

IN THE SUPREME COURT OF OHIO

In re: R.B.,
A MINOR, APPELLEE/CROSS-APPELLANT

:
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: Case No. 2019-1325
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: On APPEAL from the Hamilton
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: County Court of Appeals
:
: First Appellate District
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: C.A. Case NOS. C-170622 & C-170623
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BRIEF OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER, ET AL.,

Brooke M. Burns (0080256)
Chief Counsel, Juvenile Department

Office of the Ohio Public Defender
250 East Broad Street, Suite 1400
Columbus, Oh 43215
(614) 466-5394
(614) 752-5167 (fax)
brooke.burns@opd.ohio.gov

*Counsel for Amicus Curiae Office of the Ohio Public
Defender, Children's Law Center, Justice for Children,
Juvenile Law Center, National Juvenile Defender Center,
and Professor Catherine Carpenter*

Raymond T. Faller (0013328)
Hamilton County Public Defender

Julie Kahrs Nessler (0085189)
Assistant Public Defender
(*Counsel of Record*)

**Office of the Hamilton County Public
Defender**
125 East Court Street, Ninth Floor
Cincinnati, Ohio 45202
(513) 946-8256
(513) 946-8242 (fax)
JKNessler@cms.hamilton-co.org

Joseph T. Deters (0012084P)
Hamilton County Prosecutor

Paula Adams (0069036P)
Assistant Prosecuting Attorney
Office of the Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, Ohio 45202
(513) 946-3119
(513) 946-3021 (fax)

Counsel for the State of Ohio

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Statements of Interest of Amicus Curiae

The Office of the Ohio Public Defender (“OPD”) is a state agency, designed to represent criminal defendants, adults, and juveniles, and to coordinate defense efforts throughout Ohio. The OPD, through its Juvenile Department, provides juveniles who have been committed to the Ohio Department of Youth Services their constitutional right to access to the courts. *See John L. v. Adams*, 969 F.2d 228, 1992 U.S. App. LEXIS 16208 (6th Cir.1992). Like this Court, the OPD is interested in the effect of the law that this case will have on parties who are or may someday be involved in similar litigation. Accordingly, the OPD has an enduring interest in protecting the integrity of the justice system, ensuring equal treatment under the law, and safeguarding the rehabilitative purpose of the juvenile court system. To this end, the OPD supports the fair, just, and correct interpretation and application of Ohio’s juvenile rules and laws.

The 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 nearly 30 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 nearly 20 years, CLC has worked on issues facing Ohio youth prosecuted in juvenile and adult court, ensuring that youth receive constitutionally required protections and due process in educational settings, as well as delinquency and criminal court proceedings, including juvenile sexual offender registration cases.

Juvenile Law Center advocates for rights, dignity, equity, and opportunity for youth in the juvenile justice and child welfare systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education training, consulting, and strategic communications. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in

the country. Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values. Juvenile Law Center has represented hundreds of young people and filed influential amicus briefs in state and federal cases across the country.

The **National Juvenile Defender Center (NJDC)** was created to ensure excellence in juvenile defense and promote justice for all children. NJDC 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. NJDC 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. NJDC 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. NJDC also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. NJDC has participated as Amicus Curiae before the United States Supreme Court, as well as federal and state courts across the country.

Catherine L. Carpenter is the Honorable Arleigh M. Woods and William T. Woods Professor of Law at Southwestern Law School. Professor Carpenter teaches and writes in the area of criminal law and is a recognized national expert in sex crimes and sex offender registration laws. She was elected to the American Law Institute (ALI) in 2012 where she serves on the Advisory Committee examining the Model Penal Code's laws on sexual assault. For the past 15 years, the focus of Professor Carpenter's scholarship has been on the injustice of sex offender registration and community notification laws. Her work has been cited by courts and academics, and used by attorneys advocating

for their clients. Her law review articles *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 Hastings L.J. 1071 (2012) and *Legislative Epidemics: A Cautionary Tale of Criminal Laws that Have Swept the Country*, 58 Buff.L.Rev. 1 (2010) were cited by members of the Maryland Court of Appeals in *Doe v. Department of Public Safety and Correctional Services*, 62 A.3d 123 (Md.2015) which overturned Maryland's sex offender registration laws on *ex post facto* grounds. *Legislative Epidemics* was also cited by the District Court of Alabama in *McGuire v. Strange*, 83 F.Supp.3d 1231 (Md.Ala.2015) and *In re Nick H.*, 123 A.3d 229 (Md.App.2015). Her recent scholarship has highlighted the injustice of juvenile sex offender registration laws. *Against Juvenile Sex Offender Registration*, 82 U.Cin.L.Rev. 746 (2014) and *Throwaway Children: The Tragic Consequences of a False Narrative*, 45 Sw.L.Rev. 461 (2016), argue that juvenile sex offender registration violates fundamental tenets of the juvenile justice system and is based on the false presumption of high recidivism rates. *Throwaway Children* was quoted favorably by the dissent in *Interest of T.H.*, 913 N.W.2d 578, 603 (2018).

The Justice for Children Project at the Moritz College of Law at The Ohio State University was founded in 1998. Since then the Justice for Children Project has performed research and advocacy on behalf of a very vulnerable population: children. The Project houses the Justice for Children Clinic, which affords third-year law students with the opportunity to learn and zealously advocate for the rights of children across a variety of systems. Students in the clinic work towards the expressed goals of their client and represent children in neglect and dependency proceedings, delinquency cases, immigration adjustments and educational issues. Both the Project and the Clinic are supervised by Clinical Professor of Law Kimberly P. Jordan.

Statement of the Case and Facts

Amici curiae adopt the Statement of the Case and Facts presented in R.B.'s Brief on the merits.

Argument in Support of R.B.'s Proposition of Law

Introduction

When asked whether the extension of juvenile sex offender registration beyond the age jurisdiction of the juvenile court violated a child's right to due process, this Court held that it did not, finding that "the imposition of juvenile-offender-registrant status under R.C. 2152.82 or 2152.83(B) with corresponding duties lasting beyond age 18 or 21 includes sufficient procedural protections to satisfy the due-process requirement of fundamental fairness." *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184, ¶ 37. But, the procedural protections this Court recognized in *D.S.* can only meet fundamental fairness when they are followed. Further, the rehabilitative function of the review hearing mandated by R.C. 2152.84 is eliminated when the juvenile court fails to comport with the statute's requirements. Accordingly, and for the reasons that follow, amici urge this Court to find that a juvenile offender registrant's classification does not extend beyond the child's disposition when the juvenile court fails to timely hold the end-of-disposition hearing required by R.C. 2152.84.

R.B.'s Proposition of Law

To comply with fundamental fairness and a youth's due process rights in conducting a completion of disposition hearing, the juvenile court must conduct the hearing at the time the child completes his treatment. *See In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027. Fourteenth Amendment to the U.S. Constitution; Section 16, Article I of the Ohio Constitution.

- I. **The history and purpose of the juvenile court has always been rooted in rehabilitation.**

"Juvenile courts [occupy] a unique place in our legal system. [They are] "legislative creations, 'rooted in social welfare philosophy rather than in the *corpus juris*' [and] were premised on profoundly different assumptions and goals than a criminal court[.]" *In re C.S.*, 115 St.3d 267, 2007-Ohio-4919, 874 N.E.2d 1177, ¶ 65-66, quoting *Kent v. United States*, 383 U.S. 541, 554, 86 S.Ct. 1045, 16 L.Ed.2d

84 (1966); *In re Agler*, 19 Ohio St.2d 70, 72, 249 N.E.2d 808 (1969). Since its inception, the objective of the juvenile court has been to protect wayward children from evil influences, save them from criminal prosecution, and provide them social and rehabilitative services. *Children's Home of Marion County v. Fetter*, 90 Ohio St. 110, 127, 106 N.E. 761 (1914).

We as a society believe that our goal should be to rehabilitate, wherever possible, a child who may be young enough that the behavior can be molded and the child directed away from delinquent and criminal acts and toward a productive and responsible future. Therefore, our inquiry must begin with the premise that the goal of the juvenile code is to rehabilitate, not to punish, while protecting society from criminal and delinquent acts during rehabilitation.

In re Caldwell, 76 Ohio St.3d 156, 157, 666 N.E.2d 1367 (1996). Accordingly, juvenile courts are to remain centrally concerned with the care, protection, development, treatment, and rehabilitation of youthful offenders who remain in the juvenile justice system. *Id.*; *In re Kirby*, 101 Ohio St.3d 312, 2004-Ohio-970, 804 N.E.2d 476, ¶ 21; R.C. 2152.01.

Although the purpose of criminal prosecution and sentencing has been to protect the public from future crime and to punish the offender, the purpose of the juvenile court is decidedly different—namely, the “overriding purposes for juvenile dispositions ‘are to provide for the care, protection, and mental and physical development of children subject to R.C. Chapter 2152, protect the public interest and safety, hold the offender accountable for the offender’s actions, restore the victim, and rehabilitate the offender.’” *State v. Hand*, 149 Ohio St.3d 94, 2016-Ohio-5504, 73 N.E.3d 448, ¶ 14.

Ohio law strays from these long-held tenets in its sex offender registration statutes. In 2011, this Court held that Ohio’s most recent iteration of registration law is punitive in nature, for adults and children alike. *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16; *In re D.J.S.*, 130 Ohio St.3d 257, 2011-Ohio-5342, 957 N.E.2d 291, ¶ 1; *In re Cases held for the decision in In re D.J.S.*, 130 Ohio St.3d 253, 2011-Ohio-5349, 957 N.E.2d 288, ¶ 1. The statutes require juvenile offender registrants to personally register with the sheriff of the county in which they live; provide

personal information to the sheriff, including picture, name, aliases, social security number, birth date, license plate number, driver's license number, email addresses, and telephone numbers; register in a different county when staying for more than 3 consecutive days, or for 14 days in a 30-day period; and provide notice of relocation to the county sheriff 20 days prior to moving. R.C. 2950.04; 2950.01; 2950.041; and R.C. 2950.111.

And, unlike traditional juvenile dispositions, these punitive requirements are the first type of juvenile disposition that can extend beyond the age jurisdiction of the juvenile court. *D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184 at ¶ 40. Consequently, a juvenile court's classification order is the only juvenile disposition that can place an ongoing affirmative duty on a juvenile offender, for which failure to comply results in a felony offense. *See* R.C. 2950.99(B)(2). But, the language of R.C. 2152.84 reflects that this consequence only continues if the court timely holds the end-of-disposition hearing and orders that the classification order "should be continued." R.C. 2152.84(A)(1)(a). Specifically R.C. 2152.84 (B)(1) provides that "If a judge issues an order under division (A)(2)(a) of this section that continues the prior classification of the delinquent child as a juvenile offender registrant and the prior determination included in the order [as a tier, I, II, or III juvenile offender registrant] whichever is applicable, the prior classification and the prior determination shall remain in effect." (Emphasis added).

II. The jurisdictional limits of the juvenile court are clear and well-established.

Contrary to the State and the State's *Amici's* claims, there is no ambiguity about the jurisdictional limits of the juvenile court. A juvenile court's power "is derived from Section 1, Article IV of the Constitution of Ohio, and the court is established and its jurisdiction defined by [O.R.C.] Chapter 2151." *State ex rel. Schwartz v. Haines*, 172 Ohio St. 572, 573, 179 N.E.2d 46 (1962). Juvenile courts have exclusive jurisdiction over children who are alleged to be delinquent. R.C. 2151.23(A)(1). In delinquency proceedings, "child" means a person who is under 18 years of age, except as otherwise

provided in R.C. 2152.02(C)(2)-(6). R.C. 2152.02(C)(1); *In re Andrew*, 119 Ohio St.3d 466, 2008-Ohio-4791, 895 N.E.2d 166, ¶ 4-17. The exceptions in R.C. 2152.02(C) are extremely narrow.

Generally, the juvenile court's jurisdiction over a child terminates when the child turns 21. *In re J.V.*, 134 Ohio St.3d 1, 2012-Ohio-4961, 979 N.E.2d 1203, ¶ 24. Specifically, the Revised Code provides that, once validly entered, dispositions made under R.C. 2152 "shall be temporary and shall continue for a period that is designated by the court in its order, until terminated or modified by the court or until the child attains twenty-one years of age." R.C. 2152.22(A); *State ex rel. Jean-Baptiste v. Kirsch*, 134 Ohio St.3d 421, 2012-Ohio-5697, 983 N.E.2d 302, ¶18; *In re A.W.*, Slip Opinion, 2020-Ohio-1457, ¶ 7.

And, although the juvenile sex offender registration statutes permit a child's classification order to extend beyond the age jurisdiction of the juvenile court, when the juvenile court fails to comply with the timing requirements of those statutes, the resulting classification is void. For example, in *Jean-Baptiste*, this Court found that a juvenile court patently and unambiguously lacked jurisdiction to classify a child who had turned 21 years old and had thus aged out of the age jurisdiction of the juvenile court. *Jean-Baptiste*, at ¶ 28-32. Specifically, this Court recognized that the language in R.C. 2152.83(A)(1) "plainly states that the court shall issue the classification order at the time of the child's release from a secure facility; thus [t]his is a clear expression of the legislature's intent that juvenile courts lose their ability to hold classification hearings after that time." *Id.* at ¶30.

The State's amici urges this Court to revisit *Jean-Baptiste*, but such reconsideration is not necessary. The age of 21 is still the clear and fundamentally fair line to draw; and, juvenile courts must comply with the timing requirements of the Ohio Revised Code to protect a child's right to due process. In fact, in this calendar year, this Court, relying on *Jean-Baptiste*, vacated the adult portion of a child serious-youthful-offender disposition, finding:

A.W. turned 21 on May 23, 2017. Although the juvenile court issued its order invoking the adult sentence on May 22, 2017, the clerk of the court did not enter that order

upon the journal until May 23, 2017. A court speaks only through its journal[,] and it is the date of journalization, not the date when an order or judgment is signed, that determines when the order takes effect. Because the clerk did not journalize the order invoking the adult portion of the SYO sentence until after A.W. turned 21, the juvenile court lacked subject-matter jurisdiction over him. The order is therefore void.

(Internal citations omitted.) *A.W.*, at ¶ 8, citing *State v. Hampton*, 134 Ohio St.3d 447, 2012-Ohio-5688, 983 N.E.2d 324, ¶ 15; *Cleveland v. Trzebuckowski*, 85 Ohio St.3d 524, 527, 709 N.E.2d 1148 (1999); and *State v. Apanovitch*, 155 Ohio St.3d 358, 2018-Ohio-4744, 121 N.E.3d 351, ¶ 42.

This Court reached its conclusion in *Jean-Baptiste* based on its previous holding in *In re Cross*, 96 Ohio St.3d 328, 2002-Ohio-4183, 774 N.E.2d 58, a case concerning the juvenile court’s limited jurisdiction in instances where the child’s case had been terminated. In *Cross*, this Court held that “[a] juvenile court does not have the jurisdiction to reimpose a suspended commitment to a Department of Youth Services facility after the youth has been released from probation.” *Cross* at syllabus. This is because “the criminal aspects of juvenile delinquency proceedings require great constraints on juvenile courts.” *Id.* at ¶ 25. Thus, when a court ends a child’s probation, it therefore ends its ability to make further dispositions in the delinquency case. *Id.*; see also *In re J.B.*, 134 Ohio St.3d 538, 983 N.E.2d 1295, 2012-Ohio-5675, ¶ 1 (reversing and remanding, under *Jean-Baptiste*, the classification of a child who was under 21 but who had completed his parole and had his case terminated prior to classification).

There is no need for this Court to revisit the jurisdictional limits of the juvenile court, as the State suggests. Rather amici urge this Court to adopt R.B.’s cross proposition of law and recognize that the plain language of R.C. 2152.84 requires a court to conduct an end-of-disposition hearing for juvenile offender registrants “upon completion” of their disposition in order to continue the child’s duty to register under Ohio law. R.C. 2152.84(A)(1).

III. Registering children into adulthood harms system-involved youth and does not increase public safety.

This Court has recognized that “registration and notification requirements frustrate two of the fundamental elements of juvenile rehabilitation: confidentiality and the avoidance of stigma.”

In re C.P., 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, at ¶ 67. “Confidentiality promotes rehabilitation by allowing the juvenile to move into adulthood without the baggage of youthful mistakes. Public exposure of those mistakes brands the juvenile as an undesirable wherever he goes.” *Id.* Further, this Court recognized the harm that occurs when a child’s registration status is known:

Operating directly contrary to the rehabilitative goals of the juvenile justice system, sex offender registration and notification laws can publicly and permanently mark juvenile sex offenders as deviant criminals who should be feared and shunned. While many juvenile proceedings are confidential and sealed, sex offender registration and notification laws, by creating a public record, place the sexual offense of a juvenile directly and prominently in the public eye.

[F]ew labels are as damaging in today’s society as ‘convicted sex offender.’ Sex offenders are, as one scholar put it, ‘the lepers of the criminal justice system,’ with juveniles listed in the sex offender registry sharing this characterization. The state’s interest in and responsibility for a juvenile’s well-being and rehabilitation is not promoted by a practice that makes a juvenile’s sex offenses public.

(Footnotes omitted.) *Id.* at ¶ 68, quoting Phoebe Geer, *Justice Served?*, 27 *Developments in Mental Health Law* 33, 48-49, quoting Robert E. Shepherd, *Advocating for the Juvenile Sex Offender, Part 2*, 21 *Crim.Just.* 52, 53 (2007). Because all registration is subject to a public records request, all youth classified as juvenile sex offender registrants are at risk for this type of disruption and harm. R.C. 2950.81; R.C. 149.43.

The harms associated with registering juveniles are the reason many jurisdictions have not implemented the Federal Adam Walsh Act (“SORNA”). See Elizabeth J. Letorneau et al., *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24(1) *J.Psychology, Pub.Policy, & Law* 105, 106 (2017). Since SORNA was released, less than 20 states have substantially implemented its requirements, despite the threat of losing federal Byrne Grant funding. *Id.* Legislators in some states have found the “registration and notification of children antithetical to the juvenile justice ideal of rehabilitation.” *Id.* For example, the Deputy Commissioner of the State of New York Division of Criminal Justice Services, wrote that “New York has a longstanding public policy of

treating juvenile offenders differently from adult offenders so that juveniles have the best opportunity of rehabilitation and reintegration. The federal requirement that juveniles be placed on the Sex Offender Registry under SORNA is in direct conflict with that public policy.” *Id.*, quoting Sugarman, R.S., Letter submitted on behalf of New York State to Linda Baldwin, Director, USDOJ, Office of the Justice Programs, SMART Office. (2011, August 23).

Children started being included on sex offender registries with the advent of the “super-predator” myth and false beliefs about juvenile offending. *Compare Roper v. Simmons*, 543 U.S. 551, 556, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005) (recognizing the “particular trend in recent years toward cracking down on juvenile crime”) with Franklin E. Zimring, *The Youth Violence Epidemic: Myth or Reality?*, 33 Wake Forest L.Rev. 727, 728 (1998) (analyzing juvenile crime statistics and concluding “there never was a general pattern of increasing adolescent violence in the 1980s and 1990s”). And, in recent years, “the convergence of three trends—the generalized societal alarm over juvenile violent crime, increased punitive responses to juvenile offenders, and the expansion of social control over known sex offenders—has produced a range of policies aimed at juveniles who sexually offend.” A.J. Harris et. al., *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, International Journal of Offender Therapy and Comparative Criminology 62(4): 1-27 (2016), citing Elizabeth J. Letourneau & M.H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 Sexual Abuse: A. J. Research & Treatment 293, 293-312 (2005), and Franklin E. Zimring, *An American Tragedy: Legal Responses to Adolescent Sexual Offending*, Chicago, IL: The University of Chicago Press. (2004). The enactment of the federal Adam Walsh Act brought harsher requirements on juvenile offenders than what was previously required under federal law, so harsh that many states declined to adopt their own version of SORNA. *See* Press Release, Office of Justice Programs, *Jurisdictions Substantially Implement Sex Offender Registration and Notification Act* (Nov. 8, 2013) (available at

<http://ojp.gov/newsroom/pressreleases/2013/ojppr110813.pdf>) (accessed Dec. 12, 2018) (finding that, to date, only 17 of the 50 states have enacted their own versions of the federal Adam Walsh Act).

In the years since, researchers have found that children on registries face “incredible barriers to housing, employment, and education.” Ashley R. Brost & Annick-Marie S. Jordan, *Punishment that Does Not Fit the Crime: The Unconstitutional Practice of Placing Youth on Sex Offender Registries*, 62 S.D.L.Rev. 806, 820 (2017). Placement of child offenders on registries also jeopardizes public safety and successfully reintegration. See Jill S. Levenson et al., *Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform*, 43(2) J.Sociology & Soc.Welfare 3, 11-14 (2016), available at https://www.researchgate.net/publication/304990286_Grand_Challenges_Social_Justice_and_the_Need_for_Evidence-based_Sex_Offender_Registry_Reform; Richard Tewksbury & Matthew Lees, *Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences*, 26 Sociological Spectrum 309, 319 (2006); Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 Am.J.Criminal Justice 54, 57 (2009).

A 2013 report published by Human Rights Watch found that children on the registry suffer shame, stigmatization, isolation, and psychological harm. Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, at 30, 51 (2013), available at https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf. Of the 281 juvenile registrants interviewed for the report, 84.5% described having depression, feeling isolated socially, and entertaining suicidal thoughts. *Id.* at 51. Fifty-eight of them (19.6%) attempted suicide. *Id.* In addition, 52% of the youth and family members interviewed reported that they experienced violence or threats of violence from community members. *Id.* at 56. And, nearly all of them reported being denied access to educational and employment opportunities and being removed from their homes due to the restrictions accompanying their duties to register. *Id.*

A more recent study examined the impact of registration on juvenile offenders and compared

their outcomes to those of children who had also committed sexually oriented offenses, but who were not required to register. Letourneau et al., 24 J.Psychology, Pub.Policy & Law at 106. Children who were registered reported worse outcomes on four out of five mental health indicators, including anxiety and depression, and were four times more likely than non-registered children to have attempted suicide. *Id.* at 112. And while registered youth reported having more social support from family than non-registered youth, children on the registry reported more problems engaging with peers. *Id.* at 113. Registered children also reported being exposed to violence at much higher rates than those who were not on the registry, including being nearly twice as likely to report having been sexually assaulted. *Id.* Registered children were also five times as likely to have been approached by an adult for sex than non-registered children. *Id.* Researchers noted that “[t]he primary aim of juvenile registration and notification is to prevent adults from approaching children for sex, yet we find the exact opposite effect.” *Id.* at 114. In other words, registering youth who commit sex offenses increases the likelihood that they will be victimized by others. These results are sobering. And, as outlined below, the ends do not justify the means.

A. Juveniles who commit sexually oriented offenses have extremely low recidivism rates.

The label of “sex offender” carries demonstrably false connotations and causes irreparable harm to the reputations of those so labeled. In 2014, the Pennsylvania Supreme Court recognized that the “common view of registered sexual offenders is that they are particularly dangerous and more likely to reoffend than other criminals,” a fact inconsistent with research. *In re J.B.*, 630 Pa. 408, 107 A.3d 1, 16 (Pa.2014). The presumption that registered sex offenders are dangerous is inherent in Ohio’s law as follows: “Sex offenders and child-victim offenders pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and child-victim offenders is a paramount governmental interest.” R.C. 2950.02(A)(2). But, this presumption

and the negative message communicated about registered sex offenders is false. See Catherine L. Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 *Hastings L.J.* 1071, 1073 (2012).

Children and teenagers who have committed sex offenses rarely reoffend. Research examining the recidivism rates of youth who sexually offend is consistent across studies, time, and populations—sexual recidivism rates among youth are exceptionally low, particularly as they age into young adulthood. Michael F. Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 *Int'l J. Offender Therapy & Comparative Criminology* 197, 198 (2010) (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. Research & Treatment* 107, 112 (2007), available at http://www.njjn.org/uploads/digital-library/resource_557.pdf; 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 *J. Psychology, Pub. Policy, & Law* 89, 91 (2008), available at <http://www.ncjfcj.org/sites/default/files/examinationofthesexoffender.pdf>; Franklin E. Zimring et al., *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort*, 26 *Justice Quarterly* 58, 58 (2009), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1590&context=facpubs>.

In a 2010 study involving 63 unique datasets of more than 11,000 children, the mean sexual recidivism rate for juvenile offenders, across studies, was 7.08%. Caldwell at 197-212. And more recently, a 2016 meta-analysis of 106 studies identified a five-year sexual offense recidivism rate of just 2.75%. Letourneau et al., 24 *Psych. Pub. Pol. & L.* 105, 115, citing Michael F. Caldwell, *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, 22(4) *J. Psychology, Pub. Policy, and Law*, 414-426 (2017); Laura Cohen, *Department, Juvenile Justice Cruel and Unusual: The Senseless Stigmatization of Youth Registries*, 33 *Crim. Just.* 46 (2018). This means that “97% of children adjudicated for a sexual offense do not reoffend

sexually within 5 years.” Letourneau at p.115.

This low recidivism rate is consistent with what we know about children—that they tend to offend based on impulsivity and sexual curiosity, among other reasons, not based on pedophilia. See Michael F. Caldwell, *What We Do Not Know about Juvenile Sexual Re-offense Risk*, 7 Child Maltreatment 291, 296 (2002) (“[T]here is a strong trend toward desisting * * * offending as the offender age increases just a few years.”); Judith V. Becker & Scotia J. Hicks, *Juvenile Sexual Offenders: Characteristics, Interventions, and Policy Issues*, 989 Annals NY Acad.Sci. 397, 399-400, 406 (2003); Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 Int’l J.Offender Therapy & Comparative Criminology at 197-198. Additionally, children “are more susceptible to peer influence, have heightened sensitivity to immediate rewards, and possess less self-regulation.” Jeffrey C. Sandler et al., *Juvenile Sexual Crime Reporting Rates Are Not Influenced by Juvenile Sex Offender Registration Policies*, 23(2) J.Psychology, Pub.Policy, & Law 131, 137 (2017). With maturation, a better understanding of sexuality, and decreased impulsivity, most of these behaviors stop and only a small fraction of juvenile offenders will maintain sexually-deviant behavior in adulthood. See Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism* at 205. Thus, children who sexually offend also demonstrate the age-crime phenomenon of naturally aging out of criminogenic or antisocial behavior. See also Amy Halbrook, *Juvenile Pariahs*, 65 Hastings L.J.I, 11-12 (December 2013); and Laurence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Ann.Rev.Clin.Psychol. 2009 47-73 (2018) (finding “the vast majority of adolescents who commit antisocial acts desist from such activity as they mature into adulthood and that only a small percentage * * * become chronic offenders”).

Overall, these trends comport with what both this Court and the U.S. Supreme Court have found concerning juvenile offenders, specifically that “juveniles have a ‘lack of maturity and an underdeveloped sense of responsibility.’” *Graham v. Florida*, 560 U.S. 48, 68, 130 S.Ct. 2011, 176 L.Ed.2d 825 (2010), quoting *Roper*, 543 U.S. at 569-570, 125 S.Ct. 1183, 161 L.Ed.2d 1 and *Johnson v.*

Texas, 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993); *J.D.B. v. North Carolina*, 564 U.S. 261, 272, 131 S.Ct. 2394, 180 L.Ed.2d 310 (2011). The research supporting these cases demonstrates that “transient rashness, proclivity for risk, and inability to assess consequences—both lessened a child’s ‘moral culpability’ and enhanced the prospect that, as the years go by and neurological development occurs, his ‘deficiencies will be reformed.’” *Miller v. Alabama*, 567 U.S. 460, 472, 132 S.Ct. 2455, 183 L.Ed.2d 407 (2012). The research on adolescent sexual offending is wholly consistent with the Court’s precedent. Children who commit sex offenses are unlikely to reoffend sexually and have great capacity to mature and change.

And, because juveniles are especially amenable to treatment, the small percentage of those who do sexually re-offend are “decidedly distinct from the adult sex offender population.” A.J. Harris et. al., *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, 2: 5 (2014) When the rare repeat sexual offenses do occur, it is nearly always within the first few years following the original adjudication. Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism* at 205. Children who sexually offend seldom repeat their harmful conduct and appropriate treatment significantly reduces sexual reoffending even further. Illinois Juvenile Justice Commission, *Improving Illinois’ Response to Sexual Offenses Committed by Youth: Recommendations for Law, Policy, and Practice*, at 28-36 (2014), available at <https://tinyurl.com/ycnekqvl>. These rates are compared with a 13% recidivism rate for adults who commit sex offenses. Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, at 30 (2013), available at https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf.

Further, research shows that children who commit sex offenses more closely resemble their non-sex-offending counterparts, in that they share similar family and peer backgrounds, risk factors, and weaker family bonding. A.J. Harris et. al., *Collateral Consequences of Juvenile Sex Offender Registration*

and Notification: Results from a Survey of Treatment Providers, 2:5 (2014). The major difference is that children who commit sex offenses are more likely to have suffered sexual abuse, sexual violence, exposure to abuse, neglect, social isolation, low self-esteem, and early exposure to sex or pornography. M.C. Seto & M.L. Lalumiere, *What is So Special About Male Adolescent Sexual Offending? A review and test of explanations through meta-analysis*, 136 *Psychol. Bull.* 526, 526-575 (2010).

B. *Registering juveniles does not increase public safety.*

It is important to highlight that the low recidivism rates of children who have committed sex offenses cannot be attributed to the registry itself. “[R]ates of juvenile sexual offenses were declining before implementation of juvenile registration and notification policies and continued to decline, albeit at a lesser pace, following their implementation.” Letourneau, et al., 24 *Psych. Pub. Pol. & L.* 105, 115, citing Finkelhor, D. & Jones, L. *Have Sexual Abuse and Physical Abuse Declined Since the 1990s?* Crimes Against Children Research Center, CV267 (Nov. 2012) available at: http://www.unh.edu/ccrc/pdf/CV267_Have%20SA%20%20PA%20Decline_FACT%20SHEET_11-7-12.pdf In fact, “no research has found any evidence of any recidivism reductions” due to classification and registration schemes. Sandler et al., 23(2) *J. Psychology, Pub. Policy, & Law* at 136-137 (“The current study evaluated the association between four different [registration] policies and juvenile sexual crimes using data from four states. * * * [R]ates of sexual crime reports against minors remained statistically unchanged in the years after enactment of [registration] policies in [the four states].”).

Additionally, sexual recidivism cannot be predicted by offense. The existing research has not identified any stable, offense-based risk factors that reliably predict sexual recidivism in adolescents. Ashley B. Batastini et al., *Federal Standards for Community Registration of Juvenile Sex Offenders: An Evaluation of Risk Prediction and Future Implications*, 17(3) *J. Psychology, Pub. Policy, & Law* 451, 457-458 (2011) (describing the heterogeneous behaviors of child sex offenders). In a study that compared the sexual

recidivism rates of children assigned to three groups according to the severity of their offense, there was no significant difference in the recidivism rates of juvenile offenders in the three groups. Franklin E. Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood*, 6(3) *Criminology & Pub. Policy* 507, 515 (2007); see also Caldwell, 19 *Sexual Abuse: J. Research & Treatment* at 110-111 (reporting no significant difference in the rate of adult sexual offense charges between 249 juvenile sex offenders and 1,780 non-sex-offending delinquents over a 5-year follow-up period). Research on adult males convicted of sexual offenses also demonstrates that while the recidivism rates of low risk offenders were consistently low (1%-5%) for all time periods, a pattern of decreased recidivism over time was consistently strong for high-risk sexual offenders. R. Karl Hanson et al., *High Risk Offenders May Not Be High Risk Forever*, 29(15) *J. Interpersonal Violence* 2792, 2802-2806 (2014).

Additionally, “[b]oth sexually and nonsexually delinquent youth are far more likely to re-offend with nonsexual crimes than with sexual crimes.” Elizabeth J. Letourneau & Michael H. Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 *Sexual Abuse: J. Research & Treatment* 293, 297 (2005). The literature suggests that “that sexual offending is just one type of delinquent behavior and not unique from other delinquent behavior.” *Id.* Juvenile sexual offenders possess the same characteristics as non-sexual juvenile offenders; and sex offenses among juveniles are a result of delinquency in general and not specifically sexual deviance in origin. *Id.* at 296-297.

“[E]very published study evaluating the effects of state and federal juvenile registration policies has failed to find any evidence that these policies exert any public safety effects.” Letourneau at 115. The following nine states have had their registration schemes evaluated to discern a linkage between registries and public safety; Idaho, Maryland, New Jersey, Oregon, South Carolina, Texas, Utah, Virginia, and Wisconsin. *Id.* And, none found any public safety benefit. *Id.* Instead, the one consistent finding by researchers who have studied the impact of registering children has found that

doing so is harmful.

C. Registration causes reputational harm, and loss of future employment and other opportunities.

Common “sex offender” myths and assumptions may directly affect a person’s access to employment and housing, and it permanently damages his emotional well-being. *C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 45. The “governmental labeling of an individual with a badge of disgrace constitutes” harm to a person’s reputation and is a deprivation of liberty. *Collins v. Wolfson*, 498 F.2d 1100, 1103 (5th Cir.1974), citing *Board of Regents v. Roth*, 408 U.S. 564, 577-578, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). The Fifth Circuit explained that “publicly branding” a person “so infringes liberty interests of the individual as to require significant procedural protections.” *Collins* at 1103. The label of sex offender brands a person as dangerous—a likely inaccurate scarlet letter that the individual has no mechanism to dispute. In this case, Ronald was not afforded procedural protections set forth by the legislature. Instead, the juvenile court’s branding as “sex offender” continued without an opportunity for him to dispute that continued registration was necessary.

Registration also creates practical barriers to employment and housing, and jeopardizes public safety and successful reintegration. See Jill S. Levenson et al., *Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform*, 43(2) J.Sociology & Soc.Welfare 3, 11-14 (2016), available at https://www.researchgate.net/publication/304990286_Grand_Challenges_Social_Justice_and_the_Need_for_Evidence-based_Sex_Offender_Registry_Reform; Richard Tewksbury & Matthew Lees, *Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences*, 26 Sociological Spectrum 309, 319 (2006); Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 Am.J.Criminal Justice 54, 57 (2009). The most commonly reported consequence of sex offender registration is the inability to find employment. Human Rights Watch, *Raised on the Registry* at 50. The National Employment Law Project survey determined that nearly 90% of employers conduct

background checks. Michelle Natividad Rodriguez & Maurice Emsellem, *65 Million "Need Not Apply": The Case for Reforming Criminal Background Checks for Employment*, at 1 (Mar. 2011), available at https://www.nelp.org/wp-content/uploads/2015/03/65_Million_Need_Not_Apply.pdf. These background checks reveal registration information to potential employers. In addition, sex offenders are categorically barred from working in certain professions as follows:

Certain institutions, including public schools, child care centers, and nursing homes, are legally required to investigate and obtain criminal histories of all applicants for professional or certified licensed positions. State laws prohibit individuals on the sex offender registry from applying for licenses and certifications which require a criminal background check, thus precluding registrants from becoming nurses, doctors, lawyers, and emergency medical technicians such as paramedics. Some states implement blanket laws to prevent registered sex offenders from obtaining certain types of employment or volunteer positions. In addition to the obvious prohibitions, such as on working at a school or day care center, some states have sought to limit employment in other areas, such as operating an ice cream truck or a school bus; working at a carnival, circus, street fair, amusement park, or long-term care facility; or serving as an athletic coach, manager, or trainer.

Raised on the Registry at 50.

False assumptions about recidivism also harm a person's ability to obtain stable housing. Landlords may refuse to rent to a registered individual after that landlord has been contacted by the sheriff to verify an address. Public housing authorities can reject an entire family if a child is adjudicated delinquent of a sex offense and is required to register. *Id.* at 66. As a result of the restrictions caused by registration, nearly half of registered children indicated they had experienced at least one period of homelessness. *See id.* at 65. In Ohio, homeless persons have significantly harsher registration requirements. R.C. 2950.05 (requiring a child to provide "a detailed description of the place or places at which the * * * child intends to stay" if the child does not have a fixed address). These requirements further increase the likelihood of a conviction for failing to verify address information.

Registration also negatively impacts a person's safety and reintegration. In one study, "16% [of registrants] reported that a family member or cohabitant was harassed, assaulted, or had property

damaged and 44% reported being threatened or harassed by neighbors.” Michael P. Lasher & Robert J. McGrath, *Impact of Notification on Sex Offender Reintegration: A Quantitative Review of the Research Literature*, 56(1) *Int’l J. Offender Therapy & Comparative Criminology* 6, 19 (2012). Many registrants experience vigilante activities such as property damage, harassment, and even physical assault. *Raised on the Registry* at 56-57. Moreover, registered children are nearly twice as likely to have experienced an unwanted sexual assault that involved contact or penetration in the past year, when compared to nonregistered children who have also engaged in harmful or illegal sexual behaviors. Elizabeth J. Letourneau et al., *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24(1) *J. Psychology, Pub. Policy, & Law* 105, 114 (2017). And registered children are five times more likely to report having been approached by an adult for sex in the past year, compared to non-registered children. *Id.* (explaining that registration “may make children vulnerable to unscrupulous or predatory adults who use the information to target registered children for sexual assault”). Thus, registration exposes children to the very danger it was meant to guard against.

“[A]lthough punishment is not an intended effect of sex offender-specific legislation, it appears to be a relatively likely outcome, especially with respect to increasing rejection from socially accepted groups and organizations.” Letourneau & Miner, 17 *Sexual Abuse: J. Research & Treatment* at 302. The sex offender label diminishes social bonds, and leads to depression, hopelessness, and fear for one’s safety. *Id.*; Human Rights Watch, *Raised on the Registry* at 51. Youth on the registry display increased likelihood of suicidal thoughts and behaviors, and in some cases, sex offender registration has led individuals to suicide. *Raised on the Registry* at 51. Children on sex offender registries are four times more likely to report a recent suicide attempt than non-registered children who have engaged in harmful or illegal sexual behavior. Letourneau, *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination* at 114. Registration and the label of sex offender does not increase public safety; instead, it ostracizes young people, causing shame and isolation. Elizabeth J. Letourneau

& Michael F. Caldwell, *Expensive, Harmful Policies that Don't Work or How Juvenile Sexual Offending is Addressed in the U.S.*, 8(3-4) *International J. Behavioral Consultation & Therapy* 23, 27 (2013), available at <http://psy.cnet.apa.org/fulltext/2014-12592-006.pdf>; see also Sandler et al., 23(2) *J. Psychology, Pub. Policy, & Law*, at 136-137. The toll of registration changes a child's development and disrupts the family dynamic.

Conclusion

As recognized by this Court, procedural regularity is the lynchpin of fundamental fairness. Thus, and for the foregoing reasons, *Amici Curiae* respectfully requests that this Court grant R.B. the relief requested.

Respectfully submitted,

/s/: Brooke M. Burns

Office of the Ohio Public Defender

250 East Broad Street, Suite 1400

Columbus, Oh 43215

(614) 466-5394

(614) 752-5167 (fax)

brooke.burns@opd.ohio.gov

Counsel for Amicus Curiae Office of the Ohio Public Defender, Children's Law Center, Justice for Children, Juvenile Law Center, National Juvenile Defender Center, and Professor Catherine Carpenter

Certificate of Service

I hereby certify that a copy of the above and foregoing has been filed with the Clerk of Court on the 12th day of May, 2020, and served upon the following parties: Julie Kahrs Nessler, Assistant Public Defender, 125 East Court Street, 9th Floor, Cincinnati, Ohio 45202; and Paula E. Adams, Assistant Prosecuting Attorney, 230 East Ninth Street, Suite 4000, Cincinnati, Ohio 45202.

Respectfully submitted,

/s/: Brooke M. Burns

Office of the Ohio Public Defender

250 East Broad Street, Suite 1400

Columbus, Oh 43215

(614) 466-5394

(614) 752-5167 (fax)

brooke.burns@opd.ohio.gov

*Counsel for Amicus Curiae Office of the Ohio Public
Defender, Children's Law Center, Justice for Children,
Juvenile Law Center, National Juvenile Defender Center,
and Professor Catherine Carpenter*