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# JUVENILE SEX OFFENDER REGISTRATION LAWS IN THE UNITED STATES: HOW THE ADAM WALSH ACT WILL AFFECT JUVENILE SEX OFFENDERS

*by* BRITTANY I. BOHN, JD

The essence of the juvenile court idea, and of the juvenile court movement, is the recognition of the obligation of the great mother state to her neglected and erring children, and her obligation to deal with them as children, and

wards, rather than to class them as criminals and drive them by harsh measures into the ranks of vice and crime.<sup>1</sup>

—Hastings H. Hart, Superintendent of the Children's Home and Aid Society in Chicago, 1910

From its creation in the late 1800's, the juvenile justice system has struggled to balance the need to protect society from crimes committed by juveniles and the need to rehabilitate juveniles so that they might become positive contributors to society. In the last ten years, there has been a dramatic change in the way the juvenile justice system responds to juveniles who have been adjudicated delinquent for sex offenses. The system has become increasingly punitive in its response to juvenile crime, and the legislative response to juvenile sex offenders is no exception.

The legislative response to juveniles who have committed sex offenses has varied widely over time and across the United States as medical professionals, law enforcement officials, members of the legal community, victims' advocates, child advocates, and others have debated over how to appropriately address the need to rehabilitate juveniles and the need to protect members of the community, as new scientific research on the nature of sex offenses committed by juveniles and the effectiveness of methods to rehabilitate juvenile offenders become available. Many communities and government bodies are beginning to recognize that juveniles who commit sex offenses should not be treated the same as adults who commit sex offenses. One area of legislation that lawmakers and community members have consistently struggled with is juvenile sex offender registration. There is a fundamental clash between the notions that a juvenile offender is entitled to confidentiality as they seek to rehabilitate themselves and the notion that the public has the right to know when a sex offender lives in their community. As lawmakers have tried to balance these competing rights, unforeseen consequences have arisen, which have both harmed juvenile offenders and put members of the community at risk.

This article will examine how sex offender registration laws, specifically the registration and notification requirements, have been applied to juveniles and what some of the consequences of those laws have been for communities and juvenile offenders. Section I of this article will examine the first federal sex offender registration laws. Section II will discuss how these federal provisions have been applied to juvenile offenders by the states. Section III will examine the current trends (over the year 2006-2007) in juvenile sex offender registra-

tion laws. Finally, this article will examine how the recently signed federal Adam Walsh Child Protection and Safety Act of 2006 will affect juvenile sex offender registration laws throughout the United States.

## I. THE INTRODUCTION OF SEX OFFENDER REGISTRATION LAWS

Sex offenses and crimes against children are always devastating to both victims and the community at large. When a person who has been previously convicted of such a crime recidivates, the crime seems especially terrible since the system's treatment of the offender was not effective in deterring him from committing future crimes. Often, instances where criminals repeat sex offenses or offenses against children are highly publicized and it is generally believed that those who commit such offenses are highly likely to recidivate.<sup>2</sup>

Sex offender registration is a non-punitive<sup>3</sup> provision applied to sex offenders<sup>4</sup> requiring that the offender provide personal information to law enforcement agencies in order to monitor offenders, facilitate the location of suspects when new crimes occur, and place other restrictions on the offender such as residency and employment restrictions. Sex offender notification laws provide for the dissemination of the offender's personal information to law enforcement agencies, those who law enforcement agencies determine are in need of such information, or to the public at large through an internet database. Notification laws are designed to alert communities of those who have committed offenses in order to help provide for public safety and to help detect and prevent crime.

The first criminal registration ordinance was enacted in 1933 in California to keep track of the increasing rate of "professional criminals."<sup>5</sup> The purpose of this legislation and other criminal registration laws created in the following decades was to provide law enforcement agencies with practical information for locating and following the activities of those criminals who were likely to recidivate.<sup>6</sup> California was also the first state to apply the registration requirement to those that were convicted of a sex offense.<sup>7</sup> In 1986 five states had sex offender registration laws.<sup>8</sup> By the 1990's, most states had enacted some form of legislation requiring certain convicted sex offenders to register as sex offenders.<sup>9</sup> The first community notification law was enacted in Washington in 1990, requiring law enforcement agencies to release registration information to the public when necessary for the public's protection.<sup>10</sup> Most of these laws were enacted in response to a number of high-profile sex offenses and murders

committed by those who had previously been convicted of offenses against children.<sup>11</sup>

In response to the array of sex offender registration laws in the states that developed throughout the 1980's and 1990's, Congress enacted statutes to create federal guidelines and to provide financial incentives for all states to develop and implement sex offender registration programs. These federal laws, commonly known together as "Megan's Laws" require the states to create a legislative scheme to cause those who have been convicted of sex offenses and certain offenses against children to register on state and national sex offender registries and to make the information on these registries available to the public.<sup>12</sup> Enacted in 1994, the Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act required registration for a wide array of sexual offenses perpetrated against both adults and children, as well as some nonsexual offenses against children, such as kidnapping.<sup>13</sup> While the Wetterling Act permitted states to give law enforcement authorities discretion in allowing for community notification when necessary to protect the public, it did not require notification.<sup>14</sup> Megan's Law, enacted in 1996, amended the Wetterling Act to require that law-enforcement authorities notify the community when necessary to protect the public.<sup>15</sup> The Pam Lyncher Sexual Offender Tracking and Identification Act of 1996 further created a federal database of all of the registration information and made such information available to Federal and local law enforcement agencies.<sup>16</sup>

Since the enactment of federal Megan's Laws, every state has created some form of legislation requiring convicted sex offenders and those who have committed certain crimes against children to register personal information with law enforcement agencies and have this information made available to the community for a period of years or for their entire lives, in order to obtain their share of federal crime-prevention funds. Megan's Laws did not, however, provide specific guidance to the states about whether to and how to apply the new sex offender registration requirements to juveniles. Therefore, each state has had to decide whether to apply the registration requirements of Megan's Laws to juveniles.

The decision on whether or not to apply sex offender registration laws to juvenile offenders has been met with growing debate. On one side of the debate, many have argued that applying Megan's Laws to juvenile offenders is contrary to the fundamental tenant of the juvenile justice system: children are different

from adults.<sup>17</sup> First, children are physically different than adults, particularly in brain development. Scientific research on brain development has revealed that the maturation of the frontal brain regions, which are primarily responsible for the higher thought processes including complex thought and behavior and impulse control, continues to develop throughout the early twenties.<sup>18</sup> Therefore, children and teenagers are less able to think through the probable consequences of particular actions than adults. Also, this research indicates that a child's brain is highly capable of change, especially as compared to adults. This brain development research is supported by additional statistical research showing that juvenile sex offenders rarely re-offend and are less likely to re-offend than adult sex offenders.<sup>19</sup> It is because of these differences between adult offenders and juvenile offenders that the juvenile justice system ordinarily keeps juveniles' delinquency records private in order to give them the opportunity to rehabilitate themselves and to become a positively-contributing members of society, without carrying the stigma of crimes they may have committed as children.

On the other side of the debate is the victim's rights movement, arguing that the need to protect children in the community from harm is more important than a juvenile offender's right to privacy. With persuasive anecdotal evidence from victims of repeat sex offenders, victim's advocates have been successful in convincing lawmakers to subject juvenile sex offenders to the same registration requirements as adult sex offenders.<sup>20</sup>

## II. THE CURRENT STATUS OF JUVENILE SEX OFFENDER REGISTRATION LAWS IN THE UNITED STATES

The debate over the application of Megan's Laws to juveniles has resulted in the creation of a wide variety of juvenile sex offender registration laws throughout the United States. The spectrum of registration laws is wide, ranging from having no requirement for juvenile sex offenders to register at all to treating juvenile offenders the same as adult offenders for purposes of sex offender registration. Not only is the spectrum of registration requirements wide, but the registration requirements are also in a constant state of flux.<sup>21</sup> In the year 2006 alone, thirty-nine pieces of legislation affecting juvenile sex offender registration were signed into law or enacted.<sup>22</sup>

## A. THE REGISTRATION REQUIREMENT

All states, under federal Megan's Laws, have required that adults convicted of a sex offense or certain offenses against children must register as sex offenders. As aforementioned, the registration requirement involves submitting personal information to law enforcement agencies and keeping this information current such that law enforcement agencies on the state and federal levels might use the information to keep track of sex offenders and aid the agencies in future criminal investigations. Not all states have found that juveniles adjudicated delinquent of sex offenses should also have to register, considering that information from a juvenile's delinquency record has traditionally been kept privately and separately from adult criminal records.

As of January 1, 2007, thirty-six states explicitly required juveniles adjudicated delinquent for sex offenses to register as sex offenders or gave judges discretion to order those juveniles to register as sex offenders: Alabama, Arizona, Arkansas,<sup>23</sup> California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, and Wisconsin.<sup>24</sup> All thirty-six states that require juveniles adjudicated delinquent for sex offenses to register as sex offenders also require juveniles convicted as adults for sex offenses to register.<sup>25</sup> Since the common definition of a "sex offender" who is required to register under state Megan's Laws is any person who was "convicted" of a specified sex offense, various state courts have interpreted that any juvenile who is convicted as an adult would automatically be required to register as a sex offender along with adult offenders under Megan's Laws, though only Alaska, Florida, Kentucky, Louisiana, Maine, Vermont and Wyoming specifically require that juveniles convicted of sex offenses as adult must register as sex offenders.<sup>26</sup>

The remaining fourteen states, Alaska, Florida, Georgia, Hawaii, Kentucky,<sup>27</sup> Louisiana, Maine, Maryland, Nebraska, New York, Tennessee, Vermont, West Virginia and Wyoming, either specifically exclude all juveniles adjudicated in juvenile court for sex offenses from the registration requirement, do not specify whether juvenile offenders are required to register, or are vague as to what registration requirements juvenile offenders must meet.<sup>28</sup> Three of these

states, New York, Tennessee, and West Virginia have proposed, but not yet enacted legislation to require specified juveniles to register as sex offenders.<sup>29</sup> The Tennessee bill (if enacted) would apply to any juvenile adjudicated delinquent for specified sex offenses within the state or any juvenile adjudicated for specified sex offenses in another jurisdiction who then moves to Tennessee.<sup>30</sup> This requirement would terminate at either age twenty-one or twenty-five, depending upon the type of offense.<sup>31</sup> Under the proposed West Virginia Bill, any juvenile required to register could petition the court to issue an order stating that the juvenile is not required to register, if the juvenile shows good cause.<sup>32</sup>

Alaska is an example of a state that is vague as to what registration requirements juvenile offenders must meet. The Alaskan Senate recently enacted a bill, which would require sex offenders under the age of sixteen who have committed a crime including an act of sexual penetration with a person less than thirteen years of age and at least three years younger than the offender to register. However, Alaska does not specify whether these juveniles are subject to the same restrictions and punishments as adult offenders.

Florida recently attempted and failed to include certain juvenile offenders in its sex offender registration scheme.<sup>33</sup> The bill, which failed to pass, would have provided for the Department of Juvenile Justice to conduct a psychosexual evaluation of juveniles adjudicated of a sex offense. Based on those recommendations, the court would determine whether to require the juvenile to participate for up to three years in a community-based sex offender treatment program or to register as a sex offender if it is determined that he is not amenable to treatment.<sup>34</sup>

#### i. The Age Limit

One aspect of juvenile sex offender registration laws where state legislation varies is the age at which juveniles are required to register as sex offenders and the age at which registration requirements terminate. While most states have not opted to set a lower age limit at which a minor may be adjudicated delinquent for any offense,<sup>35</sup> some states have opted to set a lower age-limit for the age at which juveniles adjudicated delinquent for sex offenses may be required to register.<sup>36</sup> These provisions are especially important in states where there is a very low or no lower limit in the age where juveniles may be adjudicated delinquent.<sup>37</sup> Since the registration requirements may last for many years and,



as aforementioned, it has been recognized that very young children may not be capable of understanding the consequences of their actions, some states have found that it is not appropriate to require very young children to register as sex offenders.

Of the states requiring juveniles to register, only eight states actually define the youngest age at which an offender must comply with this requirement, which leaves open the possibility that in the remaining states, even very young children may be subject to registration.<sup>38</sup> North Carolina sex offender registration laws only apply to juveniles who were at least eleven years of age when they committed the offense, but such juveniles must also be found by the court to be a danger to the community.<sup>39</sup> In Indiana only juveniles who were at least fourteen years old and were found in court by “clear and convincing evidence” to be likely to be repeat offenders are required to register.<sup>40</sup> South Dakota law requires that a juvenile must be fifteen or older at the time their offense was committed in order to be required to register as a sex offender, without any additional proof of the likelihood of re-offense.<sup>41</sup> Additionally, Ohio, Idaho, New Mexico and Oklahoma registration laws apply only to juveniles fourteen-years-old and older, while Virginia sets its lower age limit at thirteen.<sup>42</sup>

Still other courts limit a juvenile’s registration requirement by terminating the requirement when the juvenile reaches a certain age. New Hampshire enacted a law this year that terminates a juvenile’s registration requirement when the juvenile reaches the age of seventeen or when the court that adjudicated the juvenile delinquent of the offense for which the juvenile is required to register no longer retains jurisdiction over the juvenile.<sup>43</sup> Tennessee is currently considering a bill that would terminate a juvenile’s registration requirement when the juvenile reaches the age of twenty-one years old or twenty-five years old if the juvenile committed a violent sex offense.<sup>44</sup> Both states, of course, would require that the juvenile offender had not re-offended at the time of the termination of his registration requirement.

## ii. Judicial Discretion

In order to address the aforementioned concerns of many that some juveniles should not be required to register because they do not pose a high risk of re-offense, some states have given judges the discretion to determine whether or not to order registration. Some states have allowed judges to use their discretion to determine whether or not certain juveniles should be required to regis-

ter and for how long on a case-by-case basis. States vary as to what factors a judge is to consider, the standard of proof used in determining whether or not a juvenile is required to register, and who has the burden of proving whether or not the juvenile should register. Additionally, some states give judges discretion in determining the length of registration and whether or not to terminate the juvenile's registration requirement at a certain age.

a. *Judicial Discretion in Ordering Registration*

The factors that a judge may consider in determining whether or not a juvenile is required to register vary from state to state. These factors can include the seriousness of the offense, the necessity to protect society, the level of planning and participation in the alleged offense, previous history of sex offenses, the availability of facilities or programs available to the court that are likely to rehabilitate the juvenile, sex offender risk assessment reports, and other factors deemed relevant by the court.<sup>45</sup>

States also vary as to who has the burden of proving that the juvenile must or must not register and what level of burden that party must overcome. Some states have placed the burden on the prosecution to show that registration is necessary in a given case. Virginia law presumes that juveniles adjudicated delinquent are required to register as sex offenders.<sup>46</sup> After adjudication, however, the prosecuting attorney may file a motion to require the juvenile to register if he was over age thirteen at the time of offense.<sup>47</sup> Then the court decides if the circumstances of the offense require registration, based on a number of factors including whether force, threat or intimidation was used in the commission of the offense, the relative ages and maturity levels of both the victim and the offender, nature of relationship between the victim and offender, the offender's prior criminal history, and any other aggravating or mitigating factors.<sup>48</sup>

In contrast, other states place the burden on the juvenile offender to show that they should not be required to register. In Washington, a juvenile required to register as a sex offender may petition the court any time after two years following the juvenile's adjudication for a sex offense, to be relieved of the duty to register.<sup>49</sup> The level of burden placed on the juvenile is dependant upon how old the juvenile was at the time of the offense.<sup>50</sup> If the juvenile was under age fifteen at the time of the offense, they must show, based on their behavior prior to and since the commission of the offense, by a preponderance of the

evidence, that future registration will serve no purpose, and that he or she has not been adjudicated of any additional sex offenses in the two years, since adjudication.<sup>51</sup> If the juvenile was fifteen or older at the time of the offense, he or she must show by clear and convincing evidence, that future registration will serve no purpose.<sup>52</sup> In Illinois, after several failed attempts to pass laws granting judicial discretion, the legislature passed, over the governor's veto, a law allowing a minor to petition the court (after two years on the registry for a misdemeanor offense or after five years on the registry for a felony offense) to terminate their term of registration.<sup>53</sup> Upon this petition, the court can terminate the minor's term of registration if the court finds, based on factors including a risk assessment evaluation performed by an evaluator approved by the state Sex Offender Management Board, that the minor poses no risk to the community by a preponderance of the evidence.<sup>54</sup>

Other states allow the court to determine on its own motion whether or not a juvenile should register.<sup>55</sup> For example, Kansas requires only those juveniles adjudicated for sexually violent crimes to register and allows the court to exempt a juvenile offender from registering if the judge finds "substantial and compelling reasons to keep a juvenile from registering."<sup>56</sup>

b. *Judicial Discretion in Determining the Duration of Registration*

Several states have adopted legislation that differentiates between adult and juvenile sex offenders by allowing for some flexibility in how long juveniles must remain on the sex offender registry, and whether they can petition the court to be removed from the registry. These state laws give judges discretion to determine how long a juvenile must register as a sex offender, taking into account factors such as the juvenile's offense history, their risk to re-offend, and their progress in treatment and under supervision. For example, twenty states have instituted special juvenile procedures and/or time limits that can terminate a juvenile's duty to register after a certain point in time following their adjudication.<sup>57</sup> These laws provide the opportunity to terminate the registration requirements in certain circumstances after juveniles reach adulthood (ranging from eighteen to twenty-one-years-old, depending on the state).<sup>58</sup> These approaches are designed to allow juveniles to rehabilitate themselves using court mandated services and to reintegrate themselves successfully back into the community without having to register throughout their adulthood.

In Texas, juvenile sex offenders can petition the courts for termination of registration requirements.<sup>59</sup> In these cases, the juvenile court must hold a hearing to weigh the protection of the public versus the harm caused to the juvenile and the juvenile's family by the registration requirements.<sup>60</sup> If the court determines that there is compelling evidence that protection of the public would be increased by registration, the offender is required to continue to register.<sup>61</sup> A similar process is in place in Oregon, where Juvenile offenders adjudicated for a sex crime in juvenile court can petition the court and apply for relief from registration two years after their period of supervision has ended.<sup>62</sup>

### iii. Excluding Specific Sex Offenses from Triggering the Registration Requirement for Juvenile Offenders

Some states include exceptions to the registration requirement for juveniles convicted of statutory rape. Statutory rape is a nonviolent act of sexual contact or sexual penetration that has been made criminal because one or both of the parties involved have not yet reached the "age of consent." These offenses are also commonly known as "Romeo and Juliet" crimes. The likely reasons that states have excluded these offenses from triggering the registration requirement is that statutory rape is more akin to a status offense, and therefore the juvenile is less likely to be violent or commit predatory sex offenses—the types of crimes that sex offender registration laws were meant to prevent. Therefore, it is seen as unnecessary by some state legislatures to require certain minors and young adults convicted or adjudicated of statutory rape to have to register as sex offenders.

The Georgia General Assembly, for example, recently passed a "Romeo and Juliet" law which says that when a teen is fourteen or fifteen years old and engages in any consensual sexual act with someone within four years of their age and no older than eighteen years of age, the older teen can only be charged with a misdemeanor and neither teen is required to register as a sex offender.<sup>63</sup> Also, Utah enacted a provision allowing a court to divert sex offenders rather than adjudicate them delinquent if the juvenile was less than sixteen years of age at the time the offense was committed, the juvenile did not use force in the commission of the offense and there was no more than two years in age difference between the offender and the victim.<sup>64</sup>

#### iv. DNA Sample Requirements

In those states that treat juvenile offenders similarly to or the same as adult offenders, new technology is being used to keep track of juvenile offenders in the same way as adult offenders. DNA records are helpful in criminal investigations, particularly in sex offense investigations. Therefore, many states have begun to require both adult and juvenile sex offenders to submit a DNA sample in order for the sample to be placed on a convicted sex offender database to help law enforcement agents investigate future sex crimes. Opponents to legislation which requires juvenile sex offenders to submit DNA samples to law enforcement agencies make the same aforementioned argument as those who oppose putting any information about juveniles on a sex offender registry, that juvenile records should be kept private and separate from adult records.

Alaska's pending juvenile sex offender registration law requires that the newly added juvenile offenders submit a DNA sample.<sup>65</sup> Arizona requires juveniles convicted only of certain crimes to have to register, and holds the juvenile's DNA record until his twenty-fifth birthday.<sup>66</sup> Illinois' Governor is expected to sign a bill that would require registered juvenile sex offenders to submit a DNA sample.<sup>67</sup>

Some states only require juveniles to submit DNA samples under limited circumstances. Kentucky requires only those juveniles detained in custody by the Department of Juvenile Justice to give DNA samples for their DNA database.<sup>68</sup> Mississippi's current law requires all juvenile sex offenders to submit a DNA sample, but it requires only those juveniles that have been adjudicated for sex offenses two times or more to have their DNA samples included in the state's DNA database.<sup>69</sup>

#### v. Residency, Work, Education and Miscellaneous Restrictions Applied to Juvenile Sex Offenders

Many states have begun to place additional restrictions on those adults who are required to register as sex offenders. These restrictions include limiting the proximity in which the offender may reside in relation to a school, day care center, park, or other place where children regularly congregate and forbidding sex offenders from working at schools, daycare centers, or places of business where children regularly congregate. Some states have extended these restrictions to apply to juvenile sex offenders. Other states have placed special re-

strictions only on juvenile offenders, including restricting where a juvenile sex offender may attend school and where a juvenile sex offender who is also a ward of the state may be placed in foster or shelter care.<sup>70</sup>

For the most part, states have been reluctant to extend the residency and employment restrictions imposed upon adult offenders to juveniles, especially given the negative impact such requirements could have on those that a dependent juvenile lives with. Some states, like Michigan, have expressly stated that a court may not restrict a juvenile's residence.<sup>71</sup> A new law in Michigan would prohibit the courts from restricting a juvenile under the age of nineteen that is currently attending school and living with his parent or guardian from living near a school and expressly exempts juveniles of a certain age who have committed certain "lesser" sex offenses from residency and employment restrictions.<sup>72</sup> Other states, like Illinois, are silent as to whether the residency restrictions placed on registered sex offenders apply to juveniles.<sup>73</sup> When a statute is silent as to whether a juvenile would be required to register, one might assume that the requirements would apply to all sex offenders, including juvenile offenders. However, in practice in Illinois, such restrictions have not been enforced against juvenile offenders.<sup>74</sup>

In 2006, several bills attempting to impose residency restrictions on juveniles have failed to become law. Florida failed to pass a law that would prevent juveniles who were prosecuted as adults for a sex offense from living within 2,500 feet of any school, public school bus stop, day care facility, park, playground, or other place where children regularly congregate.<sup>75</sup> Kentucky also failed to pass a law that would prohibit juvenile sex offenders from living within 1,000 feet (or 1,500 feet in a subsequent failed piece of legislation) of any school or day care facility upon reaching the age of eighteen.<sup>76</sup>

One difficult question that legislatures have faced concerning juvenile sex offenders is how to protect students in public schools from sex offenders when a sex offender is also a public school student. This question becomes exceedingly difficult to answer when the juvenile offender and victim both attend the same school. The issue is further complicated when a state's law simultaneously requires mandatory school attendance for minors and forbids minors from being on school property, as is the case in Illinois.<sup>77</sup> Illinois has temporarily settled the problem in 1998 by an "unofficial" letter by the Attorney General's Office stating that juvenile sex offenders have the right to attend their

resident schools, though educators and lawmakers continue to explore the issue.<sup>78</sup>

Oklahoma is currently considering a bill that would allow a school to transfer a juvenile sex offender when the offender and his victim attend the same school and the victim wishes to be separated from the offender.<sup>79</sup> Kansas successfully enacted a similar bill requiring that juvenile courts issue an order prohibiting a violent juvenile sex offender from attending the same school as their victim.<sup>80</sup> If there is only one school in the juvenile offender's district, the juvenile court will determine the appropriate placement of the offender.<sup>81</sup> Some states have been reluctant to allow schools to transfer-out juvenile sex offenders. Iowa recently considered, but did not pass, a bill that would have allowed the Board of Directors of a public school district in which a registered juvenile sex offender was enrolled the complete discretion to determine whether to allow or deny the juvenile continued enrollment in the district. If it denied the juvenile enrollment, it would have to provide the juvenile with educational services in an alternative setting.<sup>82</sup>

State legislatures have also considered the idea of restricting the placement of juveniles in the foster care system. When a juvenile is both a ward of the state and a juvenile delinquent, it can be difficult to find appropriate placement for the child, since foster placements and group homes almost always put juvenile sex offenders in close proximity to other children. This has led some states to consider the appropriateness of allowing juvenile sex offenders who are also wards of the state to be placed in certain foster care and group home facilities, however, no state has yet to pass a law specifically restricting the placement of juvenile wards based on their sex offender status. Recently, California failed to pass a law that would have required state-funded community care facilities located within one half mile from any public or private school from accepting the placement of juveniles who were adjudicated for sex offenses.<sup>83</sup> Such proposed laws are highly controversial as they could potentially severely limit the availability of placements for children who are under the care of the state.

A few states have placed even the strictest restrictions on juvenile sex offenders. Michigan's recently enacted HB 5531 requires juveniles convicted of certain sexual conduct when they were at least seventeen years of age at the time of the offense and his or her victim was less than thirteen years of age to be subject to lifetime electronic monitoring.<sup>84</sup> In addition, with the introduction of Global Positioning System technology (GPS) into the monitoring of sex offenders,

states may choose to apply such provisions to juvenile offenders. While a few states have considered applying GPS monitoring to juveniles or explicitly excluding juveniles from GPS monitoring, no state that utilizes GPS monitoring has enacted a law that would specifically require or exclude a juvenile from the requirement.<sup>85</sup>

### B. THE NOTIFICATION REQUIREMENT

Much like the registration requirements, the community notification provisions of Megan's Laws also do not describe how they should be applied to juveniles at the state level. Community notification laws allow for a registered sex offender's personal information and information from his criminal record to be made available to law enforcement agencies and the general public. Applying this idea to juveniles stands in direct contrast to another basic tenant of the juvenile justice system, a juvenile's record should remain confidential and used only within juvenile court.

Traditionally, state laws have limited access to information about juveniles' criminal histories, court proceedings, and personal information. States that require juveniles to register are forced to consider how much of this traditionally confidential information will be shared as part of the registry information. Given the fact that juvenile sex offense cases may be intra-familial, states must also grapple with how to provide information about the offender's crime without simultaneously exposing the identity of their victim.

For many juveniles, notification can exacerbate their inability to make connections with pro-social people, to maintain friendships, to get jobs, or to strike out and find healthy leisure activities in which to take part.<sup>86</sup> Additionally, for some, the stress of having one's sex offender status revealed publicly can hinder rehabilitation.<sup>87</sup> Some treatment providers have noted that discussions with juvenile sex offenders about the negative effects of notification (such as harassment by the community) them can dominate treatment sessions that should be focused on more substantive goals of treatment.<sup>88</sup>

Therefore, many states have limited the way their sex offender registration statutes notification requirements apply to juvenile sex offenders. For example, in Arizona, Minnesota, Missouri, North Carolina, Ohio, Texas, and Wisconsin, juveniles adjudicated delinquent and required to register as sex offenders are exempt from community notification laws.<sup>89</sup> On the other hand, twenty-two



states have community notification laws that specifically include provisions for juvenile sex offenders.<sup>90</sup>

Some states have tried to continue to follow the basic tenant of the juvenile justice system by limiting the notification requirement and not making a juvenile's registration information available to the general public. For example, in some states, the information juveniles must submit to the registry is solely for use by law enforcement, versus being contained on a statewide registry that allows for more widespread access to juveniles' personal information.<sup>91</sup> For example, Idaho laws allow the state to maintain a separate registry for juvenile sex offenders that is accessible to the public only after they have requested information from the police.<sup>92</sup> In Michigan, juveniles have been included on the registry that is available to law enforcement, but their names are not included on the public, Internet accessible registry until they turn eighteen.<sup>93</sup> However, any juvenile convicted of the most serious sexual offenses is listed on the public sex offender registry even after their eighteenth birthday.<sup>94</sup>

Additionally, some jurisdictions maintain juvenile sex offender registries within the juvenile court or juvenile supervision agency, rather than with the local law enforcement agency. This allows for the collection and maintenance of registry data, while also allowing for increased protections over juvenile registrants' information. For example, in Missouri, the names of adjudicated sex offenders are maintained on registries within the juvenile courts, which provides for some confidentiality protections.<sup>95</sup> Rather than being maintained on the statewide registry used for adults, information about these youth is provided by the court only to a limited range of parties on a "need to know" basis.<sup>96</sup>

The Alabama legislature took into consideration the ways in which juvenile offenders are different from adult offenders when it developed the state's community notification legislation for juveniles.<sup>97</sup> The Alabama General Assembly explained its desire to distinguish between juvenile and adult offenders in their sex offender registration statute's legislative findings section:

Juvenile sex offenders, like their adult counterparts, pose a danger to the public. Research has shown, however, that there are significant differences between adult and juvenile criminal sexual offenders. Juveniles are much more likely to respond favorably to sexual offender treatment. Juvenile offenders have a shorter history of committing sexual offenses. They are less likely to have deviant sexual arousal patterns and are not as practiced in avoiding responsibility for their abusive behavior. Juveniles are dependent

upon adults for food and shelter, as well as the emotional and practical support vital to treatment efforts. Earlier intervention increases the opportunity for success in teaching juveniles how to reduce their risk of sexually re-offending. The Legislature finds that juvenile criminal sex offenders should be subject to the Community Notification Act, but that certain precautions should be taken to target the juveniles that pose the more serious threats to the public.<sup>98</sup>

The Legislature ultimately revised the state's notification law to create different provisions for juvenile sex offenders.<sup>99</sup> Under the new law, juvenile sex offenders are no longer subject to automatic community notification but are required to receive sex offender treatment and register with the local authorities upon release from the juvenile court's supervision.<sup>100</sup> Prior to the release of a juvenile sex offender, treatment providers complete a risk assessment of the juvenile for the sentencing court and the juvenile probation officer.<sup>101</sup> Unless otherwise ordered by the sentencing court, the juvenile sex offender is not subject to notification upon release from detention unless the court determines there is a need for notification.<sup>102</sup> If a need for notification is found, cases are assessed on an individual basis to determine the most effective and judicious use of notification.<sup>103</sup>

#### i. Internet Sex Offender Registry Databases

All states now have some form of internet database or web site for listing registered sex offenders' registration information. These databases provide the general public with readily accessible information about registered sex offenders, including their names, addresses and convictions. Since sex offender registration web sites are the most public and most readily accessible mode of notifying the community about registered sex offenders, the majority of states, especially those who otherwise restrict the dissemination of a juvenile sex offender's information, have enacted laws that specifically exclude a juvenile sex offender registration information from the internet. In the last year however, some states have moved to include information about certain juvenile sex offenders on these web sites. For example, in Colorado, a new law requires that law enforcement agencies list the registration information of juveniles who have been adjudicated delinquent for a second, subsequent sex offense on its sex offender registration website.<sup>104</sup>

While many states have not found it necessary to make a juvenile sex offender's information available to the general public, some states have found it necessary to make a juvenile sex offender's information available to the school that the

juvenile offender attends, since schools must take on the special role of supervising the juvenile sex offender when he is in close proximity to other children. For example, Illinois enacted a law requiring that a juvenile's sex offender registration information be disseminated to the principal or head administrator and any guidance counselor at the school that the juvenile attends, and that such record must be kept separate all school records.<sup>105</sup> The law also provides that the juvenile's information must be provided to any person when that person's safety may be potentially compromised by the juvenile sex offender.<sup>106</sup> The effect of the combination of these two provisions on the confidentiality of juvenile sex offenders is uncertain, though it is possible that Illinois school officials would be permitted to release information about the juvenile sex offender to those in the general school population if those school officials determined that the school population's safety would potentially be compromised by the juvenile offender.

Some states have made a juvenile's registered sex offender status open to the public by unique means. In Louisiana, any driver's license issued to a registered sex offender is orange in color and includes the words "sex offender on it."<sup>107</sup> The license must be kept valid by the offender and the offender must also provide the state with certain personal information, including information about his employer, when applying for and renewing his license on a yearly basis.<sup>108</sup>

## ii. Access to Juvenile Court Records

As aforementioned, one of the basic tenets of the juvenile justice system is that a juvenile's delinquency record is to be kept sealed from public scrutiny. Some states have challenged that notion through sex offender registration laws making a juvenile's delinquency record accessible to those outside of the juvenile court. For example, California now allows any person authorized to perform a sex offender risk assessment to access all of the registered sex offender's relevant records, including their juvenile records.<sup>109</sup> Also, Kentucky recently amended its law that banned public access to juvenile records, allowing a juvenile age fourteen or older's petition, adjudication order, and disposition in a juvenile delinquency proceeding for an offense that would be considered a felony offense in adult court to be kept as a separate public record accessible to the public.<sup>110</sup> On the other hand, some states have maintained the private nature of juvenile records, despite attempts to make them more public. The Iowa legislature, for instance, recently failed to enact a law that would make the

complete record of a juvenile required to register as a sex offender a public record that could not be sealed by the court.<sup>111</sup>

Some states have examined the issue of whether a person's juvenile record of sex offenses could be expunged. Indiana attempted and failed to pass a law that would allow a person to expunge their juvenile record of sex offenses (which are otherwise non-expungeable in Indiana) provided that twenty years have passed since the last offense and the satisfactory completion of the person's sentence and other imposed obligations.<sup>112</sup> Therefore in Indiana, as well as many other states, a person's juvenile record of sex offenses may not be expunged regardless of the circumstances.<sup>113</sup>

### III. THE FEDERAL RESPONSE TO STATE EFFORTS: THE ADAM WALSH ACT

Based on the preceding discussion, it is clear that there is a wide spectrum of laws pertaining to juvenile sex offender registration currently in the United States. The variety of laws reflects the lack of guidance on whether or not juvenile sex offenders should be required to register from the federal Megan's Laws and the monumental debate over the issue between victim advocates lobbying to include juvenile sex offenders in the registration requirements, public outcry based on sensationalized media coverage of offenses committed by repeat juvenile offenders, research scientists releasing information about the nature of sex offenses committed by juveniles and their potential for rehabilitation, and the opinions children's rights advocates in favor of keeping juvenile delinquency records private and continuing to treat juvenile offenders differently than adults. With all of this inconsistency in the laws, it is no surprise that the federal government has recently stepped in to create some uniformity in regards to juvenile sex offender registration laws.

#### A. THE APPLICATION OF THE ADAM WALSH ACT TO JUVENILE SEX OFFENDERS

On July 27, 2006, President Bush signed the Adam Walsh Child Protection and Safety Act of 2006.<sup>114</sup> The Act, named after the murdered son of television host and activist John Walsh, is designed to impose nationwide uniformity to the current patchwork of sex offender registration and notification state laws.<sup>115</sup> The Act requires that all states wishing to receive federal crime-prevention funds place some youths who commit certain sex offenses on a national

Internet registry, even if the juvenile was adjudicated delinquent of the offense rather than being convicted in adult court.<sup>116</sup> The U.S. Attorney General is requested to issue guidelines on how states should craft their registration systems, including more precisely identifying the crimes which trigger the registration requirement.<sup>117</sup>

The “Declaration of Purpose” section of the Act identifies several victims of “vicious attacks” by “predators” whom the Act was designed to protect from future harm.<sup>118</sup> One of the listed victims is Amie Zyla, who was sexually abused at eight years old by a juvenile sex offender and has since become a zealous advocate for child victims and the protection of children from juvenile sex offenders.<sup>119</sup> Amie Zyla was very influential in bringing the issue of juvenile sex offenders to the attention of Congress and in the drafting and passage of the Adam Walsh Act.<sup>120</sup>

In June 2005, Ms. Zyla spoke before the House of Representatives at an oversight hearing on protecting children from sexual predators.<sup>121</sup> She testified that she was horrified to learn, nine years after being molested by fourteen-year-old Josh Wade, that he had gone on to re-offend as an adult while serving as a mentor to children.<sup>122</sup> She argued that by not requiring juvenile sex offenders to register and not making their information available to the community, her home state of Wisconsin’s laws had placed the rights of juvenile offenders to have their personal information and juvenile records remain confidential ahead of the rights of children to be safe.<sup>123</sup> She urged that action needed to be taken on the Federal level to require juvenile offenders to register as sex offenders, since “juvenile sex offenders turn into adult offenders.”<sup>124</sup>

Despite Ms. Zyla’s moving testimony, the inclusion of juvenile offenders on the national sex offender registry was a hotly contested issue.<sup>125</sup> The American Psychological Association (APA) urged the public to educate their representatives about the “devastating impact [the Adam Walsh Act] will have on the lives of many children and youth.”<sup>126</sup> In a collective letter in opposition to the Adam Walsh Act, the APA and other opponents wrote:

Given the low risk that juvenile sex offenders will re-offend; the lack of safeguards to ensure confidentiality, correct errors, or remove individuals from this list; and the damage associated with being ‘blacklisted’ for life for a youthful offense, public safety and good policy dictate that the national sex offender registry specifically exclude persons who committed an offense prior to having attained the age of 18 years. The bill’s scope is such that a

young adolescent, who was adjudicated a delinquent for non-violent sexual contact with playmate, would face what amounts to a life sentence of the most degrading public humiliation.<sup>127</sup>

The APA and other groups further urged Congress to consider the differences between juvenile and adult offenders, including: 1. the fact that juveniles are often charged with sex offenses in an inconsistent fashion (i.e. that in instances of sexual contact between two under-aged minors, the older minor or the male minor will often be charged with a sex offense while the younger minor or the female minor will not be charged, regardless of the minor's actual level of understanding and maturity); 2. juveniles will not re-offend with appropriate intervention, and 3. juvenile sex offenders have very low rates of recidivism. Despite the opposition groups' urging Congress not to pass the Act, since it would treat juvenile sex offenders the same as violent adult predators regardless of the juveniles' circumstances, the Adam Walsh Act was passed.<sup>128</sup>

The Act defines a sex offender as a person who was convicted of a sex offense.<sup>129</sup> Therefore, the terms which will determine whether a juvenile will be considered a sex offender under this act are "sex offense" and "convicted." A sex offense is defined as a federal or other criminal offense that has an element involving a sexual act or sexual contact with another or a federal or other criminal offense that is a specified offense against a minor.<sup>130</sup> Offenses involving "consensual sexual conduct" are not considered sex offenses for the purpose of the Act if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense or the victim was at least thirteen years old and the offender was not more than four years older than the victim.<sup>131</sup> Nowhere in the Act is the term "consensual sexual conduct" defined for purposes of the Act, while the common legal definition of "consensual" is "having, expressing or occurring with full consent."<sup>132</sup>

Arguably, this provision of the Act attempts to distinguish the aforementioned "Romeo and Juliet" crimes<sup>133</sup> from other sex offenses for the registration requirement. However, since all states have statutory provisions for "age of consent" where prior to a certain age, typically sixteen, a person is deemed to be incapable of consent, it is possible that no offense can be considered one involving "consensual sexual conduct" for purposes of exemption from federal sex offender registration requirements if the victim is under the age of consent according to state laws.<sup>134</sup> The Federal law seems to suggest that sex acts between a minor at least thirteen years of age and another person no more than four years older can be "consensual" while State statutory rape laws are based

on the assumption that sex acts with minors under a certain age can never be consensual.

Groups that spoke out in opposition to the Act<sup>135</sup> argued that this narrow exception to registration in the Act for “consensual sexual conduct” was an artificial distinction that does not account for the true circumstances in which sex offenses occur.<sup>136</sup> The opposition groups illustrated their opinion with an example of how different offenders might be treated under the act:

Thus, while the bill would exempt a [nineteen]-year-old who had consensual contact with a [fifteen]-year-old (even though that is below the age of consent), a far less mature [fifteen]-year-old could face lifetime stigma and humiliation for naïve experimentation with an [eleven]-year-old friend.<sup>137</sup>

Nowhere in the Act or related documents is there an explanation for why the age of thirteen and the difference in age of four years was chosen in this exception.

Under the Act, a sex offender must be “convicted” of a sex offense in order to be required to register.<sup>138</sup> The Act’s definition of the term “convicted” includes adjudications of delinquency, so long as the offender was fourteen years old at the time of the sex offense and the offense for which the juvenile was adjudicated delinquent was comparable to or more severe than aggravated criminal sexual abuse<sup>139</sup> or was an attempt or conspiracy to commit such offense.<sup>140</sup> Therefore, the Act mandates that the juvenile offenders who will be required to register are those juveniles aged fourteen and older who are adjudicated delinquent of aggravated criminal sexual abuse, as well as all juveniles convicted as adults for any sex offense.

All juveniles that fit the definition of “sex offender” under the Act are required to register as sex offenders.<sup>141</sup> Every state is required by the act to maintain a registry of sex offenders and a notification program.<sup>142</sup> A sex offender is required to register before completing a prison sentence for a sex offense or within three days of being sentenced for a sex offense, and keep the registration current throughout their registration requirement, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student.<sup>143</sup> Under the Act, state statutes must include a penalty for failure to register or to maintain registration.<sup>144</sup>

Juveniles sex offenders, like all other sex offenders, are required by the Act to submit to the registry their name, social security number, address, employment

information, student information, license plate number and any other information that the U.S. Attorney General should require.<sup>145</sup> Furthermore, the jurisdiction in which the sex offender registers must ensure that information on the registry for each sex offender includes a physical description and a current photograph of the offender, the text of the provision of law defining the criminal offense for which the sex offender must register, the criminal history of the sex offender (including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender), finger and palm prints of the offender, a DNA sample of the offender, and a photocopy of a valid driver's license or identification card issued by the jurisdiction.<sup>146</sup>

The Act also requires that most of the sex offender's registration information, including photographs, be made available to the public at large. The jurisdictions may not make public the identity of the victim of the sex offense, the social security number of the sex offender, information about any arrests that did not result in the conviction of the sex offender, and any other information exempted from disclosure by the state's Attorney General.<sup>147</sup> Each jurisdiction must make the required registration information available to the public on the Internet.<sup>148</sup> The jurisdiction is required to maintain the Internet site and permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius.<sup>149</sup> The Act further mandates the creation of a National Sex Offender Registry, a database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry.<sup>150</sup>

Furthermore, the Act also requires further dissemination of a juvenile sex offender's registration information. Under the Act, once a juvenile registers, all of the information available on the Internet registry site will be provided to law enforcement agencies, schools and public housing agencies in the area where the offender lives, goes to school or is employed, agencies responsible for conducting employment-related background checks, child welfare agencies, volunteer organizations that work with minors and any organization, company or individual who requests such information.<sup>151</sup>

The duration of the registration requirement for juvenile offenders is the same as adult offenders.<sup>152</sup> The Act creates three tiers of offenses with each tier corresponding to a different duration of registration and a other registration requirements, such that an offender's registration requirements differs based on



the type of offense for which he was convicted.<sup>153</sup> A sex offender may therefore be required to register for fifteen years (Tier I), twenty-five years (Tier II) or for his or her entire lifetime (Tier III).<sup>154</sup> However, as aforementioned, since only juveniles who have committed the offense of aggravated criminal sexual abuse or a similar or a more severe offense are required to register as sex offenders under this Act, and that offense falls under Tier III, any juvenile sex offender who is required to register will be considered a Tier III offender and will have to register as a sex offender for their entire life.<sup>155</sup> Since all juvenile sex offenders would be Tier III offenders under this Act, juveniles would also be required to appear in person every three months to verify their information and provide their jurisdiction with a current photograph.<sup>156</sup>

The Act does allow juvenile offenders, unlike adult offenders also required under the act to register for life, to be eligible to have their periods of registration reduced under certain circumstances. If, over a period of twenty-five years since being required to register, the juvenile offender has not been convicted of any offense for which imprisonment for more than one year may be imposed, has not been convicted of any sex offense, has successfully completed any period of supervised release, probation and parole, and has successfully completed an appropriate sex offender treatment program (certified by the jurisdiction or the Attorney General), then the juvenile sex offender's registration requirement is terminated.<sup>157</sup> There is nothing in the Act that describes by what process a registered sex offender must prove a "clean record" nor what would happen to the offender's registration information once his or her period of registration ends.

#### B. HOW MIGHT THE ADAM WALSH ACT AFFECT STATE JUVENILE SEX OFFENDER REGISTRATION LAWS?

States that fail to implement the new requirements within three years of the enactment of the federal law will lose ten percent of their annual U.S. Department of Justice (DOJ) anti-crime funding allocation, unless the implementation of the Act would place the jurisdiction in violation of its state constitution, as determined by the state's Supreme Court.<sup>158</sup> States that do comply with the Act will also be eligible for grants to offset the costs of implementing the Act, making it very economically appealing to the states.<sup>159</sup>

If implemented, this Act would override the laws of those states that exclude juveniles sex offenders from the registration requirement or that allow juvenile

court judges some discretion in requiring a juvenile offender to register or determining the length of the offender's registration, when that juvenile offender has committed at least the crime of aggravated criminal sexual abuse or its equivalent.<sup>160</sup> Additionally, the Act in no way prevents the states from imposing harsher restrictions on juvenile offenders or from requiring a greater population of juvenile offenders from registering. Thus, the effect of the Act is to create a juvenile sex offender registration requirement in every state.

The Act also requires all states to make registration information about juveniles who are required to register available to the public at large. This provision of the Act would override the laws of those states that allow a juvenile's information to remain private for the duration of the registration requirement or until the offender reaches a certain age and laws that restrict the dissemination of registration information to law enforcement, public schools, etc. The Act also makes public far more information about the minor, including the minor's picture, than is currently required by any state law. Furthermore, those juveniles who are required to register under the Act also must give a DNA sample, making the submission of DNA samples a requirement for at least some juvenile sex offenders in states where DNA samples were not previously required.

Although the Act does not create residency, educational and employment restrictions for juvenile sex offenders, it does not prevent any state from requiring such restrictions. By requiring that jurisdictions provide schools, public housing developments and places of employment with juvenile sex offender registration information, the Act makes it easier for states to enforce such restrictions. If a juvenile is legally restricted from living in a certain area, working in a certain business, or attending a certain school, the Act will ensure that the appropriate people have the juvenile offender's information so that they will be able to immediately determine if an employee, student, etc. is in violation of the restrictions.

The Act requires that juveniles who are required to register as sex offenders make their "criminal" records available to the public. The Act does not, however, give a definition of "criminal." Therefore, it is unclear from the text of the Act whether juvenile sex offenders are required under the Act to submit their juvenile delinquency records to public scrutiny. The interpretation of the word "criminal" is very important to those aforementioned states that have maintained the private nature of a juvenile sex offender's criminal record, since

they may now be required to release juvenile delinquency records, with the exception of arrests not resulting in convictions, to the general public. Regardless of the interpretation of the word “criminal”, however, states may continue to or opt to allow the public or certain members of the public to have access to a juvenile’s delinquency record.

#### IV. CONCLUSION

Obviously, these changes in law represent a major shift in our nation’s response to juvenile offenders and suggest a belief that some juveniles should be treated the same as adults in our justice systems. Ironically, the fundamental differences between juvenile and adult offenders, particularly a juveniles’ amenability to treatment and potential for rehabilitation, were among the reasons juvenile offenders have traditionally been afforded legal protections that adult offenders have not: a right to confidentiality, sealed records, closed hearings, and a guarantee that up to a certain age, their cases would be tried in juvenile court. Furthermore, while scientific advancements in the areas of behavioral science and developmental neurology have grown exponentially since the advent of the juvenile justice system and scientific studies now confirm that the founders of the juvenile justice system were correct in their assumption that children are fundamentally different than adults, state and federal laws treat juvenile sex offenders increasingly similar to or the same as adult offenders.<sup>161</sup>

While certain juvenile offenders tried in juvenile court will now be required to register and be subject to the same restrictions as adults, juvenile offenders are not afforded the same due process protections as adults, such as the right to a jury trial. As we begin to treat juvenile sex offenders in the same manner as adult offenders for purposes of sex offender registration, it is important to consider whether we should also give juveniles the same rights as adult sex offenders.

However, the outcry of the public and victim advocates is clear; juveniles commit sex offenses and are capable of recommitting offenses. Therefore the rights of children who are or may become victims of sex offenses are more important than the rights of juvenile sex offenders. But if state laws continue on the current trend of placing more harsh restrictions on more juvenile offenders, hopefully they will do so thoughtfully, paying attention to the warnings of scientists and others who study juvenile sex offenders, carefully analyzing which programs are effective in preventing recidivism, and not as a knee-jerk

reaction to minimally occurring, highly sensationalized unfortunate events. Perhaps though, at least in its relation to juvenile sex offenders, the days where Hastings H. Hart envisioned the state as a mother caring for young offenders like wayward children in need of a helping hand are over, and an era of treating certain youth offenders like smaller versions of adult offenders has been ushered in by juvenile sex offender registration laws.

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## NOTES

1 Hastings H. Hart, *Distinctive Features of the Juvenile Court*, 36 ANNALS AM. ACAD. POL. & SOC. SCI., 55, 57 (1910).

2 See *Smith v. Doe*, 538 U.S. 84, 102 (2003) (noting that sex offenders have unusually high rates of recidivism, although the Court cited no particular data in making this assertion). On the other hand, several private studies have found that sex offenders recidivate at a lower rate than the public generally perceives. For example, a 1998 study of 29,000 sex offenders found recidivism rates of 12.7% for child molesters over five years. LeRoy Kondo, *The Tangled Web—Complexities, Fallacies and Misconceptions Regarding the Decision to Release Treated Sexual Offenders from Civil Commitment to Society*, 23 N. Ill. U. L. Rev. 195, 199 (2002).

3 See e.g. *Robinson v. State*, 730 So.2d 252, 254 (Ala. Crim. App. 1998) (noting that registration and notification requirements are collateral consequences and not punishment); *Patterson v. State*, 985 P.2d 1007, 1019 (Alaska Ct. App. 1999) (finding that the registration requirement was a collateral consequence); *People v. Taylor*, 561 N.E.2d 393, 394 (Ill. App. Ct. 1990) (finding that the Sex Offender Registration Act was not penal in nature); *Spencer v. O'Connor*, 707 N.E.2d 1039, 1046 (Ind. Ct. App. 1999) (finding that notification is not punishment); *State v. Pickens*, 558 N.W.2d 396, 400 (Iowa 1997) (finding that sex offender registration not punitive).

4 A “sex offender” is defined for purposes of this article as one who has been convicted of a sex offense (i.e. sexual assault, sexual abuse, statutory rape, etc.) or a serious offense against a child (i.e. kidnapping, child murder, etc.). Each state determines which offenses trigger labeling a person as a sex offender.

5 Note, *Criminal Registration Ordinances: Police Control Over Potential Recidivists*, 103 U. Penn. L. Rev. 60, 62 (1954).

6 *Id.* at 64.

7 Wayne A. Logan, *Liberty Interests in the Preventive State: Procedural Due Process and Sex Offender Community Notification Laws*, 89 J. CRIM. & CRIMINOLOGY 1167, 1172 n.25 (1999) (noting that California enacted the first sex offender registration laws). It is believed that this law was created in order to ostracize members of the gay community in California. See Robert L. Jacobson, “Megan’s Laws” Reinforcing Old Patterns of Anti-Gay Police Harassment, 87 GEO. L.J. 2431, 2432 (1999).

8 Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163, 165 (2003).

9 The states that had passed sex offender registration laws prior to the enactment of Megan’s Laws were: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire,

New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 5, at <http://www.njdc.info>.

10 Jonathan Simon, *Megan's Law: Crime and Democracy in Late Modern America*, 25 LAW & SOC. INQUIRY 1111, 1136 (2000).

11 Michele L. Earl-Hubbard, *The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U. L. REV. 788, 794-795 (1996).

12 *Mission Statement of the Megan Nicole Kanka Foundation*, at <http://www.megannicolekanka.org/mission.htm>. Megan Kanka was a seven-year-old girl who was kidnapped and brutally raped and murdered by Jesse Timmendequas, Megan's neighbor who had been previously convicted for sexual offenses against young children. The Kanka's began to lobby for laws that would provide notice to the surrounding community when a convicted sex offender moves into a community following release from prison. *Id.* Within three months of Megan's tragic death, New Jersey's governor, Christine Todd Whitman, signed the legislation into law. *Id.*

13 Pub. L. No. 103-222, 108 Stat. 2038 (1994).

14 42 U.S.C. § 14071 (2000).

15 Pub. L. No. 104-236, 110 Stat. 3093 (codified at 42 U.S.C. § 14072 (2000)).

16 Pub. L. No. 104-145, 110 Stat. 1345 (1996).

17 See Garfinkle, *supra* note 9, at 184.

18 See Betsy Clarke, *Impact of Adolescent Brain Development Research on Juvenile Justice*, at <http://www.jjustice.org>.

19 See David S. Prescott, "Youth Who Have Sexually Abused: Registration, Recidivism, and Risk" in this issue.

20 See *infra* Section III, Part A.

21 Compare Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 5, at <http://www.njdc.info>. and Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 7, at <http://www.njdc.info>. (showing that over three years, from 2003 to 2006, four states joined the list of states requiring juvenile sex offender registration).

22 See Nat'l. Juv. Defender Center, *2006 State Juvenile Justice Legislation*, at <http://www.njdc.info> [*hereinafter* NJDC].

23 Arkansas does not state explicitly whether or not juveniles would be required to register as sex offenders, but included the ambiguous language of "adjudicated guilty of a sex offense" in its definition of who must register as a sex offender. NJDC at 138.

24 Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 7, at <http://www.njdc.info>.

25 *Id.*

26 *Id.*

27 Kentucky's definition of "sexual offender" does not specifically include or exclude juveniles, subsequent legislation that was enacted in the last year refers to how juveniles are to be treated under the registry scheme. It can be inferred that juveniles in Kentucky may be required to register under the statute. NJDC at 144.

28 Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 8, at <http://www.njdc.info>.

- 29 Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 7, at <http://www.njdc.info>.
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 NJDC at 140.
- 34 *Id.*
- 35 Only nine states have set a statutory lower age of juvenile court jurisdiction. *See Id.* In Massachusetts, the age is seven and in Arizona, a minor cannot be found delinquent unless he was at least eight years old when he committed an offense. *See Id.* Arkansas, Colorado, Kansas, Minnesota, Mississippi, Texas, and Wisconsin set the lower age at ten for juvenile court jurisdiction. *See Id.* While in Alabama, California, Connecticut, Delaware, Iowa, Illinois, Michigan, Missouri, Montana, North Dakota, New Hampshire, New Jersey, Nevada, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, and Washington there is presumably no minimum age at which a juvenile could be adjudicated delinquent for a sex offense. *See Id.*
- 36 Twenty-eight states do not set a lower age limit for juvenile sex offenders who are required to register. Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 8, at <http://www.njdc.info>.
- 37 *Id.*
- 38 The states which set a lower age limit are Idaho, Indiana, New Mexico, North Carolina, Ohio, Oklahoma, South Dakota and Virginia. *Id.*
- 39 Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 8 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 5, at <http://www.njdc.info>.
- 40 *Id.*
- 41 *Id.*
- 42 *Id.*
- 43 NJDC at 149.
- 44 *Id.* at 152.
- 45 Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 11 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 7, at <http://www.njdc.info>.
- 46 NJDC at 153.
- 47 *Id.*
- 48 *Id.*
- 49 *Id.*
- 50 *Id.*
- 51 *Id.*
- 52 *Id.*
- 53 730 Ill. Comp. Stat. 150/3-5 (2006).
- 54 *Id.*
- 55 NJDC at 143.
- 56 *Id.*
- 57 Alabama, Arkansas, Arizona, Colorado, Idaho, Illinois, Indiana, Minnesota, Mississippi, Ohio, Oklahoma, Oregon, Nevada, New Jersey, North Carolina, Rhode Island, South Carolina, South Dakota, Texas, Washington. Linda Szymanski, *Megan's Law: Juvenile Sex Offender Registration Lower Age Limits* 8 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 5, at <http://www.njdc.info>.

- 58 *Id.*
- 59 Tex. Code of Crim. Proc. art. 62.13 (2006).
- 60 *Id.*
- 61 *Id.*
- 62 Or. Rev. Stat. §181.607 (2006).
- 63 NJDC at 141.
- 64 *Id.* at 153.
- 65 NJDC at 138.
- 66 *Id.*
- 67 *Id.* at 141.
- 68 *Id.* at 144.
- 69 *Id.* at 147.
- 70 Linda Szymanski, *Megan's Law: Judicial Discretion Over Registering Juveniles as Sex Offenders*, 10 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 3, at <http://www.njdc.info>.
- 71 NJDC at 146.
- 72 *Id.* at 142.
- 73 *Id.*
- 74 Juvenile Justice Initiative, *HB 2067 Fact Sheet*, at [www.jjustice.org/pdf/HB2067%20Fact%20Sheet%20Web.pdf](http://www.jjustice.org/pdf/HB2067%20Fact%20Sheet%20Web.pdf).
- 75 NJDC at 140.
- 76 *Id.* at 144.
- 77 Shayne L. Aldridge and Pamela J. Kennerly, *Student Sex Offenders: What's a District to Do?*, ILL. SCH. BD. J., available at [www.iasb.com/files/j3050603.htm](http://www.iasb.com/files/j3050603.htm) (June 2003).
- 78 *Id.*
- 79 NJDC at 151.
- 80 *Id.* at 144.
- 81 *Id.*
- 82 *Id.* at 143.
- 83 *Id.* at 139.
- 84 *Id.* at 145.
- 85 *Id.* at 145-146.
- 86 *See supra* note 20.
- 87 *Id.*
- 88 *Id.*
- 89 Linda Szymanski, *Megan's Law: Community Notification*, 8 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 7, at <http://www.njdc.info>.
- 90 *Id.*
- 91 Only six states currently have separate registration laws for juvenile and adult sex offenders: Arkansas, Missouri, Montana, North Carolina, Oklahoma, and Wisconsin Linda Szymanski, *Megan's Law: Community Notification*, 8 NAT'L. JUV. DEFENDER CENTER SNAPSHOT 7, at <http://www.njdc.info>.

- 92 NJDC at 141.
- 93 NJDC at 147.
- 94 *Id.*
- 95 NJDC at 149.
- 96 *Id.*
- 97 Ala. Code §15-20-20.1 (2006).
- 98 *Id.*
- 99 *Id.*
- 100 *Id.*
- 101 *Id.*
- 102 *Id.*
- 103 Ala. Code §15-20-20.1 (2006)..
- 104 NJDC at 140.
- 105 NJDC at 141.
- 106 *Id.*
- 107 NJDC at 146.
- 108 *Id.*
- 109 *Id.* at 138.
- 110 *Id.* at 145.
- 111 *Id.* at 143.
- 112 *Id.*
- 113 NJDC at 143.
- 114 *Fact Sheet: The Adam Walsh Child Protection and Safety Act of 2006*, at <http://www.whitehouse.gov/news/releases/2006/07/20060727-7.html> (last visited March 11, 2006).
- 115 Robert E. Shepherd, Jr, *Advocating for the juvenile sex offender, part 1*, 21 Criminal Justice 53-54 (Fall 2006).
- 116 Pub. L. No. 109-248 (2006).
- 117 *Id.* at §112(b).
- 118 *Id.* at §102.
- 119 *Id.* at §102(8).
- 120 *Testimony of Amie Lee Zyla Before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, U.S. House of Representatives Oversight Hearing on "Protecting Our Nation's Children from Sexual Predators and Violent Criminals: What Needs to be Done?"* available at <http://judiciary.house.gov/OversightTestimony.aspx?ID=410> (June 9, 2005).
- 121 *Id.*
- 122 *Id.*
- 123 *Id.*
- 124 *Id.*
- 125 The organizations that strongly opposed the inclusion of juveniles on national sex offender registries included: Alaska Public Defender Agency, American Academy of Child and Adolescent Psychiatry, American Orthopsychiatric Association, American Psychiatric Association, American Psychological Association, Association for the Treatment of Sexual Abusers, California Professional Society on the Abuse of Children Child Welfare League of America, Children & Adults with Attention Deficit/Hyperactivity Disorder, Children's Defense Fund, Clinical Social Work Federation, Correctional Association of New York, Council for Children with Behavioral Disorders, Council of Juvenile Correctional Administrators. Criminal and Juvenile Justice Project, University of Chicago Law School, Davidson County, TN Public Defender's Office, Edwin F. Mandel Legal Aid Clinic, Federation of Families for Children's Mental Health, Franklin County, Ohio Public Defender's Office, GMB LLC, International Community Corrections



Association, Justice Policy Institute, Juvenile Justice Center of Suffolk University Law School, Juvenile Justice Coalition of Ohio, Lake County, IL Public Defender's Office, Law Office of the Cook County, IL Public Defender, Law Office of the Montgomery County, OH Public Defender, Juvenile Division, Learning Disabilities Association of America, Legal Aid Society of New York: Juvenile Rights Division, Legal Services for Children, Mid-Atlantic Juvenile Defender Center, Mississippi Youth Justice Project, National Alliance on Mental Illness, National Association for Children's Behavioral Health, National Association of School Psychologists, National Association of Social Workers, National Juvenile Defender Center, National Juvenile Justice and Delinquency Prevention Coalition, National Juvenile Justice Network, National Legal Aid & Defender Association, National Mental Health Association, National Network for Youth, Neighborhood Defender Service of Harlem, New York Juvenile Justice Coalition, Northeast Juvenile Defender Center, School Social Work Assoc. of America, Society for Research in Child Development, Southern Poverty Law Center, Southwest Juvenile Defender Center, Tourette Syndrome Association. Ethical Treatment for All Youth, *HR 4472 Passes Despite Opposition by Child Health Organizations*, at <http://www.ethicaltreatment.org/legislation.htm>.

126 *Id.*

127 Nat'l. Juv. Just. & Delinq. Prevention Coalition, *Letter to Arlen Specter and Patrick Leahy*, at [http://www.nacdl.org/public.nsf/Legislation/SexOffender/\\$FILE/NJJJPC.pdf](http://www.nacdl.org/public.nsf/Legislation/SexOffender/$FILE/NJJJPC.pdf)

128 *Id.*

129 Pub. L. No. 109-248, § 111(1) (2006).

130 *Id.* at § 111(5)(A)(i)-(v)

131 *Id.* at § 111(5)(C)

132 Black's Law Dictionary (8th ed. 2004).

133 *See supra* Section I.

134 *Id.* Statutory rape means unlawful sexual intercourse with a person under the age of consent (as defined by statute), regardless of whether it is against that person's will. Generally, only an adult may be convicted of this crime and a person under the age of consent cannot be convicted.

135 *See supra* note 133.

136 *Id.*

137 *Id.*

138 Pub. L. No. 109-248, § 111(1) (2006).

139 18 U.S.C.A. § 2241 defines "aggravated criminal sexual abuse" as "whoever. . . knowingly causes another person to engage in a sexual act (1) by using force against that other person; or (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury or kidnapping. . . [or] whoever. . . knowingly (1) renders another person unconscious and thereby engages in a sexual act with that other person; or (2) administers to another person by force or threat of force, or without knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby—(A) substantially impairs the ability of that other person to appraise or control conduct; and (B) engages in a sexual act with that other person. . . [or] whoever. . . knowingly engages in a sexual act with another person who has not attained the age of [twelve] years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of [twelve] years but has not attained the age of [sixteen] years (and is at least four years younger than the person so engaging). . . [and] the government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of [twelve] years. . ." 18 U.S.C.A. § 2241 (West 2006).

- 140 Pub. L. No. 109-248, § 111(8) (2006).  
141 *Id.* at § 111(9).  
142 *Id.*  
143 *Id.* at § 113(a)-(b).  
144 *Id.* at § 113(e).  
145 *Id.* at § 114(a).  
146 *Id.* at § 114(b).  
147 Pub. L. No. 109-248, § 118(a) (2006).  
148 *Id.* at § 118(b).  
149 *Id.* at § 118(a).  
150 *Id.* at § 119.  
151 *Id.* at § 121(b).  
152 *Id.* at § 115(a).  
153 Pub. L. No. 109-248, § 115(a) (2006).  
154 *Id.*  
155 *Id.* at § 111(4).  
156 *Id.* at § 116.  
157 *Id.* at § 115(3).  
158 *Id.* at § 124(a) and §125.  
159 *Id.* at § 126(a).  
160 Robert E. Shepherd, Jr, *Advocating for the juvenile sex offender, part 1*, 21 Criminal Justice 53-54 (Fall 2006).  
161 *See supra* note 20.