Community attitudes and the role of the victim offender relationship in child sexual abuse cases

Kirstin Leigh Bouse

Edith Cowan University

Recommended Citation

This Thesis is posted at Research Online.
https://ro.ecu.edu.au/theses/1364
Sexual Assaults Against Children: Community and Judicial Response

Research associated with the victim-offender relationship and child sexual abuse is
1998; Pollard, 1992; Simon, 1996.) A similar survey of the literature demonstrates that
comparing sexual offences perpetrated against adults (Connell & Connell, 2005)
regarding the victim-offender relationship and crime highlights a bias towards
research has focused upon crimes perpetrated against adults. Potential of the research
Past research into community and judicial response to the victim-offender

Sexual Assaults Against Children: Community and Judicial Response

Within a specific network of individuals,

comparison to known offenders who simply behave in a manner out of character and

more dangerous, unpredictable and indiscernible in their selection of victims in

because the criminal justice system and community perceive stranger offenders as

sentence. Weiler (1985) as cited in Simon) speculated that such perceptions exist

respondents viewed non-stranger offenders as less serious and imposed a more lenient

sensations of crime, strangers are considered more harassing. Community

justice system consistently charged a perpetrator known to the victim with the more

influenced by the relationship that exists between the victim and the offender

criminal justice system and community, with regard to the crime of rape is often

The aforementioned research demonstrates that the decision-making of both the

blameworthiness of the victim and the harm suffered by the victim,

perceived seriousness of sexual assaults, and therefore sentencing decisions, perceived

1992.) Evidently, the victim-offender relationship plays a significant role in the

sentenced known offenders significantly less harshly than unknown offenders (Pollard,

Community Aliases 8
Attitudes, profiles and the anticipated versus desired reaction from both welfare and judicial communities. Perceptions of the seriousness of the offence, the victim and offender.

Relevant to child sexual abuse policy, particularly given the attention paid to the development of education programmes. The findings from this research are also necessary insights into the community's view of child sexual abuse which was integral to the investigation of the Victoria Police educational child sexual abuse. Their study provided evidence of the Victoria Police Services Victoria (1992) investigated the issue of child protection. Community Services Victoria (1992) investigated the as a precursor to developing a programme aimed at educating the public on the peers.

Year.

Then for the purpose of this paper, a "child" is defined as a person under the age of 16 and the victim-offender relationship are worth further consideration. If should be noted that the victim-offender relationship are worth further consideration. If should be noted.

Community, these contradictory perceptions of and respond to, child sexual abuse.

However, given the importance of public opinion within policy Western Australia Criminal Code (1913), in and of themselves, these inconsistencies (Community Services Victoria, 1992) and the child sexual abuse legislation.

Horsky, 1988), attitudes of professionals within the area (Cathcart, 1997), community

presence of some inconsistencies between actual judicial practice (Cathcart et al).

Prominent was the availability of research highlighting the likely been a small component within a larger study aimed at examining other issues.

Victim-offender relationship in detail. Instead, the victim-offender relationship has severely lacking. In fact, minimal research into the role of the victim-offender.
sexual assault discussed earlier (Pollard, 1992; Shuon, 1996). That is, respondents
sexual abuses, the results showed a reaction consistent with the studies related to adult
community’s decision making with regard to reporting and described action against child
in terms of the manner in which the victim-offender relationship influenced the

some cases (Community Services Victoria, 1992).

blameworthily. However, 27 percent believed that the child should take the blame in
whether percent of the respondents believed that in all cases the offender is guilty
friend of the family, an uncle and a neighbour (from most likely to least likely), 34 percent
perceived by real victim-offender relationship at being: stepfathers, fathers, a male
offender could be inside or outside of the home. Furthermore, results showed that
smiling the offender would be inside the home, and 21 percent smiling the known
the child with 19 percent smiling the offender would be inside the home, 40 percent
showed that eighty percent of respondents believed the perpetrator would be known to
Examination of community perceptions related to the victim-offender relationship

suffered physical harm (Community Services Victoria, 1992).

91 percent believed they suffered emotional harm, and 53 percent believed they
examinations into the reported harm caused to children sexually abused showed that

with 27 percent believing that it is sometimes a criminal offence. Results of
respondents considered the sexual abuse of children to always be a criminal offence.

that child sexual abuse was a very serious problem, only 6 percent of those
per cent stating that it was not so serious. Despite 76 percent of respondents believing
percent of respondents classified child sexual abuse as a very serious social problem.

metropolitan and country areas (Community Services Victoria, 1992). Seventy six
Researchers interviewed 600 people aged 17 years and over from both the Victorian

Community Attitudes 10
and their average age was 11.1 years. The victim-offender relationship was as follows:

study had addressed two or more victims. The majority of victims were female (58.6%).

under the age of 18 years at the time of the offense. Some offenders included in this
cases of sexual assault in the New South Wales court in 1992 where the victims were
order to place the research outcomes in context. The research included 235 indiscernible
discussing the findings of this study, some background information will be provided in

influences decision-making at various stages of the criminal justice system. Before
included the examination of the manner in which the victim-offender relationship

system's response to sexual assaults against children. A component of this study
interested in providing information regarding the New South Wales' criminal justice

judiciary's response to child sexual assault cases. This research was particularly
(Cashmore and Horsey (1988) have carried out the most recent examination into the

strangers (Community Services Victoria, 1992). Sexual abuse by known perpetrators as less severe than abuse perpetrated by

Furthermore, it is also not possible to conclude whether the community perceived
argue that the punishment imposed reflected the perceived seriousness of the crime.

how it influenced the perceived seriousness of the offense. As such, it is not possible to

attitudes with regard to the punishment of the offender held to directly examine

examined the manner in which the victim-offender relationship influenced community

members), a consensus with punishment option. However, even though this research

consensus with a punishment sentence and for known offenders (particularly family

offender relationship. The preferred option for stranger offenders proved to be

(i.e., no imprisonment as opposed to a term of imprisonment) the closer the victim-

indicated that they would be less likely to report, and desired a less punitive response

Community Attitudes 11
appear to be disparity between community attitudes and judicial practice. In other

study (1988) serve to act as indicators of perceived seriousness. There would again

the judiciary. Should the sentencing practices as reflected by Campmore and Horsey’s

respondents. However, a harsher penalty is often imposed upon those same offenders by

a known offender is likely to receive a non-custodial sentence from community

child sexual abuse. In generalising these findings one could suggest that in some cases

and sexual judicial practice with regard to the victim-offender relationship and crime of

Given these results, there appears to be a discrepancy between community attitudes

committed by strangers.

that child sexual abuse perpetrated by known offenders is more serious than abuse

response to the sexual abuse cases examined for the New South Wales study indicates

the community sample surveyed by Community Services Victoria (1992), the judicial

receive a custodial sentence than offenders unrelated to the victim. Therefore unlike

also more likely to be convicted following a "no guilty" plea and were more likely to

their victims were found to be more likely to proceed. Further, those offenders were

victim-offender relationship, case involving offenders who were closely related to

decisions to proceed with prosecution following community were influenced by the

court documentation referring these cases of child sexual abuse, demonstrating that

this conclusion is evident in 61.7% of cases. Examination of police and

most common offence with which offenders were charged was indecent assault with

authority in relation to the child (8.9%); and told strangers to the victim (1.4%) the

acquittal of the victim (4.2%); someone who held a professional position of

and family figures (4.9%); close friend of the family (4.9%); a friend, neighbour or

members of the victim’s family or household (2.5%; of whom 12.1% were relatives.?

Community attitudes 12
Legislation changed. The current legislation proposes harsher penalties for offenders.

In 1992 the recommendations made by the task force were implemented, and the
subsequent legislative changes suggest non-professional public opinion may have had minimal impact upon the
their knowledge base (although highly relevant) may have overly biased the results. As
Although these professionals are also members of the community, it is suggested that
primarily reflect the attitudes of professionals within the area of child sexual abuse.
Professional community attitudes as such, the task force's recommendations
and respond to this issue, only a minority of responses obtained reflected non-
Task Force, 1987). Therefore, although the general public was involved in their views
abuse, government departments and community-based services (Child Sexual Abuse
were received from individual professional community members. The reminder
inquiry-group were received from non-professional community members. The reminder
The West Australian. Although they received approximately seventy responses, only
governing such crime. The committee called for public submissions, placing a notice in
Abuse Task Force) to examine the issue of child sexual abuse and the legislation

Child Sexual Abuse

Legislation would propose the opposite.

Perpetrators are less serious than those committed by a stranger. The criminal justice
works, the general community may consider child sexual offences committed by known
Community Attitudes 15
In other words, recommendations made by the Child Sexual Abuse explicit elements in the Criminal Code given the penalty structures prescribed by the legislation now made it in an sense and harmed. Justice Pelham, in her 1997, "Victims of Sexual Assault," provisional report, the breach of trust, commended the Commonwealth's approach to the breach of trust, commended the Commonwealth's approach to the breach of trust, and were therefore defined (teachers, employers, guardians, and related professions as being "persons in authority").

Table 1 outlines the various penalty structures used to guide the sentencing known to the victim (particularly those in a position of trust or authority) than the Commonwealth Attorney.

<table>
<thead>
<tr>
<th>Age of Victim</th>
<th>Offence</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Prior</td>
<td>Relationship</td>
<td>Death</td>
</tr>
<tr>
<td></td>
<td>Authority</td>
<td>Indecent</td>
</tr>
<tr>
<td></td>
<td>Person in</td>
<td>Incident</td>
</tr>
<tr>
<td></td>
<td>Relationship</td>
<td>Sex,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>13-16</td>
<td>General Sexual</td>
<td></td>
</tr>
<tr>
<td>10-19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10-19</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20-29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20-29</td>
<td></td>
<td></td>
</tr>
<tr>
<td>20-29</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Western Australian Criminal Code: 1913: Chapter XXXI - Sexual Offences (s32) 32

Table 1

Process.
whether the degree of trust (and subsequent breach of trust when a sexual offence occurred) was greater or lesser. However, the researcher raises the questions as to whether trust is more significant in determining the punishment. This is consistent with judicial practice as demonstrated by decisions of the courts and by those in authority as clearly set out in another, yet more serious consideration of the issue. In contrast, in the community respondents sampled by Community Services Victoria, community members believe in punishing those outside of those categories of breach of trust, as harsher penalties than those inside. This means that both thresholds and persons in authority would receive an identical penalty for an offence committed by persons outside those categories of breach of trust. Therefore, the concern of breach of trust was not considered to be an aggravating factor, given that the sentence imposed was determined by the seriousness of the offence committed within the framework of the Western Australian Sentencing Act (1995), which is dependent upon many factors, including aggravating factors. Given that the sentence imposed reflects a more serious and those sentenced without the element of trust (Weston, 1992, 1804), within the framework of the Western Australian Sentencing Act (1995), the sentence imposed is determined by the seriousness of the offence committed within the framework of the Western Australian Sentencing Act (1995). The underlying belief for those changes appears to have been that sexual offences are more serious and therefore must be punished more harshly than sexual offences occurring outside those relationships. The decision to include these changes in legislation were clearly prompted by the perception that sexual relationships were more serious and included in a position of authority as a circumstance of aggravation.
relationships, such as teacher-student, where trust is agreed upon from the outset.

Duck (1992) proposes that a third type of relationship exists which resembles in varying degrees the child places his or her trust in the adult (the father or de facto father). However, these relationships both constitute "individual trust," in that an individual obligation of keeping trust would vary between these two types of relationships.

Building slowly as the relationship itself strengthens over time, as such, the moral rather developed, such as the relationship between delinquent parents and children, trust is assumed (Essential G. Koniefer). However, in others whose closeness is not inherent but relationships from the outset, and as such are based on a high degree of unconditional Dwyer-Statmanns (1993). It is assumed that family environments foster closeness within upon the type of relationship that exists between the parties involved (Hollins &
their own home (Kennedy, 1983), the degree to which a trust is violated is dependent reliability predictable and safe place to live, especially when they are in the confines of trust is particularly important because people have a need to believe that the world is a 1984). It is defined as the ability of obligations, both explicit and implicit (Trust). The basic component of any social system or social interaction (Essential G. Koniefer, 1987). and is considered to be a universally accepted moral value (Trusted, 1987). and a

Is Trust Equal Between Relationships?

Rather, they simply comment that they both possess a high degree of trust. comments as to whether the degree of trust is or is not equal between these two groups. Recommendations that promote the legislative changes outlined above do not occur is actually equal between relatives and persons in authority. Unfortunately, the

Community ALWAYS
In addition to these arguments regarding the degree of trust within
(Victim-Offender Relationship: Various Relationship Types
not equal between these relationships.

Diver-Simmons, 1993). Nonetheless, such arguments suggest that the degree of trust is
given that the latter relationship carries the added value of "public trust" (Thomas &
between a father and child is greater than that which exists between a teacher and a student
defect in father and child. However, it appears inconclusive as to whether the trust
between a father and child is assumed to be greater than that which exists between a
the offender and victim (Duck, 1992; Eisner et al. 1989). As such, the trust
exists in the relationship is evidently determined by the type of relationship between
Therefore, although trust is inherent in all relationships, the degree of trust which
means for the abuse" (Shapiro, 1987, p. 625).
the act of ensnaring a child is a teacher may intentionally provide the opportunity and
— student relationships possess both individual and public trust. It is noteworthy that
for their child. Given that a child also places his or her trust in their teacher, the teacher
obligations. For example, parents trust that teachers will fulfill their obligation of caring


Community Actions 17
society - the rearing of children and the moulding of our future generation" (p. 3).

individual, yet trusts him with the most important task for the continuation of that
abuse, is a disease of our society: a society which dehumanises and isolates the
emotionally dependent upon them. Singer (1979) has stated that humanistic child
position of authority over the child and as such, the child was functionally and
hold their victims in a particularly helpless position because they are in a natural
child. Furthermore, she noted that offenders who live in the same home as the victim
chronic, extending over a period of years, because the abuser had ready access to the
more likely to be a one-time occurrence, whereas incestuous abuse was apt to be
This argument was based on the premise that a sexual encounter with a stranger was
against removing the crime of "incest" and replacing it with "sexual abuse of children."
the basic unit on which society depends for its stability. Davenport (1979) argued
approach to child sexual abuse by family members and common beliefs family unit is
more serious than abuse perpetrated by any other individual. Others take a similar
Raper (1661) perceives child sexual abuse perpetrated by family members as being
criminal justice system. Given that the family is essential for the survival of the child,
ofences are related to very serious and therefore, should be considered by the
members of friends, to that which is inherit with employment fraud and harassment. Such
subsequent sense of betrayal inherent in child sexual abuse perpetrated by family
leaves the child with a greater sense of betrayal. She likened the breach of trust and
claimed that abuse perpetrated by a trusted adult is far more damaging to the child and
On reviewing the literature examining the effects of child sexual abuse, Coelho (1997)
offenders.

Support for claims that child sexual abuse is not as equally serious between all
Community Annals 18
Western Australian Criminal Code (1913), Further, the judicial and community studies show that the level of trust for both is very high (Child Sexual Abuse Task Force, 1987).

"trust" is equal between family members and persons in authority. If merely inferred, unknown. This is primarily because the legislation does not distinguish as to whether judicial process and community attitudes as outlined in this paper, remains largely unknown.

Whether these arguments related to "trust" are consistent with the legislation, (Froward, 1995).

Teachers and the like should be subject to greater scrutiny and the harshest penalty searched from their familiar networks (Froward, 1995). As such, they propose that care of another, such as school, they are more vulnerable given that they are (Biddle, 1988). Lastly, others commended that whilst a child is in the school, the privileged of trust from parents, extended family and the community afforded the privilege of trust from parents, extended family and the community their work of professional role to gain sexual access to children and as such, have been experienced. The child in their care (Goddard, 1993). Some perpetrators of child sexual abuse use positions of authority not only abuse the child's trust, but also the parent who placed the child in the school. Evidence given that the teacher is acting in loco parentis. They argue that those in both the "individual trust" between the teacher and student and the "public trust" take an accumulative approach to the degree of trust which exists, taking into account the degree of trust than all other individuals (Martin, 1994). Those that support such claims authority or responsibility, such as religious leaders and teachers, possess a higher environment.

Community Attitudes 19
Victim-offender relationship influences the public's view of the seriousness of this

Furthermore, there has been no systematic exploration of the manner in which the

community attitudes is linked and as such, drawing firm conclusions is not possible.

The preferred penalties. However, it must be noted that the research examining

attitudes with regard to the perceived seriousness of child sexual abuse, and therefore

highlighted incongruence between legislation, judicial practice and community

more lenient sentences (Pollard, 1992; Simon, 1996). In contrast, this paper has

victim as being less serious as those perpetrated by strangers and subsequently prefer

fashion. That is, they perceive those assaults committed by an offender known to the

inordinate than the criminal justice system and the community respond in a similar

considering sexual assaults perpetrated against adult women, a small sample of studies

the victim-offender relationship influences the perceived seriousness of crime. When

Smiths, 1997). This paper has reviewed the literature examining the manner in which

particularly given that they reflect the perceived seriousness of the offense (Kopets &

sysem's sentencing practices have received considerable attention within the media

developed. A number of reasons for this silence were outlined. The criminal justice

remains necessary that public opinion (as the very least) be considered when policy is

community attitudes may not represent a rational or educated response to crime. Although it is recognised that

referred to in legislation and judicial responses to crime. Although it is recognised that

This paper takes the position that it is imperative that community attitudes be

Summary and Conclusion

Community Services Victoria, 1992).

discussed, did not examine the construct of trust (Cashmore & Horsey, 1988).

Community Attitudes 20
Punishment. Community attitudes appear to have had minimal impact upon either the
offence, the harm suffered by the victim and subsequently, the severity of the
determination of which the victim-offender relationship influences the perceived seriousness
community attitudes, legislation and the criminal justice system with regard to the
response. From these studies, it can be suggested that, contradictions may exist between
position of these attitudes are more serious and more harmful, warranting a harsher
papers, appears to reflect an attitude that those offenders whose the perpetrator is in a
Crime Code, 1983), The Legislation and Judicial response highlighted in a number of
(Community Services Victoria, 1992). Further, they are more likely to prefer a non-
section social problem, some members fail to perceive this offence as a crime.
Although these studies suggest that the public considers child sexual abuse to be a
issue, the only research available and as such, reflects the best starting point to examine the
and was vastly different, accurate comparisons are difficult to make. However, this is
undertaken in different states and that the manner in which these studies were carried
presumed was Western Australia's. Given that the available research has been
Victorian public; judicial practice was that of New South Wales and the legislation
regard to this paper, the community's perception discussed were those of the
attitudes, judicial practice and legislation with regard to child sexual abuse. With
examined the manner in which the victim-offender relationship influences community
offence. In fact, perusal of existing literature illustrates that no one state or territory has
Community Attitudes 21
The current study, based on the argumen

The current study, based on the argumen
do not hallucinate