

SEXUAL ASSAULT REPORT™

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Recent Literature on Several Aspects of Child Sexual Abuse

by Erica Weissman, J.D., Psy.D.

The Role of Adult Expectations on the Recovery of Sexually Abused Children

Hail Kouyoumdjian, Andrea R. Perry, and David J. Hansen
10 Aggression and Violent Behavior 475-489 (2005)

The title of this article is somewhat misleading: it is a literature review combined with theoretical discussion, not a report on original research; and the authors acknowledge that there are, in fact, no current published studies specifically investigating the role that adult expectations play in the recovery of sexually abused children. However, in reviewing recent social-psychological studies that examine related or analogous issues, they make a persuasive case that such research could provide valuable insights that would be useful to parents, clinicians, child welfare advocates, and, of course, children.

Relationship of Parent Expectations to Academic Functioning. First, they review the general issue of the relationship of adult expectations to children's academic functioning, particularly through the medium of stereotyping. They cite Rosenthal's landmark 1960s studies demonstrating that students' performance on IQ tests was influenced by their teachers' beliefs that certain children had significant academic potential. Just as teachers' high expectations correlate with improvements in students' performance,

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Sex Offense Courts: The Next Step in Community Management?

by Kristine Herman, LMSW, JD

Sex offense cases often present challenges to the police who investigate them, the district attorneys who prosecute them, the judges who adjudicate them, and the probation officers who supervise them. Unfortunately, the traditional criminal justice system approaches each of these pieces of the puzzle working in relative isolation, with their own protocols and procedures. In many instances these protocols and procedures are rooted in tradition and practice rather than in best practices and emerging research on sexual offenders.

In order to change this, dedicated sex offense bureaus in district attorney's offices, special victims units in police departments, and, most recently, specialized sex offender supervision units of probation departments have been developed in many jurisdictions.

Lack of Specialization by the Courts

Courts, however, have yet to explore the benefits of specialization. This is unfortunate because there are many problems with applying a generalist approach to the adjudication of sex offense cases, namely, lack of specialized knowledge for decision-making, lack of adequate communication and

coordination between the court and stakeholder agencies, lack of system accountability, and the resulting dissatisfaction of many victims with the criminal justice process. Judges lack adequate information to guide them in making critical decisions about specialized conditions of probation. Victims follow and track the criminal cases from courtroom to courtroom, judge to judge. Probation officers lack the tools to safely and effectively monitor offenders in the community and report violations and Assistant District Attorneys faced with an untrained judiciary sometimes plead cases down to non-sex offense, non-registerable charges in order to secure convictions.

Working to Improve the Court Response

In light of the aforementioned frequent and complex challenges, the Center for Court Innovation and the Office of Court Administration spent several years examining the issues presented by sex offense cases to look for ways to improve the court response. The Center for Court Innovation is a nonprofit public-private partner of the New York State Court System and serves as the independent

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research and development arm for the Courts. The Office of Court Administration is the administrative arm of the New York State Court System responsible for supervising the administration and operations of the trial courts.

Center for Court Innovation staff interviewed judges, probation officers, victim advocates, prosecutors, defense attorneys and sex offense treatment providers. Additionally, the Center for Court Innovation reviewed data on sex offense arrests and dispositions and sentences. In the three pilot sites, many felony sex offense arrests resulted in misdemeanor convictions, and of those convictions 63% received community supervision as part of their sentence. In reviewing court practices, the key questions we asked were:

- Is there a way for the court to be involved in enhancing public safety?
- Is there a way to increase uniformity in how sex offense cases are handled by the court?
- Is there room for improvement in coordination and communication among interested agencies in sex offense cases?

With those questions in mind, the Center for Court Innovation and the Office of Court Administration partnered to plan and implement the nation's first three pilot specialized Sex Offense Courts.

Pilot Sex Offense Courts in New York

In January of 2006, Nassau, Westchester and Oswego Counties became the first three jurisdictions in the country to pilot specialized Sex Offense Courts. To ensure that the most effective court practices possible were in place, court administrators and local stakeholders planned a unified approach to management of sex offenses, relying on best and emerging practices in the field of sex offender management, with an emphasis on promoting offender accountability and public safety.

The mission of New York State Sex Offense Courts is to promote justice by providing a comprehensive approach to case resolution, increasing sex offender accountability, enhancing community safety and ensuring victim safety while protecting the rights of all litigants. The two main purposes and functions of the Sex Offense Court model are to promote best practices in the resolution of sex offense cases and to facilitate and enhance coordination and communication among relevant stakeholders.

Best Practices of the Courts

Best practices in New York Sex Offense courts include the following core components:

- Keeping victims informed;
- Scheduling cases promptly;
- Having dedicated, trained judges;

- Supervising defendants continuously;
- Implementing additional judicial monitoring of cases post-conviction/plea;
- Building strong relationships with service providers;
- Coordinating with probation departments;
- Convening regular meetings with criminal justice agencies and service providers; and
- Providing court personnel and partners with education and training.

The New York Sex Offense Courts incorporate all of the above listed core concepts, and are designed to work with key stakeholders such as defense attorneys, prosecutors, probation, victim agencies, sex offender-specific treatment providers, and polygraph examiners. The Sex Offense Court model handles all cases that include a felony level sex offense charge or where the court has determined that the underlying facts of a case warrant the inclusion of the case in Sex Offense Court. The Courts hear cases from their inception and early identification through disposition and monitoring.

What the Sex Offense Courts Are Not

As important as it is to say what the New York Sex Offense Courts are, it is also important to point out what they are not. Sex Offense Courts are not designed as alternatives to incarceration, they are not diver-

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Editor: Joan Zorza, Esq.
Associate Editors: Anne L. Perry, Esq.
 Ann W. Burgess, D.N.Sc.
Contributing Editors: Wendy J. Murphy, Esq.
 Donna A. Gaffney, D.N.Sc.
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Managing Editor: R. Mark Davis, Esq.
Editorial Director: Deborah J. Launer
Publisher: Felicia A. Rosenfeld

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sion courts, and they are not treatment/rehabilitative courts. Instead, Sex Offense Courts are more akin to domestic violence courts; defendants do not opt-in but rather all cases of a certain nature or charge are automatically routed for their entire processing and adjudication. Sex Offense Courts, like domestic violence courts, emphasize the need for accountability of the offenders and the increasing of public/community safety.

Judicial Training and Monitoring Are Key

As mentioned, one of the key elements and best practices of Sex Offense Courts is education and training for judges and non-judicial personnel. Judicial training is integral to enhancing the court's ability to handle complex sex offense cases in a consistent and comprehensive manner. By understanding patterns of offending behavior, the prevalence of crossover behaviors, and effective interventions, such as the containment model of sex offender management, judges and lawyers can make informed decisions and appropriately assess special conditions of probation.

Another best practice feature of Sex Offense Courts is the use of judicial monitoring. Court monitoring includes rapid calendaring of cases on probation, immediate communication of compliance or non-compliance of court mandates, swift response to violations of conditions of probation and SORA, and consideration of a graduated sanctions scheme.

Given the reality that many sex offenders are sentenced to community supervision, Sex Offense Courts work with proba-

tion and parole departments to increase their participation, enhance coordination and communication between the court and the supervision agents, promote the use of pre-sentence tools (investigations, risk assessments, polygraph, etc.) and utilize special sex offender conditions.

Use of Victim-Centered Approach

The Sex Offense Courts work closely with local service providers to facilitate victim access to advocacy, counseling and other social services. Best practices dictate that a victim-centered approach is key to any sex offense containment strategy, and should guide the framework for sex offender management and the development of a Sex Offense Court. The Sex Offense Court model was driven in part by the involvement and input of the victim agencies who expressed interest in specialized court practices and quicker resolution to cases and violations. In some jurisdictions, a sex offense case could be transferred back and forth between and among multiple courtrooms before several different judges throughout the duration of the case, making the process all the more confusing and frustrating for victims. The Sex Offense Court model eliminates this concern and is designed to address the needs of the victims, and includes the victim advocacy agencies in ongoing training, planning and operations meetings.

Because the New York State Sex Offense Courts are the first of their kind nationwide (with the notable exception of the few Juvenile Sex Offense Court models), research and evaluation plans are in place to determine the effectiveness of these new strategies. The Center for Court Innovation has worked with the New York State Court System to design

a court application tool to be used in all Sex Offense Courts. Cases are tracked and data is collected to allow for a future in-depth evaluation of court procedures.

We hope to provide answers to the following research questions:

- How were sex offense cases handled prior to the implementation of the Sex Offense Courts?
- What is the process for developing and implementing Sex Offense Courts?
- What are Sex Offense Courts "best practices"?
- What is the impact of the Sex Offense Courts on victims?

By utilizing best practices and current research on sex offenders, we are optimistic that the Sex Offense Court model will improve case outcomes, including victim and stakeholder satisfaction with the criminal justice system response, and provide for increased accountability of sex offenders in New York and, as a result, increased community safety.

Kristine Herman was the Associate Director of Sex Offense Programs at the Center for Court Innovation and has worked with the Office of Court Administration to research and develop specialized Sex Offense Courts and implement emerging practice models in community management of sex offenders in New York State. She also worked with many other innovative court projects in New York State, and is in Baku, Azerbaijan serving as the Gender/Human Rights Liaison for the American Bar Association's Central and Eastern European Law Initiative. Kristine Herman can be reached at Kristine.herman@gmail.com. Information about the Sex Offender Courts can be obtained from the Center for Court Innovation, 520 Eighth Avenue, 18th floor, New York, NY 10018, by email at info@courtinnovation.org or by calling 212-373-1694 or on the Web at www.courtinnovation.org. ■

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At trial, other evidence corroborated the sexual abuse of the boys. A pediatrician examined all three boys and concluded that all of them had been sexually abused or had symptoms consistent with sexual abuse. Brigman also detailed her sexual abuse of the boys, claiming that her husband forced her to participate in these acts by threatening to kill her. Following her conviction, Brigman appealed, arguing that the trial court erred in admitting the statements of the boys as conveyed through their foster parents because these statements were testimonial and thus inadmis-

sible under Crawford. Specifically, Brigman contended that because the statements were tape recorded and reduced to notes that were provided to the prosecution, they were akin to "official investigations."

The Court of Appeals of North Carolina first noted that Brigman's arguments only pertained to statements made by the oldest boy, who was unavailable as a witness because he testified that he did not remember "the subject matter of his statement." *State v. Brigman*, 615 S.E.2d 21 (N.C. Ct. App. 2005). The younger boys were "available" to testify, although neither the State nor defendant called them to testify, so Brigman waived her right to

confront them. The court disagreed with Brigman that the statements were procured in manner similar to formalized police questioning. The child gave spontaneous answers to open-ended inquiries from his foster mother, one of the people closest to him. Further, the child did not have the reasonable belief that the statements would be used at a later trial, and did not even seem to understand that what his mother and her husband were making the boys do constituted criminal activity. The court concluded that the statements were not testimonial and there was not error in admitting those statements as hearsay exceptions. ■