

**REVIEW OF THE FINAL REPORT: ENHANCING COURT AND  
PROBATION PRACTICES FOR CASES INVOLVING JUVENILES  
WHO COMMIT SEXUALLY ABUSIVE BEHAVIORS**

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In June 2019 the National Center for State Courts and the Center for Sex Offender Management submitted a report to the Arizona Supreme Court’s Juvenile Justice Services Division, providing an overview of existing practices and recommendations related to the management and treatment of juveniles adjudicated for sexual offenses (hereinafter referred to as the JSAB report). The following is a review of the degree to which the Guiding Tenets and Recommendations contained in that report align with the available research, current best practices, and professional standards in the field of assessment and treatment of juveniles who have engaged in sexually abusive behaviors (JSAB).

Taken as a whole, the JSAB report reflects the current best practice standards in the field. The recommendations are well supported by the available research. When research on an issue is not applicable or unavailable, the recommendations reflect the current best practice recommendations of the relevant professional organizations.

### ***Historical Context***

Studies of adult sexual offenders published before 1990 described the historical behavior of adults who were in treatment for criminal sexual activity. These studies often reported extraordinarily high rates of undetected “paraphilic acts” and victims (Abel, Becker, Mittelman, Cunningham-Rathner, Rouleau, & Murphy, 1987; Groth, Longo, & McFadin, 1982). Further, the assertion that sexual recidivism was typically “frightening and high” – up to 80%, (Freeman-Longo, & Wall, 1986), was widely accepted and incorporated into numerous policy positions and court decisions (See Ellman, & Ellman, 2015 for a detailed discussion). These studies often included a subgroup of juveniles and sex offender management policies and practices were often extended to JSAB’s. The subgroup of juveniles in these studies were not independently analyzed to determine if the offense dynamics for adults applied to juveniles. Other studies

portrayed JSABs in terms commonly applied to adult offenders (Groth, 1977). These reports contributed to the assumption that JSABs were best understood as sex offenders who were young, rather than adolescents whose sexual misconduct was developmentally distinct from adult sexual offenders.

At the same time, multiple studies were raising questions as to the effectiveness of correctional rehabilitation in general (Lab & Whitehead, 1989; Martinson, 1974; Sechrest, White, & Brown, 1979) and sex offender specific treatment in particular (Seto & Barbaree, 1999). These forces contributed to a primary or exclusive emphasis on a “containment” approach to the management of sex offender risk. This approach is a philosophy that values public safety, victim protection, and reparation for victims as the paramount objectives of sex offender management and treatment (English 2004). The approach is grounded in an assumption that many sex offenders have a long history of assaulting many types of victims and will probably reoffend if not prevented from doing so. The approach stresses maximizing offender accountability and restricting the offender’s access to potential victims and situations where additional offenses are possible (English, 1998). In line with those goals, polygraph testing, and treatment services generally, were used in part to obtain additional disclosures of victims or assaults in order to extend and individualize the supervision and restrictions placed on sex offenders (Ahlmeyer, Heil, McKee, & English, 2000; English, 1998).

Over recent decades the common belief that sex offense recidivism is “frightening and high” has not been supported by the available data. Although all sex offense recidivism is undetected at some point (until the perpetrator is caught), and presumably some portion of sexual recidivism remains undetected indefinitely, rates of detected sexual recidivism among adult sexual offenders have been modest (Langan, & Levin, 2002; Sample, & Brey, 2003). In

addition, mirroring the decline in violence of all types, sexual offense recidivism rates among adult prisoners released from prisons have declined 70% to 80% (Duwe, 2014; Helmus, 2009; Minnesota Department of Corrections 2007; Wisconsin Department of Corrections, 2015).

Recent studies have established that rates of detected sexual recidivism among JSABs have been quite low and declining. In a large meta-analysis involving 106 data sets and 33,783 JSABs Caldwell reported that the rate of detected sexual recidivism over an average 60-month follow-up was less than 5% (Caldwell, 2016). In addition, when older studies, which often contained large samples of individuals charged with homosexual acts, fornication, and promiscuity were eliminated, the rate of detected sexual recidivism showed a decline of 73% in recent decades to a current rate of 2.75%. Further, studies did not find higher recidivism rates with follow-up times exceeding 3 years. At the same time, these studies have consistently reported rates of detected general, non-sexual recidivism among JSABs that is 4 to 10 times greater than the sexual offense recidivism rate (Caldwell, 2016). In response to this emerging research, the field of assessment and treatment of JSABs has moved toward a more comprehensive assessment of the youth's psychosocial adjustment and treatment needs, and a more professional and empirically guided treatment approach. The recommendations in the JSAB report align with this trend toward more comprehensive and empirically guided assessment and treatment of JSABs.

### **JSAB Report Review**

The JSAB report is organized into a series of Guiding Tenets and associated recommendations. Below these are addressed specifically, with more extensive discussion of the issues where the research is developing or issues are more complex.

**GUIDING TENET 1: WELL-INFORMED STAKEHOLDERS ADVANCE WELL-INFORMED – AND MORE EFFECTIVE – SYSTEM RESPONSES.**

This tenet and the associated recommendations align fully with the emerging best practices in the field. The Foundational Points of The Adolescent Practice Guidelines of the Association for the Treatment of Sexual Abusers (ATSA Practice Guidelines) note that emerging research has resulted in rapidly changing standards for assessment, management, and treatment of these youth. Section E items 2.0 through 2.7 of those guidelines emphasize the importance of well-trained practitioners that keep abreast of new developments in the field and avoid ineffective or potentially harmful approaches.

**GUIDING TENET 2: DISPOSITION AND CASE MANAGEMENT DECISIONS ARE MORE EFFECTIVE WHEN DRIVEN BY ASSESSMENTS, RATHER THAN BEING OFFENSE DRIVEN.**

This tenet accurately reflects the current best practices in the field and is reflected in the ATSA Practice Guidelines and in a recent monograph of the Association of Prosecuting Attorneys (Stern, 2018). Recommendation 10, involving the use of JSAB specific risk tools comports with common practice, however the reliability of these tools remains unestablished. For example, a recent National Institute of Justice solicitation for research proposals in this area noted “Although some empirical support for the predictive validity of the J-SOAP-II, the ERASOR, and the JSORRAT-II can be found in the literature, the instruments do not perform in a manner that suggests or shows their ability to predict juvenile sexual recidivism accurately” and concluded “There is a lack of consistent, independently corroborated empirical evidence concerning both the inter-rater reliability and predictive validity of juvenile risk assessments available for use at this time” (United States Department of Justice, 2013). These and other

sexual recidivism specific risk instruments have occasionally reported significant indices of accuracy in some studies. However, those results typically rely on adjusting the risk scores in such a way that very few JSABs fall into the high-risk group. The results typically produce very accurate predictions of non-recidivism in the low-risk youth, but poor accuracy in identifying youth who actually sexually reoffend. This has contributed to the standard of completing a more comprehensive assessment and is reflected in the remaining recommendations under this Tenet.

### GUIDING TENET 3: THE USE OF POLYGRAPH EXAMINATIONS WITH JSAB IS BEST CONSIDERED THE EXCEPTION, NOT THE RULE.

This Tenet, and particularly Recommendation 18 under this Tenet, may be the most complex and controversial in the report. A more detailed discussion of the related issues follows.

#### ***Polygraph Uses***

Appendix F of the JSAB report reviews the literature related to the lack of acceptance of the validity of the polygraph among the majority of the scientific community and the courts. In brief, courts have excluded polygraph results because they are deemed unreliable and researchers and professional organizations, with some exceptions (e.g. the American Polygraph Association), have opposed the use of the polygraph as unreliable. They address three issues involved with the use of the polygraph with JSABs: (a) whether the polygraph results in greater disclosure of misconduct; (b) whether the results of the polygraph are reliable; and (c) whether the use of the polygraph with JSABs can improve treatment outcomes.

*Polygraph facilitated disclosures:* With adults, the polygraph is commonly used as a way to promote sex offender's compliance with supervision conditions (Emerick & Dutton, 1993; English, Jones, Patrick, & Pasini-Hill, 2003; Grubin, Madsen, Parsons, Sosnowski, & Warberg,

2004). Although there is a compelling logic to this use, there is little empirical support that the polygraph increases openness about risk relevant behaviors. For example, in one of the few studies employing a comparison group, Grubin, et. al. (2004) studied sex offenders who were randomly assigned to a group who were told they would have a polygraph and a group who were told they would be visited by supervisory staff, but not polygraphed. The group that expected to be polygraphed did not report more high-risk behaviors than the group who expected only to be visited by supervisory staff.

Studies examining the use of the polygraph have demonstrated that disclosures of more victims and offenses can be obtained by use of the polygraph among adults (Ahlmeyer, Heil, McKee, & English, 2000; Wilcox & Sosnowski, 2005) and juvenile populations (Baker, Tabacoff, Tornusciolo, & Einsenstadt, 2001; Emerick, & Dutton, 1993; Stovering, Nelson, & Hart, 2013). However, these studies have several limitations. Although protocols have been developed and widely used, polygraph examinations are not standardized in a way that allows scientific validation. By necessity, the specific procedures must be tailored to the individual circumstances in a way that prevents controlled studies of the validity or reliability of the procedure (Ben-Shakhar, 2008). Furthermore, additional disclosures are nearly always assumed to be “truthful”, an assumption that has not always held up to scrutiny.

*Reliability issues:* In addition to the limits on validity and reliability, research on the polygraph has documented several other concerns. Research studies have demonstrated that, in situations with a low base rate of deception, even studies that report high overall accuracy will often report as many individuals incorrectly categorized as “deceptive” as are correctly assigned that label. A review by the National Academy of Sciences noted that when base rates of deception are low, even a highly accurate test will produce as many false positives as true

positives (National Research Council, 2002). This issue is particularly problematic in applied settings because the base rate of deception in the group being examined is unknowable.

However, even in research settings where the base rate is known, the rate of false positives can be quite high. For example, in a study of 263 polygraphs of 176 adult sex offenders in the community, Grubin and Madsen (2006) reported an overall accuracy of 85% for the polygraph, based on self-report. However, 51.5% of the results categorized as “deceptive” were actually truthful. In addition, 10% reported making false admissions during the polygraph examination out of a fear of being perceived as uncooperative, feeling pressured by the examiner, being confused, or wanting to demonstrate a commitment to therapy (Grubin & Madsen, 2006).

Indeed, in some controlled studies, additional disclosures were limited to offenders who were involved in treatment programs that viewed additional disclosures as an indicator of treatment commitment or progress (Ahlmeier, Heil, McKee, & English, 2000). Other studies have reported similar rates of false positive polygraph results (Grubin & Madsen, 2006; Ginton, Daie & Elaad, 1982; Kokish, Levenson & Blasingame, 2005; Lee, Lemaster, Hanlin, & Johnson, 2018; Patrick & Iacono, 1989, 1991).

*Adolescents' Susceptibility to False Positives:* A broad body of research has documented that juveniles are significantly more likely to provide false disclosures of misconduct than adults (Garratt, 2011; Gudjonsson, 2010; Kassin, Drizin, Grisso, Gudjonsson, Leo & Redlich, 2010; Redlich, 2007). Studies have found rates of false confessions of delinquent conduct among adolescents between 10 and 60 percent (Gudjonsson, Sigurdsson & Sigfusdottir, 2010; Gudjonsson, Sigurdsson, Sigfusdottir, Asgeirsdottir, Gonzalez & Young, 2016). Risk factors that predict higher rates of false disclosures of misconduct include having an ADHD, Conduct Disorder, Intellectual Disability, or other diagnosis of mental illness (Gudjonsson, Sigurdsson,

Sigfusdottir, Asgeirsdottir, Gonzalez & Young, 2016; Kassin, Redlich, Kulish & Steadman, 2011), being a victim and perpetrator of aggressive behavior (Gudjonsson, Sigurdsson & Sigfusdottir, 2010), being an older teen, or engaging in delinquent or antisocial behaviors (Drake, Gonzalez, Sigurdsson, Sigfusdottir & Gudjonsson, 2017; Gudjonsson, Sigurdsson, Sigfusdottir, Asgeirsdottir, Gonzalez & Young, 2016). In addition to more antisocial adolescents, those who tend to be more compliant with authority have been found to be at greater risk for false disclosures of misconduct (Gudjonsson, 2003). Thus, determining which adolescents are likely to provide a false disclosure is extremely difficult. In addition, some adolescents come to believe their false disclosures are actually accurate (Kassin, 1997; Wrightsman & Kassin, 1993) further complicating any effort to establish the appropriate scope and focus of treatment and supervision services.

### ***Treatment Implications:***

Regardless of the accuracy of the disclosure, the priority placed on full disclosure tends to focus treatment on issues of personal accountability, a full account of the individual's past misconduct, and the erosion of denial of misconduct. However, recent research has established that denial is not associated with future sexual misconduct in JSABs. Although categorical denial of involvement in the offense has been associated with more limited treatment progress in some programs for adult sex offenders that emphasize acceptance of responsibility for the offense (Levenson, & Macgowan, 2004), among adult sexual offenders, large meta-analytic studies have not found denial to be related to sexual recidivism (Hanson & Bussière, 1998; Hanson & Morton-Bourgon, 2004; Kennedy & Grubin, 1992).

Among studies of JSABs, denial of the offense has been associated with lower rates of acceptance into treatment, of treatment compliance, and of treatment completion (Hunter, &

Figueredo, 1997; Hunter, & Figueredo, 1999) in treatment programs that emphasize full disclosure. However, at least seven studies have examined the association between denial and sexual recidivism – two of which found *lower* rates of sexual recidivism among JSABs that denied the offense (Kahn & Chambers, 1991; Redlack, 2003), and the remaining five found no association between denial and future sexual recidivism (Auslander, 1998; Caldwell, Dickenson, 2009; Caldwell, Ziemke, Vitacco, 2008; Schram, Milloy & Rowe, 1991; Spice, Vijoen, Latzman, Scalora, & Ullman, 2012). As a result, there is currently no empirical basis to consider denial to be a criminogenic factor that increases the risk of future sexual misconduct in JSABs.

In addition, studies that have looked at the number of offenses or victims in the history of JSABs have not found these issues to be a reliable measure of future sexual recidivism risk. In 11 studies that examined the number of victims, only two found that it predicted increased risk (Epperson, Ralston, Fowers, DeWitt, & Gore, 2006; Rassmussen, 1999), one found a relationship for youth with two, but not more, victims (Ralston, 2008), and eight found no increased risk (Caldwell, Ziemke, & Vitacco, 2008; Miner, 2002; Nisbett, Wilson, & Smallbone, 2004; Spice, Viljoen, Latzman, Scalora, & Ullman, 2013; van den Berg, Smid, Wever, van Beek, Janssen, Gijs, 2017; Waite, Keller, McGarvey, Wieckowski, Pinkerton, & Brown, 2005; Wolk, 2005; Worling, & Cruwen, 2000). Further, researchers have found that including offenses discovered through polygraph examinations, or undisclosed offenses, into risk measures with JSABs has not improved the accuracy of risk prediction measures (Gannon, Beech, & Ward, 2008; Ralston, Sarkar, Philipp, & Epperson, 2017). In this way, to the extent that a treatment program places an emphasis on full disclosure, they devote treatment resources to factors that are not risk-relevant.

Many authors point out the effect that polygraph examinations have on setting the framework of the treatment relationship. The best practice principles in the treatment of JSABs reflect a growing transition away from a primary or exclusive focus on sexual misconduct and onto a more comprehensive treatment of the general psychosocial adjustment of the youth. In this framework, denial or minimization of the youth's misconduct is viewed as a treatment responsivity issue, similar to other cognitive distortions, rather than a precondition for treatment progress. This transition reflects the recognition that studies of JSABs overwhelmingly show a much greater risk of non-sexual offending and other types of social maladjustment than continued sexual misconduct (Caldwell, 2016; Letourneau, Henggeler, Borduin, Schewe, McCart, Chapman, & Saldana, L., 2009; Letourneau, Harris, Shields, Walfield, Ruzicka, Buckman, et.al., 2018).

Treatment programs for JSABs are typically compulsory and the line between investigatory and police function roles of extracting information, holding the youth accountable and imposing aversive conditions, and the role of providing treatment can easily become blurred. Some authors have noted the ethical concerns that arise with compulsory polygraph testing of JSABs. For example, Chaffin (2011) has pointed out that "if a mental health treatment provider sets out to coerce incriminating confessions from a juvenile, intending that this will result in the juvenile's prosecution or sanctioning" this would violate the ethical principle of avoiding harm to the client. The point is supported by the fact that the United States is alone in using the polygraph in JSAB treatment programs, and in many countries polygraph examinations are not allowed for juveniles (Chaffin, 2011).

### ***Professional Organization Positions***

With no clear benefits and the potential for some harm to JSABs, and significant ethical concerns, several professional organizations and other western countries have taken a position opposing the use of the polygraph with juveniles (American Academy of Child and Adolescent Psychiatry, 2014; American Psychological Association, 2004; Association for the Treatment of Sexual Abusers, 2017; Stern, 2018; United Kingdom Offender Management Act of 2007).

Perhaps no organization has considered this issue as extensively as the Juvenile Practice Committee of the Association for the Treatment of Sexual Abusers. The Committee took up the issue in 2016 and debated the issue for most of the year, eventually recommending to the Governing Board of ATSA that the organization take the position recommending against the use of the polygraph with adolescents. The issue was re-visited in late 2017 and after further discussion the position was confirmed.

Shortly after the publication of ATSA's position, the American Association of Prosecuting Attorneys issued a monograph addressing a host of issues in the prosecution of sex crimes committed by juveniles. After a thorough review of the literature the monograph took the position; "The use of the polygraph and the plethysmography have no place in the assessment or treatment of adolescents alleged to have engaged in sexually abusive behavior. Prosecutors must be insistent in relying only on reliable, valuable and ethically obtained data. Polygraphy and plethysmography use with juveniles fail to meet that threshold" (Stern, 2018).

In brief, the information contained in Appendix F of the JSAB report is an accurate summary of the available research. Further, the recommendations under Guiding Tenet 3 of the JSAB report regarding the use of polygraph testing with JSABs are in line with the current best practices and the recommendations of multiple professional organizations.

The above notwithstanding, many jurisdictions in the United States continue to rely on polygraph examinations. The Recommendations 19 through 24 under this Tenet provide guidelines to minimize the potential for harm or misuse of the polygraph with JSABs for jurisdictions that continue this practice. These guidelines are generally accepted in the field and comport with the research evidence on which populations are most susceptible to harm, and what uses of the polygraph are most apt to cause harm.

#### GUIDING TENET 4: INDIVIDUALIZED, EVIDENCE-INFORMED TREATMENT

##### INTERVENTIONS PROMOTE SUCCESSFUL OUTCOMES WITH JSAB.

This Tenet reflects the best practices in the field at this time. Items 9.5 to 9.30 of the ATSA Practice Guidelines emphasize the use of treatment programming and services that are evidence-informed, and practitioners that stay up-to-date on the emerging research into the effectiveness of treatment approaches.

This emerging research has contributed to an emphasis on comprehensive, multi-dimensional and individualized treatment services for JSABs as an effective way to reduce sexual violence in the community. Of course, the effectiveness of treatment programs will vary from program to program and youth to youth. However, it is now widely accepted that the relationship with the youth being treated is an important variable in producing positive results (Chaffin, 2011; Prescott, 2012) as are programs that rely on Cognitive Behavioral Treatment and psycho-educational programs delivered by highly qualified clinicians (Gannon, Olver, Mallion, & James, 2019). The consensus in the field is that these services should be focused on demonstrably risk-relevant areas. The ATSA Guidelines (Section F, Treatment Interventions) provides a detailed discussion of the importance of providing treatment that considers the whole youth and their social context. Recommendation 28 under this Tenet addresses the demonstrated

effectiveness of MST/MST-PSB programs and recommends that JJSD explore the reasons that MST/MST-PSB are substantially underutilized. This aligns with the available research that has demonstrated that the treatment approaches with the most empirically supported evidence of effectiveness utilize the MST/MST-PSB approach, which focuses on family and community integration and general psychosocial functioning and places relatively limited emphasis on full disclosure of prior misconduct (Borduin, Henggeler, Blaske, & Stein, 1990; Borduin, Schaeffer, & Heiblum, 2009; Henggeler, Letourneau, Chapman, Borduin, Schewe, & McCart, 2009; Letourneau, Henggeler, Borduin, Schewe, McCart, & Chapman, 2009).

#### GUIDING TENET 5: PROBATION PRACTICES WITH JSAB SHOULD BE EVIDENCE-BASED AND PROMOTE POSITIVE YOUTH DEVELOPMENT.

This Tenet reflects the best practices and treatment standards in the field that are grounded in a recognition that JSABs predominantly engage in sexual misconduct during a specific developmental stage of their lives. The recognition of this fact is incorporated into several sections of the ATSA Guidelines, particularly sections 9.5 to 9.10, dealing with providing treatment for the whole youth in a broad social-ecological approach.

#### ***Conclusion***

The field of assessment and treatment of juveniles involved in sexual misconduct has been evolving rapidly in recent decades. Although there are some areas involving complex or controversial issues, the JSAB report is an accurate reflection of the current state of the art, based on the established empirical research and accepted best practice and professional standards in the field.



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