

IS IT RATIONAL OR NOT?: WHEN INNOCENTS PLEAD GUILTY IN CHILD SEX ABUSE CASES

*Eza Bella Zakirova**

I. INTRODUCTION

Any crime concerning a child victim is a matter of public concern and a concern of the criminal justice system as a whole.¹ When it comes to child sexual abuse, children are considered to be the “perfect” victims due to the challenges that surround them and their tendency to refrain them from reporting the crime.² To settle down the public’s concern about the safety of their children, the federal government passed various acts, which provide federal funding and guidance to agencies including non-profit organizations and research centers for “prevention, assessment, investigation, prosecution, and treatment” of child abuse, including sexual abuse.³ However, scholars and reporters have come to the conclusion that there are times when the jury,⁴ and even judges,⁵ tend to have a preconceived

* Adjunct Lecturer at Department of Sociology of John Jay College of Criminal Justice, New York. She holds a Master’s degree in Criminal Justice and completed a Master’s thesis examining Media Framing of Wrongful Convictions. See *Eza Zakirova*, JOHN JAY C. OF CRIM. JUST., <https://www.jjay.cuny.edu/faculty/eza-zakirova> (last visited Nov. 19, 2018).

¹ See Edward Martinovich & Ariella Rosenberg, *False Allegations of Child Molestation and Child Abuse: What Is Real and What Only Appears to Be Real, and How to Know the Difference*, IMHOFF & ASSOCIATES PC (Aug. 22, 2005), <https://www.criminalattorney.com/Blog/2005/August/False-Allegations-of-Child-Molestation-and-Child.aspx>.

² See *Reporting on Child Sexual Abuse*, NAT’L CTR. FOR VICTIMS OF CRIME, <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse> (last visited Nov. 19, 2018) (list of challenges for child sexual abuse victims).

³ *About CAPTA: A Legislative History*, CHILD WELFARE INFO. GATEWAY (Aug. 2017), <https://www.childwelfare.gov/pubPDFs/about.pdf>. For example, President Nixon signed the Child Abuse Prevention and Treatment Act (CAPTA) in 1974. See CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUMAN SERVS., *THE CHILD ABUSE PREVENTION AND TREATMENT ACT: 40 YEARS OF SAFEGUARDING AMERICA’S CHILDREN* 4, 9 (2014), https://www.acf.hhs.gov/sites/default/files/cb/capta_40yrs.pdf.

⁴ See Jordan Smith, *Bleed ‘em and Plead ‘em: The Plight of Wrongly Accused Child Molesters*, SALON (July 26, 2010), https://www.salon.com/2010/07/26/unjustly_accused_child_abusers/.

⁵ In the case of Friedman, before hearing any evidence, the judge said she will convict the defendants charged with sex abuse for life imprisonment, and that is why he pled. See Jesse Wegman, *After a Guilty Plea, a Prison Term and a Movie, a Sex Abuse Case Returns*, N.Y. TIMES

decision about defendants charged with child sex abuse.⁶ In addition, a child sex abuse charges, by itself, can easily brand the individual and strip off his presumption of innocence before adjudication.⁷ Therefore, defendants charged with the crime are more likely to plea bargain before adjudication since they fear a more severe punishment by the jury,⁸ especially (1) those who have a prior criminal record or pending charges,⁹(2) underage or handicapped defendants that fall under the pressure of police investigations, and (3) those who are given limited time constraints to make a decision whether to plea tend to sign the plea deal.¹⁰ Therefore, Part II will define child sexual abuse and guilty pleas/plea bargaining and examine its frequency in wrongful conviction cases for child sex abuse. Part III will discuss the rationality behind plea bargaining offers. Part IV will offer recommendations.

II. DEFINING PLEA BARGAINING AND CHILD SEX ABUSE

Plea bargaining,¹¹ an efficient tool used to reduce a court's workload, provides both parties an alternative means of resolving the dispute by permitting the parties to make a deal at the prosecutor's office, rather than having to appear in court.¹² Specifically, nearly ninety-five percent of criminal cases get resolved in plea bargaining.¹³ It has become a panacea in the criminal justice system since it benefits everyone who takes part in the case.¹⁴ Since

(Feb. 9, 2015), <https://www.nytimes.com/2015/02/09/opinion/after-a-guilty-plea-a-prison-term-and-a-movie-a-sex-abuse-case-returns.html>.

⁶ See Smith, *supra* note 4.

⁷ See *id.*

⁸ See, e.g., Barry Byars: *Other Plea Cases with Perjury or False Accusation*, NAT'L REGISTRY OF EXONERATIONS (May 8, 2013), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4162> (discussing the example of Barry Byers taking the plea offer to avoid facing a jury and risking a longer prison sentence).

⁹ See LINDSEY DEVERS, BUREAU OF JUST. ASSISTANCE, U.S. DEP'T OF JUST., PLEA AND CHARGE BARGAINING: RESEARCH SUMMARY 2 (2011), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf>.

¹⁰ See Tina M. Zottoli et al., *Plea Discounts, Time Pressures, and False-Guilty Pleas in Youth and Adults Who Pleaded Guilty to Felonies in New York City*, 22 PSYCHOL., PUB. POL'Y, & L. 250, 252, 256 (2016).

¹¹ "Plea bargains are agreements between defendants and prosecutors in which defendants agree to plead guilty to some or all of the charges against them in exchange for concessions from the prosecutors." See *Plea Bargain*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/plea_bargain (last visited Nov. 19, 2018).

¹² See Paul Bergman, *How Plea Bargains Get Made*, NOLO, <https://www.nolo.com/legal-encyclopedia/how-plea-bargains-get-made.html> (last visited Nov. 19, 2018); *Plea Bargain*, *supra* note 11.

¹³ See DEVERS, *supra* note 9, at 1.

¹⁴ See ROLANDO V. DEL CARMEN & CRAIG HEMMENS, CRIMINAL PROCEDURE: LAW AND

the nineteenth century, plea bargaining has been the go-to solution to manage the growing caseloads of courts.¹⁵ Therefore, the initial deal was that if the court gets to save time and close cases using guilty pleas, then the judge will grant a lenient sentence to the defendant who is pleading guilty.¹⁶ That is why the main player in the case gets to be the prosecutor, and sometimes even the defense attorney, whose simple roles become pushing the defendant to plead guilty, despite him being innocent of the crime.¹⁷ This push is effectuated by using one of the three types of plea bargaining: charge bargaining,¹⁸ sentence bargaining,¹⁹ or fact bargaining.²⁰ Furthermore, when it comes to child sex abuse cases, due to the case sensitivity, the defendants are often notified that the jury can be unpredictable since this particular crime does not leave anyone apathetic.²¹ Yet, it is important to note that to date, there is a lack of data showing the procedures of offering and obtaining guilty pleas, and as a result, there is a lack of information regarding how these guilty pleas are obtained and whether they are induced or coerced.²²

It is known that child sexual abuse is a crime where the perpetrator engages in “sexual conduct that is harmful to a child’s mental,

PRACTICE 48 (10th ed. 2017).

1. Defendants can avoid the time and cost of defending themselves at trial, the risk of harsher punishment, and the publicity a trial could involve.
2. The prosecution saves the time and expense of a lengthy trial.
3. Both sides are spared the uncertainty of going to trial.
4. The court system is saved the burden of conducting a trial on every crime.

Id.

¹⁵ See Allison D. Redlich et al., *The Psychology of Defendant Plea Decision Making*, 72 AM. PSYCHOLOGIST 339, 340 (2017).

¹⁶ See *id.* at 341.

¹⁷ See Emily Yoffe, *The Presence of Justice: Innocence Is Irrelevant*, ATLANTIC (Sept. 2017), <https://www.theatlantic.com/magazine/archive/2017/09/innocence-is-irrelevant/534171/>.

¹⁸ *Plea Bargaining: Areas of Negotiation*, FINDLAW, <https://criminal.findlaw.com/criminal-procedure/plea-bargaining-areas-of-negotiation.html> (last visited Nov. 20, 2018) (“[Charge bargaining] . . . is a common and widely known form of plea. It involves a negotiation of the specific charges (counts) or crimes that the defendant will face at trial. Usually, in return for a plea of ‘guilty’ to a lesser charge, a prosecutor will dismiss the higher or other charge(s) or counts. For example, in return for dismissing charges for first-degree murder, a prosecutor may accept a ‘guilty’ plea for manslaughter (subject to court approval).”).

¹⁹ *Id.* (“Sentence bargaining involves the agreement to a plea of guilty (for the stated charge rather than a reduced charge) in return for a lighter sentence. It saves the prosecution the necessity of going through trial and proving its case. It provides the defendant with an opportunity for a lighter sentence.”).

²⁰ *Id.* (“The least used negotiation involves an admission to certain facts (‘stipulating’ to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to have to prove them) in return for an agreement not to introduce certain other facts into evidence.”).

²¹ See Martinovich & Rosenberg, *supra* note 1.

²² See Zottoli et al., *supra* note 10, at 250, 251.

emotional, or physical welfare.”²³ This definition is broad enough to cover various types of acts a perpetrator can do, which can be considered child sexual abuse.²⁴ As of 2010, nearly 9.2% of children under the age of seventeen who were victims of a crime, were sexually assaulted at some time in their life.²⁵ Specifically, roughly “[one] in [five] girls and [one] in [twenty] boys is a victim of child sexual abuse”²⁶ and “62,939 cases of child sexual abuse were reported in 2012.”²⁷ However, various organizations, including the National Center for Victims of Crime, note that child victims can exhibit a list of challenges,²⁸ even in their adulthood that prevent him or her from reporting child sexual abuse and that is why the numbers can be far higher.²⁹

Keeping this in mind, in child sex abuse cases, there is usually an absence of *real* evidence such as the crime scene or witnesses.³⁰ In addition, victims are known for not reporting the crime more often than they do,³¹ therefore, the victim’s accusation in addition to the

²³ *Child Sexual Abuse*, RAINN, <https://www.rainn.org/articles/child-sexual-abuse> (last visited Nov. 20, 2018).

²⁴ *See id.* (listing various types of acts that constitute child sexual abuse).

²⁵ *See* CHILDREN’S BUREAU, *supra* note 3, at 24; *Child Sexual Abuse Statistics*, NAT’L CTR. FOR VICTIMS OF CRIME, <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/child-sexual-abuse-statistics> (last visited Oct. 26, 2018).

²⁶ *Child Sexual Abuse Statistics*, *supra* note 25.

²⁷ *Raising Awareness of Sexual Abuse: Facts and Statistics*, NAT’L SEX OFFENDER PUB. WEBSITE, <https://www.nsopw.gov/en/Education/FactsStatistics> (last visited Nov. 20, 2018).

²⁸ According to the National Center for Crime Victims, a child who was sexually assaulted or abused can face one or more of the following challenges:

- When the victim is the only witness to the abuse, adults may question the child’s testimony.
- Because perpetrators are often known to the victim and his or her family, it may be difficult for the child to come forward and painful for the family to hear or believe the victim’s account of the crime.
- Victims who disclose the abuse may face anger, disagreement, and even rejection within the family and community which increase their guilt and shame.
- Child CSA victims are often vulnerable and frightened. Their stories may appear inconsistent, and may emerge in bits and pieces. This pattern is normal for a child who has experienced this kind of trauma and attempts to recount it for an adult[.]
- Adult CSA survivors may face misunderstanding and misjudgments when they finally confront and disclose their abuse. Listeners may forget that although the survivor is now an adult, he or she was a child (with a child’s status and capacities) at the time of the abuse.
- News stories that report on these issues may cause the victim to be re-victimized by reading or hearing about the case.

Reporting on Child Sexual Abuse, *supra* note 2.

²⁹ *See id.*

³⁰ *See* Emelie Ernberg et al., *Court Evaluations of Young Children’s Testimony in Child Sexual Abuse Cases*, 23 LEGAL & CRIMINOLOGICAL PSYCHOL. 176, 176 (2018).

³¹ *See Child Sexual Abuse Statistics*, *supra* note 25.

jury's assessment of the victim and the defendant is enough for the verdict.³² So, in a nutshell, the guilty plea, plus the prosecutor's offer, seems to be so compelling that even the innocents file the guilty plea.³³

III. RATIONALITY BEHIND PLEA BARGAIN OFFERS

Various scholars note that the prosecutorial decision to offer a plea bargain is in all probability due to the prosecutor's lack of confidence that the trial will result in a conviction.³⁴ The prosecutor can offer a lesser charge, which is often favored by the defendants.³⁵ The downside is that once the defendant agrees to plea bargain, he waives his right to be found innocent by the jury, and if he is innocent, he gets wrongfully convicted.³⁶ It has been found that innocent defendants are more likely to plead guilty because rationally, the deal offered seems to be a good one,³⁷ and they tend to accept it while forgetting about their innocence.³⁸

To date, in the National Registry of Exonerations, there have been over thirty cases where an innocent agreed to a plea bargain in a child sex abuse case.³⁹ Among the cases, James Blackshire⁴⁰ and co-

³² See Ros Burnett, *What if They Are Innocent? Justice for People Accused of Sexual and Child Abuse*, OXFORD U. PRESS'S BLOG (Oct. 21, 2016), <https://blog.oup.com/2016/10/national-treasure-wrongly-accused/>.

³³ See DEVERS, *supra* note 9, at 1; Yoffe, *supra* note 17; Burnett, *supra* note 32.

³⁴ See, e.g., DEVERS, *supra* note 9, at 2.

³⁵ See *id.* at 1; *What to Expect from the Criminal Justice System*, RAINN, <https://www.rainn.org/articles/what-expect-criminal-justice-system> (last visited Nov. 20, 2018).

³⁶ See DEVERS, *supra* note 9, at 1; Tim Lynch, *Americans Are Bargaining Away Their Innocence*, WASH. POST (Jan. 20, 2016), https://www.washingtonpost.com/news/in-theory/wp/2016/01/20/americans-are-bargaining-away-their-innocence/?noredirect=on&utm_term=.7a60266a5663.

³⁷ See Nancy Gertner et al., *In Response to: 'Why the Innocent Plead Guilty': An Exchange*, N.Y. REV. BOOKS (Jan. 8, 2015), <https://www.nybooks.com/articles/2015/01/08/why-innocent-plead-guilty-exchange/>; Kari Lindberg, *More People Are Pleading Guilty to Crimes They Didn't Commit, So How Can We Stop It?*, REWIRE NEWS (Feb. 8, 2017), <https://rewire.news/article/2017/02/08/people-pleading-guilty-crimes-didnt-commit-can-stop/>.

³⁸ See Lindberg, *supra* note 37.

³⁹ See *Browse Cases*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/detailist> (last visited Oct. 26, 2018).

⁴⁰ James Blackshire was eighteen (and co-defendant Antrone Johnson) when he was accused of having oral sex with a minor (thirteen-year-old) in Dallas, Texas in 1994. See Maurice Possley, *James Blackshire*, NAT'L REGISTRY OF EXONERATIONS (July 2, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3934> [hereinafter Possley, *James Blackshire*]. In 1995, the defendant pled guilty and besides the sentence "was required to pay an \$875 fine at the rate of \$25 per month, a \$5 per month sex offender fee, and to enroll in a sexual abuse therapy program." *Id.* The same year the defendant was arrested "for failing to pay \$210 in probation fees and failing to attend the sexual abuse therapy program" to which he also pled guilty, but "was sentenced to 40 years in prison." *Id.* In 2008, co-defendant

defendant Antrone Johnson⁴¹ pled guilty to aggravated sexual assault and were sentenced to ten-year deferred adjudication.⁴² When it comes to cases where there are co-defendants, one of the

Johnson hired Dallas attorney Shirley Baccus-Lobel, who upon reviewing both cases, motioned for investigation to the Dallas District Attorney and the office's Conviction Integrity Unit. *Id.* After the investigation of case files, in 2008, "Baccus-Lobel filed petitions for state writs of habeas corpus on behalf of Johnson and Blackshire alleging the improper withholding of evidence by the prosecution." *Id.* The same year, Blackshire was released. *Id.* In 2009, the Texas Court of Criminal Appeals granted a new trial based on the fact that Blackshire had an inadequate legal defense, the charges were dismissed, and he was released. *Id.*

⁴¹ Antrone Johnson was a seventeen (and co-defendant James Blackshire) when he was accused of having oral sex with a minor (thirteen-year-old) in Dallas, Texas 1994. Maurice Possley, *Antrone Johnson*, NAT'L REGISTRY OF EXONERATIONS (2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3829> [hereinafter Possley, *Antrone Johnson*]. In 1995, "Johnson pled guilty to aggravated sexual assault and received a 10-year deferred adjudication . . . and [was] fined \$750." *Id.* In the same year, "Johnson was accused of having sexual intercourse with another 13-year-old." *Id.* The incident was alleged to have occurred in a school bathroom. *Id.* When the case was presented to a grand jury, they "refused to return an indictment." *Id.* However, "the case was presented once more to a second grand jury, which [held] a misdemeanor indictment for public lewdness." *Id.* The judge who imposed the first sentence on Johnson learned about the second charge and revoked the probation. *Id.* "Johnson's attorney was not notified[,] and . . . another attorney [was] appointed to represent him." *Id.* In 1996, the newly hired counsel's "motion for discovery of evidence, including a rape kit, hospital reports or statements"—was denied. *Id.* During probation revocation, Johnson was found guilty and sentenced to life in prison. *Id.* "Johnson then pled guilty to the second [offense] and was sentenced to five years in prison." *Id.* Then, another newly hired counsel "filed motions for a new trial and to recuse the judge," but was denied. *Id.* In 2008, "Johnson's family contacted Dallas attorney Shirley Baccus-Lobel," who upon reviewing both cases motioned for investigation to the Dallas District Attorney and the office's Conviction Integrity Unit. *Id.* After investigation on case files, in 2008, it was found that in 1996, the alleged victim told the prosecutor that Johnson did not have any sexual contact with her. *Id.* The victim stated that, "Johnson did not make her give him oral sex. He took her in the bathroom and she told him she didn't want to do it, so he stayed in there and pretended and then let her out." *Id.* In addition, the school officials notified the prosecutor that the alleged victim "had serious credibility problems." *Id.* In regard to the second allegation of child sexual abuse, the alleged victim complainant reported to the prosecutor that "she came to school with a condom, which she gave to her boyfriend, and that she had sex that day with three other students under the basketball bleachers." *Id.* The statements by the two alleged victims were not revealed to Johnson's defense counsel. *Id.* In 2008, Baccus-Lobel filed writs of habeas corpus for Johnson and Blackshire due to improper withholding of evidence by the prosecution. *Id.* The same year, "Johnson's conviction and life [imprisonment] were set aside and [he] was released." *Id.* In 2009, the Texas Court of Criminal Appeals granted a new trial and the charges were dismissed. *Id.* Johnson already served sentence for the second case, and this conviction "remains undisturbed." *Id.*

⁴² *See id.*; Possley, *James Blackshire*, *supra* note 40. If the defendant files a guilty plea, the court may grant the defendant, who is usually a first-time offender, deferred adjudication, which is a form of probation. *See* Jeremy Rosenthal & Derk Wadas, *What Is Deferred Adjudication in Texas?*, ROSENTHAL & WADAS, PLLC (Oct. 17, 2017), <https://www.rosenthalwadas.com/deferred-adjudication-texas/>. It includes a list of requirements such as remaining law-abiding, taking part in community service and a treatment program, and paying fines up to the time the court decides. *See id.* If the defendant successfully completes the requirements for the given amount of time, he will not be convicted. *See id.* If, however, the defendant violates the requirements, then the charges for which he was arrested will take effect, and he can be imprisoned for the maximum amount of sentencing that is required by the law. *See id.*

prosecutor's tactics is to persuade one of the defendants to plead by letting him know that his accomplice can put all the blame on him.⁴³

Forensic evidence implicating the defendant tends to be one of the factors that the prosecutors present to the defendants to "elicit guilty pleas."⁴⁴ In cases of child sexual abuse, co-defendants are crucial to securing convictions due to the lack of forensic evidence in most cases.⁴⁵ Acknowledging the influence forensic evidence can have on the judge and jury, it plays an important role in the determination of whether the defendant committed the crime.⁴⁶ It is found that forensic evidence results are also used to influence the defendants to file guilty pleas, but when the forensic evidence is false, it leads to a wrongful conviction,⁴⁷ as in the case of Knolly Brown, Jr.⁴⁸ Brown Jr.

⁴³ See Gertner et al., *supra* note 37; Sowmya Krishnamurthy, *5 Techniques Interrogators Use to Get Confessions from Murderers*, OXYGEN (Sept. 21, 2017), <https://www.oxygen.com/criminal-confessions/blogs/5-techniques-interrogators-use-to-get-confessions-from-murderers-0>; *The Kings of the Courtroom: How Prosecutors Came to Dominate the Criminal-Justice System*, ECONOMIST (Oct. 4, 2014), <https://www.economist.com/united-states/2014/10/04/the-kings-of-the-courtroom>.

⁴⁴ See Philip Bulman, *Increasing Sexual Assault Prosecution Rates*, NAT'L INST. JUST. J., Nov. 2009, at 15.

⁴⁵ See *The Importance of DNA in Sexual Assault Cases*, RAINN, <https://www.rainn.org/articles/importance-dna-sexual-assault-cases> (last visited Nov. 20, 2018).

⁴⁶ See *id.*; see, e.g., Saul M. Kassin et al., *The Forensic Confirmation Bias: Problems, Perspectives, and Proposed Solutions*, 2 J. APPLIED RES. MEMORY & COGNITION 42, 50 (2013); Kelly Servick, *Reversing the Legacy of Junk Science in the Courtroom*, SCIENCE MAG. (Mar. 7, 2016), <https://www.sciencemag.org/news/2016/03/reversing-legacy-junk-science-courtroom>. Cf. Samuel R. Gross, *Convicting the Innocent*, 4 ANN. REV. L. & SOC. SCI. 173, 174 (2008) (describing the role DNA evidence has had in the exoneration of those falsely convicted).

⁴⁷ See Kassin et al., *supra* note 46, at 46, 48.

⁴⁸ Knolly Brown, Jr. was charged with raping and kidnapping a twelve-year-old girl in Rocky Mount, North Carolina in 2008. See Maurice Possley, *Knolly Brown, Jr.*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5009> (last updated Feb. 8, 2018) [hereinafter Possley, *Knolly Brown, Jr.*]. The victim was taken for a medical examination and was also showed more than 2,600 police mug shots among which she selected five men who resembled the perpetrator. *Id.* The next day, the victim saw her rapist, which was Knolly Brown, Jr., on a porch across the street. *Id.* He was arrested and brought to the victim's home where she identified him. *Id.* Police got a warrant to search Brown Jr.'s house and "found clothing and shoes that matched the . . . description." *Id.* Brown denied being involved in the crime. *Id.* "[H]e was charged with first-degree rape and first-degree kidnapping." *Id.* "A pubic hair recovered during the medical examination of the girl was sent to the North Carolina State Bureau of Investigation Crime Laboratory." *Id.* An analyst declared that it matched Brown's pubic hair. *Id.* The hair was also "sent to the Connecticut Department of Public Safety Forensic Science Laboratory for mitochondrial DNA testing," which showed that the hair was "from the victim and not from Brown." *Id.* The North Carolina crime lab also found blood on the girl's underwear, but no blood type was determined. *Id.* "[N]o semen or sperm could be found." *Id.* "[A] forensic analyst said that two sets of shoeprints found in the abandoned home matched the victim's [and Brown's] shoes." *Id.* In 2009, facing decades in prison, he pled no contest to a lesser charge. *Id.* In 2010, Brown contacted the North Carolina Innocence Inquiry Commission. *Id.* In 2013, "he was released . . . on parole." *Id.* After the Commission's re-investigation, the DNA testing was performed on all the evidence, which revealed presence of semen and sperm. *Id.* The results showed a single

pled no contest to second-degree rape when the forensic experts from various agencies confirmed that the evidence gathered from the victim and from Brown's residence matched.⁴⁹ In turn for Brown's plea, the prosecutor dismissed charges for first-degree rape and first-degree kidnapping and when Brown Jr. pled, he was sentenced to five to six years and nine months in prison.⁵⁰ Another case is of Michael Trevino who was charged with sexual assault of his daughter, pled no contest to indecency with a child after the forensic expertise showed that the victim was sexually active and he was sentenced to eight years of probation.⁵¹ Kevin Peterson was also wrongfully charged with sexually abusing two of his children, and once the medical examination came to find that the child had signs of sexual abuse, he pled no contest to second-degree child abuse, and instead of fifteen years in prison, the court sentenced him to one year in prison, three years of probation, and completion of a sex offender treatment program.⁵²

male DNA profile that was not Brown's. *Id.* The shoe prints showed that the prints found at the crime scene were larger and did not match Brown's shoes. *Id.* In 2016, "the Innocence Commission declared Brown factually innocent, vacated his conviction and . . . the Edgecombe County District Attorney's Office dismissed the case." *Id.* In 2018, "the North Carolina Industrial Commission [compensated] Brown \$185,342." *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Maurice Possley, *Michael Trevino*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4564> (last updated Nov. 26, 2016) [hereinafter Possley, *Michael Trevino*]. Michael Trevino was accused of sexually assaulting own eight-year-old daughter in Austin, Texas in 1990. *Id.* The victim testified that she was sexually assaulted three years earlier by Trevino. *Id.* After a medical examination confirmed that the victim had vaginal penetration, Trevino pled no contest to a charge of indecency with a child and was required to register with the Texas Sex Offender Registry. *Id.* In 2009, the victim, recanted her accusation, now claiming that her stepfather was the perpetrator. *Id.* The prosecution informed the counsel from Actual Innocence Clinic at the University of Texas in Austin that the victim recanted and they investigated Trevino's case. *Id.* Trevino passed a polygraph examination and his daughter was interviewed by a clinical and forensic psychologist, who found her explanation credible. *Id.* In 2012, Travis County District Attorney's office filed a motion to vacate and dismiss Trevino's conviction, and Judge Cliff Brown dismissed the charge. *Id.* Judge Brown specifically "found that the daughter's recantation was credible and truthful, and that Trevino was innocent of the charge for which he was convicted." *Id.* "Trevino later received \$423,000 in compensation for the 20 years he was on the Texas Sex Offender Registry." *Id.*

⁵² See Maurice Possley, *Kevin Peterson*, NAT'L REGISTRY OF EXONERATIONS (Jan. 28, 2013), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4099> [hereinafter Possley, *Kevin Peterson*]. Kevin Peterson was thirty-two years old when he was charged with sexually abusing his nine-year-old daughter and his eleven-year-old son in West Haven, Utah in 1990. *Id.* "The Weber County Attorney alleged that [he] had fondled the children's genitals." *Id.* Peterson was divorced and had custody over the children. *Id.* Medical examinations showed signs of sexual abuse and "Peterson pled no contest to second degree sexual abuse." *Id.* He was sentenced to a maximum of fifteen years in prison, but the sentence was reversed to a lenient one. *Id.* In 1993, however, he was sentenced to fifteen years in prison for failing to complete the treatment program because he maintained his innocence. *Id.* In

However, in some cases, the forensic evidence may show that the defendant was not the perpetrator, but there are instances when the prosecution withheld such evidence to reach a conviction, thus violating the Brady rule.⁵³ As was in the case of Clyde Ray Spencer, who was charged with and pled no contest to first-degree statutory rape and four counts of complicity to statutory rape and was sentenced to two life terms along with an additional fourteen years in prison.⁵⁴ Only when Spencer hired a new attorney and a private investigator was it discovered that forensic evidence detrimental to his acquittal was withheld, and only then was he allowed to withdraw his plea and got exonerated.⁵⁵

The issue of plea bargaining, where prosecutors are “trying to sell” a supposedly good deal, has been discussed by various scholars,⁵⁶ and among the solutions was to grant the defense attorney equal power to that of the prosecutors.⁵⁷ However, it may still lead the innocent

2007, Peterson was released and met his children who confessed that their mother and step-father pressured them to lie. *Id.* In 2008, “Peterson filed a petition under the Utah Factual Innocence Act . . . [with] sworn affidavits from his two children describing how they attempted to tell police that they had not been sexually abused” and how their step-father pressured them to say otherwise. *Id.* Peterson’s counsel got a new medical expert “who examined the original medical reports” and “concluded that there was no evidence of sexual abuse.” *Id.* In 2012, Peterson was declared innocent and was awarded \$70,000 in compensation. *Id.*

⁵³ “The Brady Rule, named after *Brady v. Maryland*, 373 U.S. 83 (1963), requires prosecutors to disclose materially exculpatory evidence in the government’s possession to the defense.” See *Brady Rule*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/brady_rule (last updated Oct. 2017) (emphasis added).

⁵⁴ See Maurice Possley, *Clyde Ray Spencer*, NAT’L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3657> (last updated Dec. 22, 2017) [hereinafter Possley, *Clyde Ray Spencer*]. Clyde Ray Spencer was thirty-seven years old when he was charged with sexually abusing his seven-year-old daughter, her nine-year-old brother, and five-year-old step-son in Clark, Washington in 1984. *Id.* In 1985, Spencer pled no contest because his defense attorney did not prepare the defense. *Id.* He was denied parole five times because he maintained his innocence. *Id.* While in prison, Spencer hired a new attorney and a private investigator who found that prosecutors withheld medical exams proving there was no physical evidence of abuse and that “the children’s mother was having an affair with the detective supervising the investigation.” *Id.* As a result, Washington Governor Gary Locke commuted Spencer’s sentence in 2004. *Id.* Shortly, Spencer’s two children recanted their allegations and testified at a hearing in 2009. *Id.* The children testified that they were extensively questioned by the police and got ice cream after they accused their father. *Id.* Unlike his step-siblings, the step-son “refused to recant.” *Id.* In 2009, a court of appeals vacated the plea, in part, due to Brady violations. *Id.* In 2010, “Spencer withdrew his plea” and “prosecutors dismissed the charges.” *Id.* In 2011, Spencer “moved to Sacramento, California to live with the woman he married while in prison” and “filed a federal lawsuit against Clark County as well as police and prosecutors.” *Id.* In 2014, Spencer got \$9 million in damages, but the verdict was overturned. *Id.* In 2017, “the Ninth Circuit U.S. Court of Appeals reinstated the award” and Spencer settled with \$6 million. *Id.*

⁵⁵ *Id.*

⁵⁶ See Jeffrey Standen, *Plea Bargaining in the Shadow of the Guidelines*, 81 CALIF. L. REV. 1471, 1472–74 (1993).

⁵⁷ See *id.* at 1535 (“[R]eturning sentencing discretion to judges would allocate equal plea

to plead guilty because the deal seems rational.⁵⁸ Take, for instance, the case of Edward Easley who faced thirty years in prison for molesting his niece, but was advised by his attorney to plead no contest and was sentenced to ten years in prison.⁵⁹

If you look closely at plea bargaining, some of the deals seem rational, and prosecutors can significantly reduce the charges and length of prison term, but defendants should also consider extra-legal

bargaining advantages to both prosecutors and defendants.”); see also Dylan Walsh, *Why U.S. Criminal Courts Are So Dependent on Plea Bargaining*, ATLANTIC (May 2, 2017), <https://www.theadlantic.com/politics/archive/2017/05/plea-bargaining-courts-prosecutors/524112/> (identifying several methods utilized by the various states in an attempt to equalize the power between prosecutors and defense counsel during plea bargains).

⁵⁸ See Gertner et al., *supra* note 37.

⁵⁹ See Maurice Possley, *Edward Easley*, NAT’L REGISTRY OF EXONERATIONS (Sept. 10, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5195> [hereinafter Possley, *Edward Easley*]. Edward Easley was thirty-seven years old when he was charged with sexually molesting his girlfriend’s seven-year-old niece in Shasta County, California in 1993. *Id.* In 1992, the victim mother’s physical therapist notified Shasta County Sheriff’s office that the victim had possibly been molested. *Id.* The victim (now nine years old) was interviewed by the investigators and said that Easley had touched her “back private with his front private” several times. *Id.* Two physicians examined the victim and concluded that there was “a history of probable sexual abuse” and the victim went through “multiple episodes of penetration of the vagina by an object approximating the size of an adult finger or larger.” *Id.* Easley “denied molesting the girl.” *Id.* At a preliminary hearing, the victim testified that Easley molested her. *Id.* Easley’s attorney advised him to plea and he did. *Id.* Easley admitted he did not want the victim to testify again nor spend thirty years in prison. *Id.* In 1996, the victim (now thirteen years old) told her aunt, Sharon Rhoades, that Easley was innocent and “she wanted to tell the Shasta County District Attorney’s office.” *Id.* The victim was taken to prosecutor’s office, where she recanted her allegations. *Id.* However, the prosecutor did not notify Easley nor his counsel about it because the victim denied admitting who molested her until years past and she admitted that her cousin and his friend had molested her. *Id.* The victim’s relatives on several occasions tried to contact the prosecutor’s office, but were told that the “case was taken care of and that there wouldn’t be any further need of evidence of any kind and . . . to quit bothering them.” *Id.* Easley was not notified of such calls. *Id.* In 1999, Easley was released on parole and registered as a sex offender. *Id.* Sharon Rhoades told him that the victim recanted. *Id.* Easley contacted Northern California Innocence Project (NCIP). *Id.* In 2007, NCIP filed a writ of habeas corpus since Easley’s conviction was based on false testimony, but were denied. *Id.* In 2008, the California Court of Appeal held an evidentiary hearing. *Id.* In 2009, the victim testified about the real perpetrators that molested her. *Id.* Once her mother found out who they were, she and the perpetrator’s mother forced her to blame Easley to protect Caleb. *Id.* At the hearing, Caleb admitted that he apologized to the victim and testified that the victim’s recantation is true. *Id.* Also, a medical director for the Center for Child Protection as Benioff Children’s Hospital in Oakland, testified that the medical evidence did not reveal extensive physical damage that could only have been the result of prolonged sexual abuse. *Id.* However, in 2009, “the trial court denied the false testimony claim” because the victim’s recantation equates to her initial testimony where she accused Easley and no new evidence in support was presented. *Id.* NCIP filed for a writ of habeas corpus in the California Court of Appeal, but that was denied. *Id.* In 2010, NCIP filed a writ of habeas corpus in the California Supreme Court, but was denied because Easley “was no longer in custody.” *Id.* In 2016, the California Legislature passed NCIP-supported bills that allowed people who are no longer in custody to challenge their convictions and present evidence that points at their factual innocence. *Id.* In 2017, NCIP filed a new petition on Easley’s behalf and Easley’s “conviction was vacated and the charges were dismissed.” *Id.*

factors which can worsen the situation for the defendant who decided to plea. Among these factors, one of them is immigration status.⁶⁰ As was the case of Carlos Lopez-Siguenza, who was wrongfully charged with two counts of aggravated sexual assault, two counts of child abuse, and two counts of endangering a child's welfare, pled guilty to one count of second-degree sexual assault of a minor and sentenced to three years in prison.⁶¹ However, once he served his sentence, because he was a resident of U.S., he was deported to his home country, El Salvador.⁶² Another case is of Juan Carlos Gonzalez-Barboza, who was wrongfully charged with first-degree rape, pled guilty to third-degree rape and was sentenced to five years in prison.⁶³ Since he was an illegal immigrant, upon completing his

⁶⁰ See Criminal Alien Removal Clarification Act of 2018, H.R. 5653, 115th Cong. § 2 (2018) (“Any alien who, at any time after admission, has been convicted of a felony or two misdemeanors, whether under State or Federal law, is deportable.”).

⁶¹ See Maurice Possley, *Carlos Lopez-Siguenza*, NAT'L REGISTRY OF EXONERATIONS (June 16, 2016), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4916> [hereinafter Possley, *Carlos Lopez-Siguenza*]. Carlos Lopez-Siguenza was twenty-two years old when he was charged with sexually assaulting a fourteen-year-old girl in Atlantic City, New Jersey in 2003. *Id.* “The girl was identified by authorities as Melissa Aguilar Cruz.” *Id.* Lopez-Siguenza's attorney requested a copy of the girl's birth certificate which was not notarized and was handwritten in Spanish from Honduras. *Id.* The document was for an individual named “Melissa Gabriela Aguilar Guerrero” and the date of birth was March 3, 1987. *Id.* In 2004, Lopez-Siguenza pled guilty to one count of second-degree sexual assault of a minor and was sentenced to three years in prison. *Id.* “Lopez-Siguenza, a citizen of El Salvador, was a legal permanent resident of the United States,” but after he served his sentence, U.S. Immigration and Customs Enforcement deported him. *Id.* In 2011, Lopez-Siguenza was arrested in Utah after he entered the U.S. illegally. *Id.* His mother hired another attorney who examined the 2004 conviction and “noticed the discrepancy between the name Cruz gave to police and the name on the birth certificate.” *Id.* He sent a letter to the General Consul of Honduras and was informed that the birth certificate was fake and the name Melissa Gabriela Aguilar Guerrero did not exist. *Id.* The General Consul's staff attorney “located a birth certificate for a ‘Melissa Gabriela Andino Munoz’ born on March 3, 1984, who was reported to be living in New Jersey.” *Id.* Lopez-Siguenza's attorney filed a motion for post-conviction relief and in 2012, a judge vacated Lopez-Siguenza's conviction and the prosecution dismissed the charge. *Id.* In 2013, “Lopez-Siguenza filed a federal civil rights lawsuit against the Atlantic City Police Department and the prosecutors” and got \$2,500. *Id.*

⁶² *Id.*

⁶³ See Maurice Possley, *Juan Carlos Gonzales-Barboza*, NAT'L REGISTRY OF EXONERATIONS (Dec. 6, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5240> [hereinafter Possley, *Juan Carlos Gonzales-Barboza*]. Juan Carlos Gonzalez-Barboza was twenty-three years old when he was accused of raping a fourteen-year-old girl in Henderson, Kentucky in 1994. The victim went to the hospital and a rape kit was prepared. *Id.* “The girl, S.W., said she had been at a party with two girlfriends that was attended by about [ten] Hispanic males.” *Id.* She consumed four or five beers and at the party a man took her into a bedroom and raped her. *Id.* The man had a tattoo of a building on one of his biceps. *Id.* One of S.W.'s friends, J.L., identified the man as Juan Carlos Gonzales-Barboza. *Id.* Geraldo Toriba Rodriguez, owner of the apartment, saw a man go into a bedroom with a girl and after she emerged crying, but he could not identify who the man was. *Id.* Police arrested Gonzales-Barboza and took photos of him and showed the photos to S.W. who confirmed he was her attacker. *Id.* S.W. also identified Gonzales-Barboza during a one-on-one viewing. *Id.*

sentence, he was deported to his native country, Mexico.⁶⁴ These cases illustrate that even if the defendants were offered a deal for a lesser prison term, the deals did not save them from deportation.

Another form of plea is an Alford plea,⁶⁵ which Earnest Leap took after rationally reviewing the evidence presented against him.⁶⁶ He was sentenced to three years of probation, but was required to register as a sex offender due to Megan's law, which came into effect years after he pled.⁶⁷ However, scholars note that Alford Pleas violate the defendant's due process rights and impacts the rate of innocents filing false guilty pleas, thereby increasing the rate of wrongful convictions.⁶⁸

Guilty pleas in the above-mentioned cases show the extent to which the prosecutor's deals can reach. Among the cases, there are a number of those where the defendants receive deferred adjudication

Gonzales-Barboza did not have any tattoos, but admitted to kissing S.W. *Id.* Gonzales-Barboza was indicted on a charge of first-degree rape. *Id.* Henderson County District Attorney "offered to reduce the charge if Gonzalez-Barboza would plead guilty," but the rape kit results were not ready. *Id.* Gonzales-Barboza pled guilty to a reduced charge. *Id.* In 1997, Gonzales-Barboza, an illegal immigrant, was deported to Mexico. *Id.* In 2012, Gonzales-Barboza was arrested in Springdale, Arkansas. *Id.* He was charged with illegal entry by an aggravated felon, pled guilty and was sentenced to forty-one months in federal prison. *Id.* He "contacted the Kentucky Innocence Project to obtain the DNA testing that was never completed in the rape case." *Id.* In 2013, "the tests excluded Gonzales-Barboza as the source of the sperm found in the rape kit." *Id.* "[T]he Kentucky Innocence Project filed a motion for a new trial based on the test results." *Id.* "The prosecution opposed the motion." *Id.* In 2013, Henderson County Circuit Court Judge denied the motion. *Id.* In 2015, "the Kentucky Court of Appeals reversed that decision" and "vacated Gonzales-Barboza's conviction." *Id.* In 2017, "the Kentucky Innocence Project filed a motion to dismiss the charge" and "the motion was granted." *Id.*

⁶⁴ *Id.*

⁶⁵ "[A]n Alford plea registers a formal claim neither of guilt nor innocence toward charges brought against a defendant in criminal court. Like a *nolo contendere* plea, an Alford plea arrests the full process of criminal trial because the defendant—typically, only with the court's permission—accepts all the ramifications of a guilty verdict (i.e. punishment) without first attesting to having committed the crime. The name, Alford plea, is taken from North Carolina v. Alford 400 U.S. 25." *Alford Plea*, CORNELL L. SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/alford_plea (last visited Nov. 20, 2018).

⁶⁶ See Maurice Possley, *Earnest Leap*, NAT'L REGISTRY OF EXONERATIONS (Aug. 22, 2016), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4968>

[hereinafter Possley, *Earnest Leap*]. Earnest Leap was thirty-one years old when he was accused of molesting his five-year-old son in Jackson, Missouri in 1989. *Id.* Earnest Leap finalized his divorce and he "was given primary custody of Brodie and his brother, Josh." *Id.* In 1992, Leap entered an Alford plea "with the agreement that he would be sentenced to three years of probation," which he completed. *Id.* In 1994, a sex offender registration law was enacted and Leap was required to register. *Id.* In 2007, his son, Brodie, recanted and said he was coerced by his mother. *Id.* In 2015, Missouri State Representative Jim Neely, petitioned Missouri Governor Jay Nixon for a pardon. *Id.* In 2016, Governor Nixon pardoned Leap. *Id.*

⁶⁷ See 42 U.S.C. § 14071(d), *repealed by* Megan's Law, Act of May 17, 1996, Pub. L. No. 104-145, § 2, 110 Stat. 1345 (*repealed*); Possley, *Earnest Leap*, *supra* note 66.

⁶⁸ See Allison D. Redlich & Asil Ali Özdoğru, *Alford Pleas in the Age of Innocence*, 27 BEHAV. SCI. L. 467, 468 (2009).

for pleading guilty, which is evidently a rationally good deal, but in the cases where it was offered, the defendants have somehow still crossed the line with the law and the court decision was reversed, leading to their incarceration.⁶⁹ As in the case of Domingo Calderon III, who was charged with two counts of aggravated sexual assault, pled guilty to one count of indecency with a minor and was sentenced to ten-year deferred adjudication.⁷⁰ He violated his probation when he refused to confess to molesting his sister as was required in the sex-offender therapy.⁷¹ Another case is of Dahn Clary Jr., who was charged with one count of aggravated sexual assault and indecent liberties, pled guilty to aggravated assault and was sentenced to ten-year deferred adjudication.⁷² He refused to go along with the

⁶⁹ See Possley, *Antrone Johnson*, *supra* note 41; Maurice Possley, *Dahn Clary Jr.*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4923> (last updated Dec. 4, 2016) [hereinafter Possley, *Dahn Clary Jr.*]; Maurice Possley, *Domingo Calderon III*, NAT'L REGISTRY OF EXONERATIONS (Oct. 25, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4033> [hereinafter Possley, *Domingo Calderon III*]; Possley, *Earnest Leap*, *supra* note 66; Possley, *James Blackshire*, *supra* note 40.

⁷⁰ See Possley, *Domingo Calderon III*, *supra* note 69. Domingo Calderon III was twenty-six years old when he was charged with aggravated sexual assault of his two sisters (ages seventeen and eleven) in Atascosa County, Texas in 2003. *Id.* By 2005, the victims recanted their allegations. *Id.* Calderon's counsel set up a meeting with the Atascosa County District Attorney's Office where the victims and their parents were present. *Id.* At the meeting, the older sister recanted, while the younger sister reaffirmed that the allegation was true. *Id.* The prosecution dismissed the charge against the older sister and defendant pled guilty to a reduced charge relating to the younger sister. *Id.* In 2006, Calderon filed a petition for a writ of habeas corpus and attached an affidavit signed by the younger sister where she recanted. *Id.* The victim stated that her father's presence at the meeting was intimidating and she could not recant her initial accusation. *Id.* In addition, it was found that the father had forced the older sister that recanted out of their house. *Id.* After the younger sister submitted her recantation, the case was heard by both the Texas Court of Criminal Appeals and the trial court as it was unclear whether the younger sister's recantation was made before or after the defendant's plea. *Id.* In 2010, the Texas Court of Criminal Appeals determined that the younger sister's recantation was newly discovered evidence in the case. *Id.* As a result, the Texas Court of Criminal Appeals set aside Calderon's conviction and he was released. *Id.* The same year, the Atascosa County District Attorney's Office dismissed all charges. *Id.*

⁷¹ *Id.*

⁷² Possley, *Dahn Clary Jr.*, *supra* note 69. Dahn Clary Jr. was forty-one years old when he was charged with aggravated sexual assault and taking indecent liberties with an eleven-year-old boy in Texarkana, Texas in 2001. *Id.* The victim "told his father that Clary had fondled his genitals under a blanket as they watched television [at] home." *Id.* During the interview with the police, the victim made allegations that "Clary [was] performing oral sex on him on several occasions in 1996 both at Clary's residence and at the boy's residence." *Id.* In 1998, Clary's lawyer suggested him to plead guilty, otherwise he would face life in prison. *Id.* In 2004, Clary's conviction was revoked because he was refusing to cooperate in the sex offender therapy program and was sentenced to ten years in prison. *Id.* The same year, the complainant (now eighteen years old) told his mother that his allegations were false. *Id.* In 2008, Clary was released on parole. *Id.* In 2013, Clary hired attorney Jason Horton, who hired a private investigator to interview the alleged victim and had the victim sign a sworn statement recanting his allegations against Clary. *Id.* Horton filed a writ of habeas corpus to vacate

requirements of sex offender therapy and was sentenced to ten years in prison.⁷³

At first, pleading guilty and getting deferred adjudication may seem to be a good deal. In comparison to being sentenced to prison time, which can range between five and ninety-nine years, the defendant must remain a law-abiding citizen for a period of time, and if able to do so, the arrest will become sealed from public view.⁷⁴ However, attorneys argue that in cases involving sex crimes, it is still a risk for the defendant to take because in such cases, the defendant is agreeing to waive his rights to a trial by an impartial jury as well as being acquitted in trial.⁷⁵

As noted earlier, in child sex abuse cases, the victim's accusation is sometimes enough to reach a conviction.⁷⁶ Therefore, the defendant can motion to withdraw his plea if the victim comes forward and recants her accusation.⁷⁷ As in the case of Willie Gavin, who was charged with molesting his step-daughter over a period of time and subsequently pled guilty to sexually enticing a child and first-degree sexual assault, and sentenced to eight years in prison.⁷⁸ Years later

Clary's conviction. *Id.* In 2014, Bowie County District Judge held an evidentiary hearing with the alleged victim (now twenty-eight years old) where he testified that he accused Clary because he was not spending time with him. *Id.* He said that Clary protected and nurtured him because his father was an alcoholic and his mother was mentally unstable. *Id.* "During the hearing, the [victim] apologized to Clary." *Id.* In 2016, the Texas Court of Criminal Appeals vacated Clary's conviction and the prosecution dismissed the charge. *Id.* Clary received \$522,900 and a monthly annuity of \$3,200 in compensation. *Id.*

⁷³ *Id.*

⁷⁴ See *Deferred Adjudication for Sexual Crimes: Is It Worth It?*, KEITH GORE, LAW. (Jan. 25, 2018) <https://www.keithgore.com/blog/2018/01/deferred-adjudication-for-sexual-crimes-is-it-worth-it.shtml>; Rosenthal & Wadas, *supra* note 42.

⁷⁵ See *Deferred Adjudication for Sexual Crimes*, *supra* note 74; Rosenthal & Wadas, *supra* note 42.

⁷⁶ See Burnett, *supra* note 32.

⁷⁷ See *People v. Schneider*, 991 P.2d 296, 297 (Colo. App. 1999) (affirming the trial court's decision to grant the defendant's request to withdraw his guilty plea based on the recantation of his daughter's allegations that he had sexually abused her); *reversed and remanded* 25 P.3d 755, 757 (Colo. 2001) ("[A]nnounc[ing] a new standard tailored to post conviction review for guilty pleas.").

We hold that in order for a court to permit such a withdrawal and set the matter for trial, the court must reasonably conclude that: (1) the newly discovered evidence was discovered after the entry of the plea, and, in the exercise of reasonable diligence by the defendant and his or her counsel, could not have been earlier discovered; (2) the charges that the People filed against the defendant, or the charge(s) to which the defendant pleaded guilty were actually false or unfounded; and (3) the newly discovered evidence would probably bring about a verdict of acquittal in a trial.

Schneider, 25 P.3d at 757.

⁷⁸ See Maurice Possley, *Willie Gavin*, NAT'L REGISTRY OF EXONERATIONS (June 16, 2015), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4706>

he was released on parole; his attorney found the alleged victim who confessed that her foster mother forced her to lie, and only then was Gavin allowed to withdraw his plea and be exonerated.⁷⁹

Whereas David Lazzell, a man wrongfully accused of molesting his own daughter, pled guilty to molestation of a juvenile and was sentenced to a five-year suspended prison term and placed on probation.⁸⁰ Years later, the alleged victim confessed both to her pastor and in court, that while her parents were divorcing, her mother pressured her to falsely accuse her father or she would lose custody of her.⁸¹ It was later found that the victim wanted to recant to set her father free, but learned that her mother could be imprisoned for pressuring her to accuse him of the crime, so she waited until her mother passed away.⁸² In addition, despite the fact that Lazzell was exonerated, he was still registered as a sex offender until law students moved to have his name removed.⁸³ This case shows how difficult it is to remove the brand of being a child molester. In both of these cases, the defendants were able to withdraw their guilty pleas only after the alleged victims recanted.⁸⁴ In other words, while plea bargaining once seemed like a “good deal,” it has lost its

[hereinafter Possley, *Willie Gavin*]. Gavin was thirty-seven years-old when he was accused of molesting his eleven-year-old stepdaughter in Kenosha, Wisconsin in 1997. *Id.* Gavin claimed he was innocent, but pled no-contest to sexually enticing a child and to first-degree sexual assault and sentenced to eight years in prison. *Id.* In 2001, the alleged victim confessed to her pastor that she lied and that her foster mother forced her to accuse Gavin. *Id.* In 2002, Gavin was placed on parole and registered as a sex offender. *Id.* In 2012, he was able to find a good attorney who contacted the alleged victim, now in her twenties. *Id.* Based on the woman’s statement, the counsel requested to allow Gavin to withdraw his no-contest plea. *Id.* In April 2013, during a hearing, the woman testified that her foster mother pressured her to lie. Later that year, Gavin’s no-contest plea was vacated. *Id.* In 2014, the Kenosha County District Attorney dismissed the charges. *Id.* In 2015, Gavin received \$25,000 and \$23,700 for legal fees and costs. *Id.*

⁷⁹ *Id.*

⁸⁰ See Maurice Possley, *David Lazzell*, NAT’L REGISTRY OF EXONERATIONS (Dec. 17, 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4078>

[hereinafter Possley, *David Lazzell*]. Lazzell was thirty-four years old when he was charged for molesting his twelve-year-old daughter in Iberia Parish, Louisiana in 1990. *Id.* Lazzell was arrested, “pled guilty to molestation of a juvenile [and] was given a five-year suspended prison sentence and placed on probation.” *Id.* In 1995, the victim, now eighteen years-old, notified authorities that she lied, as she didn’t want her father to get custody of her after parent’s divorce. *Id.* But she did not pursue her father’s release as she and her mother fell into the risk of getting prosecuted. *Id.* In 2007, the victim wrote out a recantation, after her mother committed suicide and wanted to clear her father’s name. *Id.* During the divorce, her mother said that she will never see her again, unless she accused her father. *Id.* A motion for a new trial was granted and the case was dismissed. *Id.* Despite the case expungement, Lazzell was still a registered sex offender until 2012, when Lazzell’s name was removed from the list. *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ See *id.*; Possley, *Willie Gavin*, *supra* note 78.

value and rationality, and seems to be yet another cause of wrongful conviction.

After analyzing guilty pleas in child sex abuse cases from the National Registry of Exonerations, the most common charges the defendants were incriminated of were the following: first-degree rape,⁸⁵ statutory rape,⁸⁶ sexual assault,⁸⁷ child molestation,⁸⁸ and

85

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than 11 years old; or
4. Who is less than 13 years old and the defendant is 18 years old or more.

Rape in the first degree is a class B felony.

N.Y. PENAL LAW § 130.35 (McKinney 2018); see *New York Rape Laws*, FINDLAW, <https://statelaws.findlaw.com/new-york-law/new-york-rape-laws.html> (last visited Oct. 30, 2018).

⁸⁶ It is an offense where the defendant had a sexual intercourse either by consent or without consent with someone of a designated age set by state law, typically between fourteen and eighteen years. See Sandra Norman-Eady et al., *Statutory Rape Laws by State*, OLR RES. REP. (Apr. 14, 2003), <https://www.cga.ct.gov/2003/olrdata/jud/rpt/2003-R-0376.htm>.

87

In California[,] a sexual assault conviction carries with it a possible sentence of [twenty-four], [thirty-six], or [forty-eight] months in prison, as well as a possible \$10,000 fine. This type of sentence is known as “determinate” since it results in a specific term of years in prison. . . . [A] judge will examine the facts of the case, including aggravating and mitigating factors, in order to settle on the exact sentence. In New York, sexual assault constitutes a class D felony. The sentencing judge has discretion to set the sentence, but the law binds the judge to impose a sentence within a certain range. Moreover, the sentence is an “indeterminate” one, which means that the judge doesn’t set an exact term. Instead, the judge picks a range of years from in between the absolute minimum and the absolute maximum set by law. The defendant could serve the entire term or just the minimum amount depending on their behavior in prison and other factors. New York law sets the absolute minimum sentence for sexual assault at one to two years and the absolute maximum penalty at seven years. Judges can choose any range that falls within those limits.

Sexual Assault Penalties and Sentencing, FINDLAW, <https://criminal.findlaw.com/criminal-charges/sexual-assault-penalties-and-sentencing.html> (last visited Nov. 21, 2018).

88

In Georgia[,] a child molestation conviction imposes a sentence of [five] to [twenty-five] years for a first offense and [ten] years to life for subsequent convictions. California’s penal code imposes up to eight years for each felony count of lewd or lascivious acts with a minor under the age of [fourteen]. Each act is a separate felony charge. In California, sexual intercourse or sodomy with a child [ten] years or under is punishable in state prison for up to [twenty] years to life. Ohio’s penal code states that anyone who rapes a child under [thirteen] is to be charged with a first-degree felony and will receive “prison term or term of life imprisonment pursuant to section 2971.03—Sentencing for Sexually Violent Predators” whether or not the perpetrator knew the victim’s age.

first-degree kidnapping;⁸⁹ whereas the most common charges the defendants were offered to plead to are statutory rape, second-degree rape,⁹⁰ and indecency with a child.⁹¹ All of these charges carry penalties and brand the defendant as a sex offender for life, the only issue being the defendant is an innocent person.⁹² Hence, in the face of multiple charges, some defendants tend to plead guilty to the prosecution's "deal," which cuts down the initial charges and gives defendants the impression that the sentencing verdict is much more lenient than what they were facing at the outset.⁹³

Ave Mince-Didier, *Consequences of a Child Molestation Conviction*, CRIM. DEF. LAW., <https://www.criminaldefenselawyer.com/resources/criminal-defense/sex-crimes/consequences-child-molestation.htm> (last visited Oct. 29, 2018).

⁸⁹

- (1) A person is guilty of kidnapping in the first degree if he or she intentionally abducts another person with intent:
 - (a) To hold him or her for ransom or reward, or as a shield or hostage; or
 - (b) To facilitate commission of any felony or flight thereafter; or
 - (c) To inflict bodily injury on him or her; or
 - (d) To inflict extreme mental distress on him, her, or a third person; or
 - (e) To interfere with the performance of any governmental function.
- (2) Kidnapping in the first degree is a class A felony.

WASH. REV. CODE § 9A.40.020 (2018).

⁹⁰

A person is guilty of rape in the second degree when:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or
2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

N.Y. PENAL LAW § 130.30 (McKinney 2018); see *New York Rape Laws*, *supra* note 85.

⁹¹ In Texas Penal Code Section 21.11, indecency with a child means "sexual contact with the child" or sexual exposure involving a child under the age of 17 either by contact or by exposure. TEX. PENAL CODE ANN. § 21.11(a) (West 2017). The punishment for indecency with a child by contact is "a second degree felony and carries a prison range of two to twenty years and/or a fine of up to \$10,000[.]" and "[i]ndecency with a child by exposure is a third degree felony and carries a prison range of two to ten years and/or a fine of up to \$10,000." *What Is Indecency with a Child in Texas?: Indecency with a Child*, VARGHESE SUMMERSETT (Aug. 20, 2018, 7:26 PM), <https://www.versustexas.com/indecency-child/>.

⁹² See Phil Locke, *The Wrongfully Convicted Sex Offender*, WRONGFUL CONVICTIONS BLOG (Sept. 2, 2013), <https://wrongfulconvictionsblog.org/2013/09/02/the-wrongfully-convicted-sex-of-fender/>.

⁹³ See *Plea Bargaining: Areas of Negotiation*, *supra* note 18.

IV. FACTORS IMPACTING PLEA BARGAIN OFFERS

A. *Prior Criminal Record and Pending Charges*

Among the cases being reviewed, there are defendants who pled guilty because they had a prior criminal record.⁹⁴ Research shows that individuals with a prior criminal record are more likely to plead guilty, even if they are innocent.⁹⁵ Barry Byars pled guilty to injury to a child rather than facing two counts of child sexual abuse and was sentenced to 10 years in prison.⁹⁶ In Byars' case, because he had a prior criminal record, he was certain that the jury would not believe him and convict him to a lengthier prison term.⁹⁷ Another wrongfully convicted individual, Joe Lea, had a prior conviction for assault with a deadly weapon and was charged with one count of oral copulation, one count of sodomy, and two counts of committing a lewd act, and was sentenced to fifteen years in prison.⁹⁸ After the trial was found

⁹⁴ See, e.g., Maurice Possley, *Barry Byars*, NAT'L REGISTRY OF EXONERATIONS (May 8, 2013), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4162> [hereinafter Possley, *Barry Byars*].

⁹⁵ See DEVERS, *supra* note 9, at 2.

⁹⁶ See Possley, *Barry Byars*, *supra* note 94. Barry Byars was twenty-four years old when he was charged with sexually assaulting his eleven-year-old niece in Beaumont, Texas in 2001. *Id.* The victim's father reported to police that his daughter was raped by Byars. *Id.* The victim's mother said the girl was lying. *Id.* Byars, who was the mother's brother, had two prior convictions for drug possession. *Id.* The victim's father brought her to the police and she was interviewed by child abuse investigators. *Id.* She stated that on one occasion Byars touched her genitals with his penis and on the second occasion Byars penetrated her and ejaculated. *Id.* Victim's grandmother also said the girl was lying because earlier she accused her five-year-old brother of something similar. *Id.* In 2004, Byars, fearing he would face a lengthy prison term because of prior convictions, pled guilty. *Id.* In 2005, the victim recanted and Byars filed for a writ of habeas corpus. *Id.* In a sworn affidavit, the victim stated that at the time of the allegation, her parents were divorced and she was living with her mother, but wanted to live with her father and saw this as the only way to be permitted to do so. *Id.* The victim noted that she had been sexually abused earlier by her grandfather and just over-reacted when she and Byars were home and she accidentally saw his penis through his boxers. *Id.* The victim testified in Jefferson County Criminal District Court. *Id.* The trial court held that the conviction be vacated and the case dismissed. *Id.* In 2005, the Texas Court of Criminal Appeals ordered the conviction vacated and prosecutors dismissed the case. Byars was released. *Id.*

⁹⁷ See *id.*

⁹⁸ Maurice Possley, *Joe Lea*, NAT'L REGISTRY OF EXONERATIONS (Feb. 12, 2013), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4103> [hereinafter Possley, *Joe Lea*]. Joe Lea was twenty-four years old when he was accused of sexually molesting two-year-old boy in Solano, California in 1999. *Id.* The victim alleged that Lea sodomized him and tried to force him to engage in oral sex. *Id.* "The boy was taken to a hospital where a sexual assault examiner said she found bruising in the boy's mouth and some lacerations near his rectum." *Id.* "A neighbor reported to police . . . she heard screaming that she recognized as the boy's coming from a smokehouse in the backyard." *Id.* Lea, who had a previous conviction for assault with a deadly weapon, was arrested and charged. *Id.* The boy identified body parts on a drawing and said that Lea had sexually assaulted him. *Id.* "The boy's older brother, who was by then [sixteen], testified that Lea had sexually assaulted him when he was five years old."

to be in error and a new trial was set up, Lea pled no contest to a reduced charge of sixteen years in prison as there was a risk of being sentenced to life in prison.⁹⁹ Further, Christopher McDermott, who was wrongfully charged with child abuse, third and fourth-degree sexual offense and assault, pled guilty to third-degree sexual offense and was sentenced to three years in prison because, at the time of the charge, he was on probation for two counts of domestic abuse which were revoked once he pled guilty and was sentenced to serve four years for the second charge concurrently with the first charge.¹⁰⁰

When it comes to child sex abuse cases, police investigators can interrogate the suspect for countless hours and may even lie to the suspects to get them to confess, while anything that the suspect says will be accepted by the court as evidence.¹⁰¹ For instance, Troy Mansfield, who had a charge for marijuana possession, was wrongfully charged with molesting a child.¹⁰² He pled guilty to first-

Id. Several witnesses testified that Lea's home "visits were brief and no sexual assaults had occurred." *Id.* Lea maintained his innocence and the jury convicted and sentenced him to fifteen years to life in prison. *Id.* In 2003, Lea filed for a writ of habeas corpus, but it was denied. *Id.* "In 2005, the U.S. Court of Appeals for the 9th Circuit overruled that decision and ordered a new trial" because the jury was not instructed on "how to treat the testimony of the two-year-old boy's older brother." *Id.* In 2006, Lea pled no contest to a sixteen-year prison term rather than a life sentence. *Id.* Lea hired a new attorney whose private investigator interviewed the two-year-old boy's mother. *Id.* The woman said that she coached the boy on what to say at the trial, though at trial she denied such statement. *Id.* The attorney filed for a writ of habeas corpus and at a hearing the mother admitted she spent hours getting the boy to understand the difference between a lie and the truth. *Id.* In 2008, Solano County Superior Court vacated Lea's conviction based on the false testimony. *Id.* In 2009, Judge William Harrison barred the victim's testimony because the boy, now twelve years old, had no memory of the sexual assault. *Id.* The judge held that the boy's trial testimony was unreliable. *Id.* In 2009, charges were dismissed and Lea was released from prison. *Id.* His compensation claim was denied. *Id.*

⁹⁹ *Id.*

¹⁰⁰ Maurice Possley, *Christopher McDermott*, NAT'L REGISTRY OF EXONERATIONS (Feb. 10, 2016), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4823> [hereinafter Possley, *Christopher McDermott*]. Christopher McDermott was twenty-three years old when he was charged with sexually molesting his girlfriend's five-year-old daughter in Hampstead, Maryland in 1998. *Id.* The girl told her mother that she was molested and was interviewed by investigators from a Child Abuse and Sexual Assault Unit. *Id.* McDermott was arrested and charged. *Id.* The prosecution revoked his probation for two prior convictions for domestic violence. *Id.* In 1999, McDermott pled guilty and sentenced, but later the girl confessed that she lied and her father and step-mother notified the attorney office saying: "We have no special interest at all in seeing this defendant released . . . but we do not wish a man to serve time for something he did not do." *Id.* In 2000, investigators from the Child Abuse and Sexual Assault Unit found that the girl lied because she did not want McDermott to live with her mother. *Id.* McDermott's lawyer motioned to vacate the conviction and the prosecution dismissed the charge. *Id.*

¹⁰¹ See Martinovich & Rosenberg, *supra* note 1.

¹⁰² Maurice Possley, *Troy Mansfield*, NAT'L REGISTRY OF EXONERATIONS (Jan. 30, 2018), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5268> [hereinafter Possley, *Troy Mansfield*]. Troy Mansfield was twenty-five years old when he was

degree aggravated assault and indecency with a child when the investigator promised Mansfield that he would not go to prison, but instead would spend time in the mental health facility.¹⁰³ Yet after giving the plea, the detectives admitted that the deal offered was a fake.¹⁰⁴ But the plea that he made was to be presented in court as a confession.¹⁰⁵ Following this, the prosecutor offered Mansfield the deal that if he would plead guilty to second-degree indecency with a child, the charge of first-degree aggravated assault—carrying a maximum of life in prison—would be dropped.¹⁰⁶ Mansfield accepted the deal and a sentence of 120 days in jail, ten years of probation and registration as a sex offender accompanying the charge of second-degree indecency with a child.¹⁰⁷

Besides a prior criminal record, pending charges that are unrelated to the accusation may also push the defendants to plea, as in the case of Hilliard Fields.¹⁰⁸ Fields was charged with sexually assaulting a

charged with sexually molesting a four-year-old girl in Round Rock, Texas in 1992. *Id.* After coming from a play date with Mansfield's two-year-old son, the victim, identified as S.B., told her mother that "Mansfield had tickled her bottom and stuck a finger in her anus while she was wearing panties." *Id.* The mother notified police and Mansfield was called to the station. *Id.* Mansfield, who had a misdemeanor charge of possession of marijuana, was now accused of molesting S.B. *Id.* Mansfield maintained his innocence, but police threatened to arrest his wife and take away their children. *Id.* They also offered a deal that if he pled, he will go to a mental health center. *Id.* When he agreed, they said it was a joke, but if he will confess, he will get a lenient sentence. *Id.* "In . . . 1993, Williamson County prosecutors told Mansfield that if he took and passed a polygraph examination, the charges would be [dropped]," but the examiner said that his responses denying molesting the victim were false and the charges were still attached. *Id.* Then, the prosecution offered to dismiss the first-degree aggravated sexual assault charge and in return, Mansfield would spend 120 days in the Williamson County Jail and be on probation for ten years and register as a sex offender. *Id.* Mansfield pled guilty and went to the Williamson County Jail. *Id.* In 2013, a judge found that the former Williamson County District Attorney, Ken Anderson, should face criminal charges as many conviction cases he led contained mistakes. *Id.* At the time, Mansfield was a registered sex offender for years. *Id.* He sought reinvestigation of his case because Anderson was the District Attorney at the time. *Id.* In 2014, Mansfield got the prosecution file and found evidence supporting his innocence. *Id.* In 2015, Mansfield's new attorney filed for a writ of habeas corpus to vacate his conviction. *Id.* In 1992, Mansfield was notified that there is a video of S.B. describing in detail what Mansfield did to her, and that a medical expert proved that S.B. was anally molested. *Id.* However, there was no video and no physical examination by a doctor. *Id.* In 2016, Williamson County Judge vacated Mansfield's conviction and prosecutors dismissed the charge. *Id.* In 2018, Mansfield filed a federal lawsuit against Williamson County alleging that prosecutors had violated his civil rights. *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ Maurice Possley, *Hilliard Fields*, NAT'L. REGISTRY OF EXONERATIONS, (June 2012), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3851> [hereinafter Possley, *Hilliard Fields*]. Hilliard Fields was twenty-five years-old when he was charged with sexually assaulting a fifteen-year-old girl in Dallas County, Texas in 1997. *Id.*

minor and had to plead guilty to this charge as well as to an unrelated drug charge that he was facing to be sentenced to five years in prison concurrently for the two charges.¹⁰⁹ Another instance where a pending charge impacted the accused's choice to plead guilty was that of Rubin Swift, who, when accused of sexually assaulting a fifteen-year-old, was also facing charges of insurance fraud.¹¹⁰ Swift was charged with rape of a minor and plead no contest to the charge of insurance fraud as well as one count of first-degree felony rape of a minor and one count of involuntary deviate sexual intercourse.¹¹¹ Swift was thereafter sentenced to twenty-eight to sixty years and nine months in prison.¹¹²

B. Defendant's Age

Facing criminal charges can make one feel persecuted.¹¹³ To date,

"Fields was a friend of the girl's mother and the girl had a crush on him." *Id.* The alleged victim wrote a love letter to Fields, such that when her mother found it she believed that the letter was proof that Fields and the alleged victim had a sexual relationship. *Id.* Even though the alleged victim denied the accusations, "Fields was charged with sexually assaulting a [minor]." *Id.* The same year, he pled guilty to this and an unrelated charge in return for a lenient sentence. *Id.* In 2002, he was released, but had to register as a sex offender. *Id.* In 2011, the mother recanted her accusation and "the conviction was vacated and the charges were dismissed . . ." *Id.* Fields received \$459,583 and a monthly annuity of \$2,200. *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Maurice Possley, *Rubin Swift*, NAT'L. REGISTRY OF EXONERATIONS (June 18, 2012), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3886> [hereinafter Possley, *Rubin Swift*]. Rubin Swift was thirty-four years-old when, in 2008, he was charged with raping a girl in Erie, Pennsylvania. *Id.* The victim alleged "that Swift assaulted her at various locations in Erie." *Id.* Swift was arrested "on a fugitive warrant for insurance fraud." *Id.* He claimed that his truck was stolen to collect on the insurance and pay for medical bills. *Id.* He "was arrested by deputy U.S. Marshals . . . in Rochester, New York, after he escaped from a mental health facility." *Id.* Initially, Swift was found incompetent to stand trial, but in 2009, was found competent and pled no contest and sentenced. *Id.* In 2010, the Erie County District Attorney questioned the validity of Rhonda Henderson's medical testimony as her results did not match the victim's injuries in other sexual assault cases. *Id.* In 2011, Swift was allowed to withdraw his plea due to invalid forensic evidence. *Id.* In 2012, the prosecution changed the years of when the assaults occurred to 2005 and 2006, instead of 2006 and 2007. *Id.* The victim, now sixteen years-old, claimed that Swift was guilty. *Id.* A medical defense expert examined Henderson's original finding and found no evidence of sexual assault. *Id.* In addition, Swift did not live in Erie at the time of crime. *Id.* In 2012, a jury acquitted Swift, but he remained in custody for the insurance fraud and faced charges in Ohio for robbing and kidnapping drug dealers. *Id.*

¹¹¹ *Id.* "A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age" and comes with a maximum sentence of forty years. 18 PA. CONS. STAT. § 3123(b), (d) (2018).

¹¹² See Possley, *Rubin Swift*, *supra* note 110.

¹¹³ See *Coping with the Stress of Prosecution*, MAHONEY TRIAL AND LITIG. GROUP, <https://www.relentlessdefense.com/what-should-i-do/coping-with-stress-of-prosecution/> (last visited Oct. 30, 2018).

roughly thirty innocent persons have pled guilty in child sex abuse cases, and among them, six were adolescents.¹¹⁴ A recent study has questioned whether adolescents facing charges are too young to be able to rationally evaluate a plea bargain that is being offered to them by a prosecutor.¹¹⁵ Specifically, the study's results showed that adolescents are prone to plead guilty even if they are innocent.¹¹⁶ Moreover, the chances of pleading guilty decreases with the increase in age.¹¹⁷ In other words, when an adolescent faces criminal charges, he does not think about the fact that he is innocent; rather he is evaluating the deal, which leads to wrongful conviction. As a result, researchers recommend that adolescents facing charges should not be offered plea bargains, or that they should be offered only in lighter sentences as opposed to those facing felony charges.¹¹⁸ Another similar study was done in the United States, which found that as a result of their ongoing mental development, adolescents are more likely to plea because they do not have the ability to evaluate the long-term consequences of their decision.¹¹⁹

The minimum age to be tried as an adult varies by state, but from the psychological perspective, people are not capable of rationally evaluating the costs and benefits of a plea bargain in their teens.¹²⁰ Among the cases being discussed, Rodney Harris was the youngest, fifteen years old at the time of his arrest, among those wrongly charged with child sex abuse.¹²¹ After being charged as an adult with

¹¹⁴ See *Browse Cases*, *supra* note 39.

¹¹⁵ See Rebecca K. Helm, et al., *Too Young to Plead? Risk, Rationality, and Plea Bargaining's Innocence Problem in Adolescents*, 24 PSYCHOL. PUB. POL'Y., & L. 180, 190 (2018).

¹¹⁶ See *id.* at 189; see also Traci Pedersen, *Teens More Likely to Plead Guilty to Crimes They Didn't Commit*, PSYCH CENT., <https://psychcentral.com/news/2018/03/16/teens-more-likely-to-lead-guilty-to-crimes-they-didnt-commit/133818.html> (last visited Nov. 21, 2018) (“[A]dolescents are less able to perceive risk and resist the influence of peers because of developmental immaturity.”).

¹¹⁷ See Helm, *supra* note 115, at 182, 189.

¹¹⁸ See *id.* at 190; see also Pedersen, *supra* note 116 (“New study findings suggest that teens should not be allowed to make deals where they face a lesser charge in return for pleading guilty, because they are less capable of making mature decisions and more likely to be enticed by such an offer— even when they have done nothing wrong.”).

¹¹⁹ See Tina Zottoli, et al., *supra* note 10, at 257.

¹²⁰ See Helm, *supra* note 115, at 181.

¹²¹ See *Browse Cases*, *supra* note 39; Maurice Possley, *Rodney Harris*, NAT'L REGISTRY OF EXONERATIONS (Aug. 16, 2018), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5120> [hereinafter Possley, *Rodney Harris*]. Rodney Harris was fifteen years old when he was charged as an adult with two counts of aggravated sexual assault in Chicago, Illinois, in 2002. Possley, *Rodney Harris*, *supra*. Harris called 911 “reporting that a relative had verbally threatened him.” *Id.* When police arrived, the relative accused Harris of sexually molesting his two children and Harris was arrested. *Id.* Police interrogated Harris for fifteen hours and he signed a confession. *Id.* Harris's grandmother, who was not able to read or write, also signed the confession. *Id.* Harris pled guilty and was sentenced to fifteen years in prison.

two counts of aggravated assault, he pled guilty to a reduced sentence of fifteen years.¹²² Fifteen hours after his arrest and with the permission of his defense attorney—who failed to review the accusation of the father of the two victims—Harris signed a confession.¹²³ The next wrongfully convicted minor was Dayna Christoph, who at the moment of arrest, was sixteen years old when she was charged with molesting her sister.¹²⁴ After she signed the confession to one count of first-degree rape, she was sentenced to twenty-one to twenty-eight weeks in a juvenile corrections facility, but once she turned eighteen, she was transferred to an adult corrections facility.¹²⁵ While only seventeen at the time of arrest, Davonn Robinson, who was charged with molesting two children, pled no contest and was sentenced to 5 years in prison and 10 years supervision.¹²⁶ In addition, Antrone Johnson was charged with

Id. In 2005, he filed a post-conviction motion arguing that he had an inadequate legal defense, but the petition was denied. *Id.* In 2006, the Illinois Appellate Court reversed that decision and “[found] that trial counsel’s advice to plead guilty to aggravated criminal assault may have been unreasonable.” *Id.* However, at an evidentiary hearing, the trial court denied the motion for a new trial. *Id.* In 2010, the “Illinois Appellate Court reversed that ruling and vacated Harris’s guilty plea” and Harris was released on house arrest. *Id.* In 2011, the accuser, “the father of the two children, gave a sworn affidavit,” alleging that he never accused Harris of sexually assaulting his children. *Id.* In 2013, the prosecution dismissed the charges. *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ See Maurice Possley, *Dayna Christoph*, NAT’L REGISTRY OF EXONERATIONS (June 2012), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3869> [hereinafter Possley, *Dayna Christoph*]. Dayna Christoph was sixteen years-old when she was charged with molesting her younger sister in Spokane, Washington in 1995. *Id.* The defendant was mentally disabled and had resided in foster homes and mental institutions numerous times. *Id.* She was born with fetal alcohol syndrome and was a victim of repeated physical and sexual abuse. *Id.* In 1995, her adoptive mother accused Christoph of sexually molesting her younger sister. *Id.* The counselor from a mental center, the mother, and the police, questioned Christoph, and she confessed that she molested her sister using her hands and a doll. *Id.* In 1999, a non-profit organization, Center for Justice, filed a motion to vacate the guilty plea, arguing that Christoph received ineffective counsel and citing the presence of new evidence in the case. *Id.* Christoph testified that she was pressured in the interrogation. *Id.* In 2000, Spokane County Superior Court dismissed the conviction. *Id.* The court found that the alleged victim was never questioned by police. *Id.* In fact, there was no evidence that a crime occurred, and the defense counsel did not spend time reviewing it. *Id.* The same year, the Washington Court of Appeals upheld the dismissal of the case. *Id.*

¹²⁵ *Id.*

¹²⁶ See Maurice Possley, *Davonn Robinson*, NAT’L REGISTRY OF EXONERATIONS (June 2012), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3585> [hereinafter Possley, *Davonn Robinson*]. Davonn Robinson was seventeen years-old when he was charged with sexually assaulting his twin eight-year-old cousins, a boy and a girl, in 2006. *Id.* The alleged victim told police that Robinson sexually assaulted the girl and forced the brother to have sex with his sister. *Id.* Robinson, a low-functioning individual, allegedly confessed to the crime, but the confession was not recorded. *Id.* In 2006, Robinson was convicted. *Id.* In 2010, the girl “victim,” now thirteen years-old, confessed that her accusation was false and was forced by her mother. *Id.* The public defender’s office then questioned the

aggravated sexual assault and pled guilty to be sentenced to deferred adjudication for ten years, which was removed once he was accused again of sexually assaulting another teen to which he also pled guilty, but was sentenced to life imprisonment.¹²⁷ Antrone Johnson's co-defendant, James Blackshire, was only eighteen years old at the time of arrest when he was wrongly charged with aggravated sexual assault of a minor and also pled guilty to be sentenced to deferred adjudication for ten years.¹²⁸ A nineteen-year-old, Stephen Brodie, was charged with child abduction and molestation, and was facing a ninety-nine-year sentence when he pled guilty to rape, where he was sentenced to five years in prison with a requirement that he register as a sex offender.¹²⁹ In the face of extensive psychological pressure from the criminal charges each individual was facing, these adolescents agreed to the pleas that were offered to them rather than claiming their innocence.

C. Handicapped Defendants

Due to their physical and mental limitations which render them more vulnerable, defendants who are handicapped are more likely to plead guilty.¹³⁰ As in the case of Dayna Christoph, who was born with

brother who also recanted. *Id.* The Wisconsin Innocence Project reinvestigated the case and found that the victims' mother, who was eventually convicted for child abuse, forced them to accuse Robinson by beating them. *Id.* In 2010, the recantation was presented in Milwaukee County Circuit Court and the court vacated Robinson's conviction, whereby he was later released. *Id.*

¹²⁷ See Possley, *Antrone Johnson*, *supra* note 41.

¹²⁸ See Possley, *James Blackshire*, *supra* note 40.

¹²⁹ See Stephanie Denzel, *Stephen Brodie*, NAT'L REGISTRY OF EXONERATIONS (June 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3056> [hereinafter Denzel, *Stephen Brodie*]. Stephen Brodie was nineteen years old when he was accused of abducting and molesting a five-year old girl in Richardson, Texas in 1990. *Id.* The victim described the perpetrator as "a fat, white man with a strange voice." *Id.* Among the evidence, the police discovered a hair from the blanket and a fingerprint on the window. *Id.* In 1991, Stephen Brodie was arrested for a separate offense. *Id.* He was interrogated for nearly eighteen hours for eight days, and was not provided a sign language interpreter even though he was deaf. *Id.* His disability affected the intonation of his voice and it sounded strange, so the police questioned him about the attack on the girl. *Id.* After the extended interrogation, Brodie confessed to the attack, and to other crimes the police made up. *Id.* After he was notified of the sentence that he could expect, he pled guilty. *Id.* Brodie served his sentence, but was not released because he refused to register as a sex offender. *Id.* Upon reinvestigation of the case, it was found that police did not hand in the evidence to Brodie's attorney regarding the hair found on the victim's blanket that did not match Brodie, and the fingerprint found on the window screen matched that of a convicted child rapist. *Id.* Brodie's case was reopened by the Dallas County District Attorney's Conviction Integrity Unit. *Id.* In 2010, prosecutors motioned for his release and the Texas District Court vacated his conviction based on actual innocence. *Id.* In 2011, Brodie received compensation of \$877,000 plus a monthly annuity of \$4,298. *Id.*

¹³⁰ See Zottoli et al, *supra* note 10, at 252.

fetal alcohol syndrome and spent years in mental health facilities and foster care, rigorously described the way she molested her sister when interrogated by the police.¹³¹ Whereas Stephen Brodie, who was deaf, was not provided a sign language interpreter and was continuously interrogated until he pled guilty.¹³² Another case was that of Davonn Robinson, a low-functioning individual, who supposedly made a confession to the police, but at the same time, denied doing anything wrong.¹³³ Whereas, Rubin Swift, who had a history of schizophrenia and was at first found mentally incompetent to stand trial, was found competent at a later point after which he pled guilty to the crimes and was convicted.¹³⁴ Just like adolescents, these individuals could not withstand the pressure of interrogation and had no other way but to agree to plea bargain.

D. Time Constraints

Scholars note that prosecutors place time constraints on defendants to decide whether they are agreeing to the deal, which can push innocents to file guilty pleas.¹³⁵ Specifically, they argue that prosecutor's caseloads can put pressure on the defendants to plea.¹³⁶ In other words, if the prosecutor has a heavy caseload, he can place very limited time constraints on the defendant, and without being given time to think it through and fearing that he may lose out on a good deal, the defendant agrees to the guilty plea, even if he is innocent.¹³⁷ This was the case with Welsey Tuley, who during his trial for rape of a minor, was offered a plea deal and given five minutes to decide whether to accept the offer, without being told that ten of the twelve members of the jury wished to acquit him of the charges.¹³⁸

¹³¹ See Possley, *Dayna Christoph*, *supra* note 124; see also *Fetal Alcohol Syndrome*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/fetal-alcohol-syndrome/symptoms-causes/syc-20352901> (last visited Oct. 25, 2018) ("Fetal alcohol syndrome is a condition in a child that results from alcohol exposure during the mother's pregnancy. Fetal alcohol syndrome causes brain damage and growth problems. The problems caused by fetal alcohol syndrome vary from child to child, but defects caused by fetal alcohol syndrome are not reversible.").

¹³² See Denzel, *Stephen Brodie*, *supra* note 129.

¹³³ See Possley, *Davonn Robinson*, *supra* note 126.

¹³⁴ See Possley, *Rubin Swift*, *supra* note 110.

¹³⁵ See Zottoli et al, *supra* note 10, at 251.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ See Maurice Possley, *Wesley Tuley*, NAT'L REGISTRY OF EXONERATIONS (June 2012), <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3700> [hereinafter Possley, *Wesley Tuley*]. Wesley Tuley was accused of raping his girlfriend's twelve-year-old daughter in Dallas, Texas in 1996. *Id.* In 1997, there was a mistrial as the jury was

V. RECOMMENDATIONS

Due to the overall issue of innocent persons accepting plea bargains and getting wrongfully convicted, the Innocence Project has opened a #GuiltyPleaProblem Campaign.¹³⁹ The campaign's goal is to make those facing criminal charges to think twice before accepting a plea bargain and becoming wrongfully convicted—and in the cases of child sexual abuse, being labeled a child sex offender—while the perpetrator of the crime is able to walk the streets possibly harming others.¹⁴⁰ In order to reduce the issue of innocent individuals agreeing to the plea bargain, it is recommended that plea bargaining be limited to certain types of charges, such as less serious crimes.¹⁴¹ In that case, the deal will not be severely spliced as it is in more severe felony cases, such as murder or rape.¹⁴² If the plea bargain is offered to defendants facing less serious crimes, then the deal will not be as dramatic as it is in felony cases, and potentially the innocent individual facing the minor charges will claim his innocence rather than agreeing to plea.

When it comes to more serious crimes, it is recommended for the magistrate judge to look over the deal and the case to have better oversight of the pleas, as it will potentially hint at innocent individuals on the verge of getting convicted and eliminating the potential mistake.¹⁴³ Overall, more research is necessary to have a better overview of the extent of the issue of guilty pleas in child sex abuse cases which lead to wrongful convictions, as it may show other

deadlocked 10-2. *Id.* Tuley was not notified that a majority of jury wanted to acquit him. *Id.* The Dallas County Assistant District Attorney offered him a plea deal of ten years supervised release and Tuley had to give his decision within five minutes, which resulted in his acceptance of the deal. *Id.* Tuley later said that he agreed to the deal because he was not financially able to continue paying his attorney and by then, had spent nearly ten months in jail. *Id.* However, two years into his sentence, Tuley was arrested for drug use and his probation was revoked, and was imprisoned for the remainder of his ten year term. *Id.* While in prison, Tuley filed a state petition for a writ of habeas corpus, since the victim recanted. *Id.* The same year, the trial court vacated Tuley's conviction and the Texas Court of Criminal Appeals affirmed the decision. *Id.* In 2003, Tuley was released on bail wearing an electronic ankle monitor and was required to register as a sex offender. *Id.* That same year, the Texas Court of Criminal Appeals denied the state's motion for rehearing, and vacated Tuley's conviction as well as other restrictions that he had to abide to when released. *Id.*

¹³⁹ #GuiltyPleaProblem, GUILTY PLEA PROBLEM, <http://www.guiltypleaproblem.org/> (last visited Nov. 21, 2018).

¹⁴⁰ *Id.*

¹⁴¹ See DEVERS, *supra* note 9, at 3.

¹⁴² See Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. REV. BOOKS (Nov. 20, 2014) <https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/>.

¹⁴³ See *id.*

2018/2019]

When Innocents Plead Guilty

841

causes that to date remain hidden within the walls of the justice system.

VI. CONCLUSION

Campaigns that seek child protection from sex predators claim that there are currently children who are being sexually abused, but the crime is not reported.¹⁴⁴ However, others argue that societal involvement in the overly active investigation and search for child sex predators have increased the risk of false allegations which only limited the suspect's chances of proving his innocence before trial.¹⁴⁵ After the passage of various acts that provide compensation and guidance to any agency, and even citizens, that will report the crime, it became a societal agenda to find and imprison all child sex predators, even if there is the absence of real evidence.¹⁴⁶ Unfortunately, to date, suspicions and accusations are often enough for a conviction and so defendants may often feel limited in their options and agree to plea.

The rationality behind plea bargaining is, unfortunately, not always a "good deal" and contains many discrepancies that are not always vivid. The various factors mentioned above that push the defendants to plead guilty in child sex abuse cases cannot be overridden and simply impact the defendant's likelihood to plea. Plea bargaining remains a panacea of the justice system and has given so much power to the prosecutor that it even surpasses the power of the judge.¹⁴⁷ The current justice system is being criticized for allowing the prosecutor to convict "whomever he liked just by pointing" without any evidence in child sex abuse cases.¹⁴⁸ Yet, still today, plea bargains remain what the United States justice system relies on to function effectively.

¹⁴⁴ Ros Burnett, *Why It Is Too Easy for Innocent People to Be Wrongly Accused of Sexual Abuse*, THE JUST. GAP (Mar. 13, 2017), <https://www.thejusticegap.com/easy-innocent-people-wrongly-accused-sexual-abuse/>; *Reporting on Child Sexual Abuse*, *supra* note 2.

¹⁴⁵ Carolyn Hoyle, et al., *The Impact of Being Wrongly Accused of Abuse in Occupations of Trust: Victims' Voices*, U. OXFORD CTR. FOR CRIMINOLOGY (2016).

¹⁴⁶ See Burnett, *supra* note 144.

¹⁴⁷ See Gertner, *supra* note 37.

¹⁴⁸ Albert W. Alschuler, *A Nearly Perfect System for Convicting the Innocent*, 79 ALB. L. REV. 919, 922 (2016).