

**IN THE COURT OF APPEALS OF IOWA**

No. 3-688 / 12-2310  
Filed November 6, 2013

**IN THE INTEREST OF A.J.M.,**  
**Minor Child,**

**STATE OF IOWA,**  
Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Charles D. Fagan, Judge.

The State of Iowa appeals the district court order waiving the requirement A.J.M. register as a sex offender. **REVERSED AND REMANDED.**

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney General, Matthew Wilber, County Attorney, and Dawn Landon, Assistant County Attorney, for appellant.

Robert J. Metel, Council Bluffs, attorney for minor child.

Considered by Potterfield, P.J., and Mullins and Bower, JJ.

**BOWER, J.**

The State of Iowa appeals the district court order waiving the requirement A.J.M. register as a sex offender pursuant to Iowa Code section 692A.103(3) (2011). Because we find the district court abused its discretion and protection of the public mandates A.J.M. register as a sex offender, we reverse and remand.

**I. Background Facts and Proceedings**

In April 2011, following a delinquency petition, A.J.M. admitted to fourteen counts of sexual abuse over a period of more than two years. A.J.M. was placed at the Iowa State Training School for girls for the purpose of receiving rehabilitative services.

During her time at the training school, A.J.M. received excellent grades and finished her high school education. Her initial evaluation shortly after arriving at the training school reported a history of depression. The results of various assessment measures showed A.J.M. attempted to present “fake good” results by projecting an image she believed would demonstrate progress rather than presenting an accurate picture of her condition. Her initial psychological evaluation determined she was dishonest about portions of her offenses she believed were unknown to others, and she was found to be in denial about her past behaviors. Later evaluations determined A.J.M. was not making a good effort in meeting program expectations and was attempting to manipulate staff. A February 6, 2012 evaluation stated A.J.M. was unmotivated and did not believe her offenses warranted punishment. At that time A.J.M. also believed others

were to blame for her actions. She was found to lack minimal levels of empathy. Her psychologist recommended she be placed on the sex offender registry.

Any progress A.J.M had displayed slowed or stopped after she completed her schooling. The final report prepared by the training school states A.J.M. was failing to follow through on program commitments and was adept at giving what she believed to be an expected appropriate response, but that someone talking to her “would have no idea how deviant her thought processes are.”

A hearing on whether A.J.M. should be required to register as a sex offender was held on November 29, 2012. The juvenile court officer, Chris Girres, testified as did A.J.M. Girres expressed his frustrations with the lack of treatment programs for female offenders and stated his belief the program offered A.J.M. was inadequate. He assigned most of her failures in participating or putting forth adequate effort while in treatment to the inadequacy of the program itself. Girres further testified there was no proof A.J.M. understood the possible consequences of offending as an adult. He recommended A.J.M. not be required to register as a sex offender due to the hardship of housing restrictions. During his testimony Girres admitted he had conducted independent research on the internet regarding the effectiveness of registry requirements and expressed his belief that placing juveniles on the sex offender registry was never appropriate.

The district court agreed. Scolding the training school for inadequacies in the sex offender treatment program, the district court determined A.J.M.’s failure to show remorse and lack of treatment progress was entirely the fault of the

training school. The district court then cited a recidivism statistic and found “[g]iven the system’s failure, the Court chooses not to compound it by making [A.J.M.] register as a sex offender.” The decision was based upon the recidivism rate and A.J.M. now understanding the future consequences of her actions.

## **II. Standard of Review**

We review the district court’s decision *de novo*, as we do all juvenile proceedings. *In re J.D.F.*, 553 N.W.2d 585, 587 (Iowa 1996). Because the legislature built an element of discretion into the statute, however, we apply *de novo* review “to the extent of examining all the evidence to determine whether the court abused its discretion.” *In re Matzen*, 305 N.W.2d 479, 482 (Iowa 1981).

## **III. Discussion**

“The purpose of Chapter 692A is clear: to require registration of sex offenders and thereby protect society from those who because of probation, parole, or other release are given access to members of the public.” *In re S.M.M.*, 558 N.W.2d 405, 408 (Iowa 1997). The statute contains a presumption in favor of forcing a juvenile to register. See Iowa Code § 692A.103(3). The decision made by the district court must be viewed in light of that primary objective, protection of the public.

In the review order waiving the registration requirement, the district court primarily focused on the failure of the training school to provide A.J.M. with an effective treatment program. The district court then states “[g]iven the system’s failure, the Court chooses not to compound it by making [A.J.M.] register as a sex offender.” The district court also relied upon a statistic concerning the rate of

recidivism among juveniles for which there is no support in the record. We find the district court failed to adequately consider the primary objective of the registration requirement, and to the extent the district court considered protection of the public, it relied upon information outside the record rendering the decision incorrect.

Upon a full review of the record, A.J.M. has failed to show she understands the full consequences of her actions, has not transitioned to adulthood in a manner that would create a sense of confidence that she will not reoffend, and is both willing and able to hide her true feelings and desires. Though her lack of progress may be attributable, in part, to failures of the training school's treatment program, those failures do not rationally justify placing the public at risk.<sup>1</sup> We recognize A.J.M. will face some hardship, particularly in finding a place to live, as a registered sex offender. We find, however, the focus of the statute on protecting the public compels this result. We reverse the order of the district court and remand with instructions to enter an order requiring A.J.M. to register as a sex offender.

**REVERSED AND REMANDED.**

Mullins, J., concurs; Potterfield, P.J., dissents.

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<sup>1</sup> We note A.J.M. failed to participate fully in the program which was offered, undermining the district court's conclusion her lack of progress is the result of an inadequate program. There is little reason to believe she would have fully participated in a better designed treatment program.

**POTTERFIELD, P.J.** (dissenting)

I would affirm, finding that the well-informed decision of the juvenile court was well within its range of discretion and in the best interests of the child. The court explicitly referenced its review of the child's "entire file and all the documentation regarding the child's stay at the State Training School for Girls."

The majority acknowledges the clear record that while A.J.M. was attending high school classes at the Training School she participated wholeheartedly; she earned good grades and finished her high school education. During the several-month period following her completion of high school and before she was eighteen, A.J.M. was moved to a cottage where she was isolated and received little programming. While the majority faults the child for lack of motivation while she was isolated in a cottage, the juvenile court found: "To place a child who has a depressive disorder coupled with dysthymic, self-demeaning thoughts, and a feeling of inferiority in relative isolation is to set her up for failure." The court stated the school's lack of a certified sex offender treatment program such as exists at the Training School for Boys was a surprise to the court and resulted in a miscarriage of justice.

Although the majority states the juvenile court based its decision on the statistical rate of recidivism among juveniles without support in the record, the information was in the testimony of the juvenile court officer who knew A.J.M. and worked closely with her. Juvenile court officer Girres testified that juveniles who go through treatment have a "very high success rate" that is "[c]lose to 98

percent.” The State did not cross-examine the juvenile court officer on this testimony.

Although the State argues in its appeal that the decision to excuse A.J.M. from registering as a sex offender puts public safety at risk, it did not make that argument before the juvenile court. Rather, A.J.M.’s evidence—the testimony and recommendation of her long-time juvenile court officer—was not challenged by the State at the evidentiary hearing. Nor does the majority provide any record evidence for its conclusion that placement of A.J.M. on the sex offender registry would protect the public.

A.J.M. testified that she understood the consequences of any new offense, that she has a plan to continue her study of culinary arts at a local community college. Both her school and residence plans would be closed to her if she is required to register as a sex offender, making her homeless and disqualifying her for future education.

Our statute reflects the reality recognized by the juvenile court and the juvenile court officer, but seemingly ignored by the majority in this case: juvenile sex offenders are fundamentally different than their adult counterparts. *Compare* Iowa Code § 692A.103(1) (“A person who has been convicted of any sex offense. . . shall register as a sex offender”) *with* Iowa Code § 692A.103 (“A juvenile adjudicated delinquent for an offense that requires registration shall be required to register . . . unless the juvenile court waives the requirement”). The statute gives broad discretion to the juvenile court with respect to juveniles; it reads:

3. A juvenile adjudicated delinquent for an offense that requires registration shall be required to register as required in this chapter *unless the juvenile court waives the requirement and finds that the person should not be required to register under this chapter.*

5. If a juvenile is required to register pursuant to subsection 3, *the juvenile court may*, upon motion of the juvenile, and after reasonable notice to the parties and hearing, modify or suspend the registration requirements if good cause is shown.

Iowa Code § 692A.103 (emphasis added). Our supreme court has examined the scope of the discretion allocated to the juvenile court regarding excusing juveniles from sex offender registration:

While it is true that the statute does not provide specific guidelines for the exercise of the court's discretion, it is clear that this discretion is not unbridled, as suggested by S.M.M. The court is not permitted to decide who initially falls within the requirement of the registration statute. The statute prescribes who is covered by the registration requirements; the only discretion in the court is in deciding who will be excused. That type of discretion is found throughout the juvenile code in the dispositional alternatives available to the court when choices have to be made between more and less onerous alternatives.

*In re S.M.M.*, 558 N.W.2d 405, 407 (Iowa 1997). By reversing the juvenile court's decision not to require A.J.M. to be placed on the sex offender registry, the majority encroaches on the juvenile court's expressly-conferred discretion.

Honoring this discretion is especially important now that our juvenile cases are assigned on the best practices model of one family, one judge. The juvenile court judge assigned to make decisions about A.J.M.'s future was familiar with her background, with the reports from her care givers, and with the expectations of her commitment to residential treatment at the school. The majority found an abuse of discretion, necessarily concluding the basis for the trial court's ruling



was “untenable or to an extent clearly unreasonable.” *State v. Craig*, 562 N.W.2d 633, 634 (Iowa 1997). A ruling “is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law.” *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). The juvenile court decision here was well within the range of reasonableness; it was based on the evidence presented at the hearing and on the best interests of the child. I would affirm.