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No. [REDACTED]

IN THE SUPREME COURT FOR  
THE STATE OF WASHINGTON

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STATE OF WASHINGTON,  
Respondent,

v.

D [REDACTED] S [REDACTED]  
Petitioner.

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MEMORANDUM OF AMICI CURIAE  
KING COUNTY DEPARTMENT OF PUBLIC DEFENSE,  
DR. ELIZABETH LETOURNEAU, DR. MICHAEL  
CALDWELL, JUVENILE LAW CENTER, TEAMCHILD,  
PUBLIC DEFENDER ASSOCIATION, WASHINGTON  
DEFENDER ASSOCIATION, AND  
ACLU OF WASHINGTON  
IN SUPPORT OF PETITION FOR REVIEW

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## **I. INTRODUCTION**

Registering youth under age 18 as “sex offenders” harms children and provides no public safety benefit. Uncontroverted research involving more than 20,000 cases of youth with sex offense adjudications shows that 97 percent of youth adjudicated for a sexual offense do not recidivate. Youth registration fails to prevent harm or improve public safety, and instead, makes children targets for sexual abuse by adults and creates suffering and anguish so severe that registration is associated with increased suicide attempts by children and young people.

## **II. ISSUES OF INTEREST TO AMICI**

The identity and interests of Amici Curiae are set forth in the Motion for Leave to Participate as Amici Curiae, filed concurrently with this brief.

## **III. STATEMENT OF THE CASE**

Amici adopt the Statement of the Case in Appellant S [REDACTED]'s brief.

#### IV. ARGUMENT

##### A. This Court Should Grant Mr. S█████'s Petition Because Washington's Mandatory Youth Sex Offender Registration Law Is Punitive

Extensive research demonstrates that youth registration is punitive and harmful. As a result, past court decisions, which have found sex offender registration laws relating to adults to be regulatory, do not control. In *State v. Ward*, this Court concluded that sex offender registration laws were not “disadvantageous” to adults and did not alter the “standard of punishment which existed under prior law[.]” 123 Wn.2d 488, 498, 869 P.2d 1062 (1994). The Court analyzed four of the factors identified by the United States Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963), and concluded that:

[T]he requirement to register as a sex offender under RCW 9A.44.130 does not constitute punishment. The Legislature's purpose was regulatory, not punitive; registration does not affirmatively inhibit or restrain an offender's movement or activities; registration per se is not traditionally deemed punishment; nor does registration of sex offenders necessarily promote the traditional deterrent function of punishment.

*Id.* at 500-11.

In *State v. Boyd*, Division I of the Court of Appeals examined transient sex offender registration requirements and found “no evidence in the record that reporting in person weekly interfered with his ability to get a job, find housing, or travel.” *State v. Boyd*, 1 Wn. App. 2d 501, 511, 408 P.3d 362, 368 (2017).

Mr. S [REDACTED]’s petition for review involves an “issue of substantial public interest that should be determined by the Supreme Court,” *see* RAP 13.4(b)(3)-(4), the constitutionality of Washington’s youth sex offender registration laws. Extensive research demonstrates that youth sex offender registration and notification laws are punitive given their grave impact on youth and complete failure to advance public safety.

**B. Sexual Recidivism Rates for Youth Who Sexually Offend Are Low**

When enacting Washington State’s registration and notification laws through the Community Protection Act of 1990, the legislature justified the need for youth registration laws on the basis that “[t]he legislature finds that sex offenders often pose a high risk of reoffense[.]” Laws of 1990, ch. 3, § 401.

However, contrary to the lawmakers' justification for youth registration laws, extensive research shows that youth adjudicated or convicted of sex crimes pose a very low risk to sexually reoffend, particularly as they age into young adulthood. Caldwell, *Quantifying the Decline in Juvenile Sexual Recidivism*, 22(4) *Psychology, Public Policy and Law* 414-426 (2016) <https://doi.org/10.1037/law0000094>. The most extensive review of adolescent sex offender recidivism rates reviewed 106 studies involving 33,783 youth and found an average sexual recidivism rate of 4.92% over an average 5-year follow-up. *Id.* That review also documented a 73% decline in adolescent sexual recidivism over the past 30 years. *Id.*

In fact, studies conducted in the last 15 years—informed by 20,008 cases—report an average sexual recidivism rate of 2.75% over 5 years. *Id.* That is, more than 97% of youth adjudicated for sex crimes did not sexually reoffend. *Id.* Of those who did reoffend, nearly all did so within the first three years following release. *Id.* A study of Washington data found that 97.1% of youth were not

adjudicated for another sex offense within three years of their release whereas 2.9% of youth were. Washington State Sex Offender Policy Board, *Recommendations and current practices for minors who have committed sex offenses 56-60* (Fall 2021), [https://sgc.wa.gov/sites/default/files/public/SOPB/documents/SOPB\\_Juvenile\\_Report.pdf](https://sgc.wa.gov/sites/default/files/public/SOPB/documents/SOPB_Juvenile_Report.pdf). Finally, a recent study compared recidivism rates of 349 adolescents adjudicated for sexual offenses to 1,711 adolescents adjudicated for other reasons over a 27.5-year follow-up. The results showed that youth adjudicated for sex offenses did not have a significantly higher risk of a future sexual offense charge by age 18. By age 22, youth adjudicated for sexual offenses had a lower risk for sexual reoffense than youth adjudicated for other offenses. Caldwell, M., & Caldwell, B., *The Age of Redemption for Adolescents Who Were Adjudicated for Sexual Misconduct*, In Press: Psychology, Public Policy and Law <https://drive.google.com/file/d/17QcD1dNRKB9H8eu7-KN1CjL23VGuHwgp/view?usp=sharing>.

**C. Youth Sex Offender Registration and Notification Laws Fail to Improve or Enhance Public Safety in Any Way**

Extensive research shows that registration and notification laws do not lead to reduced sexual recidivism rates and do not serve as a significant deterrent (or primary prevention) of first-time sex offenses.

**1. Registration and notification fail to reduce youth sexual or violent recidivism rates.**

Multiple studies examine the impact of federal and state youth registration policies on sexual and violent recidivism. None of these studies found that federal or state youth registration policies reduced sexual or violent recidivism rates. *See* Letourneau and Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *Sexual Abuse: A Journal of Research and Treatment*, 393-408 (2008) <https://orgx/10.1177%2F1079063208324661> (using juvenile justice data from South Carolina, researchers compared the reoffense rates of 111 registered youth with 111 nonregistered youth who were matched on type of sexual offense and other

relevant characteristics and found that registration and notification were not associated with reduced sexual or nonsexual recidivism); Letourneau et al., *The Influence of Sex Offender Registration on Juvenile Sexual Recidivism*, 20 *Criminal Justice Policy Review*, 136 (2009) <https://doi.org/10.1177%2F0887403408327917> (conducting population-level research examining rates of all male youth with sexual crime adjudications in South Carolina between 1991 and 2004 on a sample size of 1,275 and finding that registration was not associated with reduced sexual or nonsexual recidivism across an average 9-year follow-up); Caldwell & Dickenson, *Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders*, 27 *Criminal Justice and Behavior* 1 (2009) <https://doi.org/10.1002/bsl.907> (examining data from 172 youth adjudicated for sex crimes in Wisconsin and finding no differences in the recidivism rates for registered and unregistered youth); 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(2)

Psychology, Public Policy, and Law, 89 (2008)  
<https://psycnet.apa.org/doi/10.1037/a001324> (finding that neither the federal Tier designations nor the state risk measures from New Jersey, Texas, and Wisconsin accurately distinguished between youth who sexually reoffended and youth who did not).

Results from these and *all other studies* that examine the impact of youth registration on sexual recidivism are entirely uniform: registration fails to reduce future sexual offending by people adjudicated of sex offenses as youth.

## **2. Registration and notification laws do not deter first-time sex offenses by youth.**

Registration clearly fails to reduce sexual recidivism, the principal outcome it is intended to produce. The only other way registration and notification laws could improve public safety is if they exerted a general deterrence or primary prevention effect. They do not.

A series of studies evaluated the effects of registration on the prevention or deterrence of first-time sex crimes and found no evidence supporting this effect. *See* Letourneau et al., *Do Sex*

*Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?* 37 *Criminal Justice and Behavior*, 553-569 (2010) <https://doi.org/10.1177%2F009854810363562> (examining more than 3,000 youth sexual offense cases from 1991 through 2004 in South Carolina and finding no evidence that youth registration and notification laws enacted during that time exerted any general deterrence/primary prevention effects); Sandler et al., *Juvenile Sexual Crime Reporting Rates are not Influenced by Juvenile Sex Offender Registration Policies*, 23 *Psychology, Public Policy and the Law*, 131 (2017) <https://psycnet.apa.org/doi/10.1037/law0000118> (comparing rates of thousands of reports of youth sex offenses from Idaho, South Carolina, Utah, and Virginia prior to and following the laws' implementation and again finding no evidence for a general deterrence/primary prevention effect of these policies); Letourneau et al., *Juvenile Registration and Notification Policies Fail to Prevent First-time Sexual Offenses: An Extension of Findings to Two New States*, 30 *Criminal Justice Policy Review* 7 (2018)

(examining the entire population of first-time youth sex crime charges or adjudications in two states—Maryland and Oregon and finding that rates of first-time sex crimes did not decline following implementation of youth registration and notification laws).

In summary, the entire available body of published research, which involves tens of thousands of cases across seven states, fails to support any public safety benefit of registration and notification laws.

**D. Sex Offender Registration and Notification Laws Associated with Severe Harm to Youth on the Registry**

Youth sex offender registration and public notification requirements are associated with significant harmful consequences for youth. These harms include increased risk for mental health problems and suicide attempts, difficulties with peers, school, and housing stability, and increased risk for sexual assault victimization.

- 1. Registration and notification of youth adjudicated of sex offenses have been shown to be associated with increased risk for attempting suicide, being approached by adults for sex, and being victims of sexual assault.**

According to treatment providers across the nation, youth subjected to registration or notification are much more likely than their peers—*i.e.*, youth adjudicated for sex crimes but not subjected to registration and notification—to experience negative mental health outcomes, harassment from peers and adults, difficulty in school, and trouble maintaining stable housing. All of these effects—increased depression and anxiety, verbal and physical harassment, problems concentrating in school, and frequent disruptions caused by having to change caregivers and living situations—are known to negatively impact the educational attainment and emotional well-being of adolescents. *See* Letourneau et al., *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24 *Psychology, Public Policy and Law* 105-117 (2018). <https://doi.org/10.1037/law0000155> (hereinafter Letourneau, et al. 2018).

It is shocking, but not surprising, that adults and other children react to the common view of a registered “sex offender” is

that they are “the worst of the worst” offenders. Registration purposely signals to others that an individual is especially dangerous, even if the registrant is a child. Accordingly, reactions to youth labeled as registered sex offenders can be severe. For example, there are reports of adolescents who committed suicide after being threatened with registration and reports of registered youth who were verbally harassed, physically assaulted, and targeted by gunfire. *Raised on the Registry: The Irreparable Harm of Placing Youth on Sex Offender Registries in the United States*, Human Rights Watch (2013). <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us>.

Letourneau and colleagues conducted the first empirically rigorous evaluation of the collateral consequences of registration on youth. They surveyed 251 male youth ages 12-17 years, all of whom were in treatment for harmful or illegal sexual behavior. Letourneau, et al. 2018. These youth were recruited from 18

different states, including Washington, and 29% were subjected to registration policies. Compared to the unregistered youth, registered youth were:

- Four times more likely to report having attempted suicide in the past 30 days. That is, they reported not only thinking about suicide more often, but actually **attempting to die by suicide**;
- Five times more likely to report having been approached by an adult for sex in the past year; and
- Twice as likely to report having sustained a hands-on sexual assault victimization in the past year.

That is, researchers found evidence that youth registration and notification laws are associated with the very type of harm they purport to prevent. It is impossible to imagine worse outcomes associated with a state law for youth.

## **2. The harms from youth registration and notification extend into young adulthood.**

Letourneau and colleagues replicated their survey of children with 86 young people ages 18 to 21 years, all of whom were in treatment for sexual offending behaviors and about half of whom were required to register. Shields et al., *Collateral consequences of*

*sex offender registration and notification: Results from a survey of emerging adults* (manuscript under review). App. 1-37. Relative to the non-registered group, the teens and young adults in the registered group reported significantly more hopelessness, lower perceived social support and, perhaps consequentially, much higher rates of suicide attempts. *Id.* This combination of results paints a dire picture of young people who see no way out of their difficulties and of friends and family who may be unable to help. Registered young people also reported lower commitment to school than their nonregistered peers, which may further reflect a feeling of being isolated and untethered to society. *Id.*

**E. In Washington State, Youth Registration Requirements Disproportionately Impact Black Youth and Individuals Experiencing Homelessness**

**1. Black youth in Washington State are disproportionately subjected to registration laws.**

Data provided by the Administrative Office of the Courts (AOC) between 1999-2019 shows that Black youth are disproportionately impacted by sex offender registration laws. *See*

Distillation of AOC Data, Youth Sex Offenses – Distillation of AOC Data from 1999-2019, Compiled by King County Department of Public Defense at 4 (2021) [https://www.opd.wa.gov/documents/00902-2021\\_YouthSexOffenses.pdf](https://www.opd.wa.gov/documents/00902-2021_YouthSexOffenses.pdf). For example, between 1999-2019, Black youth were 1.82 times more likely to be convicted of a sex offense than white youth, three times more likely than white youth to be convicted of a Failure to Register related to a juvenile adjudication, and 1.86 times less likely than white youth to receive registration relief post-adjudication. *Id.* at 2, 6, 11.

**2. Individuals experiencing homelessness face particularly burdensome registration requirements which are likely to harshly impact many youth and young people, particularly housing insecure and BIPOC youth.**

Young people are particularly impacted by the onerous registration requirements for individuals experiencing homelessness. *See* RCW 9A.44.130(6)(b) (requiring weekly registration if a person is housing insecure); RCW 9A.44.132 (failure to make weekly check-ins results in a felony charge for

Failure to Register); RCW 9A.44.132(5)(a) (people tiered at Level I who lack a fixed address are automatically listed on the public registry). A 2020 report from Washington State's Office of Homeless Youth found that 10% of youth exiting the juvenile legal system were homeless 3 months after exit and 26% were homeless within 12 months. Homelessness Among Youth Exiting Systems of Care in Washington State, DSHS Research and Data Analysis Division in collaboration with the Washington State Department of Commerce 1 (July 2020), <https://www.dshs.wa.gov/sites/default/files/rda/reports/research-11-254.pdf>. Of these young people experiencing difficulty transitioning from the juvenile legal system to stable home lives, 30 percent of those individuals were Black, 22 percent were Latinx, 21 percent were American Indian, and 8 percent were Asian or Pacific Islander. *Id.* at 2.

## V. CONCLUSION

Amici request that the Court protect young Washingtonians and heavily scrutinize youth registration and find that it is punitive.

RESPECTFULLY SUBMITTED this 28th day of January

2022.

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**VI. CERTIFICATE OF COMPLIANCE WITH RAP 18.17**

I certify that the word count for this brief, as determined by the word count function of Microsoft Word, and pursuant to Rule of Appellate Procedure 18.17, excluding title page, tables, certificates, appendices, signature blocks and pictorial images is 2,472.

RESPECTFULLY SUBMITTED this 28th day of January 2022.

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## CERTIFICATE OF SERVICE

I hereby certify that on January \_\_\_\_, 2022, I filed the foregoing brief via the Washington Court Appellate Portal, which will serve one copy of the foregoing document by email on all attorneys of record.

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