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DOES THE PUNISHMENT FIT THE CRIME?: APPLYING EIGHTH AMENDMENT PROPORTIONALITY ANALYSIS TO GEORGIA'S SEX OFFENDER REGISTRATION STATUTE AND RESIDENCY AND EMPLOYMENT RESTRICTIONS FOR JUVENILE OFFENDERS

Rebecca Shepard*

INTRODUCTION

If there is "a race to the bottom to see who can most thoroughly ostracize and condemn" sex offenders among states and municipalities, Georgia is a front runner.[1] Georgia's laws for convicted sex offenders are among the toughest in the United States,[2] including a sex offender registry and residency and employment restrictions.[3] Once a person has been convicted of certain sexual crimes,[4] as well as of certain crimes against minors, regardless of

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1. Sarah Geraghty, *Challenging the Banishment of Registered Sex Offenders from the State of Georgia: A Practitioner's Perspective*, 42 HARV. C.R.-C.L. L. REV. 513, 514 (2007).

2. *Id.* at 515 (quoting Georgia State Representative Jerry Keen discussing residency and employment restrictions for registered sex offenders); Amanda West, *The Georgia Legislature Strikes with a Vengeance! Sex Offender Residency Restrictions & the Deterioration of the Ex Post Facto Clause*, 57 CATH. U. L. REV. 239, 239–41 (2007); *Id.* at 239 n.4 (comparing Georgia statutes with statutes from twenty-two other states also imposing restrictions on convicted sex offenders).

3. GA. CODE ANN. § 42-1-12 (2010); GA. CODE ANN. § 42-1-15 (2010).

4. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010); GA. CODE ANN. § 42-1-12(a)(10)(B) (2010); GA. CODE ANN. § 42-1-12(a)(14) (2010). Offenders must register if they are convicted of committing the following sexual crimes on or after July 30, 2001, against a victim who is a minor: criminal sexual conduct toward a minor, solicitation of a minor to engage in sexual conduct, use of a minor in a sexual performance, solicitation of a minor to practice prostitution, or any conviction resulting from a sexual offense against a minor victim. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010). A victim is defined as a "minor" if she or he is under age eighteen at the time of the offense. GA. CODE ANN. § 42-1-12(a)(14) (2010). Offenders must also register if they are convicted of any dangerous sexual offense, regardless of the age of the victim. Dangerous sexual offenses include: rape, aggravated assault with the intent to commit rape, sodomy, aggravated sodomy, statutory rape if the convicted individual is at least twenty-one years of age, child molestation, aggravated child molestation, enticing a child for indecent purposes, sexual assault against a person in custody, incest, second conviction of sexual battery, aggravated sexual

whether the criminal activities were of a sexual nature,[5] he is required to register and comply with residency and employment restrictions.[6]

In Georgia, minors who are convicted of sex offenses must comply with the same registry and residency requirements as adult sex offenders.[7] This is not limited to violent crimes or acts that are predatory in nature.[8] The result: Georgia teenagers can be convicted

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battery, sexual exploitation of children, electronically furnishing obscene material to minors, computer pornography and child exploitation, obscene telephone contact, any sexual offense or attempted sexual offense against a victim who is a minor. GA. CODE ANN. § 42-1-12(a)(10)(B) (2010).

5. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010); GA. CODE ANN. § 42-1-12(a)(10)(B) (2010); GA. CODE ANN. § 42-1-12(a)(14) (2010). Offenders must register as a sexual offender if they are convicted of committing the following crimes on or after July 30, 2001, even if the crimes were not sexual in nature: kidnapping or false imprisonment of a minor, except by a parent. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010). A victim is a "minor" if she or he is under the age of eighteen at the time of the offense. GA. CODE ANN. § 42-1-12(a)(14) (2010). Kidnapping or false imprisonment involving a victim who is less than fourteen years old, except by a parent, is considered a "dangerous sexual offense" and convicted offenders must register as sexual offenders, even if the offensive conduct is not sexual. GA. CODE ANN. § 42-1-12(a)(10)(B) (2010). *See also* Bill Rankin, *Ga. Supreme Court Rebuffs Sex Offender Registry Challenge*, ATLANTA J.-CONST., Mar. 15, 2010, http://www.ajc.com/news/atlanta/ga-supreme-court-rebuffs-371444.html (discussing an example of an offender required to register as a sex offender when the underlying crime, kidnapping, was not sexual in nature).

6. GA. CODE ANN. § 42-1-15 (2010). Any individual required to register under GA. CODE ANN. § 42-1-12 (2010) may not reside within one thousand feet of any childcare facility, church, school, or area where minors congregate. GA. CODE ANN. § 42-1-15(b) (2010). The restrictions on employment are slightly less strict: no individual required to register as a sexual offender may volunteer or be employed at any entity within one thousand feet of a childcare center, school, or church, but the employment restrictions do not extend to entities near "areas where minors congregate." GA. CODE ANN. § 42-1-15(c) (2010). "Areas where minors congregate" are defined by statute as including: all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, school bus stops, public libraries, and public community swimming pools. GA. CODE ANN. § 42-1-12(a)(3) (2010). A registered sex offender who knowingly violates the residency and employment restrictions "shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor more than 30 years." GA. CODE ANN. § 42-1-15(g) (2010).

7. Juveniles who are adjudicated delinquent are not required to register, nor are those convicted of misdemeanors. GA. CODE ANN. § 42-1-12(a)(9)(C) (2010). In Georgia, the legal age of majority is eighteen, and all persons under eighteen are minors. GA. CODE ANN. § 39-1-1(a) (2010). However, seventeen-year-old minors who commit offenses are tried as adults in Georgia; they are not under the jurisdiction of state juvenile courts. GA. CODE ANN. § 15-11-2(2)(A) (2010); GA. CODE ANN. § 15-11-28 (2010). Furthermore, any minor between ages thirteen and seventeen who is charged with a crime can be tried in superior court and convicted of a felony. GA. CODE ANN. § 15-11-28(b)(1) (2010). Minors who commit any of seven crimes are automatically tried as adults and in superior court: murder, voluntary manslaughter, rape, aggravated sodomy, aggravated child molestation, aggravated sexual battery, or armed robbery with a firearm. GA. CODE ANN. § 15-11-28(b)(2)(A) (2010).

8. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010); GA. CODE ANN. § 42-1-12(a)(10)(B) (2010); GA. CODE ANN. § 42-1-12(a)(14) (2010). Examples of offenses that trigger the registration requirement, but may be non-violent or may occur in the context of a peer-on-peer relationship when perpetrated by a juvenile offender include: electronically furnishing obscene material to a minor, solicitation of a minor to engage in sexual conduct, and the catchall "[a]ny conduct which, by its nature, is a sexual offense" against a minor victim. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010); GA. CODE ANN. § 42-1-12(a)(10)(B)

of sex offenses and required to register as sex offenders and comply with strict residency and employment requirements for behavior that may be quite different from the predatory offenses usually brought to mind by the term "sex offender."[9]

For example, a high school sophomore in Georgia was arrested in spring 2010 for furnishing obscene material to a minor.[10] If charged under Georgia's child pornography laws and convicted, this seventeen-year-old boy would be required to register as a sex offender who committed a "dangerous sexual offense" and prohibited from residing or loitering near any area where minors congregate—including his own high school.[11] What behavior warrants these severe consequences? He sent a naked picture of himself to a sixteen-year-old friend via text message, also known as "sexting."[12] Does the punishment fit the crime?

This Note explores whether, when applied to minors, Georgia laws requiring registration as a sex offender and restricting residency and employment based on registration violate the Eighth Amendment guarantee against cruel and unusual punishment.[13] Part I discusses Georgia's current requirements for sex offenders, including registration, residency, and employment restrictions.[14] Part II considers the constitutional validity of these restrictions as applied to

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(2010). Some peer-on-peer conduct satisfies the elements of sexual crimes, even though it may be non-violent or consensual. *See, e.g.*, Wendy S. Cash, *A Search for "Wisdom, Justice, and Moderation" in* Wilson v. State, 42 NEW ENG. L. REV. 225, 226–28 (discussing the case of Genarlow Wilson, a seventeen-year-old boy charged and convicted of felony aggravated child molestation for having received consensual oral sex from a fifteen-year-old girl in 2003, conduct that would be a misdemeanor under current Georgia law).

9. GA. CODE ANN. § 42-1-12 (2010); GA. CODE ANN. § 42-1-15 (2010).

10. Jeffry Scott, *Atlanta Schools, Parents, and Law Try to Deal with Sexting*, ATLANTA J.-CONST., Apr. 22, 2010, http://www.ajc.com/news/atlanta-schools-parents-and-482243.html (reporting two incidents of "sexting" in metro Atlanta schools resulting in different consequences for the teenaged offenders, including this incident in which a seventeen-year-old boy was arrested and charged with furnishing obscene material to a minor after sending a naked picture of himself via cell phone text message to a sixteen-year-old girl, who forwarded the picture to four other students).

11. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010); GA. CODE ANN. § 42-1-12(e)(2) (2010); GA. CODE ANN. § 42-1-15(b) (2010).

12. Scott, *supra* note 10.

13. U.S. CONST. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."); GA. CODE ANN. § 42-1-12 (2010); GA. CODE ANN. § 42-1-15 (2010).

14. *See* discussion *infra* Part I.A.

juvenile sex offenders in light of two considerations: Eighth Amendment jurisprudence on proportionality of punishments, and recent scientific research on brain development in adolescents.[15] In so doing, Part II applies the proportionality analysis from the United States Supreme Court's recent decision in *Graham v. Florida*[16] to the Georgia sex offender statutes and evaluates how recent scientific developments inform analysis of Georgia laws.[17] Finally, Part III proposes changes that address the constitutional concerns raised by the restrictions on juvenile sex offenders in Georgia, while also serving the public interest in protecting children from sex offenders.[18]

I. GEORGIA'S SEX OFFENDER STATUTES

A. Georgia Sex Offender Registry And Residency And Employment Restrictions And Their Application To Sex Offenders Who Are Minors

Georgia law provides that any individual convicted of certain sexual crimes register by providing his name, address, employer, fingerprints, and other information to the sheriff of his county of residence.[19] The sheriff's office of each Georgia county maintains

15. *See* discussion *infra* Part II. *See generally* Graham v. Florida, 130 S. Ct. 2011 (2010); Roper v. Simmons, 543 U.S. 551 (2005); Jessica E. Brown, *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 (2010); Staci A. Gruber & Deborah A. Yurgelun-Todd, *Neurobiology and the Law: A Role in Juvenile Justice?*, 3 OHIO ST. J. CRIM. L. 321 (2006); Elizabeth S. Scott & Lawrence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799 (2003).

16. 130 S. Ct. at 2022–23. The United States Supreme Court's recent decision in *Graham v. Florida* delineates a model for reviewing whether a sentence is categorically "cruel and unusual" based on proportionality. *Id.* In *Graham*, the Court's analysis weighs the culpability of the actor and suggests that scientific developments in psychology and neurology inform our understanding of the culpability of juvenile offenders. *Id.* at 2026.

17. *See* discussion *infra* Part II.

18. *See* discussion *infra* Part III.

19. GA. CODE ANN. § 42-1-12(a)(16) (2010). "Required registration information" that the offender must provide includes: name; social security number; age; race; sex; date of birth; fingerprints; photograph; physical description; address; identifying information if the offender's residence is a trailer, vessel, mobile home or otherwise moveable; employment information; vehicle description and license number; and crimes for which she was convicted. *See supra* notes 4–5 and accompanying text for crimes that trigger the registration requirement. For an offender being released from prison, the information is gathered prior to his release, but after release the offender must update the information on the registry within seventy-two hours of moving to a new residence. GA. CODE ANN. § 42-1-12(b)

this information, and it must be publicly available at county offices and on the internet.[20] Thus, in addition to facilitating the state in keeping tabs on sex offenders, the registry creates a means by which "[w]ith the click of a mouse, [anyone] can now download the name, photograph, and address of every sex offender in our communities."[21]

While "'sex offender' is synonymous with a pedophile or rapist to most lay audiences" that is not the case for all offenders required to register under Georgia's statutes, for several reasons.[22] First, offenders convicted of certain crimes against minors are classified as sex offenders, even though their criminal activities were not sexual in nature.[23] Second, minors can be required to register for offenses involving victims who are their peers or even activities where all parties consented, such as the sexting example above.[24] Third, since the registry requirement and residency and employment restrictions apply uniformly to all offenders,[25] regardless of the underlying

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(2010); GA. CODE ANN. § 42-1-12(f) (2010).

20. The sex offender registry list must be available to the public on the sheriff's website and in the sheriff's office, any county administrative building, the administrative building of any municipal corporation, and the office of the clerk of the superior court. GA. CODE ANN. § 42-1-12(i)(3) (2010).

21. Geraghty, *supra* note 1, at 514.

22. *Id.* at 517.

23. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010); GA. CODE ANN. § 42-1-12(a)(10)(B) (2010); GA. CODE ANN. § 42-1-12(a)(14) (2010). Offenders must register as a sexual offender if they are convicted of kidnapping or false imprisonment of a minor on or after July 30, 2001, even if the crime involved no sexual conduct, except when committed by a parent. GA. CODE ANN. § 42-1-12(a)(9)(B) (2010). *See also* Rankin, *supra* note 5 (discussing an example of a Georgia man required to register as a sex offender when the underlying crime was not sexual in nature).

24. Scott, *supra* note 10 (providing one example of a teen arrested for text messaging a naked image to a peer). Some teen-on-teen behaviors that once gave rise to felony convictions even though the "victim" consented, such as statutory rape or consensual oral sex, are now addressed through "Romeo and Juliet" exceptions. In Georgia, when the victim is between the ages of fourteen and sixteen (for statutory rape and child molestation) or between the ages of thirteen and sixteen (for sodomy, including oral and anal sex), and the offender is eighteen years old or younger and no more than four years older than the victim, the offense is only a misdemeanor. H.R. 1059, 148th Gen. Assemb., Reg. Sess. (Ga. 2006), *available at* http://www.legis.state.ga.us/legis/2005_06/pdf/hb1059.pdf (tracking the 2006 amendments to sex offense statutes incorporating these "Romeo and Juliet" exceptions). *See* Grovenstein v. State, 637 S.E.2d 821, 822–23 (Ga. Ct. App. 2006) (vacating the requirement that a man register as a sex offender despite having pled guilty to sexual battery because the consensual sexual incident would be treated as a misdemeanor offense under the 2006 amendments to the sex offender registry statute). However, other offenses for which conviction would result in registration as a sex offender do not have "Romeo and Juliet" exceptions for offenders who perpetrate the behavior with or against a peer.

25. GA. CODE ANN. § 42-1-12(a)(20) (2010) (defining a "sexual offender" as any individual "convicted of a criminal offense against a victim who is a minor *or* any dangerous sexual offense,"

criminal behavior, all offenders categorized as sex offenders are "treated . . . like the worst offender."[26] Legislators advocating these strict limitations for sex offenders, even after offenders have served their prison sentence and probation, proclaim their intent to prevent criminals from "prey[ing] on innocent children."[27] Courts hearing challenges to sex offender registry and residency restrictions have affirmed this intent to "protect children from known sex offenders."[28] Yet, juvenile offenders, who may be unlikely to pose any further threat to children, are treated the same as all other sex offenders.[29]

The 2006 amendments to the residency and employment restrictions for sex offenders[30] made Georgia's sex offender laws the "toughest . . . in the country."[31] The residency restrictions prevent individuals from living within one thousand feet of any childcare facility, church, school, or area where minors congregate.[32] The employment restrictions are slightly less extensive, forbidding sex offenders from working or volunteering at a school, church, or childcare facility or any entity within one thousand feet of such

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although those offenses, as defined by GA. CODE ANN. § 42-1-12(a)(9)(B) and GA. CODE ANN. § 42-1-12(a)(10)(B), encompass a wide range of conduct (emphasis added)).

26. Geraghty, *supra* note 1, at 518.

27. *Id.* at 516 (quoting Georgia State Representative Jerry Keen, a sponsor of the 2006 bill making the residency and employment restrictions stricter in Georgia (citing Ga. H.R. 1059)).

28. West, *supra* note 2, at 247 & n.39 (citing multiple federal and state court decisions acknowledging the intent of residency restrictions to protect public safety, particularly the safety of children).

29. GA. CODE ANN. § 42-1-12(a)(20) (2010). As of March 31, 2011, Georgia's sex offender registry includes 19,620 registered sex offenders, including twenty-one children aged seventeen or younger. GA. BUREAU OF INVESTIGATION, GEORGIA'S REGISTERED SEX OFFENDERS (Mar. 31, 2010), http://www.georgia.gov/00/channel_modifieddate/0,2096,67862954_87983024,00.html. For profiling purposes, the Georgia Bureau of Investigation includes eighteen-year-old offenders with the youngest set of adult offenders. *Id.* There are currently 1,378 sex offenders aged eighteen to twenty-five residing in Georgia. *Id.*

30. GA. CODE ANN. § 42-1-12(a)(20) (2010); 1996 Ga. Laws 1520 (establishing the original sex offender registry in Georgia); Geraghty, *supra* note 1, at 515–18.

31. West, *supra* note 2, at 239 (quoting the sponsor of the 2006 bill, Rep. Jerry Keen of Georgia House District 179); *see also* BRENDA V. SMITH, FIFTY STATE SURVEY OF JUVENILE SEX OFFENDER REGISTRATION REQUIREMENTS, NIC/ WCL PROJECT ON ADDRESSING PRISON RAPE (2009) (reporting sex offender registration, residency and employment statutes and their application to juveniles for every state and the District of Columbia); discussion *infra* Part III.C.1.

32. GA. CODE ANN. § 42-1-15 (2010). Any individual required to register under title 42, chapter 1, section 12 of the Georgia Code may not reside within one thousand feet of any childcare facility, church, school, or area where minors congregate. GA. CODE ANN. § 42-1-15(b) (2010). *See also* Ga. H.R. 1059 (tracking the 2006 amendments to sex offense statutes).

places.[33] The consequences for failing to comply with these restrictions are severe: once a sex offender is aware that she resides within one thousand feet of a forbidden entity, she must move immediately or face a prison sentence between ten and thirty years.[34] Further, the definition of areas where minors congregate[35] is so broad it excludes sex offenders from most residential areas of the state.[36] Residency restrictions like these make it so difficult for sex offenders to find a place to live in the state that the "laws act as the 'effective equivalent of banishment.'"[37]

B. Legal Challenges To Georgia Sex Offender Statutes

Georgia's sex offender registry and residency and employment restrictions have faced several legal challenges.[38] As passed in 2006, the residency restrictions did not include any exceptions for sex offenders who owned their homes prior to the implementation of the restrictions, or who owned their homes before a school, daycare or other area where minors congregate came to them.[39] A sex offender ordered to vacate his home and business when childcare centers opened near both places challenged the law as an unconstitutional

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33. No individual required to register as a sexual offender may volunteer or be employed at any entity within one thousand feet of a childcare center, school, or church, but the employment restrictions do not extend to entities near "areas where minors congregate." GA. CODE ANN. § 42-1-15 (b)–(c) (2010).

34. A registered sex offender who knowingly violates the residency and employment restrictions "shall be guilty of a felony and shall be punished by imprisonment for not less than ten nor more than 30 years." GA. CODE ANN. § 42-1-15(g) (2010).

35. "Areas where minors congregate" are defined by statute as including all public and private parks and recreation facilities, playgrounds, skating rinks, neighborhood centers, gymnasiums, school bus stops, public libraries, and public community swimming pools. GA. CODE ANN. § 42-1-12(a)(3) (2010).

36. Plaintiffs' Statement of Material Facts in Support of Renewed Motion for Summary Judgment and for a Permanent Injunction to Enjoin Enforcement of the "School Bus Stop" Provision of O.C.G.A. § 42-1-15(B), 42-1-16(B) at 13–15, 19–20, Whitaker v. Perdue, No. 4:06-CV-0140-CC (N.D. Ga. Sept. 15, 2006), *available at* http://www.schr.org/files/post/FACTS.pdf (noting that if the residency restriction were enforced as written, "[i]n many cases, all or nearly all persons on the registry . . . will have to move.") [hereinafter Plaintiffs' Statement]; Geraghty, *supra* note 1, at 520.

37. West, *supra* note 2, at 248 (quoting Doe v. Miller, 405 F.3d 700, 719 (8th Cir. 2005)).

38. *See generally* Rainer v. State, 690 S.E.2d 827 (Ga. 2010); Mann v. Ga. Dept. of Corr., 653 S.E.2d 740 (Ga. 2007); Whitaker v. Perdue, No. 4:06-CV-140-CC (N.D. Ga. filed July 20, 2006).

39. H.R. 1059, 148th Gen. Assemb., Reg. Sess. (Ga. 2006), *available at* http://www.legis.state.ga.us/legis/2005_06/pdf/hb1059.pdf; *see generally* Debra Hunter & Paul Sharman, Note, *Crimes and Offenses: Sexual Offenses*, 23 GA. ST. L. REV. 11 (2006).

taking of his property.[40] The Georgia Supreme Court found that the lack of a "grandfather clause" in the residency restrictions was improper.[41] The court noted that without such protection for homeowners, "there is no place in Georgia where a registered sex offender can live without being continually at risk of being ejected."[42]

The restrictions were then amended to exempt homeowners who owned property prior to an entity where minors congregate establishing a location within the proscribed distance, thus grandfathering in pre-existing property owners.[43] Subsequent amendment also exempted leaseholders whose lease agreements predate the establishment of a child-centered establishment within the forbidden distance, but only during "the duration of the executed lease."[44] Once the lease ends, the sex offender must move to a home in compliance with the restrictions.[45]

Another challenge to the Georgia statutes was brought by a man required to register as a sex offender even though he was convicted for a non-sexual crime: false imprisonment.[46] He challenged the constitutionality of the statute, claiming it was cruel and unusual

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40. *Mann*, 653 S.E.2d at 742.

41. *Id.* at 745–46 (finding the residency restrictions constituted a taking when the plaintiff owned his home prior to the relocation of a childcare center nearby that violated the one-thousand-foot residency restriction, but finding no improper taking of his business because the statute does not prevent a sex offender from owning a business proximate to a childcare center, merely from working in such a business).

42. *Id.* at 742.

43. GA. CODE ANN. § 42-1-15(e) (2010); GA. CODE ANN. § 42-1-15(f)(3) (2010); S. 1, 149th Gen. Assemb., Reg. Sess. (Ga. 2008), *available at* http://www.legis.state.ga.us/legis/2007_08/pdf/sb1.pdf (amending residency restrictions in 2008 to provide that homeowners who are registered sex offenders do not violate state residency restrictions when a school, childcare center, or other area where minors congregate locates within one thousand feet of their residences).

44. GA. CODE ANN. § 42-1-15(e) (2010); GA. CODE ANN. § 42-1-15(f)(3) (2010); H.R. 571, § 13, 150th Gen. Assemb., Reg. Sess. (Ga. 2010), *available at* http://www.legis.ga.gov/legis/2009_10/pdf/hb571.pdf (amending the residency restrictions in 2010 to allow leaseholders who are registered sex offenders residing on property leased prior to the location of a school, childcare center, or other area where minors congregate within one thousand feet to remain in their residence until the executed lease expires). The amendments also allow offenders with established employment to retain their employment if a childcare center, church, or school is later established within one thousand feet of their places of employment.

45. GA. CODE ANN. § 42-1-15(e) (2010); GA. CODE ANN. § 42-1-15(f)(3) (2010); Plaintiffs' Statement, *supra* note 36, at 12–13.

46. Rainer v. State, 690 S.E.2d 827, 828 (Ga. 2010).

punishment when the offense was not sexual in nature.[47] The Georgia Supreme Court held that the law was constitutional, even applied to non-sexual offenses, because it has a rational relationship to the intent of the sex offender registration statute,[48] even though the dissenting opinion pointed out that most instances of kidnapping and false imprisonment do not involve any sexual assault.[49]

A pending suit in the U.S. District Court in the Northern Division of Georgia challenges the "school bus stop provision" of the residency restrictions.[50] The 2006 amendment expanding the definition of "areas where minors congregate" to include school bus stops would ban registered offenders from living or working within one thousand feet of designated school bus stops,[51] but has not yet been enforced in the state.[52] Georgia registered sex offenders who would be forced to move or face imprisonment if the school bus stop provision were enforced have filed a class-action lawsuit against the state.[53] As school bus stops are pervasive in residential areas and change frequently based on school enrollment, plaintiffs assert that the school bus stop provision violates due process because it is unconstitutionally vague.[54] Because attempts to repeal the school bus

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47. *Id.* at 828–29.

48. *Id.* at 828–29 (finding that the registration statute was not over-inclusive in applying to offenders convicted of non-sexual crimes because the statute has a satisfactory rational relationship to the "State's legitimate goal of informing the public for purposes of protecting children from those who would harm them;" and finding that the registry requirement was not cruel and unusual punishment because it is a regulatory requirement, not a punishment).

49. *Id.* at 830–31 (Hunstein, C.J., dissenting) (asserting that the registration statute is over-inclusive in including those whose offenses are not sexual in nature and "is clearly not rational" in treating all kidnappings and false imprisonments as sexual offenses, when research indicates less than half of such crimes involve sexual assault).

50. Whitaker v. Perdue, No. 4:06-CV-0140-CC (N.D. Ga. filed July 20, 2006).

51. GA. CODE ANN. § 42-1-15(b) (2010); GA. CODE ANN. § 42-1-12(a)(3) (2010); GA. CODE ANN. § 42-1-12(a)(9)(B) (2010); GA. CODE ANN. § 42-1-12(a)(10)(B) (2010).

52. Plaintiffs' Statement, *supra* note 36, at 6, 9.

53. Whitaker v. Perdue, No. 4:06-CV-0140-CC (N.D. Ga. filed July 20, 2006).

54. Plaintiffs' Brief in Support of Renewed Motion for Summary Judgment and for a Permanent Injunction to Enjoin Enforcement of the "School Bus Stop" Provision of O.C.G.A. § 42-1-15(B) and O.C.G.A. § 42-1-16(B), Whitaker v. Perdue, No. 4:06-CV-0140-CC (N.D. Ga. Sept. 15, 2010), *available at* http://www.schr.org/files/post/BUS%20STOP%20BRIEF%209%2015%2010.pdf (asserting that the school bus stop provision is unconstitutionally vague and violates substantive due process rights). In response to plaintiff's motions in this case, the court has granted a temporary restraining order preventing the enforcement of the school bus stop provision of § 42-1-15(b), Whitaker v. Perdue, No. 4:06-CV-0140-CC (N.D. Ga. June 27, 2006) (order granting temporary restraining order), as well as a

stop provision have been unsuccessful thus far, offenders seeking relief from this provision await the outcome of this suit.[55]

C. Duration Of Georgia Sex Offender Registration Requirements

Georgia statute requires sex offenders, including juvenile sex offenders, to register "for the entire life of the sexual offender."[56] The residency and employment restrictions apply to anyone required to register, so they also continue for the sex offender's "entire life."[57] Provided certain statutory criteria are met, the offender can petition to be released from the default lifetime registration requirements ten years after completing all prison, parole, and probation for the offense.[58] The superior court then has the discretion to release the offender from the registration requirements or residency or employment restrictions—completely or in part, permanently or for a specific time period—based on the court's assessment of whether the person poses a risk of perpetrating another sexual offense.[59] However, the possibility remains that a minor convicted as a sex

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temporary injunction prohibiting enforcement of § 42-1-15 "to the extent that it restricts registered sex offenders from engaging in volunteer activities at churches," Whitaker v. Perdue, No. 4:06-CV-0140-CC (N.D. Ga. Mar. 30, 2009) (order granting preliminary injunction). Accordingly, the bus stop provision of the residency restrictions is currently unenforced due to the temporary order, although it remains in the statute.

55. Geraghty, *supra* note 1, at 529.

56. GA. CODE ANN. § 42-1-12(f)(6) (2010).

57. GA. CODE ANN. § 42-1-15(a)(1) (2010) (invoking the registration requirement of GA. CODE ANN. § 42-1-12(f)(6)).

58. GA. CODE ANN. § 42-1-19 (2010). The offender must remain on the registry for ten years after completing all prison, parole, and probation for the offense before petitioning for release from the registration requirements. GA. CODE ANN. § 42-1-19(c)(2) (2010). However, the offender may apply immediately upon completing all prison, parole and probation for the offense if he is: confined to a nursing home or hospice facility, totally and permanently disabled, or otherwise seriously physically disabled. GA. CODE ANN. § 42-1-19(a)(1) (2010). An offender may also petition for release from the registry if he was convicted for a felony that has since become punishable as a misdemeanor or was convicted of kidnapping or false imprisonment of a minor and the offense was not sexual in nature. GA. CODE ANN. § 42-1-19(a)(2)–(3) (2010). *See* Grovenstein v. State, 637 S.E.2d 821 (Ga. Ct. App. 2006) (vacating the registration requirement because the sexual offense was consensual oral sex with a fourteen-year-old when the offender was eighteen years old, which would be treated as a misdemeanor offense after the 2006 amendments to the sex offender registry statute).

59. GA. CODE ANN. § 42-1-19(f) (2010). This was clarified by a 2010 amendment; prior to this amendment the offender could petition to be removed from the registry, but could not appeal the residency and employment restrictions. H.R. 571, 150th Gen. Assemb., Reg. Sess. (Ga. 2010), *available at* http://www.legis.ga.gov/legis/2009_10/pdf/hb571.pdf.

offender in Georgia will spend the rest of his life on the sex offender registry and must comply with the residency and employment restrictions for the duration of the registration requirement or risk a minimum prison sentence of ten years.[60] For juvenile offenders, this may be a cruel and unusual punishment.

II. APPLYING *GRAHAM V. FLORIDA'S* EIGHTH AMENDMENT PROPORTIONALITY REVIEW TO GEORGIA'S SEX OFFENDER STATUTES

A. Graham v. Florida*: Evaluating Whether A Law Is "Cruel And Unusual" Based On Eighth Amendment Proportionality Review*

The Supreme Court's decision in *Graham v. Florida* provides a model for reviewing whether a sentence is categorically "cruel and unusual" and therefore a violation of the Eighth Amendment.[61] In *Graham*, the Court evaluated the constitutionality of a sentence of life in prison without chance of parole for juvenile offenders who committed non-homicide crimes.[62] When considering whether a punishment is unconstitutionally cruel and unusual, the United States Supreme Court has declared that "[t]he concept of proportionality is central."[63] While some Eighth Amendment cases involve challenges to a sentence in a particular case, in *Graham* the Court considered categorical sentencing rules, evaluating the constitutionality of a life sentence without parole for any juvenile non-homicide offender.[64] To

60. GA. CODE ANN. § 42-1-15(g) (2010).

61. Graham v. Florida, 130 S. Ct. 2011, 2022, 2027–31 (2010); State v. Gomez, 235 P.3d 1203 (Kan. 2010) (discussing how the analytical framework of *Graham* could be applied to a categorical challenge of disproportionality to a sentence of life in prison with a mandatory minimum sentence of twenty-five years for a conviction of aggravated indecent liberties with a child under the age of fourteen).

62. *Graham*, 130 S. Ct. at 2018–19. Graham, who was sixteen years old at the time of the crime, was charged as an adult for burglary with assault or battery and attempted armed robbery after attempting to rob a restaurant and hitting and injuring its manager. *Id.* at 2018. Graham pled guilty, and the trial court withheld adjudication of guilt and sentenced him to probation. *Id.* Graham violated his probation within six months by participating in a home invasion robbery and possessing a firearm. *Id.* at 2018–19. The trial court then found Graham guilty of the earlier armed robbery and sentenced him to life in prison. *Id.* at 2020. In Florida, there is no parole system, so his sentence was for life in prison without parole. *Id.* Graham challenged his sentence under the Eighth Amendment. *Id.*

63. *Graham*, 130 S. Ct. at 2021.

64. *Id.* at 2021–22.

consider whether the challenged sentence is constitutionally "cruel and unusual punishment" the Court evaluated proportionality, considering 1) whether there is a balance between the culpability of the offender and the severity of the punishment and 2) whether the sentence serves legitimate penological goals.[65] The Court found that a sentence of life without parole for juvenile non-homicide offenders is unconstitutional, based in part on considerations that juvenile offenders are less culpable than adults who commit the same acts.[66]

The life sentence challenged in *Graham* is clearly different from the Georgia sex offender registry and residency and employment requirements.[67] However, the *Graham* Court set forth a model for conducting an Eighth Amendment analysis of the proportionality of a categorical sentencing rule while considering "developments in psychology and brain science [that] show fundamental differences between juvenile and adult minds."[68] This model of proportionality review can be applied to Georgia's sex offender registration and residency and employment restrictions to evaluate whether, taken together, they constitute cruel and unusual punishment when applied to juvenile offenders.[69]

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65. *Id.* at 2026.

66. *Id.* at 2026–27, 2034.

67. *See* GA. CODE ANN. § 42-1-12 (2010); GA. CODE ANN. § 42-1-15 (2010); GA. CODE ANN. § 42-1-19 (2010); *Graham*, 130 S. Ct. 2011.

68. *Graham*, 130 S. Ct. at 2026.

69. The United State Supreme Court has found that requiring sex offenders to register with the state is not a punishment, which would preclude court challenges to sex offender registries under the Eighth Amendment. Smith v. Doe, 538 U.S. 84, 105–06 (2003). The Georgia Supreme Court has also found that "current law does not deem registration as a sexual offender to be punishment." Hollie v. State, 696 S.E.2d 642, 643 (Ga. 2010). Instead, the Georgia Supreme Court asserts "sexual offender registry requirements such as those contained in OCGA § 42-1-12 are regulatory, and not punitive, in nature." Rainer v. State, 690 S.E.2d 827, 828 (Ga. 2010). Defining the registry requirements as regulatory rather than punitive has allowed states, including Georgia, to defend registration statutes against claims that they impose ex post facto punishments or sentences exceeding maximum statutory punishment. *See Smith*, 538 U.S. 84; *Hollie*, 696 S.E.2d at 643; *Rainer*, 690 S.E.2d at 828.

While registration requirements *alone* may be deemed regulatory, when considered with accompanying residency and employment restrictions Georgia's requirements seem far more punitive. This Note applies Eighth Amendment analysis to the registration requirements of § 42-1-12 *in tandem* with the residency and employment restrictions of § 42-1-15. GA. CODE ANN. § 42-1-12 (2010); GA. CODE ANN. § 42-1-15 (2010). "Registration [and residency restrictions] limit[] where the offender can live, work, and congregate," and they are "no mere administrative formality or minor inconvenience." *Rainer*, 690 S.E.2d at 831 (Hunstein, C.J., dissenting).

The Georgia Court of Appeals' recent decision in *Taylor v. State*, indicates the unique position of

1. Applying Proportionality Review to a Non-Capital Punishment

Prior to *Graham*, the United States Supreme Court only applied categorical Eighth Amendment proportionality review to capital sentences—known as the "death is different" approach.[70] In *Harmelin v. Michigan*, the Court expressly cabined categorical proportionality review to capital punishment, noting that the death penalty gives rise to "protections that the Constitution nowhere else provides" and declining to extend proportionality review further.[71]

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sex offender registry requirements and residency and employment restrictions, and suggests that these requirements are punitive. 698 S.E.2d 384 (Ga. Ct. App. 2010). In *Taylor*, the appellant sought to withdraw his guilty plea to child molestation based on ineffective assistance of counsel. *Id.* at 385. His claim of ineffective assistance of counsel was based in part on his counsel's failure to advise him that he would be subject to Georgia's sex offender registration requirements. *Id.* This claim turned on whether the sex offender registry requirement was a direct consequence of a guilty plea, meaning it "lengthens or alters the pronounced sentence" or only a collateral consequence, which would not give rise to a finding of ineffective assistance of counsel. *Id.* at 387 n.3. The *Taylor* court applied factors delineated by the United States Supreme Court in *Padilla v. Kentucky*, in determining whether failure to advise of a penalty that is "uniquely difficult to classify as either a direct or a collateral consequence" (in that case, deportation) can give rise to a claim of ineffective assistance of counsel. Padilla v. Kentucky, 130 S. Ct. 1473, 1481–82 (2010); *Taylor*, 698 S.E.2d at 387–89. The Georgia Court of Appeals articulated:

> [R]egistration as a sex offender is "intimately related to the criminal process" in that it is an "automatic result" following certain criminal convictions; . . . [h]ence "[o]ur law has enmeshed criminal convictions and [sex offender registration]" such that it is "most difficult" to divorce the requirement of registration from the underlying criminal conviction.

Taylor, 698 S.E.2d at 388 (quoting *Padilla*, 130 S. Ct. at 1481). Further, the court noted that "registration as a sex offender, like deportation, is a 'drastic measure' . . . with severe ramifications for a convicted criminal," including felony charges if a required registrant fails to comply. *Taylor*, 698 S.E.2d at 388 (quoting *Padilla*, 130 S. Ct. at 1478). For the purpose of establishing ineffective assistance of counsel, the *Taylor* court found that sex offender registration is a "serious consequence" that must be disclosed by counsel to a criminal defendant considering making a guilty plea. *Taylor*, 698 S.E.2d at 389. This treatment suggests that the Georgia registry and residency and employment restrictions are more punitive, rather than merely regulatory, in nature.

The United States Supreme Court set forth a two-part test in *Smith v. Doe* for determining whether a sex offender registry statute violates the Ex Post Facto Clause: 1) did the state legislature act with punitive intent in creating the law, and if not 2) is the statute punitive in effect? 538 U.S. 84, 92 (2003). While "the Georgia legislature's stated intent is nonpunitive, the [residency and employment] statute's *effect* is punitive," especially considering the effects if the school bus stop provision were enforced. West, *supra* note 2, at 257 (emphasis added) (applying the *Smith* test to the Georgia residency restrictions and asserting that the statute is punitive in effect).

70. *See, e.g.*, Roper v. Simmons, 543 U.S. 551, 561–64 (2005); Harmelin v. Michigan, 501 U.S. 957, 994 (1991); Furman v. Georgia, 408 U.S. 238 (1972); Robert Smith & G. Ben Cohen, *Redemption Song:* Graham v. Florida *and the Evolving Eighth Amendment Jurisprudence*, 108 MICH. L. REV. FIRST IMPRESSIONS 86, 87 (2010).

71. *Harmelin*, 501 U.S. at 994 (denying proportionality review for a life-without-parole sentence for a first-time drug offender, even though the sentence was notably severe).

In his concurrence in *Harmelin*, Justice Kennedy noted that proportionality had generally been applied to capital cases, but asserted that the proportionality principle of the Eighth Amendment also applies to noncapital sentences.[72] Though it forbids "only extreme sentences that are 'grossly disproportionate' to the crime," these can include sentences short of death.[73] In *Graham*, the approach voiced by Justice Kennedy in *Harmelin* was adopted by the Court, and a non-capital sentence was found unconstitutional under proportionality review.[74] Thus, *Graham* opened the door for evaluating the proportionality and constitutionality of other non-capital punishments.[75]

2. Model of Proportionality Review Put Forth in Graham

In *Graham*, the Supreme Court considered a categorical challenge to a term-of-years sentence, life without parole for a juvenile convicted of armed burglary and attempted armed robbery, based on the proportionality principle of the Eighth Amendment.[76] The Court uses a two-part analysis to consider such categorical challenges: first, do objective indicia suggest there is a national consensus against the sentencing practice; then second, does the punishment violate the Constitution based on the Court's own interpretation of the Eighth Amendment?[77] When measuring "objective indicia of national

72. *Id.* at 997, 1001 (Kennedy, J., concurring).

73. *Id.* at 997–98, 1001 (Kennedy, J., concurring) (quoting Solem v. Helm, 463 U.S. 277, 288, 303 (1983)).

74. Graham v. Florida, 130 S. Ct. 2011, 2034 (2010); *Id.* at 2036 (Stevens, J., concurring) ("Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time; unless we are to abandon the moral commitment embodied in the Eighth Amendment, proportionality review must never become effectively obsolete." (citations omitted)).

75. *See Graham*, 130 S. Ct. at 2036–37 (Stevens, J., concurring).

76. *Graham*, 130 S. Ct. at 2021–23. The Court reviews two classifications of proportionality challenges: 1) challenges to the length or severity of a sentence based on the facts of a particular case, and 2) challenges based on categorical restrictions on the death penalty. *Id.* at 2021. The categorical challenges have included two subsets, one turning on the characteristics of the offense and the other turning on the characteristics of the offender. *Id.* at 2022. *Graham* presented a categorical challenge to a term-of-years sentence for a non-homicide offender, based on the offender's characteristic of being a juvenile, thus questioning a non-capital sentencing practice generally rather than only as applied to the facts of this case. *Id.* at 2022–23.

77. *Id.* at 2022. *See also* Roper v. Simmons, 543 U.S. 551, 564 (2005).

consensus," the Court considers legislative enactments permitting the challenged sentence for juveniles and actual sentencing practices.[78] If the punishment is less common, the Court considers it to have less support from the national consensus.[79] However, the Court notes that community consensus "is not itself determinative of whether a punishment is cruel and unusual."[80]

The Court's independent judgment of whether the sentence is cruel and unusual entails considering the culpability of the offenders and the severity of the challenged punishment.[81] The culpability of the offenders should be assessed "in light of their crimes *and characteristics*."[82] In evaluating the punishment, the Court must also evaluate whether it serves legitimate penological goals.[83]

Regarding the culpability of juvenile offenders, the *Graham* Court reiterated the holding in *Roper v. Simmons* that juveniles have diminished culpability as compared to adult offenders, and therefore "are less deserving of the most severe punishments."[84] A juvenile offender who commits a crime that, by its own nature, is less deserving of the most severe punishments "has a twice diminished moral culpability."[85] In evaluating the severity of the challenged punishment, the Court not only observed the harshness of the

78. *Graham*, 130 S. Ct. at 2023.

79. *Id.* at 2023–26. The Court weighed evidence that thirty-seven states, the District of Columbia, and federal law permit life sentences without parole for juvenile non-homicide offenders under some circumstances against the rarity with which this sentence is actually applied. *Id.* at 2023–25. The Court also noted that many states do not specifically prohibit the sentence, but do not actually apply it. *Id.* at 2025. "The sentencing practice now under consideration is exceedingly rare. And 'it is fair to say that a national consensus has developed against it.'" *Id.* at 2026 (quoting Atkins v. Virginia, 536 U.S. 304, 316 (2002)).

80. *Graham*, 130 S. Ct. at 2026.

81. *Id.* at 2026.

82. *Id.* (emphasis added).

83. *Id.* The Court considers whether the challenged sentence is justified by penological goals "that have been recognized as legitimate": retribution, deterrence, incapacitation, and rehabilitation. *Id.* at 2028.

84. *Id.* at 2026 (affirming the holding in *Roper* that characteristics of juvenile offenders make them less culpable for their actions than are adult offenders, including: a lack of maturity and responsibility, greater susceptibility to negative influences, and a more transitory character (citing Roper v. Simmons, 543 U.S. 551, 569 (2005))); Roper v. Simmons, 543 U.S. 551, 569–70 (2005) (articulating these "[t]hree general differences between juveniles under 18 and adults" that demonstrate the reduced culpability of juvenile offenders).

85. *Graham*, 130 S. Ct. at 2027. *See* Smith & Cohen, *supra* note 70, at 91–92 (discussing the significance of this "constitutional mathematics" in creating a new constitutional principle).

sentence generally, but specifically considered its severity as applied to a juvenile.[86] The Court noted that juveniles and adults both sentenced to life without parole only nominally receive the same punishment because the effect of the sentence for a juvenile will be much more severe.[87] Finally, the Court evaluated whether the challenged sentencing practice was supported by legitimate penological goals, and for each penological goal, the characteristics and immaturity of juvenile offenders undermined the justification for the sentence.[88] Because of the diminished culpability of juvenile non-homicide offenders, the severity of the challenged sentence, and the lack of justification by penological goals, the Court drew a bright line, categorically forbidding life-without-parole sentences for these offenders.[89]

B. Scientific Research On Maturation And Its Implications For Culpability Of Juvenile Offenders

Evaluating whether a punishment is cruel and unusual requires courts to apply societal morals and standards of decency, which change over time.[90] Rather than being fixed, notions of cruelty involve moral judgments and, as noted by the United States Supreme Court, "must change as the basic mores of society change."[91] A punishment considered constitutionally permissible in the past may not be acceptable today, because our understandings of decency, culpability, or social values change over time.[92] As science uncovers new information about adolescent development, our understanding of

86. *Graham*, 130 S. Ct. at 2028.

87. *Id.*

88. *Id.* at 2028–30 (finding that goals of retribution, deterrence, incapacitation, and rehabilitation do not justify a life-without-parole sentence for a juvenile non-homicide offender, based largely on the characteristics and immaturity of juveniles).

89. *Id.* at 2030 (asserting that the Constitution "does not foreclose the possibility that [juvenile non-homicide offenders] will remain behind bars for life" but that they must be given "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation").

90. *Id.* at 2021 ("To determine whether a punishment is cruel and unusual, courts must look beyond historical conceptions to 'the evolving standards of decency that mark the progress of a maturing society.'" (quoting Estelle v. Gamble, 429 U.S. 97, 102 (1976))).

91. Furman v. Georgia, 408 U.S. 238, 382 (1972).

92. *Graham*, 130 S. Ct. at 2036 (Stevens, J., concurring).

the culpability of juvenile offenders evolves, and consequently our evaluation of punishments for these offenders evolves as well.

In *Roper v. Simmons*, the United States Supreme Court held that imposing the death penalty on juvenile offenders violated the Eighth Amendment, thus declaring a punishment previously considered constitutional to be cruel and unusual.[93] The *Roper* Court found that there are three differences between juveniles and adults that diminish juveniles' culpability.[94] First, youths lack maturity and a sense of responsibility, so when they act irresponsibly, their conduct is less morally reprehensible than that of an adult.[95] Second, juveniles have greater susceptibility to negative influences and peer pressure, and at the same time lack control over their environment and ability to escape those influences.[96] Third, juveniles have a more transitory character and personality, undermining any conclusion that a juvenile who commits even a heinous crime has an "irretrievably depraved character."[97] The conclusions about juvenile culpability made in *Roper* were adopted by the Court in *Graham* as well.[98] Since the *Roper* Court based its holding about the constitutionality of the punishment on its findings regarding adolescent development, which were then adopted in *Graham*, further scientific discoveries about

93. Roper v. Simmons, 543 U.S. 551, 568 (2005).

94. *Id.* at 569.

95. *Id.* (noting that juveniles are denied the same rights as adults because of their immaturity and irresponsibility); Thompson v. Oklahoma, 487 U.S. 815, 835 (1988) ("The reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult.").

96. *Roper*, 543 U.S. at 569 (noting that while juveniles are more vulnerable to negative influences, they also have less control over their own environments and "'lack the freedom that adults have to extricate themselves from a crimogenic setting'" (quoting Lawrence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 AM. PSYCHOLOGIST 1009, 1014 (2003))).

97. *Roper*, 543 U.S. at 570. *See also* Scott & Steinberg, *supra* note 15, at 821 ("It is fair to assume that most adults who engage in criminal conduct act upon subjectively defined preferences and values, and that their choices can fairly be charged to deficient moral character. This cannot fairly be said of . . . juvenile actors, whose choices, while unfortunate, are shaped by development factors that are constitutive of adolescence.").

98. Graham v. Florida, 130 S. Ct. 2011, 2026 (2010) ("No recent data provide reason to reconsider the Court's observations in *Roper* about the nature of juveniles. . . . [D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.").

maturation could either support the Court's view of juvenile culpability or undermine it.[99]

The *Roper* Court relied upon scientific and psychological research presented in amicus curiae briefs in making its conclusions about the differences between juveniles and adults.[100] Critics have challenged the sufficiency of the scientific and psychological support for the Court's conclusions regarding juveniles' reduced culpability.[101] However, psychological and neurological research continues to support the *Roper* Court's findings that the developmental differences between juveniles and adults are significant and impact culpability.[102]

Different legal issues implicate different types of maturity.[103] While studies indicate that juveniles develop cognitive skills early and may perform cognitive tasks comparable to adults by age sixteen, they are not equal to adults with respect to psychosocial skills, including impulse control and resistance to peer pressure.[104] This

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99. *See, e.g.*, Gruber & Yurgelun-Todd, *supra* note 15, 331 (reporting the authors' conclusion from studies of brain development, that "[b]ased on neurobiological data alone, it is clear that children and adolescents are different both structurally and functionally from adults"); Lawrence Steinberg et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583 (2009); Scott & Steinberg, *supra* note 15, at 812–20.

100. *Roper*, 543 U.S. 551; Deborah W. Denno, *The Scientific Shortcomings of* Roper v. Simmons, 3 OHIO ST. J. CRIM. L. 379, 380–81, 380 n.8 (2006) (noting the Court's reliance on a "substantial number of *amici* briefs," the majority of which (sixteen out of eighteen) were submitted on behalf of the juvenile respondent, including briefs by the American Psychological Association, American Bar Association, and President Jimmy Carter).

101. *See, e.g.*, *Roper*, 543 U.S. at 617–20 (Scalia, J., dissenting) (challenging as contradictory claims by the American Psychological Association in its amicus brief for petitioner that minors "lack the ability to take moral responsibility for their decisions" when the Association also submitted an amicus brief in another, unrelated case urging that minors were mature enough to make abortion decisions without parental involvement); Denno, *supra* note 100, at 381 (asserting that the Court failed to cite adequately and relied too heavily on a few resources and some outdated resources).

102. Psychological and brain research indicates that juveniles differ from adults in their cognitive and psycho-social development, and that risky, even illegal, behavior is a common element of identity development for juveniles. *See, e.g.*, Gruber & Yurgelun-Todd, *supra* note 15; Steinberg et al., *supra* note 99; Scott & Steinberg, *supra* note 15, at 812–20.

103. Steinberg et al., *supra* note 99, at 585–86, 593.

104. *Id.* at 586 ("[O]ur findings, as well as those of other researchers, suggest that whereas adolescents and adults perform comparably on cognitive tests measuring the sorts of cognitive abilities . . . that permit logical reasoning about moral, social, and interpersonal matters—adolescents and adults are not of equal maturity with respect to the psychosocial capacities listed by Justice Kennedy in his opinion in *Roper*—capacities such as impulse control and resistance to peer influence.").

psychosocial immaturity means that in circumstances that usually accompany criminal activities, juveniles find themselves facing "the very conditions that are likely to undermine adolescents' decision-making competence."[105] Thus, while juveniles may be capable of making mature decisions under some circumstances, their psychosocial immaturity justifies considerations that they are less culpable than adults when they engage in criminal activities.[106]

Reflecting this understanding of the effects of maturation on juveniles, the Court has found immaturity to reduce culpability when evaluating the constitutionality of capital punishment and a life sentence without parole for juvenile non-homicide offenders.[107] The same considerations can also be applied in evaluating other sentences, such as those prescribed under Georgia sex offender statutes.

C. Applying Graham *To Georgia's Statutes*

Applying the Eighth Amendment analysis of *Graham* to the Georgia sex offender registration and residence and employment restriction statutes as applied to juvenile offenders involves three inquiries. First, is there a national consensus opposing the application of these statutes to juvenile offenders?[108] Second, considering the nature of the crime and characteristics of the juvenile offenders, is the severity of the punishment justified?[109] Third, does the punishment serve legitimate penological goals?[110]

1. Indicia of National Consensus

In *Graham*, the indicia considered to evaluate whether the national consensus supported the challenged sentence were legislative

105. *Id.* 592.
106. *Id.* 592–93.
107. Graham v. Florida, 130 S. Ct. 2011 (2010) (finding a life sentence without parole unconstitutional for juvenile non-homicide offenders); Roper v. Simmons, 543 U.S. 551 (2005) (finding the death penalty unconstitutional for juvenile offenders).
108. *Graham*, 130 S. Ct. at 2022.
109. *Id.* at 2022, 2026.
110. *Id.*

enactments enabling the sentencing practice and actual use of the sentence.[111] While the requirements for registration of juvenile offenders vary, all states require at least some juvenile offenders to register.[112] However, only thirteen states impose residency and employment restrictions on registered sex offenders, while five states impose only employment restrictions.[113] These requirements are automatically imposed upon offenders convicted under these statutes.[114]

The existence of registration requirements for juvenile sex offenders in every state indicates that the national consensus favors sex offender registration; however, the fact that only a quarter of the states require juvenile offenders to comply with residency and employment restrictions suggests a lack of consensus supporting such restrictions.[115] Even in the states that have residency restrictions, the parameters vary.[116] For example, Mississippi forbids any registered sex offender from living within fifteen hundred feet of schools or childcare centers,[117] Montana only imposes residency restrictions for violent offenders whose victims were minors,[118] and New York imposes no residency restrictions but forbids sex offenders from owning or operating ice cream trucks.[119] Georgia's statutes are far

111. *Id.* at 2023.

112. SMITH, *supra* note 31 (reporting sex offender registration requirements for all states and the District of Columbia). Examples of different treatment of juvenile sex offenders include Colorado, where juveniles convicted as adults and adjudicated as delinquent must register (COLO. REV. STAT. § 16-22-103(4) (2008)); Georgia, where only juveniles charged as adults must register (GA. CODE ANN. § 42-1-12 (2010)); and Arkansas, where juveniles adjudicated as delinquent are assessed and a court hearing is held to determine whether they are obligated to register as sex offenders (ARK. CODE ANN. § 9-27-356 (2008)). *Id.*

113. SMITH, *supra* note 31 (reporting residency and employment restrictions based on proximity to schools or other child-focused centers in thirteen states (Alabama, Georgia, Illinois, Iowa, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, Oregon, South Dakota, and Tennessee) and employment restrictions in five states (California, Florida, Indiana, Michigan, and New York)).

114. SMITH, *supra* note 31.

115. *Id.*; *cf. Graham*, 130 S. Ct. at 2023–25 (finding the national consensus did not favor the challenged sentencing practice when it was permitted in thirty-eight jurisdictions and under federal law, but only rarely applied, and noting that the scarcity of jurisdictions prohibiting the practice does not undermine the consensus against it).

116. SMITH, *supra* note 31.

117. MISS. CODE ANN. § 45-33-25 (2008).

118. MONT. CODE ANN. § 46-18-225 (2008).

119. N.Y. CORRECT. § 168-v (McKinney 2008).

more restrictive than any other state's in forbidding all registered offenders from living within one thousand feet of schools, childcare centers, churches, and areas where children congregate, a broad term encompassing pools, skating rinks, playgrounds, and school bus stops.[120] Georgia is thus an outlier in national practices restricting sex offenders.

2. Balancing the Juvenile's Criminal Conduct and the Severity of the Punishment

Comparing the criminal conduct to the severity of the punishment involves considering the nature of the crime and the characteristics of the offender.[121] In this Note, the relevant characteristic of the offenders is their juvenile status, which warrants their treatment as less culpable than adults who commit the same acts.[122] The nature of the crimes triggering sex offender registration requirements varies greatly; however, offenders are all subject to the same residency and employment restrictions.[123] The stated purpose of the restrictions is to protect the public, particularly from recidivist or violent sex offenders and those who prey on children.[124] However, the uniformity of application of the statutes means they are also applied to offenders whose behavior is not predatory or even sexual in nature.[125] The restrictions also have a uniquely harsh effect on juveniles because the laws prohibit them from living or spending time near schools and establishments that exist for juveniles, thus prohibiting them from carrying out their usual activities once released from any prison or probation sentence.[126] While there will be circumstances in which this punishment is not excessively severe

120. GA. CODE ANN. § 42-1-15 (2010); SMITH, *supra* note 31; West, *supra* note 2, at 239–41, 254–55.
121. Graham v. Florida, 130 S. Ct. 2011, 2026 (2010).
122. *See supra* Part II.B.
123. GA. CODE ANN. § 42-1-12 (2010); Geraghty, *supra* note 1, at 518.
124. H.R. 1059, 148th Gen. Assemb., Reg. Sess. (Ga. 2006), *available at* http://www.legis.state.ga.us/legis/2005_06/pdf/hb1059.pdf.
125. *See supra* Part I.A.
126. GA. CODE ANN. § 42-1-12 (2010); GA. CODE ANN. § 42-1-15 (2010).

in comparison to the criminal offense, because it is applied uniformly there will also be circumstances where it will be excessively punitive.

3. Penological Goals

The penological goals considered by the *Graham* Court include retribution, deterrence, incapacitation, and rehabilitation.[127] In *Graham*, the Court held that the juvenile status of the offender undermined each of these goals, and so the goals did not justify the punishment.[128] Because of the diminished culpability of a juvenile offender, the justification of retribution is less compelling.[129] Juveniles' lack of maturity makes them less susceptible to deterrence.[130] While the possibility of punishment for their conduct could be known, it may provide limited deterrence to juveniles because their immaturity makes them less likely to make decisions based on a possible punishment.[131] The *Graham* Court acknowledged the importance of the goal of incapacitation, but on the facts of the case found the level of incapacitation to be disproportionate, in part because of Graham's youth.[132] Finally, the *Graham* Court noted that juveniles "are most in need of and receptive to rehabilitation," but the challenged sentence did not provide rehabilitation opportunities.[133]

Those same penological goals also do not provide strong justification for imposing sex offender registration requirements and residency and employment requirements uniformly to juvenile

127. Graham v. Florida, 130 S. Ct. 2011, 2028–30 (2010).

128. *Id.* ("[N]one of the goals of penal sanctions that have been recognized as legitimate . . . provides an adequate justification.").

129. *Id.* at 2028 ("[R]etribution does not justify imposing the second most severe penalty on the less culpable juvenile nonhomicide offender.").

130. *Id.* ("'[T]he same characteristics that render juveniles less culpable than adults suggest . . . that juveniles will be less susceptible to deterrence.'" (quoting Roper v. Simmons, 543 U.S. 551, 571 (2005))).

131. *Id.* at 2028–29 (noting that due to immaturity, juvenile offenders are "less likely to take a possible punishment into consideration when making decisions").

132. *Id.* at 2029 (noting that because his crime, attempting to rob a restaurant and striking the manager, may reflect transient immaturity, "Graham deserved to be separated from society for some time . . . but it does not follow that he would be a risk to society for the rest of his life.").

133. *Graham*, 130 S. Ct. at 2029–30 (noting that a sentence of life in prison without parole denies an opportunity to rehabilitate and that by "denying the defendant the right to reenter the community, the State makes an irrevocable judgment about that person's value and place in society").

offenders. The penological justification of retribution is reduced for a juvenile offender, and particularly weakened when the offense triggering the punishment is non-violent or consensual, as are some offenses giving rise to sex offender status.[134] For behaviors like "sexting," juveniles may not even be aware that such behavior could lead to being convicted as a sex offender, so the sentence will be less effective as a deterrent.[135]

Unlike a prison term, residency and employment restrictions do not completely accomplish a goal of incapacitation. The sex offenders are out of prison and capable of interacting with potential victims, even though the restrictions significantly limit their freedom and opportunities.[136] Thus, the Georgia restrictions set notable boundaries on offenders without actually incapacitating them from committing subsequent offenses.[137] Finally, the Georgia statutes do not deny an offender any opportunity for rehabilitation, but they prevent her from fully incorporating back into society.[138] This is particularly true for a juvenile offender whose usual environment may be forbidden by the restrictions.

In short, the juvenile status of sex offenders undermines the penological goals considered in *Graham* when offered to justify imposing residency and employment restrictions on all juvenile sex offenders. Considering this along with the underwhelming national support for imposing residency and employment restrictions of the type Georgia imposes and the severity of the punishment for some crimes that give rise to sex offender status, the Georgia statutes appear to violate the Eighth Amendment when applied uniformly to juvenile offenders.

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134. *Id.* at 2028 (noting that the case for retribution is undermined by the offender's juvenile status, and further undermined by the nature of his crime, a non-homicide offense); *see supra* Part I.A.

135. Scott, *supra* note 10 (reporting the confusion of schools, parents, and juveniles about possible legal consequences for sex-related misuse of new technologies like cell phones and computers).

136. GA. CODE ANN. § 42-1-15 (2010).

137. GA. CODE ANN. § 42-1-12 (2010). *But see* Geraghty, *supra* note 1, at 518; West, *supra* note 2, at 239–41, 254–55 (asserting that Georgia's residency and employment restrictions are so severe they effectively banish sex offenders from the state).

138. Compare the residency and employment restrictions (GA. CODE ANN. § 42-1-12 (2010)) with the life-without-parole sentence of *Graham* that "foreswears altogether the rehabilitative ideal [b]y denying the defendant the right to reenter the community." *Graham*, 130 S. Ct. at 2030.

III. REMEDYING PROPORTIONALITY FOR JUVENILES UNDER GEORGIA'S SEX OFFENDER STATUTES

To remedy proportionality concerns about Georgia's sex offender statutes as applied to offenders who are minors, the laws should be changed to provide different treatment for juvenile offenders, rather than applying to them the same as adult offenders.

A. Juvenile Sex Offenders Should Be Treated Differently Than Adults Under Georgia Law

Changes in the treatment of juvenile offenders throughout legal history reflect changes in our understandings of those offenders. As social attitudes about juvenile offenders changed, from seeing them as wayward children needing rehabilitation at the inception of juvenile justice systems during the Progressive era to seeing them as hardened deviants threatening society since the 1980s, their legal treatment also changed.[139] While early juvenile justice systems separated minors from adults and focused on rehabilitation, later trends were to treat juvenile offenders as adults and subject them to the harshest punishments.[140]

Current scientific and psychological research suggests that immaturity of juvenile offenders mitigates culpability[141] and supports different treatment under the law for children and adolescents.[142]

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139. Scott & Steinberg, *supra* note 15, at 804–09 (reporting the history of the legal treatment of juvenile offenders and the conceptualizations of juveniles and their culpability that undergirded different approaches to juvenile offenders).

140. *Id.* at 804–07 (tracking the shift from the Progressive reforms that created the juvenile justice system for rehabilitating offenders seen as "misguided children rather than culpable wrongdoers" to the contemporary reforms of the 1980s and 1990s that led to younger offenders being punished as adults for more crimes, fueled by "an exaggerated perception of the seriousness of the threat and the number of offenders, and collective hostility toward the [juvenile] offenders").

141. *Id.* at 801 ("First, the scientific evidence indicates that teens are simply less competent decision makers than adults, largely because typical features of adolescent psycho-social development contribute to immature judgment. . . . Second . . . [y]outhful involvement in crime is often a part of [the process of developing identity and character], and, as such, it reflects the values and preferences of a transitory stage, rather than those of an individual with a settled identity.").

142. *Id.* at 829–31 (noting that "a culpability line should be drawn between children and adolescents," with pre-adolescent children being excused from responsibility for criminal behavior due to their extreme immaturity, but only mitigating the culpability of adolescents based on the maturity differences distinguishing them from adult offenders).

However, in Georgia once a juvenile is found guilty of a sexual offense, rather than being adjudicated delinquent, the juvenile is treated identically as an adult offender under the law.[143] Because they are less culpable than adult offenders, juvenile offenders should be treated differently under the law.[144]

For some circumstances, the current sentencing may be proportional and appropriate even for juvenile offenders,[145] but for other conduct, the underlying behavior is not the sort contemplated by the stated purpose of the Georgia sex offender statutes.[146] Peer-on-peer behavior, nonviolent conduct, and consensual conduct by juveniles can trigger the requirement to register as a sex offender.[147] Were these sorts of conduct perpetrated by an adult offender upon a minor victim, the sentence would conform to the intent of the legislature to target predators. However, in these circumstances, the juvenile status of the offender defeats the state's concern with adults taking advantage of minors.

Further, the effects of the residency and employment restrictions are unique and harsh for juvenile offenders, because the offenders are forbidden from places intended for youth in the community: schools, churches, and areas where their peers congregate.[148] The stigma of being publicly labeled a sex offender can be especially harmful to

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143. GA. CODE ANN. § 42-1-12 (2010).

144. *See, e.g.*, Graham v. Florida, 130 S. Ct. 2011, 2026 (2010); Roper v. Simmons, 543 U.S. 551, 569 (2005); Thompson v. Oklahoma, 487 U.S. 815, 823–24 (1988).

145. *Graham*, 130 S. Ct. at 2027 ("The age of the offender *and the nature of the crime* each bear on the analysis." (emphasis added)); *cf. Roper*, 543 U.S. at 572–73 (holding that individualized consideration did not warrant imposition of the death penalty on a juvenile offender and instead categorically banning the punishment for juveniles). The challenged punishment in *Roper*, the death penalty, is far more severe than the sex offender registry and residency and employment restrictions discussed in this Note, and therefore triggers stronger consideration of the reduced culpability of juvenile offenders. *Id.* The *Roper* Court acknowledged that many juvenile offenders have committed brutal crimes and that "a rare case might arise in which a juvenile offender has sufficient psychological maturity, and at the same time demonstrates sufficient depravity, to merit a sentence of death," although it does not concede that point. *Id.* at 572.

146. H.R. 1059, 148th Gen. Assemb., Reg. Sess. § 1 (Ga. 2006), *available at* http://www.legis.state.ga.us/legis/2005_06/pdf/hb1059.pdf (declaring the intent of the Georgia legislature in implementing the residency and employment restrictions to address the "extreme threat to the public safety" posed by "recidivist sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children").

147. GA. CODE ANN. § 42-1-12(a)(10) (2010).

148. GA. CODE ANN. § 42-1-15 (2010).

adolescents, whose developmental stage makes them highly susceptible to peer influence and judgment.[149] Juvenile sex offenders face a minimum of ten years in prison for living or loitering near their own schools or from finding employment at businesses catering to youth and likely to hire teenagers.[150] Because juveniles are likely to live with their families, rather than independently, the residency restrictions would affect not only the juvenile sex offender, but their entire family because the family would have to comply with the residency restrictions or else separate.[151]

B. Changing Georgia's Sex Offender Laws

The violation of the proportionality principle when these laws are applied to juveniles,[152] the differential effects of Georgia's sex offender registration statutes on juveniles compared to adults,[153] and the failure of these statutes in fulfilling legislative intent,[154] all lead to the conclusion that juvenile offenders should be treated differently under the law. To alter the existing framework of Georgia's sex offender statutes, several changes should be made to the statutes, which could be incorporated comprehensively or individually. First, courts should conduct individual assessments of juvenile sex offenders to determine whether they should be required to comply with registration requirements, and also whether they should be required to comply with residency and employment restrictions. Second, the default registration term for juvenile offenders should be a term of years, rather than the rest of their lives.

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149. Scott & Steinberg, *supra* note 15, at 813–14; Brown, *supra* note 15, at 369–70 (providing an example of a Delaware teenager required to register as a sex offender, due to conduct perpetrated when he was eleven years old, who became suicidal and required extensive psychiatric treatment after being bullied and teased by classmates because of his registration status).

150. GA. CODE ANN. § 42-1-15 (2010).

151. *Id.*; Plaintiffs' Statement, *supra* note 36, at 13–17, 19–20 (noting that in one Georgia county that has officially designated school bus stops, every one of the four registered juvenile sex offenders in the county would have to move to comply with residency restrictions).

152. *See supra* Part II.B.

153. *See supra* notes 148–151 and accompanying text.

154. *See supra* note 146.

1. Individual Assessment for Juvenile Offenders

For juvenile offenders, even when tried as adults, courts should conduct individual assessment of the culpability of the offender and the risks they pose in relation to the purposes of the residency statutes.[155] Based on the circumstances of the case, the trial court should determine whether the offender poses the threats to children and society contemplated by the registration requirement, considering the nature of the crime and the age and characteristics of the juvenile offender. Then, the trial court can apply the registration requirement as warranted rather than automatically upon conviction.[156] Courts should also have the discretion to apply the residency and employment restrictions to juvenile sex offenders, or waive those restrictions for some juveniles.[157] This would allow courts to evaluate the culpability of the offender before labeling a juvenile offender a "sex offender" and to consider the unique effects of the residency and employment restrictions on minors and their families before implementing them.

155. *See supra* note 146. The intent of the legislature in passing the residency and employment restrictions was to protect the public from "recidivist sexual offenders, sexual offenders who use physical violence, and sexual offenders who prey on children." *Id.*

156. Some other states give courts discretion in ordering offenders to register. SMITH, *supra* note 31. For example, under Arkansas statute, if a juvenile offender is adjudicated delinquent for certain sex crimes, the court must conduct a "sex offender screening and risk assessment" to determine whether it will require the offender to register as a sex offender; there is not an automatic requirement that juvenile sex offenders register. ARK. CODE ANN. § 9-27-356 (2008). Factors the court considers in evaluating whether the offender must register include: seriousness of the offense, level of planning and preparation, any previous sex offense history, availability of rehabilitative programs, and assessments of the juvenile's mental, social, physical, and educational history. *Id.*

157. Some other states give courts discretion to determine when offenders must comply with residency and employment restrictions, or limit which offenders must comply with the restrictions. SMITH, *supra* note 31. For example, under Louisiana statute residency restrictions are only applied to "sexually violent predators," not every person required to register as a sex offender. LA. REV. STAT. ANN. § 14:91.1 (2008). In Montana, only violent offenders whose victims were children are subject to residency restrictions, and the judge has discretion to impose "reasonable" employment restrictions. MONT. CODE ANN. § 46-18-255 (2008).

2. Shorter Default Registration Requirements for Juvenile Sex Offenders

Rather than making lifetime registration the default sentence for all offenders, the default registration requirement should be shorter for juvenile offenders. By statute, courts could be allowed to extend the requirements further if merited by the circumstances of a case, but the default registration requirement should be a set term of years[158] or until a threshold age, such as twenty-one or twenty-five, has been reached.[159] Setting a default registration requirement shorter than the offender's lifetime would acknowledge the transitory nature of juveniles' characters, rather than painting them as sex offenders for life based on juvenile conduct.

CONCLUSION

Georgia's sex offender registration and residency and employment restriction statutes have faced, and continue to face, legal challenges[160] and criticism that they are excessively harsh.[161] These statutes apply to juvenile offenders charged as adults and to adult offenders alike, even though both United States Supreme Court Eighth Amendment jurisprudence[162] and current scientific research[163]

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158. Some other states require registration of sex offenders only for a term of years, depending on various factors. SMITH, *supra* note 31. For example, Alabama has a lifetime default registration requirement for adult sex offenders, but juvenile sex offenders are only required to register for ten years. ALA. CODE § 15-20-33 (2008). Louisiana and Minnesota provide examples of the many states that have tiered registration requirements, with lifetime requirements for violent or recidivist sex offenders, and terms of years for other offenders. LA. REV. STAT. ANN. § 15:544 (2008) (establishing a three-tiered system with registration requirements of fifteen years, twenty-five years, and lifetime of the offender); MINN. STAT. ANN. § 243.166 (2008) (establishing a two-tiered system with registration requirements of ten years or lifetime of the offender).

159. For example, in Arizona, juvenile sex offenders' registration requirements end at age twenty-five. ARIZ. REV. STAT. ANN. § 13-3821 (2008). In Arkansas, juvenile offenders can petition to be removed from the sex offender registry at age twenty-one, but if they are denied, the registration requirement terminates ten years after the offense. ARK. CODE ANN. § 9-27-356 (2008).

160. *See, e.g.*, Rainer v. State, 690 S.E.2d 827 (Ga. 2010); Mann v. Ga. Dep't of Corr., 653 S.E.2d 740 (Ga. 2007); Grovenstein v. State, 637 S.E.2d 821 (Ga. Ct. App. 2006); Whitaker v. Perdue, No. 4:06-CV-0140-CC (N.D. Ga. filed July 20, 2006).

161. *See, e.g.*, West, *supra* note 2; Geraghty, *supra* note 1.

162. Graham v. Florida, 130 S. Ct. 2011, 2026 (2010); Roper v. Simmons, 543 U.S. 551, 569 (2005).

163. *See, e.g.*, Gruber & Yurgelun-Todd, *supra* note 15; Steinberg et al., *supra* note 99; Scott & Steinberg, *supra* note 15, at 812–20.

embrace the notion that juvenile offenders are less culpable than adult offenders committing the same acts. The uniform application of sex offender registration and residency and employment restrictions to minor offenders is not justified by the intent of the legislature[164] and raises the question of whether they violate the proportionality principle of the Eighth Amendment.[165] While some circumstances may warrant applying the statutes to a juvenile as they are applied to adult offenders, this should not be default or automatic. Rather, the statutes should be changed so that they continue to protect citizens from harm while also accommodating the unique position of juvenile offenders.

Rather than being automatically labeled "sex offenders" upon conviction for certain crimes, juvenile offenders should be individually evaluated to determine whether their conduct is the violent, predatory conduct the statutes seek to prevent.[166] Even when requiring juveniles to register as sex offenders, courts should use discretion in applying the residency and employment restrictions to juvenile offenders. The default lifetime requirement for sex offender registration also should be ameliorated for juveniles.[167] Instead of labeling minors as sex offenders for life, any registration requirement should be for a shortened term of years or until attainment of a certain age.

Given what society continues to learn about juvenile development, which the United States Supreme Court acknowledges reduces the culpability of youthful offenders,[168] there is little justification for continuing to treat juvenile sex offenders uniformly the same as adults. Individual assessment of juvenile offenders and shorter default terms under the registration statutes could help address Eighth Amendment proportionality concerns raised by the current Georgia statutes.

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164. *See supra* Part III.B.
165. *See supra* Part II.C.
166. *See supra* Part III.B.1.
167. *See supra* Part III.B.2.
168. *See supra* Part II.A.2.