Sex Offender Law Report™

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One-Size-Fits-All Federal Law for Child Pornography Defendants

by Ian N. Friedman, Esq., and Robert Weiss Ph.D., M.S.W.

Author's Note: *After considerable experience representing (Friedman) and evaluating and treating (Weiss) the gamut of criminal sexual offenses, we note that, despite what may be commonly thought, most possessors and viewers of child pornography offenses are not difficult to handle from the clinical perspective. Their legal defense can be extremely complicated, even though the vast majority of these offenders show no other evidence of criminal behavior. Typically, they are average, law-abiding citizens. Most have never before been involved in the criminal justice system. In many respects, they have lived productive lives, both personally and professionally. They and their families are terrified, from the first knock on the door, by the devastation that comes at them from nearly every corner of the criminal justice system, especially the underinformed and thus frequently excessive sentences so often meted out in these circumstances. As very few "brownie points" are handed out in the justice system to those who show sympathy for these individuals and their families, neither the general public nor legal professionals consider or openly support outcomes more productive than a harsh prison sentence. This article attempts to shine a light on the situation, leading to better-informed and more productive*

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Assessment Protocols for Family Reunification After Sibling Incest

by Nicole Paolillo, Psy.D., Philip H. Witt, Ph.D., and Sean P. Hiscox, Ph.D.

Researchers have suggested that sibling incest is one of the most predominant forms of childhood sexual abuse. (D. Tener & M. Silberstein, *Therapeutic Interventions With Child Survivors of Sibling Sexual Abuse: The Professionals' Perspective*, 89 Child Abuse & Neglect 192 (2019), doi:10.1016/j.chiabu.2019.01.010; D. Tener et al., *Parental Attitudes Following Disclosure of Sibling Sexual Abuse: A Child Advocacy Center Intervention Study*, 88(6) Am. J. Orthopsychiatry 661 (2018).) Compared to other forms of intrafamilial sexual abuse, sibling incest is "almost universally accepted as the most prevalent type." (*Id.* at 666.) For example, in a large retrospective sample of the UK general population (n = 2,869), Cawson and colleagues found sibling incest to have an occurrence rate that was double that of father-daughter incest. (P. Cawson et al., *Child Maltreatment in the United Kingdom: A Study of the Prevalence of Abuse and Neglect* (2000).) In a national database containing eight years of data (2000 through 2007), Krienert and Walsh found 13,013 incidents of sibling sexual abuse. They estimated sibling incest to be "five times more common than father/stepfather-perpetrated offenses." (J.L. Krienert & J.A. Walsh, *Sibling Sexual Abuse: An Empirical Analysis of Offender, Victim, and Event Characteristics in National Incident-Based Reporting System (NIBRS) Data, 2000-2007*, 20 J. Child Sexual Abuse 354 (2011).)

Despite these findings, Krienert and Walsh re-emphasized the lack of quality research regarding prevalence rates:

> The reliance on secondary, albeit officially reported, NIBRS data is still susceptible to data entry error and despite being collected at the national level remains incomplete and most certainly an underestimation of the true prevalence of sibling sexual abuse incidents in the United States. (*Id.* at 369.)

Few Nationwide Studies From Which to Formulate Theories and Treatment

Aside from Krienert and Walsh's sample, there is a paucity of nationwide studies from which to create a foundation of knowledge regarding prevalence rates in the U.S. In the twenty-seventh annual edition of *Child Maltreatment* (2016), a category for sibling incest was absent. Due to the lack of contemporary nationwide data, most research addressing sibling incest uses prevalence rates from nearly four decades ago. In Finkelhor's study, 15% of females and 10% of males in the sample—comprised of 796 undergraduates from six collegial

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institutions in the northeastern United States—acknowledged a childhood sexual experience with a sibling. (D. Finkelhor, *Sex Among Siblings: A Survey on Prevalence, Variety, and Effects*, 9(3) Arch. Sexual Behav. 171 (1980).) In that study, sexual experience predominantly consisted of touching and "fondling" of genitals. (Krienert & Walsh, *supra* at 354.) A more recent, smaller study conducted in Florida sampled 194 survivors of childhood sexual abuse and found that 50% were victims of sibling incest. (J.A. Shaw et al., *Child on Child Sexual Abuse: Psychological Perspectives*, 12 Child Abuse & Neglect 1591 (2000).)

Failure to Report Dampens Prevalence Measures. Sibling incest, like other intrafamilial crimes, is underreported. There are several reasons why sibling incest is not reported as readily as other types of offenses. Parents often consider sibling incest to be developmentally normal. (Tener et al., *supra*.) Additionally, the tendency of adults, families, professionals, and abusers is to minimize the traumatic effect of sibling sexual abuse. (P. Yates, *Sibling Sexual Abuse: Why Don't We Talk About It?*, 26(15-16) J. Clinical Nursing 2482 (2017).) Children can also be discouraged by a lack of receptivity in the people they might tell. (M. Stathopoulous, *Sibling Sexual Abuse*, ACSSA Research Summary No. 3 (2012), *available at* https://AIFS.gov.au/publications/Sibling-Sexual-Abuse.)

Lack of Guidance for Practitioners. Practitioners have few if any sources of guidance about reports of sibling incest. The literature does not address how to best respond when presented with initial disclosure of sibling incest. (A. Tapara, *Best Practice Guidelines for Health Service Professionals Who Receive Initial Disclosures of Sibling Sexual Abuse*, 7(2) Kotuitui: New Zealand J. Soc. Sci. Online 83 (2012).) Thus, there is a need for a thorough review of the current literature to make assessment and treatment recommendations in line with the best practices applied to the assessment of risk of reoffense in relation to potential family reunification within the context of the Risk-Need-Responsivity (RNR) model. (D.A. Andrews & J. Bonta, *Rehabilitating Criminal Justice Policy and Practice*, 16 Psychol., Pub. Policy & L. 39 (2010).)

This paper will examine the process of reuniting a family broken by the separations that often take place after the discovery of sibling sexual abuse. In addition, we will propose assessment methodology in line with the best practices applied to the assessment of risk of reoffense.

Definition and Demographics

Abusive sexual activity between siblings appears in the literature under a variety of terms, such as:

- Sibling incest (K. Karbeyaz et al., *Case of Sibling Incest Resulting in Pregnancy*, 6(4) Egyptian J. Forensic Sci. 550 (2016), https://doi.org/10.1016/j.ejfs.2016.09.002; C. Katz & L. Hamama, *From My Own Brother in My Own Home: Children's Experiences and Perceptions Following Alleged Sibling Incest*, 32(23) J. Interpersonal Violence 3648 (2017));
- Sibling sexual abuse (SSA) (Tener et al., *supra*; Tener & Silberstein, *supra*);
- Intrafamilial sexual abuse or brother-sister incest (M. Cyr et al., *Intrafamilial Sexual Abuse: Brother-Sister Incest Does Not Differ From Father-Daughter and Stepfather-Stepdaughter Incest*, 26(9) Child Abuse & Neglect 957 (2002)); and
- Intersibling abuse (J.V. Caffaro & A. Conn-Caffaro, *Treating Sibling Abuse Families*, 10(5) Aggression & Violent Behav. 604 (2005)).

Differentiating From Age-Appropriate Behaviors. Attempts have been made to differentiate sibling incest from age-appropriate behaviors with terms such as "sexual interaction beyond age-appropriate exploration" (M.S. Hardy, *Physical Aggression and Sexual Behavior Among Siblings: A Retrospective Study*, 16(3) J. Family Violence 255 (2001)) or "beyond developmentally appropriate curiosity" (M.S. Kiselica & M. Morrill-Richards, *Sibling Maltreatment: The Forgotten Abuse*, 85(2) J. Counseling & Dev. 148 (2007); K. Thompson, *Sibling Incest: A Model for Group Practice With*

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Adult Female Victims of Brother-Sister Incest, 24 J. Family Violence 531 (2009)).

Pithers described how normal developmental exploratory sexual behavior fits into three distinct stages. (W.D. Pithers et al., *From Trauma to Understanding* (1993).) Up to the age of five, children take interest in exploring by touching and looking at their own and others' bodies. When they are between the ages of six and 10, they begin to play sexual exploratory games, such as "doctor." During preadolescence (age 11 or 12), their interest in masturbation continues, as well as sexual activity with peers.

Fair Assessments of Presence of Pathology. A preliminary assessment of the nature or dynamics of the sexual behavior would involve discerning whether the sexual behavior is within the limits of developmentally appropriate exploration or if the behavior is likely to be detrimental to either victim or perpetrator. This would be consistent with the parameters of ethical practices that mandate the accurate identification of the presence of pathology and to tease out the potential to overpathologize a child evaluee. (American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct* (2019), *available at* www.APA.org/ethics/code.) Moreover, the commonly held assumption that youth who engage in sexually abusive tendencies are at a high likelihood of repeating the behavior has been recently disproved. Chiefly, Caldwell's research examined juvenile sexual offense recidivism rates and found them to be below 3%. (M.F. Caldwell, *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, 22(4) Psychol., Pub. Policy, & L. 414 (2016).)

Role of Coercive Pressure and Physical Force. When compared to extrafamilial sexual assault, the sexual abuse inherent in sibling incest is often less physically violent, and it is rare to find cases in which weapons were involved. (M.J. McVeigh, *"But She Didn't Say No": An Exploration of Sibling Sexual Abuse*, 56(2) Australian Soc. Work 116 (2003).) Of the 68.3% in Carlson's study reporting that the perpetrating sibling used coercion, threat, or bribery to get them to comply, 22% stated that the perpetrating sibling imparted force. (B.E. Carlson et al., *Sibling Incest: Reports From 41 Survivors*, 15(4) J. Child Sexual Abuse 19 (2006).) Cyr also found that only 20% of their sample (n = 24) of "brother offenders" of sibling incest used "force or physical violence." (Cyr et al., *supra* at 964.)

Given that older-brother/younger-sister represents the most frequently occurring dyad among siblings who are involved in sibling incest, it is not surprising that 67.7% of the female sibling incest survivors, versus 42% of the males, in Carlson's 2006 study reported being subjected to coercive pressure. This aligns with Cyr's 2002 findings that brothers tend to implement a higher degree of physical force compared to sisters. (Carlson et al., *supra;* Cyr et al., *supra.*)

In a comparison of father versus brother conduct against the daughter/sister victim, Rudd and Herzeberger noted that fathers more frequently threatened force, whereas brothers were more likely to use force against their victims. (J. Rudd & S. Herzeberger, *Brother-Sister Incest, Father-Daughter Incest: A Comparison of Characteristics and Consequences*, 23 Child Abuse & Neglect 915 (1999).)

Range of Abusive Acts. The behaviors of sibling incest can involve a range of abusive acts, from those that do not entail any physical contact, such as exposure to pornography, to behaviors that involve touching, "fondling… penetration…[and] forcible penetration." (Haskin, cited in Krienert & Walsh, *supra* at 358.) Both Carlson and Krienert and Walsh found fondling of genitals and touching to be the predominant mode of sexual activity in their samples. (Carlson et al., *supra*; Krienert & Walsh, *supra*.)

Sibling Incest Fundamentally Requires Power Differential. For the purposes of this article, sexual abuse between siblings will be referred to as "sibling incest." Sibling incest is defined as abusive sexual behavior that exceeds activity within the realm of age-appropriate sexual experimentation and often involves a power differential between siblings which may include a range of coercive behavior. Notwithstanding Falcão's view that the severity of sibling incest was indicated by "victims' young age with a power differential with the alleged abuser, physically intrusive practices, and high rates of emotional and physical violence," our view is that voluntary behavior does not place a case outside the definition of sibling incest. Thus, the definition for this paper will include cases involving voluntary behavior, as not doing so could exclude critical cases that would be appropriate for the purposes of family reunification considerations. (V. Falcão et al., *Forensic Evaluation in Alleged Sibling Incest Against Children*, 23(7) J. Child Sexual Abuse 764 (2014).) This comports with Stroebel and colleagues, who stated that, in their study, nearly three-quarters of the cases were voluntary. (S.S. Stroebel et al., *Brother-Sister Incest: Data From Anonymous Computer-Assisted Self-Interviews*, 22(3) J. Child Sexual Abuse 255 (2013), doi: 10.1080/10538712.2013.743952.)

Assessing Incidents of Sexual Acting Out

In the event that sibling incest is disclosed, professionals need to determine whether the alleged incident meets the criteria of developmentally appropriate exploration or whether it fits into the category of abusive sexual activity with a sibling. According to Johnson, sexual activity among children falls onto a continuum "ranging from natural and healthy to children who molest other children." (C.T. Johnson, *Helping Children With Sexual Behavior Problems: A Guidebook for Professionals and Caregivers* 2 (4th, 2014).) With the majority of sexual acting out being healthy, there is a subset of the population whose behavior is indicative of "disturbance." She classifies children who have "sexual behavior problems" into the following three groups:

1. "Sexually-reactive" children;
2. Children who engage in reciprocal sexual behaviors; and
3. Children who sexually abuse other children.

For cases that fall into the last category, practitioners must evaluate the individual's risk to ensure that high-risk cases are aligned with adequate services and supervision. In addition, evaluators must understand how the individual's personality factors contributed to the sexual abuse, as well as the individual's receptivity to treatment. These evaluations are best explained within the Risk-Need-Responsivity (RNR) Framework, described below.

What to Look for Using an RNR Framework

We propose that both assessment and intervention in sibling incest cases occur within an RNR framework. The RNR model has been increasingly used over the last 10 years to inform the treatment and assessment of adolescents and adults who have exhibited sexually abusive behavior. (M.J. Breiner & P.H. Witt, *Sex Offender Risk Assessment: A Decade of Development, Part 1*, 19(2) *SLR* 17 (Feb./Mar. 2018).) This approach is by far the best empirically supported approach to rehabilitating criminal behavior. In addition, there are supported methods for assessing and treating sex offenders in keeping with ethical standards for practitioners. (Association for the Treatment of Sexual Abusers, *ATSA Practice Guidelines for Assessment, Treatment, and Intervention With Adolescents*

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Who Have Engaged in Sexually Abusive Behavior (2017), *available at* www.ATSA.com/Public/Adolescent/ATSA_2017_Adolescent_Guidelines_TOC.pdf.)

Simply put, in the RNR model the evaluator first assesses an individual's risk (R), based on the well-supported principle that those individuals who present the highest risk should receive the most services and the highest level of supervision. The evaluator then assesses criminogenic needs (N), the personality factors that led to the sexual abuse. Finally, the evaluator assesses responsivity (R), the individual's learning style or context in which the individual learns best. (Andrews & Bonta, *supra*.)

Of particular relevance for sibling incest cases is literature examining the applicability of the RNR model to sex offenders. (L. Harkins & A. Beech, *Measurement of the Effectiveness of Sex Offender Treatment*, 12(1) Aggression & Violent Behav. 36 (2007), doi:10.1016/j.avb.2006.03.002.) Harkins and Beech view Risk as the static risk of the individual and Need as the dynamic risk factors of the individual. They argue that, in addition to Responsivity, other crucial considerations include process issues (i.e., group processes/cohesion/environment, group composition/environment, and therapist characteristics).

Static and Dynamic Risk Factors. A detailed and accurate assessment of the individual who committed the abuse includes both static and dynamic risk factors:

1. Static factors consist of fixed and typically unchangeable aspects of the youth's background. These might include some history of having been a victim of abuse or having an established history of offending.
2. Dynamic factors are those factors that are changeable, including personality traits, attitudes, or behaviors, low levels of social support, difficulties with self-regulation, stressors, and detrimental beliefs about sexuality. (ATSA, *supra*.) Dynamic factors can be mitigated through treatment. (Tabachnick & Pollard, *supra*.)

Many assessment measures can be used to identify the risk level presented by the offending child. As explained below, these measures can be used prior to treatment and also prior to considering the potential for safe family reunification.

Structured Risk Assessment Instruments. A range of assessment tools have been created by practitioners in the forensic mental health assessment field. The tools that are frequently used consist of actuarial instruments—tools that measure risk of future offending—and also structured clinical measures, which require professional judgment and are referred to as structured professional judgment (SPJ) tools. (T.M.S. Neal & T. Grisso, *Assessment Practices and Expert Judgment Methods in Forensic Psychology and Psychiatry: An International Snapshot*, 41(12) Criminal Justice & Behav. 1406 (2014).) It has been empirically shown that structured instruments are better at assessing risk than the use of unstructured clinical judgments. (A.B. Haynes et al., *A Surgical Safety Checklist to Reduce Morbidity and Mortality in a Global Population*, 360 New England J. Med. 491 (2009), doi:10.1056/NEJMsa0810119. *See also* Philip H. Witt et al., *A Contrarian Approach to Structured Professional Judgment Scales*, 20(2) *SLR* 17 (Feb./Mar. 2019); Breiner & Witt, *supra*; M.J. Breiner & P.H. Witt, *A Decade of Development: Merits of Risk-Need-Responsivity Models for Risk Assessment, Part II*, 19(3) *SLR* 33 (Apr./May 2018).)

Environmental Factors. In determining how and when to reunite a youth who engaged in sibling incest with his or her family, one must consider environmental factors in the family. Environmental factors associated with sibling sexual abuse may require intervention prior to reunification. Studies have found the following environmental or situational factors to be associated with sibling sexual abuse:

- Family atmosphere of sexuality or exposure to overly explicit sexual material (J.R. Worling, *Adolescent Sibling-Incest Offenders: Differences in Family and Individual Functioning When Compared to Adolescent Nonsibling Sex Offenders*, 19(5) Child Abuse & Neglect 633 (1995)), such as viewing others engaged in sexual activity or pornography (M.C. Seto & M.L. Lalumière, *What Is so Special About Male Adolescent Sexual Offending? A Review and Test of Explanations Through Meta-analysis*, 136 Psychological Bull. 526 (2010));
- Histories of intergenerational incest (M.S. Kaplan et al., *Characteristics of Parents of Adolescent Incest Perpetrators: Preliminary Findings*, 3 J. Family Violence 183 (1988); M.J. O'Brien, "Taking Sibling-Incest Seriously," in M.Q. Patton, ed., *Family Sexual Abuse: Frontline Research and Evaluation* 75-92 (1991)), with mothers often being the victims of sexual abuse (M.S. Kaplan et al., *A Comparison of Mothers of Adolescent Incest Versus Non-incest Perpetrators*, 5 J. Family Violence 209 (1990); and
- Presence of domestic violence, which gives children the belief that "family members are appropriate targets of interpersonal violence." (N.E. Latzman et al., *Research on Offenders and Survivors: Sexual Offending in Adolescence: A Comparison of Sibling Offenders and Nonsibling Offenders Across Domains of Risk and Treatment Need*, 20 J. Child Sexual Abuse 762 (2011).)

These causative environmental factors fall within the Needs aspect of an RNR model, providing treatment and management targets.

Internal Factors. Internal factors, which also fall within the Needs principle of an RNR model, require assessment as well. Following are internal factors:

- Perpetrator's own history of sexual abuse: Miner et al. have noted that the frequency of victimization of adolescent perpetrators is higher than that of nonperpetrators. (Cited in J. Tabachnick & P. Pollard, *Considering Family Reconnections and Reunification After Child Sexual Abuse: A Road Map for Advocates and Service Providers* 21 (2016).) Worling suggested that adolescent males who engage in sibling incest may be driven by having been sexually victimized themselves as children, as well as having a high accessibility to younger siblings in the household. (Worling, *supra*.)
- General behavior problems: Studies (e.g., Latzman) have found externalizing behavior problems common among youth who engaged sibling incest.

Juvenile Psychological Functioning. In completing a comprehensive assessment of the juvenile's psychological functioning, consideration should be given to measuring personality characteristics that affect the adolescent's risk of recidivism. Assessing personality features is congruent with assessing dynamic risk factors. We recommend, if possible, a combination of behavioral rating scales completed by a parent and a standardized self-report personality inventory. In this way, the evaluator can obtain an assessment by both an individual who knows the juvenile well and a self-assessment.

Two well-supported scales are the Child Behavior Checklist (CBCL) and the Personality Assessment Inventory-Adolescent (PAI-A). The PAI-A and CBCL, described below, articulate in detail aspects of the juvenile's personality and behavior, providing clarity regarding the Needs component

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of RNR. In addition to these general assessment instruments, we recommend a scale specifically focused on juvenile sex offense risk. As noted, the intensity of treatment and potential restrictions are predicated upon level of risk. Moreover, the juvenile's level of risk will be one consideration regarding the speed and feasibility of reunification. Two exemplars of juvenile sex offense risk scales are the J-SOAP-II and the JSORRAT, both of which are outlined below.

PAI-A. The PAI-A is a personality measure completed by adolescents between the ages of 12 and 18. (L. Morey, *Personality Assessment Inventory—Adolescent Professional Manual* (2007).) It has 264 items and 22 scales, with 11 scales assessing clinical variables, five for the purposes of determining treatment receptivity, two assessing interpersonal variables, and four for the purposes of validation. The clinical scales consist of a range of clinical complaints and experiences. The treatment consideration scales are specifically related to aggression, stressors, social supports, motivation, and/or potential for change, and suicidality. Interpersonal scales measure warmth and dominance.

CBCL. The CBCL is one of three behaviorally based scales of the Achenbach Empirically Based Assessment. (T.M. Achenbach & L.A. Rescorla, *Manual for the ASEBA School-Age Forms and Profiles* (2001).) The other two are Teacher's Report Form (TRF), designed for teachers to fill out, and the YSR, which the child or adolescent completes. It was designed for children between the ages of six and 18, who answer items based on their experience during the past six months. The CBCL has 113 items and eight syndrome scales that measure anxiety, depression, somatic symptoms, attention deficits, social deficits, impaired thought processes, noncompliant behavior, and aggression. (*Id.*)

J-SOAP-II. The Juvenile Sex Offender Assessment Protocol-II (J-SOAP-II) is a checklist designed to facilitate a systematic review of empirically based risk factors that directly pertain to sexual and nonsexual criminal offenses. (R.A. Prentky & S. Righthand, *Juvenile Sex Offender Assessment Protocol: Manual* (2003).) It is used with boys between the ages of 12 and 18, who have been adjudicated for sexual offenses or who have committed sexually coercive acts but were never convicted. The checklist comprises four scales:

1. Sexual drive/preoccupation;
2. Impulsive/antisocial behavior;
3. Clinical intervention; and
4. Community stability/adjustment.

One strength of the checklist is that it captures both static (scales one and two) and dynamic factors (scales three and four). It is important to note that the J-SOAP-II is not an actuarial instrument. It does not yield specific cut-off scores associated with probabilities of future sexual recidivism, but is useful as a framework to guide treatment considerations.

JSORRAT-II. The Juvenile Sex Offender Recidivism Risk Assessment Tool-II (JSORRAT-II) is an actuarial risk assessment tool that was designed to assess risk of future offending by adolescent males. (D. Epperson et al., "Actuarial Risk Assessment With Juveniles Who Sexually Offend: Development of the Juvenile Sexual Offense Recidivism Risk Assessment Tool-II (JSORRAT-II)," in D.S. Prescott, ed., *Risk Assessment of Youth Who Have Sexually Abused* 118-69 (2005).) It is applied to boys between the ages of 12- and 17.9-years-old who have been adjudicated for sexual offenses. The 12 items are behaviorally based and assess static risk factors from seven domains, such as sex offending history, offense characteristics, sexual offense treatment history, abuse history, special education history, school discipline history, and nonsexual offending behavior. The JSORRAT-II was initially developed for Utah Juvenile Justice Services and has been validated on populations of youth who engage in sexual abuse in Utah and Iowa. The JSORRAT-II has been found to accurately predict juvenile sexual offense recidivism. (D.L. Epperson & C.A. Ralston, *Development and Validation of the Juvenile Sexual Offense Recidivism Risk Assessment Tool-II*, 27 Sexual Abuse: J. Research & Treatment 529 (2015).)

Sources of Information. In conducting an evaluation, evaluators ideally consider multiple sources of information, including the following:

- Interviews of the juveniles and their caretakers;
- Prior treatment records;
- Prior evaluations;
- Child protective service records (if accessible);
- Legal records (including police investigation reports); and
- Intellectual assessments (particularly for cases in which an intellectual or learning disability is a factor). (A. Phenix & H.M. Hoberman, eds., *Sexual Offending: Predisposing Antecedents, Assessments, and Management* (2016).)

Number and Nature of Instruments Used in Sibling Incest Assessments. Few studies have addressed the number and nature of the instruments used in forensic mental health assessment cases. Neal and Grisso conducted an international study of forensic evaluators and found that the majority used between four and 18 measures when conducting assessments. (Neal & Grisso, *supra*.) When evaluating juveniles who engage in incest, a standardized checklist assessing behavior and validated measures of personality and psychopathology are appropriate. (Phenix & Hoberman, *supra*.)

Reunification Within RNR Framework

Within an RNR framework, the first consideration regarding reunification is the juvenile's risk, i.e., the Risk component of RNR. With all other factors being equal, the higher the juvenile's risk, the more slowly reunification will proceed. The J-SOAP-II or the JSORRAT can be helpful in assessing the static and dynamic risk factors (or, in RNR terms, the Risk and Needs) of the juvenile. Risk assessment includes factors related to the seriousness of the abuse (e.g., use of force, penetration, young age of victim) and the likelihood of recidivism (e.g., chronicity of abuse, general and sexual self-control problems, antisocial behavior). The dynamic risk factors provide treatment targets. The timing and even the feasibility of reunification in good part depends on the assessed risk.

There are five steps recommended while pursuing the sometimes-complex process of reunification in the context of sibling incest:

1. Treatment offered to each family member and sufficient progress made;
2. Assessment of readiness;
3. Clarification;
4. Development of a relapse prevention plan; and
5. Family reunification and ongoing monitoring. (Tabachnick & Pollard, *supra*.)

Treatment and Progress. Reunification should only commence after treatment has been offered to each family member and sufficient progress has been made. Because several family-level issues need to be addressed, many authorities recommend family therapy. (J. DiGiorgio-Miller, *A Comprehensive Approach to Family Reunification Following Incest in an Era of Legislatively Mandated Community Notification*, 35(2) J. Offender Rehabilitation 83 (2002); Stroebel et al., *supra*.) Indeed,

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research indicates that a comprehensive, family-based approach with certain offense-specific interventions may be the most effective treatment for reducing recidivism in sexually abusive adolescents (e.g., multisystemic therapy). (*See* C.M. Borduin et al., *Multisystemic Treatment of Adolescent Sexual Offenders*, 35 Int'l J. Offender Therapy & Comparative Criminology 105 (1990).) Moreover, joint work with all family members can help create a safe environment, which promotes family healing and assists with safety planning. (M. Keane et al., *A Balancing Act: A Family Perspective to Sibling Sexual Abuse*, 22(4) Child Abuse Rev. 246 (2013).)

Assessment of Readiness. An assessment of readiness needs to occur. This assessment pertains to evaluating the child victim, child perpetrator, and relevant dynamics within the family unit. Within this stage, victim, perpetrator, and parents need to be assessed. (Keane et al., *supra*; Tabachnick & Pollard, *supra*; Colorado Sex Offender Management Board, *Standards and Guidelines for the Evaluation, Assessment, Treatment, and Supervision of Juveniles Who Have Committed Sexual Offenses* (2016), *available at* https://CDPSDocs.state.co.us/somb/Juvenile/2017JuvenileStandards-WebLiveDocs1-20-17.pdf (2016).) Assessment includes the following:

1. The victim needs to have met the following criteria:
   - Has developed an age-appropriate understanding of the abuse;
   - Processed any feelings of shame and responsibility;
   - Developed a sense of physical and emotional safety; and
   - Has the ability to proactively exercise healthy limits vis-a-vis the offender and is able to reach out for help when needed.
2. The perpetrator must demonstrate the following skills and understanding:
   - Ability to discuss their abusive behavior, appropriate to their age;
   - An ability to understand the influences and motivations of the abusive behavior;
   - Possess strategies to manage causative risk factors;
   - Understand the effect that the abuse has had on the victim and other family members;
   - Understand the victim's unique perspective as separate from his;
   - An ability to accept responsibility for offense-related behaviors; and
   - Be able to communicate his needs, especially to his parents.
3. Parents must demonstrate and/or have:
   - An ability to support both of their children in counseling and to work toward establishing a home environment that ensures physical and emotional safety;
   - A supportive stance to the sibling who has caused harm, which includes holding the perpetrator to account for his actions (F. Campbell et al., *Young People Who Display Harmful Sexual Behaviors and Their Families: A Qualitative Systematic Review of Their Experiences of Professional Interventions*, Trauma, Violence, & Abuse (2018), *available at* https://doi.org/10.1177/1524838018770414; Stathopoulous, *supra*); and
   - A desire to support the family in coming to terms with and acknowledging the abuse (E. McNevin, *Applied Restorative Justice as a Complement to Systemic Family Therapy: Theory and Practice Implications for Families Experiencing Intra-familial Adolescent Sibling Incest*, 31(1) The Australian & New Zealand J. Family Therapy 60 (2010)) and openly accept the possibility of a future reoffense.

Clarification, Relapse Prevention Plan. In the third step, clarification, the perpetrator issues an apology letter to the victim, and in the fourth, the family develops a relapse prevention plan that "includes evidence of a comprehensive understanding of the offending behavior(s) and implementation of safety plans." (CSOMB, *supra* at 109.)

Ongoing Monitoring Following Reunification. The final step is the reunification of the family and the ongoing monitoring of the family.

Factors Complicating Treatment

When considering reunification, the following Responsivity factors have the potential to complicate treatment:

1. Victim: Depth of trauma precludes reunification; presence of severe mental illness or mental disability (thus requiring a higher level of protection).
2. Perpetrator: Elevated risk level; reluctance to accept responsibility; abuse occurred in the context of a conduct disorder; high level of sexual compulsivity, as well as chronic, violent, and intrusive sexual abuse, combined with significant trauma to the victim.
3. Parents: Inability to acknowledge abuse; impaired parenting ability; presence of severe mental disorder; addiction; unwillingness to implement treatment or safety plan; lack of sexual boundaries in the home.

In the context of these factors, reunification may simply not be feasible, or at least not be possible in the foreseeable future. By contrast, in cases in which the perpetrator's risk is low, combined with competent parents who are implementing an effective safety plan, reunification may be able to occur promptly.

Potential Areas of Overlap. The RNR model was originally conceived to be used in the context of general criminogenic behaviors. When applying this model to sexual recidivism, there are three potential areas of overlap:

1. Because sexual and violent crimes are subtypes of general crime, general criminogenic factors should predict sexual recidivism equally, as well as predicting general recidivism;
2. Because sexual and violent crimes each have unique features, traditional criminogenic factors can be modified to reflect these offense-type unique features; and
3. Because sexual and violent crimes each have unique features, there may be other factors that must be added to (and perhaps some removed from) traditional criminogenic factors in order to predict violent and sexual recidivism. (J. Bonta & D.A. Andrews, *The Psychology of Criminal Conduct* (6th, 2016); Breiner & Witt, *supra*.)

Problems Converge. In the juvenile risk assessment, one can see elements associated with both general criminal conduct (e.g., general impulse control problems, conduct disorder, school behavior problems) and sexual behavior problems (e.g., sexual preoccupation). The implication is that both general and sexual self-control problems converge to result in a sex offense, specifically sibling incest. Seto has recently proposed that general self-control problems act as a facilitator of sex offenses. (Seto, *supra*.) However, when considering the recidivism of adolescents who engage in sibling incest, the risk for recidivism is heightened by the accessibility to young sibling victims, which is why

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families must meet the criteria for reunification as stipulated above to reduce risk.

Successful Reunification Depends on Family Relationships

Given that the pace of family reunification is victim-driven, clinicians need to be mindful of the victims' needs, wishes, and safety. Victims may have various levels of attachment to the perpetrator and in many cases strongly desire the perpetrator to be back in the home. (D.J. Whelan, *Using Attachment Theory When Placing Siblings in Foster Care*, 20(1) Child & Adolescent Soc. Work J. 21 (2003).) Victims may also have varying levels of emotional trauma as a result of the incest. Reunification should be coordinated with the victim's therapist and the relevant social service agency.

Importance of and Challenges to Parental Support. Another important component of reunification relates to the positive influence of parental support and supervision. Parental support of all children involved in sibling sexual abuse cases is likely to lead to better therapeutic outcomes. (Campbell et al., *supra*; Stathopoulous, *supra*.) Parents have a difficult task in supporting all of their children, both perpetrator and victim, and can benefit from guidance in this regard. Moreover, parents need to be reminded that holding the perpetrator accountable is a form of support. Finally, focusing on positive family interaction goals, rather than preoccupation with past misdeeds, can often be helpful to the family.

Importance of Victim Safety Plan. In addition, no reunification can occur unless and until the victim feels both emotionally and physically safe. As a result, the development of a coherent and effective safety plan and a demonstration that such a safety plan is being followed is critical for reunification. Moreover, at both the individual and family level, we recommend a continuum of care, consistent with professional standards. (*See* ATSA, *supra*.) Per CSOMB standards, a multidisciplinary team should provide continuous monitoring of the family reunification process. (CSOMB, *supra*.) Treatment and reunification are supported by the monitoring of responsible adults within the child's support system. These include educators, court officers, child welfare staff, and family therapy providers. These individuals are critical to monitoring the victim and the sexually abusive youth's risks, needs, responsivity, protective factors, safety, and to overall reunification success. (ATSA, *supra*.) An RNR approach allows members of a team evaluating and managing a sibling incest case to consider all the above factors systematically in a well-supported framework.

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