

“CAST ME NOT AWAY!”¹: THE PLIGHT OF MODERN DAY ROMEO AND JULIET

Kelsey Dumond

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I. INTRODUCTION

“O Romeo, Romeo, wherefore art thou Romeo?”² It is a safe assumption that most people would be able to identify this quotation as belonging to William Shakespeare’s famous play, *Romeo and Juliet*. In addition, most of those individuals likely know the story of Romeo and Juliet: a tale of star-crossed lovers, two teenagers whose families are enemies, prompting the couple to navigate considerable obstacles in their pursuit of love.³ In the play, the two main characters’ family feud is the central issue.⁴ If this were a modern day problem, however, Romeo, and possibly Juliet, could potentially face criminal charges due to their

¹ WILLIAM SHAKESPEARE, *ROMEO AND JULIET* act 3, sc. 5.

² *Id.* at act 2, sc. 2.

³ See generally *id.*; see also Steve James, *Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and a Call for Reform*, 78 UMKC L. REV. 241, 241 (2009).

⁴ See generally SHAKESPEARE, *supra* note 1; see also James, *supra* note 3, at 241.

ages; Juliet is thirteen while Romeo is an older teen.⁵ Applying that contemporary filter to this beloved classic puts into perspective the ugly truth and substantial consequences teenagers are faced with today.

In an attempt to soften the strict lines defining statutory rape, many states have passed Romeo and Juliet laws, which essentially serve as an exception to the crime.⁶ The Romeo and Juliet laws were implemented to “afford[] protection to minors who willingly, voluntarily, and intentionally engage in sexual intercourse . . . [and] to decriminalize the penalty for minors in statutory rape cases.”⁷ The purpose of this Note is to analyze statutory rape laws and Romeo and Juliet exceptions, how they are lacking, and draw attention to the irrevocable consequences that result from sex offender registration.

This analysis focuses on distinguishing those who are a real threat to the community and the innocence of our children from young adults and adolescents who made an innocent mistake in exploring amorous relationships. There are two prime examples of the former: Roman Polanski⁸ and Megan Mahoney.⁹ Polanski is a famous, Academy Award-winning filmmaker who is also well-known for being a child rapist.¹⁰ At forty-three-years-old, Polanski performed oral, vaginal, and anal sex on a thirteen-year-old aspiring model despite her protests.¹¹ He was arrested and indicted on six felony counts, served forty-two days in jail, and then fled to France on the day of his sentencing, where he has lived ever since.¹² Megan Mahoney, twenty-four-year-old high school gym teacher and assistant women’s basketball coach, was arrested for having regular sexual contact with a sixteen-year-old male student over

⁵ James, *supra* note 3, at 241.

⁶ Jordan Franklin, *Where Art Thou, Privacy?: Expanding Privacy Rights of Minors in Regard to Consensual Sex: Statutory Rape Laws and the Need for a “Romeo and Juliet” Exception in Illinois*, 46 J. MARSHALL L. REV. 309, 317 (2012).

⁷ Angela D. Minor, *Sexting Prosecutions: Teenagers and Child Pornography Laws*, 60 HOW. L. J. 309, 321 (2016).

⁸ *Doe v. Superior Court*, 272 Cal. Rptr. 474, 475 (Cal. Ct. App. 1990); *People of the State of California v. Polanski*, No. A334139, 2009 WL 453950, at *2 (Cal. Super. Ct.); see also Molly Fitzpatrick, *Roman Polanski: A complete timeline of the director’s awful rape case and never-ending legal battle*, SPLINTER NEWS (June 7, 2016, 1:10 PM), <https://splinternews.com/roman-polanski-a-complete-timeline-of-the-director-s-a-1793857320>.

⁹ Andres Jauregui, *Megan Mahoney, Gym Teacher, Charged With 30 Counts Of Statutory Rape*, HUFFINGTON POST (last updated Dec. 6, 2017), http://www.huffingtonpost.com/2014/10/21/megan-mahoney-teacher-sex_n_6022546.html.

¹⁰ Fitzpatrick, *supra* note 8.

¹¹ *Id.*

¹² *Id.*

the course of about two months.¹³ There is no denying that Polanski and Mahoney's sexual acts were predicated on a position of power and authority, and such acts should overwhelmingly be deterred and punished. On the other hand, there are adolescents who engage in consensual sexual relationships and are not a threat to the community. For instance, take Kaitlyn Hunt.¹⁴ At age eighteen, Kaitlyn engaged in a sexual relationship with her fourteen-year-old girlfriend, both of whom attended the same high school.¹⁵ When the younger girl's parents found out, Kaitlyn was removed from the school, weeks before graduation, and charges were filed.¹⁶ Not only did the two go to the same high school, but the relationship was consensual; it was the girlfriend's parents who took extreme measures, resulting in imprisonment and probation for Kaitlyn, in addition to house arrest and a significantly negative impact on her career, and future as a whole.¹⁷ These cases are not as open and shut as the law makes them out to be, and young adults like Kaitlyn are victims of the current legislation.

The following section examines the foundation of statutory rape laws in the United States and explores its progression through the reformist era, both in terms of what is static and what has changed. Section III dives into the biological and psychological side of growing up, and how useful this data can be when examining cases such as Kaitlyn's. Sections IV, V, and VI offer a threefold examination of the Romeo and Juliet laws: the benefits; the downsides of applying such laws in Connecticut and other states, comparatively; and the terrible consequences that occur when an actor falls just outside the exception's boundary lines. Furthermore, Section VII presents devastating real life tales, which serve as just a small glimpse into the hell that becomes a person's life following a conviction for an innocent engagement. The final portion of this Note examines the changes to the sex offender registration system that have recently been proposed by the Connecticut Sentencing Commission, and proposes additional changes that the Connecticut Legislature, as a whole, should take into consideration.

¹³ Jauregui, *supra* note 9.

¹⁴ Sara Ganim, *Gay Florida teen Kaitlyn Hunt pleads no contest as part of deal*, CNN (Oct. 9, 2013), <http://www.cnn.com/2013/10/03/justice/florida-kaitlyn-hunt-plea-deal/>; Andres Jauregui, *Kaitlyn Hunt, Florida Teen, Faces Felony Charges Over Same-Sex Relationship*, HUFFINGTON POST (May 19, 2013, 1:08 PM), http://www.huffingtonpost.com/2013/05/19/kaitlyn-hunt-florida-teen-felony-same-sex_n_3302713.html.

¹⁵ Jauregui, *supra* note 14.

¹⁶ *Id.*

¹⁷ *Id.*; see also Ganim, *supra* note 14.

II. STATUTORY RAPE: THEN AND NOW

Under most criminal codes, Romeo and Juliet's sexual relationship is considered statutory rape, which is based on the assumption that a person is legally incapable of consenting to sexual intercourse until he/she reaches a certain age as dictated by the respective state.¹⁸ Originally, such laws were incorporated and applied to our legal system through English common law, which deemed it "illegal 'to ravish,' with or without her consent, a 'maiden' under the age of 12."¹⁹ Moreover, these laws were made to preserve a female's virginity against a deceitful older man's seduction, who was not willing to pay for such a gift with his hand in marriage.²⁰ Now, over seven hundred years later, the age of consent has gradually changed, ranging from fifteen to eighteen, depending on the state.²¹ Most states have also dictated the acceptable age range between the two parties to mitigate or eliminate a statutory rape charge,²² some have specified classifications that dictate the level of criminal behavior,²³ and others have explicitly stated what is, or is not, a tolerable defense to such a crime. Some states recognized the defense that a man or woman believed the adolescent party to be older than the minority age, and in others, a man could defend himself against statutory rape charges by proving that the minor female was already sexually experienced and, therefore, he did not corrupt the female.²⁴ Provisions outlining the boundaries of such sexual relationships are known as "Romeo and Juliet" laws, which are further discussed in the following section.

¹⁸ Patricia Donovan, *Can Statutory Rape Laws Be Effective in Preventing Adolescent Pregnancy?*, GUTTMACHER INST., Jan.–Feb. 1996, at 2, <https://www.guttmacher.org/about/journals/psrh/1996/01/can-statutory-rape-laws-be-effective-preventing-adolescent-pregnancy>.

¹⁹ *Id.*

²⁰ See Rita Eidson, *The Constitutionality of Statutory Rape Laws*, 27 UCLA L. REV. 757, 760–62 (1980).

²¹ GLOBAL JUSTICE INITIATIVE, LEGAL AGE OF CONSENT FOR MARRIAGE AND SEX FOR THE 50 UNITED STATES (2011–2012), <https://globaljusticeinitiative.files.wordpress.com/2011/12/united-states-age-of-consent-table11.pdf>.

²² *Id.*

²³ See Catherine L. Carpenter, *On Statutory Rape, Strict Liability, and the Public Welfare Offense Model*, 53 AM. U. L. REV. 313, 339, 339 n.148 (2003) ("Under CONN. GEN. STAT. § 53a–70(a)(2) [(2017)], sexual assault of one under thirteen is a potential Class A or B felony. Under § 53a–71(a)(1), the sexual assault of someone between thirteen and sixteen years of age is described as a Class B or C felony. The provision for sexual assault in the fourth degree, § 53a–73a, prohibits sexual contact of someone under fifteen and is either a Class A misdemeanor or Class D felony.").

²⁴ Donovan, *supra* note 18, at 2.

Most often, the assumption in these cases is that the “perpetrator” is a male and the “victim” is a younger female.²⁵ This notion reflects the traditional view that only young girls and young women are susceptible and defenseless, not boys or young men, and girls therefore require exclusive safeguards like the statutory rape law.²⁶ The feminist reforms of the 1970s, however, targeted this concept as one of their goals: “include young males as a part of the protected class and enable females to be charged as perpetrators.”²⁷ Liberal feminist participants argued about the inequality of rights assigned to men and women in society:

If sex is viewed as a privilege, for a state to say that a girl of a certain age is neither legally nor factually capable of consenting to that act while boys are able to consent to sex at any age with any women, that girl has been deprived of a right that her male counterpart has been allowed to engage in.²⁸

The reformists were eventually successful in their endeavor, causing lawmakers and law enforcers in the late 1970s to recognize that not only could an older or younger male initiate sexual acts, but also an older or younger female.²⁹ In essence, the statutory rape laws have gradually become both more stringent (raising the age of consent) and more accepting (eliminating gender biases), reflecting modern society’s values. Given that statutory rape is largely a strict liability offense,³⁰ however, it seems that our institution is unconsciously, or perhaps consciously, still of the view that a younger, female “victim” cannot also be the sexual instigator, with the exception of a minority of states, such as California.³¹

²⁵ *Id.*

²⁶ *Id.*

²⁷ CAROLYN E. COCCA, JAILBAIT: THE POLITICS OF STATUTORY RAPE LAWS IN THE UNITED STATES 18 (2014), <http://www.sunypress.edu/pdf/60840.pdf>.

²⁸ *Id.* (quoting Luisa A. Fuentes, *The 14th Amendment and Sexual Consent: Statutory Rape and Judiciary Progeny*, 16 WOMEN’S RIGHTS L. REP. 139, 151 (1994)).

²⁹ *Id.*

³⁰ *Owens v. State*, 724 A.2d 43, 48–49 (Md. 1999) (“An overwhelming majority of courts confronted with a constitutional challenge to statutory rape laws have held that denying a defendant a mistake-of-age defense in a statutory rape case does not deprive him of his due process rights. We are aware of only one court which has held that due process mandates a mistake-of-age defense to statutory rape, and that holding appears to be based on state, and not federal, constitutional analysis. We decline to deviate from the majority rule and uphold the legislature’s intent, as determined in *Garnett*, to make statutory rape a strict liability crimes.”) (footnote omitted) (citation omitted).

³¹ See CAL. PENAL CODE § 261.5 (2011) (using the term “any person” when describing who may be guilty of statutory rape); see also *California Age of Consent Laws 2018*, AGEOFCONSENT, <https://www.ageofconsent.net/states/california> (last visited Feb. 21, 2018).

III. ROMEO, IN THE EYES OF SCIENCE

It is apparent that both law and society define “adult,” or even “maturity,” in very different ways, with science’s interpretation hanging like a pendulum between the two. For instance, Connecticut law defines the age of majority at eighteen-years-old,³² whereas it is illegal to drink alcohol under twenty-one years of age.³³ The law essentially segregates minors from adults, the former described as “vulnerable and incompetent” while the latter “autonomous and responsible.”³⁴ On the other hand, science views adolescence as existing between childhood and adulthood.³⁵ During this stage, the brain’s cognitive functions are being continuously “rewired” until roughly twenty-five years old.³⁶ Specifically, the prefrontal cortex controls memory retrieval, emotions, weighing outcomes, and judgment.³⁷ Oftentimes, society will dismiss adolescent behavior as a product of developmental hormones, their home life, and the like. While these factors do influence behavior, there is one paramount influence: an incompletely developed pre-frontal cortex that inhibits the ability to make mature, independent decisions.³⁸ Therefore, prior to having a fully formed pre-frontal cortex as a mid-twenty-something-year-old, the task of judging future consequences, such as engaging in a sexual relationship with someone a few years younger, is quite difficult. Even though the United States Supreme Court ruled in *Roper v. Simmons*³⁹ that adolescents are less criminally responsible than adults due to their “immature judgment, susceptibility to negative peer influences, and transitory personality development,”⁴⁰ the law continues

³² CONN. GEN. STAT. § 1-1d (2013); LAWRENCE K. FURBISH, 2003-R-0071, VARIATIONS FROM THE AGE OF MAJORITY IN CONNECTICUT (2003), <https://www.cga.ct.gov/2003/olrdata/kid/rpt/2003-R-0071.htm>.

³³ CONN. GEN. STAT. § 30-1(12) (2016); see also DANIEL DUFFY, 2003-R-0730, STATE LAW CONCERNING LIQUOR AND MINORS (2003), <https://www.cga.ct.gov/2003/olrdata/gl/rpt/2003-r-0730.htm>.

³⁴ Wray Herbert, *The Teenage Brain: How Do We Measure Maturity?*, HUFFINGTON POST (Mar. 29, 2013, 1:30 PM), http://www.huffingtonpost.com/wray-herbert/the-teenage-brain-how-do_b_2980112.html.

³⁵ *Id.*

³⁶ Mariam Arain et al., *Maturation of the Adolescent Brain*, 9 NEUROPSYCHIATRIC DISEASE & TREATMENT 449, 451–52 (2013).

³⁷ Earl K. Miller & Jonathan D. Cohen, *An Integrative Theory of Prefrontal Cortex Function*, ANN. REV. NEUROSCIENCE 167, 171 (2001).

³⁸ See Julie Vidal et al., *Response Inhibition in Adults and Teenagers: Spatiotemporal Differences in the Prefrontal Cortex*, 79 BRAIN & COGNITION 49, 49–50 (2012).

³⁹ *Roper v. Simmons*, 543 U.S. 551, 569–71 (2005).

⁴⁰ Barry C. Feld, *Adolescent Criminal Responsibility, Proportionality, and Sentencing Policy: Roper, Graham, Miller/Jackson, and the Youth Discount*, 31 LAW & INEQ. 263, 263

to treat seventeen-, eighteen-, nineteen-, and twenty-year-olds as adults in the criminal justice system when it comes to crimes like statutory rape, regardless of the fact that this criminality is more of a gradual, developmental process as opposed to a “deficient, anti-social ‘character.’”⁴¹

Additionally, research has provided information demonstrating why girls mature faster than boys, perhaps answering the question: why is it older boys, rather than older girls, who are often labeled the sex offender/aggressor in statutory rape situations? It all comes down to the brain pruning neural connections.⁴² This process starts around the ages of ten to twelve for girls, but fifteen to twenty for boys.⁴³ “As a female teen’s brain emerges, hormones dramatically reorganize her brain circuitry, driving the way she thinks, feels, acts and even obsesses over her looks. Studies show that these surges of estrogen can trigger teen girls’ need to become sexually desirable to boys.”⁴⁴ Thus, girls are going through this stage at a much younger age than their male counterparts. At this age, a boy’s pre-frontal cortex, the operator of judgment making, is not developed yet.⁴⁵ When considering this information in a scientific light, it is not so absurd for a girl going through this process around 15 and a boy doing so around 19 to act impulsively on their sexual desires, despite the consequences. Boys, on the other hand, are up to speed when it comes to sex: “the male amygdala, which also controls sexual thought, is twice as large as that of females. Fueled by testosterone, it triggers the typical teenage male brain to think about sex every 52 seconds, compared to a few times a day for teen girls.”⁴⁶

Viewing this scientific data, it is reasonable that an adolescent would improperly gauge the risk of being prosecuted for engaging in oral sex, when seventy percent of males and seventy-two percent of females aged eighteen to nineteen have engaged in oral sex.⁴⁷ Given the

(2013).

⁴¹ Herbert, *supra* note 34.

⁴² Sarah Knapton, *Girls really do mature quicker than boys, scientists find*, TELEGRAPH (Dec. 20, 2013), <http://www.telegraph.co.uk/news/science/science-news/10529134/Girls-really-do-mature-quicker-than-boys-scientists-find.html>.

⁴³ *Id.*

⁴⁴ Elizabeth Vargas & Alan B. Goldberg, *The Truth Behind Women’s Brains*, ABC NEWS (Sept. 28, 2006), <http://abcnews.go.com/2020/story?id=2504460&page=1>.

⁴⁵ *Id.* (“It may not be until late adolescence or their early 20s that boys’ brains catch up to their girl peers.”).

⁴⁶ *Id.*

⁴⁷ Sarah L. Rankin, *Statutory Rape and Teen “Sexting” Laws: The Consequences of Poorly Crafted Legislation*, INQUIRIES J. (2015), <http://www.inquiriesjournal.com/a?id=1027>.

developmental status, fixation, and high school environment, for example, sexual experimentation is common at this time, yet young men and women are being punished for it, even though this categorical group is notorious for feeling invincible and acting impulsively.⁴⁸ Thus, it is easy to see the correlation between these statutes and an increase in sex offenders and victims, as well as why the prosecution of statutory law offenses is described as “the low-hanging fruit for prosecutors.”⁴⁹

The foundational issue of the statutory rape laws derives from its legislative beginnings. In 1996, President Bill Clinton signed the Welfare Reform Act, which found statutory rape laws to be a matter of public health concern, stating:

The negative consequences of an out-of-wedlock birth on the mother, the child, the family, and society are well documented as follows: (A) Young women 17 and under who give birth outside of marriage are more likely to go on public assistance and to spend more years on welfare once enrolled. These combined effects of “younger and longer” increase total AFDC costs per household by 25 percent to 30 percent for 17-year-olds.⁵⁰

Thus, the theoretical backbone of these statutes actually has nothing to do with the level and variations of teenage maturity, but economic frugality. The reason the government wanted to regulate sexual activity in the criminal sphere was to dissuade adolescents from getting pregnant, thus sparing government resources and distributing it across the social spectrum.⁵¹ Not only is it a problem that the law refuses to acknowledge the scientific data supporting gradual teenage development, but in addition, when there is poorly conceived legislation, such as this, many “victims” of statutory rape do not view themselves as victims when they feel they participated in a consensual act. As a result, the true victims are overshadowed by the purported victims of this poorly crafted legislation.

IV. ROMEO AND JULIET PROVISIONS: THE GOOD

As mentioned above, the Romeo and Juliet laws were implemented to “afford[] protection to minors who willingly, voluntarily, and

⁴⁸ *Id.*

⁴⁹ *Id.* (quoting Michele Goodwin, *Law’s Limit: Regulating Statutory Rape Law*, 2013 WIS. L. REV. 481, 509 (2013)).

⁵⁰ Personal Responsibility and Work Opportunity Reconciliation Act of 1996, PL 104-193, 110 Stat 2111.

⁵¹ Rankin, *supra* note 47.

intentionally engage in sexual intercourse . . . [and] to decriminalize the penalty for minors in statutory rape cases.”⁵² These provisions largely come into play when the “perpetrator” is eighteen or nineteen years old and the “victim” is fifteen or sixteen years of age, for example.⁵³ These laws, however, usually do not extend to adults in a position of authority over the minor involved, such as a teacher-student relationship, a coach-athlete relationship, or a parent-child relationship, for instance.⁵⁴ Moreover, these provisions do not apply to those accused of sexual acts involving the threat of violence, or violence itself.⁵⁵

Historically, Romeo and Juliet laws were applied solely to heterosexual parties. In some jurisdictions, if the victim was a minor and both the victim and the perpetrator were of the same sex, the exception would not apply to them, resulting in much tougher consequences, such as hefty fines, felony convictions, and mandatory sex offender registration.⁵⁶ Kansas was one such jurisdiction. In 2004, Matthew Limon, a developmentally disabled eighteen-year-old, engaged in consensual oral sex with a fourteen-year-old boy.⁵⁷ Had the minor “victim” been a girl, Limon would have been sentenced to thirteen to fifteen months’ imprisonment under the 1999 Kansas Romeo and Juliet law.⁵⁸ Instead, Limon was sentenced to seventeen years in prison for this consensual homosexual act.⁵⁹ Fortunately this law was successfully challenged under the Equal Protection Clause, with the court citing *Lawrence v. Texas* and *Romer v. Evans*.⁶⁰ The court held the Kansas law unconstitutional under both the United States Constitution and the Kansas Constitution, eliminated the phrase “and are members of the

⁵² Minor, *supra* note 7, at 321.

⁵³ See Danielle Flynn, *All the Kids Are Doing It: The Unconstitutionally of Enforcing Statutory Rape Laws Against Children & Teenagers*, 47 NEW ENG. L. REV. 681, 687 (2013).

⁵⁴ See James J. Carty, Note, *Is the Teen Next Door a Child Pornographer? Parenting, Prosecuting, and Technology Clash Over “Sexting” in Miller v. Skumanick*, 42 U. TOL. L. REV. 193, 222, 222 n.224 (2010) (discussing Iowa’s Romeo and Juliet laws).

⁵⁵ Romeo and Juliet provisions apply to *consensual sexual activity*, therefore, it is inherent that any nonconsensual sexual activity, i.e., rape born out of force, violence, or coercion, would ultimately fall out of the purview of such provisions.

⁵⁶ Michael J. Higdon, *Queer Teens and Legislative Bullies: The Cruel and Invidious Discrimination Behind Heterosexist Statutory Rape Laws*, 42 U.C. DAVIS L. REV. 195, 195 (2008).

⁵⁷ *State v. Limon*, 83 P.3d 229, 232 (Kan. Ct. App. 2004), *rev’d*, 122 P.3d 22 (Kan. 2005).

⁵⁸ *Id.* at 243 (Pierron, J., dissenting).

⁵⁹ *Id.* (“Since he was the same sex as [the fourteen-year-old], the sentence range was 206 to 228 months. The court imposed a sentence of 206 months—17 years and 2 months.”).

⁶⁰ *State v. Limon*, 122 P.3d 22, 34–35, 40–41 (Kan. 2005).

opposite sex” from the statute, and further held that Limon’s conviction and sentence violated his rights.⁶¹

A Romeo and Juliet provision can also prevent an individual from having to register as a sex offender.⁶² Alternatively, such a provision can reduce the time a convict must remain on the sex offender registry.⁶³ For example, someone convicted of statutory rape can petition the appropriate court to remove his/her name from the sex offender registry once a Romeo and Juliet provision is enacted.⁶⁴ Although this will be explored in greater depth in subsequent sections, there may be an advantage to removing listed offenders such as Kaitlyn from the registry: by reevaluating the list, state officials can better determine which qualifying individuals should be more heavily monitored, and which individuals are not actually threats to the community.

In addition, these provisions can reduce a criminal charge from a felony to a misdemeanor.⁶⁵ Thus, the defendant would serve a less severe jail sentence. Therefore, it is extremely beneficial to make such provisions available to individuals involved in consensual relations with another young person close in age.

⁶¹ *Id.* at 40–41.

⁶² See Michael J. Higdon, *State Misdemeanant, Federal Felon: Adolescent Sexual Offenders and the INA*, 2017 U. ILL. L. REV. 963, 965 (2017).

⁶³ In fact, in most states, those who fall within the Romeo and Juliet’s purview do not have to register as a sex offender at all. See, e.g., FLA. STAT. § 943.04354(1)(c) (2017) (permitting the removal of the requirement to register when the “sexual predator” is within four years of age from the victim, who is between the ages of thirteen and eighteen); see also Patrick McGreevy, *Criminal Justice Leaders Seek to End Lifetime Registry for Low-risk Sex Offenders in California*, L.A. TIMES (June 18, 2017), <http://www.latimes.com/politics/la-pol-ca-sex-offender-registry-20170618-story.html> (noting that lawmakers in California are seeking to reduce the number of years low-level, nonviolent sex offenders would have to register, including teenagers who are usually only a few years apart when engaging in sexual activity).

⁶⁴ See, e.g., FLA. STAT. § 943.04354 (stipulating that a person may be considered for removal from the sex offender registry); Katie Wedell, *Overhaul Could Drop Thousands From Sex Offender Registry*, DAYTON DAILY NEWS (July 14, 2017), <https://www.mydaytondailynews.com/news/state--regional-govt--politics/overhaul-could-drop-thousands-from-sex-offender-registry/Vx8yW4iYcPGAdLqTqPvxxJ/> (discussing changes to Ohio’s sex offender registry law in which low-level sex offenders would be able to petition to be taken off the registry).

⁶⁵ Higdon, *supra* note 62, at 965.

V. ROMEO AND JULIET IN CONNECTICUT: THE BAD

A. *Connecticut Law*

In Connecticut, the age of consent—the minimum age an individual can legally consent to engage in sexual acts—is sixteen.⁶⁶ Therefore, any individual, male or female, fifteen years or younger, is not legally capable of acquiescing to sexual activities with someone eighteen years of age or older. Thus, if someone does engage in these acts with another person fifteen years of age or younger, they can be prosecuted for statutory rape.⁶⁷ There are exceptions, however, to this age of consent. One such exception is more stringent: if the perpetrator is a guardian of the victim (i.e., coach, parent, teacher, instructor, etc.), and they are over the age of twenty, then the age of consent becomes eighteen years old.⁶⁸

Another exception is the close-in-age exemption, or Connecticut's Romeo and Juliet law. This safe harbor was created for the same purpose as other Romeo and Juliet provisions: to prevent the prosecution of couples that participate in a consensual, sexual relationship when one or both of the parties is below the age of consent (sixteen).⁶⁹ In Connecticut, the consenting parties must be within three years of age.⁷⁰

Since the term “statutory rape” is not used in the Connecticut statutes, the legislature uses equivalent terms to describe such acts, which vary depending on the specific circumstances of the charges. These charges may range from Aggravated Sexual Assault in the first degree (a Class A or B felony) to Sexual Assault in the third degree (a Class C or D felony), for instance.⁷¹ For our purposes, one of the more relevant statutes is § 53a–71 of the Connecticut General Statutes, entitled, “Sexual assault in the second degree: Class C or B felony,” which states that:

- (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is

⁶⁶ CONN. GEN. STAT. § 53a–71(a) (2013); *see also Connecticut Age of Consent Laws 2018*, AGEOFCONSENT, <https://www.ageofconsent.net/states/connecticut> (last visited Mar. 28, 2018).

⁶⁷ CONN. GEN. STAT. § 53a–71(a).

⁶⁸ *Id.*

⁶⁹ *See id.*

⁷⁰ *Id.*

⁷¹ CHRISTOPHER REINHART, 2008–R–0619, CRIMES WITH MANDATORY MINIMUM PRISON SENTENCES tbl.1 (2008); CONN. GEN. STAT. § 53a–70a (2015); CONN. GEN. STAT. § 53a–72a (2007).

thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person

(b) Sexual assault in the second degree is a class C felony or, if the victim of the offense is under sixteen years of age, a class B felony, and any person found guilty under this section shall be sentenced to a term of imprisonment of which nine months of the sentence imposed may not be suspended or reduced by the court.⁷²

Upon analysis of this statute, it is evident that the legislature intended for a sexual act to be considered statutory rape if the “victim” was three years and one day younger than the perpetrator. Considering that the Romeo and Juliet provision only offers its protection when the parties’ ages are within three years of each other, an offender who is not protected by the provision faces exposure to a minimum penalty of nine months’ imprisonment. Absent this safe harbor, however, an offender can face upwards of twenty years in prison, depending on the circumstances.⁷³

In addition to the above, an offender may also be confronted with C.G.S. § 53–21, “Injury or risk of injury to, or impairing morals of, children. Sale of children,” stating, in relevant part:

(a) Any person who (1) willfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child, or (2) has contact with the intimate parts, as defined in section 53a–65^[74], of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child . . . shall be guilty of (A) a class C felony for a violation of subdivision (1) . . . and (B) a class B felony for a violation of subdivision (2) of this subsection, except that, if the violation is of subdivision (2) of this subsection and the victim of the offense is under thirteen years of age, such person shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.⁷⁵

⁷² CONN. GEN. STAT. § 53a–71 (2013).

⁷³ SANDRA NORMAN-EADY ET AL., 2003–R–0376, STATUTORY RAPE LAWS BY STATE tbl.1 (2003), <https://www.cga.ct.gov/2003/olrdata/jud/rpt/2003-R-0376.htm>; REINHART, *supra* note 71, tbl.1.

⁷⁴ The Connecticut Legislature defines “intimate parts” as “the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts.” CONN. GEN. STAT. § 53a–65 (2013).

⁷⁵ CONN. GEN. STAT. § 53–21 (2015).

The above statute carries the same penalty as C.G.S. § 53a–71, which means that if charged with both, an offender’s minimum and maximum exposure may be doubled.⁷⁶

B. Contrasting Connecticut with Other States

It is important to note that Romeo and Juliet provisions vary widely throughout the country, though the age of consent only ranges from sixteen to eighteen years of age, depending on the state. For example, in Texas, an individual commits statutory rape when consensually, sexually involved with another person who is younger than seventeen years old.⁷⁷ Although there is no close-in-age exemption at all in Texas, a defendant may assert an affirmative defense that he or she was no more than three years older than the alleged victim and the victim was fourteen or older.⁷⁸ Somewhat similarly, Colorado’s age of consent is also seventeen, however, it does have a Romeo and Juliet law.⁷⁹ In Colorado, if two individuals are eighteen or younger and are within four years of one another, they are allowed to engage in such sexual activities without fear of potential prosecution.⁸⁰ Although Florida’s age of consent is eighteen⁸¹ (two years older than Connecticut’s), its Romeo and Juliet law is seemingly more lenient. As long as the victim is no younger than fourteen and no older than seventeen, Florida permits individuals to file for removal from the registered sex offender list and provides an exemption from sex offender registration if there is no more than a four year age gap between the perpetrator and the victim of certain consensual acts.⁸² Moreover, an accompanying statute includes an age-gap provision that allows a sixteen or seventeen year old to engage in consensual conduct with a person who is sixteen to twenty-three years of age.⁸³ Finally, in California, there is a Romeo and Juliet exception for

⁷⁶ See CONN. GEN. STAT. § 53a–71 (2013) (classifying sexual assault in the second degree as a class C or class B felony).

⁷⁷ TEX. PENAL CODE § 22.011 (2017); *Texas Age of Consent Laws 2018*, AGEOFCONSENT, <https://www.ageofconsent.net/states/texas> (last visited Feb. 23, 2018).

⁷⁸ TEX. PENAL CODE § 22.011(e) (2016); *Texas Age of Consent Laws 2018*, *supra* note 77.

⁷⁹ COLO. REV. STAT. § 18–3–402(e) (2017).

⁸⁰ COLO. REV. STAT. § 18–3–402(d).

⁸¹ FLA. STAT. § 794.05(1) (2017); COMMITTEE ON CRIM. JUST., EXAMINE FLORIDA’S “ROMEO AND JULIET” LAW 4 (2011), <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-214cj.pdf>.

⁸² FLA. STAT. § 943.04354 (2017).

⁸³ FLA. STAT. § 794.05.

consensual sexual relations between minors who have no more than a three year age difference.⁸⁴ Unlike many other states, however, this neither exempts nor provides a defense for those involved; it merely reduces the charge from a felony to a misdemeanor.⁸⁵

As seen here, statutory rape laws and their corresponding Romeo and Juliet provisions vary widely across the United States, as close-in-age exemptions do not exist in all locations. Since these legislative acts concern a purely developmental issue—the average mental age an individual can rationally decide to consent to sex—they were designed to offer a compromise between those who support and those who oppose statutory rape laws.⁸⁶ Yet it is evident through an analysis of various state laws that there is no magical age that effectively determines when a young person is mature enough to consent to sex in every instance. As a result, the issue is still divisive on each side of the law; some may contend that the provisions do not successfully address the age of consent issue, while others may argue that the Romeo and Juliet laws are still falling short of achieving justice for teenagers.⁸⁷ The only way to tackle the issues is to illuminate the inconsistencies within the legislation and propose a more reasonable, justifiable solution. While it may not be feasible to take on every Romeo and Juliet provision in the country, one small change can prevent legions of lives from being ruined by an undeserved sex-offender designation, while also protecting those who have been truly victimized. The impetus for this small change should start in Connecticut.

VI. THE REPERCUSSIONS: THE UGLY

A. *The Regulations*

In Connecticut, a defendant who is prosecuted and convicted of sexual assault in the second degree for allegations of statutory rape may

⁸⁴ CAL. PENAL CODE § 261.5(b) (2013).

⁸⁵ *Id.*

⁸⁶ See, e.g., Elizabeth Nevins-Saunders, *Incomprehensible Crimes: Defendants with Mental Retardation Charged with Statutory Rape*, 85 N.Y.U. L. REV. 1067, 1073 (2010) (noting that there is no consensus on what is an appropriate age of consent amongst jurisdictions, which stems from disagreement over when one is mentally able to consent to sex).

⁸⁷ See, e.g., Carissa Byrne Hessick & Judith M. Stinson, *Juveniles, Sex Offenses, and the Scope of Substantive Law*, 46 TEX. TECH L. REV. 5, 8 (2013) (arguing that Romeo and Juliet laws do not go far enough). But see *infra* note 170, and accompanying text, for a contrary view.

be required to publicly register as a sex offender,⁸⁸ as sex offender registration is maintained at the local level.⁸⁹ In this state, the Department of Emergency Services and Public Protection (“DESPP”) maintains a website that provides information about sex offenders living in Connecticut.⁹⁰ Supposedly, “[t]he main purpose of providing this data on the Internet is to make the information more easily available and accessible, not to warn about any specific individual.”⁹¹ This justification, however, is likely a pretext as revealed by the way local media and law enforcement routinely use these registration systems to keep track of individual offenders. Consider *Patch*, a network of local-news specific sites across the nation,⁹² or more specifically, an article posted in the Berlin, Connecticut *Patch* subsection titled, “Sex Offender Addresses: Berlin Homes to be Aware of This Halloween,” listing all registered sex offenders residing in that town.⁹³ There are additional articles that detail the same information in other towns, such as Oxford⁹⁴ and Enfield,⁹⁵ Connecticut. Although websites like *Patch* might include the disclaimer Connecticut law mandates for public access to the sex offender registry to avoid using such information to injure or harass anyone listed,⁹⁶ based on headlines such as the one above and the ease in which the information can be accessed, the likelihood that the data is used solely for informative purposes and not prejudicial purposes is very

⁸⁸ See CONN. GEN. STAT. § 54–251 (2015).

⁸⁹ U.S. DEP’T. OF JUSTICE, SEX OFFENDER REGISTRATION AND NOTIFICATION IN THE UNITED STATES: CURRENT CASE LAW AND ISSUES 1 (2016), <https://www.smart.gov/caselaw/2016-final-case-law-update-with-index-cover.pdf>.

⁹⁰ *Connecticut Sex Offender Registry*, DEP’T OF EMERGENCY SERVS. & PUB. PROTECTION, http://www.communitynotification.com/cap_office_disclaimer.php?office=54567 (last visited Mar. 29, 2018).

⁹¹ *Id.*

⁹² See generally PATCH, <http://patch.com/map> (last visited Feb. 23, 2018).

⁹³ Tim Jensen, *Sex Offender Addresses: Berlin Homes to be Aware of This Halloween*, BERLIN PATCH (Oct. 12, 2016, 10:37 AM), <http://patch.com/connecticut/berlin/sex-offender-addresses-berlin-homes-be-aware-halloween>.

⁹⁴ Feroze Dhanoa, *Sex Offender Map: Oxford Homes to be Aware of This Halloween*, OXFORD PATCH (Oct. 24, 2016, 12:35 PM), <http://patch.com/connecticut/oxford-ct/sex-offender-map-oxford-homes-be-aware-halloween>.

⁹⁵ Elyssa M. Millspaugh, *CT Sex Offender Registry: Enfield*, ENFIELD PATCH (June 27, 2013, 2:59 PM), <http://patch.com/connecticut/enfield/ct-sex-offender-registry-enfield>.

⁹⁶ See CONN. GEN. STAT. § 54–258a (“Any agency of the state or any political subdivision thereof that provides public access to information contained in the registry shall post a warning that states: ‘Any person who uses information in this registry to injure, harass or commit a criminal act against any person included in the registry or any other person is subject to criminal prosecution.’ Such warning shall be in a suitable size and location to ensure that it will be seen by any person accessing registry information.”); see also *Connecticut Sex Offender Registry*, *supra* note 90 (including the same disclaimer).

low. Moreover, the public can also access this information on a national scale through the National Sex Offender Public Registry Website (“NSOPW”),⁹⁷ which works much like a search engine: “jurisdictions that have their own public sex offender registry websites connect to NSOPW by way of a web service or automated upload to enable NSOPW to conduct queries against the jurisdiction’s websites.”⁹⁸ In fact, with modern technological advancement, there is now an iPhone app that will tell you if any registered sex offenders are nearby, allowing users to access this information with heightened convenience.⁹⁹

Although the localities maintain sex offender registration, over the past twenty years, Congress has legalized numerous versions of “minimum standards” to be implemented for registration and/or notification purposes.¹⁰⁰ In 1994, the “Wetterling Act,” which required states to affect a sex offender and crimes against children registry, was enacted.¹⁰¹ This Act called for an incentive-based system, where penalties, such as the loss of federal grant funds, would be imposed on noncompliant States.¹⁰² In 1996, “Megan’s Law” was passed to regulate the minimum standards for community notification—also an incentive-based system.¹⁰³ Ten years later, the most recent federal minimum standards for both systems was enacted, called the Sex Offender Registration and Notification Act (“SORNA”),¹⁰⁴ a division of the Adam Walsh Act (“AWA”).¹⁰⁵ Through SORNA, jurisdictions are required to submit information about registered sex offenders to The National Sex

⁹⁷ See U.S. DEP’T. OF JUSTICE, *supra* note 89, at 2; see also NSOPW, <https://www.nsopw.gov/> (last visited Mar. 29, 2018).

⁹⁸ U.S. DEP’T. OF JUSTICE, *supra* note 89, at 2.

⁹⁹ Ki Mae Heussner et al., *Top-Selling iPhone App: Sex Offender Locator*, ABC NEWS (July 28, 2009), <http://abcnews.go.com/Technology/AheadoftheCurve/story?id=8187394&page=1>; see also *NSOPW Mobile App*, NSOPW, <https://www.nsopw.gov/en-US/Home/Mobile> (last visited Mar. 29, 2018).

¹⁰⁰ U.S. DEP’T. OF JUSTICE, *supra* note 89, at 1–2.

¹⁰¹ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (1994).

¹⁰² U.S. DEP’T. OF JUSTICE, *supra* note 89, at 19 n.6.

¹⁰³ Megan’s Law, Pub. L. No. 104–105, 110 Stat. 1345 (1996), <https://www.congress.gov/104/plaws/publ145/PLAW-104publ145.pdf>; U.S. DEP’T. OF JUSTICE, *supra* note 89, at 1.

¹⁰⁴ 34 U.S.C. § 20913 (2017); U.S. DEP’T. OF JUSTICE, *supra* note 89, at 1; U.S. DEP’T. OF JUSTICE, FREQUENTLY ASKED QUESTIONS: THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT (SORNA) FINAL GUIDELINES 4 (2008).

¹⁰⁵ Adam Walsh Child Protection And Safety Act of 2006, PL 109–248, 120 Stat. 587 (2006) (codified at 42 USC § 16901); Lori McPherson, *Practitioner’s Guide to the Adam Walsh Act*, 20 AM. PROSECUTORS RES. INST., no. 9–10, 2007, at 1, https://www.smart.gov/pdfs/practitioner_guide_awa.pdf.

Offender Registry (“NSOR”), which law enforcement utilizes across the nation, and ensure that the offender’s fingerprints have been submitted to the Next Generation Identification (“NGI”), the official fingerprint database at the Federal Bureau of Investigation (“FBI”), as well as palm prints to the National Palm Print System (“NPPS”) and DNA profiles with the Combined DNA Index System (“CODIS”), both of which are also officially administered by the FBI.¹⁰⁶ Given the lingering federal presence in this area, a sex offender essentially has double registration requirements: if a person is required to register pursuant to federal law, that person is required to register in that state, as well.¹⁰⁷ Most jurisdictions even provide “catch-all” provisions, which essentially require anyone convicted of an offense that is “by its nature a sex offense” to register.¹⁰⁸ In Connecticut, an offender is registered as a sex offender for either ten years, “when he is released into the community after being convicted or found not guilty by reason of mental disease or defect of (1) 4th degree sexual assault or (2) a criminal offense against a minor,” or for life, when he was “convicted or found not guilty by reason of mental disease or defect of a sexually violent offense,” or if he was convicted of either, “(1) one of the crimes requiring 10-year registration and he has a prior conviction for one of those offenses or (2) the portion of 1st degree sexual assault involving having sexual intercourse with someone under age 13 when the actor is more than two years older than the victim.”¹⁰⁹

Furthermore, as the above sex offender registration systems were administered, the issue arose as to whether or not an offender who was convicted antecedent to the law’s passage would be required to register. SORNA requires that jurisdictions register offenders whose “predicate convictions predate the enactment of SORNA or the jurisdiction’s

¹⁰⁶ U.S. DEP’T. OF JUSTICE, *supra* note 89, at 3.

¹⁰⁷ *Id.* at 6.

¹⁰⁸ *Id.* at 6–7.

¹⁰⁹ CHRISTOPHER REINHART, 2004–R–0841, SEX OFFENDER REGISTRATION PERIODS (2004), <https://www.cga.ct.gov/2004/rpt/2004-R-0841.htm>. For information regarding Connecticut’s parole restrictions, see generally MICHELLE KIRBY & JAMES ORLANDO, 2017–R–0037, OLR BACKGROUNDER: SEX OFFENDERS ON PROBATION AND PAROLE—TREATMENT AND HOUSING RESTRICTIONS (2017), <https://www.cga.ct.gov/2017/rpt/2017-R-0037.htm>. For information regarding Connecticut’s prosecution of juveniles for sex crimes, see MARK RANDALL, 2012–R–0088, JUVENILE SEX OFFENDERS (2012), <https://www.cga.ct.gov/2012/rpt/2012-R-0088.htm>. For information regarding crimes which require registration as a sex offender in Connecticut, see JAMES ORLANDO, 2016–R–0098, CRIMES REQUIRING SEX OFFENDER REGISTRATION 1–4 (2016), <https://www.cga.ct.gov/2016/rpt/pdf/2016-R-0098.pdf>; see generally Michele Goodwin, *Law’s Limits: Regulating Statutory Rape Law*, 2013 WIS. L. REV. 481 (2013).

implementation of the SORNA standards” when:

- [1] They are incarcerated or under supervision, either for the predicate sex offense or for some other crime;
- [2] They are already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction’s law; or
- [3] They hereafter reenter the jurisdiction’s justice system because of conviction for some other crime (whether or not a sex offense).¹¹⁰

This hotly debated issue seemed to be put to rest in 2003 under *Smith v. Doe*, where the United States Supreme Court decided retroactive registration requirements did not violate the Ex Post Facto clause of the Constitution,¹¹¹ and were, therefore, legal.¹¹² Yet, many jurisdictions have continued to litigate cases challenging the constitutionality of retroactively imposed registration requirements. Some state courts have held that retroactive registration does violate their respective state constitutions,¹¹³ while others have struggled to stay consistent with their rulings,¹¹⁴ and still some other courts have continued to stand by *Smith*.¹¹⁵ In the fifteen years since *Smith*, the Supreme Court has avoided revisiting any Ex Post Facto implications raised by the additional requirements targeting registered sex offenders.¹¹⁶

¹¹⁰ U.S. DEP’T. OF JUSTICE, THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION 8 (2007).

¹¹¹ U.S. CONST. art. I, § 10, cl. 1.

¹¹² *Smith v. Doe*, 538 U.S. 84, 105–06 (2003). In this case, the Alaska Sex Offender Registration Act was at issue. *Id.* at 89. The Act stated that any sex offender or child kidnapper incarcerated in Alaska must register with the Department of Corrections or local authorities, which maintains a central registry of sex offenders. *Id.* at 90. This registry holds publicly accessed information such as the identity of the offender, including a picture and physical description. *Id.* Two defendants (John Doe I and John Doe II) were convicted of aggravated sex offenses prior to the enactment of this Act. *Smith*, 538 U.S. at 91. Their claim was that the Act was void in application to them under the Ex Post Facto Clause of Article I Section 10 of the Constitution. *Id.* Ultimately, the majority opinion by Justice Kennedy held that “[t]he [Alaska Sex Offender Registration] Act is non-punitive, and its retroactive application does not violate the *Ex Post Facto* Clause.” *Id.* at 105–06.

¹¹³ *See Doe v. State*, 189 P.3d 999, 1019 (Alaska 2008); *Wallace v. State*, 905 N.E.2d 371, 384 (Ind. 2009); *State v. Letalien*, 985 A.2d 4, 26 (Me. 2009).

¹¹⁴ *See Doe v. Thompson*, 373 P.3d 750, 771 (Kan. 2016) (holding that registration system violates Ex Post Facto Clause because it is punitive); *but see State v. Petersen-Beard*, 377 P.3d 1127, 1141 (2016) (holding registration system does not violate the Ex Post Facto clause).

¹¹⁵ *See Shaw v. Patton*, 823 F.3d 556, 562, 577 (10th Cir. 2016) (using *Smith*’s five factor analysis in its decision to rule that the sex offender registry was non-punitive and thus valid); *Doe v. Cuomo*, 755 F.3d 105, 110–12 (2d Cir. 2014).

¹¹⁶ *See U.S. DEP’T. OF JUSTICE, supra* note 89, at 9, 25 n.76 (citing *United States v. Kebodeaux*, 133 S.Ct. 2496, 2500 (2013) (assuming, without deciding, that Congress did not

In addition to creating SORNA, the AWA created three categories of sexual offenders. A Tier I sex offender is a residual class that includes all sex offenders not classified in Tier II or III, and registration is obligatory for fifteen years.¹¹⁷ Categorization as a Tier II offender would require being incarcerated for more than a year for offenses involving the use of minors in prostitution, the sexual contact of minors, the use of a minor in a sexual performance, and the production or distribution of child pornography.¹¹⁸ Additionally, if a person is previously convicted of a Tier I sex offense and is subsequently convicted for a felony sex offense, that individual will become a Tier II sex offender, which requires registration for twenty-five years.¹¹⁹ A Tier III classification requires registration for life, the renewal of which is mandatory every three months, and is imposed when the offender committed a sex offense punishable by imprisonment exceeding one year and comparable to:

- [1] engaging in a sexual act with another by force or threat;
- [2] engaging in a sex act with another who has been rendered unconscious or involuntarily drugged, or who is otherwise incapable of appraising the nature of the conduct or declining to participate; or
- [3] engaging in a sexual act with a child under the age of 12.
- ...
- [4] Kidnapping of a minor (unless committed by a parent or guardian).¹²⁰

The government offers a very bleak silver lining to this daunting catalogue: “If a Tier I offender maintains a clean record for 10 years, the registration period is reduced by five years. If a Tier III offender maintains a clean record for 25 years, the registration period is reduced by 25 years. There is no such provision for Tier II offenders.”¹²¹ To qualify for a “clean record,” the offender must not be convicted of a sex offense punishable by more than one year’s imprisonment; must not be convicted of any sex offense—even if the maximum punishment is less

violate the Ex Post Facto clause in enacting the SORNA registration requirements); *United States v. Juvenile Male*, 564 U.S. 932, 937 (2011) (declining to address whether SORNA’s requirements violated the Ex Post Facto clause because the case was moot); *Carr v. United States*, 560 U.S. 438, 442 (2010) (declining to address whether SORNA violates the Ex Post Facto clause).

¹¹⁷ U.S. DEP’T. OF JUSTICE, *supra* note 110, at 24–27 (2007); McPherson, *supra* note 105, at 2–3.

¹¹⁸ U.S. DEP’T OF JUSTICE, *supra* note 110, at 25; McPherson, *supra* note 105, at 2.

¹¹⁹ U.S. DEP’T OF JUSTICE, *supra* note 110, at 27; McPherson, *supra* note 105, at 2.

¹²⁰ U.S. DEP’T OF JUSTICE, *supra* note 110, at 26 (citations omitted).

¹²¹ RYAN O’NEIL, 2009–R–0240, FEDERAL AND STATES SEX OFFENDER LAWS 3 (2009), <https://www.cga.ct.gov/2009/rpt/2009-R-0240.htm>.

than one year in prison; must successfully (without revocation) complete a period of supervised release, probation, or parole; and must successfully complete an appropriate certified sex offender treatment program.¹²²

B. *The Burden*

One of the most pressing issues that registered sex offenders face is the registration itself. Nearly all jurisdictions employ a criminal penalty for failing to register, in addition to the federal government set standard. Under 18 U.S.C. § 2250, anyone required to register as a “sex offender,” or who “knowingly fails to register or update a registration as required by [SORNA] . . . shall be fined . . . or imprisoned not more than 10 years, or both.”¹²³ Connecticut is a jurisdiction which demands that a sex offender verify their address every 90 days, with a ten-day return period to the Sex Offender Registry, or else face a Class D felony charge.¹²⁴ In Connecticut, a Class D felony is punishable by up to five years in prison and a maximum fine of \$5,000.¹²⁵

Additionally, the convicted defendant would most likely undergo sex offender probation, which is considered the most arduous and restrictive type of probation in the state.¹²⁶ This probation requires an evaluation of each sex offender who is assigned a risk level, as well as a treatment program (this may include counseling sessions, drug and alcohol testing, and urinalysis).¹²⁷ A probation officer may seek a violation of probation arrest warrant if the sex offender does not complete treatment.¹²⁸ Furthermore, this strict policy includes supervision of the following matters: “(1) personal contacts, (2) treatment service referrals, (3) contacts with treatment providers and the

¹²² U.S. DEP’T. OF JUSTICE, *supra* note 110, at 62–63.

¹²³ 18 U.S.C. § 2250 (2012); *see also* *Citizen’s Guide to U.S. Federal Law on Sex Offender Registration*, U.S. DEP’T. OF JUSTICE, <https://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-sex-offender-registration> (last visited Mar. 30, 2018); *Sex Offender Registration and Failure to Register FAQs*, SMART, https://www.smart.gov/faqs/fa_q_registration.htm#10 (last visited Mar. 30, 2018).

¹²⁴ CONN. GEN. STAT. § 54–257(c) (2017); CONN. GEN. STAT. § 54–251(e) (2017); Chris Ayotte, *State’s Sex Offenders Fail to Register*, NBC CONN. (Jan. 20, 2011) <http://www.nbcconnecticut.com/news/local/States-Sex-Offenders-Fail-To-Register-114287899.html>.

¹²⁵ CONN. GEN. STAT. § 53a–35a (8) (2017); CONN. GEN. STAT. § 53a–41(4) (2017).

¹²⁶ *See* GEORGE COPPOLO, 2008–R–0273, PROBATION—SEX OFFENDERS (2008), <https://www.cga.ct.gov/2008/rpt/2008-R-0273.htm>.

¹²⁷ *Id.*

¹²⁸ *Id.*

probationer's family and associates, (4) home and employment field contacts and visits, (5) response to noncompliance, and (6) graduated sanctions."¹²⁹ Convicted sex offenders may also be subjected to electronic monitoring and/or polygraph testing ("lie detectors").¹³⁰ Moreover, any registered sex offender must have their address and place of employment approved by a probation officer, re-register his or her address every 90 days, and the offender may not sleep overnight at any address other than his or her home address without approval of the probation officer.¹³¹ Further probation conditions include, but are not limited to: no contact with the victim or his or her family in any way; must notify the probation officer of any new or existing romantic or sexual relationship; must take any medication instructed through the treatment program; may not intake any drugs or alcohol unless prescribed by a physician; may not be in the presence of any minor without probation officer approval; must keep and update a driving or activity log; and the offender is not allowed to possess a camera, camera phone, or any such device that is capable of recording and playing back any images without probation officer approval.¹³²

¹²⁹ *Id.*

¹³⁰ COPPOLO, *supra* note 126.

¹³¹ *Id.*

¹³² *Id.* The entire list for sex offender probation conditions in Connecticut is provided at this source, stating:

1. you will participate in and complete any sex offender evaluation and recommended treatment as directed by a probation officer (You may be financially responsible for all or part of the costs of such evaluation and treatment.);
2. you will participate in polygraph examinations administered by a CSSD-approved, specially trained polygraph examiner for treatment purposes and to determine level of supervision;
3. you will have no contact with the victim or victim's family by letter, telephone call, tape, video, email, text message, or third party contact unless approved by a probation officer. (Contact with the victim or victim's family must be reported immediately to a probation officer.);
4. you will notify your probation officer of any new or existing romantic or sexual relationship;
5. your place of residence must be approved by a probation officer;
6. you will not move from your place of residence or sleep elsewhere overnight without a probation officer's prior knowledge and permission;
7. you will allow any probation officer entry into your residence and notify any occupant of your residence that a probation officer may enter where you live;
8. all employment must be pre-approved by a probation officer;
9. you will provide financial and telephone records upon a probation officer's request;
10. you will abide by any curfew imposed by a probation officer;
11. you will not possess or subscribe to any sexually explicit or sexually stimulating material deemed inappropriate by a probation officer or patronize any

Although the Romeo and Juliet provisions were created as a compromise and have helped many teenagers who find themselves in a consensual relationship with a minor, there is still plenty of room for improvement. Again, Connecticut law states that a person can be convicted of second-degree sexual assault if he or she has sexual intercourse with an individual between thirteen and sixteen years of age and that person is more than three years younger than him or her.¹³³ For instance, in the case of an eighteen-year-old high school senior, who engages in a consensual relationship with a fifteen-year-old high school sophomore, that senior would be seen as a perpetrator, a statutory rapist,

adult book or video store, strip club, or adult entertainment club or similar establishment;

12. you will not use telephone numbers that provide access to sexually oriented services;

13. you will not hitchhike or pick up hitchhikers;

14. you will submit to electronic monitoring as directed by a probation officer, you may be required to pay for the costs of such monitoring, you will not tamper with electronic monitoring equipment, and you will not remove the equipment;

15. you will participate in any other treatment program as directed by a probation officer;

16. you must take any medication as prescribed if it is required as part of your treatment program;

17. you will not use any alcoholic beverages or drugs, except as prescribed to you by a physician;

18. you may not associate with other known sex offenders or convicted felons except in an approved treatment program or with prior probation officer approval;

19. you will not be in the presence of minors, nor have contact in any form, direct or indirect, including by means of computer, telephone, letter, tape, video, email, text message, or through another person with children under the age of 16 without probation officer approval. (Any contact must be reported immediately to a probation officer.);

20. you will not date or socialize with anybody who has children under the age of 16 without your probation officer's prior approval;

21. you may not possess children's clothing, toys, or games, without prior probation officer approval;

22. you will not go to or loiter near school yards, parks, playgrounds, swimming pools, arcades, or any places primarily used by children under 16;

23. you will not possess a camera, camera phone, camcorder, videocassette, DVD, or any device that can record or play back visual images without probation officer approval;

24. you must maintain a driving log or activity log, as required by a probation officer;

25. you must agree to and sign a computer access agreement that will be provided to you by a probation officer, before using any computer and you must submit to an examination and search of your computer or other similar equipment to verify it is not used in violation of probation or treatment conditions; and

26. you must comply with other probation officer-imposed conditions.

¹³³ CONN. GEN. STAT. § 53a-71(a)(1), (b); NORMAN-EADY ET AL., *supra* note 73, at tbl.1.

and the sophomore as the victim. Furthermore, if there were a fourteen-year-old high school freshman born on August 5th who dates and is in a consensual sexual relationship with a seventeen-year-old high school junior, born on August 6th, the older student could be prosecuted for statutory rape. The state would prosecute this individual, who may be a straight-A student, an athlete, and family-oriented person, solely because he or she is three years and one day older than his or her younger counterpart. This demonstrates the harsh cut and dry nature of the existing law.

Moreover, many teenagers find themselves standing in front of a judge, restrained in handcuffs, being read his or her sentence because the law is so heavy handed. For instance, two teenagers, one below the age of consent and one above, could be in a consensual sexual relationship condoned by the parents of the younger individual, and the older teen still may still be subject to prosecution if another party, such as a teacher, medical professional, public employee, or a clergy member,¹³⁴ chooses to report it, as such reporting requirements are often mandatory.¹³⁵ Unfortunately, statutory rape is largely a strict liability crime, meaning there is automatic responsibility for a crime without having to prove the applicable mens rea, or the “guilty mind.”¹³⁶ Therefore, because the statute purposely omits the intent element of the crime, mens rea does not need to be proven; just a voluntary act.¹³⁷

Additionally, the statute creates the potential that a scholar athlete, with not a speck on his or her “permanent record,” is sent to prison for ten to twenty years for past consensual sexual relations with someone below the age of consent, purely because the younger individual wanted revenge for a breakup, or because he or she was jealous, and so on. Although there is no such thing as a flawless law, and there are always exceptional cases where a defendant is unfairly targeted, statutory rape laws are over-inclusive and too frequently harshly penalize individuals who are not criminals, thus going beyond a few exceptional cases.¹³⁸

¹³⁴ See CONN. GEN. STAT. § 17a-101(b) (2017).

¹³⁵ The statutes that require mandatory reporting, and outline penalties for failure to report, are: CONN. GEN. STAT. § 17a-101(b) and CONN. GEN. STAT. § 17b-451 (2017). Furthermore, the Connecticut Department of Children & Families website elaborates on the duty to report and provides a “Model Policy for Reporting of Child Abuse and Neglect.” See *Model Policy for Reporting Child Abuse and Neglect*, DEP’T. OF CHILDREN & FAMILIES, <http://www.ct.gov/dcf/cwp/view.asp?a=3483&Q=499860> (last visited Mar. 30, 2018).

¹³⁶ *Strict Liability*, BLACK’S LAW DICTIONARY (10th ed. 2014).

¹³⁷ *Mens rea*, BLACK’S LAW DICTIONARY (10th ed. 2014).

¹³⁸ See James, *supra* note 3, at 246–47 (arguing that statutory rape law are over inclusive).

In many areas of the country, in the eyes of the law, there is little distinction between Romeo and Juliet's mutual decision to engage in a consensual relationship and a child molester's abusive actions.¹³⁹ As discussed, a slightly older teenager who has sex with his or her younger significant other can be arrested, prosecuted, and convicted for the act.¹⁴⁰ Unfortunately, the many teenagers outside of the Connecticut Romeo and Juliet provision's boundaries are faced with an exposure of a mandatory minimum of nine months' imprisonment to upwards of ten to twenty years in prison.¹⁴¹ Moreover, the defendant may also be liable for a fine ranging from ten to fifteen thousand dollars.¹⁴² Regrettably, this is not the end of the defendant's punishment.

Furthermore, courts have largely held that an offender's belief that the victim was above the age of consent, or an offender's claim that he or she was misled by the victim's appearance or misrepresentations, are not a valid defenses.¹⁴³ Since the 1964 *People v. Hernandez* California Supreme Court ruling, some states have adopted the mistake-as-to-age defense, where the defendant can argue that he or she reasonably believed that the victim was the age of consent, which therefore negated any criminal intent.¹⁴⁴ Although that ruling has inspired a number of other jurisdictions to adopt a similar policy, Connecticut still has not employed the mistake-of-age defense.¹⁴⁵ Therefore, a teenage defendant from High School X, who engages in sexual conduct with another individual from High School Y at a party, may have reasonably believed the other person was above the age of consent, but the only relevant fact the judge considers is the younger person's actual age. Under this strict liability standard, this teenager now faces prison time, amongst a plethora of other potential consequences, as discussed above.

¹³⁹ Linda Lowen, *Romeo and Juliet Laws—What they Mean for Teens*, THOUGHTCO. (Mar. 18, 2017), http://womensissues.about.com/od/datingandsex/a/Romeo_and_Julie.htm.

¹⁴⁰ *Id.*

¹⁴¹ See *supra* text accompanying notes 72–73.

¹⁴² CONN. GEN. STAT. § 53a–41.

¹⁴³ LAWRENCE K. FURBISH, 99–R–1084, MISTAKE-AS-TO-AGE DEFENSE IN STATUTORY RAPE CASES: RULE IN OTHER STATES (1999), <https://www.cga.ct.gov/PS99/rpt%5Colr%5Ch tm/99-R-1084.htm>.

¹⁴⁴ *Id.*; see *People v. Hernandez*, 393 P.2d 673 (Cal. 1964).

¹⁴⁵ FURBISH, *supra* note 143.

VII. NOTHING CHANGES, IF NOTHING CHANGES

A. *Reality Check*

With all this discussion focusing on scientific data as well as federal and state legislative requirements and penalties, it is easy to forget that many adolescents, teenagers, young adults, or whatever one may call them, have their lives hanging in the balance. Their dreams of being a police officer, an NBA all-star, a school teacher, or even a social worker have gone up in smoke. Their chances of continuing to live in their childhood home are slim to none. They face a life of harsh judgment with continuing difficulty in finding and keeping a job, a new home, and making new friends. Starting over is not an option because neither the law nor the stigma will allow it.

Meet Josh Strader of Beavercreek, Ohio, who innocently passed a note to his now-wife, Jennah, in church asking if she would go out with him, with both of their parents' knowledge and support.¹⁴⁶ Both being in their first serious relationship, they had sex for the first time, and Jennah became pregnant.¹⁴⁷ Unfortunately, Josh had just turned nineteen and Jennah had not yet turned fifteen, requiring a counselor to notify law enforcement.¹⁴⁸ Not only was Josh blessed with his first child from their union, but he was also cursed with the label of a Tier II sex offender.¹⁴⁹ Jennah described the negative impact this consequence has had on their lives, saying that Josh cannot go to the school to pick up his daughter if she is not feeling well, he has had difficulty finding a job, and that "[i]t's almost like being a single mother sometimes."¹⁵⁰ Now twenty-eight, Josh must continue to register as a sex offender every year until 2033, when his daughter will be twenty five.¹⁵¹ Jennah and their family have encountered many stereotypical reactions and shared the substance of those confrontations:

"Even after hearing the story of what happened, they can't wrap their mind around somebody who's on the registry who never hurt anybody, who never sexually assaulted anybody," Jennah Strader said. "They just automatically go

¹⁴⁶ Katie Wedell, *Proposal would lessen penalties for some sex offenders*, CONN. FOR ONE STANDARD OF JUST. (Nov. 27, 2016), <http://www.ctosj.org/2016/12/20/proposal-would-lesser-penalties-for-some-sex-offenders/>.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ Wedell, *supra* note 146.

¹⁵¹ *Id.*

to 'he's a child molester, he's a rapist.' They don't think we were young kids and we made a bad decision and now we're paying for it."¹⁵²

Although she does not regret a moment of her time with Josh, she hopes for reformation of the law, pleading, "We want [to be] productive people of society and when you do this you take away th[at] right"¹⁵³

A reporter for the *Dallas News*, Diane Jennings, further explored the impact registration has on the offender's family.¹⁵⁴ The wife of the unnamed-offender disclosed that she had to quit her job as an educator because, "[m]arrying (him) made his offense mine, because while he may be the one with his picture on the internet, I am the one the public sees regularly . . . I had gone from 'child advocate' to perceived 'child abuser' simply through marriage."¹⁵⁵ This negative brand also affects the children, who are innocent of any past misunderstanding. For instance, when the father in this situation was still on probation, he could not attend any of his children's plays, games, meet the teacher nights, or graduation.¹⁵⁶ Further, one daughter came home crying after she was told, "[m]y daddy says your daddy is bad."¹⁵⁷ Neighbors tend to walk the other way or cross the street to avoid the family when they are outside in the yard.¹⁵⁸

An online blog titled, *Tales from the Registry*, featured a post from a user named "desperatemom."¹⁵⁹ In it, she shared her aggravation and despondency with her son's experience. Her son found himself in the same situation others have, an eighteen-year-and-nine-months-old college freshman who was pursued by a fourteen-year-old online.¹⁶⁰ Two encounters of oral sex later, a detective began investigating him, a lawyer was hired, he began counseling, and was met with inquiries by schoolmates about his predator status.¹⁶¹ Despite being in the thick of plea deals and sentencing hearings, her son is certainly going to be labeled a Tier II sex offender, requiring him to register for the next

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Diane Jennings, *The impact of sex offender registration on the offender's family*, DALL. MORNING NEWS (Nov. 21, 2008) <https://www.dallasnews.com/news/crime/2008/11/21/the-impact-of-sex-offender-reg>.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Jennings, *supra* note 154.

¹⁵⁹ *The Beginning of the End...*, TALES FROM THE REGISTRY (Feb. 17, 2016), <http://www.talesfromtheregistry.org/the-beginning-of-the-end/>.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

twenty-five years, all because he was pursued by and engaged in sexual relations with a girl who was four months below the misdemeanor line.¹⁶²

Sadly, this situation is not all that unique; in fact, the above dire circumstances have recurred continuously over these past ten years, and have not changed despite the new technology and norms society utilizes today. Take Zachery Anderson, for example.¹⁶³ A nineteen-year-old boy in the Midwest who studied computer science at his local community college, came from a close-knit family, and was today's typical American teenager, flirting with and meeting girls through the Internet and social media applications.¹⁶⁴ Again, like many teenagers do, he met a seventeen-year-old girl on a dating app, known as "Hot or Not," from Michigan (not far from his home in Indiana), and they engaged in consensual sex.¹⁶⁵ The girl, who was actually fourteen-years-old, had a worried mother at home concerned about the girl's whereabouts, prompting a call to the police that eventually led to Zachery's arrest a few weeks later.¹⁶⁶

Many citizens are in uproar over Zachery's situation, claiming it is "a parable of the digital age: the collision of the temporary relationships that young people develop on the Internet and the increasing criminalization of sexual activity through the expansion of online sex offender registries."¹⁶⁷ Among his supporters is William Buhl, a former Michigan judge, stating, "The whole registry is a horrible mistake . . . I think it's utterly ridiculous to take teenage sex and make it a felony. This guy is obviously not a pedophile."¹⁶⁸ Moreover, the girl he was involved with and her justifiably concerned mother do not want to see Zachery punished.¹⁶⁹ The sentencing judge, however, has refused to accept

¹⁶² *Id.*

¹⁶³ Julie Bosman, *Teenager's Jailing Brings a Call to Fix Sex Offender Registries*, N.Y. TIMES (July 4, 2015), <https://www.nytimes.com/2015/07/05/us/teenagers-jailing-brings-a-call-to-fix-sex-offender-registries.html>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ Bosman, *supra* note 163.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

[T]he girl, who is now 15, and her mother . . . have also defended Mr. Anderson, appearing in a District Court in Michigan this spring to ask a judge for leniency.

"I don't want him to be a sex offender, because he really is not," the mother said, according to court transcripts. Her daughter told the judge that she felt "nothing should happen to Zach," adding, "If you feel like something should, I feel like the lowest thing possible."

today's dating rituals and held it against Zachery, stating, "You went online, to use a fisherman's expression, trolling for women, to meet and have sex with That seems to be part of our culture now. Meet, hook up, have sex, sayonara. Totally inappropriate behavior. There is no excuse for this whatsoever."¹⁷⁰ It is apparent that the judge, like some people, support extremely narrow Romeo and Juliet statutes, and seem to harbor disapproval of teenage sexual relations altogether, and resent common features of modern relationships, such as the use of the Internet to make amorous connections.

By the same token, the government refuses to acknowledge the fact that the girl purposely misrepresented her age to Zachery, arguing that his punishment is appropriate for failing to accurately determine her true age.¹⁷¹ In addition to his ninety days in jail and sex offender registration, Zachery's probation includes a ban from internet use for five years—effectively preventing him from continuing his college education in computer science, finding a job that includes using a computer, and even maintaining a personal email address.¹⁷²

Public outcry has occurred from hearing Zachery's story. The Executive Director of Reform Sex Offender Laws, Inc., has described this situation as "a conviction on steroids," and elaborated on the difficulty of maintaining a job when on the registry, stating, "[b]eing on a registry becomes a liability for employers, no matter how minor the offense was. Other people will say: 'I saw your employee on the Internet. He's a sex offender, and I will not come to your establishment.'"¹⁷³ One University of California, Irvine law professor, Michele Goodwin, wrote to the *New York Times* in response to Zachery's story, calling attention to the lack of a "coherent framework. . . offered by politicians that responds to the contemporary realities of adolescent sexuality, which involve immature but rarely criminal conduct. Neither federal nor state legislatures offer coherent approaches to protect against the harshest criminal punishments

¹⁷⁰ *Id.*

¹⁷¹ Bosman, *supra* note 163.

¹⁷² *Id.*

¹⁷³ *Id.* See also *Our History: From RSOL to NARSOL*, NAT'L ASS'N FOR RATIONAL SEXUAL OFFENSE LAWS, <http://nationalrsol.org> (last visited Feb. 25, 2018). Formed in 2007, Reform Sex Offender Laws, Inc., is a non-profit organization that advocates for civil rights and argues that sex offender registries across the nation has exponentially widened its reach to include petty offenses, like teen sexting and consensual sexual relationships among young adults.

demanded by statutory rape provisions.”¹⁷⁴ She elaborated on the upsetting notion that these laws are often selectively enforced against those in poor and working-class families, as well as those involved in interracial sexual engagements.¹⁷⁵ Goodwin closed her letter to the editor with a sentence that embodies the very crux of this issue: “These prosecutions represent the overuse of criminal law to address issues often better left to parents.”¹⁷⁶

B. Room for Improvement

Not only was Zachery’s family scrambling to find a new place to live,¹⁷⁷ other registered sex offenders have found themselves homeless, sleeping in cars, trailer parks and motels, if welcome, because of the restrictive bans placed on available residences upon reentry into society.¹⁷⁸ Professor of Justice Administration at the University of Louisville, Richard Tewksbury, presented evidence that, “although [registered sex offenders] are found in all varieties of neighborhoods, they are particularly likely to reside in areas characterized by economic disadvantage, lack of physical resources, relatively little social capital, and high levels of social disorganization.”¹⁷⁹ In Connecticut, probation officers must pre-approve offender’s residences and possible relocations.¹⁸⁰ The factors taken into account include:

1. the location’s potential access to the offender’s target population;
2. his or her prior sexual assault convictions;
3. other people living in the residence;
4. the location’s accessibility to family members, friends, or other supportive services;
5. whether the residence or location is of a type the offender’s treatment plan has assessed as being a potential trigger for reoffending; and
6. whether a permanent or stable residence is available that might reduce the

¹⁷⁴ Michele Goodwin, *Statutory Rape Laws*, N.Y. TIMES (July 13, 2015), <https://www.nytimes.com/2015/07/13/opinion/statutory-rape-laws.html>.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ Bosman, *supra* note 163.

¹⁷⁸ See Monica Davey, *Iowa’s Residency Rules Drive Sex Offenders Underground*, N.Y. TIMES (Mar. 15, 2006), <http://www.nytimes.com/2006/03/15/us/iowas-residency-rules-drive-sex-offenders-underground.html>.

¹⁷⁹ Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 HARV. C.R.-C.L. L. REV. 531, 535 (2007).

¹⁸⁰ SUSAN PRICE, 2012–R–0300, OLR BACKGROUNDER: SEX OFFENDERS ON PROBATION AND PAROLE—TREATMENT AND HOUSING RESTRICTIONS 3 (2012), <https://www.cga.ct.gov/2012/rpt/pdf/2012-R-0300.pdf>.

likelihood of the offender becoming transient.¹⁸¹

Noncompliance with the requirements can lead to stricter probation, extended probation periods, prosecution, and probation revocation resulting in imprisonment.¹⁸² Furthermore, registered sex offenders are restricted “from living in a nearby radius of places that ‘children congregate.’ These places can include playgrounds, schools, churches, bus stops, community centers, and more.”¹⁸³ In addition to the housing restrictions, finding a job is incredibly difficult, due to the issue of “checking the box,” where, on many job applications, there is a question that explicitly asks whether or not the applicant has ever been convicted or charged with a crime.¹⁸⁴ The stigma that attaches to sex offender registration is extravagant, because “having a record . . . has a negative impact on educational, employment, and housing opportunities.”¹⁸⁵ The worst is assumed and often these registered offenders are left homeless and jobless, a real victim of legislation. As Zachery’s mother expressed, “A young person, they make one mistake and all of a sudden they’re classified as a loser for the rest of their life.”¹⁸⁶

The Connecticut Sentencing Commission (“CSC”) was created in 2011 to examine Connecticut criminal justice and sentencing laws, and propose changes to the Governor, the General Assembly, and other criminal justice agencies.¹⁸⁷ In August of 2015, the CSC began studying the sex offender registration system, such as the sentencing laws, management of offenders and the registry, victims’ needs, and consequences of such management practices.¹⁸⁸ The CSC most recently met on January 25, 2017, and submitted a formal study on November 3, 2017.¹⁸⁹ Some lawmakers wanted to broaden the definition of a sex

¹⁸¹ *Id.* at 3–4.

¹⁸² *Id.*; see also CONN. GEN. STAT. § 53a–32 (2017).

¹⁸³ Rankin, *supra* note 47.

¹⁸⁴ A few states, including Connecticut, prohibit government employers from asking if an applicant has been convicted of a crime, but these laws do not extend to private employers. David J. Norman, Note, *Stymied by the Stigma of a Criminal Conviction: Connecticut and the Struggle to Relieve Collateral Consequences*, 31 QUINNIPIAC L. REV. 985, 1002 (2013).

¹⁸⁵ Victoria Simpson Beck & Stephanie Boys, *Romeo & Juliet: Star-Crossed Lovers or Sex Offenders?*, CRIM. JUST. POL’Y. REV. 655, 656 (2012).

¹⁸⁶ Bosman, *supra* note 163.

¹⁸⁷ Michael Agogliati et al., *Lawmakers are looking to tighten regulations for sex offenders*, WFSB (Jan. 25, 2017), <http://www.wfsb.com/story/34340569/lawmakers-are-looking-to-tighten-regulations-for-sex-offenders>.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*; CONN. SENTENCING COMM’N, A STUDY OF THE SEX OFFENDER SENTENCING, REGISTRATION, AND MANAGEMENT SYSTEM (2017), http://www.ct.gov/ctsc/lib/ctsc/Sex_Off

offender while others focused on the poor regulation of released offenders, stating, “Most people on registries represent people at minimal risk and tax dollars are better spent elsewhere.”¹⁹⁰

The CSC attempted to strike a balance in its recent report: proposing amendments to shift from an offense-based sex registry to a risk assessment-based registry.¹⁹¹ While registration remains a requirement under this proposed change, “the length of time on the registry and whether it is a public registry or a law enforcement-only registry will be determined by evaluating the registrant’s risk of reoffending.”¹⁹² The report states:

Under the new system, some registrants will be on the registry for shorter periods than under the current system, and others will be on for longer periods. However, that determination will be based on the registrant’s risk to the community. The registrants will have an opportunity to lower their risk profile by participating in programming for behavioral health, vocational training, and other services designed to enhance community reintegration and by avoiding rearrest for any new criminal activity.¹⁹³

The prospective changes include implementing procedures by which registered offenders can petition to reduce their sentences. Those with a low-risk of reoffending, determined by actuarial risk assessment, would only be placed on a law enforcement registry for ten years.¹⁹⁴ Moderate-risk offenders would be placed on either the public or law enforcement registry based on a Board decision and high-risk offenders would be presumptively placed on the public registry for life.¹⁹⁵ This proposal is a good start to changing Connecticut’s laws regarding sex offender registration. The implementation of an independent Sex Offender Registration Board to evaluate cases could result in fewer young people from having to publicly register for consensual sexual encounters.¹⁹⁶ It could provide people like Zachery, who is at very little risk for reoffending, the opportunity to lead a normal life, without the public’s knowledge of his past misfortune. More, however, can be done to rectify the current law.

ender_Report_11.03.2017Final_edits.pdf.

¹⁹⁰ Agogliati et al., *supra* note 187.

¹⁹¹ CONN. SENTENCING COMM’N, *supra* note 189, at 9.

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 11.

¹⁹⁵ CONN. SENTENCING COMM’N, *supra* note 189, at 11.

¹⁹⁶ *Id.*

As evidenced by the foregoing arguments and factual data, sex offender registration legislation needs to be amended, in more than one way. First, the strict liability component should be rescinded; there is a surplus of factors that need to be considered, including the relationship of the parties, parental consent, relationship status (were allegations made as a consequence of heartbreak, as revenge?), whether the actor knew the victim's real age, etc. The strict liability standard for statutory rape removes the "force" element from a rape charge, which leaves only intercourse and age as factors, and creates the presumption that the force element is established, "without the prosecutor's having to prove it and without the defense even having the option of affirmatively disproving it."¹⁹⁷

Second, the stigma of sex offender registration is far too harsh, thanks to the strict and overprotective policies and restrictions enacted by the government. Many registered sex offenders find themselves without a permanent address, a stable support system, or a job, when they engaged in a relationship with a fellow high school student, or someone who lied about their age, for instance. In 2015, the California Supreme Court declared restrictions imposed on paroled sex offenders in San Diego County unconstitutional, therefore causing California to cease enforcement of its blanket rule requiring offenders to stay 2,000 feet away from schools and parks, which made 97% of rental housing in the area unavailable to offenders.¹⁹⁸ After enforcing the rules on a case-by-case basis, only one third of the 5,901 offenders actually needed the restrictions, thereby lowering the number of transient sex offenders without a permanent address by 20%.¹⁹⁹ Connecticut, in turn, should institute a similar policy. In order to combat the homeless and jobless populations in the state, as well as more effectively determine the real sex offender threats, the state should re-evaluate the registry based on the above factors, perhaps removing qualifying offenders from the list altogether, and enforce the restrictions on a case by case, totality of the circumstances basis—similar to the recent proposal by the CSC. By labeling eighteen-, nineteen-, twenty-, or even twenty-one-year-olds a

¹⁹⁷ Sherry F. Colb, *The pros and cons of statutory rape laws*, CNN (Feb. 13, 2004), http://www.cnn.com/2004/LAW/02/13/findlaw.analysis.colb.statutory.rape/index.html?iref=al_lsearch.

¹⁹⁸ See *In re William Taylor et al. on Habeas Corpus*, 184 Cal. Rptr. 3d 682, 700 (Cal. 2015); Jen Fifield, *Once out of prison, few places for sex offenders to live*, CORRECTIONSONE (May 14, 2016), <https://www.correctionsone.com/re-entry-and-recidivism/articles/180714187-Once-out-of-prison-few-places-for-sex-offenders-to-live/>.

¹⁹⁹ *Id.*

“sex offender” for the rest of their life, dooming just about any hope for a successful, happy life with that one title, due to an innocent mistake, is true injustice.

VIII. ACT 5, SCENE 3

Often, people have this sense of invincibility and think, “this will never happen to me.” And though that may be true, they never anticipate that their neighbors, friends, and even family members are potentially one misunderstanding away from explanations made in vain, one knock of the judge’s gavel away from looking at the world through cold, metal bars, and one registration away from living a life full of anxiety, loneliness, and rejection. Age of consent laws serve an important purpose: they protect the innocence of children from unwarranted sexual advances. The true victim, however, may not be the boy or girl of sixteen (or younger); too often the victim is actually the Kaitlyn, Josh, or Zachery of the story: the girl who lives down the street, the class president, the scholar athlete, or even the boy hopelessly in love with his slightly younger girlfriend, who he intends to marry one day. Admittedly, teenage sex can be problematic, but the law should not criminalize consensual sex among teenagers the way it does pedophiles or rapists.

Although Romeo was speaking to Apothecary about his status of a poor, starving man, it foreshadows the dark, lonely existence that today’s Romeo is thrust into: “The world is not thy friend nor the world’s law.”²⁰⁰

²⁰⁰ SHAKESPEARE, *supra* note 1, act 5, sc. 1.