
May 2019

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Recommended Citation

Canada, Lindsey (2019) "Juvenile Sex Offender Registration and Notification in Light of *Roper, Graham, and Miller*," *Liberty University Law Review*: Vol. 13 : Iss. 3 , Article 3.

Available at: https://digitalcommons.liberty.edu/lu_law_review/vol13/iss3/3

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NOTE

JUVENILE SEX OFFENDER REGISTRATION AND NOTIFICATION IN LIGHT OF *ROPER*, *GRAHAM*, AND *MILLER*

Lindsey Canada[†]

ABSTRACT

The word *sex offender* stated in affiliation with another person automatically places a negative connotation of that person in the mind of the individual who hears it. Once a person is forced to register as a sex offender, the branding is stigmatizing. It places innumerable restrictions on the life of the offender and damages their reputation to, arguably, the greatest extent. Moreover, the label of *sex offender* is rarely temporary, even if the registration requirement has lifted.

The most extensive issue with registration and notification laws arises in the greatest measure regarding juveniles who commit sex offenses. Throughout the United States, each jurisdiction's legislature has published laws regarding juvenile registration. As a result, approximately every jurisdiction has varying laws in this area of criminal law.

Registration for a juvenile offense is contradictory to the purpose of the juvenile justice system, which strives to balance community safety with the rehabilitation of juveniles. Juveniles have a higher probability to change—one of the numerous reasons the juvenile justice system was established in the United States. Individuals who commit heinous sex crimes in their youth must be closely monitored. However, not all offenses are best resolved, and public safety heightened, by simply placing an adjudicated juvenile on a sex offender's list. Legislatures should create an alternative to automatic and lifetime registration of juvenile offenders.

This Note will explore juvenile sex offender registration and notification throughout the numerous United States' jurisdictions, including the failure to correspond with the philosophy of the juvenile justice system, and will demonstrate the effect the laws have on the offending juvenile and the public. Additionally, this Note will analyze states that have taken an alternative

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approach to juvenile sex offender registration and propose a solution to the problems with the juvenile registration system.

Realizing that many of the sex offenses completed are egregious crimes, the goal of this Note is to find a method to rehabilitate the juvenile offender to prevent further harm to the victim, potential victims, and the public as a whole.

I. INTRODUCTION

The system that United States' jurisdictions are using to punish juvenile offenders and protect the public from those offenders is not working. The number of cases involving juvenile sex offenses against minors has "rise[n] dramatically in recent years."¹ To combat the number of sex offenses committed by juveniles, legislatures must establish and administer a new approach. First, the approach should be distinct from that taken by the Sex Offender Registration and Notification Act (SORNA) for adults. The method should reflect the United States Supreme Court decisions in *Roper v. Simmons*,² *Graham v. Florida*,³ and *Miller v. Alabama*⁴ which establish that minors, due to their developmental immaturity, have lower culpability than adults and thus require sentencing which reflects such understanding. Second, the approach should model the purpose of the juvenile justice system: to rehabilitate the juvenile offender.

Opinions of juvenile sex offender registration vary widely. Some individuals are of the opinion that no juvenile should ever be registered, while others believe, as exemplified in various states' legislation, that juveniles adjudicated of a sex offense should automatically be required to register. Also, politicians often disagree on the length of time a minor should be registered—whether for life or for a period that eventually expires. An approach that falls in between the extreme opinions would comport more closely with the philosophy of the juvenile justice system. The system should be effective in both rehabilitating the juvenile offender to prevent recidivism and to safeguard the general public and victims from potential sex offenses. Although this approach does not resolve all recognizable problems in the area of juvenile sex offenses, it is an attempt to rehabilitate the offender with the ultimate goal of preventing future sex offenses.

1. Associated Press & Kim Curtis, *Youth Sex Offenses on the Rise*, PRESS-TELEGRAM (Sept. 1, 2017), <https://www.presstelegram.com/2007/06/09/youth-sex-offenses-on-the-rise/>.

2. *Roper v. Simmons*, 543 U.S. 551, 572-73, 575 (2005).

3. *Graham v. Florida*, 560 U.S. 48, 74-75 (2010).

4. *Miller v. Alabama*, 567 U.S. 460, 477-78 (2012).

II. BACKGROUND

Over half a century ago, the first sex offender registration system was implemented in the United States. Sex offender registration spread throughout the country, and now every jurisdiction in the country has its own laws governing sex offender registration and notification. Registration laws grant state and federal government authority to punish the offender and protect the public.

Today, a majority of states also require juveniles adjudicated for a sex offense to register as a sex offender.⁵ Legislation in fifteen states requires juveniles to register on a public website.⁶ Although the juvenile justice system was created to rehabilitate and protect youth from adult criminal court, the effect of the label as a sex offender often follows juveniles into adulthood.

A. *Development of Sex Offender Registration in the United States*

The registration of criminal offenders dates back to the 1920s.⁷ California implemented the first registration for sex offenders in 1947.⁸ By 1996, every state had enacted its own registration system for sex offenders.⁹ Congress, seeing sex offender registration and notification as a widespread issue that needed federal law, implemented the Wetterling Act in 1994.¹⁰ The Wetterling Act¹¹ “established a baseline for state-level sex offender registration programs.”¹² In 1996, Megan’s Law amended the Wetterling Act.¹³ Megan’s Law required states to disclose information about registered

5. Rebecca Beitsch, *States Slowly Scale Back Juvenile Sex Offender Registries*, PEW CHARITABLE TRUSTS (Nov. 19, 2015), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2015/11/19/states-slowly-scale-back-juvenile-sex-offender-registries>.

6. *Id.*

7. Lori McPherson, *The Sex Offender Registration and Notification Act (SORNA) at 10 Years: History, Implementation, and the Future*, 64 *DRAKE L. REV.* 741, 746 (2016).

8. *Id.*

9. *Id.* at 747.

10. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, & Tracking, *Legislative History of Federal Sex Offender Registration and Notification*, OFFICE OF JUSTICE PROGRAMS, <https://ojp.gov/smart/legislation.htm> (last visited Apr. 6, 2019).

11. Wetterling Act, 42 U.S.C. §§ 14071-14073 (repealed 2006).

12. Lori McPherson, *Practitioner’s Guide to the Adam Walsh Act*, 20 *NAT’L CTR. FOR PROSECUTION CHILD ABUSE UPDATE* 1, 1 (2007).

13. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, & Tracking, *Legislative History of Federal Sex Offender Registration and Notification*, OFFICE OF JUSTICE PROGRAMS, <https://ojp.gov/smart/legislation.htm> (last visited Oct. 28, 2017).

sex offenders to the public.¹⁴ The sex offender public registration laws were “predicated, in part, on the belief that sex[] offenders are at [a] high risk of sexual recidivism and require substantial surveillance to reduce that risk.”¹⁵

Although Congress enacted various amendments to the Wetterling Act, there were still certain categories of sex offenders who were not required to register, despite committing egregious sex-related crimes and being a danger to the public.¹⁶ In an attempt to “protect the public from sex offenders,” Congress implemented the Sex Offender Registration and Notification Act (SORNA) under Title I of the Adam Walsh Act.¹⁷ Like the Wetterling Act, SORNA created a “baseline” standard for jurisdictions to achieve in regard to their sex offender registration and notification statutes.¹⁸ SORNA’s use of the word “jurisdiction” includes all states, the District of Columbia, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands,¹⁹ and expanded the definition of jurisdiction to include 212 federally recognized Indian tribes, a vast majority of whom opted to create their own systems.²⁰

The Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (the SMART Office) is the federal office within the Department of Justice which ensures that jurisdictions and individuals within the jurisdictions are in compliance with SORNA.²¹ Compliance with SORNA is incentive-based.²² Jurisdictions may choose to ignore the requirements, but failure to implement SORNA’s baseline standard results in jurisdictions being stripped of a percent of funds they otherwise would receive through Byrne JAG Grant funding.²³ A federal sex-offender registry was not created through SORNA, but the Adam Walsh Act made it a federal felony offense for an individual to “fail[] to register as a sex offender as

14. *Id.*

15. Elizabeth J. Letourneau et al., *The Influence of Sex Offender Registration on Juvenile Sexual Recidivism*, 20 CRIM. JUST. POL’Y REV. 136, 137 (2009).

16. *Id.*; McPherson, *supra* note 7.

17. 34 U.S.C. § 20901 (2006).

18. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, & Tracking, *supra* note 13.

19. Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587, 593.

20. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, & Tracking, *supra* note 13.

21. McPherson, *supra* note 7, at 758.

22. *Id.*

23. *Id.* at 759.

required by SORNA.”²⁴ Although jurisdictions must meet the baseline standard SORNA mandates, jurisdictions can implement more stringent registration and notification requirements.²⁵

The SMART Office developed the National Guidelines for Sex Offender Registration and Notification “to provide guidance and assistance to covered jurisdictions . . . in implementing the SORNA standards” and “to issue guidelines to interpret . . . SORNA.”²⁶ Jurisdictions must register sex offenders in accordance with SORNA’s terms. The specifications of a sex offender’s registration requirements are determined by which tier an offender’s conviction meets.²⁷ To identify classes of sex offenders, SORNA uses three “tiers.”²⁸ Individuals categorized as Tier III offenders have been adjudicated of more serious crimes than Tier I or Tier II offenders.²⁹ Jurisdictions are not required to use the term “tier” to categorize sex offenders, so long as an offender is “subject to at least the duration of registration, frequency of in-person appearances for verification, and extent of website disclosure that SORNA requires” for an individual that fits into that tier.³⁰

After an offender has been convicted, jurisdictions must gather certain information—specified in SORNA—from the sex offender.³¹ The Adam Walsh Act increased the amount of information that sex offenders must release to the jurisdiction for registration. The Wetterling Act required eight pieces of personal information,³² SORNA requires twenty-two.³³ SORNA also

24. McPherson, *supra* note 12, at 1.

25. *Id.*

26. *The National Guidelines for Sex Offender Registration and Notification*, 73 Fed. Reg. 38030 (July 2, 2008) [hereinafter *Final Guidelines*].

27. McPherson, *supra* note 7, at 760.

28. *Id.*

29. *Id.*

30. *Final Guidelines*, 73 Fed. Reg. at 38053.

31. McPherson, *supra* note 7, at 761.

32. Wetterling Act, 42 U.S.C. § 14071(b) (repealed 2006) (requiring residence address, anticipated future residence, fingerprints, photograph, identifying factors, name, offense history, and treatment documentation).

33. 34 U.S.C. § 20914 (2016); *Final Guidelines*, 73 Fed. Reg. at 38055-58 (requiring name, social security number, address [current and future], name and address of employers, other employment information, name and addresses of schools, license plate and description of vehicle, physical description, text of the law, criminal history, finger and palm prints, DNA sample, current photograph, driver’s license, Internet identifiers, phone numbers, other residential information, temporary lodging information, travel and immigration documents, professional licenses, date of birth, and residential lodging and travel information).

requires each jurisdiction to release certain information on the jurisdiction's public registry website.³⁴

In addition to adult offenders, individuals who are "14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse...or was an attempt or conspiracy to commit such an offense" must also comply with SORNA registration regulations.³⁵ At first glance, the SORNA registration and notification regulations for juveniles seem fair—individuals convicted must be a certain age before they are required to register and their offense must be "severe"—but SORNA permits jurisdictions to implement more stringent requirements on sex offenders.³⁶ As discussed more fully below, registration requirements, or lack thereof, are leaving juveniles across the country confused and without a clear understanding of what is required of them to comply with SORNA and their jurisdiction's implementation of SORNA.

B. Juveniles Are Unique

For the past century, juveniles have been treated differently in the United States' judicial system. The American juvenile justice system was created with the goal of protecting juvenile offenders from the "destructive punishment of criminal courts" and to encourage treatment and rehabilitation.³⁷ The Supreme Court of the United States has also made this distinction in its decisions.³⁸ Juveniles should be treated differently with regard to sex offender registration laws since, as a society, we have long held that our youth are less culpable and more apt to transform their criminal behavior.

Conflicting with this widely-held view, when writing laws regarding juvenile sex offenses, for many years, legislatures wrote laws with an understanding of adult offenders instead of using a more informed, specific approach for juvenile offenders.³⁹ Throughout this time, the way the country

34. *Final Guidelines*, 73 Fed. Reg. at 38042.

35. Adam Walsh Act, Pub. L. No. 109-248, 120 Stat. 587, 593 §111(8) (codified as amended at 34 U.S.C. § 20911 (2017)).

36. McPherson, *supra* note 12.

37. NAT'L RESEARCH COUNCIL & INST. OF MED., *JUVENILE CRIME, JUVENILE JUSTICE*, 154 (Joan McCord et al. eds., 2001).

38. See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012). In these rulings, the Court emphasized that juveniles, due to their immaturity, are less culpable than adults and therefore deserve less punishment. *Id.*

39. Amanda M. Fanniff et al., *Juveniles Adjudicated for Sexual Offenses: Fallacies, Facts, and Faulty Policy*, 88 TEMP. L. REV. 789 (2016).

viewed juvenile sex offender treatment was based on models used on their adult counterparts.⁴⁰ Recent research released by the SMART Office stated that “[j]uveniles who commit sex[] offenses are [more] diverse in terms of their offending behaviors and future risk to public safety” than their adult counterparts.⁴¹ The initiative stated that sex offenses committed by juveniles are typically perpetrated without being aware of the consequences it may cause to themselves or the victim, and that this behavior is generally more impulsive than that of adults.⁴² In particular, the study stated that all sex offenses may not be “indicative of a long-term behavior pattern.”⁴³ Current legislation regarding registration laws should reflect these findings.

1. Juveniles in the American Judicial System

To appreciate the need for change in regard to juvenile sex offender registration laws, it is necessary to understand how the American legal system has historically treated and continues to treat juveniles distinctly from their adult counterparts. As a society, the United States recognizes that juveniles have a higher probability of rehabilitation success.⁴⁴ Each state in the United States of America has established a court system specifically for juveniles, recognizing that juveniles are different from their adult counterparts.⁴⁵ In *United States v. Juvenile Male*, Judge Reinhardt compared adult court to juvenile court stating that one is “public and punitive, the other largely confidential and rehabilitative.”⁴⁶ Juvenile court proceedings are different from adult proceedings in that most of the hearings and records in a juvenile court system are closed to the public, protecting children from carrying the burdens of their delinquent activity into adulthood.⁴⁷

In summary, the juvenile justice system was designed to rehabilitate and protect juvenile offenders to give them a greater opportunity for success in adulthood.⁴⁸ State and federal legislatures and judiciaries have tried through

40. Roger Przybylski, *Chapter 5: Effectiveness of Treatment for Juveniles Who Sexually Offend*, in *Sex Offender Management Assessment and Planning Initiative*, OFFICE OF SEX OFFENDER SENTENCING, MONITORING, APPREHENDING, REGISTERING, AND TRACKING, OFFICE OF JUSTICE PROGRAMS, U.S. DEP’T OF JUSTICE 303 (2017).

41. *Id.* at 304.

42. *Id.*

43. *Id.*

44. See *Youth in the Justice System: An Overview*, JUVENILE LAW CTR., <https://jlc.org/youth-justice-system-overview> (last visited Mar. 27, 2019).

45. *Id.*

46. *United States v. Juvenile Male*, 590 F.3d 924, 932 (9th Cir. 2010).

47. *Youth in the Justice System: An Overview*, *supra* note 44.

48. See, e.g., *id.*

statutes and court rulings to uphold the juvenile justice system's goals of rehabilitation and protection—in part by substantially reducing imprisonment charges for crimes. However, no one has clearly defined this in the area of juvenile sex offender registration. “While the juvenile justice system was created to treat and rehabilitate, responses to juveniles who are adjudicated delinquent for sex offenses, like lifetime sex offender registration, are similar to the responses to adults convicted of sex offenses, which are more punitive in nature.”⁴⁹

Over the course of a decade, the United States Supreme Court has ruled in favor of restricting the punishments of juveniles in regard to certain offenses. Ultimately, the Court has recognized that youth have a greater capacity to change and a less culpable mental state. In the series of cases that restrict juvenile punishment, the first decision was *Roper v. Simmons*.⁵⁰ Christopher Simmons committed murder at the age of seventeen.⁵¹ The act was egregious. Simmons planned a burglary and murder, convincing his juvenile friend to join.⁵² The two perpetrators broke into the victim's home and used duct tape to cover the victim's eyes and mouth and bind her hands together.⁵³ The two juveniles drove the victim to a state park and walked her to a railroad trestle above the river.⁵⁴ “There they tied her hands and feet together with electrical wire, wrapped her whole face in duct tape and threw her from the bridge, drowning her in the waters below.”⁵⁵ Approximately nine months after the crime, at the age of eighteen, Missouri sentenced Simmons to the death penalty.⁵⁶ The case was brought before the Supreme Court of the United States. The Court held that “offenders who were under the age of 18 when their crimes were committed” could not be sentenced to the death penalty.⁵⁷ This decision overruled *Stanford v. Kentucky*⁵⁸ which permitted juveniles to be sentenced to the death penalty.⁵⁹ In *Roper*, the Court stated that their

49. Erica Hughes et al., *An Examination of Juvenile Sex Offenders in the Illinois Juvenile Justice System*, ILL. CRIMINAL JUSTICE INFO. AUTH. (Feb. 14, 2017), <http://www.icjia.state.il.us/articles/an-examination-of-juvenile-sex-offenders-in-the-illinois-juvenile-justice-system>.

50. *Roper v. Simmons*, 543 U.S. 551 (2005).

51. *Id.* at 556.

52. *Id.*

53. *Id.*

54. *Id.* at 556-57.

55. *Id.* at 557.

56. *Roper*, 543 U.S. at 556.

57. *Id.* at 578.

58. *Stanford v. Kentucky*, 492 U.S. 361 (1989).

59. *Id.* at 370.

decision was based on “the evolving standards of decency that mark the progress of a maturing society’ to determine which punishments are so disproportionate as to be cruel and unusual.”⁶⁰

In 2010 and 2012, the Court was again faced with the decision as to whether a juvenile’s punishment should be lower than an adult convicted of the same crime. In *Graham v. Florida*, the defendant committed three robberies as a juvenile.⁶¹ In Florida, the prosecutor had the discretion to charge sixteen- and seventeen-year-old juveniles as either a juvenile or an adult for the majority of felony crimes.⁶² The prosecutor chose to charge Graham as an adult.⁶³ Graham received the maximum sentence: life imprisonment without the possibility of parole.⁶⁴ The Supreme Court of the United States held that punishing a juvenile convicted of a non-homicide crime to life imprisonment without the possibility of parole violated the Eighth Amendment⁶⁵ prohibition of cruel and unusual punishment.⁶⁶

In its most recent decision, the Supreme Court of the United States held that “a sentencing scheme that *mandates* life in prison without the possibility of parol for juveniles”—even a capital offender—violates the Eighth Amendment’s prohibition against cruel and unusual punishment.⁶⁷ In *Miller v. Alabama*, the Court granted certiorari in two cases.⁶⁸ In both cases, the defendants committed capital murder at the age of fourteen⁶⁹ and were sentenced to life imprisonment without the possibility of parole.⁷⁰ Justice Kagan wrote for the Court reasoning that a mandatory minimum sentence prevents the sentencing court from considering a juvenile’s “diminished culpability and heightened capacity to change.”⁷¹

60. *Roper*, 543 U.S. at 561.

61. *Graham v. Florida*, 560 U.S. 48, 55 (2010).

62. *Id.* at 53.

63. *Id.*

64. *Id.* at 57.

65. U.S. CONST. amend. VIII.

66. *Graham*, 560 U.S. at 82.

67. *Miller v. Alabama*, 567 U.S. 460, 479 (2012) (emphasis added).

68. *Id.*

69. *Id.* at 465, 468.

70. *Id.* at 466, 469.

71. *Id.* at 479 (“[b]y making youth (and all that accompanies it) irrelevant to the imposition of the harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment”).

The Court did not foreclose on a court's ability to sentence a juvenile to life in prison without the possibility of parole.⁷² However, the court stated that the "appropriate occasions for sentencing juveniles to [the] harshest possible penalty [would] be *uncommon*," given "children's diminished culpability and heightened capacity for change,"⁷³ and due to the "great difficulty . . . of distinguishing at this early age between 'the juvenile whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.'"⁷⁴ In sentencing a juvenile in a homicide case, the Supreme Court requires that the sentencing judge "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison."⁷⁵

In all of these cases—*Roper*, *Graham*, and *Miller*—the Court came to the conclusion that "children are different."⁷⁶ Because juveniles are less culpable, the Court concluded that they are less deserving of the most serious punishment.⁷⁷ This begs the question, "if children are different when they are charged with homicide . . . [are they not] also different when they are charged with sex offenses"?⁷⁸

2. Juvenile Registration Requirements Under SORNA Conflict with the Juvenile Justice System Policies

Not all of the states that have implemented SORNA to some degree have implemented SORNA's legislation as to juvenile offenders.⁷⁹ The SMART office does not require states to implement SORNA in regard to juvenile sex offender registration.⁸⁰ As previously stated, some states have implemented juvenile sex offender legislation that exceeds the baseline requirements of

72. *Id.* at 480.

73. *Miller*, 567 U.S. at 479 (emphasis added).

74. *Id.* at 479-80 (quoting *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48, 68 (2010)).

75. *Id.* at 480.

76. *Id.* at 480; see also *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569-70.

77. *Miller*, 567 U.S. at 474; *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569.

78. Robin Walker Sterling, *Juvenile-Sex-Offender Registration: An Impermissible Life Sentence*, 82 U. CHI. L. REV. 295, 296 (2015).

79. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), *Sex Offender Registration and Notification in the United States: Current Case Law and Issues*, OFFICE OF JUSTICE PROGRAMS 8 (2015). ("Some jurisdictions do not register any juveniles at all; some limit the ages of the offenders who might be registered; some limit the offenses for which they might be registered; and others limit the duration, frequency, or public availability of registration information.")

80. *Id.* at 7-8.

SORNA, while other states do not require juvenile sex offenders to register.⁸¹ The diversity among state legislation complicates juveniles' ability to comply.

The juvenile justice system and registration of juvenile sex offenders have competing policies.⁸² The juvenile justice system was created with the goal of rehabilitating juvenile offenders.⁸³ Congress and SORNA differ on whether to register juveniles as sex offenders with no mention of rehabilitation.⁸⁴ Under SORNA, although adjudicated delinquent juveniles are not required to register for all sex offenses for which an adult sex offender would be required to register, they are subject to registration for "engaging in a sexual act with another by force or the threat of serious violence."⁸⁵

The punishment that courts impose on any criminal offender should be "proportioned to both the offender and the offense."⁸⁶ Mandatory juvenile sex offender registration does not correlate with the goal of the juvenile justice system: rehabilitation of the offender. Instead, juveniles have the possibility of being stigmatized for life. If juveniles who commit first degree murder must be given the opportunity to be considered for parol,⁸⁷ juveniles who commit sex offenses should also be given the opportunity for a second chance.

III. DISCREPANCIES BETWEEN STATE LAWS ON JUVENILE SEX OFFENDER REGISTRATION

Collectively, the United States does not have a comprehensive sex offender registration scheme for juvenile offenders. The registration requirements vary among jurisdictions. In an article published by the Department of Justice, the SMART Office presented the many discrepancies among jurisdiction:

81. *Id.* at 8.

82. Catherine L. Carpenter, *Against Juvenile Sex Offender Registration*, 82 U. CIN. L. REV. 747, 762 (2014).

83. JUVENILE CRIME, JUVENILE JUSTICE 155–56 (Joan McCord et al. eds., 2001), <https://www.nap.edu/read/9747/chapter/7#155>.

84. *Final Guidelines*, 73 Fed. Reg. at 38053.

85. *Id.*

86. *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (quoting *Weems v. United States*, 217 U.S. 349, 367 (1910)) (internal quotations omitted).

87. *See id.* at 479. The Court held that a mandatory sentence of life without the possibility of parol for a juvenile is unconstitutional. *Id.* The Court explained that a life sentence without the possibility of parol for a juvenile is not banned but the appropriateness of such a sentence would be uncommon. *Id.* The culpability of the juvenile defendant must be considered. *Id.*

Some jurisdictions do not register any juveniles at all; some limit the ages of the offenders who might be registered; some limit the offenses for which they might be registered; and others limit the duration, frequency, or public availability of registration information. Some jurisdictions have mandatory registration provisions for certain juveniles, some are discretionary, and some have a hybrid approach. At least one jurisdiction required a person who committed an offense at age 12—who would *not* have been required to register under SORNA had an adjudication occurred at the time of the offense—to register as an adult because the conviction for that offense did not occur until after the individual was 18 years of age.⁸⁸

Under the Final Guidelines, SORNA created a baseline standard for juvenile sex offender registration that states were required to implement. However, the Attorney General lifted the juvenile registration requirement after a majority of the states would not implement SORNA due to such requirements.⁸⁹ Accordingly, the varying regulations among the states have become a problem for juveniles when they move to a different jurisdiction with different registration laws.⁹⁰

In addition to the varying statutory regulations among the states, state supreme courts have ruled differently on the constitutionality of mandatory lifetime sex offender registration. Some state courts have ruled that the imposition of sex offender registration requirements for life violates the Eighth Amendment prohibition of cruel and unusual punishment.⁹¹ The Supreme Court of South Carolina, like many other jurisdictions, upheld mandatory juvenile registration with additional requirements.⁹² The court ruled that mandatory lifetime registration is not unconstitutional if the purpose of the statute has a rational relation to the requirement.⁹³

88. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), *supra* note 79, at 8.

89. *In re C.P.*, 967 N.E.2d 729, 738-39 (Ohio 2012).

90. McPherson, *supra* note 7, at 775; *see also* A.W. v. Nebraska, 865 F.3d 1014 (8th Cir. 2017) (the Eighth Circuit ruled that a juvenile convicted for a sex crime in Minnesota and required to register as a sex offender in Minnesota was not required to register in Nebraska because Nebraska's Sex Offender Registration Act did not require juveniles to register).

91. *In re C.P.*, 967 N.E.2d at 732.

92. *In re Interest of Justin B.*, 419 S.C. 575, 586-87 (2017).

93. *Id.*

A. *In re C.P.*

In *In re C.P.*, the Ohio Supreme Court ruled that the state law, Revised Code (R.C.) 2152.86,⁹⁴ was unconstitutional.⁹⁵ R.C. 2152.86 imposed an automatic, lifetime requirement of sex offender registration and notification on a class of juvenile offenders called “public-registry-qualified juvenile-offender registrants” (PRQJOR).⁹⁶ The statute required juveniles to be placed on a public Internet registry.⁹⁷ The requirements were automatically imposed upon juveniles without the participation or discretion of a juvenile judge.⁹⁸

R.C. 2151.86’s requirements are similar to SORNA’s requirements in the Final Guidelines. Status as a PRQJOR is automatically imposed on juveniles who:

- (1) were 14 through 17 years old when the offense was committed,
- (2) have been adjudicated a delinquent child for committing certain specified sexually oriented offenses, including rape, gross sexual imposition when the victim is under 12, sexual battery of a child under age 12, and aggravated murder, murder, or kidnapping with a purpose to gratify the sexual needs or desires of the offender, and (3) have had a court impose on them a serious youthful offender (“SYO”) dispositional sentence under R.C. 2152.13.⁹⁹

Sex offender registration law in Ohio requires registration with the county sheriff within three days of becoming a resident in the county.¹⁰⁰ Offenders are required to register in the county of their established place of education and employment.¹⁰¹ Additionally, if there is a change in personal information, including changes in vehicle information, e-mail addresses, telephone numbers, or internet identifiers used by the offender, offenders

94. OHIO REV. CODE ANN. § 2152.86 (2013).

95. *In re C.P.*, 967 N.E.2d at 732; *see also, In re D.F.*, 111 N.E.3d 737, 743 (Ohio Ct. App. 2018); *State v. Fisher*, 2017 WL 3585616, at *4 (Ohio Ct. App. Aug. 14, 2017); *State v. Martin*, 61 N.E.3d 537, 543 (Ohio Ct. App. Mar. 10, 2016).

96. *In re C.P.*, 967 N.E.2d at 732.

97. *Id.*

98. *Id.* at 748.

99. OHIO REV. CODE ANN. § 2152.86 (A); *In re C.P.*, 967 N.E.2d at 735.

100. OHIO REV. CODE ANN. § 2950.04(A)(3)(a); *In re C.P.*, 967 N.E.2d at 736.

101. OHIO REV. CODE ANN. § 2950.04(A)(3)(b)(i), (ii), (iii), (iv); *In re C.P.*, 967 N.E.2d at 736.

must notify the sheriff.¹⁰² The law requires Tier III sex offenders to have, for their lifetime, in-person verification of the information every ninety days with the sheriff where the offender works and lives.¹⁰³ Local sheriffs must distribute the offender's picture and personal information to local neighborhoods, agencies, organizations, and schools that are in contact with minors.¹⁰⁴ As part of the requirement, PRQJORS must be included in Ohio's electronic sex-offender registration and notification database (eSORN).¹⁰⁵ Failure to register and comply with the registration requirements can result in further criminal prosecution.¹⁰⁶

C.P. was a juvenile affected by Ohio's R.C. 2152.86. At the age of fifteen, C.P. had a complaint for two counts of rape and one count of kidnapping with sexual motivation filed against him.¹⁰⁷ The juvenile judge denied a motion to transfer jurisdiction to the general division so that C.P. could be tried as an adult.¹⁰⁸ The judge recognized that the "best chance [to] work[] with [C.P.] [is] in the juvenile system."¹⁰⁹ C.P. admitted to each charge.¹¹⁰ Subsequently, the court designated him a delinquent child and a serious youthful offender, which automatically classified him as a PRQJOR, subject to lifetime registration as a sex offender.¹¹¹

The Ohio Supreme Court ruled that R.C. 2152.86 was unconstitutional because "the penalty it imposes violates the prohibitions against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 9."¹¹² To determine the constitutionality of the statute, the court looked to United States Supreme Court precedent that established that children should be treated differently from adults in the judicial system.¹¹³ The Ohio court

102. OHIO REV. CODE ANN. § 2950.04(C)(6), (10); § 2950.05(D); *In re C.P.*, 967 N.E.2d at 736.

103. OHIO REV. CODE ANN. § 2950.06(B)(3), (C)(1); *In re C.P.*, 967 N.E.2d at 736. The offender must verify their current school, institution of higher education, or place of employment. § 2950.06(B)(3).

104. OHIO REV. CODE ANN. § 2950.11(A), (B); *In re C.P.*, 967 N.E.2d at 736.

105. OHIO REV. CODE ANN. § 2950.13(A)(11); *In re C.P.*, 967 N.E.2d at 736.

106. *In re C.P.*, 967 N.E.2d at 734.

107. *Id.* at 732.

108. *Id.* at 733.

109. *Id.*

110. *Id.*

111. *Id.* at 733–34.

112. *In re C.P.*, 967 N.E.2d at 750.

113. *Id.* at 740–41 (citing *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005)).

recognized that lifetime registration of a juvenile sex offender was different from life in prison without the possibility of parole and the death penalty, but noted that lifetime registration as a sex offender is an “especially harsh punishment[] for a juvenile” because once the label of sex offender attaches it “cannot be shaken.”¹¹⁴

The court also held that the requirements of the statute violate both the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article I, Section 16 of the Ohio Constitution.¹¹⁵ However, in 2016, the Court of Appeals of Ohio permitted a juvenile, tried in adult court, to be sentenced to lifetime registration and notification.¹¹⁶ The court said that a juvenile’s due process rights were not violated when application of an adult sentence was given to a juvenile tried in adult court.¹¹⁷ The court emphasized that the Supreme Court of Ohio’s ruling in *In re C.P.* only applied to “juvenile sex offenders *tried within the juvenile system.*”¹¹⁸

B. *In re J.W.*

The Supreme Court of Illinois views mandatory lifetime sex offender registration differently than the Supreme Court of Ohio.¹¹⁹ In 2003, the court upheld the Sex Offender Registration Act in Illinois, which required juveniles who were considered to be sexual predators to register as sex offenders.¹²⁰ Although the state legislative law has subsequently changed,¹²¹ and the court’s ruling was made prior to the Supreme Court’s decisions recognizing that juveniles should be punished differently,¹²² this decision has not been overruled. In 2016, the Appellate Court of Illinois followed *In re J.W.* to uphold registration and notification requirements for juvenile offenders.¹²³

114. *Id.* at 741.

115. *Id.* at 746.

116. *State v. Martin*, 61 N.E.3d 537 (Ohio Ct. App. 2016).

117. *Id.*

118. *Id.* at 543 (quoting *In re C.P.*, 967 N.E.2d 729, 732 (Ohio 2012)) (emphasis in original).

119. *In re J.W.*, 787 N.E.2d 747, 760 (Ill. 2003).

120. 730 ILL. COMP. STAT. ANN. 150/1 (2000); *In re J.W.*, 787 N.E.2d at 753.

121. 730 ILL. COMP. STAT. ANN. 150/3-5 (2014).

122. *Miller v. Alabama*, 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simmons*, 543 U.S. 551 (2005).

123. *In re A.C.*, 54 N.E.3d 952 (Ill. App. Ct. 2016).

At the time of the *In re J.W.* ruling, the Illinois Compiled Statutes required juvenile sex offenders¹²⁴ to register for 10 years after adjudication.¹²⁵ However, if a juvenile sex offender was also classified under the more specific category of a sexual predator,¹²⁶ he or she was required to register for their natural life.¹²⁷

In this case, J.W., a twelve-year old, pled guilty to two counts of aggravated criminal sexual assault.¹²⁸ Based on section 2 of the Sex Offender Registration Act, the court classified J.W. as a “juvenile sex offender”¹²⁹ and “sexual predator”¹³⁰ because of his sexual assault conviction.¹³¹ Section 3 of the Illinois Sex Offender Registration Act required sex offenders and sexual predators to register as the state police department required.¹³² J.W. was sentenced to five years of probation and was ordered to register as a sex offender¹³³ and sexual predator for his natural life.¹³⁴ As a further limitation, J.W. was prohibited from being present in the community where he lived and where the sexual assaults took place.¹³⁵

124. *In re J.W.*, 787 N.E.2d at 755; see also 730 ILL. COMP. STAT. ANN. 150/2 (2000) (A juvenile sex offender was considered one who has been adjudicated a juvenile delinquent as the result of an aggravated criminal sexual assault).

125. 730 ILL. COMP. STAT. ANN. 150/7 (2000); *In re J.W.*, 787 N.E.2d at 756.

126. 730 ILL. COMP. STAT. ANN. 150/2(E)(1) (2000); *In re J.W.*, 787 N.E.2d at 755–56 (A sexual predator was defined as one who has been convicted of an aggravated criminal sexual assault).

127. 730 ILL. COMP. STAT. ANN. 150/7 (2000); *In re J.W.*, 787 N.E.2d at 756.

128. *In re J.W.*, 787 N.E.2d at 751.

129. *Id.* at 755; see also 730 ILL. COMP. STAT. ANN. 150/2 (A-5) (2000).

130. *In re J.W.*, 787 N.E.2d at 755-56; see also 730 ILL. COMP. STAT. ANN. 150/2 (E)(1) (2000) (The statute does not distinguish between sexual predators who commit the criminal sexual act as an adult and those who commit the criminal sexual act as a juvenile; both are considered “sexual predators” if they are convicted of an aggravated criminal sexual assault).

131. *In re J.W.*, 787 N.E.2d at 755–56.

132. *Id.* at 756; see also 730 ILL. COMP. STAT. ANN. 150/3 (2000) (The registration requirements in section 3 of the statute did not specifically refer to juvenile sex offenders, nonetheless the court ruled that juvenile sex offenders are categorically “sex offenders,” therefore are required to register as the statute provides.).

133. *In re J.W.*, 787 N.E.2d at 750.

134. *Id.* at 755.

135. *Id.* at 750.

C. In Interest of Justin B.¹³⁶

In 2017, the Supreme Court of South Carolina upheld a state statutory requirement of lifetime sex offender registration for juveniles convicted of certain sex crimes.¹³⁷ This ruling also affirmed the court's prior holding that lifetime electronic monitoring for juveniles was constitutional under the Eighth Amendment of the United States Constitution.¹³⁸

At fifteen years old, Justin B. committed a sexual assault against a minor.¹³⁹ Justin B. admitted to sexually assaulting the young victim.¹⁴⁰ The family court convicted Justin B. of criminal sexual conduct with a minor in the first degree under South Carolina Code.¹⁴¹ This conviction¹⁴² carried a statutory requirement that "any person, regardless of age"¹⁴³ must register "every ninety days" for the rest of their life.¹⁴⁴ In addition to the registration requirement, the South Carolina statute required offenders to wear an "electronic monitoring device for the duration of the time [he was] required to remain on the sex offender registry."¹⁴⁵ The court imposed the mandatory lifetime registration and electronic monitoring requirement on Justin B.¹⁴⁶ Justin B. appealed the decision of the family court, but the Supreme Court of South Carolina granted the State's motion to certify the case.¹⁴⁷

The court ruled that the imposition of mandatory lifetime registration for persons who are juveniles at the time of the crime's commission was not unconstitutional under the Eighth Amendment.¹⁴⁸ The South Carolina Supreme Court looked at the United States Supreme Court's rationale in *Roper v. Simmons*.¹⁴⁹ In *Roper v. Simmons*, the United States Supreme Court

136. *In re Justin B.*, 799 S.E.2d 675 (S.C. 2017).

137. *Id.* at 681.

138. *Id.* at 679 (*affg In re Justin B.*, 747 S.E.2d 774 (2013)).

139. *Id.* at 681.

140. *Id.* at 676.

141. *Id.* at 578; *see also* S.C. CODE ANN. REGS. 16-3-655(A)(1) (2015).

142. S.C. CODE ANN. REGS. 16-3-652 (2010).

143. S.C. CODE ANN. REGS. 23-3-430(A) (2015).

144. S.C. Code Ann. Regs. 23-3-460(A) (2010); S.C. CODE ANN. REGS. 23-3-460(B) (2010) ("A person classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA), is required to register every ninety days.").

145. S.C. CODE ANN. REGS. 23-3-540(H) (2015).

146. *In re Justin B.*, 799 S.E.2d at 677.

147. *Id.*

148. *Id.* at 679.

149. *Id.*

“examined the two social purposes served by the death penalty—retribution and deterrence”—which the Court determined has a lesser effect on juveniles.¹⁵⁰ The Supreme Court of South Carolina compared the constitutionality of the death penalty to the mandatory lifetime sex offender registration on juveniles, giving weight to the fact that sex offender registration is a “non-punitive act.”¹⁵¹ The court noted that the purpose of registration and electronic monitoring of juveniles was neither for retribution or deterrence, but rather to “protect the public and aid law enforcement.”¹⁵² The difference between juvenile and adult culpability has been recognized by the court. Because requiring juvenile sex offenders to register for life has a rational relation to protecting the citizens of the state and assisting law enforcement, the requirement implemented by the legislature is constitutional.¹⁵³

IV. THE EFFECT OF JUVENILE SEX OFFENDER REGISTRATION

As discussed above, the Supreme Court of South Carolina said that the purpose of juvenile sex offender registration was not for the punishment of the offender through retributive or deterrent effects, but to protect the public.¹⁵⁴ However, this purpose¹⁵⁵ does not correspond with one of the main purposes of the juvenile justice system, which is “to provide for the care, protection, and mental and physical development of children.”¹⁵⁶

In juvenile proceedings, the courts are focused on the interest of the juvenile, but also consider the interest and safety of the public.¹⁵⁷ However, it appears that courts and legislatures that permit mandatory lifetime registration for juvenile offenders have forgotten to consider one of the main reasons that the juvenile justice system was established: to rehabilitate juvenile offenders.¹⁵⁸

150. *Id.* (citing *Roper v. Simmons*, 543 U.S. 551, 571-72 (2005)).

151. *Id.*

152. *In re Justin B.*, 799 S.E.2d at 679.

153. *Id.* at 679–80.

154. *Id.* at 679.

155. *Id.*

156. *In re C.P.*, 967 N.E.2d at 742.

157. *Id.* (discussing the purposes of juvenile court proceedings which include the interest and safety of the public). *See also* *R.G. v. State*, 416 P.3d 478, 482 (Utah 2017).

158. NAT'L RES. COUNCIL & INST. MED., *JUV. CRIME, JUV. JUST.* 154 (2001).

Juveniles commit between seventeen and twenty percent of all sex crimes, excluding prostitution.¹⁵⁹ “Juvenile sex offenders come from a variety of social and family backgrounds and can either be well functioning or have multiple problems.”¹⁶⁰ To achieve juvenile rehabilitation and public safety, an effective alternative to mandatory lifetime sex offender registration that satisfies the juvenile justice system’s goals must be established.¹⁶¹ Some states have already implemented policies to achieve this goal.¹⁶²

Both of these goals—rehabilitating the juvenile offender and protecting the interest and safety of the public—should be given substantial consideration in the sentencing process. American courts should focus on ways to rehabilitate the juvenile offender when determining the offender’s sentencing. Rehabilitation is also the most effective way to protect the public’s safety. Sex offender registration was created to act as a deterrent. However, requiring a juvenile to register as a sex offender will not, on its own, prevent the offender from repeating the crime.¹⁶³ To begin, although sex offender registration arguably puts the public on notice of dangerous sex offenders, the information is not always available for the public to view. For example, registration may only put police officers and schools on notice of the charges against the offender. However, in most sexual offenses, the offender is not a stranger to the victim.¹⁶⁴ Therefore, the narrow registration requirement does not provide an adequate way for parents to protect their children in the environment where children are most vulnerable and more likely to be sexually abused.

The juvenile sex offender registration requirement is inconsistent with the underlying philosophy of the juvenile justice system. To determine an effective and appropriate alternative to registration, it is important to consider the effect registration has on the offender and the public.

159. Elizabeth J. Letourneau et al., *Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?*, 37 CRIM. JUST. & BEHAV. 553, 554 (2010).

160. David Finkelhor et al., *Juveniles Who Commit Sex Offenses Against Minors*, JUVENILE JUSTICE BULLETIN (Dec. 2009), <https://www.ncjrs.gov/pdffiles1/ojdp/227763.pdf>.

161. *See id.*

162. *See also* Beitsch, *supra* note 5 (discussing Oklahoma’s juvenile sex offender registration).

163. *See* Letourneau et al., *supra* note 15, at 147.

164. Donna Vandiver & Mark Stafford, *End Juvenile Sex-Offender Registration: It’s Ineffective and Based on Rare Cases*, JUV. JUST. INFO. EXCHANGE (Aug. 23, 2017) <http://jjie.org/2017/08/23/end-juvenile-sex-offender-registration-its-ineffective-and-based-on-rare-cases/> (discussing the research that shows most sexual offenses are not committed by strangers).

A. *The Effect Juvenile Sex Offender Registration has on the Juvenile Offender*

It is undisputed that juvenile sex offenders must be held accountable for crimes they commit. However, the manner in which they are punished should reflect the philosophy of the country's juvenile justice system. The current system is failing the offender as well as the victims and potential victims.

Elizabeth Letourneau, a doctor of childhood mental health who specializes in the study of juvenile sex offending, conducted research at John Hopkins University. Dr. Letourneau and her team have studied the effects of juvenile sex offender registration. Her study has demonstrated that the registration requirements on juveniles does not reduce the risk of sex recidivism.¹⁶⁵ In fact, there is "overwhelming evidence" that juvenile sex offenders, whether registered or not, have a recidivism rate of less than five percent.¹⁶⁶ Further, Dr. Letourneau was unable to find any evidence that registering juvenile sex offenders has a deterrent effect on other juveniles who commit similar offenses.¹⁶⁷

Registration on the sex offender registry has long-term effects on offenders during the remainder of their adolescence and throughout their adulthood. Offenders are required to register and update registration information in a time frame specified by the jurisdiction.¹⁶⁸ A failure to follow the requirements generally results in felony charges.¹⁶⁹ In addition, in almost every jurisdiction offenders must obtain permission from the government to move and travel.¹⁷⁰

1. Effect of Registration on Offender as a Juvenile

Registering juvenile sex offenders is not an effective solution to preventing or protecting victims and potential victims from sex crimes. Dr. Letourneau's research presents troubling statistics which assert that *registration* can increase the likelihood of new charges on the juvenile offender.¹⁷¹ In fact, "[y]outh [are] at greater risk of being charged with other (or sex[]) offenses

165. Letourneau, *supra* note 15 at 147.

166. *Id.* at 149; *see also* Beitsch, *supra* note 5.

167. Letourneau, *supra* note 15 at 150.

168. Eli Lehrer, *Rethinking Sex-Offender Registries*, 26 NATIONAL AFFAIRS 52 (2016), <https://www.nationalaffairs.com/publications/detail/rethinking-sex-offender-registries>.

169. *Id.*

170. *Id.*

171. Letourneau, *supra* note 15 at 147.

after registering than before or in the absence of registration.”¹⁷² One potential explanation is based on the stigma attached to being a registered sex offender that leads police officers to believe that the offender is likely to be guilty of other crimes.¹⁷³

Another concern is that juveniles who are required to register on a public forum are ostracized from society.¹⁷⁴ Juvenile offenders are often stigmatized by their communities,¹⁷⁵ which results in alienation, and actually increases the likelihood of recidivism.¹⁷⁶ Registration hinders children from participating in “routine aspects of daily life.”¹⁷⁷ Furthermore, schools are permitted to expel adjudicated sex offenders,¹⁷⁸ creating less stability in the life of the child.¹⁷⁹ “Registration also may prohibit youth from participating in pro-social activities such as sports and youth clubs.”¹⁸⁰

Another recognized concern pertains to the physiological harm that results from registration during the developmental stages of the child.¹⁸¹ Children who are registered find it difficult to develop a positive self-identity.¹⁸² Being labeled a “sex offender” carries a stigma that typically attaches to a person’s reputation for the remainder of their lives.¹⁸³

Juvenile offenders who are not placed on a public registration website must still notify local schools, neighbors, and even businesses of their offender status.¹⁸⁴ It is important that people in the area where an offender spends his time are notified in an effort to prevent future harm, but it is not uncommon for people with access to the offender’s address to target the juvenile’s home.¹⁸⁵ Many sex offenses occur within the home between family members, thus “vigilantes aren’t just terrorizing the offender but the victim,

172. *Id.* at 148 (explaining that registration leads to a higher rate of recidivism).

173. *Id.*

174. Lisa Ann Minutola & Riya Saha Shah, *A Lifetime Label: Juvenile Sex Offender Registration*, 33 DEL. L. 8, 9-10 (2015-2016).

175. Beitsch, *supra* note 5.

176. Vandiver & Stafford, *supra* note 164.

177. Minutola & Shah, *supra* note 174.

178. *Id.*

179. Beitsch, *supra* note 5.

180. Minutola & Shah, *supra* note 174.

181. *Id.*

182. *Id.*

183. *Id.*

184. Beitsch, *supra* note 5.

185. *Id.*

as well.”¹⁸⁶ It is difficult for the victim to overcome the psychological pain of the offense when they are reminded of the atrocity that occurred.

Many states have imposed residency restrictions on juvenile sex offenders.¹⁸⁷ These laws restrict convicted juvenile sex offenders from living in the same home with the victim; living with other juveniles; living in close proximity to a school, daycare, or other location where juveniles frequent; or attending a school with the victim or other juveniles.¹⁸⁸ These restrictions have burdensome effects on the families of juvenile delinquents. If the child commits a sex offense against a sibling or someone living in the home, parents of offenders often must make arrangements to place their child in the care of another person. If the crime is committed against another child in the school or community, the family of the offender may have to resort to moving to another town so the children are not in contact with one another. These residency restriction laws cause juvenile offenders to have less stability in their lives, increasing the probability of recidivism.¹⁸⁹ This is not to disregard the fact that victims or potential victims should be protected to a great extent, but to elucidate the reality that as a society we are not rehabilitating juvenile offenders. Instead, statutory laws and judicial rulings place them in environments and circumstances where they are less likely to succeed in rehabilitation and prevent future offenses.

When creating an alternative approach to juvenile sex offender registration, legislatures should consider studies and research that show that juveniles who are registered sex offenders “tend to be more depressed and anxious than their peers, and have less stability because they are shuffled from school to school and family to family.”¹⁹⁰ Juveniles on sex offender registries also suffer from “homelessness, hopelessness, unemployment, suicide and even violence at the hands of vigilantes.”¹⁹¹

Oklahoma has taken an approach different from most states for registering juvenile sex offenders. In Oklahoma, the district attorney makes an application to include the juvenile sex offender on the juvenile registry.¹⁹²

186. *Id.*

187. Lehrer, *supra* note 168.

188. *Id.*

189. See Beitsch, *supra* note 5.

190. *Id.*

191. Beth Schwartzapfel, *An Oklahoma Program Treats Juvenile Sex Offenders as Kids, Not Criminals*, AL JAZEERA AM. (Aug. 21, 2014), <http://america.aljazeera.com/articles/2014/8/21/an-oklahoma-programtreatsjuvenilesexoffendersaskidsnotcriminals.html>.

192. OKLA. STAT. ANN. tit. 10A, § 2-8-104 (2018).

Upon the application of the district attorney, the court shall appoint two persons who are qualified sex offender treatment professionals to evaluate the juvenile and report to the court on the treatment prognosis and likelihood that the juvenile offender represents an ongoing serious or aggressive threat to the public or children under sixteen (16) years of age.¹⁹³

After consideration of the evaluation report, the court is required to make a finding of whether the juvenile offender represents an ongoing threat to the public.¹⁹⁴ If the juvenile presents an ongoing threat, the court is required to order the juvenile to register on the juvenile sex offender registry.¹⁹⁵ This is an effective alternative that jurisdictions should model their juvenile sex offender registration system on. The sex offender treatment professionals are required to have extensive experience working in juvenile sex offender treatment and must be a medical or mental health professional. The philosophy of the juvenile justice system is to rehabilitate the juvenile offender; since there is an absence of evidence that juvenile sex offender registration prevents recidivism, the involvement of a sex-offender-treatment professional in the registration process is crucial to determine the necessity of registration.

2. *Effect of Registration on Offender as an Adult*

One of the reasons that juvenile court proceedings are closed to the public is to protect children's delinquent activity from following them into adulthood.¹⁹⁶ Notwithstanding the purpose of private hearings, juvenile sex offender registration and the stigma that attaches will follow the offender from adolescence into adulthood.¹⁹⁷ This label will hinder the individual from participating in the normal activities of daily life and abate opportunities available for them to rehabilitate into functioning, upstanding members of society.

In many states, juvenile offenders who were prosecuted in juvenile court will be placed on the adult registry when they turn eighteen or twenty-one.¹⁹⁸ When juvenile offenders are transferred to the adult registry, the laws governing juvenile registration and notification no longer apply; laws that

193. *Id.*

194. *Id.*

195. *Id.*

196. *Youth in the Justice System: An Overview*, *supra* note 44.

197. Minutola & Shah, *supra* note 174.

198. Beitsch, *supra* note 5.

govern adult sex offender registration apply. If a person was required to register as a juvenile offender, the length of time the offender is required to register will not change when they reach majority, and the offender's photograph and personal information may be posted to the public registry even if it was not required to be posted as a juvenile. The information, including the offender's photograph, is updated every few years depending on the jurisdiction. As they age, juvenile "offenders begin to look less like children and more like pedophiles."¹⁹⁹ Moreover, when the juvenile offender is an adult, the listing on the public registry website would convey that the offender committed sex acts against a juvenile, portraying the offender as a pedophile when the facts are more complicated than that.²⁰⁰

To put it into perspective, a person who committed a crime as a youth is given protection during adolescence, but when the person reaches the age of majority the protection no longer applies even though it is the same crime that occurred during the person's youth. To reiterate, the purpose of the juvenile justice system is to rehabilitate and protect the criminal from a harsh, adult criminal court.²⁰¹ Further, the juvenile court was created to limit the criminal activity that a juvenile will carry into adulthood, providing a greater opportunity for success in adulthood.²⁰²

If juveniles remain on the registry, they will have difficulty obtaining employment and financial aid for college.²⁰³ Juveniles who carry their registration into adulthood also have residency restrictions. In most states, sex offenders are restricted from living in a close radius to a school, daycare, or other place where juveniles frequent. Moreover, if the offenders have children they will not be able to participate in certain activities in their child's life had they not been adjudicated as juvenile sex offenders.²⁰⁴

B. The Effect Juvenile Sex Offender Registration Has on the Public

The most significant purpose of registration laws is to protect the public.²⁰⁵ Nonetheless, registering a juvenile sex offender does not create public safety.²⁰⁶ If registration is the only punishment handed down to juvenile

199. *Id.*

200. Schwartzapfel, *supra* note 191.

201. *See Youth in the Justice System: An Overview, supra* note 44.

202. *Id.*

203. *See Youth in the Justice System: An Overview, supra* note 44.

204. Beitsch, *supra* note 5.

205. Amanda Y. Agan, *Sex Offender Registries: Fear Without Function?*, 54 J.L. & ECON. 207, 207 (2011).

206. Minutola & Shah, *supra* 174, at 11.

offenders, the public is given false hope that they are now protected to a greater extent than they would be if the criminal were not registered. In reality, registration does not reduce the risk of recidivism²⁰⁷ and the “[r]ates of sex offense do not decline after the introduction of a registry or public access to a registry via the Internet.”²⁰⁸

A study published by the University of Michigan found that registration is beneficial to individuals in a close relationship with, and residents living in a close proximity to, a registered offender.²⁰⁹ The study found that registration—without notification—may reduce sex offenses committed against victims who are family members, friends, acquaintances, and neighbors, but not strangers.²¹⁰ Although those who live in close proximity to the sex offender may be aware of the offender’s identity, a study conducted by Amanda Agan, professor of economics of crime at Rutgers University, revealed that an offender’s address is not indicative of where a sex crime will occur.²¹¹

More significantly for juvenile offenders, the results show that public versus non-public registration information has only a slight effect on sexual abuse incidents in the neighborhood.²¹² This fact, in particular, weighs in favor of jurisdictions eradicating juvenile sex offender registration that is available to the public online. Although not all United States jurisdictions post juvenile offender information to a public website, fifteen continue to do so.²¹³ Public registration contravenes one of the most substantial purposes of the juvenile justice system: to keep the child’s personal information confidential.²¹⁴ If public registration has an insignificant effect on subsiding sex offenses, the negative effects that registration has on both the offender and the offender’s family²¹⁵ outweigh the benefit of online juvenile sex offender registration.

207. Letourneau, *supra* note 15, at 147.

208. Agan, *supra* note 205, at 208.

209. J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & ECON. 161, 192 (2011) (This research was based on adult registered sex offenders, not juvenile sex offenders.).

210. *Id.* at 184.

211. Agan, *supra* note 205.

212. *Id.* at 235.

213. Beitsch, *supra* note 5.

214. *Youth in the Justice System: An Overview*, *supra* note 44.

215. See *supra* Section IV. A.

Without notification laws, registration laws are not effective avenues for protecting public safety.²¹⁶ Registration laws provide information to local police with personal information regarding the offender.²¹⁷ “[N]otification laws are intended to help individuals identify and avoid involvement with convicted sex offenders who live or work nearby.”²¹⁸ Parents and other adults involved in the daily lives of children are in the best position to protect them from other youth who may be previous offenders, thus registration laws that do not require notification are ineffective. Law enforcement officers can identify juvenile offenders when they are before them but do not have the resources available to protect all children from the dangers of all juvenile offenders with the information in their possession.

V. A SECOND CHANCE FOR JUVENILES

The most effective solution to achieve the goals of the juvenile justice system, while still punishing the offender, is to give the presiding judge discretion in decision making. A judge should have this responsibility by virtue of the position that a judge holds—a non-partial bearer of justice. To achieve justice, the legislature must set a limit to the amount of years a judge in the juvenile justice system can require a juvenile to be placed on the registry: a two-year registration limit for less serious sex offense and a six-year registration limit for more serious sex offense. The judge shall then have the discretion to rule that the adjudicated offender must register for an amount of time not more than the limit set by the legislature based on the level of crime committed.

Once a juvenile is legally labeled a sex offender, the individual is required to follow the judge’s ruling for the length of registration and the law regarding registration instruction at the initial registration. This requires the juvenile to provide all relevant information to the local police department or appropriate government agency in the jurisdiction in which the offender resides, attends school, and works.

The offender shall be required to continue to comply with all registration requirements throughout registration, including updating relevant information that the jurisdiction requires. Juvenile offenders should be required to register annually with the police department or appropriate government agency. Information on the registration should also be updated if an offender moves from their registered address or changes schools or jobs.

216. See Prescott & Rockoff, *supra* note 210.

217. *Id.* at 183.

218. *Id.*

Generally, juveniles are dependent on their parents and guardians. In some situations, this dependence makes it more challenging for offenders to update registration information in the time required. For example, juveniles may not have a mode of transportation to the designated location to update the information or a legal guardian capable of reminding them of the requirements. Due to such circumstances, the period to register and update information should be longer than that of an adult offender. Further, a minor should not be charged with a felony for failing to update information in a timely manner. If the judge determines that the offender purposefully or willfully disregarded a legal obligation to register or update information completely or in a timely manner, the presiding judge shall have the discretion to charge the offender with a misdemeanor. Juveniles should be given greater protection than their adult counterparts from acquiring additional charges. The rationale behind this greater protection is that children are less culpable. In addition, charges may follow juveniles into adolescence and adulthood which would place a larger obstacle for them to overcome, potentially due to an issue they did not have control over.

Jurisdictions should adopt fourteen as the minimum age an adjudicated offender must register, following several other states and SORNA. Legislatures should also place another restriction on registering juveniles: juveniles should not be placed on an online public registry unless by a court order, due to a serious sex offense that would require an offender to be a registered six years or more. This policy is based on the idea that public registration does more harm than good. As previously discussed, research does not provide evidence that public registration effectively protects potential victims or prevents recidivism.²¹⁹ Moreover, public registration does not comport with the philosophy of the juvenile justice system: to keep minors out of the harsh, adult criminal court.

Judges, with the advice from a psychologist, should also be given the discretion to mandate specialized treatment and time in a juvenile detention center for the adjudicated offender. Treatment and placement of the offender should correspond to levels of risk and need.²²⁰ Judges, with the advice of an expert psychologist, should decide whether to place the youth offender in a juvenile detention center in order to receive in-patient treatment or allow them to attend out-patient treatment without serving a sentence in the juvenile detention center.

219. Minutola & Shah, *supra* note 174.

220. UTAH NETWORK ON JUVENILES OFFENDING SEXUALLY, ADOLESCENT TREATMENT/PLACEMENT PROTOCOL AND STANDARDS MANUAL 11-12 (6th ed. 2016), <https://drive.google.com/file/d/1-icKs2blpR-BbbyGvxo7owASJDXteRfS/view>.

Throughout the years that the individual is required to register as a sex offender or is sentenced to the juvenile detention center, whichever is longer, he or she should receive specialized treatment from a certified psychologist who has additional training and experience working with juveniles and sexual immorality.²²¹ At the end of the treatment, the individual who was an adjudicated juvenile sex offender should be brought before the judge in juvenile court (if the offender is still a juvenile) or the judge in criminal court (if the offender is now the age of majority) to determine the status of their “present danger” to society and the possible danger to society which may continue after adolescence into adulthood.

This alternative is closely based on approaches adopted in two United States jurisdictions, Virginia and Iowa.²²² Whether an offender’s registration will be extended should be based on the past offender’s “present danger” which includes any new crimes committed, risk assessments made by the certified psychologist and reported to the judge, and negative behaviors. If the judge, with the advice from the certified psychologist, determines that the juvenile continues to impose a significant threat of sexual misconduct to the public, the judge shall extend the length of time the offender must remain on the registry. The offender shall continue treatment, even into adulthood, with a certified psychologist until the judge determines that the offender no longer poses a risk for future sex offenses and thus can be taken off the registry.

This would make it possible for a juvenile to be on a sex offender registry for the remainder of his or her life, but only if the offender was considered a present danger to society for his or her entire life. This approach reflects the Supreme Court’s rulings in *Graham*, which prohibits a juvenile to being sentenced to life in prison without the possibility of parole for being adjudicated of a non-homicidal crime,²²³ and *Miller*, which prohibits a mandatory sentence of life in prison without the possibility for parol for juveniles.²²⁴ The label *sex offender* is a prison in itself due to the stigma that attaches to it;²²⁵ thus, with reservations, individuals who commit sex offenses as juveniles should be given the opportunity to be free from the restrictive nature of the title.

221. *Id.* at 8.

222. Ian Baldwin, *Due Process Objections to Compulsory Registration: Why a Day in Court Should Not Subject Juvenile Sex Offenders to a Lifetime of Stigma*, 11 J.L. ECON. & POL’Y 59, 60 (2015).

223. *Graham v. Florida*, 560 U.S. 48, 82 (2010).

224. *Miller v. Alabama*, 567 U.S. 460, 479 (2012).

225. *See supra* Section IV, A.

VI. CONCLUSION

The American juvenile justice system was created in order to keep juvenile offenders from the destructive punishment of adult criminal courts and to encourage their treatment and rehabilitation.²²⁶ Registering juvenile offenders on a sex offender registry is not the most effective way to protect the public nor to achieve the philosophy of the juvenile justice system. A juvenile adjudicated delinquent may be automatically placed on a sex offender registry for life in one jurisdiction while in another jurisdiction receive no time on a registry. The most substantial problem is that many juveniles are not given the opportunity for rehabilitation. As a result, rather than seeing a decrease in sex offenses committed by juveniles against juveniles, these numbers have risen.²²⁷ Although the Supreme Court recognizes juveniles as a whole less culpable,²²⁸ they must be rehabilitated; otherwise the negative effects of being a registered sex offender will paralyze the child from having an opportunity to succeed in adulthood. The solution to this issue which has lingered in the American society for far too long should be approached by combining the goal of the juvenile justice system to rehabilitate and protect the juvenile while also keeping in mind that society, as a whole, must be protected.

226. NAT'L RESEARCH COUNCIL & INST. OF MED., *JUVENILE CRIME, JUVENILE JUSTICE* 154 (Joan McCord et al. eds., 2001).

227. Associated Press & Kim Curtis, *Youth Sex Offenses on the Rise*, PRESS-TELEGRAM (Sept. 1, 2017), <https://www.presstelegram.com/2007/06/09/youth-sex-offenses-on-the-rise/>.

228. See *Miller*, 567 U.S. at 480; *Graham*, 560 U.S. at 68; *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005).