

The Case for Modifying Juvenile Sex Offender Registry Requirements in Delaware

**Prepared by Stand Up for what's Right and Just
(SURJ)**



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Summary: The Case for Modifying Juvenile Sex Offender Registry Requirements

FACT: The effort to modify juvenile sex offender registry requirements does not contradict the Adam Walsh Act.

The Adam Walsh Child Protection and Safety Act, established in 2006, was an effort to protect children from sexual exploitation and violent crime by requiring sex offenders to make personal information available to the public. The Act specifically excludes juveniles under age 14 and those age 14-17 who commit low level offenses. Additionally, the January 11, 2011 Final Supplemental Sexual Offender Registration and Notification Act (SORNA) Guidelines added an exemption for juvenile offenders, giving states discretion to exempt juvenile offenders from public website posting. HB 137 does not challenge the implementation of The Adam Walsh Act in Delaware; rather, it challenges registration requirements which are *beyond* what the Act requires and what the majority of the country is doing. If HB 137 passes, Judges would have the discretion to decide on a case-by-case basis whether sex offenders under the age of 14, or those age 14-17 who committed less serious sexual offenses, must be placed on the sex offender registry.

FACT: Delaware has the harshest laws in the nation for youthful sex offenders.

Our state is clearly out of line with the national approach for responding to children who commit sex offenses. Delaware has the youngest registrants in the nation, with children as young as 9 years old on its sex offender registry, and it is currently the only state that automatically places children age 14 and under on the registry. The Delaware Supreme Court, in its 2002 case *Delaware v. Sapp*, recommended that legislators review the current application of sex offender laws to children. Multiple states allow judges discretion in placing children on the sex offender registry. It is important to note that one of these states, Ohio, is one of the four states that has been deemed compliant with the Adam Walsh Act by the U.S. Department of Justice, illustrating that adherence to the Act is not contradictory with judicial discretion in this area.

FACT: Most youthful sex offenders do not commit further sex offenses.

Despite the contention that “juvenile sex offenders do re-offend,” research consistently shows that a very small number of youthful sex offenders commit additional sex crimes. A 2007 study funded by the MacArthur Foundation found that more than nine out of 10 times, the arrest of a youth for a sex offense is a one-time event. The juvenile sex offender study by the Delaware’s Statistical Analysis Center produced misleading results, since it included the technical violation “failure to register.” In contrast, a 2009 study by Smith College professor Dr. David L. Burton, commissioned by the Family Court of Delaware, found that at least 45% of Delaware’s youthful sex offenders posed a low to moderate risk for reoffending because they did not exhibit the factors that have been found by experts to contribute to future sexual offending.

FACT: Requiring children to register as sex offenders can seriously hinder their rehabilitation.

Children who are placed on the sex offender registry are subject to extreme public scrutiny and may experience harassment, taunting, and social isolation. Housing restrictions and alternative schooling can hinder a child’s ability to access rehabilitative services and treatment that are needed to lead a productive life and to engage in age-appropriate, legal behavior. Youth on the sex offender registry experience extreme difficulty finding summer jobs and often have difficulty transitioning into adulthood because of the significant societal barriers that exist for registrants.

Recommendation & Status Update:

SURJ supports the passage and implementation of **H.B. 137 in the 146th General Assembly** (previously introduced as HB 182 in the 145th General Assembly). In June 2011, the bill was released from the House Judiciary Committee. The measure awaits a vote by the full House of Representatives.

Introduction & Overview

The use of sex offender and violent offender registries is commonplace in American law enforcement. Well-publicized media accounts of sexual violence and political crackdowns on sexual predators have resulted in more stringent laws for individuals convicted of a sex crime. People convicted of many sex-related offenses are required to register with the state as sex offenders, and their home address, employer, and charges are available to the public to view online. The introduction of the internet has made sex offender registries accessible to anyone with access to a computer.

Federal legislation such as the Adam Walsh Act requires states not only to post registries for offenders from their respective jurisdiction, but also to link state offenders to a nationwide database. Additionally, the Adam Walsh Act requires some youthful sex offenders to be placed on the registry. While the aim of sex offender registries is to protect communities and families from predation, the unintended consequences of requiring youth adjudicated of sex offenses to register must be considered.

Initially, sex offender registries were enacted in order to aid law enforcement in tracking the most violent sex offenders. However, as the use of sex offender registries becomes more commonplace, children who engage in unusual or deviant sexual behavior are increasingly being required to be added to registries. According to the Justice Policy Institute, sex offender registries can actually “create more crime by alienating those on the registry from social support systems, including education, employment, and housing, that have been shown to reduce the likelihood that an individual might participate in illegal activities” (Petteruti, et al., 2008).

Since 1999, Delaware children adjudicated of certain sex crimes¹ are automatically required to be placed on the sex offender registry. It should be noted that Delaware exceeds the Adam Walsh Act registry requirements for juveniles; the state is considered to have the harshest laws in the nation targeted at youthful sex offenders. Despite the varying circumstances surrounding juvenile sex crimes and research showing that most juvenile sex offenders do not go on to commit additional sex offenses, the judiciary’s hands are tied and cases are not evaluated on a case-by-case basis to determine a youth’s likelihood of reoffending. Being added to the sex offender registry can have devastating effects on a child’s social and emotional well-being and places a stigmatizing label on a child that can have long-lasting negative effects.

In Delaware, there are currently 639 children on the sex offender registry (see Table 1). 55 of these children registered at age 12 or younger. The youngest child on the Delaware registry is 9 years old. Many juvenile justice advocates and practitioners agree that Family Court should be given the discretion, under particular guidelines that comply with the Adam Walsh Act, to determine whether a child should be required to register as a sex offender. Additionally, a recent ruling from the Delaware Supreme Court has found that children should automatically be removed from the sex offender registry if their

¹ See §771-78 of Title 11 of Delaware Code

record is expunged by the court. The proposed legislation seeks to codify these changes in order to ensure that children who pose no risk to others may escape the harsh stigmatizing effects of the sex offender registry.

Table 1
Juvenile Sex Offenders in Delaware, By Age and Tier as of January 25, 2011²

Age at Registration	Tier 1	Tier 2	Tier 3	Grand Total
9		1		1
10	1	1	1	3
11	4	4	2	10
12	11	27	3	41
13	19	66	8	93
14	46	73	22	141
15	39	77	25	141
16	31	62	18	111
17	26	58	14	98
	177	369	93	639

The History of the Adam Walsh Act

The introduction of the community notification process dates back to the early 1990s when highly publicized media coverage of sex crimes led to a heightened fear by the public and the determination of lawmakers to protect children from these tragic events. The result of this motivation was the creation of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Act in 1994. The law called for states to compile a list of previously convicted sex offenders and require these individuals to register with police for ten years.³ The Wetterling Act was amended in 1996 with Megan’s Law, which allowed community notification following the release of sex offenders into the community. Following President Bush’s approval in 1993, the law began to include the Dru Sjoдин National Sex Offender Public Registry, which joined state-based registries into one federal registry available online and made it a felony if a person on the registry failed to update his/her information.⁴ This law eventually evolved into what is now the Adam Walsh Child Protection and Safety Act.

² Office of the Public Defender of Delaware. Juvenile Registration Registrants by Age and Tier. Raw data.

³ Petteeruti, Amanda and Nastassia Walsh. *Registering Harm: How Sex Offense Registries Fail Youth and Communities*. Justice Policy Institute, 2008.

⁴ *Ibid*

The Adam Walsh Act, established in 2006, was unique from previous federal laws because of its inclusion of adjudicated juveniles on the national, public registry. It also included the creation of the Sex Offender Registration and Notification Act (SORNA), Title I of the seven titles of the Adam Walsh Act, which provided a comprehensive set of minimum standards for registry requirements and community notification.

The Adam Walsh Act requires that youth register, if prosecuted and convicted as an adult OR (a) if offender is 14 or older at time of offense AND (b) adjudicated delinquent for offense comparable or more serious than “aggravated sexual abuse” OR adjudicated delinquent for a sex act with any victim under the age of 12. It incorporates more sex offenses and extends the jurisdictions in which registration is required to include federally recognized Indian tribes. The Act also requires individuals to keep their registration current in the jurisdictions in which they reside, work, or go to school. More extensive registration information is required by the Act, including photos, and individuals are required to make periodic in-person appearances to verify and update the registration information. The Act makes the registry retroactive and requires states to have a failure to register offense and to impose a criminal punishment for noncompliance. It expands the amount of information available to the public regarding people on the registry and makes changes in the required minimum duration of registration, establishing a Tier system based for offenses:

- Tier 1: Includes misdemeanors and possession of child pornography (offenders must remain on sex offender registry for 15 years). This information is available only to law enforcement agencies
- Tier 2: Most felony sexual abuse or sexual exploitation cases involving minor victims (offenders must remain on sex offender registry for 25 years)
- Tier 3: Most sexual assaults and sexual contact cases with children under 13, non-parental kidnapping of minors, and attempts or conspiracies to commit such offenses (offenders must remain on sex offender registry for life)

Furthermore, under the Adam Walsh Act, information published on the registry includes:

- Offender’s Name, including all aliases
- Home Address
- Employment Information
- School Name and Address
- License Plate Number and Vehicle Description
- A Physical Description of the Offender
- Description of the sex offense for which offender is registered and any other sex offense for which the person has been convicted/adjudicated
- A Current Photograph of the Registered Offender⁵

⁵ *Ibid*

As of April 2011, only four states (Delaware, South Dakota, Florida, and Ohio) have been deemed in compliance with SORNA⁶, and two of those states' sex offender registry laws have been constitutionally challenged. Despite the law's intended protection, the Adam Walsh Act, as applied to juvenile sex offenders, runs contrary to the legal and moral philosophy of protecting the records of minors by requiring all juveniles assessed to be a Tier II or Tier III risk to register regardless of the circumstances surrounding the offense. However, Delaware has implemented registry requirements that *exceed* the requirements under the Adam Walsh Act by requiring youth *under* age 14 to register, as well as 14-17 year olds who commit low level sexual offenses.

National Juvenile Registry Trends

Five patterns have emerged regarding how the fifty states handle the registration of juvenile sex offenders⁷. The five different responses form a continuum from the harshest response to the most moderate. They are, respectively:

- All juvenile sex offenders, regardless of age and offense, are required to register (all but one of these states, Delaware, has set minimum ages for registration and/or public view of registry information).
- Registration is only required if a juvenile commits an enumerated offense, usually a subset of the crimes for which adult registration is required.
- Court discretion decides if the juvenile needs to register.
- Juveniles only have to register if they are charged and convicted in adult court.
- No juveniles appear on sex offender registries.

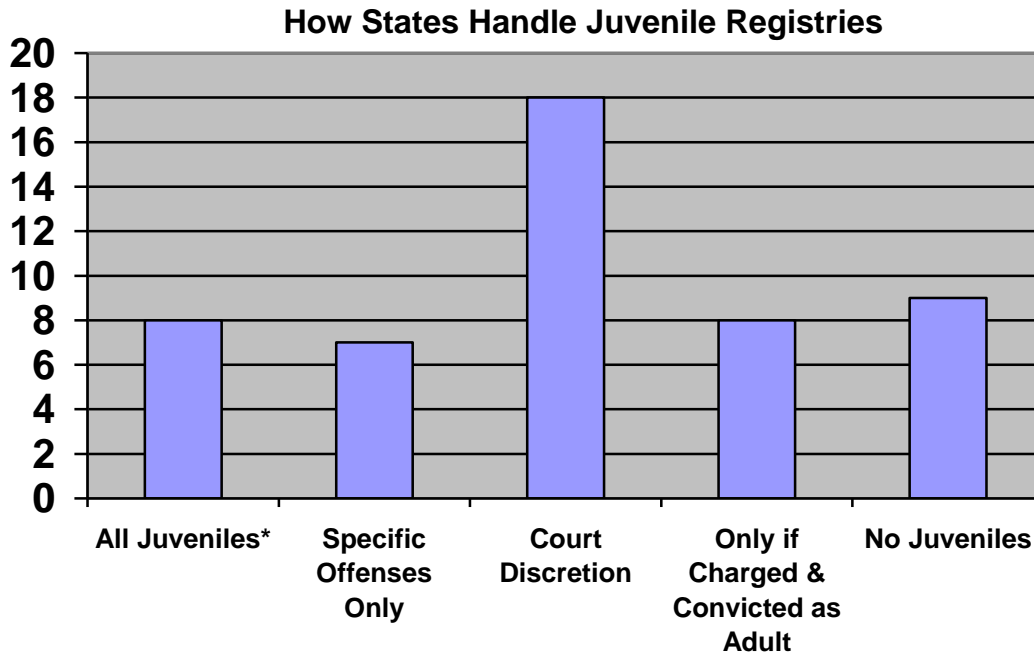
There are only eight states that require all juveniles adjudicated of a sex offense to register. Of these states, Delaware's laws are the harshest because it has no minimum age and all offenders appear on a publicly viewable database. Most of the states that require all juveniles to register have a database that is only accessible by law enforcement officials, or minimum age requirements. It is no overstatement to say that Delaware has the most stringent juvenile registry laws in the country, and it is important that reform efforts be made to bring Delaware in line with national trends.

Giving the court discretion to decide whether or not a juvenile should register is the middle ground between the stricter and more lenient responses. Eighteen states have begun using a model of court discretion, making it the most prevalent legislative response, used twice as often as the next most popular response. By enabling Delaware courts to use juvenile sex offender registration only when necessary, the proposed legislation would bring Delaware in line with the national trend, ensuring the highest quality of justice for juveniles adjudicated delinquent of sex offenses.

⁶ U.S. Department of Justice Office of Justice Programs Press Release. "Justice Department Announced Seventh Jurisdiction to Implement Sex Offender Registration and Notification Act." January 20, 2011. <http://www.ojp.usdoj.gov/newsroom/pressreleases/2011/SMART11054.htm>

⁷ Denniston, Sharon. Summary Comparison of U.S. State Juvenile Sex Offender Registry Laws. 28 Mar. 2010. Raw data.

Table 2



**Note: Delaware’s laws are considered to be the harshest, nationally, since the state assigns no minimum age for juvenile registration and all offenders appear on a publicly viewable database.*

Unintended Consequences

According to Delaware-based defense attorney and former deputy attorney general Thomas Foley, “There is nothing more egregious in the entire criminal code than the way Delaware treats children adjudicated delinquent of sex offenses.” Although the Adam Walsh Act was intended to address “public and professional concern that adult sexual offenders were not being monitored to the extent that afforded protection to children,” it disregards the apparent divide between juvenile and adult sex offenders.⁸ Under Delaware law, juvenile sex offenders are subject to the same punishment as adults and are automatically placed on the registry regardless of their risk to the community. This act is counterproductive and usually leaves underage offenders worse off than they were pre-conviction / pre-adjudication.

The Adam Walsh Act is also problematic because it groups all youth adjudicated as sex offenders into one homogeneous category. As a result, under the current law, juvenile sex offenders can include “traumatized young girls reacting to their own sexual victimization, persistently delinquent teens who commit both sexual and nonsexual crimes, otherwise normal early-adolescent boys who are curious about sex and act

⁸ Myers, Steve. “The Registration of Children and Young People Under the Sex Offenders Act (1997): Time for a Change?” *Youth Justice*, Vol. 1, No. 2, 40-48 (2001)

experimentally but irresponsibly...and impulsive youth acting without thinking.”⁹ Additionally, adding juveniles to the sex offender registry “may have the unintended consequence of undermining...the perceived need for intervention.”¹⁰ Without allowing judges the discretion to evaluate each offender on a case by case basis, we are punishing juveniles guilty of mischievous teen behavior the same as those guilty of sex crimes and removing focus from the rehabilitation and successful reintegration of adjudicated juveniles into society.

Inconsistencies in the Sentencing of Juveniles

The automatic registry of juvenile sex offenders is inconsistent with the sentencing of other youth in the juvenile justice system. Indeed, “under *parens patriae*, the juvenile court is supposed to protect juveniles, but public notification of [juvenile sex offenders] may result in physical and emotional harm to the juvenile, as well as social ostracism.”¹¹ Because the philosophy of the juvenile justice system is to rehabilitate, not to punish, and because interventions are intended to be in the best interest of the child, the notion of imposing an adult punishment—that of registering as a sex offender—on a child without the benefit of adult due process rights or a jury trial is problematic. Nicole Pittman of the Defender Association of Philadelphia states that, “Delaware Code Title 11, Section 4121 ignores the very foundation of this country’s juvenile court system: a belief confirmed by scientific research that children can and should be rehabilitated.” Her

“The empirical information to date...provides no evidence that juvenile registration laws contribute to the stated goal of improving public safety.”¹³

recommendation paper also mentions that the laws under Section 4121 cause the Delaware sex offender registry to overflow with juvenile offenders who most likely will not commit another sexual offense as an adult.¹²

Juvenile records are usually kept from being publicly viewed in an effort to prevent stigmatization and isolation from society, based on the belief that publicizing records would cause a child to constantly relive the mistakes of his or her past, therefore, interfering with the successful rehabilitation of a convicted/adjudicated offender. In December 2008, the Council of State Governments passed a Resolution in Opposition to SORNA as it applies to juveniles, in part because “these provisions of SORNA contradicts the rehabilitative intent and confidentiality that

⁹ Chaffin, Mark “Our Minds Are Made Up: Don’t Confuse Us With the Facts”: Commentary on Policies Concerning Children with Sexual Behavior Problems and Juvenile Sex Offenders. *Child Maltreatment*, Vol. 13, No. 2, 110-121 (2008).

¹⁰ Myers, *op. cit.*

¹¹ Trivits, Lisa C. and N. Dickon Reppucci. “Application of Megan’s Law to Juveniles.” *American Psychologist*. Vol. 57, No. 9 (September 2002): 690-704.

¹² Pittman, Nicole. “Recommendations.” Defender Association of Philadelphia. (March 31, 2010): 1.

¹³ Caldwell, Michael F., and Casey Dickinson. "Sex Offender Registration and Recidivism Risk in Juvenile Sex Offenders." *Behavioral Sciences and The Law* 27 (2009): 941-56. *Wiley InterScience*.

has been inherent in the juvenile justice system.”¹⁴ When a child is labeled as a sex offender for an extensive period of time, the label may serve to reinforce the negative identity of a sex offender. Likewise, it is also generally believed that juveniles’ records must be protected because, as children, they are less responsible for their actions and, thus, approaches to treatment should be rehabilitative rather than punitive. Publicly publishing the photos of juvenile sex offenders and subjecting them to public notification suggests that juvenile sex offenders are not entitled to the same treatment as other juvenile offenders and must be treated as adults by being punished more stringently.

Wasting Resources: Why Monitoring All Juvenile Sex Offenders is Ineffective

Sex offense registries were created as a way to protect children from strangers. Indeed, the tragic and well-known Adam Walsh case is itself an example of stranger abduction. However, a study conducted by the U.S. Department of Justice using FBI data has shown that, “34 percent of youth victims (0-17 years old) were sexually assaulted by a family member and 59 percent were assaulted by acquaintances. In other words, 7 percent of youth victims in this study were assaulted by strangers.” Furthermore, according to the Justice Policy Institute, “less than 1 percent of all arrests of youth under the age of 18 were for sex crimes,” and children under the age of 18 comprised only 18 percent of the arrests for any sex offense. And, “when people convicted of sex offenses do re-offend, 75 percent of their victims are someone they already know.”¹⁵ This idea was acknowledged by Mimi Carter, the Director of the Center for Sex Offender Management, when she testified before the Idaho House Judiciary, Rules and Administration Committee on January 29, 2009. She stated that, “in terms of where this [sexual] offense typically occurs, it is often within the victim’s own home or the home of a family member or friend. This is particularly true with children under 12 years of age. The offender is often a family member or friend of the family.”¹⁶

Since most juvenile victims are victimized by family members or acquaintances and only a small minority are victimized by strangers, the belief that requiring all juvenile sex offenders to register will protect the public is misguided. The strict rules that accompany being placed on the sex offender registry (keeping away from schools, churches, and children) are intended to alert and protect the general public, but since stranger assaults occurred in only 7 percent of the youth victim cases, sex offender registries can logically have a limited impact on preventing future sex crimes among juvenile offenders.

A study authored by juvenile justice expert Dr. Franklin Zimring of the University of California at Berkeley found that, “youth who have committed a sex offense are no

¹⁴ Council of State Governments 2008 Resolution Opposing Sex Offender Registration and Notification Act Application to Juvenile Offenders.

<http://www.csg.org/policy/policyresolutions/nationalresolutions2008AM.aspx>

¹⁵ Petteruti and Walsh, *op. cit.*

¹⁶ Pittman, Nicole, “Examining Juvenile Sexual Offending Behavior for Purposes of Crafting Effective Sex Offender Registration and Notification Laws in Delaware.” *Delaware House Judiciary Committee Hearing*. (March 31, 2010): 7.

different from youth who commit other nonsexual offenses and would likely benefit from similar interventions.”¹⁷ State resources are being unwisely spent by requiring all juvenile sex offenders to register and be monitored, regardless of the circumstances. For example, according to a report by the organization Human Rights Watch, individuals “who urinate in public, teenagers who have consensual sex with each other... and kids who expose themselves as a prank are required to register as sex offenders.”¹⁸

Because the public and policymakers assume that juvenile sex offenders share the same characteristics as adult sex offenders and that they pose similar levels of risk to the community, the consequences for juvenile sexual offenses mirror those for adult sex offenders. Because sex offense cases and juvenile sex offenders themselves are so diverse, however, sentences and sex offender registry requirements should be flexible and should have the ability to be tailored to the individual. Dr. Mark Chaffin, a psychologist and professor of Pediatrics and Clinical Associate Professor of Psychiatry and Behavioral Sciences at the University of Oklahoma Health Sciences Center, states, “It is so much simpler to accept the sound bite that a sex offender is a sex offender or... ‘the simple truth is that juvenile sex offenders turn into adult predators.’ But making intelligent policy requires that the facts about diversity be considered.”¹⁹ Individualized sentencing is essential to ensure that the diversity of juvenile sex offenses is adequately considered.

The Case for Modifying Juvenile Sex Offender Registry Requirements

What do we know about Delaware’s juvenile sex offenders?

In the last decade, two studies of Delaware’s juvenile sex offender population have been conducted: a 2007 report by the State’s Statistical Analysis Center (DELSAC) entitled, “Recidivism of Delaware Juvenile Sex Offenders Released in 2001,” and a 2009 report by Dr. David Burton, Professor at Smith College School for Social Work, entitled “Delaware Youth Needs Evaluation.” The reports came to very different conclusions despite studying similar populations.

The DELSAC report is referenced by opponents to the modification of Delaware’s juvenile sex offender laws. The report found that after five years, 41% of the juveniles committed a new sex offense. However, numerous caveats exist in the study that render its findings inappropriate for considering recidivism rates for all of Delaware’s juvenile sex offenders. First, recidivism is presented as an aggregate of both new sex crimes and technical offenses such as failure to register, which should have been considered separately. Secondly, the study analyzed only twenty-two offenders, which is too small a sample to be representative of all of Delaware’s juvenile sex offenders. Indeed, the study focused only on juvenile sex offenders who had been in Level IV or V

¹⁷ Walsh, Nastassia, and Tracy Velazquez. "Registering Harm: The Adam Walsh Act and Juvenile Sex Offender Registration." *The Champion*. National Association of Criminal Defense Lawyers, Dec. 2009.

¹⁸ Human Rights Watch. 2007. “No Easy Answers: Sex Offender Laws in the US.” 2007.

¹⁹ Chaffin, *op. cit.*

programs (representing *the most serious* juvenile sex offenders). Since 21 out of the 22 participants in the study were classified as rapist or sexual contact offenders, it is clear that the study was not intended as a recidivism study of all juvenile sex offenders. Interestingly, even among this group of more serious offenders, the first-time sex offenders were re-arrested for a new sex offense only 5% of the time within 5 years.

In contrast, Burton's study compares a sample of 47 juvenile sex offenders under Delaware Division of Youth Rehabilitative Services with a sample of 54 non-sex offenders at Ferris School. Burton's research found that the juvenile sex offenders in the sample are "less severe" and younger than comparable groups in other states. After completing a battery of commonly used inventory and assessment screening tools on the youth which "are clinically and empirically correlated with delinquency,"²⁰ Burton found that rates were lower than normally expected in several of the categories which have been found to contribute to reoffending: childhood family adversities, number of victims, deviant sexual arousal, commitment of previous non-sexual offenses, and severe personality issues. About 45% of the group "would be classified correctly as low to moderate risk and would probably not reoffend and be better served in the community versus in residential placement," states Burton. Interestingly, Burton concludes that harsher laws in Delaware may account for the unusual characteristics (i.e., they tend to be younger and milder) that he observed among the Delaware youthful sex offenders he has studied in other states. In other words, Delaware may be treating these younger, milder sex offenders more harshly than other states would by placing them in residential treatment.

The Effect of Sex Offender Registries on Juveniles

Despite the intended benefits of the Adam Walsh Act, when applied to juveniles, the law often causes crippling effects and leaves many juveniles worse off than they were pre-adjudication.

Possible effects include:

- Direct stigmatization
- Social exclusion and marginalization
- Harassment
- Residency restrictions
- Employment restrictions
- Alternative schooling arrangements

The ramifications of forcing all non-predatory juvenile sex offenders to register are cause for concern because, as stated in an article by the *American Professional Society on the Abuse of Children*, "Crime is more likely to occur when bonds with mainstream society are weakened."²¹ By imposing such harsh restrictions on juvenile sex

²⁰ Leon, Chrysanthi. "Delaware and the Adam Walsh Act: Unintended Consequences of Fitting Adult Policies to Youth." Presentation at State of Delaware Children's Department Conference, April 7, 2011.

²¹ Chaffin, *op. cit.*

offenders, adjudicated youth are becoming isolated and may ultimately resort to the very crimes the juvenile justice system is intended to deter.

Children adjudicated of sex offenses may be forced to withdraw from their current school and enroll in an alternative school. Children may experience ridicule, possible physical assault, and the protest of parents who are alarmed by a sex offender's presence at their child's school. Often, adjudicated juvenile sex offenders' education is interrupted by transfers from school to school as a result of these problems. As a result, the child's quality of education can be substantially diminished.²² This disruption in education can continue until college, as one college recently banned registered sex offenders from taking classes on campus.²³

Since registered sex offenders face strict housing restrictions, a child may be forced to move out of the family's home to comply with the restrictions (in Delaware, sex offenders cannot live within 500 feet of a school, but private renters' or homeowners' insurance restrictions and rules about living with siblings and other children can pose additional difficulties). Having his/her name, address, and photo published on the internet as a sex offender poses a potential safety risk to the offender as well as his/her family, since the child or adolescent may become the target of harassment. Additionally, if the sex offense involved another family member (this information may be implied by the sex offender registry listing), the victim's identity is unintentionally exposed, causing further difficulties for a family that may be attempting to heal from trauma. According to a report on the negative effects of the Sex Offender Registration and Notification Act (SORNA) by the Association for the Treatment of Sexual Abusers, "SORNA as applied to youth will disrupt families and communities across the nation because SORNA does not just stigmatize youth, it stigmatizes the entire family."²⁴

Rules forbidding or limiting exposure to other children and child-centered activities can also severely affect the social development of children. The stringent restrictions placed on registered sex offenders present a serious roadblock to juveniles wishing to access rehabilitative and social services. Housing restrictions, alternative schooling, and social marginalization "can hinder a person's ability to access rehabilitative services needed to lead a productive life and engage in appropriate, legal behavior."²⁵

Registration exposes juveniles to a "surveillance effect" as proposed by Elizabeth Letourneau of the Medical University of South Carolina. Letourneau suggests that due to registration, juveniles placed on the registry are much more likely to be exposed to law enforcement. Juveniles, like other sex offenders, must adhere to the registration policies

²² Trivits & Reppucci, *op. cit.*

²³ Miller, Mary H. "Lake Michigan College Bans Sex Offenders of Children From Its Campuses." *The Chronicle of Higher Education*. 3 Mar. 2010. Web. 12 Mar. 2010. <<http://chronicle.com/article/Lake-Michigan-College-Bans-Sex/64474/>>.

²⁴ Association for the Treatment of Sexual Abusers, Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (2007), available at <http://www.atsa.com/pdfs/SORNA.pdf>

²⁵ Petteruti and Walsh, *op. cit.*

and must update their information as frequently as required by the laws in that jurisdiction, and in order to do so, they must re-register with law enforcement subjecting them to close watch by those entities. The surveillance effect is furthered by law enforcement officers arresting registered juveniles for minor crimes. As Letourneau states, "Police officers choose to make arrests depending on several factors, such as local policies, familiarity with offenders, and global attributions about classes of offenders. A general belief among police officers that registered juvenile sexual offenders are at high risk of recidivism would be congruent with lay beliefs about sexual recidivism rates and might lead officers to arrest and charge registered youth for suspicious but ultimately noncriminal behavior." This idea of a surveillance effect is in congruence with the idea of the labeling theory, in which actors are defined as deviant after committing a certain act. Once an actor assumes a deviant label, their behavior is more strictly scrutinized and further acts are more likely to be considered deviant.²⁶

In addition to having to comply with strict rules on housing and exposure to other children, youth who are adjudicated sex offenders can face a tremendous amount of rejection, torment, teasing, and harassment from other youth. A 2007 *New York Times* article tells the story of a Delaware 8th grader who completed 16 months of sex offender treatment after being adjudicated delinquent for sex acts against his half-sister at the age of 11. After completing treatment and beginning at a new school, classmates found out about his sex offender status, most likely because a parent came across the boy's registry listing online. A psychologist at the Medical University of South Carolina states that despite a person's completion of treatment and no new offenses, "the message continues to be: You are a bad person. How does that affect your self-image? How does that affect your ability to improve your behaviors?" The Delaware 8th grader attempted suicide about two weeks after classmates found out he was a sex offender.²⁷

Social rejection and alienation can discourage youth from attempting to participate in normal age-appropriate activities and social groups. Ironically, the very label that is applied to youth in order to protect society results in youth being disfranchised from traditional social institutions, which can ultimately contribute to the risk of committing future offenses. Being placed on the registry for an extended period of time neither rehabilitates nor effectively offers the ex-offender a way to start his or her life over. In fact, researchers have found that lower-risk registered juvenile offenders were charged with new offenses at similar rates to those of higher-risk unregistered juvenile offenders. This suggests that registration may aggravate the reoffense levels of juvenile offenders.²⁸

For teenagers and young adults registered as sex offenders, finding summer jobs or part-time work can be another difficult challenge. Applicant background checks have become increasingly common, particularly at major franchises and chain stores that

²⁶ Letourneau, Elizabeth J., "The Influence of Sex Offender Registration on Juvenile Sexual Recidivism." *Criminal Justice Policy Review*, June 2009, Vol. 20 No. 2

²⁷ Jones, Maggie. "How Can You Distinguish a Budding Pedophile From a Kid With Real Boundary Problems?" *The New York Times*. July 22, 2007.

²⁸ Caldwell & Dickinson, *op. cit.*

typically attract many high school and college-aged youth looking for their first job. Upon moving into adulthood, juvenile sex offenders may be barred from joining the armed forces, or from working in the healthcare field. As Walsh and Velazquez state that “using an adult registration system for youth does not fit, likely has no public safety benefit, and therefore should not be applied to youth.”²⁹

Do Registration Requirements Deter Juveniles from Committing Crimes?

While the primary concern of registration is to protect victims and prevent future victimization through public awareness, there lies a secondary principal under the surface, that of deterrence. Deterrence is the prevention of future crimes from occurring in order to improve the community’s safety. In some of the most comprehensive studies of the SORNA policy and its’ effects on juveniles, Letourneau and her colleagues found that in fact, SORNA does not provide any general deterrence. “A general deterrent effect would have required that potential juvenile sex offenders execute a multistep reasoning process involving (a) the correct identification of certain sexual behaviors as criminal, (b) a belief in the likelihood of detection and prosecution and (c) an understanding of post-detention consequences, including registration and public notification.”³⁰ Youth that had offended were just as likely as their peers to commit a new offense, sexual or nonsexual. In this way, applying SORNA to juveniles does not improve the community’s safety because it does not create a deterrence effect among the targeted population.

Snapshot of Injustice: David’s Story

David Johnson³¹ knows first-hand how difficult life can be for a teen labeled as a sex offender in Delaware. At the age of 13, David and an 11 year old boy were caught touching each other’s genitals and engaging in sexual activity in a family friend’s basement. David recalls how one thing led to another when the boys began playing games where each player would remove an article of clothing and the situation progressed to masturbation. “I didn’t even know what we were doing—I was just a kid. My dad was never really around, so I didn’t have anybody giving me the sex talk to help me understand what was happening to me. I hadn’t learned about puberty or sex in health class.”

Confronted by his shocked and angry parents about the incident, the 11 year old boy denied having participated willingly and pinned the blame on David. “The other boy’s parents were absolutely hateful to me—they couldn’t believe their kid could be

²⁹ Walsh & Velazquez, *op. cit.*

³⁰ Letourneau, Elizabeth J., “Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?”, *Criminal Justice and Behavior*, May 2010, Vol. 37, No. 5

³¹ “David’s” real name and the state to which he moved have been altered to protect his privacy.

involved by his own choice, even though he was perfectly comfortable at the time with what we were doing.”

Interrogated by police, David became frightened and confused. “I was just a kid... they were using these big words and demanding yes or no answers and I was really scared. You don’t know what to say, so you just say what you think they want to hear. I ended up admitting to doing things that I didn’t even do... because I didn’t know what they were talking about.” Although the prosecutor’s office recommended dropping the case, the younger boy’s parents insisted that the case move forward. David ultimately pled guilty to unlawful sexual contact in the 2nd degree and was automatically added to the state’s sex offender registry list. “I felt horrible—like I wasn’t worth anything,” says David. “I kept trying to figure out, ‘why are they doing this to me?’”

David began attending counseling and probation appointments as dictated by the court. However, puzzled counselors and probation agents dismissed him from treatment and meetings, concluding that he didn’t need intervention or supervision. When the trailer park where David lived with his mother found out about David’s sex offender status, he was forced to move out of his mother’s home for insurance purposes. “I had to move in with my grandmother. She was very supportive, but you know, I should have been living at home—I was only 13,” remembers David. The guilty plea also meant withdrawing from middle school and being placed in an alternative middle school. “Even when I was home, I was on lock-down, like a prisoner in my grandmother’s home, because I wasn’t supposed to be around other kids. I couldn’t even go trick or treating.”

In high school, David began as a popular student until he and his classmates were assigned a project studying the issue of sex offender registries. As students surfed the internet looking at the various names on the sex offender registry, David’s listing was discovered by his classmates. “Some kids taped up the sheet with my picture on it to the soda machines and lockers and the walls—everyone found out about it. I thought about killing myself. I have never felt so hopeless.” Several parents forbade their children from being friends with David.

“David’s lawyer reports that the psychologist who evaluated David found that he was clearly not a predator and posed no risk of harming anyone.”

Despite being humiliated at school, David earned honor roll each year during high school and received a 4.0 during his senior year. He kept busy with athletics, running track and field and cross country and serving on the student council. He was involved with the poetry club and regularly attended a church group. He was also part of the Business Professionals of America club and earned perfect attendance at school. Though David did his best to succeed at school, he struggled to find after-school and summer jobs that would hire him. “The application always asks about any convictions, and they wouldn’t even interview me after they found out I had a record.”

In an attempt to make a fresh start, David relocated to Illinois and moved in with a friend. “Finding a place to live is really hard because I can’t live near schools or churches.” Searching for a job continued to be difficult, since virtually all employers conduct background checks. David found a job at a pizza chain that doesn’t conduct background checks when hiring employees. He performed well at work and was soon offered a promotion to manager—a position within the company that did require a background check. “When the shop owner found out about my background, I was really nervous and embarrassed. But he was understanding and still gave me the promotion.”

Though David is fortunate to have found stable housing and a job, he is still haunted by the registry. He receives four annual visits from the Illinois sex offender board to verify that his information is current. “Their office hours are 9 am to 4 pm, and they always drop by the person’s house first, but I’m always at work during those hours, so they drop in unannounced at my job and ask for me. I have asked them so many times to just call me ahead of time, but they never do. It is really embarrassing to have that happen.”

“Some kids taped up the sheet with my picture on it to the soda machines and lockers and the walls—everyone found out about it. I thought about killing myself. I have never felt so hopeless.”

David must also visit the sheriff’s office to complete paperwork each time he wishes to travel home to Delaware to visit family, and must register with the Delaware police when he arrives and again before he leaves town, and must re-register with the Illinois sheriff’s department when he arrives back home. “It’s hardly worth it to go on a vacation, there is so much paperwork,” he says. “A couple of times after I did my paperwork and went back home, the police were calling my grandmother’s house asking where I was, even though I did everything I was supposed to do. She’s in her eighties—she doesn’t need that kind of stress.”

David says he would like the court to consider both sides of the story in a case “before they slap a title on someone that will stick with them their whole life.” When asked what he hopes to achieve by sharing his story, he said, “If my story can help change things for other kids who are going through this, then I feel good about that and about telling people my story.” David will remain on the registry for 25 years, until he is 38 years old. His lawyer is helping him petition for an expungement of his charges. Because of a recent Delaware Supreme Court case, expungement of his record will also mean that his name would be removed from the sex offender registry. “It would be great not to have this hanging over my head any more,” says David.

Failure of Juvenile Offender Sentencing to Consider Adolescent Sexual Development

A central problem with the Adam Walsh Act and its enactment in Delaware is that it fails to consider normal adolescent sexual development when dealing with juvenile offenders. Behavior that may be viewed as inappropriate or alarming by adults may fall well within the range of normative sexual behavior for children. Although there is no concrete timeline of when children develop specific sexual behavior, the following timeline is taken from the article *Application of Megan's Law to Juveniles* and is the result of researchers attempting to outline the normal sexual behaviors children exhibit at different ages.

- For preschool children, normative sexual behavior includes poking others' bodies and being interested in bathroom functions.
- For children ages 5 to 7 years, normative sexual behavior includes telling dirty jokes, kissing, and holding hands.
- For children ages 8 to 12 years, normative sexual behavior includes mooning and exhibitionism, kissing, and touching others' genitals.³²

Despite the efforts of researchers to create a conclusive chart of normative sexual behavior for juveniles, there is still a vast amount of information that remains to be learned about the sexual development of adolescents. The National Center on Sexual Behavior of Youth finds that, "the vast majority of youth sex offenses are manifestations of non-sexual feelings." In fact, many mental health care professionals have found that much of the behavior classified as sex offenses should not be considered predatory.³³ Therapists point out that many sexual offenses are carried out by "naïve experimenters" who are "overly impulsive" or who are "immature adolescents," sometimes engaging in "sexual experimentation" or "playing doctor."³⁴

Although many people falsely assume that childhood is a period of "sexual latency," several studies show that "sexual behaviors are quite common in young children;" for example, in a small study of college women published in 1993, 85% reported having played sexual games as children. Another, larger study of both male and female college students in the late 1980s found that kissing, hugging, exhibitionism, and fondling had commonly occurred in students' childhoods.³⁵ The reality that some juvenile sex offending is within the parameters of normal child behavior and that juvenile sex offenses rarely signal predatory inclinations must be taken into account when imposing consequences. Despite this rise in juvenile sexual behavior, all adolescent sexual behavior continues to be criminalized. Judges should be given the discretion to consider

³² Trivits & Reppucci, *op. cit.*

³³ Petteruti and Walsh, *op. cit.*

³⁴ Jones, *op. cit.*

³⁵ Trivits & Reppucci, *op. cit.*

each adjudicated juvenile's behavior individually and should impose age-appropriate interventions. As a *New York Times* article points out,

“It’s not hard to categorize an act in which a 12-year old grabs a girl’s rear end. And, on the other extreme, it’s not difficult to classify a 17-year old who rapes young children. But many juveniles adjudicated...for sex offenses fall somewhere in between, both in terms of ages and offenses. How, for instance, should we categorize a 13-year-old who rubbed his penis against the rectum of a 9-year-old? Or a 14-year-old who was sexually aroused and asked a kindergarten-age girl to lick his penis? Both were adjudicated in juvenile court and placed on an Internet registry. Their offenses don’t fall under what therapists consider childhood experimentation.... But should these adolescents be in a different legal category than teenagers who commit robberies or physically assault young children?”³⁶

It is ineffective and unjust to use a preset one-size-fits-all punishment when it is important that one “evaluate the context within which the behavior took place.”³⁷ An intervention or punishment should be determined on whether the incident was one single act of deviance or an act of higher risk. With the passage of the proposed legislation, judges would be able to consider factors such as the risk the juvenile poses to the victim, the community and to other potential victims; the impact of registration and community notification on the victim; the evaluation, risk assessment and treatment recommendations for the juvenile; the likelihood of successful rehabilitation, if known; and the adverse impact of public registration on the juvenile and the rehabilitative process.

The Teen Brain: Under Construction

Recent research has suggested that the cognitive and emotional development of youth reduces their decision making ability and renders them less culpable than adults. Delivering the majority opinion in the landmark U.S. Supreme Court case *Roper v. Simmons* (2005), which overturned the use of the death penalty on juveniles, Justice Kennedy writes, “...as any parent knows and as the scientific and sociological studies ...tend to confirm, ‘[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions.’” The ruling was also based on the fact that youth are more susceptible to peer pressure and that they have less control over their impulses. The Court also stated that, “only a relatively

³⁶ Jones, *op. cit.*

³⁷ Trivits & Reppucci, *op. cit.*

small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.”³⁸

Because the growth of the human brain is a gradual process, there is no substantial difference between a human’s neural maturity at age 17, 18 or 19. Dr. Elizabeth R. Sowell, a UCLA scholar, explains that understanding the pattern of brain growth could provide insight to cognitive development as an adolescent.³⁹ Sowell found that there is a correspondence in the distribution of brain growth and gray matter density reduction. As a result, teenagers are less likely to think about potential consequences when they make decisions, “especially with regard to unprotected sex and drug use,” because they believe they will be the exception to those consequences.⁴⁰ There is a critical difference between juvenile and adult development; yet, we fail to modify the definition of sexual misconduct for juveniles.

Judith Herrman, Ph.D., Assistant Chair of the Department of Nursing at the University of Delaware, finds that, “many...are under the impression that the brain is largely developed during the school age years, simply maturing during the adolescent years,” but “several studies have refuted these findings, indicating that the brain is actively growing throughout the teen years and is, in fact, changing until young adulthood.” Herrman states that compared to adults, teens are less skilled in emotional reasoning, have difficulty with emotional insight, and tend to be more impulsive. Increased biological levels of dopamine and decreased levels of serotonin “may lead to a desire for novel, risky, and intense stimuli, levels not often noted in the adult population.” This can be problematic, Herrman contends, because there are few “cognitive controls to balance these urges.”⁴¹ Because the biological brain development of youth renders them relatively mentally and emotionally immature, it is inconsistent to apply adult-size punishments to youth for crimes committed within the context of immaturity.

Do juvenile sex offenders become adult sex offenders?

A common justification for increasingly harsh penalties for adjudicated juvenile sex offenders is the notion that sex offenders will continue to commit criminal sexual offenses. This belief, however, is inconsistent with research completed on the subject, both among adults and juveniles. A meta-analysis of adult sex offenders published in 1998 found that only 13.4 percent went on to commit a new sex offense. A Bureau of Justice Statistics report in 2003 found that only 5.3 percent of individuals convicted of sex offenses committed new sex offenses within a three year follow-up period.⁴²

³⁸ *Roper v. Simmons* (03-633) 543 U.S. 551 (2005)

³⁹ Sowell, Elizabeth R, Paul M. Thompson, Kevin D. Tessner, and Arthur W. Toga. “Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships during Postadolescent Brain Maturation.” *The Journal of Neuroscience*. Vol. 21, No. 22. (2001): 8819-8829.

⁴⁰ Bothum, Kelly. “Inside the Teen Brain.” *The News Journal*. Sept. 1, 2009 D5

⁴¹ Herrman, Judith. “The Teen Brain as a Work in Progress: Implications for Pediatric Nurses.” *Pediatric Nursing*. March/April 2005. Vol 31. No. 2.

⁴² Petteruti and Walsh, *op. cit.*

In addition, Dr. R. Karl Hanson, senior research officer for the Solicitor General Canada, conducted an analysis of over 95 studies concerning the recidivism of male sex offenders in North America, Europe, and Australia. Hanson found that the sexual recidivism rate was 13.7% after 5 years. These statistics are vastly lower than a worried general public believes to be the case. In contrast, the criminal recidivism rate among the general prison population was about 50% within 5 years of release.⁴³

Juvenile sex offenders are *even less likely* than adult sex offenders to commit future sex offenses, with recidivism in the range of 5%-15%. A 2006 meta-analysis examined nine studies of juvenile sex offenders. The analysis determined that 12.53% of the youth committed new sexual offenses. The meta-analysis found that juvenile sex offenders are more likely to commit a non-sexual offense than a sexual offense. Further, juvenile sex offenders who received treatment recidivated at a rate of 7.73%, while the control group's recidivism rate was 18.93%.⁴⁴ A 2007 study funded by the MacArthur Foundation found that "more than nine out of 10 times the arrest of a youth for a sex offense is a one-time event."⁴⁵ Additionally, several studies show that juvenile sex offenders are even less likely to commit a future sex offense than their delinquent peers. For example, a study published in 2007 that examined male youth in Wisconsin found that, "adjudication for a sexual offense did not identify a subgroup of delinquents that were more apt to be charged with a new sexually violent act in the 5 years after release from custody." In fact, this study found youth adjudicated of sex offenses to be "significantly less likely to be charged with any general offense, or with a felony offense, during the follow-up period" in comparison with their delinquent peers.⁴⁶ These research findings support the notion that punishments extending well into adulthood are misplaced on the majority of youthful sex offenders, since the likelihood of reoffending is very low.

Since the commission of a sex offense is not a reliable predictor of future sexual offending, researchers have attempted to determine which risk factors might prove to be more reliable predictors. Research conducted by Nancy Rodriguez of Arizona State University illustrates that there are signs which can help predict juvenile recidivism. In that study, for example, juvenile offenders who failed to apologize were far more likely to reoffend, as were juveniles with extensive records prior to the sex offense.⁴⁷ A 2006 study by Worling & Langstrom found that deviant sexual interest, prior criminal sanctions for sexual offending, sexual offending against more than one victim, sexual offending against a victim who was a stranger, social isolation, and uncompleted offense-specific treatment were correlated with future offending.⁴⁸

⁴³ Jancin, Bruce. "Risk factors predict recidivism in sex offenders." Internal Medicine News 38.10 (May 15, 2005): 18(1).

⁴⁴ Reitzel, Lorraine, and Joyce Carbonnell. "The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta-analysis." *Sex Abuse*. 18:401 (2006).

⁴⁵ Zimring, Franklin E. *An American Traveesty*. University of Chicago Press, 2004.

⁴⁶ Caldwell, Michael F. "Sexual Offense Adjudication and Sexual Recidivism among Juvenile Offenders." *Sex Abuse*, June 2007 Vol. 19 no. 2, 107-113

⁴⁷ Rodriguez, Nancy. "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions of Justice Recidivism" *Crime & Delinquency*, Vol. 53, No. 3, 355-379 (2007)

⁴⁸ Leversee, Tom. "Addressing Juvenile Sexual Offending: Setting the Foundation for Moving Forward." Presentation at State of Delaware Children's Department Conference, April 7, 2011.

Conclusion

Sex offender registries were created to protect communities from dangerous sexual and violent predators. The system that was designed to protect children and communities from predators, however, has now been expanded to include children who engage in sexual conduct with other children. The Justice Policy Institute finds that, “although youth can and do commit sexually violent offenses against young children, these situations are very rare.”⁴⁹ Additionally, research shows that 9 out of 10 juvenile sex offense arrests are one-time incidents and will not be followed by subsequent arrests for sex offenses.

Information on child and adolescent sexual development and the reduced culpability of children and youth should be carefully considered when imposing adult consequences on children, since placing children and youth on sex offender registries can have serious, long-term negative effects on the offender’s ability to thrive and avoid future criminal behavior.

Juvenile advocates in Delaware recommend modifying the current law in order to reflect research findings and to prevent unnecessary stigmatization of youth. While compliance with the Adam Walsh Act requires Delaware to register youth age 14 who are prosecuted and convicted as adults for a sex offense, and adjudicated delinquent for an offense comparable or more serious than aggravated sexual abuse or committed a sex offense against victims aged 12 or younger, there is still a significant amount of discretionary leeway that can be extended to Family Court judges in evaluating cases individually. In fact, the January 11, 2011 Final Supplemental SORNA Guidelines added an exemption for juvenile offenders, giving states discretion to exempt juvenile offenders from public website posting.

Family Court “has broad jurisdiction over juvenile offenders and has discretion, in almost all other areas [other than sex offenders and certain serious crimes], to treat juvenile offenders differently than adult offenders.”⁵⁰ Additionally, the Delaware Code charges Family Court with operating “in the interest of rather than against the child.”⁵¹ In light of scientific evidence showing that juvenile sex offenders do not typically go on to commit future sex offenses and given the serious, long-term negative effects of sex offender registries on children and youth, judges should be permitted to exercise limited discretion in deciding which children should be required to register.

⁴⁹ Petteruti and Walsh, *op. cit.*

⁵⁰ HS 1 for House Bill 182, 145th Delaware General Assembly. Text in brackets added for clarity.

⁵¹ See 10 Del. C. § 1002.

The National Juvenile Justice Network states that “substantial compliance” with the Adam Walsh Act is not precluded by “only placing youth on a registry after a panel or a judge has determined them to be a public safety risk.”⁵² Kansas, for example, has a policy whereby the court has discretion in certain circumstances to order a juvenile offender's information not be open to the public. Training programs and curriculum are available to educate and assist judges in making these decisions.

In keeping with the rehabilitative approach of Family Court, and consistent with a large body of research, Delaware should adopt this legislative measure. The bill would grant discretion to judges within the parameters of the Adam Walsh Act in deciding which children should be required to register as sex offenders.

⁵² National Juvenile Justice Network. *New Registration Requirements for Juvenile Sex Offenders*. Fact Sheet on Adam Walsh Child Protection and Safety Act 2006, April 2008.