IN THE SUPREME COURT OF OHIO

IN RE D.S., A DELINQUENT CHILD	:	
	:	CASE NO. 14-0607
	:	
	:	ON APPEAL FROM THE LICKING COUNTY
	:	COURT OF APPEALS, FIFTH APPELLATE
	:	DISTRICT
	:	CASE NO. 13-CA-58

BRIEF OF JUVENILE LAW CENTER *ET AL.* AS *AMICI CURIAE* IN SUPPORT OF APPELLANT D.S.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Ohio Cases

Ohio State Statutes

Ohio Constitutional Provisions

Federal Cases

Federal Statutes

Federal Constitutional Provisions

Other State Cases

Other State Statutes

Other Authorities

STATEMENT OF INTEREST

The organizations submitting this brief work on behalf of adolescents in a variety of settings, including adolescents involved in the juvenile and criminal justice systems. Amici are advocates and researchers who have a wealth of experience and expertise in providing for the care, treatment, and rehabilitation of youth in the child welfare and justice systems. Amici know that youth who enter these systems need extra protection and special care. Amici understand from their collective experience that adolescent immaturity manifests itself in ways that implicate culpability, including diminished ability to assess risks, make good decisions, and control impulses. Amici also know that a core characteristic of adolescence is the capacity to change and mature. For these reasons, Amici believe that youth status separates juvenile and adult offenders in categorical and distinct ways that warrant distinct treatment under the Fourteenth Amendment and the Ohio Constitution. See Appendix for a list and brief description of all Amici.

SUMMARY OF ARGUMENT

Amici respectfully submit this brief for the purpose of expanding upon Appellant's Third Proposition Of Law, "The Imposition of a Punitive Sanction That Extends Beyond the Age Jurisdiction of the Juvenile Court Violates the Due Process Clauses of the United States and Ohio Constitutions." Accordingly, we ask that this Court hold S.B. 10 unconstitutional as applied to children.

With the adoption of 2007 Am. Sub. Senate Bill 10 (S.B. 10), Ohio now registers many children as sex offenders for longer than these children will have even been alive. Some children as young as fourteen years old with no previous delinquent offenses are subject to twenty-year registration with attendant onerous reporting requirements. This registration scheme violates

state and federal constitutional due process protections because it is inconsistent with the special protections the United States Supreme Court has held must be afforded children. *See, e.g., Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v North Carolina*, 131 S. Ct. 2394 (2011); *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

Ohio has long treated children differently than adults and prioritized rehabilitation over punishment. Towards that end, Ohio shields children from adult consequences, such as criminal stigma, so that children may become productive members of society. Because of the rehabilitative aims of the juvenile court, juvenile offenders are not offered the full panoply of procedural rights that adult criminal defendants receive. They lack, for example, the right to trial by jury. Yet D.S. faces serious adult consequences, including decades of registration and a risk of lifelong stigmatization. As a result, D.S., and others in his position, receive "the worst of both worlds" *In re Gault*, 387 U.S. 1, 18 n.23 (1967).

This Court has never addressed the question of whether sex offender registration violates a child's fundamental reputation right as protected by the Due Course clause of the Ohio Constitution.[1] In light of the protective approach courts must take when applying constitutional standards to children, *Roper*, 543 U.S. at 551; *Graham*, 560 U.S. at 48; *J.D.B.*, 131 S. Ct. at 2394; *Miller*, 132 S. Ct. at 2455, the explicit reference to reputation in the Ohio Constitution's Due Course clause, which is Ohio's analog to the federal due process clause, and the historical

[1] While the question before the court today is one of Due Process, this Court may consider questions about Due Course. Courts have repeatedly held that the Due Course clause of the Ohio Constitution is interpreted as a Due Process right. *Arbino v. Johnson & Johnson*, 880 N.E.2d 420, 433 (Ohio 2007) (citing *Direct Plumbing Supply Co. v. City of Dayton*, 38 N.E.2d 70, 72 (Ohio 1941)).

treatment of reputation in Ohio and other states, children have a fundamental right to reputation. Thus, the registration requirements can only stand if they are narrowly tailored to serve a compelling state interest. They do not meet this standard. Indeed, research shows that registration of juvenile offenders neither improves public safety nor rehabilitates youth.

The 2006 federal Adam Walsh Child Protection and Safety Act, Pub. L. No. 109-248, 120 Stat. 587–the impetus for S.B. 10–provides that state courts may evaluate the constitutionality of their individual registration schemes. 42 U.S.C. § 16925. Upon determination that the scheme is in violation of constitutional law, it may be stricken without jeopardizing the state's federal financial benefits. 42 U.S.C. §16925. Requiring D.S. and other similarly situated children to register for up to twenty years violates both the Ohio and United States Constitutions.

STATEMENT OF FACTS

Amici curiae adopt the Statement of Facts set forth by Respondent D.S.

ARGUMENT

I. S.B. 10 violates procedural due process because D.S. and other similarly situated children face adult punishment, including sexual offender registration for up to twenty years, without the due process protections afforded adults.

"Due process of law is the primary and indispensable foundation of individual freedom." *In re Gault*, 387 U.S. 1, 20 (1967). Procedural due process is implicated when the state threatens to deprive an individual of a fundamental right, including life, liberty, or property. *Ingraham v. Wright*, 430 U.S. 651, 672 (1977). It has long been settled that freedom from bodily restraint and punishment are constitutionally protected liberty interests, *id.* at 652, and that the "due course of law" guarantee of the Ohio Constitution, Ohio Const. art. I, § 16, is coextensive with, or even more protective than, the due process clause of the Fourteenth Amendment. *Direct Plumbing Supply Co. v. Dayton*, 38 N.E.2d 70, 72 (Ohio 1980).

In *State v. Hayden,* 773 N.E.2d 502, 505 (Ohio 2002), this Court held that sex offender registration for adults is not punitive. As a result of changes to the statutory scheme, this Court has more recently concluded that sex offender registration requirements are a form of punishment that interferes with the fundamental right to liberty, and thus must comport with procedural due process. *State v Williams*, 952 N.E.2d 1108 (Ohio 2011) [Hereinafter *Williams* (2011)]. *See also State v. Pasqua*, 811 N.E.2d 601 (Ohio Ct. App. 2004).

A. The Ohio Juvenile Court does not afford juveniles, including those prosecuted for sex offenses, the same due process protections as adults.

In Ohio, juveniles who are charged and prosecuted in juvenile court have no right to a jury trial or a public hearing, and hearings can be "informal." R.C. 2151.35 (A)(1). Only Serious Youthful Offenders and children bound over and tried as adults receive a public jury trial with all of the due process protections afforded adults. R.C. 2151.35. Juvenile sex offenders classified as Tier II under 2007 Am. Sub. Senate Bill 10 (S.B. 10) do not receive these protections.

Under S.B. 10, after a child is classified as a sex offender and ordered to register, his first opportunity for review is at an End of Disposition hearing after he is discharged from parole. R.C. 2152.84. If he is kept on the registry, his next opportunity to be reclassified does not take place until three years later; if he is denied again, he may petition again three years later, and then every five years thereafter. R.C. 2152.85. These reclassification hearings do not occur automatically. The child himself must submit a petition for reclassification, R.C. 2152.85(A), and he has no right to an attorney in preparing the petition.[2] Moreover, by that point, there is a

[2] R.C. 2152.85 does not state whether the child has a right to have an attorney assist him in preparing the petition.

high likelihood that the information, having become public, will continue to follow the child throughout his or her life. *See* Section II.E.2., *infra*. If the child fails to register a first time, he will be prosecuted for a felony in the same degree as the underlying crime that resulted in registration. R.C. 2950.99(A). Failure to register a second time can result in a mandatory prison sentence with no possibility for reduction.

Due Process has been historically more limited in juvenile court because the primary purpose of juvenile court is rehabilitation. Ohio's juvenile justice system has several purposes:

> The overriding purposes for dispositions under this chapter are to provide for the care, protection, and mental and physical development of children subject to this chapter, protect the public interest and safety, hold the offender accountable for the offender's actions, restore the victim, and rehabilitate the offender.

R.C. 2152.01.This Court has reiterated that "[t]he very purpose of the Juvenile Code is to avoid treatment of youngsters as criminals and insulate them from the reputation and answerability of criminals." *In re Agler*, 249 N.E.2d 808, 814 (Ohio 1969).

Because of the emphasis on protection and rehabilitation of children, the juvenile system operates differently than the adult system. For instance, juveniles may permissibly be denied a jury trial in a delinquency adjudication when the possible penalty is confinement until majority. *See McKeiver v. Pennsylvania*, 403 U.S. 528, 542 (1971) (plurality). The Supreme Court has justified this difference on the basis that preserving confidentiality, informality and flexibility may allow the courts to better address the rehabilitative purpose of the juvenile court system. *McKeiver,* 403 U.S. at 534 (citing *In re Winship*, 397 U.S. 358, 366 (1970)).

However, "neither the Fourteenth Amendment nor the Bill of Rights is for adults alone." *In re Gault*, 387 U.S. at 13. Although juveniles may receive different due process, their treatment must meet the applicable standard of "fundamental fairness." *Id.* at 74 (Harlan, J., concurring)

"Fundamental fairness may require additional procedural safeguards for juveniles in order to meet the juvenile system's goals of rehabilitation and reintegration into society." *In re C.P.*, 967 N.E.2d 729, 750 (Ohio 2012).

B. Ohio's sex offender registration laws are punitive.

While the justification for providing children with less due process rights is juvenile court courts' focus on rehabilitation, rather than punishment, this Court has found twice in the past four years that Ohio's sex offender registration laws are in fact punitive, particularly for juveniles who face decades of registration and a lifetime of stigma. *In re C.P.*, 967 N.E.2d at 741; *Williams* (2011), 952 N.E.2d. at 1112.

In *Williams* (2011), the Supreme Court of Ohio recently held that registration requirements were punitive for an adult who was automatically registered under Tier II for 25 years without opportunity for reclassification. 952 Ne.2d. at 1108. Williams was required to register with the sheriff in the counties where he lived, worked, and went to school every 90 days, and much of his personal information could be made available in an online sex offender database. *Id.* at 1111-12. The holding in *Williams* (2011) significantly changed Ohio law on sex offender registration. Prior to *Williams* (2011), this Court had determined that the registration, classification, and notification provisions of sex offender registration laws were simply "civil and remedial in nature," *State v. Clayborn*, 928 N.E.2d 1093 (2010). In *Williams* (2011), this Court determined that new amendments to Ohio Revised Code Chapter 2950 made the registration requirements primarily punitive: "'I do not believe that we can continue to label these proceedings as civil in nature. These restraints on liberty are the consequences of specific criminal convictions and should be recognized as part of the punishment that is imposed as a result of the offender's actions.'" *Williams* (2011), 952 Ne.2d at 1112 (quoting *State v.*

Wilson, 865 N.E.2d 1264, 1274 (Ohio 2007) (Lanzinger, J., concurring in part and dissenting in part). This Court's finding that S.B. 10 is punitive applies equally to juveniles and adults. *See In re D.J.S.,* 957 N.E.2d 288 (Ohio 2011) (applying *Williams* (2011) to juvenile cases).

In *In re C.P.*, this Court affirmed the punitive nature of the statute. 967 Ne.2d at 729. C.P. was a juvenile sentenced to mandatory lifetime registration under S.B. 10, including in-person registration with the sheriff in the country of residence every 90 days, in-person registration in the counties where the juvenile was attending school working, re-registration upon changes to personal information, placement on a public registry, and felony prosecution for failing to register *Id.* at 733-34. This Court found that these requirements for juveniles were not only punitive, but constituted cruel and unusual punishment under the Eighth Amendment. This Court also concluded that automatic, lifetime registration for juveniles actually "do[es] violence to the rehabilitative goals of the juvenile court process" by making reintegration into society more difficult. *Id.* at 744.

Unlike Williams, D.S. is a juvenile; unlike C.P., he has not been classified as a Serious Youth Offender, and has been placed in a lower tier under S.B. 10. Despite his youth and designation as a Tier II offender, however, D.S. is subject to similar registration requirements as both Williams and C.P. D.S. must register in person every 180 days at the sheriff's office, and re-register each time he spends more than three days in a new county, for up to 20 years. R.C. 2950.06(B), 2950.041, 2950.11. The personal information he provides to the sheriff, such as fingerprints and photographs, are public records accessible by the community. R.C. 149.43; R.C. 2950.081. If he fails to register, D.S. will face a third degree felony prosecution, and three years of mandatory jail time if he fails to register more than once. R.C. 2950.99(A). As this Court

concluded in *Williams* (2011), "Following the enactment of S.B. 10, all doubt has been removed: R.C. Chapter 2950 is punitive." 952 Ne.2d at 1112.

C. Registration differs from typical juvenile dispositions because it imposes adult consequences, including registration past age 21, the possibility of adult incarceration for failing to register, and lifelong damage to reputation.

Juvenile dispositions are typically time-limited, confidential, and directed toward rehabilitation. Under normal circumstances, the consequences imposed following a juvenile adjudication can last only until age 21, when juvenile court jurisdiction ends. R.C. 2152.02(C)(6). Under Ohio law, non-sex-offender juveniles may only receive adult sanctions if they have been bound over and prosecuted as adults or prosecuted as serious youthful offenders. R.C. 2152.13. *See also State v. D.H.,* 901 N.E.2d 209 (Ohio 2009). In these proceedings, specific and more extensive due process protections are available, including the right to a jury trial. R.C. 2151.35.

Juvenile sex offender registration is different. Tier II registrants like D.S. face adult punishment: they may have to register at least twice a year for 20 years after release from probation. R.C. 2950.11. Even if a child is declassified before the end of the 20-year period, the child's registration information has likely already been disseminated. It is a public record subject to inspection by any community member, and it is disseminated through many channels. *See* Section II.E.2., *infra*, discussing publicity and dissemination of juvenile registration. The release of this information is accompanied by "stigmatization" that can "define his adult life" before it even begins, and cause obstacles in employment, education, and personal relationships. *In re C.P.*, 967 Ne.2d at 742; *see* Section II.E.4., *infra*).

Once a juvenile turns 18, if he fails to register, he will be prosecuted as an adult. He will be guilty of a felony in at least the same degree as the underlying offense that was the basis of registration. R.C. 2950.99(A). For example, a child-like D.S. who was adjudicated delinquent of a felony in the third degree will be found guilty of a felony in the third degree as a result of failing to register once he turns 18. If a child is successfully prosecuted for failure to register for a second time, he will receive a mandatory prison sentence of at least three years with no possibility of reduction, in addition to a separate penalty for the felony of failure to register. R.C. 2950.99(A). He will be prosecuted in criminal court with the full panoply of due process protections; however, at that point, due process is too little, too late, as the juvenile can offer no defense to the underlying offense and can only contest whether he did in fact meet the statute's registration requirements.

The registration requirements under S.B. 10 constitute adult punishments. Like the registration requirements struck down as cruel and unusual punishment in *In re C.P.*, S.B. 10 imposes a penalty on Tier II juveniles "that extends well beyond the age at which the juvenile court loses jurisdiction" and has lifelong consequences. *See In re C.P.*, 967 Ne.2d at 737.

D. When a juvenile receives a punitive sanction that extends into adulthood, he must receive due process protections equal to those afforded adults.

Under S.B. 10, juveniles adjudicated as sex offenders are the only children in Ohio who can receive an adult punishment without a jury trial. This is the "worst of both worlds": the juvenile gets "neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children." *Kent v. United States*, 383 U.S. 541, 556 (1966). S.B. 10's treatment of Tier II offenders like D.S. violates procedural due process under the United States Constitution and is contrary to Ohio case law.

In *In re C.P.*, this Court found that automatic imposition of an adult punishment – lifetime reporting and notification – on juveniles violated both due process and the Ohio Constitution and Eighth Amendment bans on cruel and unusual punishment. 967 Ne.2d at 746. The court emphasized the reduced culpability of juveniles; the non-homicidal nature of the crime at issue; the lifelong reputational consequences to the child; the lack of evidence that juvenile registration improves public safety; the negative impact of registration on the possibility for rehabilitation; and the lack of discretion available to the judge. *In re C.P.*, 967 Ne.2d at 737, 740-746. The first five factors also apply directly to D.S., a juvenile who committed a non-homicide offense. Subjecting D.S. to registration will undoubtedly have severe reputational and rehabilitative consequences, and there is no evidence that public safety is improved through registration. *See* Section II.D.1., *infra.*

Under Ohio law, a juvenile subject to a possible adult sentence as a Serious Youthful Offender is entitled to an open and speedy jury in juvenile court. R.C. § 2152.13. This Court has held that children who may be sentenced to adult punishment are entitled to a jury trial at the adjudication stage, even if the adjudication will not necessarily result in adult punishment or the adult punishment might be stayed. In *State v. D.H.*, the juvenile was found delinquent in a juvenile adjudication and given a "blended sentence": a traditional juvenile disposition and a stayed adult sentence. *D.H.,* 901 N.E.2d at 210. The Court stated that the juvenile had a right to a jury trial at the adjudication stage: "Only the jury's factual determination makes the juvenile defendant eligible for a disposition that might include a stayed adult sentence." *Id.* at 217.

D.H. controls the case at bar. Like D.H., D.S. faces a type of "blended sentence": After D.S. is released from confinement or parole, he may face twenty years of sex offender registration, as well as third degree felony charges if he fails to register. Although both juveniles

were subject to adult punishments, D.H. was entitled to a jury trial because he was tried as a Serious Youthful Offender, and D.S. was not.

Additionally, upon D.H.'s release from confinement or probation, a disposition hearing took place to determine whether to lift the stay on the adult portion of D.H.'s sentence. *Id.* at 214. The Court also found that D.H. had a right to certain due process guarantees at the disposition hearing, although those rights did not include a jury trial. *Id.* at 217-18. The stay would automatically remain in place, unless the state made a request to remove the stay and proved by clear and convincing evidence that the juvenile committed further bad acts in custody or created a substantial safety risk. *Id.* at 213-214 (citing R.C. 2152.14). The juvenile had a right to assistance of counsel and a public hearing. *Id.*

Like D.H.'s stayed adult sentence, the adult registration portion of D.S.'s sentence may be removed at the discretion of the court at an End of Disposition hearing. R.C. 2152.83. If it is not removed at that point, D.S. may petition for reclassification every three or five years afterwards. R.C. 2152.85. Although D.S. will receive counsel at the reclassification hearings themselves, Juv. R. 4, he does not have the right to counsel to prepare his petitions. *See supra* note 2. D.S. also receives less due process than D.H. at the End of Disposition hearing. D.S. can remain classified as a sex offender whether or not he committed a new offense. The state does not have to request a hearing or meet any burden of proof to maintain his classification; the judge will determine whether D.S. stays on the registry at his discretion. R.C. 2152.83. While the presumption for D.H. was that the stay would remain in place, the presumption in D.S.'s case is that he will remain on the registry.

In *Agler*, this Court found that a jury is not required in delinquency proceedings when the child can only be confined until age 21 or reformation, and when the child is not subject to any

"civil disabilities" in adulthood due to adjudication. *In re Agler*, 249 N.E.2d at 811. A plurality of the United States Supreme Court has also held that juveniles subject to juvenile proceedings are not entitled to a jury trial under the Fourteenth Amendment. *See generally McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). However, the *McKeiver* court considered a case where the maximum punishment that could be imposed was confinement up to age 21. Therefore, the plurality opinion would appear to have little applicability where juvenile courts are effectively imposing criminal sanctions that extend beyond the jurisdiction of the court. *See, e.g., In re L.M.*, 186 P.3d 164 (Kan. 2008). This Court acknowledged in *D.H.* that cases where adult punishments can be imposed through juvenile adjudication are different, "and thus merit[] separate consideration." *D.H.*, 901 Ne.2d at 215.

Finally, other state Supreme Courts have also concluded that imposing adult punishments in juvenile court without adult process is unconstitutional. The Wisconsin Supreme Court struck down a statute allowing juveniles to receive adult sentences without a jury trial, *State v. Hezzie R.*, 219 Wis.2d 848, 887, 889–90, 919 (1998), and the Kansas Supreme Court held that all juveniles are entitled to a jury trial under the Sixth and Fourteenth amendments. *In re L.M.*, 186 P.3d at 170. Other states guarantee a jury trial to all juveniles by statute. *See, e.g.*, Alaska Delinq. R. 21; Mass Gen. Laws ch. 119 § 55A; Mich. Comp. Laws § 3.911; Tex. Fam. Code Ann. § 54.03. Moreover, when states impose adult sentences or adult-like consequences through youthful offender statutes, like Ohio, they provide adult procedural protections, including the right to trial by jury. *See, e.g.,* Ark. Code Ann. § 9-27-505; Colo. Rev. Stat. Ann. § 19-2-107; Conn. Gen. Stat. § 46b-133d; 18 Ill. Comp. Stat. § 405/5-820; Minn. Stat. § 260B.130.

II. S.B. 10 violates children's due course right to reputation, expressly protected by the Ohio Constitution

S.B. 10 violates children's Due Course rights by interfering with their fundamental right to reputation in a way that is not narrowly tailored to serve a compelling governmental interest. This Court has held that the U.S. Constitution provides the baseline, and that the Ohio Constitution may at times provide more protection than the U.S. Constitution. *Direct Plumbing*, 38 N.E.2d at 73.

This Court has never considered whether sex offender registration for juveniles violates substantive due process under the Ohio constitution. The Court has only addressed this question for adults, *State v. Williams,* 728 N.E.2d 342, 352-355 (Ohio 2000) [hereinafter "*Williams* (2000)"], for whom different legal standards apply. *See Roper*, 543 U.S. at 551; *Graham*, 560 U.S. at 48; *J.D.B.,* 131 S. Ct. at 2394; *Miller*, 132 S. Ct. at 2455. Moreover, this Court has never considered whether sex offender notification laws violate the Due Course provision of the Ohio Constitution, article I, section 16.

A. Reputation is an interest protected by article I, section 16 of the Ohio Constitution, which is self-executing as to reputation.

The presumption is that all provisions of the Ohio Constitution are self-executing. *State ex rel. Russell v. Bliss*, 101 N.E.2d 289, 291 (Ohio 1951). A provision of the Constitution guaranteeing a right is "a positive constitutional inhibition which no legislative act can relieve or modify." *Kraus v. City of Cleveland*, 96 N.E.2d 314, 317 (Ohio Ct. App. 1951). "Any constitutional provision is self-executing to this extent, that everything done in violation of it is void." *Id.* Thus, "[Ohio] [s]tate jurisprudence has long recognized that the state's bill of rights is self-executing and requires no legislative or statutory authority to support or implement it." *Bros. v. Cnty. of Summit*, No. 5:03CV1002, 2007 WL 1567662, *22 (N.D. Ohio May 25, 2007), *aff'd*, 271 Fed.App'x 518 (6th Cir. 2008).

The exception to self-execution of a constitutional provision occurs when the provision does not "supply a sufficient rule by means of which the right which it grants may be enjoyed and protected." *State ex rel. Russell v. Bliss*, 101 N.E.2d 289, 291 (Ohio 1951). A provision is not self-executing if it is not "sufficiently definite" to provide for "adequate and meaningful enforcement of its terms," or if it requires further legislation in order to be enforced, *Williams* (2000) at 521.

Article I, section 16 of the Ohio Constitution explicitly protects the right to reputation: "[E]very person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law." Ohio Const. Art. I, § XVI. This Court has looked to how other state courts apply similar provisions in their state constitutions to determine if a constitutional provision is self-executing. *See, e.g., Williams* (2000), 728 N.E.2d at 353. The other state Supreme Courts to consider due course provisions analogous to article I, section 16 have held such provisions to be self-executing. These courts concluded that clauses like article I, section 16 are "sufficiently definite" because they identify a specific right, reputation, and a specific protection, due course. Thus no enabling legislation was deemed necessary to ensure the right. *See Gearin v. Marion Cnty.*, 223 P. 929, 931 (Or. 1924) (holding that a provision of its state constitution guaranteeing that "every man shall have remedy by due course of law for injury done him in his person, property, or reputation" was self-executing); *Burnham v. Benison*, 236 N.W. 745 (Neb. 1931) (holding that constitutional provision nearly identical to article I, section 16 was "self-executing and controlling, paramount and mandatory"); *Kitchen v. City of Newport News*, 657 S.E.2d 132, 140 (Va. 2008) (holding provision that "no person shall be deprived of his life, liberty, or property without due process of law" to be self-executing); *Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 16 P.3d 533, 535-36 (Utah. 2000)

(holding provision that "[n]o person shall be deprived of life, liberty or property, without due process of law" to be self-executing); *Shields v. Gerhart*, 658 A.2d 924, 929 (Vt. 1995) (stating that a constitutional provision that "[e]very person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character" ensures access to due process).[3]

B. Reputation is a fundamental right subject to strict scrutiny

To determine whether a right is fundamental and thus deserving of strict scrutiny, Ohio courts have looked to a variety of factors, including the text of the constitutional provision itself. Article I, section 16 explicitly states that reputation, person, land, and property are protected by due course of law. The framers of Ohio's Constitution found reputation sufficiently important to list it in the Bill of Rights alongside three of the most sacred individual rights. *Norwood v. Horney*, 853 N.E.2d 1115, 1129 (Ohio 2006) (holding that property and land are fundamental rights). The courts also look to case law. In *State ex rel. Dana v. Gerber*, the Ohio Court of Appeals found a fundamental right to reputation when they struck down a statute that allowed coroners to adjudicate causes of death without notice and a hearing to adversely affected parties; the court held that the statute deprived parties of their "fundamental rights" to reputation in violation of article I, sections 1 and 16 of the Ohio Constitution and the Fourteenth Amendment of the U. S. Constitution. *State ex rel. Dana v. Gerber*, 70 N.E.2d 111, 118, (Ohio Ct. App.

[3] In contrast, in *Williams* (2000), this Court concluded that article I, section I is not self-executing because it describes "natural law rights" that are not sufficiently defined in the text of the Constitution. *Id.* at 352. This Court found that article I, section 1 "requires other provisions of the Ohio Constitution or legislative definition to give it practical effect" and is not an "express limitation[] on government. *Williams* (2000), 728 N.E.2d at 354.

1946), *abrogated on other grounds by Perez v. Cleveland*, 678 N.E.2d 537 (Ohio 1997). *Williams* [2000] held that there is no fundamental liberty interest in reputation under article I, section I, but the Court was not asked to examine article I, section 16, which explicitly protects reputation.[4] *Williams* also considered the reputation of an adult, not a child. As discussed at Section II.C., *infra*, children suffer increased reputational harm, and warrant heightened constitutional protections.[5]

Other courts have also found that reputation is a fundamental right. Pennsylvania, based on constitutional provisions nearly identical to article 1, sections 1 and 16, found that reputation is "a fundamental right in the same class with life liberty and property." *Pennsylvania Bar Ass'n v. Com.*, 607 A.2d 850, 856 (Pa. Commw. Ct. 1992).

C. Both Ohio and U.S. Supreme Court jurisprudence on children's rights support heightened constitutional protections for youth, including their right to reputation.

Both Ohio and U.S. Supreme Court jurisprudence on children's rights support heightened constitutional protections for youth. Thus, even if the right to reputation is not fundamental for adults, this Court should still find that it is for children. Ohio recognizes that youth involved with the juvenile justice system deserve special privacy protections to preserve their reputation

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[4] Sex offender registry cases since *Williams* (2000) have not undertaken any further constitutional analysis of reputation, but rather relied on *Williams* (2000). *See Miller v. Taft*, 151 F.Supp.2d 922, 926-27 (N.D. Ohio 2001); *State v. Dobies*, 771 N.E.2d 867, 871-72 (Ohio Ct. App. 2001); *State v. Bodyke*, 933 N.E.2d 753 (Ohio 2010).

[5] Moreover, *Williams* (2000) held that reputation is not a fundamental interest, citing *Paul v. Davis,* 424 U.S. 693 (1976), which reasoned that reputation may be a fundamental right if it affects a more "tangible interest" like employment. This Court has since recognized that sex offender registration has a negative impact on the future employment of juveniles, *In re C.P.*, 967 N.E.2d at 745, rendering the *Williams* (2000) reasoning inapt.

and capacity to rehabilitate. *In re Agler*, 249 N.E.2d at 824. In *Agler*, this Court held that juveniles must be treated differently than adults because "the very purpose of the Juvenile Code is to avoid treatment of youngsters as criminals and insulate them from the reputation and answerability of criminals." *Id.* at 810. This Court emphasized that the privacy of juvenile proceedings is one of many safeguards created to preserve the reputation of children. *Id.* at 814. Similarly, in *In re C.P.*, 967 N.E.2d 729, 745 (Ohio 2012), this Court referenced the protection of children's privacy in holding that Ohio's sex offender provision, R.C. 2152.86, was cruel and unusual punishment. The Court noted that "[c]onfidentiality has always been at the heart of the juvenile justice system." *Id.* at 745, and that "[t]he punishment of lifetime exposure for a wrong committed in childhood runs counter to the private nature of our juvenile court system." *Id.*

In both *Agler* and *C.P.*, this Court considered constitutional protections in light of the sensitivity of a young person's reputation. Although harm to privacy, and therefore reputation, was greater for the defendant in *C.P.* because his registration required active public community notification, these privacy concerns are still relevant for D.S. because his registration will inevitably be public, and the publicized information can follow a child throughout life. *See* Section II.E.2., *infra*.

U.S. Supreme Court jurisprudence further emphasizes the importance of providing children special protection under the law. In the past 9 years, the U.S. Supreme Court has issued four decisions emphasizing the constitutional relevance of the distinctive attributes of youth. *See, e.g., Miller*, 132 S. Ct. at 2469 (holding that a mandatory sentence of life without possibility of parole for minors violates the Eighth Amendment); *Graham*, 560 U.S. at 48 (holding that the imposition of life without the possibility of parole for non-homicide crimes violates the Eighth Amendment); *J.D.B.*, 131 S. Ct. at 2394, 2402-03 (holding that age is a significant factor in

determining whether a youth is "in custody" for *Miranda* purposes); *Roper*, 543 U.S. at 575 (holding that the imposition of the death penalty on juvenile offenders violates the Eighth Amendment). Indeed, in *Graham*, Justice Kennedy wrote, "criminal procedure laws that fail to take defendants' youthfulness into account at all [are] flawed." *Graham*, 560 U.S. at 76.

These decisions, and the underlying research on which they are based, emphasize three categorical distinctions between youth and adults that support a more protective treatment of children under the law: youth are more impulsive, more susceptible to outside pressure, particularly negative peer pressure, and more capable of change than adults. These distinctions support greater protection of a child's reputation. Because a youth is more impulsive and more susceptible to pressure than an adult, he is less culpable for his criminal conduct, and thus more likely to be harmed by registration and notification. The youth's increased capacity for change makes it even more important that he be given a second chance.

When considering whether the right to reputation is self-executing and fundamental, this Court should place particular weight on the Supreme Court's, as well this court's, recognition that children deserve special protection. Assessing a child's right to reputation in light of their distinct developmental attributes protects children from the harm of registration and notification, and ensures that the juvenile court remains a court of second chances, allowing youthful offenders the opportunity to put their delinquent misconduct behind them.[6]

D. S.B. 10's registration and attendant consequences harm children's reputation and are not narrowly tailored to achieve its stated end of public safety.

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[6] These distinctions are also true for juvenile sex offenders.

While a legislature may, under its police power, limit fundamental rights by enacting laws to protect the public health, safety, and welfare, any such laws are subject to judicial review and a constitutional analysis. *Direct Plumbing Supply Co. v. City of Dayton*, 38 N.E.2d 70 (1941). The analysis of laws that impede upon those rights is a means-end review. *Id.* at 73. Courts must weigh the infringement on rights against the state's interest. *Id.* Where laws infringe upon fundamental rights, the law must be narrowly tailored to address a compelling state interest. *State v. Burnett*, 755 N.E.2d 857, 866 (Ohio 2001).

A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *State v. Burnett*, 755 N.E.2d 857, 866 (Ohio 2001) (quoting *Frisby v. Schultz*, 487 U.S. 474, 485 (1988)); *City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789 (1984), 808-10. A statute is not narrowly tailored when a "less restrictive alternative [to accomplish the legislative goal] is readily available." *Boos v. Barry*, 485 U.S. 312, 329 (1988). It is also not narrowly tailored if it is over-inclusive or sweeps within its reach situations not pertinent to the legislative goal. *See Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 118, 122 (1991).

The stated interest of S.B. 10 is to provide "adequate notice and information about offenders ...[so] members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release ..." R.C. 2950.02(A)(1). S.B. 10 is predicated on the premise that sexual offenders pose a high risk of committing additional sexual offenses. R.C. 2950.02(A)(2). While protecting the public from sex offenders is a compelling governmental interest, R.C. 2950.02(A)(2), this does not end the analysis. Once the "end" is established as compelling, a court must determine whether the "means" is narrowly drawn to achieve that purpose.

1. Registration sweeps within its reach children who are not likely to threaten public safety.

The research cited in *Roper, Graham* and *Miller* establishes that children—even children who commit the most heinous crimes, including murder—can change and reform as they mature. So too can children who offend sexually. The belief that "sex offenders are a very unique type of criminal" is false with regard to juveniles. Elizabeth Letourneau & Michael Miner, *Juvenile Sex Offenders: A Case against the Legal and Clinical Status Quo*, 17 SEXUAL ABUSE: J. RES. & TREATMENT 293, 300, 296 (2005) [hereinafter "Letourneau, *Against the Status Quo*"]. Unlike adult offenders, children's motivations are rarely sexual in nature. Letourneau, *Against the Status Quo* at 293, 296-97. Rather, children tend to offend based on impulsivity and sexual curiosity. *See* Michael Caldwell, *What We Do Not Know About Juvenile Sexual Re-offense Risk*, 7 CHILD MALTREATMENT 291, 302 (2002) [hereinafter "Caldwell, *Re-offense Risk 2002*"]; Frank Zimring, AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING (2004); See also Judith Becker & Scotia Hicks, *Juvenile Sexual Offenders: Characteristics, Interventions, & Policy Issues*, 989 ANN. N.Y. ACAD. SCI. 397, 399-400, 406 (2003). With maturation most of these behaviors stop. *See* Frank Zimring, *et al.*, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending*, 6 CRIMINOLOGY & PUBLIC POLICY 507 (2007) [hereinafter "Zimring, Early Sex Offending and Late Sex Offending"]; Michael Caldwell, *Sexual Offense Adjudication & Sexual Recidivism among Juvenile Offenders*, 19 SEXUAL ABUSE: J. RES. & TREATMENT 107 (2007), *available at http://www.njjn.org/uploads/digital-library/resource_557.pdf* (last visited Sept. 14, 2014) [hereinafter "Caldwell, *Recidivism Study 2007*"]; *See also* Letourneau, *Against the Status Quo* at 300-01.

Research also establishes that the sexual recidivism rate for juveniles is extremely low. Michael Caldwell, *et al.*, *Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 197, 201-07 (2009) [hereinafter "Caldwell, *Recidivism Study 2010*"](citing recidivism studies dating back to 1994). As a group, juvenile sex offenders pose a relatively low risk to sexually re-offend, particularly as they age into adulthood. Kristen M. Zgoba, *et al.*, *A Multi-State Recidivism Study Using Static-99R & Static-2002 Risk Scores & Tier Guidelines from the Adam Walsh Act*, NATIONAL INST. OF JUST., p. 29 (2012), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/240099.pdf (last visited Sept. 14, 2014) [hereinafter "Multi-State Recidivism Study"]. One meta-study of 63 studies of over 11,200 youth found that the sexual recidivism rate is 7.09% over an average 5-year follow-up. Caldwell, *Recidivism Study 2010* at 197-98. This is half as frequent as adult offenders, for whom sexual recidivism has been estimated at about 13% or higher. Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.*, p. 30 (2013), *available at* http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf (citing R. Karl Hanson & Monique T. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. CONSULTING & CLIN. PSYCH. 348 (1998). When the rare juvenile sex offender does re-offend, it is nearly always in the first few years after the original adjudication—a time when the child is generally already under juvenile court supervision. *Multi-State Recidivism Study* at 24.

Although S.B. 10 has fewer enumerated offenses that require registration for children than for adults, the list of offenses fails as a proxy for future risk. Caldwell, *Recidivism Study 2010* at 205. A child's risk of sexual recidivism cannot be predicted by offense, but rather

requires a risk-assessment. *See* Ashley Batastini, *et al.*, *Federal Standards for Community Registration of Juvenile Sex Offenders: An Evaluation of Risk Prediction & Future Implications*, 17 PSYCHOL. PUB POL'Y & L. 451, 467-68 (2011). The extant research has not identified any stable, offense-based risk factors that reliably predict sexual recidivism in adolescents. Franklin Zimring, *et al.*, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 CRIM. & PUBLIC POLICY 507 (2007). A study comparing the sexual recidivism rates of children based upon the severity of their offense found no significant difference in recidivism rates. Elizabeth Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, SEXUAL ABUSE: A JOURNAL OF RESEARCH AND TREATMENT 393 (2008). In fact, rather than comprising a special class, juveniles who commit sex offenses are no different from juveniles who commit non-sex crimes. Caldwell, *Recidivism Study 2007* at 107-113. Demographic studies have found that personality and psychosocial circumstances are the same. Letourneau, *Against the Status Quo* at 297 ("empirical literature supports the view that juvenile sex offenders, as a group are similar in characteristics to other juvenile delinquents and do not represent a distinct or unique type of offender"). If they re-offend, all are far more likely to re-offend with nonsexual crimes than with sexual crimes. *Id* at 298.

Additionally, there is no evidence that sex offender registration laws are effective in preventing future sex crimes. Instead, studies uniformly conclude that registration has no impact on already very low rates of sexual recidivism; nor does it deter first time offenses. *Raised on the Registry* at 86, 97-98. Conversely, registration imposes stigma and restrictions that could decrease public safety. Elizabeth Letourneau, *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, at 19 (unpublished

manuscript), attached at Exhibit A [hereinafter "Letourneau, Ex. A"]; Letourneau, *et al.*, *Do Sex Offender Registration & Notification Requirements Deter Juvenile Sex Crimes*, 37 CRIM. JUST. & BEHAV. 553, 556, 564-565 (2010)[hereinafter "Letourneau, 2010"]; Quyen Nguyen & Nicole Pittman, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States* DEFENDER ASSOCIATION OF PHILADELPHIA pp. 4, 12 (2011), *available at* http://www.njjn.org/uploads/digital-library/SNAPSHOT_web10-28.pdf (last visited Sept. 14, 2014) (explaining that many law enforcement officials state that flooding registries with children and other low-risk individuals may be more harmful to the public than protective, creating a false sense of security and exhausting valuable resources and limited manpower to track the "wrong offenders"—that is, individuals not likely to ever reoffend sexually). Including children on a sex offender registry may also diminish public safety by diverting resources from high-risk offenders. *Id.* Moreover, the harshness of the punishment could deter families from reporting sex offenses, impeding both prosecution and treatment.

Requiring a child to register as a sex offender may also negatively impact public safety in the realm of non-sexual offenses, by setting up obstacles between the child and a normal, productive life. Being on the registry alienates the child and creates barriers between the child and the educational, employment, housing, and treatment opportunities that are likely to reduce the likelihood of reoffending. *Raised on the Registry passim.*

2. S.B. 10 is not the least restrictive approach and is overly burdensome.

S.B. 10 is not the least restrictive means to meet the state's compelling interest in protecting the public from high-risk sexual offenders, because the overwhelming majority of juvenile offenders are not "high risk" and respond well to treatment. *See* Section, II.D.1., *supra.* For such a system to be effective it should utilize an expert risk assessment that focuses attention

on those that are most likely to sexually reoffend after treatment has been attempted. This practice has been codified in Oklahoma:

> [A] child accused of committing a registerable sex offense undergoes a risk evaluation process reviewed by a panel of experts and a juvenile court judge. The preference is for treatment, not registration, and most high-risk youth are placed in treatment programs with registration decisions deferred until they are released, at which point they may no longer be deemed high-risk. The programs and attention provided by the state to high-risk youth means that very few youth are ultimately registered. The few children that are placed on the registry have their information disclosed only to law enforcement, and youth offenders are removed once they reach the age of 21.

Raised on the Registry at 6-7; *See also* Okl. Stat. tit. 10A § 2-8-101, *et seq.*

Similarly, Pennsylvania's civil commitment statute, known as Act 21, requires the State Sexual Offenders Assessment Board (SOAB) to assess juveniles who remain in need of treatment as they near their 21st birthday. 42 Pa. Cons. Stat. § 6403(b). Amici do not support civil commitment of registrants, like D.S., but do support individualized expert risk assessments like those done under Act 21. The SOAB is comprised of psychiatrists, psychologists, and criminal justice professionals, all experts in the evaluation and treatment of sexual offenders. Pennsylvania Sex Offenders Assessment Board, *About SOAB (Organization Tab)*, *available at* http://www.meganslaw.state.pa.us/portal/server.pt/community/about_soab/7558 (last visited Sept. 12, 2014). The SOAB assessment, which includes the findings of the psychologist, is presented at a full judicial hearing during which a court must find that the person is "likely to engage in an act of sexual violence." 42 Pa. Cons. Stat. § 6403(c)-(d). Commitment is initially for a period of one year, with annual review thereafter. 42 Pa. Cons. Stat. § 6404(b). Act 21 demonstrates that assessments before registration and yearly reviews are both a practical and reasonable means of protecting the public. As such, S.B. 10's registration scheme, which

registers before a child turns 21 and leaves more than one year in between reclassification hearings is not the least restrictive approach.

E. S.B. 10's extensive and onerous registration requirements harm a child's reputation.

1. Juvenile offenders must comply with extensive and onerous registration requirements.

Any child who is age 14–17 at the time of his or her offense is eligible for sex offender classification under S.B. 10. If a child is classified, like D.S., as Tier II, he or she must follow onerous in-person reporting requirements or face criminal prosecution. A child as young as fourteen must report in person to the sheriff of the county where he resides every 180 days to confirm his address. R.C. 2950.06(B)(2). The child will be subject to the in-person reporting requirement for up to twenty years. R.C. 2950.07(B)(2). It is the child's obligation to find transportation to the county sheriff's office, and there is no exception to the requirement if the child attends school, works full time, or both. *Id.* The sheriff's office is not required to send the child a notification that the registration deadline is approaching. R.C. 2950.06(C).

Bi-yearly in-person reporting is the minimum requirement. . At least twenty days before any change of residence, a child must give written notice to the sheriffs of the county where he currently lives and the county where he is moving. R.C. 2950.05. If a child will be temporarily residing somewhere other than his home county for more than 3 days (when, for example, a child's parents share custody but live in different counties or the child's family goes on vacation), the child must register in person with the sheriff in the county of their temporary residence within 3 days of entering that county. R.C. 2950.041(A)(3).

Each time a juvenile offender registers in a new county, he must provide the county sheriff's office with a detailed list of personal information. R.C. 2950.04. This includes, *inter*

alia: name and any aliases, social security number, date of birth, address, the name and address of any employers, name and address of school, photograph, copies of any and all travel or immigration documents, driver's license or State ID number, license plate number for each vehicle owned, driven for work, or regularly available to the child, description where all vehicles are stored, description of each professional or occupational license, permit, or registration, any email address, internet identifiers, or telephone numbers, registered to or used by the child. R.C. 2950.04(C). Registration is not complete until all of the necessary attachments, as well as a signed form, are delivered to the sheriff. All of this information is considered a public record, and is thus open to inspection by any member of the community where the child resides under R.C. 149.43 and R.C. 2950.081.

If the child is one day late in verifying his information, the sheriff will send a warning letter to his home, school, or place of employment "conspicuously" stating that the child has failed to register. R.C. 2950.06(G). A child who fails to register or gives incomplete or inaccurate information is subject to arrest and criminal prosecution.

When child registrants wish to travel out of state, they will likely face numerous challenges because very little contact with a new state will trigger the child's obligation to register—whether that contact is by residence, employment or school. *Raised on the Registry* at 70-71.

Importantly, the failure to register is a criminal offense under S.B. 10. If the failure to register takes place once the child is 18 or older, the child is prosecuted as an adult and is automatically guilty of a felony in at least the same degree as the underlying offense that was the basis of registration. R.C. 2950.99(A). For example, a child-like D.S. who was adjudicated delinquent of a felony in the third degree will be found guilty of a felony in the third degree as a

result of failing to register once he is 18. If a child adjudicated delinquent of a felony fails to register for a second time, he will be prosecuted and sentenced for the felony of failure to register again and, in addition to that penalty, will receive a mandatory prison sentence of at least three years with no possibility of reduction. R.C. 2950.99(A).

A child under 18 who fails to register will be subject to prosecution in the juvenile system. R.C. 2950.99. A child will be adjudicated delinquent of a felony in the same degree as the underlying offense for failure to register, and can face secure confinement until age 21. Moreover, a child's parent, guardian, or custodian can be charged with contributing to the delinquency of a child (a misdemeanor of the first degree) if the parent fails to ensure that their child complies with the registration and verification duties. R.C. 2950.06(G)(1)(f).

2. Information about a child on the registry will be disseminated.

Non-public registry is a misnomer. Although children are not on the public sex offender Internet website under R.C. 2950.13(A)(11), juvenile information will be released and accessible by the public. This information will, in turn, be disseminated more broadly. *See* Wayne A. Logan, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA, p. 229 (2009) (noting that historically, no registry has ever been effectively kept private).

After the initial registration, the Ohio State Police (OSP) disseminates a child's registry information to the Ohio Attorney General and local law enforcement, including sheriffs in the state, representatives of the municipal chiefs of police and marshals of this state, and representatives of the township constables and chiefs of police of the township police departments or police district police forces where the child resides. R.C. 2950.13(A)(6); 2950.13(A)(13). The child's fingerprints and palm prints will be submitted to the Bureau of

Criminal Identification. R.C. 2950.13(D), and photographs will be maintained for general law enforcement purposes. *Id.* The Bureau of Criminal Identification then provides "notifications, the information and materials, and the documents that the bureau is required to provide" to the Federal Bureau of Investigation. R.C. 2950.04, 2950.041, 2950.05, and 2950.06.

Dissemination does not end there. S.B. 10 does not prohibit any person or entity receiving a juvenile's registry information based on a records request from disseminating it further. *See* R.C. 149.43; 2950.081. Individuals may make a public records request from a law enforcement agent and that agent may subsequently release registration information, including license plates, social security numbers, and school and employer name. R.C. 149.43; 2950.081. Law enforcement may not disseminate that information from the non-public database, but they may divulge that information from other sources. *See* R.C. 2950.13(C) (explaining penalties if the public attempts to gain access to the non-public sex offender database). R.C. 149.43; 2950.081. Historically, ostensibly private registry information has been commonly provided to members of the public by police. *See* Note, *Criminal Registration Ordinances: Police Control Over Potential Recidivists*, 103 U. PENN. L. REV. 60, 81 (1954). As has happened nationally, members of the public may make fliers, post notices on social media websites and inform neighbors, employers, schools and anyone else. *See* Brent Champaco, *Sex Offenders in School: What Are the Rules?,* NEWS-TRIBUNE (Tacoma), Dec. 8, 2007, http://www.freerepublic.com/focus/f-news/1936763/posts.

Moreover, as explained above, if the child vacations in Ohio but outside his or her county for more than three days, the child must register personally with the sheriff or the sheriff's designee in the county where the child staying. R.C. 2950.041(A)(3). If the child intends to travel

internationally, the OSP will notify the United States Marshals Service, the Department of Justice and any jurisdiction requiring registration. *Id.*

A child's status as a sex offender may also be released unintentionally. Roommates, foster families or group home residents may see bi-annual letters from the OSP. R.C. 2950.06(C)(2) (authorizing local sheriffs to issue notices that "conspicuously state[]" a juvenile's pending in-person offender verification). The public may see the child travel to, enter or exit the OSP's registration site at the Sheriff's office. The fact that no requirement exists that confidentiality be maintained in such public circumstances presents obvious disclosure risk.

If the OSP believes a child has failed to comply with S.B. 10, registry information will again be disseminated. The sheriff will send a warning letter to the child's (and that child's parents') last known residence, school, institution of higher education, or place of employment. R.C. 2950.06(G)(1). The written warning will state conspicuously that the child has failed to verify the "juvenile offender registrant's current residence" and that the "delinquent child" has seven days from the date on which the warning is sent to verify the current residence with the sheriff. *Id.* If the child fails to verify their address within the seven days, the sheriff will locate the child, most likely at his residence, job or school. R.C. 2950.06(G)(2) The sheriff will then seek an arrest warrant and arrest the child if appropriate. *Id.* If the registrant is an adult, the court docket will be public, posted on the Internet, and available upon request by employers, landlords or others.

Disclosure can also occur as the result of services provided by any number of non-governmental entities which disseminate registry information, including by means of email alerts and website postings. *See, e.g.,* Raised on the Registry at 44 (discussing Offendex, also known as The Official Sex Offender Archive, and HomeFacts, also known as RealtyTrac Holdings, LLC,

private organizations that make current and archived state sex offender registration information purchasable through web based databases).

The stories of children in Ohio make clear the real risk of disclosure. Christopher C. from Marietta, Ohio was placed on the registry for an offense committed when he was 14 years old. Telephone Interview by Nicole Pittman with Christopher C. (Aug. 31-Sept. 2, 2014).[7] He was classified as a Tier II registrant and not subjected to public notification. However, he reports that "even though I was non-public my information was publicized in the local newspaper, the Marietta times, and they ran a story on registrants in the neighborhood on WTAP TV." Steven W. of Mansfield, Ohio has been on the Ohio registry since he was 15 years old. He said he and his family had a horrible experience as a non-public registrant when "Ed Gallick of Fox news showed up at our front door wanting to do a news segment on registered sex offenders living near kids. It has haunted me since ..." Telephone Interview by Nicole Pittman with Steven W. (Aug. 31-Sept. 2, 2014) (*see supra* note 7).

3. S.B. 10 defames children because the public will misunderstand the meaning of registration.

As noted above, registry information of Tier II registrants will be communicated to authorized parties, leaked and made available indefinitely. RC 2950.81; *see* Section II.E.2., *infra*. Based on the implications which surround the term "sex offender," the public will view registered children as dangerous. Negative perceptions of juvenile sex offenders flow not only from the facts disclosed, but what the public may reasonably understand the communication to

[7] For more information on the methodology during these interview, see Human Rights Watch, *Raised on the Registry at* 11.

mean. See McCartney v. Oblates of St. Francis de Sales, 609 N.E.2d 216 (1992). When registration information is leaked, the sex offender label will be considered substantially more damaging than a juvenile record; registrants have found "their status as a 'felon' was not as hard to overcome as their status as their 'sex offender' label." Richard Tewksbury & Michael Lees, Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences, 26, Sociological Spectrum, 309, 330-32 (2006). As one Pennsylvania court recently noted with respect to the consequences of registration on a child's reputation:

> [O]ne of the most essential qualities of reputation is that it may be improved. This situation is even more significant for juveniles because their character is often not firmly set. Thus, a truly rehabilitated juvenile might eventually gain a good reputation to match a good character. However, under [SORNA], ...registration will hold the juvenile's reputation in stasis. The law will imbue the juvenile with the reputation of a sexual offender through formative stages of his life and continuing into old age. A juvenile who was adjudicated delinquent when he was fourteen will continue to be known as a sexual offender when he is seventy.

In re B.B., No. 248 JV 2012, slip op. at 21 (Pa Commw. Ct. 2014 Jan. 6, 2014) attached at Exhibit B. Because of the myths and falsehoods that accompany sex offender registration, the information contained on government registries can never be "accurate" or neutral; as a consequence of sex offender registration, "a wholly stigmatizing and unwelcome public status is being communicated, not mere neutral government-held information." Wayne A. Logan, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA, p. 138 (2009).

4. False assumptions surrounding registration erect barriers to housing, employment, schooling, and normal development.

False assumptions about juvenile sex offender recidivism harm a child's ability to obtain stable housing, employment and schooling. Of the nearly 300 youth offender registrants whose

cases were assessed in *Raised on the Registry*, almost half (132) indicated they had experienced at least one period of homelessness as a result of the restrictions caused by registration. *See Raised on the Registry* at 65. Landlords may refuse to rent to a child after that landlord has been contacted by the sheriff to verify an address. Juvenile registrants cannot live in public housing, which may require parents to either prohibit their child from living with them or move. 42 U.S.C.S. § 13663(a); 24 C.F.R. 960.204. As one registrant, Aaron S. of Paskala, Ohio, explained, after being placed on the registry as a Tier II juvenile registrant, he and his parents were forced to move six times in two years due to severe harassment, vandalism, and threats. Telephone Interview by Nicole Pittman with Aaron S. (Aug. 31-Sept. 2, 2014) (*see supra* note 7). Children subject to registration continuously report that finding or keeping employment is one of the most constant challenges relating to registration. *Raised on the Registry* at 50. Sex offender registration also inhibits a child's ability to succeed in school. *Id.*

Registration leads to depression, hopelessness, and fear for one's safety. *Raised on the Registry pasim.* In extreme cases, sex offender registration has led juveniles to suicide. *Id.* Many registrants experience vigilante activities such as property damage, harassment, and even physical assault. *Id.* Neurological studies have shown that adolescents are "especially vulnerable to the stigma and isolation that registration and notification create," and because youth who are labeled as "sex offenders" often experience rejection from peer groups and adults, they are less likely to attach to social institutions like schools and churches. Justice Policy Institute, *Registering Harm: How Sex Offense Registries Fail Youth and Communities*, p. 24 (2008), *available at* http://www.justicepolicy.org/images/upload/08-

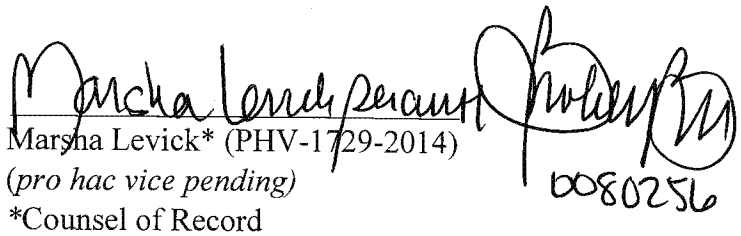
11_RPT_WalshActRegisteringHarm_JJ-PS.pdf. This lack of attachment is detrimental to the juvenile's rehabilitation and development.[8] Uggen C. Kruttschnitt & K. Shelton, *Predictors of Desistance among Sex Offenders: The Interaction of Formal and Informal Social Controls,* 17 JUSTICE QUARTERLY 61 (2000).

[8] Reports from youth in Ohio highlight these problems. Robert W. of Glenmont, Ohio was placed on the registry for an adjudication of delinquency of a sex offense committed at the age of 15. He says he is isolated, depressed, and has no friends because of the registry. Telephone Interview by Nicole Pittman with Robert W. (Aug. 31-Sept. 2, 2014) (*see supra* note 7). Mike E. of Cincinnati, Ohio, was placed on the registry 4 years ago, at the age of 16. He asks "when does it ever end." There is only no finality for me, but there is none for my family." Telephone Interview by Nicole Pittman with Mike E. (Aug. 31-Sept. 2, 2014) (*see supra* note 7).

CONCLUSION

We respectfully urge this Court to reinforce Ohio's precedent, United States Supreme Court jurisprudence, and sound public policy, all of which recognize the unique vulnerabilities of youth and the importance of the rehabilitative mission of the juvenile justice system. S.B. 10 ignores these vulnerabilities and the mission of the juvenile justice system by depriving children of their substantive and procedural due process rights. Therefore, we request that the Court protect children from decades of registration and stigmatization and hold S.B. 10 unconstitutional as applied to children.

Respectfully,



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APPENDIX

Amicus Curiae **Juvenile Law Center** is the oldest public interest law firm for children in the United States. Founded in 1975 to advance the rights and well-being of children in jeopardy. Juvenile Law Center pays particular attention to the needs of children who come within the purview of public agencies—for example, abused or neglected children placed in foster homes, delinquent youth sent to residential treatment facilities or adult prisons, or children in placement with specialized service needs. Juvenile Law Center works to ensure children are treated fairly by systems that are supposed to help them, and that children receive the treatment and services that these systems are supposed to provide. Juvenile Law Center also works to ensure that children's rights to due process are protected at all stages of juvenile court proceedings, from arrest through disposition, from post-disposition through appeal, and that the juvenile and adult criminal justice systems consider the unique developmental differences between youth and adults in enforcing these rights.

Amicus Curiae **Children's Law Center**, Inc. (CLC) is a non-profit organization committed to the protection and enhancement of the legal rights of children. CLC strives to accomplish this mission through various means, including providing legal representation for youth and advocating for systemic and societal change. For over 25 years, CLC has worked in many settings, including the fields of special education, custody, and juvenile justice, to ensure that youth are treated humanely, can access services, and are represented by counsel. For the past two years, CLC has worked on issues facing Ohio youth prosecuted in adult court and placed in adult facilities, including collecting data and issuing several reports on this topic and conducting interviews of youth in the adult court and their families as well as juvenile justice

stakeholders and decision-makers. Based on this research and national research, CLC supports the elimination of mandatory bindover.

Amicus Curiae **Dr. Elizabeth J. Letourneau** is an Associate Professor, Department of Mental Health, Bloomberg School of Public Health, and Director of the Moore Center for the Prevention of Child Sexual Abuse at Johns Hopkins University. She is a leading researcher and national expert on sex offender policy and intervention. Funded research projects include multiple federally-funded examinations of sex offender registration and public notification policies and the largest randomized clinical trial to date examining treatment effectiveness for juveniles who sexually offended. Dr. Letourneau is committed to the rigorous empirical evaluation of legal and clinical policies aimed at reducing sex crimes. Ultimately, the results of this research can inform appropriate interventions aimed at preventing sex crimes. In particular, Dr. Letourneau hopes her research will facilitate the dismantling of clinical and legal policies fail to distinguish between children and adolescents vs. adults, given that such policies seem more likely to harm children and adolescents rather than achieve the community safety aims for which these policies were intended.

Amicus Curiae the **National Juvenile Defender Center** was created to ensure excellence in juvenile defense and promote justice for all children. The National Juvenile Defender Center responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The National Juvenile Defender Center gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The National Juvenile Defender Center provides support to public defenders, appointed counsel, child advocates, law

school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The National Juvenile Defender Center also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

Amicus Curiae **Nicole Pittman** is a Senior Program Specialist and Stoneleigh Fellow at the National Council on Crime and Delinquency. She is a leading national expert who has spent ten years doing groundbreaking work examining the U.S.'s practice of placing children on sex offender registries. Ms. Pittman has interviewed over five hundred (500) individuals on sex offender registries across the country to document the abuses that stem from subjecting children to sex offender registration laws. Her research, publications, and testimony before numerous State Legislatures and Congress are all directed at application in practice, effect, and impact of sex offender registration on children.

Amicus Curiae the **Schubert Center for Child Studies** (Schubert Center) is an academic center in the College of Arts and Sciences at Case Western Reserve University (CWRU) which bridges research, practice, policy and education for the well-being of children and adolescents. The Schubert Center Faculty Associates includes a group of approximately 70 researchers from various disciplines across CWRU with a shared interest in child-related research and connecting research with practice and policy to improve child well-being and to create knowledge and approaches that are generalizable to a larger population of children. The Schubert Center is interested in ensuring that public policies and legal determinations impacting children are informed by reliable research, aligned with principles of child and adolescent development and consistent with professional practice promoting child well-being. Toward this end, the Schubert Center has been engaged in state level policy reforms to better ensure developmentally

appropriate practices for children and young people in the juvenile justice system. As these issues are directly addressed by this case, the implications of this decision are of particular concern to the Schubert Center.

Amicus Curiae **The Association for the Treatment of Sexual Abusers (ATSA)** is an international, interdisciplinary non-profit organization for the advancement of professional guidelines and practices in the field of sex offender treatment, research, management and policy. ATSA is dedicated to preventing sexual abuse through effective treatment and management of individuals who sexually abuse or are at risk to abuse. Through research, professional education, and shared learning, ATSA promotes evidence-based policies and practices that protect the public from sexual violence. ATSA's members include many of the world's foremost researchers in the study of sexual violence as well as professionals who conduct evaluations and provide treatment services to sexual abusers and survivors of sexual abuse. Given its unique scientific expertise and mission, ATSA has a significant interest in the proper resolution of this case, as well as an important perspective for the court's evaluation of public safety policies.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2014, I caused copies of the foregoing

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Exhibit A

Sexual Abuse: A Journal of Research and Treatment

Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers

Journal:	*Sexual Abuse: A Journal of Research and Treatment*
Manuscript ID:	SA-14-07-078
Manuscript Type:	Original Research Article
Keywords:	Juvenile Sex Offender, Registration, Megan's Law, Adolescent Sexual Abusers
Abstract:	Among many in the research, policy, and practice communities, the application of sex offender registration and notification (SORN) to juveniles who sexually offend (JSO) has raised ongoing concerns regarding the potential collateral impacts on youths' social, mental health, and academic adjustment. To date, however, no published research has systematically examined these types of collateral consequences of juvenile SORN. Based on a survey of a national sample of treatment providers, this study investigates the perceived impact of registration and notification on JSO across five key domains: mental health, harassment and unfair treatment, school problems, living instability, and risk of reoffending. Results indicate that treatment providers overwhelming perceive negative consequences associated with registration with an incremental effect of notification across all five domains. Providers' demographics, treatment modalities, and client profile did not influence their perceptions of the collateral consequences suggesting that providers' concerns about the potential harm of SORN applied to juveniles is robust. Policy implications are discussed.

Abstract

Among many in the research, policy, and practice communities, the application of sex offender registration and notification (SORN) to juveniles who sexually offend (JSO) has raised ongoing concerns regarding the potential collateral impacts on youths' social, mental health, and academic adjustment. To date, however, no published research has systematically examined these types of collateral consequences of juvenile SORN. Based on a survey of a national sample of treatment providers, this study investigates the perceived impact of registration and notification on JSO across five key domains: mental health, harassment and unfair treatment, school problems, living instability, and risk of reoffending. Results indicate that treatment providers overwhelming perceive negative consequences associated with registration with an incremental effect of notification across all five domains. Providers' demographics, treatment modalities, and client profile did not influence their perceptions of the collateral consequences suggesting that providers' concerns about the potential harm of SORN applied to juveniles is robust. Policy implications are discussed.

Keywords: sex offender registration and notification; juvenile sex offenders; treatment providers

Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers

Introduction

Youth engagement in sexually abusive behavior remains an important social problem in need of effective policy responses. Recent national crime data suggest that juvenile perpetrators account for between 17% and 20% of all reported sexual crime, and approximately one in three sex crimes involving minor victims (Pastore & Maguire, 2007; Finkelhor, Ormrod, & Chaffin, 2009; Snyder &Sickmund, 2006). Particularly considering the long-lasting individual and wide-reaching societal tolls of sexual victimization, these statistics help frame the problem of juvenile-perpetrated sexual abuse as a significant concern for policymakers, the juvenile justice system, and our communities.

Yet despite reasonable unanimity concerning the need to effectively respond to juvenile sexual offending, agreement on the nature of this response has proven elusive. Over the past two decades, the convergence of three trends—the generalized societal alarm over juvenile violent crime, increased punitive responses to juvenile offenders, and the expansion of social controls over known sex offenders—has produced a range of policies aimed at juveniles who sexually offend (JSO). These policies, which have included mandated registration and community notification, expanded use of incapacitation strategies including incarceration and electronic monitoring, and restrictions on school, residence, and employment opportunities, have been premised on the beliefs that JSO represent a distinctive group of youthful offenders who are at

significant risk of re-offense, highly resistant to rehabilitation, and bearing more in common with adult sex offenders than with their delinquent peers (Letourneau & Miner, 2005; Zimring, 2004).

These assumptions have been challenged by many who suggest that emergent public policies concerning JSO contravene several lines of existing evidence. First, research has documented that JSO rarely reoffend sexually (Caldwell, 2010; Chaffin, 2008; Letourneau, Bandyopadhyay, Sinha, & Armstrong, 2009; Waite, Keller, McGarvey, Wieckowski, Pinkerton, & Brown, 2005). For example, in a meta-analysis involving 63 unique datasets, Caldwell (2010) found that the mean sexual recidivism rate across studies was 7.08%. Research has also found that juveniles are especially amenable to treatment. In three randomized control trials of multisystemic therapy (MST), youth who were assigned to community-based MST experienced significant reductions in problematic sexual behavior, nonsexual recidivism, and substance abuse (Borduin, Henggeler, Blaske, & Stein, 1990; Bourdin, Schaeffer, & Heiblum, 2009; Letourneau, Henggeler, McCart, Borduin, Schewe, & Saldana, 2013). This evidence stands in stark contrast to the perception that juveniles who sexually offend are destined to continue their problem sexual behavior into adulthood.

Second, critics argue that applying adult sex offender sanctions to juveniles fails to consider the developmental and psychosocial contexts in which youthful sexual offending occurs. These critiques of contemporary policy trends maintain that expanded social controls of JSO such as registration and notification are not only overly punitive and contrary to the *parens patriae* principles of juvenile justice, but also may exacerbate rather than mitigate the risk of re-offense for many youth through their impact on the social adjustment of affected youth (Chaffin, 2008; Federal Advisory Committee on Juvenile Justice, 2007). Ongoing developmental research indicates that both the initiation of criminal behavior and its maintenance over time is related, at

least partially, to a youth's feelings of powerlessness (Ross & Mirowsky, 1987) and his or her bonding to conventional individuals and institutions (Huizinga, 1995; Menard, Elliott, & Wofford, 1993). Research has demonstrated that being labeled as "deviant" may diminish youth social bonds, and in turn increase the risk of future criminal behavior, including sex offending (Paternoster & Iovanni, 1989; Triplett & Jarjoura, 1994). In a longitudinal study, Hayes (1997) found that such labeling was a risk factor for youths remaining involved with delinquent peers, and maintaining delinquent behavior over time.

Despite these potential negative collateral consequences of subjecting JSO to adult-oriented crime policies, few studies have examined stakeholders' perceptions of outcomes associated with juvenile registration and notification. One particular subject that has not received much scholarly attention is perceptions of treatment providers who provide direct services to youth with problem sexual behavior, including (and primarily) youth who have sexually offended. These professionals seem poised to provide a unique perspective on the impact of sex crime policies aimed at juveniles. To address this gap in the literature, this study examines treatment provider perspectives about the potential collateral consequences of juvenile registration and notification requirements. To situate this study into the broader literature, we begin with a discussion of juvenile sexual offending and the policy debates surrounding sex offender registration and notification.

The Nature of Juvenile Sexual Offending

Devising effective parameters for determining whether, and under what conditions, juveniles should be subjected to sex offender registration and notification (SORN) requirements requires an understanding of both the nature of juvenile sexual offending and the likely associated impacts of SORN on offending trajectories. Emerging research has indicated that

juveniles who sexually offend represent a heterogeneous group that is decidedly distinct from the adult sexual offender population. One prominent piece of evidence in this regard is the bimodal age distribution of sexual offense perpetrators, which peaks at 13 years and again at 35 years. This suggests significant qualitative differences between juveniles and adults who sexually offend, and the presence of distinctive developmental mechanisms related to adolescent sexual offending (Hanson, 2002). Consistent with this, adults and juveniles who sexually offend differ across several dimensions, including number of committed offenses, type and duration of relationships between victims and offenders, types of sex acts committed against victims, and the use of force (Miranda & Corcoran, 2000).

More generally, research demonstrates clear differences in the neurological, cognitive, and social development of juveniles relative to adults that limit juveniles' culpability for criminal behavior (Caufman & Steinberg, 2000; Steinberg & Scott, 2003; Zimring, 2000; 2004) and juveniles' capacity as trial defendants (e.g., Grisso, 2000; Steinburg & Schwartz, 2000; Woolard & Reppucci, 2000). In sum, there is little evidence to support the supposition that JSO are simply younger versions of adult sex offenders or that they should be treated as such.

Finkelhor, Ormrod and Chaffin (2009) studied nearly 14,000 juvenile sex offense cases using the National Incident-Based Reporting System (NIBRS) and compared them to over 24,000 sex offenses committed by adults. In this criminal justice sample, juveniles committed a greater number of peer-on-peer cases than expected, challenging the notion (based on research from clinical samples) that juvenile sex offenders are primarily teens preying on much younger children. In keeping with the diversity of juveniles with sexual behavior problems, the authors recommended prevention and deterrence approaches aimed at parents and caregivers of potential

victims and abusers, short-term clinical interventions with school-age offenders, and adoption of flexible sanctions and policies rather than broad mandates.

Research also indicates that JSO resemble, in many ways, their non-JSO delinquent peers. For example, in a longitudinal study examining 66 correlates of juvenile sexual and violent offending, van Wijk, Vermeiren, Loeber, Hart-Kerkhoffs, Doreleijers, and Bullens (2006) found that violent sexual offenders were similar to violent nonsexual offenders with respect to nearly all correlates, including family (e.g., poor supervision and communication) and peer (e.g., involvement with delinquent and substance-abusing peers) risk factors. Similarly, other research has established that both juvenile sexual offenders and other serious juvenile offenders had lower bonding to family and school and higher involvement with deviant peers than did non-delinquent comparisons (e.g., Ronis & Borduin, 2007). Moreover, analyses of JSO recidivism rates indicates that these youth are far more likely to reoffend with nonsexual than with sexual offenses –suggesting that much juvenile sexual offending occurs within a broader context of general delinquent behavior (Caldwell, 2002).

However, JSO also seem to differ from their non-sex offending peers in some important ways that can inform policy interventions. A recent meta-analysis of 59 studies that collectively compared 3,855 juvenile sex offenders with 13,393 adolescent non-sex offenders found that, relative to nonsexually delinquent youth, sexually delinquent youth had higher rates of sexual abuse victimization, exposure to sexual violence, exposure to nonsexual abuse or neglect victimization, social isolation, early exposure to sex or pornography, atypical sexual interests, anxiety, and low self-esteem (Seto & Lalumiere, 2010). The authors theorized that for some JSO, childhood sexual abuse contributes to development of atypical sexual interests that, in the presence of other antisocial characteristics might manifest in sexually abusive behavior. The fact

that social isolation, anxiety, and low self esteem were significant variables in the study should inform our expectations of the impact of contemporary policy interventions. For example, to the extent that generally applied legal policies inhibit or impair normal social and academic endeavors, these policies might exacerbate risk factors for general or even sexual recidivism.

Juvenile Sex Offender Registration and Notification

One particularly contentious policy issue has concerned the application of SORN to juveniles who have been adjudicated delinquent for sexual offenses. Since the early 1990s, SORN has emerged as a ubiquitous element in the nation's public safety landscape. Prompted in part by child abductions and child murders which inspired a sequence of federal legislation beginning in 1994, all U.S. states and territories now require individuals convicted of sexual offenses to register with authorities, provide for public internet disclosure of certain registrant information, and in some cases require active notification of community members that a registered sex offender lives, works, or attends school nearby.

Bolstered by significant public support for registration and notification laws (Levenson, Fortney, Brannon, & Baker, 2007), lawmakers have progressively called for expanding the range of individuals subject to SORN, as well as the requirements placed on registered offenders (Logan, 2009). As part of this general "net widening" trend, SORN statutes at both the state and federal levels have called for the inclusion of certain juveniles adjudicated delinquent for sexual offenses within state registration systems. The application of SORN to juveniles gained substantial policy traction with the passage of the Adam Walsh Child Protection and Safety Act of 2006 (AWA), which set forth minimum standards requiring – for the first time - that states include certain adjudicated juveniles on their state registries, and further mandated that these

youth be subject to internet disclosure and community notification commensurate with their adult counterparts.

While there are no national data on the number of juveniles subject to registration and notification, estimates based on limited state samples suggest that juveniles may constitute as much as 10% of a given state's registrants and could account for approximately 3% of the nation's registered offenders (Letourneau, Bandyopadhyay, Sinha, & Armstrong, 2009). Despite the AWA's quest for uniformity, current state juvenile registration and notification policies vary across several dimensions, including the criteria for including juveniles on the registry, the level of discretion granted to judges and prosecutors in making registration decisions, the amount of time youth must spend on the registry, and the extent to which juvenile registration information is released to the public.

Policies subjecting juvenile offenders to adult registration and public notification requirements represent a marked departure from traditional judicial policy separating juvenile and adult offenders (Garfinkle, 2003). Reflecting this, juvenile registration and notification in general, and AWA's juvenile SORN provisions in particular, have prompted substantial concern and controversy from several sectors.

Following release of the preliminary AWA implementation guidelines in 2008, commentary over the guidelines' juvenile provisions accounted for a majority of the over 700 pages of public comments received by the U.S. Department of Justice. Moreover, statements from national organizations raised concerns over the policies' implications for juvenile justice practice and for the future adjustment of affected youth (Association for the Treatment of Sexual Abusers (ATSA), 2012; Federal Advisory Committee on Juvenile Justice, 2007; Human Rights Watch, 2007; 2013), and surveys of state officials in 2009 cited the juvenile provisions as one of

the primary barriers to AWA implementation (Harris & Lobanov-Rostovsky, 2010). Reflecting these concerns, juvenile SORN emerged as a prominent theme in Congressional hearings held in 2009 examining the barriers to state AWA implementation (Sex Offender Registration and Notification Act (SORNA): Barriers to Timely Compliance by States, 2009). In response to these concerns, the AWA was revised so that juvenile notification requirements were completely dropped; however, states are still required to subject juveniles adjudicated of some sexual offenses to long-term and even lifetime registration (Department of Justice, 2010).

Collateral Public Safety Impacts

Successful reentry of adult offenders back into their communities is facilitated by educational attainment, stable employment and housing, and the development and maintenance of prosocial relationships (La Vigne, Davies, Palmer, & Halberstadt, 2008; Lattimore & Visher, 2009). Amidst the broader debate over the efficacy and impacts of SORN policies, many investigators have reported and commented on the potential collateral consequences of SORN that may subvert educational, employment, housing and social stability and thus be paradoxically associated with negative public safety outcomes (Levenson, D'Amora, & Hern, 2007). The unique stigma of sex offender registration and community notification is well documented and these laws can impede community reentry and adjustment in a variety of ways (Levenson & Cotter, 2005a; Levenson, D'Amora, & Hern, 2007; Mercado, Alvarez, & Levenson, 2008; Sample & Streveler, 2003; Tewksbury, 2004, 2005; Tewksbury & Lees, 2006; Zevitz & Farkas, 2000). Sex offenders surveyed in Florida, Indiana, Connecticut, New Jersey, Wisconsin, Oklahoma, Kansas, and Kentucky report remarkably consistent adverse consequences such as difficulty securing and maintaining employment, housing disruption, relationship loss, threats and harassment, physical assault, and property damage. Psychosocial stressors such as shame,

embarrassment, depression, or hopelessness are frequently reported by registered sex offenders (RSO) as common byproducts of public disclosure. A survey of 584 family members of registered sex offenders across the U.S. revealed that they are impacted significantly by these laws as well (Levenson & Tewksbury, 2009). Employment problems experienced by RSO and resulting financial hardships emerged as the most pressing issue identified by family members. Family members living with an RSO experienced threats and harassment by neighbors, and some children of RSOs suffered stigmatization and differential treatment by teachers and classmates.

Notably, each of these surveys has been conducted with respect to adult offenders. Youth have far fewer resources at their command, and less agency over those resources, than do adults and might therefore fare even worse with respect to negative collateral consequences. Yet to our knowledge just one study has examined the potential collateral consequences of SORN as applied to juveniles.

Provider Perspectives of Juvenile Registration and Notification

Treatment providers offer a unique perspective in which to evaluate juvenile sex crime policies and approaches. Mental health professionals' experience working with JSO offers a varied context in which to view policy *in action*. The abstract workings of registration and notification that exist at the policy level become concrete for professionals working with youth with problem sexual behavior and seeing the policy effects as they play out in the lives of their young clients and those of their clients' families.

Despite the value of treatment provider perspectives, only a few studies have assessed how this group of professionals views sex crime policies, and these studies are focused on adult offenders. For example, Malesky and Keim (2001) surveyed 133 mental health professionals,

drawn from ATSA, about their views of the utility of online sex offender registries. The authors reported that the majority (59%) of respondents did not believe online registries would prevent child sexual abuse, and 60% indicated that registered sex offenders may be at risk for becoming victims of vigilantism. Levenson, Fortney, and Baker (2010) surveyed a group of 261 sex abuse professionals (including treatment providers and criminal justice professionals) and found that 62% of professionals thought community notification was a fair treatment of adult sex offenders. However, only 8% of respondents thought community notification was effective or very effective in reducing sex offenses.

With respect to juveniles, juvenile and family court judges (N =210) were surveyed and most (75% to 92%, depending upon the specific survey item) had significant reservations regarding the placement of juvenile offenders on public registries (Bumby, Talbot, & West, 2006). To our knowledge, no existing studies have examined provider perspectives about registration and notification as these policies pertain to juveniles. The current study, therefore, contributes to this line of scholarship by utilizing a sample of treatment providers who work with juveniles with problem sexual behavior.

Methods

Sampling and data collection

Original recruitment was conducted through ATSA, an international membership organization with approximately 2,700 members in 18 countries (ATSA, 2014). The majority of ATSA's members provide direct clinical services to adults or adolescents who have engaged in sexually abusive behaviors. For purposes of this study, initial email was sent to all US-based ATSA providers who indicated they provided services to youth (N = 785) explaining the study's

aims and including a link to online consent and survey forms. (Participation was restricted to providers working in the United States due to the uniqueness of the U.S. SORN laws). Trained research assistants followed up with providers multiple times via telephone and e-mail to encourage participation. To increase the sample size, the sampling protocol was subsequently expanded to include providers identified via other professional organizations (e.g., National Adolescent Perpetrator Network) and via snowball sampling wherein providers were asked to forward the survey link to colleagues. These efforts resulted in a final sample of 265 U.S. respondents

Provider data were collected between March 2013 and August 2013. Consent and survey completion were conducted entirely online and took approximately 5 to 15 minutes. The provider survey was designed to achieve two objectives: eliciting provider perspectives regarding the collateral consequences of SORN on youth and laying the groundwork for the recruitment of youth and caregivers to participate in the next stage of data collection (results of youth and caregiver surveys are not reported in this paper).

Measures

Dependent variables. The purpose of this research is to examine treatment providers' perspectives on potential consequences of juvenile SORN requirements. Table 1 lists the 42 items developed as part of this study to assess five key domains within which collateral consequences might occur. These domains included mental health problems, harassment and unfair treatment, school problems, living instability, and risk of reoffending. Providers responded to two sets of the same items, first with respect to the effects of registration and then with respect to the effects of notification. Cronbach's alphas were computed for each domain separately for

registration and notification. As can be seen in Table 1, Cronbach's alphas indicated strong item cohesion for most scales across registration and notification instruction conditions. Predictably, the scale with the fewest items, Risk of Reoffending (just two items), had the lowest Cronbach's Alpha (e.g., .66 for registration) whereas the remaining scales had Cronbach's Alphas indicating greater internal consistency.

Independent variables. Respondents were asked limited demographic and treatment modality items. *Age* was measured as a continuous variable. *Sex* was coded as 0 = female and 1 = male. Providers selected their race from the following options: White, Black, Hispanic, Native American, Asian, and other. Due to the small sample of minority respondents, *race* was recoded as a dichotomous variable (0 = minority, 1 = white). *Education* was originally measured with an ordinal scale (i.e., High School degree, Associate's degree, Bachelor's degree, Master's degree, Doctorate, and other) and was later recoded as a dichotomous variable (0 = other, 1 = doctorate). Respondents were asked to identify the state in which they primarily practice. From this list, *region* was coded per U.S. census categories: 0 = South, 1 = Northeast, 2 = Midwest, and 3 = West. Providers were asked about their *treatment approach* allowing for multiple selections: cognitive-behavioral, relapse prevention, Multisystematic Therapy (MST), family systems, Good Lives Model, and other. *Practice type* was originally coded as 0 = solo provider, 1 = part of small practice group (2-4 clinicians), 2 = part of larger practice group (5 or more clinicians), but was recoded as a dichotomous variable (0 = solo provider and 1 = group practice). *ATSA* membership was a dichotomous variable (0 = non-ATSA member and 1 = ATSA member.)

Providers were also asked a number of items pertaining to their client profile. Specifically, providers were asked to identify the number of juvenile clients who are male and who fall within specific age groups (16 to 17, 13 to 15, 10 to 12, and 9 or younger). Providers

also reported the number of juvenile clients within groupings based on *number of sexual offense convictions or adjudications* (i.e., none, one, two to three, and four or more convictions or adjudications) and the number of youth with any *non-sexual offense convictions or adjudications*. Providers also indicated the number of clients required to *register*, and for clients who were subjected to registration, providers reported the number of clients subjected to *online notification.*

Using the providers' reported total number of juvenile clients, each of these characteristics (i.e., gender, age, number of sexual offense convictions or adjudications, non-sexual offense convictions or adjudications, registration requirement, and online notification) was recoded to reflect the proportion of the provider's juvenile client base with that particular characteristic. (e.g., percent male, percent of clients within each age category, etc.).

Analytic Strategy

The analysis was conducted in three phases. First, characteristics of the treatment providers and their client base were examined using descriptive methods. Next, scale scores were computed separately for effects of registration and notification and type of policy effects were compared utilizing the Wilcoxon signed rank test. In the final step, ordinary least squares (OLS) regression analyses were computed to determine whether provider or client characteristics explained variation in provider responses to the five domains.

Results

Provider Profile

As shown in Panel A of Table 2, the provider sample was primarily White, non-Hispanic (97.4%), and slightly over half of respondents are male (52.8%). Less than one-third of respondents (28.7%) obtained a doctoral degree. More respondents were located in the West (35.5%) than elsewhere. Less than one-third of respondents (28.7%) operated in a solo practice. With respect to treatment approaches, the majority of respondents indicated that they utilized a cognitive-behavioral treatment model (89.4%) and more than half (55.8%) endorsed a relapse prevention model.

Client Profile

Panel B in Table 2 displays characteristics of providers' client base. Providers indicated that their client base was mostly comprised of boys (93.5%), between the ages of 16 and 17 (54.7%), with one or fewer sex offense convictions or adjudication (86%). Providers also reported that 28.1% of their client base was subjected to sex offender registration; among that group, approximately one-third were also subjected to online notification.

Collateral Consequences of Registration and Notification

As noted, provider perspectives on collateral consequences of juvenile sex offender registration and notification were collected across five key domains. Results are presented in Table 1 and reviewed below for registration and the notification.

Registration. Across four of the five key domains, providers agreed that youth subjected to registration would be more likely to experience negative consequences than youth without registration requirements. For example, providers reported that registered youth would be more likely to experience mental health problems (M=7.44; sd =2.93), including feeling shame or embarrassment (92.8%) and feeling hopeless (83%). Further, providers reported that registered youth would be more likely to experience harassment and unfair treatment (M=4.54; sd =2.11)

compared to unregistered youth. For example, most providers reported that registered youth would be more likely to find it unfair for others to know their sex offense history (76.6%) and would feel mistreated by the criminal justice system (68.7%). Providers also indicated that registered youth would be more likely experience school problems (M=3.19; sd =2.12), including being required to switch schools (61.5%) or not being able to attend school (58.5%). Providers also endorsed greater living instability (M=1.82; sd=1.49) for registered youth. For example, the majority of providers (55.9%) reported that youths subjected to registration would be more likely to live in a group home setting.

In contrast to the first four domains, providers did not strongly endorse the notion that registered youth would be at greater risk for recidivism (M=0.40; sd=0.69) than non-registered youth. More specifically, only 18% of providers reported that registered youth would be more likely to sexually recidivate than unregistered youth.

Notification. Similar patterns emerged in the analysis of each domain as a consequence of notification. Providers reported that juveniles subjected to notification would be more likely to experience mental health problems (M=8.42; sd=3.15), such as feeling more shame and embarrassment (89.4%) and feeling more alone (88.7%). Providers also indicated that youth subjected to notification would be more likely to experience harassment and unfair treatment (M=5.81; sd=1.98), such as being more afraid for their safety (85.3%). Providers also endorsed school problems as a consequence of notification (M=3.94; sd=2.06). For example, approximately 71% of providers reported that youth subjected to notification would be more likely to have trouble concentrating in school than youth with no notification burden. Providers also acknowledged threats to living instability due to youths' notification requirements (M=2.55; sd=2.06). For example, the majority of providers (65.7%) reported that youth under notification

would be more likely to have to change caregivers compared to youth with no notification requirements.

Providers were less likely to endorse risk of reoffending (M=0.72; sd=0.89) as a consequence of public notification. Only 35% of providers indicated that sexual recidivism is more likely to occur with youth subjected to notification.

Incremental Effect of Notification

The next stage of the analysis involved evaluating whether provider concerns were greater for one policy aspect than for the other; that is, whether concerns about notification were greater relative to concerns about registration. As depicted in Table 3, mean scores for each of the five domains were higher for notification than registration. To determine whether these results represented statistically significant differences, a series of Wilcoxon signed-rank tests were conducted. Because the assumption of normality was violated, parametric tests were determined to be inappropriate; the Wilcoxon method serves as an appropriate nonparametric alternative to the dependent t-test. The results indicate that notification scores were significantly higher than the registration scores across all five domains ($ps < .001$). Effect sizes varied from small to medium, with a range of .26 to .37.[1] These results suggest that, while the majority of providers viewed registration as having harmful effects across each key domain except recidivism, and even greater proportion viewed notification as having harmful effects on these same domains. Notification amplified the concerns of providers even with respect to concerns about recidivism. Specifically, while a minority of providers believed registration increased youths' risk for sexual or nonsexual recidivism, the figure nearly doubled with respect to notification.

[1] The effect size is computed by the following formula (Rosenthal, 1991).

$$R = \frac{Z}{\sqrt{N}}$$

Finally, we were also interested in whether provider or client profile characteristics explained variation in perceptions of the consequences of registration and notification. A series of multivariate analyses were conducted, where each of the five domains was regressed on provider characteristics (i.e., age, sex, race, education, region, practice type, treatment approach, and ATSA membership status) and client profile (i.e., the proportion of the providers' client base across sex, age, sex offense conviction history, nonsexual criminal history, and registration and notification burden). None of the provider or client characteristics significantly predicted scores on any of the five scales.

Discussion

The purpose of this study was to examine treatment providers' perspectives about the consequences of sex offender registration and notification for youth. From this analysis, three important themes emerged.

First, treatment providers overwhelming perceived negative consequences associated with registration and notification policies aimed at juveniles. Providers surveyed for this research reported that, relative to youth with no SORN burden, juveniles subjected to registration or notification are much more likely to experience negative mental health outcomes as a result of these policies. Further, providers endorsed the view that youth under SORN policies are likely to experience harassment, difficulty in school, and trouble maintaining stable housing. These results join a growing chorus of voices that critique the application of adult criminal justice practices to juveniles in general (e.g., Cohen & Kasey, 2014; Kupchik, 2006; Meyers, 2005) and those specifically concerned with the practice of subjecting youth to registration and notification

requirements (ATSA, 2012; Chaffin, 2008; DiCataldo, 2009; Miner, et al., 2006; Parker, 2014; Zimring, 2004).

Providers were less likely to express concern that registration or notification might increase the likelihood of sexual or nonsexual recidivism. This finding may reflect treatment providers' awareness of low recidivism rates for juveniles who commit sexual offenses in general (e.g., see Caldwell, 2010), as well as providers' perceptions of treatment effectiveness in addressing their clients' problem sexual and nonsexual delinquent behaviors. However, it is notable that more than one-third of providers believed that notification increases risk of sexual and nonsexual recidivism.

Second, according to treatment providers, these negative effects are even greater for notification than registration. The influence of public shaming is a useful frame to consider this finding. Scholars have discussed the role of public shaming in sex crime policies (DiCataldo, 2009; McAlinden, 2005). DiCataldo (2009) argued that sex crime policies founded in public shaming, like registration and especially notification, bring the stigma of sexual offending to the forefront. According to an ATSA policy paper (2012), the application of these policies to juveniles likely works to disrupt pro-social development, through negative impacts on peer networks, school, and employment opportunities. It is logical that public notification is a more substantial and significant form of public shaming than registration given the goal of alerting the general public (and not just law enforcement) to a youth's status as a registered sex offender. Indeed, Chaffin (2008) argued that subjecting juveniles to public notification "creates both direct stigmatization and can set in motion a series of cascading policy effects resulting in social exclusion and marginalization" (p. 113), concerns shared by providers surveyed in the current

study. It bears repeating that providers also clearly view registration as harmful to youth, even while they viewed the effects of notification as more harmful.

Third, provider perceptions of collateral consequences of juvenile registration and notification do not appear to be influenced by provider demographics, educational level, practice type, or treatment modality. Nor did providers' client profile exert a significant influence on their views of registration or notification. These findings (or lack thereof) suggest that providers' negative perceptions of registration and notification requirements directed toward juveniles is robust across a variety of contexts that might otherwise be expected to influence perceptions of juvenile or sex crime policy. Treatment providers, irrespective of their background or the makeup of their client base, identify significant and harmful consequences of adult sex offender policies aimed at youth.

The results from this study should be considered while recognizing two important limitations. First, we utilized a convenience sample of treatment providers with juvenile clients. Consequently, the findings reported here may not generalize to treatment providers more broadly. However, the size of this convenience sample mitigates against this concern. Findings also might not generalize to treatment providers who work in other relevant domains (e.g., with victims, with adult offenders). Future research should continue to evaluate key stakeholders' perspectives on consequences of registration and notification, including policy makers, law enforcement officers, child welfare professionals, survivors and victims' advocates, as well as those of registered youth and their families.

Second, we were limited in the number of provider characteristics we collected. Therefore, factors that may influence how treatment providers view consequences of juvenile registration and notification may be missing from our analysis. For example, we did not include

items assessing provider political affiliation, religion, or length of experience treating juveniles with problem sexual behavior and therefore were unable to examine the potential influence of these factors on how providers view sex crime policies aimed at juveniles. Future research might explore a broader range of provider or client characteristics that might account for variation in views of juvenile sex crime policies.

Despite these limitations, the findings reported here are congruent with existing research identifying perceptions of negative outcomes associated with sex offender registration and notification among professionals working with sexual abusers (Levenson, et al., 2010; Malesky & Keim, 2001). Extant research suggests that these perceptions are not overstated. Adult sex offenders subjected to registration and notification experience social deficits that make reentry difficult (Levenson & Cotter, 2005b; Tewksbury, 2004, 2005) and it seems only logical that adolescents—who, relative to adults, have fewer resources and less agency over those resources—would be even more negatively affected by these same policies.

This research may have important implications for treatment providers. As shown here, treatment providers are concerned about negative outcomes for juvenile subjected to registration and notification policies. Providers who treat clients with registration and notification requirements should screen for SORN-related challenges identified here, such as mental health problems, harassment, school trouble, and living instability. Such an evaluation may assist juvenile clients (and their parents) in successfully navigating emerging challenges associated with their registration or notification status.

This line of research also critiques the utility of applying adult sex offender policies to juveniles. The majority of treatment providers indicated that youth required to register and subjected to notification would experience problems related to mental health, harassment, school,

and home stability. These concerns suggest the need for a programmatic shift in American criminal justice policy as it applies to youth with problem sexual behavior, especially if these perspectives comport with the actual experiences of JSO and their families. A recent Human Rights Watch (HRW, 2013) report conducted with 281 JSO suggests that youth do, in fact, experience the types of negative outcomes predicted by treatment providers in the current study. For example, approximately 86% of youth interviewed for the HRW reported experiencing serious mental health consequences as a result of their registration burden, including depression, isolation, and suicide ideation. More than half (52%) also reported experiencing threats or actual violence due to their status as a registrant, with some youth experiencing physical assaults or being threatened with gun violence. Likewise, more than half (52%) of youth interviewed experienced school problems associated with registration, including disruptions in school or denial of access to schools. Registered youth also reported experiencing significant living instability related to registration, including homelessness (44%). In sum, providers' predictions that subjecting juveniles to registration and notification will result in serious, negative consequences for youth matches real problems identified by youth and their parents in the context of the Human Rights report.

As states continue to apply adult solutions to juveniles convicted for sexual offenses, it is important for policy-makers to understand the full weight of these policy decisions. Insights from those providers working with this population are invaluable to juvenile sex offender registration and notification policy evaluation.

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Table 1. Scales, Items, and Summary Statistics

Domain	Registration			Notification		
	α	*n*	*M* (*sd*) or % in agreement	α	*n*	*M* (*sd*) or % in agreement
Mental Health (N=11 items)	**.85**		**7.44 (2.93)**	**.91**		**8.42 (3.15)**
More likely to have attempted suicide		75	28.30		124	46.79
Have more suicidal ideation		114	43.02		154	58.11
Are more irritable		197	74.34		216	81.51
Are more angry		203	76.60		218	82.26
Are more anxious		210	79.25		229	86.42
Are more depressed		196	26.04		215	81.13
Are more likely to use alcohol/drugs		98	36.98		148	55.85
Are more likely to feel hopeless		213	80.38		225	84.91
Have less hope for the future		220	83.02		231	87.17
Feel more shame and embarrassment		246	92.83		237	89.43
Feel more alone		199	75.09		235	88.68
Harassment and unfair treatment (N=7 items)	**.77**		**4.54 (2.11)**	**.87**		**5.81 (1.98)**
Treated differently by teachers/adults		181	68.30		216	81.51
Treated differently by classmates		159	60.00		217	81.89
Experienced threats/harassment from youth		166	62.64		225	84.91
Experienced threats/harassment from adults		142	53.58		208	78.49
Feel they were treated unfairly by the CJS		182	68.68		225	84.91
Afraid for their own safety		171	64.53		226	85.28
Believe it is unfair for others to know SO status		203	76.60		222	83.77
School Problems (N=6 items)	**.89**		**3.19 (2.12)**	**.83**		**3.94 (2.06)**
Have more trouble concentrating at school		140	52.83		187	70.57
Have more trouble with schoolwork		123	46.62		171	64.53
Could not attend school		155	58.49		182	68.68
Have had to switch schools		163	61.51		202	76.23
Been suspended from school		120	45.28		158	59.62
Less likely to be in school		144	54.34		144	54.34

Living Instability (N=4 items)	.76		1.82 (1.49)	.85		2.55 (1.60)
Changed caregivers		136	51.32		174	65.66
Spent time in a group home		148	55.85		178	67.17
Lived in more different places		106	40.00		162	61.13
Have had to move more often		92	34.72		161	60.75
Risk of reoffending (N=2 items)	.66		0.40 (0.69)	.82		0.72 (0.89)
Future sexual offense		49	18.49		92	34.72
Future non-sexual offense		56	21.13		99	37.36

Table 2. Provider and client characteristics

Panel A: Provider profile	n	% or (mean)
Age		(51.6)
Sex (Male)	140	52.8
Race (White)	238	97.4
Education (Doctorate)	76	28.7
Region		
West	94	35.5
South	67	25.3
Midwest	55	20.8
Northeast	36	13.6
Practice type (solo)	78	28.7
Treatment approach[a]		
Cognitive-behavioral	237	89.4
Relapse prevention	148	55.8
Multi-Systematic Therapy	65	24.5
Family systems	116	43.8
Good lives	127	47.9
ATSA Membership	235	88.7

Panel B: Client profile	Mean %
% male	93.5
% in age group	
16 to 17	54.7
13 to 15	41.3
10 to 12	6.7
9 or younger	2.2
% with sex offense convictions or adjudications	
0	23.9
1	62.1
2 to 3	12.5
4	1.6
% with any non-SO convictions/adjudications	23.5
% required to register	28.1
% subjected to online notification	32.2

N=265

[a]Treatment approach not mutually exclusive

Table 3. Incremental Effects of Notification

	Registration		Notification				
Domain	*M*	*sd*	*M*	*sd*	*df*	*Z*	*R*
Mental health	7.44	2.93	8.42	3.15	255	6.89***	0.31
Harassment/unfair treatment	4.54	2.11	5.81	1.98	259	8.43***	0.37
School problems	3.18	2.12	3.94	2.06	260	6.80***	0.30
Living instability	1.82	1.49	2.55	1.60	260	7.20***	0.32
Risk of reoffending	0.40	0.69	0.72	0.89	261	5.91***	0.26

Note. *** = $p \leq .001$. Two-tailed Wilcoxon signed rank tests. Means and standard deviations reported to facilitate interpretation.

EXHIBIT B

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

IN THE INTEREST OF	:	No. 248 JV 2012
B. B.,	:	
A Minor	:	PETITION TO AVOID
	:	MEGAN'S LAW REGISTRY

IN THE INTEREST OF	:	No. 184 JV 2011
K. G.,	:	
A Minor	:	PETITION TO AVOID
	:	MEGAN'S LAW REGISTRY

IN THE INTEREST OF	:	No. 386 JV 2009
J. M.,	:	
A Minor	:	PETITION TO AVOID
	:	MEGAN'S LAW REGISTRY

IN THE INTEREST OF	:	No. 170 JV 2010
N. S.,	:	
A Minor	:	PETITION TO AVOID
	:	MEGAN'S LAW REGISTRY

IN THE INTEREST OF	:	No. 14 JV 2011,
	:	18 JV 2011
C. O.,	:	
A Minor	:	PETITION TO AVOID
	:	MEGAN'S LAW REGISTRY

OPINION

The matter before us is a Petition, filed jointly by the juvenile offenders B.B., K.G., J.M., N.S., and C.O. ("Juveniles" or "Petitioners"), in which they challenge the registration requirements of the most-current version of Megan's Law ("Megan's Law IV").[1] Megan's Law IV is the first statute in Pennsylvania that requires juveniles to register as sexual offenders. Registration is only required if a juvenile, fourteen years or older, is adjudicated delinquent for one of three, enumerated sex offenses or an attempt, solicitation, or conspiracy to commit the same. As applied to them, the Juveniles claim that the statute is retroactive and has a punitive effect (Ex Post Facto Clause), that the statute creates an irrebuttable presumption (Pa. Due Process), that the statute imposes cruel and unusual punishment (8th Amend.), that the statute impairs their fundamental right to reputation (Pa. Const. Art. I, § 1), and that the statute is in conflict with certain provisions of the Juvenile Act (statutory interpretation).[2]

On October 16, 2012, the Honorable Judge Jonathan Mark issued orders determining that K.G., J.M, and C.O. were 'juvenile offenders' for purposes of registration under Megan's Law IV and would be required to comply with the registration requirements. On

[1] The current version of Megan's Law may be found at 42 Pa.C.S.A. § 9799.10 et. seq. Megan's Law IV was created by Act 111 of 2011, which substantially rewrote the Registration of Sexual Offenders Law and amended various provisions of the Crimes Code, the Judicial Code, the Juvenile Act, and the Sentencing Code. Act 111 was adopted on December 20, 2011 and later amended by Act 91 of 2012. Megan's Law IV became effective on December 20, 2012.

For Act 111 of 2011, a legislative history is available online at: http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?syear=2011&sind=0&body=S&type=B&bn=1183 (last accessed January 15, 2014).

For Act 91 of 2012, a legislative history is available online at: http://www.legis.state.pa.us/cfdocs/billInfo/bill_history.cfm?syear=2011&sind=0&body=H&type=B&bn=75 (last accessed January 15, 2014).

[2] The Petitioners expressly limit their challenges to Megan's Law registration as it applies to juvenile offenders who are not subject to a sexually violent delinquent child assessment. [Juvs.' Brief in Support, 4/22/13, pg. 17, fn. 25.] This distinction is significant insofar as sexually violent delinquent children are afforded a hearing at which they may dispute whether they are mentally ill and dangerous. 42 Pa.C.S.A. § 9799.12 (defining sexually violent delinquent child as one determined to be in need of involuntary treatment under Title 42); 42 Pa.C.S.A. § 6403 (hearing to determine if juvenile is in need of involuntary treatment).

November 2, 2012, and December 20, 2012, Judge Mark issued similar orders for B.B. and N.S., respectively.

On December 20, 2012, Megan's Law IV went into effect and the Juveniles were required to register.

On February 18 or 19, 2013, the Juveniles, through their Assistant Public Defender Syzane Arifaj, filed the instant "Motion For *Nunc Pro Tunc* Relief."

On March 19, 2013, the Juvenile Law Center entered its appearance as co-counsel for the five juvenile registrants, and limited its representation to the review of the Motion for Nunc Pro Tunc Relief.

On April 22, 2013, the Juveniles submitted a Brief in Support.

On April 23, 2013, we held a hearing on the Motion. The Commonwealth presented no evidence at the hearing, electing to rely exclusively on legal argument. Attached to their Brief, the Juveniles submitted numerous exhibits from various medical and psychological experts, along with various other documents regarding juvenile sexual offenders.

On May, 24, 2013, the Commonwealth filed a Brief in Opposition.

On June 13, 2013, the Juveniles filed a Reply Brief. The Juveniles raise five claims in the instant Motion and briefs.

First, the Juveniles claim that Megan's Law IV is an ex post facto law. Addressing whether the law is punishment, the Juveniles argue that Megan's Law IV is punitive in effect ("Claim One"). The Juveniles distinguish prior case law by pointing to increased reporting requirements, as well as the fact that the law has never been applied to juveniles before. Moreover, they argue "when applied to juveniles, a population that is neither mature nor self-

reliant, more amenable to rehabilitation and unlikely to recidivate, the punitive effects are amplified." [Juvs.' Brief in Support, 4/22/13, pg. 45.]

Second, the Juveniles claim that mandatory lifetime registration, without benefit of a hearing, creates an irrebuttable presumption in violation of the Pennsylvania Constitution's guarantee of due process ("Claim Two"). Specifically, the alleged presumption is: "that children adjudicated delinquent of the enumerated offenses require lifetime registration based solely on their juvenile adjudication, regardless of their rehabilitation following treatment, likelihood of recidivism, natural maturation and desistance over time, or need to be placed on a registry." [Juvs.' Brief in Support, 4/22/13, pgs. 57-58.]

Third, the Juveniles argue that lifetime registration under Megan's Law is cruel and unusual punishment ("Claim Three"). The Juveniles rely, in part, on the recent U.S. Supreme Court case of Miller v. Alabama to argue that the differences between an adult and a child sexual offender amplifies the registry's effects and makes registration cruel and unusual. [Juvs.' Brief in Support, 4/22/13, pg. 64.]

Fourth, the Juveniles argue that the statute imposes a stigma by labeling them as a sexual offender for life, thereby infringing on their fundamental right to reputation ("Claim Four"). The Juveniles' argument is based on the Pennsylvania Constitution, which contains an explicit guarantee of a person's right to acquire, possess, and protect reputation.[3]

Fifth, and finally, the Juveniles claim that Megan's Law is in conflict with certain provisions of the Juvenile Act ("Claim Five"). This claim is, in turn, divided into two separate arguments. First, the Juveniles argue that the Juvenile Court is without jurisdiction to impose a punishment, i.e. Megan's Law registration, where that punishment extends past age twenty-one.

[3] Pa. Const. Art. I, § 1.

Second, the Juveniles argue that Megan's Law registration undermines the rehabilitative purposes of the Juvenile Act.

In addition to responding to these arguments, the Commonwealth objects that the Juveniles' Motion is untimely under Pa.R.J.C.P. 622. We will address this objection first.

Commonwealth's Objection: Timeliness of Petition under Pa.R.J.C.P. 622

The Commonwealth claims that the Juveniles' Motion is untimely under Pa.R.J.C.P. 622 because it was not filed as soon as possible. Specifically, the Commonwealth contends that the Juveniles filed their motion for relief sixty days after the effective date of Megan's Law IV and that the Juveniles provide no explanation to justify the delay in their initial filing. [Com.'s Brief, 5/24/13, pgs. 4-6.] The Juveniles responded that the effective date of Megan's Law IV was the first date any alleged error was known. [Juvs.' Reply Brief, 6/13/13, pgs. 1-4.] The Juveniles point out that the legislature may have continued to amend Megan's Law prior to its effective date[4] and that many juveniles across the state were released from supervision prior to the imposition of registration, which would have rendered their claims moot. [Juvs.' Reply Brief, 6/13/13, pgs. 1-4.] Furthermore, the sixty day delay was necessary because it was caused, in part, by the Juveniles and their families realization of the requirements of registration as it occurred after the effective date, taking time to consult with their attorneys, and waiting to file their petitions together in the interests of judicial economy. [Id.]

Pennsylvania Rule of Juvenile Court Procedure 622 states that:

> **A. Timing.** A motion for *nunc pro tunc* relief shall be filed by the juvenile with the clerk of courts in the court in which the alleged error occurred as soon as possible but no later than sixty days after the date that the error was made known.

Pa.R.J.C.P. 622 (effective April 1, 2012).

[4] One such amendment had already occurred. See fn. 1, above.

Initially, we do not believe that this case falls under the procedural rule we have just quoted. As the Rule states, the juvenile's motion shall be filed "in the court in which the alleged error occurred." Pa.R.J.C.P. 622. This implies that the error was a court order or at least occurred in court. However, we discern no alleged error in court or by the Court. The Court's prior orders did not make the Juveniles registrable and neither was it necessary to enter such orders before they became registrable. See 42 Pa.C.S.A. § 9799.23(b)(1). Prior to providing notice of the registration requirements, the Honorable Judge Jonathan Mark determined that the Juveniles met the definition of 'juvenile offenders' and so were subject to registration. Judge Mark's orders were issued to provide the Juvenile's ample notice of the registration requirements, prior to the effective date of December 20, 2012. These orders were entered before any constitutional challenge was filed. The Juveniles do not challenge Judge Mark's determinations that the statutory definition of 'juvenile offender' applies to them; instead, they argue that Megan's Law registration is unconstitutional. In any case, the parties have not argued the applicability of the Rule. Even if the Rule does apply, we find that the filing is not untimely.

Here, the alleged 'error' was known when Megan's Law IV registration went into effect, i.e. December 20, 2012. The Juveniles obviously needed significant time to research and prepare their complex legal claims, which required factual development in the form of expert affidavits and raised novel legal theories. The Juveniles also took the time to file their motions jointly. Undoubtedly, this joinder and the Juveniles' preparations significantly improved the efficiency of these proceedings and saved the Court and the parties substantial time. Based on the above, we find that the sixty day delay was "as soon as possible" in this case.

Additionally, we are unsure whether the actual delay was sixty days or sixty-one days. After a review of the filings, the timestamp on the Juveniles' initial motion is illegible and

might read either February 18, 2013, i.e. exactly sixty days after December 20, 2012, or February 19, 2013, sixty-one days thereafter. Both parties have proceeded believing that the Juveniles filed within sixty days of the law's effective date. [Com.'s Brief, 5/24/13, pg. 4; Juvs.' Reply Brief, 6/13/13, pg. 3.] Considering that the parties have not disputed this issue, and we can discern no prejudice to the Commonwealth from an additional delay of one day, we will give the Juveniles the benefit of the doubt that they filed within the sixty day timeframe and we decline to dismiss the petition under Pa.R.J.C.P. 622.

Petitioners' Claim Five: Inconsistency with the Juvenile Act

We first address the Petitioners' Fifth Claim because that claim raises non-constitutional grounds. We could not reach the constitutional claims if the Petitioners' Motion was disposable on statutory grounds. P.J.S. v. Pennsylvania State Ethics Comm'n, 723 A.2d 174, 176 (Pa. 1999) ("When a case raises both a constitutional and a non-constitutional issue, a court should not reach the constitutional issue if the case can properly be decided on non-constitutional grounds").

First, the Petitioners argue that Megan's Law IV imposes "penalties or conditions of disposition extending beyond the child's twenty-first birthday." [Juvs.' Brief in Support, 4/22/13, pg. 74.] Therefore, Megan's Law IV impermissibly extends the actions of the Juvenile Court outside the scope of its jurisdiction. Second, the Petitioners argue that Megan's Law IV is inconsistent with the rehabilitative purposes of the Juvenile Act.

"The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions." 1 Pa.C.S.A. § 1921. However, "[w]henever the provisions of

two or more statutes enacted finally by different General Assemblies are irreconcilable, the statute latest in date of final enactment shall prevail." 1 Pa.C.S.A. § 1936.

With respect to the Petitioners' first claim, they incorrectly believe that Megan's Law IV requires the Court to exercise 'jurisdiction' over them. No judicial determination subjects the Petitioners to registration.[5] At most, Megan's Law IV requires the Court to notify the juveniles that they are subject to registration. 42 Pa.C.S.A. § 9799.20; 42 Pa.C.S.A. § 9799.23.[6] This is not a disposition or an order subjecting them to registration, no more than if the Pennsylvania State Police informed the Petitioners of their obligation to register. As such, the Petitioners' first argument fails.

The Petitioners' second argument invokes the purposes of the Juvenile Act and argues that Megan's Law IV and the Juvenile Act are contradictory.

The Juvenile Act has undergone various iterations during its approximately one-hundred year presence in Pennsylvania's lawbooks. See Com. v. Fisher, 62 A. 198 (Pa. 1905) (discussing delinquency proceedings under law passed in 1903). At its core, the law has remained an alternative to criminal proceedings, aimed at rehabilitating children:

> The proceedings in [Juvenile Court] are not in the nature of a criminal trial but constitute merely a civil inquiry or action looking to the treatment, reformation and rehabilitation of the minor child. Their purpose is not penal but protective,—aimed to check juvenile delinquency and to throw around a child, just starting, perhaps, on an evil course and deprived of proper parental care, the strong arm of the State acting as parens patriae. The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life. Even though the child's delinquency may result from the commission of a criminal act the State extends to such a child the same care and training as to one merely neglected, destitute or physically handicapped. No

[5] See discussion above, regarding Judge Mark's prior orders.

[6] Certain members of the executive branch may also be required to notify the juveniles that they are subject to registration, "as appropriate." 42 Pa.C.S.A. § 9799.20. For the legislature to mandate this Court to act as its agent in providing the juveniles' notice is, perhaps, a violation of the separation of powers doctrine. However, this is irrelevant to the issues at bar considering that the notification is merely for informational purposes and does not actually subject the juveniles to registration.

> suggestion or taint of criminality attaches to any finding of delinquency by a Juvenile Court.

In re Holmes, 109 A.2d 523, 525 (Pa. 1954).[7]

Policies underlying our juvenile system, while evolving, still emphasize rehabilitation and protection of our youth. In re J.H., 737 A.2d 275, 278 (Pa. Super. Ct. 1999). The current version of the Juvenile Act attempts to balance rehabilitation, preservation of the family, and protection of the community. 42 Pa.C.S.A. § 6301. The Act is intended to provide "supervision, care and rehabilitation... [in order to further] the development of competencies to enable children to become responsible and productive members of the community." 42 Pa.C.S.A. § 6301(b)(2).

In part, juvenile proceedings exchange certain criminal protections for diminished consequences. See In Interest of J.F., 714 A.2d at 470 (no right to jury trial in juvenile proceedings). "Juvenile proceedings, by design of the General Assembly, have always lacked much of the trappings of adult criminal proceedings." In re T.P., 2013 PA Super 280 at *7 (Pa. Super. Ct. Oct. 21, 2013). The juvenile proceedings are "intimate, informal and protective in nature." Id.; 42 Pa.C.S.A. § 6336(a) (juvenile proceedings shall be conducted in an informal but orderly manner).

The special treatment provided to criminal offenders by the Juvenile Act is not a constitutional requirement. Com. v. Cotto, 753 A.2d 217, 223 (Pa. 2000); Com. v. Hughes, 865 A.2d 761, 777 (Pa. 2004). Prior to the twentieth century, there were no juvenile courts in this Commonwealth at all. Cotto, 753 A.2d at 224.

[7] The appellate courts have continued to cite Holmes with approval, despite subsequent versions of the Juvenile Act which have introduced the purpose of community protection and balanced and restorative justice. See In Interest of J.F., 714 A.2d 467, 473 (Pa. Super. Ct. 1998) (discussing the language in Holmes and stating "[t]he present scheme of the Act effectively retains this worthwhile goal, despite a greater emphasis on the protection of the public and the accountability of juvenile offenders, especially in regard to violent crimes"). Furthermore, juvenile proceedings are still considered to be "merely a civil inquiry or action looking to the treatment, reformation, and rehabilitation of the minor child." In re J.B., 39 A.3d 421, 426 (Pa. Super. Ct. 2012).

In short, the Juvenile Act represents the legislature's attempt to balance the needs of juvenile rehabilitation and community protection. Treatment under the Juvenile Act is not constitutionally guaranteed, but is a product of statute.

In comparison, the primary focus of Megan's Law IV is to protect the community. 42 Pa.C.S.A. §9799.11. The law identifies certain juvenile offenders and adds them to the sexual offender registry. 42 Pa.C.S.A. §9799.12 (defining juvenile offenders); 42 Pa.C.S.A. § 9799.15(a)(4) (requiring registration). This is aimed at the vital purpose of preventing sexual re-offense. 42 Pa.C.S.A. 9799.10(a).

While the Juvenile Act implies a different focus when it was drafted, this does not preclude Megan's Law IV from taking effect. The General Assembly is free to change its mind as to what constitutes sound policy. So long as the General Assembly acts within the strictures of the constitution, it may require additional protections from those children who have engaged in criminal conduct. Nor is there reason to think that a provision of Megan's Law IV creates an irreconcilable difference with the Juvenile Act. At most, Megan's Law IV constitutes a shift in policy which provides a different context in which to interpret the Juvenile Act.[8] This shift in policy is not different in kind than the shift which occurred through the amendments to the Juvenile Act in 1995.

For the above reasons, the Petitioners' claims with respect to the Juvenile Act fail.[9]

We will now address the Petitioners' second and fourth claims, considering that our disposition on those claims is dispositive of this petition.

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[8] Even if there was an irreconcilable difference with Megan's Law IV, the Juvenile Act would be superseded since the later-enacted statute takes priority.

[9] Claim Five partly relies on whether Megan's Law IV constitutes punishment. However, we do not rule on this issue as it is not necessary to our disposition on this claim.

Petitioners' Claims Two & Four: Reputation, Irrebuttable Presumption, and Due Process

The Petitioners claim that Megan's Law IV creates an irrebuttable presumption that violates due process (Claim Two). Furthermore, the Petitioners claim that Megan's Law IV infringes on their right to reputation without substantive due process (Claim Four). These issues are interrelated. The Petitioners' right to reputation receives the highest level of judicial scrutiny and will be analyzed first. Building from that analysis, we will briefly discuss the Petitioners' irrebuttable presumption claim.

Duly enacted legislation carries with it a strong presumption of constitutionality. Com. v. Swinehart, 664 A.2d 957, 961 (Pa. 1995). The presumption of constitutionality will not be overcome unless the legislation is clearly, palpably, and plainly in violation of the constitution. Id. A party may contest the constitutionality of a statute on its face or as-applied. Com. v. Brown, 26 A.3d 485, 493 (Pa. Super. Ct. 2011).

> A facial attack tests a law's constitutionality based on its text alone and does not consider the facts or circumstances of a particular case. An as-applied attack, in contrast, does not contend that a law is unconstitutional as written but that its application to a particular person under particular circumstances deprived that person of a constitutional right.

Id. citing U.S. v. Marcavage, 609 F.3d 264, 273 (3d Cir. 2010).

"The touchstone of due process is protection of the individual against arbitrary action of the government." Wolff v. McDonnell, 418 U.S. 539, 558 (1974).

> All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.

Pa. Const. Art. I, § 1.

> All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against

> the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.

Pa. Const. Art. I, § 11.

"'Character' and 'reputation' are not synonymous terms. The former is what a man is, the latter is what he is supposed to be." Hopkins v. Tate, 99 A. 210, 212 (Pa. 1916) (discussing the Rules of Evidence). Regarding reputation and character:

> A man may, with or without his fault, have a bad reputation for honesty in the neighborhood in which he then resides; but removing therefrom he may, after living in another and distant place for several years and leading an honest and upright life, acquire a good reputation in the latter community. His character may not undergo a change, but his reputation in the two places is not the same.

Hopkins, 99 A. at 212.

Under the U.S. Constitution, reputation is not an interest which, standing alone, is sufficient to invoke the procedural protections of the Fourteenth Amendment's due process clause. Paul v. Davis, 424 U.S. 693 (1976); see also Com. v. Maldonado, 838 A.2d 710, 714 (Pa. 2003) (Megan's Law case, noting that reputation is not sufficient to trigger due process under *Paul v. Davis*); Com. v. Mountain, 711 A.2d 473, 478 (Pa. Super. Ct. 1998) (also citing *Paul v. Davis* and stating that reputation alone is insufficient to trigger due process claims). However, under the Pennsylvania Constitution, reputation is "a fundamental interest which cannot be abridged without compliance with constitutional standards of due process and equal protection." R. v. Com., Dep't of Pub. Welfare, 636 A.2d 142, 149 (Pa. 1994) citing Hatchard v. Westinghouse Broadcasting Co., 532 A.2d 346, 350 (Pa. 1987).

Pennsylvania's Constitution requires the same due process analysis as the Federal Constitution. Pennsylvania Game Comm'n v. Marich, 666 A.2d 253, 255 fn. 6 (Pa. 1995). Like the due process clause in the Fourteenth Amendment of the Federal Constitution, Article I Section 1 of the Pennsylvania Constitution guarantees certain inalienable rights. Nixon v. Com.,

839 A.2d 277, 286 (Pa. 2003). "While the General Assembly may, under its police power, limit those rights by enacting laws to protect the public health, safety, and welfare, any such laws are subject to judicial review and a constitutional analysis." Nixon, 839 A.2d at 286 (citations omitted). "The constitutional analysis applied to the laws that impede upon these inalienable rights is a means-end review, legally referred to as a substantive due process analysis." Id. "Under that analysis, courts must weigh the rights infringed upon by the law against the interest sought to be achieved by it, and also scrutinize the relationship between the law (the means) and that interest (the end)." Id. at 286-87.

Where an infringed right is considered fundamental, the means-end review is known as the 'strict scrutiny' test. Nixon, 839 A.2d at 287. A law may only satisfy strict scrutiny if it is narrowly tailored to a compelling state interest. Id. Because reputation is a fundamental right, infringements of reputation undergo strict scrutiny. Pennsylvania Bar Ass'n v. Com., 607 A.2d 850, 858 (Pa. Cmwlth. Ct. 1992).

The existence of government records containing information that might subject a party to negative stigmatization is a threat to that party's reputation. Pennsylvania Bar Ass'n v. Com., 607 A.2d 850, 853 (Pa. Cmwlth. Ct. 1992) citing Wolfe v. Beal, 384 A.2d 1187, 1189 (Pa. 1978).

An infringement on the right to reputation necessarily implies that the stakeholder will have a remedy. Carlacci v. Mazaleski, 798 A.2d 186, 190 fn. 9 (Pa. 2002) ("Where there is a right, there is a remedy"). For example, due process required a cause of action to stand for petitioners to pursue expungement of certain records, even where no statutory right to expungement existed. Carlacci v. Mazaleski, 798 A.2d 186, 190 (Pa. 2002) (PFA hearing); Wolfe v. Beal, 384 A.2d 1187, 1189 (Pa. 1978) (involuntary commitment); but see Com. v.

Charnik, 921 A.2d 1214, 1220 (Pa. Super. Ct. 2007) (records of convictions and PFA hearings resulting in a finding of abuse do not require additional due process protections).

In Pennsylvania Bar Ass'n v. Com., the Commonwealth Court applied strict scrutiny to examine reputational harm done to certain attorneys. Pennsylvania Bar Ass'n v. Com., 607 A.2d 850, 857 (Pa. Cmwlth. Ct. 1992). In that case, the General Assembly had enacted legislation in an attempt to reduce the factors that contribute to higher vehicle insurance costs for consumers. Id. at 852. Part of this initiative included the establishment of a "Motor Vehicle Fraud Index Bureau" where insurers would submit all "suspected fraudulent claims" for listing in the Index. Id. The Index listed both the name of the claimant and the claimant's attorney. Id. The Index was then disseminated to law enforcement officers, member-insurers, the Insurance Department, and similar fraud index bureaus. Id. at 853. The Pennsylvania Bar Association petitioned the Court for declaratory and injunctive relief, arguing that the law violated procedural and substantive due process in denying the attorneys their fundamental right to reputation. Id. The Commonwealth Court agreed. Id. at 857-58. In examining substantive due process, the Court applied the strict scrutiny test and noted that "while some attorneys reported to the Index Bureau might actually be involved in submitting fraudulent claims, all of the attorneys reported will suffer an injury to their right to protect their reputations without benefit of due process." Id. at 858. Furthermore, the Commonwealth "[made] no argument which justifie[d] the broad sweep of the attorney reporting requirements." Id. Consequently, the Court held that "the requirement that attorney names be reported on the basis of an undefined

suspicion [was] unconstitutional as a violation of substantive due process." Pennsylvania Bar Ass'n, 607 A.2d at 858.[10]

Even employing the rational basis test, the Court has sometimes held that a conviction-based presumption is unconstitutional. In Johnson v. Allegheny Intermediate Unit, the Commonwealth Court applied rational basis review to a disqualification from employment based upon a criminal conviction. Johnson v. Allegheny Intermediate Unit, 59 A.3d 10 (Pa. Cmwlth. Ct. 2012). In that case, petitioner Johnson began employment for the Allegheny Intermediate Unit in 2004. Id. at 13-15. Johnson was trained as a "Fatherhood Facilitator" and counseled juvenile fathers about child development and their role in child development. Id. In 2011, the General Assembly passed a law banning employment with school children for any person convicted of felony homicide. Id. As it turned out, the petitioner had been convicted of voluntary manslaughter twenty-eight years before. Id. The petitioner was fired in accordance with the law and subsequently he brought suit, arguing that the lifetime ban violated his due process rights. Id. at 15-16. As the law did not infringe on a fundamental right, the Court employed the rational basis test. Id. at 21. Allegheny argued that the purpose of the law was to regulate employment so that there would be a safe school environment for children. Id. at 22. However, Johnson's work was exemplary and Allegheny admitted that Johnson would not have been fired but for the law. Id. at 24-25. The Court considered the nature of the offending conduct and its remoteness in time; such circumstances "must be considered where an agency seeks to revoke a professional license on the basis of a conviction." Id. at 24. Considering the facts, the Court concluded "[because the law] creates a lifetime ban for a homicide offense that has no temporal proximity to Johnson's present ability to perform the duties of his position, and it

[10] The Court also examined procedural due process and likewise found that the law was unconstitutional. Pennsylvania Bar Ass'n, 607 A.2d at 857. The Court noted that there was no notice to the attorneys or opportunity for them to raise objections to the listing. Id.

does not bear a real and substantial relationship to the Commonwealth's interest in protecting children, it is unreasonable, unduly oppressive and patently beyond the necessities of the offense." Id. at 25. Considering Johnson's diminishing risk over time as well as Johnson's actual and current danger to children, the lifetime ban on employment was not rationally related to a legitimate government interest. See id. (considering the facts and holding law unconstitutional).

For Megan's Law, the Courts have already considered various due process claims, including challenges to the sentencing enhancement provisions included in the statute. Compare Com. v. G. Williams, 832 A.2d 962, 986 (Pa. 2003) (striking down Megan's Law II sentence increase when it triggered after judge's finding that offender was a sexually violent predator) with Com. v. Killinger, 888 A.2d 592, 596-97 (Pa. 2005) (upholding Megan's Law II sentence increase when it only triggered after a criminal conviction afforded the protection of a jury trial).

Harm to Reputation

Here, we must first determine whether the protections of due process trigger, i.e. whether the Petitioners suffer any harm to their reputations because of Megan's Law IV. Focusing entirely on the trigger for strict scrutiny, the Commonwealth argues that Megan's Law IV does not harm a juvenile offender's reputation. Specifically, the statute employs language similar to common vocabulary and calls juveniles nothing worse than what their actions warrant. All registrable juveniles have been found delinquent of Rape, I.D.S.I., Aggravated Indecent Assault, or an attempt, solicitation, or conspiracy to commit one of these crimes. 42 Pa.C.S.A. § 9799.12 (defining 'juvenile offender'). One who rapes is a rapist, as the Commonwealth says, and being called a rapist is no more stigmatizing than being called a sexual offender. Furthermore, since registration is premised on what the juveniles have actually done, any

reputational harm is not the fault of the Commonwealth; thus, the Petitioners' right to reputation has not been threatened by Megan's Law IV. After careful consideration, we disagree.

The Commonwealth essentially tells us that a juvenile offender has already damaged his reputation by his own acts and the state should not be held accountable for its publication of these acts in pursuit of protecting the community. While this argument has some persuasive force, Megan's Law IV goes too far.

The primary focus of our inquiry will be the harm to reputation, but we must keep in mind the practical reasons that our commonwealth's constitution protects that reputation. The Juveniles will almost certainly be shunned wherever their registration is known. Presence on a sexual offender registry may impose limits on the Juveniles ability to obtain housing. [Juvs.' Exh. F, Letter of Ineligibility from Johnstown Housing Authority.] Schools may refuse to admit them. Businesses may refuse to employ them. At this point the precise effects of the law are unknown, but its negative consequences are highly likely. Thus, while the Juveniles are not directly banned from a certain activity as per the plaintiff in Johnson, the informational effects of Megan's Law IV are likely to be similar, broader, and more severe. Recognizing this, we consider what Megan's Law IV says about the Juveniles.

The term 'sexual offender' does not simply imply that the juvenile was adjudicated delinquent. Megan's Law IV, like prior versions, contains a section outlining the legislature's findings which state that 'sexual offenders' "pose a high risk of committing additional sexual offenses." 42 Pa.C.S.A. § 9799.11(a)(4). To accomplish its legislative goal, Megan's Law IV requires registration for someone adjudicated delinquent of a certain sexual

offense. The law then designates the juvenile delinquent a 'sexual offender,'[11] i.e. someone at a high risk for re-offense, and disseminates this information to various entities.[12] Megan's Law is essentially a state-endorsed reputation rating. The premise that the 'sexual offender' is at a 'high risk of re-offense' is essential to the statute's purpose. The dissemination of information about these dangerous individuals is intended to allow government entities and communities to prepare for them. 42 Pa.C.S.A. § 9799.11(a)(6)-(8) (discussing same). Furthermore, that a juvenile who has been adjudicated delinquent of a certain crime is at a "high risk of re-offense" is more than you could reasonably infer based on the adjudication alone.

The Commonwealth cites federal precedent in response. Considering Connecticut's Megan's Law statute, the U.S. Supreme Court has held that due process did not require a hearing to determine if the adult registrants were "currently dangerous." Connecticut Dep't of Pub. Safety v. Doe, 538 U.S. 1, 4 (2003). Rather than creating a broad rule for due process in Megan's Law cases, the Court's holding was limited to the particular statute. The precise holding was that due process "does not require the opportunity to prove a fact that is not material to the State's statutory scheme." Id. Since the adult registrant's current dangerousness

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[11] An adult registrant is designated as a 'sexual offender,' while a juvenile registrant is both a 'juvenile offender' and a 'sexual offender.' See 42 Pa.C.S.A. § 9799.12 (defining sexual offender as "[a]n individual required to register under this subchapter").

[12] Megan's Law IV provides that the Pennsylvania State Police shall make a sexual offender's information available to the following state, federal, and local entities:

1) a "jurisdiction" such as a state, where the offender:
   - is required to register; or
   - has terminated his residence, employment or enrollment as a student
2) the United States Attorney General, the Department of Justice, and the United States Marshals Service,
3) the county's district attorney, the county's chief probation officer, and the municipalities' chief law enforcement officer, wherever the registrant:
   - establishes or terminates a residence, or is a transient; or
   - commences or terminates employment; or
   - enrolls or terminates enrollment as a student

42 Pa.C.S.A. § 9799.18(a).

Furthermore, the federal authorities will include the registrant's information "in the National Sex Offender Registry, NCIC and any other database established by such Federal agencies." 42 Pa.C.S.A. § 9799.18(a)(3); see also 42 U.S.C.A. § 16919 (establishing National Sex Offender Registry).

was immaterial to Connecticut's statute, no hearing was required. Id. However, the instant case is distinguishable. Similar to Connecticut's statute, Pennsylvania registration is triggered by certain adjudications. However, Pennsylvania's statute makes clear that registration follows from these adjudications because the registrant *is* currently dangerous. Even if Megan's Law registration was only concerned with promulgating adjudication information, our State's enhanced protection for reputation has unique implications for due process in these circumstances. Here, the reputation interests at stake are the actual focus of Megan's Law IV. The law is intended to reduce the juvenile's reputation in the eyes of the public in order to ensure protection. Our State's enhanced protection of reputation requires limits on any interpretation which blurs the line between adjudications and more fact-based inferences about those adjudications. For these reasons, we find Connecticut Dep't of Pub. Safety to be distinguishable.[13]

Our conclusion about the effect on the juveniles' reputations is not based only on the legislative findings. It is probable that most laymen and government agents will not even be aware of the provisions of Megan's Law IV which discuss how sexual offenders are dangerous. However, we do not believe that this lessens the intended effect of the law. Common sense, as well as our society's perception of Megan's Law registrants, would lead an average person of reasonable intelligence to conclude that there is something dangerous about the registrant. Once the public is aware of the juvenile's registration, the clear implication is that the Commonwealth thought it necessary to inform them that this person is a sexual offender and therefore dangerous. This is exactly the purpose of the law and we believe the law will be effective. A similar view

[13] Since the dispositive issue in Connecticut Dep't of Pub. Safety was whether due process was even triggered, the Court's reasoning is largely unnecessary. Connecticut Dep't of Pub. Safety, 538 U.S. at 7 (conducting inquiry "assuming, *arguendo*, that respondent has been deprived of a liberty interest"). As we have said, federal law does not protect reputation alone. See Paul v. Davis, 424 U.S. 693, 712 (1976) (injury to reputation is not a liberty or property interest triggering due process protections).

will be held by persons informed of the juvenile's registration for the rest of the juvenile's life, despite the fact that a particular juvenile's character might be altered after a successful rehabilitation, or simply after he matures and develops. Unlike adult registrants, the registrants here committed these acts while they were children and this forms the most weighty consideration in finding reputational harm.

Being a child implies a unique reputation in our society. For an adult sex offender, there is debatable harm to reputation considering that adults are entirely culpable for their own actions and do not readily alter their characters, if at all. But as a society we recognize that children's characters are not fully-formed, that children are often subject to perverse influences for which they do not yet have an escape, and that children generally bear less culpability than adults owing to their age and circumstances. See Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012) (outlining scientific research supporting common sense regarding children). Through its various iterations over one hundred years, Pennsylvania's juvenile justice system has expressed society's differing perceptions of adults and children. The longstanding presence and purpose of the Juvenile Act shows the general recognition by our society that juveniles are different. Juveniles are separated from adults because they are believed to be more capable of rehabilitation and often more deserving of leniency due to a lesser degree of culpability. See In re Holmes, 109 A.2d at 525 ("The State is not seeking to punish an offender but to salvage a boy who may be in danger of becoming one, and to safeguard his adolescent life"). Children's habits are not solidified and this is contemplated in the law. See 42 Pa.C.S.A. § 6301(b) (rehabilitation). Thus, they often will not need to be deterred or incapacitated as an adult offender would under the criminal justice system. In 1954, our Supreme Court stated that "[n]o suggestion or taint of criminality attaches to any finding of delinquency by a Juvenile Court." In

re Holmes, 109 A.2d at 525. While such an absolute remark may not be true today, it is certainly true that children who commit heinous crimes are perceived indulgently in comparison with adults.

Megan's Law IV effectively replaces these considerations which usually soften the judgments of society. Where a child's serious transgressions might have been looked on with a more lenient eye, especially as time passed and wounds were healed, Megan's Law IV will remind us that this person *is* a sexual offender and this reminder will persist for the rest of the juvenile's life. When considering reputation, this kind of reminder is the exact interest at stake.

Furthermore, one of the most essential qualities of reputation is that it may be improved. This situation is even more significant for juveniles because their character is often not firmly set. Thus, a truly rehabilitated juvenile might eventually gain a good reputation to match a good character. However, under Megan's Law IV, lifetime registration will hold the juvenile's reputation in stasis. The law will imbue the juvenile with the reputation of a sexual offender through formative stages of his life and continuing into old age. A juvenile who was adjudicated delinquent when he was fourteen will continue to be known as a sexual offender when he is seventy.

While Pennsylvania Bar Ass'n does not deal with a situation as grave as sexual crime, it still has obvious similarities to the current facts. In Pennsylvania Bar Ass'n, the Court considered how some lawyers would justifiably be put on the list because they filed a fraudulent claim, whereas other lawyers on the list did nothing blameworthy. Despite this variation, the Court found a harm to reputation which triggered constitutional protections. Like Pennsylvania Bar Ass'n, the juvenile offenders are placed on a list which bears a negative connotation for their reputation and the list is then distributed. Some juveniles will deserve to be put on the Megan's

Law registry because they are at high-risk to re-offend, whereas others will be mislabeled. Extending the Commonwealth Court's reasoning to its logical conclusion, the inclusion of some dangerous individuals on the Megan's Law registry does not lessen the harm to reputation for the individuals who are not dangerous. Furthermore, an even greater burden to reputation occurs here insofar as sexual offender registration will generally persist for life.

The instant facts have differences to those in Pennsylvania Bar Ass'n, but these differences are not significant enough to distinguish that case. Unlike Pennsylvania Bar Ass'n, the Juveniles' injury to reputation is not grounded on a mere undefined suspicion, but results after an adjudicatory hearing or admission where it is determined that the juvenile has committed an offense. While the adjudicatory hearing undoubtedly provides a procedural protection, this does not lead us to conclude that no reputational harm has occurred. The adjudication and disposition itself is largely irrelevant because it does not consider the appropriateness of the juvenile's presence on the Megan's Law registry. Pennsylvania Bar Ass'n does not imply that there would be a contrary result if there were some grounds for the suspicion. As the Court said, "while some attorneys reported to the Index Bureau might actually be involved in submitting fraudulent claims, all of the attorneys reported will suffer an injury to their right to protect their reputations without benefit of due process." Pennsylvania Bar Ass'n, 607 A.2d at 858. Neither does Pennsylvania Bar Ass'n deal with the distinct and heightened reputational concerns present here, i.e. the high risk of re-offense designation and the peculiar situation of juveniles.

In sum, we hold that Megan's Law IV damages the juveniles' reputations and has triggered strict scrutiny.

Narrowly Tailored to a Compelling State Interest

Megan's Law IV is concerned with protecting the public from the recidivism of persons who have committed sexual offenses and are at a high risk to re-offend. As the law states, "protection of the public from this type of offender is a paramount governmental interest." 42 Pa.C.S.A. § 9799.11(a)(4). Safety or protection is a classic example of a compelling state interest. See Denver Area Educ. Telecommunications Consortium, Inc. v. F.C.C., 518 U.S. 727, 754-55 (1996) (protecting physical and psychological well-being of minors was a compelling state interest). Accordingly, we hold that Megan's Law IV clearly has a compelling state interest.

The second step in strict scrutiny review is more difficult and places the burden of proof on the government to show that the law is narrowly-tailored to the compelling state interest. Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 340 (2010) (state's burden of proof). A statute is not narrowly tailored when a "less restrictive alternative [to accomplish the legislative goal] is readily available." Boos v. Barry, 485 U.S. 312, 329 (1988) (existence of a less restrictive statute suggested that a challenged ordinance, aimed at the same problem, was overly restrictive). Neither is a statute narrowly tailored if it is over-inclusive, covering situations which are not pertinent to the legislative goal. See Simon & Schuster, Inc. v. Members of New York State Crime Victims Bd., 502 U.S. 105, 118 (1991) (to compensate victims, statute controlling literary endeavors of authors admitting to crime was over-inclusive, as it also applied to authors never actually accused or convicted).

As we have already noted, the Commonwealth did not present evidence or argument on how Megan's Law IV is narrowly-tailored. The Commonwealth elected to focus on

whether the Petitioners' reputations were harmed. Thus, we are forced to rely primarily on the Petitioner's evidence in assessing this prong.

In examining the narrowly tailored requirement, we first acknowledge the General Assembly's difficulty in attempting to craft appropriate regulation for sex offenders. On the one hand, both adult and juvenile sexual offenders might pose a future danger to the public. Megan's Law attempts to deal with this danger by essentially creating a government-managed reputation system. However, among adults and juveniles the risk of re-offense is by no means the same. The recidivism rate for adult sexual offenders has been estimated at 13% or higher, while the most extensive study of juvenile sexual recidivism rates (collecting 63 studies and surveying 11,200 juveniles) concludes that juvenile offenders recidivate in 7.09% of cases. [Juvs.' Exh. J, Aff. of Michael F. Caldwell, Psy.D.; Exh. I, Aff. of Dr. Elena del Busto, M.D.] The real recidivism rate over a sexual offender's lifetime may be higher than these statistics reveal. Of course, any study will be practically constrained to pick some point in time to stop research (on average, the juvenile studies stopped collecting data 5 years after the initial adjudication). Thus, any recidivism that occurred after that time is not accounted for. Furthermore, not all sexual re-offenses are reported. This means that the actual recidivism rate for juveniles could be higher than assessed and falls short of total accuracy.

Predictions for juvenile sexual offenders pose additional problems. For juvenile sexual offenders, "it is extremely difficult to identify the small subgroup of offenders who pose a high risk of sexual re-offense." [Juvs.' Exh. J, Caldwell, Psy.D.] This is because juvenile sexual recidivism is relatively low, for scientific purposes, and this makes identifying risk-increasing elements more difficult. [Juvs.' Exh. J, Caldwell, Psy.D.] Nevertheless, Megan's Law IV uses the fact of an adjudication alone to determine if a particular individual should be put on the

registry. We are unaware, and the parties do not suggest, what factual background or research the legislature considered before enacting Megan's Law IV. But even if the legislature were to preface its legislation with very extensive research it is hard to see how it would be possible to create an adjudication-based registry to cover only those juveniles who are, in fact, dangerous.

Megan's Law IV does differentiate between adult and juvenile sexual offenders. Adults and juveniles are subject to registration for different offenses and, unlike adults, juveniles will not be registrable unless they are at least fourteen years of age at the time of the offense. For a juvenile to be registrable he must: (1) be adjudicated delinquent of Rape, I.D.S.I., Aggravated Indecent Assault, or an attempt, solicitation, or conspiracy to commit the same; and (2) be 14 years old or older when he engaged in the registrable conduct. 42 Pa.C.S.A. § 9799.12. On the other hand, Megan's Law IV makes adult offenders registrable for approximately forty-eight (48) different crimes. 42 Pa.C.S.A. § 9799.14. This tally does not account for similar crimes in foreign jurisdictions, inchoate crimes, or repealed registrable offenses in this Commonwealth. Presumably, the offenses which make a juvenile registrable imply a higher risk of re-offense. Megan's Law IV does not place a juvenile's information on the in-state public website. 42 Pa.C.S.A. § 9799.28.[14] While Megan's Law IV provides no confidentiality protections and disseminates the registrant's information to various parties,[15] public dissemination of a juvenile's information will not necessarily occur. By these distinctions the legislature has tried to balance the need to rehabilitate juvenile offenders, while also protecting the community through registration.

[14] Petitioners contend that, nevertheless, Megan's Law IV requires the juveniles' information to be disseminated to state and federal agencies that will include their registration information online. Thus, argue the Petitioners, Megan's Law IV effectively places their information online.

[15] See fn. 12, above, discussing who receives a registrant's information.

Nevertheless, while Megan's Law implies an effort to limit juvenile registration, it fails to be narrowly tailored. Megan's Law IV is most problematic in that it is over-inclusive; the law requires registration by juveniles who are not at a high risk of re-offense. A juvenile offender's circumstances may vary, even for the heinous crimes involved. The law's lack of any individualized inquiry leaves significant questions unanswered pertaining to the juvenile's risk of recidivism. For instance, what is the juvenile's background? Was the initial adjudication born of a momentary lapse or was it a continuing pattern of behavior? Were there significant contributing factors in the juvenile's crime, such as peer pressure or a poisonous home environment? Was the juvenile previously subject to sexual or physical abuse? For how long? Has he now moved to a new and stable environment? Has he re-offended or been tempted to re-offend? Has the juvenile shown signs of rehabilitation or recovery? Is he now married, employed, in school, involved in his community, or engaged in other productive and supportive roles which would diminish the risk of re-offense? Consideration of such questions is analogous to the murder sentencing factors. See 18 Pa.C.S.A. § 1102.1 (for murder sentence, considering particular circumstances of a juvenile before deciding eligibility for parole).[16] By spelling out these considerations we do not mean to imply that the legislature must require some particular set of questions or questionnaire before it could require registration. However, Megan's Law IV is over-inclusive by not accounting for individualized circumstances, thereby ignoring a means to avoid including non-dangerous persons on the registry. It would be no answer to say that the future dangerousness of sexual offenders is too speculative and unknowable for determination at the time of adjudication, for this is simply to acknowledge that the law will sweep up those who are not dangerous.

[16] This statute was passed in response Miller v. Alabama, 132 S. Ct. 2455 (2012).

Furthermore, other statutory provisions suggest that the adjudication-based system for registration is not the least restrictive means that could have been chosen.[17] The legislature has tasked the court with judging whether a particular sexual offender should be classified as a sexually violent predator "due to a mental abnormality or personality disorder that makes the individual likely to engage in predatory sexually violent offenses." 42 Pa.C.S.A. § 9799.12 (definitions); 42 Pa.C.S.A. § 9799.24(e) (hearing for assessment). The Sexual Offender Assessment Board is tasked with assisting the Court in examining whether the sexual offender is a sexually violent predator. 42 Pa.C.S.A. § 9799.24(b). After a court order, the Board will gather the following information for the Court's review:

> (1) Facts of the current offense, including:
> (i) Whether the offense involved multiple victims.
> (ii) Whether the individual exceeded the means necessary to achieve the offense.
> (iii) The nature of the sexual contact with the victim.
> (iv) Relationship of the individual to the victim.
> (v) Age of the victim.
> (vi) Whether the offense included a display of unusual cruelty by the individual during the commission of the crime.
> (vii) The mental capacity of the victim.
> (2) Prior offense history, including:
> (i) The individual's prior criminal record.
> (ii) Whether the individual completed any prior sentences.
> (iii) Whether the individual participated in available programs for sexual offenders.
> (3) Characteristics of the individual, including:
> (i) Age.
> (ii) Use of illegal drugs.
> (iii) Any mental illness, mental disability or mental abnormality.
> (iv) Behavioral characteristics that contribute to the individual's conduct.
> (4) Factors that are supported in a sexual offender assessment field as criteria reasonably related to the risk of reoffense.

42 Pa.C.S.A. § 9799.24(b).

[17] We employ the U.S. Supreme Court's suggestion of considering similar provisions to determine if there is a less restrictive means available. Boos v. Barry, 485 U.S. 312, 329 (1988) (existence of a less restrictive statute suggested that a challenged ordinance, aimed at the same problem, was overly restrictive).

The Court then uses this information, in part, to determine whether the sexual offender is a sexually violent predator. The legislature considered this level of individual analysis appropriate, at least in these circumstances. While the legislature concluded that Megan's Law IV needed to be "strengthened," strengthening the law did not mean excluding a sexually violent predator assessment, which was already present in prior versions.[18] Similarly, the legislature also required a court hearing for "sexually violent delinquent children." 42 Pa.C.S.A. § 9799.12 (referring to § 6402 for definition of sexually violent delinquent child); 42 Pa.C.S.A. § 6402 (defining sexually violent delinquent child as one involuntarily committed under § 6403). The standard employed is deferential to the juvenile; it must be shown by "clear and convincing evidence" that the juvenile "has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence." 42 Pa.C.S.A. § 6403(d). Thus, the legislature has already indicated that it believes the individualized consideration of circumstances is a reasonable means of carrying out the law's purpose; this supports the notion that adjudication-based registration is over-inclusive.

Similar to Pennsylvania Bar Ass'n, the statute will include persons both relevant and irrelevant to the legislative aim. However, an unchallengeable, *per se* conclusion that all juvenile offenders require Megan's Law registration for at least twenty-five years discards reasonable, alternative protections which could be put in place, such as an individualized inquiry into the risks of a particular juvenile.

We also consider the holding in Johnson. While Johnson only applied the rational basis test, a considerably more deferential standard of review, the Court nevertheless struck

[18] Specifically, the Court already conducted sexually violent predator assessments for adults pursuant to Megan's Law III. As we have said, this is the first time that juveniles have been required to register and, thus, no individual juvenile assessments occurred in prior versions of Megan's Law.

down a law which presumed dangerousness based upon a criminal conviction. Here, Megan's Law IV infringes on a fundamental right and presumes that the juvenile is dangerous throughout his life based upon an adjudication alone. But if a conviction-based presumption of dangerousness is not rationally related to protection because it fails to account for individual circumstances, it follows that neither is such a presumption narrowly tailored. The infringement of a fundamental right must be more carefully justified to survive scrutiny.[19]

Additionally, the legislature has historically selected certain crimes considered heinous in nature for direct filing in the criminal division when committed by juveniles fifteen years of age and over, thus, at a minimum, invoking constitutional protections when the potential consequences are the same or similar to adult defendants. 42 Pa.C.S.A. § 6302 (defining "delinquent act"); see also Com. v. Ramos, 920 A.2d 1253, 1257 (Pa. Super. Ct. 2007). We note that the adjudicatory hearing does not encompass the full panoply of criminal protections. Such hearings are conducted "in an informal but orderly manner"[20] and the parties often adopt a less adversarial attitude than in the criminal setting. Thus, adjudications of delinquency enjoy less procedural protections than adult registrants. Where the fundamental right to reputation is at stake, however, the determination is of constitutional magnitude and should enjoy some appropriate, heightened protection. We do not hold or imply that a jury trial, or other specific criminal protections, are constitutionally required in juvenile proceedings. Neither do we hold that criminal protections are required prior to a juvenile's sexual offender registration. Rather, the lack of these constitutional protections is merely suggestive of how Megan's Law IV fails to consider that the registration issues at stake are of constitutional magnitude for the Juveniles.

[19] In assessing harm, we have noted how Johnson banned employment based upon the criminal proceeding, whereas Megan's Law IV disseminates information after the adjudication. However, this dissemination of information is likely to have similar practical effects on the Juveniles' employment, housing, and education.

[20] 42 Pa.C.S.A. § 6336(a) (Conduct of Hearings under Juvenile Act).

Before concluding, we also note that we have reviewed both the state and federal legislative histories for reasoning or evidence which supports the premise that the adjudication-based registration is closely tied to juveniles at a high risk of re-offense. We have found none.

As far as Pennsylvania's legislative record is concerned, we have found no helpful discussion. Pennsylvania legislators indicated that Megan's Law IV extended registration to transient offenders,[21] allowed for increased information sharing on national registries,[22] and brought Pennsylvania in compliance with the federal Adam Walsh Act of 2006. Compliance with the Adam Walsh Act was necessary to avoid a $1.6 million reduction in a federal grant,[23] and also to make Pennsylvania less attractive to sexual offenders from foreign jurisdictions who might otherwise elect to move to the state if Pennsylvania maintained lesser reporting requirements. We have found no discussion of the appropriateness of juvenile registration on the available record.[24]

Since Megan's Law IV was partly designed to comply with the Adam Walsh Act, we have also reviewed the federal legislative record. The Adam Walsh Act of 2006 was broad-ranging and addressed multiple issues for both adult and juvenile sexual offenders. In part, the federal legislation sought to eliminate the disparity between registration for adult and juvenile

[21] S.B. 1183, Legislative Journal—Senate, pg. 1203-04, November 15, 2011 (statement of Senator Orie). Available online at: http://www.legis.state.pa.us/WU01/LI/SJ/2011/0/Sj20111115.pdf#page=5.
[22] S.B. 1183, Legislative Journal—House, pg. 2551, December 13, 2011 (statement submitted by Representative Caltagirone). Available online at: http://www.legis.state.pa.us/WU01/LI/HJ/2011/0/20111213.pdf#page=15.
[23] S.B. 1183, Legislative Journal—House, pg. 2552, December 13, 2011 (statement submitted by Representative Marsico).
[24] At most, the record reveals that two senators objected to the juvenile provisions before the final vote. S.B. 1183, Legislative Journal—Senate, pg. 1373-74, December 14, 2011 (statements of Senators White and Ferlo). Available online: at http://www.legis.state.pa.us/WU01/LI/SJ/2011/0/Sj20111214.pdf#page=13.

offenders.[25] It also was intended to create a uniform system of registration among the states in order to enhance the accuracy and usefulness of Megan's Law registries.[26]

After reviewing the congressional record, the limited registration of juvenile offenders appears to have been part of a pragmatic compromise on the part of Congress, rather than an attempt to limit juvenile registration to those who were at a high risk for re-offense. One senator opined that:

> [I]n order for the registry to be effective, it should be targeted toward those who represent the highest risk to our communities. The current version takes a more sweeping approach toward juvenile offenders by expanding their registration requirements. The Senate bill allowed each State to determine whether a juvenile should be included on the registry. This compromise allows some offenders over 14 to be included on registries, but only if they have been convicted of very serious offenses. For juveniles, the public notification provision in this bill is harsh given their low rate of recidivism, which is less than 8 percent according to the most recent studies. For this reason, it is especially important that the bill includes funding for treatment of juvenile offenders. These provisions recognize that juvenile offenders, who have much lower rates of recidivism and have been shown to be much more amenable to treatment than their adult counterparts, shouldn't be lumped together with adult offenders.[27]

The federal legislative record does not provide any indication that Pennsylvania's registrable adjudications are tied to a high-risk of re-offense. As the Senator said, the Adam Walsh Act was a compromise which included more juveniles than those who were high-risk. The federal legislature was aware, however, that compliance with the Adam Walsh Act might very well conflict with state constitutional protections. Recognizing this, they provided an accompanying exception to the Adam Walsh Act in order to allow states the necessary leeway to abide by their own governing documents without suffering a penalty in funding.

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[25] 29 Cong. Rec. 677-78 (March 8, 2006) (statement of Rep. Green). Available online at: http://www.gpo.gov/fdsys/pkg/CREC-2006-03-08/pdf/CREC-2006-03-08-pt1-PgH657-2.pdf#page=21.
[26] 96 Cong. Rec. 8023 (July 20, 2006) (statement of Sen. Kennedy). Available online at: http://www.gpo.gov/fdsys/pkg/CREC-2006-07-20/pdf/CREC-2006-07-20-pt1-PgS8012-2.pdf#page=12.
[27] 96 Cong. Rec. 8023 (July 20, 2006) (statement of Sen. Kennedy). Available online at: http://www.gpo.gov/fdsys/pkg/CREC-2006-07-20/pdf/CREC-2006-07-20-pt1-PgS8012-2.pdf#page=12.

Considering the legislative record, we can find no grounds on which to conclude the juvenile's adjudication-based registration is narrowly tailored. Megan's Law IV juvenile registration was simply not designed to only apply to those at a high risk of re-offense.

Accordingly, as applied to the Petitioners and for the reasons discussed above, we hold that Megan's Law IV is not narrowly tailored to its legislative goal and is unconstitutional under the Pennsylvania Constitution and in light of the protections in Art. I, § 1.

Irrebuttable Presumption

Considering our disposition of the Petitioner's reputation claim, we will briefly analyze the related claim that Megan's Law IV creates an irrebuttable presumption.

While procedural due process is a flexible notion which calls for such protections as demanded by the individual situation, the essential requirements are notice and a meaningful opportunity to be heard. Soja v. Pennsylvania State Police, 455 A.2d 613, 615 (Pa. 1982) ("the essential elements of due process are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause"). Due process requires not just "any" hearing, but rather an "appropriate" hearing. Fiore v. Com. of Pa., Board of Finance and Revenue, 633 A.2d 1111, 1114 (Pa. 1993). With respect to procedural due process, the U.S. Supreme Court has stated:

> The hearing required by the Due Process Clause must be 'meaningful,' and 'appropriate to the nature of the case.' It is a proposition which hardly seems to need explication that a hearing which excludes consideration of an element essential to the decision whether licenses of the nature here involved shall be suspended does not meet this standard.

Bell v. Burson, 402 U.S. 535, 541-42 (1971) (citations omitted).

Sometimes, a legislative choice based on a categorical determination from a criminal conviction is permissible. Compare De Veau v. Braisted, 363 U.S. 144, 157 (1960) (in

employment context, holding that law barring felony convicts from waterfront union office, if they did not have a pardon or good conduct certificate, was reasonable, based on legislative findings of corruption, and not an ex post facto law); with Johnson v. Allegheny Intermediate Unit, 59 A.3d 10, 25 (Pa. Cmwlth. Ct. 2012) (lifetime ban on employment working with children based on voluntary manslaughter conviction was not punishment under ex post facto clause; however, applying the rational basis test, law violated due process because it did not account for individual circumstances).

However, a statute may be unconstitutional if it is conditioned on an irrebuttable presumption of some pertinent fact. See Com. Dep't of Transp., Bureau of Driver Licensing v. Clayton, 684 A.2d 1060, 1063 (Pa. 1996). "[I]rrebuttable presumptions are violative of due process where the presumption is deemed not universally true and a reasonable alternative means of ascertaining that presumed fact [is] available." Clayton, 684 A.2d at 1063 (holding statute unconstitutional that rescinded license, without a pertinent hearing, following an epileptic seizure which may or may not indicate dangerousness of driver).

Regarding the irrebuttable presumption doctrine, our court has observed that it is "[un]wise to pigeonhole whether an analysis of an irrebuttable presumption is solely one of substantive or procedural due process." Id. at 1064. This is because an irrebuttable presumption claim generally challenges both the statute, i.e. the substance, and the procedure employed by the statute. Id.

In D.C. v. School Dist. of Philadelphia, the Commonwealth Court considered whether it was an irrebuttable presumption for a statute to automatically exclude certain juvenile delinquents from a school's regular classrooms. D.C. v. School Dist. of Philadelphia, 879 A.2d 408, 410 (Pa. Cmwlth. Ct. 2005). In that case, the General Assembly enacted legislation to

manage students who were adjudicated delinquent. Id. at 409. Any student adjudicated delinquent would not be allowed in a regular classroom, but would be placed in a transition center for one month. Id. 409-10. In accordance with the statute, the transition center would then assign the juvenile to one of four various programs designed for disruptive students. Id. at 410. The four programs had no interscholastic sports and limited scholastic opportunities. Id. Three students brought suit, challenging the statute on the basis of the irrebuttable presumption doctrine. Id. at 416. The students were all adjudicated delinquent of non-violent crimes, but behaved themselves in the rehabilitation program and when working with others. Id. at 410. Finding that due process triggered, the Court considered that the adjudicatory hearing did not decide whether the student should be excluded from the regular classroom. Id. at 418. Instead, the statute simply presumed a student must be excluded "regardless of whether the student performed in an exemplary manner during juvenile placement or otherwise does not pose a threat to the regular classroom setting." Id., 879 A.2d at 418. The statute provided no hearing for students to challenge the classroom exclusion. Id. at 419. Accordingly, the statute created an irrebuttable presumption and was stricken. Id.[28]

Reputational harm is enough to trigger the Pennsylvania Constitution's due process protections. Compare R. v. Com., Dep't of Pub. Welfare, 636 A.2d at 149 (under Pennsylvania Constitution, reputation is "a fundamental interest which cannot be abridged without compliance with constitutional standards of due process and equal protection") with Com. v. Mountain, 711 A.2d at 478 (citing federal precedent and stating "reputational damage alone has been held to be insufficient to trigger a procedural due process claim"). As we discussed above, Megan's Law IV harms the Juveniles' reputation and has triggered due process

[28] The students also challenged the statute on the basis that it violated their fundamental right to reputation. The Court declined to address this claim because it had already granted relief on separate due process grounds. D.C. v. Sch. Dist. of Philadelphia, 879 A.2d 408, 419 (Pa. Cmwlth. Ct. 2005).

protections. Thus, we will go on to determine if the law creates an irrebuttable presumption as the Petitioners claim.

Megan's Law IV creates a presumption that the Petitioners are dangerous and pose a high risk of re-offending, thus necessitating their placement on the sex offender registry. This presumption is employed after an adjudicatory hearing where the Petitioners were adjudicated delinquent of certain offenses. However, the Petitioners' registry and dangerousness are not at issue in the hearing.

Apparently recognizing that Megan's Law IV will cover juvenile delinquents who are not high risk, the legislature provides an opportunity for juvenile offenders to petition the Court to withdraw from the registry. However, a juvenile's challenge to registration may only occur after they have been subject to registration for 25 years. 42 Pa.C.S.A. § 9799.17(a)(1). This challenge will be precluded if the juvenile has been convicted for any second degree misdemeanor punishable by more than one year in prison, whether or not this conviction bears any relationship to dangerousness, sexual offenses, or the requirements of registration. 42 Pa.C.S.A. § 9799.17(a)(2).[29] The juvenile will also be on the registry for life if his court-ordered supervision is not successfully completed without revocation, regardless of the reasons or the number of years ago that occurred. 42 Pa.C.S.A. § 9799.17(a)(3). Considering the timing of this hearing and the possibly irrelevant considerations involved, we do not believe that this hearing provides a meaningful opportunity to challenge registration. Neither does Megan's Law IV provide any notice prior to the requirement to register. See 42 Pa.C.S.A. § 9799.23(a)-(d)

[29] For example, perhaps the juvenile, in the course of his employment, commits two violations of the Sewage System Cleaner Control Act within a two year period. The second violation will be a misdemeanor of the second degree and will preclude him from ever challenging his Megan's Law registry. 35 Pa.C.S.A. § 770.12(c).

(requiring notice at the time of adjudicatory hearing's disposition and also stating that failure to notify "shall not relieve the sexual offender from the requirements of this subchapter").

For these reasons, we hold that Megan's Law IV creates an irrebuttable presumption in violation of the Pennsylvania Constitution's guarantee of due process.

Petitioners' Claims One & Three: Ex-Post Facto Clause, Cruel and Unusual Punishment

Considering our disposition with respect to Claims Two and Four, we will not address the additional constitutional grounds on which the Petitioners challenge Megan's Law IV. The Petitioners' arguments regarding the ex post facto clause and the 8th Amendment are dismissed as moot.

Severability

Once a court declares part of a statute unconstitutional, it must determine whether the statute should be struck in its entirety or whether some portion of the statute may be saved by severing it. The Statutory Construction Act provides that:

> The provisions of every statute shall be severable. If any provision of any statute or the application thereof to any person or circumstance is held invalid, the remainder of the statute, and the application of such provision to other persons or circumstances, shall not be affected thereby, unless the court finds that the valid provisions of the statute are so essentially and inseparably connected with, and so depend upon, the void provision or application, that it cannot be presumed the General Assembly would have enacted the remaining valid provisions without the void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

1 Pa.C.S.A. § 1925.

The court must find provisions severable unless "[the] valid provisions of [the statute] are so dependent upon the [invalid] provisions that the General Assembly would not have enacted the former without the latter." Com. v. G. Williams, 832 A.2d 962, 986 (Pa. 2003) (severing unconstitutional penalty provisions from Megan's Law II). However, "[w]here a legislative

scheme is determined to have run afoul of constitutional mandate, it is not the role of this Court to design an alternative scheme which may pass constitutional muster." Heller v. Frankston, 475 A.2d 1291, 1296 (Pa. 1984) (going on to find inseparable link making provision not severable).

Here, we have found Megan's Law IV unconstitutional insofar as it applies to juvenile offenders who are not assessed to be sexually violent delinquent children. Megan's Law IV primarily pertains to adult sexual offenders. Ruling that the law does not apply to select juvenile offenders does not render the other provisions incomplete or incapable of being executed in accordance with the legislature's intent. As such, the provisions are severable and Megan's Law IV is not struck down in its entirety, but only insofar as it applies to juvenile offenders who are not assessed to be sexually violent delinquent children.

CONCLUSION

In sum, as applied to the Petitioners, Megan's Law IV unconstitutionally infringes on the fundamental right to reputation and creates an irrebuttable presumption in violation of the Pennsylvania Constitution's guarantee of due process. Insofar as Megan's Law IV applies to these juvenile offenders, the law is unconstitutional and cannot stand. We will, therefore, release the Petitioners from Megan's Law registration.

Accordingly, we enter the following order:

COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

IN THE INTEREST OF B. B., A Minor	: : : :	No. 248 JV 2012 PETITION TO AVOID MEGAN'S LAW REGISTRY
IN THE INTEREST OF K. G., A Minor	: : : :	No. 184 JV 2011 PETITION TO AVOID MEGAN'S LAW REGISTRY
IN THE INTEREST OF J. M., A Minor	: : : :	No. 386 JV 2009 PETITION TO AVOID MEGAN'S LAW REGISTRY
IN THE INTEREST OF N. S., A Minor	: : : :	No. 170 JV 2010 PETITION TO AVOID MEGAN'S LAW REGISTRY
IN THE INTEREST OF C. O., A Minor	: : : : :	No. 14 JV 2011, 18 JV 2011 PETITION TO AVOID MEGAN'S LAW REGISTRY

ORDER

AND NOW, this 16th day of January, 2014, after consideration of the Juveniles' Petition to Avoid Megan's Law Registry, said Petition is **GRANTED.** We hereby declare that

Megan's Law is unconstitutional as applied to the Juveniles. The Juveniles shall not be classified as "juvenile offenders" under Megan's Law. The Pennsylvania State Police are ordered to remove the Juveniles' names, photographs, and all other information from the sexual offender registry.

IT IS FURTHER ORDERED AND DIRECTED that the Clerk of Courts shall serve a copy of this Opinion and Order upon the Commonwealth and counsel for the Juveniles.

BY THE COURT:

MARGHERITA PATTI-WORTHINGTON, P.J.

CLERK OF COURTS
2014 JAN 16 PM 4 03
MONROE COUNTY, PA

cc: Michael Rakaczewski , Esq., Assistant District Attorney
Syzane Arifaj, Esq., Assistant Public Defender
Marsha L. Levick, Esq., Juvenile Law Center
Riya Saha Shah, Esq., Juvenile Law Center
Clerk of Courts
MPW2014-0007