

DATE FILED: July 7, 2017 1:16 PM
FILING ID: F66BF AAAE1361
CASE NUMBER: 2016CA1289

COURT OF APPEALS, STATE OF
COLORADO
2 East 14th Avenue
Denver, Colorado 80203

**THE PEOPLE OF THE STATE OF
COLORADO,**

Plaintiff,

v.

In the Interest of T.B.,

Juvenile-Appellant

▲ COURT USE ONLY ▲

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Case Number:
16CA1289

**BRIEF OF AMICI CURIAE COLORADO JUVENILE
DEFENDER CENTER, JUVENILE LAW CENTER, AND
CHILDREN'S RIGHTS IN SUPPORT OF JUVENILE-
APPELLANT T.B.**

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 29 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that the amicus brief complies with the applicable word limit set forth in C.A.R. 29(d) in that it contains 4,747 words (does not exceed 4,750 words).

The *amicus* brief complies with the content and form requirements set forth in C.A.R. 29(c).

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 29 and C.A.R. 32.

s/ Elizabeth Logemann

Elizabeth Logemann

Counsel for Amici Curiae

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IDENTITY OF *AMICI CURIAE*

Colorado Juvenile Defender Center (CJDC) is a nonprofit organization dedicated to ensuring excellence in juvenile defense and advocacy and justice for all children and youth in Colorado. Through direct representation, attorney training, and policy advocacy, CJDC works to ensure that children and youth experience adolescence free from over-criminalization in a just society that promotes their well-being and provides second chances. CJDC's Believe in Youth project provides representation to assist youth in petitioning for removal from the sex offender registry in Colorado. CJDC takes particular interest in this case because since its founding the organization has worked to eliminate the imposition of lifelong consequences for juvenile behavior.

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to

ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults.

Juvenile Law Center has been involved in litigation and research on juvenile sex offender registration for many years, including filing *amicus* briefs in appellate courts in Illinois, Kansas, Louisiana, New Jersey, Ohio, Washington, and the Fifth and Ninth Circuits, and directly challenging registration laws in Pennsylvania. Juvenile Law Center takes interest in cases seeking to eliminate the harsh punishment of sex offender registration for youth.

Children's Rights is a national non-profit advocacy organization dedicated to improving the lives of vulnerable children in government systems. Children's Rights uses civil rights litigation, policy expertise, and public education to create positive systems change, with a 20-year track record in the area of child welfare reform of raising accountability, protecting rights, and improving outcomes for children. Children's Rights has brought approximately 20 federal class action child welfare reform lawsuits against state and local child welfare agencies

throughout the country, and it has won legal victories that improved the child welfare systems for thousands of children. As part of its work, Children's Rights represents children who have experienced severe trauma and stigmatization. Children's Rights has particular concerns about the grave and long-lasting impact of draconian sex offender registration laws on children in foster care, who are disproportionately represented on registries.

ARGUMENT

I. CSORA IS BASED ON FALSE PRESUMPTIONS ABOUT JUVENILE SEXUAL OFFENDING

CSORA was enacted to aid law enforcement officials in investigating future sex crimes and to ensure public safety. *Fendley v. People*, 107 P.3d 1122, 1125 (Colo. App. 2004). Yet notification laws have no impact on the already very low rates of sexual recidivism among juvenile offenders. *See generally*, Michael F. Caldwell et al., *Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 197, 198 (2010) [hereinafter Caldwell, *Recidivism Study 2010*]; Elizabeth Letourneau et al., *The Influence of Sex Offender Registration on Juvenile*

Sexual Recidivism, 20 CRIM. JUSTICE POL'Y R. 136, 147 (2009) [hereinafter Letourneau, *Influence of Registration*]; Elizabeth Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 SEXUAL ABUSE: J. OF RES. & TREATMENT 393 (2008) (finding no measurable difference in recidivism rates for registered and unregistered children who committed sexual offenses).

The United States Supreme Court has repeatedly held that children are different from adults and must be afforded unique constitutional protections. *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *J.D.B. v North Carolina*, 564 U.S. 261 (2011); *Miller v. Alabama*, 567 U.S. 460 (2012); *Montgomery v. Louisiana*, 136 S. Ct. 718, 733-34 (2016). These differences are heightened when analyzing a youthful offender's likelihood of committing a sexual offense in the future. Studies show that compared to their adult counterparts, youth who commit sexual offenses are highly unlikely to do so again in adulthood.

A. Uncontroverted Research Demonstrates That Childhood Sexual Conduct Does Not Predict Recidivism

Sexual recidivism rates among youth are exceptionally low.

Caldwell, *Recidivism Study 2010* at 198 (citing to recidivism studies dating back to 1994); *see also* Michael F. Caldwell, *Sexual Offense Adjudication and Recidivism Among Juvenile Offenders*, 19 *SEXUAL ABUSE: J. RES. & TREATMENT* 107 (2007); Michael F. Caldwell et al., *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, 14 *PSYCHOL., PUB. POL'Y, & L.* 89 (2008); Michael P. Hagan et al., *Eight-Year Comparative Analysis of Adolescent Rapists, Adolescent Child Molesters, Other Adolescent Delinquents, and the General Population*, 45 *INT'L J. OFFENDER THERAPY & COMP. CRIMINOLOGY* 314 (2001); Franklin E. Zimring et al., *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort*, 26 *JUSTICE Q.* 58 (2009); Franklin E. Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later*

Sex Offending in Youth and Young Adulthood?, 6 CRIMINOLOGY & PUB. POL'Y 507 (2007) [hereinafter Zimring, *Early Sex Offending*].

The likelihood of re-offending sexually declines further as youth age into young adulthood. Kristen M. Zgoba et al., *A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act 24*, 29 (2012);¹ Letourneau, *Influence of Registration* at 142. Researchers attribute this decline not to the effects of reporting or treatment, but to the passage of time. Letourneau, *Influence of Registration* at 147 (finding that registration does not reduce recidivism risk among juvenile sexual offenders). A meta-study of over 63 studies and over 11,200 children found an average sexual recidivism rate of only 7.09 percent over an average 5-year follow-up. Caldwell, *Recidivism Study 2010* at 202.

When individuals have remained in their community for a period of time after their offense, their likelihood of recidivism further declines. R. Karl Hanson, et al., *High Risk Sex Offenders May Not be High Risk Forever*, 29 J. OF INTERPERSONAL VIOLENCE 2792, 2805 (2014)

¹ Available at <https://www.ncjrs.gov/pdffiles1/nij/grants/240099.pdf>.

(finding that individuals who remain offense-free in the community cut their recidivism rates in half every five years). When rare sexual recidivism does occur among young offenders, it is nearly always within the first few years following the original offense. Caldwell, *Recidivism Study* 2010 at 205. Studies further demonstrate that a history of a severe offense is not indicative of likely recidivism. Ashley Batastini, et al., *Federal Standards for Community Registration of Juvenile Sex Offenders*, 17 PSYCHOL. PUB. POL'Y & L. 451, 457-58 (2011). See also Zimring, *Early Sex Offending* (describing study finding no difference between recidivism rates among three groups determined by severity of their offenses). Despite the research finding that a young person who engages in sexual misconduct twice in their teen years is unlikely to reoffend as an adult, CSORA labels individuals as a high-risk to the community and eliminates any judicial discretion to remove low-risk youthful offenders from the registry based solely on the commission of the second offense. C.R.S. § 16-22-103(5).

In the instant case, T.B.'s history is consistent with the scientific findings. Although he committed a subsequent sexual offense at age 15,

no other allegations of sexual misconduct have come to light in the past 12 years. His sexual offense, far from indicating a sexually predatory nature, is typical of delinquent behavior generally. Like the vast majority of individuals who offend sexually in their childhood, T.B. is not a risk to the community. Requiring T.B. to register as a sex offender for the rest of his life sends a very different message to the public.

B. Children Who Offend Sexually Are Not Motivated By Sexual Predation

Multiple studies confirm that children who commit sexual offenses are motivated by impulsivity and sexual curiosity, not the predatory, paraphilic, or psychopathic characteristics that are more common in adult sexual offenders. Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Re-Offense Risk*, 7 CHILD MALTREATMENT 291 (2002); Elizabeth Letourneau & Michael Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 SEXUAL ABUSE: J. RES. & TREATMENT 293, 331 (2005) [hereinafter Letourneau, *Against the Status Quo*]; Judith Becker & Scotia Hicks, *Juvenile Sexual Offenders: Characteristics, Interventions, & Policy Issues*, 989 ANN. NY ACAD. SCI. 397, 399-400, 406 (2003); Caldwell, *Recidivism Study 2010* at 197-98.

The immature thought processes of children and young adolescents, combined with their emerging sexual curiosity, can lead youth to engage in peer sexual conduct for which they are unprepared and for which they do not bear the same level of culpability as an adult.

Learning to think of oneself as a sexual being and dealing with sexual feelings are important tasks of adolescence. Sexual experimentation is one aspect of “trying on” different personalities and behaviors that is necessary to the process of identity development.

Jennifer Woolard, *Adolescent Development*, in TOWARD

DEVELOPMENTALLY APPROPRIATE PRACTICE: A JUVENILE COURT TRAINING

CURRICULUM 13, 15 (2009). At the same time, “[s]exuality is seldom

treated as a strong or healthy force in the positive development of a

child’s personality,” and youth face “conflicting and contradictory

expectations in American society concerning sexuality.” Floyd M.

Martinson & Gail Ryan, *Sexuality in the Context of Development from*

Birth to Adulthood in JUVENILE SEXUAL OFFENDING: CAUSES,

CONSEQUENCES AND CORRECTIONS 31 (G. Ryan, T. Leversee & S. Lane,

eds., 3d ed. 2010). “Adults demand that adolescents develop a healthy

sexual maturity without engaging in learning experiences that make that maturity possible.” *Id.* (citation omitted). When youth engage in sexual exploration, they run the risk of finding themselves in situations that they may not be emotionally ready to navigate. *Id.* (citation omitted). Adolescents who identify as gay, like T.B., face even greater pressures. “[Lesbian, gay, bisexual, and transgender] youth have the added challenge of contending with these developmental changes while simultaneously negotiating the difficulties of living with a stigmatized identity.” See Katayoon Majd et al., *Hidden Injustice: Lesbian, Gay, Bisexual, and Transgender Youth in Juvenile Courts* 69 (2009).²

Children naturally become more interested in sex as they enter puberty; the average onset of puberty now occurs earlier than it did a century ago—under the age of 10 for girls and at an only slightly older age for boys, as compared to ages 14-15 in the early 1900s. Martinson, *supra*, at 42. Moreover, “the combination of earlier puberty and greater sexual stimuli in the environment” has contributed to children engaging in sexualized behaviors at a younger age today than in the past. *Id.*

² Available at http://www.nclrights.org/wpcontent/uploads/2014/06/hidden_injustice.pdf

Thus an 11-year-old, like T.B. at the time of his offense, must deal simultaneously with both an increasing and normative interest in sexuality and significant exposure to sexual images in the culture at large—at an age when he is ill-equipped to process or manage these interests. An individual who engages in the same behavior as an adult cannot claim the disabling impairments of immaturity that T.B. can, yet T.B. must carry the same sex offender label as an adult, based on his conduct at 11 years old.

As T.B.'s case demonstrates, with maturation, a better understanding of sexuality, and decreased impulsivity, these behaviors stop. Caldwell, *Recidivism Study 2010* at 205.

II. REGISTRATION IRREPARABLY HARMS YOUNG OFFENDERS

Labeling youth as sex offenders carries harsh direct consequences, as well as numerous lifelong collateral consequences. Mandating lifetime registration of youthful offenders, who are inherently less culpable than adults, needlessly exposes children to lifelong stigma. Decades after an offense, they may be barred from housing, employment, and educational opportunities. The consequences are

inescapable and are more severe for youth who move, travel, or seek employment or educational opportunities in other states. They also may impede public safety. Registration creates obstacles between a child and a normal, productive life, thereby *increasing* the likelihood that a registered youth will commit a non-sexual offense in the future. Molly Walker, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 519-23 (2013) (collecting studies finding that collateral consequences of registration “exacerbate existing risk factors leading to recidivism”).

A. Youthful Offenders Are Labeled Sex Offenders For Life

There is little dispute about what the term “sex offender” means, that it carries demonstrably false connotations, or that it irreparably damages the reputations of those so labeled. David Van Biema, *Burn Thy Neighbor*, TIME, July 26, 1993 (“Sex offenders are the ‘irredeemable monsters’ in modern society.”). The “common view of registered sexual offenders is that they are particularly dangerous and more likely to reoffend than other criminals.” *In re J.B.*, 107 A.3d 1, 16 (Pa. 2014); *see also State v. Letalien*, 985 A.2d 4, 23 n.14 (Me. 2009) (recognizing that,

while sex offender registries communicate “accurate information,” “a wholly stigmatizing and unwelcome public status is being communicated, not mere neutral government-held information”).

Labeling a youth as a sex offender also establishes societal presumptions that the youth is untrustworthy, possesses other negative character traits, merits punishment, or is likely to commit crimes in the future. Akiva M. Lieberman et al., *Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning*, 52 CRIMINOLOGY 345, 349 (2014); Preston Elrod & R. Scott Ryder, JUVENILE JUSTICE: A SOCIAL, HISTORICAL, AND LEGAL PERSPECTIVE 167 (4th ed. 2014). But these assumptions are demonstrably false as to youth who offend sexually. Letourneau, *Against the Status Quo* 296; see *supra*, § I.A.

Stigmatization from sex offender labeling frequently translates to real harm to youthful offenders, including social isolation and ostracism by peers, depriving youth of sources of psychological support. Judith V. Becker, *What We Know About the Characteristics and Treatment of Adolescents Who Have Committed Sexual Offenses*, 3 CHILD

MALTREATMENT 317, 317 (1998).³ This is exacerbated for registered youth when registration information is available to the public and easily accessible.

Colorado's statewide central registry, which includes juvenile registration information, is maintained by the Colorado Bureau of Investigation (CBI) and contains information related to the charge and conviction as well as personal and demographic information about the registrant. C.R.S. § 16-22-110(6)(f). Any member of the public can request the entire sex offender registry from CBI. C.R.S. § 16-22-110(6)(c). In addition, local law enforcement agencies are permitted to maintain their own registries, which any member of the community

³ Young people who must register as sex offenders are often unable to develop and maintain friendships, are kicked out of extracurricular activities, or are physically threatened after their peers learn of their record. See Sarah Stillman, *The List: When Kids Are Found Guilty of Sexual Misconduct, the Sex-Offender Registry Can be a Life Sentence*, THE NEW YORKER, March 14, 2016, available at <http://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes> (reporting the stories of individuals labeled sex offenders due to childhood sexual conduct); Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.* at 50-58 (2013) [hereinafter *Raised on the Registry*], available at <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us>. (same).

may request. C.R.S. § 16-22-112. CBI is also permitted to post registration information online for “any person required to register...as a result of a conviction for a felony,” and local law enforcement can post information for any youth who, like T.B., has a subsequent adjudication involving unlawful sexual behavior. C.R.S. §§ 16-22-111(1.5); 16-22-112(2)(III). While the CBI website states that it does not publish information concerning juveniles adjudicated for sex crimes, <https://apps.colorado.gov/apps/dps/sor/index.jsf>, information regarding persons adjudicated as juveniles may be posted after the juvenile turns 18. T.B.’s information is currently on the CBI website. Private online services may also obtain the Colorado registry and post the public information on their own websites. Because of these online databases, a simple internet search for a registrant’s name can result in instantaneous notification that the person is labeled as a “sex offender.”

As they age into adulthood, youthful offenders face new forms of stigmatization: “As time passes, . . . people who committed sex offenses as children look like adult sex offenders [to the public viewing registry information].” *Raised on the Registry* at 56. Youthful offenders like T.B.

thus may appear to have victimized children in adulthood, exposing them to different assumptions about their danger to the public.

Youthful offenders, and especially LGBT youth, may also be at risk of vigilante justice: more than 50% report experiencing violence or threats of violence against themselves or family members that they directly attribute to their registration. *Id.* at 56. “The stigma, rejection, and harassment that many LGBT youth face in their families, schools, and communities can negatively impact their psychosocial development and behavior.” *See* Majd, *Hidden Injustice* at 69. The “sex offender” label thereby creates yet another layer of societal rejection for LGBT young people who are registered.

B. Youthful Offenders Face Onerous Consequences For Failure To Follow Restrictive Reporting Requirements

Burdensome registration and reporting requirements set youth up for failure, which leads to further justice system involvement. Colorado law requires that registrants “shall register in all jurisdictions in which [they] establish[] a residence.” C.R.S. § 16-22-105(3). Although the law considers the registrant’s intent when determining “residence,” it also

provides that “occupying or inhabiting any dwelling for more than fourteen days in any thirty-day period shall constitute the establishment of residence.” *Id.* Under this definition, youthful offenders may have more than one residence where they must register and regularly report to law enforcement. *See* § 16-22-108(1)(a)(I) (requiring registration “in ***each*** jurisdiction in which the person resides.”) (emphasis added).

Registrants must regularly re-register, at least annually as well as any time the registrant:

- Changes his address or the location of his vehicle, trailer, or motor home, if he uses it as a residence;
- Changes his name;
- Establishes an additional residence;
- Begins or changes employment, enrollment, or volunteer status at an institution of postsecondary education;
- Ceases to lack a fixed residence and establishes a residence;
or
- Ceases to reside at an address and lacks a fixed residence.

C.R.S. § 16-22-108(3). In addition, registrants like T.B. who have committed a sex crime against a person under age 18 must reregister whenever they change any e-mail address, instant-messaging identity, or chat room identity. *Id.*

Youthful offenders are frequently unable to keep up with registration requirements due to restricted hours at registration offices, transience, competing obligations with work and school, normal adolescent rebellion, and a simple inability to understand or remember what changes require reporting. *See Raised on the Registry* at 81-84. But failure to register carries grave consequences: Youthful offenders who cannot keep up with registration requirements once they reach age 18 are guilty of a class 6 felony (class 5 for a second or subsequent offense), carrying a fine of between \$1,000 and \$100,000, and a prison term ranging from 12-18 months, followed by one year of parole. C.R.S. §§ 18-3-412.5(2)(a), 18-1.3-401(1)(a)(III)(A), (V)(A).

C. Youthful Offenders Face Serious Obstacles When Traveling Between States

Youthful offenders are also forced to navigate the complex, inconsistent and ever-changing requirements of each of the 49 other

states when they travel—a task that is daunting for attorneys and adults, and nearly impossible for young registrants. *See generally*, Catherine L. Carpenter & Amy Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1076-1100 (2012) (discussing the various schemes and parameters of state sex offender laws). Determining the exact nature of a youth’s obligations in each state requires the youth to find and understand (a) whether the state treats the youth as a sex offender based on his out-of-state conduct; (b) what types of contact with the state will trigger registration requirements; and (c) what residency, employment, or other restrictions are imposed. Failure to correctly navigate these laws will lead to prosecution, significant time in jail, and onerous fines.⁴

⁴ *See, e.g.*, 730 Ill. Comp. Stat. 150/10(a), 5/5-4.5-40, 5-4.5-35 (classifying first-time violation of registration as a Class 3 felony, carrying a minimum 2-year mandatory prison term, and subsequent violation as Class 2 felony, carrying a minimum 3-year mandatory prison term); S.D. Codified Laws § 22-24B-31 (classifying failure to register based on foreign conviction/registration as a Class 4 felony carrying maximum 10-year incarceration and \$25,000 fine).

1. Youth Must Register in States Where They “Reside”

As a Colorado registrant, T.B. is also a sex offender under federal law. 42 U.S.C. § 16911(8). Therefore he must register in any state where he resides, is employed, or is a student, and, if different, the state where the conviction took place. 42 U.S.C. § 16913(a) (registration requirements); 18 U.S.C. § 2250 (establishing crime). Each state defines residency differently, and youth may be required to register in multiple states as “residents.”

In Alabama, for example, a juvenile sex offender must register immediately upon entering the state with a mere *intent* to establish residence, which includes any place the individual will be “stationed with regularity, regardless of whether the person declares or characterizes such place as a residence.” Ala. Code §§ 15-20A-32(a), 15-20A-4(20). Alabama’s sweeping yet ambiguous definition is not uncommon. *See, e.g.*, La. Stat. Ann. § 15:541(22) (“Residence’ means a dwelling where an offender regularly resides, regardless of the number of days or nights spent there.”); Nev. Rev. Stat. § 179D.090 (“Resides’ means the place where an offender resides.”).

Many states require registration for even brief stays that fall short of establishing permanent or long-term residency.⁵ A five-day vacation—or even five visits on non-consecutive days—triggers registration in Florida. Fla. Stat. §§ 775.21(2)(k), (m), 985.481(1). Oklahoma provides no guidance on what level of contact requires registration, ostensibly mandating registration of all youth on the federal registry who merely enter the state. Okla. Stat. tit. 10A § 2-8-

⁵ See, e.g., Del. Code. 11 § 4120(a) (more than 7 consecutive days or more than 30 aggregate days in 12-month period); Ga. Code. § 42-1-12(7) (fourteen consecutive days or 30 aggregate days during any calendar year); Haw. Rev. Stat. § 846E-2 (more than ten days or 30 aggregate days during any calendar year); 730 Ill. Comp. Stat. 150/3(a)(1) (three or more days); Ind. Code. § 11-8-8-7(a)(1) (seven days, including part of a day, in a 180-day period); Iowa Code § 692A.101(24) (residing, sleeping, “habitually liv[ing], or “stationed with regularity”); Kan. Stat. § 22-4902(j) (three or more consecutive days or parts of days or for ten aggregate days in 30-day period); Ky. Rev. Stat. § 17.500(7) (sleeping in-state); Minn. Stat. § 243.166(1b)(4)(b) (fourteen days); Miss. Code § 45-33-23(i) (seven or more consecutive days); Mo. Rev. Stat. § 589.400(10) (more than seven days in a 12-month period); Mont. Code § 46-23-504(1)(c) (ten days or more or aggregate 30 days in a calendar year); Neb. Rev. Stat. § 29-4003 (upon entering); Nev. Rev. Stat. Ann. § 179D.460(2) (48 hours); N.D. Cent. Code, § 12.1-32-15(1)(h), (2) (ten consecutive days or 30 aggregate days in calendar year); R.I. Gen. Laws § 11-37.1-3 (“moving or returning to this state.”); S.C. Code § 23-3-430(B) (aggregate 30 days during a 12-month period); S.D. Codified Laws § 22-24B-2 (permanent or temporary domicile); Tenn. Code § 40-39-202(17) (any physical presence).

102(4). Under Kentucky law, an individual must register within five business days of changing residence from another state. Ky. Rev. Stat. § 17.510(7). But Kentucky defines “residence” as “any place where a person sleeps.” Ky. Rev. Stat. § 17.500(7). Thus, spending a night in a hotel, getting stuck at the airport, or even parking a car while driving through the state will set off the chain of local registration requirements. Registration may simply depend on which state one falls asleep in.

Expansive and variable definitions of “residence” hinder juvenile registrants from traveling between states. Youth, who may have little control over their own movements, will not likely understand these demanding regulations.

2. Youth Must Register in Other States Where They Work or Attend School

Most jurisdictions also register non-residents who attend school or work in-state.⁶ As with the term residence, each state defines work,

⁶ See, e.g., Ala. Code § 15-20A-32; Del.Code. 11 § 4120(a); 730 Ill. Comp. Stat. 150/6-5; Iowa Code § 692A.103(1); Minn. Stat. § 243.166 subd. 1a(k); Miss. Code §§ 45-33-25; Mo. Rev. Stat. §400(1)(8), (1); Neb. Rev. Stat. §§ 29-4001.01 to 29-4004; N.H. Rev. Stat. Ann. §§ 651-B:1, B:4;

employment, or schooling differently. Michigan, for instance, requires non-resident students of institutions of higher education to register with the authority having jurisdiction over the campus that the registrant regularly attends. Mich. Comp. Laws § 28.724a(1)(a). An individual must also register if “[a]s part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state . . .” Mich. Comp. Laws § 28.724a(1)(a). Visiting another campus, taking an academic field trip, or checking a book out of a library could require additional registration with local law enforcement.

States may also define “employment” broadly, including only a few hours of work on a single day. *See* Ala. Code §§ 15-20A-32 (requiring registration upon accepting employment in Alabama), 15-20A-4 (defining employment to include work as a “day laborer for any period,”

Nev. Rev. Stat §§ 179D.460, 179D.120, 179D.110; N.Y. Correct. Law §168-f; N.C. Gen. Stat. § 14-208.7(a1); N.D. Cent. Code § 12.1-32-15(1)(h), (3); R.I. Gen. Laws § 11-37.1-3; Tenn. Code §§ 40-39-212, 40-39-202(3).

and employment that is “volunteered, or for the purpose of government or educational benefit”).⁷

Far-reaching requirements like these impede young people from traveling out of state to obtain education or employment—activities that should be encouraged for their known impact on reducing recidivism. See John M. Nally et al., *The Post-Release Employment & Recidivism Among Different Types of Offenders with a Different Level of Education*, 9 INT’L J. CRIM. JUSTICE SCI. 16 (2014).

D. Youthful Offenders Face Impediments To Accessing Education, Housing, And Employment

Youthful offenders encounter numerous obstacles to participating in the most routine aspects of daily life. See generally, Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 AM. J. CRIM. J. 54, 54-58 (2009) (collecting studies).

⁷ Notably, 23 states use GPS devices to electronically monitor registrants and provide location information to probation and parole officials. Emily A. White, *Prosecutions Under the Adam Walsh Act*, 65 WASH. & LEE L.R. 1783, 1790 (2008). These monitoring restrictions may apply for life. See, e.g., Sarah Shekhter, Note, *Every Step You Take, They’ll Be Watching You*, 38 HASTINGS CONST. L.Q. 1085, 1085-92 (2011).

Individuals classified as sex offenders are categorically barred from working in certain professions. *Raised on the Registry* at 73. Youth report losing their jobs when their employers learn of their sex offender status. *Id.* at 74. For many positions, potential employers are required by Colorado law to run a criminal history records check, which would inform the employer of any sexual offense requiring registration, even if the applicant had been registered as a juvenile. *See* C.R.S. §§ 16-22-110(6)(b), 26-6-103.3.

Youth registrants' access to education may also be hindered—a possibility that may be exacerbated in states like Colorado that notify institutions of higher education of sex offender registrants. *See Raised on the Registry* at 71; C.R.S. § 16-22-110(3.5). Over 50% of surveyed youth registrants reported that they had been denied access to or experienced severe interruptions in their education due to registration. *Raised on the Registry* at 72.

Lifetime registrants—and their families, if they live together—are also ineligible for public housing. 42 U.S.C. § 13663(a); 42 C.F.R. § 960.204. Private landlords may refuse to rent to registered individuals

after local law enforcement contacts them to verify a registrant's address. Nearly half of individuals registered as children and surveyed by Human Rights Watch reported experiencing at least one period of homelessness because of registration. *Raised on the Registry* at 65.

Gay youth of color who become registered, like T.B., face the added barriers of harassment and discrimination as a result of their sexual orientation and race. See Center for American Progress & Movement Advancement Project, *Unjust: How the Broken Criminal Justice System Fails LGBT People of Color* 33 (2016)⁸ (“[G]iven the incredibly high rates of incarceration for people of color, the compounding of a criminal record, racial and ethnic discrimination, and sexual orientation and gender identity discrimination mean that LGBT people of color face numerous difficulties and rarely receive the support they need to rebuild their lives.”). These obstacles further threaten the ability of LGBT young people of color to obtain employment, education, and adequate housing. *Id.* at 33-37.

⁸ Available at <http://www.lgbtmap.org/file/lgbt-criminal-justice-poc.pdf>.

CONCLUSION

The consequences of labeling youth as sex offenders are grave and provide little benefit to members of the public. For these and all the foregoing reasons, Colorado Juvenile Defender Center, Juvenile Law Center, and Children's Rights respectfully request that this Honorable Court reverse and vacate the juvenile court's order.

Respectfully submitted,

s/ Elizabeth Logemann

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Dated: July 7, 2017

CERTIFICATE OF SERVICE

This is to certify that I have duly served the foregoing **Brief of Amici Curiae** upon all parties below, via Colorado Courts E-filing System on July 7, 2017.

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