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”For Never Was a Story of More Woe Than This of Juliet and Her Romeo” - An Analysis of the Unexpected Consequences of Florida’s Statutory Rape Law and Its Flawed “Romeo and Juliet” Exception

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“FOR NEVER WAS A STORY OF MORE WOE THAN THIS OF JULIET AND HER ROMEO”—AN ANALYSIS OF THE UNEXPECTED CONSEQUENCES OF FLORIDA’S STATUTORY RAPE LAW AND ITS FLAWED “ROMEO AND JULIET” EXCEPTION

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I. INTRODUCTION

When you hear the term *sex offender*, what kind of a person comes to mind? Let me guess: An eighteen-year-old high school senior with great grades and a talent for cheerleading, basketball, and chorus.¹ Not what you had in mind? Well, in February of this year, Kaitlyn Hunt, an eighteen-year-old Florida high school student with the attributes listed above, was expelled from her high school and was charged with “two counts of lewd and lascivious battery of a child [twelve] to [sixteen] years of age.”²

Kaitlyn and her younger girlfriend met at Sebastian River High School in Sebastian, Florida.³ Kaitlyn was an eighteen-year-old senior, and her girlfriend was a fourteen-year-old freshman at the high school.⁴ There was a three year and seven month age difference between the two partners, which—as you will soon learn—will be a crucial piece of information in determining Kaitlyn’s future sentence.⁵

The couple played on the school basketball team and socialized with the same circle of friends.⁶ While dating, they engaged in sexual acts multiple times before the younger girlfriend’s parents discovered their

1. Stacey Barchenger, *Support Grows for Student Expelled over Same-Sex ‘Love’*, USA TODAY (May 21, 2013, 4:57 PM), <http://www.usatoday.com/story/news/nation/2013/05/21/student-expelled-same-sex-relationship/2345157/>.

2. Stephanie Slifer, *Kaitlyn Hunt Update: Fla. Teen Charged over Same-Sex Underage Relationship Speaks Out*, CBS NEWS (May 23, 2013, 11:26 AM), http://www.cbsnews.com/8301-504083_162-57585885-504083/kaitlyn-hunt-update-fla-teen-charged-over-same-sex-underage-relationship-speaks-out/.

3. Jason Parsley, *When Did High School Senior Kaitlyn Hunt Meet Her Freshman Girlfriend?*, SFGN (June 1, 2013), <http://www.southfloridagaynews.com/when-did-high-school-senior-kaitlyn-hunt-meet-her-freshman-girlfriend/122918>; Slifer, *supra* note 2.

4. Parsley, *supra* note 3.

5. *Id.*; see discussion *infra* Parts II.B., VI.B.2.

6. Slifer, *supra* note 2.

relationship.⁷ Once they learned their daughter was dating a girl about three-and-a-half years older than her, they promptly contacted the police to report Kaitlyn.⁸ After rejecting a plea deal that would have sentenced her to two years house arrest and one year of probation, Kaitlyn now faces up to fifteen years in prison, and may be required to register as a sex offender.⁹

There is no question as to the importance of statutory rape laws.¹⁰ Young teenagers are at risk of being taken advantage of by older individuals and they absolutely deserve the legal protection that statutory rape laws provide.¹¹ Offenders of said laws are usually given lengthy prison sentences¹² and are required to register as sex offenders upon their release.¹³ However, despite the importance of statutory rape laws it is worth questioning whether some of the acts punishable by statutory rape laws—sexual activity between two otherwise consenting teenagers—are acts that should result in such crippling consequences.¹⁴

This Comment will analyze whether Florida's statutory rape laws are too harsh on teenage offenders, and whether or not its Romeo and Juliet law—a law used to negate the sex offender registration requirement for teenage offenders—does enough to protect teenagers from the life-changing consequences of being found guilty of statutory rape.

II. A BRIEF HISTORICAL OVERVIEW OF STATUTORY RAPE LAW

A. *Statutory Rape Laws: Beginnings*

Statutory rape laws criminalize sexual activity with persons who are not yet old enough to legally give consent for sex.¹⁵ Such laws have been enforced in English law for over seven hundred years.¹⁶ England's first

7. Carlos Harrison, *Florida Student, 18, Gets Online Support After Her Arrest for Sex With Girlfriend*, 14, N.Y. TIMES, May 22, 2013, at A20.

8. *Id.*

9. Barchenger, *supra* note 1; Parsley, *supra* note 3.

10. See Steve James, Comment, *Romeo and Juliet Were Sex Offenders: An Analysis of the Age of Consent and a Call for Reform*, 78 UMKC L. REV. 241, 245–46 (2009).

11. *Id.*; see also FLA. STAT. §§ 775.21, 794.05, 800.04, 943.04354 (2013).

12. See FLA. STAT. §§ 775.21, 794.05, 800.04; see also *id.* § 775.082.

13. *Id.* § 775.21(6).

14. See Barchenger, *supra* note 1; see, e.g., FLA. STAT. § 800.04(5)(c)–(d).

15. Emily J. Stine, Comment, *When Yes Means No, Legally: An Eighth Amendment Challenge to Classifying Consenting Teenagers as Sex Offenders*, 60 DEPAUL L. REV. 1169, 1183 (2011) (describing the intent of Romeo and Juliet laws and why they were enacted by some states).

16. Michelle Oberman, *Turning Girls into Women: Re-Evaluating Modern Statutory Rape Law*, 85 J. CRIM. L. & CRIMINOLOGY 15, 24 (1994) (providing a brief historical overview of statutory rape laws).

statutory rape law—put into effect in 1275—prohibited children under the age of twelve from consenting to sex.¹⁷ At this time, women were considered to be *chattel*.¹⁸ Their family would marry them off to another family's son for a bride price.¹⁹ Chastity was of significant monetary value and a woman's parents would receive a greater bride price if their daughter was chaste at the time she was sold.²⁰ For this reason, statutory rape was originally considered to be a property crime.²¹ These laws were later adopted into American law and they continue to be the foundation of modern day statutory rape laws in America.²² Statutory rape is considered a strict liability offense, eliminating consent as a viable defense.²³ At the beginning of the twentieth century, however, states began to raise the age of consent to as high as twenty-one in order to prevent young women from engaging in non-marital intercourse.²⁴

B. *Age Discrepancy Considerations in Statutory Rape Law*

Originally, the age of the perpetrator had no impact on the severity of a punishment for statutory rape because the offender's age was not considered to be an element of the crime.²⁵ This led to a failure in differentiating between sexual acts amongst peers and sexual exploitation of young females by older men.²⁶ This is different today; some states take into consideration the difference in age between the alleged victim and the alleged perpetrator when determining the punishment for statutory rape.²⁷

17. *Id.*; Anthony M. Amelio, Note, *Florida's Statutory Rape Law: A Shield or a Weapon?—A Minor's Right of Privacy Under Florida Statutes § 794.05*, 26 STETSON L. REV. 407, 410 (1996) (providing a historical overview of statutory rape laws).

18. Rita Eidson, Comment, *The Constitutionality of Statutory Rape Laws*, 27 UCLA L. REV. 757, 767 (1980) (explaining the method in which women were once bought and sold in marriage).

19. *Id.*

20. *See id.*

21. *Id.*

22. James, *supra* note 10, at 245 (providing historical context for statutory rape laws).

23. Amelio, *supra* note 17, at 410 (explaining how statutory rape laws were adopted into the U.S. legal system).

24. Eidson, *supra* note 18, at 762–63 (describing how statutory rape laws were written at the turn of the twentieth century).

25. Amelio, *supra* note 17, at 410 (providing a historical overview of statutory rape laws).

26. *Id.* at 410–11.

27. *See, e.g.*, FLA. STAT. § 794.05 (2013).

C. *Statutory Rape Laws Today*

There have obviously been significant changes in how women have been treated since 1275,²⁸ but statutory rape laws are still being enforced today.²⁹ Instead of protecting women as if they were just a piece of property,³⁰ statutory rape laws now serve to “protect young people from coerced sexuality activity; enforce morality; prevent teen pregnancy; and reduce welfare dependence.”³¹ Florida has two statutory rape laws: Sections 794.05³² and 800.04 of the *Florida Statutes*.³³ Section 794.05 prohibits a person twenty-four years of age or older from engaging in sexual activity with a person between the ages of sixteen and seventeen.³⁴ Section 800.04 prohibits any sexual activity whatsoever with a person between the ages of twelve and sixteen.³⁵

Some states have also chosen to put Romeo and Juliet laws into effect.³⁶ These laws are meant to lessen the punishment of teenage offenders under section 800.04 of the *Florida Statutes* so that they are not punished in the exact same manner as adult offenders.³⁷ When teenage offenders apply for protection under Romeo and Juliet laws, their prison sentences can be reduced and their sex offender registration requirement can be dismissed as well.³⁸

D. *Gender Discrimination in Statutory Rape Law*

Originally, only men could be found guilty of statutory rape.³⁹ Women were viewed as property in need of legal protection.⁴⁰ Despite our ever-evolving societal views, however, some statutory rape laws still discriminate based on the minor's gender.⁴¹

28. See Oberman, *supra* note 16, at 24.

29. See FLA. STAT. §§ 794.05, 800.04.

30. James, *supra* note 10, at 245.

31. *Id.* at 246 (explaining the intent behind statutory rape laws).

32. FLA. STAT. § 794.05.

33. *Id.* § 800.04.

34. *Id.* § 794.05(1).

35. *Id.* § 800.04(4)(a).

36. Stine, *supra* note 15, at 1184.

37. See FLA. STAT. § 943.04354.

38. See *State v. Limon*, 122 P.3d 22, 24 (Kan. 2005).

39. Eidson, *supra* note 18, at 760–61 (describing the rationale for statutory rape laws).

40. Oberman, *supra* note 16, at 25 (providing a brief history of statutory rape laws).

41. James, *supra* note 10, at 252 (explaining that age of consent laws can lawfully discriminate based on a person's gender).

In 1981, the Supreme Court of the United States in *Michael M. v. Superior Court of Sonoma County*⁴² questioned the constitutionality of such gender-based laws.⁴³ In this case, the defendant, a seventeen-year-old male, challenged California's rape law, arguing that the law was unconstitutional because it discriminated on the basis of gender.⁴⁴ The Court disagreed and upheld the constitutionality of California's statutory rape law despite the fact that the law only allowed men to be held criminally liable.⁴⁵ The Court reasoned that a statute will be upheld "where the gender classification is not invidious, but rather realistically reflects the fact that the sexes are not similarly situated in certain circumstances."⁴⁶

Justice Brennan, in his dissent, admitted that "[c]ommon sense . . . suggests . . . gender-neutral statutory rape law[s] [would be] a greater deterrent of sexual activity" among minors because the laws would apply to more individuals.⁴⁷ Currently, many states have chosen to use a *common sense* approach and now include gender-neutral language in their statutory rape laws to allow for the protection, as well as the punishment, of both males and females.⁴⁸

III. SEXUAL BEHAVIOR IN ADOLESCENTS

Among U.S. high school students, 46% have had sexual intercourse at some point.⁴⁹ Additionally, "[m]ore than 400,000 teen[age women] aged [fifteen to nineteen] . . . gave birth in 2009."⁵⁰ Moreover, the likelihood of a teenager having sex in his or her freshman year of high school is 31.6%, while the likelihood of a teenager having sex in his or her senior year of high school is a whopping 62.3%.⁵¹

42. 450 U.S. 464 (1981).

43. *Id.* at 466.

44. *Id.* at 466–67.

45. *Id.* at 467.

46. *Id.* at 469.

47. *Michael M.*, 450 U.S. at 493–94 (Brennan, J., dissenting).

48. *See id.*; Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 404 (1984).

49. 59 CTRS. FOR DISEASE CONTROL & PREVENTION, DEP'T OF HEALTH & HUMAN SERVS., NO. SS-5, MORBIDITY AND MORTALITY WEEKLY REPORT: YOUTH RISK BEHAVIOR SURVEILLANCE—UNITED STATES, 2009 20 (2010), available at <http://www.cdc.gov/mmwr/pdf/ss/ss5905.pdf>.

50. *Sexual Risk Behavior: HIV, STD, & Teen Pregnancy Prevention*, CDC, <http://www.cdc.gov/HealthyYouth/sexualbehaviors/> (last updated Aug. 26, 2013).

51. CTRS. FOR DISEASE CONTROL & PREVENTION, DEP'T OF HEALTH & HUMAN SERVS., *supra* note 49, at 20.

Florida high school statistics show similar trends.⁵² According to the Florida Department of Health, which polled 6212 high school students in seventy-eight different Florida high schools in 2011, 48.2% of Florida high school students had sexual intercourse.⁵³ In fact, 7.6% of high school students had sexual intercourse for the first time before they reached the age of thirteen.⁵⁴ Of the students polled, 43.4% had also participated in oral sex, which—as you will soon learn—is also prohibited under Florida’s statutory rape laws.⁵⁵

These statistics are not all that surprising when you consider how much sexual content teenagers are being exposed to.⁵⁶ These teenagers are more vulnerable to such content than adults because the exposure occurs during a period in which sexual attitudes and behaviors are being developed.⁵⁷ Statistics show that teenagers who frequently watch television—which are many, since the average high school student has 2.9 televisions in his or her house—“see 143 incidents of sexual behavior on network television . . . each week.”⁵⁸ Shockingly, “80% of all movies shown on network or cable television [includes] sexual content.”⁵⁹ There is no doubt that such television content has had an impact on how teenagers view and understand sex, as 80% of teenagers reported that they or their peers have learned about sex from watching television or movies.⁶⁰

52. Compare *id.*, with FLA. DEP’T OF HEALTH, SEXUAL BEHAVIORS AMONG FLORIDA PUBLIC HIGH SCHOOL STUDENTS: RESULTS FROM THE 2011 FLORIDA YOUTH RISK BEHAVIOR SURVEY 1 (n.d.), available at http://www.floridahealth.gov/reports-and-data/survey-data/youth-risk-surveys/youth-risk-behavior-survey/reports/2011/_documents/sex-behavior.pdf#search=%22sexual%20behaviors%20among%20high%20school%20students%22.

53. FLA. DEP’T OF HEALTH, *supra* note 52.

54. *Id.*

55. *Id.*; see also FLA. STAT. § 800.04(1)(a) (2013).

56. See Enid Gruber & Joel W. Grube, *Adolescent Sexuality and the Media: A Review of Current Knowledge and Implications*, 172 W.J. MED. 210, 211 (2000), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1070813/pdf/wjm17200210.pdf> (providing statistics about sexuality in the media).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

IV. *FLORIDA STATUTES* § 800.04—LEWD AND LASCIVIOUS BATTERY ON
A CHILD TWELVE TO SIXTEEN YEARS OF AGE

A. *Definitions in Florida Statutes* § 800.04

1. Sexual Activity

“Sexual activity’ means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.”⁶¹

In *Burnett v. State*,⁶² the First District Court of Appeal held that the defendant was not guilty of lewd and lascivious battery towards a minor when he engaged in inappropriate activities involving pornographic films with minors and did not participate in any physical sexual acts.⁶³

In this case, there was evidence that the defendant had watched adult pornography with at least two minors.⁶⁴ The defendant was charged and found guilty of two counts of lewd and lascivious conduct, which he appealed.⁶⁵ The defendant moved for a judgment of acquittal arguing that there was no evidence that he actually participated in any kind of physical sexual act with the minors.⁶⁶ The appellate court agreed, holding that because there was no evidence of the defendant committing a lewd and lascivious act on the minors, he could not be found guilty under section 800.04(4) of the *Florida Statutes*.⁶⁷

2. Consent

“Consent’ means intelligent, knowing, and voluntary consent, and does not include submission by coercion.”⁶⁸ Supporters of statutory rape laws argue that sexual activity between two people, regardless of how close in age both parties may be, cannot be considered consensual if one party is below the age of consent.⁶⁹ Opponents of statutory rape laws, however, argue that these laws—many times—punish teenagers who are engaging in what would otherwise be considered—if not for their young age—*wholly*

61. FLA. STAT. § 800.04(1)(a) (2013).

62. 737 So. 2d 1106 (Fla. 1st Dist. Ct. App. 1998) (per curiam).

63. *Id.* at 1107.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Burnett*, 737 So. 2d at 1107; *see also* FLA. STAT. § 800.04(4) (2013).

68. FLA. STAT. § 800.04(1)(b).

69. Stine, *supra* note 15, at 1183.

consensual sex.⁷⁰ Proponents of statutory rape laws have argued that acts that would legally be classified as consensual sex are—in reality—not wholly consensual when dealing with teenage girls, due to manipulation by older adults.⁷¹

Michelle Oberman—in her law review article titled *Turning Girls into Women: Re-Evaluating Modern Statutory Rape Law*—discusses Antioch College and the college's attempt to create a system that would assure consensual sex.⁷² In this system, one partner would ask the other for verbal consent for each separate act of intimacy.⁷³ This method was criticized for "tak[ing] all the fun out of sex," which in Oberman's opinion, "provides ample evidence of the entrenchment of the hazy spectrum that separates consensual sex from rape."⁷⁴ Consent is clearly a major element in sexual relationships, yet it is overlooked in statutory rape cases due to the language of these laws, which strictly prohibits minors from being able to give such consent.⁷⁵

3. Coercion

"'Coercion' means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance."⁷⁶ In her article, Oberman explains that despite the intent of statutory rape laws, which is to protect teenage girls who are at risk of being coerced into having sex, the teenage girls' vulnerabilities are overlooked.⁷⁷ Instead, statutory rape laws require courts to focus simply on the age differences between the parties.⁷⁸

4. Victim

"'Victim' means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer."⁷⁹ The common perception of a

70. *Id.* at 1183–84.

71. Oberman, *supra* note 16, at 70 (pointing out the short-sightedness of statutory rape laws when dealing with teenage girls who can be easily manipulated).

72. *Id.* at 71 (explaining the increasing difficulty of differentiating between permissible and impermissible sexual encounters).

73. *Id.*

74. *Id.*

75. *Id.* at 42; *see also, e.g.*, FLA. STAT. § 800.04(2) (2013).

76. FLA. STAT. § 800.04(1)(c).

77. Oberman, *supra* note 16, at 42 (arguing that the vulnerability of teenage women is overlooked in statutory rape laws).

78. *Id.*

79. FLA. STAT. § 800.04(1)(d).

victim—which usually involves an individual being hurt or injured—may not always apply in statutory rape cases; a minor in a sexual relationship—regardless of how honest and consensual such a relationship may be—is considered a victim.⁸⁰

B. *The Text of Florida Statutes § 800.04*

Section 800.04 states, “[n]either the victim’s lack of chastity nor the victim’s consent is a defense to the crimes proscribed by this section.”⁸¹ The statute also says, “[t]he perpetrator’s ignorance of the victim’s age, the victim’s misrepresentation of his or her age, or the perpetrator’s bona fide belief of the victim’s age cannot be raised as a defense in a prosecution under this section.”⁸² Lewd or lascivious battery—the charge that Kaitlyn is currently being charged with—occurs when:

A person . . . [e]ngages in sexual activity with a person [twelve] years of age or older but less than [sixteen] years of age; or . . . [e]ncourages, forces, or entices any person less than [sixteen] years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits lewd or lascivious battery, a felony of the second degree . . .⁸³

Therefore, a person under the age of sixteen in Florida is unable to consent to sexual activity, regardless of the age of the defendant.⁸⁴

C. *The Effectiveness of Florida Statutes § 800.04*

Section 800.04 continues to be upheld because the State of Florida has determined that these laws are necessary to protect its youth, which is considered a compelling state interest.⁸⁵ It is important to note, however, that these laws have *not* been known to be effective in preventing consenting teenagers from having sex with one another.⁸⁶ The ineffectiveness of these laws at deterring teenagers from having sex puts the future of many high school students in doubt, as many of them will be required to register as sex

80. See Oberman, *supra* note 16, at 25.

81. FLA. STAT. § 800.04(2).

82. *Id.* § 800.04(3).

83. *Id.* § 800.04(4).

84. See *id.*

85. Amelio, *supra* note 17, at 422 (pointing out Florida’s compelling interest in protecting its youth).

86. See Stine, *supra* note 15, at 1212–13 (explaining that very few teenagers who are sexually active are actually prosecuted).

offenders for the rest of their lives.⁸⁷ The consequences of carrying such a label can be absolutely devastating.⁸⁸

V. CONSEQUENCES OF HAVING TO REGISTER AS A SEX OFFENDER

The public strongly supports sex offender registration and notification laws because of the popular belief that having knowledge of where sex offenders live in a person's community will help protect them or their children from future sex crimes.⁸⁹ This view is not without merit, as some sex offenders may repeat past unlawful sexual acts, which would pose a serious risk to people in the community.⁹⁰

The Florida Sexual Predators Act—which aims to protect the community from sexual predators—enforces a number of requirements and prohibitions on registered sex offenders.⁹¹ The statute reasons that because of "[t]he high level of threat that a sexual predator presents to the public safety, and the long-term effects suffered by victims of sex offenses," there is a significant state interest to monitor the release of sexual predators into the community, monitor the supervision of these sexual predators released into the community, enforce registration and notification laws, restrict certain employment opportunities for sex offenders, and create strict residency requirements.⁹² The legislature—despite their good intentions—even admits that "the cost of sexual offender victimization to society at large, while incalculable, [is] clearly exorbitant."⁹³

Although there is surely a need to prevent these wrongful acts, the majority of research shows that the sex offender registration and notification laws have proven to be largely *ineffective*.⁹⁴ Critics of such policies argue that "sex offender laws do not work, that is, they do not reduce sex offenses; . . . the stigmatizing and ostracizing effects of registration, notification, and residency restriction[s] may encourage the violent behavior they are aimed to deter."⁹⁵ This argument is sound, as these policies have been known to have

87. *Id.* at 1214–15.

88. *Id.* at 1215.

89. Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 AM. J. CRIM. JUST. 54, 55 (2009).

90. *Doe v. City of Albuquerque*, 667 F.3d 1111, 1134 (10th Cir. 2012).

91. FLA. STAT. § 775.21(3)(b) (2013).

92. *Id.*

93. *Id.* § 775.21(3)(a).

94. Levenson & Tewksbury, *supra* note 89, at 55.

95. Joseph J. Fischel, *Transcendent Homosexuals and Dangerous Sex Offenders: Sexual Harm and Freedom in the Judicial Imaginary*, 17 DUKE J. GENDER L. & POL'Y 277, 286 (2010) (explaining the ineffectiveness of statutory rape laws in regards to reducing sex offenses).

a significantly negative impact on the lives of both sexual offenders and their families.⁹⁶

A. *Employment Opportunities*

As a result of the registration and notification laws required by the Florida Sexual Predators Act, up to half of all sex offenders experience a decrease in employment opportunities.⁹⁷ This is troubling because studies have shown the “lack of stable employment” to be a central factor in sexual offenders repeating their past criminal behavior.⁹⁸ Not only does the Florida Sexual Predators Act restrict sex offenders from working near places where children frequently visit, but these sex offenders “are also excluded from working in [such] fields . . . as law, real estate, medicine, nursing, physical therapy, and education.”⁹⁹

If that were not bad enough, when sex offenders are finally able to find jobs that they are not restricted from obtaining, employers are still reluctant to hire these individuals because of their criminal past.¹⁰⁰ In fact, in “[a] survey of employers in five major” U.S. cities, two-thirds of the employers answered that they would never hire a sex offender.¹⁰¹ Sadly, the lack of employment opportunities has led many registered sex offenders to live a life of crime to support themselves and their families.¹⁰² This pattern just serves to reinforce the already unfavorable perception of sex offenders.¹⁰³

B. *Residential Restrictions*

Most states require that sex offenders live a certain distance away from “schools, daycare centers, parks, [and school] bus stops.”¹⁰⁴ The intent of these restrictions is to decrease the possibility that a sex offender could commit future sex crimes by diminishing his or her opportunities to commit such crimes again.¹⁰⁵ To put into perspective the extreme inconvenience

96. Levenson & Tewksbury, *supra* note 89, at 57.

97. *Id.* at 55; see FLA. STAT. § 775.21(6), (7).

98. James L. Johnson, *Sex Offenders on Federal Community Supervision: Factors That Influence Revocation*, 70 FED. PROBATION 18, 19 (2006).

99. *Id.*; see also FLA. STAT. § 775.21(3)(b)(5).

100. Johnson, *supra* note 98, at 19.

101. *Id.*

102. *See id.* at 20.

103. *See id.* at 19–20.

104. Levenson & Tewksbury, *supra* note 89, at 56.

105. Stine, *supra* note 15, at 1183 (discussing the rationale behind residency restrictions).

these restrictions could cause a sex offender and his or her family, consider this: In the city of Orlando, a whopping 95% of residential homes fall within 1000 feet of a school, daycare center, school bus stop, or park, leaving only 5% of the city available for them to live in.¹⁰⁶

Some states have even been known to enforce larger safety zones than are required by law.¹⁰⁷ In Miami Beach, for example, sex offenders are prohibited from residing in homes within 2500 feet away from a school if the victim was under the age of sixteen.¹⁰⁸ These strict policies prevent sex offenders from living stable lives, which have proven to be counterproductive in trying to reduce instances of recidivism.¹⁰⁹

Even when sex offenders are able to finally find a home to settle down in, in 20 to 40% of cases, the sex offender is forced to move out of his or her home at the request of his or her landlord or neighbors after they receive notification of their sex offender label.¹¹⁰ Not surprisingly, these residency restrictions have left a large number of registered "sex offenders homeless throughout the state [of Florida]."¹¹¹

C. *Impact on the Family*

As stated earlier, classifying somebody as a sex offender not only has an adverse impact on the offender's life, but on the lives of his or her loved ones as well.¹¹² While residency restrictions are intended to keep sex offenders away from certain areas, they also indirectly prevent the spouses and children living with sex offenders—individuals who may not have been charged with sex crimes—from living in close proximity to these areas as well.¹¹³ As a result, the children of sex offenders are forced to live farther away from schools, which can be quite an inconvenience for the family.¹¹⁴

As far as their social life is concerned, a survey of the family members of registered sex offenders revealed that 86% experienced stress in

106. Levenson & Tewksbury, *supra* note 89, at 56.

107. Kari White, Note, *Where Will They Go? Sex Offender Residency Restrictions as Modern-Day Banishment*, 59 CASE W. RES. L. REV. 161, 170 (2008) (explaining that some states go above and beyond what statutory rape laws require in regards to residency restrictions for sex offenders).

108. *Id.*

109. Stine, *supra* note 15, at 1183 (arguing that strict residency restrictions prevent sex offenders from living stable lives, which could be the cause of some offenders repeating past criminal behavior).

110. Levenson & Tewksbury, *supra* note 89, at 55–56.

111. White, *supra* note 107, at 170 (explaining the serious consequences of being labeled a sex offender).

112. Levenson & Tewksbury, *supra* note 89, at 57.

113. *Id.*

114. *Id.*

their lives, 77% felt isolated, and 49% had fear for their own safety.¹¹⁵ Half of the family members polled had lost friends as a result of their family member becoming a sex offender, and many who were polled admitted that being in a family with a registered sex offender kept them from participating in community events.¹¹⁶

Unfortunately, the children of sex offenders suffer tremendous emotional strain from their parents' label.¹¹⁷ More than half of the family members polled said that the children of sex offenders were treated badly by their classmates.¹¹⁸ Children of sex offenders are reported to feel increased "anger (80%), depression (77%), anxiety (73%), [loneliness] (65%), and fear [for their safety] (63%)."¹¹⁹ Perhaps the most disturbing fact of all is that "one in eight . . . children of [sex offenders] were reported to [experience] suicidal tendencies."¹²⁰ The statistics are clear: Sexual registration requirements will have an extremely negative effect not only on the actual offender, but extend to the offender's family as well.¹²¹

D. *The Lasting Effects of Registering as a Sex Offender*

In 2009, a Michigan appellate court held that forcing a "teenager [who was] convicted of [having] consensual [intercourse] with his below-the-age-of-consent girlfriend" to register as a sex offender was considered cruel and unusual punishment.¹²² "Sex offender registration [could be considered a] modern day scarlet letter," and as a result, the decision to classify a person as a sex offender should not be taken lightly.¹²³ For this reason, some states—including Florida—have chosen to put Romeo and Juliet laws into place to protect consenting teenagers from having to register as sex offenders.¹²⁴ These laws, however, are far from perfect.

115. *Id.* at 57.

116. *Id.*

117. Levenson & Tewksbury, *supra* note 89, at 63–64.

118. *Id.* at 63.

119. *Id.* at 63–64.

120. *Id.* at 64.

121. *Id.* at 63–64.

122. Stine, *supra* note 15, at 1188 (providing past constitutional challenges to sex offender laws).

123. Catherine L. Carpenter, *The Constitutionality of Strict Liability in Sex Offender Registration Laws*, 86 B.U. L. REV. 295, 324 (2006) (describing the serious consequences of having to register as a sex offender).

124. *Id.*; Stine, *supra* note 15, at 1184; *see also* FLA. STAT. § 943.04354 (2013).

VI. *FLORIDA STATUTES* § 943.04354—THE ROMEO AND JULIET LAW

A. *Text of Florida's Romeo and Juliet Law*

(1) For purposes of this section, a person shall be considered for removal of the requirement to register as a sexual offender or sexual predator only if the person:

(a) Was or will be convicted or adjudicated delinquent of a violation of . . . [section] 800.04 . . . ;

(b) Is required to register as a sexual offender or sexual predator solely on the basis of this violation; and

(c) Is not more than [four] years older than the victim of this violation who was [fourteen] years of age or older but not more than [seventeen] years of age at the time the person committed this violation.

(2) If a person meets the criteria in subsection (1) and the violation of . . . [section] 800.04 . . . was committed on or after July 1, 2007, the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender or sexual predator. The person must allege in the motion that . . . [the] removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least [twenty-one] days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. At sentencing or disposition of this violation, the court shall rule on this motion and, if the court determines the person meets the criteria in subsection (1) and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement.¹²⁵

B. *Legal Authority Regarding Florida's Romeo and Juliet Law*

Over the past decade, some states have implemented Romeo and Juliet laws, which absolve certain teenagers from having to register as sex

125. FLA. STAT. § 943.04354(1)–(2).

offenders.¹²⁶ These provisions were created to “impose lighter penalties when both parties are underage, while maintaining strict penalties for sex between an adult and a minor,” because some states believe that “sex between two young people is . . . less punishable than sex between a young person and an adult.”¹²⁷

An offender under section 800.04 of the *Florida Statutes* is automatically labeled a sex offender unless the offender satisfies three elements.¹²⁸ First, the offender must be no “more than [four] years older than the victim.”¹²⁹ Second, the offender must have been “required to register as a sex[] offender” *solely* for that offense.¹³⁰ Third, the offender must have not been charged with multiple sex crimes.¹³¹

If the offender were to satisfy all three of these elements, the offender would have the potential to take advantage of the Romeo and Juliet exception to remove the registration requirement.¹³² The following cases provide authority as to when and how the Romeo and Juliet law could be applied.

1. Defendants Charged with Multiple Sex Crimes

In *Courson v. State*,¹³³ the Second District Court of Appeal held that the defendant—who was charged on two separate occasions under section 800.04(4) of the *Florida Statutes*—did not qualify for the Romeo and Juliet exception because the law requires that an applicant not be charged with multiple sex crimes.¹³⁴

The defendant was found guilty of two separate charges of “lewd and lascivious battery of a victim over [twelve] but [fewer than sixteen] years of age.”¹³⁵ “He was [then] sentenced to three years [in prison], followed by five years of probation, and [was labeled] a sex[] offender.”¹³⁶ The defendant tried to apply the Romeo and Juliet law to remove the requirement that he register as a sex offender, but his motion was denied by

126. Stine, *supra* note 15, at 1184 (providing a brief history of Romeo and Juliet laws).

127. Sabrina A. Perelman, Note, *A Step in the Right Direction: How Kansas v. Limon Indicates a Brighter Future for Gay Rights Under Lawrence v. Texas*, 7 GEO. J. GENDER & L. 217, 240 (2006) (explaining the rationale behind Romeo and Juliet laws).

128. FLA. STAT. §§ 800.04, 943.04354(1).

129. *Id.* § 943.04354(1)(c).

130. *Id.* § 943.04354(1)(b).

131. *Id.* § 943.04354(1)(a).

132. *Id.* § 943.04354(2).

133. 24 So. 3d 1249 (Fla. 1st Dist. Ct. App. 2009).

134. *Id.* at 1250–51; *see also* FLA. STAT. §§ 800.04(4), 943.04354(1)(a).

135. *Courson*, 24 So. 3d at 1250.

136. *Id.*

the trial court.¹³⁷ The trial court agreed with the State, and the defendant appealed.¹³⁸

On appeal, the defendant argued that although the Romeo and Juliet law requires that the defendant not be convicted of more than one section 800.04 crime, denying him usage of the Romeo and Juliet law would be to disregard the legislature's true intent, which was to keep young lovers in consensual relationships from being branded as sex offenders for the rest of their lives.¹³⁹ The State, on the other hand, argued that the plain language of the statute denied the defendant the right to take advantage of the Romeo and Juliet law.¹⁴⁰

The appellate court agreed that "[i]f the language is clear and unambiguous, there is no need to engage in statutory construction, and the statute should be given its plain and obvious meaning."¹⁴¹ Therefore, because the statute clearly states that offenders with multiple sex crime convictions are not able to remove their sex offender registration requirement, the defendant was unable to take advantage of the Romeo and Juliet exception.¹⁴²

The appellate court's holding was consistent with the express terms of the statute but contrary to the original legislative intent.¹⁴³ Regardless, the court would not hold otherwise because to modify the statute's express terms would be an abuse of the court's power.¹⁴⁴ In other words, its hands were tied.

2. The Law's Strict Age Limit

In *State v. Welch*,¹⁴⁵ the Second District Court of Appeal held that because the defendant was slightly more than four years older than his minor girlfriend when she became pregnant with his child, the defendant did not meet the elements required to use the Romeo and Juliet Statute to remove his sex offender registration requirement.¹⁴⁶

137. *Id.*; see also FLA. STAT. § 943.04354(1)–(2).

138. *Courson*, 24 So. 3d at 1250.

139. *Id.*; see also FLA. STAT. §§ 800.04, 943.04354(1)(a).

140. *Courson*, 24 So. 3d at 1250.

141. *Id.* at 1251 (citing *Jackson Cnty. Hosp. Corp. v. Aldrich*, 835 So. 2d 318, 329 (Fla. 1st Dist. Ct. App. 2002), review granted *sub nom.* *Bay Anesthesia, Inc. v. Aldrich*, 847 So. 2d 975 (2003)).

142. *Id.* at 1251; FLA. STAT. § 943.04354(1)(a).

143. *Courson*, 24 So. 3d at 1251.

144. *Id.*

145. 94 So. 3d 631 (Fla. 2d Dist. Ct. App.), *reh'g denied*, No. 2D11-2911, 2012 Fla. App. LEXIS 15191 (Fla. 2d Dist. Ct. App. 2012).

146. *Id.* at 634.

At the time the victim became pregnant with the defendant's child, the victim was fourteen years old, and the defendant was eighteen years old.¹⁴⁷ They were in a relationship with one another, and the defendant was aware of the victim's younger age.¹⁴⁸ The defendant, who was four years, two months, and twenty days older than his girlfriend, was charged with the "second-degree felony of lewd or lascivious battery on a female under sixteen years of age."¹⁴⁹ The defendant was adjudicated guilty, placed on probation for ten years, and labeled a sex offender.¹⁵⁰

After his probation, the defendant attempted to take advantage of the Romeo and Juliet law to remove this requirement to register as a sexual offender.¹⁵¹ The State opposed, arguing that although the sexual conduct between the victim and the defendant was consensual, the defendant did not meet the element of the statute that requires the defendant be no more than *four years* older than the victim at the time of the violation.¹⁵² Despite this argument, the trial court ruled in favor of the defendant, and reasoned that the ages at the time of the offense—eighteen and fourteen—could be considered a four-year difference.¹⁵³ The trial court stated that its decision was "equitable under the circumstances" because, in the last ten years, the defendant had completed his sex offender treatment, he had married another woman, and had been having unsupervised contact with the children from his marriage.¹⁵⁴

The State later appealed this ruling, and the case was brought to the appellate court.¹⁵⁵ The higher court then reversed the lower court's ruling, holding that the language, "not more than [four] years older than the victim,"¹⁵⁶ is clear, and that construction of its interpretation was not necessary.¹⁵⁷ Therefore, the court had no choice but to hold that he did not meet the requirements of the Romeo and Juliet law because the defendant was more than four years older than the victim.¹⁵⁸

147. *Id.* at 633.

148. *Id.*

149. *Id.*

150. *Welch*, 94 So. 3d at 633.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Welch*, 94 So. 3d at 633.

156. *Id.* at 634 (quoting *State v. Marcel*, 67 So. 3d 1223, 1225 (Fla. 3d Dist. Ct. App. 2011)); FLA. STAT. § 943.04354 (2013).

157. *Welch*, 94 So. 3d at 634 (quoting *Marcel*, 67 So. 3d at 1225).

158. *Id.*

Erasing all doubt as to what the phrase *not more than four years* meant, the court in *State v. Marcel*¹⁵⁹ held that "[i]f a defendant [was] one day [older than] the four-year . . . limit, . . . he [would be] ineligible to" use the Romeo and Juliet law to pardon his sex offender registration requirement.¹⁶⁰ The defendant was charged with one count of lewd or lascivious battery of a person over the age of twelve but under the age of sixteen because he "was four years, three months, and eight days older than the victim."¹⁶¹ The defendant was initially labeled a sex offender, but once the Romeo and Juliet law was enacted, the trial court granted relief to the defendant.¹⁶²

The State appealed, arguing that the defendant had not met the criteria required for the Romeo and Juliet law because he was more than four years older than the victim.¹⁶³ The defendant disagreed and argued that completed years of life, not months and days, should be used when determining whether an offender is "not . . . more than four years older than [a] victim."¹⁶⁴ This interpretation, known as the *birthday rule*, would not consider a defendant to "be more than four years older than [a] victim until . . . [he] was five years older."¹⁶⁵

The appellate court rejected this argument and explained that the Romeo and Juliet law requires an analysis of *time* and the *birthday rule* was only meant to calculate *age*.¹⁶⁶ The court also reasoned that because the Romeo and Juliet law uses the word *more*—"commonly understood to mean *greater*"—the law's language was clear as to whether or not the defendant was more than four years older than the victim.¹⁶⁷ The court went even further, stating, "[i]f a defendant is one day past the four-year eligibility limit prescribed by section 943.04354 of the *Florida Statutes*, he is ineligible to petition for relief."¹⁶⁸ Therefore, because of the strict interpretation of the Romeo and Juliet law, the defendant was unable to petition for removal of his sex offender registration requirement.¹⁶⁹

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159. 67 So. 3d 1223 (Fla. 3d Dist. Ct. App. 2011).
 160. *Id.* at 1225; *see also* FLA. STAT. § 943.04354(1)(c).
 161. *Marcel*, 67 So. 3d at 1224; *see also* FLA. STAT. § 800.04(4)(a).
 162. *Marcel*, 67 So. 3d at 1224.
 163. *Id.*; *see also* FLA. STAT. § 943.04354(1)(c).
 164. *Marcel*, 67 So. 3d at 1224.
 165. *Id.*
 166. *Id.*
 167. *Id.* at 1225; *see also* FLA. STAT. § 943.04354(1)(c).
 168. *Marcel*, 67 So. 3d at 1225; *see also* FLA. STAT. § 943.04354(1)(c).
 169. *Marcel*, 67 So. 3d at 1225.

3. Sexual Orientation Discrimination in Romeo and Juliet Laws

Unfortunately, not only are some statutory rape laws gender-biased, some are biased regarding sexual orientation as well.¹⁷⁰ As shown in *State v. Limon*,¹⁷¹ the penalties in statutory rape cases can be much harsher for same-sex couples than for heterosexual couples.¹⁷² In this case, the defendant had just turned eighteen years old when he participated in consensual oral sex with a fourteen-year-old.¹⁷³ The defendant was less than four years older than the victim, so the defendant was young enough to take advantage of Kansas' Romeo and Juliet law.¹⁷⁴ Unfortunately for the defendant, however, Kansas' Romeo and Juliet law did not provide protection for individuals in homosexual relationships.¹⁷⁵ Therefore, because the defendant's partner was of the same sex, he was unable to use the Romeo and Juliet law exception and was sentenced to seventeen years in prison.¹⁷⁶

The defendant appealed and the Kansas Supreme Court reversed the lower court's decision.¹⁷⁷ The court held that the discrimination of a same-sex relationship in its Romeo and Juliet statute violated the Equal Protection Clause and, therefore, was unconstitutional.¹⁷⁸ As a result, the defendant's sentence was reduced from seventeen years in prison to one year in prison.¹⁷⁹

However, Kansas is not the only state that has discriminatory language against same-sex couples in its statutory rape laws.¹⁸⁰ Currently, Texas prohibits homosexuals from taking advantage of its Romeo and Juliet statute.¹⁸¹ There has recently been a legislative push to include same-sex couples in this law, but as of today, homosexual teenagers in Texas cannot

170. James, *supra* note 10, at 253 (providing an instance of discrimination in a Romeo and Juliet law).

171. 122 P.3d 22 (Kan. 2005).

172. James, *supra* note 10, at 253; Kate Sutherland, *From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities*, 9 WM. & MARY J. WOMEN & L. 313, 327 (2003) (discussing the discrimination of same-sex couples in Romeo and Juliet laws).

173. *Limon*, 122 P.3d at 24.

174. *Id.*

175. *Id.*

176. Sutherland, *supra* note 172, at 327.

177. *Limon*, 122 P.3d at 41.

178. *Id.* at 40; James, *supra* note 10, at 253.

179. See James, *supra* note 10, at 253; Sutherland, *supra* note 172, at 327.

180. See Jim Vertuno, *Bills Would Add Gays to Texas' 'Romeo and Juliet' Law*, STAR-TELEGRAM (Apr. 8, 2013), <http://www.star-telegram.com/2013/04/08/4759215/bills-would-add-gays-to-texas.html>.

181. *Id.*

use the Romeo and Juliet law to remove their sex offender registration requirement.¹⁸²

VII. OPINION

A. *Why Florida's Statutory Rape Law Is Too Harsh on Otherwise Consenting Teenagers*

The purpose of this Comment is not to condone teenage sex; it is to bring to light that the consequences of section 800.04(4) of the *Florida Statutes* regarding consenting teenagers—which can be as severe as serving fifteen years in prison—are *unintended consequences*.¹⁸³ Instead of providing real, effective ways to communicate to teenagers why abstaining from sexual activity at such a young age is a viable option, the statute seeks to imprison teenagers who have already engaged in sexual activity.¹⁸⁴ This law does not deter consenting teenagers from engaging in sex, but merely punishes those who have already done so.¹⁸⁵

The Model Penal Code ("MPC"), a statutory text written by the *American Law Institute*, argues that teens close in age should not be held criminally liable for partaking in oral or vaginal sex.¹⁸⁶ The *American Law Institute* reasons that because of the greater likelihood that teenagers would be otherwise consenting participants in sexual activity, criminal law should not target such activity.¹⁸⁷ Additionally, the MPC states that criminal liability against only the older party of an otherwise consenting teenage relationship is unfair.¹⁸⁸ Some states agree with this reasoning and have completely decriminalized sex amongst consenting teenagers altogether.¹⁸⁹ With a growing number of states implementing Romeo and Juliet laws, it is clear that states do not find such severe punishments against consenting

182. *Id.*

183. FLA. STAT. §§ 775.082(3)(c), 800.04(4) (2013).

184. *Id.* § 800.04(4), (5)(b)–(d), (6)(b)–(c); *see also id.* § 775.082; Stine, *supra* note 15, at 1212–15.

185. *See* FLA. STAT. § 800.04(4), (5)(b)–(d), (6)(b)–(c); Stine, *supra* note 15, at 1212–15.

186. MODEL PENAL CODE § 213.3 (Proposed Official Draft 1962); Siji A. Moore, Note, *Out of the Fire and into the Frying Pan: Georgia Legislature's Attempt to Regulate Teen Sex Through the Criminal Justice System*, 52 HOW. L.J. 197, 224 (2008) (providing an argument posed by the MPC).

187. MODEL PENAL CODE § 213.3 (Proposed Official Draft 1962); Moore, *supra* note 186, at 224.

188. MODEL PENAL CODE § 213.3 (Proposed Official Draft 1962); Moore, *supra* note 186, at 224.

189. Olsen, *supra* note 48, at 404 (discussing recent revisions of statutory rape laws).

teenagers to be just.¹⁹⁰ Even these Romeo and Juliet exceptions, however, do not do enough to protect teenagers from the severe consequences of statutory rape laws.¹⁹¹

B. *Why Florida's Romeo and Juliet Law Does Not Do Enough to Protect Otherwise Consenting Teenagers*

In the *Welch* case, Justice Morris, in his concurring opinion, discussed the injustice of the appellate court's holding that the defendant—who was four years and two months older than his girlfriend—would be unable to use the Romeo and Juliet exception to remove the requirement to register as a sex offender:

This case profoundly illustrates the manifest injustice which can result when a statute has rigid criteria that prevents a trial judge from exercising reasonable discretion. Judge Stargel, the trial judge in this case, attempted to exercise such discretion in the application of this statute. The facts of this case cry out for the result he reached. Regrettably, the requirements of the law do not permit us to support his decision.

Is there a societal interest in prohibiting an eighteen-year-old boyfriend and fourteen-year-old girlfriend from having consensual sexual relations? The answer to that question is obvious; of course there is. Mr. Welch should be punished for this behavior, and he was. However, is it really the will of the people to label the eighteen-year-old in this situation a sex offender for life? Is Mr. Welch who we really think of when we contemplate the definition of what a sex offender is or should be? I doubt most people would include him in this category.¹⁹²

Although these Romeo and Juliet laws help protect most consenting teenagers, some teenagers continue to fall victim to the laws' strict construction.¹⁹³ These high school seniors, because they are more than four years older than their partners, end up receiving the same exact punishment as much older adult sex offenders.¹⁹⁴

190. Stine, *supra* note 15, at 1184; *see also* FLA. STAT. § 943.04354.

191. *See* State v. Welch, 94 So. 3d 631, 634–35 (Fla. 2d Dist. Ct. App.) (Morris, J., concurring), *reh'g denied*, No. 2D11-2911, 2012 Fla. App. LEXIS 15191 (Fla. 2d Dist. Ct. App. 2012).

192. *Id.*

193. *See, e.g., id.*

194. *See, e.g., id.*

We need to use a common sense approach here: There is no substantive difference between a relationship in which an offender is 3 years and 364 days older than his or her partner and a relationship where an offender is four years and one day older than his or her partner. Even if there were a substantive difference, it surely should not amount to enough of a difference that one party be labeled a sex offender, while the other party is not. According to Florida's statutory rape laws, however, this distinction is justifiable.¹⁹⁵

VIII. THE SOLUTION

Kaitlyn is not a sexual predator who sought to take advantage of a younger girl.¹⁹⁶ Kaitlyn is just a girl who had a crush on her friend.¹⁹⁷ There is no doubt that when looking from the outside in, there seems to be a difference in maturity between an eighteen-year-old and a fourteen-year-old.¹⁹⁸ But who is to say that all teenagers act their own age? When Kaitlyn was asked whether she thought it was wrong of her to be in a sexual relationship with her girlfriend because of their age difference, she responded "'that she did not think about it because (redacted) acted older.'"¹⁹⁹ Instead of sentencing teenagers like Kaitlyn to fifteen years in prison—a punishment that has not been shown to prevent consenting teens from beginning sexual relationships²⁰⁰—we should lower the sentences for consenting teenagers and provide services to help both the offender and the victim understand the consequences and risks that come with entering into a sexual relationship.²⁰¹

If our true intent is to prevent teenagers from having sex at such an early age, there needs to be a more beneficial outcome than locking teenagers in prison for fifteen years and robbing many of them of promising futures. It would not be surprising in the least if neither Kaitlyn nor her girlfriend knew that they were even breaking the law.²⁰² This lack of effectiveness in deterring underage sex is the statute's biggest flaw.²⁰³

While Kaitlyn may still be able to apply the Romeo and Juliet statute to remove her sex offender registration requirement, she still faces up to

195. See FLA. STAT. § 943.04354.

196. See Barchenger, *supra* note 1.

197. See *id.*

198. See *id.*

199. *Id.*

200. Stine, *supra* note 15, at 1212–13 (explaining the ineffectiveness of rape laws in regards to consenting teenagers); see also FLA. STAT. §§ 775.082, 800.04.

201. See, e.g., Stine, *supra* note 15, at 1211–12, 1214–16, 1224–25.

202. See Barchenger, *supra* note 1.

203. See FLA. STAT. § 943.04354; Stine, *supra* note 15, at 1212–14.

fifteen years in prison.²⁰⁴ Not all teenagers charged with statutory rape will be as lucky—if you can call it that—as they may be slightly too old to use the Romeo and Juliet exception.²⁰⁵ Instead of using such a strict numbering system to determine whether a teenager should be labeled a sex offender, a *totality of the circumstances* approach should be implemented to determine so.

Whether the teenagers were in the same high school, whether they shared the same friends, whether the older partner truly had good intentions—this is information that is *important* and should actually be weighed in the legal process. The current Romeo and Juliet laws do not take these essential factors into account, and for that reason, the true intention of the Romeo and Juliet exception is not being realized.²⁰⁶

IX. CONCLUSION

Since Kaitlyn was charged with lewd and lascivious battery of a minor, her case has received national media attention.²⁰⁷ Society can clearly see the wrong in Kaitlyn facing such a harsh punishment.²⁰⁸ And though she will likely escape her sex offender registration requirement,²⁰⁹ the teenagers who fall beyond the Romeo and Juliet law's four-year limit will be provided no such legal protection.²¹⁰ Until Florida makes a change, these unlucky teenagers will continue to be treated the same as the sexual predators that society and the legislature intended to label as sex offenders.²¹¹

Labeling a teenager a *sex offender* is not a decision that should be dependent solely on something as insignificant as a birthday. To the person who argues that *a line needs to be drawn somewhere*, I say, draw it somewhere else.

204. Barchenger, *supra* note 1; Slifer, *supra* note 2.

205. *See, e.g.*, State v. Welch, 94 So. 3d 631, 634 (Fla. 2d Dist. Ct. App.), *reh'g denied*, No. 2D11-2911, 2012 Fla. App. LEXIS 15191 (Fla. 2d Dist. Ct. App. 2012).

206. *See, e.g., id.* at 634–35 (Morris, J., concurring).

207. Slifer, *supra* note 2.

208. Barchenger, *supra* note 1.

209. Slifer, *supra* note 2.

210. State v. Marcel, 67 So. 3d 1223, 1225 (Fla. 3d Dist. Ct. App. 2011).

211. *See* Barchenger, *supra* note 1.