

THE PROBATION RESPONSE TO CHILD SEXUAL ABUSE OFFENDERS: HOW IS IT WORKING?

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Executive Summary

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THE PROBATION RESPONSE TO CHILD SEXUAL ABUSE OFFENDERS:

HOW IS IT WORKING?

A Study of the
American Bar Association
Criminal Justice Section

NCJRS

MAR 15 1990

ACQUISITIONS

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Interview-based studies such as this necessarily depend on the willingness of persons "in the field" to share their time and expertise with project staff. In this instance, several hundred people -- probation officials, prosecutors, defense attorneys, judges, corrections officials, social workers and therapists -- spoke with us about their first-hand experience with child sexual abuse cases. An attempt to thank each individually would risk failing to mention at least one. We therefore extend a heartfelt, though "generic," thank you to each and every individual who participated in our telephone and mail surveys and who assisted us with our on-site visits.

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I. INTRODUCTION

The number of child sexual abuse cases adjudicated in our nation's courts is large and increasing dramatically. As the number of child sexual abuse cases grows, so does concern over the best ways for the criminal justice system to respond to such cases. While some advocate a strong response by the criminal justice system and stiff punitive sentences, others suggest alternatives to the criminal justice system and treatment-oriented sentences (MacFarlane and Bulkley, 1982; Harshbarger, 1986). While theoretical debates continue, criminal courts are already facing these complex cases in record numbers and are forced to make wise sentencing decisions now. How are they responding? What is the result?

According to a 1987 American Bar Association (ABA) study, the primary response to these cases was to sentence the defendant to probation. The study, conducted in Trenton, New Jersey, Fairfax County, Virginia, and Santa Cruz, California, documented that of the 159 child sexual abuse cases sampled in these counties, over four-fifths resulted in orders of probation. The most commonly imposed offense-specific condition of probation was that the offender receive treatment for his sexual orientation to children. A full 89% of the cases involved court-mandated treatment as a condition of probation, and 56% of those sentenced to some jail time were also required to serve a probationary period upon their release with the condition that they receive treatment (Chapman and Smith, 1987a and 1987b).

An earlier study sponsored by the American Humane Association (DeFrancis, 1969) in Brooklyn and the Bronx, New York, found less reliance on the use of probation, but they still found it was used for 40% of convicted child abuse offenders. (That study did not, however, examine specific conditions associated with the probation orders.)

Previous research documents that criminal courts are sentencing many, if not the majority, of those convicted of sexually abusing children to probation. What happens to these cases when they are turned over to probation departments? Probation departments are being given the enormous task of monitoring abusers' probationary conditions. This comes at a time when these departments are assuming ever-increasing responsibilities and maintaining tremendous caseloads due to prison overcrowding. Do probation officers have the time, expertise, and resources to monitor child sexual abusers adequately? How important is supervision by probation officers of offenders in treatment programs? What exactly does monitoring involve and how time-consuming is it? What happens when abusers fail to fulfill the conditions of probation? Does anyone even know if they fail? If so, what happens?

In addition to issues related to supervision, probation officers are being asked to address difficult treatment issues. Little consensus exists about what type of treatment works best, yet probation officers must often decide, or at least participate in deciding, complex treatment issues, largely without benefit of extensive training on these issues. For example, who is "qualified" to treat these offenders? What standards, if any, should be used to select treatment providers? Who should select the treatment program -- the judge, the probation officer, the defendant (or his lawyer), or the prosecutor? Should the treatment be administered in prison, in a half-way house or on an out-patient basis? When is someone considered "treated" and who makes that decision? This study sought answers to these key questions and to those related to supervision in order to explore what court-ordered probation for child sexual abusers actually means in practice, and to make recommendations for improving the response of the criminal justice system to child sexual abuse offenders.

II. PROJECT DESIGN

The research included two methodologies: (1) a national telephone survey of chief probation officers in 100 randomly selected counties, supplemented by a mail survey of the state director of probation (or another state representative in states without a state director), and (2) case studies in four sites. The surveys were designed to elicit a national picture about the supervision and monitoring of child sexual abusers sentenced to probation; the special conditions associated with their probation; the use of specialized caseloads for these offenders; problems associated with monitoring these offenders; treatment of offenders; and revocation issues. The case studies were designed to explore these same issues in greater depth with judges, probation officers, prosecutors, defense attorneys, therapists, and victim advocates.

III. SURVEY RESULTS FROM PROBATION DEPARTMENTS

Telephone surveys with 100 representatives of county probation departments revealed the following:

- o Fewer than half of the county probation departments surveyed had any special regulations or guidelines for handling probationers convicted of child sexual abuse.
- o Chief probation officers expressed concern that their staff caseloads were too high generally, and were specifically too high to supervise child sexual abuse probationers adequately.

- o Only one-quarter of the probation departments had a specialized unit or officer(s) designated to supervise child sexual abuse offenders.
- o One-third of probation representatives surveyed believed that the training provided to their staff on child sexual abuse was inadequate.
- o The majority of jurisdictions placed child sexual abuse offenders on probation for an average of three to five years. Most thought this length of probation was "about right."
- o The vast majority of child sexual abuse probationers were required to report to their probation officers in person; "surprise" and collateral contacts were also frequently used to monitor these probationers.
- o Psychological counseling for the abuser was the offense-specific condition most often ordered for child sexual abuse probationers; also common was an order to stay away from the victim.
- o Most probation officers were satisfied that the special conditions ordered by the judge were sufficiently clear and specific.
- o Public mental health programs were utilized most often in the treatment of child sexual abusers; private counselors were also frequently used.
- o Fewer than one-quarter of the probation officials reported that there were sufficient numbers of "good" treatment programs either for those who were indigent or for those with the means to pay. Most departments had no standards by which to approve treatment programs.
- o Few child sexual abusers were brought back to court for reoffending or other "major" violations, according to those surveyed. The few offenders who were brought back to court most often had their probation modified or revoked.

Mail surveys with representatives from each of the 50 states produced similar results to the telephone surveys. However, the state representatives were even more pessimistic about the quality of treatment facilities and staff training available on child sexual abuse than were the county officials.

IV. DESCRIPTION OF CASE STUDIES

Advisory Board members and probation directors interviewed in the national survey were asked to recommend sites where criminal justice officials and therapists were making concerted and effective efforts to handle offenders who sexually abuse children. Four of these were chosen for on-site study: Travis County, Texas, Salt Lake County, Utah, the state of Vermont, and St. Joseph County, Indiana.

During the on-site visits, project staff conducted open-ended person-to-person interviews with probation officials, prosecutors, judges, defense attorneys, therapists, and victim witness personnel. Staff also visited residential correctional facilities and both in-patient and out-patient treatment programs. Finally, a number of group therapy sessions were observed.

The sites provided an interesting contrast in terms of the type and length of typical sentences, the nature of the supervision by probation officers, and the availability and approaches of treatment programs.

TRAVIS COUNTY, TEXAS

In Travis County, child sexual abuse offenders generally receive ten years of probation, often preceded by up to 180 days of "shock" incarceration. For the first several years of their probation, they meet two or three times a month with specialized probation officers. Even when placed on the regular probation caseload, they are supervised more closely than are most other probationers.

While on probation, offenders are required to undergo treatment by probation-approved therapists. Therapists' specific treatment approaches vary considerably, from the relatively confrontational, focusing almost exclusively on controlling sexually deviant behavior, to the more "holistic," focusing on the numerous therapy needs of the client.

SALT LAKE COUNTY, UTAH

Despite a mandatory minimum sentencing law, most child sexual abuse offenders serve a short period in a local jail (three to six months) and are then placed on probation for approximately two and a half years. Depending on the severity of the offense, the first year to year and a half is spent either in a residential half-way house or in an out-patient treatment program. Specialized probation officers are assigned to these cases. Since residents in the half-way houses have counselors who perform many of the functions typically provided by probation officers, there is little one-on-one contact between probation

officers and residents although probation officers have regular contact with residents' therapists. Out-patient probationers are on maximum supervision for at least nine months, during which time they meet with their probation officers at least twice a month.

Several counseling facilities in the community provide most of the in-patient and out-patient treatment. Programs are highly structured, with specific goals offenders must meet before progressing to less restrictive levels of treatment. Therapy addresses both sex offense-specific and other problem areas. Successful completion of the treatment program may result in early termination of probation.

VERMONT STATE

In Vermont, the only state-wide system included in the study, rapists and the more serious sexual assault offenders are typically given a "split" six to twelve year sentence, with part to be served in a correctional facility and part to be spent on probation. Nonviolent pedophiles charged with "lewd and lascivious" contact are generally sentenced to two or three to five years on probation, and frequently remain on probation for the entire five-year period. While practices vary around the state, larger counties have specialized probation officers to supervise these offenders. Child sexual abuse probationers are usually on medium to high supervision for at least a year, requiring them to meet twice a month with their probation officers. Upon reassessment, the required number of visits may be reduced to one a month and, after two or three years, to one every 90 days.

As elsewhere, probationers must be treated by probation-approved therapists. Despite state-wide coordination provided by the legislatively created Vermont Treatment Program for Sexual Aggressors and the existence of a "pool" of approved therapists in every county, therapy approaches vary considerably from therapist to therapist, with some highly structured and others considerably less demanding. Therapy lasts a minimum of 18 months but typically terminates at least a year prior to the end of the probationary period.

ST. JOSEPH COUNTY, INDIANA

Most convicted offenders who sexually abuse children receive three or four years of probation, sometimes accompanied by 30 to 60 days of incarceration to be served on weekends. These offenders are supervised by the same probation officers who supervise other felony offenders. Most are on maximum supervision for at least six months, during which time they must meet with their probation officer at least twice a month.

Probationers are required to receive treatment from probation department-approved treatment providers. Most treatment is provided on an out-patient basis by a program which concentrates on controlling offenders' responses to deviant arousal. Treatment usually lasts two to four years.

V. RESULTS FROM THE CASE STUDIES

Interviews were conducted with over 60 probation officers, judges, defense attorneys, prosecutors, victim witness advocates, and treatment providers in four sites. The opinions of those interviewed varied, sometimes widely, and consensus on most issues was hard to find, not only among the four sites but often within the individual sites as well. Some common themes emerged, however, and can be summarized as follows.

Prosecution

Although prosecution was not the specific focus of study, the prosecution of child sexual abuse cases is often intricately tied to sentencing outcomes. Four issues were discussed during the interviews:

- o Intrafamilial versus other child sexual abuse offenders. Opinions were mixed among those interviewed about whether individuals who sexually abuse children within the nuclear (or extended) family should be treated differently than other offenders. While some argued that intrafamilial offenders should be treated less punitively by the system (in order, for example, to preserve the family structure, to comply with the family's wishes, or to obtain family therapy), others contended that the offender's violation of a sacred trust warranted more punitive action.
- o Difficulty of prosecution. Despite innovations in the prosecution of child sexual abuse cases, most officials reported that prosecution of these cases remains difficult.
- o Trial versus plea-bargain. Considerable consensus existed in all four sites that most child sexual abuse cases terminated with negotiated outcomes rather than trials.
- o Assessing the offender's "treatability." Consideration of the offender's amenability to treatment was a key factor in officials' decisions regarding case outcomes. Offenders who admitted to some type of sexual abuse with children were much more likely to be viewed as

good candidates for treatment. Those who denied the abuse were much more likely to be incarcerated.

Sentencing

Sentencing issues related primarily to the presentence report, the types of sentences imposed, and the conditions of probation.

- o The presentence report. Presentence reports played a key role in determining the outcome of child sexual abuse cases. The preparer of the presentence report yielded considerable power in determining the fate of the defendant since most judges indicated that they usually follow the presentence recommendations.
- o Types of sentences imposed. While many prosecutors and a number of judges expressed the view that incarceration was indicated for many abusers, prison overcrowding was frequently given as a prime reason for reserving scarce prison beds for the most violent offenders and those who denied the abuse. Most offenders were sentenced to probation conditioned on receiving either in-patient or out-patient treatment, sometimes accompanied with short periods of "shock" incarceration in a local jail.
- o Conditions of probation. By far the most commonly ordered offense-specific condition of probation was treatment for the offender's sexual orientation to children. Also common were orders to stay away from the victim or other minor children.

Supervision of Probationers

Issues discussed included the length of the probationary period, the intensity of the supervision, the use of specialized caseloads, and confidentiality issues related to supervision.

- o Length of supervision. Despite the disparity among the sites in the length of probation (from two to ten years), officials within each site were generally satisfied that the length of probation in their jurisdiction was adequate and appropriate.
- o Intensity of supervision. The most intensive form of supervision outside of jail or prison was that provided in residential half-way houses. This type of supervision was available in two of the four sites visited. All four sites used intensive or maximum supervision for child sexual abuse offenders initially placed on probation. Such supervision included

collateral contacts with the probationer's employer, therapist, family members, and associates; "surprise" or unannounced visits to their home or place of employment; and frequent in-person meetings between the probation officer and the offender. Almost without exception, practitioners held that intensive supervision was important in these cases, at least initially.

- o Specialized caseloads. Three of the four sites had specialized probation officers assigned to child sexual abuse offenders. These officers had a reduced caseload and some specialized training on the sexual abuse of children. Most practitioners interviewed thought specialization was important.
- o Confidentiality issues. Across the sites, most child sexual abuse offenders were required to sign a waiver of confidentiality with the probation officer. Most officials felt such a waiver was important because it allowed the probation officer to receive progress reports from treatment providers and to obtain otherwise confidential material from employers and government agencies.

Treatment

Discussion about treatment issues focused on three key topics: the availability of treatment, types of treatment approaches, and the coordination between probation and treatment providers.

- o Availability of treatment. Although practitioners generally were able to secure some type of treatment for child sexual abuse offenders, they were disturbed by the relative lack of alternatives and sometimes long waiting lists for programs. Almost universally the need was reported for more therapists and more alternative therapy settings -- half-way houses, therapy within prison, and therapy within jails.
- o Treatment approaches. With few exceptions, the therapists interviewed said they would not accept anyone in their program who absolutely denied sexual conduct with children. Most firmly believed that individuals who denied the abuse were not amenable to treatment. Treatment approaches varied considerably both within and across the four sites. Styles ranged from holistic "support" therapy to very confrontational therapy. None of the sites had established written standards to address the qualifications needed by therapists treating child sexual offenders. Probation

officers relied heavily on their own assessments of the quality of available treatment providers and the assessments of their colleagues in the probation department.

- o Coordination between the treatment provider and probation. Most officials thought that coordination between the therapist and probation officer was critical to successful treatment of the offender. Most bemoaned, however, that heavy caseloads precluded as much coordination and contact as would have been beneficial.

Revocation/Success Rates

Officials in all four sites noted that there were few known instances of reoffending by child sexual abuse offenders during the period of probation. But officials were also quick to point out that these probationers pose serious potential harm for one compelling reason: their sexual orientation to children usually includes a long, pervasive and active history which is extremely difficult to change. As a result, many cautioned that just because revocation rates are low and known reoffenses are few in number while the offender is on probation, a sigh of relief may not be warranted. Many expressed concern that offenders who will not abuse children while they are on probation will regress to their abusive behavior once that period is over. These concerns generated considerable debate among professionals who handle child sexual abuse offenders. Some suggested that lengthy periods of probation (such as the ten years used in Texas) are appropriate and fair sentences for these offenders. Others, however, contended that prolonged probationary periods are unfair and unrealistic in terms of available resources, and that shorter periods of intensive probation (such as two or three years) would be a better use of limited resources.

VI. CONCLUSIONS AND RECOMMENDATIONS

The primary goals of the research were to examine how well probation departments were coping with their responsibility to monitor child sexual abuse offenders and to develop recommendations to improve the response of the criminal justice system to these cases. The exploratory research design included telephone and mail surveys with 150 representatives of probation departments and site visits to four jurisdictions to conduct open-ended interviews with probation officers, judges, prosecutors, defense attorneys, therapists, and victim advocates. General conclusions and specific recommendations can be drawn from the research.

(1) CHILD SEXUAL ABUSE PROBATIONERS REQUIRE SPECIALIZED SUPERVISION BY PROBATION OFFICERS.

The telephone and mail surveys, as well as the interviews from the four sites, provided conclusive evidence that officials perceive that child sexual abuse probationers require special attention. Most officials adamantly believed that these probationers should be handled by officers in a specialized unit that has the following characteristics: reduced caseloads, officers with intensive training on child sexual abuse issues, and intensive supervision of the probationer. The primary reason given was that these offenders are especially likely to reoffend and pose such a potential danger to children that extraordinary monitoring and supervision is appropriate. Unfortunately, many lamented limited resources which precluded such a specialized response, especially given burgeoning probation caseloads due in large measure to prison overcrowding. Nevertheless, their opinion about the need for a special response was clear and leads to the following specific recommendations:

1.1. Probation departments should establish specialized units to monitor child sexual abuse offenders.

1.2 The specialized unit should have reduced caseloads (as compared with generalized units in the department) to allow more careful monitoring of these offenders.

1.3 The specialized unit should establish guidelines for frequent contact between the probationer and his probation officer. The contact should include both in-person office visits as well as "surprise" visits and collateral contacts between the officer and the probationer's therapist, employer, family members and associates.

1.4 The officers in the specialized unit should be given intensive training on issues related to child sexual abuse and the monitoring of such abusers.

(2) CLOSE COORDINATION BETWEEN PROBATION OFFICERS AND TREATMENT PROVIDERS IS VITAL.

Both the surveys and the site visits produced ample evidence that close communication and coordination between probation officers and treatment providers is important to monitor the offender adequately. For example, treatment providers need probation officers to respond quickly and seriously to any reports of the offender's failure to either attend or progress in treatment in order to encourage "reluctant" offenders to change their behavior. On the other hand, probation officers need to be kept informed in a timely manner when the offender is not attending treatment in order to supervise the offender and

protect future potential victims adequately. Effective communication, coupled with an understanding of each other's roles, is often critical in these cases, according to the vast majority of those interviewed. Therefore, the following are recommended:

2.1 Regular telephone, written, and in-person communication between probation officers and therapists should be required by the probation department. Probation officers and therapists should be encouraged to work together to establish the most effective means of communication.

2.2 The probation department should require probationers to sign confidentiality waivers to facilitate access to relevant information and insure meaningful communication between treatment providers and therapists.

2.3 Joint training is recommended between probation officers and treatment providers to clarify roles and responsibilities and to establish mutually advantageous interaction between the two.

(3) A VARIETY OF SENTENCING OPTIONS AND APPROACHES ARE NECESSARY TO ADDRESS THE NEEDS OF ALL CHILD SEXUAL ABUSE OFFENDERS.

Officials across the country are faced with very few sentencing options in child sexual abuse cases. While treatment is often the preferred choice for offenders who appear amenable to it, many judges indicated that the sentencing goals of punishment and public protection would best be served by providing that treatment in a correctional facility or other secure setting, such as a half-way house. Unfortunately, few judges have the luxury of selecting the "best" possible sentence. Prison overcrowding and the lack of any (or enough) treatment beds within incarcerated or half-way house settings often leave judges with the uncomfortable dilemma of imposing treatment without incarceration or incarceration without treatment. Judges frequently attempt to alleviate this situation by the use of "shock" incarceration.

In addition to limited in-patient treatment options, many judges face limited out-patient options. Many out-patient programs are overcrowded or are unable (or unwilling) to accept indigent offenders. Further, most judges are not trained to assess the efficacy of various treatment approaches and there are usually no standards to guide them in selecting from among available out-patient programs. This conclusion leads to the following recommendations:

3.1 Sentencing options for child sexual abuse offenders must be expanded in most communities to include sufficient numbers of placements in both out-patient facilities and in-patient facilities, including half-way houses, jails, and prisons.

3.2 Standards should be developed to establish the qualifications required to treat child sexual abusers. These standards are best developed by criminal justice officials and treatment providers working as a team.

3.3 Judges and probation officers who are responsible for recommending specific treatment providers/approaches should be given training to help them select the most appropriate options for individual offenders.

(4) "SUCCESSFUL" AND "UNSUCCESSFUL" TERMINATION OF PROBATION AND TREATMENT NEEDS TO BE BETTER DEFINED AND DOCUMENTED.

Most practitioners interviewed by telephone, mail, or in person indicated that child sexual abusers usually complete their probation with no known reoffenses. They were also quick to point out, however, that they believe these offenders are at high risk for reoffending (based on their long history of abusive behavior and their continuing attraction to children) and that "known" reoffenses were not the only concern. They worried that abusers were reoffending without being detected, and they were even more concerned that abusers were refraining from sex with children only because they were being "watched" and would regress once probation was terminated. More careful monitoring may help alleviate the first concern. The second point is moot in a due process system of justice. Once the offender's probation is terminated, the criminal justice system's hold over the abuser is terminated (unless, of course, the individual is rearrested for a new offense).

Officials were concerned about the paucity of information available on the numbers of offenders who "successfully" and "unsuccessfully" terminate treatment and probation. Therefore, the following are recommended:

4.1 Treatment providers should maintain and distribute to probation departments, judges, and other interested parties, statistics on the number of individuals accepted and rejected for treatment; the number of individuals who fail to complete treatment (and reasons why the individual dropped out or was terminated by the treatment provider); and any available statistics on long-term follow-up success rates.

4.2 Probation departments should maintain and distribute to judges, treatment providers, and other interested parties, statistics on the number of child sexual abuse probationers who successfully and unsuccessfully terminate their periods of probation and the reasons for unsuccessful terminations.

(5) MORE RESEARCH IS NEEDED TO SYSTEMATICALLY EXAMINE EFFORTS TO IMPROVE THE RESPONSE TO CHILD SEXUAL ABUSE OFFENDERS.

The conclusions and recommendations above were based on findings from an exploratory study. Important questions remain and are worthy of more rigorous study methods. Three key issues deserve particular note.

First, many suggestions were raised to improve the response of the criminal justice system generally and probation departments specifically to child sexual abusers. The specific recommendations in this report should be rigorously tested using an experimental or quasi-experimental design in a number of jurisdictions. The potential for improving the response of the criminal justice system is great and deserves serious consideration.

Second, while the above suggested research would focus directly on the day-to-day operation of probation departments, the criminal justice system could also benefit from mental health research on child sexual abuse offenders. In order for criminal justice officials to reach equitable and fair sentencing decisions, they need sound input from the treatment community. Specifically, longitudinal studies are needed to assess the long-term effects of treatment on the offender, the victim, and the family. Officials raised many disturbing doubts about whether it is indeed possible to change a person's sexual orientation and behavior towards a child and about the long-term prognosis for reunifying offenders with their families.

Third, research is needed on the relative "success" of various types of treatment for different types of offenders. Most criminal justice officials frankly admitted that offenders are being sent to one type of treatment versus another without benefit of any hard evidence to indicate which option might be better. Unless such research is forthcoming, this unfortunate situation is likely to continue.

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