

Female Sexual Offenders and Judicial Decision-making

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Background: Research examining female sexual offending is limited, and the profile of this unique offender group is not well understood. Female sexual offending has largely been identified as a rare occurrence, typically perpetrated in the context of an unhealthy relationship with a paraphilic male counterpart. Given recent changes in law and minimum sentences for sexual offences—particularly in relation to child pornography and child luring offences—it remains unknown how this has impacted sentencing of female offenders charged with sexual offences.

Objectives: The goal of this study is to better understand female offenders convicted of sexual offences and their offence characteristics. Additionally, it seeks to identify patterns in judges' decision-making with respect to aggravating and mitigating factors that impact sentencing decisions.

Methods: A sample of 26 judges' sentencing decisions between 2000 and 2017 were obtained to investigate the Canadian female sexual offender (FSO) as she enters the justice system.

Results: In the study sample, high rates of psychopathology and childhood trauma were important features of this offender group. Offences tended to occur over extended periods, with a male co-offender, and with a young victim that was well known to the offender. Aggravating factors related to the vulnerability of the victim, abuse of power, and lack of insight. Mitigating factors related to accepting responsibility and a desire for self-change. Offenders were generally sentenced for two to five years, with ancillary orders intended to track and restrict further offending, rather than foster rehabilitation.

Discussion: Gaining a better understanding of Canadian FSO population is the first step toward improving rehabilitation and prevention.

Key words: female sexual offenders, sexual offending, justice system, sentencing characteristics, judges' decision-making

Introduction

Society has long viewed female sexual offenders (FSOs) as less dangerous and victims of FSOs with less sympathy [1,2]. Historically, FSOs received little attention among the psychiatric and psychological community [3]. One significant issue in studying this population has

been small sample sizes; as FSOs only comprise about 5% of the sexual offending population, it is difficult to achieve adequate sample sizes for research [4]. However, research on FSOs has increased in the past 10 to 15 years, providing data that may inform how this population is conceptualized and treated. One area that has not been well examined is the manner in which the

judicial system views and ultimately deals with the FSO. As such, our study seeks to enhance an understanding of FSOs in the Canadian justice system and to identify patterns in judges' decision-making.

Sentencing structure in Canada

The *Criminal Code of Canada* (the Code) outlines the sentencing structure in Canada and highlights the options available to judges when sentencing FSOs. S.718 of the Code outlines the purposes of sentencing: to denounce unlawful conduct, deter offending, separate offenders from society, assist in offender rehabilitation, provide reparations to victims, and promote a sense of responsibility in offenders [5].

Recently, minimum sentences have been deemed unconstitutional, but this continues to be argued and some judges still use this principle. The Code includes maximum sentences, but judges have wide discretion in punishing offenders. For example, s.718.2 of the Code suggests that a sentence should be increased due to any aggravating factors or decreased due to any mitigating factors relating to the offence and offender, and importantly, that offenders should not be deprived of liberty if less restrictive sanctions are deemed appropriate [5]. Judges have numerous options available to them when sentencing FSOs, including custodial (incarceration) and non-custodial options [6]. Custodial sentences include full-time incarceration or an intermittent sentence (i.e., served in blocks of time, like on weekends, if sentence is less than 90 days) [6]. Noncustodial sentences include suspended (incarceration delayed if conditions of probation met) and conditional (served in community under probation) sentences [6]. In addition to the sentence, judges can impose ancillary orders, some of which aim to prevent future reoffending (e.g., restraining order, attend therapy), and others which serve to amend harm done by the offence (e.g., victim compensation) [6].

FSO history and characteristics

FSOs are a heterogeneous population but share many defining characteristics. Chaotic childhoods and the experience of early trauma

are key commonalities. Similar to other types of offenders, research suggests many FSOs were raised in dysfunctional households, surrounded by domestic violence and substance abuse [7,8,9,10]. Generally, their mothers had dependent personalities and difficulties setting appropriate boundaries [7,10]. If they were present, their fathers were found to be erratic, abrasive, emotionally distant, and volatile [7,10]. Many FSOs faced physical and emotional abuse as children, with upwards of 50% reporting sexual abuse [8,11,12,13]. In fact, compared to the general female population, FSOs are estimated to be three times more likely to have been sexually abused [8]. They are also estimated to be four times more likely to have experienced verbal abuse and three times more likely to have experienced emotional neglect [8]. Further, about 41% of FSOs report four or more adverse childhood experiences [8].

These negative abuse dynamics persist into adulthood, with FSOs remaining at high risk for emotional and sexual victimization [2]. They have turbulent relationship styles, with teenage pregnancy, prostitution, and divorce being common [9]. Adult life is characterized by a high prevalence of substance abuse and a host of other psychiatric disorders [2,9,14,15]. Further, early traumatic childhood experiences leave them vulnerable to becoming involved in relationships with abusive, manipulative, and sexually deviant males [12,13]. Indeed, co-offending behaviour is common among FSOs, with studies finding upwards of 75% offending with a male partner [2,3,9,16].

Victim characteristics

Examining victim characteristics provides important insights into FSO behaviour. Studies suggest that prepubescent or young adolescents tend to be the primary victim target [2,15]. It has been proposed by some that the FSO's personal experience of sexual abuse serves to foster maladaptive beliefs about consent and about children being appropriate means to meet their intimacy and emotional needs [12,13]. FSOs also appear to be less discriminatory of gender in their offending behaviour [2,17]. Further, rarely

do FSOs offend against an unknown victim; findings typically suggest an established relationship between victim and offender [e.g., 2,9,14,15,18]. Paralleling this, one study found half of their sample victimized their own children, and the others offended against friends, relatives, or children they were babysitting [9].

FSO typologies

A wide range of typologies have been proposed to characterize the heterogeneous FSO population. One of the earliest defined typologies is termed “teacher/lover” or “heterosexual nurturer,” and identifies women in a position of power who solo-offend against adolescent boys [3,15,19,20]. The second typology, “predisposed offenders,” are lone women who abuse pre-pubescent children, commonly their own [19,21]. Individuals within this typology also present as sexually deviant and with co-occurring addictive behaviours [15,19,22]. The “male-coerced” and “male-accompanied” offender typologies involve females with a male co-offender [19,20,21,22]. A typology encompassing a younger population is the “experimenter/exploiter,” commonly referred to as “babysitter abuse,” where a juvenile female abuses a younger victim [3,15,16,23]. The “psychologically-disturbed” or “psychosis-driven” offender presents with psychotic characteristics [9,15,20,24]. The last typology includes women who offend against other adults, with almost all victims being female [15,19].

Current study

Within the FSO domain, there is a general understanding of offender characteristics, offender typologies, and offending etiology. However, the vast majority of these studies used American samples, with limited research on Canadian FSOs. Thus, one aim of our study is to examine FSOs within the Canadian context, in terms of their characteristics, personal histories, and typologies. To our knowledge, no prior research has investigated FSOs and their interaction with the court system. Thus, the second aim of our study is to identify patterns in judges’ decisions about sentencing form and duration, aggravating and mitigating factors, and ancillary orders.

Methods

CanLII is a legal research database that provides public access to court documents and decisions from all levels of court in Canada. The authors located judges’ decisions on FSO sentencing and offences from this database. Twenty-six sentencing and judgment decisions were retrieved from October 20, 2001, to July 7, 2017. Of these 26 judgments, 23 were sentencing decisions in which the FSO was found guilty and the judge provided a sentence. The remaining three were classified as judgment decisions, in which the FSO was found guilty of her offence(s) but had not yet been sentenced.

From these court documents, relevant information was extracted and quantified using a coding form. This coding form was developed through thorough review of many sentencing and judgment decisions to find commonalities and themes. After it was created, three test trials were completed to ensure the coding form was accurate in capturing all relevant information. Coded data were assessed using the Statistical Analysis Package for the Social Sciences, version 23.0 (IBM Corp., Armonk, NY, USA). Data analysis was descriptive in nature, providing categorical frequencies.

Results

Sample demographics and personal history

We reviewed 26 FSO cases. Of these 26 females, 21 had known ages. The mean age at onset of offending was 30.6 (SD = 9.8), with a range from 17 to 59. The greatest proportion of FSOs were married or in a common-law relationship (53.8%), had children (69.2%), obtained an education level between grades 9 and 13 (19.2%), had some postsecondary (19.2%), or completed postsecondary education (19.2%). Clinically, there were 26 diagnoses among 16 FSOs in this sample. The majority of these 16 offenders had a major mental disorder diagnosis (76.9%), including depression, anxiety, bipolar disorder, and personality disorder. Only one individual was diagnosed with a sexual paraphilia (3.8%).

Table 1: Demographic Characteristics and History of Offenders (N = 26)

Variable	Mean (SD)	Min	Max
Age at start of offence (n = 21)	30.6 (9.8)	17	50
Marital status		<i>n</i>	%
Single		7	26.9
Married or common law		14	53.8
Separated or divorced		4	15.4
Widowed		1	3.8
Unknown		1	3.8
Parent			
Yes		18	69.2
No		5	19.2
Unknown		3	11.5
Education			
Grades 9 to 13		5	19.2
Some postsecondary		5	19.2
Postsecondary completed		5	19.2
Unknown		11	42.3
Diagnosis classification (n = 16)			
Major mental disorder		20	76.9
Personality disorder		6	23.1
Substance use disorder		3	11.5
Paraphilia		1	3.8
Developmental disorder		2	7.7
Total disorders		26	100.0
History of abuse (against offender)			
Sexual		10	38.5
Physical		3	11.5
Verbal or emotional		0	0.0
None		6	23.1
Unknown		10	38.5

Table 2: Index Charges (N = 26)

Variable	Mean (SD)	Min.	Max.
Number of Charges (SD)	3.2 (3.2)	1	11
Charges	<i>n</i>	% (of 83 charges)	
s.91 prohibited weapon	1	1.2	
s.139 interfering with police investigation	1	1.2	
s.151 sexual interference	15	18.1	
s.152 invitation to sexual touching	4	4.8	
s.153 sexual exploitation	5	6.0	
s.155 incest	1	1.2	
s.160 commit bestiality	2	2.4	
s.163.1(2) make child pornography	5	6.0	
s.163.1(3) distribution of child pornography	7	8.4	
s.163.1(4) possess child pornography	6	7.2	
s.171 householder permitting prohibited sexual activity	1	1.2	
s.172.1 child luring	2	2.4	
s.172.2 arrangement to commit sexual assault	4	4.8	
s.245(a) administer noxious substance	1	1.2	
s.267 assault with weapon	2	2.4	
s.271 sexual assault	11	13.3	
s.272(1)(d) party to sexual assault	1	1.2	
s.279.1(1) trafficking in persons	1	1.2	
s.286.3(1) procuring persons to provide sexual services for consideration	2	2.4	
s.463 attempted bestiality	1	1.2	
s.464(a) counselling to commit sexual assault	1	1.2	
s.465(1)(c) conspiracy to administer noxious substance/commit sexual offence	9	10.8	
Total charges	83	100.0	

Table 3: Circumstances of Offence/Typologies (N = 26)

Variable	n	%
Duration of offending		
Single event	3	11.5
Days to weeks	5	19.2
Months to years	16	61.5
Unknown	2	7.7
Intoxication at offence		
Yes	7	26.9
No	19	73.1
Typology		
Coerced/Accompanied	13	50.0
Teacher/Lover	8	30.8
Prepubescent victims	3	11.5
Psychotically driven	0	0.0
Juvenile	0	0.0
Adult victims	0	0.0
Predisposed/Paraphilic	0	0.0
Unclassified	2	7.7

In terms of a history of abuse against the offender, 38.5% of the sample reported having been sexually abused, with 11.5% reporting physical abuse and none reporting verbal/emotional abuse. The demographic characteristics and personal history of offenders are summarized in Table 1.

Index charges

The 26 FSOs in this sample had 83 charges, with up to 11 charges for one FSO. The two most frequent charges were s.151 sexual interference and s.271 sexual assault. Table 2 outlines the charges.

Offence circumstances and typologies

Circumstances related to the offence and offender typologies are listed in Table 3. Offending behaviour typically took place over an extended period of time, with 61.5% of FSOs offending over several months or years. More than a quarter (26.9%) of FSOs reported some kind of substance use and intoxication during the index offence. Half of the sample had a male co-accused (coerced/accompanied). The second

Table 4: Victim Characteristics (N = 31)

Variable	Mean (SD)	Min.	Max.
Victim's age at initial contact (n = 29)	10.8 (5.6)	2	20
Number of victims per offender (n = 25)	1.2 (0.7)	1	4
Victim's gender		<i>n</i>	<i>%</i>
Male		19	61.3
Female		12	38.7
Offender's relationship to victim			
Teacher, coach or caregiver		13	41.9
Parent		9	29.0
Known to victim (friend or acquaintance)		6	19.4
Other relative		2	6.5
Stranger		1	3.2

largest group of offenders was the teacher/lover category (30.8%), followed by offenders with prepubescent victims accounting for 11.5% of the sample. Lastly, 7.7% of individuals were not classified under the current typology framework. These individuals solo-offended against female adolescents.

Victim characteristics

Among this sample of 26 FSOs, there were 31 victims. Looking at the characteristics of these victims (see Table 4), victim age was considered as age at initial contact with the offender. There were recorded ages for 29 of the 31 victims, with the youngest being two years old and the oldest being 20 years old. The mean age of the victims was 10.8 (SD = 5.6). Among the 25 offenders with victims listed, there was an average of 1.2 victims per offender (SD = 0.7). The majority of the victims were male (61.3%). The majority of victim-offender relationships involved the FSO working or volunteering with their victim(s) as a teacher, caregiver, or coach (41.9%), or by being a parent (29.0%) of the victim(s) (including step- and foster parents).

Sentencing factors

Table 5 outlines the aggravating and mitigating factors that were present in more than 20% of

Table 5: Sentencing Factors (N = 23)

Variable	n	%
Aggravating factors (>20% of decisions)		
Victim under 18 years old	13	56.5
Breach of trust	13	56.5
Abused position of authority	9	39.1
Inability to accept responsibility or lack of insight	8	34.8
Multiple occurrences	7	30.4
Plans for more victims	7	30.4
Emotional devastation of victim	7	30.4
Victim exposed to potential harm	6	26.1
Premeditated	6	26.1
Grooming involved	6	26.1
Extended duration of offending	6	26.1
Serious offence or great extent of offending	5	21.7
Mitigating factors (>20% of decisions)		
Guilty plea	14	60.9
Remorse	13	56.5
Absence of criminal record	13	56.5
Pursuit of counselling	9	39.1
Social punishment (recognizing life impacted by charges)	7	30.4
Mental illness linked to offence	5	21.7
Accepts responsibility	5	21.7
Co-offender manipulation	5	21.7

the 23 sentencing decisions. The most common aggravating factors—reported in greater than one-third of decisions—included the victim being younger than 18 years old (56.5%), the offence being a breach of trust (56.5%), the offender abusing a position of authority (39.1%), and an inability to accept responsibility or a lack of insight into their actions (34.8%). In terms of mitigating factors, the most common included a guilty plea (60.9%), showing remorse (56.5%), the absence of a criminal record (56.5%), and pursuit of counselling (39.1%).

Delivered sentence

Of the 23 FSOs who were found guilty and sentenced, the mean incarceration duration in months was 35.0 (SD = 26.9), with the lowest incarceration time being 3 months, and the

Table 6: Delivered Sentence (N = 23)

Variable (Months)	Mean (SD)	Min	Max
Incarceration duration	35.0 (26.9)	3	84
Probation duration	24.0 (8.5)	12	36
Incarceration duration			
Provincial Custody		n	%
Two to five years		12	52.2
More than five years		7	30.4
		4	17.4
Sentence type			
Intermittent		2	8.7
Conditional		3	13.0
Probation duration			
One year to two years less a day		3	13.0
Two to five years		7	30.4
None		13	56.5
Ancillary orders (>20% of decisions)			
DNA sample		21	91.3
Sex offender registry		15	65.2
No employment, volunteering in position of trust or authority over minors		14	60.9
Weapons prohibition		13	56.5
Required to attend therapy		8	34.8
No-contact order with victim		8	34.8
Keep the peace and be of good behaviour		5	21.7

highest being 84 months (7 years). The mean duration of probation was 24.0 months (SD = 8.5), with a minimum of 12 months and a maximum of 36 months. Most incarceration lengths were two to five years (30.4%), followed by one year to 18 months (21.7%). Two of these sentences were served intermittently, and three were conditional sentences. Those ordered with probation either faced two to five years (30.4%), or one year to two years less a day (13.0%). In addition to incarceration/probation, there were many ancillary orders delivered. The most common required the offender to provide a DNA sample (91.3%) for the national registry, to be placed on the sex offender registry (65.2%) for 20 years (47.8%), to have no employment or volunteering in a position of trust or authority over minors (60.9%), and to be prohibited from possessing

weapons (56.5%). For a complete outline of the delivered sentences, refer to Table 6.

Discussion

Female sexual offending is increasingly being recognized as a problem warranting attention. The first step toward developing successful rehabilitation methods for these offenders involves gaining a better understanding of their personal and offending characteristics. The aims of this study were to better understand the FSO within the Canadian context and to better understand sentencing decisions. This study validates much previous research conducted with mainly U.S. samples, and adds novel findings to an otherwise rather limited research pool.

Offender and offence characteristics

Although the personal histories of many offenders were lacking, the current findings provide further evidence of high rates of adverse childhood experiences, with childhood sexual abuse being a common trauma for this group of offenders [8]. Interestingly, our study found low rates of physical abuse and no cases of verbal/emotional abuse in childhood, which may actually be better explained by reporting issues. This sample supports high rates of mental health-related difficulties among FSOs, with 16 individuals holding 26 diagnoses [e.g., 9,14]. Only one FSO was diagnosed with a paraphilia, a surprising finding considering that 13 victims were prepubescent. In general, even though some FSOs indicate deviant sexual fantasies and arousal, it has been identified that they are less likely to be diagnosed with paraphilias than men [25]. This could be a possible by-product of the current limitations in assessing sexual interest in females, as some authors suggest that sexual arousal in women is less revealing of stable sexual interests [26,27]. This poses a challenge for using instruments to measure sexual arousal in women and making conclusions regarding sexual interests.

According to this sample, offending occurs over extended durations, with almost two-thirds of cases occurring over months or years. This is suggestive of victims not coming forward, and an

inability of the justice system to accurately detect these offenders [e.g., 1].

Defining offender typologies is an aspect of research which has received much emphasis, with three typologies relevant to our sample. The coerced/accompanied typology encompasses half the offenders in the study, supporting the notion of high rates of co-offending behaviour [15,20]. Interestingly, our sample highlights two unclassified offenders, who solo-offended against female adolescent victims. They may fall under the “teacher/lover” category, although it usually identifies adolescent male victims. Lastly, “offenders with prepubescent victims” typology is examined, specifically, as females who solo-offend against prepubescent children. Previous studies have utilized the term “predisposed molester” to define FSOs predisposed to offending against children in response to underlying sexual deviancy, as well as their own childhood experiences of trauma and victimization [15,19,21]. Our sample suggested a dichotomy within the “predisposed molester” typology, where there are individuals who offend against prepubescent victims, but who do not present with a paraphilia. Thus, we divided this typology into the classifications “offenders with prepubescent victims,” and “predisposed/paraphilic offenders.”

Victim characteristics

With about 60% of the victims being male, our sample re-asserts the notion that FSOs are less discriminatory of gender, in line with the ease of access hypothesis [17]. Our sample supports prior research suggesting victims and offenders tend to know each other, with only one case of the offender being a stranger [e.g., 9,15]. Examining these relationships more closely, we see that almost 70% of FSOs play classic authority roles in the lives of their victims (i.e., parents, teacher, caregiver). These are individuals in strong positions of authority, who have daily access to the victims. They are individuals in which the most trust tends to be placed.

Sentencing factors

The novel aspect of this study was the investigation of the FSO’s interaction with the justice

system, and the factors influencing sentencing decisions. Aggravating factors are those which increase the severity of punishment. There were four which occurred in over one-third of decisions: victim under 18 years old, breach of trust, abused position of authority, and an inability to accept responsibility or lack of insight. The general theme for these factors relates to the vulnerability of the victim, the offender abusing their role in the victim's life, and their inability to see that what they did was wrong. In terms of mitigating factors, there are also four which occurred in over one-third of decisions: guilty plea, remorse, absence of criminal record, and pursuit of counselling. These factors can be themed as accepting responsibility and a desire for self-change.

Of the 23 sentenced FSOs, the average incarceration time was two years and 11 months. Only four offenders were given sentences longer than five years. Ancillary orders appear to have been used as methods of tracking the FSOs. All but two FSOs were required to give a DNA sample, and two-thirds were placed on the sex offender registry. Ancillary orders were also used to inhibit reoffending capabilities, with upwards of two-thirds of the sample not being allowed to volunteer or work with children and prohibited from possessing firearms, and a third having a restraining order with the victim. The most common ancillary orders reflect a theme of restriction and tracking, rather than rehabilitation. Only a third were required to attend therapy, which was the only rehabilitative ancillary order that was placed.

It is apparent there needs to be a much greater focus on developing better rehabilitative methods for these offenders. Qualitatively, numerous judges reported they either did not know what to do with these FSOs or felt the current judicial system was ill-equipped to handle them.

Implications

Overall, our article takes a small step in providing a better understanding of the factors that judges look for and see as important in sentencing FSOs. This is useful to all professionals interacting with FSOs, including legal and clinical

teams. For lawyers, understanding what to highlight when making submissions and recommendations is useful for defending and prosecuting FSOs. From a clinical perspective, our article highlights factors that judges deem as risk and mitigating factors, which becomes especially helpful in conducting clinical risk assessments. It is also useful to cross-validate what judges deem as risk factors and what has been validated by the clinical risk assessment literature.

Limitations

Although the sample size for our study was small, it was comparable with the average size for FSO studies. However, having a small sample size limits the ability to make firm conclusions about the results. The small sample size is due to using the CanLII database, which was an inadequate source for data collection (i.e., many cases were not available). Additionally, although these reports are structured in a similar manner, each judge decides what details they find relevant to include. Thus, there were differences between what judges reported in their decisions, with each investigated variable having a lot of missing information across participants.

Future directions

A larger sample size would allow for further analyses beyond descriptive statistics, including how different variables statistically influence sentencing. Comparing FSOs to male sexual offenders would also be beneficial to highlight any similarities and differences in sentencing factors. Another direction to pursue would include a longitudinal study, investigating the relation between sentence duration, ancillary orders, and recidivism. A longitudinal study would increase our understanding of how to effectively treat and rehabilitate FSOs. Further, the development of validated assessment tools for diagnosing paraphilias is necessary to better understand their role in offending behaviour and to develop treatments for FSOs.

Conclusion

FSOs are an understudied population. With limitations in past research regarding small sample

sizes and the majority of research being conducted with American samples, we sought to place the FSOs in the Canadian context.

Additionally, we sought to better understand the characteristics of sentencing decisions and the factors that influence those decisions. Our study validated previous research on offender, victim, and offence characteristics. These characteristics are becoming more consistently found as the research base grows.

Identifying sentencing characteristics was the novel portion of our study and highlighted numerous aggravating and mitigating factors occurring regularly across judges' decisions. Aggravating factors generally related to the vulnerability of the victim and abusing a position of power, whereas mitigating factors involved accepting responsibility and a desire for self-change.

Sentences were most frequent in the two- to five-year range, with many extra restrictions being placed on the offender to track and restrict their ability to offend in the future.

These findings allow us to conceptualize how the judicial system is dealing with this population. With increases in sample size, more firm conclusions will be able to be made. We posit the first step toward more successful rehabilitation of FSOs is to better understand how the justice system currently deals with them.

Conflict of Interest: none

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