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## The Adam Walsh Act as Applied to Juveniles: One Size Does Not Fit All

Richard A. Paladino

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## NOTE

### THE ADAM WALSH ACT AS APPLIED TO JUVENILES: ONE SIZE DOES NOT FIT ALL

#### I. INTRODUCTION

Imagine a nine-year-old boy who is forced to watch pornography and who is subjected to uninvited touching by his relatives. For some, that is a nightmare, but for Tony Washington, that was his reality.<sup>1</sup> When Tony was twelve, his father moved out of their house.<sup>2</sup> After his father left, Tony's mother struggled to make rent, and they were forced to move from home to home on numerous occasions.<sup>3</sup> At sixteen, his mother had to work at two restaurants, and the closest thing Tony had to a family was his fifteen-year-old sister, Caylen.<sup>4</sup> Tony and his sister were best friends.<sup>5</sup> When they were younger, Tony would look after Caylen; he would help her with her homework and make sure she ate dinner.<sup>6</sup> However, due to their unstable childhood, Tony and his sister had a hard time knowing the difference between right and wrong, and on two separate occasions, they engaged in consensual sexual intercourse.<sup>7</sup>

On May 9, 2003, Tony pleaded guilty to having consensual sex with his sister.<sup>8</sup> Tony did not know that what he did was wrong.<sup>9</sup> Tony served one month in prison, spent five years on probation, and is now a registered sex offender for the rest of his life.<sup>10</sup> As a sex offender, Tony can no longer live within 1000 feet of a school, has to avoid churches, cannot move without permission of a local officer, and has to inform his

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1. See Allison Glock, *Unforgiven*, ESPN MAG., available at <http://sports.espn.go.com/nfl/news/story?id=5497517> (last updated Aug. 31, 2010).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

neighbors of his crime.<sup>11</sup> Since this incident with his sister, Tony has not been in trouble with the law.<sup>12</sup>

The National Football League's ("NFL") 2010 draft took place on April 22 and 23 of that year.<sup>13</sup> The draft was supposed to be the turning point in Tony's life—when Tony's dream finally came true. Standing at six-foot-seven, 310 pounds, with shoulders the size of "canned hams," Tony was a projected second round pick as an offensive lineman.<sup>14</sup> Considering the draft is seven rounds, a player projected as a second round pick essentially has a guarantee that he will be drafted.<sup>15</sup> However, both April 22 and 23 came and went without Tony ever hearing his name called.<sup>16</sup> Why was Tony's name not called? It had nothing to do with his football talents or anything that revolved around football.<sup>17</sup> It did, however, have everything to do with the fact that he was a registered sex offender.<sup>18</sup>

Tony Washington is just one of the many registered sex offenders who was required to register as a juvenile.<sup>19</sup> As of November 2011, there were 747,408 registered sex offenders in America, and approximately one third of them are juveniles.<sup>20</sup> Tony's story illustrates the stigmas and difficulties that continually follow registered sex offenders as adults even when the committed offense took place when the offender was a juvenile.<sup>21</sup>

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11. *Id.*

12. *Id.* However, this did not stop the rumors. There were rumors that Tony's sister was mentally handicapped and that Tony had continued to have sexual "run-ins" with other women. All of the rumors, however, were untrue. *See id.*

13. *NFL Draft's First Round Moves to Thursday Night for 2010*, NFL, <http://www.nfl.com/news/story?id=09000d5d8116faa2&template=without-video-with-comments&confirm=true> (last visited Mar. 1, 2012).

14. Glock, *supra* note 1.

15. *See id.*

16. *Id.*

17. *Id.*

18. *Id.* As one scout said, "I'm trying to make that jump from a kid having a tough time to a kid who has sex with his sister. . . . No one is going to argue that Tony is not talented enough. We just need to know the ramifications of putting him on the roster." *Id.* (internal quotation marks omitted). There were other questions that lingered and prevented NFL teams from drafting Tony: How would they defend their decision to draft a known sex offender? How would teammates accept him? And would Tony have to announce his crime every time he traveled from state to state for a game? *Id.* Ultimately, these issues were such a large concern that no NFL team took a chance on drafting the extremely talented football specimen. *See id.*

19. *Id.*

20. COLO. SEX OFFENDER MGMT. BD., WHITE PAPER ON THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006, at 17 (2008); *Map of Registered Sex Offenders*, NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN (Nov. 4, 2011), [http://www.missingkids.com/en\\_US/documents/sex-offender-map.pdf](http://www.missingkids.com/en_US/documents/sex-offender-map.pdf).

21. Glock, *supra* note 1. As Jameel N., who was seventeen when he was forced to register as a sex offender, puts it:

Tony's story has come to light at an important time in this country. The United States recently enacted the harshest new set of laws on sex offenders.<sup>22</sup> On July 27, 2006, Congress enacted the Adam Walsh Child Protection and Safety Act (the "Adam Walsh Act").<sup>23</sup> The first title of the Adam Walsh Act is called the Sex Offender Registration and Notification Act ("SORNA").<sup>24</sup> SORNA requires all adult and certain juvenile sex offenders to register in a federal sex registry<sup>25</sup> and submit to community notification.<sup>26</sup> SORNA is the first federal law that requires a juvenile to register as a sex offender.<sup>27</sup> This change has caused quite a stir in the legal world, and commentators have voiced their concerns and opposition to the requirement.<sup>28</sup>

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When people see my picture on the state sex offender registry they assume I am a pedophile. I have been called a baby rapist by my neighbors; feces have been left on my driveway; a stone with a note wrapped around it telling me to "watch my back" was thrown through my window, almost hitting a guest. What the registry doesn't tell people is that I was convicted at age 17 of sex with my 14-year-old girlfriend, that I have been offense-free for over a decade, that I have completed my therapy, and that the judge and my probation officer didn't even think I was at risk of reoffending. My life is in ruins, not because I had sex as a teenager, and not because I was convicted, but because of how my neighbors have reacted to the information on the internet.

HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 6 (2007), available at <http://www.hrw.org/sites/default/files/reports/us0907webwcover.pdf> [hereinafter HUMAN RIGHTS WATCH].

22. See WAYNE A. LOGAN, KNOWLEDGE AS POWER 62-63 (Markus D. Dubber ed., 2009).

23. Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. §§ 16901-16997. Adam Walsh was abducted in a mall across from a police headquarters in 1981. His head was found severed two weeks later on a beach, but his body was never found. His father, John Walsh, in response to Adam's disappearance, went on to host the show *America's Most Wanted*. Both Adam Walsh's abduction and the television show created a great deal of awareness and attention for missing children and protection against sex offenders. See Yolanne Almanzar, *27 Years Later, Case is Closed in Slaying of Abducted Child*, N.Y. TIMES, Dec. 17, 2008, at A18.

24. Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 590 (codified at 42 U.S.C. §§ 16901-16962 (2006)).

25. See *id.* § 16901 (establishing a sex offender registry); *id.* § 16911(8) (requiring the registration of specific juvenile offenders).

26. See *id.* § 16921(b).

27. See *id.* § 16911(8); LOGAN, *supra* note 22, at 63, 72.

28. See e.g., Elizabeth J. Letourneau et al., *Effects of Sex Offender Registration Policies on Juvenile Justice Decision Making*, 21 SEXUAL ABUSE 149, 151, 160 (2009) (arguing that the Adam Walsh Act will substantially increase the amount of juvenile delinquents on public registry databases); Jessica E. Brown, Note, *Classifying Juveniles "Among the Worst Offenders": Utilizing Roper v. Simmons to Challenge Registration and Notification Requirements for Adolescent Sex Offenders*, 39 STETSON L. REV. 369, 399-400 (2010) (challenging the sex offender and community notification laws under the rationale of Supreme Court decision *Roper v. Simmons*, 543 U.S. 551, 569 (2005)); Brittany Enniss, Note, *Quickly Assuaging Public Fear: How the Well-Intended Adam Walsh Act Led to Unintended Consequences*, 2008 UTAH L. REV. 697, 709 (arguing that Congress, in quickly passing the Adam Walsh Act, is ultimately harming the very children that it intended to protect).

SORNA also requires juveniles who are adjudicated delinquent as a result of committing aggravated sexual abuse and were fourteen years of age or older at the time to submit to community notification.<sup>29</sup> Requiring juvenile offenders to submit to community notification undermines the hallmark of the juvenile justice system—the idea that rehabilitation is the best method for treating juveniles.<sup>30</sup> This requirement also runs counter to the notion that juveniles should be treated separately and differently from adults.<sup>31</sup> The new requirements may have a severe, negative, and everlasting impact on many juveniles' lives.<sup>32</sup> Much like Tony's life, the lives of these juveniles will be forever altered before they even reach adulthood.<sup>33</sup>

This Note will discuss the need for an amendment to the Adam Walsh Act to combat the problems and difficulties created by requiring juveniles to register as sex offenders. Part II of this Note details the history of sex registration laws in the United States. The first section of Part II provides a brief account of how states first came to adopt sex registration laws, and is followed by three sections detailing each federal sex offender registration law, including the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Jacob Wetterling Act"),<sup>34</sup> Megan's Law (which amended the Jacob Wetterling Act),<sup>35</sup> the Adam Walsh Act, and SORNA.

Part III outlines the current problems and issues with the Adam Walsh Act as it applies to juveniles. Part III summarizes the immense difficulty states are having with implementing the Adam Walsh Act. Part III discusses the stigmatizing effects that registering as a sex offender

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29. Sex Offender Registration and Notification Act, 42 U.S.C. § 16911(8).

30. See Christine Chamberlin, Note, *Not Kids Anymore: A Need for Punishment and Deterrence in the Juvenile Justice System*, 42 B.C. L. REV. 391, 394 (2001) ("Generally speaking, while the adult criminal justice system emphasizes the punishment of criminals, the juvenile justice system is based on the rehabilitation of juvenile offenders."); CTR. FOR SEX OFFENDER MGMT., UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR: EMERGING RESEARCH, TREATMENT APPROACHES AND MANAGEMENT PRACTICES 8 (1999), available at [www.csom.org/pubs/juvbrf10.pdf](http://www.csom.org/pubs/juvbrf10.pdf).

31. See Brown, *supra* note 28, at 396-97; Chamberlin, *supra* note 30, at 394.

32. See Nastassia Walsh & Tracy Velazquez, *Registering Harm: The Adam Walsh Act and Juvenile Sex Offender Registration*, CHAMPION, Dec. 2009, at 20, 23 (discussing the difficulty juveniles face when placed on a sex registry).

33. See Glock, *supra* note 1; Walsh & Velazquez, *supra* note 32, at 23.

34. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (codified at 42 U.S.C. §§ 14071-14073 (2006 & Supp. III 2010)), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. §§ 16901-16997).

35. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (codified at 42 U.S.C. § 14071(e) (2006 & Supp. III 2010)), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. §§ 16901-16997).

and submitting to community notification will have on juveniles, the truth about juvenile recidivism rates, and the effects the Adam Walsh Act will have on prosecutors and juveniles and obtaining guilty pleas. Part III also discusses the U.S. Supreme Court decision *Graham v. Florida*,<sup>36</sup> which held it unconstitutional for a juvenile to be sentenced to life imprisonment without the possibility of parole for a non-homicide crime,<sup>37</sup> and how the case's rationale can be analogized to the mandatory SORNA registration for juveniles.

Part IV of this Note analyzes how the State of Ohio, the first state to substantially comply with the Adam Walsh Act,<sup>38</sup> successfully implemented its sex registration laws regarding juvenile sex offenders in a less harsh way than required by the minimum federal guidelines of SORNA. Part IV of this Note proposes an amendment to the Adam Walsh Act which would allow states to create a completely separate sex registry for juvenile sex offenders called "J-SORNA." Finally, Part V concludes that by allowing both juveniles and adults to face the same registration requirements for the same offenses, SORNA undermines the hallmark of the juvenile justice system, provides excessive and unfair punishments to juveniles, and is the beginning of a slippery slope toward the elimination of treating adults and juveniles differently.

## II. FROM JACOB WETTERLING TO ADAM WALSH

The path to the Adam Walsh Act started with the Jacob Wetterling Act, the first set of federal sex offender laws in the United States, as well as Megan's Law, which amended the Jacob Wetterling Act and required states to create community notification laws for all sex offenders. This Part will discuss these federal laws as well as the passage of the Adam Walsh Act, and will specifically explain the SORNA provisions and requirements. It will conclude by discussing how SORNA will be applied to juvenile sex offenders.

### A. *A Brief History of Sex Registration Laws*

States have largely taken the initiative in enacting and enforcing sex registration laws.<sup>39</sup> The first set of sex registry laws was enacted in the

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36. 130 S. Ct. 2011 (2010).

37. *Id.* at 2034.

38. Press Release, U.S. Dep't of Justice, Justice Department Announces First Two Jurisdictions to Implement Sex Offender Registration and Notification Act (Sept. 23, 2009), available at <http://www.ojp.usdoj.gov/newsroom/pressreleases/2009/SMART09154.htm> [hereinafter Ohio Substantially Complies Press Release].

39. See Wayne A. Logan, *Sex Offender Registration and Community Notification: Past,*

State of California in 1947.<sup>40</sup> The California statute required law enforcement agencies to compile a list of all sex offenders,<sup>41</sup> and for nearly fifty more years sex offender registration statutes limited access of sex registry information strictly to law enforcement personnel.<sup>42</sup>

In 1990, the State of Washington became the first state to enact a law requiring convicted sex offenders to register to a public registry.<sup>43</sup> The Washington Community Protection Act of 1990<sup>44</sup> was enacted in response to media hyped cases of repeat sex offenders.<sup>45</sup> The purpose of the law was to prevent recidivism of sex offenders, to create new tools for locating and tracking sex offenders, and to protect citizens and their families.<sup>46</sup> The law applies to those that “have been found to have committed or have been convicted of any sex offense.”<sup>47</sup>

These state statutes led to the enactment of the Jacob Wetterling Act by the federal government.<sup>48</sup> This law has served as the backbone

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*Present, and Future*, 34 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 3, 5 (2008) [hereinafter *Sex Offender Registration and Community Notification*].

40. CAL. PENAL CODE § 290 (West 2008 & Supp. 2011); *Sex Offender Registration and Exclusion Information*, CAL. DEP’T OF JUSTICE, <http://www.meganslaw.ca.gov/sexreg.aspx?lang=ENGLISH> (last visited Mar. 1, 2012).

41. PENAL § 290.

42. See Richard Tewksbury, *Validity and Utility of the Kentucky Sex Offender Registry*, FED. PROBATION, June 2002, at 21, 21; Abril R. Bedarf, Comment, *Examining Sex Offender Community Notification Laws*, 83 CALIF. L. REV. 885, 892. For a further discussion on how sex offender laws create more problems than they offer solutions, and that community notification of sex offenders is costly, dangerous, and may be a violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment, see generally *id.*

43. WASH. REV. CODE ANN. § 4.24.550 (West 2005). See also BARBARA E.M. FELVER & ROXANNE LIEB, WASH. STATE INST. FOR PUB. POLICY, ADULT SEX OFFENDER REGISTRATION IN WASHINGTON STATE: INITIAL COMPLIANCE, 1990, at 1, 3 (1991), <http://www.wsipp.wa.gov/rptfiles/91-01-1102.pdf> (discussing the effectiveness of the Community Protection Act of 1990 in Washington one year after implementation).

44. WASH. REV. CODE ANN. § 4.24.550; *Civil Commitment of Sexually Violent Predators*, WASH. STATE DEP’T OF CORR., <http://www.doc.wa.gov/community/sexoffenders/civilcommitment.asp> (last visited Mar. 1, 2012) (explaining that WASH. REV. CODE ANN. § 4.24.550 was passed as part of the Community Protection Act of 1990).

45. See, e.g., *20 Year Anniversary of Washington’s Community Protection Act*, KING CNTY., (Jan. 11, 2010), <http://www.kingcounty.gov/Prosecutor/news/2010/january/anniversary.aspx> (“[A] seven-year old Tacoma boy riding a bicycle through his neighborhood was abducted, sexually assaulted and sexually mutilated by another sex offender, who had recently been released from prison.”).

46. WASH. REV. CODE ANN. § 4.24.550 (“The [Washington] legislature finds that sex offenders pose a high risk of engaging in sex offenses even after being released from incarceration or commitment and that protection of the public from sex offenders is a paramount governmental interest.”). See also *20 Year Anniversary of Washington’s Community Protection Act*, *supra* note 45.

47. FELVER & LIEB, *supra* note 43, at 3 (internal quotation marks omitted).

48. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (codified at 42 U.S.C. §§ 14071–14073 (2006 & Supp. III 2010)), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. §§ 16901–16997). See also Steven J. Costigliacci, Note,

and catalyst for federal sex offender registration laws.<sup>49</sup> It led to the eventual enactment of the Adam Walsh Act by Congress, which repealed the Jacob Wetterling Act in its entirety, and is now the standard for federal sex registration laws in the United States.<sup>50</sup>

### B. The Jacob Wetterling Act: "The Rough Draft"

Jacob Wetterling's story is chilling and horrific. In 1989, Jacob, an eleven-year-old boy, was riding his bike with two friends when a man with a gun stopped them.<sup>51</sup> The gunman drove off with Jacob while the other two boys ran home.<sup>52</sup> Neither Jacob's body nor the attacker has ever been found.<sup>53</sup>

Responding to public outcry, Congress took the first step in creating federal registration legislation against sex offenders in 1991.<sup>54</sup> However, this legislation did not pass, and it was not until 1994 that Congress successfully enacted federal legislation against sex offenders by signing into law the Jacob Wetterling Act.<sup>55</sup> Notably, the Jacob Wetterling Act had the complete bi-partisan support of Congress.<sup>56</sup>

Supporters of the Jacob Wetterling Act emphasized its necessity by claiming that sex offenders had extremely high recidivism rates.<sup>57</sup> The purpose of the Jacob Wetterling Act was to require sex offenders to register with their state once released from prison, jail, or parole sentence.<sup>58</sup> At the time, there were already twenty-four states that had sex registration laws,<sup>59</sup> but Congress wanted federal legislation to make sure that each state had a sex registry so that offenders could not simply

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*Protecting Our Children From Sex Offenders: Have We Gone Too Far?*, 46 FAM. CT. REV. 180, 182 (2008).

49. See LOGAN, *supra* note 22, at 56.

50. Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. §§ 16901–16997.

51. Crystal L. Bulges & James A. Billings, Comment, *Maine's Sex Offender Registration and Notification Act: Wise or Wicked?*, 52 ME. L. REV. 175, 183 (2000).

52. John Wetenhall, *Investigators Dig for New Evidence in Wetterling Case*, ABC NEWS (July 2, 2010), <http://abcnews.go.com/US/investigators-dig-evidence-wetterling-case-mom-hopeful/story?id=11075883>.

53. See *id.*; *Jacob Wetterling Story*, CHECOTAH POLICE DEP'T, [http://www.checotahpolice.org/index.php?option=com\\_content&task=view&id=36&Itemid=31](http://www.checotahpolice.org/index.php?option=com_content&task=view&id=36&Itemid=31) (last visited Mar. 1, 2012).

54. See *Sex Offender Registration and Community Notification*, *supra* note 39, at 5.

55. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, 108 Stat. 2038 (codified at 42 U.S.C. §§ 14071–14073 (2006 & Supp. III 2010)), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. §§ 16901–16997); *Sex Offender Registration and Community Notification*, *supra* note 39, at 5.

56. *Id.*

57. See LOGAN, *supra* note 22, at 56-57.

58. See Bulges & Billings, *supra* note 51, at 188.

59. LOGAN, *supra* note 22, at 56.



relocate to other states.<sup>60</sup> Congress could not mandate that the states enact the federal law, so instead, Congress used the threat of reducing states' federal funding by 10% if the state did not comply.<sup>61</sup> By 1996, every state complied with the Act by creating some form of sex offender registration laws.<sup>62</sup> At that point, the Jacob Wetterling Act did not require sex offenders to submit to community notification.<sup>63</sup>

### C. Megan's Laws: "The Revision"

In 1994, Congress passed legislation requiring community notification laws of all sex offenders—Megan's Law.<sup>64</sup> This was done in memory of Megan Kanka, who was raped and murdered at the age of seven by her neighbor.<sup>65</sup> Megan was invited over to her neighbor's house to see his puppy and the local police found her body days later in the woods.<sup>66</sup> The combination of the gruesomeness of the attack<sup>67</sup> and the fact that the attacker was a two-time convicted sex offender,<sup>68</sup> put pressure on legislators to promptly propose new federal legislation.<sup>69</sup>

It was believed that had Megan's parents been aware and notified that their neighbor was a sex offender, they would have taken the proper steps necessary to prevent Megan's death.<sup>70</sup> Community notification of

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60. *Id.* Representative Ramstad stated that the federal law was needed "to prod all States to enact similar laws and to provide for a national registration system to handle offenders who move from one State to another." 139 CONG. REC. 31251 (1993) (statement of Rep. Ramstad).

61. *See Sex Offender Registration and Community Notification*, *supra* note 39, at 5-6.

62. *Id.* at 6. *See, e.g.*, CAL. PENAL CODE §§ 290-294 (West 2008 & Supp. 2011); N.J. STAT. ANN. §§ 2C:7-1 to :7-23 (West 2005 & Supp. 2011); N. Y. CORRECT. LAW §§ 168 to 168-w (McKinney 2003 & Supp. 2011); OHIO REV. CODE ANN. §§ 2950.01 to -.99 (West 2006 & Supp. 2011).

63. *See Sex Offender Registration and Community Notification*, *supra* note 39, at 5.

64. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (codified at 42 U.S.C. § 14071(e) (2006 & Supp. III 2010)), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. §§ 16901-16997). *See also* Andy Newman, *Megan, Her Law and What It Spawned*, N.Y. TIMES, Feb. 25, 1996, § 13, at 1.

65. *See* Daniel M. Filler, *Making the Case for Megan's Law: A Study in Legislative Rhetoric*, 76 IND. L.J. 315, 315 (2001). For a discussion on the use of rhetoric in legislative debate and how it affected the passage of Megan's Law, *see id.*

66. Stacey Hiller, *The Problem With Juvenile Sex Offender Registration: The Detrimental Effects of Public Disclosure*, 7 B.U. PUB. INT. L.J. 271, 272 (1998).

67. *Id.*

68. *Id.*

69. *See* Filler, *supra* note 65, at 315.

70. As stated by Representative Christopher Smith, "Megan Kanka, [was a] 7-year-old in my district who was viciously abused and killed by a sexual predator . . . . No one in the community knew the killer's sordid past . . . . Had Megan's grieving parents known that their neighbor was a dangerous person, they would have taken steps to protect their precious child. Megan's parents had a right to know that information." 140 CONG. REC. H7934, 7950 (daily ed. Aug. 11, 1994) (statement of Rep. Christopher Smith).

sex offenders was the solution to this problem.<sup>71</sup> As a result of Megan's Law, the public would be notified as to which individuals are sex offenders and where these individuals lived.<sup>72</sup> Many members of Congress believed that legislation without a community notification provision was futile.<sup>73</sup> While signing the bill into law, President William J. Clinton remarked:

From now on, every State in the country will be required by law to tell a community when a dangerous sexual predator enters its midst. We respect people's rights, but today America proclaims there is no greater right than a parent's right to raise a child in safety and love. Today America warns: If you dare prey on our children, the law will follow you wherever you go. State to State, town to town. Today America circles the wagon[s] around our children.<sup>74</sup>

Megan's Law, when finalized, required every sex offender to register for community notification.<sup>75</sup> It not only permitted states to collect information on sex offenders, but states were also required to release it to the public in one way or another.<sup>76</sup> Once again, Congress used the threat of reducing federal funding by 10% if the state did not enact legislation to require community notification for sex offenders.<sup>77</sup> Today, Megan's Law has been universally adopted in some shape or form by all fifty states.<sup>78</sup>

However, at that point, federal law had not imposed federal criminal liability against an individual who violated Megan's Law.<sup>79</sup> The Jacob Wetterling Act only allowed the state to criminally punish an offender who did not register.<sup>80</sup> It was not until the Adam Walsh Act that

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71. *See id.*

72. *See* 142 CONG. REC. H4453 (daily ed. May 7, 1996) (statement of Rep. Richard Zimmer) (discussing the necessity for requiring states to have community notification laws).

73. *See* 140 CONG. REC. H5612 (daily ed. July 13, 1994) (statement of Rep. Jennifer Dunn) ("Without the community notification, the effort is reduced simply to the collection of data.").

74. *See* LOGAN, *supra* note 22, at 60 (alteration in original). President Clinton went on to state during a weekly radio address, "Too many children and their families have paid a terrible price because parents didn't know about the dangers hidden in their own neighborhood. Megan's [L]aw, named after a seven-year-old girl taken so wrongly at the beginning of her life, will help to prevent more of these terrible crimes." *Id.* (alteration in original).

75. *See* Megan's Law, 42 U.S.C. § 14071(e)(2) (2006 & Supp. III 2010), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. §§ 16901-16997).

76. *Id.*; Wayne A. Logan, *Criminal Justice Federalism and National Sex Offender Policy*, 6 OHIO ST. J. CRIM. L. 51, 71 (2008).

77. *See Sex Offender Registration and Community Notification, supra* note 39, at 6.

78. FRANKLIN E. ZIMRING, *AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING* 5 (2004).

79. *See United States v. Kapp*, 487 F. Supp. 2d 536, 538-39 (M.D. Pa. 2007).

80. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration

it became a federal felony to refuse to comply with the community notification requirements.<sup>81</sup>

#### D. Adam Walsh Act: “The Final Product”

On July 27, 2006, the harshest and toughest set of federal laws against sex offenders was enacted—the Adam Walsh Act.<sup>82</sup> The Adam Walsh Act was named after Adam Walsh, a six-year-old boy who was allegedly abducted and victimized by a sex offender.<sup>83</sup> President George W. Bush signed the Adam Walsh Act into law on the twenty-fifth anniversary of Adam’s disappearance while stating, “[o]ur society has a duty to protect our children from exploitation and danger. By enacting this law we’re sending a clear message across the country: those who prey on our children will be caught, prosecuted and punished to the fullest extent of the law.”<sup>84</sup>

##### 1. Title I of the Adam Walsh Act: Sex Offender Registration and Notification Act

SORNA is Title I of the Adam Walsh Act.<sup>85</sup> SORNA creates the National Sex Offender Registry, a national registry of people convicted of sex offenses.<sup>86</sup> SORNA greatly expands the federal authority regarding community notification and registration of sex offenders.<sup>87</sup> SORNA’s declared purpose is to establish a “comprehensive national system for the registration” of sexual offenders in response to the “vicious attacks by violent predators.”<sup>88</sup> The impetus for establishing

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Act § 14071(d), *repealed by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (codified at 42 U.S.C. §§ 16901–16997) (“A person required to register under a State program established pursuant to this section who knowingly fails to so register and keep such registration current shall be subject to *criminal penalties in any State* in which the person has so failed.”).

81. Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. § 16913(e).

82. See LOGAN, *supra* note 22, at 62-63.

83. See *supra* note 23.

84. Press Release, The White House Office of the Press Secretary, President Signs H.R. 4472, The Adam Walsh Child Protection and Safety Act of 2006 (July 27, 2006), <http://georgewbush-whitehouse.archives.gov/news/releases/2006/07/20060727-6.html> [hereinafter White House Press Release].

85. Sex Offender Registration and Notification Act, Pub. L. No. 109-248, 120 Stat. 590 (codified at 42 U.S.C. §§ 16901–16962 (2006)).

86. *Id.* § 16919(a).

87. See Andrew J. Harris & Christopher Lobanov-Rostovsky, *Implementing the Adam Walsh Act’s Sex Offender Registration and Notification Provisions: A Survey of the States*, 2 CRIM. JUST. POL’Y REV. 202, 204, 208, 212 (2010) (discussing the results of a survey that determined that there are many inconsistencies and barriers that still remain between state and federal registration laws, specifically, laws that pertain to juveniles).

88. Sex Offender Registration and Notification Act, 42 U.S.C. § 16901. Section 16901 lists

SORNA and a federal tracking system was the ongoing concern that sex offenders would fall through the loopholes created by the different registration requirements and provisions of each state.<sup>89</sup> The sponsors of the Adam Walsh Act believed that the federal national registry of sex offenders would help protect the public and children against sex offenders.<sup>90</sup> Delaware Democratic Senator Joseph Biden, now Vice President of the United States, and a co-sponsor of the original Senate version of the bill,<sup>91</sup> stated, “[t]he Adam Walsh Child Protection and Safety Act takes direct aim at this problem. Plain and simple, this legislation, I can say with certainty, will save children’s lives.”<sup>92</sup>

SORNA requires that each jurisdiction maintain a jurisdiction-wide sex registry, and the U.S. Attorney General is required to issue guidelines and regulations on how to implement the registry.<sup>93</sup> SORNA also creates the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, which administers, regulates, and oversees the implementation of standards set forth by SORNA.<sup>94</sup> A sex offender must register in each jurisdiction where the offender resides, where the offender is an employee, or where the offender is a student.<sup>95</sup> A sex offender must also register in the jurisdiction where the sex offender was convicted.<sup>96</sup> A sex offender must continue to keep current and up to date registration and has three business days after each change of name, residence, employment, or student status to inform the jurisdiction of any changes.<sup>97</sup> If a sex offender fails to comply with the registration requirements of SORNA, the sex offender will face a

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seventeen victims of sex offenses and the offense that was committed against them. These victims include Jacob Wetterling, Megan Nicole Kanka, Pam Lychner, Dru Sjodin, and Amie Zyla—all of whom have had legislation named after them. *Id.*

89. See 151 CONG. REC. H7889 (daily ed. Sept. 14, 2005) (statement of Rep. Mark Green); 152 CONG. REC. S8017 (daily ed. July 20, 2006) (statement of Sen. George Allen).

90. Utah Republican Senator Orrin Hatch, a co-sponsor of the bill, stated:

Laws regarding registration for sex offenders have not been consistent from State to State [and] now all States will lock arms and present a unified front in the battle to protect children. Web sites that have been weak in the past, due to weak laws and haphazard updating and based on inaccurate information, will now be accurate, updated and useful for finding sex offenders.

152 CONG. REC. S8013 (daily ed. July 20, 2006) (statement of Sen. Orrin Hatch).

91. *Id.* at S8012.

92. *Id.* at S8014 (statement of Sen. Joseph Biden).

93. Sex Offender Registration and Notification Act, 42 U.S.C. § 16912.

94. *Id.* § 16945(a), (c).

95. *Id.* § 16913(a).

96. *Id.*

97. *Id.* § 16913(c).

criminal penalty that includes a maximum term of imprisonment that is greater than one year.<sup>98</sup>

Each sex offender must provide personal information to the sex offender registry.<sup>99</sup> The personal information includes the offender's name, Social Security number, address, name and address of employer, location of school, license plate number, and vehicle description.<sup>100</sup> The U.S. Attorney General may require additional information from the sex offender.<sup>101</sup> The registry provides a physical description of the sex offender, the criminal offense that the sex offender is registered for, criminal history of the sex offender (including the date of all arrests, convictions, and the offender's current status), a current photograph of the offender, DNA sample of the sex offender, and fingerprints of the sex offender.<sup>102</sup>

The National Sex Offender Registry is maintained in a national database at the Federal Bureau of Investigations.<sup>103</sup> The public is able to use the Internet to access information regarding any of the registered sex offenders in the registry.<sup>104</sup> The website is known as the "Dru Sjodin National Sex Offender Public Website" (the "Website"),<sup>105</sup> and it includes information for each sex offender.<sup>106</sup> However, the Website does not mandate the disclosure of all of the sex offender's information that is available for public access, rather, the Website exempts the inclusion of the identity of the victim of the sex offense, the Social Security number of the sex offender, and any arrests of the sex offender that did not result in a conviction.<sup>107</sup>

SORNA also entails a mandatory community notification program.<sup>108</sup> Immediately after a sex offender registers or updates a registration, the program requires an appropriate official in the jurisdiction to notify the U.S. Attorney General, law enforcement agencies, schools, and public housing agencies in the state where the offender resides, is an employee, or is a student.<sup>109</sup> It also notifies any organization, company, or individual who requests notification.<sup>110</sup>

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98. *Id.* § 16913(c).

99. *Id.* § 16914(a).

100. *Id.* § 16914(a)(1)–(6).

101. *Id.* § 16914(a)(7).

102. *Id.* § 16914(b)(1)–(6).

103. *Id.* § 16919(a).

104. *Id.* § 16918(a).

105. *Id.* § 16920(a).

106. *Id.* § 16920(b).

107. *Id.* § 16918(b)(1)–(3).

108. *Id.* § 16921(b).

109. *Id.* § 16921(b)(1)–(3).

110. *Id.* § 16921(b)(7).

A sex offender is defined as any “individual that who was convicted of a sex offense.”<sup>111</sup> SORNA institutes a three-tiered system ranking sex offenders based upon the severity of the offense that was committed.<sup>112</sup> Each tier requires a different length of time the sex offender must be registered as well as different verification appearance requirements.<sup>113</sup>

A tier I sex offender is defined as a “sex offender other than a tier II or tier III sex offender.”<sup>114</sup> A tier I sex offender is required to register on the sex registry for fifteen years,<sup>115</sup> and must verify once every year.<sup>116</sup> A tier II sex offender is defined as “a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year” and the offense falls into one of two categories.<sup>117</sup> A tier II sex offender is required to stay on the registry for twenty-five years,<sup>118</sup> and must report in person every six months.<sup>119</sup> A tier III sex offender is defined as a sex offender “whose offense is punishable by imprisonment for more than 1 year” and the offense: (1) is comparable or more severe than aggravated sexual abuse or sexual abuse; (2) is abusive sexual contact against a minor twelve years or younger; or (3) involves kidnapping of a minor.<sup>120</sup> A tier III sex offender is required to stay on the registry for life,<sup>121</sup> and must report in person to the jurisdiction every three months.<sup>122</sup>

## 2. SORNA Applied to Juveniles

Unlike previous federal sex registration laws, SORNA does not only apply to adults, but also applies to juveniles.<sup>123</sup> However, SORNA only applies to a certain subsection of juveniles.<sup>124</sup> Only juveniles who

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111. *Id.* § 16911(1).

112. *Id.* § 16911(2)–(4).

113. *Id.* §§ 16915(a)(1)–(3), 16916.

114. *Id.* § 16911(2).

115. *Id.* § 16915(a)(1).

116. *Id.* § 16916(1).

117. *Id.* § 16911(3). The statute provides two categories of offenses that would place a sex offender in the category of tier II. *Id.* § 16911(3)(A)(i)–(iv). The lists provide protection for minors against sex offenders. The first category includes offenses committed against minors involving sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, and abusive sexual contact. *Id.* The second category involves the use of a minor in a sexual performance, solicitation of a minor to practice pornography, or production of child pornography. *Id.* § 16911(3)(B)(i)–(iii).

118. *Id.* § 16915(a)(2).

119. *Id.* § 16916(2).

120. *Id.* § 16911(4)(A)–(B).

121. *Id.* § 16915(a)(3).

122. *Id.* § 16916(3).

123. *Id.* § 16911(8).

124. *Id.*

are *convicted* of a sex offense have to register under SORNA.<sup>125</sup> The term “convicted” is construed by the statute to include an adjudicated delinquent as a juvenile only if: (1) “the offender is 14 years of age or older at the time of the offense”; (2) the adjudicated offense by the juvenile is more comparable to, or more severe than, aggravated sexual abuse, as defined in 18 U.S.C. § 2241;<sup>126</sup> or (3) the offense was an attempt to commit such an offense.<sup>127</sup>

As defined by 18 U.S.C. § 2241, aggravated sexual abuse includes: (i) sexual abuse by force or threat, (ii) sexual abuse by rendering “another person unconscious and engage[ing] in a sexual act with that other person,” or (iii) “knowingly engage[ing] in any sexual act” with a minor under the age of twelve.<sup>128</sup> The inclusion of any juvenile that knowingly engages in any sexual act with a minor under the age of twelve was criticized harshly for being too broad and overly inclusive against juveniles.<sup>129</sup> Thus, in response, the U.S. Attorney General removed this provision in the federal minimum guidelines.<sup>130</sup>

Additionally, about two years later, the U.S. Attorney General issued supplemental guidelines that changed the dissemination of information requirements pertaining to juvenile sex offenders.<sup>131</sup> At first, the minimum guidelines treated both juvenile and adult sex offenders the same by requiring the public to be able to access all of their information.<sup>132</sup> This provision was harshly criticized and stirred a large uproar from many juvenile advocates.<sup>133</sup> The final guidelines modified the federal minimum guidelines allowing states to withhold and conceal juvenile sex offender information from the public and still be in

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125. *Id.* (internal quotation marks omitted).

126. 18 U.S.C. § 2241 (2006 & Supp. IV 2011).

127. Sex Offender Registration and Notification Act, 42 U.S.C. § 16911(8).

128. 18 U.S.C. § 2241(a)–(c).

129. See Britney Bowater, Comment, *Adam Walsh Child Protection and Safety Act of 2006: Is There a Better Way to Tailor the Sentence for Juvenile Sex Offenders?*, 57 CATH. U. L. REV. 817, 829-30, 829 n.92, 835-37 (2008) (illustrating an example that “a fourteen-year-old juvenile adjudicated delinquent of the sexual act of intentionally touching an eleven-year-old’s genital area, not through the clothing, can be required to register as a sex offender . . . for the rest of [the juvenile’s] life”); The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,040 (July 2, 2008).

130. *Id.* at 38,030, 38,041.

131. See Supplemental Guidelines for Sex Offender Registration and Notification, 75 Fed. Reg. 27,362, 27,363 (May 14, 2010).

132. See The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. at 38,032.

133. Supplemental Guidelines for Sex Offender Registration and Notification: Final Guidelines, 76 Fed. Reg. 1630, 1631-32 (Jan. 11, 2011) (“About 280 separate comments were received from a wide variety of agencies, organizations, and individuals.”).

compliance with SORNA.<sup>134</sup> The state would still be required to provide the juvenile's information to local law enforcement and government agencies.<sup>135</sup> However, this is a minimum, "not a ceiling," and states may still release any and all of the juvenile's information to the public.<sup>136</sup>

### III. THE PROBLEM CHILD: SORNA AND ITS IMPLICATIONS ON JUVENILES

Since the passage of the Adam Walsh Act, many states have been hesitant and reluctant to pass legislation that would meet the minimum requirements to substantially implement SORNA. This Part will discuss why these states have failed to implement the SORNA federal minimum requirements even with the threat of losing federal funding. Additionally, this Part will discuss the permanent and long-lasting stigmatizing effects that are imposed on juveniles who are placed on a sex registry, and how placing juveniles on sex registries undermines the juvenile justice concept of rehabilitation. This Part will also discuss current research, which concludes that juvenile sex offenders have a very low rate of recidivism, and that juvenile sex offenders are amenable to treatment programs. It will also discuss SORNA's possible impact on juveniles taking a guilty plea in that juveniles may now be more inclined to turn down a guilty plea for fear of being placed on a sex registry. Lastly, this Part will draw analogies from Supreme Court cases that have declared certain acts against juveniles to be unconstitutional because they violate the Eighth Amendment—the Cruel and Unusual Punishment Clause—and how the reasoning behind the Court's decisions may be applied to find that placing juveniles on sex registries violates the Eighth Amendment.

#### A. *States' Problems in Implementing and Adopting SORNA*

The Adam Walsh Act was supposed to be celebrated and heralded by both the public and states as a major step in combating sex offenders and protecting the nation's children.<sup>137</sup> However, a major problem has arisen—the near complete lack of adoption of the Adam Walsh Act by the states.<sup>138</sup> As noted above, a state is not mandated to adopt the Adam

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134. *Id.* at 1631.

135. *Id.* at 1632.

136. See National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. at 38,032.

137. See White House Press Release, *supra* note 84.

138. See John Kelly, *Walsh Act Watch: The Pseudo-Extension (Updated)*, YOUTH TODAY (Dec. 16, 2010), [http://www.youthtoday.org/view\\_blog.cfm?blog\\_id=432](http://www.youthtoday.org/view_blog.cfm?blog_id=432).



Walsh Act in full, but rather, the Act sets a condition that if the state does not substantially implement the Act by a certain date, the state will lose federal funding from the government.<sup>139</sup> The original deadline for a state to comply with SORNA and not lose 10% of the state's allocated funds from the Omnibus Crime and Safe Streets Act was July 27, 2009—funds known as Byrne Grant money.<sup>140</sup> However, as the deadline approached, not one state was in compliance with the federal minimum requirements of SORNA and most requested extensions.<sup>141</sup> Thus, U.S. Attorney General Eric Holder, Jr., with the power authorized to him by the Adam Walsh Act,<sup>142</sup> granted a full year blanket extension to each state, allowing states to comply by July 2010.<sup>143</sup>

One of the most commonly stated barriers preventing states from substantially implementing the Adam Walsh Act is the requirement that juveniles register as sex offenders.<sup>144</sup> In 2009, a survey of forty-five states regarding the implementation of SORNA reported that forty-two states would require new or additional legislation to put the state in compliance with SORNA.<sup>145</sup> Of the forty-five states that responded, twenty-three states cited the implementation of juvenile registration as one of the major reasons for not being able to comply with SORNA.<sup>146</sup>

A survey of thirty-five states comparing the state and federal laws regarding SORNA provisions against current state sex offender laws demonstrates the reason why states are having such a difficult time complying with SORNA.<sup>147</sup> The survey identified eight common SORNA provisions and asked states to determine the consistency of their current sex registration laws compared to those SORNA provisions.<sup>148</sup> The survey found that “89% of the states—all but four—

139. See Sex Offender Registration and Notification Act, 42 U.S.C. § 16925(a) (2006). See also Kelly, *supra* note 138.

140. See Kelly, *supra* note 138; *What Will It Cost States to Comply with the Sex Offender Registration and Notification Act?*, JUSTICE POLICY INST., [http://www.justicepolicy.org/images/upload/08-08\\_FAC\\_SORNACosts\\_JJ.pdf](http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf) (last visited Mar. 1, 2012).

141. See Letter from Patrick Leahy, Chairman, U.S. Senate, Comm. on the Judiciary, to Eric Holder, Jr., Attorney Gen., U.S. Dep't of Justice (Mar. 19, 2009), available at [http://leahy.senate.gov/press/press\\_releases/release/?id=5532a8fb-45e6-49e6-bc0c-be0df8854f98](http://leahy.senate.gov/press/press_releases/release/?id=5532a8fb-45e6-49e6-bc0c-be0df8854f98).

142. See Sex Offender Registration and Notification Act, 42 U.S.C. § 16924(b).

143. Harris & Lobanov-Rostovsky, *supra* note 87, at 207.

144. See SEARCH, SEARCH SURVEY ON STATE COMPLIANCE WITH THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) 2 (2009), available at [www.search.org/files/pdf/SORNA-StateComplianceSurvey2009.pdf](http://www.search.org/files/pdf/SORNA-StateComplianceSurvey2009.pdf) [hereinafter SEARCH SURVEY].

145. *Id.* at 1. In fact, one state decided that it would not put forth any more legislation regarding SORNA compliance because two other legislative attempts already failed. *Id.*

146. *Id.* at 2.

147. Harris & Lobanov-Rostovsky, *supra* note 87, at 207, 210.

148. *Id.* at 208-09. These provisions include: (1) the range of “covered offenses” requiring registration, (2) juvenile registration and notification, (3) requirements for offense-based

identified at least one of the eight provisions as being highly inconsistent with the [state's] existing practice."<sup>149</sup> All of the states that were surveyed identified at least one inconsistent provision area, and 77% of the states identified three or more inconsistent provision areas.<sup>150</sup> Most significantly, the survey found that SORNA's juvenile provision had one of the highest levels of inconsistency with slightly over 50% of the states' current laws<sup>151</sup> and only slightly over 11% of the states' laws were consistent with the provision.<sup>152</sup>

Additionally, secondary data was used to determine the consistency of the non-responding states with SORNA's juvenile requirements.<sup>153</sup> Of the fifteen states not surveyed, 73% of the states were either highly inconsistent or somewhat inconsistent with the SORNA juvenile requirements.<sup>154</sup> The areas where the laws were inconsistent included statutory provisions specifically excluding juveniles from the sex registry, registration on the basis of judicial discretion, requiring purging of juvenile records at the age of twenty-one, and public accessibility to juvenile sex offenders' information on the registry.<sup>155</sup>

Many states perceive SORNA and its guidelines as "turning the clock back" on progress that has been made by the states over the past decade.<sup>156</sup> Most states have adopted "risk-based" systems and are now being forced by the federal government to transition to a uniform "offense-based" system.<sup>157</sup> Some states believe this uniform offense-based system is less effective and "compromise[s] public safety" because of the "reduced discriminatory value" and arbitrariness.<sup>158</sup> Thus, states were permitted a final extension without being penalized as long as the states used the federal funding towards complying with the federal minimum requirements.<sup>159</sup>

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classification systems, (4) retroactive application of registration requirements for designated offenders, (5) required data elements to be captured in the registry, (6) public access to the registry information, (7) requirements related to the duration of registration, and (8) requirements related to the mandated frequency of registration updates. *Id.*

149. *Id.* at 212.

150. *Id.* at 213.

151. *Id.* at 212 tbl.2.

152. *Id.*

153. *Id.* at 216.

154. *Id.* at 216-17. Five states were ranked "highly inconsistent," six states were ranked "somewhat inconsistent," and the remaining four states were ranked "generally consistent." *Id.* at 217 tbl.6.

155. *Id.* at 216-17.

156. *Id.* at 218 (internal quotation marks omitted).

157. *See id.* (internal quotation marks omitted).

158. *Id.*

159. States now have until July 27, 2011 to comply with the federal minimum requirements of the Adam Walsh Act. *See Kelly, supra* note 138.

As of December 14, 2011, approximately five months after the final deadline to substantially comply with the SORNA requirements, only fifteen states have substantially complied.<sup>160</sup> Some states are still creating new legislation in an attempt to comply with the SORNA minimum requirements and receive the federal funding.<sup>161</sup> Other states, such as New York State, have decided that it is not even worth substantially complying with SORNA because they believe the SORNA requirements are not the best way to protect their citizens and such requirements are not fiscally efficient.<sup>162</sup> Thus, the majority of states have not complied with the minimum requirements even though the deadline to substantially comply SORNA has come and passed.

*B. Registration and Community Notification Will Have Severe Stigmatizing Effects on Juvenile Offenders*

Juvenile courts were created and separated from adult courts to provide rehabilitative alternatives to juveniles.<sup>163</sup> The main concept was to focus on the juvenile rather than the offense.<sup>164</sup> It was believed that children should be treated differently than adults because they were less developed physically, mentally, and emotionally.<sup>165</sup> The juvenile court allowed the state to act in the best interest of the juvenile, while at the same time allowing the juvenile to avoid any stigmas associated with trials and “adult” court.<sup>166</sup> However, subjecting juveniles to the provisions of SORNA undermines the concepts of the juvenile justice system.<sup>167</sup>

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160. *Adam Walsh Protection and Safety Act*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/?tabid=12696> (last updated Mar. 1, 2012). These states include: Alabama, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, South Carolina, South Dakota, Tennessee, and Wyoming. *Id.*

161. See Laura Olson, *New State Law Requires Closer Monitoring of Sex Offenders*, PITT. POST-GAZETTE (Dec. 27, 2011, 10:00 AM), <http://www.post-gazette.com/pg/11361/1199525-454.stm>.

162. Letter from Risa S. Sugarman, Deputy Comm'r, Dir. of Office of Sex Offender Mgmt., to Linda Baldwin, Dir. of SMART Office (Aug. 23, 2011), available at <http://media.navigatored.com/documents/NY+Baldwin+SORNA+notification.pdf>.

163. See Barry C. Feld, *Violent Youth and Public Policy: A Case Study of Juvenile Justice Law Reform*, 79 MINN. L. REV. 965, 971 (1995).

164. Jerome R. Price, *Birthing Out Delinquents: Alternative Treatment Options for Juvenile Delinquents*, CRIM. L. BRIEF, Spring 2009, at 51, 52.

165. *Id.*

166. See *id.*

167. See Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Reoffense Risk*, 7 CHILD MALTREATMENT 291, 302 (2002) (discussing the negative and detrimental effects that registering as a sex offender has on juveniles).

Once a juvenile registers as a sex offender there are severe and perhaps permanent effects on the juvenile.<sup>168</sup> Registration may prevent juveniles from entering schools, colleges, and any other institution that would prepare the juvenile for a conventional lifestyle.<sup>169</sup> Juveniles may identify with the status, feel public humiliation and shame, disassociate themselves with the community and family, and ultimately believe that they that they are indeed a “sex offender.”<sup>170</sup> As sex offender laws continue to become more prevalent, researchers have begun to study the effects that registration and community notification have on sex offenders.<sup>171</sup> In fact, a recently conducted study interviewing thirty adult male sex offenders that had been the subject of community notification helps shed light on the issues and consequences that juveniles would likely encounter due to community notification.<sup>172</sup>

The study found that the exclusion of residence was the most frequently mentioned consequence of community notification.<sup>173</sup> Eighty-three percent of offenders stated that they had difficulty finding a home to live in.<sup>174</sup> One offender summed it up by saying, “[t]hey [community members] picketed against the landlord and all of that. They made up signs telling they don’t want the ‘sexual predator’ in the neighborhood with pictures and stuff like that.”<sup>175</sup> Loss of employment was mentioned as a consequence of community notification by 57% of the offenders.<sup>176</sup> This has resulted in severe consequences for offenders; as explained by one offender, “[a]ll I want to do is get a job and save money. I have no transportation. . . . I don’t have enough money for food or clothes . . . I don’t understand how they can expect somebody to make it.”<sup>177</sup> Stable housing and productive work are essential for both managing the

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168. *See id.*

169. *Id.*

170. *See Smith v. Doe*, 538 U.S. 84, 109 (2003) (Souter, J., concurring) (“Widespread dissemination of offenders’ names, photographs, addresses, and criminal history serves not only to inform the public but also to humiliate and ostracize the convicts. It thus bears some resemblance to shaming punishments that were used earlier in our history to disable offenders from living normally in the community.”).

171. *See, e.g., Caldwell, supra* note 167; Richard G. Zevitz & Mary Ann Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exactng Further Vengeance?*, 18 BEHAV. SCI. & L. 375 (2000).

172. *See Zevitz & Farkas, supra* note 171, at 379, 381, 388 (finding that community notification laws have a severe and disruptive effect on those who are registered as sex offenders and suggesting that a reintegrative approach that provides the sex offender with stable housing, employment, and ties to both family and community would offset these life altering effects).

173. *Id.* at 381 tbl.2.

174. *Id.*

175. *Id.* at 382 (second alteration in original).

176. *Id.* at 381 tbl.2.

177. *Id.* at 381.

behavior of a group of offenders in a community and transitioning a sex offender from prison back into a community.<sup>178</sup> Thus, the fact that sex offenders find it nearly impossible to find housing and employment creates substantial problems for both the sex offender and the community.<sup>179</sup>

The collateral consequences stemming from community notification for sex offenders do not stop there. In addition to the difficulties of finding housing and employment, 77% of the offenders stated that they were ostracized by neighbors or acquaintances and that they received some sort of threat or harassment; 67% stated that their family suffered emotional harm; 37% received additional pressure from their probation or parole agent; and 3% suffered from a vigilante attack.<sup>180</sup> This highlights just how powerful of an effect community notification has on a sex offender and how it affects the offender's life in a variety of ways on a daily basis.<sup>181</sup> As stated by the U.S. Court of Appeals for the Third Circuit in *E.B. v. Verniero*,<sup>182</sup> "registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and other personal relationships have been destroyed or severely strained."<sup>183</sup>

Another major problem sex offenders subject to registration and community notification have to face is vigilante violence.<sup>184</sup> The Third Circuit in *Verniero* stated that "incidents of 'vigilante justice' . . . happen with sufficient frequency and publicity that registrants justifiably live in fear of them. It also must be noted that these indirect effects are not short-lived."<sup>185</sup> For instance, in Suffolk County, Long Island, upon release from prison, four sex offenders moved into a house together located next door to a family with seven children.<sup>186</sup> Word got out to the community that these men were sex offenders and shortly thereafter, parents began keeping their children indoors, neighbors began picketing in front of the offenders' house, people went door-to-door distributing fliers with offenders' names and criminal records, and a local resident at

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178. *Id.* at 388.

179. *See id.* at 389.

180. *Id.* at 381 tbl.2.

181. *See id.* at 382.

182. 119 F.3d 1077 (3d Cir. 1997).

183. *Id.* at 1102.

184. HUMAN RIGHTS WATCH, *supra* note 21, at 78.

185. *Verniero*, 119 F.3d at 1102.

186. *See* Corey Kilgannon, *Threats of Violence as Homes for Sex Offenders Cluster in Suffolk*, N.Y. TIMES, Oct. 9, 2006, at B1.

a library meeting stood up and shouted to a round of applause, "I'll burn the house down."<sup>187</sup> Later that year, this same resident was arrested for plotting to blow up the house where the offenders lived.<sup>188</sup> Two of the men left the house and a third stated that he was looking for a new home because of the furor.<sup>189</sup>

Additionally, there is reason to believe that juveniles will suffer similar, if not worse, collateral consequences than suffered by adults.<sup>190</sup> SORNA, when applied to juveniles, does not only stigmatize the juvenile, but stigmatizes the entire family.<sup>191</sup> This is so because most sex offenders, when released from prison, do not have a family to go back to.<sup>192</sup> A juvenile, on the other hand, often returns home to his or her family after being placed on a sex registry, putting an extra burden on the entire family.<sup>193</sup> Often this leads to the family being ostracized by the community and forced out of stable housing.<sup>194</sup> Additionally, being placed on a sex offender registry is extremely damaging to a juvenile who is trying to complete his or her education or find employment.<sup>195</sup> As one researcher stated, "[p]lacement on a registry can be detrimental to a young person's development, making it difficult to progress through school and to participate in appropriate adolescent activities."<sup>196</sup>

Moreover, studies suggest that juveniles who are labeled as sex offenders are less likely to change their patterns of offending.<sup>197</sup> Treatment programs that have juveniles identify themselves as sex offenders have been shown to interrupt the juveniles' natural process of developing a positive identity.<sup>198</sup> Thus, requiring juveniles to register as sex offenders not only has a severe detrimental impact on both the

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187. *Id.* at B6.

188. *Id.*

189. *Id.*

190. *See* Walsh & Velazquez, *supra* note 32, at 22.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.* at 21-22.

197. *See generally* Elizabeth J. Letourneau & Michael H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 *SEXUAL ABUSE* 293 (2005) (arguing that the increased severity of legal treatment for juvenile sex offenders is based on three unsupported beliefs and faulty assumptions: (1) that there is an epidemic of juvenile sex offending; (2) juvenile sex offenders have more in common with adult sex offenders than with other juvenile delinquents; and (3) without sex offender specific treatment, juvenile sex offenders are at an exceptionally high risk of re-offending—which has led to needlessly restrictive interventions that may be ineffective, or worse, for juvenile sex offenders).

198. *Id.* at 307.

juvenile and juvenile's family, but it also may be reinforcing specific patterns of re-offending in the juvenile.<sup>199</sup>

### C. *The Truth About Recidivism Rates for Juvenile Sex Offenders*

One of the main catalysts for creating federal legislation requiring the registration of sex offenders was the belief that sex offenders had high rates of recidivism.<sup>200</sup> Supporters of harsh legislation against sex offenders have continually cited that sex offenders have an abnormally high rate of recidivism.<sup>201</sup> As stated by Representative Rod Grams, "[s]tudies have shown that child sex offenders are some of the most notorious repeat offenders."<sup>202</sup> However, recent research and studies demonstrate just the opposite.<sup>203</sup>

Current research has shown that sex offenders have low rates of recidivism.<sup>204</sup> In fact, the research establishes that juvenile sex offenders have an even lower rate of recidivism than adult sex offenders.<sup>205</sup> In addition with low rates of recidivism, studies have also shown that juvenile sex offenders are amenable to treatment.<sup>206</sup> Thus, this combination of low rates of recidivism and successful treatment methods for juvenile sex offenders questions the intention and wisdom of Congress in including juveniles to register as sex offenders in the same manner as adults under SORNA.<sup>207</sup>

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199. See *id.*

200. See Catherine Donaldson-Evans, *Molesters Often Strike Again*, FOX NEWS, April 16, 2005, <http://www.foxnews.com/story/0,2933,151999,00.html>.

201. In support of passing the Jacob Wetterling Act, Senator Durenberger remarked:

The reasons for enacting this legislation on the national level are clear: sexual crimes against children are widespread; the people who commit these offenses repeat their crimes again and again; and local law enforcement officials need access to an interstate system of information to prevent and respond to these horrible crimes against children.

137 CONG. REC. 12,529 (1991) (statement of Sen. David Durenberger).

202. 139 CONG. REC. 31,252 (1993) (statement of Rep. Rod Grams).

203. Jill L. Levenson & Leo P. Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*, 21 J. CONTEMP. CRIM. JUST. 49, 50 (2005).

204. See Elizabeth J. Letourneau & Kevin S. Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 SEXUAL ABUSE 393, 403 (2008) (citing numerous studies finding low recidivism rates for adult sex offenders).

205. See CTR. FOR SEX OFFENDER MGMT., *supra* note 30, at 4 (stating that studies show that the likelihood of a juvenile sex offender committing another sex offense is 7 to 10%); NCSBY Fact Sheet: *What Research Shows About Adolescent Sex Offenders*, NAT'L CTR. ON SEXUAL BEHAVIOR OF YOUTH (2003), <http://www.ncsby.org/What%20Research%20Shows%20About%20Adolescent%20Sex%20Offenders%20060404.pdf> [hereinafter *NCSBY Fact Sheet*].

206. See *NCSBY Fact Sheet*, *supra* note 205.

207. See Gregory A. Parks & David E. Bard, *Risk Factors for Adolescent Sex Offender Recidivism: Evaluation of Predictive Factors and Comparison of Three Groups Based Upon Victim Type*, 18 SEXUAL ABUSE 319, 337-38 (2006).

### 1. Juvenile Sex Offenders Have (Very) Low Rates of Recidivism

Study after study continues to confirm that juvenile sex offenders have extremely low rates of recidivism.<sup>208</sup> Professor Franklin Zimring conducted a recent study regarding juvenile sex offender recidivism rates.<sup>209</sup> Professor Zimring followed three cohorts of male juvenile sex offenders in Racine, Wisconsin, and concluded that “juvenile sex offenders do not often commit sex offenses as adults.”<sup>210</sup> Further, he found that only 8.5% of the juveniles had sex-related adult police contact.<sup>211</sup> This number is far lower than the numbers that have been tossed around by policy makers, media outlets, and many treatment center websites.<sup>212</sup> Additionally, this number is very close to the number of new sex offenses committed by non-sex offending juveniles.<sup>213</sup> The study also found that 6.2% of juveniles that had non-sex offense police contact as a juvenile had an adult police sex offense contact, only a 2.3% difference.<sup>214</sup> As stated by Professor Zimring, “it would be just as efficient to create a ‘potential sex offender registry’ composed solely of young men with juvenile contacts for auto theft.”<sup>215</sup>

Moreover, Professor Zimring found that the juvenile sex offenders were responsible for only 4% of all adult sex offenses.<sup>216</sup> This means that using juvenile sex crime records to predict who would be an adult sex offender would be wrong 96% of the time.<sup>217</sup> Juvenile sex offenders are no more likely to commit an adult sex offense than juveniles who did not

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208. See, e.g., Michael F. Caldwell et al., *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, 14 PSYCHOL. PUB. POL’Y & L. 89, 101, 105 (2008) (finding that since recidivism rates for juvenile sex offenders committing another sex offense is extremely low, the application of SORNA to juveniles creates numerous policy concerns); Letourneau & Armstrong, *supra* note 204, at 400, 403 (finding recidivism rates for juvenile sex offenders to be as low as 0.9%); Parks & Bard, *supra* note 207, at 337 (concluding that the majority of juvenile sex offenders do not commit additional sex offenses); Donna M. Vandiver, *A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults*, 21 J. INTERPERSONAL VIOLENCE 673, 685 (2006) (examining the predictors of recidivism of juvenile male sex offenders and finding that the majority of juvenile offenders are not re-arrested for a sexual offense).

209. See Franklin E. Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 CRIMINOLOGY & PUB. POL’Y 507, 511-12, 529 (2007) (arguing that the public perception that juvenile sex offenders are repeat offenders is severely misplaced).

210. *Id.* at 529.

211. *Id.*

212. See Letourneau & Miner, *supra* note 197, at 301.

213. Caldwell et al., *supra* note 208, at 101.

214. See Zimring et al., *supra* note 209, at 529.

215. *Id.* at 530.

216. *Id.* at 527.

217. *Id.*



commit a sex offense.<sup>218</sup> Thus, these findings establish that using juvenile sex offender records to predict future adult sex offenders is both futile and dangerous.<sup>219</sup>

Additionally, other recent studies have found similar results to those of Professor Zimring. In Texas, a group of three hundred registered male sex offenders that were arrested as juveniles and had been considered an adult for three to six years were studied.<sup>220</sup> The results showed that 52.6% of the sample were re-arrested at least once after they reached the age of seventeen, but that only 4.3% of the sample were re-arrested for a sex offense.<sup>221</sup> The researcher found that when examining the predictors of recidivism, the age of the victim, age of the offender, and the sex of the victim were all significant, but the original arrest of the offender was not significant to re-arrest.<sup>222</sup>

Moreover, in addition to low recidivism rates, juvenile sex offenders have fewer victims than adult offenders do.<sup>223</sup> Also, the types of sex offenses that juvenile male sex offenders engage in are different than the type of sex offenses that adult sex offenders engage in.<sup>224</sup> Juveniles engage in far less serious and aggressive behavior than adult sex offenders.<sup>225</sup> Adult sex offenders are more likely than juvenile sex offenders to engage in vaginal, oral, and anal intercourse.<sup>226</sup> Meanwhile, juvenile sex offenders are much more likely to engage in activities such as "digital fondling."<sup>227</sup> Researchers suggest that many juvenile sex offenses, such as digital fondling, are tied more closely to sexual curiosity rather than with pedophilia and other aggressive sexual abuses.<sup>228</sup> Thus, this combination of low recidivism rates and less serious offenses committed by juvenile sex offenders demonstrates that juveniles are generally not as serious a threat to society as adult sex offenders are,

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218. *See id.* at 529.

219. *See id.* at 530 ("The real policy implication of the analyses borne in this article is that perhaps these registries are inappropriate because those on the list may not be any more likely to commit another sexual offense as criminal offenders who are not on these lists.").

220. Vandiver, *supra* note 208, at 677-78.

221. *See id.* at 681.

222. *Id.* at 683.

223. *See* Alexis O. Miranda & Colette L. Corcoran, *Comparison of Perpetration Characteristics Between Male Juvenile and Adult Sexual Offenders: Preliminary Results*, 12 SEXUAL ABUSE 179, 186 (2000) (discussing results of a study that shows similarities and differences in the sexual abuse characteristics perpetrated by juvenile sex offenders and adult sex offenders); *NCSBY Fact Sheet*, *supra* note 205.

224. Miranda & Corcoran, *supra* note 223, at 185.

225. *See id.*

226. *Id.*

227. *Id.*

228. *Id.*

and further supports the idea that juveniles should receive different treatment and punishment than adults.<sup>229</sup>

## 2. Juvenile Sex Offenders Are Amenable to Treatment

It is a common belief among many that juveniles are susceptible to rehabilitation from proper treatment and counseling programs.<sup>230</sup> According to a study done by Dr. Marc Winokur and his colleagues, juveniles that complete a cognitive-behavioral treatment program are, “less likely to commit any re-offenses, sexual re-offenses, nonsexual violent re-offenses, or nonsexual nonviolent re-offenses than are juveniles who do not receive treatment, receive an alternative treatment, or do not complete treatment.”<sup>231</sup> The study goes on to suggest that the best treatment program for juveniles is a cognitive-behavioral treatment program that integrates the juveniles into the community and provides a solid family structure for the juveniles.<sup>232</sup>

However, as noted by the authors, cognitive-behavioral treatment models do have their limitations.<sup>233</sup> The major limitation is that currently, there are not many studies done on juvenile sex offender treatments.<sup>234</sup> Additionally, there are other limitations: recidivism rates obtained from juvenile justice records that likely underestimated actual re-offending behavior, other treatment types were not included or used to compare to cognitive-behavioral treatments, and the meta-analysis of the study did not consider how different treatment modality and treatment length may impact juvenile sex offenders.<sup>235</sup>

Yet, even after acknowledging the limitations and weaknesses of the study, the authors continue to recommend that the worst thing that can be done is to treat a juvenile sex offender like an adult sex offender.<sup>236</sup> Dr. Winokur and his colleagues’ main recommendation is

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229. *See id.*

230. Chamberlin, *supra* note 30, at 392-93.

231. MARC WINOKUR ET AL., SOC. WORK RESEARCH CTR., COLO. STATE UNIV., JUVENILE SEXUAL OFFENDER TREATMENT: A SYSTEMATIC REVIEW OF EVIDENCE-BASED RESEARCH, at iv (2006), available at <http://www.ssw.caahs.colostate.edu/community-outreach/swrc/JSOTSystematicReview.pdf> (arguing that juvenile sex offenders should be treated differently than adult sex offenders and that cognitive-behavioral treatment is an effective method in helping and rehabbing juvenile sex offenders).

232. *See id.* at iv, 23-24 (“[The] primary recommendation for practitioners is to provide [juvenile sex offenders] with cognitive-behavioral treatment options within a continuum of care model.”).

233. *Id.* at 24-25.

234. *See* Marnie E. Rice & Grant T. Harris, *The Size and Sign of Treatment Effects in Sex Offender Therapy*, 989 ANNALS N.Y. ACAD. SCI. 428, 437 (2003).

235. *See* WINOKUR ET AL., *supra* note 231, at 25.

236. *See id.* at 26.

“for policymakers . . . to enact developmentally appropriate standards for [juvenile sex offenders] that are not solely based on adult guidelines.”<sup>237</sup> Additionally, the study recommends that “[l]egislators also should provide the financial resources necessary for treatment providers, probation departments, and child welfare agencies to adequately deliver timely treatment programs and ongoing support services.”<sup>238</sup> Other research has shown that juveniles who are involved in pro-social and educational activities in the community have a far greater chance of not committing another sex offense.<sup>239</sup> Thus, the requirement by SORNA for juveniles to register as adults is producing a result that is the exact opposite of what these studies recommend.<sup>240</sup>

Additionally, there are other studies that suggest that juvenile sex offenders are considered more receptive to treatment than adult sex offenders.<sup>241</sup> Recent prospective and clinical studies have shown that many juveniles that have committed sexual offenses will cease this behavior by the time they reach adulthood.<sup>242</sup> The studies also show that this is especially true with specialized treatment programs and supervision.<sup>243</sup> Most importantly, research shows that juveniles are different and more susceptible to treatment than adults because of their emerging development.<sup>244</sup> Thus, subjecting juveniles to the same punishment as adults, requiring them to register as sex offenders and submit to community notification, will prevent and restrict juveniles from receiving treatment and becoming successfully rehabilitated.<sup>245</sup>

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237. *Id.*

238. *Id.* Additionally, this recommendation will have an added economic benefit because the creation of effective treatment programs for juvenile sex offenders will allow more resources to be available for other problem areas for children and their families. *Id.*

239. See Michael H. Miner, *The Fallacy of Juvenile Sex Offender Risk*, 6 CRIMINOLOGY & PUB. POL’Y 565, 569 (2007) (“[Juveniles] should not be subjected to restrictions, registration, and community notification. . . . [S]uccessful policy would . . . work toward integrating [juvenile sex offenders] into mainstream adolescent behaviors and activities, rather than isolating and labeling them.”).

240. See *id.* See also *supra* Part III.B.

241. See NCSBY Fact Sheet, *supra* note 205.

242. See *The Effective Legal Management of Juvenile Sexual Offenders*, ASS’N FOR THE TREATMENT OF SEXUAL ABUSERS (2000), <http://atsa.com/effective-legal-management-juvenile-sexual-offenders>.

243. *Id.*

244. *Id.*

245. See *id.*

#### D. Prosecutors and Guilty Pleas

Juvenile defendants facing adjudication or criminal charges commonly use plea bargains.<sup>246</sup> Juvenile defendants are more likely to accept a guilty plea than adult defendants, and juveniles are less likely to recognize the risks in taking a plea agreement.<sup>247</sup> Additionally, juveniles often take an *Alford* plea, one that allows the juvenile to admit guilt for the crime while still claiming innocence;<sup>248</sup> but if the juvenile were to take an *Alford* plea for a sex offense, the plea would not prevent the juvenile from being placed on a sex registry.<sup>249</sup> In many instances, juveniles are not aware of the potentially life-spanning and altering collateral effects of the plea bargain.<sup>250</sup> This is of particular concern now for juvenile defendants charged with sex offenses, as SORNA will increase the amount of states with sex offender registration laws creating difficulties for both prosecutors to charge juveniles for sex offenses, and juveniles to accept guilty pleas.<sup>251</sup>

Registration requirements for juvenile sex offenders have long-lasting collateral consequences.<sup>252</sup> Prosecutors are currently preparing for the potential problems of prosecuting juveniles in states that require the registration of juveniles.<sup>253</sup> Research has suggested that prosecutors have been more lenient in charging juvenile offenders with sex offenses

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246. See Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257, 284, 292 (2007).

247. See Thomas Grisso et al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 LAW & HUM. BEHAV. 333, 357 (2003).

248. Bryan H. Ward, *A Plea Best Not Taken: Why Criminal Defendants Should Avoid the Alford Plea*, 68 MO. L. REV. 913, 913 (2003).

249. *Id.* at 935 (arguing that sex offender registration laws are posing new challenging problems for juvenile defendants charged with a sex offense that were planning on taking an *Alford* plea). Courts in New York and Tennessee have addressed this catch-22 problem by denying any relief for this *Alford*-type defendant. *Id.* See also Peg Schultz, *The Alford Plea in Juvenile Court*, 32 OHIO N.U. L. REV. 187, 193-95, 201 (2006) (discussing the problems juvenile defendants face when entering into an *Alford* plea).

250. See Michael Pinard, *The Logistical and Ethical Difficulties of Informing Juveniles About the Collateral Consequences of Adjudications*, 6 NEV. L.J. 1111, 1114 (2006) (arguing that lawyers representing juvenile defendants need to be more upfront and honest about the potential long-lasting collateral consequences of taking a guilty plea).

251. An example of this is *Commonwealth v. Albert A.*, where two juveniles who were unaware of the new registration requirements for sex offenders in Massachusetts plead guilty for sex-related offenses and were placed on a sex offender registry. See 729 N.E.2d 312, 313-14 (Mass. App. Ct. 2000). When they appealed, the court held that the state's registration requirement was just one of many collateral consequences that the juveniles must face. *Id.* at 314.

252. Walsh & Velazquez, *supra* note 32, at 23.

253. See Thea K. Davis, *Sex Offender Registration for Juveniles* 10 (June 2010) (unpublished CLE paper) (on file with the New York City Law Department, Office of the Corporation Counsel).

since states have enacted mandatory registration requirements for certain convictions.<sup>254</sup>

A study was conducted in South Carolina that examined patterns of prosecutorial decisions and disposition outcomes for all youths charged with sex offenses between the years of 1990 and 2004.<sup>255</sup> The results showed that prosecutors were more likely to alter their decision-making procedure in an effort to protect many juveniles.<sup>256</sup> This was especially true with younger offenders and offenders who have committed fewer prior offenses.<sup>257</sup> Additionally, due to SORNA's registration and community notification requirements, juvenile defendants may now be more inclined to go to trial as opposed to taking an *Alford* plea or guilty plea since taking the plea may require the juvenile to register as a sex offender.<sup>258</sup>

Furthermore, varying state registration requirements for different types of sex offenses may create even more problems.<sup>259</sup> For instance, suppose a juvenile takes a guilty plea for a sex offense in New York because the state does not require the juvenile to register as a sex offender for that specific offense.<sup>260</sup> The juvenile may believe that there are no additional collateral consequences attached to the guilty plea. However, say that the juvenile or the juvenile's family wanted to relocate to the State of New Jersey later in life. New Jersey's sex offender laws require out-of-state juveniles adjudicated delinquent for a sex offense to register as a sex offender for qualifying offenses if they move to, become employed, or attend school in New Jersey.<sup>261</sup> Thus, the juvenile would be forced to register as a sex offender if the juvenile moved to New Jersey.<sup>262</sup> This example illustrates how guilty pleas for sex offenses may attach unforeseen collateral consequences for juveniles who commit sex offenses, and how SORNA, in requiring juvenile registration laws,<sup>263</sup> may magnify this problem.

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254. See Letourneau et al., *supra* note 28, at 153, 158.

255. *Id.* at 153.

256. *Id.* at 160.

257. *Id.*

258. See *Sex Offender Registration and Community Notification*, *supra* note 39, at 14; Ward, *supra* note 248, at 935.

259. See Davis, *supra* note 253, at 10.

260. *Id.* at 5.

261. *Id.* at 6.

262. *Id.*

263. See *id.* at 5-6, 10.

### *E. The Supreme Court's Treatment of Juveniles and the Eighth Amendment*

Over the past fifty years the Supreme Court has dealt with a handful of issues related to juveniles.<sup>264</sup> This past year, the Court in *Graham v. Florida*<sup>265</sup> considered the question of whether a sentence of life without the possibility of parole for a juvenile who commits a non-homicide crime violates the Cruel and Unusual Punishment Clause of the Eighth Amendment.<sup>266</sup> The Cruel and Unusual Punishment Clause prohibits the imposition of “inherently barbaric punishments under all circumstances,”<sup>267</sup> and operates under the pretense that the “punishment for crime should be graduated and proportioned to [the] offense.”<sup>268</sup> The Court held that life without the possibility of parole for a juvenile who committed a non-homicide crime did in fact violate the Eighth Amendment.<sup>269</sup>

The holding of *Roper v. Simmons*<sup>270</sup> played a large part in the Court's reasoning in *Graham*.<sup>271</sup> In *Roper*, the Supreme Court held that it was unconstitutional for a juvenile to be sentenced to the death penalty.<sup>272</sup> In its opinion, the Court looked into the disparity of psychological development between juveniles and adults.<sup>273</sup> The Court

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264. See, e.g., *Graham v. Florida*, 130 S. Ct. 2011, 2030, 2033-34 (2010) (holding that the Cruel and Unusual Punishment Clause of the Eighth Amendment prohibits a sentence of life without parole for a juvenile who committed a non-homicide crime); *Roper v. Simmons*, 543 U.S. 551, 551-572, 575 (2005) (holding that it is unconstitutional to impose the death penalty on a juvenile according to the Eighth Amendment); *Fare v. Michael C.*, 442 U.S. 707, 707, 724 (1979) (holding that a juvenile's request to see a probation officer is not protected under *Miranda* rights because it is not the same as a request to see an attorney); *Breed v. Jones*, 421 U.S. 519, 521, 532, 541 (1975) (holding that a juvenile cannot be tried in both juvenile and adult court for the same offense because the double jeopardy clause applies to juveniles); *McKeiver v. Pennsylvania*, 403 U.S. 528, 534, 545 (1971) (holding that juveniles that are charged with delinquencies do not have a right to a jury trial); *In re Winship*, 397 U.S. 358, 359-60, 367-68 (1970) (holding that the standard of proof in a delinquency hearing is beyond a reasonable doubt); *In re Gault*, 387 U.S. 1, 4, 33, 41, 55 (1967) (holding that a juvenile charged with a delinquency in juvenile court is afforded a multitude of rights, including: the right to written notice of charges against him, the right to an attorney, the right to remain silent, and the right to hear and cross-examine complaining witnesses); *Kent v. United States*, 383 U.S. 541, 543, 561 (1966) (holding that a juvenile must first have a waiver hearing before the juvenile could be transferred from juvenile to adult court).

265. 130 S. Ct. 2011 (2010).

266. *Id.* at 2017-18.

267. *Id.* at 2021.

268. *Id.* (internal quotation marks omitted).

269. *Id.* at 2030, 2033-34.

270. 543 U.S. 551 (2005).

271. *Graham*, 130 S. Ct. at 2026.

272. *Roper*, 543 U.S. at 572, 575.

273. *Id.* at 569-70.

determined that they were indeed distinctly different.<sup>274</sup> In coming to the conclusion that it was unconstitutional for the juvenile to receive the death penalty, the Court stated that juveniles have a “lack of maturity and an underdeveloped sense of responsibility”<sup>275</sup> and that they “are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”<sup>276</sup>

Additionally, the Court looked to the reasoning of a Nebraska Supreme Court case,<sup>277</sup> which overturned a life sentence without parole of a juvenile defendant.<sup>278</sup> There, the court reasoned that a life sentence without parole means “denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.”<sup>279</sup>

The Supreme Court’s decision that it is unconstitutional for a juvenile to be sentenced to life without the possibility of parole because the juvenile is still developing and has lessened culpabilities<sup>280</sup> is analogous to a juvenile sentenced to life on a sex offender registry. When a juvenile is placed on a sex registry for life, the juvenile is attached with a permanent stigma; the juvenile is stuck with this label for the rest of his life.<sup>281</sup> It will follow him wherever he goes—whether it be applying to college or trying to buy a home. Even though the juvenile will not be trapped behind the bars of a prison cell, the juvenile will be forever trapped by the label of a sex offender.

#### IV. A PROPOSAL ON HOW TO FIX SORNA AS APPLIED TO JUVENILES

As previously discussed, the SORNA provisions will seriously impact juveniles that commit sex offenses. Originally, the current tier system of SORNA did not take into account judicial discretion or any risk factors in placing juveniles on a sex registry.<sup>282</sup> Many states have had a problem with this requirement, and as a result, have chosen not to comply with the SORNA requirements.<sup>283</sup> However, Ohio was the first state to substantially comply with the SORNA requirements, and did so

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274. *Id.*

275. *Id.* at 569 (internal quotation marks omitted).

276. *Id.*

277. *Graham*, 130 S. Ct. at 2027.

278. *Naovarath v. State*, 779 P.2d 944, 944, 948-49 (Nev. 1989).

279. *Id.* at 944.

280. *Graham*, 130 S. Ct. at 2028-30.

281. *See supra* Part III.B.

282. *See supra* text accompanying notes 112-23.

283. *See supra* Part III.A.

by allowing some judicial discretion in determining which juveniles that commit sex offenses are placed on the sex registry.<sup>284</sup> The federal minimum guidelines were amended to reflect Ohio's compliance, and allowed states the discretion of placing juveniles on public sex registries.<sup>285</sup> Although this is a big step in addressing and fixing the problems that SORNA places on juvenile sex offenders, it is only the first step. This Part proposes an amendment to SORNA to allow for the creation of a separate sex registry for juveniles called "J-SORNA." This Part will also explain how J-SORNA will function, explain and discuss how J-SORNA may address and solve the problems that SORNA creates for juvenile sex offenders, as well as discuss the potential limitations of J-SORNA.

*A. Ohio Paves the Way: The New Minimum  
"Federal" Guidelines for States*

Ohio was the first state to successfully adopt the Adam Walsh Act.<sup>286</sup> Ohio had many issues with the federal minimum guidelines while attempting to adopt the SORNA provisions.<sup>287</sup> One of the main problems was substantially complying with the juvenile registration requirement.<sup>288</sup> Initially, under President Bush's term, the U.S. Department of Justice ("DOJ") declared that Ohio was not in compliance with the Adam Walsh Act.<sup>289</sup> The DOJ stated that Ohio's proposed law was too lenient on juveniles, excluding certain juveniles deemed as not "Serious Youth Offenders" from mandatory registration.<sup>290</sup> However, just six months later, Ohio would submit the same exact plan under

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284. See *infra* Part IV.A.

285. See *infra* Part IV.A.

286. See Greg Bluestein, *Ohio Lone State to Adopt Sex-Offender Rules*, CANTONREP.COM (Dec. 1, 2009, 11:17 PM), <http://www.cantonrep.com/ohio/x2072228737/Ohio-lone-state-to-adopt-sex-offender-rules>.

287. See John Kelly, *States May Be Able to Shield Juveniles from Registries*, YOUTH TODAY (Mar. 2, 2010), [http://www.youthtoday.org/view\\_article.cfm?article\\_id=3860](http://www.youthtoday.org/view_article.cfm?article_id=3860).

288. See *id.*

289. See Letter from Laura L. Rogers, Dir., Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Dep't of Justice, to Nancy H. Rogers, Attorney Gen., State of Ohio 1 (Jan. 16, 2009), available at [http://www.opd.ohio.gov/AWA\\_Information/AWA\\_SORNA\\_Compliance\\_Review.pdf](http://www.opd.ohio.gov/AWA_Information/AWA_SORNA_Compliance_Review.pdf) ("At this time, Ohio has not achieved the minimum standards for SORNA compliance.").

290. See SORNA Compliance Review Enclosed with Letter from Laura L. Rogers, Dir., Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, U.S. Dep't of Justice, to Nancy H. Rogers, Attorney Gen., State of Ohio 2 (Jan. 16, 2009) (internal quotation marks omitted), available at [http://www.opd.ohio.gov/AWA\\_Information/AWA\\_SORNA\\_Compliance\\_Review.pdf](http://www.opd.ohio.gov/AWA_Information/AWA_SORNA_Compliance_Review.pdf).



President Barak Obama's administration and would become applauded as the first state to adopt the Adam Walsh Act.<sup>291</sup>

The DOJ announced that Ohio had substantially complied with the SORNA requirements even though Ohio's registration requirements of juveniles technically did not reach the minimum requirements of the Adam Walsh Act.<sup>292</sup> The Ohio Revised Code allows for judicial discretion in placing juveniles on a sex registry,<sup>293</sup> allows for judicial discretion in classifying juvenile offenders,<sup>294</sup> and provides additional ways for juveniles to get off of the sex registry.<sup>295</sup> This created a new precedent that other states can now follow in making juvenile registration requirements.<sup>296</sup> The final guidelines then amended the federal guidelines allowing states to keep juvenile sex offenders off public registries and only allow their information to be accessed by law enforcement.<sup>297</sup> However, as mentioned earlier, this is still only a minimum, "setting a floor, not a ceiling."<sup>298</sup> This means that states may still require juveniles to register the same as adults do.<sup>299</sup> Thus, using this momentum, SORNA should be fully amended regarding its treatment of juveniles to continue to provide a more effective way to treat juvenile sex offenders.

#### *B. A Proposed Amendment to SORNA: Creation of J-SORNA—A Practical and Fair Registry for Juveniles*

The full enactment of SORNA by all the states would result in a tremendous increase in juveniles required to register as sex offenders.<sup>300</sup> This will result in more and more juveniles dealing with the life-altering stigma of being labeled a sex offender. SORNA does not take into account judicial discretion, the low recidivism rates for juveniles, risk factors, or the probability that a juvenile will be successfully rehabilitated under a treatment program when requiring a juvenile to

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291. See Ohio Substantially Complies Press Release, *supra* note 38.

292. See *id.*; Kelly, *supra* note 287.

293. OHIO REV. CODE ANN. § 2152.83(B)(2) (2005 & Supp. 2011).

294. *Id.* § 2152.82(B)(2)–(C), (E).

295. *Id.* § 2152.84(A)–(B).

296. See Kelly, *supra* note 287.

297. See Supplemental Guidelines for Sex Offender Registration and Notification: Final Guidelines, 76 Fed. Reg. 1630, 1631–32 (Jan. 11, 2011).

298. The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,032 (July 2, 2008).

299. See *id.* ("[J]urisdictions may adopt requirements that encompass the SORNA baseline of sex offender registration and notification requirements but exceed them in relation to" who will be required to register.).

300. See Caldwell et al., *supra* note 208, at 105.

register.<sup>301</sup> Instead, SORNA assigns the juvenile under a uniform tier system that may require the juvenile to register for life.<sup>302</sup> This tier system has been shown to be a poor indicator of sexual recidivists.<sup>303</sup> In fact, one commentator has gone so far to say that the SORNA tier system has been shown to select juveniles who are at a lower risk for violent re-offense as appropriate for lifetime registration.<sup>304</sup> Thus, an amendment to SORNA is necessary to protect youths from being inappropriately and arbitrarily labeled as sex offenders.

Currently, the majority of states that register juveniles have certain exceptions for them.<sup>305</sup> This is because the states recognize that juveniles are different than adults.<sup>306</sup> SORNA, on the other hand, simply extends protocols and procedures from adult sex offenders to juvenile sex offenders, inadequately capturing the complexities inherent in juvenile offenders.<sup>307</sup> Thus, a statutory amendment to SORNA in its application to juveniles is the best way to address this conflict.<sup>308</sup>

Amending the federal guidelines of SORNA by creating J-SORNA would allow the proper classification of sex offenders to continue, while limiting the negative impacts and stigmas that would attach to juveniles. SORNA's provisions requiring juveniles to register in a uniform tier-based system will be eliminated. Instead, J-SORNA will separate adults and juveniles, and will only apply to juveniles between the ages of twelve and eighteen.<sup>309</sup> A juvenile in this age range who is an adjudicated delinquent for a sex offense will immediately be required to register to the state's J-SORNA registry. This applies for any sex offense committed by the juvenile. The juvenile's record will be conditionally sealed following the proceeding. If at any point the juvenile commits another sex offense while on J-SORNA, the juvenile will be immediately transferred to an adult sex registry.

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301. See Sex Offender Registration and Notification Act, 42 U.S.C. § 16911 (2006).

302. *Id.* § 16911(1)(4).

303. See Caldwell et al., *supra* note 208, at 106.

304. *Id.* ("Of greater concern is the fact that the SORNA tier criteria designated participants who were at lower risk for violent reoffense as appropriate for lifetime registration and community notification.").

305. *Id.* at 105-06.

306. *Id.* at 105.

307. See Fabian M. Saleh & Gina M. Vincent, *Juveniles Who Commit Sex Crimes*, 28 ADOLESCENT PSYCHIATRY 183, 188, 202 (2004) ("Compared with adults, juvenile offenders are much more heterogenous, have higher rates of comorbidity, and include many youngsters for whom sexual deviancy is a temporary aberration."). See also *supra* Part II.D.2.

308. See ZIMRING, *supra* note 78, at 152 ("The best way to minimize the conflict between the principles of juvenile justice and the requirements of registration and notification programs is the careful design of statutory and administrative provisions that relate to adolescent offenders.").

309. See *id.* at 153 ("[P]olitical leaders should require separate and specific legislative analysis and administrative rulemaking for children and youth.").

The J-SORNA registry will include all of the juvenile's personal information, the sex offense committed, and a score for the severity of the offense. The scores will range from one to five. A score of one represents the least serious offense, and a score of five represents the most serious offense. Access to the J-SORNA registry will be restricted to law enforcement personnel only. The public will not be able to access the J-SORNA registry.

Once placed on the state's J-SORNA registry, the juvenile will be assigned to various treatment programs. These programs can include any of the following: sex offender treatment, cognitive-behavioral programs, community programs, volunteer work, or any other program that the judge deems fit.<sup>310</sup> Additionally, the juvenile will be assigned a probation officer to monitor the juvenile.<sup>311</sup> The probation officer will check in with the juvenile on a frequent basis, and will make sure that the juvenile is attending all assigned treatment programs.

When a juvenile on a J-SORNA sex registry turns twenty-one years of age, the juvenile will have a re-assessment hearing. The hearing's objective is to determine whether or not the juvenile should be removed from the J-SORNA or transferred to an adult sex registry. The judge will be in charge of conducting the hearing. The judge will listen to the recommendations and opinions of the psychologists who administered the treatment program for the juvenile, the probation officer assigned to the juvenile, and the parents of the juvenile. Additional factors the judge will consider are the nature of the sexual offense, the juvenile and victim's ages, and the juvenile's prior criminal history.<sup>312</sup> The judge may also factor in a victim's impact statement.<sup>313</sup>

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310. See *supra* Part III.C.2.

311. See Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 120 (1909) ("[O]rdinary legal evidence in a criminal court is not the sort of evidence to be heard in such a [juvenile] proceeding. A thorough investigation, usually made by the probation officer, will give the court much information bearing on the heredity and environment of the child.").

312. See Bowater, *supra* note 129, at 850 (arguing that judges should be able to use their discretion in determining whether a juvenile must register as a sex offender by using various risk assessment factors, such as: (1) the nature of the sexual offense, (2) the offender's age and maturity, (3) the complainant's age and maturity, (4) the juvenile offender's relationship to the complainant, (5) juvenile offender's prior criminal history, (6) whether the juvenile offender is a danger to the community based on a risk assessment, and (7) whether the juvenile offender is likely to respond to rehabilitation based on clinical assessments). See also 18 U.S.C. § 5032 (2006) (listing the six factors that a court must consider in evaluating whether to transfer a juvenile to adult status: "the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems").

313. See Julian V. Roberts, *Listening to the Crime Victim: Evaluating Victim Input at Sentencing and Parole*, in 38 CRIME AND JUSTICE: A REVIEW OF RESEARCH 347, 356 (Michael

At the end of the hearing, the judge will make the final decision regarding the juvenile. If the judge believes that the juvenile may commit another sex offense, the judge may require the juvenile to register to an adult sex registry. However, if the judge believes that the juvenile is no longer a threat to society and has been fully rehabilitated, the juvenile may be removed from the J-SORNA registry and will not be required to register as a sex offender.

Finally, since research regarding both juvenile sex offenders and the effectiveness of sex registries are limited,<sup>314</sup> a task force will be assembled to research the effectiveness of sex registries as applied to juveniles. The task force will research recidivism rates for juvenile sex offenders, effectiveness of registration and community notification laws to both juveniles and adults, and cost and benefit analyses of inclusion or exclusion of juveniles on registries.<sup>315</sup>

J-SORNA is not a perfect solution to the problems created by the Adam Walsh Act. It has its own shortcomings and limitations. A potential issue with J-SORNA is having a judge, as opposed to a panel of expert psychologists or social workers, making the final and ultimate decision regarding whether the juvenile gets transferred to an adult sex registry. This creates a broad range of judicial discretion for the judge which may lead to arbitrary and capricious decisions and transfers by judges.<sup>316</sup> As observed by the Supreme Court in *In re Gault*,<sup>317</sup> “unbridled [judicial] discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure.”<sup>318</sup> Thus, a judge may place certain juveniles who are not a threat to recidivate on an adult sex registry or may remove certain juveniles who are indeed a threat to recidivate from the sex registry completely.

A second issue is the arbitrariness of the age range of juveniles applicable for J-SORNA. If the sex offender is eighteen years of age or older when the sex offense is committed, the sex offender will not be eligible for J-SORNA. This may be viewed as extremely arbitrary, especially when compared to a seventeen year old that committed the same sex offense. Current research demonstrates that juveniles are more amenable to treatment than adults are, but the research does not

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Tonry ed., 2009) (“The importance of the message [from the victim] to the offender should not be underestimated.”).

314. See ZIMRING, *supra* note 78, at 149-50; Caldwell et al., *supra* note 208, at 109.

315. See ZIMRING, *supra* note 78, at 149-50.

316. See Richard S. Frase, *What Were They Thinking? Fourth Amendment Unreasonableness in Atwater v. City of Lago Vista*, 71 FORDHAM L. REV. 329, 343 (2002).

317. 387 U.S. 1 (1967).

318. *Id.* at 18.

conclusively show at what age treatment becomes ineffective.<sup>319</sup> Thus, the problem becomes: why not draw the line before or after the age of eighteen?

A third issue in regard to J-SORNA is that the majority of juvenile sex offenders who commit serious sex offenses may be transferred to adult court. States may feel pressure from the public that they are being too lenient on sex offenders and therefore push district attorneys and prosecutors to transfer more juveniles to adult court.<sup>320</sup> This may even trickle down further to less serious sex offenses committed by juveniles. Transferring more juveniles from juvenile courts to adult courts would eliminate the intended benefits of J-SORNA because the juvenile would not receive any judicial discretion.<sup>321</sup> Thus, the creation of J-SORNA may actually run counter to the overall goal of helping juveniles.

Although there are limitations with J-SORNA, it is still a better solution than allowing a subsection of juveniles to be subject to SORNA's harsh, arbitrary registration requirements. This is especially true since little to no research or data has been produced verifying that sex registries actually promote public safety.<sup>322</sup> If and only until then, the goal should be to limit the amount of juveniles placed on a sex registry.<sup>323</sup>

The key to success of J-SORNA is the careful and thoughtful decision-making by juvenile judges. The judge must be extremely knowledgeable in the law as it pertains to juveniles.<sup>324</sup> At the same time the judge must also have a strong love and passion for children.<sup>325</sup> A judge who truly cares for the best interest of the juvenile while using all

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319. See *NCSBY Fact Sheet*, *supra* note 205.

320. See *supra* Part II.B–D.

321. See Caldwell et al., *supra* note 208, at 107–08.

322. See *id.* at 107; Caldwell *supra* note 167, at 301.

323. See Parks & Bard, *supra* note 207, at 337 (“A punitive approach to juvenile sex offender treatment, often accompanied by public humiliation, may only serve to alienate such adolescents further and hinder the normal social development that might otherwise contribute to the prevention of additional victims.”).

324. See *Mill v. Brown*, 88 P. 609, 615 (Utah 1907). The court stated:

To administer juvenile laws in accordance with their true spirit and intent requires a man of broad mind, of almost infinite patience, and one who is the possessor of great faith in humanity and thoroughly imbued with that spirit. . . . [T]he beneficent purposes of the law may be made effective and individual rights respected. Care must be exercised both in the selection of a judge and in the administration of the law.

325. See Mack, *supra* note 311, at 119 (“[The judge] must, however, be more than this. He must be a student of and deeply interested in the problems of philanthropy and child life, as well as a lover of children. He must be able to understand the boys’ point of view and ideas of justice; he must be willing and patient enough to search out the underlying causes of the trouble . . .”).

the information, advice, and opinions available to him at the re-assessment hearing to determine if the juvenile is a threat to recidivate will help alleviate the majority of concerns and limitations of J-SORNA.

Additionally, most other potential shortcomings of J-SORNA will be resolved as the public becomes more aware of the current research declaring that the majority of juvenile sex offenders are not likely to commit future sex offenses.<sup>326</sup> States will begin to feel less pressure from the public to prosecute juvenile sex offenders, allowing more juveniles admission to a J-SORNA registry. Furthermore, the conditional sealing of the juvenile's records will allow juveniles to avoid the stigma of being labeled a sex offender, while not bogging down law enforcement with young children who will never commit another sex offense.<sup>327</sup> Law enforcement, of course, will still be able to access the juvenile's information on J-SORNA for purposes of locating potential sex offenders and protecting the public. Thus, J-SORNA delicately balances the competing policy interests of protecting juveniles while still improving public safety.<sup>328</sup>

## V. CONCLUSION

Requiring a juvenile to register as a sex offender on a registry that is available to the public has permanent, severe, and negative consequences on the juvenile's life. The stigmas and difficulties associated with being a registered sex offender will continually haunt and follow the juvenile.<sup>329</sup> It is clear that juveniles should be held accountable for their actions, and where a juvenile is convicted of committing a sex offense, the juvenile should be punished and monitored appropriately. However, arbitrarily requiring juveniles to register as sex offenders is detrimental to the rehabilitation of juveniles, and goes against the core concepts and theories of juvenile justice.<sup>330</sup>

The creation of a national federal registry (J-SORNA) specifically for juveniles that is only accessible by law enforcement agencies may solve both of these concerns. It provides information to law enforcement

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326. See *supra* Part III.C.1.

327. See Letter from Jill Beeler, Juvenile Section Supervisor, to Senate Judiciary-Criminal Justice Comm. (May 7, 2007), available at [http://www.opd.ohio.gov/AWA\\_Information/AW\\_Outlining\\_Prop\\_Changes.pdf](http://www.opd.ohio.gov/AWA_Information/AW_Outlining_Prop_Changes.pdf) ("Bogging down the public registry of sex offenders with 14-year-old kids dilutes the effectiveness of the registration and notification system, does nothing to enhance public safety, and wastes the limited and valuable resources of the law enforcement personnel who must track the registrants.").

328. See *supra* Part II.A-B.

329. See *supra* Part III.B.

330. See Caldwell et al., *supra* note 208, at 107-08.

agencies and states as to potential risks to re-offend, while at the same time allowing juveniles the opportunity to successfully rehabilitate themselves. It may increase the protection of the general public while preventing juveniles from facing permanent stigmas.<sup>331</sup>

The issues and problems that are brought upon juveniles by the Adam Walsh Act are not going away anytime soon.<sup>332</sup> Until the Adam Walsh Act is amended or declared unconstitutional as it pertains to juveniles, juveniles registered as sex offenders will continue to face stigmas that will continue to alter their lives. As one commentator noted as early as 1998, “[p]unitive or aversive treatment approaches must be considered within the context of a current political climate that exaggerates our fear of juvenile crime and energizes corresponding movements to punish children and youth as we would hardened adults.”<sup>333</sup> In conclusion, the story of Ricky Blackman illustrates the stigmas and problems imposed on juveniles who are registered as sex offenders and the capability for a juvenile to successfully lead a normal life once removed from a sex offender registry.<sup>334</sup>

Ricky was sixteen when he had sex with a girl who he met at a teen club.<sup>335</sup> Although she claimed she was fifteen, in reality she was only thirteen.<sup>336</sup> After she ran away from home, the cops came looking for her and confronted Ricky, who admitted to having sex with her on two occasions.<sup>337</sup> Ricky pleaded guilty to sexual abuse for having sex with a thirteen-year-old, and was placed on a conditional sex offender registry.<sup>338</sup> His family moved from the State of Iowa to the State of Oklahoma to give Ricky a fresh start.<sup>339</sup> After the move he completed his sex offender treatment and his record was supposed to be expunged.<sup>340</sup> However, Oklahoma did not recognize this and refused to remove his name from the registry.<sup>341</sup> As a result, the family had to move to a trailer

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331. See *supra* Part IV.B.

332. See *supra* Part III.

333. Mark Chaffin & Barbara Bonner, “Don’t Shoot, We’re Your Children”: Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children With Sexual Behavior Problems?, 3 CHILD MALTREATMENT 314, 315 (1998) (arguing that our current political atmosphere and climate has enhanced the use of punitive treatment towards juvenile offenders).

334. See Emanuella Grinberg, *No Longer a Registered Sex Offender, But the Stigma Remains*, CNN JUST. (Feb. 11, 2010), [http://articles.cnn.com/2010-02-11/justice/oklahoma.teen.sex.offender\\_1\\_offender-registry-oklahoma-label?\\_s=PM:CRIME](http://articles.cnn.com/2010-02-11/justice/oklahoma.teen.sex.offender_1_offender-registry-oklahoma-label?_s=PM:CRIME).

335. *Id.*

336. *Id.*

337. *Id.*

338. *Id.*

339. *Id.*

340. *Id.*

341. *Id.*

in a rural part of Oklahoma because he could not be within 2000 feet of a school or daycare center as a registered sex offender.<sup>342</sup> Additionally, Ricky suffered from continual harassment—he was videotaped by a neighbor when he went outside, was refused a sale of cigarettes from a gas station attendant, and his picture and address were posted on a vigilante website.<sup>343</sup> He could not even enroll in high school or obtain his GED because he was considered a danger to the rest of the students.<sup>344</sup> Ricky went from being a kid who was “fun-loving” and “full of life,” to a kid who was extremely cautious and more reserved.<sup>345</sup>

Yet, when Oklahoma eventually recognized Ricky’s completion of his sex offender treatment in Iowa and expunged his record, Ricky began his slow return to a life of normalcy.<sup>346</sup> With his name off the registry, Ricky began going out in public areas again where he was previously banned, and continued to move forward with his life.<sup>347</sup> In fact, he eventually ended up marrying a childhood friend.<sup>348</sup> Although it has been difficult for Ricky, with his name off the sex offender registry, Ricky finally has an opportunity to remove the stigmas that have haunted him as a registered sex offender and return to a life of normalcy.<sup>349</sup> This is something that Ricky could never have done if his name stayed on the sex registry for the rest of his life.

*Richard A. Paladino\**

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342. *Id.*

343. *Id.*

344. *Id.*

345. *Id.*

346. *Id.*

347. *Id.*

348. *Id.*

349. *Id.*

\* J.D. candidate, 2012; Hofstra University School of Law. This Note is dedicated to my family. Thank you for all of your loving support throughout college and law school, especially my parents, Rich and Lauren; and my sister, Krista. This Note would not have been possible without the help and thoughtful suggestions of many. Thank you Professor Gulino for teaching me the value of hard work and perseverance, and ultimately for making me the writer that I am today; Dean Demleitner and Professor Sample for your suggestions and guidance; and Lindsay for your friendship and being there for me through every stage of law school. I would also like to thank my Notes and Comments Editor, Jonathan Frankel, for all of his understanding and support; Christine Garcia for helping me choose and understand my Note topic; and Michael Capeci for your invaluable mentorship and advice. Lastly I would like to thank all of the members of Volume 40, especially those who spent hours pouring over my Note: Katherine Porter, Simone Hicks, Elizabeth Murphy, and Allana Grinshteyn.



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