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*Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201–2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.*

**Commonwealth of Pennsylvania v. Jay Lee Walter, Jr., Defendant**
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Criminal Action – Law No. 1848-2013

**IN INTEREST OF: Jay Walter Jr., Born: September 8, 1993**
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Juvenile Court Division No. JV 180-2010

## HEADNOTES

*Constitutional Law; Cruel and Unusual Punishment*

1. Under Pa. Const. art. I. § 13 and U.S. Const. Amend. VIII, a punishment is cruel and unusual only if it is so greatly disproportionate to an offense as to offend evolving standards of decency or as a balanced sense of justice. This is known a proportionality analysis. *Commonwealth v. Ehrsam,* 512 A.2d 1199, 1210 (Pa. Super. 1986).

2. A proportionality analysis is implemented by considering the characteristics of the offender and the nature of the offense. *Graham v. Florida*, 560 U.S. 48, 60 (2010).

3. A court must exercise its own judgment to determine whether the punishment at issue violates the Constitution. This exercise in judgment takes into account both the age and the culpability of juveniles in light of the nature of their offenses. *Miller v. Alabama*, 132 S.Ct 2455 (2012).

4. SORNA's juvenile registration requirement under 42 Pa.C.S. § 9799.15 fail to serve legitimate penological goals such as retribution, deterrence, incapacitation, and rehabilitation.

5. Requiring the juvenile Defendant to register as a sex offender for life, without any consideration to the mitigating qualities of youth, is a sentence so greatly disproportionate to the offense that it offends evolving standards of decency or a balanced sense of justice.

*Constitutional Law; Irrebuttable Presumption*

1. The essential elements of due process are notice and a meaningful opportunity to be heard. *Commonwealth Dep't of Transp., Bureau of Driver Licensing v. Clayton*, 684 A.2d 1060, 1064 (Pa. 1996)

2. Irrebuttable presumptions are violative of due process where the presumption is deemed not universally true and reasonable alternative means of ascertaining that presumed fact are available. *Id*.

3. Because an adjudication hearing only addresses the juvenile Defendant's guilt or innocence in relation to the sexual offense, SORNA's mandatory registration requirements violate his due process rights by denying him the opportunity to rebut or challenge the presumption that he poses a high risk of reoffending.

4. SORNA violates due process and is unconstitutional for failing to provide the juvenile Defendant with an opportunity to challenge the registration requirements on an individual basis.

*Constitutional Law; Ex Post Facto*

1. The United States Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 169 (1963), established a two-level inquiry which must be performed when assessing state

and federal ex post facto claims. First ask, whether the legislature's intent was to impose punishment, and, if not, whether the statutory scheme is nonetheless so punitive either in purpose or effect as to negate the legislature's non-punitive intent.

2. The second prong utilizes seven *Mendoza-Martinez* factors which provide a useful guideposts in determining whether a statute imposes a retroactive punishment unconstitutionally.

3. Application of the seven *Mendoza-Martinez* requirements to juveniles yields a different result than when it is applied to Tier II sex offenders as was done in the Superior Court's recent decision in *Commonwealth v. Perez*, 2014 PA Super 142 (Pa. Super. July 9, 2014).

4. SORNA's lifetime registration requirements as they pertain to the juvenile Defendant are punitive and violate the Ex Post Facto Clauses of the Pennsylvania and United States Constitutions.

Appearances:

Tammy Dusharm, Esq., Counsel for Defendant

Matthew Fogal, Esq., District Attorney

Zachary Mills, Esq., Assistant District Attorney

## OPINION AND ORDER OF COURT

Before Van Horn, J.

## STATEMENT OF THE CASE

Before the Court are Defendant's Motion for Finding that Registration is Unconstitutional, Motion to Dismiss Charges, Motion to Stay Registration, Petition for Writ of Habeus Corpus, and Motion to Stay Registration in the juvenile case, each of which are premised on Defendant's challenge to the constitutionality of Pennsylvania's Sexual Offender Registration and Notification Act ("SORNA") as it applies retroactively to juveniles.[1] *See* 42 Pa.C.S. § 9799.10 *et seq*. Effective December 20, 2012, juveniles who were adjudicated delinquent for a SORNA offense,[2] committed when they were 14 or older, are required register as sex offenders retroactively if they were under juvenile court supervision for said offense on December 20, 2012. *See* 42 Pa.C.S. § 9799.10 *et seq*.

On or about June 25, 2010, the Defendant in the above captioned criminal case, Jay Lee Walter, Jr., was adjudicated delinquent for the Rape

1 Defendant has also filed a Motion to Stay Registration in the juvenile docket, No. JV 180-2010.

2 18 Pa.C.S. §§ 3121, 3123, 3125, and conspiracy, attempt or solicitation to commit one of the listed offenses.

of a Child, an offense he committed when he was 16 years old. At the time of his adjudication, the Defendant was not required to register as a sex offender, yet he was under the juvenile court's supervision on December 20, 2012, SORNA's effective date. Consequently, he was notified on December 14, 2012 of his requirements to register retroactively as a Juvenile Offender. *See* 42 Pa.C.S. § 9799.23. Defendant allegedly failed to comply with the registration requirements and was arrested and charged in the above-captioned criminal action pursuant to 18 Pa.C.S. § 4915.1(a)(2) on September 19, 2013. This charge is currently pending.

Additionally, on February 22, 2014, the Defendant was charged in an unrelated matter with the crime of False Reports. The Defendant was unable to post bail, and on April 24, 2014, he entered a plea pursuant to the agreement that he would receive a sentence of time served (61 days at the time). However, Defendant has remained incarcerated due to his difficulties securing an approved home plan presumably due to his sex offender status.

Defendant filed a Motion for Finding that Registration is Unconstitutional, and a Motion to Dismiss Charges on April 23, 2014. On the same date, Defendant also filed a Motion to Stay Registration in the juvenile docket. The Commonwealth filed Answers and a hearing was held on May 29, 2014. After the hearing, both parties were ordered to submit briefs. Defendant filed his brief on June 26, 2014, as well as an additional Motion to Stay Registration and a Petition for Writ of Habeas Corpus in the criminal docket. The Commonwealth filed Answers to the new filings on July 10, 2013, and their Brief on July 28, 2014. The Court will now address the Defendant's Motions in this Opinion and Order of Court.

## BACKGROUND

I. SORNA Overview

SORNA was enacted on December 20, 2011, amended on July 5, 2012, and became effective on December 20, 2012. *See In re J.M.*, 89 A.3d 688, 693 (Pa. Super. 2014). The law requires Juvenile Offenders[3] who are adjudicated delinquent to register as sex offenders for life. 42 Pa.C.S. § 9799.15 (a)(4). After the passage of twenty-five years, they may petition the court for removal from the registry if they have met certain conditions. 42 Pa.C.S. § 9799.17. The SORNA registration requirements, some of which the Court will mention now,[4] are complex and comprehensive. Pursuant to § 9799.16, the juvenile offender is statutorily required to provide a

3 A "juvenile offender" is "[a]n individual who was 14 years of age or older at the time the individual committed an offense which, if committed by an adult, would be classified as an offense under 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse) or 3125 (relating to aggravated indecent assault) or an attempt, solicitation or conspiracy to commit an offense." 42 Pa.C.S. § 9799.12.

4 The following is only a brief description of some of the SORNA registration requirements and should not be taken as a full and comprehensive list.

significant amount of information upon initial registration including but not limited to all of his names, telephone numbers, his social security number, the addresses of each residence or intended residence, his passport, and the name and address of his employment and future employment.[5] In addition, the juvenile offender is required to register information pertaining to his physical attributes including "a general physical description and tattoos, scars and other identifying marks." 42 Pa. C.S. § 9799.16 (c)(1). The juvenile must also submit fingerprints, palm print, and a DNA sample, and have extensive periodic in-person verification requirements where he will be repeatedly photographed. 42 Pa. C.S. § 9799.15; § 9799.16 (c)(5) & (6).

5 For a complete list of registration requirements see § 9799.16 which states:

(b) Information provided by sexual offender.--An individual specified in section 9799.13 (relating to applicability) shall provide the following information which shall be included in the registry:

(1) Primary or given name, including an alias used by the individual, nickname, pseudonym, ethnic or tribal name, regardless of the context used and any designations or monikers used for self-identification in Internet communications or postings.

(2) Designation used by the individual for purposes of routing or self-identification in Internet communications or postings.

(3) Telephone number, including cell phone number, and any other designation used by the individual for purposes of routing or self-identification in telephonic communications.

(4) Valid Social Security number issued to the individual by the Federal Government and purported Social Security number.

(5) Address of each residence or intended residence, whether or not the residence or intended residence is located within this Commonwealth and the location at which the individual receives mail, including a post office box. If the individual fails to maintain a residence and is therefore a transient, the individual shall provide information for the registry as set forth in paragraph (6).

(6) If the individual is a transient, the individual shall provide information about the transient's temporary habitat or other temporary place of abode or dwelling, including, but not limited to, a homeless shelter or park. In addition, the transient shall provide a list of places the transient eats, frequents and engages in leisure activities and any planned destinations, including those outside this Commonwealth. If the transient changes or adds to the places listed under this paragraph during a monthly period, the transient shall list these when registering as a transient during the next monthly period. In addition, the transient shall provide the place the transient receives mail, including a post office box. If the transient has been designated as a sexually violent predator, the transient shall state whether he is in compliance with section 9799.36 (relating to counseling of sexually violent predators). The duty to provide the information set forth in this paragraph shall apply until the transient establishes a residence. In the event a transient establishes a residence, the requirements of section 9799.15(e) (relating to period of registration) shall apply.

(7) Temporary lodging. In order to fulfill the requirements of this paragraph, the individual must provide the specific length of time and the dates during which the individual will be temporarily lodged.

(8) A passport and documents establishing immigration status, which shall be copied in a digitized format for inclusion in the registry.

(9) Name and address where the individual is employed or will be employed. In order to fulfill the requirements of this paragraph, if the individual is not employed in a fixed workplace, the individual shall provide information regarding general travel routes and general areas where the individual works.

(10) Information relating to occupational and professional licensing, including type of license held and the license number.

(11) Name and address where the individual is a student or will be a student.

(12) Information relating to motor vehicles owned or operated by the individual, including watercraft and aircraft. In order to fulfill the requirements of this paragraph, the individual shall provide a description of each motor vehicle, watercraft or aircraft. The individual shall provide a license plate number, registration number or other identification number and the address of the place where a vehicle is stored. In addition, the individual shall provide the individual's license to operate a motor vehicle or other identification card issued by the Commonwealth, another jurisdiction or a foreign country so that the Pennsylvania State Police can fulfill its responsibilities under subsection (c)(7).

(13) Actual date of birth and purported date of birth.

(14) Form signed by the individual acknowledging the individual's obligations under this subchapter provided in accordance with section 9799.23 (relating to court notification and classification requirements).

42 Pa.C.S. § 9799.16(b).

On top of the required periodic in-person verifications, the juvenile must also report in-person to notify the registry within three days of any changes to his name, residence, employment, education, telephone number, vehicle ownership, temporary lodging, e-mail address or internet communication, and occupational or professional license. 42 Pa. C.S. § 9799.15 (g).

As occurred in the instant case, upon a juvenile offender's failure to comply with the extensive registration requirements, he will be charged with failure to register, verify, or provide accurate information. *See* 18 Pa.C.S. § 4915.1. All three offenses are felonies.

Pennsylvania's juvenile sex offender registry is non-public, which is somewhat of a misnomer. Within three business days, the Pennsylvania State Police must make a juvenile offender's registration information available to the jurisdiction where the juvenile resides, works, or attends school, the jurisdiction where the juvenile terminates a residence, job, or school, the district attorney, the chief law enforcement officer, and the county office of probation and parole where the juvenile establishes or terminates a residence or is transient, starts or terminates a job, and starts or terminates a school, and the United States Attorney General, the Department of Justice, and the United States Marshals Service. 42 Pa.C.S. § 9799.18 (a). If the juvenile travels or moves internationally, the Pennsylvania State Police must transfer registry information to the United States Marshals Service, the Department of Justice for inclusion in the National Sex Offender Registry and NCIC, and the jurisdiction if it requires sexual offenders to register. 42 Pa.C.S. § 9799.18(c) & (d). Additionally, the juvenile's necessary "criminal history record information" shall be transferred "to enable an agency responsible for conducting employment-related background checks under section 3 of the National Child Protection Act of 1993." 42 Pa.C.S. § 9799.18(e). § 9799.18 specifically lists the entities and individuals that the Pennsylvania State Police are required to disseminate registry information to, yet it does not specifically prohibit those entities and individuals from releasing the information to others.

II. Juveniles and the Pennsylvania Juvenile Justice System

In Pennsylvania, our juvenile court system is purposefully different from the adult criminal court system. *In re J.B.*, 39 A.3d 421, 426 (Pa. Super. 2012). As such, "[t]he Juvenile Court proceedings are not criminal in nature but constitute merely a civil inquiry or action looking to the treatment, reformation, and rehabilitation of the minor child." *Id*. (quoting *Commonwealth v. Henig*, 189 A.2d 894, 896 (Pa. Super. 1963)). Juvenile proceedings are not intended to deliver punishments, but to "seek treatment, reformation and rehabilitation," and to "hold children accountable for

their behavior." *In re J.B.*, 39 A.3d at 427 (Pa. Super. 2012). Perhaps most relevant to the instant case is that the ultimate goal of the juvenile justice system is to enable juvenile delinquents to become productive and responsible members of society. *Id*. Consequently, the juvenile justice system also seeks to protect the participating juveniles, and "[t]here is a compelling interest in protecting minor children's privacy rights and the protection of a minor child's privacy is a key aspect of the Juvenile Act." *Id*. (quoting *In the Interest of T.E.H.*, 928 A.2d 318, 323 (Pa. Super. 2007)).

The purpose of having two separate courts to handle adult and juvenile crimes is to address the significant differences between adult and juvenile offenders. Such differences have been explored by the Supreme Court of the United States in several cases such as *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), *J.D.B v. North Carolina*, 131 S.Ct. 2394 (2011), and *Miller v. Alabama*, 132 S.Ct 2455 (2012). In examining the culpability of juveniles, the Supreme Court has reasoned that juveniles differ from adults in three general ways which demonstrates that they "cannot with reliability be classified among the worst offenders." *Roper v. Simmons*, 543 U.S. 551, 569 (2005). They display a "lack of maturity and an underdeveloped sense of responsibility; they are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; and their characters are not as well formed." *Graham*, 560 U.S. at 68 (internal quotations omitted) (citing Roper, 543 U.S. at 569-570).

Additionally, juveniles are "generally are less mature and responsible than adults," and they "often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them." *J.D.B.*, 131 S. Ct. at 2403 (citations omitted). Although juveniles should be held accountable for their delinquencies, their crimes are not as "morally reprehensible" as the crimes of adults. *Graham*, 560 U.S. at 68 (internal quotations omitted) (citing *Roper*, 543 U.S. at 569-570). Further, only a small number of juveniles who partake in illegal activities "develop entrenched patterns of problem behavior." *Miller*, 132 S. Ct. 2455 (quoting *Roper*, 543 U.S. at 570 (2005)). "[T]he signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Roper*, 543 U.S. at 570 (citation omitted). "[T]ransient rashness, proclivity for risk, and inability to assess consequences—both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Miller*, 132 S. Ct. at 2465 (quoting Graham, 560 U.S. at 68). Essentially, such distinctive characteristics of juveniles "diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes."

*Id*. Therefore, "children are constitutionally different from adults for purposes of sentencing . . . juveniles have diminished culpability and greater prospects for reform, we explained, 'they are less deserving of the most severe punishments.'" *Id*.

Perhaps most relevant to the instant matter is the decreased likelihood of recidivism among juvenile sexual offenders. This issue has been discussed thoroughly by the York County Court of Common Pleas in *In the Interest of J.B., et al.*, No. CP-67-JV-0000726-2010 (Pa. Ct. Com. Pl. York) (Opinion by J. Uhler). Judge Uhler opined that:

> 'There are now more than 30 published studies evaluating the recidivism rates of youth who sexually reoffend. The findings are remarkably consistent across studies, across time, and across populations: sexual recidivism rates are low.' . . . 'As a group, juvenile sex offenders have been found to pose a relatively low risk to sexually re-offend, particularly as they age into adulthood.' . . . In what Dr. Caldwell describes as 'the most extensive' research study to date, a meta-study of over sixty-three studies and over 11,200 children 'found an average sexual recidivism rate of 7.09% over an average 5 year follow-up.' . . . These rates are compared with a 13% recidivism rate for adults who commit sexual offenses. Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* at 30 (citing R. Karl Hanson and Monique T. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. of Consulting & Clin. Psych. 348-62 (1998)).
>
> The recidivism rates for children are lower than adults because 'children are different'. 'Multiple studies have confirmed that juveniles sexually offend for different reasons than adults. It is rare for juvenile offenders' motivations to be of the sexual nature as seen in adults. Juveniles tend to offend based on impulsivity and sexual curiosity, to name a few.' . . . '[W]ith maturation, a better understanding of sexuality, and decreased impulsivity, most of these behaviors stop. Of the population of adolescents who experiment with sexual deviance, only a small fraction will maintain sexually deviant behavior in adulthood.'

*Id*. at 18-19 (some internal citations omitted). Further research by the Pennsylvania Juvenile Judges Commission not only supports the studies relied on by Judge Uhler but found that sexual recidivism rates by juvenile

sexual offenders are even lower. In fact, the Commission has found that among "the 1,342 juveniles with cases closed in 2007, 2008, or 2009 who had committed a sex offense in Pennsylvania, only 19 individuals (or 1.4% of all sex offenders with a case closed) committed another sex offense within two years." Pennsylvania Juvenile Court Judges' Commission, *The Pennsylvania Juvenile Justice Recidivism Report: Juveniles with Cases Closed in 2007, 2008, or 2009*. 83-85 (2013). Considering the purpose and goals of our juvenile justice system, the distinct differences between adult and juvenile offenders, and the lower rates of recidivism among juvenile sex offenders, the propriety of SORNA as it applies to juveniles retroactively clearly must be evaluated.

## DISCUSSION

I. Motion for Finding that Registration is Unconstitutional & Motion to Dismiss

Defendant moves the Court to enter a finding that 42 Pa.C.S. § 9799.10 *et seq*. is unconstitutional as it relates to juvenile offenders, or in the alternative, unconstitutional as it relates to the Defendant.[6] Upon such a finding, the Defendant also moves the Court to dismiss the criminal charges herein. In support, Defendant asserts that his registration as a juvenile is inappropriate because it violates the Pennsylvania and United States constitutions as well as provisions of the Pennsylvania Juvenile Act.

Preliminarily we note that all lawfully enacted legislation enjoys a presumption of constitutionality. *Edmonds by James v. W. Pennsylvania Hosp. Radiology Associates of W. Pennsylvania P.C.,* 607 A.2d 1083, 1087 (Pa. Super. 1992). Therefore "a party raising a constitutional challenge has a heavy burden of rebutting the presumption of constitutionality and demonstrating that the statute clearly, plainly, and palpably violates constitutional precepts." *Id*. (citation omitted).

A. Infliction of Cruel and Unusual Punishment

Defendant argues that juvenile registration violates the Pennsylvania and United States Constitutional bans on the infliction of cruel and unusual punishment. *See* Pa. Const. art. I. § 13; U.S. Const. Amend. VIII. The Commonwealth argues that juvenile SORNA registration requirements do not constitute punishment, and that *Miller* and *Graham* (as discussed below) are distinguishable from the instant case because SORNA registration requirements are incomparable to harsh punishments like life imprisonment and the death penalty. (Commonwealth's Brief., 7/28/2014, p. 13-14).

6 We will address the issues raised in this Motion as they pertain to all juveniles offenders as a class, and will references specifics of the instant case where necessary. Our holdings are limited to the instant Defendant.

"A punishment is cruel and unusual 'only if it is so greatly disproportionate to an offense as to offend evolving standards of decency or a balanced sense of justice.'" *Commonwealth v. Knox*, 50 A.3d 732, 741 (Pa. Super. 2012) (quoting *Commonwealth v. Ehrsam*, 512 A.2d 1199, 1210 (Pa. Super. 1986)). This is commonly referred to as a proportionality analysis or review. *Graham v. Florida*, is instructive here because the Supreme Court considered the implication of "a particular type of sentence as it applies to an entire class of offenders who have committed a range of crimes." *Graham*, 560 U.S. at 61. In *Graham*, the Supreme Court held that life in prison without parole sentences imposed on juveniles for non-homicide offenses violates the Eighth Amendment's ban on cruel and unusual punishment. The jurisprudence evolved in *Miller v. Alabama*, 132 S. Ct. at 2472 where the Supreme Court held that mandatory life-without-parole sentences for juveniles who commit homicides also violates the Eighth Amendment's ban on cruel and unusual punishment. *Miller*, 132 S. Ct. at 2464.

A proportionality analysis is implemented by considering the characteristics of the offender and the nature of the offense. *Graham*, 560 U.S. at 60. In doing so, the Court must first consider "objective indicia of society's standards," to evaluate whether there is a "national consensus against the sentencing practice at issue." *Id*. at 61. Second, the Court must exercise its own independent judgment to determine whether the punishment at issue violates the Constitution. *Id*. (citation omitted).

First, examining the "national consensus" on juvenile registration requirements, the enactment of pertinent legislation provides reliable objective evidence of society's standards. *See id*. at 62. Considering such legislation, most states do require some form of juvenile sex offender registration, yet the requirements are not uniform across all jurisdictions.[7] Therefore, "simply counting [statutes] would present a distorted view," because the specific requirements for juvenile registration varies from state to state. *Miller*, 132 S. Ct. at 2472. Consequently, a finding that a large number of states have statutes similar to Pennsylvania is not dispositive. The *Miller* Court opined that the *Graham* decision ruled unconstitutional life-without-parole sentences for juveniles committing non-homicidal offenses even though similar sentences were permitted in 39 jurisdictions. *Id*. at 2471. Additionally, "in *Atkins, Roper,* and *Thompson*, we similarly banned the death penalty in circumstances in which 'less than half' of the 'States that permit [ted] capital punishment (for whom the issue exist[ed] )' had previously chosen to do so." *Id*. at 2471-72. Therefore, a decision that Pennsylvania's SORNA violates the Eight Amendment is not precluded by the fact that most states have some form of juvenile sex offender registration requirements. See *id*. at 2473.

7 *See e.g.*, N.J. Stat. § 2C:7-2; Okla. Stat. tit. 10A, § 2-8-103; Ala. Code § 15-20A-28; Nev. Rev. Stat. § 179D.475.

Second, the Court must exercise its own judgment to determine whether the punishment at issue violates the Constitution. "The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question." *Graham*, 560 U.S. at 67. This inquiry also requires us to consider whether the sentencing practice serves legitimate penological goals. *Id*. This analysis inherently implicates the broader consideration of the offender's characteristics as a juvenile.

Examining the culpability of juvenile offenders, an offender's age is relevant to the Eighth Amendment and must be taken into consideration. *See Miller*, 132 S. Ct. at 2462. As discussed in detail above, there are fundamental differences between juvenile and adult offenders, and juveniles are less culpable for their criminal conduct. *Id*. at 2464 (citation omitted) ("juveniles have diminished culpability and greater prospects for reform . . . 'they are less deserving of the most severe punishments.'").

The Court's exercise of judgment also requires us to consider the culpability of juveniles in light of the nature of their offenses. The juvenile in the instant matter was adjudicated delinquent for rape, but the SORNA registration requirements also apply to delinquency adjudications for involuntary deviant sexual intercourse, aggravated indecent assault, or attempt, solicitation, or conspiracy to commit said crimes. 42 Pa.C.S. § 9799.12. The crime of rape is undoubtedly horrific, yet it is not as severe or irrevocable as intentional murder. *See Graham*, 560 U.S. at 69. The *Graham* court noted that, "defendants who do not kill, intend to kill, or foresee that life will be taken are categorically less deserving of the most serious forms of punishment than are murderers." *Id*. Although the crime of rape is "a serious crime deserving serious punishment," it "differ[s] from homicide crimes in a moral sense." *Id*. Therefore, "when compared to an adult murderer, a juvenile offender who did not kill or intend to kill has a twice diminished moral culpability." *Id*.

As for the severity of the punishment, the registration requirements are particularly strict as articulately explained in the following excerpt taken from an Opinion by Senior Judge Ulher in the York County Court of Common Pleas:

> [I]t is particularly harsh for juveniles in[of] light the greater portion of their lives that is subject to the registration requirements, and the detrimental effects that registration can have on all aspects of their lives and livelihood.

*In the Interest of J.B., et al.*, No. CP-67-JV-0000726-2010 (Pa. Ct. Comm. Pl. York) (Opinion by J. Uhler) at 34.

Finally, we will consider whether the SORNA juvenile registration requirement serves legitimate penological goals. "A sentence lacking any legitimate penological justification is by its nature disproportionate to the offense." *Graham*, 560 U.S. at 71. Such justifications include retribution, deterrence, incapacitation, and rehabilitation. *Id*. The retribution rationale "relates to an offender's blameworthiness," which is a characteristic less attributable to juveniles than adults. *Id*. Nor is deterrence a sound justification because children's "immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment." *Miller*, 132 S. Ct. at 2465.

The purpose of incapacitation is to ensure that offenders can no longer threaten their communities, thus it assumes that offenders will continue to commit criminal acts unless they are prevented from doing so. *Graham*, 560 U.S. at 115 (Alito, dissent); *see also* Linda S. Beres & Thomas D. Griffith, *Do Three Strikes Laws Make Sense? Habitual Offender Statutes and Criminal Incapacitation*, 87 Geo. L.J. 103, 113 n.60 (1998). Undoubtedly, recidivism, particularly with sexual offenders, poses a risk to the public. *See Graham*, 560 U.S. at 72. Yet, considering the unique attributes of juveniles, incapacitation is not a legitimate justification because it assumes that a "juvenile offender forever will be a danger to society" and therefore "requires the sentencer to make a judgment that the juvenile is incorrigible. The characteristics of juveniles make that judgment questionable," as "incorrigibility is inconsistent with youth." *Id*. at 73 (quoting *Workman v. Commonwealth*, 429 S.W.2d 374, 378 (Ky.1968)). In the instant case, the juvenile clearly posed a risk to society when he was adjudicated, "but it does not follow that he would be a risk to society for the rest of his life." *Id*. As the SORNA registration requirements are automatic and applied retroactive, they "improperly den[y] the juvenile offender a chance to demonstrate growth and maturity." *Id*. Thus, incapacitation is not a legitimate goal considering the characteristics of juveniles.

Nor does the juvenile registration requirement serve a rehabilitative goal because a mandatory, lifelong registration requirement "forswears altogether the rehabilitative ideal." *Graham*, 560 U.S. at 74. By permanently restricting a juvenile's ability to find housing and employment for most if not all of his adult life, the Commonwealth is making "an irrevocable judgment about that person's value and place in society." *Id*. Additionally, the registration requirements go against the rehabilitative goals of our juvenile justice system. *In the Interest of J.B., et al.*, at 34. "For a juvenile offender, '[i]t will be a constant cloud, a once-every-three-month reminder to himself and the world that he cannot escape the mistakes of his youth.'" *Id*. (quoting *In re C.P.*, 967 N.E. 2d. 729 at 741-42 (Ohio 2012)).

This Court cannot find that the juvenile registration requirements

adequately serve a legitimate penological goal. Essentially, as stated above, the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes." *Miller* 132 S. Ct. at 2458. Thus, upon conducting the proportionality review and considering the lessened culpability of juvenile offenders and the severity and longevity of the registration requirements, the Court finds that SORNA as it applies to the instant Defendant offends the United States and Pennsylvania Constitutional bans on the infliction of cruel and unusual punishment. *See* Pa. Const. art. I. § 13; U.S. Const. Amend. VIII. Of particular offense is SORNA's pervasive and automatic application, which is, in effect, a prohibition against allowing juvenile offenders an opportunity to prove they are rehabilitated or have a lesser degree of culpability. *In the Interest of J.B., et al.*, at 35-36. Requiring juveniles to register as sex offenders for life, without any consideration to the "mitigating qualities of youth," is a sentence so greatly disproportionate to the offenses that it offends evolving standards of decency or a balanced sense of justice. *Miller*, 132 S. Ct. at 2467. (citation omitted).

B. Irrebuttable Presumption

Second, the Defendant argues that mandatory registration creates an irrebuttable presumption that juveniles adjudicated delinquent require lifetime registration based solely on their adjudication, regardless of their rehabilitation following treatment, likelihood of recidivism, natural maturation and desistance over time, or the need to be placed on a registry. Therefore, the statute's irrebuttable presumption denies juveniles due process of law. Pa. Const. art I; U.S. Const. Amend. XIV. The Commonwealth argues that *Commonwealth Dep't of Transp., Bureau of Driver Licensing v. Clayton* (discussed below) does not create a uniquely Pennsylvania judicially created irrebuttable presumption doctrine and therefore *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003) is applicable because in the absence of a Pennsylvanian irrebuttable presumption doctrine, the Defendant only has a due process challenge under the 14th Amendment. (Commwealth's Brief, p. 15-17). We disagree and find *Clayton* to be applicable for the reasons stated below.

The essential elements of due process are notice and a "meaningful opportunity to be heard." *Commonwealth Dep't of Transp., Bureau of Driver Licensing v. Clayton*, 684 A.2d 1060, 1064 (Pa. 1996). The Supreme Court of Pennsylvania has stated that "irrebuttable presumptions are violative of due process where the presumption is deemed not universally true and a reasonable alternative means of ascertaining that presumed fact are available." *Id*. at 1063 (citing *Vlandis v. Kline*, 412 U.S. 441, 452 (1973)).

In *Clayton*, the Court examined 67 Pa. Code § 83.4 which created an irrebuttable presumption that a licensee was incompetent to drive for at least one year upon suffering a seizure. *Clayton*, 684 A.2d at 1062. "Under the regulation, any evidence that may rebut this presumption of incompetency, including medical evidence from the licensee's treating physician, [was] irrelevant." *Id*.

The Supreme Court of Pennsylvania found that § 83.4 offended the Constitution because it did not provide the licensee with adequate process. *Id*. at 1064. The only process afforded to the licensee was a hearing addressing the recall of his license, where he could present evidence to prove he did not have a seizure. *Id*. at 1065. However, the court concluded that such a hearing did not provide the licensee a "meaningful opportunity to be heard" because he could only challenge whether or not he had a seizure, not the irrebuttable presumption of his incompetency to drive. *Id*.

Similarly, by virtue of a juvenile's adjudication for one or more of the enumerated sexual offenses, SORNA deems him a sexual offender who poses "a high risk of committing additional sexual offenses." 42 Pa.C.S. § 9799.11(a)(4). As stated above in *Clayton*, "irrebuttable presumptions are violative of due process where the presumption is deemed not universally true and a reasonable alternative means of ascertaining that presumed fact are available." *Clayton*, 684 A.2d at 1063 (citation omitted). Therefore as Defendant aptly notes in his brief, for § 9799.10 *et seq*. to be constitutionally sound, it must be universally true that all juvenile offenders pose a high risk of reoffending and there must not be a reasonable alternative means of determining whether juvenile offenders actually do pose such a risk. (*See* Def.'s Brief, June 26, 2014, p. 84).

SORNA's mandatory registration requirements clearly violate juvenile due process rights by denying them a meaningful opportunity to be heard. The adjudication hearing only addressed the Defendant's guilt or innocence in relation to the sexual offense. Similar to *Clayton*, it did not afford the Defendant the opportunity to rebut or challenge the presumption that he poses a high risk of reoffending. The facts of the instant case are even more constitutionally offensive as the presumption applies *after* the Defendant's adjudication hearing. In concurrence with the York and Lancaster Courts of Common Pleas, "[w]e find that SORNA is in violation of due process and unconstitutional for failing to provide children with an opportunity to challenge the registration requirements on an individual basis." *In the Interest of J.B., et al.*, at 38; *see also In the Interest of W.E., et al*, No. J1085-2008 (Pa. Ct. Com. Pl. York) (Opinion by J. Workman) at 11. This holding is limited to the instant Defendant.

C. Right to Reputation

Third, Defendant argues that juvenile sexual offender registration violates the Due Process Clause[8] of the United States[9] and Pennsylvania Constitutions because it imposes a stigma on the juvenile that changes his legal status depriving him of a cognizable liberty interest without an opportunity to refute the characterization. Pa. Const. art I; U.S. Const. Amend. XIV.

Article 1, Section 1 of the Pennsylvania Constitution guarantees a fundamental right of reputation, and provides that [a]ll men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, *possessing and protecting property and reputation*, and of pursuing their own happiness." Pa. Const. art. I, § 1; *Simon v. Commonwealth*, 659 A.2d 631, 636 (Pa. Cmwlth. 1995) (emphasis added). Reputation is a fundamental right "that cannot be abridged without compliance with state constitutional standards of due process and equal protection." *Simon*, 659 A.2d at 637 (citations omitted).

1. Procedural Due Process

The Defendant clearly has a protected reputational interest that may be affected by his SORNA registration requirements. Therefore, we must next determine what extent the interest may be harmed. *R. v. Com., Dep't of Pub. Welfare*, 636 A.2d 142, 149 (Pa. 1994). Such an "inquiry must necessarily focus on the extent to which the information contained in an indicated report is readily available and/or accessible." *Id*. Defendant testified at the hearing that individuals in the community have become aware of his sex offender status. Also, Defendant makes several pertinent points in his memorandum. He argues that the information contained in the juvenile sex offender registry can be accessible to the general public because, "the law does not prevent personal information from being released by law enforcement, courts, or private individuals outside of the State Police website." (Defendant's Memorandum, 6/26/2014, p. 89). "The law requires frequent and regular in person reporting, which can lead to conclusions about an individual's activities at the approved registration sites." *Id*. "The law does not prohibit an individual who knows information about a registered individual from sharing it widely." *Id*. Finally, "the law makes registration information accessible to schools." *Id*.

8 In Defendant's brief, he appears to make both substantive and procedural due process arguments which will both be addressed below.

9 Defendant appears to abandon his due process argument pursuant to the United States Constitution in his brief. Additionally, "[t]he United States Supreme Court has already held that reputation is not an interest which, standing alone, is sufficient to invoke the procedural protections of the Fourteenth Amendment's due process clause." *R. v. Com., Dep't of Pub. Welfare*, 636 A.2d 142, 149 (Pa. 1994)

As the Commonwealth argues, most of these reputational harms are speculative; however, "[t]he Pennsylvania Supreme Court has already recognized that the existence of government records containing information that might subject a party to negative stigmatization is a 'threat' to that party's reputation." *Pennsylvania Bar Ass'n v. Commonwealth*, 607 A.2d 850, 853 (Pa. Cmwlth. 1992) (quoting *Wolfe v. Beal*, 384 A.2d 1187, 1189 (Pa. 1978)). In *Pennsylvania Bar Ass'n*, the Pennsylvania Bar Association asserted that recent amendments to the Vehicle Code violated its members' procedural due process rights. *Id*. at 852. The new statute required the reporting of suspected fraudulent insurance claims and any attorneys connected with those claims. *Id*. The reported information was available upon request to "law enforcement officers, member-insurers, the Insurance Department . . . and similar fraud index bureaus." *Id*. at 853. Although bringing the suit, the Pennsylvania Bar Association was unable to find a specific member of the bar who had suffered any reputational injury because the information was being withheld pending resolution of the case. *Id*. As such, the Insurance Department argued that the Bar Association "failed to prove its entitlement to summary relief because its case rests on the mere assumption that [the statute] injures or threatens to injure the reputations of its members, and that no actual injuries have been alleged. *Id*. The Commonwealth Court disagreed and found that reporting attorneys associated with fraudulent insurance claims "inevitably leads to the injury of these attorneys' reputations, based upon suspicion alone." *Id*. at 854. The court found the existence of such a threat to the attorneys' reputations even though the information was not publicly disseminated; it was only accessible to specific entities and individuals. *Id*.

Similarly, the inclusion of juveniles on the sex offender registry poses a threat to their reputations. Although the Defendant's injuries are primarily speculative, so were the injuries to the attorneys in *Pennsylvania Bar Ass'n*. The exact impact of SORNA on the Defendant is unknown, but it is highly likely he will suffer adverse consequences for a majority of his life. (See Def.'s Brief, p. 88-90). As the Lancaster County Court of Common Pleas has stated, "the existence of [the juveniles'] names and personal information in Pennsylvania's sex offender registry alone threaten their reputations through negative stigmatization." *In the Interest of W.E., et al,* at 12-13; *Pennsylvania Bar Ass'n,* 607 A.2d at 856. Such a threat requires certain procedural due process safeguards. *In the Interest of W.E., et al,* at 12-13.

"Where such a right is protected by the constitutional guarantee of procedural due process, the courts must balance the interests of the individual in procedural protections against the interests of the government in proceeding without protections to determine what due process requires."

*Simon v. Commonwealth*, 659 A.2d 631, 637 (Pa. Cmwlth. 1995) (citing *Pennsylvania Bar Ass'n v. Commonwealth*, 607 A.2d 850 (Pa. Cmwlth. 1992)). In determining if a procedure satisfies due process pursuant to Article 1, Section 1 of the Pennsylvania Constitution, as the Commonwealth accurately states in their Brief,[10] Pennsylvania courts use the *Mathews v. Eldridge,* 424 U.S. 319 (1976) three pronged methodology for guidance.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements will entail.

*R. v. Com., Dep't of Pub. Welfare*, 636 A.2d 142, 146 (Pa. 1994) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 353 (1976)). As elaborated above, Juveniles undoubtedly have a private interest in protecting their reputations in so much as their sex offender classification and placement on the registry causes reputational harm. (*See* Def.'s Brief, p.88-91). Alternatively, the Commonwealth has a substantial interest in protecting and warning the public of potentially dangerous sexual offenders. 42 Pa.C.S. § 9799.11(a)(4). Considering these interests, the current procedures of classifying juveniles based only upon their adjudications certainly poses a risk of erroneous deprivation. As discussed in detail above, juveniles have a decreased likelihood of recidivism compared with adults and are more adept to rehabilitation. The procedure, as it stands today, fails to take such differences into account because juveniles are labeled as sex offenders based only on their adjudications. "Therefore, the Juveniles' classification as sexual offenders based solely upon their convictions, presents a serious risk of error that will deprive juveniles of their reputations." *In the Interest of W.E., et al,* at 13.

A foundation requirement of due process is notice.[11] *Pennsylvania Bar Ass'n v. Commonwealth*, 607 A.2d 850, 856 (Pa. Cmwlth. 1992) (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The Lancaster Court of Common Pleas reasoned that providing juveniles with notice such as allowing them to review a SORNA Colloquy before adjudication

10 Although incorrectly in reference to substantive due process, not procedural.

11 The other foundation due process requirement is an opportunity to be heard. *Pennsylvania Bar Ass'n v. Commonwealth*, 607 A.2d 850, 856 (Pa. Cmwlth. 1992) (citing *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The suggested notice was fulfilled in the instant case, yet the Defendant was not afforded a fair opportunity to be heard. Defendant argued at the May 29, 2014 hearing that the automatic registration requirements violate his due process rights because he has been successfully released from treatment and there has been no independent finding that he is a danger to the public or likely to reoffend. We do agree, but we intend to align our decision with the Lancaster Court of Common Pleas. Therefore, similarly, we refrain from holding that an individualized assessment of a juvenile's likelihood of reoffending is necessary to satisfy procedural due process requirements. *In the Interest of W.E.,* et al, No. J1085-2008 (Pa. Ct. Com. Pl. Juvenile Division Lancaster) (Opinion by J. Workman) at 14 n.18.

or tending an admission would have a significant impact. *In the Interest of W.E., et al,* at 12-13. We agree, and note that unlike the juveniles in the Lancaster case, the Defendant in the instant case did review and sign a SORNA Colloquy before he tendered his admission. (*See* SORNA Colloquy, 6/25/2010). Therefore, limiting our decision to the facts before us, we find that the Defendant was afforded sufficient procedural due process before his inclusion in the registry and classification as a sexual offender.

2. Substantive Due Process

As stated above, reputation is a fundamental right "that cannot be abridged without compliance with state constitutional standards of due process and equal protection." *Simon*, 659 A.2d at 637 (citations omitted). Through its police power, the General Assembly may limit such a right "by enacting laws to protect the public health, safety, and welfare, [but] any such laws are subject to judicial review and a constitutional analysis." *Nixon v. Commonwealth*, 839 A.2d 277, 286 (Pa. 2003) (citation omitted). The constitutional analysis that must be performed is a "means-end review" known as substantive due process analysis. *Id*. (citations omitted). "Under that analysis, courts must weigh the rights infringed upon by the law against the interest sought to be achieved by it, and also scrutinize the relationship between the law (the means) and that interest (the end)." *Id*. at 286-87. The right to reputation is fundamental and strict scrutiny review is required. *Pennsylvania Bar Ass'n*, 607 A.2d at 857. "Under that test, a law may only be deemed constitutional if it is narrowly tailored to a compelling state interest." *Nixon*, 839 A.2d at 287. Here, strict scrutiny review has been triggered because as we stated above, the threat to the Defendant's reputation trigger's due process safeguards.

In *Pennsylvania Bar Ass'n v. Commonwealth*, the Pennsylvania Bar Association also asserted that the amendments to the Vehicle Code violated its members' substantive due process rights and the court applied the strict scrutiny test. *Pennsylvania Bar Ass'n*, 607 A.2d at 857. As a compelling state interest, the Department argued that the reporting requirements were necessary to prevent insurance fraud. *Id*. The Pennsylvania Bar Association responded that the reporting requirements would not help in stemming insurance fraud, but instead "will result in unreliable reports based on unchecked and undisciplined suspicion." *Id*. The Commonwealth Court agreed that the abolition of fraud was a valid exercise of police power, but in exercising that power, individual rights could not be trammeled arbitrarily without a meaningful opportunity to be heard. *Id*. As such, the court found that the reporting requirements were "designed to operate in an arbitrary manner, with undefined suspicion as the basis for reports and no system

in place to evaluate them for veracity or probative value." *Id*. The Court went on to find:

> [W]hile some attorneys reported to the Index Bureau might actually be involved in submitting fraudulent claims, all of the attorneys reported will suffer an injury to their right to protect their reputations without benefit of due process. The Department makes no argument which justifies the broad sweep of the attorney reporting requirements. Consequently, we find the requirement that attorney names be reported on the basis of an undefined suspicion to be unconstitutional as a violation of substantive due process.

*Id*. at 858.

Turning to the instant case, the state has a clear interest in protecting the public from sexual offenders and their high tendency to commit additional sexual crimes. 42 Pa. Cons. Stat. Ann. § 9799.11(4) ("[s]exual offenders pose a high risk of committing additional sexual offenses and protection of the public from this type of offender is a paramount governmental interest."). Defendant argues that SORNA fails strict scrutiny review because it is "not narrowly tailored to meet the Commonwealth's justifications to prevent recidivism and notify community members about risky sexual offenders in their neighborhoods." (Def.'s Brief, p. 91). Defendant goes on to argue that "nearly all" the children subject to SORNA are unlikely to reoffend, that juvenile registration information can become public, and due process is not burdensome. (Def.'s Brief, p. 91).

As accurately noted by the Monroe County Court of Common Pleas, "safety or protection is a classic example of a compelling state interest." *In the Interest of B.B., et al,* No. 248 JV 2012 (Pa. Ct. Comm. Pl. Monroe) (Opinion by P.J. Patti-Worthington) at 12-13; *see also In re S.A.*, 925 A.2d 838, 847 (Pa. Super. 2007) ("It is undisputed that the Commonwealth has a compelling interest in protecting its citizens from danger."). Upon recognizing that SORNA promotes a compelling state interest, we must determine whether it is narrowly tailored to serve the interest. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340 (2010) (government has the burden); *see also Pennsylvania Bar Ass'n*, 607 A.2d at 857.

The Commonwealth did not argue or discuss in its brief how SORNA is narrowly tailored. Instead, the Commonwealth's focus was on whether SORNA caused a stigmatizing reputational harm. Also, a majority of the Defendant's brief also focuses on the reputational harm caused by SORNA. Defendant only argues that SORNA is not narrowly tailored because "nearly all children subject to SORNA are at a low risk for reoffending," and juvenile offenders are required to register by only by

virtue of their adjudication. (Def.'s Brief, p. 91). As the question of whether SORNA is narrowly tailored to serve the compelling state interest was not fully briefed or addressed in this matter, the Court cannot find at this time that it violates constitutional guarantees of substantive due process.

D. Juvenile Court Jurisdiction and Juvenile Act Conflict

1. Juvenile Court Jurisdiction

Fourth, Defendant argues that the Juvenile Court has no authority to impose a punishment that extends over the lifetime of the juvenile, where the juvenile court's jurisdiction over the Defendant otherwise ends at age 21. 42 Pa.C.S. § 6302. Defendant argues in support that there exists "no opportunity for a juvenile court to conduct an individual assessment at the time of sentencing" and "no authority to conduct further reviews of periodic assessments." *In the Interest of J.B., et al.*, at 39.

Examining the juvenile court's jurisdiction, Defendant accurately states in his brief that the Pennsylvania Juvenile Act applies to "[p]roceedings in which a child is alleged to be delinquent or dependent." 42 Pa.C.S. § 6303(a)(1). A "child" is defined as an individual who "(1) is under the age of 18 years; [or] (2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years . . ." 42 Pa. Cons. Stat. Ann. § 6302. Along similar lines, the Superior Court has stated, "[j]uvenile court jurisdiction terminates at 21, regardless of whether or not appellants continue to pose a threat to society." *Commonwealth v. Zoller*, 498 A.2d 436, 440 (Pa. Super. 1985). The Defendant argues that this holding as well as the Juvenile Act forbids juvenile courts "from imposing penalties or conditions of disposition extending beyond the child's twenty-first birthday. Thus, lifetime SORNA registration is proscribed." (Def.'s Brief, p. 92).

In response, using a statutory construction argument,[12] the Commonwealth asserts that SORNA is more specific than the Juvenile Act and more recently enacted. (Commonwealth's Brief, p.21). Therefore, any conflict between the two must be resolved "by the special provisions of juvenile registration under SORNA prevailing over the general provisions of the Act." *Id*. at 22. Additionally the Commonwealth argues that registration requirements under SORNA are not enforced by the juvenile court nor dependent on juvenile court jurisdiction. *Id*.

We agree with the Commonwealth that Defendant's argument that

12 Defendant cites 1 Pa.C.S. § 1933 which states:
Whenever a general provision in a statute shall be in conflict with a special provision in the same or another statute, the two shall be construed, if possible, so that effect may be given to both. If the conflict between the two provisions is irreconcilable, the special provisions shall prevail and shall be construed as an exception to the general provision, unless the general provision shall be enacted later and it shall be the manifest intention of the General Assembly that such general provision shall prevail.
1 Pa.C.S. § 1933.

the Juvenile Court has no authority to impose a punishment that extends over the lifetime of the juvenile must fail as the Defendant's SORNA registration requirements are not enforced by the juvenile court or dependent on continuous juvenile court jurisdiction. (Commonwealth's Brief, p. 22); *see also In the Interest of B.B., et al*, at 8.

Although Defendant's argument fails, he does raise some relevant points in his brief worthy of further discussion. Defendant notes that there are two circumstances – civil commitment and continuing restitution obligations[13] - where juvenile adjudications may lead to adult consequences. (Def.'s Brief, p.92). However, both differ from SORNA requirements because SORNA does not provide a mechanism for conducting individualized assessments.

For example, in the case of civil commitments, a juvenile adjudicated delinquent for certain sexual offenses may be ordered by an adult court to be involuntarily committed for an indefinite amount of time past the age of 21. 42 Pa.C.S. § 6403(a). However, before a civil commitment is permitted, several procedural steps must take place including an assessment by the State Sexual Offenders Board, the filing of a petition, and a hearing. 42 Pa.C.S. § 6403(b) & (c). Then, only when the Court finds by clear and convincing evidence that "the person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence" may the court enter an order directing for the commitment of the individual. 42 Pa.C.S. § 6403(d). Additionally, there is a mechanism for periodic review as commitment may initially only be for one year. 42 Pa.C.S. § 6404(a). The involuntary commitment is then annually reviewed to determine if commitment is still necessary because "the person continues to have serious difficulty controlling sexually violent behavior." 42 Pa.C.S. § 6404(b)(2). Alternatively SORNA imposes automatic registration requirements long past the age of 21 without also providing an opportunity for periodic review or individualized assessment. (Def.'s Brief, p. 93).

The Court finds the circumstances surrounding civil commitments very relevant as the statute requires individualized assessments to ensure that commitment is initially required and remains necessary. SORNA applies automatically based upon a juvenile's adjudication, yet it does not provide for the juvenile court to conduct initial individualized assessments and consider a juvenile's unique circumstances or likelihood of recidivism. (Def's Brief at 92). Additionally, a juvenile must register for a minimum of 25 years, yet the juvenile court cannot conduct periodic reviews to determine the continued need for registration. *Id*. at 93. Although SORNA registration

13 *See* 42 Pa.C.S. § 6352(a)(5) ("[a]ny restitution order which remains unpaid at the time the child attains 21 years of age shall continue to be collectible under section 9728 . .").

requirements are arguably less restrictive than involuntary commitments, the civil commitment procedure stands for the proposition that a juvenile adjudication for a specific sexual offense alone is not enough to impose adult penalties past the age of 21.[14]

2. Juvenile Act Conflict

Fifth, Defendant argues that a juvenile's requirement to register for life as a sexual offender "runs counter to the express rehabilitative purpose and individualized approach of the Juvenile Act." *In the Interest of J.B., et al.*, at 40-41; 42 Pa.C.S. § 6301. The Court agrees that SORNA directly contradicts the rehabilitative purpose and goals of the Juvenile Act, which are discussed in detail in Section II above. (Def.'s Brief, p. 95). For example, the ultimate goal of the juvenile justice system is to enable juveniles to become productive and responsible members of society. *In re J.B.*, 39 A.3d at 427. Requiring juveniles to automatically comply with SORNA registration requirements absolutely hinders their abilities to become productive members of society as it restricts their abilities to find housing and employment for most of his adult life. *See Graham*, 560 U.S. at 74. Furthermore, SORNA's lack of control over the dissemination of information goes directly against the privacy goals of the juvenile justice system where "[t]here is a compelling interest in protecting minor children's privacy rights and the protection of a minor child's privacy . . ." *In re J.B.*, 39 A.3d at 427 (quoting *In the Interest of T.E.H.*, 928 A.2d 318, 323 (Pa. Super. 2007)). In short, "[t]he purpose of juvenile proceedings is to seek treatment, reformation and rehabilitation of the youthful offender, not to punish." *Commonwealth v. S.M.*, 769 A.2d 542, 544 (Pa. Super. 2001) (internal quotations and citation omitted). SORNA punishes the juvenile offender indefinitely. We agree with Judge Uhler that, "SORNA mandates imposition of a lifetime punishment that runs counter to the express rehabilitative purpose and individualized approach of the Juvenile Act, and we find that SORNA is in conflict with the Juvenile Act." *In the Interest of J.B., et al.*, at 39-41. However, this conflict alone does not render SORNA unconstitutional. *Id*.

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14 (a) Persons subject to involuntary treatment.--A person may be subject to court-ordered commitment for involuntary treatment under this chapter if the person: (1) Has been adjudicated delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest). (2) Has been committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) and remains in any such institution or facility upon attaining 20 years of age as a result of having been adjudicated delinquent for the act of sexual violence. (3) Is in need of involuntary treatment due to a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.

42 Pa.C.S § 6403.

E. Ex Post Facto

Sixth, the Defendant argues that by requiring juveniles adjudicated delinquent of offenses committed prior to December 20, 2012 to register as juvenile offenders based solely on the offense committed rather than on an individualized assessment of dangerousness, causes the registration requirement to become part and parcel of the juvenile's disposition. This retroactive increase in the juvenile's disposition imposes additional punishment in violation of the *Ex Post Facto* Clauses of the Pennsylvania and United States constitutions.[15] Pa. Const. Art I, Sec. 17; U.S. Const. Art. 1, Sec. 10.

Therefore, we must determine whether SORNA's retroactive application to juveniles still under juvenile court supervision on December 20, 2012 constitutes a retroactive punishment prohibited by the *Ex Post Facto* Clauses of the Pennsylvania and U.S. Constitution. *See Smith*, 538 U.S. at 92.

The United States Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 169 (1963) has established a two-level inquiry which must be performed when assessing state and federal *ex post facto* claims. First we must ask, "whether the legislature's intent was to impose punishment, and, if not, whether the statutory scheme is nonetheless so punitive either in purpose or effect as to negate the legislature's non-punitive intent." *Commonwealth v. Lee*, 935 A.2d 865, 873 (Pa. 2007) (quoting *Commonwealth v. Williams*, 832 A.2d 962, 971 (Pa. 2003)). If the intent is to impose punishment, the inquiry ends. *Smith*, 538 U.S. at 92 "If, however, the intention was to enact a regulatory scheme that is civil and nonpunitive, we must further examine whether the statutory scheme is so punitive either in purpose or effect as to negate [the State's] intention to deem it civil." *Id*. (internal quotations and citations omitted). This second prong utilizes the seven *Mendoza-Martinez* factors which provide a "useful guideposts" in determining whether a statute imposes a retroactive punishment unconstitutionally. *Id*. at 97. The Mendoza-Martinez factors are:

> [1]Whether the sanction involves an affirmative disability or restraint, [2]whether it has historically been regarded as a punishment, [3]whether it comes into play only on a finding of scienter, [4]whether its operation will promote the traditional aims of punishment—retribution and deterrence, [5] whether the behavior to which it applies is already a crime, [6]whether an alternative purpose to which

15 As correctly noted by the Commonwealth in their brief, the *ex post facto clauses* of the Pennsylvania and U.S. Constitutions are "virtually identical and the standards applied to determine an ex post facto violation under the Pennsylvania Constitution and the United States Constitution are comparable." *Com. v. Young*, 536 Pa. 57, 65, 637 A.2d 1313, 1317 n.7 (1993) (citations omitted).

> it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the alternative purpose assigned

*Mendoza-Martinez*, 372 U.S. at 168-69. "[O]nly the clearest proof will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty." *Smith*, 538 U.S. at 92. This means that the factors "must weigh heavily in favor of a finding of punitive purposes or effect . . . to negate the General Assembly's intention that the Act be deemed civil and remedial." *Lee*, 935 A.2d at 877. Not all of the factors must weigh in favor of punishment. The Pennsylvania Supreme Court has recognized that the seventh factor alone may be dispositive, meaning that a statute may be punitive when it is "so excessive relative to [its] remedial objectives." *Id*. at 876 n.24; *see also In the Interest of J.B., et al.*, at 21.

As the Commonwealth aptly states in their brief, the legislature intended SORNA to be civil and non-punitive. *See* 42 Pa.C.S. § 9799.11(b)(2) ("[i]t is the policy of the Commonwealth to require the exchange of relevant information about sexual offenders among public agencies and officials and to authorize the release of necessary and relevant information about sexual offenders to members of the general public as a means of assuring public protection and shall not be construed as punitive."). It is therefore imperative this Court determine whether SORNA's "statutory scheme is so punitive in either purpose or effect as to negate [the State's] intention to deem it civil." *Smith*, 538 U.S. at 92. As a result, we consider the seven (7) factors in *Mendoza-Martinez* it turn to determine this.

The first factor is whether the "sanction involves an affirmative disability or restraint." *Mendoz-Martinez*, 372 U.S. 168-69. This requires looking at the degree to which it affects those who are subject to it by assessing whether it imposes major and direct disabilities and restraints. *Smith*, 538 U.S. at 99-100. It is difficult to see the restraints and disabilities imposed under SORNA as anything other than major and direct. As discussed *supra*, SORNA's registration requirements are complex and extremely comprehensive. Juvenile offenders are required to provide extensive initial registration information, perform quarterly in-person appearances and perform in-person appearances within three (3) days of any change in personal circumstance. 42 Pa.C.S. § 9799.17. These requirements are in addition to other state and federal statutory requirements and non-compliance is subject to strict penalties.

Further, this Court agrees with both the Defendant and Judge Uhler in *In the Interest of J.B., et al.*, that the leading federal and Pennsylvania cases to consider whether Megan's Law imposes an affirmative disability or

restraint are not dispositive of SORNA. *See Smith*, 538 U.S. at 84; *see also Williams*, 832 A.2d 973-75. Not only were the registration requirements in both *Williams* and *Smith* significantly less than that of SORNA, they dealt exclusively with adults and not juvenile offenders. These differences clearly distinguish *Williams* and *Smith* from the case in question. Additionally, SORNA imposes various secondary disabilities and restraints. Such secondary restraints include a child's ability to travel, concerns regarding their social well-being, and the child's ability to find housing, employment and schooling. Although these are effects are not directly imposed by SORNA, they are an inevitable and logical result when applied to juvenile offenders.

The Commonwealth argues that SORNA does not impose affirmative disabilities or restraints by relying on the legal analysis the Pennsylvania Superior Court's articulated in *Commonwealth v. Perez*, 2014 PA Super 142 (Pa. Super. Ct. July 9, 2014). This Court finds the issue before it distinguishable from *Perez*. In *Perez*, the Superior Court found that SORNA requiring Tier II sexual offenders[16] to attend semiannual in-person appearances over a 25 year period ***did*** impose a direct and affirmative restraint. *Id*. at 5. The Commonwealth seeks to rely on the legal analysis of *Perez* while distinguishing the facts of this case by likening juvenile offenders to Tier III sexual offenders because 42 Pa. C.S. § 9799.15 requires quarterly in-person reporting requirements for both. (Com.'s Brief, July 28, 2014, p. 6). Thus, the Commonwealth argues that because the quarterly in-person reporting requirements for Tier III offenders has been found not to be an affirmative disability or restraint, that this analysis applies to juvenile offenders as well since they share the same in-person reporting requirement. *Id*. This Court is unpersuaded. On this factor we see no reason for distinguishing between the disabilities and limitations imposed on Tier II offenders in *Perez* from those of the juvenile Defendant in this case. Based on these considerations, we conclude that the first *Mendoza-Martinez* factor weighs in favor of finding SORNA punitive.

The second factor we must consider is whether the sanction has historically been regarded as punishment. The Defendant asserts that the application of SORNA to juvenile offenders is paramount to two traditional forms of punishment, probation and shaming. (Def.'s Brief, p. 60). The Commonwealth relies again on *Perez* where the court found that imposing SORNA semiannual reporting requirements on Tier II sexual offenders was not parallel to probation and supervised release and weighed against finding SORNA punitive.[17] *Perez*, 2014 PA Super 142 at 5. This Court disagrees and finds Judge Christine Donohue's concurring opinion more instructive

16 As defined by 42 Pa.C.S. § 9799.14.

17 The majority opinion conceded that analogizing SORNA's registration requirements to parole and supervised released did have "some force."

on this factor. *See id*. at 11-16 (Donohue, J., concurring). As articulated by the Pennsylvania Supreme Court, probation has historically been considered a form of punishment. *Williams*, 832 A.2d at 977. Similar to probation, the limitations imposed by SORNA require "obligations to report followed by penalties for failure to comply and both statutory schemes appear in the same sentencing code." *In the Interest of J.B., et al.*, at 24. In her concurrence Judge Donohue detailed the similarities between SORNA's limitations and probation, stating:

> Like the conditions imposed on probationers, registrants under SORNA must notify the state police of a change in residency or employment. 42 Pa.C.S.A. § 9799.15(g). Offenders also face incarceration for any non-compliance with the registration requirements. 42 Pa.C.S.A. § 9799.22(a). Furthermore, SORNA requires registrants who do not have a fixed work place to provide "general travel routes and general areas where the individual works" in order to be in compliance. 42 Pa.C.S.A. § 9799.16. The Supreme Court in Smith stated that "[a] sex offender who fails to comply with the reporting requirement may be subjected to criminal prosecution for that failure, but any prosecution is a proceeding separate from the individual's original offense." *Smith*, 538 U.S. at 101–02, 123 S.Ct. 1140. However, violations for noncompliance with both probation and SORNA registration requirements are procedurally parallel. Both require further factual findings to determine whether a violation has actually occurred. 42 Pa.C.S.A. §§ 9771(d), 9799.21. Similarly, but for the original underlying offense, neither would be subject to the mandatory conditions from which the potential violation stems. The parallels between the SORNA registration requirements and probation lead me to conclude that factor two of the Kennedy test leans towards a finding that SORNA is punitive.

*Perez*, 2014 PA Super 142 at 15 (Donohue J., concurring). Adopting this analysis, we would find that the application of SORNA to juvenile offenders does impose a traditional form of punishment, probation, and would find the second factor weighs in favor of finding SORNA punitive.

We also agree that application of SORNA to juveniles constitutes the traditional punishment of shaming. Pennsylvania recognizes that status as a "sexually violent predator" under Megan's Law is not sufficient to constitute shaming. *Williams*, 832 A.2d at 976-77. However, such an analysis should

not be extended to juveniles. Imposing SORNA reporting requirements on juveniles inflicts a lifetime characterization as a criminal and the statute lacks adequate safeguards necessary to protect such information from becoming public. *In the Interest of J.B., et al.*, at 25. The limitations imposed on juveniles by SORNA would be historically consistent with public shaming and would be contrary to Pennsylvania's clearly stated "compelling interest in protecting minor children's privacy." *In the Interest of T.E.H.*, 928 A.2d 318, 323 (Pa. Super. 2007). Thus, we find this weighs in favor of finding SORNA punitive.

The third factor to consider is the requirement of scienter. "The existence of a scienter requirement is customarily an important element in distinguishing criminal from civil statutes." *Kansas v. Hendricks*, 521 U.S. 346, 362 (1997). The Defendant argues that scienter is a necessary part of SORNA's regulatory objective asserting that "the regulatory obligations flow directly from a finding of criminal conduct and the regulatory purpose is the reduction of future offending." [18] (Def.'s Brief, p.65-66). We disagree. Analogous to the situation in *Smith*, SORNA's regulatory scheme "applies only to past conduct, which was, and is, a crime." *Smith*, 538 U.S. at 104. This same analysis was applied to SORNA in *Perez* for Tier II offenders [19]and on this factor we find no reason to differentiate between adults and juvenile offenders. Therefore, we find that this factor does not weigh in favor of finding SORNA punitive in nature.

The fourth factor is whether SORNA's operation will promote retribution and deterrence, the traditional aims of punishment. We would agree with Defendant's assertion that SORNA punishes children by exacting retribution. (*See* Def.'s Brief, p. 66). This retribution becomes apparent when comparing it to Act 21, the juvenile sexual offender involuntary civil commitment statute. Act 21 requires a court to conduct a hearing to determine if involuntary treatment is needed for a mental abnormality or personality disorder which results in the juvenile's difficulty in controlling sexual behavior. *See* 42 Pa.C.S. §§ 6358, 9799.24. The Superior Court found that Act 21 did not constitute retribution because it was directly aimed to the "juveniles current and continuing status as a person" in need of treatment and did "not affix culpability for prior criminal conduct." *In re S.A.*, 925 A.2d 838, 842-44 (Pa. Super. 2007). In stark contrast, SORNA applies only to prior criminal conduct.

Further, SORNA inflicts punishment on children adjudicated delinquent who are engaged in a broad array of behavior, regardless of the underlying facts or chances of recidivism. The Commonwealth again

18 This is consistent with Judge Uhler's opinion in *In the Interest of J.B., et al.*, No. CP-67-JV-0000726-2010 (Pa. Ct. Com. Pl. York).
19 *See Perez*, 2014 PA Super 142.

mistakenly attempts to apply the analysis used for adult Tier II offenders in *Perez* to the case in question, which features a juvenile defendant. The *Perez* court acknowledged that the legislative history of SORNA imposes some aspects of deterrence and retribution but then stated "[h]owever, taking into account the high risk of recidivism, the General Assembly is permitted to have some deterrent and retributive effects in its legislation as long as they are 'consistent with ... regulatory objectives [and are] reasonably related to the danger of recidivism…'" As discussed *supra*, the inherent problem with applying this analysis to the case in question is that, unlike the Tier II offenders in *Perez*, juvenile sex offenders **do not** have a high risk of committing a subsequent sex offense.[20] Therefore, SORNA's deterrent and retributive effects can hardly be seen as "reasonably related to the danger of recidivism" when research clearly indicates that there is an extremely minimal chance of any juvenile sex offender committing a subsequent sex offense. The analysis used in *Perez* on this factor may be relevant to adult offenders, but it is wholly inapplicable when applied to juveniles. As a result, we conclude this factor weighs in favor of finding SORNA punitive.

The fifth *Mendoza-Martinez* factor asks whether the behavior to which the law applies is already a crime. We would agree that it is. SORNA applies only after a child has been adjudicated delinquent of a qualifying offense. Because the statute relies on past crimes as a basis, it runs the risk of including numerous individuals who pose no real threat to the community and it can be argued that its true purpose is to revisit past crimes, not prevent future ones. *State v. Letalien,* 985 A.2d 4, 4 (Maine 2009) (quoting *Smith*, 538 U.S. 108 (Souter, J., concurring)). Additionally, SORNA does not apply to children who may actually pose a threat and were arrested for offenses that could implicate SORNA, but were later not adjudicated delinquent for any one of a number of reasons.[21] This conundrum undermines SORNA's stated purpose of public safety and if the registration requirements were intended not to apply to something that is already a crime, it would seem the Commonwealth should have chosen to register some or all of these other juveniles. When consideration of past conduct has been at the starting point of a statute, it still has been found proper when "the General Assembly's concern is the high rate of recidivism." *Perez*, 2014 PA Super 142 at 8 (*citing Smith*, 538 U.S. at 105). However, in this case such consideration would not be proper based on the low rates of recidivism by juveniles of subsequent sexual offenses. Therefore, we find the fifth factor weighs in favor of finding SORNA to be punitive.

20 As noted, recent research by the Pennsylvania Juvenile Judges Commission has found that juvenile sex offenders have only a 1.4% of committing a subsequent sexual offense within two years of their case being closed.

21 These could include children who are incompetent to proceed to trial, who committed sexual offenses but negotiated plea bargains to non-SORNA charges, convictions precluded due to suppression of evidence, who committed sexual acts but for whom the evidence was not sufficient for proof beyond a reasonable doubt. (*See* Def.'s Brief, p. 70).

The sixth factor is the statute's rational connection to an alternative purpose. The Commonwealth clearly has a compelling interest in seeking to prevent crimes of a sexual nature, especially those against children. For a majority of the offenders, registration under SORNA is undoubtedly connected to this interest. However, when imposed on juveniles SORNA is not rationally related to a non-punitive purpose. The key factor Pennsylvania courts look to when determining if a sex offender registration scheme is punitive are recidivism rates. *See Lee*, 935 A.2d at 882. Unlike adult offenders, juvenile sex offender's sexual recidivism rates are almost non-existent, less than 2%. Based on this, imposing SORNA on juveniles would clearly be punitive. Finally, the public safety rationale that was the base for SORNA was to provide the public with adequate notice and information about sexual offenders. *Williams*, 832 A.2d at 972. This rationale is wholly inapplicable to juveniles based on the purported non-public nature of the registry for juveniles. I*n the Interest of J.B., et al.*, at 27 (citing 42 Pa. C.S. § 9799.28(b)). Based on these reasons, SORNA cannot be considered to be rationally related to a non-punitive purpose.

The seventh and final factor to consider is whether SORNA appears excessive in relation to the alternative purpose assigned. We believe it does. Defendant asserts that SORNA may include many juvenile offenders, potentially more than 90% who are required to register, who will never commit another sexual offense in their lifetime. (Def.'s Brief, p. 73). The Supreme Court in *Smith* held that Alaska's Sex Offender Registration Act was not excessive simply because it applied "to all convicted sex offenders without regard to their future dangerousness." *Smith*, 538 U.S.at 103. However, the statute in *Smith* dealt specifically with adults or juveniles charged as adults. It did not address juveniles adjudicated delinquent, as the Defendant is in this case. This distinction is glaringly apparent when reviewing the Court's analysis in *Smith*, as it stated:

> Alaska could conclude that a conviction for a sex offense provides evidence of substantial risk of recidivism. The legislature's findings are consistent with grave concerns over the high rate of recidivism among convicted sex offenders and their dangerousness as a class. The risk of recidivism posed by sex offenders is "frightening and high." *McKune v. Lile*, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002); *see also id*., at 33, 122 S.Ct. 2017 ("When convicted sex offenders reenter society, they are much more likely than any other type of offender to be rearrested for a new rape or sexual assault" (citing U.S. Dept. of Justice, Bureau of Justice Statistics, Sex Offenses and Offenders 27 (1997); U.S. Dept. of Justice, Bureau

of Justice Statistics, Recidivism of Prisoners Released in 1983, p. 6 (1997))).

*Id*. As exhaustively discussed *supra*, juvenile sex offenders have extremely low rates of recidivism. Thus, unlike adult offenders, the risk of recidivism posed by juvenile sexual offenders cannot be considered "frightening and high." Therefore, the analysis outlined in *Smith*, and cited by *Perez*, is not instructive on the issue of whether SORNA is excessive in relation to the alternative purpose assigned.

More pertinent to the application of SORNA to the Defendant, a juvenile offender, is the Pennsylvania Supreme Court's observation that "if [an] Act's imprecision is likely to result in individuals being deemed sexually violent predators who in fact do not pose the type of risk to the community that the General Assembly sought to guard against, then the Act's provisions could be demonstrated to be excessive…" *Williams*, 832 A.2d 983. In this case, the General Assembly was concerned about high rates of sexual recidivism by sexual offenders, a concern that research shows is not consistent with juvenile offenders. Not only is this core concern not applicable to juveniles, the requirements imposed by SORNA are quite excessive.[22] This is particularly true when applied to the Defendant, who because he is a juvenile is likely to be far less mature and capable of adhering to the excessive requirements of SORNA than an adult. The Commonwealth also places emphasis on the ability of juveniles to become eligible for early termination of SORNA registration.[23] However, we agree with the Defendant that this potential for removal is illusory when factoring in that a juvenile offender may be disqualified if they have their probation revoked or if they are convicted of even one (1) second degree misdemeanor. (See Def.'s Brief, p. 75 n56). Based on the following reasons, we find that SORNA appears excessive in relation to the alternative purpose assigned and this weighs in favor of finding the statute punitive.

When reviewing the *Mendoza-Martinez* factors together, we find that the Defendant has meet his burden of establishing that registration under SORNA is punitive. This is based on finding six (6) of the seven (7) factors weighing in favor of being punitive. As this Court has noted, we find the case in question to be clearly distinguishable from *Perez*, the case so strongly relied upon by the Commonwealth. There simply remains a fundamental difference between applying SORNA to a juvenile offender

22 In addition to the quarterly in-person appearances every year for life, the juvenile must comply with the exhaustive list of requirements outlined in 42 Pa. C.S. § 9799.15-16; *see supra* pg 3-5. A child must also submit a photograph whenever there is a significant change in their appearance. 42 Pa. C.S. § 9799.15 § (c)(4). This requirement is inherently ambiguous and seems to imply that a child would have to submit a photograph when they grew their first beard or decided to dye their hair. The fact that the offenders subject to this requirement are children and thus will be still growing and developing makes determining what constitutes a "significant change" even more problematic for both child and law enforcement. *In the Interest of J.B., et al.*, at 29.

23 This is in contrast to adult offenders and the requirements for early termination are codified in 42 Pa. § C.S. 9799.17.

and the adult Tier II offenders in *Perez*. Therefore, this Court finds that the SORNA provisions pertaining to the Defendant are punitive, and violate the *Ex Post Facto* Clauses of the Pennsylvania and United States Constitutions. Pa. Const. Art I, Sec. 17; U.S. Const. Art. 1, Sec. 10. This holding is limited to the instant Defendant.

II. Motions to Stay Registration & Petition for Writ of Habeas Corpus.

For the aforementioned reasons, Defendant's Motions to Stay Registration in the adult and juvenile matters as well as the Defendant's Petition for Writ of Habeas Corpus are granted.

**CONCLUSION**

The Court finds that 42 Pa.C.S. § 9799.10 *et seq.* is unconstitutional as it relates to the Defendant because it violates the Pennsylvania and United States Constitutional bans on the infliction of cruel and unusual punishment, creates an irrebuttable presumption that denies the Defendant adequate due process of law, and its provisions pertaining to Defendant are punitive and violate the *Ex Post Facto* Clauses of the Pennsylvania and United States Constitutions. Therefore, Defendant's Motion for Finding that Registration is Unconstitutional is granted. Regarding Defendant's Motion to Dismiss Charges, the Court declines to dismiss the above captioned charges at this stage, yet orders the matter to be stayed pending further determinations by the Supreme Court. Therefore, the Defendant's Motions to Stay Registration in both the adult and juvenile court are granted. Finally, Defendant's Petition for Writ of Habeas Corpus/Coram Nobis is granted.

**Commonwealth of Pennsylvania v. Jay Lee Walter, Jr., Defendant**
Court of Common Pleas of the 39th Judicial District of Pennsylvania,
Franklin County Branch, Criminal Action – Law No. 1848-2013

**ORDER OF COURT**

**AND NOW THIS 10th day of September, 2014,** the Court having reviewed the Defendant's Motion for Finding that Registration is Unconstitutional, Motion to Dismiss Charges, Motion to Stay Registration, Petition for Writ of Habeus Corpus, the Commonwealth's Answers, having heard the arguments provided at hearing, having considered the briefs, and upon review of the applicable law,

**IT IS HEREBY ORDERED THAT:**

1.Defendant's Motion for Finding that Registration under 42 Pa.C.S. § 9799.10 et seq. is Unconstitutional as it Relates to Juvenile Offenders is **GRANTED** as it relates to the movant Defendant.

2.Defendant's Motion to Stay Registration Under 42 Pa.C.S. § 9799.10 *et seq*. Pending the Pennsylvania Supreme Court's Review in *In the Interest of J.B., A Minor, et al.* and Resolution of Defendant's Petition for Writ of Habeas Corpus/Coram Nobis is **GRANTED**. The Pennsylvania State Police and Juvenile Probation department **SHALL NOT** include the Defendant's name, photograph, and information in the Registry of Sexual Offenders pending further Order.

3.Defendant's Motion to Dismiss Charges is **DENIED**.

4. Defendant's Petition for Writ of Habeas Corpus/Coram Nobis is **GRANTED**. Defendant **SHALL NOT** be required to register as a sexual offender in Pennsylvania as a result of his adjudication in Franklin County Court of Common Pleas Juvenile Delinquency Case No. JV 180-2010. The Pennsylvania State Police SHALL immediately remove the Defendant's name, photographs, and other information from the sexual offender registry.

**IT IS FURTHER ORDERED** that the Clerk of Courts shall serve a copy of this Order upon Lieutenant Todd L. Harman, Commander, Megan's Law Section, Pennsylvania State Police, 1800 Elmerton Avenue, Harrisburg, PA 17120.

*Pursuant to Pa. R. Crim. P. 114, the Clerk of Courts shall immediately docket this Opinion and Order of Court and record in the docket the date it was made. The Clerk shall forthwith furnish a copy of the Opinion and Order of Court, by mail or personal delivery, to each party or attorney, and shall record in the docket the time and manner thereof.*

**IN INTEREST OF: Jay Walter Jr., Born: September 8, 1993**
Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Juvenile Court Division No. JV 180-2010

**ORDER OF COURT**

**AND NOW THIS 10th day of September, 2014,** the Court having reviewed the Defendant's Motion to Stay Registration under 42 Pa.C.S. § 9799.10 et seq. Pending the Pennsylvania Supreme Court's Review in *In*

*the Interest of J.B., A Minor, et al.*, the Commonwealth's Answer, having heard the arguments provided at hearing, having considered the briefs, and upon review of the applicable law,

**IT IS HEREBY ORDERED THAT,** Defendant's Motion is **GRANTED**. Defendant's registration as a juvenile offender under 42 Pa.C.S. § 9799.10 *et seq*. is **STAYED** pending the decision of the Pennsylvania Supreme Court in *In the Interest of J.B., A Minor, et al.*, No. CP-67-JV-0000726-2010, et al. The Pennsylvania State Police and Juvenile Probation department **SHALL NOT** include the Defendant's name, photograph, and information in the Registry of Sexual Offenders pending further Order.