

# Criminal Justice Outcomes may Differ for Child Sexual Abuse Victims Across States



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## BACKGROUND

- Differences in state definitions of child sexual abuse (CSA) can influence sentencing of offenders and therefore justice outcomes for victims.
- Differing definitions of CSA make it difficult to estimate exactly how many children are victims (Singh, Parsekar, & Nair, 2014).
- Prevalence rates of CSA are dependent on where studies take place, definitions used, types of CSA being studied, extent of coverage, and the quality of data (Bassani, Palzzo, Beria, Gigante, Figueiredo, & Aerts, 2009; Krug, Dahlberg, Mercy, Zwi & Lozano, 2002; Martin & Silverstone, 2013; WHO, 2014).
- Differences in legal definitions of CSA vary greatly, as do the experiences of victims (e.g., duration, frequency, intrusiveness of acts perpetrated, and relationship to perpetrator) (Bassani et al., 2009; Martin et al., 2013; Wihbey, 2011).
- There has been disagreement as to what the definition of CSA should include with respect to contact with the victim; non-contact is only sometimes considered to be CSA (Collin-Vezina, Daigneault & Hebert, 2013).
- Experts argue that CSA includes activities such as: intercourse, oral-genital contact, attempted intercourse, fondling of genitals directly or through clothing, the use of the child for prostitution or pornography, exhibitionism or exposing children to adult sexual activity or pornography (Putnam, 2003).
- Sexual activities that involve a person below a statutorily designated age fall under the large umbrella of CSA; however, the age of consent varies greatly across countries, e.g. as young as 12 or 13 (Spain) to 17 or 18 years of age (states in the US and Australia) (Collin-Vezina, Daigneault & Hebert, 2013).
- There are definitional issues that have not yet been resolved such as age of sexual consent and age for sexual maturity, which influences statutory sex offense sentencing (Collin-Vezina, Daigneault & Hebert, 2013).
- Interpersonal violence or coerced sexual activities occurring while in dating/romantic relationships is recognized as sexual violence by experts and organizations such as the World Health Organization, however, the extent of social recognition and acknowledgement in different laws around the world is unclear (Collin-Vezina, Daigneault & Hebert, 2013).

## FORENSIC IMPLICATIONS

- A myth about persons convicted of felony CSA is that all are sentenced to prison. Less than one-third of those convicted of CSA (28.7%) are sent to prison (Marsh, Patrick, & Hopfenbeck, 2007).
- There are wide variations in sentencing outcomes of offenders, regardless of crime or relevant laws about minimum sentencing or sentencing guidelines (Crow & Gertz, 2008; Cullen, Smith, Funk, & Haaf, 2000).
- Characteristics of the offender, victim, and offense seem to affect sentencing outcomes somewhat, however, the characteristics of the offense seem to play the largest part (Patrick & March, 2011).
- Characteristics of the offense that are associated with longer sentences include: younger victim, vulnerable victim, repeat offending, forced rape, more severe offense (Coburn, Chong, & Connolly, 2017; Demuth, & Steffensmeier, 2004; Faller, Birdsall, Vandervort, & Henry, 2006; Hilinski-Rosick, Freiburger, & Verheek, 2014; Holland & Sheets, 2009; Ulmer, Kurlychek, & Kramer, 2007).
- The gender of the victim does appear to play a part in the sentencing outcome; this finding is consistent with other research (Curry, Lee, & Rodriguez, 2004).
- Judges tend to take intrusiveness of the offense into account, independent of other variables such as age of the victim and abuse frequency (Coburn, Chong, & Connolly, 2017).
- Offenders who pled guilty received shorter sentences than those who pled not guilty (Coburn, Chong, & Connolly, 2017; Hilinski-Rosick et al., 2014).

## STATE DEFINITIONS OF CSA

### California

- Aggravated Sexual Assault of a Child: An offender commits aggravated sexual assault of a child by committing the acts below on a child under the age of 14 who is 7 or more years younger than the offender:
  - Rape as defined in §261.
  - Rape or sexual penetration in concert with another in violation of Section 264.1.
  - Sodomy as defined in §286.
  - Oral copulation as defined in §288a.
  - Unlawful sexual penetration as defined in §289.
- Sexual acts with a child 10 years and younger: An offender who is 18 years of age or older violates §288.7 by engaging in sexual intercourse or sodomy with a child who is 10 years of age or younger (punishment is imprisonment of 25 years to life); or engaging in oral copulation or sexual penetration with a child who is 10 years of age or younger (punishment is imprisonment of 15 years to life).
- A child is considered dependent if he or she has been sexually abused; there is a substantial risk that the child will be sexually abused, as defined in § 11165.1 of the Penal Code, by his or her parent, guardian, or a household member; or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.
- The Legislature finds and declares that a child who is sexually trafficked, as described in §236.1 of the Penal Code, or who receives food or shelter in exchange for or who is paid to perform, sexual acts, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that these children shall be known as commercially sexually exploited children.
- 'Sexual abuse' means sexual assault or sexual exploitation as defined below:
- 'Sexual assault' includes rape, incest, sodomy, lewd or lascivious acts upon a child, or child molestation.
- 'Sexual exploitation' refers to any of the following:
  - Depicting a minor engaged in obscene acts; preparing, selling, or distributing obscene matter that depicts minors; employing a minor to perform obscene acts
  - Knowingly permitting or encouraging a child to engage in, or assisting others to engage in, prostitution or a live performance involving obscene sexual conduct, or to either pose or model alone or with others for purposes of preparing a film, photograph, negative, slide, drawing, painting, or other pictorial depiction involving obscene sexual conduct
  - Depicting a child in, or knowingly developing, duplicating, printing, or exchanging any film, photograph, videotape, negative, or slide in which a child is engaged in an act of obscene sexual conduct
- Citation: Welf. & Inst. Code § 300; Penal Code § 11165.1

### New York

- Predatory sexual assault on a child: Committing the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and the victim is less than 13 years old, when the person is 18 years or older (punishment could be imprisonment 10 to 25 years)
- NY has offenses broken down into first (5 to 25 years imprisonment) and second degree (2-7 years imprisonment).
- The term 'abused child' includes a child younger than age 18 whose parent or other person legally responsible for his or her care commits, or allows to be committed, an act of sexual abuse against such child, as defined in penal law.
- The term 'abused child' also includes a child younger than age 18 whose parent or other person legally responsible for his care:
  - Commits or allows to be committed any sex offense against the child, as defined in article 130 of the penal law, including sexual misconduct, rape, and sexual abuse
  - Allows, permits, or encourages the child to engage in child prostitution, as described in § 230.25, 230.30, and 230.32 of the penal law
  - Commits an act of incest, as described in § 255.25, 255.26, and 255.27 of the penal law
  - Allows the child to engage in acts or conduct to produce, promote, or possess child pornography, as described in article 263 of the penal law
- Citation: Soc. Serv. Law § 371; Family Court Act § 1012

### Texas

- Under aggravated sexual assault, and statutory rape: "Child" means a person younger than 17 years of age. "Sexual contact" (only for the purposes of Indecency with a child) means touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child, any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of the person with the intent to arouse or gratify the sexual desire of any person.
- Aggravated sexual assault, first degree felony: 25-99 years imprisonment, maximum fine of \$10,000. Sexual assault, second degree felony: 2-20 years imprisonment, maximum fine of \$10,000. Indecency with a child, second degree felony: 2-20 years imprisonment, maximum \$10,000 fine. Indecency with a child, third degree felony: 2-10 years imprisonment, maximum \$10,000 fine. TX has offenses broken down into first and second degrees.
- The term 'abuse' includes the following acts or omissions by a person:
  - Sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child (§ 21.02, Penal Code), indecency with a child (§ 21.11, Penal Code), sexual assault (§ 22.011, Penal Code), or aggravated sexual assault (§ 22.021, Penal Code)
  - Failure to make a reasonable effort to prevent sexual conduct harmful to a child
  - Compelling or encouraging the child to engage in sexual conduct (as defined by § 43.01, Penal Code), including conduct that constitutes an offense of trafficking of persons (§ 20A.02(a)(7) or (8), Penal Code), prostitution (§ 43.02(b), Penal Code), or compelling prostitution (§ 43.05(a)(2), Penal Code)
  - Causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by § 43.21, Penal Code) or pornographic
  - Causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child (as defined by § 43.25, Penal Code)
  - Knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under § 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections
- Citation: Fam. Code § 261.001