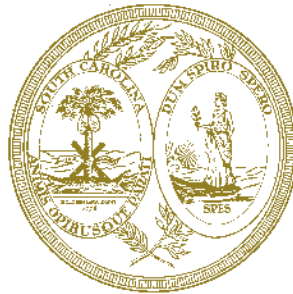




2015 Annual Report
Joint Citizens and Legislative
Committee on Children



Joint Citizens and Legislative Committee on Children

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Director, Department of Juvenile Justice..... Sylvia Murray, Columbia
Director, Department of Mental Health..... John H. Magill, Columbia
Director, Department of Social Services..... V. Susan Alford, Columbia
Committee website: sccommitteeonchildren.org

Committee Staff:

Children's Law Center, University of South Carolina School of Law

Harry W. Davis, Jr., Director hwdavis@sc.edu
Jenna Stephens, Senior Policy Analyst jennastephens@sc.edu
Bud Ferillo, Communications Specialist budferillo@sc.edu
Baron Holmes, Senior Research Analyst bholmes@law.sc.edu
Christopher Church, Children's Data Manager christopherchurch@sc.edu
Jenny G. May, Research Associate jennymay@sc.edu

1600 Hampton Street, Suite 502
Columbia, South Carolina 29208
(803) 777-1646
<http://childlaw.sc.edu>

**Joint Citizens and Legislative
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**STATE OF SOUTH CAROLINA
JOINT CITIZENS AND LEGISLATIVE COMMITTEE ON CHILDREN**

February 1, 2015

Governor Nikki R. Haley
President *Pro Tempore* Hugh K. Leatherman, Sr.
Speaker James H. Lucas
Members of the General Assembly:

The Joint Citizens and Legislative Committee on Children is pleased to present its 2015 Annual Report. The Committee is charged with the important responsibility of identifying and studying key issues facing the children of South Carolina and making recommendations to the Governor and General Assembly.

The 2015 Annual Report includes topics of concern raised by citizens' testimony at the Committee's Public Hearings held across the state in November 2014. These and other topics expand on existing priorities to focus on important matters of child well-being. The Committee's initiatives and recommendations can make a positive impact on difficult issues and are actionable within the context of the state's limited resources.

In its 2015 Annual Report, the Committee focuses on the incarceration of status offenders, the juvenile sex offender registry, and the regulation of family childcare homes. Topics of previous Annual Reports have included school readiness, childhood obesity, adverse childhood experiences, and childhood fatalities and injuries.

These issues affect child development and well-being; have long-term impacts on the citizens of South Carolina; and are most worthy of our time and attention.

Thank you for your consideration of the thoughtful study and recommendations contained in this report.

Mike Fair

Shannon Erickson

Handwritten signature of Mike Fair in cursive.

Chair

Handwritten signature of Shannon A. Erickson in cursive.

Vice Chair

**Joint Citizens and Legislative
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<http://www.sccommitteeonchildren.org>.

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Childhood fatalities and injuries
Childhood immunizations
Childhood trauma
Preventable childhood obesity
School readiness

2014

Adverse childhood experiences
Early childhood language and literacy
Effects of Toxic Stress on children

Child Well-being in South Carolina

Last year, South Carolina was ranked 45th in the nation in overall child well-being by the Annie E. Casey Foundation in its annual *KIDS COUNT Data Book*. Of the more than one million children in South Carolina, nearly a third live in poverty. If you take into account all children eligible for Medicaid, then nearly three quarters of the children in this state are living in some measured degree of poverty. Children in South Carolina also face a range of significant and complex challenges from mental health needs, abuse and neglect, family instability, lack of health care, and educational problems.

This Committee continues to study and work to address these challenges through legislation and policy development. Please refer to the Committee's website, sccommitteeonchildren.org, for additional research and recommendations reviewed in previous Annual Reports concerning:

Adverse childhood experiences and childhood trauma

Childhood fatalities and injuries

Childhood immunizations

Childhood obesity

Safe sleeping practices for infants

School Readiness—including early childhood language and literacy, parenting, and family strengthening

The Committee conducted statewide public hearings in November 2014. Citizen testimony raised many pressing issues including school readiness and early childhood education (which are addressed in the Committee's 2013 and 2014 Annual Reports), regulation and child safety in day care, child health, incarceration of children who commit status offenses, juvenile sex offender registry, and the impact that living in poverty has on children.

Having addressed trauma and Adverse Childhood Experiences in previous annual reports, the committee appreciates how dynamics within a family affect a child. Family problems may be impacted or exacerbated by the child's mental health, the parent's behavior, substance abuse in the family, or economic frustration. Often these problems are manifested through the child by acting out behavior such as truancy, incorrigibility, and running away. These behaviors are generally referred to as status offenses.

Based on input provided at the Committee's public hearings, and building on the Committee's previous work on the effects of trauma and toxic stress on children, this Annual Report gives attention to **children who are incarcerated for committing a status offense; child safety and the regulation of family childcare homes; and the juvenile sex offender registry**. This Annual Report gives attention to these topics by presenting sound research, state data, and policy and practice recommendations.

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Updates on Committee Initiatives:

Previous legislation

The Committee on Children continues to study and seek legislative and policy reforms that improve protections for children and more effectively use limited public resources. In 2014, the Committee on Children sponsored or endorsed the following bills that ultimately passed:

- **Shackling of Juveniles**—Act 186 prohibits the shackling of juveniles in family court proceedings unless found by the court to be necessary to prevent harm or because the juvenile is a flight risk. This will end unnecessary harm to children who pose no danger when they appear in court.
- **Child Fatality Advisory Committee**—Act 203 adds representation to the committee to further its work.
- **South Carolina First Steps to School Readiness Reauthorization**—Act 287 reauthorizes First Steps and develops a comprehensive long-range initiative for school readiness and a strategy for fulfilling this initiative.
- **Read to Succeed**—Act 284 implements a statewide comprehensive plan to improve reading achievement.

Current Legislation

The Committee will support the following legislation based on the recommendations in this report.

- **Family Childcare Homes**—Give DSS different levels of options to respond when a family childcare home is found to be unsafe or unhealthy, or if the home is caring for more than six children.
- **Incarceration of Status Offenders**—Prohibit incarcerating children who commit status offenses in a secure DJJ evaluation center and committing status offenders to DJJ. Also, provide for the automatic expungement of the record of status offenses upon the child's seventeenth birthday.
- **Juvenile Sex Offender Registry**—Give family court judges the discretion whether to require a juvenile adjudicated delinquent for a sex offense in the family court to be placed on the sex offender registry.

Trauma-informed care

The 2012 and 2013 Annual Reports of the Committee on Children outlined the prevalence and impact of childhood trauma and toxic stress and adopted trauma-informed practice as an initiative. Based on this initiative, the Joint Council on Children and Adolescents formed the Workforce Training Collaborative, a trauma-informed care workgroup led by the Department of Alcohol and Other Drug Abuse Services. The Collaborative trains professionals who work with children who have experienced trauma. From August 2013 to December 2014, the Collaborative held trainings in seventeen counties with over 1,400 child-serving professionals attending. The Collaborative plans to continue these trainings and expand to focus on career-specific trainings for school and law enforcement personnel.

Research demonstrates that children exposed to trauma show improved symptoms and functioning within six months of treatment. After 12 months of treatment, 44% of children experienced improved school attendance and grades, and decreased arrests of juveniles (36%) and suicide attempts (64%). By increasing access to trauma-informed treatment to children who have experienced abuse and neglect, South Carolina can improve the lives of children and the overall health and well-being of our state as children grow into healthy, productive adults despite experiencing trauma.

The South Carolina Trauma Practice Initiative (SCTPI) began in 2013 and is a two-year collaborative training and services implementation project between the Department of Mental Health, the Department of Social Services, and Project BEST.¹ This statewide initiative uses the Community-Based Learning Collaborative (CBLC) approach developed by Project BEST to: 1) train SCDMH and community therapists in Trauma-Focused Cognitive-Behavioral Therapy, 2) train SCSS case managers and other broker professionals in trauma-informed, evidence-based practices to identify, refer, and monitor children who need trauma-focused treatment, and 3) build greater professional collaboration and service coordination between community service professionals and agencies. The CBLC is an intense, 10-month program of learning and practice implementation activities with expert training, consultation, and monitoring. Those completing a CBLC are placed on the Project BEST Roster of Trained Professionals. Over 600 DMH, DSS, and other community professionals have been trained, greatly increasing the capacity of communities throughout South Carolina to deliver effective, evidence-based trauma treatment to children and their families.²

¹ Project Best. www.musc.edu/projectbest (last visited March 23, 2015) Project BEST is a collaborative effort of the National Crime Victims Research and Treatment Center at the Medical University of South Carolina and the Dee Norton Lowcountry Children's Center in Charleston, and is funded primarily by The Duke Endowment. Its mission is to ensure that all abused and traumatized children and their families in every community in South Carolina receive the appropriate, evidence-supported mental health treatment they need.

² Ben Saunders, Project BEST, email message, March 23, 2015

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Continued topics of Committee focus

The Committee continues to study and support possible legislative and policy developments that improve protections for children, including the following:

- **Background Checks for Childcare Employees:** Add certain crimes against children to the list of offenses that would prohibit employment of a person by a childcare facility.
- **Child Passenger Safety:** Update the child passenger restraint laws to comply with the recommendations of the American Academy of Pediatrics.
- **Obesity:** Create a central repository of data to confirm the prevalence of childhood obesity, and promote best practices and educational programs to prevent childhood obesity.
- **Summer Camp Safety:** Require all volunteers and employees of summer camps to have background checks, and require lifeguards to be present at swimming activities.
- **Admissibility of Statements to Children’s Advocacy Centers Interviewers:** Add children’s advocacy centers interviewers to the statutory list of professionals who may inform family court about a child’s out-of-court statements regarding alleged abuse.
- **Recreational Off-Road Vehicles (ROVs):** Provide minimum age and safety requirements for ROV operators, similar to the requirements for ATV operation, e.g., an ROV operator must be 16 years old and have a driver’s license.
- **Methamphetamine Production and Child Safety:** Prohibit placement of a child in foster care with a relative who has been involved in the use or manufacture of methamphetamine.
- **Sexting:** Create tiered penalties for children under 18 who electronically transmit sexually explicit photos of themselves or others, and discontinue placement of children on the sex offender registry for a conviction of sexting.

Child Safety and Regulation of Childcare Facilities

Citizens testified at the Committee's public hearings regarding the recent death of a two year old in a family childcare home that was exempt from state oversight and called for enhanced protection of children in daycare. Depending on the type of facility and number of children in its care, state laws require virtually no oversight of certain facilities that provide daycare for children.

State law defines childcare as the care, supervision, or guidance of a child, unaccompanied by the parent or guardian for more than two days a week, for a period of more than four hours, but less than 24 hours a day, in a place other than the child's own home.³ Childcare facility is an umbrella term broadly defined by statute to encompass many types of childcare providers.⁴ Larger, out-of-home childcare facilities must be licensed and regulated by DSS and were not the focus of public testimony. However, smaller, in-home childcare facilities are required only to register with DSS and receive little, if any, oversight. Many other afterschool and summer childcare programs are neither required to register with DSS, nor are they subject to any oversight or child safety minimum standards. Childcare is a critical need for many families, and parents must trust their children will be kept safe.

This report addresses these types of childcare facilities according to licensure, registration, or exemption from compliance with minimum child safety standards.

Overview of childcare program types

South Carolina has the following general types of oversight of childcare facilities:

1. **Licensed facilities:** *childcare centers* and *group childcare homes* are licensed and regulated; provide care for seven or more children
2. **Registered facilities:** *family childcare homes* are registered, but unlicensed and unregulated; provide care for six or fewer children
3. **Facilities exempt from oversight:** childcare programs that are exempt from oversight are unlicensed, unregistered, and unregulated; provide care for less than four hours a day, and summer camps that operate for less than three weeks

³ S.C. Code Ann. § 63-13-20(2)

⁴ S.C. Code Ann. § 63-13-20(4)

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1. Facilities that are licensed

Childcare centers care for more than 12 children in a non-residential location, and *group childcare homes* care for 7 to 12 children in a residence. Both of these program types are subject to licensure and regulation by DSS. There are about 1,400 childcare centers and about 120 group childcare homes reported to exist in South Carolina.⁵

License requirements to open and operate include:

- Minimum standards for fire inspection, health inspection, sanitation, and safety protocols,
- an initial inspection by DSS to ensure licensure compliance with applicable regulations, such as staff-to-child ratios,
- annual staff training, and
- requirement to have at least one CPR and First Aid certified staff member on duty during all hours of operation.

DSS monitoring includes an annual unannounced inspection. If warranted, a facility can be placed on a corrective action plan. If the facility does not follow the corrective action plan, DSS has authority to revoke the license. The facility is entitled to appeal a DSS finding of licensure violations through the state's administrative Fair Hearing process.

2. Facilities that are registered

A *family childcare home* is a childcare facility where the resident of the home:

- provides care in her own home,
- more than two days a week,
- for children from more than one unrelated family, and
- for no more than six children.⁶

The only registration requirements to open and operate a family childcare home are to register with DSS by mail and perform background checks on residents of the house.⁷ There are approximately 1,200 registered family childcare centers in South Carolina. Family childcare homes may offer parents a more affordable and more personal alternative to traditional day care. While some providers are known to parents, others are simply a business venture that may solicit customers by advertising its services on sites such as Craigslist.

⁵ Department of Social Services, data, May 13, 2015

⁶ A caregiver who provides childcare only for children related to her and/or the children of one unrelated family is not considered a family childcare home.

⁷ S.C. Code § 63-13-810

Family childcare homes are not required to meet minimum standards or regulation requirements to open or to operate. In 2014, DSS began conducting unannounced inspections of family childcare homes once a year to ensure the children in the home are healthy and safe.⁸ In addition to the unannounced inspections, DSS is required to investigate a family childcare home if it receives a complaint about the home.⁹ An inspection to determine “health and safety” within a facility focuses only on the immediate presence of indications of child abuse or imminent physical danger, and uses criteria well below the minimum standards of operation required for licensure. If an inspection or investigation reveals that the health and safety of the children are compromised or that a family childcare home is caring for more than six children, DSS currently has authority only to revoke its registration,¹⁰ in which case the family childcare home would no longer be authorized to operate. Nothing prohibits the operator of a closed facility from re-applying to open. It is unknown how many unregistered family childcare homes exist.

Family childcare home providers are required to complete only two hours of training each year. DSS tracks and posts provider training compliance on its website. Failure to fulfill the statutory training requirement currently carries no repercussions or penalties. Childcare providers who have been trained offer higher quality care and make fewer mistakes that put children at risk.¹¹ Moreover, children in high quality care with trained workers are proven to have better language, cognitive, and social development.¹² Child Care Aware, a national organization that promotes quality childcare standards, recommends that all employees caring for children, even those in private homes, receive 40 hours of initial training and 24 hours of annual follow up training.¹³

When a family childcare home registers with DSS, it receives a copy of DSS’ *Suggested Standards for Family Childcare Homes* as a guideline for best practices. While they may volunteer to comply, family childcare providers are not required by law to follow the minimum *Suggested Standards*, which include building specifications, programming requirements, fire inspection, and health and safety protocols that are tailored to a residential home being used for daycare.

3. Facilities that are exempt from any oversight and are not licensed and not regulated:

State law specifically exempts various types of childcare facilities and programs from regulation, including:

- school vacation or holiday day camps that operate for less than three weeks, and
- childcare facilities that operate for less than four hours a day or for no more than two days a week

⁸ Act No. 295 of 2014

⁹ S.C. Code § 63-13-80(A)

¹⁰ S.C. Code Ann. § 63-13-830(E)

¹¹ Differentiating Among Measures of Quality, Office of Planning, Research, and Evaluation, Administration of Children and Families. http://www.acf.hhs.gov/sites/default/files/opre/differ_measures.pdf (last visited March 3, 2015)

¹² Licensing and Public Regulation of Early Childhood Programs, National Association for the Education of Young Children, <http://www.naeyc.org/files/naeyc/file/policy/LicensingPublicRegulation.pdf> (last visited March 3, 2015)

¹³ ChildCare Aware, Types of Training, <http://www.childcareaware.org/child-care-providers/training/types-of-training> (last visited March 3, 2015)

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For example, an afterschool program that provides karate instruction every day for one hour and then offers three hours of unstructured time could be used as a form of daycare, but is not regulated, licensed, or inspected by DSS.

Summer camp and afterschool childcare programs that are exempt from oversight by law:

- have no state-required minimum standards for child safety,
- are not required by state law to perform criminal and child abuse background checks on their employees,
- have no state-mandated minimum staff-to-child ratio requirements,
- are not inspected by DSS (but may be inspected by ABC monitors if they receive ABC funding), and
- have no state required minimum worker training and education requirements.

Afterschool programs and day camps exempt from oversight may receive funding from the federally-funded ABC voucher program on behalf of low-income working parents. Childcare facilities exempt from childcare licensing inspections that accept ABC vouchers are subject to ABC quality monitors to ensure varying levels of health and safety standards are met. Federal legislation passed in 2014 will require facilities that accept ABC vouchers to have First Aid and CPR-trained staff.

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Summary of Current South Carolina Law Regarding Childcare Facilities¹⁴

	Unregulated, unregistered, unlicensed	Regulated by DSS childcare licensing			
		Registered	Licensed		
Type of facility	Operate less than four hours; afterschool programs, summer camps	Family childcare home	Family childcare home that elects to be licensed	Group childcare home	Childcare center (sometimes called day care)
# of children allowed	No limits	Up to 6	Up to 6	7 to 12	13 or more
Location	No requirements	Residence	Residence	Residence	Non-residence
Licensure inspection	None	None	Yes	Yes	Yes
Visits by DSS childcare licensing	None	1 per year, unannounced	1 per year, unannounced	1 per year, unannounced	1 per year, unannounced
Annual training required	None	2 hours	2 hours	10 to 15 hours	15 to 20 hours
Education of workers	No requirements	No requirements	No requirements	High school or experience	High school or experience
Education of director	No requirements	None	None	Relevant degree or experience	Relevant degree or experience
First aid and CPR certification	Not required	Not required	Required for one person on site	Required for one person on site	Required for one person on site
Background checks	Not required	Yes	Yes	Yes	Yes
Fire, health, sanitation inspections	Not required	Not required	Required	Required	Required
Number of facilities ¹⁵	Unknown	1157	14	122	1409

¹⁴ S.C.Code Ann. § 63-13-10 et seq.

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**The Joint Citizens and Legislative Committee on Children makes the following
recommendations:**

- A. Recommendations for Family Childcare Homes (caring for six or fewer children):
 - 1. In the event DSS finds conditions in the home to be unsafe or unhealthy, or if the home is caring for more than six children, grant DSS the authority to:
 - a. deny an application for registration of a family childcare home,
 - b. terminate the registration of a family childcare home (which is already allowed by law), or
 - c. work with the provider to correct the problem.
 - 2. Require DSS to design a 10-hour basic training program, including CPR and first aid, tailored specifically for family childcare home providers; require family childcare home providers to complete this training; and impose appropriate penalties for failure to comply with training requirements.

- B. The above recommendations are specifically in immediate response to testimony offered at the Committee's public hearings. The Committee is continuing its study of oversight of childcare facilities.

¹⁵ As of November 5, 2014

Family Dynamics and Status Offenders

Chris is a 16-year-old boy in York County who had stopped attending school regularly when he was in the sixth grade. His school referred him to the Solicitor's Office for prosecution for truancy.¹⁶ The Solicitor directed Chris into their Truancy Alternative Program (TAP) where he and his mother met with representatives from the Solicitor's Office, his school, and the Department of Juvenile Justice (DJJ) to determine why he was not attending school. The group learned that Chris' father had died the year before, and Chris had substantial unresolved grief.

Through the TAP, Chris was directed to grief counseling, and he and his mother were referred to the Family Solutions program at DJJ. Chris received the assistance he needed and now attends school regularly. The outcome for Chris was grief counseling, not prosecution and incarceration. Chris, his mother, and the community benefitted because of the solicitor's efforts to resolve Chris' underlying grief problem.

Chris is one of approximately 1,400 South Carolina juveniles charged each year for a "status offense" – conduct that is not a crime for an adult, but is unlawful for a child solely because he or she is under the age of 17.¹⁷ These 1,400 children charged with status offenses are charged with truancy, running away, or incorrigibility (being "beyond the control of the parents").¹⁸ Research demonstrates that, as with Chris' situation, status offenses typically arise not from a willful disregard of laws, but from underlying emotional problems or unmet needs at home and school. Much of the acting out behavior of children who commit status offenses is a child's immature response to unresolved family issues and problems. This conduct is viewed in this Annual Report in the context of the broad issues of mental health and problematic family dynamics.

South Carolina law treats status offenses as criminal offenses, not as a manifestation of learning disabilities, mental health, emotional, or family problems. Incarceration of status offenders has proven ineffective to alter undesirable behavior, and the side effects of locking up a child can result in worse problems. Incarceration will not resolve an undiagnosed learning disability or help a child who runs away from abuse at home. Simply punishing these children for the dysfunction in their family is counterproductive, can exacerbate mental health and educational problems, and can unintentionally contribute to more serious future offenses.^{19,20}

Exemplary programs across the country and state have successfully reduced the use of incarceration of status offenders with evidence-based solutions that provide meaningful assistance to the child and family to resolve family conflict and to address the underlying causes of the status-offending behavior.

¹⁶ Whitney Payne, York County Solicitor's Office, e-mail message, January 9, 2015.

¹⁷ SC DJJ Annual Statistical Report, <http://www.state.sc.us/djj/pdfs/2012-13%20Annual%20Statistical%20Report.pdf>

¹⁸ S.C. Code Ann. §§ 63-1-40(6), 63-19-20(9)

¹⁹ "A Road Map for Juvenile Justice Reform," The Annie E. Casey Foundation, 2008 KIDS COUNT Data Book. <http://www.aecf.org/m/resourcedoc/AECF-KidsCountDataBook-2008.pdf> (last visited, November 5, 2014).

²⁰ "The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities," A Justice Policy Institute Report by Barry Holman and Jason Ziedenberg. http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf (last visited November 5, 2014).

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A Status Offender Task Force of engaged stakeholders, established by the Children’s Law Center, USC School of Law, has been created to study the handling of status offenders in South Carolina. The Task Force is identifying issues and developing recommendations to improve support and services for these children and their families and reduce reliance on the incarceration of status offenders. The work of the Task Force has been most informative and helpful to the work of this Committee in the preparation of this Annual Report.

Status Offenses under Current Law

Under South Carolina law, a child charged with a status offense may be locked up in a pre-trial detention center. If convicted of a status offense, a child may be committed to DJJ for a 45-day evaluation, and may be committed to DJJ for up to 90 days.²¹ Of the 84 pre-trial detentions for status offenses from April 2013 to March 2014, 75% were detained for more than 24 hours. State law limits the pre-trial detention of status offenders to a maximum of 72 hours.²² Roughly half of these pre-trial detentions arose from a charge of running away from home.²³

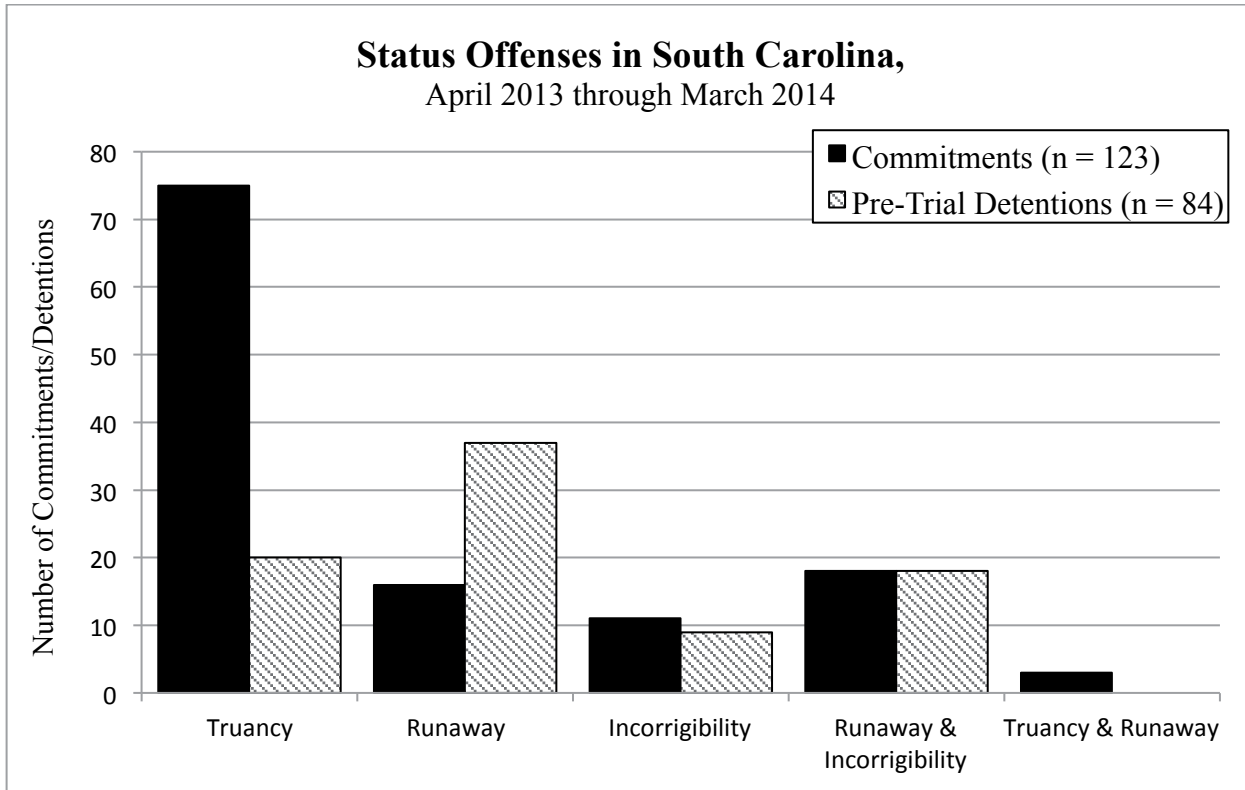
During the same year, there were 123 post-trial commitments to DJJ for conviction of status offenses of truancy, running away, or incorrigibility. Over half resulted from a truancy case where the student was a repeat truant in violation of a previous court order to attend school. Girls were incarcerated more often for status offenses than boys, and African-American girls were incarcerated disproportionately more often than non-minority children.²⁴

²¹ S.C. Code §§ 63-19-820(E), 63-19-1440(C), and 63-19-1440(F)

²² S.C. Code Ann. § 63-19-820(E)

²³ Juvenile Justice Management System (JJMS), unpublished data generated 2014. Status offender data based on the four 24-hour juvenile detention facilities and 3 DJJ Orientation and Assessment (O&A) Centers.

²⁴ Juvenile Justice Management System (JJMS), unpublished data generated 2014. Status offender data based on the four 24-hour juvenile detention facilities and 3 DJJ Orientation and Assessment (O&A) Centers.



Criminalizing status offenders furthers no social good or public policy goal of public safety. Once convicted of a status offense, a child will have a “criminal” record that will follow them for life. Although there is an expungement process to remove the record that can be used after the child becomes an adult, the procedure is confusing and many children do not realize they can apply for expungement once they are adults.

South Carolina could reform its law so that a child’s record of convictions for status offenses is automatically expunged when the child reaches the age of 17. Expungement of status offense records would remove a person’s lifetime criminal record for truancy or running away, and remove these future barriers to employment, college admission, and military service.²⁵

Addressing underlying causes of status offenses

Truant children report a wide range of reasons that contribute to their failure to attend school regularly, including mental health issues, avoidance of bullying, and learning disabilities.²⁶ Parents may not be supportive of their child’s education, and worse, truant children are often victims of child abuse or

²⁵ National Center for School Engagement. Truancy, <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/40.pdf> (last visited November 5, 2014).

²⁶ National Center for School Engagement. Truancy, <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/40.pdf> (last visited November 5, 2014).

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neglect.^{27,28} Truant children may stay home from school to assist with family health problems, sibling care, or financial problems.²⁹

Children who run away from home are often trying to escape family conflict or child abuse.^{30,31} These children often struggle with mental health disorders, emotional distress, substance use, or physical and sexual abuse.³²

Parents who bring incorrigible petitions against their children sometimes lack appropriate parenting skills, which may be contributing to the volatile parent-child relationship. In some cases, an incorrigible child may be resisting the control of an abusive, intoxicated, or mentally ill parent.

Harmful effects of locking up a status offender

The use of incarceration does not solve a child's emotional and family problems, nor does it deter future status offending behavior.³³ Instead, incarceration is counterproductive and exposes children to negative influences. A recent national survey reports that nearly 20% of status offenders and parole violators were placed in cells with violent offenders. As many as 70% of children in the juvenile justice system have at least one mental illness.³⁴ Incarceration can exacerbate mental health problems with heightened risks of suicidal behavior and self-harm.³⁵ Further, the state must pay a much greater financial price to incarcerate a status offender than to provide the child with support and services through an alternative community program, which is more effective and less expensive.

On occasion, incarceration of a child for a status offense may be seen as the only option available if there are no appropriate alternative services or placements. There may not be short-term crisis placements available to the family court judge who must make an immediate decision when there are questions regarding the child's safety. Additionally, families may face multiple barriers to accessing appropriate services, including a lack of local providers and long waiting lists to be seen.³⁶

South Carolina should develop and link community-based resources that direct status offenders and their families to resources in order to resolve the issues surrounding the status offense. Reliance on prosecution and incarceration should be the last resort to deal with a status offender.

²⁷ Development Services Group, Truancy Prevention, http://www.ojjdp.gov/mpg/litreviews/Truancy_Prevention.pdf (last visited, January 23, 2015).

²⁸ http://www.ojjdp.gov/mpg/litreviews/Truancy_Prevention.pdf

²⁹ Truancy Prevention, Truancy Definition, Facts and Laws, <http://www.truancyprevention.org/> (last visited, January 23, 2015).

³⁰ "Runaway Youth: A Research Brief," by Sydney McKinney, Status Offense Reform Center (SORC), http://www.njjn.org/uploads/digital-library/Running-Away_Final-may-28-2014.pdf (last visited, November 5, 2014).

³¹ "Juvenile Status Offenses: Treatment and Early Intervention," by Jessica R. Kendall, Edited by Catherine Hawke, American Bar Association, <http://www.americanbar.org/content/dam/aba/migrated/publiced/tab29.authcheckdam.pdf> (last visited, November 5, 2014).

³² "Runaway Youth: A Research Brief," by Sydney McKinney, Status Offense Reform Center (SORC), http://www.njjn.org/uploads/digital-library/Running-Away_Final-may-28-2014.pdf (last visited, November 5, 2014).

³³ Nelson, D.W. 2008. A Road Map for Juvenile Justice Reform. Baltimore, MD: Annie E. Casey Foundation p.5.

³⁴ Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System. <http://www.ncmhjj.com/wp-content/uploads/2013/12/Blueprint.pdf>

³⁵ The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities," A Justice Policy Institute Report by Barry Holman and Jason Ziedenberg. http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf (last visited, November 5, 2014).

³⁶ Presentation: "Direction: a successful community based program addressing alternatives to juvenile justice detention," DMH/DJJ Horry County Detention Initiative, Advancing School Mental Health Conference. October 4, 2013. For more information contact: Waccamaw Center for Mental Health, Conway, SC, Lori Chappelle, Director of Children's Services, Eryn Bergeron, Children's Services Supervisor.

Community and family-based services for status offenders

For an intervention to work, the child's family must be involved.³⁷ However, when incarcerated, a child is physically removed from his family, home, school, and community. There are many low-cost, successful community-based programs proven to address the underlying problems that may lead to status offending.

For example, the Waccamaw Center for Mental Health and the Horry County Department of Juvenile Justice, in cooperation with local law enforcement and the family court, provide crisis de-escalation services to juveniles and their families and connect them with community resources. The resulting incarcerations for status offenses and misdemeanors in Horry County following commencement of this program decreased by 72% from October 2010 to September 2012.³⁸

The Solicitor's Office in York County, in cooperation with local school districts and the local DJJ office, provides a pre-trial diversion program for truant children. This program has proven to be an effective response to truancy cases. In the first year of the program, 69% of children referred to the solicitor for truancy began attending school again and there was no further involvement in the family court.³⁹

The Clayton County Family Court in Georgia refers status offenders to a team of child-serving professionals that works with the family, evaluates each child, and develops a treatment plan tailored to meet the child's needs. The family court will not accept a status offense case for a hearing unless the child has first been referred to this program. After eight years, Clayton County has seen a 73% reduction in the number of children referred to juvenile court by schools, and its high school graduation rate has risen by 24%.⁴⁰

Connecticut implemented a similar program that requires status offenders to be referred to Family Support Centers in their community.⁴¹ By the program's second year, the number of status offenders incarcerated was reduced from an annual average of 300 to zero children being incarcerated.⁴²

Jefferson County, Alabama implemented a family-centric program where the family court requires parents to participate in five counseling sessions with their child before the parent is allowed to file a petition for incorrigibility. This protocol has decreased petitions by parents against their children for incorrigibility by 40% annually.⁴³

³⁷ Patricia J. Arthur and Regina Waugh. 2009. "Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule." *Seattle Journal for Social Justice: Homeless Youth and the Law*. Vol. 7, Issue 2.

³⁸ Presentation: "Direction: a successful community based program addressing alternatives to juvenile justice detention," DMH/DJJ Horry County Detention Initiative, Advancing School Mental Health Conference. October 4, 2013. For more information, please contact Waccamaw Center for Mental Health, Conway, SC, Lori Chappelle, Director of Children's Services, Eryn Bergeron, Children's Services Supervisor.

³⁹ Whitney Payne, York County Solicitor's Office, e-mail message, January 9, 2015.

⁴⁰ Notes from the Field: Clayton County, Georgia. Status Offense Reform Center, Vera Institute. 2014. <http://www.modelsforchange.net/publications/677> (last visited January 23, 2015).

⁴¹ check the year and the possible decriminalization? <http://www.kidscounsel.org/OJJDP%20CT%20FWSN.pdf>

⁴² Deinstitutionalization of Status Offenders. Coalition for Juvenile Justice | SOS Project. <http://www.juvjustice.org/sites/default/files/ckfinder/files/dso%20fact%20sheet.pdf> (last visited January 23, 2015).

⁴³ Positive Power: Exercising Judicial Leadership to Prevent Court Involvement and Incarceration of Non-Delinquent Youth. Coalition for Juvenile Justice. <http://www.jdaihelpdesk.org/miscellaneous/Positive%20Power%20%28Coalition%20for%20Juvenile%20Justice%29.pdf>

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Extensive research has shown that incarceration of status offenders is not only ineffective, but can be harmful to children.⁴⁴ Programs in South Carolina and other states have successfully reduced the number of status offenders prosecuted and incarcerated by connecting children to appropriate services and providers that address family and mental health issues. Such programs achieve the desired outcomes of keeping children at home with their families, attending school, and reducing future offenses.

The Joint Citizens and Legislative Committee on Children makes the following recommendations:

1. The Children's Code should require consideration of all possible alternatives before a status offense may be prosecuted in the family court.
2. State agencies should cooperate to develop a network of statewide placement services to be available to status offenders and their families including alternatives to incarceration, community-based evaluation services, runaway shelters, respite care homes, short-term alternative placements, and 24-hour crisis interventions.
3. Participation of the parents and child in family counseling should be a requirement before a parent or custodian may file a petition of incorrigibility.
4. Prior to commencing a trial of a status offense case, family court judges should make a written finding that the relevant state agencies have cooperated to identify and resolve the child's and family's situation.
5. While preferably not at all, a status offender should not be placed in pre-trial detention for a period that exceeds 48 hours.
6. A status offender should not be committed to a secure DJJ evaluation center for a 45-day evaluation. If an evaluation is needed, a status offender should remain in their home or community-based placement and receive the evaluation.
7. A status offender should not be committed to DJJ.
8. A child's record of convictions for status offenses should be automatically expunged from the person's record upon the person's seventeenth birthday.

⁴⁴ Patricia J. Arthur and Regina Waugh. 2009. "Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule." *Seattle Journal for Social Justice: Homeless Youth and the Law*. Vol. 7, Issue 2.

Juvenile Sex Offender Registry

South Carolina law requires all persons convicted of sex offenses to be on the sex offender registry for the rest of their lives, regardless of their age, severity of offense, or likelihood to reoffend. This requirement does not differentiate between children and adults. As an extreme but possible example, a 12 year old child adjudicated for “peeping tom” has the same lifetime sex offender registration requirements and stigma as a 30 year old who commits a violent rape.⁴⁵

There are currently 434 people on South Carolina’s sex offender registry who were juveniles when placed on the registry.⁴⁶ For the rest of their lives, registrants must provide their home, work, and school addresses, a current photograph, and other personal information to their local sheriff.⁴⁷ Sheriffs must notify schools and childcare facilities of registered offenders who live within one-half mile of the school or childcare facility.⁴⁸ Juveniles convicted of a sex offense in adult court will have their registration information published online. Juveniles adjudicated delinquent of sex offenses in family court may have their registration information published online, depending on the seriousness of the offense.

The 2006 federal Sex Offender Registration and Notification Act (SORNA) set minimum standards for the sex offender registry laws of all states. South Carolina enacted sex offender registry laws that are more stringent than those national requirements. SORNA classifies sex crimes into three tiers, based on the severity of the crime, to determine the length of time an offender should remain on the registry, ranging from 15 years to life. South Carolina law requires all registrants, including juveniles, to be registered for their lifetime, and provides no opportunity to be removed from the registry. SORNA requires registration of sex offenders who are 14 years old or older at the time of the offense only if force or threat of force was used during their offense. Children younger than 14 years old are not required to register under SORNA. South Carolina law provides no minimum age for registration and has no requirement for violence or threat of force as part of the offense. A child of any age may be placed on the sex offender registry, where he or she will remain for life. Although he was not convicted, a child as young as six years old has been charged with a sex offense in South Carolina.⁴⁹

Examples of offenses for which a child is currently required to be placed on the sex offender registry include:

- peeping
- voluntary sexual contact between a 14 year old and a 13 year old
- sexting (for example, a 15-year-old girl who sends her boyfriend a nude picture of herself, which under the law is child pornography, can be required to register for her

⁴⁵ S.C. Code Ann. § 23-3-430

⁴⁶ Natalie Spires, South Carolina Law Enforcement Division, email message, January 13, 2015.

⁴⁷ S.C. Code Ann. § 23-3-460

⁴⁸ S.C. Code Ann. § 23-3-490(C)

⁴⁹ Letourneau, E. J., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?. *Criminal Justice and behavior*, 37, 553-569.

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lifetime. If her boyfriend either saves or forwards the picture, he could be placed on the sex offender registry for his lifetime)

- indecent exposure (for example, a child who moons his friends on a school bus could be placed on the sex offender registry for life)

Public Safety

Sex offender registries were initially designed to protect the public by helping law enforcement quickly identify potential suspects in the event of a sex crime.⁵⁰ These laws were premised on the concept that sex offenders have a high likelihood of reoffending.⁵¹

Research indicates children who commit sex offenses are highly unlikely to reoffend.⁵² One study of juvenile sex offenders in South Carolina found the reconviction rate for another offense to be 3% after about nine years.⁵³ By contrast, juveniles in South Carolina adjudicated delinquent of all categories of offenses have a recidivism rate of about 15% after one year.⁵⁴

Research indicates that placement of juveniles on the sex offender registry does not reduce the likelihood of future sexual violence.⁵⁵ One study of 14 to 17 year old sex offenders in South Carolina found that the overall rate of sex offenses did not decrease subsequent to implementation of the sex offender registry law in 1995, nor did the rate of sex offenses decrease after the registry went online in 1999.⁵⁶

Child offenders are different from adult offenders

Research shows that child sex offenders are different from adult sex offenders. Juvenile sex offenders rarely grow up to be adult rapists or pedophiles.⁵⁷ Child sexual behavior may sometimes be attributed to experimentation or to a lack of parental supervision. Children who commit sex offenses may have been victims of sexual abuse who were acting out their own victimization and may not understand that their own sexual behavior was wrong.

The part of the brain that functions to make decisions and control impulses is still developing during adolescence and does not reach full maturity until around age 25.⁵⁸ Teenagers are more impulsive and irrational than adults, and these traits may contribute to inappropriate sexual behavior. During the

⁵⁰ S.C. Code Ann. § 23-3-400

⁵¹ Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S. Human Rights Watch. 2013. http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf (last visited, January 23, 2015).

⁵² Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S. Human Rights Watch. 2013. http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf

⁵³ Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153.

⁵⁴ <http://www.state.sc.us/djj/pdfs/2013-report-card.pdf>

⁵⁵ Letourneau, E. J., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?. *Criminal Justice and behavior*, 37, 553-569.

⁵⁶ Letourneau, E. J., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?. *Criminal Justice and behavior*, 37, 553-569.

⁵⁷ Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S. Human Rights Watch. 2013. http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf

⁵⁸ Winters, K. C., Adolescent Brain Development and Drug Abuse, supported by Archie & Bertha Walker Foundation, RKMC Private Foundation, and Mentor Foundation. http://www.mentorfoundation.org/uploads/Adolescent_Brain_Booklet.pdf (last visited, November 5, 2014).

period of adolescent brain development, treatment and education are more likely to reduce the likelihood of the child later reoffending as an adult.⁵⁹

South Carolina's current judicial process allows for the waiver of older, violent juvenile offenders to the adult court for trial and punishment.⁶⁰ Less serious offenders are kept in the family court, which is designed to be rehabilitative.⁶¹ Violent juveniles who are tried in adult court should be treated as adults.

However, if the conduct of a juvenile offender is deemed appropriate to be tried in the family court, the judge should have access to a risk assessment when making the determination as to whether to place the child on the sex offender registry. The family court decision to place or to remove a child from the sex offender registry should occur at a post-trial review hearing after an appropriate risk assessment has been completed and furnished to the court.

Collateral problems

Sex offender registrants face a lifetime of stigma and collateral problems in addition to court-ordered punishment. Registered offenders have trouble getting and keeping jobs,⁶² locating house in an approved area, and more frequently experience depression and suicidal ideology due to the shame of being registered.⁶³ Registrants are harassed, physically assaulted, and even killed as a result of publication on the sex offender registry.⁶⁴

Placing a minor child on the sex offender registry also adversely impacts their families.⁶⁵ Restrictions severely limit where the juvenile and his family are allowed to live by prohibiting registrants from living within 1000 feet of a school, park, or playground.⁶⁶ Registered juveniles are prohibited from living in federally assisted housing,⁶⁷ forcing families to choose whether to forego federal housing assistance or to break up the family by requiring the juvenile offender live outside the family.

The inappropriate or naïve conduct of a sexually experimenting child can result in a lifetime of unintended consequences that contribute to problems in education, employment, and family stability.

⁵⁹ The negative impact of registries on youth. Justice Policy Institute. http://www.justicepolicy.org/uploads/justicepolicy/documents/08-08_fac_sornakidsaredifferent_jj.pdf (last visited March 20, 2015)

⁶⁰ S.C. Code Ann. § 63-19-1210

⁶¹ S.C. Code Ann. § 63-19-20(1)

⁶² J.S. Levenson and R. Tewksbury, "Collateral Damage: Family members of registered sex offenders," *American Journal of Criminal Justice*, vol. 34 (June 2009), pp. 54-68.

⁶³ http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf

⁶⁴ *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.* Human Rights Watch. 2013.

http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf

⁶⁵ Richard Tewksbury and Jill S. Levenson, "Stress Experiences of Family Members of Registered Sex Offenders," *Behavioral Sciences and the Law*, vol. 27, no. 4 (2009), pp. 611-626.

⁶⁶ S.C. Code Ann. § 23-3-535(B)

⁶⁷ 42 USC § 13663

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Appropriate accountability

Prosecutors and judges already have the discretion in some cases to distinguish juvenile cases based on factors including the serious and violent nature of the offense. Whether violent or not, any sex-related offense is a very serious matter. Adult court sentences are punitive in nature, and family court sentences are rehabilitative in nature.

Mandatory registration presents a problem in a case when a prosecutor recognizes the unnecessary outcomes that will result from placing a non-violent child on the sex offender registry for life. To avoid lifetime sex offender registration, the prosecutor may have to accept a plea to a lesser offense.⁶⁸ In such a case, a juvenile who pleads to assault and battery may not be identified to receive appropriate treatment for his sexual offending behavior.

If the sentencing discretion of family court judges included whether to require sex offender registration on a case-by-case basis, prosecutors would be more willing to charge juvenile offenders with their actual offense, and judges could order more appropriate accountability and proper treatment and education about sex abuse and their behavior.

The Joint Citizens and Legislative Committee on Children makes the following recommendations:

- A. Juveniles whose cases are tried in the adult court should continue to be subject to the state's laws for adult registration on the sex offender registry.

- B. For juveniles whose cases are tried in the family court:
 - 1. Family court judges should have the discretion whether to require a juvenile adjudicated delinquent for a sex offense in the family court to be placed on the sex offender registry.
 - 2. The family court should have the discretion to delay its decision whether to place a juvenile on the sex offender registry until after court-ordered sentences, risk assessment, and treatment are completed.
 - 3. Juveniles aged 13 and younger should not be subject to placement on the sex offender registry.
 - 4. Upon age 21, a person previously convicted in the family court for a sex offense should be allowed to petition the family court for removal from the sex offender registry.
 - 5. Juveniles subject to registration should report their information to law enforcement as required by the registry, and their information should be available to victims; however, information on juvenile offenders should not be published on the online sex offender registry.

⁶⁸ Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). The effects of sex offender registration and notification on judicial decisions. *Criminal justice review*.

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Contact Information:

Children's Law Center

<http://childlaw.sc.edu/>

803-777-1646

Joint Citizens and Legislative Committee on Children



For more information, visit
www.sccommitteeonchildren.org

Produced by Children's Law Center
University of South Carolina School of Law
803-777-1646

For more information, visit
<http://childlaw.sc.edu>

