The remaining slides in this week's presentation are focused on a new topic, juvenile sex offenders in court. There have been a number of new legal trends with regard to juvenile sex offenders in court. For example, there's been a reduction in the age by which children can be tried as adults. There's been an elimination of a strict confidentiality for some juvenile records and court proceedings.

There's been changes in now having mandatory minimum sentences for juvenile sex offenders. There's also been a greater reduction in judicial discretion in juvenile and family court. Also, there's been an increased use of what's called civil commitment.

Here's a chart showing the geographical differences in states that permit the public release of juvenile records without qualifying restrictions. Several states, such as Arizona, Idaho, Iowa, Kansas, Michigan, Montana, New York, Oregon, and Washington now permit the release of juvenile court records without any qualifying restrictions.

Another 15 states--California, Colorado, Delaware, Indiana, Kentucky, Louisiana, Maine, Mississippi, Missouri, Nebraska, New Jersey, Oklahoma, Rhode Island, South Carolina, and Wyoming--are states that allow public access to juvenile court records if the youth has committed a specific type of offense.

A number of other states now require that certain records never be sealed, expunged, or destroyed, including those in juvenile sex offender cases. These states include Alaska, California, Colorado, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Montana, Nebraska, North Carolina, Ohio, Oregon, South Carolina, Texas, Virginia, Washington, West Virginia, and Wyoming.

13 states, including Arizona, California, Florida, Iowa, Michigan, Montana, Nebraska, Nevada, New Mexico, North Carolina, Oregon, Texas, and Washington, actually permit or require juvenile delinquency hearings to be open to the general public.

Finally, in the mid- to late-'90s, all states, except Nebraska, enacted or expanded their laws related to the transfer of juveniles to criminal court. As of the end of the 2002 legislative sessions, 22 states, including Alaska, Arizona, Delaware, and others, eliminated altogether the minimum age that youthful offenders could be considered in some form or fashion for adult court proceedings, or for adult sanctions. So the increased use of juvenile waivers is definitely occurring in recent years.

Civil commitment laws have been used. These are designed for individuals that suffer significant mental health difficulties and pose a danger to someone, including themselves. These types of laws enact procedures that allow for commitment of these juveniles to secure state facilities. Also, these
laws often target dangerous sexual predators, or sexually violent predator legislation, as it's often referred to.

Here are several state examples of civil commitment policies. For instance, Arizona allows civil commitment, but the juvenile must be over the age of 18. In comparison, Illinois and Wisconsin--any juvenile can be applied civil commitment laws to. South Carolina and Florida-- they have some mixed discussion related to this. It can be used for some juveniles, but not. Pennsylvania states that civil commitment laws can be applied against any juvenile who is quote, "aging out," and has a mental abnormality or recidivism risk.

There are a number of concerns with civil commitment laws. For example, sex recidivism is low, suggesting these laws may be unnecessarily punitive. There's also the issue of labeling. The use of adult style sanctions may adversely label the juvenile as a serious offender and predator, which this label sticks with them throughout the course of their life.

Also, congregating a bunch of anti-social juveniles together through civil commitment may not necessarily be a great idea. Also, mixing juveniles with more serious adult offenders in prison is also generally not considered a good idea.

Additional concerns with civil commitment is that the use of a diagnosis in order to apply it to juveniles to civilly commit them may be too broad, essentially widening the net, allowing more juveniles to be civilly committed unnecessary. There's also the issue of co-occurring illnesses among juveniles. Oftentimes, these juveniles have multiple issues.

So the use of this civil commitment law is, once again-- could be unnecessarily punitive and not help them get a treatment they need. Furthermore, in the end, our prediction models in juvenile justice and the criminal justice system are relatively weak. So our ability to predict future dangerousness, particularly from juveniles into adulthood, is very poor. So perhaps, at best, these laws should be reconsidered.

There are several types of waivers where a juvenile may be waived to adult court. One such example is a judicial waiver. A judicial waiver to adult court can be used when a juvenile is considered amenable to treatment, or poses a threat to society, or what's called exhibits dangerous or rehabilitative potential.

These types of decisions-- judges rely on the Kent v. United States standard, which has a series of criteria for when they can invoke a judicial waiver, such as-- the judges can consider the seriousness of the alleged offense, whether the alleged offense was committed in an aggressive, violent, and premeditated or willful manner, whether the evidence was against persons or against property, the merit of the complaint, the desirability of a trial, the sophistication and maturity of the juvenile, the juvenile's previous criminal record, and the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile. This is the most common method where waivers are used.
Comparatively, legislative waivers also have the possibility to waive juveniles to adult court. These types of waivers often exclude some offenses from juvenile court jurisdiction, particularly with regard to violent crimes and felonies. Oftentimes, most murders or forcible rapes are legislatively waived to adult court.

The last type of waiver is the prosecutorial waiver, or what's considered direct file. Of all the three types of waivers-- judicial, legislative, and prosecutorial-- prosecutorial waivers are the most controversial because it, once again-- it's the entire discretion of the prosecutor on where the case should be heard. So the prosecutor can decide this case goes to juvenile court. This case goes to adult court. They have ultimate and unbridled discretion.

Furthermore, because it's discretion, reversals are often unlikely. But furthermore, the prosecutor can also decide for concurrent jurisdiction, which means the juvenile can be essentially tried in both arenas.

Historically, sex offenses in juvenile court have not necessarily been emphasized as being important. Also, the courts actually used to institutionalize sexually active girls for mere status offenses, and also considered sexual activity for males as not important compared to sexual activity for females. In the end, cases related to juvenile sex offenses in juvenile court only represent around 2% of the average caseloads in any juvenile court.

So regarding the general trends in the juvenile justice system and the courts with regard to sex offenses, there are several of these. First, there's an increased role in power of prosecutors. As mentioned earlier, there's an increased use of waivers, whether they be judicial waivers, prosecutorial waivers, or legislative waivers.

There's been an increase in the use of waivers, particularly for older juveniles. Furthermore, there's been an increase in juvenile sex offender treatment programs as options in recent years. There's also been an increased public alarm with regard to juvenile sex offenders, leading to a public panic, almost always affecting juveniles.

Ultimately, Franklin Zimring provides several recommendations regarding how to handle sex offenses in a juvenile court. He advocates for a division of responsibility, or a collaboration among prosecutors, juvenile court, and treatments staff. Also, he advocates treating consensual peer sex among juveniles as a status offense, not as a sex offense.

Also, Zimring advocates for diverting first-time juvenile sex offenders, as he argues these first time juvenile sex offenders-- their recidivism rates are relatively low. They are not that skilled. So in a sense, this is unnecessarily punitive when treating juvenile sex offenders, particularly first-time juvenile sex offenders, as sex offenders.
Other such examples of how to handle juvenile sex offenders in the court-- the Florida Task Force provided a series of recommendations. They argue that once these juvenile sex offenders are labeled and registered as a sex offender, a juvenile's options in life, such as joining the military, attending college, and location of residence, will be substantially limited.

Because of the high success rates of available treatment, it is important to minimize the unintended consequences of labeling these youth, which place barriers to their successful reintegration attempts into society.

Furthermore, the law recognizes the difference between juvenile and adult behavior. Juveniles, for example, are restricted from owning guns, drinking, and driving because society recognizes the difference in the developmental status of juveniles and adults.

Children and adolescents engage in sexual behavior for a number of reasons, including experimentation and exploration. As such, the task force recommends that legislative measures regarding juvenile sex offending should consider these motivations and take care not to violate the principles of culpability.

Also, the Florida Task Force recommended that careful consideration should be given by the parties when making a determination that a juvenile sex offending act was motivated by criminal intent. In order to assist the parties in making this critical determination, the legislator should require that a psychosexual examination be performed on any juvenile who has plead or have been found guilty of committing a sexually delinquent act by a qualified practitioner in the field of juvenile sexual behavior. The behavior can then be examined to determine whether it was, in fact, experimental, consensual, or predatory.

Finally, the task force recommended that concern should be raised about the treatment of the very young, specifically youth less than the age of 12 years of old. These youth represent 1% of the youth committed to moderate or high risk facilities.

Developmentally speaking, youth in this age group lack the cognitive ability of adolescents to understand the criminal nature of the behavior. Very young children and/or those who are developmentally immature and involved in sexually delinquent behavior should be referred to treatment by the Department of Children and Families, rather than be prosecuted.

States should also avoid the label itself, juvenile sex offender. The current definition and the statute of juvenile sex offender encompasses a wide range of sex offenses, from exhibitionism to penetration. This results in an instant label of the youth that they will held throughout their life.

As such, the task force recommends to change the term "juvenile sex offender" to the term "juveniles with sexual behavior problems." The specific term "juvenile sex offender" should be reserved only for those youth who are transferred to adult court for sexual offenses.
Finally, the task force recommended that the charge be reduced from a felony to a misdemeanor in those cases involving sexual offending behavior in which the juvenile offender and the victim are of similar age or developmental status, and have, in fact, engaged in consensual behavior.