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## LEGAL UPDATES

**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### MANDATORY SEX OFFENDER REGISTRATION FOR CERTAIN JUVENILE OFFENDERS

Filed by the Iowa Supreme Court

June 15, 2018

In the Interest of T.H.

No. 16-0158

[www.iowacourts.gov/courtcases/37/embed/SupremeCourtOpinion](http://www.iowacourts.gov/courtcases/37/embed/SupremeCourtOpinion)

**Factual and Procedural Background.** The juvenile court adjudicated T.H., a 14-year-old male, delinquent of one count of sexual abuse in the third degree for performing a sex act by force on a 16-year-old girl. The juvenile court found that because the offense is a tier II sex offense, Iowa Code section 692A.103(4) required T.H. to register as a sex offender with the Iowa Sex Offender Registry and the statute does not allow the juvenile court to defer or waive the sex offender registration requirements, as T.H. was 14 at the time of the offense and the offense was committed with force. T.H. appealed, asserting there was insufficient evidence to find he committed sexual abuse by force and the mandatory sex offender registration requirement constituted cruel and unusual punishment in violation of both the Iowa and United States Constitutions. The Iowa Court of Appeals concluded there was substantial evidence to support a finding that T.H. sexually abused his victim by force and that the mandatory sex offender registration requirement for a juvenile such as T.H. was not cruel and unusual punishment. The Supreme Court (Court) granted further review.

**Issue.** Whether the Cruel and Unusual Punishment Clause of the Iowa Constitution or United States Constitution prohibits mandatory sex offender registration for juveniles found delinquent of a sex act under certain aggravated circumstances.

#### **Analysis.**

**Mandatory Sex Offender Registration as Punishment.** The majority opinion, written by Justice Cady, noted the Iowa Legislature amended Iowa Code chapter 692A (Iowa Sex Offender Registry) in 2009 to comply with the federal Sex Offender Registration and Notification Act requiring juveniles to abide by the federal Sex Offender Registry requirements, including possible lifetime registration, if a juvenile was 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse. While the Court opined that the legislative intent behind Iowa Code chapter 692A remains protective and nonpunitive, the Court nevertheless also considered whether the effects and impact of Iowa Code chapter 692A as applied to the facts of this case is sufficiently punitive to actually be penal in nature.

Utilizing seven factors set forth by the United States Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), to determine whether a statute is punitive in nature, the Court considered whether: (1) the sanction involves an affirmative disability or restraint; (2) it has historically been regarded as a

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punishment; (3) it comes into play only on a finding of scienter; (4) its operation will promote the traditional aims of punishment (retribution and deterrence); (5) the behavior to which it applies is already a crime; (6) an alternative purpose to which it may rationally be connected is assignable for it; and (7) it appears excessive in relation to the alternative purpose assigned. Based upon this framework for analysis as applied to the facts of this case, the Court concluded that “mandatory sex offender registration for juvenile offenders is sufficiently punitive to amount to imposing criminal punishment.”

**Cruel and Unusual Punishment.** The Court next considered whether the punitive nature of the mandatory sex offender registration requirement goes so far as to violate the constitutional prohibition against cruel and unusual punishment. The Court examined statutory provisions in Iowa Code chapters 232 (Juvenile Justice) and 629A, and found that juveniles like T.H. are not treated identically to adult offenders. While Iowa Code chapter 629A removes the juvenile court’s discretion to suspend the initial registration requirement for certain juvenile offenders found delinquent of a sex offense under aggravated circumstances, Iowa Code chapter 232 retains the juvenile court’s authority to determine whether it is in society’s and the juvenile’s best interest to continue the juvenile’s sex offender registration at the time the juvenile’s dispositional order is terminated. The Court determined this “cooperative regime strikes a reasonable balance between protecting society from the risk of aggravated offenders committing subsequent offenses and accounting for the youthful circumstances of juvenile offenders” and concluded that the mandatory sex offender registration requirement in this case does not amount to cruel and unusual punishment in violation of the Iowa Constitution.

**Holding.** The Court held that requiring a juvenile who has been adjudicated delinquent of a sex act under certain aggravating circumstances to register on the Sex Offender Registry is punitive, but does not rise to the level of cruel and unusual punishment.

## **Concurrences in Part and Dissents in Part.**

**Justice Appel, joined by Justices Wiggins and Hecht.** Justice Appel concurred in the part of the majority’s decision holding that automatic mandatory registration on the Sex Offender Registry for certain juvenile sex offenders is punishment, however dissented from the part of the majority’s decision that such a registration requirement is not unconstitutionally cruel and unusual punishment.

Justice Appel opined that automatic, mandatory sex offender registration as applied to juveniles violates the Cruel and Unusual Punishment Clause of the Iowa Constitution because of the lack of proportionality between the punishment and the offense committed, citing low recidivism and sexual re-offense rates of juvenile sex offenders combined with their responsiveness to rehabilitative treatment. Justice Appel noted the particularly harsh consequences faced by juveniles placed on the Sex Offender Registry, citing barriers to housing, employment, and education as well as concerns about psychological harm and social stigma. Justice Appel opined that juveniles are not offered any meaningful opportunity to show rehabilitation because while Iowa Code section 692A.128 provides that a juvenile may apply to be removed from the Sex Offender Registry, the statutory requirements for removal from the Sex Offender Registry do not provide a realistic chance for release. Justice Appel also stated that although Iowa Code chapter 232 allows a juvenile court to hold a hearing to determine whether the juvenile should remain on the Sex Offender Registry prior to termination of the dispositional order, this determination should be made only after the juvenile has had the chance to develop and mature, which should occur after the age of 25 and not at the age of 18.

**Justice Mansfield, joined by Justices Waterman and Zager.** Justice Mansfield concurred with the part of the majority’s decision concluding that the mandatory sex offender registration requirements are

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not unconstitutional as applied to the facts of this case, but dissented from the part of the majority's decision that registration which is nonpunitive for adults becomes punitive when applied in a more lenient way to juveniles. Justice Mansfield stated that the majority fails to cite any case law in support of a constitutional distinction between sex offender registration requirements for adults and sex offender registration requirements for juveniles and highlights many cases to the contrary. Justice Mansfield further cautioned the Court against using social science as the basis for the majority's distinction, noting that although social science has a role in judicial decision making, the executive and legislative branches of government are better at evaluating and acting on social science. Justice Mansfield further emphasized caution about the impact of the majority's opinion, stating the decision that juvenile sex offender registration is punitive necessarily means that the Ex Post Facto Clause of the United States Constitution and the Iowa Constitution applies and therefore a juvenile can no longer be subjected to a new or different registration requirement enacted subsequent to a juvenile's underlying conviction.

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