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NOTE

ARE CHILD SEX OFFENDERS TRULY PREDATORS? PROPOSED CHANGE TO THE MINNESOTA LEGISLATURE REQUIRING MANDATORY SEX OFFENDER REGISTRATION FOR JUVENILES

MACKENZIE SEDLACK*

INTRODUCTION

Herbert and Candi Stevens met at an ice-skating rink when Herbert was fourteen and Candi was twelve years old.¹ The two began spending more time together, going to the movies, attending school dances, and hanging out with each other in groups of friends.² The young children began dating and continued to date until they were married. They are now celebrating their twenty-first wedding anniversary this year.³ The couple bought a house and have three children together.⁴ There was a wrinkle in their relationship, however. Candi's stepfather did not approve of this young relationship. When Candi was fifteen and Herbert was seventeen, Candi's mother and stepfather called the police, and Herbert was arrested and charged with statutory rape.⁵ Herbert was convicted due to Candi's status as a minor child and was sentenced to serve time in prison at age seventeen.⁶ Upon his release, Herbert was required to register as a predatory offender.⁷

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1. See Riya Saha Shah, *Juvenile Law Center and SPLC Sue Alabama Officials to Remove Sex Offender Label for Children*, JUV. L. CTR. BLOG (Sept. 19, 2019), <https://jlc.org/news/juvenile-law-center-and-splc-sue-alabama-officials-remove-sex-offender-label-children>.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Shah, *supra* note 1.

Juvenile sex offenders account for roughly 3.1 percent of all juvenile offenders.⁸ Of the small number of offenses, most juvenile sex offenses are non-violent, with 88 percent of victims having no injury.⁹ Studies collectively show that juvenile sex offender recidivism is “exceptionally low” with a rate of 3–5 percent.¹⁰ This rate drops significantly as time goes on.¹¹ In the rare occasion a re-offense would occur, it is typically within the first few years.¹² Juvenile sex offenders consistently have no subsequent arrests for sex crimes.¹³ In contrast, adult sexual re-offense is more likely as time goes on; 20 percent after ten years and 24 percent after fifteen years.¹⁴ Studies consistently show that juveniles are not high-risk predatory offenders.¹⁵ Juveniles quickly learn that their sexual curiosity and acting out in response to that curiosity is wrong. The trouble of going through the court process seems to be enough deterrence for most children.¹⁶ Studies have shown that requiring youth to register as a sex offender does not reduce their already low recidivism rates.¹⁷

Minn. Stat. § 243.166 requires juveniles and adults to register as a predatory offender if they have been charged with or convicted of a felony-level sexual offense.¹⁸ The sex offender registry was created to protect young children and the community, however the inclusion of juvenile offenders, with a low risk of re-offense, has the opposite effect.¹⁹ Juvenile offenders suffer a host of collateral consequences from “social stigma, branding as predators, housing bans and exclusion from schools.”²⁰ Forced registration can also limit treatment options these juveniles can receive.²¹

8. See David Finkelhor, Richard Ormrod & Mark Chaffin, *Juveniles Who Commit Sex Offenses Against Minors*, OFF. OF JUV. JUST. AND DELINQ. PREVENTION, U.S. DEP'T OF JUST. 3–4 (Dec. 2009), <https://www.ncjrs.gov/pdffiles1/ojdp/227763.pdf>.

9. *Id.* at 7.

10. See Riya Saha Shah, *Five Facts About Juvenile Sex Offender Registration*, A.B.A. (Dec. 5, 2018), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2018/five-facts-about-juvenile-sex-offender-registration>.

11. *Id.*

12. *Id.*

13. See Finkelhor, Ormrod & Chaffin, *supra* note 8, at 3.

14. See *Adult Sex Offender Recidivism*, OFF. OF SEX OFFENDER SENT'G, MONITORING, APPREHENDING, REGISTERING, AND TRACKING (SMART) (May 2017), <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/adultsexoffenderrecidivism.pdf>.

15. See Shah *supra* note 10; Finkelhor, Ormrod & Chaffin, *supra* note 8; *Adult Sex Offender Recidivism*, *supra* note 14.

16. See Zoom Interview with Tracy Reid, Pub. Def., Hennepin Cnty., Minn. (May 20, 2020).

17. See Shah, *supra* note 10.

18. MINN. STAT. § 243.166 (2020) (amended 2021).

19. See Ashley Nellis, *Addressing the Collateral Consequences of Convictions for Young Offenders*, NACDL: THE CHAMPION, July–Aug. 2011, at 20, 24.

20. *Id.* at 24.

21. *Id.*

The Minnesota courts have asked the legislature on more than one occasion to amend this law, to no avail.²²

Minn. Stat. § 260C.503, subd. 2(6) imposes an additional, unintended, and widely unknown collateral consequence on registered juveniles. This child protection statute mandates the Department of Human Services to ask the County Attorney to file a termination of parental rights petition on a parent who is convicted of an adult or juvenile offense that requires predatory registration.²³ Adults who may still be on the registry due to offenses committed as a juvenile can potentially have their parental rights terminated for an offense they committed before even becoming a parent. There is a strong correlation that, for males, getting married and finding stable, consistent employment promotes a reduction in offending.²⁴ This is an unnecessary, additional collateral consequence, and the statute should be revised to eliminate the inclusion of offenses committed as a juvenile.

Juveniles differ from adults in many ways. They differ physically, mentally, developmentally, psychologically, legally, and socially.²⁵ Juvenile court was created to address and recognize these stark differences, yet some statutes, such as Minn. Stat. § 243.166, have failed to differentiate juveniles from adults. The Supreme Court of the United States has also recognized that these developmental differences need to be considered when applying long-lasting adult punitive measures to juveniles.²⁶ The reasonings behind these Supreme Court decisions should be considered and applied to the adult registration standards as applied to juvenile offenders. As such, Minn. Stat. § 243.166 should be revised to completely remove juveniles from the registration requirement. If the Minnesota Legislature is unable to be convinced of complete removal of the juvenile registration requirement, there must be a modification to allow for individualized consideration and discretion by removing the mandatory language of the statute as applied to juvenile offenders. Alternatively, at a minimum, an exception to Minn. Stat. § 260C.503, subd. 2(6) must be made to remove this unintended and unnecessary collateral consequence.

22. See *In re Welfare of J.S.K.*, No. C5-02-388, 2002 WL 31892086, at *3 (Minn. Ct. App. Dec. 31, 2002).

23. See MINN. STAT. § 260C.503, subd. 2(a)(6) (2020).

24. See *From Youth Justice Involvement to Young Adult Offending*, NAT'L INST. OF JUST. (Mar. 10, 2014), <https://nij.ojp.gov/topics/articles/juvenile-delinquency-young-adult-offending>.

25. See BARRY C. FELD & PERRY L. MORIEARTY, *CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION* 94–103 (5th ed. 2018).

26. See *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012).

- I. MINN. STAT. § 243.166 SHOULD BE CHANGED TO EXCLUDE JUVENILE REGISTRATION BECAUSE (A) JUVENILES ARE DISPROPORTIONATELY AFFECTED IN COMPARISON TO ADULTS BY THE DAMAGING COLLATERAL CONSEQUENCES AND (B) JUVENILE REGISTRATION ADDITIONALLY IMPOSES AN UNINTENDED COLLATERAL CONSEQUENCE IN MINN. STAT. § 260C.503, SUBD. 2(6).

In Minnesota, juveniles are required, just like adult offenders, to register as a predatory offender for felony-level sex offenses.²⁷ Minn. Stat. § 243.166 states:

Subd. 1b. Registration Required. (a) A person shall register under this section if:

- (1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or adjudicated delinquent for that offense or another offense arising out of the same set of circumstances. . . (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345; 609.3451, subdivision 3; or 609.3453;

Subd. 6. Registration Period.

(a) . . . a person required to register under this section shall continue to comply with this section until ten years have elapsed since the person initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, whichever occurs later.

(b) If a person required to register under this section fails to provide the person's primary address . . . fails to comply with the requirements of subdivision 3a [procedure for lack of primary address], fails to provide information as required by subdivision 4a [consent for release of information], or fails to return the verification form referenced in subdivision 4 within ten days, the commissioner of public safety shall require the person to continue to register for an additional period of five years. This five-year period is added to the end of the offender's registration period.

There are two main problems with including juveniles in the registration statute. The first is that this statute treats juvenile and adult sex crimes, and subsequent registration, in the same manner. Juvenile sex crimes are often non-violent and motivated by impulsivity, sexual curiosity, or mimicry of what has been done to them, not sexual deviance or malice.²⁸ Adult sex crimes are often motivated by anger, a desire for power, pedophilia, or predatory-psychopathic characteristics.²⁹ Juvenile and adult sex crimes are not the same. The second problem is that juveniles are disproportionately affected by the collateral consequences of registration.

27. See MINN. STAT. § 243.166 (2020) (amended 2021).

28. See Shah, *supra* note 10.

29. See Shah, *supra* note 10.

- A. *Minn. Stat. § 243.166 (1) incorrectly holds juvenile and adult offenders to the same standard (2) creating collateral consequences that disproportionately affect juvenile sex offenders who are required to register.*

Roughly 35 percent of sex offenses against minors are committed by other minors.³⁰ As shown in Herbert's story, some of these sex crimes are simply status offenses. There is no violence or non-consensual acts; only the status as a minor is the basis for the offense. Other offenses are committed by offenders who often have experienced trauma in their own lives from maltreatment, exposure to violence, or even sexual abuse.³¹ A history of sexual abuse is prevalent among youth with sexual behavior problems.³² A juvenile prosecutor for Ramsey County, Minnesota, reported that there are common characteristics of offenders and victims in juvenile sex crimes.³³ A female is often the victim.³⁴ Female victims are usually "acting in" and struggle internally with eating disorders, depression, anxiety, or some serious emotional issue.³⁵ Ninety-three percent of offenders are male³⁶ and typically "act out," repeating actions that have previously been done to them onto others.³⁷ In light of these facts, motivation for juvenile sex offenses is often driven by impulsivity and sexual curiosity, not sexual deviance, predatory desires, or malice.³⁸ As juveniles mature, their impulsivity decreases, and they gain a better understanding of their sexuality. As a juvenile matures, these inappropriate sexual behaviors stop.³⁹

1. *Juveniles and adults are treated differently in society and in the justice system, and predatory registration should not be an exception.*

There is a reason a separate juvenile court exists. Juveniles are different from adults and should not be treated equally in terms of criminal conviction and punishment. The original intent of juvenile court was to determine the needs of the child and provide guidance and rehabilitation instead of just adjudicating criminal conduct.⁴⁰ Juvenile court was a means to recognize the difference in culpability, impulsivity, and youthfulness of juvenile offenders versus adult offenders and to protect delinquent juveniles

30. See Finkelhor, Ormrod & Chaffin, *supra* note 8, at 1.

31. See Finkelhor, Ormrod & Chaffin, *supra* note 8, at 3.

32. See Finkelhor, Ormrod & Chaffin, *supra* note 8, at 3.

33. Interview with Kathryn Richtman, Juv. Prosecutor, Ramsey Cnty., Minn. (Sept. 15, 2020).

34. *Id.*

35. See *id.*

36. See Finkelhor, Ormrod & Chaffin, *supra* note 8, at 2.

37. See Interview with Kathryn Richtman, *supra* note 33.

38. See Shah, *supra* note 10.

39. See Shah, *supra* note 10.

40. See FELD & MORIEARTY, *supra* note 25, at 84.

from the “destructive punishments of the [adult] criminal justice system.”⁴¹ Juveniles benefit from the developmentally appropriate services, programs, and resources available to them in juvenile court.⁴²

Juveniles differ from adults in many ways, but Minn. Stat. § 243.166 fails to differentiate juveniles from adults. Developmental psychology has examined the distinctions between juvenile and adult criminal culpability.⁴³ Most juvenile delinquents do not become adult criminals, “because their youthful choices are shaped by factors and processes that are peculiar to (and characteristics of) adolescence.”⁴⁴ Studies have shown that adolescents are less competent decision-makers by nature.⁴⁵ Their capacity for autonomous choice, self-management, self-control, risk-assessment, perception, and the ability to identify future consequences of their actions are deficient in comparison to adults.⁴⁶ Emotions influence a youth’s decision-making more so than in adults.⁴⁷ This contributes to a juvenile’s less effective decision-making and self-control.⁴⁸ “Self-control requires the ability to think before acting, to choose between alternatives, and to interrupt a course in motion.”⁴⁹ Sixteen and seventeen-year-olds may have similar reasoning and understanding to adults, but their ability to “exercise mature judgement and control impulses” can take several more years to master.⁵⁰

Additionally, juveniles are more susceptible to peer pressure and their social context when compared to adults.⁵¹ This peer pressure can be direct or indirect.⁵² Juveniles may behave a certain way in response to direct peer pressure, such as engaging in drug use with peers or drinking an alcoholic beverage handed to them, even though they are underage. They are put in a place of having to make a quick decision which will be tainted by their immature judgment and their lack of perception of risk and future consequences.⁵³ Juveniles can also be susceptible to indirect peer pressure. Indirect peer pressure is often a desire for peer approval and fear of peer rejection.⁵⁴ Youth desire to fit in among their peers is greatly influenced by

41. See FELD & MORIEARTY, *supra* note 25, at 51.

42. See Nicole Scialabba, *Should Juveniles Be Charged as Adults in the Criminal Justice System?*, A.B.A. (Oct. 3, 2016), <https://www.americanbar.org/groups/litigation/committees/child-rens-rights/articles/2016/should-juveniles-be-charged-as-adults>.

43. See FELD & MORIEARTY, *supra* note 25, at 95.

44. FELD & MORIEARTY, *supra* note 25, at 95.

45. FELD & MORIEARTY, *supra* note 25, at 95.

46. FELD & MORIEARTY, *supra* note 25, at 95.

47. FELD & MORIEARTY, *supra* note 25, at 705.

48. FELD & MORIEARTY, *supra* note 25, at 705.

49. FELD & MORIEARTY, *supra* note 25, at 705.

50. FELD & MORIEARTY, *supra* note 25, at 705.

51. FELD & MORIEARTY, *supra* note 25, at 97.

52. FELD & MORIEARTY, *supra* note 25, at 97.

53. FELD & MORIEARTY, *supra* note 25, at 96.

54. FELD & MORIEARTY, *supra* note 25, at 96.

dopamine neurotransmitters, the reward center of the brain.⁵⁵ The reward-seeking and emotional-stimulus parts of the brain develop sooner than the areas of the brain that regulate executive function and impulse control.⁵⁶ This greater influence and sensitivity in juveniles contributes to riskier behavior.⁵⁷ These are normal developmental characteristics that play a role in a juvenile's decision-making, participation in risky behaviors, and motivation for their criminal conduct.⁵⁸

Character development also influences a juvenile's decision-making. Adolescents are trying to form their character, personality, and identity through trial and error, with both positive experiences and mistakes.⁵⁹ Some of these mistakes may be run-ins with the legal system for criminal behavior. Juveniles learn and grow by imitating adults, peers, and other prominent influences in their lives.⁶⁰ If juveniles are surrounded with negative influences, sometimes at no fault of their own, they copy the negative and sometimes criminal behavior they observe in their surrounding environment, not knowing it is wrong. These characteristics align with juvenile sex crimes.⁶¹ Most juveniles commit these crimes not out of malice but out of experimentation or by treating others how they have been treated.⁶²

The Supreme Court of the United States has applied these developmental behavioral differences to juvenile case law. *Roper v. Simmons*,⁶³ *Graham v. Florida*,⁶⁴ and *Miller v. Alabama*⁶⁵ are landmark Supreme Court juvenile cases that all came to the same conclusion—juveniles should not be treated the same as adults in terms of criminal punishment. *Roper* paved the way for the consideration of fundamental differences between juvenile and adult offenders.⁶⁶ In 2005, the Supreme Court held that the execution of a juvenile offender is cruel and unusual punishment forbidden by the Eighth Amendment of the Constitution.⁶⁷

The Court in *Roper* identified three general differences between juvenile offenders under eighteen and adults.⁶⁸ The first difference is that juveniles have a “lack of maturity and an underdeveloped sense of responsi-

55. See Erin Walsh, *Dopamine and the Teenage Brain*, SPARK & STICH INST. (Nov. 1, 2016), <https://sparkandstichinstitute.com/dopamine-and-the-teenage-brain>.

56. See FELD & MORIEARTY, *supra* note 25, at 705.

57. See FELD & MORIEARTY, *supra* note 25, at 705.

58. See FELD & MORIEARTY, *supra* note 25, at 95.

59. See FELD & MORIEARTY, *supra* note 25, at 95.

60. Rick Nauert, *Modeling Behavior for Children Has Long-Lasting Effects*, PSYCHCENTRAL (May 27, 2018), <https://psychcentral.com/news/2018/05/27/modeling-behavior-for-children-has-long-lasting-effects/14139.html>.

61. See Finkelhor, Ormrod & Chaffin, *supra* note 8.

62. See Finkelhor, Ormrod & Chaffin, *supra* note 8.

63. *Roper v. Simmons*, 543 U.S. 551 (2005).

64. *Graham v. Florida*, 560 U.S. 48 (2010).

65. *Miller v. Alabama*, 567 U.S. 460 (2012).

66. See *Roper*, 543 U.S. at 551.

67. *Id.*

68. *Id.* at 569.

bility.”⁶⁹ This underdevelopment leads to more reckless and impulsive decisions and behaviors. “Adolescents are overrepresented statistically in virtually every category of reckless behavior.”⁷⁰ In recognition of the immature and irresponsible behavior most juveniles exhibit, a juvenile’s conduct is not as “morally reprehensible as that of an adult.”⁷¹ The Court pointed out that state prohibitions on voting and the ability to serve on a jury are also in effect because of a juvenile’s immaturity.⁷²

The second difference is that juveniles are “more vulnerable and susceptible to negative influences and outside pressures, including peer pressure.”⁷³ Juveniles cannot be expected to act in the same manner as an adult would be expected to act in an identical situation. Youth are often restricted on where they can go, where they can live, and how they can support themselves because they are dependent on their parent or guardian. Society expects adults to care for themselves but does not expect the same from children. If a child lives in a high crime neighborhood, surrounded by negative influences, they cannot pick up and move out as we would expect an adult to do.⁷⁴ Juveniles have “less control, or less experience with control, over their own environment.”⁷⁵

The third difference the Court pointed out is that a juvenile’s character is not yet fully-formed or developed as an adult’s character is. “The personality traits of juveniles are more transitory, less fixed.”⁷⁶ Juveniles’ moral characters are not fully-developed. A heinous crime committed by an adult supports evidence of depraved character, but the Court held that the same could not be said for a heinous crime committed by a juvenile.⁷⁷ The immature thought processes and underdevelopment of personal identity and character, as identified by scientific studies and recognized by the Supreme Court, are also the underlying reasons why psychiatrists are forbidden from diagnosing any patient under the age of eighteen with antisocial personality disorder, among other psychological disorders.⁷⁸ The failings of a juvenile cannot be compared to the failings of an adult. Juveniles shows greater promise and possibility that their “character deficiencies” can and will be reformed.⁷⁹ The Supreme Court concluded that, because juveniles lack maturity and are impulsive, they are more susceptible to negative outside influ-

69. *Id.*

70. *Id.*

71. *Id.* at 553.

72. *See Roper*, 543 U.S. at 569.

73. *Id.*

74. *See FELD & MORIEARTY*, *supra* note 25, at 99.

75. *Roper*, 543 U.S. at 569.

76. *Id.* at 570.

77. *Id.*

78. *See id.* at 573–74.

79. *Id.* at 570.

ence.⁸⁰ Because a youth's character is not fully formed, juveniles are less culpable than adults and cannot be punished as an adult's equal.⁸¹

Graham held that imposing a life sentence without the possibility of parole for a juvenile convicted of a nonhomicide offense was cruel and unusual punishment under the Eighth Amendment.⁸² The majority came to this decision by contemplating if a life sentence without the possibility of parole for a juvenile who committed a nonhomicide offense was proportional to the crime and the offender.⁸³ Eighth Amendment cases that have addressed the proportionality of sentences generally fall into two categories. The first category includes cases that challenge whether the length of a term-of-years sentence is proportional given all the circumstances in the particular case.⁸⁴ The Court looks at the severity of the offense and the sentence others convicted of a similar crime have received in the same jurisdiction as well as other jurisdictions.⁸⁵ The second category includes cases in which the Court implements the proportionality standard by certain categorical restrictions on the death penalty.⁸⁶ This second category looks at two underlying factors—the nature of the offense and the characteristics of the offender. *Graham* was the first to challenge a length of a term-of-years sentence based on categorical restrictions.⁸⁷ The Court recognized that consideration of a defendant's age and youthful characteristics is imperative and relevant to the Eighth Amendment. Failure to take a "defendant's youthfulness into account would be flawed."⁸⁸ Again, just as in *Roper*, the Court looked at a juvenile's lessened culpability and decreased "moral reprehensibility."⁸⁹ These cases are distinguishable because the Supreme Court has recognized that juveniles and adults are different.⁹⁰ Under the Eighth Amendment, these differences in human attributes must be respected even for those who have committed serious crimes.⁹¹

2. *Juveniles required to register as a predatory offender are disproportionately affected by the collateral consequences of registration.*

Juvenile registration is a disproportional punishment that has lasting effects. From a practical standpoint, registration requirements would be dif-

80. *Id.* at 571.

81. *See Roper*, 543 U.S. at 571.

82. *See Graham v. Florida*, 560 U.S. 48, 81–82 (2010).

83. *Id.* at 82.

84. *Id.* at 59–60.

85. *Id.* at 60.

86. *Id.* at 59.

87. *Id.* at 61.

88. *Graham*, 560 U.S. at 76.

89. *Id.* at 68.

90. *See Roper v. Simmons*, 543 U.S. 551, 551 (2005); *Graham*, 560 U.S. 48; *Miller v. Alabama*, 567 U.S. 460 (2012).

91. *Graham*, 560 U.S. at 59.

difficult for a juvenile to comply with. Juveniles are, until at least the age of sixteen, entangled in a “web of legal restrictions” which prevents them from acting in a capacity we would expect an adult to act in the same context.⁹² Individual cities and counties throughout Minnesota create sex-offender residency restrictions.⁹³ Throughout Minnesota, approximately ninety localities have adopted “ordinances with varying degrees of residency restrictions” for sex offenders.⁹⁴ The ordinances have “effectively made large swaths of the state off-limits to many offenders who have already served their prison terms.”⁹⁵ Most ordinances prohibit offenders from living within a certain distance of schools, parks, churches, playgrounds, and daycare centers.⁹⁶ If a juvenile is required to register as an offender, their family may have to uproot and move to comply with their child’s new registration requirements, assuming they even have the financial means to do so. A juvenile cannot be expected to find a new place to live on their own as an adult may be able to.

In twenty-five percent of juvenile sex offenses, a sibling or family member is the victim of the offense.⁹⁷ This leaves the family to face potential removal or incarceration of the offending juvenile and/or the removal of the sibling or familial victim.⁹⁸ The offender and victim living in the same home would violate the registration requirements, even if the siblings are no longer a danger to one another.

In college and as young adults, moving from place-to-place is common. Most eighteen-year-olds are still renting and have not established a permanent address for themselves. It is likely that in college alone, someone will move at least twice. In addition to city ordinances with imposed residential restrictions, the Sex Offender Registration and Notification Act (SORNA) requires an offender to update their registration in each jurisdiction they may reside, be employed, or attend school.⁹⁹ The Minnesota statute also requires an offender to update their primary address every time they move, and failure to do so results in an additional five years of registration.¹⁰⁰ Practically speaking, this can be a daunting task and unnecessary punishment for an adult, let alone a juvenile, leaving them vulnerable to

92. FELD & MORIEARTY, *supra* note 25, at 99.

93. See Chris Serfes, *Minnesota Sex Offenders Sue Over Residency Restrictions in Apple Valley*, STAR TRIB. (Feb. 13, 2020), <https://www.startribune.com/minnesota-sex-offenders-sue-over-residency-restrictions-in-apple-valley/567841772>.

94. *Id.*

95. *Id.*

96. *Id.*

97. See Finkelhor, Ormrod & Chaffin, *supra* note 8, at 2, 5.

98. *Families of Juvenile Sex Offenders*, AM. ASS’N OF MARRIAGE AND FAM. THERAPY, https://www.aamft.org/Consumer_Updates/Families_of_Juvenile_Sex_Offenders.aspx (last visited Mar. 14, 2022).

99. *Sex Offender Registration and Notification Act (SORNA)*, U.S. DEP’T OF JUST. (May 28, 2020), <https://www.justice.gov/criminal-ceos/sex-offender-registration-and-notification-act-sorna>.

100. MINN. STAT. § 243.166, subd. 6(b) (2020) (amended 2021).

easily getting stuck in the registration system for administrative errors rather than a subsequent sex offense.

Sex offender registration is a strict and harsh consequence for youth with extremely low recidivism rates. Although it is rare, in the event that a sexual re-offense does occur among youth, it is likely to happen in the first few years of the original offense, with the likelihood declining as time goes on.¹⁰¹ Requiring juveniles to register for a minimum of ten years puts unnecessary, non-predatory, and non-dangerous people into the database, clogging it and detracting from adult offenders who are almost four times more likely to reoffend as time goes on.

Being a “predatory offender” creates a stigma that lasts beyond your time on the registry. The California Supreme Court recognizes that “although the stigma of a short jail sentence should eventually fade, the ignominious badge carried by the convicted sex offender can remain for a lifetime.”¹⁰² The label “sex offender” relays a message that the juvenile is a dangerous person. The collateral consequences of juvenile registration can punish young people for decades, if not their entire lifetime, after they have been through the justice system and have completed their registration requirements. This does not accomplish the rehabilitative goal that society has set out for juvenile offenders in the justice system.

Minnesota courts have “invited the legislature to reassess the ‘prudence’ of requiring all juvenile offenders (especially very young offenders) adjudicated delinquent for criminal sexual conduct to register as sex offenders. . . . But the legislature has not yet accepted [their] invitations.”¹⁰³ The courts have asked for help, and it is well past due for the legislature to act. Courts will continue to be bound with imposing “long-term collateral consequences [that] are inconsistent with the rehabilitative goals of juvenile court” if the registration statute is not addressed.¹⁰⁴

Registration was designed to assist law enforcement, not to be imposed as a punitive sanction.¹⁰⁵ Unfortunately, this is not how registration is executed in reality. Registration laws “stigmatize and isolate the very children they were designed to protect, forcing youthful indiscretions to follow children into adulthood.”¹⁰⁶ A 2008 study found “no measurable difference in recidivism rates for registered and unregistered children who committed sexual offenses.”¹⁰⁷ In reality, “recidivism rates among youth who have

101. Shah, *supra* note 10.

102. *In re Welfare of C.D.N.*, 559 N.W.2d 431, 434 (Minn. Ct. App. 1997).

103. *In re Welfare of J.S.K.*, No. C5-02-388, 2002 WL 31892086, at *3 (Minn. Ct. App. Dec. 31, 2002).

104. *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 249 (Minn. Ct. App. 2002).

105. *See In re Welfare of C.D.N.*, 559 N.W.2d at 434.

106. *Ending the Abusive Practice of Placing Children on Sex Offender Registries*, CTR. ON YOUTH REGISTRATION REFORM, <https://impactjustice.org/impact/center-on-youth-registration-reform> (last visited Dec. 2, 2020).

107. Shah, *supra* note 10.

committed a sexual offense are *lower* in states that do not register youth.”¹⁰⁸ Children who are not required to register do not bear the badge of being stigmatized as a dangerous sexual predator. These children can be held responsible for their actions as they go through the juvenile court process and learn from their mistakes.

Registration does not create a deterrent effect for juveniles.¹⁰⁹ The Court in *Roper* recognized that “the absence of evidence of [a] deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence.”¹¹⁰ The Court concluded that because the imposition of the death penalty did not deter juveniles, there was no justification to impose this harsh punishment on youth.¹¹¹ A similar rationale should be applied to juveniles required to register as predatory offenders. While registration is not a sentencing structure, it is a consequence of an offense that poses a sentence-like punishment. For the next ten years, at a minimum, a child with little to no likelihood of re-offense, who is merely charged with and possibly not even adjudicated delinquent¹¹² of an offense that requires registration, will be entangled in a web of legal formalities and restrictions. This youth is now subject to a registration that stigmatizes and keeps the youth tied to the justice system for a minimum of ten years while this youth attempts to continue to grow, mature, and become a productive member of society.

Minn. Stat. § 243.166 should be revised to remove the requirement of registration for adjudicated juveniles. This would reflect the numerous studies and court holdings that juveniles are characteristically different from adults. Minn. Stat. § 243.166, subd. 1b should read:

Subd. 1b. Registration Required. (a) a person shall register under this section if:

(1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and *convicted in adult court* of that offense or another offense arising out of the same set of circumstances.

108. Shah, *supra* note 10.

109. Shah, *supra* note 10.

110. *Roper v. Simmons*, 543 U.S. 551, 571 (2005).

111. *Id.* at 572–75.

112. *Delinquency Glossary*, EDUCATED TOMORROW, http://www.educatetomorrow.org/client/uploads/pdf/del_glossary.pdf (last visited Jan. 27, 2021) (“An adjudicated delinquent is a youth who has been found guilty by a judge of committing a delinquent act.”).

B. *Minn. Stat. § 260C.503, subd. 2(6) imposes an additional unnecessary, unintended, and punitive collateral consequence upon juveniles required to register as predatory offenders.*

Minnesota and a handful of other states in child protection proceedings treat juvenile sex offenders as predators, even as productive adults.¹¹³ Minn. Stat. § 260C.503, subd. 2(6) reads

Subd. 2. Termination of parental rights. (a) The responsible social services agency must ask the county attorney to immediately file a termination of parental rights petition when . . . (6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b).

Under this child protection statute, juvenile offenders who may still be on the registry as adults, and are now parents, can potentially have their parental rights terminated when they have never posed a threat to their child. Minn. Stat. § 260C.503, subd. 2(6) must be revised as applied to juvenile sex offenders.

When a termination of parental rights case is filed, a parent's rights are terminated when two conditions exist. First, the court must find that a statutory condition exists.¹¹⁴ Second, the court must also find that termination is in the best interest of the child.¹¹⁵ Once a termination petition has been filed, "the court shall ensure that reasonable efforts, including culturally appropriate services, by the social services agency are made to prevent placement or to eliminate the need for removal and to reunite the child with the child's family at the earliest possible time."¹¹⁶ However, this same statute excuses social services from reasonable efforts to prevent placement and from rehabilitation and reunification if a parent has committed an offense that requires registration as a predatory offender under Minn. Stat. § 243.166.¹¹⁷

The facts of *In re Welfare of the Child of M.D.L.* tell a story of the intrusiveness of this statute.¹¹⁸ An investigator with Becker County Human Services received a report that G.M. and M.D.L.'s children may have been experiencing abuse and neglect in the home.¹¹⁹ However, subsequent investigation did not find any reported concerns.¹²⁰ The investigation did reveal

113. *Grounds for Involuntary Termination of Parental Rights*, CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SERVS. (July 2021), <https://www.childwelfare.gov/pubPDFs/groundtermin.pdf>.

114. *In re Welfare of Child of M.D.L.*, No. A19-0034, 2019 WL 2332565, at *1 (Minn. Ct. App. June 3, 2019).

115. *Id.*

116. MINN. STAT. § 260.012(a) (2020).

117. MINN. STAT. § 260.012(g)(5).

118. *In re Welfare of M.D.L.*, 2019 WL 2332565, at *1.

119. *Id.*

120. *Id.*

G.M.'s prior sexual offense from twelve years prior.¹²¹ Based on this revelation alone, not a finding of abuse or neglect, Becker County Human Services filed a Child in Need of Protection or Services (CHIPS) petition and subsequently a petition to terminate G.M.'s parental rights.¹²² While G.M. was an adult at the time of the offense, this statute equally applies to juveniles adjudicated delinquent of a predatory offense that requires registration.¹²³

Those required to register must comply with registration for ten years.¹²⁴ Even if a juvenile completes their registration period without incident, the juvenile could be ready to start a family before those ten years have passed. The evidence relating to termination must address conditions *as they exist at the time* of the hearing and which are likely to continue for a prolonged, indeterminate period.¹²⁵ A juvenile offense committed a number of years prior to becoming a parent creates only superficial, not meaningful, evidence of conditions that currently exist.¹²⁶ The parent may currently be on the registry, but they are not currently, and are unlikely to in the future, a danger to their child—the sole concern of the child protection system.

The language in Minn. Stat. § 260C.503, subd. 2(6) as applied to juvenile offenders is arbitrary and punitive. The Minnesota Court of Appeals held in 1997 that sex offender registration “is not punitive because it serves the regulatory purpose of assisting police investigations.”¹²⁷ The court also concluded that “registration is not historically regarded as punishment . . . and does not promote a traditional aim of punishment because it only produces a ‘minimal deterrent effect.’”¹²⁸ The court came to these conclusions because registration data is information that is designed for private usage for law enforcement purposes only.¹²⁹ However, over time, the predatory offender registry has been made public and criminalized past the point of a minimal deterrent effect.

Being a registered sex offender constitutes statutory grounds for parental termination in nine states, including Minnesota.¹³⁰ However, of these nine states, four of them do not require juveniles to register for any predatory offense.¹³¹ Nearly half of the states that permit a termination petition to be filed on the statutory grounds of predatory registration do not place chil-

121. *Id.*

122. *Id.*

123. MINN. STAT. § 260C.503, subd. 2(a)(6) (2020).

124. MINN. STAT. § 243.166, subd. 6 (2020) (amended 2021).

125. *In re Welfare of Maas*, 355 N.W.2d 480, 482–83 (Minn. Ct. App. 1984).

126. *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995).

127. *In re Welfare of C.D.N.*, 559 N.W.2d 431, 433 (Minn. Ct. App. 1997).

128. *Id.*

129. *See id.*

130. *See Grounds for Involuntary Termination of Parental Rights*, *supra* note 113.

131. *See Juvenile Sex Offender Registration and SORNA*, NAT'L CONF. OF STATE LEGISLATURES (May 2011), <https://www.ncsl.org/research/civil-and-criminal-justice/juvenile-sex-offender-registration-and-sorna.aspx>.

dren on the predatory registry to begin with.¹³² Studies have shown the negligible recidivism rates of juvenile sex offenders, so there is no other explanation, other than punishment, for attempting to terminate the parental rights of juvenile offenders still on the registry when there is no finding of mistreatment of the child.

Juveniles should be excluded from predatory registration requirements, but at a minimum, an exception to Minn. Stat. § 260C.503, subd. 2(6) must be made to remove this unintended and unnecessary collateral consequence. Termination of parental rights has been coined the “civil death penalty.”¹³³ A child is a parent’s life. A juvenile is not told when they are required to register, “Remember, don’t have a child in the next ten years while you’re still on the registry because Child Protective Services has the right to file a termination petition against you.” Ten years is a significant amount of time for a juvenile to finish maturing. Studies show, and the courts have found, that children are close to the maturity of adults roughly around the age of eighteen, but often do not reach full maturity until their early to mid-twenties.¹³⁴ A natural parent is presumptively a “fit and suitable person to be entrusted with the care of his or her child,” and “[o]rdinarily, it is in the best interest of a child to be in the custody of his or her natural parents.”¹³⁵ A juvenile should not have their children taken away for a crime they committed likely a number of years ago, before they even considered being a parent. There is a strong correlation that, for males, getting married and finding stable, consistent employment promotes a reduction in offending.¹³⁶ A juvenile offender is not likely to be a threat to their child’s well-being, but they are treated as such because of the ten-year registration requirement.

There are statutory interpretation questions regarding the current statute as written. An argument could be made that the term “parent” was not applicable to the juvenile when they committed the offense, because they did not have any children at the time. Therefore, they are not a parent that has committed an offense that requires registration as a predatory offender. Rewriting the statute to include this interpretation in plain words will help to uniformly apply the statute. If Minnesota neglects to change the juvenile registration requirements, Minn. Stat. § 260C.503, subd. 2(6) should be rewritten as follows:

Subd. 2. Termination of parental rights.

(a) The responsible social services agency must ask the county attorney to immediately file a termination of parental

132. *Id.*

133. Interview with Tracy Reid, *supra* note 17; *Child Welfare Appellate Clinic*, UNIV. MICH. L. SCH., <https://www.law.umich.edu/clinical/cwac/Pages/default.aspx> (last visited Mar. 25, 2022); Elizabeth Brico, “*The Civil Death Penalty*”—*My Motherhood is Legally Terminated*, FILTER (July 13, 2020), <https://filtermag.org/motherhood-legally-terminated>.

134. FELD & MORIEARTY, *supra* note 25, at 67.

135. *In re Welfare of A.D.*, 535 N.W.2d 643, 647 (Minn. 1995).

136. *See From Youth Justice Involvement to Young Adult Offending*, *supra* note 24.

rights petition when . . . (6) the parent has committed an offense that requires registration as a predatory offender under section 243.166, subdivision 1b, paragraph (a) or (b).

(b) *Juvenile adjudications under section 243.166, subdivision 1b, paragraph (a) or (b) are excluded from termination under this subsection unless the juvenile was a parent at the time of the offense and their child is at risk of being harmed.*

II. IF THE LEGISLATURE CANNOT BE CONVINCED OF COMPLETE REMOVAL OF JUVENILES FROM THE REGISTRATION STATUTE, AT A MINIMUM, JUVENILE REGISTRATION SHOULD NOT BE MANDATORY PURSUANT TO MINN. STAT. § 243.166.

Minn. Stat. § 243.166, subd. 1(b)(1) reads

A person shall register under this section if: (1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or adjudicated delinquent for that offense *or another offense arising out of the same set of circumstances*.¹³⁷

This catch-all language ignores the “presumption of innocence embedded in both the United States Constitution and the Minnesota Constitution.”¹³⁸ In *In re Welfare of J.S.K.*, Judge Randall of the Minnesota Court of Appeals wrote in his concurrence about the injustice of the statutory inclusion of registration for *another offense arising out of the same set of circumstances*.¹³⁹ Judge Randall wrote:

The presumption of innocence embedded in both the U.S. Constitution and the Minnesota Constitution is swept aside in favor of a “rule” that says you are “guilty” and must register as a predatory sex offender simply because you were “charged” with an offense requiring registration, even though that charge did not stick. Your absolute right to plead not guilty and stand trial, which may result, as here, in a conviction/adjudication for an offense not requiring registration as a predatory sex offender, is rendered almost meaningless. *The charge itself* is its own judge, jury, and executioner!¹⁴⁰

Prosecutorial and judicial discretion have a major impact on juvenile registration. The plain language of Minn. Stat. § 243.166 is interpreted as a person need not be convicted of, or adjudicated delinquent for, one of the enumerated offenses to invoke mandatory registration; rather, a person . . . initially charged with, or the subject of a

137. MINN. STAT. § 243.166, subd. 1(b)(1) (2020) (amended 2021) (emphasis added).

138. See *In re Welfare of J.S.K.*, C5-02-388, 2002 WL 31892086, at *3 (Minn. Ct. App. Dec. 31, 2002).

139. *Id.*

140. *Id.* (alteration in original).

petition for, an enumerated offense must only be convicted of, or adjudicated delinquent for, “another offense which arose out of the same set of circumstances” as the charged predatory offense¹⁴¹

to be required to register under the statute. Looking at the plain language of Minn. Stat. § 243.166, if the prosecutor charges anything above a gross-misdemeanor fifth-degree criminal sexual conduct, and a juvenile is adjudicated delinquent, even if it is pled down to a fifth-degree criminal sexual conduct, the mandatory registration is triggered because the charged offense *arises out of the same set of circumstances*.¹⁴² However, if a juvenile is granted and successfully completes the requirements under a stay of adjudication, the juvenile will not have to register.¹⁴³

The district court has two options.¹⁴⁴ The first option would be to adjudicate a child delinquent, possibly of an offense that does not require registration if adjudicated, but if it is due to the *same set of circumstances*, then the child could potentially still have to register depending on the original charge.¹⁴⁵ The second option is to grant a stay of adjudication so the child can have a chance to avoid predatory registration.¹⁴⁶ There is no ability to adjudicate a child delinquent for their conduct without requiring a child to register as a predatory offender. In adult court, there is uniformity across the state, as adult courts do not routinely use stays of adjudication.¹⁴⁷ By contrast, in juvenile court, there is no uniformity across the counties or the state in granting stays of adjudication.¹⁴⁸

District courts have broad discretion in deciding whether or not a stay is appropriate.¹⁴⁹ District court judges have stayed adjudication to allow juveniles to avoid sex offender registration.¹⁵⁰ Minnesota courts have acknowledged that predatory registration may have a lasting impact on juveniles, which is relevant to the district court’s adjudication decision.¹⁵¹ The problem is that there is no option for a district court to adjudicate a child without imposing the damaging collateral consequences of registering as a predator.

141. *In re Welfare of J.R.Z.*, 648 N.W.2d 241, 247 (Minn. Ct. App. 2002) (citation omitted).

142. *See* Minn. Stat. § 243.166.

143. *See* Interview with Kathryn Richtman, *supra* note 33.

144. *See* Interview with Kathryn Richtman, *supra* note 33.

145. *See* Interview with Kathryn Richtman, *supra* note 33.

146. *See* Interview with Kathryn Richtman, *supra* note 33.

147. *See* Interview with Kathryn Richtman, *supra* note 33.

148. *See* Interview with Kathryn Richtman, *supra* note 33.

149. *See In re Welfare of J.S.K.*, C5-02-388, 2002 WL 31892086, at *2 (Minn. Ct. App. Dec. 31, 2002).

150. *See In re Welfare of M.A.R.*, 558 N.W.2d 274, 276 (Minn. Ct. App. 1997); *State v. Krotzer*, 548 N.W.2d 252 (Minn. 1996).

151. *In re Welfare of T.P.B.*, No. A08-1699, 2009 WL 1751919, at *4, *5 (Minn. Ct. App. June 23, 2009).

The majority opinion in *In re Welfare of J.S.K.* struggled with this balance.¹⁵² J.S.K. was charged with third-degree criminal sexual conduct (which requires registration) and fifth-degree criminal sexual conduct (which does not require registration).¹⁵³ J.S.K. was only adjudicated of the fifth-degree offense, but because the third-degree charge arose from the same incident, J.S.K. was still required to register as a predatory offender.¹⁵⁴ On appeal, the majority acknowledged that they were mindful of their discretionary power in granting a stay of adjudication, but because J.S.K. was unwilling to accept responsibility for his actions or his need for treatment, the majority did not feel they could grant a stay of adjudication.¹⁵⁵ However, the majority wrote that the “rigid requirement of registration and its significant, long-term collateral consequences are inconsistent with the rehabilitative goals of juvenile court” and invited the legislature to reassess the requirement that all juveniles adjudicated of criminal sexual conduct must register as sex offenders.¹⁵⁶ The court struggled with the decision to deny the stay of adjudication because they could not hold J.S.K. accountable for his actions without imposing the disproportionate and significant punishment of registration.¹⁵⁷ Judge Randall pointed out in his concurrence, “when the district court judge wishes to spare the child the harsh penalty of registration, he must stay the adjudication, even when he has solid reasons for adjudicating the child delinquent. Why should the judge’s hands be so tied?”¹⁵⁸ In this case, staying the adjudication would not have served an effective purpose, but the majority and the concurrence both opposed the non-discretionary registration requirement that was tacked on with the denial of the stay of adjudication. Minnesota courts are asking the legislature to change juvenile registration.¹⁵⁹

The United States Supreme Court addressed mandatory punishments imposed on juveniles in *Miller v. Alabama*.¹⁶⁰ Relying on the holdings in *Roper* and *Graham*, *Miller* extended the Eighth Amendment to prohibit a mandatory minimum life sentence without the possibility of parole to juveniles, even if a homicide was committed.¹⁶¹ The mandatory minimum sentence did not allow the court to consider the fact of a juvenile’s diminished culpability and ability of reformation.¹⁶² Justice Kagan, writing for the majority, held that juveniles should be treated differently than adults

152. See *In re Welfare of J.S.K.*, 2002 WL 31892086, at *2.

153. *Id.*

154. *Id.*

155. *Id.* at *3.

156. *Id.*

157. See *id.* at *4.

158. *In re Welfare of J.S.K.*, 2002 WL 31892086, at *4.

159. *Id.* at *3.

160. *Miller v. Alabama*, 567 U.S. 460, 470 (2012).

161. *Id.*

162. See *id.* at 470–71.

when given severe penalties because of their diminished culpability and the fact that they are more susceptible to reform in comparison to adults.¹⁶³ The Court came to this conclusion by relying on the *Roper* and *Graham* decisions and their distinction between juvenile and adult criminal culpability. *Miller* solidified that juveniles, as a class, need to be treated differently from adults because of their diminished capacity, susceptibility to outside and peer influence, and their transient, developing personalities.

Mandatory registration for juveniles should be analyzed through the lens of the majority opinion in *Miller*. The language of Minn. Stat. § 243.166 creates a mandatory registration requirement for any adult or juvenile charged or convicted of anything higher than fifth-degree criminal sexual conduct.¹⁶⁴ The mandatory language of “a person shall register” and the “arising out of the same set of circumstances” language in the Minnesota registration statute prevents the judge from considering the youthful characteristics of the juvenile as required by the Supreme Court of the United States.¹⁶⁵ While mandatory registration as a sex offender is not a sentence of imprisonment, it is a consequence imposed on juveniles in an equal manner to adults, and it is a severe consequence with lasting impact and collateral consequences. It limits where you can live, what jobs you can have, and stigmatizes and labels you as a dangerous human being for far longer than a prison sentence might.¹⁶⁶ The Constitution does not protect an individual from the collateral consequences of a punishment, but the Eighth Amendment protection of juveniles from mandatory sentences should inform the Minnesota Legislature. Minnesota courts have urged the legislature to examine the statute as it applies to juveniles. The mandatory requirement, and especially the catchall language of “or another offense arising out of the same set of circumstances,” ties the hands of a judge.¹⁶⁷ They are not allowed to weigh the totality of the circumstances. A judge is prevented from “taking into account the family and home environment that surrounds [the juvenile]—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.”¹⁶⁸ A judge cannot consider a juvenile’s age or diminished culpability. A judge cannot consider the trauma history of the child or the numerous studies that show juvenile sex offenders are highly unlikely to reoffend. There is no way for a judge to hold a child responsible for his actions without saddling the juvenile with the harsh, long-lasting consequence of offender registration, essentially a ten-year sentence.

163. *Id.* at 471.

164. See MINN. STAT. § 243.166 (2020) (amended 2021).

165. *Roper v. Simmons*, 543 U.S. 551, 551 (2005); *Graham v. Florida*, 560 U.S. 48, 48 (2010); *Miller v. Alabama*, 567 U.S. 460, 460 (2012).

166. Nellis, *supra* note 19.

167. *In re Welfare of J.S.K.*, C5-02-388, 2002 WL 31892086, at *4 (Minn. Ct. App. Dec. 31, 2002).

168. FELD & MORIEARTY, *supra* note 25, at 730.

In the United States, fifteen states do not require any adjudicated juvenile to register as a predatory offender, while ten states have removed the mandatory language and allow for judicial discretion.¹⁶⁹ Ideally, juveniles should be removed from the predatory registration statute, but if the Minnesota Legislature cannot be convinced of complete removal, the mandatory language in the statute must be removed. Removal of the mandatory provision would provide a means for individualized consideration by the judge that is currently prevented. Minn. Stat. § 243.166 could be rewritten as follows:

Subd. 1b. Registration Required. (a) A person shall register under this section if: (1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and *convicted in adult court* of that offense or another offense arising out of the same set of circumstances.

(b) *A person may be required to register under this section if: (1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and was adjudicated delinquent of that offense. (2) Before requiring registration, the fact finder must consider all mitigating factors, including but not limited to the youthfulness of the offender, a juvenile's diminished culpability, the trauma history of the child, and the likelihood and ability of rehabilitation.*

CONCLUSION

Juveniles are usually not predatory offenders. *Roper*, *Graham*, and *Miller* were decided by the Supreme Court despite the egregious facts of the cases. On the contrary, most juvenile sex offenses are not violent crimes.¹⁷⁰ Minn. Stat. § 243.166 places a disproportionate consequence on juveniles for their often non-predatory and non-violent offenses. Juvenile offenders typically act out of sexual curiosity, not malice.¹⁷¹ Herbert Stevens was required to register as a sexual predator because he engaged in sexual activity with his now wife when she was underage. There was no lack of consent, no violence, and no predatory motivation—simply curiosity and impulsivity at a young age.¹⁷² Herbert struggled to find work and to find a home for his family within the registry's guidelines. Herbert could not pick his children up from school and missed graduations.¹⁷³ These collateral consequences could have been avoided.

169. See *Juvenile Sex Offender Registration and SORNA*, *supra* note 131.

170. Finkelhor, Ormrod & Chaffin, *supra* note 8.

171. Shah, *supra* note 10.

172. Shah, *supra* note 10.

173. Shah, *supra* note 10.

Requiring juveniles to register defeats the rehabilitative goals of juvenile court by entangling a child in a variety of legal restrictions and creating a multitude of collateral consequences. Minn. Stat. § 243.166 currently treats adults and juveniles as equals.¹⁷⁴ The United States Supreme Court and numerous studies have noted that juveniles and adults cannot and should not be treated equally in terms of criminal consequences. Additionally, a petition for termination of parental rights solely due to registration is an unnecessary and unintended future consequence that no one warns the child of when requiring him or her to register. Juveniles have the ability to continue developing and maturing and are the best candidates for rehabilitation. Requiring juveniles to register as a predatory offender saddles the child with more hardship than some judges wish to impose. Juveniles are normally not predatory offenders, and the Minnesota legislation needs to reflect as such.

174. See MINN. STAT. § 243.166 (2020) (amended 2021).