

**A SHATTERED SENSE OF SELF: ENDING THE PRACTICE OF  
JUVENILE REGISTRATION IN NEW JERSEY**

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## INTRODUCTION

In the original design of Megan's Law in 1994, the New Jersey legislature was charged by intense public pressure to address an incident that occurred only one month prior; when Jesse Timmendequas sexually assaulted and murdered his seven-year-old neighbor Megan Kanka on July 29, 1994.<sup>1</sup> The nationwide rage in response to this horrific set of facts was further fomented by Timmendequas's criminal history, as he had two prior convictions for sexually offending against children in the past.<sup>2</sup>

How could a person such as Jesse Timmendequas remain in his community unchecked and unaccounted for? The New Jersey legislature responded swiftly to this exact question by enacting statutes that require certain individuals to register with local law-enforcement agencies.<sup>3</sup> These statutes, combined with Community Notification Laws and the New Jersey Attorney General's Guidelines, enabled law enforcement officials to acquire identifying information concerning those obligated to register.<sup>4</sup> They further authorized the dissemination of information and pictures of those individuals to organizations and members of the local community.<sup>5</sup>

It has now been over twenty-eight years since the inception of Megan's Law in New Jersey.<sup>6</sup> Since then, criminologists and legal scholars have repeatedly questioned its effectiveness.<sup>7</sup> This skepticism is

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1. State v. Timmendequas, 773 A.2d 18, 22–23 (N.J. 2001).

2. *Id.* at 22 (“The murder of Megan Kanka sparked outrage after the public learned that defendant had been twice convicted of sex offenses against children, and that Megan’s community had not been made aware of those convictions.”).

3. Doe v. Poritz, 662 A.2d 367, 373 (N.J. 1995); *see id.* at 423 (Stein, J., dissenting) (discussing the legislative history of these statutes).

4. *Id.* at 379–80 (majority opinion).

5. *Id.* at 377; *see also id.* at 423 (Stein, J., dissenting) (“[T]he notification provisions of the statute and Guidelines are intended to protect the public by familiarizing those who receive notice with sufficient details about the offender’s appearance, prior conviction, and other data to permit them to take appropriate precautions.”).

6. *See Timmendequas*, 773 A.2d at 22.

7. *See, e.g.*, Jessica Ann Orben, Connecticut Department of Public Safety v. Doe: Sex Offenders’ Due Process Under “Megan’s Law” and the Effectiveness of Sex Offender Registration, 36 U. TOL. L. REV. 789, 790 (2005); Koresh A. Avrahamian, *A Critical*

bolstered by multiple studies,<sup>8</sup> including one conducted by the New Jersey Department of Corrections (“DOC”) in 2008, which shows that Megan’s Law has no effect on reducing sexual re-offenses.<sup>9</sup> This report concludes that, “Given the lack of demonstrated effect of Megan’s Law on sexual offenses, the growing costs may not be justifiable.”<sup>10</sup> Regardless of these reports originating from New Jersey’s very own Department of Corrections, Megan’s Law in the state fervently endures.<sup>11</sup>

Who suffers the backlash of dysfunctional laws remaining in place? Ex-offenders that want to lead law-abiding lives post-release are harmed because registration often disrupts their ability to establish stable lifestyles by creating homes and families of their own.<sup>12</sup> The ostracization and stigmatizing effects of registration are well-documented.<sup>13</sup> Communities are harmed because this impediment on offender rehabilitation increases the likelihood of re-offense.<sup>14</sup> Many of the regulations that come with community notification and registration create a “barrier” of reintegration into society that could lead to re-

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*Perspective: Do “Megan’s Laws” Really Shield Children from Sex-Predators?*, 19 J. JUV. L. 301, 309 (1998); Shelly L. Clevenger, *To Register or Not to Register? The Effectiveness of Megan’s Law in Pennsylvania* (May 2012) (Ph.D. dissertation, Indiana University of Pennsylvania) (ProQuest); Robert Holland, *Is Megan’s Law Fair and Effective?*, JARRET MAILLET J.D., P.C. (Oct. 24, 2018), <https://www.mailletcriminallaw.com/is-megans-law-fair-and-effective>.

8. See, e.g., Kimberly Maurelli & George Ronan, *A Time-Series Analysis of the Effectiveness of Sex Offender Notification Laws in the USA*, 24 J. FORENSIC PSYCHIATRY & PSYCH. 129, 141 (2013); Kristen M. Zgoba & Meghan M. Mitchell, *The Effectiveness of Sex Offender Registration and Notification: A Meta-Analysis of 25 Years of Findings*, J. EXPERIMENTAL CRIMINOLOGY, Sept. 2021, at 1; Kristen Zgoba et al., *An Analysis of the Effectiveness of Community Notification and Registration: Do the Best Intentions Predict the Best Practices?*, 27 JUST. Q. 667, 690 (2010).

9. KRISTEN ZGOBA ET AL., N.J. DEP’T CORR., MEGAN’S LAW: ASSESSING THE PRACTICAL AND MONETARY EFFICACY, 1–2 (2008) [hereinafter MEGAN’S LAW: ASSESSING EFFICACY], <https://www.ojp.gov/pdffiles1/nij/grants/225370.pdf>.

10. *Id.* at 2 (“Start up costs totaled \$555,565 and current costs (in 2007) totaled approximately 3.9 million dollars for the responding counties.”).

11. N.J. STAT. ANN. § 2C:7-1 (West 2022).

12. Deborah Jacobs, *Why Sex Offense Laws Do More Harm Than Good*, ALL CONST. SEX OFFENSE L. (July 9, 2021), <https://all4consolaws.org/2021/07/why-sex-offender-laws-do-more-harm-than-good/>.

13. See, e.g., Carla Schultz, *The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and The Sex Offense Registry*, 2 THEMIS 64, 68 (2014) (“[T]he criminal justice system continues to stigmatize offenders under the guise of community safety.”); Kelsey Eagan, *Forfeiting Sex Offenders’ Constitutional Rights Due to the Stigma of Their Crimes?*: State v. Trosclair, 59 LOY. L. REV. 267, 267 (2013) (“Statutes regulating sex offenders after their release originated . . . in response to the public’s outcry for protection from these ‘perceived monsters.’”).

14. Schultz, *supra* note 13, at 76.

offending, increasing recidivism rates instead of leading to their decline.<sup>15</sup>

The failings of Megan's Law become substantially more alarming when the focus is shifted to individuals who have committed sex offenses when they were children. This Note proposes that New Jersey should reconsider and restructure its registration scheme and eliminate the practice of requiring all juveniles who were adjudicated delinquent of a sex offense to register. Part I will discuss the background of Megan's Law in New Jersey while briefly surveying initial constitutional challenges argued by adult offenders. Part II will consider this background with a lens focused on juveniles that are required to register in New Jersey. Part III will discuss recent studies that have taken place regarding juveniles adjudicated delinquent of sex offenses. These studies have shown that juveniles are physically and emotionally distinct from adult offenders, and that they have exceptionally low recidivism rates. Part IV will observe the uniquely harmful effects that registration imposes on adolescents and teenagers, while Part V considers multiple states that have acknowledged these harms and have structured their registration schemes to account for them. Although New Jersey has taken large strides towards progressive reforms to juvenile registration, it still falls behind the curve when compared to other states.<sup>16</sup>

## I. BACKGROUND AND INITIAL CONSTITUTIONAL CHALLENGES TO MEGAN'S LAW

New Jersey's sex offender registration and notification law, referred to as "Megan's Law," is codified at section 2C:7-2 of the New Jersey Code.<sup>17</sup> Since the original drafting of Megan's Law, it has received support through similar legislation passed at the federal level such as the Sex Offender Registration and Notification Act ("SORNA"), enacted through the Adam Walsh Child Protection and Safety Act of 2006.<sup>18</sup> SORNA provides "a comprehensive set of minimum standards" and guidelines for states to adopt when they are establishing their own registration schemes.<sup>19</sup> Aside from imposing these minimum requirements on states, SORNA further requires individuals who have committed sex offenses to keep their registration current in each

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15. *Id.*

16. See discussion *infra* Part V.

17. N.J. STAT. ANN. § 2C:7-2 (West 2022).

18. See 34 U.S.C. § 20901.

19. *Current Law: SORNA*, OFF. SEX OFFENDER SENT'G, MONITORING, APPREHENDING, REGISTERING, TRACKING, U.S. DEPT OF JUST., <https://smart.ojp.gov/sorna/current-law> (last visited Mar. 8, 2023).

jurisdiction “where they live, work or go to school.”<sup>20</sup> It requires offenders to verify and update their information with local law-enforcement, while also expanding the use of this information to the public.<sup>21</sup> Finally, it requires a minimum duration of registration for sex offenders, typically in increments of years and based on the type of offense committed.<sup>22</sup>

Further, Megan’s Law was supported by the New Jersey Supreme Court through their holding in *Doe v. Poritz*<sup>23</sup> in 1995. There, an individual convicted of a sex offense challenged the enforcement of sections 2C:7-1 through 2C:7-5 of the New Jersey Code—the statutes concerning the sex offender registration scheme.<sup>24</sup> The community notification scheme and Attorney General guidelines,<sup>25</sup> as applied to individuals convicted of a sex offense, were also constitutionally challenged.<sup>26</sup> The court upheld Megan’s law, confirming its constitutionality but requiring judicial review of a prosecutor’s determination regarding an offender’s potential to re-offend and the scope of notification to the community.<sup>27</sup>

The community notification provisions of Megan’s Law were further challenged in the Third Circuit Court of Appeals in *E.B. v. Verniero*.<sup>28</sup> There, the appellants, previously convicted sex offenders subject to registration, brought an action claiming that community notification provisions violated the Double Jeopardy and Ex Post Facto Clauses of the U.S. Constitution.<sup>29</sup> After reviewing New Jersey’s legislative history surrounding Megan’s Law, the court held that community notification did not inflict “punishment” in violation of either the Double Jeopardy or the Ex Post Facto Clause.<sup>30</sup> The court cited public safety as the primary goal behind notification, and that it intended to “identify potential recidivists . . . and promptly resolve incidents involving sexual abuse and missing persons.”<sup>31</sup> However, the court detailed the “harsh” reality faced

20. *Id.*; see also 34 U.S.C. § 20913(a).

21. 34 U.S.C. §§ 20913–14; *Current Law: SORNA*, *supra* note 19.

22. 34 U.S.C. § 20915; see also *Current Law: SORNA*, *supra* note 19.

23. See 662 A.2d 367, 423 (N.J. 1995).

24. *Id.* at 372.

25. Coupled together with sections 2C:7-1 through 2C:7-5, the community notification scheme and the guidelines create what is commonly referred to as “Megan’s Law.” *Id.*

26. *Id.*

27. *Id.* at 423; see also N.J. STAT. ANN. § 2C:7-8(d) (West 2022).

28. 119 F.3d 1077, 1081 (3d Cir. 1997).

29. *Id.*

30. *Id.* at 1093–97, 1105.

31. *Id.* at 1097. The Supreme Court of New Jersey also found in *Doe v. Poritz* that registration was remedial, stating that Megan’s Law statutes “were designed simply and solely to enable the public to protect itself from the danger posed by sex offenders, such offenders widely regarded as having the highest risk of recidivism.” *Poritz*, 662 A.2d at 404.

by Tier 2 and Tier 3 individuals, and acknowledged the public scrutiny that their families may face in response to notification.<sup>32</sup> Humiliation, isolation, loss of employment opportunities, and incidents of vigilante justice are some of the indirect effects that registrants face.<sup>33</sup> This “primary sting” recognized by the court was not enough to be considered punishment, and it was ultimately found that “the impact of Megan’s Law on the registrants’ reputational interests is necessarily insufficient.”<sup>34</sup>

## II. INTRODUCTION TO MEGAN’S LAW AS APPLIED TO JUVENILES IN NEW JERSEY

As previously noted, the public’s reaction to the murder of Megan Kanka was intense, prompting the New Jersey legislature to issue an emergent response.<sup>35</sup> The answer provided by the legislature was a registration system that permitted law enforcement to identify individuals who have committed a sex offense and alert the public, when necessary, for the public’s safety.<sup>36</sup> The definitive system was all-encompassing, as a “sex offender” was broadly defined as “[a] person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense.”<sup>37</sup> The New Jersey Supreme Court has always interpreted the legislature’s construction of the Megan’s Law registry to specifically include juveniles.<sup>38</sup> The court cemented this understanding at its earliest opportunity in *Doe v. Poritz*, going so far as to state that the registration requirement applies to “all juveniles, no matter what their age, found delinquent because of the commission of those [sex] offenses.”<sup>39</sup>

### A. *Caselaw Challenging the Application of Megan’s Law to Juveniles; In re Registrant J.G.*

It was not until six years after the *Poritz* decision, in 2001, that the Supreme Court of New Jersey recognized that failing to consider the age of an actor that committed a sex offense poses significant issues. These

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32. *Verniero*, 119 F.3d at 1102.

33. *Id.*

34. *Id.* at 1102–04.

35. *Id.* at 1081.

36. N.J. STAT. ANN. § 2C:7-1 (West 2022).

37. *Id.* § 2C:7-2.

38. *Doe v. Poritz*, 662 A.2d 367, 404 (N.J. 1995) (“[I]t applies to juveniles, similarly an unlikely target for double punishment but included for remedial protective purposes.”).

39. *Id.* at 377.

concerns were explored within the context of the facts provided in *In re Registrant J.G.*<sup>40</sup> There, the appellant was ten years old when he sexually assaulted his eight-year-old female cousin and his five-year-old sister.<sup>41</sup> Because of his age at the time of the offense, J.G. appeared before the Chancery Division, Family Part, and he was sentenced to probation for two years on the condition that he attend a counseling program and aftercare.<sup>42</sup>

Although it was reported that J.G. was responding well to treatment,<sup>43</sup> at the time of his tier review hearing he received a score of fifty-five on the Registrant Risk Assessment Scale (“RRAS”), designating him as a Tier 2 moderate risk offender under Megan’s Law.<sup>44</sup> In light of this score, the prosecution sought to notify two police departments and approximately twenty schools that J.G., only eleven or twelve years old, was residing in the area.<sup>45</sup> In a later tier hearing it was found unlikely that any sexual penetration actually occurred, which was the basis for both the offense he was adjudicated delinquent of and the excess of “points” he received on the RRAS that placed him as a Tier 2 moderate risk offender.<sup>46</sup> This was wholly or in part because of his age at the time of his guilty plea: the court found that he “clearly did not have an understanding of what a sexual assault constituted, what was involved in a sexual act, . . . nor was he able to relate, in words, what had occurred between he and his victims.”<sup>47</sup>

This resulted in J.G. asserting, in a matter reaching the New Jersey Supreme Court, that the registration scheme employed by Megan’s Law should not apply to him because of his age at the time of the index offense.<sup>48</sup> After a brief review of the goals and values upheld by the Code of Juvenile Justice,<sup>49</sup> and how they were distinguishable from the application of Megan’s Law registration, the court became concerned that

40. 777 A.2d 891 (N.J. 2001).

41. *Id.* at 894.

42. *Id.* at 894, 896.

43. *Id.* at 896.

44. *Id.* (“The Attorney General Guidelines . . . state that an RRAS score of 0 to 36 denotes a low risk or Tier 1 offender, a score of 37 to 73 denotes a moderate risk or Tier 2 offender, and a score of 74 or higher denotes a high risk or Tier 3 offender.”).

45. *Id.*

46. *Id.* at 896–97.

47. *Id.* at 897 (citing a May 26, 1999, letter from the Catholic Charities Juvenile Intervention Program to J.G.’s counsel).

48. *Id.* at 900.

49. *Id.* at 901–06 (“[I]n determining the extent to which the literal provisions of Megan’s Law should be applied to unlawful acts committed by a ten-year-old boy, we must take careful cognizance of the philosophy underlying . . . our separate juvenile justice system, as well as of the specific provisions of our Juvenile Code intended to implement that philosophy.”).

the application of the RRAS “[did] not take into account the issues unique to juvenile offenders below age fourteen.”<sup>50</sup>

Although the court acknowledged the judicial dangers of juveniles lacking criminal capacity, and sometimes not even being able to comprehend the sexual nature of the act they may be committing, the court’s answer to this was to recommend that the Attorney General Guidelines and the RRAS be reviewed.<sup>51</sup> The court further required the RRAS to be modified to “reflect factors and issues unique to . . . youthful offenders.”<sup>52</sup> This was the only answer the court provided for juveniles even after it was noted that New Jersey was in the minority of states that applied registration requirements to juvenile offenders.<sup>53</sup> Even among the states that applied Megan’s Law to juvenile offenders in 2001, New Jersey’s statute was distinguishable as it was significantly more severe.<sup>54</sup>

The court further attempted to “harmonize” the imbalanced goals of the Code of Juvenile Justice and Megan’s Law by making juveniles eligible to petition termination from the registry as long as they are able to prove that they were under the age of fourteen when the offense was committed, and that they do not pose a threat to the safety of others.<sup>55</sup> The Attorney General responded to the *J.G.* court’s recommendation to modify the RRAS by introducing the Juvenile Risk Assessment Scale (“JRAS”) which went into effect in 2006, over four years after the *J.G.* decision.<sup>56</sup> County prosecutors currently use the JRAS to determine the risk level of a juvenile offender at initial Megan’s Law Tier hearings.<sup>57</sup>

#### B. *Recent Challenges; State ex rel. C.K.*

Challenges to the application of Megan’s Law to juveniles did not just end with the New Jersey Supreme Court’s decision in *J.G.* The *J.G.* court only addressed the application of Megan’s Law to juveniles under the age of fourteen, due to their potential inability to consider the nature of their conduct at the time of the offense; they did not address juveniles over

50. *Id.* at 910.

51. *Id.*

52. *Id.*

53. *Id.* at 906–07 (“Although twenty-four states apply their registration requirements to juvenile sex offenders, many states impose burdens less severe than the New Jersey statute.”).

54. *Id.*

55. *Id.* at 912.

56. Andrew J. Hughes, *Haste Makes Waste: A Call to Revamp New Jersey’s Megan’s Law Legislation as-Applied to Juveniles*, 5 RUTGERS J.L. & PUB. POL’Y 408, 414 (2008).

57. N.J. OFF. ATT’Y GEN., JUVENILE RISK ASSESSMENT SCALE (JRAS) 2, <https://www.state.nj.us/lps/dcj/megan/jras-manual-scale-606>.



fourteen.<sup>58</sup> Juveniles secured broader relief after the New Jersey Supreme Court heard *State ex rel. C.K.*<sup>59</sup> in 2018, where it held that lifetime registration requirements for juvenile defendants were unconstitutional.<sup>60</sup> The petitioner, C.K., was adjudicated delinquent of aggravated sexual assault when he was fifteen years old and was sentenced in 2003 to a three-year probationary term conditioned on attending treatment.<sup>61</sup> Because his index offense was aggravated assault, one of the offenses that falls within the purview of New Jersey Megan's Law, C.K. was also ordered to comply with registration requirements.<sup>62</sup> He remained on the Megan's Law registry after two decades despite not re-offending.<sup>63</sup>

C.K. called multiple expert witnesses at an evidentiary hearing, including clinical psychologists Dr. Sean Hiscox and Dr. James Reynolds.<sup>64</sup> Nicole Pittman, Esq., Executive Director of the Just Beginnings Collaborative, also testified regarding her experiences with juvenile offenders and provided an in-depth look at the effects of juveniles being raised on the registry.<sup>65</sup> The court noted that “[a]ll of the expert witnesses asserted that juvenile sex offenders are more amenable to rehabilitation and less likely to re-offend than adult sex offenders. They stressed that juvenile offenders . . . are fundamentally different from adult offenders.”<sup>66</sup>

After consideration of these effects, the court analyzed the text of section 2C:7-2(g), which states that a person required to register because they were adjudicated delinquent of aggravated sexual assault is not eligible to terminate their registration requirements.<sup>67</sup> The State's interest in providing this portion of subsection (g) was “to ‘permit law enforcement officials to identify and alert the public’ about sex offenders who may pose a danger to children.”<sup>68</sup> However, after careful consideration, the court then determined that the application of subsection (g) to juveniles did not pass muster under the substantive due process guarantee of the New Jersey State Constitution.<sup>69</sup> The court came to this conclusion by considering the developments of scientific and

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58. *J.G.*, 777 A.2d at 913.

59. 182 A.3d 917, 935–36 (N.J. 2018).

60. *Id.* at 936.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 921.

65. *Id.* For more on Nicole Pittman and her research, see *infra* Part IV.

66. *C.K.*, 182 A.3d at 921.

67. *Id.* at 925.

68. *Id.*

69. *Id.* at 934.

sociological studies regarding adolescent brain development since their ruling in *J.G.*<sup>70</sup> With these studies in mind, it was determined that subsection (g) “no longer bears a rational relationship to a legitimate state purpose and arbitrarily denies those individuals their right to liberty and enjoyment of happiness.”<sup>71</sup>

### III. CONTEMPORARY RESEARCH AND STUDIES REGARDING JUVENILES ADJUDICATED DELINQUENT OF SEX OFFENSES

Part III of this Note will discuss recent studies that have taken place regarding juveniles adjudicated delinquent of sex offenses. Nicole Pittman has spearheaded research regarding this topic.<sup>72</sup> Other organizations and individuals that have studied the harmful effects of registration for juveniles include clinical psychologists, the American Civil Liberties Union (“ACLU”), and Human Rights Watch.<sup>73</sup> These studies have provided insight into recidivism rates, distinguishing characteristics of adults and juveniles, and the stigmatization of life on the registry. All have concluded that federal and state legislatures should explicitly exempt juveniles who are below the age of eighteen at the time of their offense from registration, community notification, and residency restriction laws.<sup>74</sup>

#### A. *Juvenile Offenders Are Fundamentally Different from Adult Offenders*

As the New Jersey Supreme Court determined in *In re Registrant J.G.*,<sup>75</sup> juveniles have a diminished capacity to truly understand the nature and gravity of their actions.<sup>76</sup> Like the incident that occurred in *J.G.*, this results in the improper scoring of juveniles in jurisdictions that consider the circumstances surrounding the index offense in their actuarial risk assessment instruments.<sup>77</sup> As Nicole Pittman notes,

70. *Id.*

71. *Id.* at 935.

72. Nicole Pittman, *JD*, STONELEIGH FOUND., <https://stoneleighfoundation.org/fellow/nicole-pittman/> (last visited Mar. 8, 2023).

73. See *id.*; see also John Hardenbergh, *Sex Offender Law Violates Rights, Puts Kids at Risk*, ACLU (Mar. 16, 2009), <https://www.aclu.org/news/civil-liberties/sex-offender-law-violates-rights-puts-kids-risk>.

74. See Nicole Pittman, *JD*, *supra* note 72.

75. 777 A.2d 891 (N.J. 2001).

76. *Id.* at 905.

77. The registrant in *J.G.* received “points” on the RRAS for penetration because he did not understand what “sexual penetration” meant and thought that it had occurred. *Id.* at 895–96.

“Psychological research confirms [that] . . . children, including teenagers, act more irrationally and immaturely than adults.”<sup>78</sup> Although great strides have been taken to provide a separate court system for juvenile offenders, it appears that many federal and state statutes fail to truly consider the stark contrast between children and adults. For example, many juveniles in their teenage years have compromised judgments, “immature moral development,” and unstable identities.<sup>79</sup> These factors are only exacerbated when the child is a victim of abuse at home by a parental figure.<sup>80</sup> Fear, a product of this abuse, will interfere with a juvenile’s cognitive ability to make life choices.<sup>81</sup>

The culpability of juveniles, in comparison to adults, was at the heart of the reasoning behind the U.S. Supreme Court’s decision in *Roper v. Simmons*.<sup>82</sup> There, it was held that sentencing an individual to death when they are a juvenile at the time of their capital crime is prohibited by the Eighth and Fourteenth Amendments.<sup>83</sup> The U.S. Supreme Court, with an opinion delivered by Justice Kennedy, reasoned that adolescents are less mature and therefore less culpable for their misconduct than adult offenders who commit comparable crimes.<sup>84</sup>

Contemporary neuroscience has also supported the conclusion that juveniles, and even young adults, have compromised judgments due to immaturity in brain development.<sup>85</sup> Neuroscientists have provided studies analyzing the magnetic resonance imaging (“MRI”) readings of brain functions at different aged individuals.<sup>86</sup> A study of over 145 children has shown the “immaturity of the portions of children’s brains associated with reasoning and emotional equilibrium” when performing specific tasks.<sup>87</sup> This phenomena regarding the unstable identities of juveniles, along with the fact that individuals continue to develop until they reach early adulthood,<sup>88</sup> only supports an emphasis on

78. NICOLE PITTMAN, HUM. RTS. WATCH, RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE US 26 (2013), [https://www.hrw.org/sites/default/files/reports/us0513\\_ForUpload\\_1.pdf](https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf).

79. Marty Beyer, *Recognizing the Child in the Delinquent*, 7 KY. CHILD. RTS. J. 16, 16 (1999).

80. *Id.* at 20.

81. *Id.* at 17.

82. *Roper v. Simmons*, 543 U.S. 551, 569–70 (2005); see also *Miller v. Alabama*, 567 U.S. 460, 371 (2012) (reaffirming *Roper*’s reasoning and holding that children’s lessened culpability must be taken into consideration during juvenile sentencing).

83. *Roper*, 543 U.S. at 578.

84. *Id.* at 568–75.

85. PITTMAN, *supra* note 78, at 26–27.

86. *Id.*

87. *Id.* at 26.

88. *Id.* at 27 (“[T]he fact that young people continue to develop into early adulthood suggests that they may be particularly amenable to change.”).

rehabilitation and treatment over incarceration and post-conviction registration schemes.

*B. Recidivism in Juvenile's Adjudicated Delinquent of Sex Offenses*

The previous Subsection highlights the fact that decisional maturity in juveniles does not reach its full potential until long past the age of eighteen.<sup>89</sup> For this reason, the recidivism rates in juveniles are exceptionally low because youthful offenders will “outgrow” behavior deemed unlawful even without the pressure that comes with incarceration or societal punishment and backlash.<sup>90</sup> In fact, there is no scientific support for the proposition that juveniles who commit sex offenses “pose a danger of future sexual predation” in their communities.<sup>91</sup>

Studies have shown that recidivism rates in juveniles are consistently low, with the highest rate appearing as ten percent and the lowest, and most recently surveyed study, placing them at one percent.<sup>92</sup> This recidivism rate is informative alongside the fact that juveniles who have committed sex offenses are among the least likely to recidivate when compared to any other group of index offenders.<sup>93</sup> In *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?* (“Racine Study”), Professor Franklin Zimring considered the empirical knowledge of adolescent sex offenses and found that there was a “nonexistent” relationship to later conduct.<sup>94</sup> Professor Zimring limited the scope of his research to three separate male “birth cohorts” in Racine, Wisconsin.<sup>95</sup> The findings of the Racine Study ran parallel to conclusions drawn from prior studies as they reflected a low to nonexistent recidivism rate in juveniles that have committed sex offenses.<sup>96</sup> The Racine Study further noted that male juveniles adjudicated delinquent of a sex offense only make up four

89. Amy E. Halbrook, *Juvenile Pariahs*, 65 HASTINGS L.J. 1, 9 (2013).

90. EDWARD P. MULVEY, OFF. JUV. JUST. AND DELINQ. PREVENTION, U.S. DEPT. JUST., HIGHLIGHTS FROM PATHWAYS TO DESISTANCE: A LONGITUDINAL STUDY OF SERIOUS ADOLESCENT OFFENDERS 8 (2011) (“Most youth who commit felonies greatly reduce their offending over time, regardless of the intervention.”).

91. PITTMAN, *supra* note 78, at 30.

92. *Id.*

93. *Id.* at 4, 22.

94. Franklin Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 CRIMINOLOGY & PUB. POLY 507, 508 (2007).

95. *Id.* at 529.

96. *Id.*

percent of juvenile delinquencies in Racine.<sup>97</sup> Zimring concluded the study by stating that

although readers . . . may be concerned about the . . . generalizability of the study, we note here that the number of sex offender cases in the current study is still much larger than the typical number of cases used by policy makers when making sex offender policy legislation.<sup>98</sup>

The findings of Zimring in the Racine Study are further supported by the research conducted by Elizabeth J. Letourneau a year later in 2008.<sup>99</sup> Letourneau limited her study to South Carolina because of its history as one of the first states to respond to the federal enactment of SORNA.<sup>100</sup> South Carolina's registration scheme is also similar to the requirements and proposals of SORNA when applied to minors.<sup>101</sup>

Letourneau's study consisted of 222 juvenile males that were adjudicated of a sex-based index offense between the dates of January 1, 1995, and December 31, 2005.<sup>102</sup> After carefully surveying each participant for an average of 4.32 years,<sup>103</sup> only thirteen adjudications appeared.<sup>104</sup> Out of these adjudications, only two met the criteria to be considered a sexual offense or registry offense.<sup>105</sup>

Every instance of accredited research in the field of juvenile offenders has mirrored the findings of Zimring and Letourneau.<sup>106</sup> Based on this alone, mandatory registration schemes for juveniles that have been

97. Zimring also notes that this number is six percent in Philadelphia. *Id.*

98. *Id.* at 530.

99. Elizabeth Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *SEXUAL ABUSE* 393, 396, 403 (2008).

100. *Id.* at 394.

101. *Id.*

102. *Id.* at 395.

103. *Id.* at 396.

104. *Id.* at 399.

105. *Id.* at 399–400 (“Of the remaining [eleven] events, [two] resulted in not guilty dispositions, [one] was associated with an unknown disposition, [four] occurred after the index offense but prior to the start of follow-up (e.g., while a youth was still incarcerated for an index offense) and none of these was [sic] associated with guilty dispositions, and [four] were follow-up events associated with youth’s index sexual offenses (e.g., change in probation status).”).

106. See Dennis Waite et al., *Juvenile Sex Offender Re-Arrest Rates for Sexual, Violent Nonsexual and Property Crimes: A 10-Year Follow Up*, 17 *SEXUAL ABUSE* 313, 324 (2005) (showing a recidivism rate of approximately five percent for juvenile sex offenses); see also Janis F. Bremer, *Essay: Juveniles Who Engage in Sexually Harming Behavior—A Restorative Justice System*, 32 *WM. MITCHELL L. REV.* 1085, 1087 (2006) (reporting a four percent recidivism rate).

adjudicated delinquent of a sex offense can no longer be supported by a goal of protecting public safety. There is no evidence-based research that shows registration and community notification schemes deter harmful conduct in juveniles. The juveniles that are targeted by these ill-informed policies pose an exceptionally low risk of committing additional sex offenses in the future.

#### IV. REGISTRATION REQUIREMENTS FOR JUVENILES UNDER NEW JERSEY'S CURRENT SCHEME HAVE A DEBILITATING IMPACT THAT INTERFERES WITH REHABILITATION

The previous Section notes that many of the policy considerations, such as public safety, behind registration and community notification legislation are not realized by implementing mandatory registration for juveniles. The issues apparent with applying Megan's Law to juveniles does not stop there. Registration for young offenders has debilitating and sometimes even life-threatening effects. Part IV of this Note will discuss the obstacles imposed by registration for individuals and their families attempting to receive treatment.

##### A. *Stigmatization Is Exacerbated by New Jersey's Current Registration Requirements*

The New Jersey legislature understood the harmful effects of openly disclosing the delinquency charges of a juvenile for "public inspection" when the Code of Juvenile Justice was drafted.<sup>107</sup> Section 2A:4A-60(a) of the code provides that "legal and other records of the court and probation division . . . pertaining to juveniles charged as a delinquent . . . shall be strictly safeguarded from public inspection."<sup>108</sup> However, aside from the carveouts provided by the New Jersey Supreme Court in *J.G.* and *C.K.*,<sup>109</sup> New Jersey applies Megan's Law to juveniles using the same mechanisms that are applied to adults.<sup>110</sup> How do New Jersey courts reconcile the clashing of these two statutes, with clear policy decisions underlining both? The answer is found when considering the Appellate Division of the New Jersey Superior Court's opinion in *State ex rel. J.P.F.*<sup>111</sup> The *J.P.F.* court acknowledged the conflicting goals of Megan's

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107. See N.J. STAT. ANN. § 2A:4A-60(a) (West 2022).

108. *Id.*

109. See *supra* Part II.

110. See NICHOLAS R. SCALERA, HOW MEGAN'S LAW AFFECTS JUVENILES IN NEW JERSEY 5 (2017).

111. 845 A.2d 173 (N.J. Super. Ct. App. Div. 2004).

Law and the Code of Juvenile Justice.<sup>112</sup> Highlighting the “ten enumerated exceptions” to this non-disclosure requirement, the appellate division reasoned that it was not absolute.<sup>113</sup> The court held that the non-disclosure provisions of the Code of Juvenile Justice do not override Megan’s Law, further reasoning that Megan’s Law was adopted with presumed knowledge of the juvenile code.<sup>114</sup>

However, the non-disclosure requirements of the Code of Criminal Justice were established with a clear purpose. As discussed in Part III of this Note, many juveniles in their teenage years have compromised judgments and unstable identities.<sup>115</sup> Identity formation is an important part of adolescence; it can be characterized as an individual forming a strong sense of self and developing an understanding of how they fit into their surrounding social groups.<sup>116</sup> This sense of self is shaken when an individual at a young age is required to register at their local police department and declare to the staff that they are a sex offender while being fingerprinted and photographed.<sup>117</sup>

Nicole Pittman, in her report to Human Rights Watch, interviewed 281 youth offenders and their family members regarding their life on the registry.<sup>118</sup> Of the group, 84.5% of people interviewed “described negative psychological impacts that they attributed to their status as a registrant, such as depression, a sense of isolation, difficulty forming or maintaining relationships, and suicidal ideation.”<sup>119</sup> The alienation that comes with placing juveniles on sex offender registries causes severe psychological harm and impacts their education and rehabilitation.<sup>120</sup> By the time that the relief provided by the New Jersey Supreme Court in *C.K.* becomes available,<sup>121</sup> it may already be too late.

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112. *Id.* at 179.

113. *Id.*

114. *Id.* at 181–82.

115. *See supra* Part III.

116. *Adolescent Identity Development, ACT FOR YOUTH*, <http://actforyouth.net/adolescence/identity.cfm> (last visited Mar. 8, 2023).

117. SCALERA, *supra* note 110, at 12 (“A Megan’s Law offender must . . . be fingerprinted and photographed. The offender must provide . . . certain information related to the offense(s) that required the registration.”).

118. PITTMAN, *supra* note 78, at 9.

119. *Id.* at 51. Additionally, 19.6% of the group said they had attempted suicide—out of fifty-eight cases surveyed, three did commit suicide. *Id.*

120. *Id.*

121. *See State ex rel. C.K.*, 182 A.3d 917 (N.J. 2018) (allowing juveniles to petition for termination of their registration requirements under section 2C:7-2(f)).

*B. Stigmatization Might Cause Juveniles to Fail to Register;  
Consequences of Failing to Register*

Juveniles that are faced with the obstacles and societal stigma that come with Megan's Law may choose to avoid registration entirely or never check in with their local police department.<sup>122</sup> In New Jersey, the consequences for failing to register are considerable. An individual, whether they were "convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense," who fails to register is guilty of a crime of the third degree.<sup>123</sup> This means that juveniles will have to register with local police, and sometimes even the law enforcement unit of their educational institution.<sup>124</sup> If they do not, then they can potentially face a sentence of three to five years' imprisonment, with a "[four]-year presumptive sentence."<sup>125</sup>

Research has suggested that juveniles who fail to register do not truly understand the risks involved, and do not know that a very serious criminal offense could be waiting in their future.<sup>126</sup> Nicole Pittman has interviewed juveniles at length regarding their experience registering.<sup>127</sup> These interviews have highlighted that youth offenders are required to read and sign as many as seventy acknowledgments at a time, some of which they may not even be able to comprehend.<sup>128</sup> For one youth offender interviewed, acknowledgments he made as a thirteen-year-old had criminal consequences almost ten years later when he failed to register his new college dorm.<sup>129</sup>

## V. MULTISTATE SURVEY; EXPLORING OTHER MODELS

New Jersey is an outlier in its practice of registering juvenile offenders. Only New Jersey and nine other states require all juveniles adjudicated delinquent of a sex offense to register as a sex offender in the same way an adult would.<sup>130</sup> The remaining states either provide for

122. See PITTMAN, *supra* note 78, at 81.

123. N.J. STAT. ANN. § 2C:7-2(a) (West 2022).

124. *Id.* § 2C:7-2(c).

125. Rebecca Pirus, *New Jersey Felony (Indictable Offenses) Crimes by Class and Sentences*, CRIM. DEF. LAW., <https://www.criminaldefenselawyer.com/resources/criminal-defense/state-felony-laws/new-jersey-felony-class.htm> (last visited Mar. 8, 2023).

126. PITTMAN, *supra* note 78, at 80.

127. *Id.*

128. *Id.*

129. *See id.* at 66.

130. Meaning that these states do not provide a separate tiering scheme for juveniles or allow a family court judge to exercise their discretion in determining whether a juvenile offender should be required to register. *50-State Comparison: Relief from Sex Offense*



relief specific to juveniles from the outset of their registration obligations or they do not require juveniles to register at all.<sup>131</sup> This Part will briefly discuss some of the registration practices of other states and their termination requirements. Finally, it will propose that New Jersey adopt a model that mirrors the scheme of states that do not require the registration of juveniles.

*A. There Is a National Trend of Rejecting Registration Requirements for Juveniles*

Although the practice of states maintaining sex offender registries remains popular, there is a national consensus against the registration of juveniles.<sup>132</sup> Certain federal funds are contingent on a state adhering to SORNA, but many states continue to “rebel[] at compliance” regardless.<sup>133</sup> Beyond doubt, this is because of the federal requirement that juveniles involved in sex offenses must register. “The most significant barrier,” as per the Office of Sex Offender Sentencing Monitoring, Apprehending, Registering, and Tracking (“SMART”), is the juvenile registration requirements.<sup>134</sup> These grievances are highlighted by a statement made by the New York Director of the Office of Sex Offender Management in 2011: “New York has a . . . policy of treating juvenile offenders differently from adult offenders so that juveniles have the best opportunity of rehabilitation and reintegration. The federal requirement . . . is in direct conflict with that public policy.”<sup>135</sup> Rehabilitation has been a principle of significance for the majority of states that reject the notion of registering juveniles.

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*Registration Obligations*, RESTORATION OF RTS. PROJECT (Oct. 2022) [hereinafter *50-State Comparison*], <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/>. The nine states with juvenile registration schemes most similar to New Jersey are: Arkansas, Idaho, Indiana, Kentucky, Massachusetts, Minnesota, North Carolina, North Dakota, and Virginia. *Id.*

131. *See id.*

132. Catherine L. Carpenter, *Against Juvenile Sex Offender Registration*, 82 U. CIN. L. REV. 747, 781 (2014).

133. *Id.* at 782; *see also* Justine M. Jacobs, Comment, *Alaska Supreme Court Requires Risk-Assessment Hearings for Eligible Sex Offenders Seeking an Exit from the Registry*, 73 RUTGERS U. L. REV. 1267, 1271 (2021) (“One of the most common objections is to SORNA’s requirement that juvenile offenders be included in registries, with many states citing the higher likelihood of rehabilitation among juveniles as a reason for excluding them.”).

134. Donna Lyons, *Down to the Wire*, STATE LEGISLATURES MAG., June 2011, at 26, 27.

135. Carpenter, *supra* note 132, at 783–84.

*B. Some States Have Responded to Rehabilitation Interests by Providing Full Discretion to Juvenile Judges*

With this in mind, the answer provided by many legislatures to emphasize rehabilitation was to bestow a significant amount of deference to juvenile judges.<sup>136</sup> Aside from family courts overseeing the adjudications of juveniles, many states grant these judges complete discretion when determining whether a juvenile should be subject to the requirements of Megan's Law.<sup>137</sup> However, this structure creates issues of its own, as reducing the guidance given to judges by the legislature could cause a juvenile's liberty interests to be unconstitutionally infringed upon. For example, in Arizona, the court is given the discretion to decide whether a juvenile must register; but the statute on point provides no additional parameters or legislative guidance in making that determination.<sup>138</sup>

Megan's Law already rides the line of being an unconstitutional state-imposed stigmatization. As Andrew J. Hughes notes in his article *Haste Makes Waste*, legislation surrounding Megan's Law must be narrowly tailored to meet the compelling government interest of public safety.<sup>139</sup> Leaving these requirements subject to the whims of juvenile judges, especially when it has already been shown that juveniles as a class are not likely to recidivate,<sup>140</sup> is arguably broad.

*C. Surveying Termination Schemes for Juvenile Registrants*

States have adopted varying models to determine whether a juvenile is fit to be terminated from their Megan's Law registry. For example, California, Maryland, Kansas, and South Dakota provide reduced registration periods for offenders who are registered based on a juvenile adjudication.<sup>141</sup> Other states, such as Arizona, New Hampshire, Idaho, and North Carolina, provide a system that automatically removes an offender from the juvenile registry upon the offender reaching a specific age (typically eighteen or twenty-one).<sup>142</sup> For example, in Idaho, a

136. See *50-State Comparison*, *supra* note 130.

137. Hughes, *supra* note 56, at 446.

138. *Id.* at 446 n.134.

139. *Id.* at 447.

140. See *supra* Part IV.

141. See *e.g.*, CAL. PENAL CODE §§ 290.5, .008(d) (West 2022); MD. CODE ANN., CRIM. PROC. § 11-704.1(d) (LexisNexis 2022); KAN. STAT. ANN. § 22-4906(f) (2022); S.D. CODIFIED LAWS §§ 22-24B-17, -19 (2022).

142. See ARIZ. REV. STAT. ANN. § 13-3821 (2022) ("Any duty to register under this subsection shall terminate when the person reaches twenty-five years of age."); N.H. REV. STAT. ANN. § 169-B:4 (2022); IDAHO CODE § 18-8410 (2022); N.C. GEN. STAT. § 14-208.30

prosecutor may petition the court to transfer the juvenile to another registry for adult offenders.<sup>143</sup> If no petition is filed, then the juvenile is removed from the registry completely.<sup>144</sup>

Montana and Texas exempt first-time juvenile sex offenders from registration until they re-offend, or if it can be shown that registration is in the public's best interest.<sup>145</sup> Finally, most states deploy provisions that either allow juveniles to petition for relief earlier than adult offenders or structure their risk tiers so that they differentiate between offenders that were convicted and juveniles that were adjudicated delinquent.<sup>146</sup>

Currently, New Jersey sits in this final category; in order to be terminated from Megan's Law under section 2C:7-2(f), juvenile offenders need to prove they are not likely to pose a threat to the safety of others. Although this may seem favorable at a glance and a low bar to satisfy, the application of this requirement has been controversial in recent New Jersey Supreme Court interpretations. In *In re Registrant H.D.*,<sup>147</sup> the New Jersey Supreme Court had the opportunity to interpret the Megan's Law termination requirements found in section 2C:7-2(f).<sup>148</sup> Subsection (f) permits a registrant to petition for the termination of their registration duties, and requires a showing that they have not committed "an offense within [fifteen] years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others."<sup>149</sup> The main issue the court was called to consider was whether this section "permits the termination of sex offender registration for registrants who commit an offense during the fifteen years following their conviction or release but who then remain offense-free for fifteen years."<sup>150</sup> One interpretation of subsection (f) could have led the court to determine that the New Jersey legislature intended for a "resetting of the clock" each time that a registrant committed an offense, and they could try to petition for

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(2022) ("The requirement that a juvenile adjudicated delinquent register under this Part automatically terminates on the juvenile's eighteenth birthday or when the jurisdiction of the juvenile court with regard to the juvenile ends, whichever occurs first.").

143. IDAHO CODE § 18-8410.

144. *Id.*; see also OFF. SEX OFFENDER SENT'G, MONITORING, APPREHENDING, REGISTERING, TRACKING, SORNA SUBSTANTIAL IMPLEMENTATION REVIEW STATE OF IDAHO—REVISED 3 (2019), <https://smart.ojp.gov/SORNA/Idaho-Substantial-Implementation-Review.pdf>.

145. MONT. CODE ANN. § 41-5-1513 (2022); TEX. CODE CRIM. PROC. ANN. art. 62.301 (West 2022).

146. *50-State Comparison*, *supra* note 130.

147. 228 A.3d 1235 (N.J. 2020).

148. *Id.* at 1237.

149. *Id.* (quoting N.J. STAT. ANN. 2C:7-2(f) (West 2022)).

150. *Id.*

termination again in fifteen years. Another interpretation could have led the court to determine that once a registrant commits an offense within that fifteen-year period, then they are stuck with a lifetime registration requirement even if the offense they committed was not a sex offense. The appellate division agreed with the former interpretation, holding that “the Legislature never intended to forever bar relief from Megan’s Law” and that there should be some form of clock resetting mechanism.<sup>151</sup>

The New Jersey Supreme Court, however, did not agree with this interpretation. After comparing the Megan’s Law statute to the language used throughout the statute regarding Community Supervision for Life (“CSL”), the court determined that the statute plainly showed that the fifteen-year period commences upon their release for the sex offense that gave rise to their registration requirement.<sup>152</sup> Subsection (f) does not invoke a “resetting of the clock” mechanism.

This new interpretation of subsection (f) could have both devastating consequences and absurd results for juveniles adjudicated delinquent of a sex offense. Although the registrants in *H.D.* were adult offenders,<sup>153</sup> the court did not provide a clear exception for juveniles. If this statutory interpretation applied the fifteen-year bar to those adjudicated delinquent, it would undercut the policy considerations of the court in 2018 when it decided *State ex rel. C.K.*<sup>154</sup> In sum, although a hypothetical juvenile did not receive a lifetime registration requirement, because a lifetime registration sentence is unconstitutional in New Jersey, that same juvenile would never be able to petition for termination and must register for the rest of his life if he committed an additional offense within fifteen years of his registration obligations beginning.

#### *D. Registration Models to Consider: West Virginia and Pennsylvania*

Among the states that do not require juvenile offenders to register, West Virginia, and now Pennsylvania, have addressed this issue in ways that are distinct. In West Virginia, juveniles that are adjudicated delinquent in juvenile court are not required to register as sex offenders as they are not specifically included in the statute.<sup>155</sup> The Supreme Court of Appeals of West Virginia determined that the state’s statute does not apply to juveniles.<sup>156</sup> The court, in *State v. J.E.*, reasoned that the West

151. *Id.* at 1238 (quoting *In re H.D.*, 198 A.3d 1007, 1010 (N.J. App. Div. 2018)).

152. *Id.* at 1242.

153. *Id.* at 1237.

154. 182 A.3d 917, 936 (N.J. 2018) (declaring that lifetime registration requirements for juveniles was unconstitutional).

155. See W. VA. CODE § 15-12-2 (2022).

156. *State v. J.E.*, 796 S.E.2d 880, 881–82 (W. Va. 2017).

Virginia legislature and the court's prior precedent have determined that a juvenile adjudication is not a conviction, and should not be treated as such for the purposes of sex offender registration.<sup>157</sup> The *J.E.* court also recognized that there is a substantial difference between juvenile court and the criminal jurisdiction of the court.<sup>158</sup> Because of this, the court reasoned that the legislature did not intend for juveniles to register, and if they did, they would have expressed "adjudications" explicitly.<sup>159</sup>

Recent decisions in Pennsylvania are also notable, as juveniles adjudicated delinquent are not required to register.<sup>160</sup> However, if the juvenile has been labeled a sexually violent delinquent child ("SVDC") by judicial order and pursuant to an evaluation by the Sex Offender Assessment Board, the juvenile will be required to be placed on the sex offender registry.<sup>161</sup> In *In re J.B.*, the Supreme Court of Pennsylvania acknowledged the presumption that *sexual offenders pose a high risk of recidivating* is not "universally true when applied to juvenile offenders."<sup>162</sup> Juveniles adjudicated of a sex offense exhibit low levels of recidivism, and many of the index offenses occur due to curiosity rather than predation.<sup>163</sup> The Supreme Court of Pennsylvania coupled this fact with the "societal knowledge" that juveniles are more amenable to rehabilitation.<sup>164</sup>

Although juveniles generally have a significantly low recidivism rate, the court also considered a framework for maintaining registration for the very small group likely to commit a future sex offense. The juveniles challenging registration in this matter raised a constitutional argument, so the Supreme Court of Pennsylvania was called upon to determine if there were any "reasonable alternative means" where juveniles with a high recidivism rate could remain on the registry.<sup>165</sup> After exploring the options that the state had at its disposal, the court concluded that a mechanism was already available through individualized risk assessment used to determine if an individual could be categorized as a sexually violent predator ("SVP").<sup>166</sup> Therefore, juveniles adjudicated delinquent are not required to register unless they have been determined to be a SVDC via court order.

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157. *Id.* at 885–86.

158. *See id.* at 885.

159. *Id.* at 886.

160. *See In re J.B.*, 107 A.3d 1, 20 (Pa. 2014).

161. *Id.* at 8.

162. *Id.* at 17.

163. *Id.* The court places the recidivism rate of juveniles between 2–7%. *Id.*

164. *Id.* at 18.

165. *Id.* at 2, 19.

166. *Id.* at 19–20.

*E. Model States That Do Not Require Juveniles to Register*

Finally, Vermont currently does not require juveniles adjudicated delinquent of a sex offense to register in conformity with their Megan's Law statute,<sup>167</sup> which ought to serve as a guide for New Jersey to consider. Vermont's practice of not requiring juveniles to register is especially informative because the state's statute expressly excludes juvenile adjudications, or "youthful offenders."<sup>168</sup>

In 2017, the General Assembly of the State of Vermont enacted a series of amendments to section 5401 of the Vermont Code, which is the section regarding the definition and registration of sex offenders.<sup>169</sup> In the amendments to section 5401, the Vermont legislature specifically provided that youthful offenders have no duty to register as a sex offender unless their youthful offender status is revoked.<sup>170</sup> The Vermont legislature took this a step further by also amending the definition of youthful offender under section 5102 to include individuals who have committed an act of delinquency prior to becoming twenty-two years of age rather than the standard eighteen.<sup>171</sup>

This change was adopted to conform with the modern understanding that juveniles have a diminished capacity to truly understand the nature and gravity of their actions. As stated by Karen Vastine of the Vermont Department of Children, "[eighteen- and nineteen-] year olds, [are] actually not that different from their [sixteen- and seventeen-] [year-old] counterparts. We know that, generally, emerging adults grow out of impulsive behavior."<sup>172</sup> Other officials, such as Vermont's Chief Juvenile Defender, Marshall Pahl, have stated that a system that lumps individuals under the age of twenty-two with adult offenders results in a harm to human potential.<sup>173</sup> Marshall Pahl has further stated: "It's all frontal-lobe behavior. Most of these kids go on to be just fine. They go on not to be frequent fliers in the criminal justice system."<sup>174</sup>

167. VT. STAT. ANN. tit. 13, § 5401 (2022).

168. *Id.* § 5401(15)(C) ("A . . . youthful offender . . . shall have no duty to register unless the offender's youthful offender status is revoked and he or she is sentenced for the offense in the Criminal Division of Superior Court.").

169. S.B. 23, 2017 Gen. Assemb., Reg. Sess. (Vt. 2017).

170. *Id.*

171. VT. STAT. ANN. tit. 33, § 5102.

172. Deborah Becker, *Why Vermont Raised Its Juvenile Court Age Above 18—and Why Mass. Might, Too*, WBUR (Oct. 3, 2019) (fourth alternation in original), <https://www.wbur.org/news/2019/10/03/juvenile-court-age-vermont-massachusetts>.

173. *Id.*

174. Gordon Dritschilo, *Youthful Offender Bill Sparks Debate*, RUTLAND HERALD (Mar. 25, 2019), [https://www.rutlandherald.com/news/local/youthful-offender-bill-sparks-debate/article\\_af9454f1-7fff-50c3-aa98-8cd75e311a96.html](https://www.rutlandherald.com/news/local/youthful-offender-bill-sparks-debate/article_af9454f1-7fff-50c3-aa98-8cd75e311a96.html).

When confronted with accusations that these new youth offender laws would result in offenders getting a “pass,” even prosecutors disagreed. Interviewed state’s attorneys noted that the new system would continue to allow the state to hold youthful offenders accountable for their actions.<sup>175</sup>

Overall, Vermont’s legislature has listened to the attorneys that work alongside youthful offenders in juvenile court and has recognized that registration obligations have significant harmful effects. They have further acknowledged that juveniles have compromised judgments, immature moral development, and unstable identities that may lead them to make poor decisions. These offenders are not likely to recidivate, and Vermont has recognized that juveniles are more amenable to the rehabilitation not offered by adult sentencing guidelines and registration obligations.

#### CONCLUSION

New Jersey’s Megan’s Law registration scheme as applied to juveniles is a policy based on misconceptions. These obligations are not an appropriate response to sex offenses committed by children; they impede on a juvenile’s ability to seek rehabilitation, counseling, and further their academic and professional careers. New Jersey’s treatment of juveniles is outdated, draconian, and falls behind the curve in comparison to other states who have recognized the dangers of placing children on sex offender registries.

A contemporary analysis of juveniles adjudicated delinquent of sex offenses shows that juveniles are distinct from adult offenders, especially considering their immature moral development, decision-making skills, and unstable identities. Research has also shown exceptionally low recidivism rates in juveniles because most of them will “outgrow” behavior deemed unlawful even without the pressure that comes with punishment or registration. There is no empirical support for the proposition that juveniles who commit sex offenses pose a danger in their communities. Studies have shown that recidivism rates in juveniles are consistently low, with the highest rate appearing as ten percent and the lowest, and most recently surveyed study, placing them at one percent.

This over-encompassing scheme significantly harms juvenile registrants. Registrants have noted the debilitating effects of Megan’s Law and the stigmatization that comes with it. This is especially harmful for juveniles because they are at a stage in their life where identify

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175. Becker, *supra* note 172.

formation and creating a sense of self is a primary goal. The psychological effect of perceived alienation impedes a juvenile's healthy development and ability to seek rehabilitation and counseling. The public brand of "sex offender" could diminish a juvenile's opportunity to further their education, employment, and secure adequate living conditions. Ultimately, these conditions will cause a significantly high number of children placed on sex offender registries to suffer from suicidal ideation.

In recent years, New Jersey has acknowledged the distinguishing features between juvenile and adult offenders. New Jersey has provided exceptions for juveniles by declaring lifetime registration requirements unlawful and creating a separate risk assessment scale. However, New Jersey's Megan's Law statute still fails to differentiate between offenders based on age at the time of registration. By the time the relief provided by the court in *J.G.* and *C.K.* becomes available to a juvenile, the damage is already done. Exempting juveniles from the registry in New Jersey is needed now more than ever because of the potential that the recent decision made in *In re Registrant H.D.* has to undercut the policy considerations of the *C.K.* court.

New Jersey should amend section 2C:7-1 to explicitly exempt individuals aged eighteen and below from all sex offender registration obligations until evidence-based research demonstrates that such requirements provide a positive benefit in the form of public safety that outweighs the severe harm done to juvenile registrants. When doing so, New Jersey should consider the recent steps taken by the Vermont legislature in 2019, which provided that youthful offenders have no duty to register as sex offenders unless their youthful offender status is revoked.

New Jersey's neighboring state, Pennsylvania, may also serve as a guide if incremental change is preferred. Juveniles adjudicated delinquent in Pennsylvania are not required to register. However, if the juvenile is considered a SVDC after individualized assessment, the juvenile will be required to be placed on the sex offender registry. Like Pennsylvania, New Jersey should amend its Megan's Law statutes to be in favor of registration exemptions for juveniles yet provide an exception if an individual is assessed as a high risk or "Tier 3" through the JRAS. These individual assessments should be made with a lens focused on avoiding the unnecessary stigmatization of the youth offender and his or her victim.



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