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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.”¹ Rhonda Blevins made this statement after a convicted juvenile sex offender murdered her seven-year-old daughter, Kristi.² On August 19, 2000, Ms. Blevins discovered that Kristi and Kristi’s twelve-year-old friend were missing.³ Ms. Blevins had been watching the children play outside her Oilton, Oklahoma home.⁴ After stepping inside to use the bathroom for a few minutes, Ms. Blevin returned to discover the children were gone.⁵ Later that evening, a citywide search found the girls in an abandoned home.⁶ The twelve-year-old had been raped while Kristi had been strangled to death.⁷ Police found nineteen-year-old Robert Rotramel with them.⁸

Robert Rotramel, who lived in Oilton, saw the girls playing outside and “asked them if they wanted to see some fireworks.”⁹ After igniting the fireworks, Rotramel forced the girls to accompany him to an

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1. *Murder Triggers Mom’s Crusade for Legal Change Legislation*, L.A. TIMES, Oct. 14, 2000, at A30.

2. *Id.*

3. *Id.*

4. *See id.*

5. Rhett Morgan, *Suspect’s Record Termed Unsavory*, TULSA WORLD, Aug. 23, 2000, at A1.

6. Rhett Morgan, *Rotramel Backs Out of No-Parole Plea Bargain*, TULSA WORLD, Aug. 10, 2001, at A1.

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.

9. Rhett Morgan, *Trial Ordered in Oilton Slaying, Rape*, TULSA WORLD, Oct. 17, 2000, at A1.

abandoned house about a block away.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.¹¹

No one had any way of knowing that Robert Rotramel had an extensive juvenile sex offense record,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.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.¹⁴ Rotramel had also participated in a court-ordered treatment program for juvenile sex offenders.¹⁵

10. Morgan, *Rotramel Backs Out*, *supra* note 6; *see also* Morgan, *Charges Filed*, *supra* note 7.

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.

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(c)(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.*

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.*

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.

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.¹⁶ Rotramel admitted to the Oilton Police Chief that he had sex with the twelve-year-old girl on multiple occasions.¹⁷ Despite his confession, Rotramel was released from the Clinic after he completed the court-ordered treatment.¹⁸

At the time Kristi Blevins was killed, Oklahoma's community notification statutes did not require public notification of juvenile sex offenders.¹⁹ Partly in response to Kristi's murder, Oklahoma passed the Juvenile Sex Offender Registration Act on June 1, 2001.²⁰ 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.²¹ 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.²²

Twenty-four states have enacted similar statutes, each differing in the severity of the notification burden imposed on juveniles.²³ Tragic stories

16. Rhett Morgan, *Records Release: A What-If Scenario Plays Out*, TULSA WORLD, June 22, 2001, at A16. The Oilton Police became aware of this incident when the victim's mother came to the police with this information. Morgan, *supra* note 13. The victim underwent counseling and remembered instances of sexual abuse by three juveniles, one of whom was Rotramel. *Id.*

17. Morgan, *Records Allege Earlier Assaults*, *supra* note 13.

18. *Registering Juveniles*, *supra* note 14.

19. See Greiner, *supra* note 12.

20. See Brian Ford, *A List of Laws That Begin July 1*, TULSA WORLD, July 1, 2001, at A3. The law went into effect July 1, 2001. *Id.* The Act is only partly in response to the murder of Kristi Blevins because, if the Act had been passed completely in response to the murder, the legislature would have included juvenile offenders under the age of fourteen within the Act's scope. See *id.* (reporting that the "measure targets minors 14-18 years of age"). Robert Rotramel was only thirteen years of age when he committed his first known sex offense of forcible sodomy. Morgan, *Records Allege Earlier Assaults*, *supra* note 13.

21. Greiner, *supra* note 12. The sexual offenses that require registration are rape and forcible sodomy. *Id.*

22. *Id.* If an offender turns twenty-one and a hearing determines that the offender is still a threat to the public, then he or she could be placed on the adult sex offender registry. *Id.*

23. See *In re Registrant J.G.*, 777 A.2d 891, 906-07 (N.J. 2001). Four states, Georgia, Hawaii, Kentucky, and Vermont, exclude juvenile sex offenders who are eighteen years of age or younger if their sex offenses were only criminal because of the age of the victim. *In re Registrant J.G.*, 777 A.2d at 906 n.4; see also GA. CODE ANN. § 42-1-12(a)(4)(C) (Supp. 2001) (stating that "conduct 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"); HAW. REV. STAT. ANN. § 846E-1 (Michie 1999) (stating that a criminal offense against a minor "excludes conduct that is criminal only because of the age of the victim . . . if the

similar to that of Kristi Blevins have resulted in an increased legislative awareness of the dangers posed to the community by juvenile sex offenders.²⁴ 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,²⁵ to include juveniles.²⁶

Some people remain uneasy about stigmatizing delinquent juveniles in the same manner as adults.²⁷ 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").

24. See CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION AND EDUCATION 1-3 (Apr. 2001), at <http://www.csom.org/pubs.notadv.pdf> (last visited Dec. 22, 2002); see also CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUALLY OFFENDING BEHAVIOR 5-6 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

25. 42 U.S.C. § 14071(e) (2000). Megan's Law was enacted to enable members of the community to obtain information regarding locally residing sex offenders. CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION: AN OVERVIEW 4, at <http://www.csom.org/prevedu/slides/sld004.htm> (last visited Dec. 22, 2002).

26. See *In re Registrant J.G.*, 777 A.2d at 906-07 n.5; see also ALA. CODE § 15-30-28 (2002); ARIZ. REV. STAT. ANN. §§ 13-3821 to -3827 (West 2001 & Supp. 2001); ARK. CODE ANN. §§ 12-12-901 to -920 (Michie 1999 & Supp. 2001); CAL. PENAL CODE §§ 290 to -94 (West 1999 & Supp. 2002); COLO. REV. STAT. ANN. §§ 16-11.7-102 to -103, 16-22-102 to 108 (West 2002); CONN. GEN. STAT. ANN. §§ 54-250 to -261 (West 2001) (reserves discretion to the judiciary to exempt those convicted of a sex offense if "the court finds that such person was under nineteen years of age at the time of the offense and the registration is not required for public safety"); DEL. CODE ANN. tit. 11, § 4121 (2002); IDAHO CODE §§ 18-8401 to -02 (Michie 2002); 730 ILL. COMP. STAT. ANN. 150/1 to /10; 152/101 to -99 (West 1997 & Supp. 2002); IND. CODE ANN. §§ 5-2-12-1 to -14 (Michie 2001 & Supp. 2002); IOWA CODE ANN. §§ 692A.1 to .16 (West Supp. 2002); KAN. STAT. ANN. §§ 22-4901 to -4912 (1995 & Supp. 2001); KY. REV. STAT. ANN. §§ 17.500 to .580 (Michie 1996 & Supp. 2001); MASS. GEN. LAWS ANN. ch. 6, §§ 178C to 178P (West Supp. 2002); MICH. COMP. LAWS §§ 28.721 to .732 (West Supp. 2002); MINN. STAT. ANN. § 243.166 (West 1992 & Supp. 2002); MISS. CODE ANN. §§ 45-33-21 to -57 (Supp. 2001); MONT. CODE ANN. § 41-5-1513 (2002); N.J. STAT. ANN. § 2C:7-2 (West 2002); N.C. GEN. STAT. §§ 4-208.5 to .32 (2002); N.D. CENT. CODE § 12.1-32-15 (1997); OHIO REV. CODE ANN. § 2152.82 (West 2002); OR. REV. STAT. §§ 181.585 to .607 (2001); R.I. GEN. LAWS § 11-37.1-1 to -19 (West 2000 & Supp. 2001); S.C. CODE ANN. §§ 23-3-400 to -530 (Law Co-op. Supp. 2001); S.D. CODIFIED LAWS § 22-22-31 (Michie 2002); TEX. CRIM. PROC. CODE ANN. art. 62.01 to .13 (Vernon Supp. 2002); VA. CODE ANN. §§ 19.2-298.1 to .4 (Michie 2000 & Supp. 2002); WASH. REV. CODE ANN. §§ 9A.44.130 to .145 (West 2000 & Supp. 2002); WIS. STAT. ANN. §§ 301.45 to .46 (West 1999 & Supp. 2001).

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.²⁸ 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.”²⁹ Today, this goal of the juvenile justice system has been joined by another: protecting society as a whole.³⁰

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.³¹ The breakdown in the

Convery, *Senate Oks Bill Labeling Teen Sex Offenders as Predators*, DAYTON DAILY NEWS, Apr. 25, 2001, at A1 (quoting Ohio Senator Time Ryan as stating that “[w]e have a juvenile justice code in this country for a reason: because young people should be treated differently than adults”); David Heinzmann, *Ruling To Affect Juvenile Sex Cases; State’s Top Court Weighs Registry, Youths’ Privacy*, CHI. TRIB., July 5, 2002, Zone N, at 1 (stating that “[o]pponents of registering juveniles as sex offenders say the possibility violates a basic principle of Juvenile Court, which is to protect child offenders so they might be rehabilitated and get a fresh start to adult life”).

28. See Hiller, *supra* note 27, at 291; see also *In re Gault*, 387 U.S. 1, 14-16 (1967).

29. See *A.C. v. People*, 16 P.3d 240, 242 (Colo. 2001) (en banc). This concept is referred to as *parens patriae*. *Parens patriae*, meaning “parent of his or her country” refers to “[t]he state regarded as a sovereign; the state in its capacity as provider of protection to those unable to care for themselves.” *Steele v. Hamilton County Cmnty. Mental Health Bd.*, 736 N.E.2d 10, 19, n.5 (Ohio 2000), *cert denied*, 532 U.S. 929 (2001) (quoting BLACK’S LAW DICTIONARY 1137 (7th ed. 1999)); see also *In re D.S.*, 763 N.E.2d 251, 261 (Ill. 2002) (stating that the doctrine of *parens patriae* “represents an expression of the general power and obligation of the government as a whole to protect minors and the infirm”). Of this power, the Pennsylvania Supreme Court wrote:

To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the Legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the state without any process at all, for the purpose of subjecting it to the state’s guardianship and protection. The natural parent needs no process to temporarily deprive his child of its liberty by confining it in his own home, to save it and to shield it from the consequences of persistence in a career of waywardness; nor is the state, when compelled, as *parens patriae*, to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts.

Commonwealth v. Fisher, 62 A. 198, 200 (Pa. 1905)

30. See *A.C.*, 16 P.3d at 242. The juvenile justice system is different from the adult criminal system; it is designed to serve the welfare of children and the best interests of society. *Id.*

31. Ralph A. Rossum, *Holding Juveniles Accountable: Reforming America’s “Juvenile Injustice System,”* 22 PEPP. L. REV. 907, 907 (1995) (stating that “[b]etween 1983 and 1992, the number of juveniles arrested for murder rose by 128% and the number arrested for violent crime rose by 57%”); see also George Bundy Smith & Gloria M. Dabiri, *The Judicial Role in the Treatment of Juvenile Delinquents*, 3 J.L. & POL’Y 347, 360-61 (1995)

juvenile justice system is particularly apparent when focusing on sex offenses committed by juveniles.³² 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.”³³ 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.³⁴

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.

McKeiver v. Pennsylvania, 403 U.S. 528, 544-45 (1971).

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 SUE 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).

34. See CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 5-6 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

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.³⁵ 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.³⁶ The early reformers wished to distinguish between the procedures and penalties applied to adults and those applied to children.³⁷ 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.³⁸

The juvenile justice system's primary objective is rehabilitative rather than retributive in nature.³⁹ The system was designed to prevent children from committing additional crimes by addressing and solving the underlying problems.⁴⁰ 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.⁴¹ The

35. *See In re Gault*, 387 U.S. 1, 14 (1967).

36. *Id.*

37. *See id.* at 15.

38. *Id.* 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.'" *Id.* (quoting Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 140, 119-20 (1909)).

39. *See In re Gault*, 387 U.S. at 15-16.

40. *A.C. v. People*, 16 P.3d 240, 242 (Colo. 2001) (en banc).

41. *Id.* The juvenile court movement leaders distinguished juvenile courts from criminal courts in other important respects as well. *See id.* 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. *See id.* The public was excluded from juvenile hearings to protect children from the public stigma of a criminal prosecution. *See id.* 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.⁴² 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.⁴³

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.⁴⁴ 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.⁴⁵ 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.⁴⁶

The rise in juvenile-committed crime has motivated many to question the validity and effectiveness of the juvenile justice system.⁴⁷ 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)).

44. Stephen Wizner, *On Youth Crime and the Juvenile Court*, 36 B.C. L. REV. 1025, 1033 (1995).

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.⁴⁸ 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.⁴⁹ 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.⁵⁰ One reform adopted by many states requires juvenile sex offenders to comply with Megan’s Law by registering with their state sex offender registry.⁵¹ Registering may lead to the release of offenders’ identification information to members of the public who are residing in their communities.⁵²

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.⁵³ Prior to the early 1980s, the majority of Americans viewed male sexual offenses with a “boys-will-be-boys” attitude.⁵⁴ Such behavior was perceived as innocent experimentation or a result of the “normal aggressiveness of sexually maturing adolescents.”⁵⁵ Such trivialization of juvenile sex offenses gradually disappeared as medical professionals

childhood). On the increase in incidents of juvenile arrests for serious crime, see Smith & Dabiri, *supra* note 31, at 360-62.

48. See Smith & Dabiri, *supra* note 31, at 360-62.

49. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 5 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002). The number of delinquency cases waived to adult courts increased seventy-one percent between 1985 and 1994. *Id.* The age at which a juvenile may be tried as an adult has been lowered in over half of the states. *Id.* “Twenty jurisdictions have no minimum age restriction for trying a juvenile as an adult for certain serious crimes.” *Id.*

50. *Id.* at 5-6.

51. *Id.* at 6.

52. *Id.*

53. *Id.* at 1, nn. 1-2 (“In 1995, youth were involved in 15 percent of all forcible rapes that resulted in arrest [and] . . . [a]pproximately 16,100 adolescents were arrested for sexual offenses . . . (excluding rape and prostitution)”).

54. HOWARD E. BARBAREE ET AL., THE JUVENILE SEX OFFENDER 10 (1993); see also RIGHTHAND & WELCH, *supra* note 33, at 1 (stating that “[r]esearch has shown that the sexual behavior problems exhibited by [juvenile sex offenders] are ‘not simply isolated incidents involving normally developing adolescents’”).

55. BARBAREE ET AL., *supra* note 54, at 10.

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.⁵⁶

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

Offenders share a number of characteristics.⁶⁰ In both categories, offenders are typically males between the ages of thirteen and seventeen.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.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

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 percent 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”).

57. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 3 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.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”).

58. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 3-4 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

59. *Id.*

60. *Id.* at 1-3.

61. *Id.* at 3.

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 percent of the juvenile sex offenders . . . had academic problems, 38 percent had been placed in special classes, and 14 percent were diagnosed as mentally retarded”).

childhood.⁶³ 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.⁶⁴ Also, one study found less than fifteen percent of juvenile sex offenders felt any sense of guilt or remorse for their actions.⁶⁵

There are also many characteristics that differ among the two groups.⁶⁶ The most notable difference is in the choice of victims.⁶⁷ Category one, juvenile sex offenders who abuse peers or adults, predominantly assault females who are strangers or mere acquaintances.⁶⁸ 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.⁶⁹

Another important difference between the two categories of offenders lies in their offense and behavior patterns.⁷⁰ 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.*

66. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 3 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

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.

70. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 4 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

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.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.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.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.⁷⁴ “Reoffense” refers to “new instances of sexually aggressive behavior, whether or not the new offense is similar to prior sexual aggression.”⁷⁵ Juveniles who reoffend demonstrate that they are unable to manage their sexually aggressive behavior and should remain in secured custody.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.⁷⁷ Because

71. *Id.*; see also 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”).

72. 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).

73. *Id.*; see also 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.*; 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”).

74. See William C. Greer, *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).

75. *Id.*

76. *Id.*

77. *Id.*; see also 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. *Id.* Using “subsequent conviction” as the measuring tool to determine recidivism rates is a

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.⁷⁸

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.”).

79. See WASH. STATE INST. FOR PUB. POL’Y, *supra* note 64, at 6 (stating that “[c]ontrolled studies that compare treatment outcomes for adolescent sex offenders are practically nonexistent”); see also CENTER FOR SEX OFFENDER MANAGEMENT, RECIDIVISM OF SEX OFFENDERS 14 (May 2001) at <http://www.csom.org/pubs/recidsexof.pdf> (last visited Dec. 22, 2002); Walter H. Bera, *Family Systems Therapy for Adolescent Male Sex Offenders*, in MALE SEXUAL ABUSE: A TRILOGY OF INTERVENTION STRATEGIES 153 (John C. Gonsiorek et al. eds., 1994) (stating that “recidivism and treatment follow-up studies are noted for their methodological difficulties”); Greer, *supra* note 74, at 428 (1997) (stating that “[t]here have been few studies of reoffense or recidivism for sexually abusive youth”). See generally CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 4 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

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.brf10.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,⁸² as many as half of adult sex offenders admit to committing their first sexual assault during adolescence.⁸³

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.⁸⁴ Choosing standards that are too lenient may lead to an increased danger of sexually abusive crimes that could have been prevented through notification.⁸⁵ 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.brf10.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”).

85. *See* CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION AND EDUCATION 10 (Apr. 2001) at <http://www.csom.org/pubs/notedu.pdf> (last visited Dec. 22, 2002). *See generally* Gail Ryan, *Consequences for the Victim of Sexual Abuse*, in

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

JUVENILE SEXUAL OFFENDING: CAUSES, CONSEQUENCES, AND CORRECTION 157-67 (Gail Ryan & Sandy Lane eds., new and rev. ed. 1997) (describing adverse consequences of sexual abuse).

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*⁹⁶

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.⁹⁷ 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."⁹⁸ 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.⁹⁹ Prior to this statute's enactment, Minnesota law enforcement agencies lacked the resources necessary to identify known sex offenders residing in the state.¹⁰⁰ The Foundation also sought enactment of similar legislation at the federal level.¹⁰¹

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).

96. 42 U.S.C. § 14071 (2000).

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.

CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 2 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

98. Jacob Wetterling Foundation, *Jacob's Story*, at http://www.jwf.org/Jacobs_story.html (last visited Aug. 27, 2002).

99. 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); *see also* MINN. STAT. ANN. § 243.166 (West & Supp. 2002).

100. 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).

101. *Id.* at 3.

Jacob Wetterling Act).¹⁰² 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.¹⁰³ The statute penalized states for noncompliance, but it failed to provide federal funding to enable states to fulfill the Act’s requirements.¹⁰⁴ 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.¹⁰⁵

B. The Creation of Megan’s Law¹⁰⁶ and the Community Notification Statutes¹⁰⁷

Although the Jacob Wetterling Act required convicted sex offenders to register with state authorities, this information was not made accessible to the public.¹⁰⁸ 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.¹⁰⁹

Megan Kanka was invited into the home of a neighbor to see a puppy and was never seen alive again.¹¹⁰ Her body was found in a wooded area

102. 42 U.S.C. § 14071 (2000).

103. CENTER FOR SEX OFFENDER MANAGEMENT, UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR 6 (Dec. 1999), at <http://www.csom.org/pubs/juvbrf10.pdf> (last visited Dec. 22, 2002).

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.*

105. 42 U.S.C. § 14071(g) (2000); *see also* Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3756 (2000). Monies not allocated to states failing to comply with the Act were to be reallocated to those states found in compliance. 42 U.S.C. § 14071(g)(2)(b) (2000).

106. 42 U.S.C. § 14071(e) (2000); *see also* Brian Blomquist, “Megan’s Law” Bill Likely To Advance, WASH. POST, Sept. 7, 1996, at A3.

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.*

108. *See Clinton Signs Legislation That Requires Neighbors Be Told When a Convicted Sex Offender Moves In*, CHI. TRIB., May 17, 1996, Zone C, at C1.

109. *See id.*

110. Hiller, *supra* note 27, at 272.

in her own neighborhood.¹¹¹ The police charged Jesse Timmendequas, who had twice been convicted for sex offenses, with Megan's murder.¹¹²

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."¹¹³ A unanimous House of Representatives agreed and approved Megan's Law on May 7, 1996.¹¹⁴ Ten days later, President Bill Clinton signed the legislation into law.¹¹⁵

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.

113. 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).

114. *See National "Megan's Law" Is Approved in House*, WASH. POST, May 8, 1996, at A14.

115. *See* John E. Yang, *President: Stand Up To Crime; Clinton Finishes Week Of Focusing on Issue*, WASH. POST, May 18, 1996, at A6. Megan's Law amended the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act to require the release of sex offender identifying information to the public. 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). The Act has since been amended on two other occasions. *Id.* at 3-4. The Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093 (1996) (codified as amended at 42 U.S.C. §§ 13071, 14071, 14072), increased the registration requirements pertaining to serious sex offenders. Wayne A. Logan, *A Study in "Actuarial Justice": Sex Offender Classification Practice and Procedure*, 3 BUFF. CRIM. L. REV. 593, 600 (1999). The Lychner Act requires states to "impose lifetime registration for offenders "with one or more prior convictions for a registration-eligible offense and those initially convicted of specified 'aggravated' sex offenses." *Id.* (noting that "aggravated" sex offenses include "sex crimes involving penetration through the use or threat of force and sexual acts involving penetration with victims below the age of twelve"). The second amendment was Section 115 of the General Provisions of Title 1 of the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act. *Id.* at 601. Under this Act,

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.”¹¹⁶ To accomplish this goal, Congress provided that states and state agencies must release information about sex offender registrants that is necessary for public safety.¹¹⁷ Decisions about the threat posed by individual offenders are left to the states.¹¹⁸ 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.¹¹⁹

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.¹²⁰ 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.¹²¹ The greatest differences reside in

116. CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION: AN OVERVIEW 4, at <http://www.csom.org/prevdv/slides/sld004.htm> (last visited Dec. 22, 2002).

117. See 42 U.S.C. § 14071(e)(2) (2000).

118. CENTER FOR SEX OFFENDER MANAGEMENT, SEX OFFENDER REGISTRATION: POLICY OVERVIEW AND COMPREHENSIVE PRACTICES 2 (Oct. 1999), at <http://www.csom.org/pubs/sexreg.pdf> (last visited Dec. 22, 2002). The statute permits disclosure for “any purpose permitted under the laws of the State.” 42 U.S.C. § 1407(e)(1) (2000). Some states leave to local law enforcement, who are given broad discretion, the final decision on notification. CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION: AN OVERVIEW 14, at <http://www.csom.org/prevedu/slides/sld014.htm> (last visited Dec. 22, 2002). Factors used by law enforcement officials in the decision often include information forwarded by the offender’s releasing agency and the characteristics of the local community. *Id.*

119. CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION AND EDUCATION 4 (Apr. 2001), at <http://www.csom.org/pubs/notedu.pdf> (last visited Dec. 22, 2002).

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.”).

121. See *In re Registrant J.G.*, 777 A.2d 891, 906-07 (N.J. 2001).

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

122. See CENTER FOR SEX OFFENDER MANAGEMENT, COMMUNITY NOTIFICATION: AN OVERVIEW 7 (2001), at <http://www.csom.org/prevedu/slides/sld007.htm> (last visited Dec. 22, 2002).

123. 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).

124. See *id.*

125. *Id.*; cf. *In re Registrant J.G.*, 777 A.2d at 906-07.

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.

N.D. CENT. CODE § 12.1-32-15(2)(c) (Supp. 2002).

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.¹³³

The Supreme Court of Massachusetts also recently had an opportunity to discuss this method in *Roe v. Attorney General*.¹³⁴ In *Roe*, convicted sex offenders brought a class action suit to seek injunctive relief from the enforcement of the Massachusetts sex offender registration statute.¹³⁵ The court explained that when sentencing a juvenile sex offender who has committed certain sex crimes,¹³⁶ the judge *must* determine whether the offender poses a risk to the public.¹³⁷ The sentencing judge must look to the circumstances surrounding the offense, as well as the offender’s criminal history, to make this determination.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.¹³⁹

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

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.” *Id.* (citation omitted).

134. 750 N.E.2d 897 (Mass. 2001).

135. *Id.* at 899, 903.

136. *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.

Id.

137. *Roe v. Attorney General*, 750 N.E.2d 897, 899 n.5 (Mass. 2001); *see* MASS. ANN. LAWS CH. 6, § 178E(f). The statute provides:

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

MASS. GEN. LAWS ANN. ch. 6, § 178E(f) (West Supp. 2002).

138. MASS. GEN. LAWS ANN. ch. 6, § 178E(e).

139. *Id.*

to register.¹⁴⁰ 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.¹⁴¹

This statute was applied in *K.J.P. v. Indiana*.¹⁴² 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.¹⁴³ He was found delinquent, ordered to serve five days of detention, and then placed on probation.¹⁴⁴ 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.¹⁴⁵ 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.¹⁴⁶

New Jersey has implemented yet another approach.¹⁴⁷ In general, the same registration requirements¹⁴⁸ that apply to adult sex offenders also

140. IND. CODE ANN. § 5-2-12-4(b) (Michie 2001).

141. *Id.*; see also *In re G.B.*, 709 N.E.2d 352, 353 (Ind. Ct. App. 1999).

142. 724 N.E.2d 612 (Ind. Ct. App. 2000).

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.*

147. See N.J. STAT. ANN. § 2C:7-2(b) (West 1995).

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.¹⁴⁹ New Jersey requires *all* sex offenders to register with local law enforcement for life.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.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.¹⁵²

It was not until July 2001, when the Supreme Court of New Jersey decided *In re Registrant J.G.*, that a more lenient standard was applied to offenders under the age of fourteen.¹⁵³ J.G. admitted that he had sexually assaulted two young female victims when he was ten years old.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].”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.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.¹⁵⁷

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.” *Id.* (emphasis added).

149. *In re Registrant J.G.*, 777 A.2d 891, 900 (N.J. 2001). The term sex offense, in this context, is defined by statute. See N.J. STAT. ANN. 2C:7-2(b) (West Supp. 2002).

150. See *In re Registrant J.G.*, 777 A.2d at 900.

151. *Id.* at 900; see also N.J. STAT. ANN. § 2C:7-2(f)-(g) (West Supp. 2002).

152. *In re Registrant J.G.*, 777 A.2d at 900.

153. *Id.* at 912.

154. *Id.* at 894-95.

155. *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 . . .

N.J. STAT. ANN. 2A:4A-26 (West Supp. 2001).

156. *In re Registrant J.G.*, 777 A.2d at 912.

157. 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).

159. MISS. CODE ANN. § 45-33-25(1) (Supp. 2001).

160. *Id.*

161. See RIGHTHAND & WELCH, *supra* note 33, at 1; see also Sherry L. Scott, Comment, *Fairness to the Victim: Federal Rules of Evidence 413 and 414 Admit Propensity Evidence in Sexual Offender Trials*, 35 HOUS. L. REV. 1729, 1741-42 (1999) (stating that "[s]ex crimes are highly underreported"); Roxanne Lieb et al., *Sexual Predators and Social Policy*, 23 CRIME & JUST. 43, 50-51 (1998) (stating that "[i]t is especially difficult to ascertain the true rate of sex offenses"); Jennifer P. Maxwell, *Mandatory Mediation of Custody in the Face of Domestic Violence: Suggestions for Courts and Mediators*, 37 FAM. & CONCILIATION CTS. REV. 335, 338-339 (1999) (stating that "the National Victim Center and Crime Victims Research and Treatment Center estimate 'that eighty-five percent of rapes are never reported to the police'"); James A. Billings & Crystal L. Bulges, Comment, *Maine's Sex Offender Registration and Notification Act: Wise or Wicked?*, 52 ME. L. REV. 175, 178 (2000) (stating that, like other crimes, "sex offenses are significantly underreported"); Standing Together Against Rape, *Statistics*, at <http://www.star.ak.org/main/statistics.htm> (last visited Aug. 25, 2002) ("Only one in ten rapes are reported. Rape remains the most under-reported of all violent crimes."); Leonore M.J. Simon, *Therapeutic Jurisprudence: Sex Offender Legislation and the Antitherapeutic Effects on Victims*, 41 ARIZ. L. REV. 485, 499-512 (1999) (explaining the factors that contribute to the fact that only one-fifth of all those arrested for forcible rape or attempted rape are ever convicted). See generally Aviva Orenstein, *No Bad Men!: A Feminist Analysis of Character Evidence in Rape Trials*, 49 HASTINGS L.J. 663 (1997-1998).

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.¹⁶³ This process allows for judges to enforce registration statutes subjectively and could adversely affect both juvenile sex offenders and the community.¹⁶⁴

This problem was illustrated in *In re S.M.M.*¹⁶⁵ 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.¹⁶⁶ 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.¹⁶⁷ *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.”¹⁶⁸ 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.¹⁶⁹

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.”¹⁷⁰ The state further claimed that the burden is on the juvenile to produce evidence that would support such an exemption.¹⁷¹

Although the court accepted the state’s argument, this circular reasoning is unsound.¹⁷² 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.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.¹⁷⁴ The court admitted this statutory deficiency, but it did not offer any clarity on the factors used in the determination.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.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.¹⁷⁷ As illustrated by the story of Robert Rotramel,¹⁷⁸ however, juveniles can commit serious offenses before reaching the age of fourteen.¹⁷⁹

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

173. *Id.* at 406-07.

174. *See id.* at 407.

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.

Id.

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).

177. *See id.*

178. *See supra* notes 1-18 and accompanying text.

179. Morgan, *Records Allege Earlier Assaults*, *supra* note 13.

180. RIGHTHAND & WELCH, *supra* note 33, at 19.

181. *See* Ryan, *supra* note 64, at 6; *see also* RIGHTHAND & 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.*

registering will expose very young children, typically between the ages of four and seven, to a greater possibility of becoming victims.¹⁸²

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.¹⁸³ The first step in achieving these goals is to require that all offenders register regardless of their ages.¹⁸⁴ 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.¹⁸⁵ 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.¹⁸⁶

In 2001, New Jersey refined this statute even further through case law.¹⁸⁷ *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.¹⁸⁸ 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.¹⁸⁹ J.G. accepted a plea offer imposing a three-year suspended sentence and probation with certain orders, including completion of a counseling program.¹⁹⁰ Eighteen months after the sentencing, J.G. was notified that, pursuant to Megan's Law, he was classified as a Tier 2 offender¹⁹¹ 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.*

183. *In re Registrant J.G.*, 777 A.2d 891, 901 (N.J. 2001).

184. *See id.* at 900; *see also* N.J. STAT. ANN. § 2C:7-2 (West 1995).

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).

186. N.J. STAT. ANN. §§ 2C:7-2(f),(g) (West Supp. 2002).

187. *In re Registrant J.G.*, 777 A.2d at 894-900.

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.¹⁹² J.G. filed an objection to the application of the registration and notification requirements on both statutory and constitutional grounds.¹⁹³ 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.¹⁹⁴

The New Jersey Supreme Court discussed the rehabilitative reasons for the creation of a separate justice system for juveniles.¹⁹⁵ The court recognized that in the 1960s, disappointment with the juvenile system led to custodial sentencing of juveniles who committed serious offenses.¹⁹⁶

pubs/notedu.pdf (last visited Dec. 22, 2002). 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 898-99. 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.*

192. *In re Registrant J.G.*, 777 A.2d at 896. 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.

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.²⁰¹

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.

