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October 13, 2017 11:11

By: AMANDA J. POWELL 0076418

Confirmation Nbr. 1197242

IN RE: A.W.

CA 17 105845

vs.

Judge:

Pages Filed: 24

**CUYAHOGA COUNTY COURT OF APPEALS
EIGHTH APPELLATE DISTRICT IN THE STATE OF OHIO**

In re A.W.,

Appellant.

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CA-17-105845

On Appeal from the Cuyahoga
County Court of Common Pleas,
Juvenile Division.

Trial Case No. DL 14105159

**BRIEF OF AMICUS CURIAE JUVENILE LAW CENTER
IN SUPPORT OF APPELLANT A.W.**

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STATEMENT OF INTEREST

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 advocates for the protection of children's due process rights at all stages of juvenile court proceedings, from arrest through disposition and from post-disposition through appeal. Juvenile Law Center works to align juvenile justice policy and practice, ensuring that definitions of juvenile delinquency reflect modern understandings of adolescent development and time-honored constitutional principles of fundamental fairness. Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children. Juvenile Law Center has participated on multiple appeals in Ohio courts addressing the protections that must be afforded to youth in the juvenile justice system, including as *amicus curiae* in *In re M.W.*, 133 Ohio St.3d 309, 2012-Ohio-4538, 978 N.E.2d 164; *In re D.B.*, 129 Ohio St.3d 104, 2011-Ohio-2671, 950 N.E.2d 528; and *In re C.S.*, 115 Ohio St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177.

STATEMENT OF FACTS

Amicus adopt the Statement of Facts as articulated in the brief of Appellant.

ARGUMENT

At seventeen years old, A.W. committed an offense that resulted in a Serious Youthful Offender adjudication. He was receiving treatment in the juvenile system when statements he made during court-ordered treatment triggered the court to invoke his adult sentence. This was a clear violation of his right against self-incrimination under the Fifth Amendment to the United States Constitution and Ohio law. Moreover, the constitutional harm is amplified by the punishment it triggered. As a result of the invocation of his adult sentence, A.W. will now have a criminal record, may be exposed to victimization in the adult prison system, and will be required to register as an adult sex offender for the remainder of his lifetime.

First Assignment of Error

Using Compelled Statements Made During Court-Ordered Treatment To Invoke Punishment Violates The Constitutional Privilege Against Self-Incrimination

A. The United States Supreme Court And Ohio Prohibit The Use Of Statements Made During Court-Ordered Treatment Against Young People

Article I, Section 10 of the Ohio Constitution provides, in part, that “[n]o person shall be compelled, in any criminal case, to be a witness against himself.” Ohio Constitution, Article I, Section 10. In the instant case, the youth’s confidential statements during the course of treatment were unconstitutionally compelled and used against him at his Serious Youthful Offender disposition hearing.

The privilege against self-incrimination serves as a safeguard to protect youth from coerced admissions. *In re Gault*, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967). Indeed, the *Gault* Court explicitly acknowledged the unique problems that arise when confessions compelled in the name of treatment are later used against a child. In such cases, the youth “may well feel that he has been led or tricked into confession and that despite his confession, he is being punished.” *Id.* at 52. Moreover, “the availability of the privilege [against self-incrimination] does not turn upon the type

of proceeding in which its protection is invoked, but upon the nature of the statement or admission and the exposure which it invites.” *Id.* at 49. In determining whether a statement is voluntary, the court must ensure that “the greatest care [was] taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights.” *State v. Evans*, 144 Ohio App.3d 539, 561, 750 N.E.2d 909 (1st Dist.2001) (quoting *In re Gault*, 387 U.S. at 55); *See also, Estelle v. Smith*, 451 U.S. 454, 101 S.Ct. 1866, 68 L.Ed.2d 359 (1981) (holding that the state infringed on defendant’s Fifth Amendment rights when it sentenced him to death relying on statements he made, in the absence of *Miranda* warnings, to the psychiatrist conducting his competency examination).

As Appellant’s brief discusses, compelling a child to participate in therapy or risk being charged and sentenced as a serious youthful offender places a young person in the “classic penalty situation” the Supreme Court has repeatedly held to be an unconstitutional violation of the privilege against self-incrimination. *Amicus* write to emphasize that this position is consistent with case law in Ohio and numerous other states, and supports the therapeutic relationship that can best support rehabilitation.

In *Minnesota v. Murphy*, the Supreme Court noted that “if the state, either expressly or by implication, asserts that invocation of the privilege would lead to revocation of probation, it would have created the classic penalty situation, the failure to assert the privilege would be excused, and the probationer’s answers would be deemed compelled and inadmissible in a criminal prosecution.” *See Minnesota v. Murphy*, 465 U.S. 420, 435, 104 S.Ct. 1136, 79 L.Ed.2d 409 (1984). Thus, the Court held that the defendant’s Fifth Amendment right was violated when statements he made to his probation officer were used against him after he was court-ordered to “be truthful with [his] probation officer ‘in all matters’” or risk probation revocation. *Id.* at 422.

Similarly, the Supreme Court has held that a range of penalties, all arguably less severe than imprisonment—employment termination, *Uniformed Sanitation Men Ass’n Inc. v. Commissioner of Sanitation of City of New York*, 392 U.S. 280, 284-85, 88 S.Ct. 1917, 20 L.Ed.2d 1089 (1968), the loss of a professional license, *Spevack v. Klein*, 385 U.S. 511, 516, 87 S.Ct. 625, 17 L.Ed.2d 574 (1967), the inability to receive government contracts, *Lefkowitz v. Turley*, 414 U.S. 70, 71-76, 94 S.Ct. 316, 38 L.Ed.2d 274 (1973), and the loss of the right to hold public office, *Lefkowitz v. Cunningham*, 431 U.S. 801, 97 S.Ct. 2132, 53 L.Ed.2d 1 (1977)—are so substantial that they may coerce incriminating testimony.¹

The First District Court of Appeals for Ohio has made clear that like statements made to a parole officer, those made in treatment required by the court also constitute compelled testimony. In *Evans*, the Court explicitly recognized that a youth was in a “classic penalty” situation when the young person was court-ordered to participate in therapy in his residential treatment facility or risk being transferred to a more restrictive facility. *Evans*, 144 Ohio App.3d at 557. The Court concluded that *Murphy* was applicable “in the context of sexual-abuse treatment programs.” *Id.* (“It appears common that such programs require participants to divulge specific criminal acts to which they have not previously admitted, putatively for therapeutic purposes.”). “[The youth’s] privilege against self-incrimination therefore became self-executing, and the resulting confessions could not be used against him in a criminal trial.” *Id.* at 556.

Ultimately, the *Evans* Court explained, it had an obligation to determine “whether a defendant’s will was overborne by the circumstances surrounding the giving of [the] confession.”

¹ In contrast, a change in a prisoner’s conditions of confinement, including the loss of a “personal television and gym access,” when it does not extend a prisoner’s prison term or affect his eligibility for good time credits or parole, is not so significant a penalty that it could be considered to unconstitutionally compel confession. *McKune v. Lile*, 536 U.S. 24, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002).

Put another way, ‘the determination depend[s] upon a weighing of the circumstances of pressure against the power of the resistance of the person confessing.’” *Id.* at 561 (alterations in original). If being sent to a more secure facility, as in *Evans*, was a sufficient penalty to coerce self-incrimination during therapy, than imprisonment as a serious youthful offender certainly rises to that level. In both cases, the young person is “unconstitutionally forced to choose between a substantial penalty and self-incrimination.” *Id.* at 558.

B. Other States Protect Young People From Compelled Self-Incrimination During Court-Ordered Treatment

Other states similarly protect young people from compelled self-incrimination during court-ordered treatment. In *Welch v. Commonwealth*, 149 S.W.3d 407, 412 (Ky. 2004), for example, the Supreme Court of Kentucky held that using statements made during the course of sex offender treatment in a juvenile facility against the defendant in a subsequent criminal proceeding violated the Fifth Amendment when the defendant was strongly encouraged to share the information as part of treatment required by the court. The court clarified that the privilege against self-incrimination is “not limited to criminal proceedings and protects in circumstances where the person’s freedom is curtailed.” *Id.* at 410. Similarly, in *State v. Fuller*, 276 Mont. 155, 167, 915 P.2d 809 (1996), the Montana Supreme Court concluded that the defendant was placed in the classic penalty situation when he was ordered as a condition of his probation to participate in a sexual offender treatment program that required participants to disclose their offense history. The court recognized that “a defendant who refuses to disclose his offense history cannot be successfully treated. However, if the State chooses to compel answers to incriminating questions, it cannot use those answers against the defendant in a later criminal proceeding.” *Id.* See also *State v. Gaither*, 196 Or.App. 131, 133, 100 P.3d 768 (2004) (statements made during court-ordered treatment are inadmissible in criminal trial where compelled by threat of probation revocation); *In*

re Lineberry, 154 N.C.App. 246, 257, 572 S.E.2d 229 (2002) (penalizing a youth with extended custody who refuses to admit guilt in court-ordered sex offender treatment violated right against self-incrimination); *Mace v. Amestoy*, 765 F.Supp. 847, 851 (D.Vt.1991) (the defendant's Fifth Amendment rights were violated where his probation was revoked based on his failure to complete a sexual treatment program that required incriminating admissions); *State v. Imlay*, 249 Mont. 82, 91, 813 P.2d 979 (1991) (sexual assault defendant's suspended sentence, conditioned upon his completion of sexual therapy program, could not be revoked where basis of failure to complete program was refusal to admit guilt).

Moreover, as a matter of policy, ensuring the confidentiality of statements made during treatment will enhance trust between youth and their counselors and therapists, thus promoting the Ohio Juvenile Court's core purpose of "care, protection, and mental and physical development of children." R.C. 2152.01(A). In contrast, admitting such statements to be used against youth could have a chilling effect, limiting a young person's willingness to disclose key information to the therapist or counselor. Thus courts have repeatedly protected privileged communications between individuals and those in treatment roles, recognizing that such "communication should be protected. . . . to [e]nsure that persons communicate fully and completely with their counselors in order to promote successful treatment." *Sims v. State*, 601 N.E.2d 344, 346 (Ind.1992) (applying the privilege to a co-founder and director of a treatment center in the interest of supporting the therapeutic relationship needed for effective treatment). Because an individual's rehabilitation may depend on effective therapy, the importance of the therapeutic relationship will often outweigh the need for evidence in criminal matters. See Youssef, *The Importance of the Therapeutic Alliance When Working with Sexual Offenders*, *Journal of Forensic Psychology* 1(3), 110 (2016) (Noting that compelling therapists to disclose information shared during sex offender treatment may

interfere with the development of trust needed for effective therapy); Donner, *Balancing Confidentiality: Protecting Privacy and Protecting the Public*, *Professional Psychology: Research and Practice*, 39(3), 369, 372 (2008) (“In order to achieve the objective of treating confidentiality as the primary ethical obligation, psychology must more actively assert the position that without confidentiality, psychologists cannot be effective. This means that whatever pressure is applied to disclose confidential information . . . psychologists must push back and strive to protect the privacy of our clients.”); Miller, *Conflict of Interest between Therapist-Patient Confidentiality and the Duty to Report Sexual Abuse of Children*, *Behavioral Sciences & the Law*, 5(2) 161, 171 (1987) (“The threat of criminal sanctions significantly decreases the abuser’s trust in therapists who are required to report any evidence of past abuse, and therefore inhibits the effectiveness of treatment which offers the best hope of producing positive changes in the system.”)

Second Assignment of Error

The Constitutional Harm Of Using Compelled Statements Is Compounded Because It Invoked A.W.’s Adult Sentence, Unjustly Exposing Him To The Harsh Consequences Of The Adult Justice System

A.W. was only seventeen years old when he allegedly engaged in the activities that led to his rape charge. While detained in the juvenile system, A.W. exhibited none of the problematic behaviors that the court warned would lead to the invocation of his adult sentences (*See* 9/13/16 Tr. at 76-78 explaining A.W. would get an adult sentence if he “continually [fought], continually create[d] delinquent acts” or otherwise acted so badly that the Ohio Department of Youth Services could not handle him.). Thus, A.W.’s adult sentence is not only the unconstitutional result of compelled statements made in therapy, but also subjects him to a myriad of severe adult repercussions even though A.W. was a child when the alleged actions resulting in the adult sentence took place.

A. The Adult Justice System Places Young People At Risk For Devastating Consequences

During A.W.'s May 22, 2017 hearing to determine whether the court would invoke the adult portion of his sentence, Robin Palmer, the president of the Mokita Center which provided A.W.'s treatment, testified that time in adult prisons give some offenders clarity and motivates them to change their behaviors. (5/22/17 Tr. at 49). However, the research on the culture and impacts of the adult justice system demonstrates the opposite impact on young people. Young people incarcerated in adult prisons are particularly vulnerable to victimization. *See* Marty Beyer, Experts for Juveniles *At Risk of Adult Sentences in More Than Meets The Eye: Rethinking Assessment Competency And Sentencing For A Harsher Era Of Juvenile Justices* 18-20 (P. Puritz, A. Capozello & W. Shang eds., 2002). As A.W. is twenty-one years old, he will not receive the "sight and sound separation" protections mandated by the Prison Rape Elimination Act of 2003, and will be housed with much older inmates. This setting can be dangerous for A.W., because often the youngest members of the prison population face physical and sexual abuse and even death. Campaign for Youth Justice, *The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform* 7 (2007). One study showed that youth in adult facilities were five times more likely to be sexually assaulted while incarcerated and two times more likely to be assaulted with a weapon than were youth in the juvenile justice system. Richard E. Redding, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* Juvenile Justice Bulletin (June 2010). Youth in adult prisons were also 36 times more likely to commit suicide than those held in facilities apart from adult offenders. Jessica Lahey, *The Steep Costs of Keeping Juveniles in Adult Prisons*, The Atlantic (Jan. 8, 2016), available at <http://www.theatlantic.com/education/archive/2016/01/the-cost-of-keeping-juveniles-in-adultprisons/423201/>.

The significant risks of sexual abuse, assault, and suicide arise because of the criminal culture of adult prisons. *See Juvenile Transfer Laws: An Effective Deterrent to Delinquency?* at 7. Incarceration in adult facilities has “brutalizing” effects on young people. *Id.* at 8. Young people must survive in such settings by finding ways to fit into inmate culture, dealing with difficult and authoritarian relationships with older inmates, and by accepting violence as a part of daily life. *Id.* 7-8.

Not only are young people vulnerable to extreme victimization, their immersion in the violent culture of adult prisons makes them more likely to reoffend. Research shows that young people whose cases are transferred to adult court are 34% more likely to recidivate than those with similar offenses whose cases remained in juvenile court. Children’s Law Center, Inc., *Falling Through the Cracks: A New Look at Ohio Youth in the Adult Criminal Justice System*, 1 (2012). Youth transferred to the adult system “reoffend more quickly and are more likely to engage in violent crimes after release than youths processed in the juvenile justice system.” Jason J. Washburn *et al.*, *Psychiatric Disorders Among Detained Youths: A Comparison of Youths Processed in Juvenile Court and Adult Criminal Court*, 59 *Psychiatric Services* 965, 972 (2008). The violence associated with an adult prison sentence puts A.W. at high risk for sexual abuse and assault and makes him more likely to recidivate than if he had been returned to his community after the completion of the juvenile portion of his sentence.

The collateral consequences of an adult criminal record also continue to harm young people long after their release from prison. Criminal convictions may affect a person’s employment and business opportunities, deny access to government benefits and program participation, including student loans, housing, contracting, and other forms of participation in civil life. Sarah B. Berson, *Beyond the Sentence-Understanding Collateral Consequences*, National Institute of Justice

available <https://www.nij.gov/journals/272/Pages/collateral-consequences.aspx>. Under Ohio's law, A.W.'s adult conviction triggers more than 500 collateral consequences. *See* Chart of Collateral Consequences of an R.C. 2907.02 Conviction, found on Ohio's CIVICC website at <http://civiccohoio.org>.

B. A.W.'s Adult Sentence Triggers Harmful Sex Offender Registration Requirements

The most severe collateral consequence that arises from the invocation of A.W.'s adult sentence is the requirement to register as an adult sex offender for the duration of his life. Ohio law classifies A.W. as a Tier III sex offender. *See* R.C. 2950.01(G)(1)(a). Tier III offenders must verify the addresses of their residence, school, and employment, every ninety days with the sheriff of the county in which they reside. R.C. 2950.06 (B)-(C). The registration information is maintained in an internet database and is available for public inspection. R.C. 2950.081. Furthermore, Tier III offenders are subject to notification requirements: the sheriff must provide notice of the identity and location of the offender to numerous individuals in the registrant's community including occupants of residential units around the registrant. R.C. 2950.10. Tier III offenders remain on the registry "until . . . death." R.C. 2950.07(B)(1).

Adult sex offender registration requirements are based on the need to protect the community from adults who continually engage in predatory behavior. Applying such requirements to A.W., who was a child when he committed his offense, is unjust because child offenders do not create the same risk to the community as adults. A.W.'s adult sentence unfairly subjects him to the stigma and consequences of such requirements.

1. A.W. Unfairly Receives Adult Consequences For Offenses He Committed When He Was A Child

A.W. was only seventeen years old when he committed the offense that precipitated his adult sentence. Although A.W. was a juvenile at the time of the offense, he receives the same

severe, lifetime punishment of sex offender registration to which older, more mature sex offenders are subject. Punishing A.W. in the same manner as adult offenders are punished is particularly problematic because 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, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); *Graham v. Florida*, 560 U.S. 48, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010); *J.D.B. v North Carolina*, 564 U.S. 261, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011); *Miller v. Alabama*, 567 U.S. 460, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012); *Montgomery v. Louisiana*, ___ U.S. ___, 136 S.Ct. 718, 733-34, 193 L.Ed.2d 599 (2016).

These differences between adults and children are especially important when considering appropriate punishments for sex offenders. Sex offender registration requirements are designed to prevent offenders from committing additional sex crimes in the future. However, such laws have no impact on the already very low rates of sexual recidivism among juvenile offenders. See 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); 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).

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). 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) (finding that individuals who remain offense-free in the community cut their recidivism rates in half every five years).

Further, 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 such as A.W. 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.

2. Young People Who Register As Sex Offenders Suffer Lifelong Consequences

Labeling young people as sex offenders carries harsh direct consequences, as well as numerous lifelong collateral consequences. Mandating lifetime registration of those who committed offenses in their youth and are inherently less culpable than adults, needlessly exposes them to lifelong stigma. Decades after an offense, they may be barred from housing, employment, and educational opportunities. *See* Bonnar-Kidd, *Sexual Offender Laws and Prevention of Sexual Violence or Recidivism*, Am.J. Public Health, 2010 March available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2820068/#>. The consequences are inescapable and are more severe for young people who move, travel, or seek employment or educational opportunities in other states. They also may impede public safety. Registration creates obstacles between a young person and a normal, productive life, thereby increasing the likelihood that a registered person 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”).

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.*, 630 Pa. 408, 433, 107 A.3d 1 (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 young people as sex offenders also establishes societal presumptions that they are untrustworthy, possess other negative character traits, merits punishment, or are 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 people who offend during their youth. Letourneau, *Against the Status Quo* at 296.

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).² This is exacerbated for registered youth such as A.W. when registration information is available to the public and easily accessible.

In *In re C.P.*, the Ohio Supreme Court struck certain mandatory, lifetime public sex offender registration requirements for juveniles as violating United States and Ohio constitutional

² 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), available at <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us>. (same).

prohibitions against cruel and unusual punishment. *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 86. The Supreme Court found that public registration and notification requirements frustrate juvenile rehabilitation because they are contrary to confidentiality and the avoidance of stigma. *Id* at ¶ 67. Such laws “publicly and permanently mark[ed] juvenile sex offenders as deviant criminals who should be feared and shunned,” and “place[d] the sexual offense of a juvenile directly and prominently in the public eye.” *Id.* at ¶ 68 (citing Geer, *Justice Served?*, 27 *Developments in Mental Health Law* at 47, quoting Robert E. Shepherd, *Advocating for the Juvenile Sex Offender, Part 2* (2007), 21 *Crim.Just.* 52, 53).

Burdensome registration and reporting requirements also set youth up for failure, which leads to further justice system involvement. Young people, like AW., who have been designated as Tier III offenders are required to register their current address, school, and place of employment with their county sheriff every ninety days. R.C. 2950.06(A)(3). Those who fail to register in a timely manner receive a warning letter that if they do not verify the relevant information with the sheriff within the next seven days, they will be arrested and may be charged with a felony offense. R.C. 2950.06(G)(1). 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* 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 young person’s obligations in each state requires them to find and understand (a) whether the state treats the young person 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.

Sex offender registries are burdensome and stigmatizing, which is especially problematic for young people like A.W. who committed their offenses in their youth, but will be punished for them as adults “until . . . death.”

CONCLUSION

For the foregoing reasons *Amicus* respectfully requests that the decision of the trial court be vacated.

Respectfully submitted this 13th day of October, 2017.

This document is acceptable to all signers.

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of October, 2017, I caused copies of the foregoing Brief of Amicus Curiae Juvenile Law Center on Behalf of Appellant, Motion of Attorney Marsha L. Levick for Permission to Appear Pro Hac Vice, and Motion for Leave to Appear as Amicus Curiae to be served via the electronic filing system on:

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