Remembering the Victims of Sexual Abuse: The Treatment of Juvenile Sex Offenders in *In Re J.W.*

Joanna C. Enstice

Follow this and additional works at: [http://lawecommons.luc.edu/luclj](http://lawecommons.luc.edu/luclj)

Part of the [Juvenile Law Commons](http://lawecommons.luc.edu/luclj)

Recommended Citation


Available at: [http://lawecommons.luc.edu/luclj/vol35/iss3/6](http://lawecommons.luc.edu/luclj/vol35/iss3/6)
Note

Remembering the Victims of Sexual Abuse: The Treatment of Juvenile Sex Offenders in In re J.W.

Joanna C. Enstice*

I. INTRODUCTION

Sex offenders and sexual abuse have long posed a threat to innocent young children. However, it is difficult to imagine another child as the sex offender. Parents typically picture the threat coming from a stranger on the street or at the playground, not the child down the block or a child's playmate. Recently, an alarming increase in the number of

---

* J.D. expected May 2005. I would like to thank my family for their encouragement and support, and my friends for their support and much needed insight.

1. See JANE WALDFOGEL, THE FUTURE OF CHILD PROTECTION 78 (1998) ("Today the risks facing children seem to be expanding exponentially. Sexual abuse accounts for 12 percent of child abuse cases nationwide ...."); 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, 789 (1996) ("Estimates hold that one of every three girls and one of every seven boys will be sexually abused before they reach the age of eighteen."); Mic Hunter, Foreword to CHILD SURVIVORS AND PERPETRATORS OF SEXUAL ABUSE: TREATMENT INNOVATIONS, at vii (Mic Hunter ed., 1995) ("[E]ven the most conservative estimates suggest that the sexual abuse of children is all too common in the United States."); see also KAREN L. KINNEAR, CHILDHOOD SEXUAL ABUSE: A REFERENCE HANDBOOK, at xi–xii (1995) ("The extent and seriousness of the effects of sexual abuse have ... been recognized and studied, from earlier attitudes that little damage was done to a child who was fondled or otherwise abused to the current understanding that the effects of this abuse can be manifested in many ways and can indeed be serious."); Janis F. Bremer, Juveniles, Rehabilitation, and Sex Offenses: Changing Laws and Changing Treatment, 29 WM. MITCHELL L. REV. 1343, 1346 (2003) ("A sexual offense in our society is generally seen as the most heinous of crimes, particularly if the victim is a child.").

2. See Hunter, supra note 1, at vii ("We know now that ... children abuse other children.").

3. See KINNEAR, supra note 1, at 17. Kinnear states that:

We often believe that children’s safety is threatened more by strangers than by those people the children know. At home and in school, parents and teachers emphasize to children that they should not talk to strangers or accept candy or rides. We picture dirty old men in trench coats ready to flash or snatch our children. Most people do not realize that children who are sexually abused are most likely to be abused by someone they know and trust. Sexual abusers come from all walks of life, all races, and all socioeconomic levels. Furthermore, adults are not the only abusers. Adolescents and
children attacked by juvenile offenders has caused widespread concern.\(^4\) The Center for Sex Offender Management has estimated that juvenile sex offenders commit up to one-fifth of all rapes and approximately one-half of all child molestations that occur each year in the United States.\(^5\)

In response to violent sexual crimes committed against children, Congress and the legislatures of all fifty states have enacted laws that not only require convicted sex offenders to register with state or federal agencies but provide for public notification when sex offenders have registered with the state or moved into the community.\(^6\) These laws commonly are referred to as “Megan’s Laws.”\(^7\) The purpose of these

---

4. Pamela S. Richardson, Note, Mandatory Juvenile Sex Offender Registration and Community Notification: The Only Viable Option To Protect All the Nation’s Children, 52 CATH. U. L. REV. 237, 245 (2002); see also Carter Allen Lee, Comment, When Children Prey on Children: A Look at Hawaii’s Version of Megan’s Law and Its Application to Juvenile Sex Offenders, 20 U. HAW. L. REV. 477, 523 (1998) (“Concern over the devastating effect of sex crimes has risen to display an urgent need for a remedy.”). There are generally two categorizations for juvenile sex offenders: “sexually abusive youths who abuse peers or adults” and “offenders who target children.” Richardson, supra, at 246. Typical juvenile sex offenders are males between the ages of thirteen and seventeen, and have had “a history of physical and/or sexual abuse.” Id.


7. The term “Megan’s Law” arose after the murder of seven-year-old Megan Kanka by her neighbor in New Jersey spurred a legislative initiative for sex offender registration and notification laws. See infra notes 61–66 and accompanying text (discussing the development of Megan’s Law).
laws is to help law enforcement personnel track sexual offenders. While these statutes usually apply to both adult and juvenile sex offenders, debate has grown over juvenile sex offender registration because juvenile sex offenders comprise a considerable portion of the sex offender population, and their actions tend to have more significant and lasting ramifications on the victims than those of other sex offenders.

The Illinois Supreme Court recently decided *In re J.W.*, a case involving the issue of sex offender registration for juvenile offenders. The court interpreted the Illinois Sex Offender Registration Act (the “SORA”) and its application to juvenile sex offenders and held that juvenile sex offenders must register. Before the advent of registration statutes, local law enforcement was unable to keep track of convicted sex offenders in the community, and deviants who previously had committed nefarious acts against children were able to attack or kill

---


9. See Elizabeth Garfinkle, Comment, Coming of Age in America: The Misapplication of Sex-offender Registration and Community-notification Laws to Juveniles, 91 CAL. L. REV. 163, 163 (2003) (“This inclusion is a marked departure from the traditional juvenile justice system of maintaining separate procedures and consequences for juveniles and adults.”); Richardson, supra note 4, at 239–40 (discussing the trend among states to extend registration laws to juvenile offenders).


Not only are youth a significant proportion of the sex offender population, but the effects of their behavior are long-lasting and arguably perpetuate the cycle of abuse.

......

Sexual abuse by minors is . . . significant because it often imposes psychological and social effects on its victims. People who are abused during childhood are more likely to be arrested later in life. Studies have also demonstrated that convicted criminals with a history of physical or sexual abuse are more likely than other inmates to victimize children. . . . [T]he primary effects of sexual assault and molestation are followed by secondary effects that perpetuate the cycles of abuse.

Skoglund, supra, at 1815–18 (footnotes omitted).

11. *In re J.W.*, 787 N.E.2d 747 (Ill. 2003); see also infra Part III (discussing *In re J.W.*).

12. Sex Offender Registration Act, 730 ILL. COMP. STAT. 150/1–150/12 (2002 & West Supp. 2003). This statute requires sex offenders to provide their information to local law enforcement. Id. § 150/3 (“A sex offender . . . or sexual predator shall . . . register in person and provide accurate information as required by the Department of State Police. Such information shall include current address, current place of employment, and school attended.”).

again.\textsuperscript{14} The enactment of the SORA marked the Illinois legislature’s desire to prevent such crimes.\textsuperscript{15} In \textit{J.W.}, the court overruled the Illinois Appellate Court case \textit{In re Nicholas K.},\textsuperscript{16} which had excused juvenile sex offenders from lifelong registration requirements.\textsuperscript{17} Additionally, the \textit{J.W.} opinion provided guidance to lower courts in applying the SORA to juvenile offenders.\textsuperscript{18} In upholding the legislative intent of the SORA to inform and protect the public by monitoring all dangerous sexual offenders, the court implied that the legislature should not change the SORA explicitly to prevent its application to juvenile offenders.\textsuperscript{19}

Accordingly, this Note will discuss the \textit{In re J.W.} opinion and contend that the Illinois Supreme Court correctly interpreted the SORA.\textsuperscript{20} Thus, Part II of this Note will begin by reviewing the history of federal and state sex offender registration laws\textsuperscript{21} and will trace the development of Illinois statutes requiring sex offenders to register, including the SORA.\textsuperscript{22} Part II of this Note will then discuss the constitutional restrictions on registration laws: the Eighth Amendment prohibition on cruel and unusual punishment and the Due Process Clause,\textsuperscript{23} as well as the treatment of juveniles in the court system.\textsuperscript{24} Part II of this Note also will examine the rules of statutory construction used by Illinois courts when assessing the constitutionality of a statute\textsuperscript{25} and then will examine the development of the standard set by the Illinois Supreme Court to determine whether juvenile sex offenders are required to register.\textsuperscript{26} Part III of this Note will review the decisions of the trial court, the appellate court, and the Illinois Supreme Court in \textit{In

\begin{itemize}
  \item \textsuperscript{14} See infra note 61 (commenting on the murder of seven-year-old Megan Kanka).
  \item \textsuperscript{15} See infra Part II.B (discussing the Illinois legislature’s intent in passing a registration statute).
  \item \textsuperscript{16} \textit{In re Nicholas K.}, 761 N.E.2d 352 (Ill. App. Ct. 2nd Dist. 2001).
  \item \textsuperscript{17} \textit{Id.} at 355; see also infra notes 219–31 and accompanying text (examining the \textit{Nicholas K.} decision).
  \item \textsuperscript{18} See infra note 374 (discussing recent Illinois decisions that looked to \textit{J.W.}).
  \item \textsuperscript{19} See infra Part IV.B (contending that the legislature should not rewrite the SORA due to the potential harsh results in its application to juvenile offenders).
  \item \textsuperscript{20} See infra Parts III–IV (discussing and analyzing the \textit{J.W.} decision).
  \item \textsuperscript{21} See infra Part II.A (tracing the development of federal and state sex offender registration and notification statutes).
  \item \textsuperscript{22} See infra Part II.B (examining the history of sex offender registration statutes in Illinois).
  \item \textsuperscript{23} See infra Part II.C (discussing the Eighth Amendment and Due Process Clause in the United States Constitution).
  \item \textsuperscript{24} See infra Part II.D (examining the court system’s treatment of juveniles).
  \item \textsuperscript{25} See infra Part II.E (discussing the Illinois rules of statutory construction).
  \item \textsuperscript{26} See infra Part II.F (reviewing Illinois Supreme Court and appellate court decisions that have interpreted sex offender registration and notification statutes).
\end{itemize}
Then, Part IV of this Note will analyze these opinions and argue that the Illinois Supreme Court’s decision correctly construed the statute and thus helps protect society from potential dangers. Finally, Part V of this Note will discuss the impact of the decision on Illinois citizens and future cases.

II. BACKGROUND

This Part examines the history of sex offender laws and the resultant constitutional challenges and considerations. Section A of this Part explores the development of federal and state laws requiring sex offenders to register. Next, section B of this Part traces the development of the SORA in Illinois. Section C of this Part discusses the background of the cruel and unusual punishment and due process provisions in the United States Constitution. Next, section D discusses the general treatment of juveniles in the court system. Section E of this Part then discusses the statutory construction rules used by Illinois courts to assess the constitutionality of a statute. Finally, section F reviews the set of Illinois Supreme Court and appellate court cases that have interpreted and construed the statutory language of the SORA and established standards by which the SORA is applied to juvenile sex offenders.

A. Jacob's and Megan's Laws: The History of the Sex Offender Registration Requirement

Surprisingly, considering the magnitude of the problem of sexual abuse of children, most states did not enact sex offender registration
laws until very recently. In fact, by 1986, only five states had enacted registration laws for sex offenders. California was the first state to enact a sex offender registration statute, in 1947. Arizona, Nevada, and Alabama soon followed with their own registration laws in 1951, 1961, and 1967, respectively. The purpose of these early laws was to prevent recidivism of sex offenders by keeping law enforcement informed of potential attackers.

Although registration laws have existed since 1947, most consider the Jacob Wetterling Crimes Against Children and Sex Offender Registration Act ("Wetterling Act"), enacted in 1994, the advent of the sex offender registration requirement because this Act was the first federal statute regulating the issue. The Wetterling Act set off a wave of federal and state legislation on sex offenders.

The impetus for the Wetterling Act was the tragic story of eleven-year-old Jacob Wetterling of St. Joseph, Minnesota, a victim of abduction at the hands of a masked stranger. In October 1989, Jacob

---

37. See infra note 38 and accompanying text (noting that only five states had sex offender registration statutes in 1986); supra note 1 and accompanying text (discussing the longstanding threat of sexual abuse to children).

38. Garfinkle, supra note 9, at 164 & n.2. These five states were Alabama, California, Massachusetts, Nevada, and Ohio. People v. Monroe, 215 Cal. Rptr. 51, 58 (Ct. App. 1985) (citing In re Reed, 663 P.2d 216, 222 (Cal. 1983)).


41. Boyers, supra note 40, at 743 ("The motivation behind the system was the thought that registration would combat the high recidivism rate of sex offenders by arming police with information to aid in the apprehension of suspects.").


43. Wayne A. Logan, Jacob's Legacy: Sex Offender Registration and Community Notification Laws, Practice, and Procedure in Minnesota, 29 WM. MITCHELL L. REV. 1287, 1288 (2003) ("As a result of converging social and political forces, including the increasingly influential victims' rights, child welfare, and women's movements, augmented by media attention of unprecedented influence, legislatures nationwide fixated on 'sexual predators.'" (footnote omitted)).

44. JACOB WETTERLING FOUND., JACOB'S STORY, at http://www.jwf.org/Jacobs_story.html (last visited Mar. 5, 2004) [hereinafter JACOB'S STORY] (describing the story of Jacob's abduction). Jacob has never been found, and his abductor has never been apprehended. Terry Collins, Search Goes on for Missing Girl; Weariness, Anxiety Growing in Chisholm, STAR TRIB.
was on his bicycle on his way home from a convenience store with his brother Trevor and his friend Aaron when a masked man holding a gun accosted the boys.\textsuperscript{45} The man asked the boys their ages, and then told both Trevor and Aaron to run into the nearby woods and not look back or he would shoot them.\textsuperscript{46} The boys glanced back while running away and saw the man grab Jacob's arm, but when they looked back again once they reached the woods, both the gunman and Jacob were nowhere to be seen.\textsuperscript{47}

In February 1990, Jacob's parents established the Jacob Wetterling Foundation (the "Foundation") in Minnesota.\textsuperscript{48} The following year, the Foundation successfully lobbied the Minnesota legislature for sex offender registration, leading to the state's Sex Offender Registration Act, which was passed in 1991 and requires convicted sex offenders to register with local law enforcement.\textsuperscript{49} The Foundation earned public

\begin{itemize}
\item[(45)] JACOB'S STORY, supra note 44 (describing the story of Jacob's abduction).
\item[(46)] Id.
\item[(47)] Id. Although the authorities never captured Jacob's abductor, they maintained a strong suspicion that the abductor was a local person. See Rogers Worthington, Shock Dims, Hope's Strong 7 Months After Boy's Kidnapping, CHI. TRIB., May 28, 1990, at 4C, available at 1990 WL 2909919.
\item[(48)] JACOB WETTERLING FOUND., HISTORY OF JWF, at http://www.jwf.org/jwf_about.html (last visited Mar. 5, 2004) [hereinafter HISTORY OF JWF]. The Foundation was established in response to Jacob's abduction. See Logan, supra note 43, at 1287 (examining the "moral panic" that resulted from Jacob's abduction); Richardson, supra note 4, at 252 (discussing the establishment of the Jacob Wetterling Foundation). The Foundation is a non-profit organization established to help "find missing children and educate children, teens, parents, caregivers and teachers about personal safety." HISTORY OF JWF, supra. The foundation's mission is to "protect the nation's children from sexual exploitation and abduction and 'to focus national attention on missing children and their families.'" Richardson, supra note 4, at 252 & n.98 (quoting JACOB'S STORY, supra note 44)); see also JACOB WETTERLING FOUND., JWF ONLINE, at http://www.jwf.org/ (last visited Mar. 5, 2004) (providing the history of the Foundation and its current initiatives, goals, and programs).
\item[(49)] MINN. STAT. § 243.166(a) (2003).
\end{itemize}
support as it additionally lobbied for similar federal legislation that would require each state to develop a registration requirement for convicted sex offenders. In 1994, the Foundation achieved this goal when the Wetterling Act became law. Congress enacted the Wetterling Act within the Federal 1994 Omnibus Crime Bill, as Title XVII of the Violent Crime Control and Law Enforcement Act of

(4) the person was convicted of or adjudicated delinquent for . . . violating a law of the United States, . . . similar to the offenses described in clause (1), (2), or (3).

Id.; see also ACT HISTORY, supra note 42.

1991—Minnesota’s Sex Offender Registration Act—The first legislative initiative of the Jacob Wetterling Foundation. When Jacob was abducted in October 1989, law enforcement had no comprehensive list of sex offenders to work from. The leads received by investigators became the basis of an extensive computerized database. The Act went into effect 7/1/91.

Id.; Richardson, supra note 4, at 252 (“Prior to th[e] statute’s enactment, Minnesota law enforcement agencies lacked the resources necessary to identify known sex offenders residing in the state.”). The Foundation was instrumental in getting the legislation passed. JACOB WETTERLING FOUND., JWF’S ROLE IN COMMUNITY NOTIFICATION LAW AND POLICY, at http://www.jwf.org/jwf_legislation.html (last visited Mar. 5, 2004) (“The Jacob Wetterling Foundation was intricately involved in the development and passage of Minnesota’s notification law. Representatives from the Foundation testified at the legislature and provided research to key legislators.”).

50. Richardson, supra note 4, at 252; see also Gordon Dillow, Struggling To Stay Together: Activism: Groups Formed After Child Kidnappings and Murders Frequently Fade Away After a Few Years, L.A. TIMES, Jan. 10, 1994, at E1 (“[T]he foundation, which emphasizes education to prevent child abductions and has fought for a national convicted child molester registration act, has an annual budget of about $188,000, a full-time staff of three—including Patty Wetterling, who is not paid—and a core of about 20 volunteers.”), available at 1994 WL 2123047. While Congress considered such legislation, other states noted its potential benefits. See Editorial, Keeping Track of Child Molesters, ATLANTA J. & CONST., Jan. 6, 1994, at A10, available at 1994 WL 4476965.

Now there is a national move to crack down on these sexual predators of children by doing a better job of keeping track of them. In recent years, 25 states have passed registration laws requiring convicted sex offenders to notify police of where they live. Georgia is not one of them. Georgia lawmakers, unfortunately, rarely worry as much about child victims’ rights as they do about criminals’ rights.

But if Congress passes the $22 billion crime bill now before it, Georgia’s Legislature will be forced to act. A provision of the bill, called the Jacob Wetterling Crimes Against Children Registration Act, would require all convicted child abusers to register and maintain their address with state law enforcement agencies for 10 years after their release from prison. The bill is named for an 11-year-old who was abducted at gunpoint four years ago in Minnesota. Jacob has never been found.

Critics say such laws violate an offender’s right to privacy long after he’s paid his debt to society. But a child’s right to protection far outweighs a criminal’s right to privacy, particularly if that criminal is the kind most likely to rape or kill again.

Id.

51. ACT HISTORY, supra note 42 (“[This act] [m]andates that each state create a very narrowly drawn, specific program to register sex offenders. The compliance deadline was 9/30/97.”).
The Act requires states to create and maintain registries of those individuals convicted of sexually violent offenses or crimes


(a)(1) State guidelines
The Attorney General shall establish guidelines for State programs that require—

(A) a person who is convicted of a criminal offense against a victim who is a minor or who is convicted of a sexually violent offense to register a current address for the time period specified in subparagraph (A) of subsection (b)(6) of this section; and

(B) a person who is a sexually violent predator to register a current address unless such requirement is terminated under subparagraph (B) of subsection (b)(6) of this section.


(a)(3) Definitions
For purposes of this section:

(A) The term “criminal offense against a victim who is a minor” means any criminal offense in a range of offenses specified by State law which is comparable to or which exceeds the following range of offenses:

(i) kidnapping of a minor, except by a parent;
(ii) false imprisonment of a minor, except by a parent;
(iii) criminal sexual conduct toward a minor;
(iv) solicitation of a minor to engage in sexual conduct;
(v) use of a minor in a sexual performance;
(vi) solicitation of a minor to practice prostitution;
(vii) any conduct that by its nature is a sexual offense against a minor . . . .

Id. § 14071(a)(3)(A)(i)–(vii).

(b)(2) Transfer of information to State and FBI; participation in National Sex Offender Registry

State procedures shall ensure that the registration information is promptly made available to a law enforcement agency having jurisdiction where the person expects to reside and entered into the appropriate State records or data system. State procedures shall also ensure that conviction data and fingerprints for persons required to register are promptly transmitted to the Federal Bureau of Investigation.

(b)(6) Length of registration
A person required to register under subsection (a)(1) of this section shall continue to comply with this section, except during ensuing periods of incarceration, until—

(A) 10 years have elapsed since the person was released from prison or placed on parole, supervised release, or probation; or
against children. Further, states must maintain heightened registration requirements for highly dangerous sex offenders. The Wetterling Act requires offenders to verify their addresses once a year for a period of ten years and requires sexually violent predators to verify their addresses four times per year for life. A state’s failure to establish these registration programs will subject it to a ten percent reduction of Byrne formula grant funding, federal funding that is meant to aid and improve law enforcement agencies. The Center for Sex Offender Management ("CSOM"), an organization developed by the United States Department of Justice to help facilitate community management of sex offenders, considers the Wetterling Act the beginning of the

(B) for the life of that person if that person—

(i) has 1 or more prior convictions for an offense described in subsection (a)(1)(A) of this section; or

(ii) has been convicted of an aggravated offense described in subsection (a)(1)(A) of this section; or

(iii) has been determined to be a sexually violent predator pursuant to subsection (a)(2) of this section.

Id. § 14071(b)(6)(A)–(B).

53. See MATSON, supra note 8 (setting out the state requirements contained within the Wetterling Act). Juvenile offenders may be included in this registry, but states are not required to include such offenders unless they have been convicted of a sexual offense as adults. Id.

54. Id. The Act requires that an offender register for life if the offender “(i) has [one] or more prior convictions for” a criminal offense against a minor or for a sexually violent offense, or “(ii) has been convicted of an aggravated [criminal] offense” against a minor or has been convicted of an aggravated sexually violent offense, or (iii) has been deemed a sexually violent predator. 42 U.S.C. § 14071(b)(6)(B)(i)–(iii). The Act defines a sexually violent predator as “a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.” 42 U.S.C. § 14071(a)(3)(C).


56. See 42 U.S.C. § 3750 (2000) (“The grant programs established under this subchapter shall be known as the ‘Edward Byrne Memorial State and Local Law Enforcement Assistance Programs.’”); id. § 3756 (providing for the allocation and distribution of Byrne funds); id. § 14071(g)(2)(A) (“A State that fails to implement the program as described in this section shall not receive 10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.”); see also MATSON, supra note 8 (discussing the imposition of this penalty). The Office of Justice Programs, U.S. Department of Justice, monitors states’ compliance with the Wetterling Act, and any fund reduction is reallocated to states that are in compliance with the Act. Id.; see also Nat’l Ass’n of Criminal Defense Lawyers, Inc., Virginia’s Court-appointed Attorney Fees and Resources, CHAMPION, May 1998, at 11 (“Administered by the Justice Department’s Bureau of Justice Assistance, the Edward Byrne Memorial Formula Grant Program provides funding to state and local criminal justice systems to improve police, prosecution, defense and court programs.”).


In November 1996, the Office of Justice Programs (OJP), U.S. Department of Justice, convened the National Summit: Promoting Public Safety through the Effective Management of Sex Offenders in the Community. The summit sought input from over
registration and tracking system for individuals convicted of crimes against minors or violent sex crimes.\textsuperscript{58}

Critics soon attacked the Wetterling Act because it only provided for registration and tracking at the government level and did not mandate the dissemination of this information to the public.\textsuperscript{59} Instead, the Act gave the state law enforcement authorities discretion as to whether or not to notify the public of a sex offender in the community.\textsuperscript{60} This changed, however, after the 1994 murder of seven-year-old Megan Kanka in New Jersey by a neighbor who was a convicted sex offender.\textsuperscript{61} After the murder, Megan’s mother and other concerned citizens petitioned the New Jersey legislature to enact a law requiring notice to the community of sexual offenders living in their neighborhoods.\textsuperscript{62} On October 31, 1994, then New Jersey Governor Christine Todd Whitman signed the first Megan’s Law, which required that the public be notified when convicted sex offenders reside within the community.\textsuperscript{63} Megan’s murder also triggered a public outcry for more stringent federal legislation.\textsuperscript{64} The United States Congress reacted

\begin{itemize}
  \item 180 practitioners, academic researchers, and other experts regarding the most effective management strategies for this challenging offender population. Participants were also asked about the information, training, and other needs of their colleagues working in this field. In response to their recommendations, OJP, the National Institute of Corrections (NIC), and the State Justice Institute (SJI) created the Center for Sex Offender Management.
  \item Id. Richardson, supra note 4, at 253. See generally MATSON, supra note 8 (discussing the history of the registration and tracking systems for sexual offenders).
  \item Richardson, supra note 4, at 253.
  \item Garfinkle, supra note 9, at 166.
  \item Id. On July 29, 1994, Megan’s neighbor Jesse Timmendequas invited her into his home to see his puppy and raped and murdered her. Id.; Richardson, supra note 4, at 253–54. Timmendequas was twice convicted of sexual offenses against children. Garfinkle, supra note 9, at 166. Later, it was “reported that ‘Megan’s parents believe[d] that if they had known that a pedophile lived nearby, this heinous crime would never have happened.’” Richardson, supra note 4, at 254 (quoting SCOTT MATSON, CTR. FOR SEX OFFENDER MGMT., COMMUNITY NOTIFICATION AND EDUCATION 3, available at http://www.csom.org/pubs/notedu.pdf (Apr. 2001)).
  \item Garfinkle, supra note 9, at 166.
  \item Id. This law was codified in sections 2C:7-1 through 2C:7-19 of the New Jersey Statutes. See N.J. STAT. ANN. §§ 2C:7-1 to 2C:7-19 (West 1995 & Supp. 2003). The statute states in part that “[a] person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense . . . shall register as provided in . . . this section.” N.J. STAT. ANN. § 2C:7-2(a). Throughout this Note, the term “Megan’s Law” is used to refer generally to both federal and state sex offender registration and notification laws.
\end{itemize}

The response was immediate. A rally in Hamilton Township, a suburb of Trenton, heard calls for ‘Megan’s Law.’ Gov. Christine [Todd] Whitman voiced support. U.S.
to this outcry with an amendment to the Wetterling Act. In May 1996, Congress passed this amendment and President William Clinton signed it into law, thus creating the first federal Megan's Law.

The federal Megan's Law amended the Wetterling Act to read "shall release" instead of "may release," thereby requiring states and state agencies to release any information about registered sex offenders necessary for public safety. The statute does not specify what information states should provide to the public, but rather uses the term "relevant information." Further, states may decide how to disseminate the information, and can choose to notify the public through mailings, press releases, or community meetings, or to make the information available to the community upon request. This requirement sought to ensure that the public could obtain information necessary to protect them from sex offenders in the community. Generally, such

---

Rep. Christopher Smith went on the House floor to demand that the crime bill before Congress be amended to require sex offenders to register with local police.

_id._ Rep. Smith stated in his remarks to Congress:

I plan to introduce legislation that would require community notification. I know my bill faces an uphill fight. But the memory of Megan Kanka, the extreme agony her parents and family must now endure, and the prevention of tragedies like this in the future demands no less than full disclosure to communities when sexual predators are released back into our communities.


65. Garfinkle, _supra_ note 9, at 167; Richardson, _supra_ note 4, at 254. The amendment was drafted by a New Jersey representative at the time, Dick Zimmer. _Id._ For the specific text of this amendment, see _infra_ note 66.

66. Richardson, _supra_ note 4, at 254; see Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (codified as amended at 42 U.S.C. § 14071(e)). "Megan's Law" was an amendment to the Wetterling Act that provided for community notification of a sex offender's presence, and states in part as codified:

   e) Release of information

   (1) The information collected under a State registration program may be disclosed for any purpose permitted under the laws of the State.

   (2) The State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section, except that the identity of a victim of an offense that requires registration under this section shall not be released. The release of information under this paragraph shall include the maintenance of an Internet site containing such information that is available to the public and instructions on the process for correcting information that a person alleges to be erroneous.


67. Garfinkle, _supra_ note 9, at 167; Richardson, _supra_ note 4, at 255.

68. 42 U.S.C. § 14071(e); see _infra_ note 66 (quoting pertinent provisions of this section). _See generally_ Garfinkle, _supra_ note 9, at 167 (discussing the Jacob Wetterling Act).

69. Richardson, _supra_ note 4, at 255.

70. _Id._ at 254-55, 255 n.116.
notification statutes safeguard the private information of convicted sex offenders while simultaneously sanctifying the public dissemination of such information.\(^7\)

Later in 1996, Congress again amended the Wetterling Act through the enactment of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 ("Lynchner Act").\(^7\) The Lynchner Act created a federal database for registration information and increased registration requirements for repeat and aggravated offenders.\(^7\) Additionally, the Lynchner Act imposed a lifetime registration requirement on offenders who are (1) twice convicted of committing a criminal offense against a minor, (2) twice convicted of committing a sexually violent offense, (3) convicted of aggravated sexual abuse, or (4) deemed sexually violent predators.\(^7\)

In response to crimes committed against children by convicted sex offenders, state legislatures followed the example set by Congress and the New Jersey legislature and passed their own versions of Megan’s Law.\(^7\) By 1996, every state had enacted a sex offender registration and

---

71. Skoglund, supra note 10, at 1822 ("Notification statutes serve as both gatekeepers to confidential information about released offenders and as catalysts for publication of information about potentially dangerous members of the community.").

72. Pam Lynchner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093 (codified at 42 U.S.C. § 14072). The statute as codified provides in part that [t]he Attorney General shall establish a national database at the Federal Bureau of Investigation to track the whereabouts and movement of— (1) each person who has been convicted of a criminal offense against a victim who is a minor; (2) each person who has been convicted of a sexually violent offense; and (3) each person who is a sexually violent predator.


73. Garfinkle, supra note 9, at 167; SCOTT MATSON, CTR. FOR SEX OFFENDER MGMT., COMMUNITY NOTIFICATION AND EDUCATION, at http://www.csom.org/pubs/notedu.html (Apr. 2001); see also Kenneth W. Birrell, Criminal Law and Procedure: Sex Offender Lifetime Registration Law, 2001 UTAH L. REV. 1112, 1114 (2001) ("The Lynchner Amendment requires lifetime registration for two categories of convicted sex offenders: (1) those who have a prior conviction for an offense for which registration is required, and (2) those who have been convicted of an aggravated offense."). The legislature named the amendment in honor of Pam Lynchner, an anticrime activist tragically killed in a plane crash. Daniel M. Filler, Making the Case for Megan's Law: A Study in Legislative Rhetoric, 76 IND. L.J. 315, 330 n.95 (2001).

74. 42 U.S.C. § 14072(d)(2). "Aggravated sexual abuse" includes, among other things, sexual acts accompanied by force or threats, as well as any sexual act with a minor under the age of twelve. 18 U.S.C. § 2241 (2002). The Act defines a sexually violent predator as "a person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses." 42 U.S.C. § 14072(a)(2) (referencing 42 U.S.C. § 14071(a)(3)(C)).

75. Richardson, supra note 4, at 239. For example, the Oklahoma Juvenile Sex Offender Registration Act, passed on June 1, 2001, is an example of such an act. Id. The Oklahoma Act was passed partly in response to the murder of seven-year-old Kristi Blevins by a neighborhood convicted juvenile sex offender in 2000. Id. at 237-39. The Washington state sex offender
community notification statute. Many of the state Megan’s Laws include juvenile sex offenders, but only twenty-eight states expressly apply the laws to juvenile sex offenders. Sixteen states and the District of Columbia have statutes that do not address whether juvenile registration and notification act was passed after public outrage resulting from an attack on a seven-year-old boy by Earl Shriner, a convicted child molester. Kirsten R. Bredlie, *Keeping Children Out of Double Jeopardy: An Assessment of Punishment and Megan’s Law in Doe v. Poritz*, 81 MINN. L. REV. 501, 504 (1996).


78. Garfinkle, *supra* note 9, at 177–78 (“[T]he laws of twenty-eight states and the federal Megan’s Law specifically require registration and community notification for juveniles adjudicated delinquent for certain crimes.”). These states are Alabama, Arizona, Arkansas, California, Colorado, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Washington, and Wisconsin. *Id.* at 177 n.98. To examine these states’ sex offender registration laws, see *supra* note 76.
offenders are subject to registration requirements, leaving this issue for
the courts to decide.79 Five states have statutes that do subject juveniles
convicted as adults for sexual crimes to the registration requirement, but
do not address whether juveniles adjudicated, rather than convicted as
adults, must register.80 New Mexico is the only state that has a statute
that specifically excludes juveniles from registering.81

Those states that do subject juvenile sex offenders to registration
requirements differ in their determinations of when juveniles must
register.82 Some state laws require registration only when the state has
adjudicated the juvenile of a specific number of offenses.83 For
example, Mississippi does not require a juvenile offender to register
until he or she has committed and been found twice delinquent of a sex
offense or an attempted sex offense, which courts refer to as a "wait and
see" approach.84 Other states look to the evidence surrounding the
offense.85 For instance, Indiana's statute considers the age of the
offender and the evidence surrounding the offense, requiring that the
offender be at least fourteen, have committed an offense that would be
considered a sex offense if committed by an adult, and that the state

---

79. Garfinkle, supra note 9, at 178. These states are Connecticut, Florida, Georgia, Hawaii,
Maryland, Missouri, Nebraska, New York, North Dakota, Oklahoma, Pennsylvania, Tennessee,
Utah, Vermont, West Virginia, and Wyoming. Id. at n.99. To examine these states' sex offender
registration laws, see supra note 76. To examine the D.C. statute, see D.C. CODE ANN. § 22-

80. Garfinkle, supra note 9, at 178. These states are Alaska, Kentucky, Louisiana, Maine, and
Virginia. Id. at 178 n.100. To examine these states' sex offender registration laws, see supra
note 76.

81. Garfinkle, supra note 9, at 178; see N.M. STAT. ANN. § 29-11A-3 (noting that a sex
offender is a person eighteen years of age or older).

82. Richardson, supra note 4, at 256; see also Lee, supra note 4, at 508-10 (discussing
different state approaches to juvenile offenders); Mark J. Swearingen, Comment, Megan's Law as
Applied to Juveniles: Protecting Children at the Expense of Children?, 7 SETON HALL CONST.
For example, Alabama, Arizona, Arkansas, Connecticut, Colorado, Iowa, Massachusetts,
Montana, and North Dakota all allow the courts discretion in determining if a juvenile sex
offender is required to register. Richardson, supra note 4, at 256; see, e.g., In re S.M.M., 558
N.W.2d 405, 408 (Iowa 1997) (applying this judicial discretion method in requiring a juvenile sex
offender to register); Roe v. Att'y Gen., 750 N.E.2d 897, 899 (Mass. 2001) (discussing the
judicial discretion method).

residing in this state who has been...twice adjudicated delinquent for any sex offense or
attempted sex offense shall register with the Mississippi Department of Public Safety.").

84. Id.; Richardson, supra note 4, at 261.

85. See, e.g., IND. CODE ANN. § 5-2-12-4(b) (West 2002) (stating that a juvenile offender may
not have to register if the state can prove by clear and convincing evidence that the offender is not
likely to re-offend).
present clear and convincing evidence that the offender is likely to re-offend.\footnote{Id.; Richardson, supra note 4, at 259 (describing Indiana's method for determining whether juvenile sex offenders should be required to register, noting that there must be "clear and convincing evidence that proves a likelihood of subsequent offenses."). The statute reads: The term [offender] includes a child who has committed a delinquent act and (1) who is at least fourteen (14) years of age; (2) is on probation, is on parole, or is discharged from a facility by the department of correction, is discharged from a secure private facility ... , or is discharged from a juvenile detention facility as a result of an adjudication as a delinquent child for an act that would be an offense described in subsection (a) if committed by an adult; and (3) is found by a court by clear and convincing evidence to be likely to repeat an act that would be an offense described in subsection (a) if committed by an adult.}

Lastly, some state laws subject juveniles to the registration requirement only until the juvenile can show by clear and convincing evidence that it would be in the public's best interest to release him from registration.\footnote{See, e.g., N.J. STAT. ANN. § 2C:7-2(f)-(g) (West 1995 & Supp. 2003) (stating that a person required to register can apply to have the requirement terminated if he proves that he has not re-offended within 15 years following conviction or release from a correctional facility, whichever is later, and is not likely to pose a threat to the safety of others); WASH. REV. CODE § 9A.44.140(4) (2000) ("The court may relieve the petitioner of the duty to register for a sex offense ... that was committed while the petitioner was fifteen years of age or older only if the petitioner shows, with clear and convincing evidence, that future registration of the petitioner will not serve the purposes of [Washington's sex offender registration statute].").} Although New Jersey's statute generally requires juvenile sex offenders who have been adjudicated delinquent of more than one sex offense to register for life,\footnote{Richardson, supra note 4, at 259-60. Under the statute, offenders who have only committed one sex offense may petition to end registration if they have not committed another offense fifteen years from the date registration began, but those who have committed more than one offense are not able to cease registration. See N.J. STAT. ANN. § 2C:7-2(f)-(g).} the statute also allows the offender to apply to end the registration requirement after fifteen years if the offender has not committed another sex offense.\footnote{Richardson, supra note 4, at 260.} However, the registration requirement for juvenile offenders who are under the age of fourteen ends when the offender turns eighteen if the New Jersey Law Division, upon the production of clear and convincing evidence by the offender, determines that the juvenile does not pose a threat to the community.\footnote{Id. See generally infra note 219 (discussing the New Jersey case In re J.G., which reviewed the registration requirement for juvenile offenders).} Washington allows juveniles who were at least fifteen when they committed the offense to avoid the registration requirement if they show by clear and convincing evidence that requiring their
registration will not serve the legislative intent of the statute. The state allows a juvenile offender aged fourteen or younger at the time of the offense to register for only two years and ends the requirement after that time if the offender did not re-offend during that period and can prove by a preponderance of evidence that continued registration will not serve the purpose of the statute.

Other states leave the issue for the courts to determine. Hawaii’s statute, for example, does not specifically include juvenile sex offenders who are “adjudicated delinquent,” but it is possible that the courts can apply the requirement to a juvenile who falls within the statutory definition of a “sex offender.” It is left to the Hawaii courts to construe the statute to determine whether juvenile offenders should be considered sex offenders and thus subject to registration.

B. The SORA: Illinois’ Megan’s Law

The SORA, Illinois’ Megan’s Law, is the state’s primary legislation on sex offender registration requirements, enacted in response to sexual crimes against children. The Illinois legislature enacted the original

---

91.  WASH. REV. CODE § 9A.44.140(4); Swearingen, supra note 82, at 573.
92.  WASH. REV. CODE § 9A.44.140(4); Swearingen, supra note 82, at 573. The statute states: The court may relieve the petitioner of the duty to register for a sex offense... that was committed while the petitioner was under the age of fifteen if the petitioner (i) has not been adjudicated of any additional sex offenses or kidnapping offenses during the twenty-four months following the adjudication for the offense giving rise to the duty to register, and (ii) proves by a preponderance of the evidence that future registration of the petitioner will not serve the purposes of [Washington’s sex offender registration statute].
93.  Lee, supra note 4, at 508-09; see, e.g., HAW. REV. STAT. § 846E-1(9) (1999) (providing Hawaii’s definition of a “sex offender”).
94.  See HAW. REV. STAT. § 846E-1(9) (providing a definition of “sex offender” that could encompass an offender who is a juvenile, though not referring specifically to juvenile sex offenders); Lee, supra note 4, at 508-09.
95.  Lee, supra note 4, at 510-12. Hawaii courts must construe the statute in accordance with the legislature’s intent. See State v. Toyomura, 904 P.2d 893, 903 (Haw. 1995) (noting that in construing a statute, the court must determine and give effect to the legislative intent).
96.  See 730 ILL. COMP. STAT. 150/1-150/12 (2002 & West Supp. 2003); Jessica R. Ball, Comment, Public Disclosure of “America’s Secret Shame:” Child Sex Offender Community Notification in Illinois, 27 LOY. U. CHI. L.J. 401, 422 (1996) (noting that the Illinois General Assembly enacted the state’s first registration statute “[i]n reaction to a proliferation of sex crimes against children”); see also supra note 12 and accompanying text (describing the SORA). The development of such a law to prevent sexual abuse of children is supported by the observation that “[c]hild sexual abuse was ‘rediscovered’ in the late 1970s and early 1980s” after being dismissed earlier in the century by Dr. Sigmund Freud. Tara Ney, Foreword to TRUE AND FALSE
version of the SORA in 1986 as the Habitual Child Sex Offender Registration Act.97 Since the SORA’s enactment, the legislature has amended it several times.98 The original statute required sex offenders who had been convicted of at least two sex offenses against a victim under age eighteen to register.99 The intent of the legislature was to protect the state’s children from repeat offenders.100

However, the 1986 version of the Act did not prove effective, and in 1992, the kidnapping and murder of a six-year-old girl and the resulting public outcry inspired the legislature to expand the Act to compel registration after a first offense.101 In 1995, the murders of two other children prompted the legislature to amend the registration statute once again to provide for community notification.102 In 1998, the Illinois


98. See infra notes 101–05 and accompanying text (discussing the amendments to the original registration law).

99. Habitual Sex Offender Registration Act, Pub. Act. No. 84-1279, 1986 Ill. Laws 1467 (codified as amended at 730 ILL. COMP. STAT. 150/1–150/12); see also Ball, supra note 96, at 422 & n.129 (discussing the original act).

100. Ball, supra note 96, at 422 & n.130 (“[T]his kind of legislation will help our law enforcement agencies stop this kind of carnage on our children. Society demands that we protect [our] . . . children.”” (quoting House Proceedings, 84th Ill. Gen. Assemb., 1st Sess. 209 (1986))).

101. Id. at 422–23 & nn.132–33 (discussing the legislature’s motivation for amending the statute). The abduction and murder of Kahla Lansing primarily motivated the legislature:

Six-year-old Kahla Lansing disappeared on September 28, 1991. Police discovered Kahla’s body two weeks later in an abandoned grain storage bin in eastern Iowa. Twenty-nine-year-old Jeffrey Rissley admitted to kidnapping Kahla, molesting her, and finally strangling her with an electrical cord. Rissley had previously served time in a Texas prison following conviction on two counts of child molestation in that state. Moreover, Rissley sexually assaulted another child in Galesburg, Illinois before kidnapping Kahla.

Id. at 423 n.133 (citations omitted).

102. Child Sex Offender Community Notification Law, Pub. Act. No. 89-428, 1995 Ill. Laws 4453 (codified as amended at 730 ILL. COMP. STAT. 152/101–152/130) (establishing notification provisions); Michael Gillis, Bill To Name Sex Offenders in Community Passes House, CHI. SUN-TIMES, Nov. 4, 1995, at 5 (“This year’s murders of 10-year-old Christopher Meyer of the Kankakee area and 3-year-old Sara Kramer of Decatur prompted lawmakers to give the bill immediate attention in the veto session.”), available at 1995 WL 6678842. On August 7, 1995, ten-year-old Christopher Meyer of Kankakee, Illinois, was murdered by a man who had previously been jailed for murdering a five-year-old girl. Ball, supra note 96, at 401–02. Sara Kramer was three when she disappeared from her bed in the middle of the night. Three Years Later, Death of Decatur Girl Is Still Being Investigated, ST. LOUIS POST-DISPATCH, Oct. 2, 1998,
legislature further amended the statute to include a separate definition of a “juvenile sex offender” in the definitions section, whereas there previously had been no specific mention of a juvenile offender.\textsuperscript{103} However, the legislature changed this in 2002, when an amendment to the statute included “juvenile sex offenders” as a specific type of “sex offender” in the statute’s definition of a “sex offender” and eliminated the separate juvenile sex offender definition subsection.\textsuperscript{104} After the 2002 amendment, the SORA’s definition of a sex offender included any juvenile adjudicated delinquent for the commission of a sex offense.\textsuperscript{105} at B5. Her body was found in the Sangamon River four days later. \textit{Id.} The authorities never solved the case. \textit{Id.} Prior to this amendment, communities were not notified when a registered sex offender resided in the area. \textit{See Gillis, supra, at 5 (“[P]olice are now prohibited from giving the names [of convicted offenders] to the community. The bill, proposed by Rep. Gwenn Klinger ... opens the records to the public and requires police to deliver the names to schools, child-care facilities and the Illinois Department of Children and Family Services.”). \textit{See generally infra} notes 109–12 and accompanying text (discussing and quoting the law).


(A-5) “Juvenile sex offender” means any person who is adjudicated a juvenile delinquent as the result of the commission of or attempt to commit a violation set forth in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, sister state, or foreign country law. For purposes of this Section, “convicted” shall have the same meaning as “adjudicated.”


105. 730 ILL. COMP. STAT. 150/2(A)(5) (2002). This amendment defines a “sex offender” as [any person who is] adjudicated a juvenile delinquent as the result of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, or found guilty under Article V of the Juvenile Court Act of 1987 of committing or attempting to commit an act which, if committed by an adult, would constitute any of the offenses specified in item (B), (C), or (C-5) of this Section or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law.

\textit{Id.} As noted above, this amendment removed the separate definition of a juvenile sex offender and moved it to a subsection of the definition of a sex offender. \textit{See supra} notes 102–05 and
Specifically, the SORA requires a person defined as a sex offender or sexual predator under the Act to register his or her current address, place of employment, and school attended with local law enforcement. The SORA’s definition of sexual predators includes offenders who have committed specified sex offenses, including aggravated criminal sexual assault. Additionally, the SORA requires that sexual predators register for life, whereas other offenders need only register for ten years.

accompanying text. A sex offense includes aggravated criminal sexual assault under the SORA. 730 ILL. COMP. STAT. 150/2(B)(1).

106. 730 ILL. COMP. STAT. 150/3(a)(1)–(2). The statute requires that

[a] sex offender, as defined in Section 2 of this Act, or sexual predator shall, within the time period prescribed in subsections (b) and (c), register in person and provide accurate information as required by the Department of State Police. Such information shall include current address, current place of employment, and school attended. The sex offender or sexual predator shall register:

1. with the chief of police in each of the municipalities in which he or she attends school, is employed, resides or is temporarily domiciled for a period of time of 10 or more days, unless the municipality is the City of Chicago, in which case he or she shall register at the Chicago Police Department Headquarters; or

2. with the sheriff in each of the counties in which he or she attends school, is employed, resides or is temporarily domiciled in an unincorporated area or, if incorporated, no police chief exists.

Id. § 150/2(E)(1) (“As used in this Article, ‘sexual predator’ means any person who, after July 1, 1999, is . . . convicted for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to any offense listed in subsection (E) of this Section . . .”). The statute also provides that sexual predators are those offenders (i) convicted of first degree murder where the victim was under eighteen years old and the offender was at least seventeen years old, (ii) certified as a sexually dangerous person, (iii) found to be a sexually violent person, or (iv) convicted of a second or subsequent offense requiring registration.

Id. § 150/2(E)(2)–(5).

108. Id. § 150/7.

[Sexual predators must] register for the period of his or her natural life after conviction or adjudication if not confined to a penal institution, hospital, or other institution or facility, and if confined, for the period of his or her natural life after parole, discharge, or release from any such facility. Any other person who is required to register under this Article shall be required to register for a period of 10 years after conviction or adjudication if not confined to a penal institution, hospital or other institution or facility, and if confined, for a period of 10 years after parole, discharge or release from any such facility . . . . Liability for registration terminates at the expiration of 10 years from the date of conviction or adjudication if not confined to a penal institution, hospital or any other institution or facility and if confined, at the expiration of 10 years from the date of parole, discharge or release from any such facility, providing such person does not, during that period, again become liable to register under the provisions of this Article.

Id.
Additionally, in 1995 the Illinois legislature passed the Child Sex Offender and Community Notification Law (the “Notification Law”).\(^\text{109}\) The Notification Law separately defines juvenile sex offenders as juveniles adjudicated of specified violations, including aggravated criminal assault.\(^\text{110}\) This statute provides for public notification of information about convicted sexual offenders or sexual predators in the community.\(^\text{111}\) The Notification Law further restricts the dissemination of information pertaining to juvenile sex offenders by only releasing such information when the juvenile offender compromises the safety of a person in some way.\(^\text{112}\)

**C. The Prohibition on Cruel and Unusual Punishment and the Due Process Clause in the United States Constitution**

While sexual offender registration laws, such as the SORA, now exist in all states, these laws are not without limits.\(^\text{113}\) Two provisions of the United States Constitution regulate and greatly limit the scope of such laws.

---

110. 730 ILL. COMP. STAT. 152/105.
   “Juvenile sex offender” means any person who is adjudicated a juvenile delinquent as the result of the commission of or attempt to commit a violation set forth in item (B), (C), or (C-5) of Section 2 of the Sex Offender Registration Act, or a violation of any substantially similar federal, Uniform Code of Military Justice, sister state, or foreign country law, and whose adjudication occurred on or after the effective date of the amendatory Act of the 91st General Assembly.
111. Id. (citations omitted).
112. Id. § 152/120(b)(1)–(5).
   The Department of State Police and any law enforcement agency may disclose, in the Department’s or agency’s discretion, the following information to any person likely to encounter a sex offender, or sexual predator:
   (1) The offender’s name, address, and date of birth.
   (2) The offense for which the offender was convicted.
   (3) Adjudication as a sexually dangerous person.
   (4) The offender’s photograph or any such information that will help identify the sex offender.
   (5) Offender employment information, to protect public safety.
113. See Ball, supra note 96, at 414 (“Sex offender registration and community notification laws have been challenged on myriad federal and state constitutional grounds.”).
registration laws: the Eighth Amendment prohibition against cruel and unusual punishment, and the Due Process Clause.\textsuperscript{114} Part 1 of this section discusses the origin of the idea of cruel and unusual punishment.\textsuperscript{115} Part 2 of this section examines the concept of due process of law.\textsuperscript{116}

1. Cruel and Unusual Punishment

The Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment.\textsuperscript{117} The Framers of the United States

\begin{itemize}
    \item \textsuperscript{114} U.S. CONST. amend. VIII (stating that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"); \textit{id.} amend. V (stating "[n]o person shall ... be deprived of life, liberty, or property, without due process of law"); \textit{id.} amend. XIV, § 1 (stating that "nor shall any State deprive any person of life, liberty, or property, without due process of law"); \textit{see also} Ball, supra note 96, at 414–15 & n.80 (discussing the constitutional challenges to sex offender registration and community notification statutes, including claims that such statutes violate the prohibition against cruel and unusual punishment and due process guarantees contained within the United States Constitution).
    \item \textsuperscript{115} \textit{See infra} Part II.C.1 (discussing cruel and unusual punishment).
    \item \textsuperscript{116} \textit{See infra} Part II.C.2 (discussing due process of law).
    \item \textsuperscript{117} U.S. CONST. amend. VIII. This ban on cruel and unusual punishment is derived from English law. \textit{Furman v. Georgia}, 408 U.S. 238, 316 (1972). The United States Supreme Court, in \textit{Furman v. Georgia}, recounted the English history that influenced the Eighth Amendment, noting:

    In 1583, John Whitgift, Archbishop of Canterbury, turned the High Commission into a permanent ecclesiastical court, and the Commission began to use torture to extract confessions from persons suspected of various offenses. Sir Robert Beale protested that cruel and barbarous torture violated Magna Carta, but his protests were made in vain.

    Cruel punishments were not confined to those accused of crimes, but were notoriously applied with even greater relish to those who were convicted. Blackstone described in ghastly detail the myriad of inhumane forms of punishment imposed on persons found guilty of any of a large number of offenses. Death, of course, was the usual result.

    The treason trials of 1685—the ‘Bloody Assizes’—which followed an abortive rebellion by the Duke of Monmouth, marked the culmination of the parade of horrors, and most historians believe that it was this event that finally spurred the adoption of the English Bill of Rights containing the progenitor of our prohibition against cruel and unusual punishments.

\textit{Id.} at 316–17 (footnotes omitted). The Court also stated another historian’s hypothesis for the inclusion of the prohibition of cruel and unusual punishment in the English Bill of rights, noting, \textit{[L]egislative history has led at least one legal historian to conclude ‘that the cruel and unusual punishments clause of the Bill of Rights of 1689 was, first, an objection to the imposition of punishments that were unauthorized by statute and outside the jurisdiction of the sentencing court, and second, a reiteration of the English policy against disproportionate penalties,’ and not primarily a reaction to the torture of the High Commission, harsh sentences, or the assizes.}

\textit{Id.} at 318 (footnotes omitted). However, in assessing the United States use of the term cruel and unusual punishment, the court stated that

\textit{[w]hether the English Bill of Rights prohibition against cruel and unusual punishments is properly read as a response to excessive or illegal punishments, as a reaction to}
Constitution took the phrase “cruel and unusual punishment” from the English Bill of Rights of 1689. This phrase in the English Bill of Rights functioned to protect citizens from torture and medieval forms of punishment. Similarly, the Constitutional Framers included this language within the Eighth Amendment to ensure the same protection for the citizens of the United States.

Since the amendment’s adoption, the United States Supreme Court has defined cruel and unusual punishment broadly when deciding cases involving punishment that is potentially cruel and unusual. When a statute is challenged under the Eighth Amendment, courts will uphold the constitutionality of the statute if its provisions bear a reasonable

barbaric and objectionable modes of punishment, or as both, there is no doubt whatever that in borrowing the language and in including it in the Eighth Amendment, our Founding Fathers intended to outlaw torture and other cruel punishments.

Id. at 319 (footnotes omitted).


121. Solem v. Helm, 463 U.S. 277, 286 (1983). The court noted that:

Although the Framers may have intended the Eighth Amendment to go beyond the scope of its English counterpart, their use of the language of the English Bill of Rights is convincing proof that they intended to provide at least the same protection—including the right to be free from excessive punishments.

Id.

122. Alison Chin, Hope v. Pelzer: Increasing the Accountability of State Actors in Prison Systems—A Necessary Enterprise in Guaranteeing the Eighth Amendment Rights of Prison Inmates, 93 J. CRIM. L. & CRIMINOLOGY 913, 914 (2003); see also Houston, supra note 119, at 747 (discussing the broad interpretation of cruel and unusual punishment). For example, in Trop v. Dulles, the Court looked to the principle that the “basic concept underlying the Eighth Amendment is nothing less than the dignity of man” in its analysis and used the “evolving standards of decency that mark the progress of a maturing society” as a guideline in its determination of whether the expatriation and dishonorable discharge of a citizen convicted by a military court martial of desertion from the United States Army in wartime, where there was no attempt to give allegiance to a foreign power, constituted cruel and unusual punishment. Trop v. Dulles, 356 U.S. 86, 100-01 (1958). In a later case, the Court classified “cruel and unusual punishment as any punishment ‘grossly disproportionate to the severity of the crime,’ any pain inflicted without penological justification, or as any ‘unnecessary and wanton infliction of pain.’” Chin, supra, at 915 (quoting Gregg, 428 U.S. at 173). Cruel and unusual punishment by the government can extend even to actions not taken by the government. Earl-Hubbard, supra note 1, at 822 (noting that the government could be held accountable for cruel and unusual punishment in the case of an incarcerated non-smoker who alleged health damage from being paired with a smoker for a cellmate (citing to Helling v. McKinney, 509 U.S. 25, 27-29 (1993))).
relationship to the public interest served and it attempts to accomplish that objective through reasonable methods. 123

To determine whether a law constitutes cruel and unusual punishment, courts, and specifically Illinois courts, apply a two-part test. 124 First, courts determine whether or not the law constitutes a punishment. 125 Courts determine whether a law is penal in nature by looking to the purpose of the statute, including the intent of the legislature in enacting the statute. 126 However, even if the legislative intent is not found to be punitive in nature, the court will disregard that legislative intent if the party challenging the statute can demonstrate that the statute nevertheless has a punitive effect. 127 Second, if the law is found to be a punishment, courts then must determine whether the punishment imposed by the law is cruel and unusual because it is


124. Ball, supra note 96, at 415. The two part test was developed by the United States Supreme Court in Trop v. Dulles. See Trop, 356 U.S. at 95, 101–03 (stating that an Eighth Amendment analysis of a sex offender registration a consists of two parts).

125. Adams, 581 N.E.2d at 640 (“[T]he purpose of the statute should be evaluated in order to determine whether it is penal in nature.” (citing Trop, 356 U.S. at 96)).

126. Ball, supra note 96, at 416; see also Trop, 356 U.S. at 96–97 (stating the rules for determining whether a statute is penal in nature). As the Trop noted,

In deciding whether or not a law is penal, this Court has generally based its determination upon the purpose of the statute. If the statute imposes a disability for the purposes of punishment—that is, to reprimand the wrongdoer, to deter others, etc., it has been considered penal. But a statute has been considered nonpenal if it imposes a disability, not to punish, but to accomplish some other legitimate governmental purpose.

Trop, 356 U.S. at 96. However, even if the statute is considered nonpunitive, it can still constitute cruel and unusual punishment if it imposes an excessive disability. See Earl-Hubbard, supra note 1, at 816–17 (“If the law has a nonpunitive purpose, the court must assess whether the disability or injury appears excessive in relation to this non-punitive purpose.”).

127. People v. Malchow, 739 N.E.2d 433, 439 (Ill. 2000) (“[T]he legislature’s intent will be disregarded where the party challenging the statute demonstrates by ‘the clearest proof’ that the statute’s effect is so punitive that it negates the legislature’s intent.” (quoting Kansas v. Hendricks, 521 U.S. 346, 361 (1997))). To assess whether a statute has a punitive effect even where its intent is nonpunitive, courts generally have looked to the following factors:

(1) whether the “sanction” involves an affirmative disability or restraint; (2) whether the sanction has been historically regarded as punishment; (3) whether the sanction comes into play only on a finding of scienter; (4) whether operation of the sanction will promote retribution and deterrence; (5) whether the behavior to which the sanction applies is already a crime; (6) whether an alternative purpose to which the sanction may rationally be connected is assignable for it; and (7) whether the sanction appears excessive in relation to the alternative purpose assigned.

Id. (citing Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168–69 (1963)).
2004] The Treatment of Juvenile Sex Offenders in *In re J.W.* 965

grossly disproportional to the crime committed by the offender.\(^\text{128}\) Courts ascertain whether the punishment is grossly disproportionate to the crime by applying a three-part test where the court considers (1) the seriousness of the offense and the harshness of the punishment, (2) the sentences imposed on other criminals within the jurisdiction, and (3) the sentences imposed in other jurisdictions for the commission of the same crime.\(^\text{129}\)

Opponents to sex offender registration statutes such as the SORA have challenged such statutes, contending that such laws constitute a grossly disproportionate punishment in violation of the Eighth Amendment.\(^\text{130}\) However, these challenges have not been successful, and courts have held that such statutes do not violate the Eighth Amendment.\(^\text{131}\)

2. Due Process

Scholars have noted that due process is a necessary requirement for any system of law.\(^\text{132}\) The due process concept has its roots in Anglo-American law.\(^\text{133}\) The United States Constitution provides for due process in the Fifth and Fourteenth Amendments.\(^\text{134}\) Due process of

\(^{128}\) Ball, *supra* note 96, at 415–16; *see also* Houston, *supra* note 119, at 752 (noting that "a penalty inflicted must accord with the 'dignity of man,' and the punishment must not be 'grossly disproportionate' to the crime" (citations omitted)).

\(^{129}\) Ball, *supra* note 96, at 417. The United States Supreme Court developed this test in *Solem v. Helm*, 463 U.S. 277, 292 (1983). In *Harmelin v. Michigan*, 501 U.S. 957 (1991), however, the Supreme Court split on whether the *Solem* decision remained good law, with two Justices voting to overrule *Solem*, three Justices voting in a concurring opinion to narrow the *Solem* test and only find a violation of the Eighth Amendment if the punishment was grossly disproportionate to the crime, and four Justices voting in a dissenting opinion to uphold the *Solem* test. *Harmelin*, 501 U.S. at 985 (plurality opinion); *id.* at 1004 (Kennedy, J., concurring); *id.* at 1009 (White, J., dissenting).

\(^{130}\) See Ball, *supra* note 96, at 417–18 & n.95 (discussing a case that analyzed whether registration laws constituted punishment). For an example of a case that argued that the SORA violated the Eighth Amendment, see *Adams*, 581 N.E.2d at 637, and see also *infra* notes 176–85 and accompanying text for a discussion of the *Adams* case.

\(^{131}\) See, e.g., *Adams*, 581 N.E.2d at 641 (holding that Illinois' registration statute did not constitute cruel and unusual punishment because its effect was nonpenal). *See generally infra* notes 176–85 and accompanying text (examining the *Adams* decision).

\(^{132}\) See, e.g., J. Kevin Jenkins & John Dayton, *Students, Weapons, and Due Process: An Analysis of Zero Tolerance Policies In Public Schools*, 171 WEST'S EDUC. L. RPTR. 13, 15 (2003) ("Due process of law is essential to any just system of laws, and is a necessary foundation for any government committed to the rule of law.").

\(^{133}\) See *Adams*, 581 N.E.2d at 641 n.18 (noting that the Magna Carta of 1215 and the English Petition of Right of 1628 contained ideas similar to that of the due process requirement provided for in the United States Constitution).

\(^{134}\) U.S. CONST. amend. V (stating that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law"); *id.* amend. XIV, § 1 (stating that "nor shall any State deprive any person of life, liberty, or property, without due process of law"); *see also* Michelle
law consists of several types of rights, including fairness and limitations on government power. Courts recognize both procedural and substantive due process rights today.

Procedural due process requires a certain level of fairness in all governmental processes that potentially encroach on life, liberty, or property rights. Specifically, procedural due process requires that citizens accused of violating a law must be given a fundamentally fair hearing, with adequate notice of charges, evidence, and witnesses, and the chance to rebut the charges, evidence, and witnesses. The level of notice required for procedural due process varies, but generally, the offender must have notice that his or her conduct is illegal. Additionally, procedural due process protects against government misuse of power and provides for the right to a trial by jury.

Substantive due process ensures that government actions serve a legitimate government interest and are fair and reasonable. Courts look to fundamental rights to assess whether a due process analysis


135. Jenkins & Dayton, supra note 132, at 16 (“Within the broad array of rights associated with due process are requirements of notice and hearing, fundamental fairness, proportionality, and other limitations on the arbitrary, unfair, or corrupt use of governmental power.”).

136. Id.

137. Id. (“In its most basic form procedural due process guarantees adequate notice of government actions affecting life, liberty, or property, and the right to a fair hearing regarding these issues.”).

138. Id. at 16–17; see also Earl-Hubbard, supra note 1, at 835 (“An essential principle of due process is that these deprivations [of life, liberty, or property] be preceded by notice and an opportunity for a hearing appropriate to the nature of the case.”).

139. Earl-Hubbard, supra note 1, at 827 (“For most offenses an offender must have knowledge of the facts that make his conduct illegal.”).

140. See Jenkins & Dayton, supra note 132, at 17 (“[G]overnment officials cannot compel confessions or otherwise misuse governmental power to deny fair procedures and trials. The right of trial by jury is an additional protection against the improper use of governmental power.”) (footnotes omitted).

141. Id.; see also Carter, supra note 134, at 846 & nn.102–04. “Substantive due process protects citizens from two primary types of government action. First, it protects citizens from any government action that ‘shocks the conscience.’ Second, it prevents the government from participating in conduct that interferes with rights ‘implicit in the concept of ordered liberty.’” Id. at 846 (footnotes omitted). Substantive due process also brings in some of the concepts found in a cruel and unusual punishment analysis, such as the idea that punishments should be fair. See Jenkins & Dayton, supra note 132, at 17 (“Even when convicted of violations of legitimate laws, individuals are protected from excessive punishments. Substantive due process requires that punishments must be fundamentally fair and proportional to the violation of law.”).
In doing so, courts must first determine if the government action in question infringes upon a fundamental right of all people protected by due process. If the court finds that the action infringes upon such a right, the court then uses a strict scrutiny due process analysis to decide whether the legislature was unjustified in infringing on the right. If the right is found to be a fundamental right that was unjustly infringed upon by the legislature, the action is held to violate due process. If the right infringed upon is not a fundamental constitutional right, courts, and specifically Illinois courts, will apply a rational basis test. The rational basis test is satisfied when the statute bears a rational relationship to its legislative purpose. Thus, a statute will be not be held unconstitutional if it reasonably relates to the public interest intended to be served by the legislature and the legislature adopts reasonable means to accomplish that objective.

Opponents have challenged statutes such as the SORA, arguing that the laws violate the due process rights found in the Constitution. However, these challenges have not been successful, and courts have held that such statutes do not violate due process.

142. Carter, supra note 134, at 846-47. Courts determine whether a fundamental right of all or one class of persons is affected. Id. When the fundamental right is restricted for only one classification of people, courts apply the equal protection rational basis test. Id.

143. Id. at 847. In order to infringe on a right of life, liberty, or property, the government action must "substantially interfere" with that right. Id. at 848.

144. Id. at 847; see also In re R.C., 745 N.E.2d 1233, 1241 (Ill. 2001) ("To survive strict scrutiny the means employed by the legislature must be 'necessary' to a 'compelling' state interest . . . and the legislature must use the least restrictive means consistent with the attainment of its goal." The tests developed to determine if there was sufficient justification for the action have been termed "means-end scrutiny" tests. Russell W. Galloway, Jr., Basic Substantive Due Process Analysis, 26 U.S.F.L. REV. 625, 627 (1992).

145. See Carter, supra note 134, at 847; see also Galloway, supra note 144, at 626-27 (describing the substantive due process analysis).

146. In re R.C., 745 N.E.2d at 1241; People v. Adams, 581 N.E.2d 637, 642 (Ill. 1991) ("[A] rational basis test . . . prevents the implementation of a statute if it irrationally differentiates between persons similarly situated." (citing Jenkins v. Wu, 468 N.E.2d 1162, 1166-67 (Ill. 1984))); see also infra note 278 and accompanying text (noting the Illinois Supreme Court's application of the test in J.W.).


149. See Ball, supra note 96, at 414-15 & n.80 (giving an example of a case where registration laws were challenged for violation of the Fifth and Fourteenth Amendments). For an example of a case that argued that the SORA violated due process guarantees, see Adams, 581 N.E.2d at 637, and see generally infra notes 176-85 and accompanying text for an examination of the Adams decision.

150. See, e.g., Adams, 581 N.E.2d at 642 (holding that Illinois' registration statute did not violate the due process clause of the Fourteenth Amendment). See generally infra notes 176-85 and accompanying text (examining the Adams decision).
D. The Treatment of Juveniles in the Court System

The Constitution is not the only limitation on the scope of registration laws, as the treatment of juveniles in the court system also greatly restricts their scope.151 Over a century ago, the Illinois legislature created the first juvenile court system in the United States by enacting the Illinois Juvenile Court Act of 1899,152 based on the belief that the state should treat children differently than adults.153 Unlike the adult

151. See Swearingen, supra note 82, at 549 (noting that the separate juvenile justice system developed because children were not meant to be treated as criminals).
152. 1899 Ill. Laws 131; Susan A. Burns, Comment, Is Ohio Juvenile Justice Still Serving Its Purpose?, 29 AKRON L. REV. 335, 337 & n.11 (1996); see also Richardson, supra note 4, at 243 (“Since its creation in Illinois in 1899, the [juvenile court] system has grown and is now found in every state, the District of Columbia, and Puerto Rico.”). The system was established “with two main goals: to divert children from the harms of the punitive criminal justice system as much as possible, and to intervene in the children’s best interest when necessary.” Garfinkle, supra note 9, at 194.
153. Skoglund, supra note 10, at 1810; see also Richardson, supra note 4, at 243 (“The early reformers wished to distinguish between the procedures and penalties applied to adults and those applied to children.”). Within this early system, juveniles were not given certain rights that adults were given in the adult criminal system, such as the right to counsel, but juveniles have since been afforded these rights through acts passed by state and federal legislatures. Alison G. Turoff, Comment, Throwing Away the Key on Society’s Youngest Sex Offenders, 91 J. CRIM. L. & CRIMINOLOGY 1127, 1131 (2001). Illinois’ Juvenile Court Act is an example of legislation designed to protect the rights of juveniles. See generally 705 ILL. COMP. STAT. 405/5 (2002) (affording specific rights to juveniles accused of committing a criminal offense); see also Turoff, supra, at 1131 (“The Juvenile Court Act and both the Illinois and federal constitutions provide minor defendants with many of the same protections that adult defendants have. For example, juveniles have the right to counsel, the right to be free from self-incrimination, and the right to face their accusers and question witnesses.”). However, juveniles still are not given the right to a jury trial, which has given rise to several claims that this omission violates procedural due process. Turoff, supra, at 1131–32. On this issue, the Illinois Supreme Court has held that a “trial by jury is not crucial to a system of juvenile justice.” In re Fucini, 255 N.E.2d 380, 382 (Ill. 1970).

To combat criticism over juveniles’ restricted right to a jury trial, some states, including Illinois, have passed legislation that gives juveniles the right to a jury trial. See Turoff, supra, at 1133 (“The Illinois Juvenile Court Act, for example, has three exceptions to the general rule of bench trials for minor defendants. Juveniles have the right to a jury trial when they fall under the provisions for (1) extended jurisdiction juvenile prosecutions, (2) habitual juvenile offenders, or (3) violent juvenile offenders.” (footnotes omitted)); see also 705 ILL. COMP. STAT. 405/5 (providing the right to a jury trial). Specifically, the Illinois Juvenile Court Act provides that “[a] minor who is subject to an extended jurisdiction juvenile prosecution has the right to trial by jury.” Id. § 405/5-810(3). It also states that “[t]rial on . . . petition [to seek adjudication as a Habitual Juvenile Offender] shall be by jury unless the minor demands, in open court and with advice of counsel, a trial by the court without jury.” Id. § 405/5-815(d). Additionally, the Act provides that “[t]rial on the petition [to seek adjudication as a Violent Juvenile Offender] shall be by jury unless the minor demands, in open court and with advice of counsel, a trial by the court without a jury.” Id. § 405/5-820(d). These jury trials usually are provided, however, only in instances where the prosecution for the crimes committed would be more interested in protecting society from criminals than in rehabilitating the juvenile offenders. See Turoff, supra, at 1134.
system, which is designed to punish offenders for their crimes, the purpose of the juvenile court system is to rehabilitate children who commit crimes. The legislators posited that if the state could rehabilitate juvenile offenders, they would not commit crimes as adults. Moreover, the creators of the juvenile justice system believed that children should be treated by the system with the care normally found in a stable family environment. In accordance with these ideas, juveniles are adjudicated rather than convicted of a crime, and adjudications focus more on treatment than on the offense committed. Additionally, dispositions are purposefully indeterminate or nonproportional to help the juvenile’s rehabilitative progress.

In cases in which the juvenile commits an extremely serious crime, he or she may not be eligible for the more lenient rehabilitative treatment afforded by the juvenile court system and instead will be

---

154. Skoglund, supra note 10, at 1811 ("Whereas adult criminal systems were implemented to punish misdeeds and discourage criminality, the juvenile justice system was intended to rehabilitate youthful offenders and to protect the public."); see also Swearingen, supra note 82, at 549 ("[T]he function of the [juvenile] system was "to investigate, diagnose, and prescribe treatment, not to adjudicate guilt or fix blame." (quoting SOL RUBIN, JUVENILE OFFENDERS AND THE JUVENILE JUSTICE SYSTEM 2 (1986)).

155. Richardson, supra note 4, at 243 ("The system was designed to prevent children from committing additional crimes by addressing and solving the underlying problems.").

156. Id. at 243–44 ("Even reprehensible acts committed by juveniles are not deemed the result of a mature decision-making process; rather, they are seen as caused by environmental pressures or other forces beyond the control of the child."). This concept is often referred to as parens patriae. Burns, supra note 152, at 337; see also Swearingen, supra note 82, at 549 ("[T]he state was to act as a parent, protecting instead of punishing the child.").

157. Skoglund, supra note 10, at 1811; see also Michael M. O’Hear, Statutory Interpretation and Direct Democracy: Lessons from the Drug Treatment Initiatives, 40 HARV. J. ON LEGIS. 281, 309 (2003) (noting that juveniles are adjudicated rather than convicted of a crime); Swearingen, supra note 82, at 549 (noting that "rehabilitation became the central tenet of the juvenile justice system"). To adjudge means "[t]o pass on judicially, to decide, settle, or decree, or to sentence or condemn;" to adjudicate means "[t]o settle in the exercise of judicial authority; [t]o determine finally," whereas a conviction is "the result of a criminal trial which ends in a judgment or sentence that the prisoner is guilty as charged." BLACK’S LAW DICTIONARY 63, 403 (4th ed. 1968).

158. Skoglund, supra note 10, at 1812.

Unlike sentences based on statutory guidelines, as in the criminal system, indeterminate dispositions in the juvenile system are limited only by the child’s amenability to treatment and the jurisdiction of the juvenile court. Indeterminate juvenile court dispositions are also nonproportional because they are unrelated to the nature of the child’s particular offense.

Id. (footnotes omitted)).
subject to adult penalties. However, courts rarely impose adult penalties on juveniles. Yet, the possibility of such penalties is important considering that, in recent years, the focus of the juvenile court system has turned more to the offense committed, due in part to the increase in serious and violent crimes committed by juveniles. Nevertheless, noting the juvenile court system’s emphasis on rehabilitation and greater protection for child offenders, some commentators consider the juvenile court system to be a real limitation on the scope of sexual offender registration laws.

E. Statutory Construction Rules Used by Illinois Courts in Determining the Constitutionality of a Statute

In Illinois cases in which the constitutionality of a statute is at issue, courts must consider the legislative intent and the statutory construction of the statute. The constitutionality of a statute is reviewed de novo. Courts presume that the statute is constitutional, and the burden of demonstrating the statute’s invalidity lies with the party challenging the statute. In construing a statute, Illinois courts are bound to uphold its validity and constitutionality if reasonably possible. Accordingly, Illinois courts first examine the statute at issue to determine legislative intent and then construe the statute in

159. Richardson, supra note 4, at 244 (“It has been recognized since the earliest days of the juvenile justice system that the commission of a very serious crime would render a juvenile ineligible for the juvenile courts’ lenient and treatment-oriented dispositions.”).

160. Id.

161. Swearingen, supra note 82, at 553 (“This shift in focus is the result of statistics that show that juveniles are not only committing more crimes, but increasingly serious and violent crimes.”).

162. See Skoglund, supra note 10, at 1830 (noting that “the states that apply Megan’s Law statutes to juveniles do not do so according to the rehabilitative ideal”); Swearingen, supra note 82, at 555 (“If the Juvenile Code is premised primarily on the ideas of rehabilitation and treatment of juvenile offenders, the application of Megan’s Law to these offenders is not sound policy. Megan’s Law is not rehabilitative in any sense of the word.”).

163. See, e.g., People v. Malchow, 739 N.E.2d 433, 437–38 (Ill. 2000) (applying the statutory construction rules in the context of an ex post facto challenge). These rules have also been used in cases determining the constitutionality of the SORA. See, e.g., id. at 433 (determining the constitutionality of the SORA); People v. Adams, 581 N.E.2d 637, 640–41 (Ill. 1991) (assessing the constitutionality of the SORA); In re Nicholas K., 761 N.E.2d 352, 353 (Ill. App. Ct. 2nd Dist. 2001) (assessing the constitutionality of the SORA’s applicability to juvenile offenders); see also infra Part II.F (discussing Illinois case law interpreting the SORA).

164. Malchow, 739 N.E.2d at 437 (citing People v. Fisher, 705 N.E.2d 67, 71–72 (Ill. 1998)).

165. Id. (citing In re K.C., 714 N.E.2d 491 (Ill. 1999)).

166. Id. ("[Courts have] a duty to construe a statute in a manner that upholds its validity and constitutionality if it can be reasonably done." (citing Fisher, 705 N.E.2d at 71)).
accordance with that intent. The statutory language usually provides the best indication of the drafters’ intent; therefore, courts usually should give it the plain, ordinary, and popularly understood meaning. In construing the meaning of the words of a statute, the use of specific words in one context and different words in another context demonstrates that the legislature intended a different meaning for the two words. The courts have used these rules in cases involving sex offender registration laws.

F. Constitutionality of the SORA and the Applicability of Sex Offender Registration to Juvenile Sex Offenders

As noted above, Illinois was not the first state to enact sex offender registration and notification laws, nor is it the only state to have confronted the issue of whether or not to include juvenile sex offenders in those registration laws. Moreover, like other states, the Illinois courts have analyzed the constitutionality of its sex offender registration law several times, with cases concerning both juvenile and adult offenders. When applying the SORA to juveniles, Illinois courts have faced the question of whether they must require juvenile sex offenders to register in order to remain consistent with the intent of the legislature in drafting the statute, and whether it is constitutional to hold

167. Nicholas K., 761 N.E.2d at 354 (“[Courts must] ascertain and give effect to the legislature’s intent in enacting the statute.” (citing Collins v. Bd. of Trs., 610 N.E.2d 1250, 1253 (Ill. 1993))).

168. Id. (citing Collins, 610 N.E.2d at 1253).

169. Id. (“[W]here the legislature uses certain words in one context and different words in another, it must intend a different meaning.” (citing In re Marriage of Walters, 604 N.E.2d 432, 438 (Ill. 1992))).

170. See, for example, People v. Adams, in which the Illinois Supreme Court used the statutory construction rules to interpret an earlier version of the SORA. People v. Adams, 581 N.E.2d 637, 640 (Ill. 1991). See generally infra notes 176-85 and accompanying text (discussing the Adams case).

171. See, e.g., State v. Misiorski, 738 A.2d 595, 603 (Conn. 1999) (holding that a community could be notified of a sex offender’s conviction as a condition of his probation).

172. See, e.g., Helman v. State, 784 A.2d 1058, 1064 (Del. 2001) (holding that the application of registration and notification statutes to a juvenile sex offender indicted as an adult was constitutional); In re J.G., 777 A.2d 891, 904 (N.J. 2001) (holding that juveniles can be required to register, but such registration may cease at age eighteen if it can be shown by clear and convincing evidence that the juvenile is not a threat to the community); In re Ayres, 608 N.W.2d 132, 134 (Mich. Ct. App. 1999) (holding that applying the registration statute to a juvenile sex offender did not violate the cruel and unusual punishment provision of the Michigan state constitution).

173. See, e.g., People v. Malchow, 739 N.E.2d 433, 436 (Ill. 2000) (assessing the constitutionality of the SORA); In re Nicholas K., 761 N.E.2d 352, 352 (Ill. App. Ct. 2nd Dist. 2001) (assessing the constitutionality of applying the SORA to juvenile offenders).
that the SORA can apply to juvenile sex offenders.174 With each constitutional challenge to the SORA, Illinois courts have used the general statutory construction rules discussed above as well as the tests relating to specific constitutional provisions.175

One of the first and most referenced constitutional challenges to the SORA took place in 1991, with the Illinois Supreme Court case People v. Adams.176 In Adams, the defendant, a convicted sex offender, maintained that the Illinois Habitual Child Sex Offender Registration Act (the “Registration Act”), the original predecessor to the SORA effective at the time of the case, was unconstitutional because it constituted cruel and unusual punishment and violated due process under the Fourteenth Amendment.177 The Illinois Supreme Court noted that the state legislature passed the Registration Act in response to the number of offenses committed against children and designed the law to aid local law enforcement.178

174. See Nicholas K., 761 N.E.2d at 354 (determining whether the SORA applies to juvenile sex offenders). In applying the registration requirement to juvenile sex offenders, the issues of “reoffense” and “recidivism” arise. Richardson, supra note 4, at 248–49. Although both terms measure the risk that a convicted juvenile sex offender poses to the community, reoffense refers to “new instances of sexually aggressive behavior, whether or not the new offense is similar to prior sexual aggression,” and recidivism refers to a new arrest, conviction, or incarceration of the offender for any criminal or dangerous behavior. Richardson, supra note 4, at 248–49 (quoting William C. Greer, Aftercare: Community Integration Following Institutional Treatment, in Juvenile Sexual Offending: Causes, Consequences, & Correction 23 (Gail Ryan & Sandy Lane eds., new and rev. ed. 1997)).

175. See Malchow, 739 N.E.2d at 436 (assessing the constitutionality of the SORA); Nicholas K., 761 N.E.2d at 353 (determining the constitutionality of applying the SORA to juvenile offenders); supra Part II.E (discussing statutory construction rules used by Illinois courts).


177. Id. at 639–40, 642; see also supra note 99 and accompanying text (stating that the Habitual Child Sex Offender Act imposed a registration requirement on those convicted of at least two sexual offenses against children). See generally supra note 97 and accompanying text (discussing the Habitual Child Sex Offender Act as a precursor to the SORA). In Adams, the defendant was convicted of criminal sexual assault against his twelve-year-old daughter. Adams, 581 N.E.2d at 639. He was required to register pursuant to the Habitual Child Sex Offender Registration Act. Id. The defendant in Adams also argued that the Habitual Child Sex Offender Registration Act violated equal protection of the law afforded by the Fourteenth Amendment because it was an underinclusive statute that did not include child pornographers. Id. at 642. The court found this argument unpersuasive because the broad purpose of the statute was to prevent sexual victimization of children, and although child pornographers could fit into this category, their motives are often more profit-driven than sexually driven. Id. Therefore, the court held that the Habitual Child Sex Offender Registration Act did not violate the equal protection clause of the United States Constitution. Id.

178. Adams, 581 N.E.2d at 640. The court noted that “[t]he legislature passed the statute in question in response to concern over the proliferation of sex offenses against children.” Id. “The Registration Act was designed to aid law enforcement agencies by requiring habitual child sex offenders to register with the local law enforcement authorities whenever they move.” Id. (citing House Proceedings, 84th Ill. Gen. Assemb. 208 (1986)).
To ascertain whether the Registration Act violated the Eighth Amendment, the court first evaluated whether the registration requirement constituted a punishment. The court looked to the legislative debates on the Registration Act and determined that the purpose of the Act was not penal but rather another way to protect children from sexual abuse. The court noted that the legislature needed to find a way to monitor such offenders to combat sex offenses against children, and to educate children about possible attacks. Further, the court noted that the Registration Act's lack of corrective measures for the sex offender's behavior, such as counseling or a treatment program, provided further evidence that the statute was nonpenal.

The court in Adams also found that the Registration Act did not violate the Due Process Clause of the Fourteenth Amendment. The court noted that helping law enforcement officials protect children was the public interest to be served by the Registration Act and that it was reasonable to accomplish this purpose by providing the public with information on known sex offenders. Since the court found the Registration Act did not constitute cruel and unusual punishment and did not violate due process under the Fourteenth Amendment, the Adams court held that the Registration Act was constitutional.

---

179. Id. The court looked to whether or not the statute created a punishment in order to assess the defendant's claim that the Registration Act constituted cruel and unusual punishment and therefore violated the Eighth Amendment. Id. See generally supra Part II.C.1 (examining the history of Eighth Amendment law).


181. Adams, 581 N.E.2d at 641. The court noted that "the most logical alternative available to the legislature was to monitor the movements of the perpetrators by allowing ready access to crucial information." Id.

182. Id.

183. Id. at 642.

184. Id.

185. Id. at 644. The Illinois appellate courts followed the reasoning used in Adams in later cases involving amended versions of the SORA. See, e.g., People v. Logan, 705 N.E.2d 152, 160 (Ill. App. Ct. 2nd Dist. 1998) (holding that the registration and notification provisions of the SORA and the Notification Law do not violate the ex post facto clauses of the United States and Illinois Constitutions); People v. Starnes, 653 N.E.2d 4, 7 (Ill. App. Ct. 1st Dist. 1995) (holding that the SORA is constitutional because it protects a legitimate public interest and imposes a collateral, rather than penal, consequence upon conviction); see also infra notes 186–201 and accompanying text (discussing Logan and Starnes). See generally supra Part II.C (examining the history of Eighth Amendment and due process law).
In the 1995 case, *People v. Starnes*, the First District Appellate Court of Illinois assessed whether the Illinois registration laws violated the ex post facto clauses of the United States and Illinois Constitutions.\(^1\) The defendant in *Starnes* appealed his certification as a sex offender and the requirement that he register as a sex offender pursuant to the Child Sex Offender Registration Act ("Registration Act II"), a predecessor to the SORA in effect at the time of the case, arguing that the registration requirement violated the ex post facto clauses of the United States and Illinois Constitutions.\(^2\) The court noted that the ex post facto clause of the Illinois Constitution should be examined in the same manner as the ex post facto clause of the United States Constitution.\(^3\)

The appellate court first stated that the Illinois Supreme Court had held that the Registration Act, the predecessor to the Registration Act II, was not penal and that its provisions did not constitute punishment.\(^4\)

---

2. *Starnes*, 653 N.E.2d at 5. The defendant was convicted of aggravated criminal sexual abuse against his fifteen-year-old niece. *Id.* He was sentenced to four years probation and counseling, certified as a child sex offender, and required to give a blood sample to the state and register as a sex offender. *Id.* at 5–6.
3. The United States Constitution provides, "No Bill of Attainder or ex post facto Law shall be passed." U.S. CONST. art. I, § 9. The Illinois Constitution provides that "[n]o ex post facto law, or law impairing the obligation of contracts or making an irrevocable grant of special privileges or immunities, shall be passed." ILL. CONST., art. I, § 16. The Illinois Constitution has contained a prohibition on ex post facto laws since its original version in 1818. See ILL. CONST. of 1818, art. VIII, § 16. The Framers of the United States Constitution included a bar on such laws because they considered ex post facto laws to be a violation of a fundamental right and grossly unfair. Erwin Chemerinsky, *Constitution Bars Prosecution of Long-ago Child Abusers*, TRIAL, Jan. 2004, at 64. The prohibition on ex post facto laws in the original Constitution, before the Bill of Rights, indicates the Framers' high disdain for such laws. *Id.* at 65.

   I will state what laws I consider ex post facto laws, within the words and the intent of the prohibition. 1st. Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 
   2nd. Every law that aggravates a crime, or makes it greater than it was, when committed. 
   3rd. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 
   4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offence, in order to convict the offender. If the law does not fall into one of these categories, it does not constitute the type of *ex post facto* law the Framers intended to prohibit.

   *Id.*; see also Barger v. Peters, 645 N.E.2d 175, 176–77 (Ill. 1994) (holding that the Illinois Constitution's ex post facto clause is to be construed the same way as the United States Constitution's ex post facto clause).
The court then looked to other appellate court decisions that had held that a registration requirement is not punishment. The court reasoned that the current registration law contained the same provisions requiring registration as the previous law, and therefore it too did not constitute a punishment and did not violate the ex post facto clauses of the Illinois and United States Constitutions.

More recently, in *People v. Logan,* the Second District Appellate Court of Illinois assessed the constitutionality of the SORA. The defendant in *Logan* was convicted for failure to register as a sex offender. The defendant appealed his conviction, arguing that the SORA was unconstitutional because it violated the ex post facto clauses of the Illinois and United States Constitutions, violated due process, and violated his right to privacy. The appellate court first looked to Illinois Supreme Court precedent that held the previous versions of the SORA to be constitutional. The court then looked to the amended version of the SORA to assess its constitutionality under each of the defendant’s arguments.

In its assessment of whether the SORA violated the ex post facto clauses of the Illinois and United States Constitutions, the court looked to the Illinois legislature’s intent and found that the registration and notification provisions in the SORA did not violate ex post facto prohibitions in the constitutions. The court then addressed whether

---

190. *Starnes,* 653 N.E.2d at 7. The court noted that an appellate court had held that “certification is a collateral consequence of a defendant’s conviction for a sex offense against a child rather than a penalty or an enhancement of the sentence.” *Id.* (internal quotations omitted) (quoting *People v. Murphy,* 565 N.E.2d 1359, 1360 (Ill. App. Ct. 4th Dist. 1991)). The court also quoted from another appellate court decision that stated “[the Act is] an Act for the protection of the general public from those prone to sex offenses against children. Any limitation of the rights of an offender proscribed by the Act is made insignificant when weighed against the protection to the public.” *Id.* (quoting *People v. Taylor,* 561 N.E.2d 393, 394 (Ill. App. Ct. 4th Dist. 1990)).

191. *Id.*


193. *Id.* at 154. The defendant was required to register as a sex offender after his 1992 release from prison following a 1990 conviction for a sex offense. *Id.*

194. *Id.* At the time of this case, the current version of the registration law, the SORA, was in effect. See generally *supra* Part II.B (discussing the development of Illinois’ registration law); *supra* Part II.C.2 (examining the history of due process law).


196. *Id.* at 155–56.

197. *Id.* at 157–60. The court noted that “we... do not believe that the defendant has met his burden of presenting by the ‘clearest proof’ that the statutory scheme at issue is so punitive in effect so as to negate the nonpunitive legislative intent.” *Id.* at 160 (quoting Kansas v. Hendricks, 521 U.S. 346, 361 (1997)); see *supra* notes 186–91 and accompanying text (discussing *People v. Starnes,* in which the defendant contended that the registration statute constituted an ex post facto law).
the SORA violated due process, finding that the defendant had not satisfied his burden of showing that the SORA deprived him of a protected liberty or property interest. Lastly, the court evaluated whether the statute violated the defendant’s right to privacy and held that the defendant’s interest in information about where he resides is not within the constitutionally protected “zone of privacy.” Therefore, the court held that the SORA was constitutional, affirming the conviction of the lower court.

In 2000, the Illinois Supreme Court analyzed the constitutionality of both the SORA and the Notification Law in People v. Malchow. The defendant in Malchow specifically argued that the SORA and the Notification Law were unconstitutional because they were in violation of the constitutional prohibition of ex post facto laws, constituted cruel and unusual punishment, infringed on the right to privacy, subjected him to double jeopardy, and violated the due process and equal protection clauses of the Fourteenth Amendment, in addition to violating the single-subject clause of the Illinois Constitution.

The court noted that the ex post facto clauses of the Illinois and United States Constitutions did not render the SORA unconstitutional, as the Adams decision had already determined that the registration requirement did not constitute a punishment; therefore, the court considered only the ex post facto argument as it applied to the Notification Law. After noting that the dissemination of a


202. People v. Malchow, 739 N.E.2d 433, 438 (Ill. 2000). In Malchow, the defendant was required to register as a sex offender after being convicted of aggravated criminal sexual abuse in 1988, and in 1997 was brought to court for charges that he had never registered. *Id.* at 436. The defendant was convicted of failure to register as a sex offender and appealed his conviction, like the defendant in Adams, maintaining that the SORA and the Notification Law were unconstitutional. *Id.*

203. *Id.* at 436–37. *See generally supra* Part II.C (examining the history of Eighth Amendment and due process law); *supra* notes 186–91 and accompanying text (discussing *People v. Starnes*, in which the defendant contended that the registration statute constituted an ex post facto law); *infra* note 212 (discussing the Double Jeopardy Clause); *infra* note 215 (explaining the significance of the single-subject clause).

204. Malchow, 739 N.E.2d at 438. *See generally supra* notes 176–85 and accompanying text (discussing the Adams decision); *supra* notes 186–91 and accompanying text (discussing *People
registrant's information is limited under the Notification Law, the court found that the legislative intent behind the Notification Law was to protect the public and not to punish sex offenders and child murderers. The court then determined that the Notification Law did not have punitive effects in line with its nonpunitive intent. Therefore, the court held that neither the SORA nor the Notification Law violated the ex post facto clauses. Moreover, the court reiterated that they previously had rejected a cruel and unusual punishment argument in Adams, and therefore the defendant's claim in Malchow failed for similar reasons.

The court upheld the constitutionality of the SORA and the Notification Law, holding that the statutes did not abridge the right to privacy. The court noted that the statutes did not require the offender to provide information that fell within any area recognized as being part of the right to privacy under the United States Constitution. Additionally, the court determined that the defendant did not meet the burden of demonstrating that the SORA and the Notification Law violated the privacy clause of the Illinois Constitution.

The court also rejected the claim that the SORA and the Notification Law constituted double jeopardy as it found both Acts to be nonpunitive. The court found that the defendant did not satisfy his

---

v. Starnes, where the defendant contended that the registration statute constituted an ex post facto law).


A simple reading of the act shows ... that the intent of the Notification Law is not to stigmatize and shame sex offenders. Rather, the Act is carefully tailored so that the information is disseminated in such a way as to protect the public.... The limited dissemination of the information clearly demonstrates that the Notification Law is intended to protect the public rather than to punish sex offenders.

206. Id. at 440; see supra note 127 and accompanying text (discussing the factors considered by courts in determining punitive intent).

207. Malchow, 739 N.E.2d at 440.

208. Id. at 441. See generally supra notes 179–85 and accompanying text (examining the Adams court analysis of cruel and unusual punishment under the Registration Act); supra Part II.C.1 (discussing the history of Eighth Amendment law).

209. Malchow, 739 N.E.2d at 442.

210. Id. at 441. The court noted that areas recognized under the United States Constitution include “personal decisions involving marriage, procreation, contraception, family relationships, and child rearing and education.” Id.

211. Id.

212. Id. at 442. The Double Jeopardy Clause in the United States Constitution provides, “nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb.” U.S. CONST. amend. V. The Framers of the Constitution added the Double Jeopardy Clause to protect citizens from multiple punishment. See United States v. Halper, 490 U.S. 435, 440 (1989) (stating that “[i]n drafting his initial version of what came to be our Double Jeopardy Clause,
burden of showing that the SORA and Notification Law violated due process and equal protection under the Fourteenth Amendment of the United States Constitution because he did not present a reasoned or developed argument. 213

Lastly, the court considered whether Public Act 89-8, which amended the Registration Act II, 214 violated the single-subject clause of the Illinois Constitution. 215 The court determined, again, that the defendant had not satisfied the burden of proving that the provisions in 89-8 bore no logical or natural relationship to the subject. 216 Consequently, the

James Madison focused explicitly on the issue of multiple punishment”); Kenneth G. Schuler, Note, Continuing Criminal Enterprise, Conspiracy, and the Multiple Punishment Doctrine, 91 Mich. L. Rev. 2220, 2223 n.25 (1993) (noting that “[s]everal commentators have argued that the Framers of the Constitution viewed the protection against multiple punishment as the preeminent aspect of the Double Jeopardy Clause”). To analyze a double jeopardy claim, courts determine whether a sanction is criminal in nature, because the Framers designed the Double Jeopardy Clause to protect against the imposition of “multiple criminal punishments for the same offense.” Hudson v. United States, 522 U.S. 93, 99-100 (1997). If the sanction is found to be criminal, courts then determine whether it is for an offense that has already been sanctioned—the Double Jeopardy Clause provides that no person can be punished twice for the same offense, and no one can attempt to punish a person criminally a second time for the same offense. Witte v. United States, 515 U.S. 389, 395-96 (1995). The Illinois Constitution also contains a double jeopardy clause, which provides that “no person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.” Ill. Const., art. I, § 10.

213. Malchow, 739 N.E.2d at 442. The court stated:
Defendant next argues that the Registration Act and Notification Law violate the due process and equal protection provisions of the United States and Illinois Constitutions.

Defendant lumps both of these contentions into one seven-sentence argument. Three of those sentences are merely quotes from the United States and Illinois Constitutions. Defendant’s “argument” amounts to little more than a suggestion. Glaringly absent is any reasoned or developed argument.

Id. See generally supra Part II.C.2 (discussing the history of due process law).


215. Malchow, 739 N.E.2d at 442. The Illinois Constitution provides that “[b]ills, except bills for appropriations and for the codification, revision, or rearrangement of laws, shall be confined to one subject.” Ill. Const., art. IV, § 8(d). A bill’s subject can be broad as long as the bill’s provisions are connected naturally and logically. Malchow, 739 N.E.2d at 442 (citing Johnson v. Edgar, 680 N.E.2d 1372, 1379 (Ill. 1997)). The single subject clause is violated “when [the General Assembly] includes within one act provisions that by no fair interpretation have any natural and logical connection to a single subject.” Id. (citing Arangold Corp. v. Zehnder, 718 N.E.2d 191, 199 (Ill. 1999)). In determining if a law violates the single subject clause, Illinois courts construe the ‘subject’ liberally in favor of the legislature.” Id. This clause originated in the 1970 Illinois Constitution. Brannon P. Denning, Survey of Illinois Law: Constitutional Law, 25 S. Ill. U. L.J. 733, 752 n.134 (2001).

216. Malchow, 739 N.E.2d at 443. The court noted that although Public Act 89-9 amended several statutes, the court previously had held that legislation can amend several acts provided that “the amendments related to the same subject of ‘crime.’” Id. (quoting People v. Wooters, 722 N.E.2d 1102, 1109-10 (Ill. 1999)). The logical and natural relationship test requires that the various provisions within an enactment relate to a single subject but does not require that the provisions be related to each other. People v. Morales, 795 N.E.2d 1006, 1010 (Ill. App. Ct. 1st
The Treatment of Juvenile Sex Offenders in *In re J.W.*

court held that the SORA and the Notification Law were constitutional because all of the defendant’s arguments for the statutes’ unconstitutionality were found to be without merit or support.\(^{217}\)

All of the above cases, however, dealt with the constitutionality of Illinois’ sex offender registration statute as it applied to adult offenders.\(^{218}\) The first Illinois case that dealt with the application of this requirement to juvenile sex offenders was *In re Nicholas K.*\(^{219}\) In *Nicholas K.*, the defendant juvenile sex offender appealed his registration requirement to the Second District Appellate Court of Illinois, contending that the SORA did not require juveniles to register as sex offenders.\(^{220}\) The court in *Nicholas K.* agreed with the defendant.
and held that juvenile sex offenders could not be required to register under the language of the SORA.\textsuperscript{221} The court construed the SORA’s inclusion of a separate category denoting “juvenile sex offenders” to mean that the legislature wanted these offenders to be treated differently.\textsuperscript{222} The court noted that because section 3 of the SORA\textsuperscript{223} only required “sex offenders” to register and did not expressly mention “juvenile sex offenders,” juveniles were not bound by the registration requirement.\textsuperscript{224} The court reasoned that had the legislature wanted to require juvenile sex offenders to register, they would have amended the definition of sex offender to include them.\textsuperscript{225} The court rejected the State’s argument that because section 2(A-5) of the SORA stated that for the purposes of the section, “convicted shall have the same meaning as adjudicated,”\textsuperscript{226} the general class of sex offenders included juvenile sex offenders.\textsuperscript{227} Further, the court held that imposing a registration requirement on a juvenile sex offender would be inconsistent with the Juvenile Court Act (the “JCA”),\textsuperscript{228} which the legislature intended to promote the best interest of the minor and maintain his or her confidentiality.\textsuperscript{229} The court noted that since the intention of the legislature was not clear, it could not conclude that the legislature meant to allow the release of a juvenile’s information that is protected under

\begin{itemize}
\item \textsuperscript{221} Id.
\item \textsuperscript{222} Id. at 355. \textit{See generally supra} Part II.B (tracing the development of the SORA); \textit{supra} Part II.E (discussing statutory construction rules used by Illinois courts).
\item \textsuperscript{223} 730 ILL. COMP. STAT. 150/3 (2002); \textit{see supra} note 106 (quoting this section of the SORA).
\item \textsuperscript{224} Nicholas K., 761 N.E.2d at 355; \textit{see supra} Part II.E (discussing statutory construction rules used by Illinois courts).
\item \textsuperscript{225} Nicholas K., 761 N.E.2d at 355. The court reasoned that [i]f the legislature wanted to provide that juveniles who were adjudicated delinquent for having committed sex crimes had to register as sex offenders on the same basis as adults convicted of sex crimes, it could simply have amended the definition of “sex offender” to include juveniles who were adjudicated delinquent. \textit{Id.} \textit{See generally supra} Part II.E (discussing statutory construction rules used by Illinois courts).
\item \textsuperscript{226} 730 ILL. COMP. STAT. 150/2(A-5) (1998), amended by 730 ILL. COMP. STAT. 150/2(A)(5) (2002); \textit{see supra} note 103 (quoting this section of the SORA).
\item \textsuperscript{227} Nicholas K., 761 N.E.2d at 355.
\item \textsuperscript{228} 705 ILL. COMP. STAT. 405/1-1-405/7-1 (2002 & Supp. 2003).
\item \textsuperscript{229} Nicholas K., 761 N.E.2d at 355. The court noted that “the legislature and the courts have taken great pains to preserve the confidentiality of minors involved in juvenile court proceedings.” \textit{Id.; see} 705 ILL. COMP. STAT. 405/1-8 (providing in part that “[i]nspection and copying of juvenile court records relating to a minor who is the subject of a proceeding under this Act shall be restricted”); \textit{supra} Part II.D (discussing the treatment of juveniles in the court system).
\end{itemize}
the JCA. Therefore, the court held that juvenile sex offenders were not subject to the registration and notification requirements of the SORA, leaving neighbors uninformed about the possibility of offenders living next door.

III. DISCUSSION

Following the Second District Appellate Court of Illinois' holding in Nicholas K. that the SORA did not apply to juvenile sex offenders, the Illinois Supreme Court faced the same issue in In re J.W., a case involving a twelve-year-old sex offender. Yet, the majority came to the opposite conclusion of the court in Nicholas K. and held that juvenile sex offenders are subject to the lifetime registration requirement. This Part first states the relevant facts of the J.W. case. Next, this Part discusses the Illinois Appellate Court decision in In re J.W. Finally, this Part discusses the majority opinion, Chief Justice McMorrow's concurring opinion, and Justice Kilbride's dissenting opinion in the Illinois Supreme Court case In re J.W.

A. The Facts

In early November 1999, David Berg, an investigator with the Child Advocacy Center of the Kane County State's Attorney's office, questioned a twelve-year-old boy, J.W., who lived in the Village of South Elgin, Illinois, to determine if the boy had sexually molested another South Elgin child. The family of R.We., a seven-year-old boy, had filed a police report alleging that J.W. had forced sexual contact with R.We. During the investigation, Berg spoke with R.We., R.We.'s family, and another alleged victim, J.P., who was also

230. Nicholas K., 761 N.E.2d at 356. "In the absence of a clearer expression of its intention, we will not assume that the legislature intended to authorize the release of information about the minor and his offense pursuant to the Act when the same information may not be released under the Juvenile Court Act." Id. See generally supra Part II.E (discussing statutory construction rules used by Illinois courts).
231. Id. at 354.
232. Id.
234. Id. at 756.
235. See infra Part III.A (discussing the facts of In re J.W.).
236. See infra Part III.B (discussing the appellate court decision).
237. See infra Part III.C.1 (examining Justice Thomas's majority opinion).
238. See infra Part III.C.2 (examining Chief Justice McMorrow's concurring opinion).
239. See infra Part III.C.3 (examining Justice Kilbride's dissenting opinion).
240. J.W., 787 N.E.2d at 751-52.
241. Id.
seven-years-old.\textsuperscript{242} Both victims described explicit sexual acts that had occurred with J.W.\textsuperscript{243} Moreover, both stated that they had not told anyone about the incidents because J.W. had instructed them not to tell, and they feared retribution from J.W. if they told.\textsuperscript{244} During the investigation, Berg learned that an additional five-year-old boy had witnessed J.W. exposing himself and R.We.’s six-year-old sister had witnessed a sexual act between J.W. and R.We.\textsuperscript{245}

On November 10, 1999, the State filed a petition to adjudicate J.W. in the Circuit Court of Kane County, alleging that he had committed aggravated criminal sexual assaults against the two seven-year-old boys.\textsuperscript{246} J.W. pled guilty to two counts of aggravated criminal assault on February 14, 2000, in exchange for the State withdrawing two other counts of criminal sexual assault.\textsuperscript{247} At the sentencing hearing in February 2000, the trial court noted that it could not commit J.W. to the juvenile division of the Department of Corrections because he was under age thirteen, and even though the State had recommended residential treatment for J.W., it had not determined whether there was a treatment center that was able or willing to care for J.W.\textsuperscript{248} The trial court placed J.W. on five years of probation and ordered that he be placed in residential treatment if such treatment was available.\textsuperscript{249} If such treatment was not available, the court prohibited J.W. from returning to South Elgin and ordered him to live with his aunt in Elgin until his parents moved from South Elgin.\textsuperscript{250} Further, the court required J.W. to register as a sex offender pursuant to the SORA.\textsuperscript{251}

\begin{itemize}
\item \textsuperscript{242} Id. at 752.
\item \textsuperscript{243} Id. at 751-52.
\item \textsuperscript{244} Id. The fact that law enforcement investigated this type of situation demonstrates the current attitude toward child sexual abuse by other children—that of outrage and shock over such a horrific crime—whereas in the past, this type of behavior might have been seen as merely exploratory. See Bremer, supra note 1, at 1346 (“In the late 1970s, adolescent sexual crimes were often dismissed as ‘boys will be boys’ crimes. As public awareness grew in concert with data collected from imprisoned adult sexual offenders, the serious nature of youth sexual offenses grew clearer.”).
\item \textsuperscript{245} J.W., 787 N.E.2d at 752.
\item \textsuperscript{246} Id. at 751.
\item \textsuperscript{247} Id.
\item \textsuperscript{248} Id. at 751, 753. See generally supra Part II.D (discussing the treatment of juveniles in the court system).
\item \textsuperscript{249} J.W., 787 N.E.2d at 753. Courts tend to use treatment as a means to prevent further offenses. See Lee, supra note 4, at 480 (“Relapse prevention is the primary focus to enable juvenile offenders to manage their criminal tendencies.”).
\item \textsuperscript{250} J.W., 787 N.E.2d at 753.
\item \textsuperscript{251} Id.
\end{itemize}
B. The Illinois Appellate Court Decision

J.W. appealed his probation to the Second District Appellate Court of Illinois, specifically appealing the conditions of his probation that (1) required him to register as a sex offender and (2) ordered him not to return to or reside in South Elgin. On appeal, the appellate court ruled that J.W. constituted a sexual predator under the SORA and that he therefore was required to register as a sex offender for the rest of his natural life. The appellate court based its ruling on its construction of the SORA, specifically the sexual predator clause. The appellate court also held that the trial court’s prohibition on J.W. from entering South Elgin did not constitute an abuse of discretion because J.W.’s parents had agreed to the restriction. Consequently, J.W. then appealed to the Illinois Supreme Court, again challenging the probation requirements that banished him from the Village of South Elgin and required him to register as a sex offender.

C. The Illinois Supreme Court Decision

On February 21, 2003, in the five-to-one decision of In re J.W., the Illinois Supreme Court affirmed the decision of the Second District Appellate Court of Illinois that J.W. was to be considered a sex offender and subject to the lifetime registration requirement under the SORA, vacated the Second District’s decision prohibiting J.W. from returning to South Elgin for any reason whatsoever, and remanded the case so that the appellate court could consider whether the ban from South Elgin

252. This section of the Note will examine only the appellate court decision as it was discussed by the Illinois Supreme Court, as the appellate court decision is not published per Rule 23 of the Illinois Supreme Court and is not available from the appellate court. For the provisions of this rule, see ILL. SUP. CT. R. 23 (2003).

253. J.W., 787 N.E.2d at 753. J.W. argued that imposing a lifetime registration requirement on a twelve-year-old violated due process. Id.

254. Id.

255. Id.

256. Id. Although the appellate and supreme courts considered the trial court’s geographic restriction on J.W., this Note addresses only the portion of the Illinois Supreme Court opinion assessing the SORA’s applicability to juvenile sex offenders.

257. Id.

258. Justice Thomas was joined by Justice Fitzgerald and Justice Garman, and joined in part by Justice Kilbride. Id. at 750. Justice Rarick took no part in the consideration or decision of the case. Id. at 766. Chief Justice McMorrow wrote a specially concurring opinion. Id. (McMorrow, C.J., specially concurring). Chief Justice McMorrow was joined by Justice Freeman. Id. (McMorrow, C.J., specially concurring). Justice Kilbride delivered an opinion in which he concurred in part and dissented in part. Id. at 767 (Kilbride, J., concurring in part and dissenting in part).
Justice Thomas, writing for the majority, concluded that J.W. was a sexual predator under the SORA, and therefore was subject to the lifetime reporting requirement. Chief Justice McMorrow concurred, noting that although the court correctly applied the SORA to juvenile sex offenders, a lifetime reporting requirement for juveniles was extremely harsh, and recommended that the legislature consider rewording the statute. Justice Kilbride filed an opinion concurring in part and dissenting in part. Justice Kilbride stated that although the court properly held that J.W. must be considered a sex offender under the SORA, the majority’s interpretation of the sexual predator clause of the SORA was incorrect.

1. Justice Thomas’ Majority Opinion

Writing for the majority, Justice Thomas examined whether the lifetime registration requirement imposed by the SORA could apply to juvenile sex offenders in order to ascertain the validity of the lifetime reporting requirement imposed on J.W. The court began by addressing J.W.’s claim that the trial court’s order requiring him to register as a sex offender for the rest of his life was unconstitutional. The court noted that because the trial court did not specify the duration...

259. Id. at 765. The court noted that on remand, the appellate court should consider whether “the geographic travel restriction is still warranted and, if so, what appropriate terms for entering the geographic area should be applied.”Id.
260. See infra Part III.C.1 (discussing Justice Thomas’ majority opinion).
261. See J.W., 787 N.E.2d at 766 (McMorrow, C.J., specially concurring); see also infra Part III.C.2 (discussing McMorrow’s concurring opinion).
262. J.W., 787 N.E.2d at 767 (Kilbride, J., concurring in part and dissenting in part).
263. See infra Part III.C.3 (discussing Justice Kilbride’s opinion concurring in part and dissenting in part).
264. J.W., 787 N.E.2d at 754-56. The court first determined that the Illinois Supreme Court had jurisdiction over the case. Id.
265. Id. at 754. The majority looked to People v. Wright and People v. Malchow as precedent, noting that the party challenging the constitutionality of a statute has the burden of proof, as statutes are presumed constitutional, and that the constitutionality of a statute is reviewed de novo. Id.; see People v. Wright, 740 N.E.2d 755, 766 (Ill. 2000); People v. Malchow, 739 N.E.2d 433, 437 (Ill. 2000). The majority further noted that in assessing whether a statute violates due process, courts first must determine the right allegedly infringed upon by the statute, and if this right is not a fundamental constitutional right, apply the rational basis test. J.W., 787 N.E.2d at 757 (citing In re R.C., 745 N.E.2d 1233, 1241 (Ill. 2001); Wright, 740 N.E.2d at 767). The rational basis test is satisfied when the statute bears a rational relationship to the legislative purpose behind it. Id. (citing People v. R.G., 546 N.E.2d 533, 540 (Ill. 1989)). Thus, “a statute will be upheld if it ‘bears a reasonable relationship to a public interest to be served, and the means adopted are a reasonable method of accomplishing the desired objective.’” Id. (quoting People v. Adams, 581 N.E.2d 637, 642 (Ill. 1991)).
of time for which J.W. was to register and the appellate court deemed J.W. a sexual predator and thus subject to the lifetime reporting requirement under the SORA, the court must look to the construction of the SORA itself.\textsuperscript{266} To construe the SORA, the court noted that it must ascertain and consider the intent of the legislature.\textsuperscript{267} Therefore, the majority examined the definitions of "sexual predator" and "juvenile sex offender" set forth in the SORA.\textsuperscript{268}

In its construction of the SORA, the court looked specifically to sections 2(A-5) and 2(E) and declared that J.W. clearly qualified as a sexual predator when it read these two sections together.\textsuperscript{269} The court noted that because the statute stated that "convicted" has the same meaning as "adjudicated" for purposes of section 2, and the SORA defines a sexual predator as a person "convicted" of aggravated criminal sexual assault, it follows that the defendant J.W., who was "adjudicated" of aggravated criminal assault, is also a sexual predator under the statute.\textsuperscript{270} Further, the court held that the lifetime registration

\footnotesize{266. J.W., 787 N.E.2d at 754–55.}

\footnotesize{267. Id. at 755. The court noted that "[i]n construing a statute, the court must ascertain and give effect to the legislative's intent in enacting that statute." Id. (citing Collins v. Bd. of Trs. of the Firemen's Annuity & Benefit Fund, 610 N.E.2d 1250, 1253 (Ill. 1993)). To determine the legislative intent, the court must "first examine the language of the statute, which is the most reliable indicator of the legislature's intent." Id. (citing In re C.W., 766 N.E.2d 1105, 1113 (Ill. 2002)). If the language of the statute "is clear and unambiguous, a court must give effect to the statute as written without reading into the statute exceptions, limitations or conditions that the legislature did not express." Id. Further, a statute is "read as a whole, and no word or paragraph should be interpreted so as to be rendered meaningless." Id.; see also supra notes 163–70 and accompanying text (discussing the Illinois statutory construction laws).}

\footnotesize{268. J.W., 787 N.E.2d at 755. See generally supra notes 103, 107 and accompanying text (explaining the SORA's definitions of sexual predator and juvenile sex offender); Ted Shaw & Jamie R. Funderburk, Civil Commitment of Sex Offenders as Therapeutic Jurisprudence—A Rational Approach to Community Protection, in THE SEXUAL PREDATOR: LAW, POLICY, EVALUATION AND TREATMENT 5-3 (Anita Schlank & Fred Cohen eds., 1999) ("Sexual predators are individuals who have distorted beliefs about the rights of others, about consent, sexuality, honesty, anger, power, or violence. They may be diagnosed with a variety of personality disorders."). At the time of the J.W. case, 2149 of the adults on the Illinois sex offender registry were classified as "sexual predators." Jeff Long, Sex Predator Label Can Be Put on Kids for Life, CHI. TRIB., Feb. 22, 2003, at IN, available at 2003 WL 14857198.}

\footnotesize{269. J.W., 787 N.E.2d at 755. See generally supra Part II.E (discussing statutory construction rules used by Illinois courts); supra notes 103, 107 and accompanying text (discussing and quoting sections 2(A-5) and 2(E) of the SORA). The court also noted the recent amendment to the SORA deleting the section 2(A-5) separate definition of a juvenile sex offender and adding section 2(A)(5), which specifically provides that a sex offender is "any person who is 'adjudicated a juvenile delinquent as the result of committing or attempting to commit' certain specified acts, including aggravated criminal assault." J.W., 787 N.E.2d at 755, n.1 (quoting 730 ILL. COMP. STAT. ANN. 150/2(A)(5)). See generally supra note 105 (quoting section 2(A)(5)).}

\footnotesize{270. J.W., 787 N.E.2d at 756. See generally supra notes 103, 107 and accompanying text (discussing and quoting sections 2(A-5) and 2(E)). Giving support to the majority's interpretation of the SORA, Justice Thomas declared, "This statutory language is clear and unambiguous, so we
requirement imposed by the appellate court was also in line with the proper construction of the SORA.\(^271\) The court reasoned that although a juvenile sex offender generally would fall into the class of sex offenders required to register for ten years after adjudication, those juvenile sex offenders considered to be sexual predators must register for the rest of their natural lives because the SORA imposes such a registration requirement on sexual predators.\(^272\)

The court noted that the Second District Appellate Court of Illinois in Nicholas K. incorrectly applied the SORA to juvenile sex offenders by holding that because section 3 of the SORA does not refer specifically to juvenile sex offenders, juvenile sex offenders are not required to register.\(^273\) The court noted that although the SORA does not mention juvenile sex offenders explicitly, the SORA does mention sex offenders and sexual predators in section 3.\(^274\) The court further stated that juvenile sex offenders do indeed constitute "sex offenders" as defined by the SORA, though they make up a specific category of such offenders and as such, are subject to the registration requirements imposed in section 3.\(^275\) The court then examined the SORA in conjunction with the Notification Law, stating that because the Notification Law expressly mentions juvenile sex offenders, the legislature must have intended the SORA to apply to juvenile sex offenders, for if they were not subject to registration, there would be no need for their mention in the Notification Law.\(^276\)

give effect to the statute as written." \(J.W., 787 N.E.2d\) at 756. This indicates that the court was attempting to follow the statutory construction rule laid out in \(C.W.\) \(See supra\) Part II.E (discussing the statutory construction rules used by Illinois courts).

271. \(J.W., 787 N.E.2d\) at 756.

272. \(Id.\)

273. \(J.W., 787 N.E.2d\) at 756. \(See generally\) supra Part II.E (discussing the statutory construction rules used by Illinois courts); \(supra\) notes 219–31 and accompanying text (discussing the Nicholas K. decision).

274. \(J.W., 787 N.E.2d\) at 756. \(See generally\) supra Part II.E (discussing the statutory construction rules used by Illinois courts).

275. \(J.W., 787 N.E.2d\) at 756. The majority supported these assertions with statements made by state representatives and senators during the debates concerning House Bill 2721, which amended the SORA to add the separate definition of a juvenile sex offender. \(Id.\) \(See generally\) supra note 103 and accompanying text (discussing this amendment). The majority specifically mentioned Representative Klinger’s statement “that the bill requires juveniles who are adjudicated delinquent to register” and Senator Klemm’s statement that the addition of the separate definition for “juvenile sex offenders imposes registration requirements of those persons.” \(J.W., 787 N.E.2d\) at 756–57 (internal quotations omitted) (citing \(House Proceedings,\) 91st Gen. Assemb., 1st Sess. 143 (1999); \(Senate Proceedings,\) 91st Ill. Gen. Assemb., Reg. Sess. 52 (1999)).

276. \(J.W., 787 N.E.2d\) at 757; \(see\) \(730\) ILL. COMP. STAT. 152/105 (2002) (providing the definition of juvenile sex offender). \(See generally\) supra notes 109–12 and accompanying text (discussing and quoting from the Notification Law).
After determining that the SORA was applicable to juvenile sex offenders, the court assessed whether the SORA violated the substantive due process afforded to J.W. by the United States Constitution. The court applied the rational basis test and noted that in earlier cases dealing with previous versions of the SORA, such as Adams, the court had found that the registration requirement was not an unreasonable way of serving the statute's purpose of protecting minors from sexual abuse; thus the statute did not violate substantive due process. The court stated that the public interest served by the statute did not change because of the age of the offender. Indeed, the court rejected J.W.'s argument that a lifetime registration requirement imposed on a twelve-year-old is an unreasonable means of achieving the legislature's objective because it does not support the intent of the JCA. The court concluded that the lifetime registration requirement for J.W. was consistent with the JCA, as subsequent amendments to the JCA marked a shift in its purpose from rehabilitation to protection of the public; thus, the court held that the lifetime registration requirement's application to juvenile sexual predators supported the purpose of the JCA.

277. J.W., 787 N.E.2d at 757. See generally supra Part II.C.2 (discussing due process law); supra Part II.E (discussing the Illinois Supreme Court standards for determining the constitutionality of a statute).

278. J.W., 787 N.E.2d at 757; see supra notes 146–48 and accompanying text (explaining the rational basis test for determining the constitutionality of a statute).

279. J.W., 787 N.E.2d at 757–58. See generally supra Part II.C.2 (discussing due process law). The majority looked to the precedent case of People v. Adams, which dealt with an earlier version of the SORA. J.W., 787 N.E.2d at 757. The majority noted that in Adams, the Illinois Supreme Court found that the earlier SORA was enacted “in response to concern over the proliferation of sex offenses against children and was designed to aid law enforcement agencies by requiring sex offenders to register with local law enforcement authorities.” Id. (quoting People v. Adams, 581 N.E.2d 637, 640 (Ill. 1991)). The legislature’s intent was “to create an additional method of protection for children from the increasing incidence of sexual assault and sexual abuse.” Id. at 757 (quoting Adams, 581 N.E.2d at 637). See generally supra notes 176–85 and accompanying text (discussing the Adams case).

280. J.W., 787 N.E.2d at 758. The court observed that “[i]n the context of a 12-year-old sex offender, the public interest to be served by the Registration Act remains unchanged.” Id. See generally supra Part II.C.2 (discussing due process law and its possible limitations on sex offender registration statutes).

281. J.W., 787 N.E.2d at 758. The JCA’s general purpose is to “secure for each minor subject to the Act] such care and guidance, preferably in his or her own home, as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community.” 705 ILL. COMP. STAT. 405/1-2 (2002). The Illinois Appellate Court for the Second District in In re Nicholas K. found that imposing the sex offender registration requirement on juvenile sex offenders was inconsistent with the JCA, which the court stated was enacted to correct minors’ behavior, not to punish. In re Nicholas K., 761 N.E.2d 352, 355 (Ill. 2001).

The court further held that the Notification Law is also a reasonable means of achieving the legislature’s goal of protecting the public because the Notification Law does not provide information about the juvenile sex offender to others unless it can be proved that the sex offender has placed such persons in danger. In holding so, the court noted that the rational basis test for determining the constitutionality of a statute does not mandate that the statute be the best means of advancing the legislature’s objectives. The court additionally explained that the Notification Law’s strict access requirement for the juvenile offender’s information made it reasonable to apply the lifetime registration requirement to juvenile sex offenders. Therefore, the court rejected J.W.’s claims that the SORA violated his substantive due process rights. The court noted, though, that it was not ruling whether the SORA was the best means to achieve the objective of protecting the public interest, recognizing legislative domain over the issue.

The court also rejected J.W.’s claim that the registration requirement constituted cruel and unusual punishment. The court noted that J.W. conceded that in People v. Malchow, the Illinois Supreme Court had held that the SORA and the Notification Law did not violate the Eighth Amendment, but J.W. argued that his case could be distinguished from Malchow because the defendant in Malchow was an adult and the version of the Notification Law at issue in Malchow provided for more limited dissemination of registered offenders’ information than did the

---

283. J.W., 787 N.E.2d at 760. The court quoted the language of the statute in the opinion, emphasizing that information is only given to a person after a juvenile sex offender compromises the safety of that person. Id. at 760 & n.3.
284. Id. (citing People ex rel. Lumpkin v. Cassidy, 703 N.E.2d 1, 4 (Ill. 1998)).
285. Id. The majority later noted that this restriction on juvenile sex offender information invalidated J.W.’s argument that the Notification Law as applied to juveniles was against the Eighth Amendment’s prohibition on cruel and unusual punishment. Id. at 761–62.
286. Id. See generally supra Part II.C.2 (discussing due process law and its possible limitations on sex offender registration statutes).
287. J.W., 787 N.E.2d at 760 (“Whether there are better means to achieve this result, such as limiting the duration of registration for all juvenile sex offenders including juvenile sexual predators, is a matter better left to the legislature.”). New Jersey is an example of a state that has lessened the duration of time by which juvenile sex offenders have to register. See, e.g., In re J.G., 777 A.2d 891, 912 (holding that juvenile offenders under age fourteen may be relieved of the registration requirement upon clear and convincing evidence that they do not pose a threat to the safety of others); see also supra note 219 (discussing the J.G. case and the approach of the New Jersey Supreme Court in applying the registration requirement to juvenile offenders).
288. J.W., 787 N.E.2d at 762. See generally supra Part II.C.1 (discussing cruel and unusual punishment).
version currently in effect. The court again noted the limited dissemination of information on juvenile offenders provided by the Notification Law, rejecting J.W.’s argument that the Notification Law constituted cruel and unusual punishment because it allowed for unlimited dissemination of his personal information. The court also held that J.W.’s argument that the Notification Law constituted cruel and unusual punishment because it was analogous to the death penalty for an adult was not supported by precedent.

Thus, because the court held that the SORA did not violate substantive due process and did not constitute cruel and unusual punishment, the supreme court affirmed the decision of the appellate court that J.W. constituted a sex offender and was subject to the SORA’s lifetime registration requirement but remanded the case so that the lower court could determine whether J.W.’s ban from South Elgin was still necessary.

2. Chief Justice McMorrow’s Specially Concurring Opinion

In a specially concurring opinion, Chief Justice McMorrow stated that, while she agreed with the majority that the SORA’s lifetime registration requirement applied to juvenile sex offenders who are deemed sexual predators, she cautioned against the severity of such a requirement. Although she agreed with the court’s interpretation of the SORA and its ruling on the SORA’s constitutionality, Chief Justice

289. J.W., 787 N.E.2d at 761. The court noted that it had already performed an Eighth Amendment analysis of Illinois’ registration and notification statutes and found that neither statute constituted punishment. Id. at 762. See generally supra notes 202–17 and accompanying text (discussing the Malchow decision).

290. J.W., 787 N.E.2d at 762. The court based this determination mainly on the fact that “[t]he Notification Law specifically addresses juvenile sex offenders and provides that information concerning juvenile sex offenders is not available on the Internet and public access to information concerning juvenile sex offenders is limited to those whose safety might be compromised for some reason related to the juvenile sex offender.” Id. at 761. Further, the court noted that Malchow was not distinguishable from J.W.’s case because the dissemination of juvenile offender information is even more restricted than the dissemination of the information at issue in Malchow. Id. at 762.

291. Id. The majority noted that the restriction on juvenile sex offender information contradicted this theory and found no merit in the argument analogizing the registration requirement to the death penalty, as the court had previously held that the provisions of the SORA and Notification Law did not constitute punishment. Id. (citing People v. Malchow, 739 N.E.2d 433, 440 (Ill. 2000)).

292. Id. at 765. See generally supra Part II.C.1 (discussing cruel and unusual punishment); supra Part II.C.2 (discussing due process).

293. J.W., 787 N.E.2d at 766 (McMorrow, C.J., specially concurring).
McMorrow argued that a conflict existed between the lifetime reporting requirement and the ideals of the juvenile justice system.294

Chief Justice McMorrow cited provisions of the JCA that do not allow the State to prosecute a minor younger than thirteen under the criminal laws of the state or to subject a minor to an extended juvenile prosecution.295 She contended that these provisions demonstrate a legislative intent that minors under thirteen should not be tried as adults.296 She noted that because children under thirteen years of age have less capacity to form criminal intent, the SORA should make a distinction in its treatment of juveniles under the age of thirteen.297

Chief Justice McMorrow pointed out that all fifty states have adopted sex offender registration and community notification laws, but the treatment of juvenile sex offenders under these laws differs from state to state.298 She recommended that the Illinois legislature reevaluate the imposition of such a harsh punishment on juveniles, particularly those under the age of thirteen.299 She argued that having a policy in place

294. Id. (McMorrow, C.J., specially concurring); see also supra notes 277–92 and accompanying text (discussing the majority’s constitutional analysis of the SORA). See generally supra Part II.D (discussing the treatment of juveniles in the court system).

295. J.W., 787 N.E.2d at 766 (McMorrow, C.J., specially concurring); see also 705 ILL. COMP. STAT. 405/5-130 (2002 & Supp. 2003) (providing that “[t]he definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with . . . aggravated criminal sexual assault”); 705 ILL. COMP. STAT. 405/5-810 (2002) (providing that a minor under thirteen cannot be subject to extended jurisdiction juvenile prosecutions).

296. J.W., 787 N.E.2d at 766 (McMorrow, C.J., specially concurring). Chief Justice McMorrow noted that “these provisions reflect a legislative understanding that children under the age of 13, no matter how serious the offense charged, ‘simply are too immature as a matter of law to be tried as an adult.’” Id. (citing In re J.G., 777 A.2d 891, 904 (N.J. 2001)). See generally supra Part II.D (discussing the treatment of juveniles in the court system).


298. J.W., 787 N.E.2d at 766 (McMorrow, C.J., specially concurring). Chief Justice McMorrow noted that some states, such as Florida and Delaware, do not expressly include juveniles in their registration and notification statutes:

In some instances, although registration requirements are made applicable to juveniles, the burden has been ameliorated by various means: by making a jury trial a condition precedent to juvenile registration, allowing the juvenile court the discretion to waive the registration requirement, providing that the duty to register will terminate at a certain age or by allowing the juvenile to petition for termination of the registration duty upon a clear showing that the juvenile has not reoffended and that registration is no longer necessary to protect the public.

Id. (McMorrow, C.J., specially concurring). See generally supra notes 75–95 and accompanying text (discussing the registration statutes of other states).

299. J.W., 787 N.E.2d at 767 (McMorrow, C.J., specially concurring). The Chief Justice stated, “[W]hile I am compelled to agree with the[e] determination [that the Registration Act and lifetime reporting act can apply to minors], I, nevertheless, invite the legislature to reconsider the
that allows a twelve-year-old offender to be subject to the lifetime reporting requirement may be unduly burdensome. In addition, the Chief Justice noted that the legislature could merge the public safety concerns with traditional notions of the necessity of protecting and wisdom of imposing such a burden on juveniles, particularly juveniles under the age of 13.” *Id.* (McMorrow, C.J., specially concurring). See generally *supra* Part II.D (discussing the treatment of juveniles in the court system).

300. *J.W.*, 787 N.E.2d at 767 (McMorrow, C.J., specially concurring). For example, scholars have noted that there is the possibility that the registered juvenile offender may be subject to vigilantism. See Hiller, *supra* note 77, at 286 (“Reported incidents of violence against sex offenders has been widespread in areas that allow the public access to registration information.”); Mark Brown, *Net Names Pedophiles; County Sheriff Lists Child Molesters*, Chi. SUN-TIMES, Aug. 13, 1998, at 1 (discussing Illinois’ posting of the sex offender registry on the Internet and the possibility of vigilantism against the offenders, as “sex offender registries have contributed to acts of vigilantism elsewhere in the country, ‘even against people whose names and addresses were on the list by mistake’”), available at 1998 WL 5593581. Some sex offenders have become literally homeless due to community reaction after notification of their past conduct. See Bayles, *supra* note 64.

In some states, vigilance has turned into vigilantism.

Raul Meza was released from a Texas prison... after serving 11 years for an 8-year-old girl’s murder, but citizen protests drove him out of six towns. He finally moved in with his mother in Austin.

In Washington state, where local police call news conferences to announce the arrival of sex felons, residents of Lynnwood torched the home of child rapist Joseph Gallardo. He fled to a brother’s home in Deming, N.M., but was forced to leave after protests there. He returned to Washington.

*Id.* In an example of a juvenile sex offender subject to such vigilantism,

Alan Groome, a juvenile sex offender who spent three years in a Washington prison for raping two boys, moved into an Olympia, Washington, apartment with his mother. The local police department knocked on seven hundred doors in the neighborhood, handing out fliers containing Groome’s photo and address. The landlord eventually evicted Groome and his mother, and after eviction, they moved into his grandmother’s apartment. Local officials then notified the new neighbors of Groome’s conviction. The grandmother’s landlord pressured Groome and his mother into leaving by threatening to evict the grandmother. Groome is now sheltered at a facility for the homeless in a different part of the state and he is consistently rejected for employment.

Hiller, *supra* note 77, at 287 (footnotes omitted). Those offenders left homeless pose an even bigger threat to the community, as more often than not they are not registered. Alex Rodriguez, *Homeless Lost in Sex-offender Registration*, Chi. SUN-TIMES, Sept. 19, 1996, at 3, available at 1996 WL 6764358. “No one knows how many homeless people are among the nearly 20,000 Illinoisans convicted of a sex offense in the last 10 years and therefore required to register.... [R]eaching homeless sex offenders is ‘certainly difficult ... since they move from shelter to shelter and town to town.” *Id.* Additionally, sometimes the wrong person becomes a victim of such violence. Hiller, *supra* note 77, at 286. For example, “[a] father and son broke into the house at [a] disclosed address, looking for the adult sex offender. Once inside they attacked a man thought to be the rapist, but actually attacked the wrong man. The beating was so severe the man had to be hospitalized.” *Id.* (footnotes omitted). However, even with the possibility of vigilantism, the beneficial effects of the law on the general public, especially potential victims, must be weighed heavily. See Lee, *supra* note 4, at 512–13 (“Affected sex offenders may suffer from potential acts of vigilantism. This concern, however, must be balanced with the rights of the potential victims that Megan’s Law is meant to protect.” (footnotes omitted)).
rehabilitating the youth of Illinois by rewording the SORA to prevent courts from construing juveniles as sexual predators and subjecting them to the lifetime reporting requirement. 301

3. Justice Kilbride’s Dissenting Opinion

In his opinion concurring in part and dissenting in part, Justice Kilbride disagreed with the majority’s holding that the SORA required J.W. to register as a sexual predator for the rest of his life and stated that an interpretation requiring such registration by a twelve-year-old child “offends principles of substantive due process.” 302 Accordingly, he argued that the majority improperly construed the statute. 303 Specifically, he contended that a juvenile sex offender cannot constitute a sexual predator under the SORA. 304 Justice Kilbride explained that although he did agree with the majority’s holding that J.W. did constitute a sex offender under the SORA, the majority’s interpretation of the sexual predator clause of the SORA was incorrect. 305 The dissent, like the majority, looked at section 2(A-5) 306 in conjunction


302. J.W., 787 N.E.2d at 767 (Kilbride, J., concurring in part and dissenting in part); see supra note 292 and accompanying text (discussing the majority’s holding that J.W. was a sexual predator and subject to the lifetime registration requirement). See generally supra Part II.C.2 (discussing the history of due process law). Additionally, Justice Kilbride objected to the “unnecessary factual description” of J.W.’s sexual conduct with the victims contained in the majority opinion. J.W., 787 N.E.2d at 767 (Kilbride, J., concurring in part and dissenting in part).

303. J.W., 787 N.E.2d at 767 (Kilbride, J., concurring in part and dissenting in part); see also supra note 267 (discussing Illinois statutory construction precedent and noting that construction is unnecessary when the language of a statute is clear and unambiguous). The majority found the language of the SORA to be clear and unambiguous. See supra note 270. However, Justice Kilbride noted that “[a] statute is ambiguous if it is capable of more than one reasonable interpretation,” and that the parties in the case disagreed as to the interpretation of the SORA’s application to juvenile sex offenders, acknowledging that the SORA is subject to differing interpretations. J.W., 787 N.E.2d at 767 (Kilbride, J., concurring in part and dissenting in part) (citing In re B.C., 680 N.E.2d 1355, 1359 (Ill. 1997)). Therefore, the SORA “is clearly subject to more than one reasonable interpretation and is thus ambiguous,” making the majority opinion incorrect in Justice Kilbride’s opinion. Id. (Kilbride, J., concurring in part and dissenting in part).

304. J.W., 787 N.E.2d at 768 (Kilbride, J., concurring in part and dissenting in part). He supported this statement by citing the Illinois State Police’s A Guide to Sex Offender Registration in Illinois and quoting a section that states that “[a]lthough juvenile delinquent sex offenders are not predators” and “[a]ll juvenile delinquent sex offenders cannot be classified as sexual predators.” Id. at 769 (Kilbride, J., concurring in part and dissenting in part); see also ILL. STATE POLICE, A GUIDE TO SEX OFFENDER REGISTRATION IN ILLINOIS 6, 31, 33 (Oct. 1, 2002), available at http://www.isp.state.il.us/docs/sorguide.pdf (last visited May 12, 2004).

305. J.W., 787 N.E.2d at 768 (Kilbride, J., concurring in part and dissenting in part); see supra note 270 and accompanying text (discussing the majority’s interpretation of the sexual predator clause of the SORA).

306. See supra note 103 (quoting section 2(A-5) of the SORA).
with section 2(E)\(^{307}\) but argued that reading these sections together established that a juvenile sex offender cannot constitute a sexual predator, because section 2(A-5), which defines a juvenile sex offender, makes no reference to section 2(E), which defines a sexual predator.\(^{308}\) Conversely, Justice Kilbride noted, section 2(E) makes no reference to section 2(A-5) and does not indicate that a juvenile sex offender can be classified as a sexual predator.\(^{309}\) Further, he disputed the majority's conclusion that convicted means the same as adjudicated for purposes of section 2(E), pointing out that although the statute states that the two have the same meaning for the purposes of section 2(A), there is no such statement in section 2(E).\(^{310}\) Justice Kilbride argued that the legislature intended the term "sexual predator" to apply only to those who have been "convicted" in an adult court for one of the specified offenses, including aggravated criminal sexual assault.\(^{311}\)

Furthermore, he indicated that the State had noted in its brief that the trial court required J.W. to register as a sex offender, not a sexual predator, and that the appellate court mistakenly had held that J.W. must register as a sexual predator.\(^{312}\) Justice Kilbride concluded by arguing that because the State did not try J.W. as an adult, the State should not treat him as an adult by requiring him to comply with the lifetime registration requirement that is imposed on adults.\(^{313}\) He argued that

---

307. See supra note 107 (quoting section 2(E) of the SORA).
308. J.W., 787 N.E.2d at 768 (Kilbride, J., concurring in part and dissenting in part).
309. Id. (Kilbride, J., concurring in part and dissenting in part); see supra note 107 (quoting section 2(E)).
310. J.W., 787 N.E.2d at 768 (Kilbride, J., concurring in part and dissenting in part); see supra note 270 and accompanying text (discussing the majority's determination that convicted means adjudicated for the purposes of 2(E)).
311. J.W., 787 N.E.2d at 768 (Kilbride, J., concurring in part and dissenting in part). Justice Kilbride noted that any other interpretation of the SORA would lead to unjust results and gave an example that using the majority's construction, under the SORA sections 2(A-5) and 2(E), any juvenile sex offenders considered sexual predators would be subject to the lifetime registration requirement, but a sex offender or sexual predator convicted of first degree murder has to be seventeen years old before becoming subject to the lifetime registration requirement. Id.; see also supra notes 103, 107 and accompanying text (quoting sections 2(A-5) and 2(E) of the SORA).
312. J.W., 787 N.E.2d at 769 (Kilbride, J., concurring in part and dissenting in part). See generally supra notes 246–51 and accompanying text (discussing the trial court proceedings). Justice Kilbride supported his theory that J.W. should not be considered a sexual predator and subject to the lifetime registration requirement by quoting a passage from the State's brief that indicates that public policy can be served by a lesser registration requirement: "As a sex offender, the registration of the minor is limited to 10 years. A 10-year requirement . . . strikes a fair balance between Respondent's desire for a limited registration time and the People's concerns for protecting the public." Id. (Kilbride, J., concurring in part and dissenting in part).
313. J.W., 787 N.E.2d at 769–70 (Kilbride, J., concurring in part and dissenting in part). Justice Kilbride noted that juveniles convicted as adults are afforded the determination of guilt beyond a reasonable doubt and the protection of the Fourth, Fifth, and Sixth Amendments to the
there is no legitimate rationale or objective for subjecting a juvenile under age thirteen to such requirement. Therefore, Justice Kilbride contended that J.W. could not constitute a sexual predator and should not be subjected to the lifetime reporting requirement.

IV. ANALYSIS

In In re J.W., the Illinois Supreme Court’s most recent construction of the SORA, a statute that the court previously had noted was designed to protect children from sexual abuse, the court appeared to hold that the legislative intent is furthered even when the SORA applies to juvenile offenders. However, the court was divided as to whether the statute should impose such harsh penalties on juvenile offenders. This Part first demonstrates that the court properly analyzed and construed the SORA, using the rules of statutory construction. Then, this Part argues that the legislature should not rewrite the SORA, despite the possible harsh results to juveniles when courts apply the SORA’s lifetime registration requirement to juvenile offenders.

United States Constitution, while juveniles who are adjudicated of a criminal offense do not receive the advantage of such protections. Id. at 769 (Kilbride, J., concurring in part and dissenting in part). Further, he argued, as J.W. could not be tried as an adult, he should not be treated as an adult by requiring him to register for the rest of his life. Id. at 770 (Kilbride, J., concurring in part and dissenting in part).

314. Id. (Kilbride, J., concurring in part and dissenting in part). Justice Kilbride argued that the majority’s interpretation does not comply with substantive due process, as imposing a lifetime registration requirement on a twelve-year-old is not a reasonable manner of achieving the legislature’s objective. Id. (Kilbride, J., concurring in part and dissenting in part). See generally supra notes 277–86 and accompanying text (discussing the majority’s substantive due process analysis); supra notes 142–48 and accompanying text (discussing the application of substantive due process law).

315. J.W., 787 N.E.2d at 767 (Kilbride, J., concurring in part and dissenting in part).

316. See supra notes 163–71 and accompanying text (discussing the Adams court’s interpretation of the SORA).

317. See supra notes 266–76 and accompanying text (discussing the majority holding in J.W. that juveniles can be subject to the requirements of the SORA in keeping with the legislative intent of the statute).

318. See supra Part III.C.2–C.3 (discussing the concurrence and dissent in J.W. that noted the harshness of a lifetime reporting requirement for juvenile offenders).

319. See infra Part IV.A (analyzing how the court’s construction of the SORA in its application to juvenile sex offenders was correct).

320. See infra Part IV.B (arguing that although the concurrence and dissent brought up a valid point about the harshness of the SORA’s effect on juvenile offenders, the legislature should not reword the statute). Scholars have supported the idea that juvenile offenders must be monitored in the same manner as adult offenders. See Jacqueline Jackson Kikuchi, When the Offender Is a Child: Identifying and Responding to Juvenile Sexual Abuse Offenders, in CHILD SURVIVORS AND PERPETRATORS OF SEXUAL ABUSE: TREATMENT INNOVATIONS 116 (Mic Hunter ed., 1995) (“Judging by the number of juvenile offenders reported, we need to improve society’s awareness of and responses to juvenile sexual abuse offending.”).
A. The Court Correctly Construed the SORA to Uphold the Legislative Intent

The majority correctly applied the statutory construction rules and construed the SORA as allowing juvenile sex offenders to constitute sexual predators.\footnote{321} While a lifetime registration reporting requirement for minors under the age of thirteen admittedly is harsh, this requirement is still in line with the proper construction of the SORA because it furthers the legislative intent.\footnote{322} The majority correctly noted that in construing a statute, courts must ascertain the legislative intent by examining the language of the statute.\footnote{323} Moreover, the court properly utilized the Illinois rules of statutory construction to determine the intent of the legislature, for courts must use those rules if the language of the statute is clear and unambiguous.\footnote{324} Here, the court was correct in determining that the language of the statute was clear and unambiguous, and thus should be treated as written, because the statute provides that a sexual predator includes a person convicted of aggravated criminal sexual assault and that “convicted” has the same meaning as “adjudicated” for purposes of the statute.\footnote{325} Further, the court properly used the Illinois rules of statutory construction in this case because relying on established rules helps achieve consistency in the law.\footnote{326} Additionally, utilizing statutory construction adds predictability to the law.\footnote{327} Accordingly, predictability in sex offender registration laws will help ensure that the statutes fulfill their intended purpose of protecting the public from harm, instead of allowing courts to decide arbitrarily how to construe the statute, subjecting some

\footnotetext{321}{See supra Part III.C.1 (discussing the majority opinion in J.W.).}  
\footnotetext{322}{See supra Part III.C.2 (discussing Chief Justice McMorrow’s concurrence, which agreed with the majority’s construction of the SORA); supra Part II.E (discussing the statutory construction rules used by Illinois courts).}  
\footnotetext{323}{See supra Part II.E (discussing the rules for statutory construction used by Illinois courts).}  
\footnotetext{324}{In re J.W., 787 N.E.2d 747, 756 (Ill. 2003); see supra Part II.E (discussing the rules of statutory construction in Illinois).}  
\footnotetext{325}{See 730 ILL. COMP. STAT. 150/2 (2002); supra notes 269–70 and accompanying text (discussing the court’s statutory analysis of the SORA).}  
\footnotetext{327}{See Grundfest & Pritchard, supra note 326, at 639 (noting the importance of statutory construction in assuring predictability); supra Part II.E (discussing the statutory construction rules used by Illinois courts).}
offenders to the requirement and releasing others from such a requirement.\textsuperscript{328}

Through the use of statutory construction, the court in \textit{J.W.} correctly determined that the intent of the legislature was to protect the best interests of the public.\textsuperscript{329} One must remember the disturbing nature of sexual abuse of children\textsuperscript{330} and that preventing such abuse, no matter who the offender, is the desired goal and the most important factor in applying such registration rules.\textsuperscript{331} Accordingly, the majority properly held that J.W. must register for the rest of his life.\textsuperscript{332} This decision was especially sound in light of the disturbing nature of his crime and the legislative intent to protect other minors from possible sexual attack.\textsuperscript{333} Therefore, the court correctly ascertained the legislative intent and properly upheld the constitutionality of the SORA.\textsuperscript{334}

\textsuperscript{328} See Allison L. Almason, Comment, \textit{Personal Liability Implications of the Duty To Warn Are Hard Pills to Swallow: From Tarasoff to Hutchinson v. Patel and Beyond}, 13 J. CONTEMP. HEALTH L. \& POL’Y 471, 482 (1997) (noting that statutory construction can achieve predictability in therapist disclosure law, which may lead to stabilization of therapist insurance rates).

\textsuperscript{329} \textit{J.W.}, 787 N.E.2d at 758; \textit{supra} notes 278–79 and accompanying text (noting that the court reasoned that the SORA was designed to protect the public).

\textsuperscript{330} See KINNEAR, \textit{supra} note 1, at 1 (“Today, the problem of childhood sexual abuse is foremost in the minds of many professionals as well as the general public. New charges are levied almost daily, against parents, priest, day-care operators, or others to whom we entrust our children.”).

\textsuperscript{331} The registration requirement is important in the case of juvenile sex offenders, as these types of offenses are not always reported, so identifying the abuser earlier rather than later will help prevent attack. See Kikuchi, \textit{supra} note 320, at 108–09.

[I] have become aware that we, as a society, are tolerant of sexual abuse between children or adolescents, even when there is a considerable age difference between the children or adolescents or when some of those involved clearly did not consent to the activity…. I am… sure that some of the acceptance comes from the fact that we do not want to believe that adolescents and children can be sexual abuse offenders.

\textit{Id.}

\textsuperscript{332} See \textit{supra} notes 266–85 and accompanying text (discussing the majority holding that the SORA can apply to juvenile offenders and those offenders can constitute sexual predators who are subject to the lifetime registration requirements).

\textsuperscript{333} See \textit{supra} Part III.A (providing the facts of the \textit{J.W.} case). Registration may help identify a potential threat if such deviant behavior were to recur, as is highly possible with sex offenses generally. See RENVOIZE, \textit{supra} note 3, at xiii (“[I]ncarcerating for a brief period those who are caught achieves nothing; sexual abuse will have been part of their lifestyle for many years, perhaps from their own childhood, and within a short time of leaving jail they will almost inevitably set about finding another victim.”).

\textsuperscript{334} \textit{Supra} Part III.C.1 (examining the majority decision in \textit{J.W.}).
B. The SORA Should Not Be Amended Despite the Potentially Harsh Results When Enforcing the SORA Against Juvenile Offenders

The majority correctly held that the SORA can subject juvenile sex offenders to the lifetime reporting requirement, but the concurring and dissenting opinions both observed that imposing a lifetime reporting requirement on a juvenile sex offender results in a harsh penalty.\textsuperscript{335} Although the concurring and dissenting justices make valid arguments, the majority came to the correct conclusion because, due to the prevalence of child sexual abuse, society benefits more by requiring juveniles offenders to register for life.\textsuperscript{336}

Juvenile offenders may never be rehabilitated enough to cease being a threat to society.\textsuperscript{337} CSOM, which noted that research does not indicate that juvenile sex offenders will continue such abuse as adults, seems to support the concurring and dissenting opinions' contention that the lifetime registration requirement is too harsh.\textsuperscript{338} CSOM additionally notes that such offenders tend to be receptive to treatment.\textsuperscript{339} CSOM qualifies these remarks, however, by stating that more conclusive research and data must be performed and analyzed before CSOM can determine whether such statements on rehabilitation rates are accurate.\textsuperscript{340} Moreover, many scholars argue that, contrary to

\textsuperscript{335} In re J.W., 787 N.E.2d 747, 755–56, 766–71 (Ill. 2003); see supra notes 299–300 and accompanying text (discussing Chief Justice McMorrow's contention that a lifetime registration requirement is too harsh a penalty for juveniles); supra note 314 and accompanying text (discussing Justice Kilbride's argument that a juvenile offender should not be subjected to a lifetime registration requirement); see also supra Part II.D (discussing the treatment of juveniles in the court system and how the juvenile system is founded on the belief that children should be treated differently).

\textsuperscript{336} See Long, supra note 268 (noting the large number of sexual predators on the Illinois sex offender registry); see also KINNEAR, supra note 1, at 12 ("[M]ore recent research has shown that sexual abuse of children can be found in all socioeconomic classes and family settings.").

\textsuperscript{337} See infra note 340 (noting that not all juvenile offenders can be successfully rehabilitated).

\textsuperscript{338} TALBOT ET AL., supra note 5, at 2 ("Available research does not suggest that the majority of sexually abusive youth are destined to become adult sex offenders.").

\textsuperscript{339} Id. ("Sexually abusive youth appear to respond well to cognitive-behavioral and/or relapse prevention treatment, with rearrest rates of approximately 7 percent in follow-up periods of more than five years."). Evidence indicates that there is a greater chance for rehabilitation of juvenile sex offenders than there is for adult offenders. See Lee, supra note 4, at 524 ("Unlike adults, the success rate of rehabilitating juvenile sex offenders is much higher."). Commentators have noted that the legislature should focus on rehabilitation. See, e.g., Swearingen, supra note 82, at 575 ("Since today's juvenile offenders are tomorrow's adult offenders, the public's interest in protecting its children from juvenile sex offenders would best be served by early intervention and a continued focus on the traditional juvenile justice notions of confidentiality and rehabilitation.").

\textsuperscript{340} TALBOT ET AL., supra note 5, at 2 ("[A]dditional data are needed to understand more fully the extent and etiology of juvenile sex abuse as victimization data indicates that a vast
CSOM's research, juvenile offenders are, in fact, likely to repeat the abuse later in life, noting that children who begin sexually abusing others as children will most likely continue such behavior in the future. Therefore, although CSOM provides some support for the concurring and dissenting opinions, the majority's view that registration of juveniles is necessary to protect the public interest is stronger because CSOM's research is inconclusive and many scholars contradict its findings.

The opinions of the concurring and dissenting justices in *J.W.* also find support within the academic community, as some scholars have gone so far as to say that registration laws violate juvenile offenders' constitutional rights. Some scholars further argue that requiring juveniles to register violates the protection mechanisms inherent in the juvenile justice system. Moreover, scholars argue that Megan’s number of sexual assaults go unreported and there may be even higher rates of under-reporting among victims of incest/sibling offenses.”). Further, it has been noted that not all juvenile offenders can be successfully rehabilitated. See Skoglund, *supra* note 10, at 1824 (“[M]ost juvenile sex offenders will eventually be released before they have been rehabilitated.”).

341. See *RENVOIZE*, *supra* note 3, at 112–13 (noting that there is evidence showing a correlation between the age an offender begins his offensive behavior and the chance that the offender will continue that behavior and frequently offend in the future when such abuse occurred in the child’s home); Bremer, *supra* note 1, at 1346 (“The majority of imprisoned adult sexual offenders reported that their sexual offense behaviors began in early adolescence.”); Kikuchi, *supra* note 320, at 109 (“Most adult sexual offenders admit that they began sexually offending as children and adolescents.”). Statistics support such an assertion. See *RENVOIZE*, *supra* note 3, at 113 (“Many recent studies have shown that a significant number of adult offenders have begun deviant sexual patterns before they have reached 18, a significant number committing their first offence between 12 and 15, and some even earlier.” (citations omitted)).

342. See *RENVOIZE*, *supra* note 3, at 113 (“Since we know that in some cases a child can begin his first abusive acts as early as 4 or 5, it is clear that future intensive abusers-to-be must be trawled for not only amongst young teenagers but also amongst those just beginning school, even in kindergarten.”).

343. See Turoff, *supra* note 153, at 1127 (“[The application] of sexually violent predator laws [to juveniles] . . . violates several constitutional principles at both the state and federal level. . . . [S]exually violent predator laws for juveniles violate both the due process and equal protection clauses of the Fourteenth Amendment.”).

344. See David Heinzmann, *Ruling To Affect Juvenile Sex Cases; State's Top Court Weighs Registry, Youths' Privacy*, CHI. TRIB., July 5, 2002, at 1N (“The possibility [of requiring juvenile offenders to register] violates a basic principle of Juvenile Court, which is to protect child offenders so they might be rehabilitated and get a fresh start to adult life.”), available at 1994 WL 2672147; see also Garfinkle, *supra* note 9, at 177; *Political Acts Often a Salve for Grief; Protecting Others Can Help Some Cope With Tragedy*, CHI. TRIB., Dec. 27, 1996, at 16N (“Few politicians, even those worried it might go awry, have dared stand against Megan’s Law. Yet legislating by heart-rending example has its hazards, including the abridgment of rights in a rush to avenge or heal.”), available at 1996 WL 2740003; *Part II.D (discussing the treatment of juveniles in the court system). As Garfinkle has noted:

[B]y making sexual abuse the ultimate crime, lawmakers essentialize all parties down to that single sexual experience. One party is assigned a lifetime identity as a
Laws, such as the SORA, are not effective ways of preventing recidivism of juvenile sex offenders. Scholars also note that such laws may give the public a false sense of security. Further, they contend that rehabilitation of the juvenile sex offender may be impossible when the state requires the juvenile sex offenders to register.

Garfinkle, supra note 9, at 177 (footnote omitted). Some also have reasoned that even if the juvenile offender is rehabilitated successfully, he or she may have to live with the stigma of being labeled a sex offender for the rest of his or her life. See Hiller, supra note 77, at 287-88 ("The state's disclosure of juvenile sex offender registration information ... may inspire vigilantism, public shame, social ostracism, and various types of adverse legal action, including loss of employment and eviction. Certainly, subjecting a child to these harms is not nurturing or caring, but stigmatizing ...") (footnote omitted); see also Swearingen, supra note 82, at 555 (discussing Megan's Law and noting that "not only does it not promote rehabilitation, but it in fact hinders what little chance at rehabilitation juvenile sex offenders already have by isolating them, degrading them, and reminding them every day of the unfortunate incident which led them down their current path"). Further, it has been noted that most juvenile offenders faced social problems before starting their abuse, and the registration requirement will likely enhance these problems. Hiller, supra note 77, at 292.

Juvenile sex offenders have difficulty maintaining close interpersonal relations and are isolated from their peers. This alienation may encourage sexually aggressive behavior.... Disclosure of [the] offender's past to his community may only serve to increase his or her alienation, possibly encouraging re-offending, because of the negative attitudes the public will emit toward the youth.

[Footnotes omitted].

345. See Garfinkle, supra note 9, at 176.

Since the empirical evidence suggests that sex offending is more likely than other kinds of offending to be an isolated event for an individual sex offender, rather than a psychosis or deviant personality trait, then Megan's Laws are a far less effective and palatable tool than the legislative debates would imply.

Id.


While it is likely that [sex offender registration and community notification laws] prevent some sexual offenses, they may revictimize some victims, cause increases in vigilantism, and also provide a community with a false sense of security. They may lead residents to believe that they know who the sex offenders in the community are, ignoring the fact that these laws only identify convicted sexual offenders and that there are likely to be many offenders among them who have never been caught ....

Id.; see also Bayles, supra note 64, at 3 ("People often look for the easy, quick fix after a tragedy," said Patricia Toth, director of the National Center for Prosecution of Child Abuse. 'But no one thing is a panacea. It takes a combination of things, including law enforcement and serious treatment of this problem while these offenders are in prison."); Phillip J. O'Connor, Nearly Half of State's Sex Offenders Not Registered, CHI. SUN-TIMES, Mar. 8, 1997, at 4 ("Barely more than half of 14,000 convicted sex offenders in Illinois have registered with police as required by law ...."), available at 1997 WL 6340034.

347. See Skoglund, supra note 10, at 1823 ("Because these laws are founded on the belief that many sex offenders are likely to re-offend after release, it is necessary to apply the rehabilitative
Although these are valid points, the debate should focus instead on the potential benefits achieved from the registration requirement because this requirement may save the life of a child.\textsuperscript{348} The statistics on juvenile sex offenders show that this class of sex offenders poses a substantial threat to the community.\textsuperscript{349} The registration requirement helps to curb this threat by aiding the law enforcement effort to keep track of previous sex offenders and prevent future sexual attacks against children.\textsuperscript{350} In contrast, both the dissenting and concurring justices advocate an approach that creates a lenient standard that would result in the potential release of very dangerous offenders from the registration requirement.\textsuperscript{351} This moderate standard in turn would lead to an increased possibility of sexual crimes that notification could have prevented.\textsuperscript{352} On the other hand, scholars have noted that the majority’s registration requirement could have a desired rehabilitative effect on the juveniles if implemented correctly, resulting in fully rehabilitated juvenile offenders.\textsuperscript{353} To properly implement registration requirements, states must consider the treatment needs of the offenders, the statutes must be designed by those members of the juvenile justice system who will consider the rehabilitative needs of the offenders, and the notification clauses of the statutes must both ensure public safety and protect the juvenile’s privacy and rehabilitation.\textsuperscript{354} Therefore, the

\begin{itemize}
\item \textsuperscript{348} The reaction from parents whose children were abused by J.W. show the importance of notifying potential victims of juvenile sex offenders. See infra Part V.A (describing the reaction of the parents of the victims to the J.W. case praising the court for its holding).
\item \textsuperscript{349} See supra note 5 and accompanying text (discussing the number of sexual offenses committed by juvenile sex offenders); infra note 381 and accompanying text (stating the number of registered juvenile sex offenders in Illinois at the time of the J.W. case).
\item \textsuperscript{350} Logan, supra note 43, at 1289 (“Registration seeks to enhance the capacity of law enforcement to monitor the whereabouts of released sex offenders and facilitate their re-arrest should they commit a subsequent sex offense.”); see supra Part II.A and Part II.B (discussing the history and purpose of Megan’s Law and the SORA).
\item \textsuperscript{351} See In re J.W., 787 N.E.2d 747, 757 (Ill. 2003) (“The intent of the legislature in enacting the Registration Act was ‘to create an additional method of protection for children from the increasing incidence of sexual assault and sexual abuse.’” (quoting People v. Adams, 581 N.E.2d 637, 640 (Ill. 1991))); see also supra note 341 and accompanying text (discussing the high likelihood of re-offense in adulthood for juvenile offenders).
\item \textsuperscript{352} Richardson, supra note 4, at 250.
\item \textsuperscript{353} Skoglund, supra note 10, at 1834-35 (“Through proper implementation, registration statutes can strengthen the rehabilitative efforts of the juvenile justice system. Community notification statutes may provide information to state agents without undermining the rehabilitation of released offenders.”).
\item \textsuperscript{354} Id. at 1835.
\end{itemize}

[S]uch statutes may serve the states' interests by protecting public safety and
legislature should not rewrite the SORA to render it inapplicable to juveniles because the registration requirement prevents minors from becoming victims and assists juveniles in their rehabilitation.355

Further, the propriety of requiring juveniles to register per the SORA becomes clear after an examination of the original purpose of the state and federal registration and notification laws.356 The legislatures initially designed these laws with the protection of the potential child victim in mind, not protection of the offender.357 Opponents may argue that in helping the victim, the legislature must also consider the rights of the offender.358 While this is true, the needs of the victim outweigh the rights of the offender; moreover, the public will better accept a statute that protects a victim than one that furthers the offender’s rights at the expense of the victim’s rights.359

As noted above, others have argued that holding juveniles to such requirements eliminates the prospect of rehabilitation360 and defies the

---

355. See supra notes 353–54 and accompanying text (stating the proposition that registration helps prevent future victims and aids in rehabilitative efforts).

356. See supra Part II.A–B (tracing the development of federal and Illinois registration and notification laws).

357. See Lee, supra note 4, at 490 (“Megan’s Law was primarily created to address this problem [of repeat sex offenders], rather than to punish previously convicted sex offenders.”); supra Part II.A (discussing the history and purpose of Megan’s Law and the SORA).

358. Swearingen, supra note 82, at 561 (“Megan’s Law does not even consider the protection of the offender a relevant concern.”). Scholars have proposed that the legislatures create a more evenly tailored statute to protect the juvenile offender’s interest. See Bremer, supra note 1, at 1364 (concluding that, with the one-sided nature of these statutes, “[p]erhaps it is time to consider a more moderate road, with legal changes closing the gap between leniency and stringency”).

359. See Nicole Marie Nigrelli, Comment, The Sex Offender Registry: Is It Attacking People That Were Not Meant To Be a Part of the Law?, 4 SUFFOLK J. TRIAL & APP. ADVOC. 343, 363 (1999) (“The sex offender registry was implemented to protect the public, not to protect an offender. . . . The argument that the law is overinclusive overlooks the entire purpose and intent of the Act.”).

360. See supra note 347 (discussing the importance of the rehabilitation factor in determining whether to extend the registration requirement to juvenile offenders); see also Hiller, supra note 77, at 271–72 (“[T]he required disclosure of a juvenile sex offender’s identity to the public contradicts both the state’s interest in protecting minors under the philosophy of parens patriae and the basic premise underlying the creation of juvenile courts—rehabilitation—because
ideals and purposes of the juvenile justice system. However, allowing the offender to attempt rehabilitation before subjecting him or her to the registration requirement leaves open the possibility that the offender will again attack innocent and unsuspecting victims.

Contrary to Chief Justice McMorrow's opinion, the legislature should not rewrite the SORA to make it comparable to the Megan's Laws of other states. Indeed, adopting a state statute that bases registration requirements on the number of offenses committed, such as the one followed in Mississippi, could result in increased opportunities for the offender to victimize unsuspecting children because the Mississippi statute does not notify the community of the juvenile sex offender until he has committed two separate acts of abuse. Furthermore, adopting a statute like those of Indiana, New Jersey, or Washington may

361. See Hiller, supra note 77, at 282-83. Public disclosure of a juvenile sex offender's registration information will... create the potential for public violence and anger against the juvenile. This state-influenced harm is contrary to the state's protective role under parens patriae, which aims to protect the child in the juvenile system, and the rehabilitative goals on which the juvenile court system was built. See generally supra Part II.D (discussing the treatment of juveniles in the court system).

362. See supra note 341 and accompanying text (discussing the likelihood of re-offense in adulthood).

363. See supra notes 298-301 and accompanying text (discussing Chief Justice McMorrow's discussion of other states' registration laws and her suggestion that the legislature amend the SORA).

364. See supra note 84 and accompanying text (discussing Mississippi's registration requirement for juvenile offenders). Scholars also have noted the problems with other state statutes, such as Minnesota. See Logan, supra note 43, at 1331 (discussing the Minnesota courts' reaction to juvenile sex offender registration statutes).

365. Richardson, supra note 4, at 261 (criticizing Mississippi's system by noting that "waiting for a second sex offense conviction before requiring registration creates the possibility that a juvenile sex offender will be able to abuse several [more] victims before anyone in the surrounding community is notified of his identity"); see, e.g., Kikuchi, supra note 320, at 109-10 ("Young offenders need to be identified and treated early: By adolescence, many offending children have abused more than one child and the deviant sexual behaviors are often well established."); see also supra note 341 and accompanying text (stating that juvenile sex offenders are likely to continue their abuse of children into adulthood).

366. See supra note 86 and accompanying text (discussing Indiana's registration requirement for juvenile offenders).

367. See supra notes 88-90 and accompanying text (discussing New Jersey's registration requirement for juvenile offenders).
also result in more needless attacks on children in uninformed communities because these statutes allow juveniles to cease registration if they show they are no longer a threat to society, they are not likely to reoffend, or that their registration will not further the legislative intent of the registration requirement. \(^{369}\) Thus, if the adopted standards are not strict enough, otherwise easily preventable sexual offenses against children may nonetheless occur. \(^{370}\) Therefore, although on its face the statute and its potential results may seem harsh, the legislature should not rewrite the statute to explicitly bar juvenile sex offenders from the registration requirement or reduce this requirement for such offenders because of the potentially deadly and disastrous consequences. \(^{371}\)

V. IMPACT

Victims and their families have already applauded the *J.W.* decision, and the decision will likely have an impact on future sexual crimes against children. \(^{372}\) The case will prevent future attacks on children by keeping the public aware of potential dangers in the community. \(^{373}\)

A. Applause from Victims

The *J.W.* decision has already impacted the victims in the case. \(^{374}\) In reaction to the decision, the parents of the victims involved in the case

---


369. *See supra* note 341 and accompanying text (discussing the potential problems in not requiring juvenile offenders to register). Even if the offender has not re-offended in the period he was required to register, if he is not rehabilitated, he will likely strike again. Hiller, *supra* note 77, at 292 ("[G]iven the fact that 60-80% of adult sex offenders start sex offending as juveniles, experts deduce that without effective rehabilitation, the majority of juvenile sex offenders will inevitably continue their sex offending into adulthood.").

370. Richardson, *supra* note 4, at 250.


372. *See infra* Part V.A (discussing the impact of the *J.W.* case on victims and their families).

373. *See infra* Part V.B (discussing the impact of the *J.W.* decision on potential future attacks).

374. *See generally* Long, *supra* note 268 (discussing the ramifications of the *J.W.* decision). In addition to the impact on the victims, the *J.W.* decision has impacted the Illinois courts, as Illinois courts already have been faced with similar cases and followed the standard set forth by the majority in *J.W.* regarding the registration requirement for juvenile sex offenders. *See, e.g.*, *In re Todd O.*, 789 N.E.2d 301, 301 (Ill. 2003) (vacating an appellate court’s decision and directing the appellate court on remand to reconsider its judgment in light of the *J.W.* decision); *In re Donald R.*, 796 N.E.2d 670, 678 (Ill. App. Ct. 3rd Dist. 2003) (looking to the *J.W.* decision to support the finding that requiring a minor to register as a sex offender was not an excessive
championed the lifetime registration requirement because of its ability to protect potential victims.\textsuperscript{375} Further, parents in the South Elgin area have argued that such a requirement is necessary for juvenile offenders because such offenders do not cease to pose a threat merely because they have turned eighteen years of age.\textsuperscript{376} Parents of victims have given their approval to the \textit{J.W.} decision, which takes the victims' rights into consideration along with the juvenile offenders' rights.\textsuperscript{377}

\section*{B. Prevention of Future Crime}

Courts always will have a difficult time deciding the proper course of action regarding a juvenile sex offender, as there are strong opinions on both sides.\textsuperscript{378} Opponents of extending a lifetime or lesser duration registration requirement to juvenile offenders worry about the impact of treating juveniles in the same manner as adults and argue that such equal treatment defies the concept of a juvenile justice system.\textsuperscript{379}

\footnotesize

\textsuperscript{375} Long, \textit{supra} note 268. The mother of one of \textit{J.W.}'s victims noted, "'At least I know we'll have that safeguard.'" \textit{Id.} A parent of a different victim in a separate case involving a thirteen-year-old sex offender noted that "she never would have believed that a child could be a predator until her children became prey." \textit{Id.} When considering the impact of registration or notification requirements on potential victims and what such requirements can potentially prevent, the devastating effects of child sexual abuse must be considered. \textit{See} \textsuperscript{RENOVOIZE, supra} note 3, at 144. The author notes:

Some victims of child sexual abuse will recover completely, some will seem to have put their experiences completely behind them, only to find themselves overwhelmed by painful memories later; for many others their lives will be dogged by a variety of ills, such as anxiety, depression, low self-esteem, self-destructive behaviour, a tendency to substance abuse and revictimization, and difficulties in allowing themselves to trust anyone. At the far end of this continuum of damage lies total psychiatric breakdown, or suicide. \textit{Id.; see also} Kikuchi, \textit{supra} note 320, at 109 ("Sexual abuse offenses committed by children and adolescents have lasting consequences for both the victims and the offenders.").

\textsuperscript{376} Long, \textit{supra} note 268 ("People need to know that the offender is a danger to society past the age of 18 . . . ." (internal quotations omitted)).

\textsuperscript{377} \textit{Id.} ("Everybody is concerned about the constitutional rights of the juvenile offender. . . . Nobody is concerned about the constitutional rights of the juvenile victim. This is a major step in the right direction."). (quoting a parent of a victim)).

\textsuperscript{378} \textit{See} Richardson, \textit{supra} note 4, at 255 (discussing the divergence in state registration statutes' treatment of juvenile sex offenders); \textit{see also} \textsuperscript{RENOVOIZE, supra} note 3, at xii--xiii ("The real problem is that the crime of child sexual abuse is so loathed that few people even want to think about it, let alone consider ways of treating the offenders.").

\textsuperscript{379} Richardson, \textit{supra} note 4, at 240--41 ("Opponents argue that treating juveniles and adults equally contradicts the rationale that led to the creation of a separate and distinct justice system for juveniles."). Scholars also have noted that Megan's Laws, which apply to both adults and
However, the statistics on the number of serious crimes committed by juveniles, specifically sex offenses, demonstrates that the juvenile justice system has not performed as some may have hoped.\textsuperscript{380} Indeed, at the time of the \textit{J.W.} case, the Illinois State Police records indicated that 455 of the 14,930 registered sex offenders in Illinois were juveniles.\textsuperscript{381}

The lifetime registration requirement helps ensure that communities are aware of potentially dangerous individuals in their midst.\textsuperscript{382} Protection of the community at large necessitates application of this requirement to sexual predators of any age.\textsuperscript{383} Allowing some sexual predators to cease registration solely because of their youth will not keep the community safe.\textsuperscript{384} By making the public more aware of juveniles, contradict the historical trend of separating the criminal justice systems for adults and juveniles. \textit{E.g.,} Garfinkle, \textit{supra} note 9, at 182 (“The commingling of juvenile and adult offenders within most Megan’s Laws represents a marked departure from the century-old practice of separate juvenile and adult criminal justice systems.”); \textit{see also supra} Part II.D (discussing the treatment of juveniles in the court system). Furthermore, they contend that the legislatures did not intend for such types of laws to apply to juveniles. \textit{See} Garfinkle, \textit{supra} note 9, at 183 (“[T]here was no mention in legislative debates of the child sex offenders who would be subject to community notification under federal Megan’s Law.”); \textit{supra} Part III.C.3 (discussing Justice Kilbride’s dissenting opinion that such laws should not apply to juvenile offenders.); \textit{supra} Part IV.B (discussing the lifetime registration requirement’s effect on juvenile offenders).

380. Richardson, \textit{supra} note 4, at 241–42. Juveniles account for an estimated one-fifth of all rapes and one-half of all child molestation cases committed each year. \textit{See supra} note 5 and accompanying text (discussing CSOM’s report on juvenile sex offenders); \textit{see also supra} Part II.D (discussing the treatment of juveniles in the court system).

381. Heinzmann, \textit{supra} note 344.

382. \textit{See} Nigrelli, \textit{supra} note 359, at 363 (“The public has the right to know when someone in their community poses a risk to loved ones when they inquire about that particular offender.”). The public has shown that it wants to be aware of such offenders in the community. \textit{See Becky Beaupre & Robert C. Herguth, Registry Site Popular But Draws Fire, CHI. SUN-TIMES, Jan. 16, 2000, at 9 (“When the State Police posted the names of all registered sex offenders in Illinois on the Internet in November, the reaction was immediate. Visitors jammed the site, which offers addresses, birthdates and other information about more than 14,000 registered offenders.”), available at 2000 WL 6664817. \textit{See generally supra} note 283 and accompanying text (discussing the \textit{J.W.} court’s assessment of the limited dissemination of information provided by the Notification Law).

383. \textit{See} Richardson, \textit{supra} note 4, at 239–40 (“Tragic stories similar to that of Kristi Blevins have resulted in an increased legislative awareness of the dangers posed to the community by juvenile sex offenders.”). Even scholars who have expressed concern with sex offender laws have conceded that such laws ultimately will be accepted in order to save the public. \textit{See Schlank & Cohen, \textit{supra} note 346, at x (“Sex offender statutes do appear to be withstanding legal scrutiny and are likely to be around for quite some time, despite the best efforts of those intent on continuing the heated debate concerning their appropriateness.”); \textit{supra} note 279 and accompanying text (discussing the \textit{J.W.} court’s opinion that the statute is serving the best interest of the public).

384. \textit{See} Hiller, \textit{supra} note 77, at 280 (“[T]oday’s juvenile sex offender exhibits more physical aggression and violence in his or her sexually abusive behavior than in the past.”); Richardson, \textit{supra} note 4, at 240 (“[T]ragic stories of the murder of children by juvenile sex
potential offenders, the lifetime registration requirement will help ensure that the community is mindful of the dangers that could befall their children and will work to prevent such danger.385 Parents will be more likely to keep a closer eye on their children to prevent the fate of children such as Megan Kanka.386 Further, if such a requirement did not exist, a sexual predator who began his offenses at a young age and who was never rehabilitated may never be identified.387 Therefore, the legislature and courts are correct to err on the side of caution and protect the victims’ interests first.388

VII. CONCLUSION

Developed to protect children from the harms of potential sex offenders, the Wetterling Act, Megan’s Law, and the SORA were born out of senseless tragedies. Although some may argue that reporting requirements stigmatize sex offenders, it is important to remember that registration requirements apply only to perpetrators of some of the most vile and loathsome crimes. No one is required to register unless convicted or adjudicated of a sexual offense against a child.

The Illinois Supreme Court confronted this issue in In re J.W. The court interpreted the SORA and held that the lifetime reporting requirement applies to juvenile sex offenders. Applying the SORA to require these juveniles to register for the rest of their natural lives

---

385. See supra note 61 (stating that Megan Kanka’s parents believed Megan would not have been murdered if they had known a pedophile lived in their neighborhood). For example, parents who know a sexual predator lives in their neighborhood may take extra precautions to ensure that no harm comes to their child, such as walking them to and from school and keeping track of where they are at all times and with whom they are playing.

386. See supra note 61 (discussing the murder of Megan Kanka).

387. See supra note 341 (discussing the likelihood of re-offense when the juvenile offender is not rehabilitated).

388. See Lee, supra note 4, at 514 (noting that opponents of Megan’s Laws incorrectly fail to consider the victims Megan’s Laws aim to protect); see also supra note 357 (stating that the application of the SORA in J.W. goes to support the initial legislative intent of protecting child victims of such abuse). As Lee noted:

Because Megan’s Law does not completely guarantee protection against sex offenders, some commentators argue that its provisions promote a false sense of security. Commentators also argue that because most victims know their attackers, Megan’s Law will provide little added protection. Both arguments provide practical assertions which fail to consider those victims, although small in number, the law attempts to protect.

Id. (footnotes omitted).
admittedly can be considered harsh. However, this does not mean that the legislature should amend the statute to excuse juveniles from such a standard, as the harsh standard serves the best interests of the community. The legislature enacted the SORA to protect the community and its children, and to achieve this goal, the public must be aware of all sex offenders and potential threats in their respective communities regardless of the age of the offender. Even if juvenile offenders can show clear and convincing evidence that they do not pose a risk of reoffense, the public has the right to know that at one point the juvenile did pose such a threat. Such a course of action is the only way to protect the best interests of the people of Illinois.