

Report and Recommendations To the Legislature

Act 77 An Act Relating to the Child Abuse Registry And Sex Offender Registry Requirements

November 1, 2007



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Legislative Request

As part of Act 77, the general assembly requested that the commissioner of the department for children and families, or a designee, perform a study on a number of issues related to the child abuse registry and other matters related to the safety of children and vulnerable adults. A report on the findings of this study is due to the senate and house committees on judiciary, the senate committee on health and welfare, and the house committee on human services on or before November 1, 2007.

Section 6 of Act 77 specified that the study cover the following topics:

- 1) The need for the agency or its designee to have the authority to perform criminal background checks on individuals providing care, custody, treatment, transportation, or supervision for children or vulnerable adults.
- 2) The need for reciprocal agreements with New York, Massachusetts, and New Hampshire to share child abuse registry information for the purpose of performing child abuse registry checks on residents of those states who provide care, custody, treatment, transportation, or supervision for children or vulnerable adults in this state. The commissioner shall consult with similar agency administrators in those states to determine the feasibility of these reciprocal agreements.
- 3) The need for broadened authority for employers providing care, custody, treatment, transportation, or supervision for children or vulnerable adults to perform criminal background checks on prospective and current employees.
- 4) Issues related to allegations of abuse or neglect of a child, including a tiered approach to the investigation and substantiation of child abuse or neglect that is based upon the severity of the behavior and the risk to children and the community and that establishes appropriate corresponding consequences and protections.
- 5) Issues related to the substantiation of minors, including the availability of psychological treatment for a minor suspected of committing an act of abuse, placement of a minor's name on the child abuse registry once the commissioner determines the minor committed an act of abuse, and expungement of a minor's registry records once the minor reaches the age of 18. The commissioner shall consult with the house committee on human services and the senate committee on health and welfare while considering the issues in this subdivision.

In performing the study, the commissioner was asked to consult with the following individuals and entities:

- 1) The agency of human services.
- 2) The agency of human services' director of housing and transportation.
- 3) The defender general.
- 4) Early childhood educators and caregivers.
- 5) The family services unit of the department for children and families.
- 6) The network against domestic and sexual violence.
- 7) Teachers, school nurses, and school administrators.

- 8) Pediatricians.
- 9) The Vermont citizen's advisory board.
- 10) The Vermont public transportation association.

The required consultations have taken place, and are reflected in the body of this report.

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Executive Summary

This study incorporates information from three separate literature and current practice review. Additionally, information was obtained from twenty-one (N=21) consultation groups held throughout the state of Vermont (248 individuals participated), an on-line survey (N=198) and phone consultations with two national experts on the use of Differential Response Systems in Child Protection.

Background Checks

The current statutory provisions for background checks do not go far enough to protect children and vulnerable adults, in that they only allow background checks at the point of hire. There is a need to revise statute to allow for ongoing, periodic checks

Differential Response Systems in Child Protection

- Rigorously conducted studies agree that: children are at least as safe as in a traditional response system, parents are more likely to engage in services, and the assessment process is more likely to focus more widely on the underlying issues which led to the family coming to the attention of child protection.
- Studies also show that DRS requires a front-end investment of workers and services that increases the average cost per family but that these costs are more than off-set in lower costs for worker and service inputs over the long run.
- The decreased costs over time are associated with:
 - reduced use of out-of-home/non-kin placements
 - use of more clearly targeted treatment interventions
 - fewer open-ended, long term therapies,
 - greater likelihood of informal services and supports provided by the family and community, and
 - faster times to case closure both with new referrals and re-referrals.
- When DRS families are re-reported, however, the matters are dealt with faster and case closure is achieved more quickly than with cases that have been re-reported from an investigative track.
- Successful outcomes in DRS are associated with increased investment of resources aimed at ensuring timely delivery of services that are carefully matched with a family's individual needs.
- Families served under DRS more reliably get more responsive services more quickly than do families who are investigated.
- Social workers are somewhat slow to take up the practice strategies associated with DRS; that is, they are reluctant to let go of the investigative skills and strategies to which they are accustomed but like the practice when they have begun to engage families. Full implementation of DRS appears to take 3-5 years but is greatly supported by enabling legislation, strong policy guidance, and robust education and quality assurance programs.
- Parents and other family members prefer DRS and find it less alienating and adversarial than investigation.

- Research shows that investigative responses for severe physical and sexual abuse are improved by contributing to increased legal pursuit of perpetrators of the most serious types of child abuse and neglect.
- The Vermont survey and consultations revealed very high levels of support for changing the current child protection system and for developing differential pathways for certain families. The consultation groups were unanimous in recommending that the state embrace differential response.
- Even among those who would like to see DRS implemented in the state, the most frequently cited concern was that DRS would increase the workload demands on already overburdened child welfare agency personnel. Participants, regardless of their affiliation, believed more social workers would be needed and that greater investment in mental health services and greater flexibility in funding to support individualized assessment and intervention would be required since they are seen to be insufficient now.

Use of Child Abuse Registries

- Since the introduction of mandatory reporting and child abuse registries, expansion in the types of abuses investigated and the changing landscape of drugs, poverty, sexual abuse and levels of mental health issues have broadened the scope of child protection work.
- Refinements to the purpose and management of child abuse registries have not kept pace with these changes with the result that registries originally set up mainly to safeguard the public from the most egregious forms of abuse now contain people with widely differing levels of risk to others.
- The consultations reveal that many professionals working in Vermont believe that some people on the registry should not be there permanently or at all, and that some dangerous offenders do not get substantiated and put on the registry.
- Many believe that there are children, including very young children, on the child abuse registry for sex offenses who either pose little or no risk to others and for whom being characterized as a sex offender is neither required for the children's treatment nor does it safeguard other children.
- Ninety percent (90%) of survey respondents favor placing names on the Child Abuse and Neglect Registry for different lengths of time, depending on the nature and severity of the incident.
- The complexity of determining when and if a person should be removed from the registry was reflected in a wide variety of opinions. Most people expressed the view that it was more just and fair to have a tiered registry system that would be more responsive to the variety in severity of abuse/neglect incidents and future risk to children, but disagreed as to how and by whom that system should be designed and decisions should be made.
- The survey and the consultations revealed that the child abuse registry is often confused with the Vermont State Sex Offender Registry. They have different purposes and are accessed in very different ways. These understandings are in part complicated by Vermont's somewhat unique mandate to investigate familial and non-familial sex abuse allegations and the implication of this that very young children get placed on the registry as perpetrators.

- While most persons expressed the view that very young children should not be placed on the registry, others express strong sentiments that all sex abuse ought to be treated equally regardless of the age of the offender.
- Only two states, Delaware and Michigan have systems which differentially place the names of substantiated perpetrators on the state's child abuse registry.
- Delaware's registry is used for employment purposes; Michigan's is not.

The Treatment & Management of Youth Who Commit Sexual Offenses

- Children and youth identified as having sexually abused other children or youth have very low rates of re-offending for sex offenses. When they do recidivate, it is much more likely that their offense will be non-sex related.
- Contrary to public opinion, juveniles who sexually offend have more in common with other delinquent juveniles than previously thought and are distinctly different from adult sex offenders in ways that hold significance for their treatment and management.
- Sexually abusive youth are a heterogeneous group. Treatment plans must be individualized and comprehensive. This requires careful assessment to ensure treatment fit with their developmental needs and offending behaviors. Treatment needs to be individualized; a one-size-fits-all approach, as is often the case with treatment "programming", is contraindicated.
- Treatment should consist of multiple modalities to best address the youth's individual and family needs. This can be done with a combination of group, family, and individual therapy. Many different techniques and strategies have been developed and tested that can be utilized to assist in a youth's rehabilitation.
- There is no evidence that public registration and public notification requirements for juveniles, and especially young children, are associated with positive treatment outcomes or with greater safeguarding of other children.
- Youth who have committed sexual offenses are best served by a collaborative team approach. Multidisciplinary teams (MDTs) can work together effectively to maximize the likelihood that a youth will successfully complete treatment and have a positive long-term outcome.

Methods Used for Study

Review of Statutes and Research Literature

The methodology for the study included reviews of statutes and practices with respect to child abuse registries in the United States, reviews of research and literature related to the use of Differential Response Systems (DRS) and the treatment and management of youth who commit sexual offenses.

On-line Survey

A total of 198 individuals responded to the on-line survey widely distributed by the Family Services between July 19, 2007 and August 14, 2007. The survey focused on three issues: differential response to child abuse and neglect investigation, and tiered entry into the child abuse and neglect registry and the entry of children into the registry. A background paper on these issues accompanied the email with the survey link. In addition, the survey itself provided limited information before specific questions.

The table below illustrates the distribution of respondents based on their affiliation.

Agency/Affiliation	# Responding
Agency Human Services	7
Community Justice Center	1
Community Mental Health Center	16
Community Partnership	6
DCF Family Services Division	57
Dept. Of Aging & Ind. Living	1
Dept. of Corrections	3
Dept. of Health/Med. Provider	17
DMH/Psychiatric Provider	4
Domestic Violence Agency/Service	11
Early Childhood Services	5
Family Center	11
Foster/Adoptive/Kin Parent	19
Homeless Shelter/Program	3
Other	4
Police	1
Private Non-Profit Community Agency	12
School	3
University of Vermont	3
Vermont Court System	8
VT Fed. For Children's Mental Health	4

Consultation Groups

Between 6/25/2007 and 9/10/2007, staff of the Child Welfare Training Partnership (State of Vermont/University of Vermont) facilitated 21 consultation groups attended by

248 people. The consultation groups also focused on differential and tiered child abuse registries. In advance, participants were provided with the same written background paper described above.

The statewide consultation groups included a wide range of participants, as the chart below shows.

Agency	Role	# of Participants
AHS	Field Director/other	6
Child Care Services	Various	5
Community Mental Health Center	Various	31
Community Partnership	Varous	3
Dept. of Health/Medical provider	Various	9
Domestic Violence Agency	Various	7
Economic Services Division	Eligibility Specialist	2
Family Services Division	Managers, Supervisors and Direct Service Staff	108
Foster/Adoptive Parent	Foster/Adoptive Parent	13
Other	Various	3
Parent Child Center	Various	4
Private Non-Profit Human Services		38
School	Various	3
Various	Service User	5
Vermont Court System	Attorney/judge	7
Vermont Legislature	Legislator	3
Voc Rehab Division		1
TOTAL		248

Other

In addition, the deputy commissioner coordinated efforts with the AHS Director of Housing and Transportation to gain input from the Vermont public transportation association.

Background Checks

This section will focus on the following issues:

- The need for the agency or its designee to have the authority to perform criminal background checks on individuals providing care, custody, treatment, transportation, or supervision for children or vulnerable adults.
- The need for reciprocal agreements with New York, Massachusetts, and New Hampshire to share child abuse registry information for the purpose of performing child abuse registry checks on residents of those states who provide care, custody, treatment, transportation, or supervision for children or vulnerable adults in this state. The commissioner shall consult with similar agency administrators in those states to determine the feasibility of these reciprocal agreements.
- The need for broadened authority for employers providing care, custody, treatment, transportation, or supervision for children or vulnerable adults to perform criminal background checks on prospective and current employees.

AHS Criminal Background Checks

The Agency of Human Services already performs VCIC criminal background checks on applicants for foster care, adoption and child care as part of the licensing and approval processes. Recent federal law now requires fingerprint-supported NCIC for foster parent applicants. Updated checks are also completed as part of the foster care re-licensing process.

The Agency is also in the process of implementing new policy that will require VCIC and child abuse registry checks as part of the hiring process for new employees, when those employees will provide care, custody, treatment, transportation, or supervision for children or vulnerable adults.

It appears that the Agency already has the authority it needs to perform these checks.

Reciprocal Agreements for Child Abuse Registry Checks in Other States

The federal Adam Walsh statute already requires that the DCF check the child abuse registry in any state in which foster parent applicants (and any adult residing in their home) have resided in the last five years. There is no similar provision for other persons providing care, custody, treatment, transportation, or supervision for children or vulnerable adults. Without explicit statutory authority, most states cannot perform child abuse registry checks for other states.

Over the last 12 months, the general counsels for the New England states have met several times to identify and discuss cross-state child protection issues, including the release of registry information and case records when a family moves from one state to another. Generally, the New England states – and New York -- can and do share information. However, the commonwealth of Massachusetts has very restrictive statutes, and generally will not share information without a court order.

Employer Background Checks

The current statute allows employers hiring individuals to provide care, custody, treatment, transportation, or supervision for children or vulnerable adults to obtain VCIC, child abuse and adult abuse registry checks. However, there is no authority for periodic re-checks. There is need for statutory authority to conduct such checks as a condition of ongoing employment.

The Vermont Public Transportation Association was consulted as part of this study. The Association advocates for consistency of rules around all background checks, not only for new hires, but for individuals already employed. To effectively manage risk, they believe that annual VCIC, child abuse and adult abuse registry checks are necessary.

The Association also stated that they are using NCIC checks for this function, as those checks are allowed periodically – even at a cost of \$36.00 per check. They note that NCIC checks is revealing criminal history not noted in VCIC, even convictions in Vermont. They recommend that VCIC and NCIC checks be “interchangeable” for contractual purposes.

Tiered Approaches to Investigation and Substantiation of Child Abuse

Introduction

This section will focus on two aspects of “tiered approaches” to the investigation and substantiation of child abuse. First, the study will present an overview of so-called **differential response systems** for child protective services. Such systems allow the child welfare agency to tailor a response to a report of child abuse or neglect that is individualized, and appropriate for the severity of the maltreatment alleged.

Typically, differential response systems use a traditional “forensic” or investigative response for the highest risk situations. Investigations are often conducted jointly with law enforcement, and may result in criminal charges. At the end of the investigation, a decision is made about whether to substantiate the allegation.

A second response, often referred to as an “assessment” response, is used in lower risk situations. The focus of the assessment is less on the specific incident that brought the family to the attention of the child welfare agency, and more on the factors that are

interfering with successful parenting. No substantiation decision is required as part of the intervention.

This section will also discuss options ***for tiered entry of individuals into the child abuse and neglect registry***. Only a few states have opted for such system. Essentially, this is another form of differential treatment of individuals. Depending upon such factors as nature and severity of the offense, and history of other offenses, the individual's name may remain in the registry for different lengths of time, and the impact on employment may vary.

Differential Response Systems in Child Protection

Background

In the last 30 years, increased focus on child abuse and neglect, mandatory reporting laws, and the broadening in scope of definitions of child abuse have forced child protective services away from a social work model and into an increasingly quasi-criminal investigative approach. These models placed child welfare systems into conflict with the very families they were intended to help.

Nationally, the primary driving forces behind the expansion of differential response can be traced to growing dissatisfaction with the existing system. Child welfare has experienced wide swings of the pendulum between child protection and family support in a frustrating search to find across-the-board or one-size-fits-all solutions to today's highly complex family situations. Many families, at some point, require assistance in parenting appropriately. That assistance should be available without having to define the parents as child abusers. Instead, a focus on the incident and whether it can be substantiated takes precedence over gaining a clear understanding of the main causes of the family's problems.

National Implementation of Differential Response

In a 2006 national study on differential response published by the American Humane Association and Child Welfare League of America, Merkel-Holguin et al found that fifteen states had implemented extensive DRS systems. Eleven are statewide efforts and 4 offer DRS at multiple sites in the state¹. Another 15 states had either initiated pilot projects or were using elements generally associated with differential response.

Based on such factors as the type and severity of the alleged maltreatment, the number of previous reports, and the source of the report, child protective systems have multiple ways of responding. Generally, low and moderate risk cases are provided a family assessment and offered timely services, without a formal substantiation of child abuse and neglect. The forensic investigation is reserved for accepted reports that are high risk and egregious.

¹ Hawaii, Kentucky, Minnesota, Missouri, North Carolina, Oklahoma, Pennsylvania, Tennessee, Virginia, Washington, and West Virginia have implemented statewide. Alaska, Florida Louisiana and West Virginia have pilots underway in multiple sites.

Differential response systems are not designed to “widen the net”. Typically, child welfare agencies intervene in the same kind of situations as they did previously. However, the kind of response is tailored to the individual family.

The following is adapted from Schene (2005). It shows the main differences between an assessment response and the forensic investigation.

	Assessment Response	Forensic Investigation
Focus of Intervention	To understand the underlying conditions and factors that could jeopardize the child’s safety as well as areas of family functioning that need to be strengthened	To understand what happened to the child in the incident being reported, who was responsible, and what steps need to be taken to ensure the child’s safety
Type of Maltreatment	Generally targets low to moderate risk cases	Generally reserved for more serious reports that may result in court action and/or criminal prosecution. Without differential response, investigation is used for all accepted reports.
Purpose	To engage parents, the extended family network and community partners in a less adversarial approach, to recognize problems and participate in services and supports to address their needs	To determine “findings” related to allegations in the report and identify “perpetrators” and “victims”; Secondarily, to identify and deliver needed services
Substantiation	Reports are not substantiated, and perpetrators are not identified.	A decision of substantiation of the allegations is a key objective.
Central Registry	Alleged perpetrators’ names are not entered into the central registry.	Perpetrators names and other information, if substantiated, are entered into the registry.
Services	Voluntary services offered. If parents do not participate, the case is either closed or switched to an investigative response.	If a case is opened for services, a case plan is written and services are provided.
Areas of Commonality	All responses continue to include a focus on child safety, the promotion of permanency within the family where possible, the authority of CPS to make decisions on placement and court involvement, the value of community services, and the need to respond to changing family circumstances that challenge or promote child safety.	

Evaluation of Differential Response Systems

Both Missouri and Minnesota have conducted rigorous evaluations of their differential response systems (Missouri: Loman & Siegel, 2004; Minnesota: Institute of Applied Research, 2006; Loman & Siegel, 2004). They report that differential response is most successful when the model employs:

- a non-adversarial, respectful approach to families;
- readiness to change tracks (assessment to investigation) when imminent danger is found;
- early assessments of family strengths and needs;
- child safety assessment and safety planning;

- group decision-making methods include the family and extended family in planning and making decisions about child safety;
- increased services and community referrals;
- the decision to continue contact and supports are made mutually by the worker and family.

Further studies (Institute of Applied Research, 2006; Loman & Siegel, 2004, 2005; Shusterman et al., 2005) have found similar positive results. These studies found that children are no more likely to be re-reported under differential response or assessment tracks than they are under an investigative track. In the one four-year study that included matched comparison and control groups, assessment track children were less likely to be re-referred.

Implementation Issues

In their comprehensive review of DRS, Merkel-Holguin et al. (2006) found great variation among states' and counties' definitions of DRS and in their implementation. Nevertheless, they distinguished the following core elements.

- Programs offered two or more discrete responses of intervention.
- Differential responses were created for reports of maltreatment *that are typically screened in and accepted for response*.
- Assignment to the forensic or investigation track is determined by a consideration of at least the presence of imminent danger, level of risk, the number of previous reports, the source of the report, and/or presenting case characteristics such as type of alleged maltreatment and age of the alleged victim. Typically, accepted reports categorized as low- or moderate- risk are assigned to the non-investigation assessment response.
- There is an option to change original response assignment (either decreased or elevated) based on additional information gathered during the investigation or assessment phase. An increase or decrease in threats of harm or risk level can trigger a change in track assignment.
- The establishment of multiple tracks is codified in statute, policy and/or protocols.
- Families who receive a non-investigatory response may accept or refuse the offered services after an assessment, without consequences (i.e., services are voluntary).
- With an assessment response, individuals are not identified as perpetrators and victims during or after the response. Services are offered without a formal determination of child maltreatment (i.e., substantiation).

Implementing differential response requires that the child welfare agency focus staff resources on the “front end” of the system. The ramp-up time for full implementation is 3 – 5 years, owing in part to cautious uptake on the part of veteran social workers and supervisors. The percentage of families referred increases by year until a workable balance is achieved. This balance ranges between states from a high of around 70% of accepted cases referred to DRS after full implementation is realized, as in the case of Missouri, to around 55% statewide in Minnesota.

Costs of Differential Response

Minnesota reported a greater average combined cost for services and staff during the initial contact period with families of \$147.00 (\$1,142 for DRS families and \$905 for control group families) but a lower average combined cost of \$1,515 during the follow-up for these costs (\$4,062 for control families and \$2,547 for experimental).

Savings are accrued from the reduced use of out-of-home care and with families who are re-reported. Importantly, this pattern of reduced cost over time continues. Three and a half years out, with all costs included and combined, mean costs for control families were \$4,967 and for differential response families \$3,688, a difference of \$1,279. The extended evaluation went through 2005 and the average length of time families were followed post assessment was 3.6 years. The cost per control family was 135% of the cost per differential response family over those 3.6 years.

Vermont's Readiness to Develop DRS

Differential Response is consistent with the overall Family Services priority to move towards practice strategies that engage families earlier, and in a meaningful way, to ensure their own member's safety and well-being. Division staff have been employing a variety of family-centered approaches such as:

- signs of safety facilitated case consultations;
- family group conferencing;
- focus on permanent connections for adolescents in out of home care.
- family finding techniques which focus on locating and involving extended family members in helping older youth to find permanent connections; and
- increased services to youth transitioning out of care.

Vermont Stakeholder Input on Differential Response

As part of this study, we consulted with many people around the state to obtain their opinions about the value of moving to differential response. The primary methods were a web-based survey and consultation groups.

Survey respondents were given background information on differential response, and then were asked: *"In your opinion, would a differential response system result in more effective services for families and children? Why or why not?"*

Of the 198 people who answered this question, 172 (86.9%) answered yes. The majority of comments reflected a belief that a differential response system would allow DCF Family Services to tailor services more effectively to meet family needs, engage families more successfully in improving their situations, and result in children being safer. Many also noted that this would be a wiser allocation of resources. Some sample comments follow:

"I believe that this may increase opportunities to create more cooperation and positive relationships with parents which will effect their future relationships with service providers, their communities and, most important, their children. I believe that it will help to reduce feelings of stigmatization, persecution and victimization that parents often voice. The majority of parents and this agency have a common goal: the welfare of their children."

"For the many parents who are overwhelmed by parenting, support and guidance could solve many issues. Our foster care system is overtaxed. Helping families just makes more sense."

"Given the current and apparently inevitable dwindling of funds to support efforts to keep children safe, a differential response system seems to have the potential for maximizing those resources while maintaining reasonable standards for investigating, analyzing, and responding to reported abuse/neglect."

248 people attended consultation groups around the state. Following a presentation on differential response, individuals participating were asked to react. Broad support was

expressed for both changing the current system and for implementing a differential response system to allow services to be more closely tailored to the needs of children and families. All groups were of the opinion that additional resources were needed to make differential response possible, not only on the part of DCF, but also other community resources they believe essential to the effort to keep children safe. Most frequently cited **were mental health services** for children and parents.

One or more consultation groups identified the following resources as being particularly needed by families struggling to parent safely:

- public transportation
- in-home parenting support
- parenting classes
- domestic violence support services.

Other themes consistently emerged, including:

- the need to educate a wide range of stakeholders about differential response;
- a belief that children would be safer in such a system;
- a belief that DRS would strengthen communities; and
- a belief that DRS would be more fair and less likely to unnecessarily stigmatize struggling parents.

“It drives me crazy that we have flexible money like this for kids in custody, but not if they are in their family of origin.”
Family Services Supervisor

Overwhelmingly, participants anticipated that the more strength-based approach of differential response would improve families’ willingness to engage in services and shift the public perception of Family Services from an agency that primarily removes children from their families to a more positive and trusting view.

“Now, sometimes a worker says, “I’m from DCF” and the parent starts crying and asking, “Are you here to take my kids away?” It will take some time and education for families to view us as a helpful agency, not just taking kids.”
Family Services Investigator

Many participants felt that a substantiation unnecessarily stigmatizes and penalizes a struggling parent, and voiced strong support for differential response as more fair to parents.

Overwhelmingly, participants felt that community partners (schools, mental health agencies, parent/child centers, etc.) would welcome the changes inherent in adoption of a differential response system. Some community partners expressed the opinion that Family Services is currently too “black and white” in its decision-making, and that differential response would allow them to respond more accurately to child and family needs. Some anticipated that implementation of an assessment response would help preserve a mandated reporter’s relationship with the family, which can be damaged by a report which is followed by a forensic investigation.

Many Family Services respondents felt that DRS would serve to strengthen their relationships with community partners.

Modeling Differential Response in Vermont

At the conclusion of each child abuse or neglect, information is captured in division databases regarding the exact nature of the allegation, whether or not the allegation is substantiated. Because we have this level of detail, we can model the impact of differential response. To do this, we have made an educated guess on what percent of each category of allegation might be appropriate for an assessment response. Unlike other states, in Vermont, DCF investigates non-caretaker sexual abuse. Most sexual abuse will be appropriate for a forensic response. Therefore, we would anticipate that a lower percent of cases overall will receive an assessment response, when compared to other states.

Type of Allegation (Whether or Not Substantiated)	Number of Investigations	Percent estimated for Assessment Response	Number estimated for Assessment Response
Death from to Child Abuse/Neglect	1	0%	
Physical Abuse			
Central Nervous System Trauma	0	0%	
Head Injury	5	0%	
Internal Injury	2	0%	
Burn	28	0%	
Poison	1	0%	
Wound	13	0%	
Fracture	23	0%	
Cuts, bruises or welts	602	60%	361
Bite	10	20%	
Sprain	2	20%	
Confinement	10	50%	
Physical Abuse - Other	53	50%	27
Emotional Abuse	15	90%	14
Sexual Abuse²			
Intercourse	215	0%	
Anal-genital	54	0%	
Oral-genital	170	0%	
Fondling	567	10%	57
Exposure	96	10%	10
Exploitation	24	0%	
Sexual Abuse - Other	140	10%	
Neglect			
Food	61	80%	49
Shelter	151	80%	121
Clothing	14	80%	11
Medical	106	80%	85

² We would anticipate an assessment response in situation in which the alleged “perpetrator” is under the age of 10.

Type of Allegation (Whether or Not Substantiated)	Number of Investigations	Percent estimated for Assessment Response	Number estimated for Assessment Response
Abandonment	22	80%	18
Risk of Physical Harm	1026	90%	923
Risk of Sexual Abuse ³	164	50%	82
Total	3575	47%	1676

Loman (2005) found that the result of having DRS contributes to carrying out better investigations in the serious cases and results in more criminal arrests for severe physical and sexual abuse. Conversely, those cases referred to DRS need to be met with a timely and thorough assessment response that quickly concludes on a plan of service and tries to engage the family.

One might also assume that some families initially assigned to an assessment response would be reassigned to an investigation due to a reassessment of risk. The Minnesota research (Loman & Siegel, 2005; personal communication with Rob Sawyer, 9/10/07) indicates that only about 10% of cases switch from an assessment response to an investigative one.

Tiered Child Abuse Registries

Introduction

As part of this study, we have conducted a review of statutes governing child abuse registries in 50 states. Every state has developed procedures for maintaining records of child abuse and neglect. Approximately 42 States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. territories of American Samoa and Guam have statutorily created central registries.

Most state central child abuse and neglect registries share four general purposes: record-keeping and statistics; quality assurance; diagnosis; and prevention. However, among the forty-eight states that now have statutorily created central child abuse and neglect registries, there is wide variation at the detail level in how they are specifically structured and operated (i.e., basis for placement, standards of proof for entry on the registry, juvenile status of the perpetrator, duration of entries, confidentiality/access, appeal rights, screening for employment, background checks for selection of adoptive parents or foster care providers, and grounds for expunction). A little more than half of the central registry states require the recording, for at least some period of time, of the results of all investigations whether they are substantiated or not.

History of Central Child Abuse Registry in Vermont

In 1980, Vermont created a State Central Registry, primarily for the gathering of statistical information about child abuse and neglect. The registry was used to ensure

³ Two types of situations are typically investigated under this category. First, situations in which a caretaker has unknowingly allowed a substantiated or convicted offender to have access to his or her children. These would likely be handled as assessments. Second, situations in which a known offender has access to children, such as a school bus driver. These might be handled as forensic responses.

that individuals with a history of abuse/neglect of children were not licensed by the state to provide care for children in foster care or child care. The statute explicitly prohibited use of registry information for employment purposes. People listed in the registry could appeal the substantiation decision.

In 2003, the legislature created the mandate for DCF to release information from the registry to several new groups, including “an employer if such information is used to determine whether to hire or retain a specific individual providing care, custody, treatment, transportation or supervision of children or vulnerable adults.” This change was made without alteration to the due process rights of individuals whose names were entered into the registry.

In 2007, the Vermont legislature addressed this need, passing Act 77. The new law defines the Child Abuse and Neglect Registry as “a record of all investigations that have resulted in a substantiated report on or after January 1, 1992.” (Act 77, 2007) The act further requires DCF to establish an administrative review unit consisting of contracted reviewers who shall be a “neutral and independent arbiter who has no prior involvement in the original investigation of the allegation.” Subsequent to placing the name of a person on the child abuse and neglect registry, the department must notify that person. That person then has two weeks to appeal that decision to the administrative reviewer and present evidence to support their position. The independent reviewer may reject the substantiation determination, accept it, or direct the department to investigate further.

Differences between Vermont’s child protection and criminal statutes make it possible for people to be substantiated for child abuse or neglect even if they were never convicted, or even criminally charged, for the acts for which they have been substantiated. The Child Abuse Registry is not available through the Internet and is not the same as the Sex Offender Registry. Its primary purpose is to protect children and to insure the safety of children in childcare, health care, and public educational facilities.

The current system was designed in different times with different aims in mind. The result has been that registries now contain the names of persons for a wide variety of reasons – including reasons that may not be consistent with our current understanding of risks to children.

Tiered Child Abuse and Neglect Registries

Tiered registries allow for the possibility of variation in:

- how long a person’s name remains on the registry;
- when and how names are expunged;
- different use of the registry depending on whether the person is a juvenile or an adult, whether the person’s offense was adjudicated or not and whether the person is likely to pose a future risk to children and other vulnerable populations.

At this time, only two states, Delaware and Michigan, have developed a tiered approach to registry placement. More specifically, Delaware requires “that a person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at one of four designated Child Protection Levels related to the risk of future harm [low,

moderate, high, and highest] to children arising from the incident under investigation or for which a person has been substantiated.” Each level is then treated differently vis-à-vis the registry as to variables such as duration of the entry and availability for use in employment screening. (16 Del C. Sec. 923)

For example, a person substantiated for abuse or neglect designated as low risk to children would be placed on the registry but not reported to employers, would be eligible to work in a child care facility or public school, and would be automatically removed from the registry after 3 years if no further substantiation occurred during that time. However, a person substantiated for a higher risk incident is placed on the registry, prohibited from working in certain places, and is automatically removed from the registry after 7 years if no further substantiations occur. (See Appendix B for Delaware Statute)

In Michigan, the central registry is not used for employment purposes. However, Michigan stands out in its effort to attain an integrated approach which comprises both differential response and tiered registration and thereby expressly correlates the severity and factual nature of the underlying abuse with the future risk of harm to arrive at the registry placement category (V - I). Michigan accomplishes this in part by the use of a “structured decision-making tool” that seeks to better measure the risk of future harm to a child. (M.C.L.A. 722.623). This structured decision-making tool is the same tool currently in use in Vermont as part of DCF’s child abuse investigation process.

Potential Tiered Registry in Vermont

During the discussion in the legislature that led to the passage of Act 77, legislative committees were interested in these emerging differential models. A one-size-fits-all approach to registry placement is less likely to strike the sensitive balance between child/community safety with fairness to the many different individuals and circumstances that can give rise to a registry placement. Vermont has the opportunity to maintain security and safety for all while making progress towards a more nuanced registry tool that recognizes objective bases for determining the relative risk of future harm to children and the community.

The table that follows shows the detail of child maltreatment type for those individuals currently in the child abuse and neglect registry. The total number of entries is 26,846. There are substantially fewer individuals represented, as individuals may be entered multiple times.

If Vermont were to adopt a tiered approach to the child abuse registry, it would be easier to do so going forward, as for current substantiations we have current information about the exact nature of the maltreatment. Going backwards in time, we have limited information. A choice could be made to eliminate certain categories of substantiations. For example:

- Eliminate all neglect categories, risk of physical harm and risk of sexual abuse after 3 years – eliminates 6692 entries
- Eliminate cuts, welts, bruises; tying and confinement; other undefined physical abuse; and emotional abuse after 5 years – eliminates 3300 entries.

These entries would not be part of the Child Abuse and Neglect Registry and therefore not accessible to employers. However, historical information would still be available, as it is now, to DCF social workers needing it to assess current safety and risk.

Vermont DCF recommends implementing a differential registry process such as Delaware's to both ensure that persons who present a low risk to children either are not entered into the registry (or are automatically removed from the registry after a period of time) and that persons who present a higher risk to children are identified by the registry.

	Year															
Type of Abuse/Neglect	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	Total
Death	0	1	1	0	2	2	0	6	1	0	0	1	0	0	1	15
Central Nervous System Trauma	2	0	5	0	0	0	1	5	0	3	0	0	0	1	0	17
Head Injury	10	6	12	17	9	6	8	8	9	6	10	7	3	10	1	122
Internal Injury	2	2	1	1	5	0	1	5	4	0	1	1	0	4	2	29
Burn, Scald	10	8	8	10	3	6	6	2	4	6	1	4	3	2	1	74
Poisoning	0	0	0	0	3	1	0	2	1	0	0	0	0	0	0	7
Wound	8	3	4	2	0	6	4	4	3	2	2	1	4	2	12	57
Fracture	16	9	12	16	7	8	10	6	12	4	11	7	2	8	10	138
Cut, Bruise, Welt	368	320	300	251	251	248	242	214	264	193	242	203	174	157	164	3591
Bite	7	4	9	4	4	5	1	4	4	5	5	3	4	3	5	67
Sprain, Dislocation	0	1	4	2	2	4	4	1	1	0	2	0	2	6	0	29
Tying, confinement	9	8	12	20	2	4	4	14	13	8	6	1	6	9	3	119
Physical Abuse - Other	55	40	25	34	24	29	14	25	36	30	26	31	17	18	25	429
Emotional Abuse	34	39	31	16	9	14	13	11	15	14	7	9	3	13	9	237
Intercourse	166	97	145	105	119	125	105	122	129	106	126	91	129	104	86	1755
Genital – Anal Contact	84	48	61	58	46	44	36	40	33	23	22	20	33	36	31	615
Genital – Oral Contact	183	163	140	113	113	105	110	107	111	109	106	99	99	92	96	1746
Fondling	666	509	474	377	389	340	305	317	351	265	329	256	292	268	232	5370
Exposing	224	131	109	134	87	101	53	72	83	49	64	72	64	54	51	1348
Exploitation	125	52	63	67	53	45	28	24	37	19	33	27	27	15	14	629
Sexual Abuse - Other	186	163	153	151	103	107	67	68	96	82	128	69	83	54	49	1559
Neglect - Food	24	23	19	12	27	17	20	14	14	16	16	15	26	9	4	256
Neglect - Shelter	29	18	17	23	36	34	34	29	24	23	31	34	50	20	18	420
Neglect - Clothing	18	8	4	13	20	4	19	8	3	10	9	7	9	4	1	137
Neglect - Medical	44	29	37	29	34	20	34	23	38	43	48	36	42	20	27	504
Abandonment	34	51	52	47	35	16	31	23	38	30	50	28	24	31	17	507
Risk of Physical Harm	377	313	261	258	256	273	338	452	468	421	573	500	386	430	329	5635
Risk of Sex Abuse	48	78	101	109	87	95	93	119	87	130	113	64	116	106	88	1434

Vermont Stakeholder Opinion on Tiered Registries

Both the web-based survey and consultation groups were used to present information on tiered registries and to gather stakeholder input on the issues. The survey included the following before asking whether the respondent supported placing names on the Registry for different lengths of time, depending on the nature and severity of the incident.

Currently, any person substantiated for child abuse or neglect is placed in the child abuse registry permanently (unless that substantiation is overturned on appeal.) This includes very minor incidents and very egregious incidents.

Several years ago, the legislature made the child abuse registry results available, on request, to employers hiring individuals who will have access to children or vulnerable adults. In order not to unnecessarily deprive families of their livelihood, we are exploring the idea of identifying some types of abuse for which an individual is in the registry for life, and other types that could be expunged following a specified period of time without further substantiations.

Of the 190 people who answered this question, 90% (171) support placing names on the Child Abuse and Neglect Registry for different lengths of time, depending on the nature and severity of the incident. However, the complexity of determining when and if a person should be removed from the registry was reflected in a wide variety of opinions. People overwhelmingly felt that it was more just and fair to have a tiered registry system, to reflect the variety in severity of abuse/neglect incidents and future risk to children, but disagreed as to how that system should be designed. This complexity is reflected in the comments that follow.

“It is only fair to the individuals: the less serious incidents should not impact a person for life; however, the more egregious incidents should be registered for the safety of children, all the while remembering that people do change, especially if they are young at the time of the incidents.”

“As long as severe abuse/sexual abuse is always considered as un-erasable. No second chances to hurt children.”

“There are instances when young men and women are added to the sex offender registry and branded as sex offenders when they have had a consensual relationship with someone who is under the age of 16. That is a terrible burden to bear forever “

“Situations and people change. I would support expunging some individuals if there were no further substantiations, but would be concerned about expunging them if there were further allegations, whether substantiated or not.”

“Please define "very minor" because it currently takes a significant event to get DCF involved in the 1st place, I would be a little concerned about this without more information. Who decides the severity?”

“I think this could be helpful if there are clear guidelines about determining how long a name is placed on the registry. I think there are some cases of child maltreatment that are very specific to a given situation and unlikely to occur again and there are others that create reasonable risk into the foreseeable future. Having varying lengths would mean that the length of time would relate to the risk posed.”

“At times, minor incidents (e.g. one-time act, such as a slap that leaves marks) are treated the same as profound physical abuse = and this simply doesn't seem fair and

equitable. I believe that people can change their own behaviors for the better (or worse) and those who can demonstrate that they've gotten their acts together, especially in those minor abuse/neglect incidents, should be treated differently than those who have committed egregious acts against a child.”

Overall, participants in consultation groups agreed that differential system for the time someone remains in the registry makes a lot of sense. There were two “camps” in discussions about when and if names should be removed from the registry. Some felt that clear guidelines which take into account the nature of the offense, subsequent substantiations, and age at time of the offense would be sufficient to make automatic removal from the registry after a designated period of time for lower risk offenses reasonable. Others felt strongly that no name should be removed from the registry without an assessment of treatment successfully completed and future risk to children, but that such assessment and potential removal would be advisable.

Participants felt strongly that adult sex offenders should never be removed from the registry.

The comments bulleted below were discussed by just one or two focus groups, but each with considerable passion.

- Consensual sex between adolescents should not be a crime.
- Two groups expressed concerns about children and parents who are illiterate or unable to understand the importance of appealing a substantiation decision remaining unfairly in the registry due to lack of advocacy on their behalf.
- Perhaps DCF should alter the form given to employers who request Registry checks, to include a release of information in case there is a notation in the Registry, giving permission for the employer to get additional information re: the nature of the incident. This arose from a situation in which an employer obtained information that a potential employee had been substantiated, but the process needed for the employer to obtain a signed release of information from the applicant to get more details meant a considerable amount of time that this person was without pay unnecessarily.

Treatment of Youth Who Commit Sexual Offenses

The following section is responsive to the following request: “Issues related to the substantiation of minors, including the availability of psychological treatment for a minor suspected of committing an act of abuse, placement of a minor’s name on the child abuse registry once the commissioner determines the minor committed an act of abuse, and expungement of a minor’s registry records once the minor reaches the age of 18”.

Introduction to the Issue

Nationally, of the 18,300 juvenile arrests for sex offenses other than rape and prostitution in 2003, 51% involved youth under age 15, and during that same year,

juveniles were responsible for 12% of forcible rapes (Snyder, 2005; Snyder & Sickmund, 2006). Although an often-ignored population, juvenile females account for 2% of the juvenile arrests for forcible rape and approximately 9% of the juvenile arrests for other sex offenses in the United States alone (excluding prostitution) (Snyder, 2005).

Interestingly, as the field evolves, there has been a considerable paradigm shift (for an excellent description and table outlining this shift, see Brown & Schwartz, 2006). In the late 1980s and early 1990s, juveniles who committed sexual offenses were viewed as “mini” adult sex offenders, and the treatment perspective was to treat them similarly to adults. These youth were viewed as especially dangerous when compared to other youths committing non-sexual offenses. The assumption existed that, like many adult sex offenders, they present with entrenched and stable deviant sexual interests. But research that has been conducted on these youth strongly indicates that the majority of juveniles who commit sexual offenses do not become adult sex offenders (Caldwell, 2002, 2007). Likewise, sexually abusive juveniles are distinctly different from adult sex offenders (Chaffin, Bonner, & Pierce, 2003; Ryan, 1997). Treatment efforts need to sufficiently respond to those differences.

Juveniles who have committed sexual offenses are a heterogeneous group with a variety of developmental considerations, victimization experiences, co-occurring mental health issues, and pathways to offending (Fanniff & Becker, 2006; Hunter, 2006; Johnson, 2006; Rich, 2003). Their sexuality is considered fluid (Hunter & Becker, 1994), not fixed or entrenched as seen among adult offenders (although a small proportion of these youth develop early adolescent onset pedophilic interests) (Hunter, 2006). The goal is for them to attain a healthy path of sexual development (Brown & Schwartz, 2006). And despite some initial equivocal research pointing to unproductive treatment outcomes, there is compelling evidence to suggest juveniles who commit sexual offenses can be successfully treated (see CSOM, 2006; Reitzel & Carbonell, 2006).

For purposes of this literature review, the focus will be on adolescent males, the majority of those that commit juvenile sexual offenses; therefore, this review should not be considered inclusive for female youth. This section is adapted from a much more detailed literature review completed by Robinson & Leibowitz (available on request).

Recidivism Research

The research on juvenile sexual recidivism (or re-offending) suggests that for many youth, sexual offending during adolescence is an adolescent-limited phenomenon (ATSA, 2000). And, it has been suggested that the actual threat of juvenile sexual aggression does not match the community’s perceived threat (Brannon & Troyer, 1995; Letournou & Miner, 2005; Parks & Bard, 2006, Zimring, 2004). Overall, the rates of re-offending tend to be low (between 2-15%); non-sexual recidivism is consistently and significantly higher than sexual, between 16 and 54% as noted in Righthand and Welch (2001, p.32). (Also see Parks & Bard, 2006, p. 321, Table 1; Weinrott, 1996, p. 68-70; Zimring, 2004, p. 173-181). Although there are a few studies showing higher sexual recidivism rates (over 20%), these studies are the clear minority of all the juvenile recidivism studies that have been conducted.

Risk Factors and Assessment Tools

Prescott & Levenson (2007) note that to date there is still no empirically validated method for assessing the likelihood that a sexually abusive youth will recidivate. Part of the problem is that because the sexual recidivism among juveniles is relatively low, it is a challenge to identify factors that are reliable, predictive risk factors.

Given the ongoing research focus and inexact state of risk assessment, it is recommended that clinicians who render risk determinations on clients utilize the empirically derived risk assessments. These assessments help maintain clinical objectivity, and should be used in conjunction with the clinician's working knowledge of the latest empirical research and emerging data regarding stable and dynamic risk factors. Any risk determination needs to be interpreted with caution and the limitations of such instruments, e.g., their time-limited nature, should be articulated in the body of an evaluation report. Risk assessment necessitates a comprehensive review of multiple sources of data collection. Clinicians should never rely solely on a self-report (CSOM, 2007; Worling & Langstrom, 2003).

The Treatment of Sexually Abusive Youth

Given the different characteristics of young offenders and their pathways to offending, treatment needs to be individualized yet also geared towards the subtypes of offending. For example, juveniles offending younger children will most likely require treatment that focuses on improving self-esteem, self-efficacy, social skills, support systems, and overall psychological functioning (e.g., by decreasing depression, anxiety, or stabilizing other co-occurring conditions). Juveniles targeting peers and adult females will most likely require treatment that addresses delinquent attitudes, negative peer group affiliations, and cognitive distortions that devalue females and support male dominance or hypermasculinity.

Addressing trauma in juvenile sexual abusers is crucial. McMackin, Leisen, Cusack, LaFratta, & Litwin (2002) found that trauma exposure was related to "offense triggers" in 65% of the sample of sexually abusive youth. Given the trauma backgrounds in this population, trauma focused cognitive behavioral therapy (TF-CBT) may be clinically indicated. TF-CBT has been found to be more effective in randomized control trials in treating PTSD in sexually abused children and adolescents than other interventions, e.g., supportive therapy, stress management, narrative therapy, or psychoeducational work (Cohen, Mannarino, Zhitova, & Capone, 2003; Deblinger, Steer, & Lippmann, 1999). There are many different approaches to meeting the needs of sexually abusive youth and with the extensive research addressing the impact of trauma on the brain (Teicher, Andersen, Polcari, Anderson, Navalta, & Kim, 2003; see also Creedon, 2006, for a review) and the fact many sexually abusive youth have been severely victimized themselves, new strategies are being applied to sexually abusive youth to mitigate their neurological impairments (Bengis & Cuninggim, 2006). These include biofeedback and neurotherapy (Longo, R., personal communication, August 13, 2007). (For other innovative treatment approaches, please see Longo & Prescott, 2006.)

Additionally, the recent Center for Sex Offender Management (2006) document on the treatment of sexually abusive juveniles supports the need for holistic programming and treatment. Certain individual and social factors have been shown to influence the

effectiveness of the treatment of juvenile offenders. These factors include a history of victimization, family and community violence, and substance abuse (Tarolla, Wagner, Rabinowitz, & Tubman, 2002). Offering treatment that is multimodal in nature can better address these variables.

Although group offense-specific therapy has been considered a primary treatment modality in treating sexually abusive youth, Hunter (2006) notes that the research empirically supporting the use of group treatment is lacking. Caution must be rendered when mixing different subtypes of youth as the treatment effects could be more harmful than beneficial.

Legal/Registration Issues for Sexually Abusive Youth

The present study addresses child abuse registries, not sex offender registries. However, in that Vermont is unique in its investigation of non-caretaker sexual abuse – and the resulting inclusion of minors in its child abuse registry, little information is available on that exact subject. However, there is something to be learned from the considerable controversy about the inclusion of minors in sex offender registries.

Some of the professional organizations weighing in on registration issues include the Association for the Treatment of Sexual Abuse (ATSA) and the International Association for the Treatment of Sexual Abuse (IATSA), both highly respected multidisciplinary organizations consisting of professionals who research, treat, monitor and supervise sex offenders, e.g., law enforcement agents, probation and parole officers, mental health professionals, victim advocates, policy makers, and researchers.

The literature is replete with examples of the unintended consequences of juvenile sex offender registration as well as other concerns these requirements pose to juveniles. In summary, the most significant concerns include:

- (1) The potential for juveniles and their families to experience harassment, vigilantism, and ostracism. The additional family stress only complicates the lives of these juveniles and can destabilize the youth's overall functioning which in turn, can exacerbate risk. Further, when the victim is a family member, the negative affects can be especially traumatizing;
- (2) Registration laws do not prevent recidivism. Most of the research that has thus far been conducted has found no recidivism reduction as a result of these laws.
- (3) Registration laws give people a false sense of security and increase community fears. ATSA (2007) notes that over 90% of offenders sexually abuse family members. Out of 60,000 annual sex assault reports, approximately 100 involve stranger abduction (as noted in FitzPatrick, 2007).
- (4) The labeling of youth as "sex offenders," inherent in the registration language, is counter therapeutic and may hinder the treatment progress of these youths due to the ramifications such negative labeling has on an adolescent's self-esteem during such a critical and vulnerable time in their identity development. In fact, such labeling can maintain inappropriate behaviors (Hayes, 1997) or potentially increase risk because of increased isolation, shame, peer ostracism,

hopelessness, rejection, and depression. Additionally, many sexually abusive youth have histories of abuse. When a child is engaging in traumatic re-enactment as a result of his or her victimization, labeling him or her as a “sex offender” can be especially injurious.

- (5) The lack of carefully discriminating low from high-risk juveniles, lumps juveniles unfairly. Unfortunately, in many states there does not appear to be a sufficient tier system in place based on risk level.
- (6) Registration requirements do not adequately take into account that young people change and most sexually abusive youth (as the recidivism studies suggest) do not become adult sex offenders. Having children register as young as 10, as is done in some states, without sufficient evidence of the high risk they pose to the community, appears unduly harsh and damaging to a youth’s burgeoning development.

A current controversy worth discussion surrounds the Sex Offender Registration and Notification Act (SORNA) (H.R. 3132), which establishes a set of minimum registration and notification standards for sex offenders for all 50 states. This Act has direct implications for juveniles who have committed sexual offenses. SORNA is Title 1 of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 248-109). It specifies that state compliance must occur by July 2009, and failure to do so will result in a mandatory 10% reduction in “Byrne Justice Assistance Grant” funding (U.S. Department of Justice, 2007a, b). The U. S. Department of Justice describes how juveniles are treated under SORNA. Juveniles who are convicted as adults for a sex offense are treated “identical” to adult sex offenders (U.S. Department of Justice, 2007b, p.17).

Some of the concerns noted in this section may have relevance to the child abuse registry. Also, with the mandated implementation of SORNA, in the future these youth may be included, in the sex offender registry.

Vermont Stakeholder Opinion about Young Children on the Registry

The survey included the following set of statements and questions.

Vermont is unusual, in that sexual abuse by any person is investigated by the child protection agency. This means that minors, even under the age of 10, can end up on the child abuse registry. The legislature has specified that these names will be removed at the age of 18, if there have been no further substantiations between the ages of 10 and 18. At the same time the legislature charged us to examine this issue.

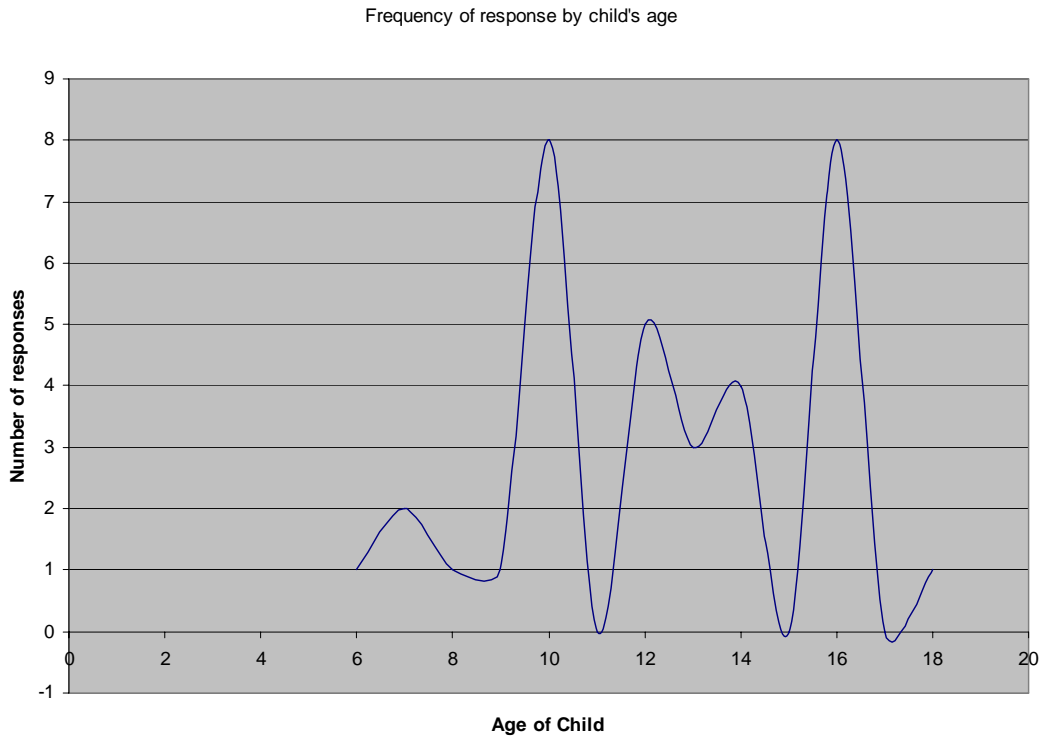
Do you support the current practice of entering the names of minors on the child abuse registry?

177 people responded to this question. 63.8% (113) support entering the names of minors on the registry.

A second question was asked of respondents:

In your opinion, should there be a lower age limit for placement of a name on the child abuse registry?

Of the 170 people who answered this question, 81.8% (139) do not feel there should be a lower age limit. Those who felt there should be a lower age limit disagreed as to what it should be, ranging from one person who said 6 years old, to one who said 18. The distribution of responses to this question follows.



A few people who commented on the question above noted that a specific age limit would be arbitrary, and that the focus should be on the severity of the offense and future risk to children instead.

The majority of participants were quite concerned about labeling children as sex offenders. There was strong support for removing youth from the registry at age 18 if their first offense occurred before age 13 and they had no further offenses. Generally, participants were aware that many youth who sexually offend have experienced earlier sexual victimization. They were equally supportive of removing these youth from the registry if they successfully complete treatment and have no further offenses within a specified period of time.

You can't do a one size fits all for adolescents with sexual behavior problems. Some of the kids on the registry are a risk to the community and others are not.

Mental Health Therapist

Participants were also clear, however, that there is a small portion of youth who continue to pose significant risk to others, and that these should remain on the registry into adulthood.

Because it is not obvious which category a particular youth fits into, some felt that each case should be assessed at age 18, to consider whether or not treatment was successfully completed, whether they had additional substantiations and how much risk they pose to others.

Comments on this topic were varied, and no clear agreement emerged from the survey. Some samples follow:

“Chronological age is not the only criteria that should be used to determine culpability. Emotional developmental age, prior traumatization or victimization or known history of emotional disturbance or mental illness should also be factored in before substantiation is made - not after. Multidisciplinary approaches and attitudes have led to confusion in all sectors as to when a child victim can/should be labeled an offender. Since there is no treatment matrix when a child is victimized, it is conceivable that a child never receives appropriate treatment until they react in what for them is a normative manner.”

“We must consider the offense, the developmental stage, and additional clinical information on the child. I believe that some children can be sexually reactive based on their own trauma, but not necessarily an offender. I do not want to see children wrongly labeled based on harm that has been done to them. We also need to look at response to treatment and willingness to engage in treatment as an individual and a family.”

“This is a very serious issue. I do not believe in placing children on the same registry as adults. These situations still need the same level of investigation and monitoring, but should be done so on a separate registry. These children are often both victims and perpetrators and need INTENSE intervention.”

“If the minor children are removed from the registry, how would the information be tracked in the system? Would we be more likely to place kids with problem sexual behaviors in settings that are not appropriate because we don't have easy access to information about their sexual behavior history?”

“Children should not be held to adult standards of accountability; treatment must be made available and every effort made to protect them from unnecessary stigma/trauma.”

“Unless such substantiations have been adjudicated no child should be placed upon the registry. And, upon adjudication the same levels of confidentiality and rights to privacy of a minor in any other criminal matter should be enforced. If, however the case does not rise to the level of punishable criminality or the minor is found innocent in a court of law then the substantiations must not so profoundly effect the future of our young”

“Often times I have supervised "sex offenders" on probation who have been identified as offenders for relatively minor incidents or for lack of knowledge and boundaries specific to girlfriends. We have excellent resources for treatment and many of our youth 'successfully' complete treatment. The abuse registry for youth should be looked at on a case by case basis with treatment providers providing input as to risk to re-offend and family response to treatment.”

“I question blanket removal of names at age 18. Again, it strongly hinders the Investigator's ability to quickly and accurately go back through the system and know whether they are dealing with a first time offender or an individual that has a long history of sexually concerning behaviors starting at a young age.”

Recommendations

The following recommendations have emerged from our examination of the issues and discussion with a wide range of stakeholders. We recommend that the legislature the following statutory revisions:

- Expand current provisions to allow employers to perform child abuse, adult abuse and criminal background checks not just at the time of hire, but periodically.
- Pass language that will allow for the design and implementation of a differential response system for the investigation and assessment of child abuse.
- Provide for the differential or “tiered” inclusion of substantiated perpetrators of child abuse or neglect in the child abuse and neglect registry.
- Keep in effect the revision made last year as part of Act 77 regarding the entry of young children into the registry. That is, children under the age of 10 will be included on the registry, but will be removed if they have no further substantiations between the ages of 10 and 18.

Appendix A – Excerpt from Minnesota Legislation on Differential Response

626.556 REPORTING OF MALTREATMENT OF MINORS.

Subdivision 1. Public policy. The legislature hereby declares that the public policy of this state is to protect children whose health or welfare may be jeopardized through physical abuse, neglect, or sexual abuse. While it is recognized that most parents want to keep their children safe, sometimes circumstances or conditions interfere with their ability to do so. When this occurs, families are best served by interventions that engage their protective capacities and address immediate safety concerns and ongoing risks of child maltreatment. In furtherance of this public policy, it is the intent of the legislature under this section to strengthen the family and make the home, school, and community safe for children by promoting responsible child care in all settings; and to provide, when necessary, a safe temporary or permanent home environment for physically or sexually abused or neglected children.

In addition, it is the policy of this state to require the reporting of neglect, physical or sexual abuse of children in the home, school, and community settings; to provide for the voluntary reporting of abuse or neglect of children; to require a family assessment, when appropriate, as the preferred response to reports not alleging substantial child endangerment; to require an investigation when the report alleges substantial child endangerment; and to provide protective, family support, and family preservation services when needed in appropriate cases.

Subd. 2. Definitions. As used in this section, the following terms have the meanings given them unless the specific content indicates otherwise:

(a) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child maltreatment, and family strengths and needs that is applied to a child maltreatment report that does not allege substantial child endangerment. Family assessment does not include a determination as to whether child maltreatment occurred but does determine the need for services to address the safety of family members and the risk of subsequent maltreatment.

(b) "Investigation" means fact gathering related to the current safety of a child and the risk of subsequent maltreatment that determines whether child maltreatment occurred and whether child protective services are needed. An investigation must be used when reports involve substantial child endangerment, and for reports of maltreatment in facilities required to be licensed under chapter 245A or 245B; under sections 144.50 to 144.58 and 241.021; in a school as defined in sections 120A.05, subdivisions 9, 11, and 13, and 124D.10; or in a nonlicensed personal care provider association as defined in sections 256B.04, subdivision 16, and 256B.0625, subdivision 19a.

Appendix B – Excerpt from Delaware Statute On Tiered Registry

TITLE 16 Health and Safety: Regulatory Provisions Concerning Public Health

CHAPTER 9. ABUSE OF CHILDREN

Subchapter II. Child Protection Registry

§ 921. Child Protection Registry; purpose.

The Division shall maintain a Child Protection Registry which contains information about persons who have been substantiated for abuse or neglect as provided in this subchapter or who were substantiated between August 1, 1994, and February 1, 2003. The primary purpose of the Child Protection Registry is to protect children and to ensure the safety of children in child care, health care and public educational facilities. This subchapter must be liberally construed so that these purposes may be realized. (73 Del. Laws c. 412 § 7.)

§ 922. Entry on the Child Protection Registry.

The Child Protection Registry must indicate "substantiated for abuse" or "substantiated for neglect" and the Child Protection Level as designated in § 923 of this subchapter for any person who:

(1) Based on the same incident of abuse or neglect on which the substantiation proceeding is premised, has been convicted of any criminal offense set out in § 923 of this subchapter or any offense specified in the laws of another state, the United States or any territory of the United States which is the same as or equivalent to any of the offenses set out in § 923 of this title;

(2) Has been found by the Family Court, in a child welfare proceeding brought by the Division or in which the Division is a party, by a preponderance of the evidence to have abused or neglected a child;

(3) Fails to make a timely written request for a hearing as provided in § 924(a)(2) of this title after being given notice by the Division of its intent to substantiate the person for abuse or neglect and enter the person on the Registry;

(4) Is entered on the Registry by order of the Family Court in a proceeding on a Petition for Substantiation as described in § 925 of this title; or

(5) Was substantiated for abuse or neglect between August 1, 1994, and February 1, 2003. (73 Del. Laws, c. 412, § 7.)

§ 923. Child Protection Levels.

(a) A person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at a designated Child Protection Level related to the risk of future harm to

children as designated in subsection (b) of this section. The Division shall develop regulations that assess the risk of future harm to children from acts of abuse or neglect and designate Child Protection Levels.

(b) The following paragraphs describe the 4 child protection levels:

(1) Child Protection Level I. -- A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level I:

a. An incident of abuse or neglect, including emotional neglect, presenting a low risk of future harm to children; or

b. Conviction of a violation of compulsory school attendance requirements or truancy when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title.

A person who is substantiated for abuse or neglect at Child Protection Level I must not be entered on the Child Protection Registry and must not be reported in response to a Child Protection Registry check made pursuant to § 8563 of Title 11 for that incident or conviction. The person is eligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11.

(2) Child Protection Level II. -- A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level II:

a. An incident of abuse or neglect, including severe emotional neglect, presenting a moderate risk of future harm to children; or

b. Conviction of interference with custody when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this subchapter.

A person who is substantiated for abuse or neglect at Child Protection Level II must be reported for a period of 3 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to § 8563 of Title 11. The person must remain on the Registry for a period of 3 years, but the person is eligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11, while the person is on the Registry at Child Protection Level II; and a prospective employer making a Child Protection Registry check must be so informed. If the person is not substantiated for abuse or neglect while on the Registry, the person on the Registry at Child Protection Level II is automatically removed from the Registry after 3 years and must not be reported in a Child Protection Registry check for that incident or conviction.

(3) Child Protection Level III. -- A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level III:

a. An incident of abuse or neglect presenting a high risk of future harm to children, including but not limited to: physical injury, nonorganic failure to thrive, malnutrition, or abandonment of a child 13 to 17 years of age; or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: offensive touching, menacing, reckless endangering, assault in the third degree, terroristic threatening, unlawful administration of drugs or controlled substances, indecent exposure in the first or second degree, sexual harassment, unlawful imprisonment, abandonment of a child, or misdemeanor endangering the welfare of a child.

A person who is substantiated for abuse or neglect at Child Protection Level III must be reported for a period of 7 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to § 8563 of Title 11. The person is ineligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11, while the person is on the Child Protection Registry at Child Protection Level III. If the person is not substantiated for a different incident of abuse or neglect while on the Registry, the person entered on the Registry at Child Protection Level III is automatically removed from the Registry after 7 years and is, thereafter, eligible for employment in a child care facility, health care facility or public school, and must not be reported in a Child Protection Registry check for that incident or conviction.

(4) Child Protection Level IV. -- A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level IV:

a. An incident of abuse or neglect presenting the highest risk of future harm to children, including but not limited to serious physical injury, sexual abuse, torture, criminally negligent treatment, or abandonment of a child 12 years of age or younger (but not including the voluntary surrender of a baby pursuant to the Safe Arms for Babies program as provided in § 907A of this title); or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first degree, assault in the second degree, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, bestiality, continuous sexual abuse of a child, possession of child pornography, unlawfully dealing in child pornography, felony endangering the welfare of a child, dangerous crime against a child, kidnapping, coercion, dealing in children, unlawful dealing with a child, sexual exploitation of a child, or promoting suicide.

A person who is substantiated for abuse or neglect at Child Protection Level IV must be reported as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to § 8563 of Title 11. The person is ineligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry check for the incident or conviction.

(c) A person who is substantiated for an incident of abuse or neglect while on the Child Protection Registry is ineligible for automatic removal from the Registry, but may be removed from the Registry by order of the Family Court as provided in § 929 of this title. If a person is substantiated for abuse or neglect while on the Registry, the imposed conditions for each incident must be completed consecutively, with the conditions for the most restrictive Child Protection Level or Levels being completed before those for the less restrictive level or levels. A person

who has partially completed a level when assigned to a more restrictive level is given credit for that partial completion when that person has completed the conditions for the more restrictive level or levels. (73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1.)

§ 924. Notice of Intent to Substantiate; process.

(a) In response to a report where abuse or neglect is alleged, the Division shall conduct an investigation into the facts and circumstances of the alleged abuse or neglect as required by § 906 of this title.

(1) If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing. The Division shall develop regulations for classifying unsubstantiated cases in its internal information system.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter the person on the Child Protection Registry, it shall give written notice to the person by certified mail, return receipt requested, at that person's last known address. The written notice must:

- a. Briefly describe the alleged incident of abuse or neglect;
- b. Advise the person that the Division intends to substantiate the allegations and enter the person on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;
- c. State the consequences of being entered on the Registry at the designated level, including whether the person will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to § 8563 of Title 11;
- d. Inform the person of that person's own right to request a hearing in the Family Court before the person is entered on the Child Protection Registry;
- e. Further advise that the person will be entered on the Registry for the incident at the designated Child Protection Level unless, within 30 days of the date of mailing of the notice, the person responds to the Division in writing, requesting a hearing in the Family Court on the Division's intent to substantiate the person for abuse or neglect and enter the person on the Registry;
- f. Contain a written form for the person to return to the Division to request a hearing.

(b) A person who fails to request a hearing as provided in subsection (a) of this section must, at the expiration of 30 days from the date of mailing of the notice of intent to substantiate the allegations of abuse or neglect and enter the person on the Registry, be entered on the Child Protection Registry at the Child Protection Level designated in the notice. (73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1.)

§ 925. Petition for Substantiation.

(a) If a person responds to the Division and requests a hearing in the Family Court before being entered on the Registry, as provided in § 924 of this title, the Division shall, unless the automatic stay provisions of § 927 of this title apply, file in the Family Court no later than 20 days after receipt of the written request a Petition for Substantiation which requests that the Court substantiate the abuse or neglect and enter the person on the Child Protection Registry at a Child Protection Level designated by the Court. The Petition for Substantiation must be filed in the county in which the alleged incident leading to the Petition occurred. The Family Court may, upon motion by the Division or sua sponte, enter an order that places the person on the Registry at a designated Child Protection Level pending a final order on the Petition for Substantiation. The Family Court shall make a written finding in the proceedings on the Petition for Substantiation as to whether the person committed abuse or neglect. If the Family Court finds that the person committed abuse or neglect, it shall, pursuant to § 923 of this title, designate the Child Protection Level at which the person must be entered on the Registry. An order of substantiation may not be stayed pending appeal. If the Family Court finds that the person has not committed an act of abuse or neglect, the person may not be entered on the Registry for that incident, and the Division shall indicate in its internal information system that the incident is unsubstantiated.

(b) If a child welfare proceeding is pending in which the Division has requested a finding of abuse or neglect against a party and entry on the Registry for the same incident, the Family Court shall decide the issues of substantiation and entry on the Registry as provided in § 926 of this title without the necessity of a response to the notice of intent to substantiate or a separate Petition for Substantiation.

(c) If the Division fails to file a Petition for Substantiation within 20 days of receipt of a person's written request for a hearing as provided in § 924 of this title and a child welfare proceeding based on the same incident of abuse or neglect is not pending, the person may not be entered on the Child Protection Registry for the incident of abuse or neglect indicated in the notice of intent to substantiate. (73 Del. Laws, c. 412, § 7.)

§ 926. Finding of abuse or neglect in child welfare proceeding; binding effect.

In every child welfare proceeding brought by the Division or in which the Division is a party and in which the Division has requested a finding of abuse or neglect and entry on the Registry, the Family Court shall make a finding, by a preponderance of the evidence, as to whether a parent or other party has abused or neglected the child. If the Court finds that a parent or party has abused or neglected the child, it shall order the parent or party to be entered on the Child Protection Registry at the Child Protection Level designated by the Court, as provided in § 923 of this title. An order of substantiation may not be stayed pending appeal. The findings of the Family Court are final and binding, and work as issue or claim preclusion for the same incident of abuse or neglect in substantiation proceedings. (73 Del. Laws, c. 412, § 7.)

§ 927. Automatic stay of substantiation proceedings.

(a) Proceedings under § 925 of this title, including the duty to file a Petition for Substantiation, are automatically stayed in any matter in which a criminal or delinquency proceeding involving the same incident of abuse or neglect is pending.

(b) Conviction of a crime involving the same incident of abuse or neglect is final, binding and determinative of the issue of abuse or neglect and of the person's entry on the Registry at the Child Protection Level designated for such offense.

(c) Upon conclusion of a criminal or delinquency proceeding involving the same allegations or facts as those alleged in the incident of abuse or neglect, if the accused is acquitted of the charge or the charge is dismissed and the Division intends to pursue substantiation, the acquittal or dismissal does not automatically work as issue or claim preclusion against a civil finding of abuse or neglect, nor does it prevent the taking of evidence, notwithstanding any other law to the contrary. (73 Del. Laws, c. 412, § 7.)