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JUVENILE SEX OFFENDERS: PAST, PRESENT, AND FUTURE?

by SARA HOWARD AND COLLEEN MOREY

In a crowded Sears Roebuck store a mother turned her back for a few minutes and never saw her son again.¹ Presumably, the young boy was abducted by a stranger.² After a two week search involving 50 police officers and 100 volunteers, Adam Walsh, the abducted child, was discovered.³ His head was severed and found in a canal 125 miles away from the store.⁴

Thanks in part to zealous parents; Adam's death began a movement of careful documentation and awareness of missing children.⁵ Through a made for television movie and the creation of four Adam Walsh Resource Centers, millions of Americans were exposed to the epidemic of missing children and those frequently responsible for these kidnappings: sex offenders.⁶

Adam Walsh was not the only young person to become famous for the unfortunate crimes committed against him.⁷ The most recent federal legislation that addresses sex offender registries lists seventeen victims that have made national news because of abductions and sexual assaults.⁸ These victims range in age from five to thirty years old.⁹ Of those listed, only three survived and one, Jacob Wetterling, is still missing.¹⁰

Twenty five years after the abduction of Adam Walsh, sex crimes and offenses have been put on the forefront of American news.¹¹ When Adam Walsh was abducted in 1981, there was only a small amount of news coverage of any sexual offense outside the locality of the crime.¹² Since then, child abduction cases have grown in news coverage over the past two decades.¹³ Whether it is a Congressional representative or a no-named offender plucked from the internet courtesy of NBC's *To Catch a Predator*, the American public is well aware and outraged by the behavior of sex offenders.¹⁴ Through these media outlets, the general public would most likely identify sex offenders as adult males; but, *juvenile* sex offenders exist as well.¹⁵ These young offenders create a debate as to the best way to punish such offenses and require the law to give special attention.¹⁶

Illinois, founder of the juvenile justice system, has a long history of sex offender registration.¹⁷ The first piece of registration legislation came in the form of the Habitual Child Sex Offender Registration Act, effective August 15, 1986¹⁸. Initially, only a person who had been convicted at least twice of a sex crime against a victim less than eighteen years of age could be placed on the registry. Just two decades later, the Illinois Sex Offender Registry would include juveniles as well as adults.¹⁹

These laws have not passed without controversy, regardless of the number of offenses. For example, in 1991, the Supreme Court of Illinois held in *People v. Adams* that the Habitual Child Sex Offender Registration Act does not impose a punishment for purposes of the Eighth Amendment.²⁰ The court effectively stated that registration is not punitive; it is not part of a sentence in Illinois, like jail time or parole.²¹ Additionally, the Supreme Court of Illinois held that even if the registration requirement did impose a punishment, that punishment is not cruel or unusual and does not violate due process.²² The order certifying a defendant as a habitual child sex offender could be entered *nunc pro tunc*.²³ Although the defendant in *People v. Adams* argued that it was cruel to place a stigma upon him after he had paid his debt to society through

incarceration, the court stated, "We fail to see how any stigma attaches to a registrant that is not already present through his own actions."²⁴ The Illinois Supreme Court noted that all of the information in the registry was already available in the public record, and the 1986 Act merely made the information more straightforward for the police to attain.²⁵

With the Illinois Supreme Court's endorsement of the Habitual Child Sex Offender Registry Act, the legislature continued to broaden the scope of sex offender registration within the state of Illinois. Just two years after *People v. Adams* the Illinois legislature amended the statute and required an offender to be certified as a child sex offender after his or her first conviction for a sex crime against a victim less than eighteen years of age.²⁶ This altered the Habitual Child Sex Offender Registration Act from two offenses and then certification as a child sex offender, to one offense and certification after conviction.²⁷

Illinois responded to increasing national pressures in 1996 by toughening an already existing portion of the Illinois compiled statutes.²⁸ Finally, the Child Sex Offender Registration Act was amended and renamed the Sex Offender Registration Act.²⁹ Under this Act, any person convicted of a felony sex crime or an attempt to commit a felony sex crime was required to register as a sex offender regardless of the victim's age.³⁰ The amended legislation provided a list of specific sex offenses, such that only those sex offenses included in the act could merit registration.³¹ However, even with these new amendments the names, addresses and offense of the registered child sex offender could only be released under certain limited circumstances.³² Notably, much of the burden for notification was placed on law enforcement agencies to inform local schools and child care facilities, but any person who wanted to obtain registry information simply had to go to their local police department or sheriff's office.³³ Additionally, law enforcement agencies had the discretion to inform anyone likely to encounter the offender.³⁴ Though this broadened the scope of notification, it also overburdened already overwhelmed law enforcement agencies.

A year later, in 1997, the Illinois State Legislature amended the Sex Offender Registration Act to address the issues of notification.³⁵ The 1997 amendments allowed information regarding sex offenders to be released to the public and did not prohibit the release of secondary information regarding the offender or date of birth.³⁶ Interestingly, one of the provisions of the amended law required registration for the natural life of adjudicated or convicted as sexually

dangerous persons and required them to register every 90 days for this same period.³⁷

It was not until 1999 that the Illinois Sex Offender Registration Act began to consider juveniles.³⁸ Since juveniles could not be 'convicted' as sex offenders, the language of adjudication was added to the Illinois Compiled Statutes.³⁹ While juveniles were required to register, their notification was limited only to schools, licensed day care facilities, local law enforcement and only the community when public safety is at risk.⁴⁰ Just seven years after juveniles were first required to register on a separate sex offender registry, the Illinois legislature heightened the requirements once again.

Effective January 1, 2006, the Sex Offender Registration Act Amendment stated that "upon attaining 17 years of age, a juvenile delinquent, shall be considered as having committed the sex offense on or after the offender's 17th birthday."⁴¹ Thus, under that legislation, upon attaining the age of seventeen, a person who has been adjudicated a juvenile delinquent for an act, which if committed by an adult, would be a sex offense, shall register as an adult sex offender within ten days after turning seventeen.⁴² The amendments provided that this shift of registration from the juvenile sex offender registry to the adult sex offender registry would not extend their original registration period of ten years.⁴³ Additional provisions of the 2006 law include further notification to the schools that registered juvenile sex offenders are enrolled in, including the juvenile's sex offender registry registration form. It is important to remember that these requirements were not for juveniles who have been convicted as adults. Rather, these amendments applied primarily to those juveniles who have been processed through the juvenile court system, a system geared much more towards rehabilitation than punishment. There was contention over the 2006 legislation because it went against the argument that the nature of the juvenile justice system to give children in conflict a second chance.⁴⁴

Both *In re J.W.* and *In re J.R.* articulate the constitutional merit behind the Sex Offender Registration Act and the 2006 legislation.⁴⁵ *In re J.W.* overturned *In re Nicholas K.* when it determined that the Sex Offender Registration Act applied to juvenile delinquents because the term sex offender within the act encompassed those that were adjudicated (juvenile) or convicted (adult)⁴⁶ The juvenile offender had been adjudicated in this case, thus his registration was consistent with the legislation.⁴⁷ Likewise, *In re J.R.* affirmed the Sex Offender Registration Act to include juvenile offenders.⁴⁸ The Illinois Supreme court

additionally found the Sex Offender Registration Act met the constitutional requirements of the due process clause.⁴⁹ In that case, the accused argued due process was not met because the primary purpose of the Illinois Juvenile Court Act is rehabilitation, and to require juvenile registration is not in the minor's best interest.⁵⁰ The court held the purpose of the Juvenile Court Act was to protect citizens from juvenile crime and to hold each juvenile offender directly accountable for the minor's acts. The Sex Offender Registration Act was rationally related to the legislative goal.⁵¹

Most recently, Illinois adopted Senate Bill 121 which heavily amended the Sex Offender Registration Act and its 2006 changes.⁵² Now in Illinois, there is not a mandate for juvenile sex offenders to be registered within 10 days of their 17th birthdays.⁵³ Instead, the legislation requires the judge to determine if the offender is still a threat to the community prior to being placed on the registry.⁵⁴ These changes may appease many critics who disliked the previous legislation because it lacked the rehabilitation element necessary to the juvenile court system. In any event, it is a progressive change in the law that provides a second chance to deserving offenders.

The controversy behind both the state and national legislation fuels debate in future court cases and new changes to Illinois law. The allowance of judicial discretion helps preserve rights for minors and their futures. As new challenges arise which require innovative problem solving, both on the part of policy makers as well as law enforcement, judges, advocates and school administrators, the question comes to mind: is juvenile sex offender registration the best and only solution?

NOTES

1 Keith S. Hampton, *Children in the War on Crime: Texas Sex Offender Mania and The Outcasts of Reform*, 42 S. TEX. L. REV. 781, 782 (2001).

2 *Id.*

3 *Id.*

4 *Id.* at 782-83.

5 *Id.* at 783-84

6 *Id.* at 784.

7 Joanna C. Enstice, *Remembering the Victims of Sexual Abuse: The Treatment of Juvenile Sex Offenders in In Re J.W.* 35 LOY. CHI. L.J. 941, 946 (2004).

8 42 USCA § 16901(2006), available at rpc.senate.gov/_files/L49HR4427ChldprotBB072006.pdf.

9 *Id.*

10 *Id.*

11 David Singleton, *Sex Offender Residency Statutes and the Culture of Fear: The Case For More Meaningful Rational Basis Review of Fear-Driven Public Safety Laws*, 3 U. ST. THOMAS L.J. 600, 604-605 (2006).

12 *Id.* at 604.

13 *id.*

14 Chris Hanson, *Reflections on To Catch a Predator*, available at <http://www.msnbc.msn.com/id/17601568/> (March 13, 2007).

15 Alison G. Turnoff, *Throwing Away the Key on Society's Youngest Sex Offenders*, 91 J. CRIM. L. & CRIMINOLOGY 1127, 1127 (2001).

16 *Id.*

17 *Id.*

18 ILLINOIS STATE POLICE, A GUIDE TO SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION IN ILLINOIS, at 3 (January 1, 2006), available at <http://www.isp.state.il.us/docs/4-084d.pdf>.

19 *Id.* at 10.

20 *People v. Adams*, 144 Ill.2d 381,389 (1991).

21 *Id.*

22 *Id.*

23 *Id.* at 392-94.

24 *Id.* at 389.

25 *Id.*

26 ILLINOIS STATE POLICE, A GUIDE TO SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION IN ILLINOIS, at 3 (January 1, 2006), available at <http://www.isp.state.il.us/docs/4-084d.pdf>.

27 *Id.*

28 730 ILCS 150/1

29 ILLINOIS STATE POLICE, A GUIDE TO SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION IN ILLINOIS, at 3 (January 1, 2006), available at <http://www.isp.state.il.us/docs/4-084d.pdf>.

30 *Id.*

31 *Id.* at 3-4.

32 *Id.* at 4.

33 *Id.*

34 *Id.*

35 ILLINOIS STATE POLICE, A GUIDE TO SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION IN ILLINOIS, at 4 (January 1, 2006), available at <http://www.isp.state.il.us/docs/4-084d.pdf>.

36 *Id.*

37 *Id.* at 5.

38 *Id.* at 6.

39 730 ILCS 150/1

40 ILLINOIS STATE POLICE, A GUIDE TO SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION IN ILLINOIS, at 6 (January 1, 2006), available at <http://www.isp.state.il.us/docs/4-084d.pdf>.

- 41 *Id* at 10.
- 42 *Id.*
- 43 *Id.*
- 44 Rozas, *Supra* note 18.
- 45 *In Re J.W.* 204 Ill.2d 50, 64, N.E.2d 747 (2003)., *In Re J.R.*, 341 Ill.App.3d 784, 793 N.E.2d 687 (2003)
- 46 *In re J.W.*,*Supra* note 20 at 64-65.
- 47 *Id.*
- 48 *In Re J.R.*, 341 Ill.App.3d 784, 793 N.E.2d 687, 769 (2003).
- 49 *In re J.W.* *Supra* note 20 at 69.
- 50 *Id.*.
- 51 *Id.* at 68-69.
- 52 SB 121
- 53 *Id.*
- 54 *Id.*

