

CAUGHT IN THE CYCLE OF SEXUAL VIOLENCE: THE APPLICATION OF MANDATORY REGISTRATION AND COMMUNITY NOTIFICATION LAWS TO JUVENILE SEX OFFENDERS

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Approximately 3.3 million reports of child abuse and neglect were made to child protective services agencies in the United States in 2005, involving the alleged maltreatment of an estimated six million children.¹ Of these reports, approximately thirty percent resulted in a child found to be a victim of abuse or neglect, amounting to a total of roughly 899,000 abused and neglected children in one year alone.² While the majority of these children suffered from neglect, approximately thirty-five percent were subjected to physical, sexual, and emotional abuse at the hands of their parents, relatives, and caregivers.³ Although the data appears overwhelming, the nature of child abuse, where the victims are frequently children under the age of seven and the perpetrators are almost exclusively parents and relatives, creates the distinct possibility that many children who suffer abuse are not represented within the available data.⁴ It is important to recognize that child abuse and neglect is a “hidden epidemic,”⁵ and thus, likely to be underreported.

Child abuse and neglect is defined as “any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation” or “an act or failure to act which presents an imminent risk of serious harm” to a child.⁶ While each state must provide its own definition for child abuse and neglect, each is also required to adhere to these minimum standards.⁷ The vast majority of states recognize four primary categories of child maltreatment: neglect, physical

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1. ADMIN. FOR CHILDREN & FAMILIES, U.S. DEPT. OF HEALTH & HUMAN SERVS., SUMMARY: CHILD MALTREATMENT (2005), available at <http://www.acf.hhs.gov/programs/cb/pubs/cm05/summary.htm> [hereinafter CHILD MALTREATMENT] (presenting a summary of the data collected by the National Child Abuse and Neglect Data System during the 2005 Federal fiscal year).

2. *Id.*

3. *Id.* (more than sixty percent of children were neglected, more than fifteen percent were physically abused, approximately ten percent were sexually abused, and less than ten percent were emotionally abused).

4. CHILD MALTREATMENT, *supra* note 1.

5. National Child Abuse Statistics: *Child Abuse in America*, CHLDHELP, <http://childhelp.org/pages/statistics>. (last visited Oct. 14, 2011) [hereinafter CHLDHELP].

6. CHILD MALTREATMENT, *supra* note 1. See also 42 U.S.C.A. § 13925(a)(2) (West 2010).

7. CHILD MALTREATMENT, *supra* note 1.

abuse, sexual abuse, and emotional or psychological abuse.⁸ Some states have recently recognized a fifth category of maltreatment: the exposure of children to domestic violence.⁹ While the definitions and penalties may vary for these offenses from state to state, the behavior that these laws seek to punish is consistent throughout the nation.

Child maltreatment cases are rarely sensationalized in the media like other types of violent crime, making known victims rare. However, the plight of the child abuse victims has drawn national attention in the past four decades¹⁰ and has been labeled an epidemic by the media.¹¹ Such national attention began in 1962 with Dr. C. Henry Kempe and his colleagues' publication of *The Battered-Child Syndrome*¹² and child abuse continues to be considered a major issue both socially and in the legal realm. Despite today's recognition of child abuse as a national epidemic, the history of child abuse recognition is not as far reaching as one might imagine. In fact, prior to 1874, child abuse was rarely addressed as a problem as no agencies yet existed to handle the abuse of children.¹³ The establishment of the first organization created to deal with the abuse of children followed the conviction of a woman for the assault and battery of her ten-year-old foster daughter.¹⁴ This first organization, the New York Society for the Prevention of Cruelty to Children, was derived from the Society for the Prevention of Cruelty to Animals, and was similarly followed by hundreds of others within the next forty years.¹⁵ These organizations had a great impact, performing functions such as "increas[ing] public awareness of and concern about the dangers some children experienced at the hands of their caregivers; [promoting] the passage of criminal child abuse statutes; [filing] actions in court against suspected perpetrators; and, most significantly, [challenging] the

8. CHILD MALTREATMENT, *supra* note 1.

9. Lois A. Weithorn, *Protecting Children from Exposure to Domestic Violence: The Use and Abuse of Child Maltreatment Statutes*, 53 HASTINGS L.J. 1, 12 (2001).

10. NAT'L RESEARCH COUNCIL & INST. OF MED., VIOLENCE IN FAMILIES: ASSESSING PREVENTION AND TREATMENT PROGRAMS 1 (Rosemary Chalk & Patricia A. King eds., 1998).

11. *See, e.g.*, Curt Kuball, *Child Abuse: A National Epidemic*, ASSOCIATED CONTENT (Jul. 25, 2007), http://www.associatedcontent.com/article/316591/child_abuse_a_national_epidemic.html?cat=5; *Ignoring the U.S. Child Abuse/Neglect Death Epidemic*, SALEM-NEWS.COM (Dec. 14, 2010), <http://www.salem-news.com/articles/december142010/child-abuse.php>;

Rise in Child Abuse Called National 'Epidemic', ABC NEWS (Apr. 25, 2005), <http://abcnews.go.com/WNT/rise-child-abuse-called-national-epidemic/story?id=701293>.

12. Weithorn, *supra* note 9, at 55-56; *see generally* C. Henry Kempe et al., *The Battered-Child Syndrome*, 181 J. AM. MED. ASS'N 17 (1962).

13. Kathleen A. Copps, *The Good, the Bad, and the Future of Nicholson v. Scoppetta*, 72 ALB. L. REV. 497, 499 (2009).

14. *Id.*; Weithorn, *supra* note 9, at 48. This ground-breaking case "served as a rallying point for a nascent social movement against cruelty to children, initiating the use of the criminal justice system as a weapon in the movement's armamentarium, and stimulating the founding of the first society against cruelty to children." *Id.*

15. Copps, *supra* note 13, at 499.

autonomy of parents in the interest of child protection.”¹⁶ These agencies are the predecessor of modern child protective services.¹⁷

Federal legislation directed at child welfare, with which states must comply to be eligible to receive federal funding,¹⁸ soon followed, beginning with the Social Security Act of 1935, which established the Aid to Dependent Children program.¹⁹ This Act promoted a policy of keeping families intact by providing financial aid to families as an alternative to removing the child from the home.²⁰ By 1967, mandated reporting statutes had been enacted by every state, requiring certain professionals, including doctors, to report suspected cases of child abuse.²¹ Mandated reporting was codified in federal law with the passage of one of the most recognized pieces of legislation in this field, the Child Abuse Prevention and Treatment Act of 1974 (CAPTA).²² In addition to requiring the enactment of mandated reporting by states, CAPTA required that states establish procedures for investigating those reports.²³

In the fifteen years following CAPTA, five pieces of major federal legislation directed at child welfare emerged including, most notably, the Adoption Assistance and Child Welfare Act of 1980.²⁴ Remarkably, in the two decades that followed, the amount of new legislation almost quadrupled that enacted in the preceding twenty year period.²⁵ Some of the more noteworthy laws coming out of this explosion of legislation include the Adoption and Safe Families Act (“ASFA”) and the Adam Walsh Child Protection and Safety Act (“Adam Walsh Act”). The ASFA switched the policy focus from preservation of families to the best interest of the child and permanency often including “timely termination of parental rights and adoption.”²⁶ In addition, the Adam Walsh Act “strengthen[ed] the ability of the courts to administer penalties to perpetrators of child sex offenses.”²⁷

16. Weithorn, *supra* note 9, at 50.

17. *Id.*

18. CHILD WELFARE INFO. GATEWAY, U.S. DEPT. OF HEALTH & HUMAN SERVS., MAJOR FEDERAL LEGISLATION CONCERNED WITH CHILD PROTECTION, CHILD WELFARE, AND ADOPTION 1 (2011), available at <http://www.childwelfare.gov/pubs/otherpubs/majorfedlegis.pdf> [hereinafter *Federal Legislation*].

19. Copps, *supra* note 13, at 499.

20. *Id.* at 499-500.

21. *Id.* at 500 (mandated reporting was a response to C. Henry Kempe’s article, *The Battered-Child Syndrome*, Kempe et al., *supra* note 12, which described the physical manifestations of child abuse and called doctors to arms to report such symptoms).

22. Copps, *supra* note 13, at 500.

23. *Id.* (failure to enact mandated reporting or investigative procedures as required by CAPTA prevents a state from receiving certain federal funds).

24. See FEDERAL LEGISLATION, *supra* note 18, at 3.

25. See *id.* (between 1992 and 2008, nineteen pieces of federal legislation aimed towards promoting child welfare were enacted by Congress, compared to only six pieces of legislation between 1974 and 1988).

26. Weithorn, *supra* note 9, at 66-67 & n.279.

27. *Adam Walsh Child Protection and Safety Act of 2006: Summary of Child Welfare Provisions*, ASS’N OF ADMINS. OF THE INTERSTATE COMPACT ON THE PLACEMENT OF CHILDREN, http://icpc.aphsa.org/Home/Doc/Summary-Adam_Walsh_Act.pdf.

From the time leading up to the passage of Megan's Law in 1996 through the passage of the Adam Walsh Act in 2006, there was a considerable increase in the amount of media coverage relating to sex offenders and sex offenses against children.²⁸ This significant increase was not the result of an increase in reported sex offenses—in fact, reported sex offenses decreased during this period—but instead was the result of amplified public and political interest.²⁹ Policy responses and legislation resulting from the vast amount of media attention, including the Adam Walsh Act,³⁰ fueled the media even further.

Today, the faces of Megan Kanka and Adam Walsh are far less recognized than the atrocious stories of their deaths and the legislation passed in their names. Although the crimes committed against these two children have incited legislative action and brought a great amount of attention to sex offenses committed against children,³¹ they do not accurately depict the true nature of the majority of child sexual abuse cases. The reality is that child sexual abuse rarely involves abduction and murder by strangers, but instead is most frequently committed by acquaintances of the child or members of the child's own family;³² these instances account for approximately “a quarter to a third of offenders.”³³ While the purpose and the impact of the legislation stemming from these heinous crimes cannot be understated, it is evident that the sexual offenders targeted by this legislation do not represent the majority of sexual predators. This mismatch has been the subject of much controversy.

In recent years, sexual predators have received significantly more media attention. This is largely the result of increases in access to victims due to the prevalence of the internet in the lives of children.³⁴ Beginning with the creation of America Online's Instant Messaging service,³⁵ and more recently

28. See Emily Horowitz, *Growing Media and Legal Attention to Sex Offenders: More Safety or More Injustice*, 7 J. INST. JUST. & INT'L STUD. 143, 145-46 (2007) (“[N]ews stories with ‘sex offender’ or ‘sexual predator’ in the title increased seven-fold between 1991 and 2006” and show no sign of declining). See also Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996), repealed by Adam Walsh Child Safety and Protection Act of 2006 Pub. L. No. 109-248, 120 Stat. 587 (current version at 42 U.S.C. § 16902) (Megan's Law is a federal statute enacted in 1996 to increase access to information about sexual offenders to protect the public and improve sex offender registration; it was repealed and re-enacted by the Adam Walsh Child Safety and Protection Act of 2006.).

29. Horowitz, *supra* note 28, at 147.

30. *Id.* at 148.

31. *Id.*

32. Emily M. Douglas & David Finkelhor, *Childhood Sexual Abuse Fact Sheet*, CRIMES AGAINST CHILD. RES. CTR. (May 2005), <http://www.unh.edu/ccrc/factsheet/pdf/childhoodSexualAbuseFactSheet.pdf>.

33. Douglas & Finkelhor, *supra* note 32.

34. See Kristi Newman & Beth Wiersma, *How Far Will On-Line Sexual Predators Go?*, U. NEB. KEARNEY, <http://www.unk.edu/uploadedFiles/academics/gradstudies/ssrp/2005/Kristi%20Newman%20Poster.pdf>.

35. *Difference Between AOL and AIM*, DIFFERENCEBETWEEN.NET, <http://www.differencebetween.net/technology/internet/difference-between-aol-and-aim/> (last visited Oct. 14, 2011) (“In May 1997, AOL released an instant messaging and presence

with the creation of social networking sites such as MySpace and Facebook, sexual predators now have greater access to children, creating a media sensation focusing on the dangers of online predators.³⁶ The emergence of online predators has been pervasive in the media, even including a reality show focusing on trapping sexual predators that use the internet to prey on children.³⁷ While this immense media attention focuses primarily on the atypical cases of sexual victimization of children perpetrated by strangers, who account for only seven to twenty-five percent of offenders,³⁸ this media frenzy was not missed by researchers. Numerous studies focusing on the sexual victimization of children have resulted, creating a vast amount of information about both the victims and perpetrators of child sexual abuse.³⁹

Notwithstanding all of this media attention and the vast amount of legislation enacted in the interest of child welfare within the past forty years, child abuse still remains an omnipresent issue with hundreds of thousands of *known* victims in the United States alone. Unfortunately, the implications of child maltreatment do not stop with the pain and suffering of the child victims, creating an ever greater burden on society. Children who are the victims of “child abuse [and] neglect are 59% more likely to be arrested as . . . juvenile[s], 28% more likely to be arrested as . . . adult[s], and 30% more likely to commit violent crime.”⁴⁰ This propensity for victims of child abuse and neglect to go on to commit violent crime has been commonly termed “the cycle of violence.”⁴¹ To be clear, the cycle of violence is not a theory that all abused children will go on to be violent criminals, as the majority of abused children do not ever perpetrate violence.⁴² The cycle of violence instead simply refers to the fact that “victimization is over-represented in the lives of those juveniles who perpetrate violence.”⁴³

This over-representation of victimization is evident in adolescents who commit sexual offenses,⁴⁴ thus demonstrating the existence of a cycle of sexual

computer program, called AOL Instant Messenger, or AIM for short. This computer software is maintained by the AOL Company, and it allows registered users to easily communicate with one another in real-time.”).

36. See Newman & Weirisma, *supra* note 34.

37. *Id.* (Dateline’s reality television show *To Catch a Predator* televises the use of decoys posing on the internet as children to lure sexual predators to a monitored home, where they are apprehended).

38. Douglas & Finkelhor, *supra* note 32.

39. See Gail Ryan, *Victims who go on to Victimize Others: No Simple Explanations*, 26 CHILD ABUSE & NEGLECT 891 (2002); David L. Burton, *Male Adolescents: Sexual Victimization and Subsequent Sexual Abuse*, 20 CHILD & ADOLESCENT SOC. WORK J. 277 (2003); Cathy S. Windom & Michael G. Maxfield, *An Update on the “Cycle of Violence”*, NAT’L INST. JUSTICE: RES. IN BRIEF (U.S. Dept. Justice, Office Justice Programs), February 2001, at 1, available at <http://www.ncjrs.gov/pdffiles1/nij/184894.pdf>.

40. CHILDHHELP, *supra* note 5.

41. Windom & Maxfield, *supra* note 39 at 1.

42. Ryan, *supra* note 39, at 891.

43. Ryan, *supra* note 39, at 891; Windom & Maxfield, *supra* note 39, at 5, 7.

44. See Burton, *supra* note 39, at 277 (“Even the most conservative projections indicate that adolescent sexual abusers have been sexually victimized at three to four times the 10% rate found within the general male adolescent population.”).

violence. This cycle, in which adolescents who were sexually victimized as children later act out sexually against peers or younger children,⁴⁵ “typically for a transitory period,”⁴⁶ raises an interesting question: When does a child victim of sexual abuse become a juvenile sexual predator? In a criminal justice system where penalties for sex offenses apply to adults and juveniles alike,⁴⁷ an issue arises of where to draw the line between victim and offender. In failing to consider that juvenile sex offenders may themselves be victims of sexual abuse, existing long-term penalties for juvenile sex offenders, including registration and civil commitment, seem inherently unjust.

The purpose of this note is to examine the link between sexual victimization in childhood and the subsequent perpetration of sexual abuse in adolescence, addressing the dangers of applying mandatory long-term penalties to these juvenile offenders. Part I of this note provides important theoretical background and empirical evidence supporting the link between juvenile sex offenders and the prior sexual victimization of these offenders. Part II identifies existing long-term sanctions applied by the courts to juvenile sex offenders, focusing on registration and community notification as required by the Adam Walsh Act. Part III of this note argues that such long-term penalties as applied to juvenile sex offenders are unreasonable due to the nature of such penalties punishing juveniles whose actions are a response to, or even a symptom of, their own sexual victimization. To conclude, Part IV of this note advocates the use of judicial discretion over mandatory long-term sanctions as applied to juvenile sex offenders in order to protect the victims of child sexual abuse. While a juvenile’s history of sexual victimization alone should not always prevent the application of long-term penalties to juvenile sex offenders, it is a factor that must be considered in order to prevent the unnecessary punishment of victimized juveniles who are likely to respond well to treatment.

45. FRANKLIN E. ZIMRING, *AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING* 49 (2004).

The majority of young child victims were involved with the very youngest of the children and youths who were arrested. While 78 percent of those victimized by arrested kids ten and under were younger than nine years old, only 13 percent of the reported victims of seventeen-year-olds were under nine. Sixty percent of all victims under the age of nine were involved with offenders under fourteen, and 88 percent were victimized by offenders under the age of fifteen.

Id.

46. Maggie Jones, *How Can You Distinguish a Budding Pedophile From a Kid With Real Boundary Problems?*, N.Y. TIMES MAG., July 22, 2007, at 36, available at <http://www.nytimes.com/2007/07/22/magazine/22juvenile-t.html?pagewanted=all>.

47. See Michael F. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 SEXUAL ABUSE: J. RES. & TREATMENT 107, 107-08 (2007) (juvenile sex offenders are included in many states’ registration and civil commitment statutes).

I. UNDERSTANDING THE CYCLE OF SEXUAL VIOLENCE

The cycle of violence has been the subject of vast psychological research in recent years.⁴⁸ In addition to studies exposing the existence of the cycle of violence, many researchers have attributed this cycle to various psychological theories. Theories used to explain the existence of the cycle of violence include the social learning theory, the evolutionary adaptation theory, and the attachment theory.⁴⁹ The social learning theory—the most prevalent of these theories—focuses on how abusive or aggressive behavior is learned through two systems: instrumental learning, which is learning through a system of rewards, and modeling, in which behavior is observed and imitated.⁵⁰ Attachment theory attributes insecure attachment resulting from “inconsistent, emotionally neglectful and/or abusive caregiving” as a controlling factor in an individual’s relationship with others.⁵¹ The evolutionary adaptation theory has not yet been researched, due to the difficulty of studying human evolution and the complexity of the theory.⁵²

Theories by which children can overcome the cycle of violence have also been posited. These include the ecological theory, the family systems theory, and the resiliency theory.⁵³ The ecological theory focuses on multiple factors, including the individual, family, culture, and community, as contributors to the perpetration of child abuse and neglect.⁵⁴ Likewise, the family-systems theory focuses on dysfunctional family relationships as a cause of child abuse and neglect.⁵⁵ Both of these theories provide a focus for programs aimed at preventing child maltreatment. Another theory directing prevention programs is the resiliency theory, which provides an explanation for why children are not always irreversibly damaged by the trauma of child abuse and includes factors that aid children in overcoming such trauma.⁵⁶ These factors include “social support, parental warmth, and the victim’s healthy relationship with a supportive adult influence.”⁵⁷ The resiliency theory becomes tremendously

48. See Jaclyn E. Barnes et al., *Sexual and Physical Revictimization Among Victims of Severe Childhood Sexual Abuse*, 33 CHILD ABUSE & NEGLECT 412 (2009); Burton, *supra* note 39; David L. Burton et al., *A Social Learning Theory Comparison of the Sexual Victimization of Adolescent Sexual Offenders and Nonsexual Offending Male Delinquents*, 26 CHILD ABUSE & NEGLECT 893 (2002); David L. Burton & William Meezan, *Revisiting Recent Research on Social Learning Theory as an Etiological Proposition for Sexually Abusive Male Adolescents*, 1 J. EVIDENCE-BASED SOC. WORK 41 (2004); Margaret L. Griffin & Maryann Amodeo, *Predicting Long-Term Outcomes for Women Physically Abused in Childhood: Contribution of Abuse Severity Versus Family Environment*, 34 CHILD ABUSE & NEGLECT 724 (2010); Ryan, *supra* note 39.

49. Burton & Meezan, *supra* note 48, at 59-60; *Research Theories about Child Abuse*, WEARESURVIVORS.ORG (Aug. 27, 2009), <http://www.wearesurvivors.org/?p=676> [hereinafter *Research Theories*].

50. *Research Theories*, *supra* note 49.

51. *Id.* (emphasis omitted).

52. Burton & Meezan, *supra* note 48, at 60.

53. *Research Theories*, *supra* note 49.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* (emphasis omitted).

important in the context of therapy and treatment initiatives to disrupt the cycle of violence.

A. Social Learning Theory and The Cycle of Sexual Violence

Although all of these theories have been addressed in literature, the most prevalent of these theories in the research is the social learning theory.⁵⁸ First posited in 1977, the social learning theory has “provided a compelling model to explain the initiation and acquisition of many human behaviors,” including the behaviors propelling the cycle of violence.⁵⁹ This theory is especially prevalent in studies of child sexual abuse and subsequent perpetration of sexual offenses.⁶⁰ This victim-to-victimizer relationship in the context of sexual abuse was first addressed in an illustrative case of social learning theory conducted by Bandura, the originator of the social learning theory, and Walters.⁶¹ The theory has since been regarded as an approach to understanding sexual victimization as an “etiologial explanation for sexual abuse.”⁶²

Those who advocate the social learning theory as an explanation for the cycle of violence in sexually victimized children suggest that the victimized child may become fixated on the trauma of their victimization causing the child to “[recreate] the experience in ritualistic patterns that become more elaborate, more rigid and more secret over time.”⁶³ The social learning theory approach attributes the first act of sexual abuse perpetrated by a sexually abused youth to a combination of several components including “internalized social definitions that support sexual offending; and the receipt of anticipated rewards that they perceive their own offenders obtaining . . . ; prior reinforcements for minor rule breaking (at home or in the community); and cognitive distortions regarding sexual behavior and potential victims.”⁶⁴

Support for the cycle of violence, relating specifically to sexually victimized children, has been overwhelmingly demonstrated through research.⁶⁵ Studies comparing delinquents who commit sexual offenses to “those who commit

58. Burton, *supra* note 39, at 278; Burton et al., *supra* note 48, at 903-04; Burton & Meezan, *supra* note 48, at 42-57; Ryan, *supra* note 39, at 891. Social learning theory is also referred to as social cognitive theory. See Albert Bandura, *Human Agency in Social Cognitive Theory*, 44 AM. PSYCHOLOGIST 1175, 1175 (1989).

59. Ryan, *supra* note 39, at 891 (“[T]he notion that abusive behaviors are learned through observation or experience continues to dominate hypotheses regarding the question ‘Why do they do it?’”).

60. See Burton, *supra* note 39, at 278.

61. *Id.*

62. *Id.*

63. Burton et al., *supra* note 48, at 894 (alteration in original) (quoting Gail Ryan, *Victim to Victimizer: Rethinking Victim Treatment*, 4 J. INTERPERSONAL VIOLENCE 325, 327 (1989)).

64. Burton, *supra* note 39, at 278.

65. See Ryan, *supra* note 39, at 892.

nonsexual offenses[,] have found a higher prevalence of sexual victimization among those who commit sexual offenses.”⁶⁶ This illustration of the cycle of violence in delinquent sexual offenders is not remarkable; the same studies found child maltreatment, trauma, and exposure to domestic violence to be a common etiology of all delinquents.⁶⁷

In addition, research has demonstrated specific support for the social learning theory in the cycle of sexual violence. The social learning theory, as it attributes sexual abuse perpetration to imitation of learned behaviors, can be demonstrated in the research by sexually victimized youths repeating behaviors they learned during their own victimization.⁶⁸ Several studies have demonstrated that adolescent sexual abusers mirrored their own victimization in perpetrating sexual abuse against others.⁶⁹ One study looked at four facets of sexual victimization of individual perpetrators: the gender of the abuser, the relationship between the victim and the abuser, the modus operandi, and the severity, or type, of acts.⁷⁰ Results of this study indicated that youths were likely to abuse the same type of person who abused them,⁷¹ were likely to abuse a person of the same gender as the person who abused them,⁷² were likely to use the same modus operandi as their own abusers,⁷³ and that “youth

66. Ryan, *supra* note 39, at 892.

67. *Id.*

68. Burton, *supra* note 39, at 279.

69. *Id.* A 1992 study found that seventy-seven percent of a sample of forty-two adolescent offenders repeated acts that were perpetrated against them. A more recent study in 2000 also found support for this basic proposition, concluding that “youth do indeed learn from, and tend to repeat, the characteristics of their own abuse.” *Id.*

70. *Id.* at 281.

71. *Id.* at 282.

A youth who was sexually abused by a non-parental relative was 2.95 times more likely to sexually abuse a relative than a youth who was not sexually abused by a relative. A youth who was sexually abused by a friend or neighbor was 4.54 times more likely to sexually abuse a friend or neighbor than a youth who was not sexually abused by a friend or neighbor. Finally, a youth who was sexually abused by a stranger was 2.87 times more likely to sexually abuse a stranger than a youth who was not sexually abused by a stranger.

Id.

72. *Id.*

[A] youth who was sexually abused by a female was 3.89 times more likely to sexually abuse a female than a youth who was not sexually abused by a female. A youth who was sexually abused by a male was 6.05 times more likely to sexually abuse a male than a youth who was not sexually abused by a male. A youth who was sexually abused by both genders was 1.88 times more likely to sexually abuse both genders than a youth who was not sexually abused by both genders.

Id.

73. *Id.* at 284.

A youth who was sexually abused with favors, games or babysitting was 9.22 times more likely to use these same methods than a youth who was not sexually abused with favors,

who experienced various acts were somewhat more likely to repeat them than youth who did not experience those same acts.”⁷⁴ This study demonstrates overwhelming support for the social learning theory as a cause of the cycle of sexual violence.

Other studies focused on the factors that lead some victims of sexual abuse to perpetrate sexual abuse while others do not. Some of the characteristics thought to contribute to sexually victimized youth becoming sexual offenders include the relationship between the perpetrator and the youth, the gender of the predator, the modus operandi of the predator, the type of acts perpetrated, the duration of the victimization, and the age of the victim during the victimization.⁷⁵ Some of these characteristics have support in the research as contributing to the potential for victims to become adolescent sexual offenders.

More specifically, a victim with a closer relationship to the perpetrator “may be more likely to attend to, learn from, and later model that person’s victimizing behaviors.”⁷⁶ Additionally, victimization by a male perpetrator “may lead to a greater likelihood of becoming a sexual offender due to the tendency of males to use greater force and thus reinforce learning.”⁷⁷ Similarly, a modus operandi that uses greater force may increase this likelihood.⁷⁸ Another factor that may lead to adolescent sexual offending is victimization by penetrative acts which typically result in more physical and emotional trauma, reinforcing learning of this behavior, and more helplessness, which may encourage “resolv[ing] their trauma through the method modeled for them by their perpetrators.”⁷⁹ Finally, an earlier onset and a longer duration of victimization may contribute due to the greater opportunity to learn the behavior and early learning of the norm.⁸⁰

Studies have also recognized a difference between males and females in their roles in the cycle of violence indicating that while male victims of sexual abuse are at greater risk of becoming sexual offenders, female victims are at

games or babysitting. A youth who was sexually abused with threats, against him and/or others, was 3.88 times more likely to use threats with his own victim(s) than a youth who was not sexually abused with threats. Finally, a youth who was sexually abused with direct force was 3.95 times more likely to sexually abuse using direct force than a youth who was not sexually abused in this manner.

Id.

74. Burton, *supra* note 39, at 286 “A youth who was fondled was 2.14 times more likely to fondle than a youth who was not fondled . . . [A] youth who was sexually penetrated was 4.13 times more likely to penetrate a victim than a youth who was not sexually penetrated.”

Id.

75. Burton et al., *supra* note 48, at 896-97.

76. *Id.* at 896.

77. *Id.*

78. *Id.*

79. *Id.* at 897.

80. *Id.*

greater risk of being re-victimized.⁸¹ One study demonstrated that “in contrast to a group who did not experience childhood sexual abuse, sexually abused females were almost twice as likely to have been sexually and physically (re)victimized.”⁸² Additionally, women who were sexually or physically victimized as children “have reported up to 3.5 times greater incidences of domestic and intimate-partner violence in young-adulthood than women who have not experienced childhood abuse.”⁸³ Due to the tendency of females to internalize sexual violence perpetrated against them in contrast to male victims’ tendency to act out, this note will focus primarily on victimized males who go on to perpetrate sexual offenses against children.

B. The Cycle of Sexual Violence: A Symptom of Victimization

Additional support for the cycle of sexual violence demonstrated in the research is commonly referred to as “sexualized behavior.”⁸⁴ This symptom of child sexual abuse, which includes “sexualized play with dolls, putting objects into anuses or vaginas, excessive or public masturbation, seductive behavior, requesting sexual stimulation from adults or other children, and age-inappropriate sexual knowledge,”⁸⁵ is commonly exhibited by children who have been sexually abused.⁸⁶ This sexualized behavior can go beyond a child “wanting to engage school-age playmates in sexual intercourse or oral-genital contact,”⁸⁷ causing some children (mostly adolescent boys) to “become sexually aggressive and victimize their peers or younger children.”⁸⁸ The acts described above typify the acts that juvenile sexual offenders most frequently commit, demonstrating that these acts, at least in some cases, are a symptom of the offender’s previous victimization. This fact not only lends further support to the cycle of sexual violence but demonstrates a category of juvenile sexual offenders that is far from the “superpredators”⁸⁹ the media has made these children out to be.

81. Compare generally Barnes et al., *supra* note 48, with Burton et al., *supra* note 48.

82. Barnes et al., *supra* note 48, at 417.

83. *Id.* at 413.

84. Kathleen A. Kendall-Tackett et al., *Impact of Sexual Abuse on Children: A Review and Synthesis of Recent Empirical Studies*, 113 PSYCHOL. BULL. 164, 165 (1993).

85. *Id.*

86. *Id.*

87. David Finkelhor & Angela Browne, *The Traumatic Impact of Child Sexual Abuse: A Conceptualization*, 55 AM. J. ORTHOPSYCHIATRY 530, 534 (1985).

88. *Id.*

89. Cf. Kelly Luker, *Kids These Days*, METROACTIVE (Sept. 18, 1997), <http://www.metroactive.com/papers/cruz/09.18.97/kids-9738.html>.

II. LONG-TERM PENALTIES FOR JUVENILE SEX OFFENDERS

Although adjudicated in a separate system, the past decade has demonstrated a shift towards a more punitive system for juvenile sex offenders.⁹⁰ Despite the juvenile justice system's expressed goals of rehabilitation⁹¹ and "divert[ing] children from the harms of the punitive criminal justice system as much as possible,"⁹² juvenile courts have handed out longer sentences to juvenile sex offenders.⁹³ In addition to harsher sentences "some states have created tougher probation requirements and, most significant[ly], lumped adolescents with adults in sex-offender legislation."⁹⁴ This trend of treating juvenile offenders and adult offenders alike for purposes of punishment is adverse to an idea recognized by the American criminal justice system for over a century, "that juveniles are different from adults and should be treated as such."⁹⁵

A. Registration, Community Notification, and Juvenile Sex Offenders

Federal legislation requiring the registration and community notification of sex offenders was a response to several high-profile assaults on children committed by sex offenders,⁹⁶ some of whom had been previously convicted for offenses against children.⁹⁷ Beginning in 1994 with the passage of the Jacob Wetterling Act, requiring states to keep a registry of sex offenders,⁹⁸ and followed shortly thereafter by Megan's Law passed in 1996, which implemented a system of community notification,⁹⁹ legislators responded to these heinous crimes by requiring states to "release relevant information that is necessary to protect the public concerning a specific person required to register under this section," through the use of a website that could be

90. Jones, *supra* note 46, at 35.

91. See Howard N. Snyder & Melissa Sickmund, U.S. DEP'T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 2006 NATIONAL REPORT 98 (2006), available at <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/nr2006.pdf>.

92. Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 CAL. L. REV. 163, 194 (2003).

93. Jones, *supra* note 46, at 35.

94. *Id.*

95. Garfinkle, *supra* note 92, at 184.

96. Adam Walsh Child Safety and Protection Act of 2006 Pub. L. No. 109-248, § 102, 120 Stat. 587, 590-91 (codified as amended at 42 U.S.C. § 16901) (several horrific crimes, including the abduction, sexual assault, and murders of several children, are noted under the Adam Walsh Act's Declaration of Purpose).

97. See, e.g., Britney M. Bowater, *Adam Walsh Child Protection and Safety Act of 2006: Is There A Better Way To Tailor the Sentences of Juvenile Sex Offenders?*, 57 CATH. U. L. REV. 817, 822-23 (2008).

98. *Overview and History of the Jacob Wetterling Act*, BUREAU OF JUSTICE ASSISTANCE, <http://www.ojp.usdoj.gov/BJA/grant/jacob/2a1jwacthistory.html>.

99. *Id.*

accessed by the public.¹⁰⁰ This website allows members of a community to track offenders who live in close proximity to their homes. The passage of the Adam Walsh Act in 2006 increased the ability to track sex offenders “[i]n order to protect the public from sex offenders and offenders against children.”¹⁰¹

The Adam Walsh Act consists of seven titles.¹⁰² Title I, the Sex Offender Notification and Registration Act (SORNA), “provides a comprehensive set of minimum standards for sex offender registration and notification in the United States.”¹⁰³ Reforms to previous federal registry and notification requirements under SORNA include “[i]ncorporat[ing] a more comprehensive group of sex offenders and sex offenses for which registration is required,”¹⁰⁴ requiring more extensive information to be provided for registration, and expanding the amount of information available to the public.¹⁰⁵ SORNA mandates that each jurisdiction maintain a sex offender registry¹⁰⁶ containing the names and known aliases, social security numbers, addresses including home, places of work and education, and vehicle descriptions of sex offenders required to register.¹⁰⁷ The registry must also include a physical description and photograph of the offender, the offender’s fingerprints, DNA, criminal history, and the crime for which the offender is registered.¹⁰⁸ This information, although required to be included in the registry, is not entirely available to the public.¹⁰⁹ Information that is available to the public must be provided through a website maintained by the jurisdiction, allowing individuals to search for sex offenders in their area.¹¹⁰ Local agencies, organizations, and the community within the jurisdiction that the offender registers are also required to be notified with the appropriate information about the sex offender from the registry.¹¹¹

In addition to jurisdiction-wide registries, SORNA requires the Attorney General to maintain the National Sex Offender Registry, a database containing all sex offenders registered in the United States.¹¹² The duration of time a sex

100. 42 U.S.C. § 14071(e)(2) (Supp. 2007) *repealed by* Adam Walsh Child Safety and Protection Act of 2006 Pub. L. No. 109-248, 120 Stat. 587 (current version at 42 U.S.C. § 16918).

101. Adam Walsh Child Safety and Protection Act § 102.

102. *See id.* § 1.

103. U.S. DEP’T OF JUSTICE, FREQUENTLY ASKED QUESTIONS: THE SEX OFFENDER REGISTRATION AND COMMUNITY NOTIFICATION ACT (SORNA) PROPOSED GUIDELINES 3 (2007), *available at* http://www.nlpoa.org/US_Department_of_Justice_May_17_2007_SORNA_NLPOA.pdf [hereinafter FAQ].

104. *Id.*

105. *Id.*

106. Adam Walsh Child Safety and Protection Act § 112(a).

107. *Id.* § 114(a).

108. *Id.* § 114(b).

109. *Id.* § 118(b), (c).

110. *Id.* § 118(a) (“The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user.”).

111. *Id.* § 121(b).

112. Adam Walsh Child Safety and Protection Act § 119.

offender spends on both the national and jurisdictional registries is determined in accordance with the offense for which the offender is registered.¹¹³ SORNA established a three tier system, in which individual sex offenders are assigned either Tier I, Tier II, or Tier III depending on the offense committed. Tier I applies to the least severe offenses while Tier III applies to the most severe.¹¹⁴ Registered sex offenders assigned to Tier I are required to remain on the registry for fifteen years¹¹⁵ and are required to verify their information annually.¹¹⁶ Tier II sex offenders remain on the registry for twenty-five years¹¹⁷ and verify every six months,¹¹⁸ while Tier III offenders remain on the registry for life¹¹⁹ and are required to verify every three months.¹²⁰ SORNA penalizes the failure of a sex offender to comply with registration requirements.¹²¹

While the Adam Walsh Act made important additions to federal registration and community notification requirements for sex offenders, it was also the first piece of federal legislation to require juvenile offenders adjudicated delinquent for a sexual offense to register as sex offenders under SORNA's adult standards.¹²² Under the Adam Walsh Act, both juveniles tried and convicted as adults and juveniles over the age of fourteen who are adjudicated for an offense "comparable to or more severe than aggravated sexual abuse"¹²³ are required to register in accordance with SORNA.¹²⁴ Aggravated sexual abuse, as defined by 18 U.S.C. § 2241, includes: (1) "engaging in a sexual act with another by force or threat of serious violence . . . ;"¹²⁵ (2) "engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim . . . ; or"¹²⁶ (3) "engaging in a sexual act with a child under the age of [twelve]."¹²⁷ This note focuses solely on the third of these offenses, as this specific offense has the potential to subject juvenile sex offenders, who are acting out as a result of their own victimization, to long-term registration and notification standards, potentially for life.

The Adam Walsh Act sets minimum requirements to which states must adhere in order to obtain federal funds.¹²⁸ However, "sex offender

113. Adam Walsh Child Safety and Protection Act § 115(a).

114. *Id.* §§ 111(2)-(4).

115. *Id.* § 115(a)(1).

116. *Id.* § 116(1).

117. *Id.* § 115(a)(2).

118. *Id.* § 116(2).

119. Adam Walsh Child Safety and Protection Act § 115(a)(3).

120. *Id.* § 116(3).

121. *Id.* § 122.

122. *Id.* § 111(8).

123. *Id.* § 111(8); *see also* 42 U.S.C. § 16911(8) (2006).

124. FAQ, *supra* note 103, at 17.

125. *Id.*; *see* 18 U.S.C. § 2241(a) (2006).

126. FAQ, *supra* note 103, at 17; *see* 18 U.S.C. § 2241(b).

127. FAQ, *supra* note 103, at 17; *see* 18 U.S.C. § 2241(c).

128. Adam Walsh Child Safety and Protection Act § 125(a).

registration and community notification programs have generally been defined and carried out through individual state statutes and entities.”¹²⁹ Prior to the Adam Walsh Act, states fell into three categories with regard to juveniles and statutory registration requirements: a number of states excluded juveniles from registration where the age of the victim was the only qualifying factor,¹³⁰ some states required juveniles to register according to adult standards,¹³¹ and other states included juveniles in the registry but left the decision to the discretion of a judge.¹³² A state’s compliance with the Adam Walsh Act limits the state to

129. Bowater, *supra* note 97, at 830.

130. *See* HAW. REV. STAT. § 846E-1 (West 2011) (excluding sexual conduct committed by a juvenile from the definition of a sex offense, for purposes of registration, where the conduct is only criminal because of the age of the victim); KY. REV. STAT. ANN. § 17.500(3)(b) (LexisNexis 2011) (“Conduct which is criminal only because of the age of the victim shall not be considered a criminal offense against a victim who is a minor if the perpetrator was under the age of eighteen (18) at the time of the commission of the offense.”); VT. STAT. ANN. tit. 13, § 5401(10)(B) (2011) (“A person who is convicted of any of the following offenses against a victim who is a minor, except that, for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered an offense for purposes of the registry if the perpetrator is under the age of 18 and the victim is at least 12 years old”).

131. N.J. STAT. ANN. § 2C:7-2(a)(1), (b)(2) (LexisNexis 2011); N.J. STAT. ANN. § 2C:7-5(a) (LexisNexis 2011). “New Jersey is an example of a state that required juveniles adjudicated delinquent of sexual offenses to register and submit to community notification to the same extent as adult sex offenders.” Bowater, *supra* note 97, at 832.

132. *See* ALA. CODE § 15-20-28(c) (LexisNexis 2011) (“Unless otherwise ordered by the sentencing court, the juvenile criminal sex offender shall not be subject to notification upon release.”); ARIZ. REV. STAT. § 13-3821(D) (LexisNexis 2011) (stating that “[t]he court may require a person who has been adjudicated delinquent for an act that would constitute [a sexual] offense . . . to register pursuant to this section” and that any registration shall terminate at age twenty-five); CONN. GEN. STAT. § 54-251(b) (2011) (a person under the age of nineteen may be exempted from the registration requirements where “registration is not required for public safety”); IND. CODE ANN. § 11-8-8-4.5(b)(2)(C) (West 2011) (requiring a court to find by clear and convincing evidence that the juvenile adjudicated delinquent is likely to repeat a sex offense in order to include a juvenile on the registry); IOWA CODE ANN. § 692A.103(3)-(5) (West 2011) (permits the juvenile court to waive registration based on a finding that the juvenile should not be required to register and permits a juvenile placed on the registry to motion for modification or suspension on a showing of good cause); MONT. CODE ANN. § 41-5-1513(1)(d)(ii) (2010) (the court may “[E]xempt the youth from the duty to register if the court finds that . . . registration is not necessary for protection of the public and that relief from registration is in the public’s best interest”); NEV. REV. STAT. § 62F.240 (2007) (repealed 2007) (granting discretion to the district court in determining whether a child adjudicated delinquent for a sexual offense need be subjected to community notification); N.H. REV. STAT. ANN. § 169-B:19(I)(k) (LexisNexis 2011) (requiring minors to register as a sex offender “until the juvenile reaches the age of 17 if the court finds that the minor presents a risk to public safety”); N.C. GEN. STAT. § 14-208.26(a) (2011) (“No juvenile may be required to register under this Part unless the court first finds that the juvenile is a danger to the community”); R.I. GEN. LAWS § 11-37.1-4(j) (2011) (“[I]f a juvenile is adjudicated delinquent [of first degree child molestation] or [second degree child molestation], the court shall assess the totality of the circumstances of the offense and if the court makes a finding that the conduct of the parties is criminal only because of the age of the victim, the court may have discretion to order the juvenile to register as a sex offender as long as the court deems it appropriate to protect the community and to rehabilitate the juvenile offender.”); VA. CODE ANN. § 9.1-902(G) (2006) (“Juveniles adjudicated delinquent shall not be required to register; however, where the offender is a juvenile over the age of 13 at the time of the offense who is tried as a juvenile and is adjudicated delinquent . . . of any offense for which

the sole option of requiring the mandatory registration of juveniles over the age of fourteen when a juvenile is adjudicated delinquent of the equivalent to an aggravated sexual offense, thus taking away the state's ability to allow for any discretion.¹³³ As aggravated sexual offenses include engaging in a sexual act with a child under the age of twelve,¹³⁴ juvenile offenders who are acting in response to their own victimization are put at risk of being required to register without any consideration of their history of victimization. While only fifteen states thus far have been recognized as having "substantially implemented" SORNA,¹³⁵ the movement of other states to achieve compliance with SORNA is apparent.¹³⁶ As more and more states go on to implement SORNA into their own registration and community notification statutes, the discretion of judges in requiring juvenile offenders to register as sex offenders will become merely a historical principle. SORNA compliance will ultimately create a ruthless system in which children are treated as adults regardless of their path to crime, even where that path includes their own sexual victimization.

B. Civil Commitment of Juvenile Sex Offenders

In recent years, several states have adopted statutes that require certain sex offenders to be "committed for an indefinite period of treatment after they have served their sentence."¹³⁷ Many of these civil commitment statutes apply

registration is required, the court may, in its discretion and upon motion of the attorney for the Commonwealth, find that the circumstances of the offense require offender registration."); WIS. STAT. § 301.45(1m) (2011) (stating that where a juvenile (1) did not engage in sexual intercourse by the use of force, or threat of force or violence, or (2) with a victim under twelve, where the juvenile had not attained the age of nineteen years and was within four years of age of the victim, and where "[i]t is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements," registration is not required).

133. Adam Walsh Child Safety and Protection Act § 111(8).

134. 18 U.S.C. § 2241(c) (2006).

135. See *Adam Walsh Child Protection and Safety Act*, NAT'L CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/default.aspx?tabid=12696> (last updated Oct. 27, 2011) (as of October 1, 2011, Alabama, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, South Carolina, South Dakota, Tennessee and Wyoming are the only eight states recognized as complying with SORNA).

136. See Act effective July 1, 2008, ch. 485, 2007 Nev. Laws 485 (codified as amended at NEV. REV. STAT. ANN. §§ 179D.010-850 (2007)) ("The Act also provides that the new uniform system of registration and community notification applies to juveniles who are at least 14 years of age and who have been adjudicated delinquent for committing certain sexual offenses. Section 56 of this bill repeals certain existing state laws which are inconsistent with such provisions of the federal law."); S.C. CODE ANN. § 23-3-490(D)(1)(c)-(e) (2010) (requiring that the information of a juvenile adjudicated delinquent for criminal sexual conduct with minors or engaging a child for sexual performance be available to the public through a registry and notification); WASH. REV. CODE ANN. § 9A.44.130 (West 2011) (making no distinction between adult and juvenile sex offenders in registration requirements).

137. Caldwell, *supra* note 47, at 107.

to adult and juvenile sex offenders alike.¹³⁸ Even more unsettling is one specific state statute that applies solely to the commitment of juvenile sex offenders.¹³⁹ Pennsylvania Act 21 allows court-ordered commitment for juveniles who (1) have been adjudicated delinquent of an act of sexual violence, as defined by the Act, (2) have been committed to an institution or facility based on an adjudication and remain there “upon attaining 20 years of age,” and (3) are “in need of involuntary treatment due to a mental abnormality or personality disorder . . . that makes the person likely to engage in an act of sexual violence.”¹⁴⁰ A mental abnormality is defined by this section as a “congenital or acquired condition of a person affecting the person's emotional or volitional capacity.”¹⁴¹ In order for a juvenile to be committed under this Act:

The court must decide if the juvenile suffers from a “mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes a person likely to engage in an act of sexual violence” by clear and convincing evidence. The statute also requires the court to balance the “protection of the public safety and the appropriate control, care and treatment” of the juvenile. If the evidentiary burden is met, and the balancing of the public's and the juvenile's needs require commitment, the order will require immediate confinement to a facility designated by the Department of Public Welfare for involuntary inpatient treatment.¹⁴²

The danger of committing juvenile sex offenders indefinitely,¹⁴³ when these juveniles may have mental abnormalities that fall short of mental illness,¹⁴⁴ is evident. Civil commitment becomes particularly dangerous when applied to juvenile offenders who have themselves been victimized. The definition of mental abnormality, including “acquired condition[s] . . . affecting [the juvenile's] emotional or volitional capacity,”¹⁴⁵ has the potential of encompassing victims of sexual abuse, casting a net catching juvenile sex offenders who have themselves been victimized.

The Jimmy Ryce Act, a federal law offering grants to states for the purpose of “establishing, enhancing, or operating effective civil commitment programs for sexually dangerous persons,”¹⁴⁶ encourages additional states to adopt civil

138. Caldwell, *supra* note 47, at 107.

139. 42 PA. CONS. STAT. ANN. § 6403 (West 2011); Caldwell, *supra* note 47, at 107.

140. 42 PA. CONS. STAT. ANN. § 6403(a).

141. *Id.* § 6402.

142. Kristine Bell, *Pennsylvania's Act 21: The Legal and Social Implications of Allowing the Juvenile System to Commit Sexual Offenders Indefinitely*, 27 J. JUV. L. 2006 56, 59 (alteration in original) (quoting 42 PA. CONS. STAT. ANN. § 6403(d)).

143. *See* 42 PA. CONS. STAT. ANN. § 6404. “The commitment periods are potentially indefinite due to the unlimited number of one-year terms.” Bell, *supra* note 142, at 60.

144. Bell, *supra* note 142, at 60.

145. 42 PA. CONS. STAT. ANN. § 6402.

146. Adam Walsh Child Safety and Protection Act of 2006 Pub. L. No. 109-248, § 301(a), 120 Stat. 587, 617-19 (codified as amended at 42 U.S.C. § 16971 (2006)). The Jimmy Ryce Act is within the Adam Walsh Act, under Title III: Civil Commitment of Dangerous Sex Offenders.

commitment statutes. This Act, like many of the existing state civil commitment statutes, does not distinguish between adult and juvenile sex offenders.¹⁴⁷ Instead, the Jimmy Ryce Act requires that state eligibility for this grant applies to juvenile sex offenders as well as adults.¹⁴⁸ As more states consider adopting civil commitment statutes for particularly dangerous sex offenders, the question of who is really being punished by the inclusion of juvenile sex offenders in such legislation should be considered.

III. THE DANGER OF APPLYING MANDATORY LONG-TERM PENALTIES TO JUVENILES

As penalties for juvenile sex offenders begin to mirror those targeting the most dangerous adult predators,¹⁴⁹ the need for protecting children who may become victims of sexual violence is apparent. What is less apparent is that these laws may also be targeting the very group that they are aimed at protecting. By including juveniles who sexually offend against their peers in registration and civil commitment statutes, long-term penalties are being applied to victims of sexual abuse who are acting in response to their own victimization. While not all juvenile sex offenders are themselves victims, ignoring the ones who are is extremely problematic when attaching long-term penalties without allowing for judicial discretion. Through the implementation of overbroad legislation, many victims of child sexual abuse will suffer a second victimization at the hands of the juvenile justice system.

A. Imposing Registration and Community Notification Requirements on Victims of Sexual Abuse

While the argument has been advanced that “SORNA requirements are non-punitive regulatory measures adopted for public safety purposes,”¹⁵⁰ the application of mandatory registration and community notification laws to juvenile sex offenders, who were themselves victimized, seems extremely punitive in nature. This is particularly true where treatment of juveniles that directly addresses their victimization could alleviate any public safety concerns through rehabilitation.¹⁵¹ The mandatory application of SORNA requirements

147. Adam Walsh Child Safety and Protection Act § 301(e)(2) (defining a sexually dangerous person as “a *person* suffering from a serious mental illness, abnormality, or disorder, as a result of which the individual would have serious difficulty in refraining from sexually violent conduct or child molestation.”) (emphasis added).

148. H.R. REP. NO. 109-218, pt. 1, at 25 (2005).

149. *Id.*

150. Applicability of the Sex Offender Registration and Notification Act, 75 Fed. Reg. 81849, 81851 (Dec. 29, 2010).

151. See Lorraine R. Reitzel & Joyce L. Carbonell, *The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta-analysis*, 18 SEXUAL ABUSE: J. RES. & TREATMENT 401, 408-09 (2006) (finding, through a comparison of several studies of juvenile sex

to victimized juvenile offenders falls clearly within the criticism advanced by opponents of applying mandatory registration and community notification to juveniles.¹⁵² They argue that such requirements are adverse to the rehabilitation requirement of the juvenile justice system.¹⁵³ Even these opponents have not yet addressed the dangers of applying such mandatory long-term penalties to victimized juveniles.

Under the SORNA provisions of the Adam Walsh Act, juveniles who are adjudicated for the offense of “engaging in a sexual act with a child under the age of [twelve],”¹⁵⁴ are required to register in accordance with SORNA.¹⁵⁵ Depending on the specific offense for which the juvenile is adjudicated, this registration could be required to remain on public websites¹⁵⁶ for anywhere from fifteen years to life.¹⁵⁷ In addition to the availability of specific information about the juvenile on a public website, including a photograph,¹⁵⁸ the information will be distributed in any location that the juvenile moves, gains employment, or attends school.¹⁵⁹ This means that a child adjudicated at age fourteen for engaging in a sexual act with a child under twelve would be identified as a sex offender upon arrival at college or when obtaining a job, even if the act leading to the registration was a reaction to the offender’s own childhood sexual victimization. This in itself predicts a grave future for all juvenile sex offenders; however, this tragic consequence is even more problematic for offenders who are themselves victims.

The dangers of applying SORNA to victimized juvenile offenders goes well beyond the mere long-term application of these laws, seemingly targeting victims of the most severe sexual abuse. It is clear that not all victims of child sexual abuse will go on to victimize others. Factors that seem to predict future offending include a close relationship with the perpetrator,¹⁶⁰ victimization by

offender treatment, that the sexual recidivism rate for juvenile offenders receiving treatment was 7.37% whereas the rate of recidivism for juveniles not participating in sex offender treatment was significantly higher at 18.93%). While not all sexually aggressive children have themselves been sexually victimized, sexually aggressive children who are truly coercive “are quite different from children who are simply reactive to their sexual abuse.” William N. Friedrich, *Foreword* to SHARON K. ARAJI, *SEXUALLY AGGRESSIVE CHILDREN: COMING TO UNDERSTAND THEM* at xiii, xiv (1997). The implication of this in treatment settings dictates that therapists should “think about sexually aggressive children as being in close proximity to their own victimization,” as focusing on their trauma is extremely important for lasting change. *Id.* at xv.

152. See Bowater, *supra* note 97, at 836 (opponents of mandatory registration and community notification as applied to juveniles include the American Bar Association and the Coalition for Juvenile Justice).

153. Timothy E. Wind, *The Quandary of Megan’s Law: When the Child Sex Offender is a Child*, 37 J. MARSHALL L. REV. 73, 116-17 (2003).

154. FAQ, *supra* note 103, at 17; See also 18 U.S.C. § 2241(c) (2006).

155. FAQ, *supra* note 103, at 17.

156. Adam Walsh Child Safety and Protection Act § 118(a).

157. *Id.* § 115(a).

158. *Id.* § 114(b)(4).

159. *Id.* § 121(b)(2) (registration information will be distributed to “each school and public housing agency, in each area in which the individual resides, is an employee or is a student”).

160. Burton et al., *supra* note 48, at 896.

a male perpetrator “due to the tendency of males to use greater force and thus reinforce learning,”¹⁶¹ a modus operandi that uses greater force,¹⁶² penetrative acts,¹⁶³ and finally, a younger age of onset and longer duration of abuse.¹⁶⁴ These factors demonstrate that the most severe abuse predicts future offending, causing some children, mostly adolescent boys, to “become sexually aggressive and victimize their peers or younger children.”¹⁶⁵ Where “the peak age for juvenile sexual offending appears to be fourteen years”¹⁶⁶ and child victims of sexual abuse perpetrate sexual offenses against their peers and younger children, SORNA provisions are unknowingly drawing a target on victims of the worst kind of sexual abuse. With this target in place, SORNA has hit a bull’s-eye, creating a law under which the punishment for victims of sexual abuse who abuse others goes well beyond a deserved sentence and treatment, creating lifelong implications for these children.

Not only are these lifelong implications excessive, they are also often unnecessary. Data on juvenile sex offenders indicates that adolescent sexual offending is typically transitory, as “few adolescents appear to have . . . long-term tendencies to commit sexual offenses.”¹⁶⁷ Not only are recidivism rates for adolescent sex offenders substantially lower than recidivism rates for other deviant acts, but they are lower in most treatment settings than those of adult sex offenders.¹⁶⁸ Most importantly, “[a]dolescent sex offenders are considered to be more responsive to treatment than adult sex offenders and do not appear to continue re-offending into adulthood, especially when provided with appropriate treatment.”¹⁶⁹ This demonstrates that with a proper focus on treatment, registration and community notification applied to juvenile sex offenders serves only to stigmatize juveniles who may never reoffend sexually, directly contradicting the purpose of the Adam Walsh Act.

B. Civil Commitment: A Potential Life Sentence for Sexual Abuse Victims

The civil commitment of juvenile sex offenders under Pennsylvania Act 21 allows for the involuntary commitment of juveniles, for an indefinite period of time, who meet three qualifications.¹⁷⁰ These qualifications seem to allow for

161. Burton et al., *supra* note 48, at 896.

162. *Id.*

163. *Id.* at 897.

164. *Id.*

165. Finkelhor & Browne, *supra* note 87, at 534.

166. Eric S. Janus & Emily A. Polachek, *A Crooked Picture: Re-Framing the Problem of Child Sexual Abuse*, 36 WM. MITCHELL L. REV. 142, 159-60 (2009).

167. *What Research Shows About Adolescent Sex Offenders*, NAT’L CTR. ON SEXUAL BEHAVIOR OF YOUTH (July 2003), <http://www.dshs.wa.gov/pdf/ca/NCSBYfactsheet.pdf>.

168. *Id.*

169. *Id.*

170. 42 Pa. Cons. Stat. Ann. § 6403(a) (West 2011) (Qualifications include: that the juvenile has been adjudicated delinquent of an act of sexual violence, that the sentence for this

the commitment of two types of juvenile offenders, particularly dangerous juvenile offenders and juveniles who offended as a response to their own victimization.

Childhood sexual abuse has numerous consequences for the victims. Among these consequences, as has been discussed throughout this note, is that the child may himself become a sexual offender,¹⁷¹ victimizing his peers or younger children,¹⁷² or be re-victimized sexually.¹⁷³ Another consequence is the development of psychopathologies, including depression, generalized anxiety disorders, panic disorder, and post-traumatic stress disorder (PTSD).¹⁷⁴ An explanation posited for the development of such mental disorders is that child sexual victimization “causes disruptions in the development of a child’s sense of self, leading to difficulty in relating to others, inability to regulate reactions to stressful events, and other interpersonal and emotional challenges that make psychiatric disorders more likely.”¹⁷⁵ These psychiatric disorders, developed as a result of sexual abuse in childhood, have the potential to fit within Pennsylvania Act 21’s definition of mental abnormality which includes “acquired condition[s] . . . affecting [the juvenile’s] emotional or volitional capacity.”¹⁷⁶ Thus, civil commitment under this statute has the potential of targeting juvenile sex offenders who were sexually victimized, creating a potential life sentence for sexual abuse victims.

IV. BETTER APPROACHES FOR JUVENILE SEX OFFENDERS

This note does not advance the position that juvenile sex offenders who have themselves been victimized are undeserving of just punishment. In fact, a key premise of the juvenile justice system is that the juvenile must be held accountable for his own actions.¹⁷⁷ There is no denying that the perpetration of sexual violence, even where the perpetrator is a victim of such violence, creates more victims. Thus, the focus of the juvenile justice system in

offense included committing the juvenile to a facility where the juvenile has remained upon reaching the age of twenty, and that the juvenile has “a mental abnormality or personality disorder . . . that makes the person likely to engage in an act of sexual violence.”)

171. Burton et al., *supra* note 48, at 894.

172. Finkelhor & Browne, *supra* note 87 at 534.

173. Aosved et al., *Sexual Revictimization and Adjustment in College Men*, 12 PSYCHOL. MEN & MASCULINITY 285, 285-86 (2011) (Noting that while studies of revictimization in men are sparse as compared to the same studies for female populations, preliminary statistics show that male child victims of sexual abuse are five times more likely to experience sexual abuse as an adult than male non-victims).

174. Beth E. Molnar et al., *Child Sexual Abuse and Subsequent Psychopathology: Results From the National Comorbidity Survey*, 91 AM. J. PUB. HEALTH 753, 753 (2001).

175. *Id.*

176. 42 PA. CONS. STAT. ANN. § 6402 (West 2011).

177. See *Focus on Accountability: Best Practices for Juvenile Court and Probation*, JUV. ACCOUNTABILITY INCENTIVE BLOCK GRANTS PROGRAM BULL. (Office of Juvenile Justice and Delinquency Prevention, U.S. Dep’t of Justice) Aug. 1999, at 1, available at <http://www.ncjrs.gov/pdffiles1/177611.pdf> (“[Y]oung people who violate the law need to be held accountable for their offenses.”).

addressing juvenile sex offenders should be a combination of appropriate punishment and rehabilitation. Unfortunately, long-term penalties applied to juvenile sex offenders with a past of sexual victimization do not serve this purpose.

Through state compliance with the Adam Walsh Act,¹⁷⁸ judicial discretion is eliminated, requiring judges to mandate compliance with registration and community notification standards in sentencing juvenile offenders. Applying this one size fits all approach to juvenile sex offenders has the unique disadvantage of punishing—for extended periods of time or even life—adolescents who act out sexually in response to their own victimization. Stigmatizing these children by publicly identifying them as sex offenders, without any consideration of their path to offending, has the effect of punishing victims for being victimized, and in essence, prevents the very children that these laws are meant to protect from living a life that is not tainted by their victimization. By empowering judges “to account for the juvenile sex offender’s sense of remorse, risk assessment, likelihood of re-offense, and response or likely response to treatment in determining whether [registration and] community notification [are] necessary,”¹⁷⁹ this consequence of victimization can be averted.

Permitting judicial discretion at the sentencing phase, especially when deciding whether an adolescent offender should be required to register, allows a judge to consider the juvenile’s history of victimization. An even more protective model of judicial discretion would require a “special certification hearing before a juvenile court judge in cases of serious sex crime[s] where the juvenile court retains jurisdiction, but to require that the prosecution establish [certain criteria] before registration is required.”¹⁸⁰ While the juvenile’s history of sexual victimization alone should not always prevent a judge from requiring the juvenile to register, it is a factor that must be considered in order to prevent the unnecessary punishment of victimized juveniles who are likely to respond well to treatment.

In addition to amending the Adam Walsh legislation to allow for judicial discretion when requiring juveniles to register as sex offenders, alternatives to registration and community notification for juvenile offenders should be generated and implemented to protect juveniles who have themselves been victimized. One example of an alternative to registration and community notification is conditional record sealing.¹⁸¹ Under this strategy, juveniles would not be required to register upon adjudication of a sex offense, but the

178. Though not mandated, states must comply with the Adam Walsh Act and SORNA in order to receive certain federal funding. *See* FAQ, *supra* note 103, at 4, 5.

179. Bowater, *supra* note 97, at 849.

180. ZIMRING, *supra* note 45, at 154. This type of proceeding, in which the prosecution bears the burden of proof, would likely be restricted to more dangerous juvenile sex offenders, including recidivists or extremely predatory offenders. *Id.*

181. *Id.*

juvenile's records of adjudication would be available to law enforcement if that offender perpetrates a sex offense as an adult.¹⁸² This approach, while well in line with the goals of juvenile registry,¹⁸³ would keep numerous low-risk juveniles from "permanent stigma."¹⁸⁴ Through a combination of innovative alternatives to juvenile registration and preventative and rehabilitative efforts,¹⁸⁵ the juvenile justice system has the potential to protect the public from the danger of sex offenders without sacrificing the future of juveniles who have been victimized.

V. CONCLUSION

The cycle of sexual violence, in which adolescents who were sexually victimized go on to commit sex offenses against their peers or younger children, has been substantially overlooked by the legal community. Child victims of sexual abuse are not a rarity in this country, creating a sad reality with serious consequences for every victim. One of these consequences lies in the application of mandatory long-term penalties to child victims who become juvenile sex offenders as a result of their victimization. Subjecting these juvenile sex offenders to mandatory long-term penalties intended for the most dangerous adult offenders is not only excessive punishment, but it is unnecessary to the purpose of public safety that this legislation purports to promote.

The Adam Walsh Act has created one such mandatory long-term penalty by eliminating judicial discretion in applying registration and community notification standards to juvenile offenders. By eliminating judicial discretion in the application of registration and community notification to juvenile sex offenders, the possibility that these juveniles are responding to their own victimization is ignored. In order to avoid the long-term stigmatization of sexually abused children as dangerous sex offenders, the Adam Walsh Act

182. ZIMRING, *supra* note 45, at 154. Zimring's proposal of conditional record sealing provides a potential solution to concerns of proponents of mandatory registration for juvenile sex offenders, who argue that the sex offender registry "has to cover a broad enough spectrum of offenders" in order to protect the public by creating a behind the scenes registry. Jones, *supra* note 46, at 38-39. By allowing law enforcement to access records of juveniles adjudicated of a sex offense only where that juvenile "has been convicted of a sex felony as an adult," low-risk juveniles are not subjected to the dangers of the registry while career offenders "who would be able to hide official records behind the protective policies of juvenile justice would fast approach zero." ZIMRING, *supra* note 45, at 154.

183. *See* H.R. REP. NO. 109-218, pt. 1, at 25 (2005) (indicating that the goal of the Adam Walsh Act is the protection of victims, which overrides concerns of protecting the identities of juvenile sex offenders).

184. ZIMRING, *supra* note 45, at 154.

185. *See* Janus & Polachek, *supra* note 166, at 166-67 (three levels of intervention must be used to reduce the instance of sexual abuse: (1) primary intervention, in which sexual abuse will be prevented proactively through the education of children and the training of child-protective workers to identify risk factors, (2) secondary intervention, which focuses on those individuals most likely to re-offend, and (3) tertiary intervention, which focuses on preventing or reducing recidivism for those with a history of offending). *Id.* at 167.

should be amended to permit for judicial discretion that considers the offender's status as a victim. It is also necessary to consider alternatives to mandatory registration, such as conditional record sealing and intervention strategies. Other long-term penalties that equate juvenile and adult sex offenders, specifically civil commitment, must also be acknowledged as dangerous in having the potential to provide a life sentence for juvenile sex offenders who offend in response to their own victimization.

The reality is that not all juvenile sex offenders have themselves been victimized and that not all children who have been sexually abused go on to commit offenses as juveniles. However, the possibility that certain juvenile offenders are caught in the cycle of sexual violence must factor into whether such severe penalties are applied to juvenile sex offenders across the board. Existing long-term penalties that fail to consider the status of certain juvenile sex offenders as victims of sexual abuse punishes these children for the effects of their victimization, making their application to victimized offenders inherently unjust and often unnecessary.