University of Cincinnati Law Review

Volume 81 | Issue 1 Article 7

2-22-2013

Delinquency and Punishment: The Impact of State v. Williams on Juvenile Sex Offender Registration in Ohio

Amy Grover
University of Cincinnati College of Law, groveral@mail.uc.edu

Follow this and additional works at: http://scholarship.law.uc.edu/uclr

Part of the Law Commons

Recommended Citation
Amy Grover, *Delinquency and Punishment: The Impact of State v. Williams on Juvenile Sex Offender Registration in Ohio*, 81 U. Cin. L. Rev. (2013)
Available at: http://scholarship.law.uc.edu/uclr/vol81/iss1/7

This Student Notes and Comments is brought to you for free and open access by University of Cincinnati College of Law Scholarship and Publications. It has been accepted for inclusion in University of Cincinnati Law Review by an authorized administrator of University of Cincinnati College of Law Scholarship and Publications. For more information, please contact ken.hirsh@uc.edu.

DELINQUENCY AND PUNISHMENT: THE IMPACT OF *STATE V. WILLIAMS* ON JUVENILE SEX OFFENDER REGISTRATION IN OHIO

*Amy Grover**

The juvenile justice system was founded upon the notion that children who commit acts that would be crimes if committed by adults are different than adults who engage in the same behaviors.[1] This distinction led to the establishment of a distinct court system for juveniles that focused on rehabilitating youth rather than punishing them, with an ultimate goal of guiding them "toward life as . . . responsible, law-abiding adult[s]."[2] However, recent federal and state laws that require youth who are adjudicated delinquent in juvenile courts to register as sex offenders are more punitive than rehabilitative, and actually can deter children who commit sex offenses from later becoming productive members of society.[3] In *State v. Williams*, the Supreme Court of Ohio recently held that these registration requirements were punitive,[4] and effectively admitted that Ohio's juvenile justice system has been punishing juvenile sex offenders instead of rehabilitating them.

I. INTRODUCTION

The Supreme Court of Ohio's holding in *State v. Williams* has significantly impacted the way the law approaches sex offender registration.[5] Prior to the court's decision, Ohio considered sex offender registration laws to be a primarily remedial measure rather than a punitive restriction.[6] However, the court determined that new amendments to Ohio Revised Code Chapter 2950 had made the registration requirements primarily punitive, therefore making

---

* Associate Member, 2011–12 *University of Cincinnati Law Review*.

1. ABA Division for Public Education,THE AMERICAN BAR ASSOCIATION, DIALOGUE ON YOUTH AND JUSTICE 5 (2007) , *available at* http://www.americanbar.org/content/dam/aba/migrated/publiced/features/DYJfull.authcheckdam.pdf.

2. *Id*.

3. *See generally* JUSTICE POLICY INST., REGISTERING HARM: HOW SEX OFFENSE REGISTRIES FAIL YOUTH AND COMMUNITIES 5 (2008), *available at http://www.justicepolicy.org/images/upload/08-11_RPT_WalshActRegisteringHarm_JJ-PS.pdf.*

4. State v. Williams, 952 N.E.2d 1108, 1112 (Ohio 2011).

5. *Id*.

6. *See* State v. Bodyke, 933 N.E.2d 753, 758 (Ohio 2010); State v. Ferguson, 896 N.E.2d 110, 117 (Ohio 2008).

retroactive application of the law unconstitutional.[7]

Punitive classification of sex offender registration laws will likely have remarkable implications for juvenile sex offender registration requirements in Ohio. The Supreme Court of Ohio concluded that the prohibition on retroactive application of these requirements applies to juveniles as well as adults.[8] However, because the dispositions of juvenile delinquents are meant to be primarily rehabilitative, not punitive, juvenile defenders in Ohio should argue against the prospective imposition of punitive registration requirements on juvenile sex offenders as well.

Part II of this Comment will examine the emerging trend in United States Supreme Court decisions of recognizing the differences between adults and children, along with the rehabilitative goal of the juvenile justice system. Part III will provide an overview of the current state of sex offender registration in Ohio, including the requirements for both adult and juvenile offenders. In Part IV, this Comment will discuss the Supreme Court of Ohio's decision in *State v. Williams*. Finally, Part V will explain why juvenile sex offender registration requirements are both invalid and in violation of the Due Process Clause when the recent decisions the Supreme Courts of the United States and Ohio are considered. The limited protective value of these requirements does not justify the extreme intrusion into the youth's life and privacy created by registration laws. Requiring juveniles to register as sex offenders is ineffective, anti-rehabilitative, and unconstitutional.

II. RECOGNIZING THE DIFFERENCE BETWEEN CHILDREN AND ADULTS

Anyone who has ever known a child or adolescent can say without question that juveniles and adults are physically, cognitively, and emotionally different. The United States Supreme Court has also recently recognized this fact, and, using psychological research regarding adolescent development, has made several alterations to the criminal law to account for these variances. However, the differences between children and adults have long been recognized in the American justice system through the juvenile court system and the civil, rather than criminal, ramifications of its decisions. Juvenile court was founded on the principle of rehabilitation, not punishment, and therefore its adjudications are intended to help transform children into productive members of society rather than punish children for their wrongdoing.

7. State v. Williams, 952 N.E.2d at 1113.

8. *In re* D.J.S., 957 N.E.2d 291 (Ohio 2011).

A. The Trend of Supreme Court Decisions Altering Criminal Law for Juveniles

In recent years, the Supreme Court of the United States has recognized the differences between children and adult in its decisions, and allowed for concessions or changes in criminal law based solely on the juvenile status of the defendants. In *Roper v. Simmons*, the Court discussed three general differences between children and adults, which it used to justify the abolition of the death penalty for children on the grounds that it was cruel and unusual punishment.[9]

The Court's first observation was that children exhibit "a lack of maturity and an underdeveloped sense of responsibility" that often leads to "impetuous and ill-considered actions and decisions."[10] In other words, due to their immaturity, juveniles tend to act impulsively and are unable to consider fully the possible consequences of their actions. Children typically make decisions based on their instinct, instead of engaging in the cost–benefit analysis most responsible adults subconsciously consider before making most of their choices.

Secondly, the Court concluded that children are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressure."[11] Because juveniles are less secure in their individual identities, it is much easier for them to get swept into whatever activities in which their peers are engaging.[12] In the same vein, other people's opinions influence them to a greater extent.

Finally, the Court recognized that "the character of a juvenile is not as well formed as that of an adult," meaning that a child's personality traits are "more transitory, less fixed."[13] A juvenile's personality is not set in stone; rather, it is constantly in the process of being formed. Every outside force with which a child comes into contact and every experience that child goes through contributes to the shaping of his or her personality, conscience, and character.[14]

Taking these differences into consideration, the Court concluded that "[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that *even a heinous crime* committed by a juvenile is evidence of irretrievably deprived character,"[15] that "a greater possibility exists that a minor's character deficiencies will be

9. Roper v. Simmons, 543 U.S. 551, 569 (2005).
10. *Id*. (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)).
11. *Id*.
12. *Id*.
13. *Id*. at 570.
14. Aaron M. White, *The Changing Adolescent Brain*, EDUC. CAN., Spring 2005, at 6.
15. Roper v. Simmons, 543 U.S. 551, 570 (2005) (emphasis added).

reformed,"[16] and children have "diminished culpability" in any crime they might commit.[17] Recognizing that because children's immense capability to be rehabilitated and the limited culpability in children's actions render it nearly impossible for even the wisest and most capable of psychiatrists to pick out the rare juvenile offender who is completely beyond rehabilitation, the Court concluded that it is unconstitutional to determine that an attempt at rehabilitation would be in vain and sentence a child to death.[18]

The Court also considered the differences between adults and children in *Graham v. Florida*, where it concluded that life without parole was cruel and unusual punishment for juvenile offenders convicted of nonhomicide crimes.[19] In determining that life without parole for nonhomicide juvenile offenders was not justified by the retributive value of the sentence, the Court looked to the psychological conclusions underlying the holding in *Roper*, specifically the diminished culpability of juvenile offenders.[20] Finding that life without parole did not provide juveniles with a meaningful opportunity for rehabilitation, the Court held that it was an inappropriate and unconstitutional sentence for youth who committed nonhomicide crimes.[21]

Most recently, in *Miller v. Alabama*, the Supreme Court expanded its holding in *Graham* to find that the Eighth Amendment also forbids sentencing laws that require juvenile offenders to receive a sentence of life without parole for committing homicide.[22] Looking to the *Graham* factors, the Court concluded that "[s]uch a scheme prevents those meting out punishment from considering a juvenile's lessened culpability and greater capacity for change."[23] While youth who commit homicide may still receive life without parole, the sentencing court must be able to determine whether "his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life *with* the possibility of parole) more appropriate."[24]

The Supreme Court has also looked to the *Roper* factors to inform its analysis in other areas of criminal law. In *J.B.D. v. North Carolina*, the Court acknowledged the widespread acceptance of these deductions,

16. *Id*.
17. *Id*. at 571.
18. *Id*. at 573.
19. Graham v. Florida, 130 S. Ct. 2011, 2030 (2010).
20. *Id*. at 2028.
21. *Id*. at 2030.
22. Miller v. Alabama, No. 10-9646, slip. op. at 2 (U.S. June 25, 2012).
23. *Id*. at 1.
24. *Id*.

going so far as referring to them as "commonsense conclusions."[25] The Court observed that "[t]he law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them,"[26] and reiterated many previous statements that explained "what any parent knows"[27]: children are not miniature adults.[28] Considering the differences between adults and children, the Court concluded that age should be considered when determining for *Miranda* purposes the reasonableness of a person's belief that he or she was in custody, even though other subjective factors are not permitted to be considered.[29]

These four decisions illustrate the Court's recognition of the key differences between juveniles and adults; namely, that juveniles make less cognizant decisions, are less culpable for their actions, and have a greater susceptibility to rehabilitation; and that because of these differences, juvenile offenders should receive different treatment and punishment than adult offenders do. In all four of these cases, the Supreme Court repeatedly chose to alter well-established criminal law principles in order to address more appropriately the unique situation of the juvenile offender.

B. The Rehabilitative Purpose of the Juvenile Justice System

Although the Supreme Court has expressly recognized the differences between adults and children only recently, the juvenile justice system has treated children differently than the criminal justice system treats adults since separate courts were established for children.[30] The system was established to provide juveniles with rehabilitative, rather than punitive, dispositions.[31] The chapter in the Ohio Revised Code on juvenile delinquency states that "[t]he overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender."

25. J.D.B. v. North Carolina, 131 S. Ct. 2394, 2403 (2011).

26. *Id*.

27. Roper v. Simmons, 543 U.S. 551, 569 (2005).

28. J.D.B. v. North Carolina, 131 S. Ct. at 2403.

29. *Id*. at 2405.

30. Jessica E. Brown, Note, *Classifying Juveniles "Among the Worst Offenders": Utilizing* Roper v. Simmons *to Challenge Registration and Notification Requirements for Adolescent Sex Offenders*, 39 STETSON L. REV. 369, 370 (2010).

31. *Id*.

[32] Even though the Code does mention holding the offender accountable for his actions, the primary concern of the juvenile justice system is to rehabilitate the offender and restore him as a productive member of the community.[33] The Supreme Court of Ohio itself noted this distinction, and recently concluded that "[j]uvenile delinquency proceedings are civil rather than criminal in character,"[34] and "[j]uvenile courts are unique and are tied to the goal of rehabilitation."[35] In examining the differences between juvenile dispositions and criminal sentences to determine what due process protections must be provided to a youth who was given a blended sentence, the court in *State v. D.H.* also emphasized that "[t]he purposes of felony sentencing, on the other hand, 'are to protect the public from future crime by the offender and others and to punish the offender.'"[36]

Additionally, because juvenile delinquency hearings are considered civil and not criminal proceedings, children are not afforded all of the same rights given to adults in criminal trials.[37] Among the procedural rights denied to children in their delinquency hearings is the right to a trial by jury.[38] Rather, juvenile delinquency cases are heard in bench trials, and a child's disposition is determined by a judge, without the procedural protection of a jury.[39] Since juvenile delinquents are not afforded the full due process of law required in adult criminal proceedings, it is even more important to focus juvenile dispositions on rehabilitating the child and not on punishing the child for his or her actions.

III. SEX OFFENDER REGISTRATION REQUIREMENTS

Ohio Sex offender registration requirements are based on adaptations of the Federal legislation. Federal law itself does not distinguish between juvenile and criminal offenders. Likewise, in Ohio, juvenile delinquents may be subject to the same registration requirements as criminal defendants. Juvenile offenders may be ordered to register under the registration requirements of any of the three tiers created by the Adam Walsh Act, or under the restrictions of the uniquely juvenile category of Public Registry-Qualified Juvenile Offender Registrant.

---

32. OHIO REV. CODE ANN. § 2152.01 (West 2012).

33. Cope v. Campbell, 196 N.E.2d 457, 459 (Ohio 1964) (overruled in part by *In re* Agler, 249 N.E.2d 808 (Ohio 1969)).

34. *In re* A.J.S., 897 N.E.2d 629, 634 (Ohio 2008).

35. State v. D.H., 901 N.E.2d 209, 216 (Ohio 2009).

36. *Id.* at 217 (quoting OHIO REV. CODE ANN. § 2929.11(A) (West 2011)).

37. JUSTICE POLICY INST., *supra* note 3, at 25.

38. *Id.*

39. *Id.*

A. Criminal Registration Requirements

Congress passed "Megan's Law" in 1994 in response to the rape and murder of seven-year-old Megan Kanka. The bill demanded that every state create a registry for violent and child sex offenders to avoid losing ten percent of its funding under Section 506 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3765).[40] In 1996, Congress amended the law to require states to inform citizens of registered sex offenders in their neighborhoods.[41]

In 2006, Congress increased its demands on the states by passing the Adam Walsh Child Protection and Safety Act in commemoration of the twenty-fifth anniversary of six-year-old Adam Walsh's abduction and murder.[42] The Act classified sex offenders into three different tiers based on their offense, [43] increased registration requirements,[44] and established a national sex offender registry.[45] It also required states to adopt the title within three years of the enactment in order to maintain their current level of funding.[46] These requirements were established "[i]n order to protect the public from sex offenders and offenders against children and in response to vicious attacks by violent predators." [47]

Ohio adopted Megan's Law through Am.Sub.H.B. No. 180, 146 Ohio Laws, Part II, 2560 in 1996, and the requirements were significantly amended in 2003 by Am. Sub. S.B. 5 (S.B. 5) 150 Ohio Laws, Part IV, 6558.[48] The state legislature subsequently implemented the Adam Walsh Act through Am. Sub. S.B. 10 (S.B. 10) in 2007.[49] Both adoptions amended Chapter 2950 of the Ohio Revised Code to comply with the federal requirements.[50]

B. Juvenile Registration Requirements

Under Ohio law, certain juvenile sex offenders are also required to comply with the registration requirements of O.R.C. Chapter 2950. S.B.

---

40. Daniel M. Filler, *Making the Case for Megan's Law: A Study in Legislative Rhetoric*, 76 IND. L.J. 315, 316 (2001).

41. *Id*.

42. Adam Walsh Child Protection and Public Safety Act of 2006, Pub. L. No. 109-248, § 2, 120 Stat. 587, 589 (2006).

43. *Id*. § 111.

44. *Id*. § 117.

45. *Id*.

46. *Id*. §§ 124–25.

47. *Id*. § 102.

48. State v. Williams, 952 N.E.2d 1108, 1110 (Ohio 2011).

49. *Id*.

50. *Id*.

10 divides juvenile sex offenders into the three tiers created in the Adam Walsh Act.[51] It also establishes a fourth category for the Public Registry-Qualified Juvenile Offender Registrant (PRQJOR), which places a child on the online sex offender registry.[52] Additionally, the bill requires that juvenile courts automatically classify children who commit certain sex offenses and receive a Serious Youthful Offender sentence as both Tier III offenders and PRQJORs.[53] However, the Supreme Court of Ohio recently determined that the automatic classification of such youth constituted cruel and unusual punishment, making O.R.C. § 2152.86 unconstitutional.[54] Accordingly, this Comment will not further discuss PRQJOR status.

All children who are sixteen or seventeen at the time they commit their offense must be classified as juvenile offender registrants.[55] Furthermore, juvenile offenders aged fourteen through seventeen at the time they commit an offense are required to register if they have been adjudicated delinquent for committing a sex offense or a child–victim offense before.[56] This requirement exists without regard to how long ago the child committed his or her first offense or to the child's age at the time of the first offense.[57] These registration requirements are mandatory, and there is no discretion left to the judge to determine whether or not registration is necessary based on the potential dangerousness of the juvenile or his or her likelihood to reoffend.[58] However, juvenile courts do have discretion to decide which tier is the appropriate classification for non-PRQJOR youth, including mandatory registrants.[59]

In addition to creating mandatory juvenile registrants, the Code also gives judges the discretion to determine that some first-time offenders who were fourteen or fifteen at the time of their offense should be required to register.[60] The factors that judges are required to consider include the nature of the offense committed by the child, whether the child has displayed any genuine remorse for the offense, the welfare and safety of the general public, the results of any treatment provided to the child and of any follow-up professional assessment of the child, and

51. JUVENILE DIVISION, OHIO PUBLIC DEFENDER, OVERVIEW OF THE JUVENILE PROVISIONS OF SENATE BILL 10, at 2.

52. *Id.*

53. OHIO REV. CODE ANN. § 2152.86 (West 2012).

54. *In re* C.P., 967 N.E.2d 729 (Ohio 2012).

55. OHIO REV. CODE ANN. § 2152.83 (West 2012).

56. OHIO REV. CODE ANN. § 2152.82 (West 2012).

57. JUVENILE DIVISION, *supra* note 51, at 1.

58. *Id.*

59. *Id.* at 2.

60. OHIO REV. CODE ANN. § 2152.83 (West 2012).

several other factors regarding the child, offense, and victim.[61] If the court determines that the child should register, it must also hold a tier classification hearing as it would for a mandatory registrant.[62]

Tier classification impacts the length of time children must register, how often they must register, and the public availability of their information. Tier I juvenile offender registrants must register annually for ten years unless they are judicially declassified.[63] Tier II sex offenders are required to register every 180 days for twenty years unless they are declassified.[64] Finally, Tier III offenders are required to register every 90 days for life unless they are declassified.[65] A court can also choose to subject a Tier III juvenile offender registrant to community notification requirements.[66] However, the registration information for any juvenile offender registrant is public record open for public inspection.[67]

IV. *STATE V. WILLIAMS*

Although Ohio law requires juvenile sex offenders to follow the above registration requirements, the Supreme Court of Ohio's decision in *State v. Williams* brings the constitutionality of these laws into serious question. In *Williams*, the court considered the retroactive application of sex offender registration requirements to George Williams, who was indicted in November 2007 for unlawful sexual contact with a minor.[68] Although Ohio's version of the federal "Megan's Law,"[69] as amended by Am.Sub.S.B. No. 5 ("S.B. 5") was the statutory scheme for sex offender classification and registration in effect at the time Williams committed the offense, as well as the time when he entered his plea,[70] Williams was sentenced under the harsher requirements of the Ohio version of the Adam Walsh Act,[71] 2007 Am.Sub.S.B. No. 10 ("S.B. 10").[72] Under S.B. 10, Williams was subject to additional reporting and registration requirements and was subject to those requirements for a

61. *Id*.
62. JUVENILE DIVISION, *supra* note 51, at 2.
63. *Id.*
64. *Id*.
65. *Id*.
66. *Id.* at 3.
67. *Id*.
68. State v. Williams, 952 N.E.2d 1108, 1109 (Ohio 2011).
69. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996).
70. *Williams*, 954 N.E.2d at 1110.
71. Adam Walsh Child Protection and Public Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587 (2006).
72. *Williams*, 954 N.E.2d at 1109.

longer period of time than he would have been under S.B. 5.[73] According to his sentence, under S.B. 10 he was required to:

> [R]egister in person in the county in which he resided, in the county in which he was being educated, and in the county in which he was employed, to provide written notice within three days of any change of vehicle information, e-mail addresses, Internet identifiers or telephone numbers, and to verify the addresses for a period of 25 years with in person verification every 180 days.[74]

Williams appealed the retroactive application of these requirements to his sentence, arguing that the law did not go into effect until January 1, 2008, and therefore, could not be applied to him because of Ohio's constitutional ban on the retroactive application of substantive laws.[75]

After reviewing Ohio's jurisprudence regarding the retroactive application of laws, the court applied a two-prong test.[76] First, the court determined whether or not "the General Assembly expressly made the statute retroactive."[77] The court concluded that S.B. 10 was intended to apply retroactively because Revised Code § 2950.03 imposed registration requirements on offenders who were sentenced on or after January 1, 2008 without any regard to when the offense was committed.[78] The court then examined the second prong of the retroactivity test, which asks whether the statute was substantive or remedial.[79]

According to Ohio Supreme Court precedent, the Constitutional ban on retroactive laws applies only to substantive, not remedial, laws.[80] Ohio law defines a substantive statute as a law that "impairs or takes away vested rights, affects an accrued substantive right, imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction, or creates a new right."[81] Remedial laws, on the other hand, affect only the actual remedy provided and "include laws that merely substitute a new or more appropriate remedy for the enforcement of an existing right."[82]

In previous cases regarding sex offender registration, the court had held that the requirements of "R.C. Chapter 2950 serve[d] the solely

---

73. *Id*.
74. State v. Williams, 952 N.E.2d 1108, 1109 (Ohio 2011).
75. *Id*.
76. *Id*. at 1110.
77. *Id*.
78. *Id.*
79. *Id.*
80. *Id.*
81. *Id*. at 1110 (citing Van Fossen v. Babcock & Wilcox, Co., 522 N.E.2d 489 (Ohio 1988)).
82. *Id*. at 1110–11.

remedial purpose of protecting the public,"[83] and that "R.C. Chapter 2950 is a civil, remedial statute."[84] Therefore, retroactive application of sex offender registration requirements had never been considered to violate the Ohio Constitution, as they were considered to be an alternative remedy for protecting the community rather than an additional burden on sex offenders. However, these conclusions about the remedial nature of R.C. Chapter 2950 were all made before the revisions of S.B. 10.

After reviewing the amendments in S.B. 10, the court determined that "the statutory scheme has changed dramatically since this court described the registration process imposed on sex offenders as an inconvenience comparable to renewing a driver's license" and that "it has changed markedly since this court concluded . . . that R.C. Chapter 2950 was remedial."[85] Several differences between S.B. 5 and S.B. 10 led the court to conclude that "all of the changes enacted by S.B. 10 in aggregate" had transformed Chapter 2950 of the Ohio Revised Code from remedial to punitive.[86] Those differences were: (1) Williams' classification as a Tier II sex offender based entirely on the offense he committed without a hearing and "without regard to the circumstances of the crime or his likelihood to reoffend";[87] (2) the mandatory, rather than discretionary, nature of his registration requirements;[88] and (3) the extension of his registration period from ten to twenty-five years.[89] The court was also swayed by the fact that the new system no longer permitted sex offenders to challenge their classifications.[90] Ultimately, the court held in forceful and conclusive language that "[f]ollowing the enactment of S.B. 10, *all doubt has been removed*: R.C. Chapter 2950 is punitive."[91]

Therefore, due to the punitive nature of the amended Chapter 2950, the court concluded that it was "no longer convinced that R.C. Chapter 2950 is remedial, even though some elements of it remain remedial," and therefore that "as to a sex offender whose crime was committed prior to the enactment of S.B. 10, the act imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction and create[s] new burdens, new duties, new obligations, or new liabilities

83. State v. Cook, 700 N.E.2d 570, 585 (Ohio 1998).
84. State v. Ferguson, 896 N.E.2d 110,120 (Ohio 2008).
85. State v. Williams, 952 N.E.2d 1108, 1112 (Ohio 2011).
86. *Id*. at 1113.
87. *Id*. at 1112 (citing OHIO REV. CODE ANN. § 2950.01(E)–(G) (West 2012)).
88. *Id*. at 1113 (citing OHIO REV. CODE ANN. § 2950.04(A)(2) (West 2012)).
89. *Id*. at 1113 (citing OHIO REV. CODE ANN. § 2950.07(B)(2) (West 2012)).
90. *Williams*, 952 N.E.2d at 1113 (citing OHIO REV. CODE ANN. § 2950.06(B) (West 2012)).
91. *Id*. at 1112 (emphasis added).

not existing at the time."[92] Because S.B. 10 qualified as a substantive, rather than remedial, law, the court determined that the law's retroactive application to Williams was unconstitutional, and it remanded the case for resentencing.[93]

V. DISCUSSION

Although sex offender registration was created to provide children with protection from rape and even murder at the hand of dangerous criminals, it actually does very little to keep children safe. Requiring juvenile offenders to register is even less effective than adult registration, as most youth who commit sex crimes pose a minimal threat to society. In reality, sex offender registration requirements cause significant harm to the lives of juvenile sex offenders, and might even increase their chance of reoffending. Not only is registration damaging and ineffective, but it is also inconsistent with the rehabilitative methodology of the juvenile justice system and denies youth their constitutionally-mandated right to due process of law.

A. Registration is an Ineffective Means of Protecting Potential Victims

Despite significant criticism of both Megan's Law and the Adam Walsh Act, adult sex offender registration requirements maintain their popularity with the public because of society's fear of the "sexual predator," and maintain legislative approval because of tremendous pressure from the public.[94] Lawmakers view sex offender registration requirements as protective, and the government considers the violation of the sex offenders' rights to privacy to be less important than its interest in protecting children from what the community perceives to be dangerous criminals "who prey on children."[95] The public also justifies this devaluation of the rights of convicted sex offenders because proponents of registration laws have worked to dehumanize sex offenders, portraying them as "lions in the tall grass waiting to attack,"[96] "monsters,"[97] "beast[s],"[98] and even "the human equivalent of toxic

92. *Id*. at 1113.

93. *Id* at 1113.

94. *See, e.g.*, Mark A. Palmer, *Sexual Predators*, WASH. TIMES, Apr. 6, 2007, at A16.

95. *Id*.

96. Don McPherson, *The myth of the 'monster' pedophile*, CNN, Nov. 8, 2011, http://articles.cnn.com/2011-11-08/opinion/opinion_mcpherson-pedophiles_1_prevention-of-sexual-abuse-sexual-predators-jerry-sandusky?_s=PM:OPINION.

97. *Id*.

98. Filler, *supra* note 40, at 339.

waste."[99] When sex offenders are portrayed in such an animalistic and predatory light, it is easy to see why registration requirements maintain both public and legislative support.

However, studies have shown that sex offender registration laws do very little to prevent violent sexual crimes. In fact, many opponents of the Adam Walsh Act maintain that registration laws are "ill-considered, poorly crafted, and may cause more harm than good."[100] The legislation was designed based on the idea that, because sex offenders often continually hunt for and prey on random children,[101] registration can help parents and law enforcement officials protect these children.[102] However, the truth of the matter is that three out of four sex offenders do not recidivate, and approximately 90% of sex crimes against children are committed by someone the child knows and trusts.[103]

Although research supports the conclusion that the sexual predator is almost entirely a myth,[104] juvenile sex offenders are even less likely to recidivate than adult offenders.[105] It has been established that adolescent cognitive functions are different than those of adults, and juvenile sex offenders are no different from other adolescents. According to Dan Knoepfler, President of the Washington Association for Treatment of Sexual Abusers, "A common misperception is that they're like adults. But they're not. We're mainly talking about geeky, nerdy, socially immature kids."[106]

Research also suggests that juvenile sex offenders are more amenable to treatment than adult offenders due to their continuing psychological development, and therefore are more likely to be rehabilitated.[107] When provided with proper treatment, juvenile offenders rarely commit sex offenses as adults.[108] One explanation for this difference is that juvenile sex offenders exhibit lower frequencies of more extreme forms of sexual aggression, fantasy, and compulsivity than adult offenders.[109] They also

99. *Id*. at 340.

100. HUM. RTS. WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE US 3 (2007).

101. *See id*. at 4 ("Some politicians cite recidivism rates for sex offenders that are as high as 80–90 percent.").

102. *Id*.

103. *Id*.

104. *See generally* Don McPherson, *The myth of the 'monster' pedophile*, CNN, Nov. 8, 2011, http://articles.cnn.com/2011-11-08/opinion/opinion_mcpherson-pedophiles_1_prevention-of-sexual-abuse-sexual-predators-jerry-sandusky?_s=PM:OPINION.

105. NATIONAL CENTER ON SEXUAL BEHAVIOR OF YOUTH, WHAT RESEARCH SHOWS ABOUT ADOLESCENT SEX OFFENDERS 1 (2003).

106. JUSTICE POLICY INST., *supra* note 3, at 20.

107. ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, THE EFFECTIVE LEGAL MANAGEMENT OF JUVENILE SEX OFFENDERS (2000).

108. *Id*.

109. *Id*.

show lower levels of consistency in deviant arousal and are "more fluid in their sexual interests and patterns of behaviors than adults."[110] Finally, very few juvenile offenders exhibit the same long-term tendencies to commit sexual offenses as chronic adult offenders.[111] The majority of their offenses are the result of nonsexual feelings, and they rarely eroticize aggression as repeat adult offenders do.[112] Juvenile sex offenders, therefore, very rarely fall into the already narrow definition of "sexual predators."

Juvenile registration laws are also "based on an assumption that adjudicated sex offenders differ in important and lasting ways from other delinquents and teens in general," and accordingly pose a great risk to society because of their likelihood to commit additional sex offenses.[113] However, these public policies are "grounded in questionable or inaccurate assumptions about the risk of juvenile sexual recidivism."[114] In fact, juvenile sex offenders are less likely to reoffend than other juvenile delinquents.[115] As illustrated by a recent study of over 11,000 juvenile delinquents, the recidivism rate among sex offenders was only 7.08%, whereas the general recidivism rate was 43.4%.[116] Many statistical studies have shown that over nine out ten juveniles who are arrested for a sex offense never commit a sex crime again.[117]

Because juveniles are still in the process of developing their sexual tendencies, they are highly responsive to sex offender treatment and likely to pose no future threat to society.[118] They pose less risk of reoffending than adult sex offenders[119] and other juvenile delinquents.[120] Requiring youth to comply with sex offender registration requirements is therefore a highly ineffective method of protecting children from sexual abuse.

---

110. John A. Hunter, Jr. et al., *The Relationship Between Phallometrically Measured Deviant Sexual Arousal and Clinical Characteristics in Juvenile Sexual Offenders*, 32 BEHAV. RES. & THERAPY 533, 537 (1994).

111. NATIONAL CENTER ON SEXUAL BEHAVIOR OF YOUTH, WHAT RESEARCH SHOWS ABOUT ADOLESCENT SEX OFFENDERS 1 (2003).

112. JUSTICE POLICY INST., *supra* note 3, at 20.

113. Michael F. Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 197, 198 (2010).

114. *Id*.

115. *See id*. at 201–02.

116. *Id*.

117. JUSTICE POLICY INST., *supra* note 3, at 20.

118. ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, THE EFFECTIVE LEGAL MANAGEMENT OF JUVENILE SEX OFFENDERS 2 (2000).

119. *Id.*

120. Caldwell, *supra* note 113, at 202.

B. Registration Causes Unnecessary Harm to Juvenile Sex Offenders

Sex offender registration has a profound impact on the life of a child. Being on the registry alienates the child and creates barriers between the child and the educational, employment, housing, and treatment opportunities that are likely to reduce the likelihood of reoffending.[121] Neurological studies have shown that adolescents are "especially vulnerable to the stigma and isolation that registration and notification create,"[122] and because youth who are labeled as a "sex offender" label often experience rejection from peer groups and adults, they are less likely to attach to social institutions like schools and churches.[123] This lack of attachment is detrimental to the juvenile's rehabilitation and development.[124] In addition, the pain, guilt, and rejection caused by registry requirements increases the youth's risk of suicide.[125]

Placement on the registry also reveals a child's personal information to the public, putting the child at risk of harm from vigilante actions by members of the community.[126] One study conducted at the University of Louisville concluded that 47%of registered sex offenders surveyed had been harassed in person, 28% had received threatening phone calls, and 16% had been assaulted.[127] Because adolescent brains are "sculpted by [their] interactions with the outside world," [128] and are therefore more likely to internalize this harassment, the publication of their personal information can cause both physical and emotional damage to youth.[129]

Requiring a juvenile to register also places stressors and limitation on the youth that might lead him or her to reoffend or commit other nonsexual crimes.[130] Many studies have shown the connection between lack of access to education, employment, housing, and treatment and criminal activity.[131] Research also indicates that the ostracism felt by registered offenders and the difficulties they have in finding employment and housing increase the stress felt by a juvenile who has been released from a facility.[132] This stress can trigger new offenses as

121. JUSTICE POLICY INST., *supra* note 3, at 24.
122. *Id*.
123. *Id*.
124. *Id*.
125. *Id*. at 25.
126. *Id*.
127. *Id*.
128. Aaron M. White, *The Changing Adolescent Brain*, EDUC. CAN., Spring 2005, at 6.
129. JUSTICE POLICY INST., *supra* note 3, at 24–25.
130. *Id*. at 24.
131. *Id*.
132. *Id*.

a coping mechanism.[133] Registration requirements alienate juveniles from "the very opportunities that are likely to reduce the likelihood of future offending."[134] Therefore, although they are intended to protect children from victimization, juvenile sex offender registration requirements actually victimize the children who must comply with them and prevent youth from joining the ranks of productive society.

C. Registration is Punitive and Therefore is Not an Appropriate Juvenile Disposition

Based on both the history of the juvenile justice system and the policies recently espoused by both the Supreme Court of the United States and the Supreme Court of Ohio, the juvenile justice system is primarily focused on working to rehabilitate the children who fall under its jurisdiction. Because children are emotionally and psychologically different than adults, their actions are less culpable than those of adults and they are more likely to be rehabilitated. Dispositions, therefore, should not be doled out as a punishment for wrongdoing or a deterrent of future crime. Rather, courts should focus on providing the disposition that will most effectively allow the child to be rehabilitated and reintegrated into society as a productive and contributing member.

In *State v. Williams*, the Supreme Court of Ohio concluded that all doubt had been removed as to the punitive nature of sex offender registration requirements: sex offender registration requirements under S.B. 10 are punishment. Even though the Supreme Court of Ohio has already held that the punitive nature of the statutory requirements do not allow for ex post facto application of registration requirements to juveniles, the fact that registration is a punitive scheme has much broader implications. Because juvenile courts are rehabilitative in nature, they should be prohibited from imposing a punitive sentence such as requiring a juvenile to register as a sex offender.

The penalties imposed by sex offender registration are especially oppressive to juvenile offenders. Although the requirements are not substantively different, children are more likely to internalize the societal stigmatization that is inseparable from registration as a sex offender because they are more sensitive to the views of others. Juvenile offenders begin to see themselves in the same distorted light that members of society do and begin to believe that they are the

133. *Id.*
134. *Id.*

predator everyone seems to think that they are.[135]

This stigmatization, however, goes beyond punishment; it is actually anti-rehabilitative. Because juveniles who are forced to comply with sex offender registration requirements can be denied educational and vocational opportunities, it is more difficult for them to become productive members of society. Walking around with the shame of sex offender status not only constrains children's self-esteem and shapes their self-perception, but it also limits their rehabilitative options.[136]

Although the purpose of the juvenile justice system is to take juvenile delinquents—who have a diminished culpability for their criminal acts and an immense capacity for rehabilitation and training—and transform them into capable adults, sex offender registration requirements impose restrictions on young offenders that inhibit their ability to embrace a reformed life. A system that intends to assist cannot assign punishment that leads to the offender's societal regression, hinders personal change and growth, and could even drive the young registrant to reoffend. Sex offender registration not only flouts the rehabilitative spirit of the juvenile justice system, but it actually debilitates the ex-delinquents who are subject to it.

The harmful effects of juvenile sex offender registration seem even more inexcusable when faced with the reality of extremely low rates of recidivism among youth who commit sex crimes. The Adam Walsh Act's registration and notification requirements were founded on the idea that sex offenders are crazed deviants who cannot resist reoffending and prey on the weak and helpless. However, the fact that very few juveniles who are adjudicated delinquent for a sexual offense go on to commit another sex crime completely annihilates the argument that registration is necessary for public protection. These juveniles are not predators, and studies have shown that they can be rehabilitated. However, subjecting them to harsh, punitive registration requirements and the societal stigma that accompanies the label "sex offender" can actually interfere with their rehabilitation.

---

135. *See* Mike S. Adams et. al., *Labeling and Delinquency*, 38 ADOLESCENCE 149, Spring 2003, at 184 ("negative labels . . . can lead to the adoption of a deviant self-concept"); Hollida Wakefield, *The Vilification of Sex Offenders: Do Laws Targeting Sex Offenders Increase Recidivism and Sexual Violence?* 1 J. SEXUAL OFFENDER CIV. COMMITMENT: SCI. & L. 141, 145 (2006) ("former prisoners who perceive opportunities are blocked may develop a sense of hopelessness").

136. *See, e.g.*, JUSTICE POLICY INST., *supra* note 3, at 24.

D. Imposing Punitive Registration Requirements Violates a Juvenile's Fourteenth Amendment Right to Due Process of Law

Although juveniles charged as delinquents are not afforded all of the rights of criminal defendants, the United States Supreme Court has determined that the Due Process Clause requires a delinquency hearing to "measure up to the essentials of due process and fair treatment."[137] As Justice Fortas famously pronounced in the Court's landmark decision in *In re Gault*, which held that juveniles have due process rights to notice of charges, counsel, confrontation and cross-examination of witnesses, and privilege against self-incrimination, "[u]nder our Constitution, the condition of being a boy does not justify a kangaroo court."[138]

However, juveniles have been denied several important procedural protections of criminal trials, including the right to trial by jury.[139] In holding that juvenile delinquency hearings did not require a jury trial, the Supreme Court reasoned that "a juvenile delinquency proceeding is fundamentally different from a criminal proceeding and cannot be equated to a criminal prosecution within the meaning of the sixth amendment."[140] In his concurring opinion, Justice White further explained why he reached this conclusion. He stated that because the malevolent acts of juveniles are considered to be mainly the consequences of environmental pressures or other forces outside of their control, they are "not deemed so blameworthy that punishment is required to deter him or others."[141] When a court adjudicates juvenile delinquent, it is reflective of a legislative choice "not to stigmatize the juvenile delinquent by branding him a criminal," and his disposition is "aimed at rehabilitation, not at convincing the juvenile of his error simply by imposing pains and penalties."[142]

The Supreme Court of Ohio has chosen to deny juveniles certain procedural protections as well. In holding that the State was not obligated to provide juveniles with a jury trial, the court concluded that the very existence of the juvenile court "reflects the considered opinion of society that childish pranks and other youthful indiscretions, as well as graver offenses, should seldom warrant adult sanctions and that the decided emphasis should be upon individual, corrective treatment."[143]

---

137. *In re* Gault, 387 U.S. 1, 30 (1967).
138. *Id*. at 28.
139. McKeiver v. Penn., 403 U.S. 528, 545 (1971).
140. People ex rel. Birkett v. Konetski, 909 N.E.2d 783, 796 (Ill. 2009).
141. *McKeiver*, 403 U.S. at 552.
142. *Id*.
143. *In re* Agler, 249 N.E.2d 808, 810 (Ohio 1969).

Therefore, certain procedural protections are not required under due process of law because "[t]he very purpose of the Juvenile Code is to avoid treatment of youngsters as criminals and insulate them from the reputation and answerability of criminals."[144]

Because of the rehabilitative purpose of the juvenile justice system, courts have determined that delinquency hearings do not require the same level of protection as criminal courts.[145] Although juveniles must be afforded some procedural protections in delinquency hearings, the established due process standard for juvenile proceedings is "fundamental fairness."[146]

Imposing a punitive, criminal, and sometimes mandatory sanction in a juvenile court that lacks the protections that would be afforded to adult defendants is clearly and fundamentally unfair. After the Supreme Court of Ohio's decision in *State v. Williams*, it is incontestable that requiring juveniles to register as sex offenders is a punitive disposition.[147] A youth adjudicated delinquent for a sex crime may spend less time in a juvenile facility than an adult offender would in prison, a juvenile sex offender could be required to register every 90 days for the rest of his life.[148] The enormity of this punishment makes it difficult to see the alleged fundamental differences between a delinquency hearing and a criminal proceeding.[149] In fact, if one considers the enhanced devastation that registration causes to the lives of young people, juvenile courts that require children to register actually impose harsher punishments than criminal courts, while providing the youth with fewer procedural protections.

Additionally, both the Supreme Court of the United States and the Supreme Court of Ohio have indicated that a central purpose of the juvenile justice system is to avoid exposing the youth to the societal stigmatization caused by a criminal record.[150] However, requiring juveniles to register as sex offenders not only stigmatizes them as criminals, but announces to their community that they are one of the most abhorred criminals in society: a sex offender. This public humiliation and denunciation flies in the face of the rehabilitative philosophy of the juvenile court. A juvenile court cannot maintain that its "very purpose is to avoid treatment of youngsters as criminals and

144. *Id.* at 814.

145. McKeiver v. Penn., 403 U.S. 528, 545 (1971).

146. *Id.* at 543.

147. State v. Williams, 952 N.E.2d 1108, 1112 (Ohio 2011).

148. JUVENILE DIVISION, OHIO PUBLIC DEFENDER, OVERVIEW OF THE JUVENILE PROVISIONS OF SENATE BILL 10 3.

149. See, *e.g.*, People ex rel. Birkett v. Konetski, 909 N.E.2d 783, 796 (Ill. 2009).

150. *McKeiver*, 403 U.S. at 552; *see In re* Agler, 249 N.E.2d 808, 814 (Ohio 1969).

insulate them from the reputation . . . of criminals,"[151] while at the same time branding some juveniles as sex offenders for the rest of their lives.

Finally, requiring courts to classify mandatory registrants unfairly denies youth the "individual, corrective treatment" that they should be provided in the juvenile justice system.[152] In denying juveniles procedural protections such as a jury trial, courts have attempted to preserve the rehabilitative and individualized approach of the juvenile court by keeping it separate from the world of adversarial criminal trials. However, when youth face the possibility of lifelong registration based solely on the offense they committed, no court can argue that they are receiving a treatment plan that is individually tailored to rehabilitate them. Rather, they are being punished by a one-size-fits-all scheme without the full protection granted other criminal defendants.

Juvenile sex offender registration is fundamentally unfair and therefore violates a youth's right to due process of law. Juvenile sex offenders face the same punitive registration requirements as adult offenders, but without the full scope of constitutional protections afforded to criminal defendants. Sex offender registration is not a rehabilitative measure, and stigmatizes youth even more than a criminal record for nonsexual crime would. Therefore, the justifications for the limited protections offered in juvenile court do not exist in sex offender cases, and imposing registration requirements under such circumstances does not promote a juvenile's due process right to "fundamental fairness."[153] If the condition of being a boy does not justify a kangaroo court, neither should the condition of being a juvenile sex offender.

VI. CONCLUSION

Although *State v. Williams* does not specifically address juvenile sex offenders, it has many implications on registration requirements for children who are adjudicated delinquent on the basis of a sex offense. Because the holding in *State v. Williams* clearly states that the registration requirements of Revised Code Chapter 2950 are punitive measures, and not merely remedial in nature, applying these punitive restrictions to juvenile delinquents violates the rehabilitative spirit of the juvenile justice system. This priority of rehabilitation is not simply a historical perspective, but it is a philosophy that has recently been endorsed by the Supreme Court of Ohio. Additionally, imposing such harsh, criminal sanctions without the protection of a jury trial could raise many constitutional issues, including violations of the child's right to

151. *In re Agler*, 249 N.E.2d at 814.

152. *Id.* at 810.

153. McKeiver v. Penn., 403 U.S. 528, 543 (1971).

due process of law. Ohio's juvenile defenders should explore all of these arguments as part of zealously advocating on behalf of their clients.

In conclusion, although *State v. Williams* deals solely with an adult sex offender, it could have revolutionary effects on juvenile sex offenders. At the very least, Ohio defenders have more ammunition with which to protect their clients from long-term stigmatization and humiliation through sex offender registration. Ohio legislatures should also reconsider the constitutionality and legitimacy of imposing punitive, criminal sanctions on juvenile sex offenders. Children who come into the juvenile justice system are meant to be rehabilitated and transformed into productive members of society; not stigmatized and disparaged for years to come.