Mandatory Juvenile Sex Offender Registration and Community Notification: The Only Viable Option to Protect All the Nation's Children

Pamela S. Richardson
MANDATORY JUVENILE SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION: THE ONLY VIABLE OPTION TO PROTECT ALL THE NATION'S CHILDREN

Pamela S. Richardson

“If I [had] known he was a sexual offender when he was a juvenile, my kids would not have had anything to do with him.” Rhonda Blevins made this statement after a convicted juvenile sex offender murdered her seven-year-old daughter, Kristi. On August 19, 2000, Ms. Blevins discovered that Kristi and Kristi’s twelve-year-old friend were missing. Ms. Blevins had been watching the children play outside her Oilton, Oklahoma home. After stepping inside to use the bathroom for a few minutes, Ms. Blevins returned to discover the children were gone. Later that evening, a citywide search found the girls in an abandoned home. The twelve-year-old had been raped while Kristi had been strangled to death. Police found nineteen-year-old Robert Rotramel with them.

Robert Rotramel, who lived in Oilton, saw the girls playing outside and “asked them if they wanted to see some fireworks.” After igniting the fireworks, Rotramel forced the girls to accompany him to an

---

2. Id.
3. Id.
4. See id.
7. Id.; see also Rhett Morgan, Charges Filed Against Oilton Slaying Suspect, TULSA WORLD, Aug. 24, 2000, at A1. After an attempt by police to administer CPR, Kristi was taken to a local hospital by medical personnel where she was pronounced dead. Id. The cause of death was asphyxiation by strangulation. Id. The other girl was taken to a nearby hospital where she was treated and released. Id.
8. Morgan, Charges Filed, supra note 7.
abandoned house about a block away.\textsuperscript{10} There, he separated the girls, placing Kristi in a “sleeper hold” until she lost consciousness and forcing the twelve-year-old to perform oral sex and engage in sexual intercourse.\textsuperscript{11}

No one had any way of knowing that Robert Rotramel had an extensive juvenile sex offense record,\textsuperscript{12} which included a finding of delinquency on a charge of forcible sodomy against a four-year-old boy when he was just thirteen years old.\textsuperscript{13} Rotramel had been placed under the control of the Department of Human Services and forced to reside at the Therapeutic Interpretations Clinic in Tulsa.\textsuperscript{14} Rotramel had also participated in a court-ordered treatment program for juvenile sex offenders.\textsuperscript{15}

\textsuperscript{10} Morgan, Rotramel Backs Out, supra note 6; see also Morgan, Charges Filed, supra note 7.

\textsuperscript{11} Morgan, Trial Ordered, supra note 9. In fulfillment of his plea agreement, Rotramel pleaded guilty to the murder of Kristi Blevins and to first-degree rape and forcible sodomy in relation to the twelve-year-old. Rhett Morgan, Rotramel Gets Life Without Parole, TULSA WORLD, Oct. 26, 2001, at 1. In exchange for this confession, the state agreed not to seek the death penalty, and Rotramel was sentenced to life without parole for Kristi’s murder. See id. He later received an additional life sentence for the other charges. Rhett Morgan, Life Term Doubles for Killer, TULSA WORLD, Dec. 1, 2000, at A1.

\textsuperscript{12} John Greiner, Bill Targets Sex Offender Under Age 18, DAILY OKLAHOMAN, May 23, 2001, at 6A. Rotramel’s disturbing past was publicly revealed when World Publishing Company filed suit to have the records released. World Publishing Co. v. White, 32 P.3d 835, 848 (Okla. 2001). The Supreme Court of Oklahoma ordered the records be released after it determined that the records were “open records” under a state statute. Id. at 837. According to the court, “Subsection 7307-1.2(C)(2) provides that once an ‘individual’ is ‘charged’ pursuant to 10 O.S. Supp. 1997 § 7306-1.1, the juvenile court and law enforcement records of the ‘individual’ are no longer confidential.” Id. at 842 (footnote omitted) (discussing OKLA. STAT. ANN. tit. 10, § 7307-1.2(e)(2) (West Supp. 2002) and OKLA. STAT. ANN. tit. 10, § 7306-1.1 (West. 1998)). Rotramel argued that, because this section appears in the Juvenile Code, the statute should not be applicable to him. World Publ’g Co., 32 P.3d at 840 n.8. The court disagreed, finding that “[t]he mandatory language coupled with other provisions which clearly apply to adults rather than to children or juveniles defeats the assertion that inclusion of a section within the Juvenile Code requires that it ipso facto must be inapplicable to an adult.” Id.

\textsuperscript{13} Greiner, supra note 12; Rhett Morgan, Records Allege Earlier Assaults, TULSA WORLD, June 20, 2001 at A1. The four-year-old victim told a local sheriff’s deputy that, while his mother was in the hospital having a baby, he had stayed with Robert Rotramel, who “had been naughty to him.” Id. The young boy reportedly described two occasions of sodomy to the deputy. Id. Another forcible sodomy count had been filed against Rotramel, but it was dismissed with prejudice after the state failed to meet its burden of proof. Id.

\textsuperscript{14} See Morgan, Records Allege Earlier Assaults, supra note 13; see also Registering Juveniles: Are Young Sex Offenders Same as Adults? DAILY OKLAHOMAN, Oct. 30, 2000.

\textsuperscript{15} Registering Juveniles, supra note 14.
Two years later, while still in the program, police questioned Rotramel concerning another alleged incident of sexual assault; this time, the assault involved one of his female relatives. Rotramel admitted to the Oilton Police Chief that he had sex with the twelve-year-old girl on multiple occasions. Despite his confession, Rotramel was released from the Clinic after he completed the court-ordered treatment.

At the time Kristi Blevins was killed, Oklahoma's community notification statutes did not require public notification of juvenile sex offenders. Partly in response to Kristi's murder, Oklahoma passed the Juvenile Sex Offender Registration Act on June 1, 2001. This Act requires juvenile sex offenders between the ages of fourteen and eighteen to register with Oklahoma's Office of Juvenile Affairs if found delinquent of certain sexual offenses in juvenile court. The Act confers discretion on the judiciary to order that information about juvenile offenders be made available upon request to local law enforcement or to the public.

Twenty-four states have enacted similar statutes, each differing in the severity of the notification burden imposed on juveniles. Tragic stories
similar to that of Kristi Blevins have resulted in an increased legislative awareness of the dangers posed to the community by juvenile sex offenders. These stories have also sparked the current trend among states to broaden the scope of adult community notification and registration statutes, collectively known as Megan’s Law, to include juveniles.

Some people remain uneasy about stigmatizing delinquent juveniles in the same manner as adults. Opponents argue that treating juveniles and

perpetrator is eighteen years of age or younger’’); KY. REV. STAT ANN. § 17.500(2)(b) (Michie 1996) (excludes criminal offenses against minors if the perpetrator was under eighteen at the time the offense occurred); VT. STAT. ANN. TIT. 13, § 5401 (10)(b) (2002) (defining a sex offender as ‘‘[a] person who is convicted of [certain offenses] against a victim who is a minor, except that . . . conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18’’).


27. See Stacey Hiller, The Problem with Juvenile Sex Offender Registration: The Detrimental Effects of Public Disclosure, 7 B.U. PUB. INT. L.J. 271 (1998); see also Kristen
adults equally contradicts the rationale that led to the creation of a separate and distinct justice system for juveniles. The creation of the separate system for juveniles was originally based on the belief that “[t]he state’s role in juvenile proceedings is not that of a prosecutor, but rather . . . to protect the welfare of the child.” Today, this goal of the juvenile justice system has been joined by another: protecting society as a whole.

The mounting rate of serious crimes committed by juveniles demonstrates that the juvenile justice system created by the early reformers is failing to accomplish these goals. The breakdown in the
juvenile justice system is particularly apparent when focusing on sex offenses committed by juveniles. According to the Center for Sex Offender Management, "[c]urrently, it is estimated that juveniles account for up to one-fifth of all rapes and almost one-half of all cases of child molestation committed each year." Rising juvenile crime statistics have left state legislators with the difficult task of balancing the goal of preventing juvenile offenders from maturing into life-long criminals with the goal of protecting society from juveniles who commit serious adult crimes.

This Note first discusses the evolution of the juvenile justice system, focusing on how the recent "hardened" approach correlates with the increasing number of states requiring juvenile sex offenders to follow registration requirements similar or identical to those of adult sex offenders. Next, this Note explains Megan's Law, the history behind it, and how, when applied correctly, it can be instrumental in protecting children from becoming victims of repeat juvenile sex offenders. This

(citing statistics indicating that there has been a sharp rise in crimes committed by juveniles). In 1971, Justice Blackmun wrote:

We must recognize, as the Court has recognized before, that the fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized. The devastating commentary upon the system's failures as a whole, contained in the President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime, reveals the depth of disappointment in what has been accomplished.


32. See CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING THE JUVENILE SEXUAL OFFENDING BEHAVIOR 1 (Dec. 1999), at http://www.csom.org/pubs/juvbrf10.pdf (last visited Dec. 22, 2002); see also Mark R. Weinrott et al., Reducing Deviant Arousal in Juvenile Sex Offenders Using Vicarious Sensitization, 12 J. INTERPERSONAL VIOLENCE 704, 705 (1997) (citing a study indicating that "[c]onservatively, at least a half-million juveniles commit a hands-on sex crime every year").

33. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING THE JUVENILE SEXUAL OFFENDING BEHAVIOR 1 (Dec. 1999), at http://www.csom.org/pubs/juvbrf10.pdf (last visited Dec. 22, 2002); see also SUEx RIGHTHAND & CARLANN WELCH, U.S. DEP'T OF JUSTICE, JUVENILES WHO HAVE SEXUALLY OFFENDED: A REVIEW OF THE PROFESSIONAL LITERATURE 1 (Mar. 2001), at http://www.nejrs.org/padfiles1/offdp/184739.pdf (citing Federal Bureau of Investigations data that indicated "in 1995, 15.8 percent of arrests for forcible rape and 17 percent of arrests for all other sex offenses involved persons under 18 years old"); Susan Warmbrunn, CHILDREN HURTING CHILDREN; SOME SEX OFFENDERS NOT MUCH OLDER THAN THEIR VICTIMS, GAZETTE, June 11, 2000, at A1 (citing a Department of Justice study that found forty-three percent of assault victims who were six years old or younger when they were sexually assaulted were victimized by someone under seventeen).

Note then profiles common characteristics that are typically found in a juvenile sex offender. This Note analyzes the statutes of several states that have already incorporated juvenile sex offenders into the notification scheme required by Megan's Law. This analysis is accomplished by comparing and contrasting how states determine which juvenile sex offenders are required to register. Finally, this Note explains how the system implemented by the state of New Jersey best serves to protect both juvenile sex offenders and potential victims.

I. THE EVOLUTION OF THE JUVENILE JUSTICE SYSTEM

A. The Reformers Create a New Justice System Exclusively for Juveniles

The juvenile court movement began in the United States in the late 1800s. Since its creation in Illinois in 1899, the system has grown and is now found in every state, the District of Columbia, and Puerto Rico. The early reformers wished to distinguish between the procedures and penalties applied to adults and those applied to children. Convinced that a state's responsibility to its children could not be limited to the realm of penal justice, the reformers disapproved of the imposition of long prison sentences during which juvenile offenders would mix with adult criminals.

The juvenile justice system's primary objective is rehabilitative rather than retributive in nature. The system was designed to prevent children from committing additional crimes by addressing and solving the underlying problems. Like the juvenile system, the adult system aims to promote public safety and rehabilitate offenders; unlike the juvenile system, however, the adult system seeks to punish offenders. The reformers "believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent,' but 'what 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."" The juvenile court movement leaders distinguished juvenile courts from criminal courts in other important respects as well. They developed a specialized vocabulary through which petitions of delinquency replaced criminal complaints, hearings replaced trials, adjudications of delinquency replaced judgments of guilt, and dispositions replaced sentences. The public was excluded from juvenile hearings to protect children from the public stigma of a criminal prosecution. Finally, judges were...
philosophy underlying the approach to juvenile offenders is that children should be treated with the care and supervision ideally found in a stable and loving family. Even reprehensible acts committed by juveniles are not deemed the result of a mature decision-making process; rather, they are seen as caused by environmental pressures or other forces beyond the control of the child.

B. A Rise of Violent Offenses Committed by Juveniles and the Slow Erosion of the Distinction Between the Adult Justice System and the Juvenile Justice System

It has been recognized since the earliest days of the juvenile justice system that the commission of a very serious crime would render a juvenile ineligible for the juvenile courts' lenient and treatment-oriented dispositions. The Chicago juvenile court began a trend when, four years after its founding in 1903, it transferred fourteen children to the adult criminal court; the trend has since been followed by every state, the District of Columbia, and the federal government. Although, since its inception, the juvenile justice system has allowed adult penalties to be applied to juveniles, these consequences have been imposed quite infrequently; the primary judicial path for adolescent offenders was through the juvenile and family courts.

The rise in juvenile-committed crime has motivated many to question the validity and effectiveness of the juvenile justice system. What is

granted broad discretion to adjudicate delinquency and set dispositions. See id. The principle underlying the juvenile justice system was to combine flexible decision-making with individualized intervention to treat and rehabilitate offenders rather than punish them. See id. Juvenile courts, therefore, were expected to be informal and offender-oriented. See id. This expectation was based upon the idea that the child is "essentially good" and should "be made 'to feel that he is the object of [the state's] care and solicitude,' not that he was under arrest or on trial." In re Gault, 387 U.S. at 15. Children were to be treated or rehabilitated; accordingly, procedures from the clinical arena were more appropriate than punitive measures. Id. at 15-16.

42. See In re Gault, 387 U.S. at 15-17.
43. Smith & Dabiri, supra note 31, at 355 (quoting McKeiver v. Pa., 403 U.S. 528, 551-52 (1971) (White, J. concurring)).
45. Id.
46. Id.
47. See McKeiver, 403 U.S. at 534 (stating that the "Court... has also noted the disappointments of the system's performance and experience and the resulting widespread disaffection"). See generally Janet E. Ainsworth, Re-Imagining Childhood and Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court, 69 N.C. L. REV. 1083 (1991) (arguing that the system is based on an outdated understanding of
most troubling about the increase in juvenile crime is the increase in the number of serious violent crimes committed annually. In response to this increase, recent legislation “designed to enhance public safety and raise the level of accountability of juveniles in the criminal justice system” has been passed. These new laws have lowered the age at which a juvenile may be tried as an adult, permitted public access to juvenile court records, and even allowed public juvenile hearings without age or crime restrictions. One reform adopted by many states requires juvenile sex offenders to comply with Megan's Law by registering with their state sex offender registry. Registering may lead to the release of offenders’ identification information to members of the public who are residing in their communities.

II. WHO ARE JUVENILE SEX OFFENDERS?

A. Characteristics Common to Juvenile Sex Offenders

The rising number of incidents of sexual aggression involving juveniles, over the past ten years, has become a growing concern in the United States. Prior to the early 1980s, the majority of Americans viewed male sexual offenses with a “boys-will-be-boys” attitude. Such behavior was perceived as innocent experimentation or a result of the “normal aggressiveness of sexually maturing adolescents.” Such trivialization of juvenile sex offenses gradually disappeared as medical professionals
became aware that many adult sexual offenders began offending in their youth and as emerging data demonstrated that the number of juvenile offenders was rising and that a substantial percentage of all sexual offenses was attributable to adolescents.\textsuperscript{56}

Recent studies suggest juvenile sex offenders may be placed into two different categories depending upon the identity of their victims.\textsuperscript{57} Category one consists of sexually abusive youths who abuse peers or adults.\textsuperscript{58} Category two consists of juvenile sex offenders who target children.\textsuperscript{59}

Offenders share a number of characteristics.\textsuperscript{60} In both categories, offenders are typically males between the ages of thirteen and seventeen.\textsuperscript{61} As many as eighty percent of these sexually abusive youth have a diagnosable psychiatric disorder, while between thirty and sixty percent display learning disabilities and academic dysfunction.\textsuperscript{62} Other prevalent characteristics common to both categories of juvenile sex offenders include a history of physical and/or sexual abuse, a history of witnessing domestic violence, and a deviant sexual environment during

\textsuperscript{56} Id. at 10-11; see also Weinrott et al., supra note 32, at 704 (citing Department of Justice studies showing that "[r]oughly 25\% of sex abuse arrests" and "about 20\% of reported rape victimizations" involve perpetrators below the age of 21); Julia C. Martinez, Bill Aims To Break Habits of Young Sex Offenders: Tougher Legislation Targets Problem Juveniles Before Pattern Is Ingrained, DENV. POST, Apr. 9, 2000, at B8 (quoting the sponsor of a Colorado bill as stating that "70\% of sex offenders who are prosecuted began their crimes when they were juveniles"); Warmbrunn, supra note 33 (reporting that a deputy district attorney believes "all the [sexual] assaults she sees are serious," even third-degree sexual assault misdemeanors, because failure to take these offenses seriously sends a message to young girls that "boys are allowed to touch [their] intimate parts without consent").

\textsuperscript{57} CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDERING BEHAVIOR 3 (Dec. 1999), at http://www.csom.org/pubs/juvbfrf10.pdf (last visited Dec. 22, 2002); see also RIGHTHAND & WELCH, supra note 33, at 13 (stating that "it is widely accepted that juveniles who have abused young children differ from those who have sexually assaulted [one of their] peers").


\textsuperscript{59} Id.

\textsuperscript{60} Id. at 1-3.

\textsuperscript{61} Id. at 3.

\textsuperscript{62} Id.; see also RIGHTHAND & WELCH, supra note 33, at 8 (citing a study finding that "as a group, juveniles who sexually offended experienced academic difficulties" and another study finding that "49\% of the juvenile sex offenders . . . had academic problems, 38\% had been placed in special classes, and 14\% were diagnosed as mentally retarded").
Such offenders rarely have any previous convictions for sexual assault, but very often a first conviction represents neither a first offense actually committed, nor a first victim. Also, one study found less than fifteen percent of juvenile sex offenders felt any sense of guilt or remorse for their actions.

There are also many characteristics that differ among the two groups. The most notable difference is in the choice of victims. Category one, juvenile sex offenders who abuse peers or adults, predominantly assault females who are strangers or mere acquaintances. This is unlike offenders in category two—those who target children—whose victims may be siblings or relatives and almost half of whom perpetrate an offense against at least one male.

Another important difference between the two categories of offenders lies in their offense and behavior patterns. Offenders in category one

63. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 1-3 (Dec. 1999), at http://www.csom.org/pubs/juvbrf10.pdf (last visited Dec. 22, 2002). It is estimated that twenty to fifty percent of sexually abusive youth have histories of physical abuse and forty to eighty percent have histories of sexual abuse. Id.; see also RIGHTHAND & WELCH, supra note 33, at 3 (citing a study that found that “[r]ates of juvenile sex offenders who have experienced sexual abuse as children . . . range from 40 to 80 percent”).

64. Gail Ryan, Sexually Abusive Youth: Defining the Population, in JUVENILE SEXUAL OFFENDING: CAUSES, CONSEQUENCES, AND CORRECTION 7 (Gail Ryan & Sandy Lane eds., new and rev. ed. 1997); see also RIGHTHAND & WELCH, supra note 33, at 1 (citing a study showing a disparity between the percentage of adult offenders with a prior record and the higher percentage of adult offenders who admitted to committing sex offenses as a juvenile); WASH. STATE INST. FOR PUB. POL’Y, JUVENILE SEX OFFENDERS: A FOLLOW-UP STUDY OF REOFFENSE BEHAVIOR 2 (1991) (citing a study that found that “although [juvenile sex offenders] are unlikely to have a prior conviction for a sex offense, they are likely to have committed sex offenses in the past”).

65. WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 3. The study also showed that almost fifty percent of juvenile sex offenders told close friends about the sexual assault. Id. These friends tended to approve of the “sexually aggressive behavior.” Id.


67. Id. at 4.

68. Id.

69. Id. Research indicates “that that the highest levels of deviant sexual arousal are found in juveniles who exclusively target young male children, specifically when penetration is involved.” Id. at 3. This tendency is important to consider because some studies show that “juveniles arrested for a new offense were significantly more likely than other offenders to have deviant patterns of sexual arousal.” RIGHTHAND & WELCH, supra note 33, at 7.

are more likely to commit sexual offenses in conjunction with other criminal activity, are more likely to commit the offenses in a public place, and use higher levels of aggression and violence.\textsuperscript{71} Category two offenders rely on "opportunity and guile," and are more likely to "[t]rick a child" with bribes or threats to enable them to commit the offense.\textsuperscript{72} Juvenile sex offenders in category one are more likely to have a history of non-sexual criminal offenses and are generally delinquent, while offenders in category two are deficient in self-esteem and social competency and lack the skills necessary to form and maintain healthy relationships.\textsuperscript{73}

### B. Reoffense Rates Versus Recidivism Rates

Although both "reoffense" and "recidivism" are terms used to quantify the risk that a convicted juvenile sex offender poses to the community, there are significant differences that require a short description of each.\textsuperscript{74} "Reoffense" refers to "new instances of sexually aggressive behavior, whether or not the new offense is similar to prior sexual aggression."\textsuperscript{75} Juveniles who reoffend demonstrate that they are unable to manage their sexually aggressive behavior and should remain in secured custody.\textsuperscript{76} Recidivism occurs when there is a new arrest, new conviction, or new incarceration of the youth for any criminal or dangerous behavior discovered by the criminal justice system.\textsuperscript{77}

\begin{itemize}
\item \textsuperscript{71} \textit{Id.}; see also \textit{WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 3 (stating that juveniles in this category “often demonstrate little concern for their victims [and] use force or a weapon in the commission of their crimes”).}
\item \textsuperscript{72} \textit{CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDER BEHAVIOR 4 (1999), at http://www.csom.org/pubs/juvbrf10.pdf (last visited Dec. 22, 2002)}.
\item \textsuperscript{73} \textit{Id.}; see also \textit{RIGHTHAND & WELCH, supra note 33, at 7. Juvenile child molesters are “more socially maladjusted than either” juvenile delinquents who have not committed a sex offense or nondelinquent youths. Id. Another study found that juvenile sex offenders typically have a sense of isolation and an inability to form interpersonal attachments. Id.; \textit{WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 3 (1991) (stating that juvenile child molesters “demonstrate poor social skills, isolation from peers, and low self-esteem”).}}
\item \textsuperscript{74} See William C. Greer, \textit{Aftercare: Community Integration Following Institutional Treatment, in JUVENILE SEXUAL OFFENDING: CAUSES, CONSEQUENCES, AND CORRECTION 428 (Gail Ryan & Sandy Lane eds., new and rev. ed. 1997)}. \textit{Id.}
\item \textsuperscript{76} \textit{Id.}
\item \textsuperscript{77} \textit{Id.}; see also \textit{CENTER FOR SEX OFFENDER MANAGEMENT, RECIDIVISM OF SEX OFFENDERS 2 (May 2001), at http://www.csom.org/pubs/recidsexof.pdf (last visited Dec. 22, 2002)}. Using “subsequent arrest” as the standard to define recidivism will result in a high recidivism rate because of the existence of individuals arrested but never convicted. \textit{Id.} Using “subsequent conviction” as the measuring tool to determine recidivism rates is a
\end{itemize}
recidivism is measured only after the criminal or dangerous conduct of the juvenile has been brought to the attention of law enforcement, recidivism measurements tend to be misleadingly low; they do not reflect the actual number of reoffenses committed.8

To date, research on juvenile sex offender recidivism and reoffenses is scarce and highly problematic.79 Different studies vary greatly in their estimated percentage rates of recidivism and reoffense.80 The differences arise either because of the form of therapy undergone by the juvenile offender or because of the varying length of follow-up periods after the juvenile is released from a juvenile facility.81 Although most studies show more restrictive criterion, resulting in lower reported recidivism rates. Id. Researchers who use a "subsequent incarceration" standard could calculate this in two different ways: whether the individual committed a new crime resulting in a return to incarceration or whether the individual returned to incarceration because he violated his parole. Id. Using the former standard would be very restrictive because the offender would have to be found guilty of a crime that warrants a prison sentence. Id. The latter standard would be broader and would find recidivism for any technical violation of parole, such as being alone with a minor or underage drinking. Id.

78. Righthand & Welch, supra note 33, at 35 ("The hidden nature of sexual abuse may contribute to low reoffense rates because reoffending may tend to go undetected; however, juveniles who have already been identified as sex offenders may be followed more closely and have less opportunity to reoffend.").


80. See Righthand & Welch, supra note 33, at 30-35.

81. Id. at 35 (stating that “too short follow-up periods also may account for low predictive accuracy; some offenders may offend sometime in the future, but after the study period”). Righthand and Welch cite one study to the effect that “37 percent of those who had committed sex offenses as juveniles went on to have criminal records for sexual assaults as adults” and another study to the effect that “only 9.7 percent of [a] sample of 124 juveniles who had committed ‘nonviolent’ sex offenses against children under 16 years old were subsequently arrested for a sex offense as an adult.” Id. at 30. These widely varying statistics demonstrate the difficulty presented by attempts to quantify the likelihood that a convicted juvenile sex offender will commit another sex offense. On the effect of treatment on the results of such statistical studies, see CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 4 (Dec. 1999), at http://www.csom.org/pubs/juv.brp10.pdf (last visited Dec. 22, 2002) (“[Y]ouths receiving multisystemic therapy had recidivism rates of 12.5 percent for
that the overall recidivism rate of juvenile sex offenders is substantially lower than the rate of adult sex offenders, as many as half of adult sex offenders admit to committing their first sexual assault during adolescence.

C. The Victims of Sexual Abuse

Before coming to any conclusions about which community notification requirements should pertain to juvenile sex offenders under Megan's Law, one must consider the potential consequences of such notification. Choosing standards that are too lenient may lead to an increased danger of sexually abusive crimes that could have been prevented through notification. For victims of sexual abuse committed by a juvenile, the

sex offenses and 25 percent for non-sex offenses, while those receiving individual therapy had recidivism rates of 75 percent for sex offenses and 50 percent for non-sex offenses.”). See also Bera, supra note 79, at 154 (speculating that the “lack of systematic sex abuse treatment” explains the differences between studies); BARBAREE ET AL., supra note 54, at 11 (stating that a 1984 study showed that the “average adolescent sex offender will, without treatment, go on to commit 380 sexual crimes during his lifetime”).

82. See CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 1, 2 (Dec. 1999), at http://www.csom.org/pubs/juv.brfl0. pdf (last visited Dec. 22, 2002); see also Doe v. Poritz, 142 A.2d 367, 375 (N.J. 1995) (surveying statistics on adult sex offender reoffense rates). The fact that the juvenile reoffense rate is lower does not negate its importance. WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 30 (stating that “[e]ven though only a small number of youth recidivated sexually the social costs of their continued sex offense behavior should not be ignored” and listing the dangers particularly associated with juvenile reoffense).

83. BARBAREE ET AL., supra note 54, at 11 (stating that “professionals working with adult sexual offenders have become increasingly aware of the proportions of their clients who began their deviant careers in adolescence”). These numbers were obtained after fifty-five percent of sex offenders responding to a confidential survey indicated that they had committed sexually abusive acts as juveniles. See id.; see also RIGHTHAND & WELCH, supra note 33, at 1 (citing a research study that found approximately half of adult sex offenders first committed sexual abusive acts as juveniles); Weinrott et al., supra note 32, at 704 (saying of adult sex offenders that “many, perhaps the majority, began committing sex crimes in their teenage years or earlier”); WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 1 (stating that an “important reason to study juvenile sex offenders is that deviant sexual behavior during adolescence seems to play a role in the development of sexual deviance in adulthood” and that “[p]revious research has also asserted that relatively minor deviant sexual behavior during adolescence may be related to serious sexual deviance in adulthood”).

84. WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 33 (stating that “the impact of repeat offenses on victims, their families, and the juvenile and criminal justice systems requires that sex offending among adolescents be taken seriously”); see also Warmbrunn, supra note 33 (stating that “[f]or every offense, there’s a victim, usually a child”).

experience is especially intrusive because the assault is not only physical, but also psychological, given the fact that the offense is usually committed by a person the victim once trusted.86

Victims can suffer from a variety of psychological disorders, and many of them are long-term.87 Some effects of a traumatic sexual experience include sexual dysfunction,88 somatic complaints and anxiety,89 substance abuse,90 heightened suicide risks,91 eating disorders,92 and failed personal relationships.93 These dysfunctions may result from a victim’s failure to cope with the abusive experiences.94 The sexual abuse that victims encounter may reappear in many forms, and the most troubling consequence occurs when victims become sexual perpetrators themselves.95

---

86. Ryan, supra note 85, at 158-59; see also WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 30; Warmbrunn, supra note 33 (“Since victims often know the person who hurt them, their ability to trust can become twisted. . . . A few minutes of some sort of molestation can distort a lifetime.”).
87. Ryan, supra note 85, at 161, 163.
88. Id. at 163-64. Sexual dysfunctions can include both hypersexual and hyposexual dysfunctions. Id. at 163.

Hypersexual dysfunctions may include promiscuity, sexual addictions, compulsive masturbation, or elevated or deviant arousal patterns. . . . Hyposexual dysfunctions may include inhibited desire or arousal and manifest in frigidity, impotence, or sexual aversions, which are also dynamics in marital difficulties. Victimless fetishes too, such as cross-dressing, may relate to the impacts of childhood sexual abuse.

Id. at 164. The ways that victims choose to cope vary by gender. See id. at 160; see also Standing Together Against Rape, Sexual Assault Topics; Male Victims of Sexual Assault, at http://www.star.ak.org/Library/files/mv.htm (last visited on Aug. 23, 2002).
89. Ryan, supra note 85, at 164. The feeling of anxiety stems from the victims’ feelings of loss and betrayal. Id. These symptoms, attributable to sexual assault, “may make it impossible for survivors to feel entirely well or completely comfortable.” Id.
90. Id. The survivor may abuse alcohol or drugs to counteract the feelings of anxiety or depression. Id.
91. Id. (“The chronic feelings of fear and anxiety may contribute to feelings of depression and a profound sense of hopelessness. . . . [W]ith maturity, depressive disorders increase the risk of self-destructive behaviors and suicidal ideation”). Id.
92. Id. at 164-65 (noting that “eating disorders have been associated with childhood sexual abuse” by several researchers).
93. Id. at 165. Sexual abuse victims represent a group with a disproportionately higher rate of failed marriages. See id. These victims also tend to encounter more parent-child conflicts and an inability to maintain close interpersonal relationships. Id.
94. See id. at 166.
95. See id.; see also CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 1-2 (Dec. 1999), at http://www.csom.org/pubs/
III. EVENTS AND LEGISLATION LEADING UP TO MEGAN’S LAW

A. The Jacob Wetterling Act

The Jacob Wetterling Foundation was established in February 1990 after an unidentified man abducted eleven-year-old Jacob Wetterling near his St. Joseph, Minnesota home. The mission of this foundation is to protect the nation’s children from sexual exploitation and abduction and “to focus national attention on missing children and their families.” In 1991, the Foundation recommended a legislative initiative to the Minnesota legislature, which resulted in the creation of that state’s sex offender registration act. Prior to this statute’s enactment, Minnesota law enforcement agencies lacked the resources necessary to identify known sex offenders residing in the state. The Foundation also sought enactment of similar legislation at the federal level.

In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (1994

juvbrf10.pdf (last visited Dec. 22, 2002) (citing a study that found between forty and eighty percent of juvenile sex offenders have been sexually abused); WASH. STATE INST. FOR PUB. POL’Y, supra note 64, at 3 (citing a study that found that serious juvenile sex offenders were more likely to have been physically and/or sexually abused than less serious juvenile sex offenders).


97. Dirk Johnson, Small Town Is Shaken by a Child’s Abduction, N.Y. TIMES, Oct. 30, 1989, at A10; see also CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION AND EDUCATION 2-3 (Apr. 2001) at http://www.csom.org/pubs/notedu.pdf (last visited Dec. 22, 2002). It was reported:

In October 1989, a masked man abducted 11-year-old Jacob Wetterling at gunpoint near his home in St. Joseph, Minnesota. Neighbors, friends, and strangers rallied to the Wetterling family's aid and worked diligently to search the area and distribute flyers across the country. That outpouring of support led to the establishment of a nonprofit foundation in Jacob's name to focus national attention on missing children and their families. Jacob remains missing to this day.


101. Id. at 3.
According to the Center for Sex Offender Management, "the registration and tracking of individuals convicted of violent sex crimes or crimes against minors began with the passing of the 1994 Jacob Wetterling Act. The statute penalized states for noncompliance, but it failed to provide federal funding to enable states to fulfill the Act's requirements. A state that failed to implement this program within the prescribed period would have its funding under the Omnibus Crime Control Act of 1968 reduced by ten percent.

B. The Creation of Megan's Law and the Community Notification Statutes

Although the Jacob Wetterling Act required convicted sex offenders to register with state authorities, this information was not made accessible to the public. It was not until the tragic murder of seven-year-old Megan Kanka that Congress added community notification requirements to the existing federal registration requirements.

Megan Kanka was invited into the home of a neighbor to see a puppy and was never seen alive again. Her body was found in a wooded area.

104. CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION AND EDUCATION 3 (Apr. 2001), at http://www.csom.org/pubs/notedu.pdf (last visited Dec. 22, 2002). After a two-year extension contingent on good faith efforts to comply with the Act, the deadline for compliance was September 12, 1999. Id.
107. See CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION AND EDUCATION 1 (Apr. 2001), at http://www.csom.org/pubs/notedu.pdf (last visited Dec. 22, 2002). In this context, "community notification" distinguishes statutes that enable the public dissemination of information about sex offenders from those that merely require sex offenders to notify law enforcement of their places of residence. Id.
109. See id.
in her own neighborhood. The police charged Jesse Timmendequas, who had twice been convicted for sex offenses, with Megan's murder.

It was reported that “Megan’s parents believe[d] that if they had known that a pedophile lived nearby, this heinous crime would never have happened.” A unanimous House of Representatives agreed and approved Megan’s Law on May 7, 1996. Ten days later, President Bill Clinton signed the legislation into law.

The Center for Sex Offender Management asserts that “the principal objective of Megan’s Law is to ensure that members of the public can obtain information that is necessary for the protection of themselves and

111. Id. Jesse Timmendequas had covered Megan's head with a plastic bag before he choked her with a belt and raped her as she lay unconscious. Id.

112. Id. Timmendequas has since been convicted of the murder and is currently on death row in New Jersey. Wendy Ruderman, Sex Offender Publicity Bill Advances in Senate, THE RECORD (Bergen County, N.J.), June 26, 2001, at A4.


Congress prescribed heightened registration and notification requirements for offenders deemed “sexually violent predators” (SVPs), which federal law mandates that jurisdictions take steps to identify. Such an offender is one who has “been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.” Jurisdictions are free to decide the timing of the determination of whether an offender is a SVP and how the determination is to be initiated. . . .

Id. (footnotes omitted).
their families from dangerous sex offenders residing in their community.”  To accomplish this goal, Congress provided that states and state agencies must release information about sex offender registrants that is necessary for public safety. Decisions about the threat posed by individual offenders are left to the states. States are allowed to choose to notify communities proactively – through mailings, media releases, or community meetings – or to make the information accessible to the public upon request.

IV. APPLYING MEGAN’S LAW TO JUVENILE SEX OFFENDERS

A. Different States Take Widely Different Approaches

While every state in the United States has enacted Megan’s Law, only thirty states have expressly extended the law’s requirements to include juvenile sex offenders. Although these thirty states share the belief that juvenile sex offenders pose a sufficient threat to their surrounding neighborhoods as to require community notification, they are divided on how exactly to implement this law. The greatest differences reside in

120. See supra note 26; see also CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION AND EDUCATION 6 (Apr. 2001), at http://www.csom.org/pubs/notedu.pdf (last visited Dec. 22, 2002) (“Under federal guidelines, states are not required to register or conduct notification on juveniles who are adjudicated delinquent for a sex crime. However, states have the option to require registration and notification for these youths.”).
the methods used by states to identify sex offenders for community notification.122

B. Current State Methods for Identifying Which Juvenile Sex Offenders Are Required to Notify the Community of Their Presence

Adult sex offenders are subject to the community notification laws of most states if they are convicted of a violent sex offense or a sexual offense against a minor.123 In imposing this requirement, most states do not distinguish between high-risk and low-risk offenders.124

This risk-blind approach differs greatly from the approach used when most states apply registration requirements to juvenile sex offenders.125 For example, Mississippi requires registration “only after a juvenile has twice been adjudicated delinquent based on a sex offense.”126 Alabama, Arizona, Arkansas, Connecticut, Colorado, Iowa, Massachusetts, Montana, and North Dakota each allow the juvenile courts to use discretion when determining if an offender should be required to register.127


124. See id.


126. In re Registrant J.G., 777 A.2d at 907; see also MISS. CODE ANN. § 45-33-25(1) (Supp. 2000) (stating that “[a]ny person residing in [Mississippi] who has been ... twice adjudicated delinquent for any sex offense or attempted sex offense shall register with the Mississippi Department of Public Safety”).

127. See In re Registrant J.G., 777 A.2d at 907 (listing Iowa, Arkansas, and Colorado). Alabama’s statute explicitly exempts juveniles from registering as sex offenders unless the sentencing court, in its discretion, holds otherwise. ALA. CODE. § 15-20-28(c) (2002). Arizona’s statute provides: “The court may require a person who has been adjudicated delinquent for an act that would constitute an offense specified in subsection A or C of this subsection to register pursuant to this section. Any duty to register under this subsection shall terminate when the person reaches the age of twenty-five.” ARIZ. REV. STAT. ANN. §§ 13-3821(D) (West 2001). Arkansas defines a sex offender as “a person who is adjudicated guilty, adjudicated delinquent and ordered to register by the juvenile court judge, or acquitted on the grounds of mental disease or defect of a sex offense.” ARK. CODE ANN. § 12-12-903(A) (Michie Supp. 2001). Colorado spells out certain requirements for courts to waive the registration requirements.

If a court determines, pursuant to a motion filed by [an eligible juvenile] or on its own motion, that the registration requirement ... would be unfairly punitive, the court, upon consideration of the totality of the circumstances, may exempt a person from the registration requirements imposed pursuant to this section if: [t]he person was thirteen years of age or younger at the time of the commission
The Iowa Supreme Court explained this "judicial discretion method" in In re S.M.M. 128 S.M.M. was adjudicated delinquent in juvenile court after committing a second-degree sexual offense. 129 He was ordered to register with law enforcement pursuant to the state law requiring a juvenile sex offender to register unless the juvenile court found that the person need not do so. 130 S.M.M. appealed the court's order, claiming the statute was overly vague because it did not provide the juvenile courts with specific guidance to decide who should be exempt from registration. 131 The Iowa Supreme Court disagreed and held that the "statute prescribes who is covered by the registration requirements; the only discretion in the court is in deciding who will be excused." 132 The court believed that this "type of discretion is found throughout the

of the offense, . . . [t]he person has received a sex offender evaluation . . . from an evaluator who has experience in juvenile issues, and the evaluator recommends exempting the person from the registration requirements based upon the best interests of that person and the community; and [t]he court makes written findings of fact specifying the grounds for granting such exemption.

COLO. REV. STAT. ANN. § 18-3-412.5(8.5) (2001). Connecticut allows the court to exempt sex offenders under the age of nineteen if it feels that registration is not required to ensure public safety. CONN. GEN. STAT. ANN. § 54-251(b) (West 2001). Iowa law states:

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

IOWA CODE ANN. § 692A.2(4) (West Supp. 2002). Massachusetts provides:

Upon written motion of the commonwealth, a court which enters a conviction or adjudication of delinquent or as a youthful offender may, at the time of sentencing, having determined that the circumstances of the offense in conjunction with the offender's criminal history does not indicate a risk of reoffense or a danger to the public, find that a sex offender shall not be required to register.

MASS. ANN. LAWS CH. 6, § 178E(e) (West Supp. 2002). Montana allows for its juvenile courts to choose one or more dispositions for juvenile sex offenders. One of these options "require[s] a youth found to be delinquent . . . to register as a sexual or violent offender . . . ." MONT. CODE ANN. § 41-5-1513(1)(c) (2002). North Dakota requires registration for certain juvenile offenders, but provides the judiciary power to waive this requirement.

The court may deviate from requiring the juvenile to register if the court first finds the juvenile has not previously been convicted as a sexual offender or for a crime against a child, and the juvenile did not exhibit mental abnormality or predatory conduct in the commission of the offense.


128. 558 N.W.2d 405 (Iowa 1997).
129. Id. at 406.
130. Id.
131. See id.
132. Id. at 407.
juvenile code in the dispositional alternatives available to the court when choices have to be made between more and less onerous alternatives” and therefore upheld the exercise of the lower court’s discretion.\textsuperscript{133}

The Supreme Court of Massachusetts also recently had an opportunity to discuss this method in \textit{Roe v. Attorney General}.\textsuperscript{134} In \textit{Roe}, convicted sex offenders brought a class action suit to seek injunctive relief from the enforcement of the Massachusetts sex offender registration statute.\textsuperscript{135} The court explained that when sentencing a juvenile sex offender who has committed certain sex crimes,\textsuperscript{136} the judge must determine whether the offender poses a risk to the public.\textsuperscript{137} The sentencing judge must look to the circumstances surrounding the offense, as well as the offender’s criminal history, to make this determination.\textsuperscript{138} If the judge believes that the offender does not pose a risk to the community, the offender will be relieved of his registration obligation.\textsuperscript{139}

Indiana uses a “clear and convincing evidence” version of the judicial discretion method to determine which juvenile sex offenders are required

\begin{footnotes}
\item[133] Id. The court wrote that the lower court’s “construction of section 692A.2(1) is a reasonable construction and is thus sufficient to uphold the constitutionality of the statute in the face of a vagueness challenge . . . . Further, the court properly exercised its discretion in ruling that S.M.M. had failed to rebut the presumption that registration would be required.” \textit{Id}. (citation omitted).
\item[134] 750 N.E.2d 897 (Mass. 2001).
\item[135] \textit{Id}. at 899, 903.
\item[136] \textit{But see MASS. ANN. LAWS ch. 6, § 178E(f)}. It should be noted that the [c]ourt may not make such a finding if the sex offender has been determined to be a sexually violent predator; has been convicted of two or more sex offenses defined as sex offenses pursuant to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 14071, committed on different occasions; has been convicted of a sex offense involving a child or a sexually violent offense; or if the sex offender is otherwise subject to minimum or lifetime registration requirements as determined by the board pursuant to section 178D.
\item[137] \textit{Roe v. Attorney General}, 750 N.E.2d 897, 899 n.5 (Mass. 2001); see \textit{MASS. ANN. LAWS CH. 6, § 178E(f)}. The statute provides:
\begin{quote}
In the case of a sex offender who has been convicted of a sex offense or adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense . . . and who has not been sentenced to immediate confinement, the court shall, within 14 days of sentencing, determine whether the circumstances of the offense in conjunction with the offender's criminal history indicate that the sex offender does not pose a risk of reoffense or a danger to the public. If the court so determines, the court shall relieve such sex offender of the obligation to register . . . .
\end{quote}
\textit{MASS. GEN. LAWS ANN. ch. 6, § 178E(f)} (West Supp. 2002).
\item[138] \textit{MASS. GEN. LAWS ANN. ch. 6, § 178E(e)}.
\item[139] \textit{Id}.\
\end{footnotes}
to register. The statute mandates that the juvenile offender who is required to register must be at least fourteen years old and on probation or parole for an offense that would be a sex offense if committed by an adult; in addition, there must be clear and convincing evidence that proves a likelihood of subsequent offenses.

This statute was applied in *K.J.P. v. Indiana*. K.J.P admitted to allegations of attempted criminal deviant conduct and sexual battery on the basis of acts he performed when he was fourteen years old. He was found delinquent, ordered to serve five days of detention, and then placed on probation. K.J.P. appealed the trial court’s order requiring him to register as a sex offender, questioning whether the order was supported by clear and convincing evidence that he would reoffend. The Indiana Court of Appeals held that the standard was sufficiently met when two psychologists and one counselor, who interviewed K.J.P. and had access to his records, testified that they believed he presented a high risk of reoffense.

New Jersey has implemented yet another approach. In general, the same registration requirements that apply to adult sex offenders also

---

140. IND. CODE ANN. § 5-2-12-4(b) (Michie 2001).
143. *Id.* at 613.
144. *Id.*
145. *Id.* K.J.P. appealed the trial court’s order requiring him to register as a sex offender on two separate grounds: (1) that requiring a juvenile to register conflicted with the rehabilitative goals of the juvenile code; and (2) that the order requiring K.J.P. to register was not supported by clear and convincing evidence that the juvenile would reoffend. *Id.* K.J.P. lost on both arguments. *Id.* at 614-16. As to the first argument, the court stated:

The burdens that accompany registering . . . do “not rise to the level of punishment” and do not constitute an additional penalty . . . [T]he goal of the statute is not to label or penalize the child for past acts, but to provide protection for the public. The registration requirement does not conflict with the rehabilitative goals of the juvenile code.

*Id.* at 615.

146. *Id.* at 616. Two psychologists and a counselor testified at K.J.P.’s hearing. *Id.*

One doctor believed that “if the opportunity presented itself [K.J.P.] would be at high risk” for being a repeat offender. *Id.* The counselor believed that K.J.P. “has to be supervised not to re-offend.” *Id.*


148. In general, registration for those not in police custody requires “appearance at a local police station for fingerprinting, photographing, and providing information for a registration form that will include a physical description, the offense involved, home address, employment or school address, vehicle used, and license plate number.” Doe v. Potriz, 662 A.2d 367, 377 (N.J. 1995). For those in custody, the information is collected at the location of their custody. *Id.* This registration requirement “applies to all convicts, all
apply to juvenile sex offenders who are adjudicated delinquent for commission of sex offenses.\textsuperscript{149} New Jersey requires \textit{all} sex offenders to register with local law enforcement for life.\textsuperscript{150} However, this lifetime registration requirement can be lifted if, after fifteen years, the registrant makes an application to the superior court requesting termination of the obligation.\textsuperscript{151} This request will be granted only upon a showing of proof that the applicant has not committed a subsequent offense within that fifteen-year period.\textsuperscript{152}

It was not until July 2001, when the Supreme Court of New Jersey decided \textit{In re Registrant J.G.}, that a more lenient standard was applied to offenders under the age of fourteen.\textsuperscript{153} J.G. admitted that he had sexually assaulted two young female victims when he was ten years old.\textsuperscript{154} The New Jersey Supreme Court found a “clear legislative determination that children under fourteen, no matter how serious the offenses with which they are charged, simply are too immature as a matter of law to be tried as [adults].”\textsuperscript{155} Therefore, the court determined that registration and notification requirements imposed for offenses committed before the age of fourteen would terminate when the offender turned eighteen if the judiciary’s Law Division determines that the offender is unlikely to pose a threat to the community.\textsuperscript{156} The juvenile has the burden of production to accomplish this termination and must provide the Law Division with clear and convincing evidence that he or she is not likely to reoffend.\textsuperscript{157}

\textit{juveniles}, no matter what their age, found delinquent because of the commission of those offenses, and to all found not guilty by reason of insanity.” \textit{Id.} (emphasis added).


\textsuperscript{150} \textit{See} \textit{In re Registrant J.G.}, 777 A.2d at 900.

\textsuperscript{151} \textit{Id.} at 900; \textit{see also} N.J. Stat. Ann. § 2C:7-2(f)-(g) (West Supp. 2002).

\textsuperscript{152} \textit{In re Registrant J.G.}, 777 A.2d at 900.

\textsuperscript{153} \textit{Id.} at 912.

\textsuperscript{154} \textit{Id.} at 894-95.

\textsuperscript{155} \textit{Id.} at 904. This court determined legislative intent by referring to the waiver provision in the Code of Juvenile Justice, which states: On motion of the prosecutor, the court shall, without the consent of the juvenile, waive jurisdiction over a case and refer that case from the Superior Court, Chancery Division, Family Part to the appropriate court and prosecuting authority having jurisdiction if it finds, after hearing, that [inter alia:] the juvenile was 14 years of age or older at the time of the charged delinquent act . . . .


\textsuperscript{156} \textit{In re Registrant J.G.}, 777 A.2d at 912.

\textsuperscript{157} \textit{See id.}
V. WHICH STATE STATUTES BEST PROTECT THE NATION'S CHILDREN?

Although many states have extended a version of Megan's Law to include juvenile sex offenders, many of the methods used to decide which offenders must register are underinclusive or overly vague.158

A. MISSISSIPPI’S JUVENILE REGISTRATION LAW LACKS THE PROACTIVE ELEMENT NECESSARY TO BE EFFECTIVE

Mississippi’s system requires registration only after the juvenile has twice committed and been found delinquent of sex offenses or attempted sex offenses.159 The weakness inherent in this type of statute is that it only becomes effective after multiple victims have been traumatized.160 This “wait and see” approach is particularly troublesome because many incidents of sex abuse are underreported to law enforcement, and those that are reported are extremely hard to prove in court.161 Additionally, waiting for a second sex offense conviction before requiring registration creates the possibility that a juvenile sex offender will be able to abuse several victims before anyone in the surrounding community is notified of his identity.162

158. See generally id. at 907-08 (describing a range of state juvenile registration requirements).
160. Id.
162. See Righthand & Welch, supra note 33, at 1, 30-32.
B. The Judicial Discretion Approach Does Not Provide Identifiable Factors for the Judiciary To Use When Determining Whether the Juvenile Offender Is Regarded as a Continuing Threat to the Community

The approach taken in Arizona, Iowa, Arkansas, Colorado, North Dakota, and Massachusetts, which allows juvenile courts to use discretion when determining whether an offender should be required to register, is also flawed. This process allows for judges to enforce registration statutes subjectively and could adversely affect both juvenile sex offenders and the community.

This problem was illustrated in *In re S.M.M.* In *S.M.M.*, the juvenile appealed the decision of the juvenile court requiring him to register on the grounds that the statute was unconstitutionally vague. The juvenile believed that the absence of exact statutory guidelines for juvenile courts to use in deciding whether an offender must register leads to arbitrary enforcement of the law. S.M.M. contended that although the legislature wanted to exempt certain juvenile sex offenders from the registration requirement, it kept the characteristics of juveniles who would meet this exception “a secret.” This lack of guidance created the possibility that some juveniles would be forced to register after committing certain acts, while other juveniles committing similar crimes would be spared this burden by different judges.

The state countered that the statute was not unconstitutionally vague because “it presumes that all offenders, including juveniles, are required to register, and the only exception is if the juvenile court in its discretion decides registration should be waived.” The state further claimed that the burden is on the juvenile to produce evidence that would support such an exemption.

Although the court accepted the state’s argument, this circular reasoning is unsound. The court clearly acknowledged that the legislature provided an opportunity for certain offenders to be exempt

---

163. See generally supra note 127.
164. See infra notes 165-75 and accompanying text.
165. 558 N.W.2d 405 (Iowa 1997).
166. Id. at 406.
167. See id. at 406-07.
168. Id. at 406.
169. See id.
170. Id. The state also argued that S.M.M.’s interest in his reputation was not an interest protected by the guarantee of procedural due process. Id.
171. Id.
172. Id.
from registering.\textsuperscript{173} It also acknowledged that the legislature failed to provide the public with factors to be considered by the juvenile court when determining whether a juvenile would have to register.\textsuperscript{174} The court admitted this statutory deficiency, but it did not offer any clarity on the factors used in the determination.\textsuperscript{175}

C. Indiana Overlooks the Threat Imposed by Juvenile Sex Offenders Under the Age of Fourteen

The “clear and present danger” test used in Indiana has one serious flaw: it only applies to juveniles fourteen years of age or over.\textsuperscript{176} This statute completely eliminates a class of juvenile offenders, not based on their crimes or threat of recidivism, but on the age of the juvenile who has committed the offense.\textsuperscript{177} As illustrated by the story of Robert Rotramel,\textsuperscript{178} however, juveniles can commit serious offenses before reaching the age of fourteen.\textsuperscript{179}

Researchers recognize the real and substantial threat that these youth pose to the community.\textsuperscript{180} New findings demonstrate a reported increase of sexually aggressive behavior among prepubescent children.\textsuperscript{181} Exempting juvenile sex offenders under the age of fourteen from

\begin{footnotesize}
\begin{enumerate}
\item \textsuperscript{173} Id. at 406-07.
\item \textsuperscript{174} See id. at 407.
\item \textsuperscript{175} Id. The court wrote:
While it is true that the statute does not provide specific guidelines for the exercise of the court’s discretion, it is clear that this discretion is not unbridled, as suggested by S.M.M. The court is not permitted to decide who initially falls within the requirement of the registration statute. The statute prescribes who is covered by the registration requirements; the only discretion in the court is in deciding who will be excused.
\item Id.
\item \textsuperscript{176} IND. CODE ANN. § 5-2-12-4(b)(1) (Michie 2001). Two other states, Ohio and South Dakota, also use the age of the perpetrator as a factor when deciding whether to exempt juvenile offenders from sex offender registration requirements. See OHIO REV. CODE ANN. § 2152.82 (West 2002) (specifying that only offenders fourteen years old or older are required to register as sex offenders); S.D. CODIFIED LAWS § 22-22-31 (Michie 2002) (requiring registration of sex offenders who are fifteen years old or older).
\item \textsuperscript{177} See id.
\item \textsuperscript{178} See supra notes 1-18 and accompanying text.
\item \textsuperscript{179} Morgan, Records Allege Earlier Assaults, supra note 13.
\item \textsuperscript{180} RIGHHAND & WELCH, supra note 33, at 19.
\item \textsuperscript{181} See Ryan, supra note 64, at 6; see also RIGHHAND & WELCH, supra note 33, at 19 (citing a study that found that the “Washington Department of Social and Health Services had 641 active cases of children under age 12 who had raped, molested, or engaged in noncontact sexual acts such as exposing, masturbating in public, or peeping”). A Vermont study identified 200 children under the age of ten who had committed sex offenses in the years between 1984 and 1989. Id.
\end{enumerate}
\end{footnotesize}
registering will expose very young children, typically between the ages of four and seven, to a greater possibility of becoming victims.  

D. The New Jersey Approach Demonstrates the Most Workable Balance Between Rehabilitating Juvenile Offenders and Protecting the Surrounding Communities

In an attempt to balance the two goals of the juvenile justice system, New Jersey has developed a registration scheme that serves the dual role of protecting the community and rehabilitating the juvenile sex offender. The first step in achieving these goals is to require that all offenders register regardless of their ages. By not taking the age of the perpetrator into consideration, New Jersey avoids the pitfall of allowing prepubescent offenders the opportunity to reoffend in a community unaware of their presence. This registration requirement continues for life unless the offender is later able to show that he has not committed a subsequent sexual offense within a fifteen-year period.

In 2001, New Jersey refined this statute even further through case law. In re Registrant J.G. provided the court with an opportunity to examine the strict lifetime registration requirement as applied to a thirteen-year-old boy who had committed sexual offenses when he was ten years old. J.G. was charged with two delinquency complaints on the basis of two offenses that would have constituted first-degree sexual assault if committed by an adult. J.G. accepted a plea offer imposing a three-year suspended sentence and probation with certain orders, including completion of a counseling program. Eighteen months after the sentencing, J.G. was notified that, pursuant to Megan’s Law, he was classified as a Tier 2 offender and that the county prosecutor was

182. See RightHand & Welch, supra note 33, at 20. It should be noted that girls represent greater numbers of prepubescent youths who sexually offend. Id. These female offenders were reported to engage in sexually abusive behaviors that were as aggressive as those found in their male counterparts. Id.
185. See generally In re Registrant J.G., 777 A.2d at 894-900 (relating factual background of the registration requirements placed on a ten-year-old).
188. Id. at 894.
189. Id.
190. Id. at 896.
191. States differ as to how they decide who in the community should be notified of a locally residing juvenile sex offender. Center for Sex Offender Management, Community Notification and Education 4-5 (Apr. 2001), at http://www.csom.org/
seeking to notify local police departments, schools, and numerous childcare facilities of his status. J.G. filed an objection to the application of the registration and notification requirements on both statutory and constitutional grounds. J.G. believed that the requirements imposed by Megan's Law should not apply to him because he was only ten years old when he committed the offenses.

The New Jersey Supreme Court discussed the rehabilitative reasons for the creation of a separate justice system for juveniles. The court recognized that in the 1960s, disappointment with the juvenile system led to custodial sentencing of juveniles who committed serious offenses.

New Jersey employs a risk assessment system. See N.J. STAT. ANN. § 2C:7-8(e) (West 1995). Each juvenile is scored according to factors such as the age and sex of the victim, the violence associated with the crime, the actual crime itself, and the offender's personal feelings about his own actions. In re Registrant J.G., 777 A.2d at 896-99. After the offender is scored, he or she is then placed into a tier representative of the perceived risk of subsequent offense. See id. at 896. In New Jersey, a score of 0 to 36 denotes a Tier 1 offender, a score of 37 to 73 a Tier 2 offender, and a score of 74 or above a Tier 3 offender. Id. A Tier 1 offender is one whose risk to reoffend is low. N.J. STAT. ANN. § 2C:7-8(8) (West 1995). In New Jersey, law enforcement agencies likely to encounter the juvenile sex offender are the only community members to be notified. Id. A Tier 2 offender is one whose risk of re-offense is moderate. Id. According to New Jersey law, a sex offender who has a moderate risk of re-offense will have “organizations in the community including schools, religious and youth organizations notified of his presence in the community.” Id. Tier 3 offenders have a high risk to reoffend. Id. Identifying information regarding a high risk re-offender is made available to the public likely to come in contact with the offender. Id.

J.G. was originally classified as a moderate risk Tier 2 offender with a Registrant Risk Assessment Scale (RRAS) score of fifty-five. Id. This was due, in part, to the fact that J.G. admitted he had penetrated one of his victims. Id. at 895-96. In May 1998, the Law Division conducted a conference to determine if J.G.’s Tier 2 classification and score were correct, as evidence began to call into question whether J.G. had actually penetrated the victim. Id. at 896. In April 1999, the prosecutor amended J.G.’s score to forty-seven and limited the request for Megan’s Law notification to two schools and two police departments. Id. at 897. In June 1999, counsel for J.G. contested the amended RRAS score on three categories: degree of force, degree of contact, and number of offenses/victims. Id. at 898. As to the “degree of force” category, the assistant prosecutor attempted to show that J.G.’s score of five was correct because the police report stated J.G. had threatened to kill one of his victims if she refused to strip for him or told anyone about the incident. Id. 898-99. The court did not believe that this conduct supported a score a five and lowered J.G.’s score in the “degree of force” category to 42. Id. at 899. The court then found that, due to the score of 42, all schools within a two-mile radius of J.G.’s residence should be notified. Id. The Appellate Division affirmed J.G.’s Tier 2 classification but restricted notification to the schools that J.G. currently attends or would attend in the future. Id. at 899-90.  

192. In re Registrant J.G., 777 A.2d at 896. 193. Id. at 900. 194. Id. 195. Id. at 901-03. 196. Id. at 902.
The court then discussed the Juvenile Code's significant distinction between juveniles under the age of fourteen and those over that age. 197 The court found that there is a rebuttable "presumption of incapacity as to children between the ages of seven and [fourteen]" and that the burden of proving capacity lies with the state. 198 The court went on to hold that juvenile sex offenders under the age of fourteen will have an opportunity to be relieved of registration requirements at the age of eighteen if they can show, by clear and convincing evidence, that they do not pose a threat to the community. 199 This method gives the courts some leeway when deciding whether a juvenile's registration requirements should be terminated; at the same time, it puts juvenile offenders on notice that their burden to prove they do not present a risk to the community is rather high. 200 This standard provides courts with a point of reference when deciding whether to grant a juvenile sex offender's request for the termination of his or her registration requirement.

VI. CONCLUSION

The rise in the number of violent criminal acts perpetrated by juveniles has caused the juvenile justice system to impose stricter penalties on youthful offenders. For example, almost half of the states now require juvenile sex offenders to register identifying information with local authorities and permit the release of this information to the community.

Although many states now require that such juvenile offenders register with law enforcement, the states differ on the details necessary to

---

197. Id. at 904. The court noted several statutory and rule provisions that demonstrated the "significant distinction in the Juvenile Code between juveniles over and under the age of fourteen." Id. First, the court discussed the New Jersey statute that allows juveniles over the age of fourteen to be waived into adult courts if "they are charged with certain specified offenses and the juvenile is unable to prove that the probability of rehabilitation before age nineteen outweighs the need to for [the] waiver." Id. (discussing N.J. STAT. ANN. 24:4A-26). Another statute authorizes "under specified circumstances [the] release of juveniles over age fourteen on their own recognizance." Id. at 905 (citing N.J. STAT. ANN. 24:4A-35). The court also looked to State v. Presha, 748 A.2d 1108 (N.J. 2000), in which the New Jersey Supreme Court found, applying a totality of the circumstances test, that a confession by a seventeen-year-old juvenile defendant was voluntary, even though no parent was present. In re Registrant J.G., 777 A.2d at 905. In Presha, the court stated in dicta that the totality of the circumstances test would be "insufficient to assure the knowing, intelligent, and voluntary waiver of rights" for a defendant under the age of fourteen. See id. (citing Presha, 748 A.2d at 1108).

198. 777 A.2d at 905.
199. Id. at 912.
200. See id.
201. See id.
implement these laws. Many of these systems contain serious flaws due to the vagueness of the state statutes or the exclusion of entire groups of sex offenders from the registration requirement based on the perpetrators’ ages.

The most workable system appears to be that implemented in New Jersey. This system requires all juvenile offenders to register for life unless they can prove—after a fifteen-year period—that they have not committed a subsequent offense and do not pose a threat to the community. The state also provides prepubescent offenders, those under the age of fourteen, a way to terminate their obligation to register, if, at the age of eighteen, they can show by a preponderance of the evidence that they are no longer a threat to society. This method best meets the need to balance the rehabilitative interest of the juvenile system with the judiciary’s responsibility to protect the nation’s communities.