ABSTRACT

Recently, sex offender registration laws have been expanded to apply to juveniles, sometimes requiring mandatory or lifetime registration and community notification. Courts have generally upheld these registration and notification requirements, determining that they are administrative rather than punitive procedures. This Note argues that mandatory and lifetime sex offender registration for juveniles violates the Eighth Amendment protection against cruel and unusual punishment. The Supreme Court has developed recent caselaw curbing the constitutionally permissible punishments available to juveniles. Noting the unique developmental characteristics of juveniles, the Court has held that capital and mandatory life without parole sentences violate the Eighth Amendment. Based on this line of cases, this Note argues that juveniles’ developmental characteristics effectively transform registration and notification laws from administrative procedures into punishment, and that, as a punishment, the automatic application and lifetime nature of these laws are unconstitutional. When mandatory and not susceptible to modification, these laws comprise the most severe form of punishment available to juvenile sex offenders. Because the Supreme Court has argued forcefully against mandatory lifetime sentences for juveniles due to juveniles’ high potential for rehabilitation and reduced culpability, such mandatory and life-long sentences for juveniles who have committed non-homicide offenses violate their right against cruel and unusual punishment. Additionally, once juvenile sex offender registration is correctly characterized as punitive, it also becomes susceptible to ex post facto, equal protection, and due process challenges. As an alternative to registration, this Note suggests more effective ways of dealing with juvenile sex offenders that encourage rehabilitation.

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One afternoon, while I was clerking in a law office, a woman walked in
with her adorable four-year-old daughter. She sat behind the large
mahogany desk and began to tell her story like most clients did from
3:00-5:00 p.m. However, this woman was different. She was a mother
scared for her daughter and terrified for her thirteen-year-old son. She
was stuck in the middle of the love for her children and the realities of
the judicial system.
Several weeks prior, the woman’s daughter came to her laughing, while telling her that her brother had her perform, what the mother later determined to be, oral sex on him. Horrified, the mother talked to her son. He explained that he found a picture on the Internet and was curious. One day while she was gone for twenty minutes, the son and daughter experimented. What this little boy did not know, nor could he understand, was that this single act would change the rest of his life. The mother, heartbroken, took her son to a psychiatrist for counseling. The counselor then turned to the authorities. The desperate cry from the mother for help ultimately caused her son to be taken out of the home and investigated for felony charges.1

* * *

Johnnie is a registered sex offender. When he was eleven he touched his four-year-old half-sister’s vagina (over her underwear). A few months later, she performed oral sex on him at his request. Johnnie’s mother found out. She called the police and Johnnie spent sixteen months in a residential juvenile sex offender program, where he successfully completed treatment. When he was released, Johnnie’s mother wanted nothing to do with him, so he ended up living with his grandmother. Two months after he started at a new middle school, someone found Johnnie on the state’s Internet sex offender registry. Two days later, Johnnie walked into oncoming traffic and told a police officer he wanted to die. He transferred to an alternative school for juvenile delinquents. Even there, the harassment continued. Some of the other boys confronted Johnnie on the school bus, calling him a sex offender and yelling: “You tried to rape your sister!” As a result of anger and depression, Johnnie has twice been admitted to psychiatric hospitals. Not only is Johnnie suicidal, but when he transferred to yet another school and the harassment continued, he told a counselor that he wanted to kill another student for taunting him. Johnnie knows what he did to his sister was wrong and continues to feel guilty about it. Johnnie has never committed another sex offense. Nevertheless, his name, photo, address, and school information continue to appear on the Internet registry, where they will likely remain for the rest of his life.2

1 Caitlin Young, Note, Children Sex Offenders: How the Adam Walsh Child Protection and Safety Act Hurts the Same Children it is Trying to Protect, 34 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 459, 459 (2008).
Sexual offenses against children are among the most horrible crimes imaginable. Rapidly growing concern and fear of those who prey on children has led Congress to enact a series of laws meant to protect children against the threat of sexual predators. This, in turn, has led states to create laws that implement sex offender registries and community notification methods to enhance management and control of sexual offenders. Generally, these laws have withstood judicial scrutiny. More recently, these registry and notification requirements have been expanded to include juveniles.

Many critics have noted how juvenile registration laws create more harm for society than good. Additionally, this Note will argue that the application of sex offender laws to juveniles violates the Eighth Amendment’s prohibition against cruel and unusual punishment, as well as the Ex Post Facto Clause and the Fourteenth Amendment’s Equal Protection and Due Process clauses. Part I will outline federal and state laws requiring juveniles to register as sex offenders, and Part II will continue by highlighting the courts’ responses to these laws. Part III will describe the Supreme Court’s recent action on juvenile sentences and discuss how this might create a constitutional challenge to juvenile sex offender registration. Part IV will then lay out an Eighth Amendment challenge to juvenile sex offender registration laws. After describing how the unique developmental characteristics of juveniles separate them from adult offenders, Part IV will argue that, when applied to juveniles, sex offender registration is effectively a punishment and therefore may be scrutinized under Eighth Amendment standards. Under this scrutiny, neither mandatory registration nor lifetime registration for juveniles pass muster. Additionally, Part IV will identify other potential constitutional challenges to juvenile registration laws. Part V will conclude by offering suggestions for more effective ways to handle juvenile sex offenders.

3 See Nicole Pittman & Quyen Nguyen, Defender Association of Philadelphia, A Snapshot of Juvenile Sex Offender Registration and Notification Laws 6-7 (May 1, 2011), available at http://www.pajuv defenders.org/file/snapshot.pdf, for a discussion of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act and Megan’s Law, which led up to the passing of the Adam Walsh Child Protection and Safety Act of 2006, Title 1 of which is the Sex Offender Registration and Notification Act (SORNA).

4 Id. By 1996, all states had some sort of Megan’s Law on the books. Id. at 7.

5 See discussion infra Part II.A.

6 SORNA was the first federal statute to include juveniles in registration and notification schemes. Pittman & Nguyen, supra note 3, at 7.

7 Throughout this paper, laws that provide for both sex offender registration and public notification will be referred to as “registration laws.” This term refers to both statutory registration and notification.

8 See discussion infra Parts IV.B, V.
focusing on the goal of rehabilitation that permeates the juvenile justice system.

I. JUVENILE SEX OFFENDER REGISTRATION—WHAT DOES THE LAW REQUIRE?

Sex offender registration laws have existed for several years, with varying degrees of juvenile inclusion. Prior to 2006, both federal and state laws required the registration of adult sex offenders. In 2006, Congress increased national management of sex offenders by passing the Adam Walsh Child Protection and Safety Act. Title I of the Act is the Sex Offender Registration and Notification Act (SORNA), which, for the first time, encompassed juveniles adjudicated delinquent for sex offenses. In order to comply with SORNA, many states passed legislation requiring juvenile sex offenders to register. However, states’ laws vary widely in how they address juvenile registration and notification. This section first describes SORNA and its directive to the states and then highlights the current landscape of juvenile sex offender registration laws among the states.

A. THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

Congress passed the Sex Offender Registration and Notification Act (SORNA) in order to set up a comprehensive national registration system for sex offenders to “protect the public from sex offenders and offenders against children.” SORNA was a response to “vicious attacks by violent predators.” For the first time, SORNA expanded sex offender registration to cover juveniles “14 years of age or older at the time of the offense and [whose] offense adjudicated was comparable to or more severe than aggravated sexual abuse . . . or was an attempt or conspiracy to commit such an offense.” For the purposes of SORNA,

9 See PITTMAN & NGUYEN, supra note 3, at 6-7, for a discussion of the laws leading up to the Adam Walsh Child Protection and Safety Act.
12 § 16901.
13 Id.
14 § 16911(8). Under its definition of “conviction,” SORNA would also cover juveniles convicted as adults. Under SORNA and most state statutes, juveniles convicted as adults must comply with adult registration requirements. Because the statutory schemes are so complex, this Note only identifies registration requirements applied to juveniles adjudicated delinquent in the juvenile justice system. However, the constitutional arguments (Part IV, infra) and suggestions for better ways to deal with juvenile sex offenders (Part V, infra) also apply to cases in which a juvenile convicted as an adult must register.
aggravated sexual abuse includes engaging in any sexual act with a person under the age of twelve.\textsuperscript{15}

SORNA also established tiers of offenses. Tier III includes aggravated sexual abuse, abusive sexual contact, and kidnapping of a minor; Tier II includes various other offenses against minors; and Tier I encompasses all other sex offenses that do not fall under Tier II or Tier III.\textsuperscript{16} Since all juveniles included under SORNA are only those who have been adjudicated delinquent of aggravated sexual abuse, and an offense of aggravated sexual abuse is automatically categorized as a Tier III offense, \textit{all} juveniles forced to register under SORNA must register as Tier III offenders. Tier III offenders are required to register for life.\textsuperscript{17} Juveniles registered as Tier III offenders can reduce their registration term to twenty-five years if they meet the requirements under SORNA: maintaining a clean record for twenty-five years (i.e. no convictions with the possibility of one year imprisonment, no convictions for sex offenses, successful completion of probation and/or parole, and successful completion of a sex offender treatment program).\textsuperscript{18} Additionally, Tier III offenders must appear in person to re-register every three months.\textsuperscript{19}

As part of its notification component, SORNA requires that each jurisdiction make information about registered sex offenders (including name, address, employer, physical description, current photograph, a description of the offense committed, as well as other information\textsuperscript{20}) available on the Internet, subject to exemptions by the Attorney General.\textsuperscript{21} The Act also requires that jurisdictions maintaining the registries provide this information to “each school and public housing agency, in each area in which the individual resides, is an employee or is a student”; “[e]ach jurisdiction where the sex offender resides, is an employee, or is a student”; “[a]ny agency responsible for conducting employment-related background checks”; “[v]olunteer organizations in which contact with minors or other vulnerable individuals might occur”; “[a]ny organization, company, or individual who requests such notification”; and various other entities.\textsuperscript{22}

Additionally, when passed, SORNA mandated that every jurisdiction maintain a sex offender registry conforming to the requirements of

\textsuperscript{15} 18 U.S.C. § 2241(c) (2007).
\textsuperscript{17} 42 U.S.C. § 16915 (2006).
\textsuperscript{18} \textit{Id.}
SORNA by July 27, 2009. Any jurisdiction that failed to comply by the deadline would forfeit ten percent of their Byrne Memorial Justice Assistance Grant (JAG) Omnibus Crime federal funding. However, because just one state (Ohio) was deemed substantially in compliance with the Act by the original deadline, the Attorney General issued a blanket extension, giving states until July 2011 to comply. In January of 2011, the Attorney General issued Supplemental Guidelines, which allowed jurisdictions the discretion to exempt registered juveniles from public notification.

These guidelines, however, merely establish a “baseline” for sex offender registration and notification, setting “a floor, not a ceiling,” for jurisdictions’ programs. As a result, states have attempted to implement these standards in a variety of ways.

**B. State Juvenile Sex Offender Registration Laws**

As of October 2011, only fifteen states were in substantial compliance with SORNA. Some states are in the process of attempting to comply, but others, such as New York, have chosen not to comply and forfeited federal funding. Regardless of whether the states are in compliance or not, the degree to which registration and notification requirements apply to juveniles varies extensively across states. This

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26 Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1630-01 (January 11, 2011) [hereinafter 2011 Supplemental Guidelines]. The Supplemental Guidelines state that, “Given this change, the effect of the remaining registration requirements under SORNA for certain juvenile delinquent sex offenders is, in essence, to enable registration authorities to track such offenders following their release and to make information about them available to law enforcement agencies . . . . There is no remaining requirement under SORNA that jurisdictions engage in any form of public disclosure or notification regarding juvenile delinquent sex offenders. Jurisdictions are free to do so, but need not do so to any greater extent than they may wish.” Id.
section serves as a general overview of the current landscape of state laws.

Thirty-four states subject juveniles adjudicated delinquent in juvenile court to registration and notification.\(^{30}\) Of the thirty-four states that subject juveniles to registration, eighteen permit public notification of registered juveniles’ information.\(^{31}\) Additionally, twelve states do not allow juveniles to petition for modification or removal of their registration.\(^{32}\) In twenty-one of the states requiring juveniles to register, there is no minimum age below which juveniles are exempt from registration.\(^{33}\) In states where there is no minimum age, young children actually appear on the registry, and therefore a lack of minimum age is not a trivial matter. For example, Delaware, one of the states with no minimum age, had approximately 639 juveniles registered as sex offenders, with fifty-five children under the age of twelve—and a handful even as young as nine years old.\(^{34}\)

Some states (nine) deny judicial discretion as to whether a juvenile must be subject to registration and community notification and instead mandate registration.\(^{35}\) And six states—California, Florida, Montana, South Carolina, Virginia, and Washington—require lifetime registration for juveniles.\(^{36}\) In addition, in most states, juveniles can be tried as adults based on their age and the charges that they face. Those juveniles convicted of sex offenses as an adult must comply with adult registration requirements—potentially subjecting them to mandatory registration for life.\(^{37}\)

II. JUDICIAL RULINGS ON REGISTRATION LAWS

Since the passage of the initial sex offender registration laws, both adult and juvenile registration laws have come under attack. Those challenging the laws argue that registration violates various principles of the U.S. Constitution. This section reviews the stance that courts have

\(^{30}\) See Pittman & Nguyen, supra note 3, at 32. Thus, sixteen states, as well as the District of Columbia, do not subject juveniles to registration. Id. For a more extensive and state-by-state review of juvenile registration laws, see id. While the Snapshot was released in July 2011, a review of current relevant state laws shows that the laws reviewed in the Snapshot are generally current. However, many of the laws are undergoing pending legislation.

\(^{31}\) See id.

\(^{32}\) See id.

\(^{33}\) See id.

\(^{34}\) Id. at 12. This information was current as of July 2011.

\(^{35}\) See id. at 32.

\(^{36}\) Id.

\(^{37}\) See, e.g., Colo. Rev. Stat. § 16-22-113(3) (2013) (subjecting all persons convicted as a sexually violent predator or convicted of sexual assault on a child or incest to lifetime registry without relief).
taken on the constitutionality of sex offender registration laws, both for juveniles and for adults.

A. CASELAW UPHOLDING SEX OFFENDER REGISTRATION

The most notable case upholding sex offender registration has been the Supreme Court’s decision in Smith v. Doe. The Court determined that an Alaskan adult sex offender registration statute did not constitute punishment, and thus did not violate the Ex Post Facto Clause, which prohibits any criminal penalty or punitive civil penalty from being applied retroactively. The Court completed a two-part analysis of the registration scheme. First, they asked whether the legislature had the intention of establishing a punishment or a civil proceeding. Second, if the intent was to establish a civil proceeding, they then asked “whether the statutory scheme [was] so punitive either in purpose or effect as to negate the State’s intention to deem it civil.” Examining the face of the statute, the Court found that the legislature intended to create “a civil, nonpunitive regime.” Additionally, the Court stated that “where a legislative restriction ‘is an incident of the State’s power to protect the health and safety of its citizens,’ it will be considered ‘as evidencing an intent to exercise that regulatory power, and not a purpose to add to the punishment.’

To analyze the effect of the sex offender registration statute, the Court looked at five of the seven factors that it had previously outlined in Kennedy v. Mendoza-Martinez. These factors were “whether, in its necessary operation, the regulatory scheme: [1] has been regarded in our history and traditions as a punishment; [2] imposes an affirmative disability or restraint; [3] promotes the traditional aims of punishment; [4] has a rational connection to a nonpunitive purpose; or [5] is excessive with respect to this purpose.” The Smith Court found that registration was not traditionally punitive, as its “principal effect” was “to inform the public for its own safety, not to humiliate the offender.” The Court found that the disability and/or restraint that registration imposed was minor and indirect since “[t]he Act imposes no physical restraint, and so does not resemble the punishment of imprisonment, which is the paradigmatic affirmative disability or restraint;” its “obligations are less

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39 See id.
40 Id. at 92.
41 Id. at 96.
42 Id. at 93-94 (quoting Fleming v. Nestor, 363 U.S. 603, 616 (1960)).
44 Smith, 538 U.S. at 97. The Court chose not to focus on two of the Mendoza-Martinez factors: whether the regulation is based on a finding of scienter and whether the regulation applies to an act that is already a crime. Id. at 105.
45 Id. at 99.
harsh than the sanctions of occupational debarment, which we have held to be nonpunitive;” and it “does not restrain activities sex offenders may pursue but leaves them free to change jobs or residences.”\textsuperscript{46} When analyzing whether registration promoted the traditional aims of punishment, the Court found that such registration might, in fact, deter future crimes, but stated that “[a]ny number of governmental programs might deter crime without imposing punishment. ‘To hold that the mere presence of a deterrent purpose renders such sanctions “criminal” . . . would severely undermine the Government's ability to engage in effective regulation.’”\textsuperscript{47}

The Court looked to the last factor—a rational connection to a nonpunitive purpose—as the most significant, identifying the goal of protecting “public safety, which is advanced by alerting the public to the risk of sex offenders in their communit[y].”\textsuperscript{48} The Court highlighted that a statute need not be narrowly tailored to its nonpunitive purpose in order to meet this requirement.\textsuperscript{49} Finally, the Court held that the “excessiveness inquiry . . . is not an exercise in determining whether the legislature has made the best choice possible to address the problem it seeks to remedy. The question is whether the regulatory means chosen are reasonable in light of the nonpunitive objective.”\textsuperscript{50} Because the Court found that Alaska’s sex offender registration scheme was not punitive in purpose or effect, the ex post facto analysis was inapplicable.\textsuperscript{51} Other courts, including the Supreme Court of Illinois and the Iowa Court of Appeals, followed the Supreme Court’s analysis in finding that juvenile sex offender registration statutes do not constitute punishment and thus do not violate the Ex Post Facto Clause.\textsuperscript{52}

In another review of sex offender registration laws, the Supreme Court held that a registration requirement without a hearing to determine the dangerousness of the offender did not violate the Due Process Clause.\textsuperscript{53} The Court found that Connecticut chose to base the registry requirement on “the fact of previous conviction, not the fact of current dangerousness” and so held that “due process does not require the opportunity to prove a fact that is not material to the State’s statutory scheme.”\textsuperscript{54} The Second Circuit Court of Appeals had held that since the law “implicated a liberty interest because of: (1) the law’s stigmatization

\textsuperscript{46} Id. at 100 (citations omitted).
\textsuperscript{47} Id. at 102 (quoting Hudson v. United States, 522 U.S. 93, 105 (1997)).
\textsuperscript{48} Id. at 103 (quoting Doe I v. Otte, 259 F.3d 979, 991 (9th Cir. 2001)).
\textsuperscript{49} Id.
\textsuperscript{50} Id. at 105.
\textsuperscript{51} Id. at 105-06.
\textsuperscript{52} See In re C.A.A., 728 N.W.2d 853 (Iowa Ct. App. 2007); In re J.W., 787 N.E.2d 747 (Ill. 2003).
\textsuperscript{54} Id. at 4.
of respondent by implying that he [was] currently dangerous, and (2) its imposition of extensive and onerous registration obligations on respondent,” there was an obligation to allow the respondent “an opportunity to demonstrate that he was not likely to be currently dangerous.” But the Supreme Court reversed stating that “mere injury to reputation, even if defamatory, does not constitute the deprivation of a liberty interest.”

When specifically analyzing whether juvenile registration and notification is unconstitutional, other courts have noted that judicial discretion in deciding whether to require a juvenile to register helps a registration requirement survive constitutional scrutiny. The Iowa Supreme Court held that a statute including discretion to keep a juvenile off the registry withstood a challenge of vagueness and an ex post facto challenge. The Supreme Judicial Court of Massachusetts also held that a statute providing for a determination of risk before a juvenile was placed on the sex offender registry was not unconstitutional.

Additionally, the Supreme Court of Rhode Island upheld a juvenile offender notification scheme against a challenge that this violated the confidentiality of juvenile court. The court acknowledged the public safety policy motivating the statute and held that the statute was not meant as a punishment. The court emphasized that “[e]ven in spite of the trend toward the partial erosion of confidentiality in the juvenile-justice system, it is noteworthy that both the registration and any information accompanying the registration are available only to law enforcement agencies and are not disseminated to the public at large. This is a significant consideration.”

Recently, the Court of Appeals for the Ninth Circuit also upheld a juvenile registration statute in the face of an Equal Protection and Eighth Amendment challenge. The court found that since juvenile sex offenders did not belong to a protected class and were not being deprived of a fundamental liberty, rational basis scrutiny was appropriate. The court then held that the registration scheme passed constitutional scrutiny since it was rationally related to the legislative purpose of

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55 Id. at 6 (internal quotations omitted).
56 Id. at 6-7.
57 Phoebe Geer, Justice Served? The High Cost of Juvenile Sex Offender Registration, 27 DEV. MENTAL HEALTH L. 34, 52 (2008) (citing In re S.M.M., 558 N.W.2d 405 (Iowa 1997)).
58 Id. at 51 (citing Roe v. Attorney General, 750 N.E.2d 897 (Mass. 2001)).
60 Id. at 213.
61 Id. at 212.
62 United States v. Juvenile Male, 670 F.3d 999, 1009-10 (9th Cir. 2012).
63 Id. at 1009-12.
The court also held that the registration did not constitute cruel and unusual punishment since the “requirement that juveniles register in a sex offender database for at least 25 years because they committed the equivalent of aggravated sexual abuse is not a disproportionate punishment. These juveniles do not face any risk of incarceration or threat of physical harm.” Thus, the court upheld a requirement that juveniles register as sex offenders.

B. CASELAW STRIKING DOWN SEX OFFENDER REGISTRATION

On the other hand, several state courts have found that their state sex offender registration statutes violate various tenets of their state constitutions. Alaska, Maine, Indiana, and Ohio have all held that the retroactive application of their sex offender registration statutes violates their versions of the Ex Post Facto Clause. In coming to their decisions, these courts analyzed the effects of the registration using the Mendoza-Martinez factors. Generally, these courts found that the factors indicated a punitive effect. For example, the Supreme Court of Alaska determined that

[b]ecause ASORA [Alaska Sex Offender Registration Act] compels (under threat of conviction) intrusive affirmative conduct, because this conduct is equivalent to that required by criminal judgments, because ASORA makes the disclosed information public and requires its broad dissemination without limitation, because ASORA applies only to those convicted of crime, and because ASORA neither meaningfully distinguishes between classes of sex offenses on the basis of risk nor gives offenders any opportunity to demonstrate their lack of risk, ASORA's effects are punitive.

The Supreme Court of Indiana found sex offender registration to be punitive based on a similar analysis and held that because registration imposes burdens beyond that which could have been imposed when the crimes were committed, the law violates Indiana’s Ex Post Facto Clause. Alaska, Maine, and Ohio courts held likewise.

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64 Id.
65 Id. at 1010.
67 See, e.g., Doe, 189 P.3d at 1008-18.
68 Id. at 1019.
69 Wallace, 905 N.E.2d at 384.
In *In re C.P.*, the Ohio Supreme Court extended the reasoning from an earlier Ohio case, *State v. Williams* (finding that the Ohio sex offender registration law was punitive71), to hold that mandatory, lifetime sex offender registration and notification requirements for juveniles violate the Eighth Amendment and federal Due Process Clause.72 The court reasoned that a 2009 survey of the fifty states demonstrated that there was national resistance to the application of SORNA to juveniles.73 The court emphasized the immense burden that registration would place on juveniles74 and ultimately held that because of the “limited culpability of juvenile nonhomicide offenders who remain within the jurisdiction of the juvenile court, the severity of lifetime registration and notification requirements . . . and the inadequacy of penological theory to justify the punishment,” lifetime registration and notification for juveniles was an unconstitutionally cruel and unusual punishment.75 Additionally, the court held that since the Ohio law “eliminates the discretion of the juvenile judge, this essential element of the juvenile process, at the most consequential part of the dispositional process,” an automatic imposition of lifetime registry violates a juvenile’s right to due process.76

70 See Doe, 189 P.3d at 1007-18; *Letalien*, 985 A.2d at 18-27; *Williams*, 952 N.E.2d at 1111-14.
71 See *Williams*, 952 N.E.2d at 1111-14.
72 See *In re C.P.*, 967 N.E.2d 729, 737-50 (Ohio 2012).
73 Id. at 738-39.
74 Id. at 741-42 (“For juveniles, the length of the punishment is extraordinary, and it is imposed at an age at which the character of the offender is not yet fixed. Registration and notification necessarily involve stigmatization. For a juvenile offender, the stigma of the label of sex offender attaches at the start of his adult life and cannot be shaken. With no other offense is the juvenile’s wrongdoing announced to the world. Before a juvenile can even begin his adult life, before he has a chance to live on his own, the world will know of his offense. He will never have a chance to establish a good character in the community. He will be hampered in his education, in his relationships, and in his work life. His potential will be squelched before it has a chance to show itself. A juvenile—one who remains under the authority of the juvenile court and has thus been adjudged redeemable—who is subject to sex-offender notification will have his entire life evaluated through the prism of his juvenile adjudication. It will be a constant cloud, a once-every-three-month reminder to himself and the world that he cannot escape the mistakes of his youth. A youth released at 18 would have to wait until age 43 at the earliest to gain a fresh start. While not a harsh penalty to a career criminal used to serving time in a penitentiary, a lifetime or even 25-year requirement of community notification means everything to a juvenile. It will define his adult life before it has a chance to truly begin.”).
75 Id. at 744.
76 Id. at 748. The court went on to say, “The requirement in [the Ohio registration law] of automatic imposition of Tier III classification on a juvenile offender who receives an SYO [serious youth offender] dispositional sentence undercuts the rehabilitative purpose of Ohio’s juvenile system and eliminates
III. RECENT SUPREME COURT DECISIONS ON JUVENILE SENTENCING

Recent Supreme Court decisions on the constitutionality of juvenile sentences have emphasized the unique characteristics of youth and have implemented protections and limitations on the punishments that children may receive. Thus far, the Court’s reasoning has culminated in a trilogy of cases—

Roper v. Simmons,77 Graham v. Florida, 78 and Miller v. Alabama79—restricting the degree of punishment to which juveniles may be subjected.

A. ROPER V. SIMMONS

In Roper v. Simmons, the Court invalidated capital sentences on juveniles, holding that execution of youth violated the Eighth and Fourteenth Amendments.80 In its Eighth Amendment analysis, the Court looked “to ‘the evolving standards of decency that mark the progress of a maturing society’ to determine which punishments are so disproportionate as to be cruel and unusual.”81 Finding sufficient evidence of a national consensus against sentencing juveniles to the death penalty (even those juveniles convicted as adults), the Court went on to examine the severity of the death penalty as applied to juveniles.82

The Court, citing numerous sociological and psychological reports, noted three main differences between juveniles and adults that necessarily mitigated juveniles’ culpability. First, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.”83 Second, “juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure.”84 And third, “the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.”85

the important role of the juvenile court’s discretion in the disposition of juvenile offenders and thus fails to meet the due process requirement of fundamental fairness.” Id. at 750.

80 See Roper, 543 U.S. 551.
81 Id. at 561 (quoting Trop v. Dulles, 356 U.S. 86, 100–01 (1958) (plurality opinion)).
82 See generally id.
83 Id. at 569 (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).
84 Id. (citing Eddings v. Oklahoma, 455 U.S. 104, 115 (1982)).
85 Id. at 570 (citing E. ERIKSON, IDENTITY: YOUTH AND CRISIS (1968)).
Combined, the Court held, these developmental differences between juveniles and adults clearly mitigated any juvenile wrongdoing:

The susceptibility of juveniles to immature and irresponsible behavior means “their irresponsible conduct is not as morally reprehensible as that of an adult.” Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed. Indeed, “[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.”

The Court found that the degree of mitigation was so considerable that even allowing an individual case-by-case determination for a juvenile was unacceptable. Thus, the Court imposed a blanket ban on sentencing juveniles under the age of eighteen to the death penalty.

B. GRAHAM V. FLORIDA

Following Roper, the Court held in Graham v. Florida that life without parole sentences for juveniles who committed non-homicide crimes violated the Eighth Amendment. In looking at the culpability of the offenders, the Court reiterated the general developmental differences between juveniles and adults, further establishing that juveniles as a

86 Id. (citations omitted).
87 Id. at 572-73 (“The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability. An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender’s objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death. In some cases a defendant’s youth may even be counted against him.”).
88 Id. at 578-79.
89 See Graham, 130 S. Ct. 2011.
class were less culpable than adults. They also determined that this applied with greater force to those juveniles who committed non-homicide crimes: “Although an offense like robbery or rape is a serious crime deserving serious punishment, those crimes differ from homicide crimes in a moral sense. It follows that, when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability.”

The Court next considered the severity of a life sentence without the possibility of parole. When applied to juveniles, the Court held that a life sentence is an “especially harsh punishment” since “a juvenile offender will on average serve more years and a greater percentage of his life in prison than an adult offender. A 16-year-old and a 75-year-old each sentenced to life without parole receive the same punishment in name only.” Additionally, the denial of probation “deprives the convict of the most basic liberties without giving hope of restoration, except perhaps by executive clemency—the remote possibility of which does not mitigate the harshness of the sentence.” When applied to a juvenile, the Court argued that such a sentence “means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.”

Based on these findings, the Court held that a sentence of life without parole for juveniles convicted of non-homicide crimes (even if convicted as an adult, as in this case) violated the Constitution. Finding that a case-by-case approach did not offer sufficient protection for juveniles, the Court held that a flat ban against such a sentence was necessary in order to grant juveniles the protections that the Constitution requires.

C. MILLER V. ALABAMA

Most recently, the Court addressed mandatory life without parole sentences for juveniles convicted of homicide offences in Miller v. Alabama, holding that such sentences for juveniles violated the Eighth

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90 Id. at 2026.
91 Id. at 2027 (emphasis added) (quotation marks omitted).
92 Id. at 2028.
93 Id. at 2027.
94 Id. (quoting Naovarath v. State, 779 P.2d 944 (Nev. 1989)).
95 Id. at 2034 (“The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term.”).
96 Id. at 2031-34.
Amendment. Combining *Roper* and *Graham*, which likened life without parole to the death penalty, and a line of precedents prohibiting mandatory imposition of the death penalty without consideration of the defendant’s characteristics and offense, the Court came to the conclusion that mandatory life without parole sentences violated the Eighth Amendment, even for juveniles convicted of homicide offenses.

The Court stated that mandatory sentences, “[b]y making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence,” posed “too great a risk of disproportionate punishment.” The Court thus held that the Eighth Amendment required juvenile sentencing “to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” The Court cautioned that although a juvenile convicted of a homicide crime still may be sentenced to life without parole, “because of the great difficulty we noted in *Roper* and *Graham* of distinguishing at this early age between ‘the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption,’” any “appropriate occasion[] for sentencing juveniles to this harshest possible penalty will be uncommon.”

**D. CONSEQUENCES OF THIS TREND**

In all of these cases, the Court emphasized the differences between adults and children, particularly noting juveniles’ “lack of maturity,” and “underdeveloped sense of responsibility.” The Court also stated that children’s characteristics are “less fixed” and less likely to be “evidence of irretrievably depravity.” The Court’s findings that juveniles’ developmental capacities diminish their culpability suggest that it may not be appropriate to punish juveniles in the same way that adults are punished, even when the juvenile is convicted as an adult.

The Court also emphasized the added burden that a life sentence has on a juvenile as compared to an adult. This suggests that a life sentence should only be imposed on a juvenile in extreme cases. Moreover, this reasoning demonstrates the Court’s understanding that sentences, while nominally the same, can have disparate effects on juveniles and adults. This leads to the conclusion that the same sentence, even though

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98 *Id.* at 2463-64.
99 *Id.* at 2469.
100 *Id.*
101 *Id.* at 2469, 2481.
103 *Roper*, 543 U.S. at 570.
considered non-punitive for adults can, in fact, be effectively punitive when applied to a juvenile.

Additionally, since a determination of culpability is critical to the disposition of the juvenile, and consideration of the juvenile’s unique cognitive and emotional development is necessary to this determination, sentencing schemes that pronounce a one-size-fits-all punishment based on the crime committed may be disproportionate to the offense. Therefore, courts should base sentencing on individual determinations of the culpability, therapeutic needs, and rehabilitative potential of each youth.

IV. UNCONSTITUTIONALITY OF MANDATORY, AUTOMATIC, AND LIFETIME SEX OFFENDER REGISTRY FOR JUVENILES

Recent neurological and psychological research continues to show that juveniles and adults differ significantly in their developmental characteristics. A survey of studies demonstrates that different legal issues are implicated by different types of maturity. For example, studies show that juvenile psychosocial skills, which include impulse control and resistance to peer pressure, are not equal to those of adults. In the legal context, “[t]his psychosocial immaturity means that in circumstances that usually accompany criminal activities, juveniles find themselves facing ‘the very conditions that are likely to undermine adolescents’ decision-making competence.’”

A. UNIQUE CHARACTERISTICS OF JUVENILES MAKE THEM LESS CULPABLE AND DANGEROUS

As the Supreme Court has noted, juveniles differ significantly from adults in their developmental characteristics. These developmental characteristics make “sex offenses” committed by juveniles much less egregious because they (1) are often behaviors stemming from normal development, (2) mitigate the culpability of juvenile sex offenders, and (3) reduce their threat to public safety.

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104 Rebecca Shepard, Note, Does the Punishment Fit the Crime?: Applying Eighth Amendment Proportionality Analysis to Georgia’s Sex Offender Registration Statute and Residency and Employment Restrictions for Juvenile Offenders, 28 GA. ST. U. L. REV. 529, 546-47 (2012).

105 Id.

106 Id. at 546-47 (quoting Lawrence Steinberg et al., Are Adolescents Less Mature Than Adults? Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA “Flip-Flop,” 64 AM. PSYCHOLOGIST 583, 592 (2009)).
1. Sexual Exploration Is a Normal Part of Adolescent Development

Scholars and researchers have consistently reported that sexual exploration is a healthy part of adolescent development. One scholar points out that even at an early age (three or four), children begin participating in sex play. These children may “develop erections, engage in sexual exploration games, peek in at the other child’s parts, use nasty language, and flirt.” This scholar describes sex play as “contact that is often exploratory in nature, and is accompanied by joy, laughter, embarrassment, inhibition, lightheartedness, spontaneity, and balanced with curiosity about other things. Sex play consists of activities such as playing doctor or engaging in exploratory touching and tickling.” This play is normal, and only becomes a concern “when done routinely or when it is accompanied by coercion or an absence of mutual consent.”

Additionally, “[m]asturbatory activities become more common in preadolescence but are only considered a problem when the practice leads to physical harm or is conducted in public or at inappropriate times.”

In fact, sex play is necessary for healthy sexual development, as it is “the way maturing children develop sexually, seeking information and a better understanding about the nature of sexual life through play and exploration with others.” It helps adolescents create their sexual identity and “work toward resolving questions and misconceptions they may have about sex in general, and their own sexuality.”

Not only is sex play healthy, but studies show that it is common among children. A study conducted by UCLA found that “46% of

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110 Id. at 114 (citing Normal Behavior Notes).
111 Id. (citing Lippincott et al., supra note 108, at 59s).
112 Id. (citing Normal Behavior Notes). The author also states: “Preadolescence is a time when sexual development increases, and children become aware of their bodies. Children may begin exploring their bodies and genitals, and seek to view pictures and images of other people’s bodies in an effort to understand themselves.” Id. (citing Lippincott et al., supra note 108, at 59s).
113 Id. (citing Lippincott et al., supra note 108, at 59s).
children had engaged in interactive sex play (and that the percentage grew to 77% when masturbation was factored in) by age six.”114 Another study found that 61% of respondents (college students) had “had some sort of sexual experience with another child” by the time they were thirteen.115 Surprisingly, 17% of those respondents said that they had engaged in sexual activity with a sibling.116 A national study found that “40% of ninth graders and 72% of twelfth graders had had intercourse.”117

Generally, this sex play is not correlated with adult deviant sexuality. The UCLA study discussed previously found that of those children who had engaged in sex play by the age of six, later testing in adulthood revealed that the sex play “did not appear to have any effect whatsoever on the young adult’s development or maturation.”118 Another scholar concurred, stating that sexual experimentation “is ‘not [necessarily] indicia of pedophilia, a diagnosis that is not recognized in younger teens by the Diagnostic and Statistical Manual of Mental Disorders, but [is] more often a combination of hormones and opportunity.”119

These conclusions suggest that the majority of “sex offences” perpetrated by juveniles are in fact merely an expression of normal development. As one scholar predicted, “[f]or these children, very low recidivism would be expected as they grow out of this developmental stage.”120 However, because normative reference points are rarely taken into account with risk assessment of juvenile sex offenders, it is difficult

115 Id. (citing WILLIAM H. MASTERS ET AL., HUMAN SEXUALITY 217 (5th ed. 1995) (citing E. Greenwald & H. Leitenberg, Long-Term Effects of Sexual Experiences with Siblings and Nonsiblings During Childhood, 18 ARCHIVES SEXUAL BEHAV. 389 (1989))).
116 Id. (citing MASTERS ET AL., supra note 115).
117 Id. (citing MASTERS ET AL., supra note 115 (citing Ctrs. for Disease Control, Sexual Behavior Among High School Students—U.S. 1990, 40 MORBIDITY & MORTALITY WkLY. REP. 885-88 (1992))).
118 Tracy Petznick, Only Young Once, But a Registered Sex Offender for Life: A Case for Reforming California’s Juvenile Sex Offender Registration System Through the Use of Risk Assessments, 16 BERKELEY J. CRIM. L. 228, 244 (2011) (citing Okami et al., supra note 114).
120 Petznick, supra note 118, at 244.
to distinguish abnormal behavior from normal behavior. Since juveniles in the system face more scrutiny than the general population, due to constant monitoring and observation, “[t]hese juveniles . . . may then be labeled as sexually deviant for the sexual behavior they engage in,” whether that behavior is normal or not.

2. Juveniles Are Less Culpable and Less Predatory than Adults

Unlike adults, juveniles’ brains are not fully developed, rendering them less culpable and predatory than adult sexual offenders. Studies on brain development show that juveniles’ brains are not fully developed until late adolescence. And though juveniles can participate in “‘adult-like processes of decision-making, they [still] may not reach the right results.” Additionally, juveniles are much more sensitive to peer influences and have a “different perception of risk than their adult counterparts due to their younger age and a lack of experience.” This developmental immaturity suggests that juveniles might not be as blame-worthy as adults.

Juveniles who engage in sexual behavior are also less predatory than adults. Generally, preadolescent sex play “is usually for non-sexual goals or purposes.” Professor Franklin E. Zimring, an expert and leading scholar on adolescent sexuality, explains that

When fifteen-year-olds impose themselves sexually on younger children, they usually are not reflecting a sexual orientation that strongly prefers prepubescent targets, so a broader set of sexual opportunities as the adolescent matures will reduce the pressure to express

122 Embar-Seddon & Pass, supra note 121, at 115.
123 Young, supra note 1, at 480 (citing Larry Cunningham, A Question of Capacity: Towards a Comprehensive and Consistent Vision of Children and Their Status Under Law, 10 U.C. DAVIS J. JUV. L. & POL’Y 275, 281 (2006)).
124 Id. (quoting Cunningham, supra note 123, at 284).
125 Id.
126 See, e.g., Shepard, supra note 104, at 552 (citing Elizabeth S. Scott & Lawrence Steinberg, Blaming Youth, 81 TEX. L. REV. 799, 801 (2003)).
127 Wind, supra note 108, at 114 (citing Lippincott et al., supra note 108).
sexual needs on forbidden targets or in ways otherwise prohibited by the criminal law.128

One scholar highlights a study that found that juveniles normally engage in sex offenses in groups, “suggest[ing] that group juvenile sex offending may be more a result of peer pressure than individual psychosis.”129

Another study by the National Center on Sexual Behavior of Youth found that

the vast majority of youth sex offenses are manifestations of nonsexual feelings. Youth engage in fewer abusive behaviors over shorter periods of time and engage in less aggressive sexual behavior. Youth rarely eroticize aggression and are rarely aroused by child sex stimuli. Most youth behavior that is categorized as a sex offense is activity that mental health professionals do not label as predatory.130

Thus, the sex offenses that juveniles do participate in are unlikely to be the most severe offenses.131

3. Juveniles Are Less Likely to Reoffend and Are More Amenable to Treatment

Studies support a consensus among experienced practitioners in the field of juvenile sexual abuse intervention that juvenile sex offenders have a low rate of recidivism (between 2-14%) and are unlikely to become adult sex offenders.132 Moreover, physiological and psychological studies show that juvenile and adult sex offenders differ in sexual response: “while phallometric studies of adult child molesters have shown a higher degree of response to stimuli depicting children than that experienced by non-sex-offenders, juvenile offenders demonstrated a more heterogeneous response,” showing that “there was

128 Young, supra note 1, at 477 (quoting FRANKLIN E. ZIMRING, AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING 120 (Univ. of Chi. Press 2004)).
129 Geer, supra note 57, at 46 (citation omitted) (internal quotation marks omitted).
131 See Geer, supra note 57, at 43.
132 Bowater, supra note 119, at 840-41 (citations omitted).
no measurable distinction in erectile responses between sex-offending and non-sex offending juveniles to ‘deviant’ stimuli." The fact that juveniles are more likely to offend in groups adds to the conclusion that juvenile sex offenders are likely to “simply outgrow” their delinquent activity, as they become less susceptible to peer pressure and more able to make decisions independently.

Not only are juvenile sex offenders likely to outgrow deviant behavior on their own, but studies also show that juveniles respond much better to treatment than adults. The Association for the Treatment of Sexual Abusers claims that “poor social competency skills and deficits in self-esteem can best explain sexual deviance in juveniles, rather than the paraphilic interests and psychopathic characteristics that are more common in adult offenders.” Since competency skills and self-esteem can be more easily treated through therapy, therapy can be much more effective for juvenile sex offenders than for adults.

B. SEX OFFENDER REGISTRATION ACTS AS A PUNISHMENT WHEN APPLIED TO JUVENILES

The unique developmental characteristics of juveniles, outlined above, suggest that determinations regarding punishment for adults may not apply to juveniles. Although the Supreme Court in Smith v. Doe classified sex offender registration as nonpunitive, a new look at juvenile registration demonstrates that, when applied to juveniles, sex offender registration and notification is, in effect, punishment.

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134 Id. at 193 (“[G]roup involvement is another indicator showing that sex offenses committed by juveniles do not represent the kind of permanent psychosis warranting lifetime registration and notification requirements.”).
135 Petznick, supra note 118, at 230 (citing FRANKLIN ZIMRING, AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING 27 (2004)).
136 Bowater, supra note 119, at 840 (citing FRANKLIN E. ZIMRING, AN AMERICAN TRAVESTY 62 (2004)) (“Professor Franklin E. Zimring notes that the results of a meta-analysis of studies of treatment that reported on outcomes for over 10,000 sex offenders of a variety of ages and types, including 1,025 juveniles who completed some form of treatment’ revealed that ‘[t]he recidivism rates of treated juveniles were 56 percent of the recidivism rates of similarly treated adult offenders.’”)
137 Garfinkle, supra note 114, at 191 (citing Mark Chaffin & Barbara Bonner, “Don’t Shoot, We’re Your Children”: Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?, 3 CHILD MALTREATMENT 314, 316 (quoting Ass’n for the Treatment of Sexual Abusers, Position on the Effective Legal Management of Juvenile Sexual Offenders (1997))).
Following Smith, the first inquiry is whether the legislatures passed registration schemes with the purpose or intent of creating a penalty.\textsuperscript{138} Since most courts addressing this question have determined that legislatures have had a non-punitive purpose for sex offender registrations, this Note will continue on the assumption that all registration laws are passed with a non-punitive intent.\textsuperscript{139} Thus, moving to the second part of the analysis, in order to determine whether juvenile sex offender registration is “so punitive either in purpose or effect as to negate the State’s intention to deem it civil,”\textsuperscript{140} this Note follows the Smith Court’s analysis by applying the Mendoza-Martinez factors:

[1] Whether the sanction involves an affirmative disability or restraint, [2] whether it has historically been regarded as a punishment, [3] whether it comes into play only on a finding of scienter, [4] whether its operation will promote the traditional aims of punishment . . . , [5] whether the behavior to which it applies is already a crime, [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the alternative purpose assigned.\textsuperscript{141}

1. Affirmative Disability or Restraint

The first factor to consider is whether the sanction of registration imposes an affirmative disability or restraint, making it more of a punitive sanction. First, registration requirements “compel[] affirmative post-discharge conduct (mandating registration, re-registration, disclosure of public and private information, and updating of that information) under threat of prosecution.”\textsuperscript{142} Many statutes require periodic in-person verification of this information.\textsuperscript{143} These requirements are especially burdensome on juveniles who may not have independent transportation and who may lack support from parents or other adults in the community.\textsuperscript{144}

Numerous scholars and social science studies have explained the immense burden and lasting harmful effect that registration has on juveniles, citing difficulty obtaining employment and housing, increased

\textsuperscript{138} See supra Part II.A.
\textsuperscript{139} See id.
\textsuperscript{140} Smith v. Doe, 538 U.S. 84, 92 (2003).
\textsuperscript{141} State v. Letalien, 985 A.2d 4, 16-17 (Me. 2009).
\textsuperscript{142} Doe v. State, 189 P.3d 999, 1009 (Alaska 2008).
\textsuperscript{144} Id.
social harassment and rejection, and disruption to support systems.\textsuperscript{145} Any employer who does a background check on a juvenile will receive notice of his registration status, and even those employers who don’t do background checks or choose to hire the juvenile regardless might face additional difficulties when the employer’s address is included on public notification websites.\textsuperscript{146} These impositions are especially burdensome on juveniles, since they are “released back into society after completion of their court-imposed disposition at an age when they would ordinarily first be entering the workforce and find themselves unable to obtain employment due to their publicized ‘sex offender’ label.”\textsuperscript{147}

Landlords doing background checks will also discover the juvenile’s registration status and may face pressure to withhold housing due to the fact that the offender’s address will be included on the public notification.\textsuperscript{148} Additionally, residency restrictions in the registration laws themselves forbidding offenders from living near certain locations, such as playgrounds and schools, may limit an offender’s ability to find adequate housing.\textsuperscript{149} These effects can be especially harsh for juvenile offenders, since “offenders are forbidden [by law] from places intended for youth in the community: schools, churches, and areas where their peers congregate.”\textsuperscript{150} Not only does registration make it difficult to find employment or housing, but juveniles also may face imprisonment for trying to do so in prohibited areas. For example, in one state, “[j]uvenile sex offenders face a minimum of ten years in prison for living or loitering near their own schools or from finding employment at businesses catering to youth and likely to hire teenagers.”\textsuperscript{151}

Juvenile sex offenders are also at a greater risk of suffering harm due to the stigma and harassment that result from registration, since their “developmental stage makes them highly susceptible to peer influence and judgment.”\textsuperscript{152} One study found that “47 percent of [registered sex offenders] surveyed had been harassed in person and 28 percent had received threatening phone calls as a result of being on the sex offender

\textsuperscript{145} See, e.g., Michael F. Caldwell et al., An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism, 14 PSYCHOL. PUB. POL’Y & L. 89, 91 (2008); Bowater, supra note 119, at 843-44.


\textsuperscript{147} Geer, supra note 57, at 49.

\textsuperscript{148} Enniss, supra note 143, at 710.

\textsuperscript{149} Id.

\textsuperscript{150} Shepard, supra note 104, at 553.

\textsuperscript{151} Id. at 554 (citing GA. CODE ANN. § 42-1-15 (2010)).

\textsuperscript{152} Id. (citing Elizabeth S. Scott & Lawrence Steinberg, Blaming Youth, 81 TEX. L. REV. 799, 813-14 (2003)).
registry; 16 percent had been assaulted."\textsuperscript{153} School notification provisions also may result in "ostracized or harassed juveniles moving from school to school after their offense is discovered by fellow students."\textsuperscript{154}

Registration also disrupts traditional support systems, especially a juvenile’s family. Since a juvenile often returns home to his or her family upon release, the stigma of registration encompasses the family as well.\textsuperscript{155} This can lead to the whole family being ostracized by the community.\textsuperscript{156} Other supportive networks, such as schools, neighborhoods and workplaces that "can and often help a juvenile’s rehabilitation and socialization” are instead transformed into “hostile environments that further ostracize the juvenile offender and enhance the likelihood of recidivism."\textsuperscript{157}

While many of these barriers apply to adults as well as juveniles, juveniles feel the impact more strongly. One scholar explains that registration and notification are “particularly damaging to developing brains” because

\begin{quote}
[r]esearch on adolescent brain development indicates that youth are particularly vulnerable to the stigma and isolation that registration and notification create. To be labeled and therefore self-identified as a “sex offender” as a child will likely permanently undermine a person’s self-worth and create lasting mental health problems such as depression and substance abuse.\textsuperscript{158}
\end{quote}

Because of the extensive and added burden that registration and notification places on juveniles, this factor weighs heavily in favor of such schemes having a punitive effect.

\textsuperscript{153} Walsh & Velazquez, supra note 130, at 21 (citing Richard Tewksbury, \textit{Collateral Consequences of Sex Offender Registration}, 21 J. CONTEMP. CRIM. JUST. 67-81 (2005)).
\textsuperscript{154} Geer, supra note 57, at 50 (citing Paige Richmond, \textit{Student Suspended for Naming Sex Offender Classmate: Gig Harbor Boy, 16, Thinks His Actions Were a ‘Public Service’}, THE PENINSULA GATEWAY (Gig Harbor, Washington), July 2, 2008).
\textsuperscript{155} Paladino, supra note 29, at 289 (citations omitted).
\textsuperscript{156} Id.
\textsuperscript{157} Geer, supra note 57, at 51.
\textsuperscript{158} Walsh & Velazquez, supra note 130, at 23 (citing Franklin E. Zimring et al., \textit{Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?}, 6 CRIMINOLOGY & PUB. POL’Y 507-534 (2007)).
2. Historically Regarded as Punishment

The second factor is whether the sanction has been historically regarded as punishment. If so, it becomes more punitive. Generally, registration does not mirror any traditional punishments, such as imprisonment or fines. Some have argued that the notification provisions are similar to traditional shaming penalties such as branding, public shaming and exile. However, because these punishments have not been implemented in the recent past, and because the harmful effects of notification are not the direct goal of the registration, this factor favors registration schemes being classified as non-punitive.

3. Finding of Scienter

The third factor is whether the underlying crime behind the sanction involves a finding of scienter (intent or knowledge of wrongdoing). When the underlying offense requires a finding of scienter, this weighs in favor of punitiveness, since scienter is linked with the resulting punishment and sanction. With a few exceptions, the offenses requiring registration generally involve a finding of scienter for conviction. As one court stated, “[t]he few exceptions do not imply a non-punitive effect, given the assumption of scienter for those exceptions and the fact that a reasonable-mistake-of-age defense is allowed in a charge of statutory rape.” This factor therefore favors the punitiveness of registration, albeit weakly.

4. Promotes Traditional Aims of Punishment

The fourth factor asks whether the sanction promotes the traditional aims of punishment—in this case, deterrence and retribution, as specified in \textit{Mendoza-Martinez}. Because the purpose of the registration is not to implement a penalty, registration and notification do not serve a retributive purpose. Deterrence, however, is indirectly implicated by registration and notification schemes. Presumably, the threat of having to register as a sex offender may deter some juveniles from committing sex offenses. However, in \textit{Smith} the Court stated that some indirect deterrent effect does not render a sanction punitive. Thus, this factor suggests juvenile registration has a non-punitive effect.

\footnotesize
\begin{itemize}
\item[162] \textit{Smith}, 538 U.S. at 102.
\end{itemize}
5. Applies to Behavior That Is Already a Crime

The fifth factor is whether the sanction applies to a behavior that is already a crime, since a sanction that applies to criminal behavior is more likely to be punishment for that behavior. Clearly, sex offender registration only applies once a juvenile has been adjudicated delinquent or convicted of a sex offence. However, in this case, the legislative purpose is to protect against those who have previously committed sex offenses, which necessarily requires the sanction to be tied to a criminal behavior. Because the application to criminal behavior is directly related to the legislative purpose, this factor is neutral in this analysis.

6. Rationally Connected to an Alternative Purpose

The sixth factor is whether the sanction is rationally connected to an alternative purpose. In doing this analysis, the Smith Court found that SORNA had the clear, non-punitive purpose of protecting public safety, and held that, while not perfectly connected to this purpose, it was still rationally connected.163 This rational connection, however, becomes unstable when the goal is to protect the public from juvenile offenders who may reoffend.

The registration and notification laws are grounded in several assumptions. The first is that juvenile sex offenders are at a higher risk of reoffending than non-sex offending delinquents.164 The second assumption is that the crimes that require registration are the most predictive of future sexual offenses.165 And the third assumption is that juveniles’ risk levels can be identified by their offenses or specialized risk assessment measures.166 Several studies have found no significant difference in recidivism risk between juveniles who have committed sex offenses and those who have committed non-sexual offenses.167 More studies have found that the measures states use to predict sex offense recidivism—either through categorization of offenses or through systematic risk assessment procedures—do not accurately predict risk of recidivism for juveniles.168 Thus, the means used to determine who must register are not adequate predictors of the risk the registration is meant to protect against.

163 Smith, 538 U.S. at 102-03.
164 Caldwell et al., supra note 145, at 91.
165 Id.
166 Id.
167 Id. at 91-92 (citing F. Zimring, A. Piquero, & W. Jennings, Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?, 6 CRIMINOLOGY & PUB. POL’Y 507 (2007); M. Caldwell, Sexual Offense Adjudication and Recidivism Among Juvenile Offenders, 19 SEXUAL ABUSE: J. RES. & TREATMENT 107 (2007)).
168 See, e.g., Caldwell et al., supra note 145, at 105 (citations omitted).
Moreover, registration itself, even if it accurately predicted risk of recidivism, does not adequately serve the purpose of protecting the public. First, the registration is generally aimed at protecting against strangers who have registered, which conflicts with the well-established fact that most children are victimized by someone they know. This lulls the public into a false sense of security while ignoring the fact that inappropriate sexual interaction is much more likely to occur closer to home. Victims will either already know of the sexual history of those with the highest potential to be sexual aggressors (friends and family members), or they will not. But a registry will rarely call out a friend’s or family member’s predatory nature of which potential victims are not already aware.

Additionally, “parents, teachers, and social workers may choose not to report a juvenile’s sexual conduct out of fear that the juvenile will be forced to register, and as a result, the juvenile may not get the treatment he needs.” Because public notification affects the family as well as the juvenile, families may choose not to report offenses because they do not want to deal with the impact. Prosecutors who are left with no discretion as to whether they should recommend registration may also become more lenient in charging juveniles with sex offenses. Thus, even if registration identified recidivists, there are other parties affected by registration who have incentives to underreport offenses. Therefore, the juvenile registration laws are not doing everything we hoped they would do. In fact they may be doing more harm than good.

This underreporting and under-prosecution can lead to juveniles not getting necessary treatment, and thus increase their risk of reoffending. Registration and notification itself can also increase the risk of recidivism by introducing stressors into the juvenile’s life and ostracizing him from support networks. The inability of juveniles to reintegrate into their community greatly contributes to their risk of reoffending.

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169 Embar-Seddon & Pass, supra note 121, at 112.
171 Id.
172 Paladino, supra note 29, at 295 (citing Elizabeth J. Letourneau et al., Effects of Sex Offender Registration Policies on Juvenile Justice Decision Making, 21 SEXUAL ABUSE 149, 153, 158 (2009)).
173 See, e.g., Walsh, supra note 130, at 22 (citations omitted).
Therefore, not only do the means to determine who must register fail at identifying those most likely to reoffend, the results of the registration and notification schemes lead to conditions that actually contribute to juvenile recidivism. Because juvenile sex offender legislation not only fails to adequately protect the public but also imposes greater risks of recidivist attacks, it cannot be rationally related to the non-punitive purpose.

7. Excessive in Relation to Alternative Purpose

The final factor is whether the sanction is excessive in relation to its alternate purpose. As previously discussed, sex offender registration has an excessively burdensome impact on juveniles above and beyond that for adults, as it can prevent them from living near their schools and places where youth activities occur. This further impedes their ability to participate in normal youth activities, such as finding a job. Additionally, registration schemes are overbroad and inaccurate in their sampling. A widespread collection of crimes trigger sex offender registration, yet all who are required to register are “subject to the same residency and employment restrictions.”175 This uniform application of sex offender registration statutes to both juveniles and adults “means they are also applied to offenders whose behavior is not predatory or even sexual in nature.”176 One scholar points out that “[w]hile there will be circumstances in which this punishment is not excessively severe in comparison to the criminal offense, because it is applied uniformly there will also be circumstances where it will be excessively punitive.”177

Because the registration statutes impose a burdensome disability on juveniles, they cannot be deemed to be rationally connected with their non-punitive purpose, and are excessive. Registration and notification schemes as applied to juveniles must be considered punitive in effect.

C. SEX OFFENDER REGISTRATION EVALUATED UNDER THE EIGHTH AMENDMENT’S CRUEL AND UNUSUAL PUNISHMENT STANDARD

Since juvenile sex offender registration laws are effectively punitive, they may be analyzed under the Eighth Amendment, which protects against “cruel and unusual punishment.”178 This analysis calls for an examination of national consensus as well as an independent

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175 Shepard, supra note 104, at 549.
176 Id.
177 Id. at 549-50.
178 U.S. CONST. amend. VIII.
determination of whether the punishment is inherently excessive based on the characteristics of the class of offenders. This Note argues that juvenile registration is unconstitutional if applied as a lifetime sanction or as a mandatory sanction. It also argues that juvenile registration is fundamentally unfair and potentially violates the Ex Post Facto, Due Process, and Equal Protection clauses of the Constitution.

1. Lifetime Registration Is Problematic

Juvenile registration becomes unconstitutional if imposed as a lifetime sanction. The first step of the analysis is to determine if national consensus supports lifetime registration for juveniles. Currently, only six states allow juveniles to register as sex offenders for life. Additionally, one of the biggest concerns of the states regarding SORNA was its application to juveniles. By refusing to substantially comply with SORNA, particularly with its application to juveniles, states are clearly demonstrating a consensus against lifetime registration for juveniles.

The next step, then, is to determine whether the punishment is excessive when applied to juveniles as a class. This Note has already presented the vast research demonstrating that juveniles are developmentally different from adults and therefore less culpable in their delinquent activity. And since registration applies to non-homicide offenses, further diminishing culpability, these juvenile offenders have a “twice diminished moral culpability.” For a juvenile to be subjected to lifetime registration, he or she is automatically categorized as among the worst sex offenders. However, research demonstrates that juveniles’ developmental characteristics create a strong enough mitigating factor to categorically exclude juveniles from being branded as “among the worst offenders.” Therefore, they should not be subject to the harshest punishment.

Other research has shown that lifetime sex offender registration has a harsher impact on juveniles than it does on adults. The Court agreed, noting that a life penalty of any sort is harsher for a juvenile than an adult because the juvenile must bear the penalty for a
longer time.\textsuperscript{186} The Court also found that a lifetime sentence without the possibility of parole denied the juveniles any opportunity or reason to rehabilitate.\textsuperscript{187} This finding is even more relevant and concerning when analyzing sex offender registration, since the juveniles are released into the public and rehabilitation is a more pressing goal. Moreover, the psychological harm that the stigma of registration causes is much more severe for juveniles than it is for adults.\textsuperscript{188} Lifetime registration therefore harms the juvenile significantly more than it protects society. Thus, since the punishment of a lifetime sex offender registration requirement is too severe for most juveniles, considering their lessened culpability, juveniles should be excluded from lifetime registration requirements.

Because the Supreme Court has found that the risk of error in considering an individual juvenile’s culpability is too high,\textsuperscript{189} this prohibition must apply to juveniles as a class.

2. \textit{Mandatory Registration Is Problematic}

Juvenile registration is also unconstitutional if it is imposed as a mandatory sanction. The Supreme Court examined mandatory sentences for juveniles in \textit{Miller}.\textsuperscript{190} In that case, the Court found that a mandatory imposition of a sentence for life imprisonment of a juvenile was unconstitutional.\textsuperscript{191} The \textit{Miller} Court, following \textit{Graham}, likened a life sentence without parole to the death penalty, and concluded that, as with the death penalty, an individual determination of the appropriateness of the penalty was necessary.\textsuperscript{192}

Here, the mandatory registration penalty is not as severe or debilitating as lifetime imprisonment. However, the juveniles subjected to registration have also not committed crimes as severe as those homicide offenses considered in \textit{Miller}. The Supreme Court has already indicated that sex offenses are not as egregious a crime as homicide, and thus they cannot be subject to the same punishments.\textsuperscript{193} Therefore, it follows that if a mandatory lifetime sentence is not appropriate for juveniles who have committed homicide offenses, a mandatory registration of any kind is not appropriate for juveniles who have committed sex offenses.

Moreover, since registration is meant to protect the public rather than punish the juvenile, any mandatory registration requirement denies

\begin{itemize}
  \item \textsuperscript{186} \textit{Graham}, 130 S. Ct. at 2028.
  \item \textsuperscript{187} \textit{Id.} at 2027.
  \item \textsuperscript{188} \textit{See supra} Part IV.B.
  \item \textsuperscript{189} \textit{See, e.g.}, \textit{Roper}, 543 U.S. at 572-73.
  \item \textsuperscript{190} \textit{See Miller v. Alabama}, 132 S. Ct. 2455, 2460 (2012).
  \item \textsuperscript{191} \textit{Id.} at 2469.
  \item \textsuperscript{192} \textit{Id.} at 2463-64.
  \item \textsuperscript{193} \textit{See generally} \textit{Coker v. Georgia}, 433 U.S. 584 (1977).
\end{itemize}
this goal. In order to determine who must register, the sentencing body (either judge or jury) must consider the harm that the juvenile is likely to pose to the public. Because a juvenile’s unique developmental characteristics are a critical factor when determining his or her risk of reoffending, any sentencing body must take this into account. Thus, any mandatory registration requirements are inappropriate for juvenile sex offenders.

3. General Fundamental Fairness

In addition to the considerations that the Supreme Court has laid out, other unique characteristics of juvenile sex offending render lifetime and mandatory registration unjust. The first concern is the irony that juveniles considered unable to consent to any sexual activity are being prosecuted for just that activity. This requires an imperfect link in which laws meant to protect children by defining their age of consent are ignored or incorrectly incorporated when juveniles are being prosecuted under the adult criminal code. The criminal code may note the age of consent and criminalize sexual behavior with children under that age while at the same time prosecuting children under the age of consent who engage in such behavior with other children. This result “defies common sense” and makes punishments intended for adults inherently unfair when applied to juveniles.194

A more concerning fact is the failure to consider that many of these juvenile sex offenders have been victims of abuse themselves.195 The “implementation of overbroad legislation” leads to the result that “many victims of child sexual abuse will suffer a second victimization at the hands of the juvenile justice system.”196 Such legislation also is ripe for abuse by police and prosecutors.197 Statistics of juvenile prosecution reveal that indigent and minority youth and juveniles already involved in the child welfare system face disproportionate prosecution under juvenile sex offense statutes.198 Thus, because of the inherent injustice of these statutes, any punishment resulting from them must receive the most careful scrutiny.

195 For a discussion of the cycle of violence, see generally Kring, supra note 28.
196 Id. at 116.
197 See Meiners-Levy, supra note 194, at 512.
198 Id.
Along with Eighth Amendment concerns, juvenile sex offender registration violates other tenets of the Constitution, including protection from ex post facto punishment, a right to due process, and equal protection.

Protection against ex post facto punishment prohibits any criminal penalty or punitive civil penalty from being applied retroactively. The purpose behind prohibiting ex post facto punishment is the notion that it is unfair to retroactively create an additional burden on an individual convicted of a crime after he or she has already been tried and punished. Since sex offender registration and notification requirements for juveniles should be classified as punitive, any requirements that states add in order to comply with SORNA would violate the Ex Post Facto Clause if those requirements apply retroactively.

When conducting Fourteenth Amendment due process analyses for juveniles, the Supreme Court has stated that “the applicable due process standard in juvenile proceedings . . . is fundamental fairness.” While the Court has held that juveniles are not guaranteed a right to a jury trial, this becomes a concern when juveniles adjudicated under juvenile court jurisdiction are subject to adult punishments. Juveniles required to register as sex offenders could argue that the due process standards in juvenile court are “not adequate to address a potential status change and repercussions that extend into adulthood.” Additional due process concerns that juveniles might raise include (1) a “constitutionally protected interest in not being wrongly classified as [a] dangerous sexual predator[,]” (2) a “protected liberty or property interest in the confidentiality of their records,” and (3) a “liberty interest in avoiding the state-induced harms to their health and well-being that result from the codification of the state’s disapproval of youthful sexual activity.” When juveniles are subject to registration that has traditionally been limited to adults, all of these claims could be potential violations of the Due Process Clause.

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200 See id. at 289-90.
201 In re C.P., 967 N.E.2d 729, 747 (Ohio 2012).
203 See Caldwell et al., supra note 145, at 107.
204 Garfinkle, supra note 114, at 202.
205 Id. at 203-04.
Additionally, juvenile sex offenders may raise equal protection claims against the registration requirement. Because sex offender registration necessarily treats juveniles who have committed sex offenses differently than juveniles who have committed non-sex offenses, the state must show some rational basis for the disparate treatment. Because studies have shown no significant difference in recidivism between juvenile sex offenders and non-sex offenders, it is unlikely that courts will find that such unequal treatment passes rational basis scrutiny.

V. SUGGESTIONS FOR MORE EFFECTIVE WAYS OF DEALING WITH JUVENILE SEX OFFENDERS

Thomas F. was just 14 years old when he confessed to his adoptive father that he had molested both his five-year-old foster brother and his ten-year-old foster sister. He was adjudicated for one count of non-forceful lewd and lascivious conduct . . . and ordered to enter a group home that specialized in the treatment of juvenile sex offenders. While in treatment, Thomas admitted to molesting more than 10 other victims, for which he received an additional adjudication for the continuous sexual abuse of a child . . . . Thomas, with nearly 15 victims before he even turned 15, was classified as a high risk to reoffend.

Rather than prove those perceptions correct, Thomas excelled in his treatment program. He moved steadily through the steps of the program and quickly became a role model for other youth. In one of his six-month reviews, Thomas’ probation officer reported to the court:

Thomas continues to fully engage his program . . . . He participates in both group and individual therapy on a weekly basis and it is reported that he is working diligently trying changes. Of utmost importance, Thomas over the last several months has internalized what he has learned at [his group home] and has been applying it to his everyday experiences. At this point in his recovery, Thomas has been classified as a low to moderate risk to re-offend sexually. This is a major accomplishment for Thomas considering his history and there is little doubt that he will be able to reduce his risk to low, prior to being discharged from [his group home].

Thomas spent two-and-a-half years of his childhood addressing his sexual behavior in the group home-based treatment program. When he

206 See Alison G. Turoff, Comment, Throwing Away the Key on Society’s Youngest Offenders, 91 J. CRIM. L. & CRIMINOLOGY 1127 (2001).
graduated from the program, he was classified as a low risk and was considered an unqualified success.207

Rather than automatically applying adult sex offender registration requirements to juveniles, states should consider other alternatives for dealing with juvenile sex offenders. Some alternatives may entail excluding juveniles from registration altogether and focusing on rehabilitation, or, if juveniles are to register as sex offenders, statutes could require individual risk assessments with frequent reevaluation and reductions in public notification if appropriate.

A. EXCLUDE JUVENILES FROM REGISTRATION

States have the option of choosing not to comply with SORNA and instead exclude juveniles from sex offender registration requirements.208 Rather than complying, states could choose to deal with juvenile sex offenders through traditional juvenile justice dispositions, such as parole and judicial orders to undergo treatment. By continuing the tradition of rehabilitation, juvenile justice systems can more effectively ensure the safety of the public by encouraging juvenile sex offenders to receive treatment. States that choose to keep juveniles off of sex offender registries will also prevent stigmatization and ostracism of juveniles, thus reducing further risk factors of reoffending.

B. FOCUS ON REHABILITATION

Another option for states is to focus on encouraging the successful rehabilitation of juvenile sex offenders. This should be the greatest focus of states, both to protect the public safety and to ensure the well-being of its youth, since research and professional consensus show that juveniles are especially amenable to treatment.209 Research shows that “the patterns of sexual offending of juveniles seem to be less embedded than those found in adults,” and that juvenile offenses “appear to be more exploratory in nature than those committed by adults and [do] not signify permanent sexual deviance.”210 Treatment programs for juvenile sex offenders could help youth develop appropriate social behavior and interaction, significantly decreasing their risk of recidivism.211

Requiring juveniles to register as sex offenders directly undermines the goal of rehabilitation. Parents may choose not to report their child’s

208 See supra Part I.A.
209 Geer, supra note 57, at 42.
210 Id.
211 Id. at 42-43.
offending out of fear that their child will be required to register.\footnote{212} Prosecutors, as well, may attempt to avoid charging juveniles with sex offenses in order to avoid mandatory registration requirements.\footnote{213} Registration requirements that chill reporting by parents and prosecutors limit a juvenile’s opportunity to receive appropriate treatment.

For those juveniles who do receive sex offender adjudications, the psychological and social harms caused by registration interfere with effective treatment. Therapists note that “the whole issue of registration create[s] an unwarranted distraction and a concrete way to deter parents and families from facing the nature of the youth’s behavior as a sexual offense.”\footnote{214} The social stigmatization and difficulty reintegrating into society also impede the “process of developing and maintaining a functional and mainstream lifestyle.”\footnote{215} One scholar notes that when juveniles are required to register, “[t]he opportunity for rehabilitation is overshadowed by stigmatization and, as a result, youth are no longer encouraged to make amends, engage in more positive behaviors, and move on with their lives.”\footnote{216} Therefore, states that want to increase juvenile rehabilitation should carefully consider whether to subject juveniles to sex offender registration.

\textbf{C. INDIVIDUAL RISK ASSESSMENT BEFORE REQUIRING REGISTRATION}

If states insist on including juveniles on sex offender registrations, they should only do so after an individual assessment of the risk that the juvenile poses to society. The simplest way to implement this is through judicial discretion, allowing the court to consider the juvenile’s “sense of remorse, risk assessment, likelihood of re-offense, and response or likely response to treatment.”\footnote{217} This discretion would be in accordance with the juvenile justice system’s traditional practices.\footnote{218}

In order to determine the appropriateness of requiring a juvenile to register, judges should use individual and comprehensive risk assessments. Studies show that classifications based on offense are highly inaccurate in predicting a juvenile’s risk of reoffending.\footnote{219}

\begin{footnotes}
\item[212] E.g., Batastini et al., \textit{supra} note 174, at 460.
\item[213] See, e.g., Bremer, \textit{supra} note 146, at 1352-53.
\item[214] Id. at 1355.
\item[215] Id. at 1364 (“The process of developing and maintaining a functional and mainstream lifestyle entails finding and holding full-time work, finding affordable housing, and engaging in positive peer activities. These tasks are increasingly difficult when criminal records prevent employment, limit housing opportunities, and create a sense of self-failure that fosters social isolation.”).
\item[216] Batastini et al., \textit{supra} note 174, at 460.
\item[217] Bowater, \textit{supra} note 119, at 849.
\item[218] Batastini et al., \textit{supra} note 174, at 467.
\item[219] See id. at 467-68; Caldwell et al., \textit{supra} note 145, at 108.
\end{footnotes}
However, comprehensive risk assessments conducted by trained mental health providers may give judges a more valid prediction of a juvenile’s risk of recidivism. These assessments can also identify the juvenile’s treatment needs for successful rehabilitation.

D. FREQUENT REEVALUATION

Because juveniles are still maturing, states should incorporate frequent reevaluation of the juveniles to determine if registration remains appropriate. These reevaluations must take into account the “developmental characteristics of juvenile offenders, their relatively unique behavioral patterns, and their greater potential for rehabilitation.” Since registered juveniles should receive treatment and other services in order to be rehabilitated and since juveniles naturally mature over time, they must have an opportunity to demonstrate successful rehabilitation and a chance for removal from the registry.

E. REDUCE PUBLIC NOTIFICATION FOR JUVENILES WHO ARE REGISTERED

Most importantly, states should reduce or eliminate public notification for those juveniles who are required to register as sex offenders. The Attorney General recognized the importance of this limitation by lifting the requirement that states include juveniles in public notification measures in order to substantially comply with SORNA. States should take advantage of this option by removing all information on juvenile offenders from public websites and limiting access to “those officials who have a clearly established need to know this information,” such as police officers, school administrators, daycare providers, etc. Limiting public notification allows states to maintain the confidentiality of juvenile courts. It also decreases the stigmatization that poses such an impediment to juvenile rehabilitation.

VI. CONCLUSION

Juveniles who commit sex offenses differ drastically from sex-offending adults in their developmental characteristics, maturity, culpability, aggressiveness, and likelihood of reoffending. Because of

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220 Batastini et al., supra note 174, at 467-68.
221 See id.
222 Geer, supra note 57, at 53.
223 See id.; see also Petznick, supra note 118, at 257.
224 See 2011 Supplemental Guidelines, supra note 26, at 1632.
225 Geer, supra note 57, at 54.
226 Batastini et al., supra note 174, at 469.
227 Id.; see also Geer, supra note 57, at 54.
these differences, juveniles should not be subject to laws requiring the registration and public notification of sex offenders.

Not only are these laws inherently unfair to juveniles, but they also are unconstitutional as applied to juveniles. While the Supreme Court has determined that adult sex offender registration is not a punitive sanction, the unique characteristics of juveniles and the additional burden that these registration schemes impose on young offenders render juvenile registration punitive. Following the Court’s recent trend in evaluating juvenile sentences, juvenile registration laws should be deemed cruel and unusual punishment, and thus unconstitutional. Not only do these laws violate the Eighth Amendment, but they also raise ex post facto, due process, and equal protection concerns.

Rather than expending energy and resources on maintaining sex offender registries for juveniles, states should instead focus in incorporating measures to aid in these juveniles’ rehabilitation. Studies show that juveniles have a proclivity for responding positively to treatment. Therefore, states should limit the harms associated with juvenile sex offender registration notification and instead maximize juveniles’ opportunity to successfully reintegrate into society.