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Rehabilitating Juvenile Sex Offenders with a Life Sentence, 42 J. Marshall L. Rev. 187 (2008)

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REHABILITATING JUVENILE SEX OFFENDERS WITH A LIFE SENTENCE

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I. INTRODUCTION: THE STORY OF J.W.

On February 14, 2000, J.W. pled guilty to two counts of aggravated sexual assault.[1] The events that led to his guilty plea were shocking: J.W. sexually assaulted two seven-year-old boys.[2] Specifically, he coerced the two boys into acts of oral and anal sex with each other and with him.[3] As punishment, the court ordered J.W. to register as a sex offender for the rest of his life.[4] J.W. was a twelve-year-old boy when the court sentenced him.[5]

J.W.'s sentence consisted of two parts: a five-year probation and a lifetime registration as a sex offender.[6] The five-year probation was a direct result of his juvenile trial,[7] and was the longest possible sentence allowed under the Illinois Juvenile Court Act ("Juvenile Act").[8] The registration, however, was only indirectly related to his adjudication as a juvenile delinquent.[9] Nonetheless, the Illinois Supreme Court held that juvenile sex offenders are subject to the Sex Offender Registration Act ("SORA").[10]

There is a clear and substantial difference between a maximum sentence of five years probation and registration on a list depicting the offender as a child molester for the rest of his

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1. *In re* J.W., 787 N.E.2d 747, 750 (Ill. 2003).
2. *Id.*
3. *Id.* at 751.
4. *Id.* at 750.
5. *Id.*
6. *Id.*
7. *Id.* at 753.
8. Illinois Juvenile Court Act, 705 ILL. COMP. STAT. ANN. 405/5-715 (West 2008).
9. Sex Offender Registration Act, 730 ILL. COMP. STAT. ANN. 150/2(A)(5) (West 2008). The Sex Offender Registration Act, not The Juvenile Court Act, requires delinquent juveniles to register as sex offenders. A juvenile adjudicated delinquent for an act, which if committed by an adult would be an offense that required registration as a sex offender, must also register as a sex offender. *Id.*
10. *In re J.W.*, 787 N.E.2d at 756.

life, especially when the recipient of the penalty is a child.[11] This Comment will analyze this disconnect. Part II details the event that created this disconnect: the federal law that led to individual state laws that force juveniles to register as sex offenders. Part II also summarizes why juvenile registration is a problem, and finally explains how states such as Illinois have amended sex offender legislation to deal with juvenile offenders. Part III analyzes the current condition of sex offender registration law, particularly in Illinois, how it comprehends offenses by juveniles, and why it is still deficient. Finally, Part IV proposes to fold sex offender registration requirements for juveniles in Illinois into the Juvenile Act.

II. THE PROBLEM WITH SEX OFFENDER REGISTRATION AS APPLIED TO JUVENILE OFFENDERS

A. How a Juvenile Became a Lifelong Sex Registrant

Illinois law, when the juvenile court adjudicated J.W. delinquent, required a juvenile sex offender such as J.W. to register for life.[12] While a lifelong registration is no longer allowable under the current Illinois SORA, both versions of Illinois law are based on federal law.[13] Therefore, the analysis of how J.W. became a lifelong registrant must begin with the federal law.

1. The Federal Law: Megan's Law

Megan's Law is comprised of four separate federal laws.[14] In 1994, Congress passed the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program in an effort to establish a federal registry for sex offenders by encouraging states to create laws requiring sex offender[15]

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11. Timothy E. Wind, *The Quandary of Megan's Law: When the Child Sex Offender is a Child*, 37 J. MARSHALL L. REV. 73, 116 (2003). Contrary to the rehabilitative goal of most juvenile justice systems, sex offender registration does not provide any rehabilitative means to a juvenile and, in fact, treats juveniles as adults. *Id.*; *see also In re J.W.*, 787 N.E.2d at 770 (Kilbride J., dissenting) ("Children have lesser levels of maturity and . . . their criminal acts are generally considered less culpable than those of an adult," and as a result, children should not be labeled as "sexual predators" for life).

12. Sex Offender Registration Act, 730 ILL. COMP. STAT. ANN. 150/2(A)(5) (West 2008).

13. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C.A. § 14071 (West 1996).

14. Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163, 206 n.1 (2003).

15. 42 U.S.C.A. § 14071(a)(3) (West 1996). The Act includes definitions for both sexually violent offenders and sexually violent predators. A sexually violent offense is:

> [A]ny criminal offense in a range of offenses specified by State law which

registration.[16] Next, in 1996, Congress amended this Act with what was then known as Megan's Law,[17] and required states to make the registered information public.[18] That same year, Congress passed the Pam Lyncher Sexual Offender Tracking and Identification Act in order to create a federal database to hold the state registration information.[19] Finally, in 2006, Congress passed the Adam Walsh Child Protection and Safety Act.[20] This Act broadened the federal definition of "sex offender" to include anyone convicted of a sex offense,[21] created three separate categories of sex offenders based on the severity of the crime,[22] and added categories of information that offenders must register, including DNA samples.[23] Most importantly, the Adam Walsh Act requires states to make the information in their registry available to the public through the internet.[24]

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is comparable to or which exceeds the range of offenses encompassed by aggravated sexual abuse or sexual abuse or an offense that has as its elements engaging in physical contact with another person with intent to commit aggravated sexual abuse or sexual abuse.

42 U.S.C.A. § 14071 (a)(3)(B) (West 1996).

A sexually violent predator is:

[A] person who has been convicted of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses.

42 U.S.C.A. § 14071 (a)(3)(C) (West 1996).

16. 42 U.S.C.A. § 14071 (West 1996). The Act set aside $100 million of federal crime-fighting funds for states as an incentive for compliance. *Id.* A state does not have to adopt a form of Megan's law, but if it does not, it forfeits its portion of the crime-fighting funds. *Id.*; *see also* Michele L. Earl-Hubbard, *The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated With the Scarlet Letter Laws of the 1990s*, 90 NW. U. L. REV. 788, 799 (1996) (noting that this database, however, was not designated as public information, and was only available to local law enforcements agencies, in essence, as a first place to look when sexual offenses occurred).

17. While this specific Act was originally known as Megan's Law, the cumulative effect of this series of acts also took on the name Megan's Law.

18. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996). "An Act to amend the Violent Crime Control and Law Enforcement Act of 1994 to require the release of relevant information to protect the public from sexually violent offenders." *Id.*; *see also* Garfinkle, *supra* note 14, at 206 n.1 (noting that the newly adopted Megan's Law required some form of community notification mechanism).

19. Pam Lyncher Sexual Offender Tracking and Identification Act, 42 U.S.C.A. § 14072 (West 1996).

20.Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).

21. *Id.* § 111 (codified as 42 U.S.C.A. § 16911). Now, the term "sex offender" is applied to anyone convicted of a sex offense. *Id.*

22. *Id.* This section categorized sex offenders as tier I, II, or III in increasing order of severity. *Id.*

23. Adam Walsh Act § 114 (codified as 42 U.S.C.A. § 16914).

24. Adam Walsh Act § 118 (codified as 42 U.S.C.A. § 16918).

All of these Acts passed with little opposition, and the original version of Megan's Law and the Pam Lyncher Act were passed with little debate and a unanimous vote.[25] Quite simply, this was because of the national outcry following Jesse Timmendequas' rape and murder of seven-year-old Megan Kanka.[26] Megan's fate was unquestionably tragic, but national interest was piqued not by Megan's death but by Timmendequas' status as a convicted child sex offender.[27] Congressional debate centered on how this crime could have been prevented.[28] A public database identifying convicted child sex offenders would have alerted the Kankas to Timmendequas' proximity, and in theory, they could have acted to prevent the tragedy.[29]

2. *The States' Reaction to Megan's Law*

By the end of 1996, all fifty states passed some form of a sex offender database that met the minimum requirements set by Megan's Law.[30] While each state was free to design its own registry, all state laws share common elements.[31] A state form of Megan's Law requires offenders to register personal information such as their name, personal description, address, and place of employment.[32] Further, the state law would have to provide a

25. Garfinkle, *supra* note 14, at 168.

26. Bill Clinton, President of the United States, Weekly Radio Address (June 22, 1996), *available at* http://edition.cnn.com/US/9606/22/clinton.radio/transcript.html. "We've all read too many tragic stories about young people victimized by repeat offenders." *Id.* In his speech, he further noted how the Jacob Wetterling Act was not enough to prevent these offenses, impetus for his signature implementing Megan's Law. *Id.* "Megan's law, named after a seven-year-old girl taken so wrongly at the beginning of her life, will help to prevent more of these terrible crimes." *Id.*

27. Maureen S. Hopbell, *Balancing the Protection of Children Against the Protection of Constitutional Rights: The Past, Present and Future of Megan's Law*, 42 DUQ. L. REV. 331, 336 (2004).

28. Daniel M. Filler, *Making the Case for Megan's Law: A Study in Legislative Rhetoric*, 76 IND. L.J. 315, 340 (2001). Simply, if Megan's family had known that a sex offender lived in near them, they could have acted by moving away or simply keeping Megan away from the Timmendequa's house, and Megan Kanka's tragic death may never have occurred. *Id.*

29. *Id.*

30. Wind, *supra* note 11, at 90.

31. 42 U.S.C.A. § 14071 (a)(1).

32. Wind, *supra* note 11, at 97-98. *See, e.g.*, 730 ILL. COMP. STAT. Ann. 150/3(a) (West 2008) (listing the requirements for sex offender classification). For instance, a sex offender must provide (and update when necessary) a current photograph, current address, current place of employment, all e-mail addresses, instant messaging identities, chat room identities, and other internet communications identities that the sex offender uses or plans to use, and even license plate numbers for every vehicle registered in the name of the sex offender. *Id.*; *see also* Illinois Sex Offender Information database, *available at* http://www.isp.state.il.us/sor/ (last visited Nov. 10, 2008) (showing all information Illinois makes public in regard to registered sex offenders).

mechanism for communicating this information to the community.[33] The result, in theory, allowed anyone to discover if there were sex offenders in their neighborhood and who they were.[34]

While the impetus for Megan's Law (and the various state forms) was to protect children from adult sex offenders, the laws also ensnared offenders who were *themselves* children.[35] The federal legislation did not require states to include juvenile offenders,[36] but most states chose to do so.[37] As a result, "the juvenile sex offender is treated as an adult by the Megan's Laws of most jurisdictions."[38]

3. Illinois

The old form of registration law in Illinois required a juvenile to register[39] for either ten years or for life depending upon the severity[40] of the crime committed.[41] A juvenile, at that time and

33. Wind, *supra* note 11, at 97.

34. *Id.* at 93-94.

35. Garfinkle, *supra* note 14, at 164. "In a misguided effort to protect potential child and adolescent victims from the special crime of sexual assault, many states require registration and notification for child and adolescent offenders who have traditionally been viewed as needing special protection themselves." *Id.*

36. 42 U.S.C.A. § 14071 (a)(3). "[C]onduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is 18 years of age or younger." *Id.*

37. Wind, *supra* note 11, at 78.

38. *Id.*

39. 730 ILL. COMP. STAT. ANN. 150/2(A)(5) (West 2008). The Illinois SORA requires that anyone "adjudicated a delinquent" for committing an offense that would require an adult to register as a sex offender must register as a sex offender. *Id.* The Illinois Supreme Court unequivocally held that this definition brought juveniles within the purview of the Registration Act. *In re J.W.*, 787 N.E.2d at 757.

40. 730 ILL. COMP. STAT. ANN. 150/7 (West 2008). The Illinois Sex Offender Registration Act recognizes two types of offenses, one for general sex offenses and another for which an offender is labeled a sexual predator. *Id.* The latter carries the lifetime penalty. *Id.* A sex offense is a violation of any of the following Sections of the Criminal Code of 1961: 11-20.1 (child pornography); 11-20.3 (aggravated child pornography); 11-6 (indecent solicitation of a child); 11-9.1 (sexual exploitation of a child); 11-9.2 (custodial sexual misconduct); 11-9.5 (sexual misconduct with a person with a disability); 11-15.1 (soliciting for a juvenile prostitute); 11-18.1 (patronizing a juvenile prostitute); 11-17.1 (keeping a place of juvenile prostitution); 11-19.1 (juvenile pimping); 11-19.2 (exploitation of a child); 12-13 (criminal sexual assault); 12-14 (aggravated criminal sexual assault); 12-14.1 (predatory criminal sexual assault of a child); 12-15 (criminal sexual abuse); 12-16 (aggravated criminal sexual abuse); 12-33 (ritualized abuse of a child).An attempt to commit any of these offenses also carries the penalty of registration. 730 ILL. COMP. STAT. ANN. 150/2 (B) (West 2008). A sexual predator is a person convicted for an offense of federal, Uniform Code of Military Justice, sister state, or foreign country law that is substantially equivalent to: 11-17.1 (keeping a place of juvenile prostitution);

now, registers on a separate juvenile registry[42] until they turn seventeen, after which they must register as an adult.[43] Thus, as a result of being adjudicated delinquent of aggravated criminal sexual assault, the court ordered J.W., a twelve-year-old boy, to register as a sexual predator for life.[44]

B. Why Requiring Juveniles to Register as a Sex Offender is a Problem

While Megan's Law and its state progeny garnered near unanimous approval from legislatures, the laws have not gone entirely without legal objection. "Due to hasty passage of many of these laws, lawmakers did not adequately consider their potential constitutional implications or policy concerns."[45] Constitutional challenges to Megan's Laws were brought in both state and federal court shortly after passage.[46] Nonetheless, "it appears, at least for

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11-19.1 (juvenile pimping); 11-19.2 (exploitation of a child); 11-20.1 (child pornography); 11-20.3 (aggravated child pornography); 12-13 (criminal sexual assault); 12-14 (aggravated criminal sexual assault); 12-14.1 (predatory criminal sexual assault of a child); 12-16 (aggravated criminal sexual abuse); 12-33 (ritualized abuse of a child).
730 ILL. COMP. STAT. 150/2 (E) (West 2008).

41. 730 ILL. COMP. STAT. 150/7 (West 2008).

42. 730 ILL. COMP. STAT. 152/121(a) (West 2008). In essence, the juvenile registry shields the juvenile's information from most of the public, only allowing dissemination of their registry "to any person when that person's safety may be compromised for some reason related to the juvenile sex offender." *Id.*

43. *Id.*

44. *In re J.W.*, 787 N.E.2d at 757. It is important to note that at the time the Court decided *J.W.* the Illinois SORA allowed juvenile registrants to stay on the juvenile registry permanently. *Id.* at 760. However, the Illinois legislature since amended the SORA so that a juvenile registrant, including J.W., must transfer to the adult registry after their seventeenth birthday. S.B. 1234, 94th GEN. ASSEM. (Ill. 2005).

45. Earl-Hubbard, *supra* note 16, at 813-14. "Due to hasty passage of many of these laws, lawmakers did not adequately consider their potential constitutional implications or policy concerns." *Id.*; *see also* Alison G. Turoff, *Throwing Away the Key on Society's Youngest Sex Offenders*, 91 J. CRIM. L. & CRIMINOLOGY 1127, 1140-50 (2001) (discussing how applying sex offender registration laws to juveniles violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment).

46. Hopbell, *supra* note 27, at 342. Specifically, Hopbell notes that these challenges arose mainly as claims of "punishment, privacy and due process." *Id.* The punishment claims focus on how registration subjects offenders to public ridicule, an argument easily dismissed as Megan's Laws are intended to protect, not punish. *Id.* at 342-43. Arguments that registration invades privacy have been dismissed as the information needed to register is "public record information already exposed to public view." *Id.* at 343 (quoting National Conference on Sex Offender Registries, NCJ-168965, April 1998, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/ncsor.pdf.) Finally, the due process argument is that Megan's Law deprive sex offenders of their liberty without "extensive, trial-like procedures." *Id.* However, labeling a person as a

now, that Megan's Law has survived [these] challenges and will continue to remain in effect."[47]

1. *Requiring Juvenile Offenders to Register as Sex Offenders Violates the Traditional Approach to Juvenile Justice*

Analysis focused more narrowly on how these laws apply to sex offenders, who are themselves children, reveals policy flaws. At the heart of this debate is the clash between the goals of juvenile justice and the goal of sex offender registration laws.[48]

Since Illinois first separated juvenile justice from its criminal justice system over a century ago, the hallmark of every state's system has been a focus on rehabilitating juvenile offenders.[49] In essence, this ideal recognized that tailored attention could reduce the risk that a juvenile offender would grow into an adult criminal.[50] Juvenile sentencing, in turn, was utilized as a tool to foster rehabilitation,[51] and methods such as probation gave courts a way to monitor and direct a juvenile's progress.[52]

Congress' stated purpose for enacting Megan's Law was to protect children.[53] A public registry allows parents the

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criminal or does not infringe on Constitutional rights. *Id.*; *see also* Doe v. Poritz, 662 A.2d 367, 380 (N.J. 1995) (noting that plaintiff was a convicted sex offender who had been released from prison and had lived and worked within the community for sometime). He claimed that being forced to register as a sex offender would lead to losing his job. *Id.* Therefore, he sued for an injunction seeking protection from New Jersey's form of Megan's Law, claiming that the law would constitute punishment, invasion of privacy, and violate his right to due process. *Id.* The New Jersey Supreme Court rejected the plaintiff's claim. *Id.* at 421.

47. Hopbell, *supra* note 27, at 353.

48. Garfinkle, *supra* note 14, at 163.

49. Wind, *supra* note 11, at 82-83. In 1899, Cook County, Illinois established the first juvenile court system that was separate from the adult system. Behind this split was the idea that children should not be treated as criminals but, instead, the state should work to rehabilitate the children from a downward spiral into a criminal adult life. *Id.*; *see also* Lisa McNaughton, *Extending Roper's Reasoning to Minnesota's Juvenile Justice System*, 32 WM. MITCHELL L. REV. 1063, 1063 (2006) (explaining that the juvenile justice system was created not only "to address the differences between adults and children" but to rehabilitate juvenile offenders).

50. Wind, *supra* note 11, at 82-83.

51. John M. Stuart & Amy K.R. Zaske, *What Does a "Juvenile Adjudication" Mean in Minnesota? Some New Answers After a Century of Change in Juvenile Court*, 32 WM. MITCHELL L. REV. 919, 922-23 (2006). In fact, courts adopted different terminology for juvenile courts. Juveniles are not convicted of crimes, rather, they are adjudicated guilty or delinquent. *Id.*; *see also* 705 ILL. COMP. STAT. ANN. 405/5-105(3) (West 2008) (stating that a delinquent minor is any minor under the age of seventeen who violated or attempted to violate federal or state law.).

52. Wind, *supra* note 11, at 84.

53. H.R. REP. NO. 104-555, at 3 (1996), *as reprinted in* 1996 U.S.C.C.A.N. 980, 981.

opportunity to spot dangers to their children and give law enforcement officials a place to start their search when sex crimes are committed.[54] More importantly, Congress claimed that sex offenders have a high recidivism rate, a claim that supported the goal of tracking sex offenders. However, the sex offender recidivism rate is simply not as high as Congress thought.[55] In fact, some believe that there is little evidence that these laws work, and, more importantly, that registration may in fact make things worse.[56]

Whichever goal is supported, juvenile offenders like J.W. are punished in a way not comprehended by the rehabilitative approach to juvenile justice.[57] Protecting children and preventing sex crimes is an important goal, but should it outweigh the much longer standing goal of juvenile rehabilitation?

At the very least, rejecting rehabilitation creates new problems.[58] Juvenile offenses may be the result of a juvenile's problems at home and not symptomatic of pathology.[59] Further,

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> Perhaps no type of crime has received more attention in recent years than crimes against children involving sexual acts and violence. Several recent tragic cases have focused public attention on this type of crime and resulted in public demand that government take stronger action against those who commit these crimes.

Id.

54. Filler, *supra* note 28, at 340-41. Federal legislators argued that the access to sex offender information that Megan's law allowed would give parents a chance to protect their children from potential repeat sex offenders. *Id.* at 341. Further, had the law been in place, for instance, Megan Kanka would not have died. *Id.*

55. Human Rights Watch, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE U.S. 25 (2007) *available at* http://hrw.org/reports/2007/us0907/us0907web.pdf. The report notes that legislators supporting sex offender registration support their position by citing sex offender registration rates from forty to ninety percent. *Id.* However, these numbers are simply unsupported, and, in fact, eighty-seven percent of sex offenders are first time offenders. *Id.*; *see also* Interview by Neal Conan with Sarah Toffe, Researcher, Human Rights Watch, *on* NPR Talk of the Nation, Sept. 18, 2007 (stating that the numbers legislators use to support the theory that sex offenders are likely recidivists are not generally supported, and the real numbers are much lower).

56. Interview by Angela Rozas with Sarah Toffe, Researcher, Human Rights Watch, *in* Angela Rozas, *Sex-Offender Laws Called Ineffective*, CHI. TRIB., Sept. 13, 2007, § 1, at 4.

57. *See generally* Wind, *supra* note 11, at 82-84 (discussing that the traditional juvenile justice approach was "driven by the idea that children should not be treated as criminals").

58. Garfinkle, *supra* note 14, at 163-64.

59. Wind, *supra* note 11, at 108-09. While Mr. Wind rejects the notion that there is a prototypical juvenile sex offender, he suggests that a dysfunctional home-life is often present. *Id.* Juvenile sex offenders tend to come from homes where "parents [had] higher degrees of psychiatric disturbances, alcoholism, and marital tension[.]" *Id.* Further, many juvenile offenders are exposed to inappropriate and explicit sexual material such as pornography. *Id.*

sex offenses may be the enactment of experimentation, not a flawed mind.[60] Despite these considerations, the prevailing position is that all juvenile sex offenders should be given what is essentially a black mark on their name.[61]

These problems have not gone unnoticed. While courts have been, at best, reluctant to alter state sex offender laws, some legislatures have amended their original laws to recognize juvenile offenders.[62] In a great majority of states, however, juveniles are still treated as adults.[63]

2. *The Current State of Resolution*

Over a decade after Megan's Law was created, rehabilitation is losing.[64] Juvenile justice systems no longer purport to focus solely on rehabilitation,[65] and in fact allow punishment if it fosters public protection.[66] This change in methodology certainly allows punishing juvenile sex offenders by forcing them to register, like adults, as sex offenders.[67] Moreover, it creates a hook for courts to

60. Garfinkle, *supra* note 14, at 185-86. Ms. Garfinkle notes that juveniles do not necessarily recognize the line between normal sexual behavior and what adults consider criminal sexual behavior. *Id.* In other words, what may be criminal to an adult mind may only be a juvenile's attempt to understand boundaries. *Id.* "Childhood sex play is not psychologically harmful under ordinary circumstances and is probably a valuable psychosocial experience in developmental terms." *Id.* at 186 (*citing* William H. Masters et. al., HUMAN SEXUALITY 217 (5th ed. 1995)).

61. Garfinkle, *supra* note 14, at 204-05. Juvenile and adult sex offenders ought to be treated differently. Nonetheless, Congress and most state legislatures do not treat juvenile sex offenders differently than adult sex offenders, and "[i]n doing so, they are arbitrarily forcing thousands of children to face an utterly false lifetime classification as dangerous perverts." *Id.*

62. *See, e.g.*, S.B. 1509, 95th GEN. ASSEM., Reg. Sess. (Ill. 2007) (recognizing that different treatment of juvenile offenders is necessary).

63. Garfinkle, *supra* note 14, at 205.

64. Wind, *supra* note 11, at 84-85.

65. *Id.* at 84; *see also* Kulmeet S. Galhotra, *Survey of Illinois Law: Juvenile Delinquency—Protecting the Public*, 28 S. ILL. U. L.J. 847, 848 (2004) (discussing how Illinois redirected its juvenile justice system policy to focus on punishment because the old purely rehabilitative method did not treat violent offenders severely enough).

66. *In re J.W.*, 787 N.E.2d at 758-59. The court recognizes that the former singular goal of the Illinois Juvenile Court Act was rehabilitation. However, the legislature amended the Act in order to promote public protection as another goal of the juvenile justice system. As such, the court held that it had to balance public protection with rehabilitation. *Id.*; *see also* Wind, *supra* note 11, at 84 (beginning in the 1970's, courts began to shy away from rehabilitation and began to favor punishment as a sentencing guideline). Many believed that, as protecting the public from dangerous juveniles grew to the primary concern of lawmakers, that rehabilitation was simply to weak a method to deter juvenile crime. *Id.*

67. *In re J.W.*, 787 N.E.2d at 758-59.

latch on to in upholding such laws.[68] The judicial debate over rehabilitation and punishment, at least in the area of juvenile sex offenders, is over; sole responsibility for change rests in the hands of state legislatures.[69]

3. *Illinois*

Illinois is no different. Following the federal adoption of Megan's Law, Illinois adopted its own registration law.[70] Until recently, a juvenile convicted of a sexual offense in Illinois faced a penalty of registering as a sex offender for at least ten years and up to lifetime registration.[71] Further, the Registration Act requires anyone "adjudicated a juvenile delinquent" for committing an offense that would require an adult to register as a sex offender to register as a sex offender.[72] The Illinois Supreme Court supports this view.[73]

However, on June 1, 2008, Illinois adopted a new approach.[74] A juvenile may not be considered a sexual predator and be given a lifetime registration; the maximum time a juvenile will be subject to registration is ten years.[75] Further, after five years, a juvenile may petition the court to terminate the registration.[76]

Former Chief Justice of the Supreme Court of Illinois Mary Ann G. McMorrow aptly summarized the landscape of juvenile sex offenses in Illinois. While she agreed that the current form of the law in Illinois forced her to rule against J.W., she "invite[ed] the legislature to reconsider the wisdom of imposing such a burden on

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68. *Id.* at 759. "This court has recognized that the amendments to the purpose and policy section of the Juvenile Court Act represent a fundamental shift from the singular goal of rehabilitation to include the overriding concerns of protecting the public and of holding juveniles accountable for violations of the law." *Id.*

69. Hopbell, *supra* note 27, at 352.

70. 730 ILL. COMP. STAT. ANN. 150/1-150/12 (West 2008).

71. 730 ILL. COMP. STAT. ANN. 150/7 (West 2008).

72. 730 ILL. COMP. STAT. ANN. 150/2(A)(5) (West 2008).

73. *In re J.W.*, 787 N.E.2d at 757.

74. S.B. 1509, 95th GEN. ASSEM., Reg. Sess. (Ill. 2007).

75. *Id.* While section h of the senate bill expressly limited a juvenile's registration to ten years, the newly amended text of the statute does not contain a limiting provision. 730 ILL. COMP. STAT. 150/3-5 (West 2008).

76. *Id.* Juvenile courts may now consider the following factors in determining if a juvenile may be relieved of registering:

> (1) a risk assessment performed by an evaluator approved by the Sex Offender Management Board; the sex offender history of the adjudicated juvenile delinquent; (2) evidence of the adjudicated juvenile delinquent's rehabilitation; (3) the age of the adjudicated juvenile delinquent at the time of the offense; (4) information related to the adjudicated juvenile delinquent's mental, physical, educational, and social history; (5)victim impact statements; and (6) any other factors deemed relevant by the court.

730 ILL. COMP. STAT. ANN. 150/3-5(e) (West 2008).

juveniles, particularly juveniles under the age of 13."[77]

III. ANALYSIS

Both Illinois' former and current versions of the SORA would impose such an unwise burden on J.W. Simply because states can require juvenile sex offenders to register does not imply that all juvenile offenders should register. To once again invoke (and broaden) Justice McMorrow's plea, a state legislature must ensure that its sex offender registration laws are wise; that it maintains its goal of public protection while not burdening the juveniles who should not be unnecessarily labeled as sex offenders.[78] Such a law must support the policies behind sex offender registration and juvenile justice.[79] This Section analyzes the wisdom behind sex offender registration laws, with particular attention to the Illinois scheme, by examining the policy behind these laws and how they are administered.

A. Balancing Public Protection with Proper Application of Juvenile Justice

An effective sex offender registration law must balance two policies,[80] and this is no simple task. On one side is the need to protect the public, especially children, from all sex offenders.[81] On the other side is the correct application of juvenile justice to sex offenders who are themselves juveniles.[82] The best possible solution would fully accommodate both strongly-supported policies.

Certainly, the support for public protection is evident in the nationwide application of Megan's Law.[83] Without such widespread public support, Megan's Law and its state progeny may not exist.[84] This support is not unfounded. What happened

77. *In re J.W.*, 787 N.E.2d at 767 (McMorrow, J., concurring). Note that Justice McMorrow's comment came before Illinois amended its Sex Offender Registration Act.

78. *Id.*

79. *See id.* at 83-84 (recognizing that there is a substantial purpose—public protection—behind sex offender registration, but, at the same time, it is at tension with "the philosophical underpinnings of our juvenile justice system").

80. *See* Wind, *supra* note 11, at 106 (noting that the sex offender registration laws protect the public by preventing recidivism, but, as juveniles may be rehabilitated, there is insufficient justification "to warrant registration of child sex offenders").

81. *Id.*

82. *Id.*

83. Suzanne Meiners-Levy, *Challenging the Prosecution of Young "Sex Offenders": How Developmental Psychology and the Lessons of* Roper *Should Inform Daily Practice*, 79 TEMP. L. REV. 499, 501 (2006).

84. *See* Sarah W. Craun & Poco D. Kernsmith, *Juvenile Offenders and Sex Offender Registries: Examining the Data Behind the Debate*, 70 FED.

to Megan Kanka was unconscionable.[85] It is hardly bad policy to protect children, who are naturally vulnerable, from becoming victims like Megan.[86]

At the same time, the core of this policy—that children are more vulnerable than adults—cannot be ignored in other contexts. For this very reason, states long ago separated juvenile courts from adult courts.[87] Children are different from adults and should not always be punished in the same manner.[88] Again, a central policy of juvenile justice, while somewhat eroded, is to rehabilitate juveniles.[89] In other words, juvenile justice systems aim to prevent juveniles from becoming recidivists. Sex offender registration, in theory, protects the children because it puts them and their parents on notice of potential recidivists. As both policies share an interest in preventing recidivism, there is no reason both policies cannot work together.

State legislatures, however, must make an effort to accommodate both policies.[90] In this context, the laws must be tailored to both protect children from dangerous sex offenders and protect juveniles from not being unnecessarily subjected to registration.[91]

B. Recidivism

Both policies share the goal of preventing recidivism, but the role registration plays in preventing recidivism is not immediately clear. The impetus for sex offender registration is protecting children from sex offenders; the underlying reason for registration is that it will prevent recidivism.[92] The central premise of sex offender law is that sex offenders are more likely to be repeat

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PROBATION 45, 45 (2006) (citing that eight out of ten people surveyed in Washington State considered Megan's Law "very important"); *see also* 142 CONG. REC. 10,354 (1996) (showing that the House of Representatives passed the community notification element of Megan's Law—the amendment then know as Megan's Law—with a unanimous 418 to 0 vote).

85. Wind, *supra* note 11, at 90.

86. *See* Filler, *supra* note 28, at 342 (noting that the primary purpose of Megan's Law is to protect children who, like Megan Kanka, are unable to protect themselves).

87. McNaughton, *supra* note 49, at 1063.

88. Kristin L. Caballero, *Blended Sentencing: A Good Idea for Juvenile Sex Offenders*, 19 ST. JOHN'S J. LEGAL COMMENT. 379, 400 (2005).

89. *Id.*

90. *See* Adam Shajnfield & Richard B. Krueger, *Reforming (Purportedly) Non-Punitive Responses to Sexual Offending*, 25 DEV. MENTAL HEALTH L. 81, 96 (2006) (noting that sex offender registration must be preceded by careful study and must be based on "sound science or public policy").

91. Meiners-Levy, *supra* note 83, at 514.

92. *Poritz*, 142 662 A.2d at 404; *see also In re J.W.*, 787 N.E.2d at 758 (holding that the Illinois Sex Offender Registration Act was intended to protect the public from sex offenders).

offenders than other types of criminals.[93] Therefore, registration allows the public access to the offender's location so that the offender may be avoided.[94] In other words, a sex offender is punished by their criminal sentence[95] and is, in theory, prevented from re-offending by having to register as a sex offender.[96]

Whether sex offenders are more likely recidivists has been debated since Congress passed Megan's Law.[97] It is also pertinent to consider if *juvenile* sex offenders are more likely recidivists than adults.[98] Opponents of Megan's Law contend that there is no proof that sex offenders are likely recidivists, a claim supported by the absence of any study confirming the recidivism rates for sex offenders.[99] Not surprisingly, proponents of Megan's Law also cite the dearth of numerical support, but note that their theory cannot be dismissed without support.[100]

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93. *See* 142 CONG. REC. H4451-02 (daily ed. May 7, 1996) (statement of Rep. Molinari) (discussing that sex offenders recidivism rates are high and noting that this rate has been demonstrated "time and time again").

94. Filler, *supra* note 28, at 340-41; *see, e.g.*, Illinois Sex Offender Information database, http://www.isp.state.il.us/sor/ (last visited on Nov. 11, 2008) (listing registered sex offenders and their registered information). Interestingly, the front page to the site notes that the "information contained on this site does not imply listed individuals will commit a specific type of crime in the future, nor does it imply that if a future crime is committed by a listed individual what the nature of that crime may be." *Id.*

95. *See, e.g.*, 730 ILL. COMP. STAT. ANN. 150/2(A)(5) (West 2008) (requiring that a juvenile must first be adjudicated delinquent of committing a criminal act before registration applies).

96. Filler, *supra* note 28, at 340.

97. *See generally* Garfinkle, *supra* note 14, at 171 (discussing that legislators have long supported the claim that sex offenders are recidivists and that this belief, though unsupported, led to the passage of Megan's Law); *see also* Joanna C. Enstice, *Remembering the Victims of Sexual Abuse: The Treatment of Juvenile Sex Offenders in In Re J.W.*, 35 LOY. U. CHI. L.J. 941, 997-998 (2004) (discussing the inconclusive data that proponents of Megan's Law used to support the theory that juvenile sex offenders will become repeat offenders).

98. *See generally* Caballero, *supra* note 88, at 397-400 (discussing that sex offender registration laws are based on the theory that sex offenders are likely recidivists, but, at the very least, conclusive results on juvenile recidivism rates are needed before requiring juveniles to also register as sex offenders).

99. *See, e.g.*, 142 CONG. REC. S3421-01 (daily ed. Apr. 17, 1996) (statement of S. Gramm) (explaining that sexual predators have a recidivism rate higher than any other type of criminal, and, in fact are ten times more likely to commit another sex offense than an armed robber will commit armed robbery again); *see also* HUMAN RIGHTS WATCH, *supra* note 55, at 25 (noting that state and federal legislators are largely responsible for perpetuating the theory that sex offender recidivism rates are high, yet these legislators "rarely cite . . . the source and credibility of such figures").

100. Caballero, *supra* note 88, at 397; *see also* Garfinkle, *supra* note 14, at 172 (noting that despite conclusive numbers on exactly how many sex offenders re-offend, it is clear that most sex offenders are not recidivists).

The findings are inconsistent, and ultimately, not conclusive, but do point to sex offender recidivism rates that are lower than legislators cited when passing the laws.[101] With this in mind, juveniles may be slightly more likely recidivists than adults.[102] Nonetheless, the rates are not nearly as high as legislators believed, but they are not so low as to be ignored.[103]

Perhaps the most important finding of these studies is that the most likely victim of a juvenile sex offender is a juvenile.[104] The average victim age of a juvenile sex offender is fifteen, while the typical victim of an adult offender is thirty-three.[105] If protecting children from sex offenders is the true purpose of Megan's Law, then this finding supports applying sex offender registration to juveniles.

While this finding does support extending registration requirements to juveniles, it does not obviate legislatures from tailoring their laws so that they do not automatically include all juvenile offenders.[106] As will be discussed below, some juveniles are not dangerous and should not be forced to register.[107]

C. *Mechanisms*

The goal, and, to a certain extent, the policy behind Megan's Law is too strongly supported to be ignored. At the same time, registration laws must not unnecessarily require all juvenile offenders to register. Simply by virtue of being labeled a sex offender and registrant, a juvenile receives a black mark on his name.[108] Yet not all juvenile offenders are dangerous or even

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101. *See generally* Human Rights Watch, *supra* note 55, 25-30 (concluding that it is difficult to accurately measure sex offender recidivism rates, but it is clear from numerous reports that the recidivism rates are lower than the figure legislators cited in supporting Megan's Law).

102. Craun & Kernsmith, *supra* note 84, at 47. This study found that eighty-eight percent of convicted adults sex offenders committed only one offense but only eighty-four percent of juveniles committed one offense. *Id.* While this is not a vast disparity, Craun and Kernsmith noted their surprise that more juveniles had re-offended because "older offenders would have more years to offend." *Id.*

103. Tom Leversee & Christy Pearson, *Eliminating the Pendulum Effect: A Balanced Approach to the Assessment, Treatment, and Management of Sexually Abusive Youth*, 3 J. CENTER FOR FAMILIES, CHILD. & CTS. 45, 49 (2001). Recidivism rates for sex offenders range from eight to thirty-seven percent, but ten percent "is believed to be the typical recidivism rate for sexually abusive youths." *Id.*

104. *Id.* at 47.

105. *Id.*

106. Michael Pinard, *The Logistical and Ethical Difficulties of Informing Juveniles About the Collateral Consequences of Adjudications*, 6 NEV. L.J. 1111, 1112 (2006).

107. *See infra* Part III(C)(1) (discussing circumstances under which juvenile sex offenders should not be required to register).

108. Shajnfield & Krueger, *supra* note 90, at 82. Not only does requiring sex

potential recidivists.[109] Registration laws can better incorporate this distinction by modifying registration parameters, such as when registration is triggered and how registration is terminated.[110]

1. Triggering Registration

The most prominent problem with applying sex offender registration laws to juveniles is that some juveniles who may not be dangerous or potential recidivists are forced to register.[111] This situation puts a black mark on those juveniles while not protecting the public.[112] In fact, it may even hurt the public—if the juvenile is no risk, state money is essentially wasted in making the juvenile register.[113]

a. Distinguishing Between Types of Juvenile Offenders

Consider a sixteen-year-old couple. Perhaps at some point their relationship progresses to the point that one or both minors remove some of their clothing in order to arouse their partner. This is not dangerous, deviant or even unusual behavior for sixteen-year-olds. Nonetheless, if any parent were to find out about the incident and, in their anger, file criminal charges, either minor could be guilty of sexual exploitation of a child.[114] If adjudicated delinquent in Illinois, the minor would also be subjected to at least a ten year registration as a sex offender.[115]

While the preceding example may not end in adjudication for the juvenile, it does represent a sex offense and subsequent

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offender registration force the label of sex offender on the registrant, the registration requirement turns them into social outcasts. *Id.*

109. Meiners-Levy, *supra* note 83, at 502.

110. *See generally* Pamela S. Richardson, *Mandatory Juvenile Sex Offender Registration and Community Notification: the Only Viable Option to Protect All the Nation's Children*, 52 CATH. U. L. REV. 237, 255-60 (2002) (discussing the methods different states utilize in initializing and ending sex offender registration for juvenile offenders).

111. *See generally* Meiners-Levy, *supra* note 83, at 505-7 (discussing how many juvenile sex offenders are simply curious about their sexuality and their "crimes" are the result of sexual exploration). Some punishment and guidance are more than enough to deter future incidents. *Id.* at 506.

112. *See generally* Earl-Hubbard, *supra* note 16, at 796 (discussing how a sex offender registry gives law enforcement officials a list of possible offenders when a sex crime is committed by an unknown assailant). If the registrant poses no threat of future crime, there is no need to track them.

113. Shajnfield & Krueger, *supra* note 90, at 91.

114. 720 ILL. COMP. STAT. ANN. 5/11-9.1 (a-5) (West 2008). "A person commits sexual exploitation of a child who knowingly entices, coerces, or persuades a child to remove the child's clothing for the purpose of sexual arousal or gratification of the person or the child, or both." *Id.*

115. 730 ILL. COMP. STAT. ANN. 150/2(B)(1) (West 2008).

registration that would be administered to a minor most would not consider dangerous or a likely recidivist.[116] Nonetheless, the new Illinois SORA would result in that child being labeled a sex offender and registrant.[117]

If this example represents one end of a spectrum of offenses, it is illuminating to consider an example at the opposite end. Consider the same sixteen-year-old, but this time he coerces or forces a seven-year-old into allowing him to penetrate him or her. In this case, the sixteen-year old committed criminal sexual assault.[118] Here, the general consensus is that the offender committed a serious offense and absolutely should be punished as he very well may be a future danger.[119]

These two examples illustrate that not all juvenile sex offenses are the same.[120] There are offenses that should not be punished with registration, but at the same time, there are many that, at the very least, should require registration.[121] Illinois's SORA ignores this distinction, but not all states do.

For example, Mississippi does not attach registration unless a juvenile is older than fourteen,[122] and if over fourteen, only if they are adjudicated delinquent of rape, sexual assault, statutory rape, or a conspiracy to commit any of these offenses.[123] Further, Alabama,[124] Arizona,[125] Arkansas,[126] Connecticut,[127] Colorado,[128]

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116. *See* Meiners-Levy, *supra* note 83, at 506 (demonstrating that teens who act out on their sexual desires are showing immaturity and not signs of pedophilia); *see also* McNaughton, *supra* note 49, at 1073 (discussing that juvenile sexual experimentation is not deviant behavior and should not be punished beyond the juvenile sentence with registration as a sex offender).

117. *See also* 730 ILL. COMP. STAT. ANN. 150/3-5(a) (West 2008).

118. 720 ILL. COMP. STAT. ANN. 5/12-13(a)(1) (West 2008). "The accused commits criminal sexual assault if he or she commits an act of sexual penetration by the use of force or threat of force." *Id.*

119. Leversee & Pearson, *supra* note 103, at 46. Of course, it is also interesting to make one final adjustment to this example. What if the offender, like J.W., is twelve instead of sixteen?

120. Madeline Carter, Kurt Bumby & Thomas Talbot, *Promoting Offender Accountablity and Community Safety Through the Comprhensive Approach to Sex Offender Management*, 34 SETON HALL L. REV. 1273, 1286 (2004); *see also* Ayn Embar-Seddon & Allan D. Pass, *Assessing, Managing, and Treating Juvenile Sex Offenders*, 2004 J. INST. JUST. INT'L STUD. 112, 117 (2004) (noting that there are a great variety of sex offenders, whether juvenile or adult).

121. *See* Elizabeth S. Scott & Thomas Grisso, *Developmental Incompetence, Due Process, and Juvenile Justice Policy*, 83 N.C. L. REV. 793, 814-15 (2005) (discussing how juveniles have less mature emotional and psychological development than adults and tend to have lower impulse control in situations where emotional arousal is high).

122. MISS. CODE ANN. § 45-33-25(1)(a) (West 2008).

123. MISS. CODE ANN. § 45-33-25(1)(b) (West 2008).

124. ALA. CODE § 15-20-28(c) (West 2008); *see also* D.B.Y. v. State, 910 So. 2d 820, 826 (Ala. 2005) (holding that a judge must wait for a sexual-offender risk assessment before determining whether a juvenile sex offender must register as a sex offender).

Iowa,[129] Massachusetts,[130] Montana,[131] and North Dakota[132] allow the court to use its discretion in attaching registration to delinquent juveniles.

However, even these laws are not adequate. According to Ayn Embar-Seddon and Allan D. Pass, professors at Capella University, the first step in successfully treating a juvenile sex offender should be the administration of a well-informed assessment.[133] They point out that although many jurisdictions do assess sex offenders, such assessments are poorly done.[134] For

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125. ARIZ. REV. STAT. ANN. § 13-3821(D) (2008). "The court *may* require a person who has been adjudicated delinquent for an act that would constitute an offense specified in subsection A or C of this section to register pursuant to this section." *Id.* (emphasis added).

126. ARK. CODE ANN. § 9-27-356 (West 2008). When a juvenile sex offender is adjudicated guilty of a sex offense, the court may order a sex offender screening assessment, and, once carried out, may, following a motion from the prosecutor, require the juvenile to register as a sex offender. *Id; see also* L.W. v. State, 202 S.W.3d 552, 555 (Ark. Ct. App. 2005) (holding that the trial judge's decision to require a juvenile to register as a sex offender must be supported by clear and convincing evidence).

127. CONN. GEN. STAT. ANN. § 54-251(b) (West 2008). If a sex offender is under the age of nineteen at the time of the offense, the trial judge may decide not to impose registration "if it is not required for public safety." *Id.*; *see also* State v. Bletsch, 860 A.2d 299, 303 (Conn. App. Ct. 2004) (holding that even if a sex offender is a juvenile—under the age of nineteen—and does not pose a danger to the public, the trial judge "still retains discretion to determine whether an exemption is warranted").

128. COLO. REV. STAT. ANN. § 16-22-103(5)(a) (West 2008). The court may exempt a juvenile from registering as a sex offender if they find that registration would be unfairly punitive and that the juvenile does not pose a significant threat to the public. *Id.*

129. IOWA CODE ANN. § 692A.2(4) (West 2008); *see also In re* J.A.C., 723 N.W.2d 450, 450 (Iowa App. 2006) (holding that a juvenile sex offender is presumed to have to register as a sex offender, but, subject to the judge's discretion, this presumption may be overcome if the juvenile shows that they are not abusive or a risk to the community).

130. MASS. GEN. LAWS ANN. ch. 6, § 178E(e) (West 2008). While a trial judge may remove the registration requirement for a juvenile offender, the judge may only do so after a written motion from the commonwealth. *Id.*

131. MONT. CODE ANN. § 41-5-1513(2) (West 2008); *see also* State v. Villanueva, 118 P.3d 179, 182 (Mont. 2005) (holding that a juvenile, adjudicated guilty of a sex offense in Washington, still had to register when he moved to Montana, even though he would not have had to register if originally adjudicated in Montana).

132. N.D. CENT. CODE § 12.1-32-15(2)(c) (West 2008).

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

Id.

133. Embar-Seddon & Allan D. Pass, *supra* note 120, at 114.

134. *Id.*

instance, the assessment is generic—it essentially treats juvenile and adult offenders equally.[135] Further, judges are generally poor evaluators of such reports and may not fully understand the professional analysis.[136] Nonetheless, if a judge does have the final word, then they should be well informed.

b. Illinois and *J.W.*

Interestingly, the court in *J.W.* had multiple professional analyses at its disposal. First, a psychiatrist testified at J.W.'s sentencing hearing.[137] He diagnosed J.W. with paraphila, a disorder where a person engages in sexual activity that is not sanctioned by society.[138] The psychiatrist concluded that J.W. would be a risk to the public if he was not placed in residential *treatment*.[139] Second, the court heard testimony from a therapist who had ten prior years of experience with juvenile sex offenders.[140] She testified that "J.W. was a danger to the community to a certain degree," and recommended that J.W. receive specialized *treatment*.[141]

After hearing these experts' testimony, the trial court sentenced J.W. to five years probation.[142] In light of J.W.'s action, this punishment, along with the court supervision that accompanies probation, was reasonable. Sex offender registration automatically attached, regardless of whether the court "found" registration necessary.[143] The expert witnesses spoke about treatment, the court listened, but the court was unable to consider whether J.W. should register as a sex offender. What purpose did the expert testimony at the sentencing hearing serve?

Of course, there is no completely accurate method to determine if a juvenile sex offender is a recidivist, but there are better ways than Illinois essentially per se law.[144] Without change, even Illinois' new SORA will force juveniles to register as sex offenders even if they should not be required to do so.

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135. *Id.*
136. *Id.*
137. *In re J.W.*, 787 N.E.2d at 751.
138. *Id.* This diagnosis begs the question: Does society sanction any sexual activity by twelve year old children? Also, the psychiatrist noted that the diagnosis would have been pedophilia if J.W. had been sixteen. *Id.*
139. *Id.*
140. *Id.* at 752. This therapist had also worked with J.W. on a weekly basis for at least one year.
141. *Id.*
142. *Id.* at 753.
143. 730 ILL. COMP. STAT. ANN. 150/2(A)(5) (West 2008).
144. *See generally* Meiners-Levy, *supra* note 83, 505-06 (discussing how medical research and common sense are paramount in assessing when and if subjecting juveniles to registration is appropriate).

1. Terminating Registration

On the other hand, the recently amended Illinois law does contain a mechanism to release rehabilitated juveniles.[145] A juvenile adjudicated delinquent will be able to petition the court to release him/her from registering after five years.[146] This part of the legislation is a step forward[147] as it not only recognizes the old hallmark of juvenile justice, rehabilitation, but it allows a potentially dangerous juvenile the chance to recover.[148]

This type of mechanism, however, still does not aid juveniles that should not have been forced to register in the first place.[149] The damage is already done.[150] They were already labeled as a sexual deviant and registrant, as well as a delinquent.[151]

Again, *J.W.* exemplifies how his approach is deficient. J.W. committed aggravated criminal sexual assault.[152] However, his case was different from the above examples: J.W. was only twelve.[153] There is absolutely no question that his act was culpable.[154] J.W. deserved punishment, and the juvenile justice system levied his punishment.[155] Certainly Illinois' new scheme will recognize when, and if, J.W. is rehabilitated, but it will not recognize whether J.W. should have been forced to register in the

145. 730 ILL. COMP. STAT. ANN. 150/3-5(d) (West 2008).

146. 730 ILL. COMP STAT. ANN. 150/3-5(c) (West 2008).

147. *See Generally* Michael L. Skoglund, *Private Threats, Public Stigma? Avoiding False Dichotomies in the Application of Megan's Law to the Juvenile Justice System*, 84 MINN. L. REV. 1805, 1833 (2000) (noting that no juvenile previously adjudicated delinquent should be released back into the public if they are a risk to the community, but public safety is increased by releasing fully rehabilitated juvenile offenders).

148. *See* Patricia Puritz & Katayoon Majd, *Ensuring Authentic Youth Participation in Delinquency Cases: Creating a Paradigm for Specialized Juvenile Defense Practice*, 45 FAM. CT. REV. 466, 471 (2007) (noting that collateral consequences such as sex offender registration seriously limit "the life chances of youth"); *see also* Shajnfeld & Krueger, *supra* note 90, at 82 (discussing that registration is a punitive sanction that not only may increase sex offending but also prevents effective treatment as leaves no incentive for the registrant to, in essence, work towards rehabilitation).

149. *See id.* at 84 (demonstrating that many juvenile sex offenders are unlikely to re-offend and forcing them to register serves no purpose as it does nothing to further public protection).

150. *See* Doron Teichman, *Sex, Shame, and the Law: An Economic Perspective on Megan's Laws*, 42 HARV. J. ON LEGIS. 355, 358-59 (2005) (discussing how sex offender registration shames the registrant due to the discomfort they feel from their past actions being revealed to the public).

151. *See, e.g.*, 730 ILL. COMP. STAT. ANN. 150/2(A)(5) (West 2008) (requiring a juvenile to first be adjudicated delinquent before sex offender registration must attach).

152. *In re J.W.*, 787 N.E.2d at 751.

153. *Id.*

154. *See* 705 ILL. COMP. STAT. ANN. 405/5-701 (West 2008) (creating the punitive sentences that may be given to juveniles adjudicated delinquent).

155. *Id.*

first place. As such, the new Illinois law is still unwise.

IV. PROPOSAL

The problem with the new Illinois registration law is glaring: it lacks a mechanism to allow the courts to use their discretion in determining if a juvenile should be required to register as a sex offender.[156] A remedy is not only apparent but is simple to implement. Illinois should sever the juvenile requirement from SORA and move it under the umbrella of the Juvenile Act as a sentence the court could impose on a juvenile.

A. Why This is Apparent and Simple to Implement

As discussed above, registration is inappropriate for some juvenile sex offenders.[157] Certainly it is not possible to predict with complete accuracy how a juvenile will respond to treatment, or if the juvenile may be rehabilitated at all.[158] It is, however, unreasonable that Illinois juvenile courts may hear professional opinions on such matters but cannot use it to determine if a juvenile should register as a sex offender.[159] Yet, it would not require great effort to change Illinois' law to eradicate this problem.

The Juvenile Act already places the necessary tools at the courts' fingertips. Once a juvenile is adjudicated delinquent, the trial judge has wide discretion over the sentence to impose on the juvenile.[160] At the sentencing hearing, the court must determine

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156. *See supra* Part III(C)(1)(a) (arguing that sex offender registration laws that lack a filter mechanism unfairly treat all juvenile offenders the same, even though many juveniles and juvenile sex crimes are not equal).

157. *See* Carter, Bumby, & Talbot, *supra* note 120, at 1286 (arguing that the diversity of sex offenders necessitates a flexible approach, and that the generic "one size fits all approach" is inappropriate); Embar-Seddon & Pass, *supra* note 120, at 117 (explaining how a "spectrum of treatments" is absolutely necessary in order to adequately comprehend and treat the "spectrum" of sex offenses and offenders); *see also* Scott & Grisso, *supra* note 121, at 812-17 (discussing how bright-line age tests for distinguishing juveniles from adults is ineffective and how a case-by-case analysis of neurological, intellectual, emotional, and psychosocial development more precisely measures maturity); *supra* Part III(C)(1)(a) (demonstrating how a juvenile's age and the type of sex crime committed not only drastically change the nature of the sex crime committed but also affect how much of a danger the accused is to the public).

158. Embar-Seddon & Pass, *supra* note 120, at 115; *see also* Skoglund, *supra* note 147, at 1824 (treating juveniles is still a developing science, and, while improvement is noticeable, treatment models are still not completely successful).

159. *See* Meiners-Levy, *supra* note 83, at 514 (arguing that sex crime statutes must be crafted to distinguish between predatory and non-predatory juvenile offenses, but until they do "defense counsel must play a decisive and aggressive role in pushing legal change").

160. 705 ILL. COMP. STAT. ANN. 405/5-705(1) (West 2008); *see also* 705 ILL.

the "proper disposition best serving the interests of the minor and the public."[161] The court may, for instance, impose probation,[162] placement in a detention center,[163] or submission to medical treatment.[164] Adding registration as a sex offender to this list of sentences would properly bring registration under the court's control.

More importantly, the Juvenile Act already includes methods for the court to determine if a juvenile adjudicated delinquent should be required to register. The Juvenile Act requires any juvenile adjudicated delinquent of a sex offense to undergo a sex offender evaluation performed by a certified evaluator.[165] This requirement gives the court automatic access to the information it needs to evaluate the need for registration. Further, the court may admit "[a]ll evidence helpful in determining" the sentence that best serves the juvenile's and the public's interests.[166]

The court must already hear expert testimony describing the likelihood that treatment will help a juvenile, and, indirectly, the public interest. Likewise, the court has wide discretion to impose what it believes is the best mix of sentencing to properly serve both interests.

B. What This Approach Would Have Meant for J.W.

The *J.W.* court heard testimony from both a psychiatrist and a therapist.[167] The psychiatrist determined that J.W. would pose a threat to the community if he was not treated.[168] Similarly, the therapist concluded that J.W., while at the time a risk to the community, was likely to respond favorably to treatment, and, in fact, should not be relegated to a residential facility and should be allowed to remain in the community.[169]

Certainly balancing J.W.'s interests with the public's interest was not an easy task. Yet, the court essentially had no choice but to disregard the expert testimony and automatically subject J.W., a twelve year-old boy, to registration as a sex offender. The court never had the opportunity to balance these interests as it had no control over registration during the sentencing phase of J.W.'s

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COMP. STAT. ANN. 405/5-710 (West 2008) (listing the types of sentences the trial judge "may" impose on the juvenile).

161. 705 ILL. COMP. STAT. ANN. 405/5-710 (West 2008).

162. 705 ILL. COMP. STAT. ANN. 405/5-710(1)(a)(i) (West 2008).

163. 705 ILL. COMP. STAT. ANN. 405/5-710(1)(a)(v) (West 2008).

164. 705 ILL. COMP. STAT. ANN. 405/5-710(1)(a)(ix) (West 2008).

165. 705 ILL. COMP. STAT. ANN. 405/5-701 (West 2008). Specifically, the evaluator must be approved by the Sex Offender Management Board and the standards it propagates under the Sex Offender Management Board Act. *Id.*

166. 705 ILL. COMP. STAT. ANN. 405/5-705(1) (West 2008).

167. *In re J.W.*, 787 N.E.2d at 750-52.

168. *Id.* at 752.

169. *Id.* at 753.

trial.

Illinois needs to allow the juvenile courts to exercise their discretion, as they do in other phases of sentencing, in order to determine if a juvenile must register as a sex offender. The Juvenile Act already gives the courts the tools they need to make this decision. All that remains is for the legislature to allow the courts to fully utilize these tools by severing the registration requirements for juveniles from the SORA and placing it within the Juvenile Act.

V. CONCLUSION

Megan's Law is undoubtedly here to stay. All fifty states have adopted some form of sex offender registration law, and most apply that registration to juveniles. These laws have survived numerous challenges and changes, but it is clear that they may be imposed on juveniles. It is not so clear, however, that they should always be imposed on juveniles.

Juvenile sex offenders may be dangerous, potential recidivists that pose a significant risk to the children Megan's Law aims to protect. Some, however, are not dangerous. A wise sex offender registration law must recognize this distinction. Illinois' new SORA lacks such a distinction despite the ease with which it could be fixed by bringing juvenile registration within the Juvenile Act.