

CHAPTER 1

An Introduction to the Juvenile Sex Offender

Terms, Concepts, and Definitions

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Sexual assault is now recognized as one of the more significant problems in modern Western society, ranking as a societal ill with nonsexual crime, poverty, environmental damage, communicable and chronic disease, and substance abuse. The severity of the problem of sexual assault is the result of the number of individuals who are victimized and the degree of harm they suffer by their victimization. Large-scale surveys using stratified random samples of the general population have informed us of the prevalence of sexual assault. Approximately one half of adult women surveyed report having experienced some form of sexual victimization since the age of 14, and approximately one in six adult women have experienced penetrative rape (e.g., Koss, Gidycz, & Wisniewski, 1987). Similarly, approximately one in four adult female respondents and one in ten male respondents report that they were sexually abused prior to the age of 18 (e.g., Committee on Sex Offenders Against Children and Youth, 1984). The trauma associated with this victimization leads to both immediate and longer term negative effects in a number of domains of mental health outcomes, including depression, anxiety, substance abuse, and negative behavioral outcomes such as early pregnancy, suicide, and antisocial conduct (e.g., Kilpatrick et al., 2000, 2003).

Although the majority of sexual assaults are committed by adult

men, a significant minority of sexual assaults, approximately 20%, are committed by juveniles. This chapter provides a general introduction to the understanding, assessment, and treatment of the juvenile sex offender. The chapter discusses terms and defines concepts relating to the offender and his or her criminal behavior. Additionally, the chapter provides important definitions for related concepts, including sexual deviance, sexual abuse, sexual consent, and sexual crime.

The Juvenile Sex Offender

Sex offenders are persons who have been convicted in a criminal court of a sexual crime. Sexual crimes include those that are nominally sexual (e.g., sexual assault, rape) and crimes that have some sexual intent or component (e.g., murder or attempted murder during the commission of a rape, simple assault pled down from rape). This definition excludes persons who are merely suspected of committing sexual offenses (charged but not convicted) and persons who display sexual behaviors that are socially undesirable or deviant but not criminal (e.g., extreme promiscuity). A more detailed definition of sexual crime is presented later in this chapter.

For our purposes in this chapter, we divide sex offenders into two broad age categories: adult and juvenile. The criminal justice system holds an adult sex offender fully responsible for their criminal behavior and subjects them to the full range of criminal sanctions available, including a prison sentence and, in some jurisdictions, the death penalty. The term “juvenile” is used here in the legal sense as describing “an individual who is under an age fixed by law at which he or she would be charged as an adult for a criminal act” (*Merriam-Webster Dictionary of Law*, 1996). In most Western jurisdictions, youthful offenders are provided with a juvenile criminal justice system that is separate from the adult system, in which the penalties are less severe and the emphasis is on rehabilitation rather than punishment. In the majority of U.S. states and in most other Western jurisdictions, a person is considered to be an adult when he or she reaches the age of 18. A small minority of U.S. states ($n = 10$) regard 17-year-olds as adults, and an even smaller number ($n = 3$) regard 16-year-olds as adults (Snyder, 2003).

The law makes an additional distinction between children and juveniles. In the criminal justice system, a person is considered to be a child when, by virtue of his or her immaturity, he or she cannot be held to be responsible for criminal behavior. In most Western jurisdictions, a person younger than 12 years of age is considered to be a child. By definition, then, children cannot be sex offenders because they have not been

convicted of a sexual crime. Put a different way, if a person has been convicted of a sexual crime, the convicting court did not regard him or her as a child. When children engage in sexual behaviors that would be regarded as criminal when they are older, they are described as “children with sexual behavior problems” (Grey, Busconi, Houchens, & Pithers, 1997).

In the juvenile courts throughout the United States, from 1985 to 2000, 91.8% of accused persons standing trial for offenses against persons were between the ages of 12 and 17, whereas 6.5% were below the age of 12 and only 1.6% were above the age of 17 (Stahl, Finnegan, & Kang, 2003). Therefore, a juvenile sex offender is a person who has been convicted of a sexual offense and who is considered by law to be old enough to be held criminally responsible for the crime (generally by age 12), but not so old as to be subject to the full range of adult criminal sanctions (as would be the case after his or her 18th birthday).

An alternative age-related nomenclature is based on developmental processes and milestones, with the developmental categories being child, adolescent, and adult. These terms roughly coincide with the legally based terms described previously. Adolescence is defined as “the period of physical and psychological development from the onset of puberty to maturity” (*American Heritage Stedman’s Medical Dictionary*, 2002). Puberty is defined as “the condition of being or the period of becoming first capable of reproducing sexually, marked by maturing of the sexual organs, development of secondary sex characteristics, and menstruation in the female . . . the age at which puberty occurs being typically between 13 and 16 years in boys and 11 and 14 in girls” (*Merriam-Webster Medical Dictionary*, 2002).

In the scientific literature, youthful sex offenders may be referred to as juvenile or adolescent sex offenders, these terms being somewhat interchangeable. Strictly speaking, however, these terms refer to different identifying features of the offenders. For example, an offender who is held to be criminally responsible for a sexual offense but who has not yet reached puberty would be a juvenile, not an adolescent, sex offender.

The Incidence and Prevalence of Sexual Crimes by Male Juveniles

Ageton (1983) estimated that 2–4% of adolescent males have reported committing sexually assaultive behavior. Although the prevalence of sexual assault among adolescents may be low, a substantial proportion of all sexual offenses can be attributed to adolescents. The best available estimates suggest that approximately 20% of all rapes and between 30

and 50% of child molestations are perpetrated by adolescent males (Becker, Kaplan, Cunningham-Rathner, & Kavoussi, 1986; Brown, Flanagan, & McLeod, 1984; Deisher, Wenet, Paperny, Clark, & Fehrenbach, 1982; Groth, Longo, & McFadin, 1982). The FBI Uniform Crime Report for 2002 (Federal Bureau of Investigation, 2002) presents arrest data for violent crimes, including murder, forcible rape, aggravated assault, and other sexual offenses. Persons under the age of 18 account for 16.7% of all forcible rapes and 20.61% of other sexual offenses, and these percentages are consistent with figures from 10 years ago. Nevertheless, there have been substantial reductions in the numbers of persons arrested for violent crimes over this same 10-year period, a decrease that is matched by reductions in child sexual victimization, a phenomenon that is at present not completely understood or explained (Finkelhor & Jones, 2004).

Sexual crimes committed by juveniles are sometimes difficult to distinguish from normal sexual activity in adolescence. For example, when a 15-year-old youth has sexual intercourse with his 13-year-old girlfriend, is it criminal sexual activity or normal adolescent sexual development? Of course, when a 30-year-old man has sexual relations with a 13-year-old girl, no one disputes that it is quite clearly classified as criminal behavior.

In order to inform our discussion of these issues, it is necessary to define a number of terms and concepts. The remainder of the chapter provides these definitions. Deviant sexual behavior in adolescence is discussed in terms of (1) the statistical prevalence of particular sexual behaviors in a specific population, (2) moral and religious condemnation of unusual sexual behaviors, (3) potential harmful effects of sexual behaviors, and (4) criminal sanctions. The purpose of the introduction is to compare and contrast three related concepts: sexual deviance, sexual abuse, and sexual crime.

Deviant Sexual Behavior

“Deviance” is a statistical term, denoting the tendency in a distribution of scores of any quantifiable variable for the values of individual observations to disperse from the average value, or midpoint. Accordingly, sexual behavior is said to be deviant when it is outside the “norm” for a particular population of individuals. We can determine whether or not a sexual behavior is deviant if we know the group membership of the individual who has engaged in the behavior and what sexual practices are usual for that group. For example, an unmarried 18-year old-girl engaging in sexual intercourse would be considered normative in modern Western society because such behavior is not unusual in her peer group

(Leitenberg & Saltzman, 2000, 2003). However, such behavior would be considered deviant in many parts of the world where such behavior is unusual in the local population.

Deviant Sexual Behavior in Children and Adolescents

High-quality scientific studies of sexual behavior in adolescents are few in number. The result is that we have very little objective information about the normal developmental course of sexual behavior. There have been many explanations offered to account for this lack of basic and fundamental knowledge. For example, it has been suggested that research on children's sexuality is discouraged by legal and ethical considerations where the mere act of observing or enquiring about sexual behavior in children could lay the experimenter open to charges of sexual abuse (Bancroft, 1989). And the development of sexual modesty and embarrassment from childhood to adolescence has frustrated the accumulation of reliable and accurate information on sexual behaviors in children and adolescents. Friedrich, Grambsch, Broughton, Kuiper, and Beilke (1991) surveyed mothers of 880 2- to 12-year-olds using a behavior checklist that included a number of sexual behaviors. These overt sexual behaviors decreased with age in this sample in both sexes. Money and Ehrhardt (1972) observed this same decline and suggested that as children get older they seek to conceal their sexual behavior in order to conform to society's rules on modesty and manners.

And, even when studies have been done, the observations made have led to widely different interpretations depending on culture and social climate (Vizard, Monck, & Misch, 1995). In Norway, for example, Gundersen, Melas, and Skar (1981) conducted individual interviews with 60 preschool teachers concerning their observations of sexual behavior of their pupils. Many of the teachers reported seeing children exploring their own bodies, manipulating their own genitals, exhibiting an interest in their fellow students' genitals, and behaviors they described as "coitus training." In the United States, Cantwell (1988) described the same behaviors in very young children but judged these preschool and school-age children as "perpetrators" of inappropriate sexual behavior and recommended an educational program of prevention (Vizard et al., 1995).

We do know that adolescents engage in many of the deviant sexual behaviors exhibited by adults, including child molestation, pedophilia, and fetishism (Zolondek, Abel, Northey, & Jordan, 2001). Perhaps ironically, we may know more about deviant than about normative sexual behavior in these age groups. Whereas research into normative sexual

behavior of children and adolescents has been difficult and frustrating, research into deviant sexual behavior has become widespread. Upon disclosure, these sexual behaviors become the subject of intense investigation and scrutiny by the school authorities, child protective agencies, the police, the courts, and correctional authorities. These cases are often referred to clinical practitioners for evaluation and intervention. As a consequence, a large clinical and scientific literature now exists on deviant sexual behavior in adolescents. Because our scientific knowledge is based almost entirely on research with clinical cases, it likely suffers from what has been called external validity bias (Rind, Tromovitch, & Bauserman, 2001).

When considering whether or not a sexual behavior is deviant, the issue is complicated during adolescence by the fact that normative sexual behavior changes over age and between developmental stages. In the normal course of development from childhood through adolescence, sexual behavior becomes more frequent, extensive, and complex, following a developmental sequence from hugging and kissing in the earliest stages to fondling and touching of the breasts and genitals in later stages to more intimate interactions involving oral–genital contact and penetrative intercourse in the final stage (Smith & Udry, 1985). When the sexual behavior of an adolescent is consistent with sexual behavior exhibited by his or her peers in their own age group, such sexual behavior is considered to be normative.

However, when children engage in sexual behaviors that are unusual for their current age group, these behaviors are considered deviant even though these same behaviors may be normative later in development. Again, sexual intercourse in young girls provides an illustrative example. Leitenberg and Saltzman (2000) conducted a statewide survey of a representative sample of adolescent girls in grades 8–12 ($n = 4,201$) in Vermont. Participants were asked to report their age at first experience of consensual sexual intercourse. Prior to age 14, only 5% of surveyed girls reported that they had engaged in sexual intercourse. Therefore, to this stage in development, sexual intercourse is rare or unusual in the peer group, and such behavior might be said to be deviant. However, among the girls who were 18 years of age, 51% reported that they had engaged in sexual intercourse. At this level of prevalence, sexual intercourse would be considered a normative behavior. From a developmental perspective, when a sexual behavior appears earlier in the development sequence than usual in the population, we regard such sexual behavior as deviant.

If we restrict ourselves to the statistical definition of deviance, no value judgment of the sexual behavior is made or conveyed. But deviant sexual behaviors have been characterized in negative terms in a number

of ways, including (1) as immoral as a result of religious or moral condemnation, (2) as pathological by diagnosis as a mental disorder, (3) by association as a correlate with negative outcomes, (4) as abusive when the deviant sexual behavior involves nonconsenting partners or children, and (5) as criminal when the behavior violates the criminal law.

Religious or Moral Condemnation of Deviant Sexual Behavior

In colloquial usage, the term “sexual deviance” has acquired a pejorative connotation and conveys at least a tone of moral disapproval, more often outright condemnation. It seems a prominent human trait and a pervasive aspect of human society that religious and moral judgments are readily made about all forms of sexual behavior, but particularly when the sexual behavior is unusual. For the obvious example, the world’s religions have condemned homosexual behavior throughout history. But religious disapproval has not been restricted to less prevalent sexual behavior. Leaders in the early Christian church expressed disapproval of sexual intercourse between a husband and his wife even when performed for the purposes of procreation (Tannahill, 1992). A current example of moral condemnation of sex between adolescents is the prohibition by the Catholic Church and other fundamental Christians of premarital sex (e.g., Smith, 1996). In this chapter, we resist the human tendency to condemn sexual behaviors on moral or religious grounds, except, of course, as explained, in the case of sexual abuse, on the basis of its harmful effects on victims.

Resisting the general temptation to make moral judgments of deviant sexual behaviors is especially important when considering deviant sexual behavior in children and adolescents. Young children may not yet have an ability to appreciate that particular sexual behaviors are considered to be morally wrong, socially inappropriate, harmful, or illegal (Pithers & Gray, 1998). In addition, according to many authorities in this field, and as is discussed later, deviant sexual behaviors in adolescents are often the result of abusive experiences they have endured as children (e.g., Craissati, McClurg, & Browne, 2002), in which case moral or religious condemnation is akin to blaming the victim.

Diagnosis as a Mental Disorder

Sexual deviation is often used as a synonym for “sexual perversion” or “paraphilia” (Travin & Protter, 1993). When the object of sexual desire

is unusual, an underlying pathology of sexual interest is inferred, and a mental health professional will make a diagnosis of paraphilia according to criteria set out in DSM-IV-TR (American Psychiatric Association, 2000). For example, when the objects of desire are children, women's undergarments, or animals, diagnoses of pedophilia, fetishism, and zoophilia, respectively, would be made.

Deviant Sexual Behavior and Associated Negative Outcomes

Deviant sexual behaviors may come to be viewed as undesirable because they are associated with less desirable circumstances or outcomes. We continue with the example of girls engaging in consenting sexual intercourse at an early age. Such girls exhibit more behavior problems and experience more negative outcomes than similar-age girls who are not yet sexually active (Irwin & Millstein, 1992; Jessor & Jessor, 1977); these behavior problems and negative outcomes include suicide, alcohol use, drug use, truancy, and pregnancy (Leitenberg & Saltzman, 2000). Later, in adulthood, these girls are more likely to endorse symptoms of psychological distress (Leitenberg & Saltzman, 2003). Girls who engage in sexual intercourse early in adolescence experience greater family conflict and exhibit less positive affect (McBride, Paikoff, & Holmbeck, 2003), are more likely to come from single-parent families (Wyatt, Durvasula, Guthrie, LeFranc, & Forge, 1999), and are less likely to achieve their educational goals (Hays, 1987). There are reasons to believe that the younger the girl is when she first has intercourse, the more likely she is to have had a much older partner. For example, Elo, King, and Furstenberg (1999) found that 45% of women who first had intercourse when they were 14 years of age or younger had partners 4 or more years older than themselves, compared with 18% who first had intercourse between ages 15 and 17. Lindberg, Sonenstein, Ku, and Martinez (1997) found that the youngest teenage mothers in their sample were the most likely to have had substantially older partners. These findings suggest that when a girl experiences first intercourse at a very young age, she may have been subject to the undue influence of a much older partner, even though she described the interaction as consenting.

It is not known whether early sexual intercourse causes these less desirable outcomes or whether early sexual intercourse is a result of these undesirable circumstances. Of course, early intercourse together with these outcomes may be a result of some other unknown determining factor (Billy, Lindale, Grady, & Zimmerle, 1988; Bingham & Crockett, 1996; Costa, Jessor, Donovan, & Fortenberry, 1995).

Sexual Abuse

A significant subset of deviant sexual behaviors are referred to as sexually abusive. In order to define sexual abuse properly, we must first define “consent” to sexual relations. Movies, television, and other popular media often portray the pleasurable aspects of sexual activity but place much less emphasis on the significant risks to participants. There are well-known health risks of sexual intercourse, including the acquisition of sexually transmitted diseases and HIV, with the potential for serious negative health outcomes. Girls have their own specific set of risks. Pregnancy and the subsequent birth of a child will present the teenage mother with difficult choices between abortion, giving the child up for adoption, or raising the child in very difficult circumstances. Parenthood leads to serious long-term lifestyle changes and financial challenges. Sexual relationships, particularly during adolescence, are associated with negative emotional states, including jealousy, rejection, and abandonment. Of course, sex can have a number of benefits as well, including increased psychological well-being, the solidification of human partnerships, the formation of family units, and procreation. Considering the potential risks and rewards of sexual relations, the decision to engage in sexual activity can be a critically important decision with long-term consequences for the individual.

There is now widespread recognition that adults have the right to make autonomous decisions concerning their participation in sexual relations (United Nations General Assembly, 1994) by weighing for themselves the balance between the potential risks and rewards of any sexual relationship. This recognition is the result of the long history of the emancipation of women and more recent feminist scholarship and activism (Brownmiller, 1975; Largen, 1985). The absolute right of women to refuse sexual relations has been articulated in the slogan “no means no” used in campaigns on college campuses over the past 15 years to raise awareness of this important principle (Monson, Langhinrichsen-Rohling, & Binderup, 2000). Perhaps the ultimate recognition of women’s right to refuse sexual relations is contained in laws against rape in marriage that have been enacted over the past several years in many Western jurisdictions. Although the right to refuse sexual relations has been won largely by women for women, the resulting principle that consent is required to be obtained before sexual relations begin is now a benefit afforded to all persons.

When sexual interactions are forced against a nonconsenting person, the sexual interactions are, by definition, abusive. In these circumstances, the person (adult or juvenile) who forces sex is referred to as the “perpetrator” or as a “sexual abuser,” and the nonconsenting person is recognized as a victim of sexual abuse. Though it has been argued that

prevalence rates of sexual abuse are high (e.g., Koss et al., 1987), there is general agreement that sexual abuse is outside the norm in our society. Therefore, sexual abuse is a subset of deviant sexual behavior; not all deviant sexual behaviors are abusive, but all abusive sexual behaviors are considered to be deviant.

Considering the relationship between sexual abuse and consent to sexual relations, it follows that sex between an adult (or older adolescent) and a child is inherently abusive because children are unable to provide true consent (Finkelhor, 1979). Finkelhor articulated two preconditions to true consent: (1) full knowledge regarding what is being consented to and (2) absolute freedom to accept or decline. Young children have not yet developed the capacity to give consent to sexual relations because (1) they have not yet developed the intellectual ability or the knowledge to properly weigh the risks and rewards of sexual relations and (2) children are susceptible to influence by adults, who, by virtue of their maturity and greater experience, easily exert control over children (Ondersma et al., 2001). In short, children are neither knowledgeable nor autonomous beings, and as a consequence they are not able or free to make their own decisions regarding sexual relations. Over the past 25 years, the influence of the child protection, victim's rights, and women's movements have combined with emerging scientific research regarding the harmful effects of child sexual abuse, leading to a dramatic shift in public awareness and concern. Children have come to be viewed as potential victims of sexual exploitation by adults or adolescents, and as such, they deserve and require what protection society can provide (Ondersma et al., 2001; Myers, Diedrich, Lee, Fischer, & Stern, 1999).

An important distinction is to be made here between "willingness" and "consent." A child may be "willing" to engage in sexual interactions. He or she may express a desire for sexual interactions and may even seem to initiate sexual interactions. But however willing they may be, according to the argument just presented, children do not have the psychological capacity to give consent. Therefore, all sexual interactions between an adult and a child are, by definition, abusive to the child. Child sexual abuse has been used in the psychological literature to describe virtually all sexual interactions between children or adolescents and significantly older persons, as well as between same-age children or adolescents when coercion or a power imbalance is involved (Rind, Tromovitch, & Bauserman, 1998).

Sexual Crime

In all jurisdictions in modern Western society, criminal laws against sexual assault have been enacted to protect the individual's right to auton-

omy and self-determination in sexual relations. Although these laws contain language that varies from jurisdiction to jurisdiction, they all prohibit all forms of sexual behavior, including touching, kissing, and intercourse, when the prospective sexual partner does not give consent. Forcing another person of any age to engage in sexual relations of any kind is against the law in every modern Western society.

Additionally, in every jurisdiction in modern Western society, criminal laws specifically protect children from sexual victimization by adults and/or adolescents. When a child is unwilling and sexual interactions are forced upon him or her, the sexual crime is referred to as child rape, or simply as sexual assault. When the child is willing and agrees to sexual interactions with an adult, the sexual crime is sometimes referred to as “statutory rape” (Leitenberg & Saltzman, 2000, 2003; Oberman, 1994).

Laws against child sexual abuse require the establishment of an age below which the individual is considered to be unable to provide consent to sexual relations. This is often referred to as the “age of consent.” According to Leitenberg and Saltzman (2003), in the United States, 15 states have established 18 years, six states have set 17 years, and 28 states have chosen 16 years as their age of consent. Only one American state has established age 14 as the age of consent (Donovan, 1997). In Europe, one half of the separate legal jurisdictions use 14 as the age of consent, whereas most of the remainder has set 15 or 16 as the age of consent (Graupner, 2000). In Canada, the age of consent is 14 years (Rodrigues, 2004).

The intent of these laws is to protect children from sexual victimization and exploitation by adults. In the same vein, very young children require protection from older children or adolescents who might take advantage of a very young child. However, it was not the original intent of these laws to criminalize sexual interactions between adolescent peers when such interactions are a normal part of adolescent development. Unfortunately, such criminalization does occur.

The Adolescent Male Sexual Partner: Boyfriend or Sexual Abuser?

Imagine the situation when two 13-year-old neighbors, one male and the other female, engage in sexual intercourse while their parents are at work. Because these two adolescents are of equal age and maturity, it would be inappropriate to label such interactions as abusive. At 13 years of age, the law would state that neither one of them has the psychological capacity to consent to sexual activity. But, because their interactions did not involve any force or violence or threats of violence, and there is no power imbalance between them, according to the definition of sexual

abuse provided earlier, we would not be able to determine which of these individuals is the abuser and which the victim. If we agree that there has been no abuse in this situation, we should also agree that it would be inappropriate to subject either of these adolescents to criminal prosecution.

Now consider that these two adolescents are separated by several years in age. In this circumstance, we have to consider that the relationship was abusive, and that the older of the two was the "abuser." The question then arises: how much of an age difference is required before we regard this situation as either (1) abusive or (2) criminal? It seems reasonable to suggest that, when an older individual has sex with a child who is below the age of consent, it should not be considered abusive or criminal when the older individual's age is close to the age of the younger. In the research literature, child sexual abuse is said to occur when there is at least a 5-year difference between partners (Finkelhor, 1984). For the purposes of this chapter, child sexual abuse will be defined as sexual interactions between a child under the age of 14 years with a person more than 5 years older than the child.

According to Leitenberg and Saltzman (2003), in the United States, four states require a minimum of a 5-year age difference between partners in order for the sexual interaction to qualify as a statutory rape offense (Donovan, 1997). However, 29 states do not require any age discrepancy for these laws to be prosecuted. Among these states, some require more severe penalties based on the magnitude of the age discrepancy, the absolute age of the defendant (e.g., 20 and over), and whether or not the defendant is a repeat offender. However, in these states, when the "alleged (usually female) victim" is at all younger than the age of consent, her (usually male) sexual partner of any age can be charged with a criminal sexual offense (statutory rape; Leitenberg & Saltzman, 2003). With respect to the example of the male and female 13-year-olds given earlier, the male partner could be prosecuted and convicted of sexual assault in many U.S. states.

In the study described earlier by Leitenberg and Saltzman (2000), young girls were asked to report the age at which they first experienced sexual intercourse, and, in addition, they were asked to report the age of their partner during their first experience. For 11- to 12-year-old girls, only 37% reported that their partners were of similar age. Twenty-nine percent and 34% reported that their partners were 2 to 4.5 years older and more than 5 years older, respectively. For 13- to 15-year-olds, 45%, 43%, and 12% reported that their partners were of similar age, 2 to 4.5 years older, and more than 5 years older, respectively. This study confirmed the concern about the welfare of very young girls having much older partners. For girls who first had intercourse in early adolescence

(11–12), much older partners (+5 years) were associated with more suicide attempts, more alcohol and drug abuse, and a higher incidence of pregnancy. However, for older girls (13+ years), having much older partners (+5 years) did not lead to significantly more problems, except for truancy. Nevertheless, a large number of male adolescents not much older than their female partners have consensual sex with girls below the age of consent and would be subject to criminal proceedings in many states in the United States.

The following discussion illustrates how peer-to-peer sexual relations in adolescence have been accommodated in Canadian law (Rodrigues, 2004). When sexual relations involve a person under the age of consent (12–13 years of age) with a person who is the same age or only marginally older (12–15 years of age) and who has no other relationship with the underage person that would make the relationship a nonpeer relationship (teacher, coach, etc.), then the sexual relations would be viewed as an example of peer-to-peer relations. In this circumstance, the older adolescent would be allowed to offer the defense at trial that the alleged victim consented to sexual activity. In this case, the older adolescent would perhaps not be subject to successful criminal prosecution in Canada. However, when the alleged victim is below the age of consent, the alleged perpetrator cannot use the defense that the alleged victim consented to sexual activity when the alleged victim is less than 12 years of age or when the alleged perpetrator is over the age of 16.

The Canadian law also takes age into account in determining criminal sanctions in cases of sexual assault. As mentioned earlier in this chapter, in most Western jurisdictions, youthful offenders are provided with a criminal justice system that is separate from the adult system, in which the penalties are less severe and the emphasis is on rehabilitation rather than punishment. It is interesting to note here the different ways in which the law treats immaturity in the victim as compared with the perpetrator. For the victim below the age of consent, the law regards the individual to be “incapacitated” by her or his immaturity, lacking the psychological resources to make autonomous decisions regarding sexual behavior. In contrast, the perpetrator of the same age is not viewed as being incapacitated. He or she is held to be fully responsible for the criminal sexual behavior. In Canada, as in many other Western jurisdictions, when the perpetrator is older than 12 but below the age of consent (14), the law regards the individual to be incapable of consenting to sexual behavior yet fully responsible for criminal sexual behavior, though deserving of less severe punishment on account of his or her immaturity. Under the age of 12, in Canada, as in most Western jurisdictions, the alleged perpetrator is “exempt” from prosecution, and this may recog-

nize the assumption that, below this age, the individual does not have the “capacity” to appreciate the fact that the behavior was illegal.

Summary and Conclusions

At the time of writing our first edition of this book (Barbaree, Marshall, & Hudson, 1993), we referred to a time in the not too distant past when juvenile sex offenders were not taken as seriously as is the case now.

Prior to the early 1980s, the predominant view of the sexual offenses committed by [juveniles] was that they constituted a nuisance value only, reflecting a “boys-will-be-boys” attitude and a discounted estimate of the severity of harm produced. . . . the sexually offensive behavior was not seen as assaultive; instead, these acts were seen as examples of experimentation and therefore as innocent. (Barbaree, Hudson, & Seto, 1993, p. 10)

By the early 1990s, however, we reported that “the tendency to minimize the sexual crimes of juveniles has been reduced substantially over the past decade” (Barbaree et al., 1993, p. 10). Now, more than 10 years later, perhaps we could argue that the pendulum has continued to swing in this direction, and some would argue that it has swung too far. For example, in some U.S. states, juvenile sex offenders are subject to legislation on sexually violent predators that leads in some cases to lifetime detention in strict custody (Trivits & Reppucci, 2002).

The terms and concepts introduced in this chapter provide the basis for a more informed and sophisticated discussion of this issue. From our perspective, we would make the point that criminal prosecution or other onerous public safety interventions should not be brought to bear in the case of juveniles’ sexual behavior simply because it was deviant or unusual. Nor would we agree to criminal prosecution being used to reinforce moral or religious condemnation of sexual activity in juveniles. In other words, criminal prosecution should not be used in cases in which the juvenile has been engaged in peer-to-peer sexual activity. Criminal sanctions and public safety interventions should be reserved for cases in which there has been actual sexual abuse and victimization, as these terms have been defined in this chapter.

Juveniles who face prosecution for sex offenses are often taken from their families and placed in custody or foster homes; ostracized by friends, family, community, and society; and suffer persecution and stigma that outlasts whatever temporal criminal sentence may be imposed. Such negative effects suffered by the juvenile offender may be

justified in the interests of providing a concrete solution to sexual assault as a significant problem in our society. Such justification is based on (1) the need for specific deterrence of sexually abusive behavior in the individual offender, (2) the need for general deterrence in society, and (3) the need to protect the safety of the public. Nevertheless, we support attempts to minimize the negative effects on juvenile offenders of society's response to the problem of sexual abuse.

The remainder of this volume is intended to increase general understanding of sexual abuse committed by juvenile sex offenders, to increase our ability to discriminate between abusive and nonabusive sexual behavior in juveniles, to increase awareness of assessment methodology and treatment interventions that lead to a minimization of sexual abuse committed by juvenile sex offenders, and to promote interventions that minimize the negative effects for juvenile perpetrators in the course of society's response to this important societal ill.

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