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ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006: IS THERE A BETTER WAY TO TAILOR THE SENTENCES OF JUVENILE SEX OFFENDERS?

Britney M. Bowater

Rooted in the late nineteenth century presumption that young offenders can often be rehabilitated, our country's criminal justice system has recognized the need to treat juveniles differently from adults. As of 2006, the National Center for Juvenile Justice found that the majority of "juvenile courts [aspire to] give balanced attention to three primary interests: public safety, individual accountability to victims and the community, and development of skills to help offenders live law-abiding and productive lives." Due to the rehabilitation component of our juvenile justice system, juveniles adjudicated delinquent often face lesser or otherwise different punishments from their adult counterparts.


2. Suffredini, supra note 1, at 888 ("Unlike the criminal court system, which seeks to deter crime in large measure by punishing criminals, the juvenile courts have long been grounded upon a philosophy emphasizing the social rehabilitation of young offenders.").

3. Gault, 387 U.S. at 15 (noting that the establishment of the juvenile justice system resulted from the reformers' opposition to the possibility that juvenile offenders could receive sentences comparable to adult offenders), quoted in Registrant J.G., 777 A.2d at 901 (discussing the application of a state sex offender statute to a ten-year-old boy).


5. 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, 194-95 (2003) (noting that although adult incarceration rates have increased, the
Yet when a juvenile has been adjudicated delinquent of a sexual offense the result is not likely to fit this pattern.  

In the early 1990s, as a result of an increase in cases involving child molestation, rape, and murder, both state and federal governments began enacting legislation requiring that sex offenders submit to registration and community notification. State statutes defining sex offenders varied, and some made no distinction between adults and juveniles. Under these statutes, as long as a juvenile was adjudicated for a statutorily defined sex crime, he was required to register and submit to community notification to the same extent as an adult.

On July 27, 2006, Congress replicated state statutes by enacting the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act). Title I of the Adam Walsh Act is the Sex Offender Registration and Notification Act (SORNA). SORNA requires that a juvenile adjudicated delinquent of aggravated sexual abuse, who was fourteen years of age or older at the time of the offense, must register as a sex offender and submit to community notification to the same extent as an adult. Aggravated sexual abuse is delineated into three categories of offenders: those who engage in a sexual act through force or threat; those who engage in a sexual act by other means, such as rendering the victim unconscious; and those who commit a sexual act with children. The third category encompasses a broad range of circumstances in which sexual abuse can occur, such as that of a fourteen-year-old engaging in a sexual act with a minor under the age of twelve,

juvenile courts have continued to focus on the juvenile offender's growth and development when determining the need for incarceration).

6. See id. at 195 ("[B]y applying [sex offender laws] to juveniles, states are dismantling the cornerstone of the diversionary juvenile justice system.").
7. Id. at 165-66 (noting the horrifying attacks that preceded the enactment of registration and community notification laws both nationally and among several states).
9. See, e.g., N.J. STAT. ANN. § 2C:7-2(a)(1) ("A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense... shall register... ").
12. See Sex Offender Registration and Notification Act § 111(1), (8), 42 U.S.C.A. § 16911(1), (8) (West Supp. 2007) (defining "sex offender" to include juveniles adjudicated delinquent of a sex offense committed at the age of fourteen or older); id. § 113, 42 U.S.C.A. § 16913 (mandating registration); id. § 118(a), 42 U.S.C.A. § 16918(a) (mandating community notification through a website); see also 18 U.S.C.A. § 2241 (West 2000 & Supp. 2007) (defining the crime of aggravated sexual abuse).
whom the offender perceives as a consenting peer. This type of situation is the focus of this Comment.

The Adam Walsh Act requires that all juveniles and adults who have been adjudicated or convicted of aggravated sexual abuse register and submit to community notification. Yet when it comes to juveniles

15. See National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. 30,210, 30,216 (proposed May 30, 2007) (providing that SORNA “requires registration only for a defined class of older juveniles who are adjudicated delinquent for committing particularly serious sexually assaultive crimes or child molestation offenses”). It is important to recognize that “[b]ased on the presumption that minors are incapable of giving consent, age-of-consent laws make all sexual activity under a certain age illegal.” Garfinkle, supra note 5, at 180 n.114. However, as others have done, this Comment, “[w]hile recognizing that minors’ reduced maturity impacts their ability to give consent, . . . does not share the presumption that minors are inherently incapable of consenting to sexual activity.” Id. Rather, this Comment, like others, “will proceed on the assumption that much of the child and adolescent sexual activity described herein, when free of force and substantial age differences, is best understood as consensual.” Id.

16. Sex Offender Registration and Notification Act § 111(1), (8), 42 U.S.C.A. § 16911(1), (8); id. § 113(a), 42 U.S.C.A. § 16913(a). According to the proposed National Guidelines for Sex Offender Registration and Notification (National Guidelines) under the Adam Walsh Act:

[The registration aspects of [sex offender registration and notification] programs are systems for tracking sex offenders following their release into the community. If a sexually violent crime occurs or a child is molested, information available to law enforcement through the registration program about sex offenders who may have been present in the area may help to identify the perpetrator and solve the crime. If a particular released sex offender is implicated in such a crime, knowledge of the sex offender’s whereabouts through the registration system may help law enforcement in making a prompt apprehension. The registration program may also have salutary effects in relation to the likelihood of registrants committing more sex offenses. Registered sex offenders will perceive that the authorities’ knowledge of their identities, locations, and past offenses reduces the chances that they can avoid detection and apprehension if they reoffend, and this perception may help to discourage them from doing so.


17. Sex Offender Registration and Notification Act § 118(a), 42 U.S.C.A. § 16918(a). In accordance with the proposed National Guidelines, the notification requirement “involves making information about released sex offenders more broadly available to the public. The means of public notification currently include sex offender Web sites in all States, the District of Columbia, and some territories, and may involve other forms of notice as well.” National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,211. The Department of Justice believes that

[t]he availability of such information helps members of the public to take common sense measures for the protection of themselves and their families, such as declining the offer of a convicted child molester to watch their children or head a youth group, or reporting to the authorities approaches to children or other suspicious activities by such a sex offender. Here as well, the effect is salutary in relation to the sex offenders themselves, since knowledge by those around them of their sex offense histories reduces the likelihood that they will be presented with opportunities to reoffend.
adjudicated delinquent of sexual offenses, community notification can undermine the rehabilitation\(^{18}\) and societal protection\(^{19}\) tenets of the juvenile justice system. Many state statutes use the terms "register" and "community notification" interchangeably.\(^{20}\) However, this Comment specifically focuses on the possible negative implications of the requirement that juveniles adjudicated delinquent of sexual offenses submit to community notification.\(^{21}\)

The community notification requirement of the Adam Walsh Act, when strictly applied to all juvenile sex offenders, runs counter to the rehabilitative component of the juvenile justice system.\(^{22}\) Additionally, the public safety component of the juvenile justice system is at issue.\(^{23}\) Undoubtedly, in the interest of public safety, it is necessary that some juveniles adjudicated delinquent of sex offenses should be required to submit to community notification.\(^{24}\) It does not necessarily follow, however, that all juveniles adjudicated delinquent of sex offenses should

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\(^{18}\) Id. Although these are possible benefits of community notification requirements, it is necessary to weigh these benefits against the possible negative consequences that can result from a mandate that a juvenile, adjudicated delinquent of aggravated sexual abuse for engaging in a sexual act with a perceived peer who is under the age of twelve, submit to community notification. See discussion infra Part III.A.2.

\(^{19}\) See discussion infra Part III.A.1; see also Stacey Hiller, Note, The Problem with Juvenile Sex Offender Registration: The Detrimental Effects of Public Disclosure, 7 B.U. PUB. INT. L.J. 271, 271-72 (1998) ("While the registration of juvenile sex offenders is not itself objectionable, the 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 disclosure inhibits such rehabilitation." (footnotes omitted)).

\(^{20}\) The terms are interchangeable in that if a state determines or mandates that a juvenile adjudicated delinquent of a sexual offense must register, that juvenile automatically must submit to community notification. See, e.g., IOWA CODE ANN. §§ 692A.2(6), .13(1)(b) (West Supp. 2007) (providing that all juveniles adjudicated delinquent and required to register shall be subject to the dissemination of the sex offender registry to the public); N.J. STAT. ANN. §§ 2C:7-2(a)(1), :7-5(a) (West Supp. 2007) (same); VA. CODE ANN. §§ 9.1-902(G), -913 (Supp. 2007) (same).

\(^{21}\) See discussion infra Part III.A.1.

\(^{22}\) See infra note 137 and accompanying text.

\(^{23}\) See SNYDER & SICKMUND, supra note 4, at 98 (noting the rehabilitative and public safety component of the juvenile justice system); see also infra Part III.A.2.

\(^{24}\) See Robert E. Longo & Martin C. Calder, The Use of Sex Offender Registration with Young People Who Sexually Abuse, in CHILDREN AND YOUNG PEOPLE WHO SEXUALLY ABUSE 334, 351 (Martin C. Calder ed., 2005) ("We believe registration should not be used with [juvenile sex offenders] except under the most extreme conditions in which they pose a serious threat to others and the community."); see also N.C. GEN. STAT. § 14-208.26(a) (2005) (providing that if it is judicially determined that a juvenile sex offender is a danger to the community, he can be required to register).
be required to submit to community notification. At times, community notification requirements can result in adverse consequences for the juvenile, his family, and society. Thus, a one-size-fits-all approach should not be taken with juveniles.

Accordingly, this Comment discusses the need for judicial discretion in deciding whether it is in the best interest of both the community and the juvenile who has been adjudicated delinquent of aggravated sexual abuse for engaging in a consensual sexual act with a perceived peer under the age of twelve, for that juvenile to submit to community notification. Part I of this Comment explores the history of federal sex offender registration and community notification statutes that led to the adoption of the Adam Walsh Act. After examining the Adam Walsh Act, specifically SORNA, this Comment looks at several state statutes that apply sex offender registration and notification requirements to juveniles. Part II of this Comment first compares the Adam Walsh Act to the New Jersey statute, which mandates juvenile sex offender registration and community notification. This Comment then examines an alternative approach that some states, specifically Iowa and Virginia, have adopted, which allows for judicial discretion in deciding whether a juvenile sex offender should be required to submit to registration and community notification. Part III of this Comment argues that SORNA is overly broad when applied to juveniles. To conclude, this Comment advocates for wider adoption of the alternative approach allowing for judicial discretion over mandatory community notification of juvenile sex offenders.

I. FEDERAL LEGISLATION MANDATING SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION

Since 1994, multiple pieces of federal legislation have been enacted mandating that states implement sex offender registration and community notification laws. SORNA, within the Adam Walsh Act, is the most recent federal legislation addressing sex offender registration and community notification and is the most restrictive to date. For the

25. See Longo & Calder, supra note 24, at 351 (proposing conditions upon which a juvenile sex offender should be required to register).
first time, federal law now mandates that certain juveniles adjudicated delinquent of sexual offenses register and submit to community notification.29

A. Federal Legislation Paving the Way for the Adam Walsh Act

Following the abduction of eleven-year-old Jacob Wetterling,30 Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (Wetterling Act), within the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA).31 The Wetterling Act "[r]equired states to track sex offenders by confirming their place of residence annually for ten years after their release into the community or quarterly for the rest of their life if the sex offender was convicted of a violent sex crime."32 Although the Wetterling Act was the beginning of federally required registration of sex offenders with state authorities, it did not mandate the dissemination of this information to the public.33

This changed in 1996 when Congress added "Megan's Law" to the VCCLEA.34 Megan's Law was enacted as a response to the brutal killing of seven-year-old Megan Kanka in 1994.35 The perpetrator, Jesse Timmendequas, lured Megan into his bedroom under the pretense of

29. Compare Sex Offender Registration and Notification Act § 111(8), 42 U.S.C.A. § 16911(8) (West Supp. 2007) ("The term 'convicted' or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse . . . , or was an attempt or conspiracy to commit such an offense.") with Violent Crime Control and Law Enforcement Act § 170101(a)(3)(A) ([C]onduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger.").
33. See Violent Crime Control and Law Enforcement Act § 170101(d); see also 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, 253 (2002).
seeing his puppy. He then raped her. Out of fear that he might get caught, Timmendequas strangled Megan with a belt and pulled a plastic bag over her head, suffocating her. Megan's attacker turned out to be her neighbor, a twice-convicted sex offender who had spent six years in prison for child molestation. According to the Center for Sex Offender Management, "Megan's parents believe[d] that if they had known that a pedophile lived nearby, this heinous crime would never have happened."

Megan's Law requires that "states . . . have procedures in place to inform the public about sex offenders who live in close proximity." Specifically, the law requires that "[t]he 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" by means including a publicly available website. The enactment of this legislation marked the birth of federally mandated community notification.

B. Adam Walsh Child Safety and Protection Act of 2006

On July 27, 2006, President George W. Bush signed the Adam Walsh Act into law. The Act was a response to "the growing epidemic of sexual violence against children." It was intended to "help Federal, State, and local enforcement officials investigate and prosecute crimes against children." The President stated that the Adam Walsh Act would accomplish this goal by "expand[ing] the National Sex Offender Registry by integrating the information in State sex offender registry systems and ensuring that law enforcement has access to the same information across the United States." Second, the Act would "increase Federal penalties for crimes against children." Third, the Act would

36. Id.
37. Id.
38. Id.
46. Id.
47. Id.
"make it harder for sex predators to reach our children on the Internet . . . [by] authoriz[ing] additional new regional Internet Crimes Against Children Task Forces." Finally, the Act would "help prevent child abuse by creating a National Child Abuse Registry and requiring investigators to do background checks on adoptive and foster parents" before a child may be placed in their custody.

1. Sex Offender Registration and Notification Act

The Adam Walsh Act is organized in seven titles, the first of which comprises SORNA. Congress statutorily mandated that the U.S. Attorney General issue interpretive guidelines and regulations implementing SORNA. According to the Attorney General's proposed National Guidelines for Sex Offender Registration and Notification (National Guidelines), the registration component of SORNA facilitates the tracking of released sex offenders. The registration component "also provides the informational base for . . . notification[,] which involves making information about released sex offenders more broadly available to the public." SORNA mandates a minimum set of national standards for registration and community notification. The proposed National Guidelines note that in the past, individual states have implemented sex offender registration and notification programs. Congress has, however, now recognized the need for "effective arrangements for tracking . . . registrants as they move among jurisdictions." The national system for registration, in accordance with SORNA, will include the creation of the National Sex Offender Registry, which will be maintained on an FBI

48. Id. President Bush used the term "sex predator" in his signing statement. Id. In general, a sex predator is "[a] person who has committed many violent sexual acts or who has a propensity for committing violent sexual acts." BLACK'S LAW DICTIONARY 1407 (8th ed. 2004).
49. Adam Walsh Act Signing Statement, supra note 45, at 1396.
52. Id. § 112(b), 42 U.S.C.A. § 16912(b).
54. Id. at 30,211.
55. Id. at 30,212 ("[T]he Act . . . sets a floor, not a ceiling, for jurisdictions' programs.").
56. See id. at 30,211.
57. Id.
database for each sex offender. The national system for registration will also include the creation of the Dru Sjodin National Sex Offender Public Website and separate jurisdictional websites. All of these websites must make sex offender information readily accessible to the public "by a single query for any given zip code or geographical radius set by the user."

A sex offender must register in the jurisdiction where the offender resides and where the offender is employed or is a student. Information about the sex offender that must be collected for the registry includes, but is not limited to, the following: the offender's name, address, and Social Security number; the name and address of his employer and/or school; "[t]he license plate number and a description of any vehicle" the offender owns or operates; a physical description of the offender; "[t]he text of the provision of law defining the criminal offense for which the sex offender is registered"; the offender's entire criminal history; a current photograph of the offender along with fingerprints, palm prints, and a DNA sample; and a copy of his driver's license or identification card. The Attorney General, under the authority of SORNA, added additional information to these requirements, including an internet identifier for the offender, such as an email address; the offender's telephone number(s), professional license(s), and date of birth. It is important to note that this information is merely for registration purposes; not all of this information will be accessible to the public. For

59. Sex Offender Registration and Notification Act § 120(a), 42 U.S.C.A. § 16920(a).
60. Id. § 118(a), 42 U.S.C.A. § 16918(a).
61. Id.; id. § 120(b), 42 U.S.C.A. § 16920(b).
62. Id. § 113(a), 42 U.S.C.A. § 16913(a). The offender must also register in the jurisdiction in which he was convicted, if that is a different jurisdiction from the one in which he resides. Id. Furthermore, the statute requires the offender to register before being released from prison, or if the offender is not sentenced to prison, he must register no later than three business days after he is sentenced. Id. § 113(b), 42 U.S.C.A. § 16913(b).
63. Id. § 114, 42 U.S.C.A. § 16914. Because these requirements are only a baseline for registries, "jurisdictions are free to obtain and include in their registries a broader range of information" about offenders. National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,220.
64. Sex Offender Registration and Notification Act § 114(a)(7), (b)(8), 42 U.S.C.A. § 16914(a)(7), (b)(8); National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,222-23.
65. Sex Offender Registration and Notification Act § 118(b)-(c), 42 U.S.C.A. § 16918(b)-(c) (setting forth both mandatory and optional exemptions from disclosure to the public). The information that must be easily accessible to the public through the jurisdictional websites and the Dru Sjodin National Sex Offender Public Website is the sex
example, the public websites must not disclose the identity of the victim or the Social Security number, criminal history, and travel and immigration document numbers of the offender.\textsuperscript{66}

In addition, SORNA established a three-tiered system to rank sex offenders by the severity of their offenses.\textsuperscript{67} For each tier, a different registration period\textsuperscript{68} and in-person verification interval\textsuperscript{69} applies. A tier I sex offender fits within "a residual class that includes all sex offenders who do not satisfy the criteria for tier II or tier III."\textsuperscript{70} A tier I sex offender will remain on the registry for fifteen years, and is required to appear in person to verify his information annually.\textsuperscript{71} A tier II or tier III offense must be punishable by imprisonment for at least one year.\textsuperscript{72} Further, a tier II sex offender's "registration offense [must] fall[] within one of two lists. In general terms, these lists cover most sexual abuse or exploitation offenses against minors."\textsuperscript{73} A tier II sex offender will remain on the registry for twenty-five years, and is required to appear in person every six months.\textsuperscript{74} Tier III sex offenders, those who have committed the offender's current photo, physical description, name, address of residence, address of employment or enrollment, vehicle identification information, and a description of the sexual offense that resulted in registration. National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,224.

\textsuperscript{66} Sex Offender Registration and Notification Act § 118(b), 42 U.S.C.A. § 16918(b); National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,223-24.

\textsuperscript{67} See Sex Offender Registration and Notification Act § 111(2)-(4), 42 U.S.C.A. § 16911(2)-(4).

\textsuperscript{68} Id. § 115(a), 42 U.S.C.A. § 16915(a).

\textsuperscript{69} Id. § 116, 42 U.S.C.A. § 16916.

\textsuperscript{70} National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,219.

\textsuperscript{71} Sex Offender Registration and Notification Act § 115(a)(1), 42 U.S.C.A. § 16915(a)(1); id. § 116(1), 42 U.S.C.A. § 16916(1).

\textsuperscript{72} Id. § 111(3)-(4), 42 U.S.C.A. § 16911(3)-(4).

\textsuperscript{73} National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,219. According to the proposed National Guidelines, [t]he first list ... covers offenses committed against minors that are comparable to or more severe than a number of cited federal offenses—those under 18 U.S.C. §§ 1591, 2422(b), 2423(a), and 2244—and attempts and conspiracies to commit such offenses. The second list ... covers use of a minor in a sexual performance, solicitation of a minor to practice prostitution, and production or distribution of child pornography.

\textsuperscript{74} Sex Offender Registration and Notification Act § 115(a)(2), 42 U.S.C.A. § 16915(a)(2); id. § 116(2), 42 U.S.C.A. § 16916(2).
most serious offenses, will remain on the registry for life, and are required to appear in person every three months.

SORNA's requirements apply to all sex offenders, both prospectively and retrospectively. Congress mandated that jurisdictions implement the minimum SORNA requirements no later than three years after July 27, 2007 or one year after certain software is obtainable. Although Congress cannot explicitly mandate that state legislatures adopt SORNA, it can provide a significant financial incentive: a jurisdiction that fails to implement SORNA will receive ten percent less funding than it would normally receive under the Omnibus Crime Control and Safe Streets Act of 1968. To help jurisdictions' implementation efforts, SORNA authorized the creation of a dedicated office within the Department of Justice to administer grant programs and provide other technical assistance related to the Adam Walsh Act. All of these above mentioned requirements have been put in place to better achieve the general goal of public safety.

75. See id. § 111(4), 42 U.S.C.A. § 16911(4). The proposed National Guidelines describe tier III offenses as

[o]ffenses comparable to or more severe than aggravated sexual abuse or sexual abuse as described in 18 U.S.C. §§ 2241 and 2242, or an attempt or conspiracy to commit such an offense. . . . [o]ffenses against a child below the age of 13 that are comparable to or more severe than abusive sexual contact as defined in 18 U.S.C. § 2244, or an attempt or conspiracy to commit such an offense. . . . [k]idnapping of a minor (unless committed by a parent or guardian). National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,219-20.


78. Sex Offender Registration and Notification Act § 124(a), 42 U.S.C.A. § 16924(a). This software is to be created by the Department of Justice to assist in the creation of local registries and Internet sites. Id. § 123(a), 42 U.S.C.A. § 16923(a).

79. See id. § 125(a), 42 U.S.C.A. § 16925(a).

80. Id. § 145(a), (c), 42 U.S.C.A. § 16945(a), (c); see also LAURA L. ROGERS, DEPT OF JUSTICE, THE SMART OFFICE: OPEN FOR BUSINESS 1 (2007), available at http://www.ojp.usdoj.gov/smart/pdfs/register.pdf. Ms. Rogers is the director of this unit, the Sex Offender Sentencing, Monitoring, Apprehension, Registration, and Tracking (SMART) Office. Id.

81. National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,210 ("The SORNA reforms are generally designed to strengthen and increase the effectiveness of sex offender registration and notification for the protection of the public . . . .")
2. The Application of SORNA to Juvenile Sex Offenders

Unlike prior federal legislation, the Adam Walsh Act's SORNA requirements expressly apply to both adult and juvenile sex offenders. SORNA defines "sex offender" as "an individual who was convicted of a sex offense." The term "convicted" includes adjudicated delinquency, "but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse... or was an attempt or conspiracy to commit such an offense." Thus under SORNA, registration is required for juveniles who are fourteen years of age and who have been adjudicated delinquent of "aggravated sexual abuse" as defined in 18 U.S.C. § 2241.

The proposed National Guidelines would interpret "aggravated sexual abuse" to include: (1) "[e]ngaging in a sexual act with another by force or the threat of serious violence[;]" (2) "[e]ngaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim[;]" and (3) "[e]ngaging in a sexual act with a child under the age of 12." As stated earlier, this Comment limits its discussion to the latter of the three categories and specifically focuses on the Adam Walsh Act's lifetime community notification requirement for a juvenile adjudicated delinquent of engaging in a consensual sexual act with a perceived peer, who is under the age of twelve.

To better understand how the Adam Walsh Act affects a juvenile adjudicated delinquent of "[e]ngaging in a sexual act with a child under the age of 12," it is necessary to define what encompasses a sexual act. The National Guidelines propose that the term "[s]exual act... should be understood to include any of the following: (i) Oral-genital or oral-anal contact, (ii) any degree of genital or anal penetration, and (iii) direct genital touching of a child under the age of 16." This definition parallels the 18 U.S.C. § 2246(2) definition of "sexual act" used in 18 U.S.C. § 2241, which in turn defines "aggravated sexual abuse." It is important to emphasize that under § 2246(2), "the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass,

82. See supra note 29 and accompanying text.
83. Sex Offender Registration and Notification Act § 111(1), 42 U.S.C.A. § 16911(1).
84. Id. § 111(8), 42 U.S.C.A. § 16911(8).
85. Id.
87. Id.
88. Id.
degrade, or arouse or gratify the sexual desire of any person” is considered to be a sexual act.\footnote{90} Therefore, in accordance with the Adam Walsh Act and 18 U.S.C. §§ 2241 and 2246, a fourteen-year-old juvenile adjudicated delinquent of the sexual act of intentionally touching an eleven-year-old’s genital area, not through the clothing, can be required to register as a sex offender and submit to community notification for the rest of his life.\footnote{91} The juvenile would be required to register and submit to community notification even if he viewed the eleven-year-old as a peer who consented to the sexual encounter.\footnote{92} This is because an individual convicted of “aggravated sexual abuse” is labeled a tier III sex offender. An individual falling within this category is required to register for life, and must appear in person every three months to verify his or her registration information.\footnote{93} Furthermore, a juvenile adjudicated delinquent of aggravated sexual abuse is required to submit all of the same registration information as an

\footnote{90} § 2246(2)(D). 
\footnote{91} See supra Part I.B.1. This situation does not necessarily represent the outer bounds of covered sexual acts. The proposed National Guidelines assert that “the inclusions and exclusions in the definition of ‘conviction’ for purposes of SORNA do not constrain jurisdictions from requiring registration by additional individuals—e.g., more broadly defined categories of juveniles adjudicated delinquent for sex offenses—if they are so inclined.” National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,216. 
\footnote{92} This Comment recognizes that children under age twelve legally cannot consent to a sexual act. However, this Comment focuses specifically on the perceptions of the juvenile adjudicated delinquent. See supra note 15. The Adam Walsh Act accommodates consensual sexual activity, exempting it from classification as a sexual offense “if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.” Sexual Offender Registration and Notification Act § 111(5)(C), 42 U.S.C.A. § 16911(5)(C) (West Supp. 2007). Yet, when it comes to juveniles who are fourteen years of age or older and who have engaged in a sexual act, as defined by 18 U.S.C. § 2241(c), with a consenting eleven-year-old, the law does not make such an exception. See id. § 111(8), 42 U.S.C.A. § 16911(8). Rather, if the juvenile is adjudicated delinquent, he is labeled a tier III sex offender and must submit to registration and community notification for life. Id. § 111(4)(A)(i), 42 U.S.C.A. § 16911(4)(A)(i); id. § 115(a)(3), 42 U.S.C.A. § 16915(a)(3). As a result, it appears that the Adam Walsh Act recognizes and tolerates less egregious consensual sexual activity for adults than for juveniles. 
\footnote{93} See supra notes 75-76. SORNA gives a sex offender adjudicated delinquent an opportunity to reduce his registration period from life to twenty-five years, but only if he maintains a clean record for twenty-five years. Sex Offender Registry and Notification Act § 115(b), 42 U.S.C.A. § 16915(b). Maintaining a clean record entails “(A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed; (B) not being convicted of any sex offense; (C) successfully completing any periods of supervised release, probation, and parole; and (D) successfully completing . . . an appropriate sex offender treatment program.” Id. § 115(b)(1), 42 U.S.C.A. § 16915(b)(1).
adult similarly convicted. Most of this information must be made available on publicly accessible websites, regardless of the offender’s age. Thus, under SORNA, whether the individual convicted of aggravated sexual abuse is a juvenile or an adult makes no difference in the eyes of the law.

II. STATE LEGISLATION MANDATING SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION FOR JUVENILES

Although federal legislation has laid out the minimum requirements, sex offender registration and community notification programs have generally been defined and carried out through individual state statutes and entities. As a result, it is essential to examine the various approaches states have taken with respect to registration and community notification for juvenile sex offenders. Currently, some state sex offender statutes are in flux due to state legislatures’ attempts to come into compliance with the Adam Walsh Act. Thus, it is necessary to survey the state sex offender statutes that were in effect prior to the enactment of the Adam Walsh Act on July 27, 2006.

State statutes on registration and community notification for juvenile offenders varied significantly. Although some state statutes were silent or ambiguous as to whether a juvenile adjudicated delinquent of certain sex crimes must register and submit to community notification, a

94. See supra notes 63-65 and accompanying text.
95. See Sex Offender Registration and Notification Act § 118, 42 U.S.C.A. § 16918 (making no distinction between juvenile and adult sex offenders); National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,224 (same); see also supra notes 62-66 and accompanying text.
96. See supra note 55 and accompanying text; see also National Guidelines for Sex Offender Registration and Notification, 72 Fed. Reg. at 30,213 (“Jurisdictions are free to require registration for broader classes of sex offenders with convictions that predate SORNA or the jurisdiction’s implementation of the SORNA standards in its program.”).
97. See supra note 56 and accompanying text.
98. Although this Comment focuses on the implications of mandated community notification for juveniles adjudicated delinquent of sexual offenses, most state models, including the ones noted in this Comment, address the registration requirement and the community notification requirement as one in the same. Thus, if the state, in accordance with its statute, finds that a juvenile adjudicated delinquent must register, a community notification requirement is likely to follow.
99. See Garfinkle, supra note 5, at 177-79.
significant number of state statutes required some form of registration and community notification for juvenile sex offenders.101 Of the states that had adopted mandatory juvenile sex offender registration and community notification laws, several states had adopted a model that excluded juveniles adjudicated delinquent from registering and submitting to community notification if their offenses were only criminal based on the age of the victim.102 Other states' models permitted registration and/or community notification for juveniles, but granted the judiciary discretion in deciding whether juveniles adjudicated delinquent of certain sex crimes must submit to these programs.103


See HAW. REV. STAT. ANN. § 846E-1 (LexisNexis 2007) (stating that acts committed by individuals under eighteen are not covered by the statute's definition of aggravated sexual offense if the act is criminal only because of the age of the victim); KY. REV. STAT. ANN. § 17.500(2)(b) (LexisNexis 2003) ("Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense.") (current version at KY. REV. STAT. ANN. § 17.500(3)(b) (LexisNexis Supp. 2007)); VT. STAT. ANN. tit. 13, § 5401(10)(B) (Supp. 2007) (providing that juveniles, delinquent only because of the age of the victim, are not classified as sex offenders so long as the victim was twelve or older).

ALA. CODE § 15-20-28(c) (LexisNexis Supp. 2007) ("Unless otherwise ordered by the sentencing court, the juvenile criminal sex offender shall not be subject to notification
New Jersey is an example of a state that required juveniles adjudicated delinquent of sexual offenses to register and submit to community notification to the same extent as adult sex offenders. A "sex offense" upon release.

104. N.J. STAT. ANN. § 2C:7-2(a)(1), (b)(2); id. § 2C:7-5(a) (West Supp. 2007). In Doe v. Poritz, the New Jersey Supreme Court noted that New Jersey registration and community notification requirements are "lifetime requirements unless the registrant has been offense-free for fifteen years following conviction or release from a correctional facility (whichever is later) and, on application to terminate these obligations, can persuade the court that he or she is not likely to pose a threat to the safety of others." 662 A.2d 367, 378 (N.J. 1995). However, in a case decided six years later, In re Registrant J. G., the New Jersey Supreme Court held that more lenient registration and notification standards should be applied to offenders under the age of fourteen. 777 A.2d 891, 912
under the New Jersey statute included "[a]ggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping . . . or an attempt to commit any of these crimes." The New Jersey statute defines "sexual assault" as "an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim." In accordance with the New Jersey statute, "[s]exual contact' means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor." Thus, under New Jersey law, a fourteen-year-old must register and submit to community notification for life if adjudicated delinquent for touching, over the clothing, the intimate parts of a ten-year-old.

By contrast, Iowa allowed for judicial discretion in determining whether juveniles adjudicated delinquent of sexual offenses should register and submit to community notification. The Iowa statute stated that

[a] person who is convicted . . . of a criminal offense against a minor, sexual exploitation, a sexually violent offense, or an other relevant offense as a result of adjudication of delinquency in juvenile court shall be required to register . . . unless the juvenile court finds that the person should not be required to register . . .

Thus while there is a presumption under Iowa law that a juvenile adjudicated delinquent is required to register, the juvenile court can decide that registration is unnecessary. Although Iowa's statute "does not provide specific guidelines for the exercise of the court's discretion," case law has defined some factors to be considered. These factors include "(1) the nature of the offense[]; (2) the status of the victim[]; (3) [the juvenile offender's] status, attitude, and ability to obey rules as well as his safety plan and his attitude toward following it; (4)
clinical judgments; and (5) assessment tools." Once the court determines that the juvenile adjudicated delinquent must register, "relevant information from the sex offender registry [may be provided] to the . . . general public through the sex offender registry's web page."

Like Iowa, Virginia took a discretionary approach at the time the Adam Walsh Act was enacted. Yet, unlike the Iowa statute, the language of the Virginia statute indicated that there is a presumption that juveniles adjudicated delinquent of some sex offenses are not required to register at all. The Virginia Code stated in pertinent part that

[j]uveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent of any offense [for which registration is required] . . . , the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration.

Thus, under the Virginia Code, the judiciary has discretion in determining whether a juvenile adjudicated delinquent of a sex offense, who is fourteen years of age or older at the time of the offense, should be required to register and submit to community notification. Unlike Iowa, the Virginia legislature incorporated key factors into its law to guide the court in making this determination. Under the Virginia statute,

the court shall consider all of the following factors that are relevant to the case: (i) the degree to which the delinquent act was committed with the use of force, threat or intimidation, (ii)


113. IOWA CODE ANN. § 692A.13(1)(b) (West Supp. 2007). However, registry information about an offender who was eighteen or nineteen at the time of the offense and committed a sex act with a fourteen- or fifteen-year-old may not be disclosed on the website. See id.; see also id. § 709.4(2)(c)(4) (West 2003).


115. Id.

116. Id. Under the Virginia Code, registration is required for juveniles who have committed a number of offenses, including sexually violent offenses. Id. § 9.1-902(A), amended by VA. CODE ANN. § 9.1-902(A) (Supp. 2007) (adding coverage for murder and criminal homicide in conjunction with the amendment to the former section 9.1-902(C)). An individual is required to register if he has committed a sexual offense against a minor under the age of thirteen, or if he has engaged in a sexual act with a minor who is thirteen or older and is not within three years of age of the perpetrator. Id. § 9.1-902(A)(1); see id. § 18.2-63 (2004) (current version at VA. CODE ANN. § 18.2-63 (Supp. 2007)).

117. Id. § 9.1-902(C); see also id. § 9.1-913 (2006).

118. Id. § 9.1-902(C).
the age and maturity of the complaining witness, (iii) the age and maturity of the offender, (iv) the difference in the ages of the complaining witness and the offender, (v) the nature of the relationship between the complaining witness and the offender, (vi) the offender's prior criminal history, and (vii) any other aggravating or mitigating factors relevant to the case. \(^{119}\) In giving statutory guidance to the court, these factors help eliminate judicial subjectivity. \(^{20}\) Once it is judicially determined that registration is required for a juvenile adjudicated delinquent of a sexual offense, certain registry information shall be made “publicly available by means of the Internet.” \(^{120}\)

It is clear that the states have taken different approaches in addressing the issue of juvenile sex offender registration and community notification. Some states, such as New Jersey, have adopted an approach that is similar to the requirements of SORNA under the Adam Walsh Act. \(^{121}\) These states will only be required to make slight changes, if any, to their laws in order to comply with the new federal law. \(^{122}\) On the other hand, states such as Iowa and Virginia will be forced to make more dramatic changes to their laws to comply. \(^{123}\) Yet the question still remains whether the Adam Walsh Act and New Jersey’s approach to juvenile sex offender registration and community notification is preferred, or whether judicial discretion is necessary in deciding whether a juvenile adjudicated delinquent of aggravated sexual abuse for engaging in a sexual act with a perceived peer under the age of twelve should be required to register and submit to community notification for life.

### III. THE DEBATE: MANDATORY COMMUNITY NOTIFICATION OR JUDICIAL DISCRETION IN DETERMINING WHETHER COMMUNITY NOTIFICATION FOR JUVENILE OFFENDERS IS JUST

As a result of the diverse state sex offender statutes as they pertain to juveniles, there has been intense debate as to whether juveniles adjudicated delinquent of a sex crime should be required to register. \(^{124}\)

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119. *Id.*
120. See *id.*
121. See *id.* § 9.1-913.
122. See supra notes 92-95, 104-07 and accompanying text.
123. See supra notes 50-61 and accompanying text.
124. See supra notes 82-95, 108-21 and accompanying text.
125. See, e.g., Hiller, supra note 18, at 271-72 (noting that requiring juvenile sex offenders to register is not necessarily wrong, but disseminating the juvenile's information to the public is).
There has been an even more heated debate as to whether they should be forced to submit to community-notification.\footnote{See, e.g., FRANKLIN E. ZIMRING, AN AMERICAN TRAVESTY 155 (2004) ("While a case can be made that some juvenile court adjudications might be the basis for registration with police, the additional requirement of community notification should never be a consequence of a juvenile court finding."); see also Hiller, supra note 18, at 271-72.}

Specifically with regard to the Adam Walsh Act, this debate has already begun.\footnote{See H.R. REP. NO. 109-218, pt. 1, at 25, 248, 257 (2005).} A former Republican congressman from Wisconsin and co-sponsor of the Adam Walsh Act, Mark Green, was quoted in a \textit{New York Times} interview saying: "If we are going to have a sex-offender registry that's a useful tool for authorities and the public, it has to cover a broad enough spectrum of offenders. I err on the side of covering more offenders because these crimes are so destructive to victims, families and communities."\footnote{Maggie Jones, \textit{How Can You Distinguish a Budding Pedophile from a Kid with Real Boundary Problems?}, \textit{N.Y. TIMES}, July 22, 2007, § 6 (Magazine), at 38-39.} Green's statement corresponds with Congress's public safety justification for requiring that juvenile sex offenders register.\footnote{H.R. REP. NO. 109-218, pt. 1, at 25.}

House Report 218 noted that "[f]or victims, whether the offenders [sic] is an adult or a juvenile has no bearing on the impact of that sexual offense on the life of the victim."\footnote{Id.} The House Report asserts that the Adam Walsh Act "strikes the balance in favor of protecting victims, rather than protecting the identity of juvenile sex offenders."\footnote{Id.}

Conversely, both the American Bar Association (ABA) and the Coalition for Juvenile Justice vehemently oppose the application of SORNA to juvenile sex offenders.\footnote{Letter from Denise A. Cardman, Deputy Dir., Governmental Affairs Office, Am. Bar Ass'n, to David J. Karp, Senior Counsel, Office of Legal Policy, U.S. Dep't of Justice (Apr. 30, 2007) [hereinafter Cardman Letter], \textit{available at} http://www.abanet.org/poladv/letters/crimlaw/2007apr30_adamwalsh_l.pdf; Letter from Nancy Gannon Hornberger, Executive Dir., Coal. for Juvenile Justice, to Laura L. Rogers, Dir., SMART Office, U.S. Dep't of Justice (July 31, 2007) [hereinafter Hornberger Letter], \textit{available at} http://www.juvjustice.org/media/fckeditor/SORNA\%20Comments.pdf.} The ABA argues that the SORNA regulations, as applied to juveniles, contravene research that "recognize[s] that juveniles are generally less culpable than adults, and that their patterns of offending are different from those of adults."\footnote{Cardman Letter, supra note 132, at 2.} Further, both organizations argue that the SORNA requirements will
negatively impact juvenile delinquency adjudications and advancements in juvenile treatment.134

A. Critiques of Mandatory Juvenile Sex Offender Community Notification

New Jersey law, like the Adam Walsh Act, mandates that juveniles adjudicated delinquent of certain sex offenses register and submit to community notification for life.135 These requirements, especially the community notification requirement, have been criticized over the years.136 One of the most common criticisms is that mandatory juvenile sex offender community notification works against the rehabilitation component of the juvenile justice system.137 It has also been argued that mandatory juvenile sex offender community notification can have adverse consequences for the juvenile offender, his family, and society as a whole.138

1. The Rehabilitative Component of the Juvenile Justice System is at Odds with Juvenile Community Notification

The first United States juvenile court system was created in Illinois by statute in 1899. Since that date, every state, including the District of Columbia, has adopted a juvenile justice system.139 The philosophy behind the creation of our country’s juvenile justice system was that “society’s role was not to ascertain whether the child was ‘guilty’ or

134. Id.; Hornberger Letter, supra note 132, at 3 (“Subjecting juveniles to the mandates of SORNA interferes with and threatens child-focused treatment modalities and may significantly decrease the effectiveness of the treatment.”).
136. See, e.g., ZIMRING, supra note 126, at 146-59 (discussing the policies behind community notification laws and highlighting criticisms thereof); Longo & Calder, supra note 24, at 340 (“Registration laws and public notification laws, especially as applied to youth, are not going to prevent sexually abusive and/or aggressive behaviour from occurring.”); Timothy E. Wind, The Quandry of Megan’s Law: When the Child Sex Offender is a Child, 37 J. MARSHALL L. REV. 73, 116 (2003) (“Applying the requirements of Megan’s Laws to adolescent sex offenders may have a negative impact on the normal development of the youthful offender. This is contrary to the fundamental underpinnings of the juvenile justice system . . . .”); Hiller, supra note 18, at 282-93 (arguing that public disclosure of juvenile sex offender information causes several harms); Jones, supra note 128 (“The Adam Walsh Act and similar legislation may risk ensnaring low-risk teenagers who were never headed toward becoming adult sex offenders.”). See generally Suzanne Meiners-Levy, Challenging the Prosecution of Young Sex Offenders: How Developmental Psychology and the Lessons of Roper Should Inform Daily Practice, 79 TEMP. L. REV. 499, 508-13 (2006) (discussing the challenges of defending juveniles being prosecuted for sex offenses).
137. E.g., Wind, supra note 136, at 117-18.
138. See Longo & Calder, supra note 24, at 340-51 (discussing the potential negative consequences that can result from community notification requirements).
139. See In re Gault, 387 U.S. 1, 14 (1967).
'innocent,' but '[w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.' Thus "[t]he idea of crime and punishment was to be abandoned," and the focus shifted to rehabilitation. Over the years, rehabilitation has continued to be an important component of the juvenile court system. Although the Supreme Court has stated that "[t]he juvenile court is a court of law, charged like other agencies of criminal justice with protecting the community against threatening conduct," it has recognized that "[r]ehabilitating offenders through individualized handling is one way of providing protection, and appropriately the primary way in dealing with children." However, scholars have argued that applying mandatory community notification requirements to juveniles "thwarts the rehabilitation idea by isolating, degrading, and reminding the offenders of the situation." A plausible justification for a separate juvenile court system, as well as the imposition of different sentences on juveniles, is the notion that juveniles are inherently different from adults. The Supreme Court in Roper v. Simmons acknowledged three key developmental differences in justifying the conclusion that adults and juveniles do not always deserve the same sentence for committing identical acts. As the Court described them:

First, as any parent knows and as . . . scientific and sociological studies . . . tend to confirm, "[a] lack of maturity and an

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140. Id. at 15. The view was that the state should act under the doctrine of parens patriae, assuming "the role of parent, protecting juveniles from the social harm that has befallen them." Wind, supra note 136, at 82.
142. See SNYDER & SICKMUND, supra note 4, at 98 (noting that one of the primary interests of the juvenile justice system is the "development of skills to help offenders live law-abiding and productive lives").
143. McKeiver v. Pennsylvania, 403 U.S. 528, 546 n.6 (1971) (plurality opinion).
144. Id.
145. Wind, supra note 136, at 117; see also ZIMRING, supra note 126, at 150 (recognizing the conflict between the juvenile justice system’s view of juvenile offenders and society’s view of juvenile offenders); Hiller, supra note 18, at 291-92 (stating that public disclosure relieves juvenile sex offenders of taking responsibility for their conduct, instead shifting the responsibility to the community).
146. ZIMRING, supra note 126, at 105. Professor Zimring notes two reasons society needs a special court for youth: first, "the immaturity that is characteristic of youth is associated with lower levels of culpability for the same criminal acts," and second, a special court reflects "the societal investment in giving young people, even young offenders, a chance to grow into normal adulthood." Id.
147. 543 U.S. 551, 569-70 (2005) (plurality opinion); see also Meiners-Levy, supra note 136, at 506 (highlighting developmental research showing that sexual exploration, a normal stage of adolescent development, combined with an adolescent’s lack of maturity “may lead nonpredatory teens to act on sexual opportunities with younger children”).
underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. Although the Court noted these differences in support of its holding that the Constitution prohibits the issuance of a death sentence to a juvenile, the differences retain their importance in deciding the appropriate sentence for any juvenile offense.

Not only are juveniles developmentally different from adults, but juvenile sex offenders also differ from adult sex offenders. Juveniles, unlike adults, are more likely to experiment with their newly-found sexual desires. However, such experimentation is “not [necessarily] indicia of pedophilia, a diagnosis that is not recognized in younger teens by the Diagnostic and Statistical Manual of Mental Disorders, but [is] more often a combination of hormones and opportunity.”


149. *Id.* at 578. With regard to juvenile development, University of Oklahoma professor Mark Chaffin has stated, “[i]t’s not that juveniles can’t distinguish right from wrong; it’s that they don’t perceive risks and consequences the way adults do . . . .” *Jones*, *supra* note 128.

150. *E.g.*, Tom Leversee & Christy Pearson, *Eliminating the Pendulum Effect: A Balanced Approach to the Assessment, Treatment, and Management of Sexually Abusive Youth, 3* J. CENTER FOR FAMILIES CHILD. & CTS. 45, 49 (2001) (“[S]exually abusive youth differ from their adult counterparts in the areas of growth and development. Whereas the personality characteristics and behaviors of adults are generally stable over time, children and adolescents are still learning about themselves and the world and are in the process of growing and developing.”).

151. *Id.* at 51 (noting that unlike adult sex offenders, “sexually abusive youth are more amenable to treatment and . . . successful completion of specialized treatment can significantly reduce recidivism among young offenders”).

152. Meiners-Levy, *supra* note 136, at 506; see also Jones, *supra* note 128 (“Some juvenile sex offenders . . . are what therapists call ‘naïve experimenters’ – overly impulsive or immature adolescents who are unable to approach girls or boys their own age; instead, they engage in inappropriate sexual acts with younger children.”). But see Leversee & Pearson, *supra* note 150, at 48 (criticizing the common belief thirty years ago that sexual experimentation was the cause of adolescent sexual offenses and pointing to the dramatic rise in treatment programs for juvenile offenders since the mid-1980s).

153. Meiners-Levy, *supra* note 136, at 506 (footnote omitted); see also CTR. FOR SEX OFFENDER MGMT., *UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR: EMERGING RESEARCH, TREATMENT APPROACHES AND MANAGEMENT PRACTICES 3*
Perhaps the most important distinction between juvenile and adult sex offenders is the belief that "juvenile sex offenders do respond better to treatment concepts over adult offenders." Professor Franklin E. Zimring notes that the results of "a meta-analysis of studies of treatment that reported on outcomes for over 10,000 sex offenders of a variety of ages and types, including 1,025 juveniles who completed some form of treatment" revealed that "[t]he recidivism rates of treated juveniles were 56 percent of the recidivism rates of similarly treated adult offenders . . . ." 155

Although it has been acknowledged that "accurate recidivism rates are extremely difficult to calculate due to the element of secrecy in both victims and offenders," many studies indicate that juvenile sex offenders have a lower recidivism rate than adult sex offenders. 156 The majority of studies indicate that the "official sexual recidivism rates for juveniles (even when followed into early adulthood) appear to range from 2% to 14%. Most juvenile sex offenders do not go on to become adult sex offenders." 157 Scholars Robert E. Longo and Martin C. Calder note that

[a]dults who have developed a pattern of offending are likely to find opportunities to re-offend. However, most young people

154. Wind, supra note 136, at 105-06.
155. ZIMRING, supra note 126, at 62 (emphasis omitted).
156. Toni Cavanagh Johnson & Ronda Doonan, Children with Sexual Behaviour Problems: What Have We Learned in the Last Two Decades?, in CHILDREN AND YOUNG PEOPLE WHO SEXUALLY ABUSE, supra note 24, at 32, 44.
157. See ZIMRING, supra note 126, at 62; FED. ADVISORY COMM. ON JUVENILE JUSTICE, ANNUAL RECOMMENDATIONS REPORT TO THE PRESIDENT AND CONGRESS OF THE UNITED STATES 7-8 (2007), available at http://www.facjj.org/annualreports/ccFACJJ%20Report%205058.pdf ("Research also indicates that juvenile sex offenders are less likely to re-offend than adults, especially if they receive appropriate treatment.").
158. Johnson & Doonan, supra note 156, at 45; see also Leversee & Pearson, supra note 150, at 49 ("Recidivism rates for sexual offenses range from 3 to 16 percent, but 10 percent is believed to be the typical recidivism rate for sexually abusive youth.") (footnotes omitted); Jones, supra note 128 (noting that the juvenile sex offender recidivism rate of less than ten percent is mild compared to the adult sex offender recidivism rate of twenty-five to fifty percent). After reviewing data from three different locations and tracking sex offense cases in juvenile courts during sample periods of time, Professor Zimring noted that "[t]he existing data on the general run of juvenile sex offenders provide solid evidence that young offenders are much less likely than adult offenders to commit further sex offenses and that the known rates of sex re-offending for juveniles are also very low in absolute terms." ZIMRING, supra note 126, at 62.
have not been offending for long enough to develop a clear pattern of abusing and many are still very immature. With appropriate intervention, the risk of long-term offending is low for the majority of young people.159

Experienced practitioners in the field of juvenile sexual abuse intervention generally agree with the assertion that the majority of youth offenders are not likely to become adult sex offenders.160 In light of this, a one-size-fits-all approach to juvenile sex offender intervention can be problematic, because "it may lead to some young people with low-level sexually problematic behaviour being subjected to extensive and intrusive levels of intervention unnecessarily."161 Thus exposure to invasive intervention, such as community notification, can have a negative impact on the juvenile sex offender, his family, and society.162

2. The Significant and Negative Impact of Juvenile Sex Offender Community Notification Requirements

Not only are mandatory juvenile community notification requirements in opposition to the rehabilitation component of our juvenile justice system,163 but these requirements can adversely affect society, particularly in the area of public safety. Almost all researchers agree that treatment is crucial in decreasing the likelihood that a juvenile will re-offend.164 Yet one negative consequence associated with mandatory community notification is that parents, teachers, and social workers may choose not to report a juvenile’s sexual conduct out of fear that the juvenile will be forced to register, and as a result the juvenile may not get the treatment he needs.165 According to Longo and Calder, “[r]eports from New Jersey

159. Longo & Calder, supra note 24, at 342; see SUE RIGHTHAND & CARLANN WELCH, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP’T OF JUSTICE, JUVENILES WHO HAVE SEXUALLY OFFENDED: A REVIEW OF THE PROFESSIONAL LITERATURE 5 (2001), http://www.ncjrs.gov/pdffiles1/ojjdp/184739.pdf (stating that juvenile sex offender recidivism rates are low, which suggests that a large number of “juvenile sex offenders do not continue to commit sex offenses as adults”).


161. Id. at 141.

162. See supra note 138 and accompanying text.

163. See discussion supra Part III.A.1.

164. See Johnson & Doonan, supra note 156, at 45 (reporting the results of a study which compared both treated and untreated offenders, finding that “18% of the untreated boys had new charges, compared to 5% of those who had successfully completed treatment”).

165. Jones, supra note 128; see also Longo & Calder, supra note 24, at 346 (“In some cases, social workers and child protection workers are reluctant to report cases involving
and Colorado, among other states, indicate that there is a decrease in the reporting of juvenile sexual offences and incest offences by family members and victims who do not want to deal with the impact of public notification on their family.\textsuperscript{166}

In addition, prosecutors may hesitate to charge a juvenile with a sex offense that would require him to register and submit to community notification for life.\textsuperscript{167} For example, Professor Zimring observes that “[j]uvenile courts . . . have the capacity to shield delinquents from sex-offender registration [and thus, community notification] by conviction for non-sex offenses like assault,”\textsuperscript{168} which are unlikely to lead to a sentence requiring sex-offender treatment.\textsuperscript{169} If juveniles adjudicated delinquent of sexual offenses do not get treatment, they are more likely to re-offend, and therefore pose a greater threat to society.\textsuperscript{170}

Experts even argue that mandatory juvenile sex offender community notification can also undermine the juvenile’s treatment.\textsuperscript{171} Because the majority of juvenile sex offenders have behavioral issues, such as an inability to control their anger, low self-esteem, and poor social and communication skills,\textsuperscript{172} their communities need to foster support, juvenile sexual offenders to authorities out of concern that these young persons will be subjected to sex offender registration and community notification laws. In these cases many are quietly and privately referring these young persons to sex offender treatment specialists to get them treatment without the negative consequences of the law.” (citation omitted)).

\textsuperscript{166} Longo & Calder, supra note 24, at 349.
\textsuperscript{167} See Michels, supra note 153, at 3; see also Longo & Calder, supra note 24, at 349 (“Although reported, many sex crimes are not resulting in convictions, now, or the charges are reduced to non-sexual offences through plea-bargaining. In Michigan, many judges and prosecutors are having a difficult time obtaining convictions for juvenile sex offenders because many jury members do not want to live with the guilt of ostracising a 15-year-old for the majority of his life. Moreover, the actual prosecutors, judges, and referees are reluctant to convict these juveniles for the very same reason. They are placing a growing number of juveniles under advisement status.”).
\textsuperscript{168} ZIMRING, supra note 126, at 158.
\textsuperscript{169} See Leversee & Pearson, supra note 150, at 50-51.
\textsuperscript{170} Johnson & Doonan, supra note 156, at 45. It has also been reported that juveniles who receive offense-specific treatment are even less likely to re-offend than juveniles who receive non-offense-specific treatment. Id. at 44-45 (noting an eighty-three percent lowering of the recidivism rate after offense-specific treatment).
\textsuperscript{171} Longo & Calder, supra note 24, at 346.
\textsuperscript{172} Id.; see also Leversee & Pearson, supra note 150, at 51 (“[C]ommunity notification involving juvenile offenders [has been described] as ‘likely to stigmatize the adolescent, fostering peer rejection, isolation, increased anger, and consequences for the juvenile’s family.’ The peer rejection and isolation that could result from broad community notification might actually increase the risk of recidivism among sexually abusive youth whose impaired social and interpersonal skills were a contributing factor in turning to younger children for sexual gratification and social interaction.” (quoting ASS’N FOR THE TREATMENT OF SEXUAL ABUSERS, THE EFFECTIVE LEGAL MANAGEMENT OF
comfort, and growth in hopes of rehabilitating these individuals.\footnote{173} Community notification requirements, however, are more likely to leave juveniles feeling unwanted, ostracized, and alienated.\footnote{174} In the most extreme cases, these feelings can drive a juvenile to re-offend, thereby completely thwarting the protective purpose of sex offender community notification.\footnote{175}

Community notification requirements have resulted in both juvenile offenders and their families being subjected to violence\footnote{176} and ostracism from the community in which they live.\footnote{177} For example, Longo and Calder relate the story of the mother of a sixteen-year-old male who was adjudicated delinquent of a sexual offense who “became an outcast in her own community and received threats of harm to both [her son] and her if she did not move. Eventually she caved in under the pressure out of fear for her son and her own personal safety and moved to a new town.”\footnote{178}

Not only are juvenile sex offenders likely to feel unwanted, ostracized, and alienated as a result of community notification, but such a requirement can “result in the unnecessary stigmatizing of many juvenile offenders for the rest of their lives. Registration for life will make it difficult for these juveniles to obtain gainful employment, secure stable housing on reaching adulthood, and otherwise have access to

\footnote{173. See Longo & Calder, supra note 24, at 346-47 (“Sex offenders need to learn appropriate skills that assist them in functioning appropriately and safely in the community. In the absence of these skills they do not function well and are at greater risk of re-offending.”).}

\footnote{174. See id.; see also Leversee & Pearson, supra note 150, at 51; Jones, supra note 128 (Researcher Elizabeth Letourneau noted that “‘[i]f kids can’t get through school because of community notification, or they can’t get jobs, they are going to be marginalized.’ And marginalized people . . . commit more crimes.”).}

\footnote{175. Hiller, supra note 18, at 292.}

\footnote{176. Longo & Calder, supra note 24, at 342; see also Jones, supra note 128 (“Of all the worries the public registries create, though, the most frightening for many families is vigilantism. In 2005, a man killed two adult sex offenders he tracked through a Washington State community-notification website. And last year, a 20-year-old Canadian man with a list of 29 names and addresses from the Maine Sex Offender Registry went to the homes of two convicted offenders, shooting and killing them. Both men were strangers to the killer. One of the offenders had raped a child. The other was convicted for statutory rape; he was 19 when he had sex with his girlfriend, who was two weeks shy of her 16th birthday.”).}

\footnote{177. See Leversee & Pearson, supra note 150, at 50; Longo & Calder, supra note 24, at 342; see also Hiller, supra note 18, at 287 (“The underlying premise of parens patriae is protection, but to allow the dissemination of a juvenile’s identity would put that juvenile’s health in jeopardy by subjecting him to community violence and social outrage.”).}

\footnote{178. Longo & Calder, supra note 24, at 342.}
opportunities to live productive lives.\textsuperscript{179} Although there are a number of negative critiques of mandatory community notification requirements, it is necessary to address the negative critiques of the discretionary approach before determining what approach best meets the needs of both society and the juvenile offender.

\textbf{B. Critiques of Judicial Discretion in Deciphering Whether a Juvenile Should be Required to Submit to Community Notification}

Some states, such as Iowa and Virginia, have rejected mandating juvenile sex offender registration and community notification, and instead give the judiciary discretion to decide whether registration and community notification is necessary.\textsuperscript{180} It has been argued, however, that this approach leads to too much subjectivity in judicial decision-making.\textsuperscript{181} The Iowa Supreme Court acknowledged in \textit{In re S.M.M.} that the legislature had not given the court guidelines to determine whether a juvenile sex offender should be required to register and submit to community notification.\textsuperscript{182} Yet Iowa case law has begun to develop in this area, and factors have been established to give the Iowa courts guidance in these situations.\textsuperscript{183} Thus an attempt was made in this jurisdiction to eliminate excessive judicial subjectivity while still recognizing that the interests of juveniles and society would not be best served by requiring all juvenile sex offenders to register and submit to community notification.

Another major criticism of the judicial discretion approach is that by not always requiring juveniles adjudicated delinquent of sexual offenses to submit to community notification, there is "an increased danger of sexually abusive crimes that could have been prevented through notification."\textsuperscript{184} This criticism is based on the notion that the community notification requirement will assist the public in tracking sex offenders and, ultimately, "mitigat[ing] the risks of additional crimes against children."\textsuperscript{185} In response to this contention, it is unrealistic to think that

\textsuperscript{179} FED. ADVISORY COMM. ON JUVENILE JUSTICE, supra note 157, at 24; Wind, supra note 136, at 118 (pointing out that registration requirements may harm juveniles in "finding suitable living arrangements, securing meaningful employment, and making lasting friends," among other troubles (footnotes omitted)).

\textsuperscript{180} See supra notes 108-21 and accompanying text.

\textsuperscript{181} See Richardson, supra note 33, at 262.

\textsuperscript{182} 558 N.W.2d 405, 407 (Iowa 1997); see also Richardson, supra note 33, at 262-63 (discussing the court's acknowledgment in \textit{S.M.M.} that guidelines are needed in determining whether a juvenile sex offender should be required to register and submit to community notification).

\textsuperscript{183} See supra notes 111-12 and accompanying text.

\textsuperscript{184} Richardson, supra note 33, at 250.

everyone with whom the juvenile sex offender comes into contact, will know of his status as a sex offender and take steps to protect themselves.\textsuperscript{186} Further, the possible ostracism and alienation experienced by a juvenile sex offender as a result of community notification could make the juvenile more likely to re-offend,\textsuperscript{187} thus enlarging the danger to society. Furthermore, "[a]s sex offender registration and public notification laws begin to identify an increasing number of offenders," Longo and Calder warn, "these laws will create increasing levels of panic. One can only feel so safe knowing that there are sex offender's moving into and living in one's neighbourhood and community."\textsuperscript{188}

According to House Report 218, the Adam Walsh Act's registration and community notification requirement for juveniles adjudicated delinquent of specific sex offenses recognizes the need for juveniles to take responsibility for their actions.\textsuperscript{189} The House Report staunchly asserts that "no longer should the rights of juvenile offenders outweigh the rights of the community and victims to be free from additional sexual crimes."\textsuperscript{190} This statement presupposes that community notification of juvenile offenders will actually alleviate society of suffering additional sex crimes.\textsuperscript{191} Yet, as stated earlier, mandatory juvenile community notification requirements may have the unintended consequence of perpetuating the problem they are intended to prevent.\textsuperscript{192} Furthermore, juveniles are neither obviating a sentence nor responsibility for their actions when judicial discretion is permitted in deciding whether juveniles adjudicated delinquent of certain sex crimes must submit to community notification.\textsuperscript{193} In fact, judicial discretion will likely require

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\item[\textsuperscript{186}] Longo & Calder, supra note 24, at 343.
\item[\textsuperscript{187}] Hiller, supra note 18, at 292 ("Disclosure of a juvenile sex 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."); see also Leversee & Pearson, supra note 150, at 51; Jones, supra note 128.
\item[\textsuperscript{188}] Longo & Calder, supra note 24, at 344.
\item[\textsuperscript{189}] See H.R. REP. No. 109-218, pt. 1, at 25 ("All too often, juvenile sex offenders have exploited current limitations that permit them to escape notification requirements to commit sexual offenses.").
\item[\textsuperscript{190}] Id.
\item[\textsuperscript{191}] See id.; see also Richardson, supra note 33, at 250 ("Choosing standards [of punishment] that are too lenient may lead to an increased danger of sexually abusive crimes that could have been prevented through notification.").
\item[\textsuperscript{192}] E.g., Hiller, supra note 18, at 292; see Leversee & Pearson, supra note 150, at 51.
\end{itemize}
some, if not most, juveniles to submit to community notification. Even if the court determines that the interests of society and the juvenile are best served by not requiring the juvenile to submit to community notification, the juvenile will likely still undergo treatment and serve a sentence in a juvenile delinquency facility.  

IV. THE BETTER APPROACH: JUDICIAL DISCRETION, NOT RIGID MANDATES

As stated above, the Adam Walsh Act requires that juveniles adjudicated delinquent of aggravated sexual abuse, who were at least fourteen years old at the time of the offense, register and submit to community notification. This community notification requirement is overly broad because it requires juveniles who have committed a consensual sexual act with a perceived peer who is under the age of twelve to submit to community notification to the same extent as adults. Although the central tenet underlying mandatory community notification is societal protection, mandatory juvenile community notification may adversely affect the juvenile offender, his family, and even society as a whole. It is thus necessary to abandon the Adam Walsh Act’s rigid mandates in favor of a more discretionary approach.

A. The Adam Walsh Act is Overly Broad

The Adam Walsh Act is too broad in its application to juveniles adjudicated delinquent of sexual offenses. The motivation behind sex offender community notification laws is to inform communities about convicted and adjudicated delinquent sex offenders in their neighborhoods. The hope is that by giving this information to the

194. See, e.g., J.L., 2005 WL 3115810, at *1-2 (stating that prior to requiring J.L. to register, the court sentenced him to “Four Oaks STOP program, a specialized adolescent sexual abuse treatment program”).
195. Sex Offender Registration and Notification Act § 111(1), (8), 42 U.S.C.A. § 16911(1), (8) (West Supp. 2007); id. § 113(a), 42 U.S.C.A. § 16913(a).
196. Id. § 118(a), 42 U.S.C.A. § 16918(a).
197. See supra note 15.
198. See Sex Offender Registration and Notification Act § 111(8), 42 U.S.C.A. § 16911(8).
199. See id. § 101, 42 U.S.C.A. § 16901 (noting that the purpose of SORNA is to “protect the public from sex offenders and offenders against children”); see also H.R. REP. NO. 109-218, pt. 1, at 25 (2005) (indicating the need to protect the community and potential victims from juvenile sex offenders).
200. See discussion supra Part III.A.
public, the public will be better protected from dangerous sex offenders.\textsuperscript{202}

In order to adequately protect the public, there is a legitimate argument that community notification might be a necessary requirement for some juvenile sex offenders, such as those who have used threats of force or violence with their victims, those who have a high risk assessment, or those who are not responding to treatment.\textsuperscript{203} Yet it clearly does not follow that community notification is the appropriate solution for all juveniles adjudicated delinquent of sexual offenses.\textsuperscript{204}

Some juveniles engage in consensual sexual acts with perceived peers who are under the age of twelve as a result of newly-found sexual impulses.\textsuperscript{205} These juveniles may very well have no indication, possibly because of poor parenting skills,\textsuperscript{206} that what they are doing is wrong.\textsuperscript{207} Requiring this class of juveniles to submit to community notification is likely to have an adverse impact, calling into question the public safety goals underpinning community notification requirements.\textsuperscript{208} This is because these juveniles may be unlikely to re-offend and may respond well to treatment,\textsuperscript{209} but as a result of community notification may suffer acts of vigilantism, ostracism, and underreporting of sexual incidences by parents, social workers and teachers.\textsuperscript{210} If a juvenile's sexual act is not reported, he is less likely to receive treatment; however, treatment is critical to reducing the likelihood of re-offense.\textsuperscript{211} It may even be the case that feelings of alienation and ostracism that result from mandated community notification may cause the juvenile sex offender who could have benefited from treatment to re-offend.\textsuperscript{212} Thus by requiring
community notification, society may be subjecting these juveniles to a punishment that is far greater than intended. Although there is no doubt that these juveniles need treatment and support, it is not necessarily the case that mandatory community notification will benefit the public and the juvenile offender. Rather, as a result of the possible negative consequences that a juvenile sex offender may suffer from mandated community notification, the public safety purpose underlying the Adam Walsh Act’s mandatory registration and community notification requirements is likely to be thwarted.

Furthermore, requiring juveniles adjudicated delinquent of certain sexual offenses to submit to community notification works against the rehabilitation component of the American juvenile justice system. This is the case especially when a juvenile who engages in a consensual sexual act with a perceived peer, uses no force or violence with his victim, is unlikely to re-offend, and is responding or likely to respond to treatment, is yet required to submit to community notification. The American juvenile justice system is premised on the philosophy that juveniles are different from adults and that some juveniles are more likely to respond to treatment and can be rehabilitated. Thus, it is the states’ duty to act in the best interest of the child, providing those juveniles with a chance to grow into normal, healthy adults. The states may be discouraged from acting in the juvenile’s best interest, however, when they are penalized for failing to implement and enforce the Adam Walsh Act’s general mandate. Because SORNA’s mandated community notification requirement for juveniles adjudicated delinquent of certain sex offenses conflicts with the rehabilitative component of the juvenile justice system, Congress must re-address the issue.

213. See Garfinkle, supra note 5, at 198 (“[C]ommunity-notification requirements for children’s and adolescents’ sex crimes can significantly hinder these young people’s potential to grow up and out of their criminal behavior.”); see also Longo & Calder, supra note 24, at 349 (“Magistrates have expressed in a range of individual cases that they thought the circumstances of the offence did not warrant registration of the young person, which would automatically be required as a result of the sentence they passed.”).

214. See Wind, supra note 136, at 117; Hiller, supra note 18, at 291-93; see also discussion supra Part III.A.1.

215. See supra notes 146-49 and accompanying text.

216. See Wind, supra note 136, at 105-06 (“It is believed that juvenile sex offenders do respond better to treatment concepts over adult offenders . . . .”); see also supra notes 154-60 and accompanying text.

217. See Hiller, supra note 18, at 283-86 (describing the doctrine of parens patriae).

218. See supra note 79 and accompanying text.
B. Judicial Discretion in Deciding Whether Community Notification is Necessary

The Adam Walsh Act must grant the states' judiciaries discretion in deciding whether a juvenile adjudicated delinquent of engaging in a consensual sexual act with a perceived peer under age twelve should be required to submit to community notification. Some states have enacted statutes that allow for judicial discretion in deciding whether a juvenile adjudicated delinquent should be required to register and submit to community notification. As a result of the enactment of the Adam Walsh Act these states will be required to amend their statutes. Yet it may be necessary for Congress to consider an amendment to the Adam Walsh Act in light of these discretionary approaches.

Judicial discretion allows state and federal courts to account for the juvenile sex offender's sense of remorse, risk assessment, likelihood of re-offense, and response or likely response to treatment in determining whether community notification is necessary. This approach protects juveniles who have acted impulsively on their sexual desires and curiosities from being stigmatized as sex offenders for life. Further, this approach allows the courts to shield juveniles who are likely to be adversely affected by community notification, as well as protect society from the negative consequences of community notification. Appropriately, this approach does not guarantee that all juveniles will be exempted from community notification. Rather, it permits the judiciary to exercise discretion in determining whether a juvenile's offense history and identifying information should be subject to public disclosure through the Internet.

To combat fears that judicial discretion allows for too much judicial subjectivity, which could result in inconsistent sentences for juveniles,
judges should be given statutorily mandated factors to guide their decision-making.\textsuperscript{227} For example, by allowing for judicial discretion, the courts can weigh factors such as (1) the nature of the sexual offense;\textsuperscript{228} (2) the offender’s age and maturity;\textsuperscript{229} (3) the complainant’s age and maturity;\textsuperscript{230} (4) the juvenile offender’s relationship to the complainant;\textsuperscript{231} (5) the juvenile offender’s level of remorse;\textsuperscript{232} (6) the juvenile offender’s likely response to treatment, based on clinical assessments;\textsuperscript{233} (7) whether the juvenile offender is a danger to the community, based on his risk assessment;\textsuperscript{234} and (8) the juvenile offender’s prior criminal history.\textsuperscript{235} Consideration of these factors allows the judiciary to better account for the individual circumstances of each juvenile offender and weigh the potential adverse impacts to the individual, his family, and society of requiring the juvenile to submit to community notification for life. Therefore, the discretionary approach is more appropriate than the mandatory approach because it is likely to comport with the juvenile justice system’s goal of rehabilitation, while still taking into account the needs of society.

V. CONCLUSION

The Adam Walsh Act obligates states to enact legislation that will require juveniles adjudicated delinquent of aggravated sexual abuse, who are fourteen or older at the time of the offense, to submit to registration and community notification.\textsuperscript{236} There are two problems with mandatory

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\item \textsuperscript{227} See, e.g., VA. CODE ANN. § 9.1-902(C) (2006) (current version at VA. CODE ANN. § 9.1-902(G) (Supp. 2007)).
\item \textsuperscript{228} See \textit{In re B.A.}, 737 N.W.2d 665, 668 (Iowa Ct. App. 2007) (including “the nature of the offense[]” as a factor in determining whether a juvenile adjudicated delinquent of a sexual offense should be required to register and be subject to community notification); \textit{In re J.L.}, No. 04-1947, 2005 WL 3115810, at *5 (Iowa Ct. App. Nov. 23, 2005) (unpublished table decision) (same).
\item \textsuperscript{229} VA. CODE ANN. § 9.1-902(C)(iii).
\item \textsuperscript{230} Id. § 9.1-902(C)(ii).
\item \textsuperscript{231} Id. § 9.1-902(C)(v).
\item \textsuperscript{232} See \textit{J.L.}, 2005 WL 3115810, at *4-5 (noting an offender’s admission and recognition of his offense as factors in determining whether registration and community notification are required).
\item \textsuperscript{233} See \textit{B.A.}, 737 N.W.2d at 668 (including “clinical judgment” as a factor in determining whether a juvenile adjudicated delinquent of a sexual offense should be required to register and be subject to community notification); \textit{J.L.}, 2005 WL 3115810, at *5 (same).
\item \textsuperscript{234} See \textit{B.A.}, 737 N.W.2d at 668 (including “assessment tools” as a factor in determining whether a juvenile adjudicated delinquent of a sexual offense should be required to register and be subject to community notification); \textit{J.L.}, 2005 WL 3115810, at *5 (same).
\item \textsuperscript{235} VA. CODE ANN. § 9.1-902(C)(vi).
\item \textsuperscript{236} See discussion \textit{supra} Part I.B.2.
\end{itemize}
juvenile community notification requirements, especially as applied to a juvenile adjudicated delinquent for engaging in a consensual sexual act with a perceived peer who is under age twelve. First, it runs counter to the rehabilitation aim of the juvenile justice system. Second, mandatory community notification laws can result in unintended and adverse consequences for both the individual juvenile and society. The better approach is to amend the Adam Walsh Act to allow for judicial discretion in deciding whether a juvenile adjudicated delinquent of aggravated sexual abuse in this circumstance should be subjected to community notification requirements. To counter concerns that judicial discretion would permit too much subjectivity, Congress should lay out clear statutorily mandated guidelines, such as the eight suggested above, to assist judges in making this determination while accounting for what is in the best interests of both the individual juvenile and society.

237. See supra note 15.
238. See discussion supra Part III.A.1.
239. See discussion supra Part III.A.2.
240. See discussion supra Part IV.B.
241. See discussion supra Part IV.B.