CHILDREN AS PREDATORS: COURTS SHOULD HANDLE JUVENILE SEX OFFENDERS AND ADULT SEX OFFENDERS DIFFERENTLY

I. INTRODUCTION

What if a childhood mistake punished you for the rest of your life?1 This was the case for Jacob C., who was tried and found guilty of criminal sexual conduct at the mere age of eleven.2 Jacob was placed on the sex offender registry at the age of eleven for touching, not penetrating, his sister's genitals.3 Jacob, initially placed on the public registry when he turned eighteen, faced relentless humiliation and harassment from his school peers.4 Eventually, Jacob married and had a daughter, but later divorced.5 Although Jacob initially had joint custody of his daughter, he lost custody when he violated registration requirements by living too close to a school and by failing to register a new address after a period of homelessness.6 Jacob could not fight his felony conviction for failure to register because he could not afford a lawyer.7 The mistake he made at the age of eleven now and forever defines his life.8

This Note will discuss the dangerous and controversial practice of sentencing juvenile sex offenders.9 First, this Note will discuss the Bush administration's Adam Walsh Child Protection and Safety Act of 2006,10 (“Adam Walsh Act”) which includes the Sex Offender Registration and Notification Act (“SORNA”)11 creating the sex offender

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2. HUMAN RIGHTS WATCH, supra note 1.
3. Id.
4. See id. (noting that Jacob also dropped out of college due to the same humiliation and harassment from peers).
5. Id.
6. Id.
7. See id. (explaining that Jacob could not afford a lawyer because of his inability to find employment.)
8. Id.
9. See infra notes 23-230 and accompanying text.
registry. Since the United States Supreme Court has yet to hear a juvenile sex offender case, this Note will discuss what the Court has said on the topic of juvenile offenders. This Note will then discuss the Pennsylvania Supreme Court's determination regarding the punitive effects of SORNA on juvenile sex offenders. Next, this Note will look at the split between the United States Court of Appeals for the Eighth and Eleventh Circuits regarding whether a juvenile offender may be required to register as a sex offender under SORNA. This Note will also discuss what some state courts have determined when addressing lifetime registration requirements for juvenile sex offenders.

Ultimately, this Note will argue that a lifetime registration requirement for a juvenile sex offender constitutes, for all intents and purposes, a life sentence. This Note will examine SORNA's punitive effects and the purpose of juvenile court system. Next, this Note will consider Pennsylvania's process of assessing juvenile offenders as a solution to the problem of how to handle juvenile sex offenders in the justice system. This Note will address the potential objection from within SORNA, which states that only juveniles aged fourteen years and older who have committed aggravated sex abuse, or higher crime, will be required to register. However, this Note will rebut this objection by examining why an irrebuttable presumption that a juvenile offender is at a high risk of reoffending is inappropriate. Finally, this Note will address why a juvenile does not fall within the meaning of the term sex offender.

II. BACKGROUND
A. CONGRESS PASSES THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

In October 1989, Jacob Wetterling was on his way home from the store with his brother, Trevor, and his friend, Aaron. The three boys were accosted by a masked stranger who told both Aaron and Trevor...
to run into the woods and not look back or else he would shoot them.\textsuperscript{24} Jacob Wetterling was never seen again.\textsuperscript{25} In 1994, Jacob’s parents successfully lobbied Congress to include the Wetterling Act\textsuperscript{26} within the Violent Crime Control and Law Enforcement Act of 1994.\textsuperscript{27} The Wetterling Act requires States to maintain registries of those convicted of sexually violent crimes against children and offenders to continuously update their addresses.\textsuperscript{28} Although the Wetterling Act mandated registration at the government level, it fell short because it did not require the registry be disseminated to the public.\textsuperscript{29}

In 1994, seven-year-old Megan Kanka was murdered in her New Jersey neighborhood by a neighbor who happened to be a convicted sex offender.\textsuperscript{30} Megan’s family petitioned the New Jersey legislature to enact legislation that would require the state to notify communities of any sex offenders living in the community.\textsuperscript{31} As a result, the United States Congress passed an amendment to the Wetterling Act in May 1996.\textsuperscript{32} This amendment, known as Megan’s Law, changed the wording of the Wetterling Act from \textit{may} release registration information to \textit{shall} release registration information.\textsuperscript{34}

In July 1981, six-year-old Adam Walsh was abducted seventy-five feet away from his mother at a shopping center.\textsuperscript{35} Adam’s family created the National Center for Missing and Exploited Children and worked with Congressmen to draft legislation to establish a national sex offender registry and implement mandatory notification laws.\textsuperscript{36} The Adam Walsh Act was signed into law by President Bush.\textsuperscript{37} The

\begin{itemize}
  \item \textsuperscript{24} Id. at 947.
  \item \textsuperscript{25} Id.
  \item \textsuperscript{27} Id.
  \item \textsuperscript{28} Id. Under the Wetterling Act, an offender must update his or her address once a year for ten years, and a sexually violent predator must update his or her address four times a year for life. Id.
  \item \textsuperscript{29} Enstice, supra note 23, at 951.
  \item \textsuperscript{30} Id.
  \item \textsuperscript{31} Id. at 952.
  \item \textsuperscript{32} Id. The Amendment is known more commonly as “Megan’s Law.” Id.
  \item \textsuperscript{34} 42 U.S.C. § 14071(e)(2) (1996). The wording was changed from “the State agency may release relevant information that is necessary to protect the public” to “the State agency shall release relevant information that is necessary to protect the public.” Id.
  \item \textsuperscript{36} Id. at 701-02.
  \item \textsuperscript{37} Id. at 702. President Bush stated that the purpose of the legislation was society’s “duty to protect our children from exploitation and danger.” Id.
\end{itemize}
Adam Walsh Act expands both the definition of sexual offenses and the number of individuals that fall under its purview.\textsuperscript{38} SORNA is contained within Title I of the Adam Walsh Act.\textsuperscript{39} SORNA defines the term \textit{sex offender} as one who has been convicted of a sex offense, and provides three classifications of sex offenders.\textsuperscript{40} The first classification is a tier III sex offender, which includes those who have committed an offense punishable by more than a one year imprisonment.\textsuperscript{41} The tier III sex offender classification also requires the offense be either (1) comparable to an aggravated sexual abuse, sexual abuse, or abusive sexual contact; or (2) involve the kidnapping of a minor.\textsuperscript{42}

The second classification is a tier II sex offender, which includes those who have committed an offense that is punishable by more than a one year imprisonment.\textsuperscript{43} This offense must also (1) be comparable to sex trafficking, coercion and enticement, transportation with intent to engage in criminal sexual activity, abusive sexual contact; or (2) involve the use of a minor in a sexual performance, solicitation of a minor to participate in prostitution, or the production or distribution of child pornography.\textsuperscript{44}

The last classification is a tier I sex offender, which serves as the catch all for sex offenders who are neither a tier II nor a tier III sex offender.\textsuperscript{45} SORNA requires every sex offender to register in the juris-

\textsuperscript{38} 34 U.S.C. §§ 20911-20932. Under the Adam Walsh Act, relevant offenses include sex trafficking, coercion, transportation with intent to engage in criminal sexual activity, abusive sexual contact, use of a minor in a sexual performance, solicitation of a minor to participate in prostitution, production or distribution of child pornography, aggravated sexual abuse, abusive sexual contact, or kidnapping. 34 U.S.C. § 20911(1)-(4). Under the Wetterling Act, relevant offenses included kidnapping, false imprisonment, criminal sexual conduct, solicitation of a minor to engage in sexual conduct, use of a minor in a sexual performance, solicitation of a minor to practice prostitution, any conduct that is sexual in nature toward a minor, aggravated sexual abuse. 34 U.S.C. § 20902.

\textsuperscript{39} 34 U.S.C. § 20911.

\textsuperscript{40} 34 U.S.C. § 20911(4).

\textsuperscript{41} Id. The statute provides:

The term “tier III sex offender” means a sex offender whose offense is punishable by imprisonment for more than 1 year and (A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense: (i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18); or (ii) abusive sexual contact (as described in section 2244 of Title 18) against a minor who has not attained the age of 13 years; (B) involves kidnapping of a minor (unless committed by a parent or guardian); or (C) occurs after the offender becomes a tier II sex offender.

\textsuperscript{42} Id.

\textsuperscript{43} 34 U.S.C. § 20911(3).

\textsuperscript{44} Id.

\textsuperscript{45} 34 U.S.C. § 20911(2). An offender will become a tier II offender if he or she is already a tier I offender, and a tier III offender if he or she is already a tier II offender. Id. 34 U.S.C. § 20911.
diction where he or she lives and keep the registration current.\footnote{34 U.S.C. § 20914.} The length of time that an offender must continue to register as a sex offender differs depending on which tier he or she falls in.\footnote{34 U.S.C. § 20915.} The registration period is fifteen years for Tier I sex offenders, twenty five years for Tier II sex offenders, and lifetime for Tier III sex offenders.\footnote{Id.}

As previously indicated, SORNA defines the term \textit{sex offender} as one who has been convicted of a sex offense.\footnote{34 U.S.C. § 20911.} SORNA specifies that the term \textit{convicted} includes juveniles who have been adjudicated delinquent.\footnote{34 U.S.C. § 20911(8).} The caveat is that this only applies if the offender is at least fourteen years old and the offense was comparable to aggravated sexual abuse.\footnote{Id.}

\section*{B. The Supreme Court's Take On Juvenile Sentencing}

While the United States Supreme Court has not addressed the issue of lifetime registration requirements for juvenile sex offenders, the Court has addressed the issue of life-without-parole sentences for juveniles in \textit{Miller v. Alabama}.\footnote{567 U.S. 460 (2012).} In \textit{Miller}, the United States Supreme Court held that imposing life sentences without the possibility of parole on juveniles was unconstitutional because it violated the...
Eighth Amendment right against cruel and unusual punishment. 53 Two fourteen-year-old boys, in two separate cases, were convicted of murder and sentenced to life without the possibility of parole. 54 For one boy, petitioner Jackson, the Arkansas Supreme Court disagreed with the argument that a life-without-parole sentence for a fourteen-year-old violated the Eighth Amendment. 55 For the other boy, petitioner Miller, the Alabama Court of Criminal Appeals held that Miller’s life-without-parole sentence was not overly harsh in light of the nature of his crime. 56

Both petitioners Jackson and Miller appealed to the United States Supreme Court, which granted certiorari and consolidated the cases. 57 The petitioners argued that the lower courts erred in affirming their life-without-parole sentences because those sentenced violated the Eighth Amendment. 58 The Court reversed and held that the Eighth Amendment forbids life-without-parole sentences for juveniles. 59 The Court reasoned that juveniles are different than adults for purposes of legal proceedings because juveniles have diminished culpability and greater possibility for reform and rehabilitation. 60 For these reasons, the Court determined that juveniles are less deserving of severe punishments. 61 Specifically, the Court relied on precedent that noted significant differences between juveniles and adults. 62 In light of the neurological differences between juveniles and adults, the Court reasoned that the imposition of life-without-parole sentences on juveniles prevents courts from considering juveniles ages and the hallmark features associated with those ages. 63

54. Miller, 567 U.S. at 461.
55. Id. Jackson accompanied two boys, who had plans to rob a video store. When Jackson entered the store after the other boys, he witnessed one of the boys shoot and kill the store clerk. Jackson was charged as an adult with capital felony murder and aggravated robbery. Id.
56. Id. Miller, along with his friend, drunkenly beat his neighbor and set fire to his neighbor’s trailer, killing the neighbor. Miller was tried as an adult and charged with murder in the court of arson. Id.
57. Id.
58. Id. at 469.
59. Id. at 479.
60. Id. at 471.
61. Id.
62. See id. (stating that because children have a lesser culpability and a greater potential for rehabilitation, they are less deserving of punishment since (1) children lack maturity and are reckless, (2) children are more vulnerable to influence, and (3) a child’s character is not fixed and can be changed (citing Graham v. Florida, 560 U.S. 48 (2009); Roper v. Simmons, 543 U.S. 551 (2005))).
63. Id. at 477.
C. Pennsylvania’s Take On SORNA

The Pennsylvania Supreme Court in Commonwealth v. Muniz64 addressed the issue of whether the effects of SORNA were punitive.65 Pursuant to Megan’s Law III,66 Jose Muniz was convicted of indecent assault on a minor and ordered to register as a sex offender for ten years.67 The District Court ordered Jose Muniz to comply with lifetime sex offender registration requirements.68 Jose Muniz filed a post-sentence motion to request application of the ten-year registration requirement under Megan’s Law III, which was the law at the time of his offense and conviction.69 Muniz’s motion was denied.70

Jose Muniz then appealed to the Superior Court of Pennsylvania, arguing that retroactive application of SORNA violated both the Pennsylvania and federal constitutions.71 After the superior court affirmed the ruling of the lower court, Jose Muniz appealed to the Pennsylvania Supreme Court.72 The Pennsylvania Supreme Court held that its analysis weighed in favor of finding that SORNA was punitive in nature.73 The court applied the Mendoza-Martinez factors in its analysis, which was set forth in Kennedy v. Mendoza-Martinez74 to determine whether SORNA was sufficiently punitive to overcome the legislature’s non-punitive purpose.75

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64. 164 A.3d 1189 (Penn. 2017).
67. Muniz, 164 A.3d at 1193. The court observed that Jose Muniz failed to appear for his hearing and was not absconded until several years later. It was during his absence that Megan’s Law III was replaced by SORNA, which required lifetime registration. Id.
68. Id. at 1193.
69. Id.
70. Id.
71. Id.
72. Id. at 1193-94.
73. Id. at 1218 (holding that the retroactive application of SORNA violated the ex post facto clause of the Constitution because the sanctions and requirements of SORNA promote the traditional aims of punishment).
75. Muniz, 164 A.3d at 1210 (stating that the legislature’s nonpunitive purpose was stated to be protection of the public). See generally Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168 (1961). The court stated:
Whether the sanction involves an affirmative disability or restraint, whether it has been historically regarded as a punishment, whether it comes into play only upon a finding of scienter, whether its operation will promote the traditional aims of punishment – retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may be rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned.
Id.
The Pennsylvania Supreme Court reasoned that SORNA was a direct restraint on Jose Muniz because it required him to appear in person to register multiple times every year. The court noted that SORNA served two aims: retribution and deterrence. First, retribution is achieved through exposing registrants to additional punishment by requiring registrants to disclose personal information to the public. Second, deterrence is achieved by imposing a substantial period of incarceration for violations of SORNA.

The court further determined that SORNA has a nonpunitive purpose of protecting the public. However, the court reasoned that SORNA was substantially overbroad in achieving its stated purpose of protection of the public because it was over inclusive in the individuals it affected. The court reasoned that SORNA was over-inclusive because it applied to individuals convicted of offenses that did not necessarily relate to sexual acts. The court reasoned the Mendoza-Martinez factors indicated that SORNA was punitive. The Supreme Court of Pennsylvania ultimately held that a retroactive application of SORNA was unconstitutional.

76. Muniz, 164 A.3d at 1210-11.
77. Id. at 1200.
78. Id. at 1212-13. Shaming as punishment is prevalent online because the personal information of registrants is publicly displayed, thus allowing registrants to become targets for people who seek out their information online. Id.
79. Id. at 1214-15.
80. Id. at 1217. The expressed purpose of SORNA was to protect the public from sex offenders, namely to protect children. Id.
81. Id. at 1218. The Pennsylvania Supreme Court reasoned that the registration requirements were excessive and over-inclusive in regards to the stated purpose of protecting the public. Id.
82. See id. (noting that these individuals include those who were convicted of false imprisonment, interference with custody, filing factual statement about an alien, etc.).
83. Id.
84. See id. (reasoning retroactive application violated the ex post facto clause of the Constitution and that SORNA was punitive because it imposed criminal prosecution for failure to register).
D. The Split Between the United States Court Appeals for the Eighth and Ninth Circuits on Whether Juvenile Sex Offenders Should be Subject to SORNA’s Registration Requirements

1. United States v. Juvenile Male: The United States Court of Appeals for the Ninth Circuit Determined SORNA was not Punitive and did not Meet the High Standard of Cruel and Unusual Punishment

In United States v. Juvenile Male, the United States Court of Appeals for the Ninth Circuit addressed the issue of juvenile sex offenders. Three juveniles were charged with aggravated sexual abuse of a child and were required to register pursuant to SORNA. The juveniles appealed to the Ninth Circuit, arguing that SORNA’s registration requirement violates the Federal Juvenile Delinquency Act (“FJDA”) and the United States Constitution. The Ninth Circuit affirmed the decision of the district court, holding that SORNA’s registration requirement was constitutional, in part, because Congress had carved out a juvenile exception from the FJDA. Recognizing the differences between juvenile delinquents and adult offenders, the court reasoned that the FJDA was intended to provide a separate judicial system for juvenile delinquents to promote treatment and rehabilitation.

The court recognized that there was a conflict between the FJDA’s prohibition against the release of juvenile information and SORNA’s requirement of registration and notice. The court reasoned that SORNA prevailed over the FJDA because when two statutes conflict the more recent and more detailed provision applies. The court recognized that SORNA was both more recent and more detailed due to its carve out of a narrow category of juvenile delinquents who must...
disclose their offenses through registration. Additionally, the court reasoned that the effects of SORNA, which may expose the juvenile to shame and humiliation, did not meet the high standard of cruel and unusual punishment prohibited by the Eighth Amendment.

2. A.W. v. Nebraska: The United States Court of Appeals for the Eighth Circuit Held that Juveniles did not fall under SORNA’s Definition of Sex Offender

In A.W. v. Nebraska, the United States Court of Appeals for the Eighth Circuit came to a different conclusion than the Ninth Circuit regarding how juvenile sex offenders should be handled in the justice system. A.W., an eleven-year-old, was charged with first-degree criminal sexual conduct in Minnesota. Although A.W. was required to register as a predatory sex offender, the Minnesota law requiring public disclosure did not apply to him because A.W. was adjudicated as a juvenile delinquent. A.W. was granted a transfer from Minnesota to Nebraska, where he was required to comply with Nebraska’s sex-offender registry law. Nebraska maintains its own version of SORNA, the Sex Offender Registration Act (“SORA”), which requires every offender to release certain personal information on a public website.

A.W. commenced an action against the State of Nebraska, asserting that the legislature did not intend for SORA to apply to juveniles and, therefore, the application of SORA to A.W. violated both the Nebraska and federal constitutions. The district court granted A.W.’s motion for summary judgment, reasoning that the term sex offender did not include a juvenile delinquent. The State appealed to the Eighth Circuit, which affirmed the decision of the lower court.

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94. See id. at 1008 (holding that SORNA directs juveniles to register when they are over the age of 14 and convicted of certain aggravated sex crimes).
95. See id. at 1010 (noting that the Eighth Amendment prohibits barbaric punishments and sentences that are disproportionate to the crime committed).
96. 865 F.3d 1014 (8th Cir. 2017).
97. A.W. v. Nebraska, 865 F.3d 1014 (8th Cir. 2017).
98. A.W., 865 F.3d at 1016. See 34 U.S.C. § 20911(8) (denoting a class of juvenile offenders that are required to comply with registration requirements).
99. Id. The Minnesota law requiring public disclosure does not apply when the offender was adjudicated as a delinquent. Id.
100. Id. The Nebraska State Patrol told A.W. to register in Nebraska or he would face a criminal referral to the county sheriff and attorney. Id.
102. A.W., 865 F.3d at 1016. Juveniles adjudicated in Nebraska are required to register, therefore, A.W.’s registration information would be public in Nebraska. Id.
103. Id.
104. See id. at 1016-17 (reasoning that the term sex offender meant one who was convicted of a sex crime, which does not include a juvenile offender because juvenile proceedings do not result in convictions).
The Eighth Circuit acknowledged that juvenile adjudication was not a criminal proceeding or a conviction. The Eighth Circuit reasoned that a delinquency adjudication occurred when a court found that a juvenile committed an offense that would be a crime if the juvenile were an adult. The court further reasoned that SORA emphasized that sex offenders were individuals that have been found or pleaded guilty to a sex offense. Additionally, the Eighth Circuit concluded that A.W. was an adjudicated juvenile delinquent and did not fall under SORNA’s definition of sex offender.

E. THE DIFFERENCE OF OPINION BETWEEN OHIO, ILLINOIS, AND PENNSYLVANIA STATE COURTS

1. In Re C.P.: The Ohio Supreme Court Weighed in on SORNA’s Application to Juveniles

In In re C.P., the Ohio Supreme Court held that the Ohio state law mandating registration for juvenile sex offenders violated the Eighth Amendment’s prohibition of cruel and unusual punishment. The court recognized that a two-step process was required to determine whether the state law on registration was punitive. The two-step process required the court to consider whether there was a national opposition to the sentencing practice and whether the punishment in question was unconstitutional based on the court’s independent judicial opinion.

In applying the two-step test, the court first recognized that states responded negatively to SORNA’s application to juvenile sex offenders. Second, using the findings from past cases, the court reasoned that registration requirements imposed on juveniles violated

105. Id. at 1017.
106. Id. at 1018; see also Neb. Rev. Stat. § 43-280 (2018) (stating “[n]o adjudication by the juvenile court upon the status of a juvenile shall be deemed a conviction nor shall the adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction”).
107. Id.
108. Id. at 1019.
109. Id. at 1020. The court defined sex offender as “[a] person who has been convicted of a crime involving sex.” Id. at 1019 (quoting Sex Offender, Merriam-Webster, https://www.merriam-webster.com/dictionary/sex%20offender (last visited July 5, 2017)).
110. 967 N.E.2d 729 (Ohio 2011).
111. In re C.P., 967 N.E.2d 729, 738 (Ohio 2011). The Ohio Supreme Court also held that the statute violated the Ohio Constitution and the Fourteenth Amendment. C.P., 967 N.E.2d at 732.
112. Id. at 738.
113. Id.
114. Id. at 738-39. When the United States Attorney General issued supplemental guidelines for SORNA the biggest barrier to state compliance was that SORNA included sex offenders as young as fourteen years old. Id. at 738.
the Constitution’s prohibition on cruel and unusual punishment.\textsuperscript{115} The court also acknowledged the registration requirements were inconsistent with the juvenile court’s goal of rehabilitation.\textsuperscript{116} The court reasoned that juvenile courts were created because of the assumption that children were not as culpable for their acts as adults and juveniles’ bad actions were unlikely to show an unredeemable corruptness.\textsuperscript{117}

Additionally, the court recognized that a mandatory registration requirement was a lifetime penalty that implied a juvenile’s culpability and redemptive capability were of particular interest.\textsuperscript{118} The court reasoned that a registration requirement differed from a jail sentence because lifetime registration and notification requirements impose punishment that does not end.\textsuperscript{119} The court noted that when the label of sex offender attaches to a juvenile at the beginning of adulthood, it hampers many aspects of his or her life, including education, employment, and relationships.\textsuperscript{120} Even a twenty-five-year registration requirement would mean a lifetime sentence to a juvenile.\textsuperscript{121}

The court also articulated that imposing lifetime registration and notification requirements on juveniles was contrary to the purpose of the juvenile system in rehabilitating juvenile offenders both mentally and physically.\textsuperscript{122} The court reasoned that registration and notification requirements conflicted with the purpose of the juvenile system because such requirements only served to ensure that juvenile sex offenders would encounter difficulties long into adulthood.\textsuperscript{123}

\textsuperscript{115} \textit{Id.} at 740 (citing Graham v. Florida, 560 U.S. 48, 67 (2010); Roper v. Simmons, 543 U.S. 551, 575 (2005)).

\textsuperscript{116} \textit{Id.} at 744. \textit{See Graham,} 560 U.S. at 75 (finding that it is unconstitutional to sentence juveniles to life without parole for non-homicidal crimes); Miller v. Alabama, 567 U.S. 460, 462 (2012) (extending the decision in Graham to include juveniles who commit homicidal crimes); Roper, 543 U.S. at 578 (finding that it is unconstitutional to subject juveniles to capital punishment).

\textsuperscript{117} \textit{C.P.}, 967 N.E.2d at 740.

\textsuperscript{118} \textit{Id.} at 740-41. Since juveniles have a greater capacity for change than adults they respond better to the rehabilitative methods of the juvenile justice system. \textit{Id.} at 741.

\textsuperscript{119} \textit{Id.} at 741.

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.}

\textsuperscript{122} \textit{Id.} at 742.

\textsuperscript{123} \textit{Id.}
2. People v. J.W.: The Illinois Supreme Court Determined SORNA’s Application to Juveniles was Constitutional Because SORNA was Reasonably Related to the State End of Achieving Public Safety

In People v. J.W. (In re J.W.), the Illinois Supreme Court confronted a case involving a twelve-year-old sex offender. J.W., an adjudicated delinquent, was a twelve-year-old boy who admitted to two counts of aggravated criminal sexual assault. J.W. appealed his adjudication, arguing that requiring a twelve-year-old to register on a sex offender registry was unconstitutional.

The Illinois Court of Appeals affirmed the decision of the juvenile court and J.W. appealed to the Illinois Supreme Court, which granted his petition for leave. The court acknowledged that J.W. came within the meaning of sexual predator and, therefore, was required to register for the rest of his life. The court reasoned that a juvenile sex offender’s personal information may be disseminated to an individual if that individual’s safety was at risk and, even then, only at the discretion of the appropriate agency.

Utilizing rational basis review, the Illinois Supreme Court further reasoned that there was no constitutional violation because registration of juvenile offenders was reasonably related to the legitimate state end of protecting the public.

3. In the Interest of J.B.: The Supreme Court of Pennsylvania held that SORNA did not Apply to Juveniles Because the Presumption Used Under SORNA was Unconstitutional

The Pennsylvania Supreme Court in In the Interest of J.B. also looked at the dilemma of juvenile sex offenders. In the Interest of J.B. allowed the court to reviewed various trial court decisions that

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126. J.W., 787 N.E.2d at 750. J.W. was required to register as a sex offender as a term of his probation. Id.
127. Id. J.W. also argued that the condition prohibiting him from residing in the town of South Elgin was overly broad and, therefore, void. Id.
128. Id. at 751. J.W. asserted that the registration requirement constituted cruel and unusual punishment. Id.
129. Id. at 754-55. Under SORNA, all sexual predators are subject to lifetime registration requirements. Id.
130. Id. at 760. The court stated that personal information includes the offender’s name, address, date of birth, and offense. Id.
131. Id. Juveniles’ personal information was not disseminated or made available over the internet. Therefore, personal information would only be disseminated in extreme circumstances. Id.
132. 107 A.3d 1 (Penn. 2014).
found SORNA’s application to juveniles violated the Constitution. The court held that SORNA violated the juvenile offenders’ due process rights because it utilized an irrebuttable presumption that an adjudication for a sex crime equates to an increased risk of recidivism, which ultimately leads to a requirement of registration with a sex offender registry. The court reasoned that under the irrebuttable presumption doctrine, a presumption is unconstitutional when the presumption is not universally true and when there is a way of establishing the presumed fact without simply assuming it.

The court reasoned that SORNA registration requirements, under a presumption that all sex offenders will reoffend, violated a juvenile offender’s fundamental right to his or her reputation guaranteed by the Pennsylvania Constitution. The court further reasoned that SORNA did not provide a juvenile offender with an opportunity to challenge the presumption because a delinquency hearing did not consider a juvenile’s risk of recidivating.

Additionally, the court determined that the irrebuttable presumption violated a juvenile’s right to due process because there was a method to determine whether a juvenile offender is at a high risk of recidivating, without simply assuming that a juvenile offender is at a high risk of recidivating. The court pointed to an alternative method that was already in place in Pennsylvania. Additionally, the court recognized that SORNA required individual assessments of juvenile offenders currently institutionalized and approaching their twentieth birthdays to determine if continued commitment was needed. Therefore, the court determined that a similar procedure

135. *Id.* at 2.
136. *Id.* at 14. “[R]egistration requirements violate juvenile offenders’ due process rights by utilizing the irrebuttable presumption that all juvenile offenders ‘pose a high risk of committing additional sexual offenses,’ because that presumption is not universally true and a reasonable alternative means currently exists for determining which juvenile offenders are likely to reoffend.” *Id.* See also Commonwealth Dept’ of Transp., Bureau of Driver Licensing v. Clayton, 684 A.2d 1060, 1063 (Penn. 1996) (recognizing the irrebuttable presumption that all juvenile offenders pose a high risk of recidivism).
137. Compare *J.B.*, 107 A.3d at 16-17 (reasoning that SORNA explicitly states that all sex offenders pose a high risk of committing additional sexual offenses), and 42 Pa. CONS. STAT. § 9799.11(a)(4) (indicating “[s]exual offenders pose a high risk of committing additional sexual offenses and protection of the public from this type of offender is a paramount government interest”), with Pa. CONST. art. I, § 11 (stating “[a]ll men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, or acquiring, possessing and protecting property and reputation, and of pursuing their own happiness”).
139. *Id.* at 10.
140. *Id.* at 19.
141. *J.B.*, 107 A.3d at 19. SORNA provides individual assessment of all sexual offenders and categorizes offenses into three tiers. *Id.* See also 34 U.S.C. § 20911(1)-(4).
could be used to determine which juvenile offenders had a higher risk of reoffending.\textsuperscript{142}

III. ANALYSIS

A. LIFETIME REGISTRATION REQUIREMENTS: LIFE SENTENCES IN DISGUISE

Under SORNA, an adult sex offender falls into one of three categories: Tier I, Tier II, or Tier III.\textsuperscript{143} Each tier varies in severity and length of punishment.\textsuperscript{144} Tier III offenders are those who have committed a crime comparable to an aggravated sexual abuse or sexual abuse, and must continue to register as sex offenders for the rest of their lives.\textsuperscript{145} Additionally, under SORNA, registration requirements can be applied to a juvenile if, and only if, the juvenile is at least fourteen-years-old and has committed an offense comparable to an aggravated sexual abuse or a sexual abuse.\textsuperscript{146} Therefore, every juvenile who is forced to register as a sex offender pursuant to SORNA is automatically subject to lifetime registration requirements.\textsuperscript{147} Lifetime registration requirements in conjunction with the label of being a sex offender attach to a juvenile and hamper many aspects of a juvenile offender’s life, for the rest of his or her life.\textsuperscript{148} Therefore, lifetime registration requirements are, for all intents and purposes, life sentences.\textsuperscript{149}

A thorough understanding of \textit{Miller v. Alabama},\textsuperscript{150} is relevant to understanding why SORNA is unconstitutional when applied to juveniles.\textsuperscript{151} \textit{Miller} was a landmark decision in which the United States Supreme Court highlighted three neurological differences be-

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\item \textsuperscript{142} \textit{J.B.}, 107 A.3d at 19.
\item \textsuperscript{143} 34 U.S.C. § 20911(1)-(4).
\item \textsuperscript{144} 34 U.S.C. § 20915(a); 34 U.S.C. § 20915(b)(2)-(3); 34 U.S.C. § 20918.
\item \textsuperscript{145} 34 U.S.C. § 20911(4). Tier III offenders are subject to a lifetime registration requirement and must update their registration every three months. 34 U.S.C. § 20915(a)(3); 34 U.S.C. § 20918(3).
\item \textsuperscript{146} 34 U.S.C. § 20911(8).
\item \textsuperscript{147} \textit{See In re C.P.}, 967 N.E.2d 729, 741 (Ohio 2012) (stating that juveniles fall under the definition of \textit{sex offender} if they have committed an offense comparable to an aggravated sexual abuse, and offenders that commit such offenses are tier III offenders, which are subject to lifetime registration requirements).
\item \textsuperscript{148} \textit{See C.P.}, 967 N.E.2d at 741 (stating that a sex offender label will hamper a juvenile’s education, employment, and relationships long into his or her adulthood life).
\item \textsuperscript{149} \textit{See id.} (reasoning that registration requirements are different from jail sentences because a lifetime of registration requirements imposes a punishment that does not end).
\item \textsuperscript{150} 567 U.S. 460 (2012).
\item \textsuperscript{151} \textit{See generally} Miller v. Alabama, 567 U.S. 460, 490 (2012) (discussing the constitutionality of imposing life without parole sentences on juveniles). 
\end{itemize}
tween adolescents and adults. In light of these neurological differences, it is clear that juveniles are less deserving of the most severe forms of punishment because of their diminished culpability and greater propensity for rehabilitation. In fact, the Supreme Court determined that imposing life sentences on juveniles prevented the consideration of a juvenile’s youthful age and the features associated with that age. Further, the Supreme Court found such life sentences to be unconstitutional when imposed on juveniles. Therefore, it is clear that subjecting juvenile offenders to lifetime registration requirements under SORNA is unconstitutional.

B. INTERNAL CONFLICT: A PUNITIVE SORNA MEETS A REHABILITATIVE JUVENILE SYSTEM

The United States Supreme Court held that imposing life without parole sentences on juveniles was unconstitutional because it amounted to cruel and unusual punishment under the Eighth Amendment of the United States Constitution. Although cruel and unusual punishment is a high standard to meet, the Court’s reasoning in Miller v. Alabama leads to the logical conclusion that subjecting

152. See Miller, 567 U.S. at 471 (listing the three differences as: (1) juveniles’ lack of a sense of maturity; (2) juveniles’ vulnerability to peer pressure; and (3) juveniles’ unformed character can be fixed. The court also states that these distinctions address and coincide with the specific issues that are addressed in juvenile court and because of a juvenile’s amenability to rehabilitation).

153. See id. at 477 (reasoning that juveniles have a separate justice system because they have a diminished culpability and a greater possibility for reform).

154. See id. The court stated:

First, children have a ‘lack of maturity and an underdeveloped sense of responsibility,’ leading to recklessness, impulsivity, and heedless risk-taking. Second, children ‘are more vulnerable . . . to negative influences and outside pressures,’ including from their family and peers . . . . And third, a child’s character is not as ‘well formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievable depravity.’

Id. (quoting Roper v. Simmons, 543 U.S. 551, 569-70 (2005)).

155. Id. at 465 (determining that imposing life without parole sentences on juveniles violate the Eighth Amendment protection against cruel and unusual punishment).

156. See 34 U.S.C. § 20911(8) (stating that juveniles who are at least fourteen years old that have committed an offense comparable to aggravated sex abuse are classified as tier III offenders; and tier III offenders are subject to a lifetime registration requirement).


juveniles to SORNA's lifetime registration requirements also amounts to cruel and unusual punishment.  

159. See Miller, 567 U.S. at 489 (holding requiring juveniles who have been convicted of homicide to a life without parole sentence violates the Eighth Amendment’s protection against cruel and unusual punishment because a fact-finder must have the occasion to consider “mitigating circumstances” before imposing such a harsh punishment). These “mitigating circumstances” are the differences between an adult mind and a juvenile mind. Id. at 477. Compare In Re C.P., 967 N.E.2d 729, 732, 741-42 (Ohio 2012) (holding imposing sex offender registration requirements on adjudicated juveniles violated the Eighth Amendment because juvenile’s are more culpable and open to rehabilitation and the severity of a lifetime registration requirement will “define [the juvenile’s] adult life before it has a chance to truly begin.”), and In the Interest of J.B., 107 A.3d at 11 (reasoning that being labeled a sex offender violated the Due Process Clause because an irrebuttable presumption unfairly branded all juvenile offenders with the label of a violent recidivist), with United States v. Juvenile Male, 670 F.3d 999, 1002 (9th Cir. 2012) (holding that SORNA is constitutional as applied to juveniles because the effects of SORNA do not meet the high standard of cruel and unusual punishment).

160. See C.P., 967 N.E.2d at 525 (reasoning SORNA's application to juveniles offenders was severe because the stigma of being labelled a sex offender remained with a juvenile for the rest of his or her life); see also J.B., 107 A.3d at 11 (reasoning that being labeled a sex offender violated a juvenile’s right to reputation and stigmatized the offender later in life); People v. J.W. (In re J.W.), 787 N.E.2d 747, 762 (Ill. 2003) (reasoning that a reformed adult should not have to carry the negative stigma for a juvenile offense committed in his or her youth).


162. See C.P., 967 N.E.2d at 525 (acknowledging that if a juvenile offender is labelled a sex offender that label will stick with him or her for life and will affect every aspect of his or her life).

163. See Juvenile Male, 670 F.3d at 1004 (stating “the purpose of the FJDA is to enhance the juvenile system by removing juveniles from the ordinary criminal justice system and by providing a separate system of treatment for them” (quoting United States v. Frasquillo-Zomosa, 626 F.2d 00, 101 (9th Cir. 1980)).

164. See Juvenile Male, 670 F.3d at 1004. (citing United States v. Doe, 94 F.3d 532, 536 (9th Cir. 1996)).
criminal conviction. In fact, many courts seem to agree that the purpose of a juvenile court is to treat and rehabilitate, not to punish. Therefore, if a course of action is intended to punish a juvenile, it is inconsistent with the juvenile court’s goal of rehabilitation. Therefore, it is clear that SORNA’s registration requirements as applied to juveniles is inconsistent with the juvenile court’s goal of rehabilitation and treatment because it is punitive in nature and serves to punish juvenile offenders.

C. **FOLLOWING PENNSYLVANIA’S LEAD**

To determine whether an irrebuttable presumption is invalid it is necessary to examine whether there exists another method of determining the validity of the fact that is presumed to be true. A reasonable alternative exists in Pennsylvania. In Pennsylvania, under SORNA, an individualized assessment is mandated for juveniles who have committed specific crimes, are institutionalized, and are nearing their twentieth birthdays. Likewise, Pennsylvania’s interpretation

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165. See *id.* (citing United States v. Doe, 53 F.3d 1081, 1083 (9th Cir. 1995)).
166. See *C.P.*, 967 N.E.2d at 517 (reasoning that juvenile courts were developed because of the assumption that children are not as culpable for their acts as adults and that their bad acts are less likely to reveal an unredeemable corruptness). See also *Miller*, 567 U.S. at 465 (holding that the three differences between juveniles and adults are: (1) juveniles lack a sense of maturity; (2) juveniles are more vulnerable to peer pressure; (3) a juvenile’s character is not well-formed and can be fixed); *J.W.*, 787 N.E.2d at 758 (noting that the purpose of the juvenile court system is to rehabilitate minors and protect the best interests of minors).
167. See *Juvenile Male*, 670 F.3d at 1004 (indicating that the FJDA created a juvenile court system to promote treatment and rehabilitation of juvenile offenders outside of the ordinary criminal justice system); *C.P.*, 967 N.E.2d at 744 (finding juvenile registration requirements violated the Constitution’s prohibition on cruel and unusual punishment, therefore such requirements were inconsistent with the juvenile court’s goal of rehabilitation).
168. See *C.P.*, 967 N.E.2d at 525 (reasoning that I SORNA imposed severe effects because the stigma of being labelled a sex offender remained with juveniles for the rest of their lives; *Muniz*, 164 A.3d 1189, 1213 (Penn. 2017) (noting that the Mendoza-Martinez factor test leaned towards finding SORNA to be punitive, in part, due to the criminal prosecution that would stem from a violation of SORNA); *Juvenile Male*, 670 F.3d at 1004 (indicating that the FJDA created a juvenile court system to promote treatment and rehabilitation for juvenile offenders outside of the ordinary criminal justice system).
169. In the Interest of J.B., 107 A.3d 1, 10 (Penn. 2014). The court stated: “registration requirements violate juvenile offenders’ due process rights by utilizing the irrebuttable presumption that all juvenile offenders ‘pose a high risk of committing additional sexual offenses,’ because that presumption is not universally true and a reasonable alternative means currently exists for determining which juvenile offenders are likely to reoffend.” *Id.* at 14. (quoting 42 *Pa. Cons. Stat.* § 9799.11(a)(4)).
170. See *J.B.*, 107 A.3d at 19-20. (stating that individualized assessments exist in Pennsylvania for different crimes and a similar process could be applied to juvenile offenders to assess their risk of recidivating).
171. See *id.* (noting that this assessment determines whether involuntary commitment is necessary).
of SORNA requires an individual assessment of all sex offenders to determine whether they are sexually violent predators.\footnote{172}{See id. at 5 (identifying that SORNA classifies adult offenders in three tiers based on their offenses).}

The Pennsylvania Supreme Court reasoned that such a process could be adapted to apply to juvenile sex offenders in assessing their risk of recidivism.\footnote{173}{See id. at 19-20 (concluding that an individual assessment of each juvenile sex offender is a reasonable alternative means of ascertaining whether he or she poses a high risk of reoffending).} Not only did the Pennsylvania Supreme Court find the effects of SORNA unconstitutional when applied to juveniles, it also determined that an individualized assessment process should be put in place to determine whether a juvenile offender has a high risk of reoffending.\footnote{174}{See id. (reasoning that such a process could determine whether a juvenile is likely to recidivate and whether he or she should be required to register as a sex offender in adulthood).}

D. Objections: The Exception Within SORNA and Protecting the Public

Despite the recent landmark decision in\textit{ Miller v. Alabama}\footnote{175}{576 U.S. 460 (2012).} there has been pushback to changing how juvenile sex offenders are treated.\footnote{176}{See Miller v. Alabama, 576 U.S. 460, 465 (2012) (holding that imposing life without parole sentences on juveniles was unconstitutional because such sentences violated the Eighth Amendment’s ban against cruel and unusual punishment). \textit{But see In re J.W.}, 787 N.E.2d 747, 764 (Ill. 2003) (upholding SORNA’s application to a juvenile because there was no reasonable alternative of attaining the end of public safety); \textit{United States v. Juvenile Male}, 670 F.3d 999, 1005 (9th Cir. 2012) (pointing out the juvenile exception in SORNA only requires registration requirements for juvenile offenders aged fourteen years or older that have committed an offense comparable to an aggravated sexual abuse).} For example, a public safety argument succeeded in\textit{ In re J.W.}\footnote{177}{787 N.E.2d 747 (Ill. 2003).} in which the Illinois Supreme Court upheld the registration requirement for a juvenile sex offender.\footnote{178}{In re J.W. (People v. J.W.), 787 N.E.2d 747, 750 (Ill. 2003).} The court analyzed Illinois’ sex offender registration statute under a rational basis review and noted that the purpose of the act was to protect children from sexual assault and abuse.\footnote{179}{See id. (finding that it was not unconstitutional to impose registration requirements on a juvenile because the state’s registration statute was intended to protect the public from sex offenders).} Proponents of imposing registration requirements on juveniles will argue that such requirements are not unconstitutional because is the requirements are reasonably related to the legitimate end of protecting the public.\footnote{180}{See id. (finding that it was not unconstitutional to impose registration requirements on a juvenile because the state’s registration statute was intended to protect the public from sex offenders).}
In fact, the Supreme Court of Illinois noted that sex offenders of any age present a problem and that sex offender statutes are intended to protect the public from both adult and juvenile sex offenders.181 Further, the court bolstered its argument by acknowledging that a juvenile sex offender’s personal information was never made readily available on the internet and was only disseminated if an individual’s safety was at risk and the appropriate agency directed the information be released.182

Perhaps the biggest obstacle to changing the narrative on juvenile offenders is found within SORNA itself.183 SORNA maintains an exception for juveniles under Title I, subtitle A, section 111(8) of the Adam Walsh Act.184 Although juveniles cannot be convicted of a crime, Congress carved out an exception for a small class of juveniles who can be found guilty of a sex crime under the Adam Walsh Act.185 The United States Court of Appeals for the Ninth Circuit suggests that not only does SORNA take priority over the FDJA, but that by inserting a juvenile exception within SORNA, Congress intended to limit protections of juvenile offenders under the FDJA.186

It has also been suggested that the rights of juvenile sex offenders should no longer outweigh the rights of victims and the rights of the community to be protected from any additional sex crimes.187 The

181. See id. (citing Helman v. State, 784 A.2d 1058, 1079 (Del. 2001)).
182. See id. (iterating that juveniles’ personal information is not made available over the internet and is only disseminated when a member of the public’s safety is compromised).
183. See 34 U.S.C. § 20911(8). The statute provides:
The term ‘convicted’ or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse . . . or was an attempt or conspiracy to commit such an offense.
Id. See also Juvenile Male, 670 F.3d at 999 (highlighting the importance of the juvenile exception within SORNA).
184. See 34 U.S.C. § 20911(1) (defining sex offender as one who has been convicted of a sex offense and indicating that a juvenile in juvenile court receives a delinquency adjudication, not a conviction)
185. 34 U.S.C. § 20911(8). The statute provides:
The term ‘convicted’ or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse . . . or was an attempt or conspiracy to commit such an offense.
Id.
186. Juvenile Male, 670 F.3d at 999. The court determined that SORNA should be followed priority because it was more recent and more detailed. The court also acknowledged that Congress unambiguously directed a small class of juveniles to register under SORNA. Id. See also 18 U.S.C. § 5032 (aiming to protect juvenile delinquents from absorbing a negative stigma by providing them a separate judicial system from the adult criminal justice system).
187. See Juvenile Male, 670 F.3d at 1007-08. The court stated:
Eighth Amendment to the United States Constitution protects against cruel and unusual punishments, as well as, disproportionate sentences, which is a high standard to meet.\textsuperscript{188} It could be argued that SORNA’s application to juvenile offenders is not unconstitutional because the shame and humiliation that a juvenile offender may face after being forced to register under SORNA does not meet the high standard of cruel and unusual punishment.\textsuperscript{189}

E. REBUTTAL: SORNA IS INAPPLICABLE TO JUVENILES, REGARDLESS OF AGE

Some opponents of change advocate for the protection of victims over the protection of a juvenile offender’s identity.\textsuperscript{190} The United States Court of Appeals for the Ninth Circuit has suggested that the rights of juvenile offenders should not take priority over the safety of the community and rights of the victims to be free from additional sex crimes.\textsuperscript{191} However, in asserting this, the Ninth Circuit essentially reinforces the dangerous irrebuttable presumption that all juvenile sex offenders pose a high risk of recidivating in the future.\textsuperscript{192} This irrebuttable presumption is dangerous and fallible in this context because it fails to account for the differences between juvenile and adult offenders and assumes all juvenile offenders will reoffend in the future.\textsuperscript{193}

While the Committee recognizes that States typically protect the identity of a juvenile who commits criminal acts, in the case of sexual offenses, the balance needs to change; no longer should the rights of the juvenile offender outweigh the rights of the community and victims to be free from additional sexual crimes... H.R. 3132 strikes the balance in favor of protecting victims, rather than protecting the identity of juvenile sex offenders.

\textit{Id.} (quoting H.R. REP. 109-218, pt. 1, at 25 (2005)).

\textsuperscript{188.} See id. at 1010 (recognizing that a violation of the Eighth Amendment is a high bar to meet).

\textsuperscript{189.} See id. (determining that SORNA’s registration requirement as applied to juveniles did not meet the high standard of cruel and unusual punishment prohibited by the Eighth Amendment).

\textsuperscript{190.} See id. at 1008 (noting “no longer should the rights of the juvenile offender outweigh the rights of the community and victims to be free from additional sexual crimes” (citing H.R. REP. 109-218, pt. 1, at 25 (2005))). See also 152 CONG. REC. S8012, S8023 (daily ed. July 20, 2006) (statement of Sen. Kennedy) (stating “[t]his compromise allows some offenders over 14 to be included on registries, but only if they been convicted of very serious offenses”).

\textsuperscript{191.} United States v. Juvenile Male, 670 F.3d 999, 1008 (9th Cir. 2012).

\textsuperscript{192.} Compare Juvenile Male, 670 F.3d at 1008 (determining that the community’s and victims’ rights to be free from additional sexual crimes should be given priority), \textit{with} In the Interest of J.B., 107 A.3d 1, 2 (Penn. 2014) (noting that the irrebuttable presumption incorrectly assumes that all juvenile offenders pose a high risk of recidivating in the future).

\textsuperscript{193.} J.B., 107 A.3d at 2. The court recognized that an irrebuttable presumption is unconstitutional when it is not universally true and a reasonable alternative to ascertain that fact exists. \textit{Id.}
The percentage of reoffending juvenile offenders is half that of the percentage of reoffending adults because juvenile offenders are often motivated to offend by impulsivity and sexual curiosity.194 Therefore, while an irrebuttable presumption may be valid when applied to adult sex offenders, it cannot be a valid when applied to juvenile offenders.195 SORNA targets sex offenders that pose a high risk of committing additional sex offenses in the future and, therefore, maintains the presumption that all sex offenders, adult and juvenile, pose a high risk of reoffending.196 This irrebuttable presumption is also unfair to juvenile offenders who do not have an opportunity to challenge the presumption at their delinquency hearings because juvenile courts do not consider the risk of reoffending.197 This process and presumption eliminates the ability to discern a juvenile offender’s actual risk of reoffending.198

The Ninth Circuit suggested that SORNA prevailed over the FDJA because SORNA was more recent and more detailed.199 However, this understanding fails to take into consideration the language and purpose of the FDJA.200 The FDJA prohibits the name or picture of juveniles that have been tried and convicted from being made available to the public in connection with the case.201 Additionally, the

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194. See id. at 10 (noting that juvenile offenders recidivate at the low rate of 2-7%, compared to 13% for adult offenders); see also Miller v. Alabama, 567 U.S. 460, 490 (2012) (Breyer, J., concurring) (listing the three neurological differences between juveniles and adults and noting that the differences coincide with the specific issues addressed in juvenile courts). 195. J.B., 107 A.3d at 435-36 (comparing low rate of juvenile offenders that recidivate to the rate of adults that recidivate). 196. See 34 U.S.C. § 20901 (indicating the purpose of the Act is to protect the public against convicted sex offenders); J.B., 107 A.3d at 16 (noting that the nature of SORNA seeks to prevent sex offenders from reoffending, which supports the presumption that all offenders will reoffend). 197. See J.B., 107 A.3d at 17 (stating that SORNA does not give juvenile offenders an opportunity to challenge the presumption because juvenile courts do not take the risk of recidivism into account); 34 U.S.C. § 20911(8) (indicating that a juvenile offender who is adjudicated delinquent of a sex crime comparable to aggravated sex abuse will be considered to have been convicted of a sex crime under SORNA). 198. See J.B., 107 A.3d at 17 (indicating a juvenile offender is automatically labeled a sex offender based on the result of his or her delinquency adjudication). See e.g. 42 Pa. Cons. Stat. § 9799.12(1) (stating a juvenile offender is “[a]n individual who was 14 years of age or older at the time the individual committed an offense . . . [r]elating to rape, . . . involuntary deviate sexual intercourse or . . . aggravated indecent assault”). 199. See Juvenile Male, 670 F.3d at 1008 (9th Cir. 2012) (noting that where SORNA and the FDJA conflict the more recent and more detailed statute prevails). 200. See 18 U.S.C. § 5038(a) (stating “the [delinquency adjudication] records shall be safeguarded from disclosure to unauthorized persons.”). See also Juvenile Male, 670 F.3d at 1007-08 (acknowledging that the public release of juvenile records under SORNA is prohibited under the FDJA, which predated SORNA). 201. 18 U.S.C. § 5038(e). “Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connec-
FDJA prohibits information about a juvenile’s record from being released except in very limited circumstances.\textsuperscript{202} The purpose of the FDJA is to care for juvenile delinquents and minimize negative labeling of juveniles by providing a separate judicial system for juveniles.\textsuperscript{203} Therefore, the purpose of the FDJA is frustrated by the imposition of registration requirements on juvenile offenders.\textsuperscript{204}

Those that support SORNA’s application to juvenile sex offenders argue that registration requirements for juvenile offenders does not amount to cruel and unusual punishment.\textsuperscript{205} However, this view fails to take into consideration the recent Supreme Court finding in \textit{Miller v. Alabama}\textsuperscript{206} and the holding in \textit{In re C.P.}\textsuperscript{207} by the Ohio Supreme Court.\textsuperscript{208} A juvenile sex offender will automatically be subjected to lifetime registration requirements under SORNA.\textsuperscript{209} A lifetime registration requirement is equivalent to a life sentence for a juvenile offender because it affects the offender for the rest of his or her life.\textsuperscript{210}

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\textit{See also Juvenile Male}, 670 F.3d at 1008 (stating that the FJDA prohibits disclosing a juvenile’s identity and image, even when the proceedings are released).
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\textsuperscript{202} 18 U.S.C. § 5038(a). “Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license bonding, or any civil right or privilege.” \textit{Id. See Juvenile Male}, 670 F.3d at 1004 (noting that such information may not be released for employment, license, bonding, or any other privilege except for situations related to court proceedings, treatment, investigations, or national security).
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\textsuperscript{203} \textit{See United States v. Frasquillo-Zomosa}, 626 F.2d 99, 101 (9th Cir. 1980) (noting “the purpose of the [Federal Juvenile Delinquency] Act, as amended in 1974, was to enhance the juvenile system by removing juveniles from the ordinary criminal justice system and by providing a separate system of ‘treatment for them.’” (quoting S. REP. No. 93-1011, as reprinted in 1974 U.S.C.C.A.N. 5283, 5283).
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\textsuperscript{204} \textit{Compare Juvenile Male}, 670 F.3d at 1004 (iterating that the objective of the FJDA is to minimize negative labeling, avoid the stigma of a conviction, and promote rehabilitation), \textit{with} 34 U.S.C. § 20911(8) (carving out a class of juveniles who come within the meaning of sex offender and are subject to lifetime registration requirements).
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\textsuperscript{205} \textit{See Juvenile Male}, 670 F.3d at 1010 (holding that the standard of cruel and unusual punishment is a high bar to meet and SORNA’s effects on juvenile offenders do not satisfy that high standard).
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\textsuperscript{206} 567 U.S. 460 (2012).
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\textsuperscript{207} 967 N.E.2d 729 (Ohio 2012).
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\textsuperscript{208} \textit{See Miller v. Alabama}, 567 U.S. 460, 465 (2012) (finding that imposing life without parole sentences on juveniles amounted to cruel and unusual punishment); \textit{In re C.P.}, 967 N.E.2d 729, 741 (Ohio 2012) (recognizing that subjecting a juvenile to lifetime registration and notification requirements imposes an endless punishment on the juvenile).
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\textsuperscript{209} 34 U.S.C. §20911(8). Juveniles who are at least fourteen years old and have committed an offense comparable to an aggravated sex abuse, can fall within the definition of sex offender; and sex offenders who commit an offense comparable to an aggravated sex abuse are categorized as tier III offenders; and tier III offenders are subjected to lifetime registration requirements. \textit{Id.}
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\textsuperscript{210} \textit{See C.P.}, 967 N.E.2d at 741-42 (emphasizing that lifetime registration requirements impose endless punishment on juvenile offenders and will affect all aspects of offenders’ lives).  
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Additionally, the United States Supreme Court’s recent determination that life sentences for juveniles amounts to cruel and unusual punishment must be taken into account.\textsuperscript{211} Therefore, it necessarily follows that subjecting juvenile offenders to lifetime registration requirements constitutes cruel and unusual punishment.\textsuperscript{212}

The strongest opposition to changing the narrative on how juvenile sex offenders are treated is centered on the juvenile exception in SORNA.\textsuperscript{213} However, by definition, a juvenile, regardless of age, cannot fall within the meaning of the term \textit{sex offender}.\textsuperscript{214} According to dictionary definitions of sex offender, one must be convicted or found guilty of a sexual offense in order to be considered a sex offender.\textsuperscript{215} Juveniles receive delinquency adjudications in juvenile courts, which do not provide for criminal convictions and are recognized as a separate classification from a conviction.\textsuperscript{216} The Eighth Circuit acknowledged that the Nebraska Sex Offender Registry defines a sex offender as a person who has been found guilty of, or has pled guilty to, a sex crime.\textsuperscript{217} Therefore, because a delinquency adjudication is not a criminal proceeding that can result in a criminal conviction, a juvenile cannot be guilty of a sex crime and does not come within the definition of “sex offender.”\textsuperscript{218}

IV. CONCLUSION

Congress enacted SORNA to protect children.\textsuperscript{219} However, both Congress and the United States Supreme Court have not decided how

\textsuperscript{211} Miller, 567 U.S. at 465. The Court determined that imposing life without parole sentences on juveniles amounted to cruel and unusual punishment.

\textsuperscript{212} Compare C.P., 967 N.E.2d at 741-42 (recognizing that lifetime registration requirements will serve to affect every aspect of juvenile offenders' lives for the rest of their lives), with Miller, 567 U.S. at 465 (finding that life sentences imposed on juveniles amounted to cruel and unusual punishment).

\textsuperscript{213} See 34 U.S.C. §20911(8) (indicating that juveniles fourteen years old and older who have committed an offense comparable to an aggravated sex abuse can be found to come within the meaning of the term \textit{sex offender}).

\textsuperscript{214} See A.W. v. Neb., 865 F.3d 1014, 1020 (8th Cir. 2017) (holding that juveniles do fall within the meaning of \textit{sex offender} and therefore cannot be punished and treated as an adult).

\textsuperscript{215} Sex Offender, Merriam-Webster, https://www.merriam-webster.com/dictionary/sex%20offender (last visited Nov. 13, 2018). The Merriam-Webster dictionary defines a sex offender as “a person who has been convicted of a crime involving sex.”\textsuperscript{Id}

\textsuperscript{216} See A.W., 865 F.3d at 1018 (holding that an adjudication of juvenile delinquency is a finding that a juvenile has committed an offense that would be a crime if the juvenile were an adult).

\textsuperscript{217} \textit{Id}. at 1017.

\textsuperscript{218} \textit{Id}. at 1018.

\textsuperscript{219} 34 U.S.C. § 20901.
to confront the issue of protecting those children who prey on other children.\footnote{220}{See \textit{id.} (failing to include language or address the issue of offenses relating to sexual acts committed by juveniles).}

The irrebuttable presumption discussed by the Pennsylvania Supreme Court maintains that all juvenile offenders are at a high risk of recidivating.\footnote{221}{See supra notes 132-142 and accompanying text.} However, the problem with this presumption is that it fails to account for the differences between juveniles and adults that were discussed in \textit{Miller v. Alabama}\footnote{222}{567 U.S. 460 (2012).} by the Supreme Court.\footnote{223}{See supra notes 52-63 and accompanying text.} Some state courts have found SORNA to be punitive because it forces a juvenile to register as a sex offender, which in turn imposes a stigma and label on the juvenile that will hinder him or her far into adulthood.\footnote{224}{See supra notes 143-156 and accompanying text.}

The purpose of the juvenile court system is to rehabilitate juvenile delinquents both mentally and physically.\footnote{225}{See supra notes 85-95 and accompanying text.} Forcing juvenile offenders to subject themselves to a lifelong label as sex offenders runs contrary to that purpose.\footnote{226}{See supra notes 85-95 and accompanying text.} Instead, in order to stray far from the dangers presented by the irrebuttable presumption, courts should subject juvenile sex offenders to individualized assessments to gauge their risk of recidivating.\footnote{227}{See supra notes 169-174 and accompanying text.}

There remain strong objections to any solution that would take juveniles off sex offender registries the most prominent one being public safety.\footnote{228}{See supra notes 175-189 and accompanying text.} However, the rebuttal to that objection is that juveniles do not fall under the definition of a sex offender because adjudications in juvenile court do not result in criminal convictions.\footnote{229}{See supra notes 190-218 and accompanying text.} Since juveniles cannot be punished for a crime and the effects of SORNA’s registration requirements are punitive, imposing these requirements on juveniles is unconstitutional.\footnote{230}{See supra notes 143-168 and accompanying text.}

\textit{Kristyn Wong—’20}