STATE OF MICHIGAN
IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff- Appellee,

v

KENNETH AARON MALONE,

Defendant-Appellant.

Supreme Court No. 166375
Court of Appeals No. 331903
Macomb County Circuit Court
No. 2015-001129-FH

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN AND JUVENILE LAW CENTER IN SUPPORT OF DEFENDANT-APPELLANT

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QUESTIONS PRESENTED

I. Does registration under Michigan's Sex Offenders Registration Act (SORA) constitute cruel or unusual punishment on its face where SORA is automatically imposed for decades or life with no individual review and no consideration of youth or the potential for rehabilitation?

Amici answer: Yes.

Mr. Malone answers: Yes.

The prosecution answers: No.

The trial court answered: No.

II. Does registration under Michigan's Sex Offenders Registration Act (SORA) constitute cruel or unusual punishment as applied to Mr. Malone where SORA was automatically imposed for life with no individual review and no consideration of youth or the potential for rehabilitation?

Amici answer: Yes.

Mr. Malone answers: Yes.

The prosecution answers: No.

The trial court answered: No.

INTERESTS OF AMICI

The American Civil Liberties Union of Michigan ("ACLU") is the Michigan affiliate of a nationwide, nonpartisan organization with over a million members dedicated to protecting fundamental liberties and basic civil rights guaranteed by the United States Constitution. The ACLU is firmly committed to protecting the constitutional rights of all people in this country, including the rights of children and the rights of individuals with past sex offenses. The ACLU and its attorneys frequently provide direct representation or file *amicus curiae* briefs in state and federal courts on a wide range of civil liberties and civil rights cases in Michigan. The ACLU has been involved in numerous cases involving the constitutional rights of people convicted of sex offenses,

including representing the plaintiffs in *Does #1-5 v Synder*, 834 F3d 696 (CA 6, 2016), cert den 583 US 814 (2017) (*Does I*), and a class of all Michigan registrants in *Does v Snyder*, 449 F Supp 3d 719 (ED Mich, 2020) (*Does II*), and litigating lifetime electronic monitoring in *Corridore v Washington*, 71 F 4th 491 (CA 6, 2023). The ACLU of Michigan has filed amicus briefs before this Court on registration and electronic monitoring issues including in *People v Ellis,* __ Mich __; __ NW3d __ (2026) (Docket No. 166766); *People v Kardasz*, __ Mich __; __ NW3d __; 2025 WL 3691966 (2025) (Docket No. 165008); *People v Lymon*, 515 Mich 145; 29 NW3d 58 (2024); *People v Betts*, 507 Mich 527; 968 NW2d 497 (2021); and *People v Cole*, 491 Mich 325; 817 NW2d 497 (2012); ACLU of Michigan counsel currently represent a class of all Michigan registrants in *Does v Whitmer*, 751 F Supp 3d 761 (ED Mich, 2024) (*Does III*). ACLU attorneys have also led litigation and filed *amicus* briefs in cases challenging juvenile life-without-parole sentencing in Michigan. See, e.g., *People v Eads*, __ Mich __; __ NW3d __ (2026) (Docket No. 168205); *People v Poole,* __ Mich __; __ NW3d __; 2025 WL 978646 (2025) (Docket No. 166813); *People v Taylor,* 510 Mich 112; 987 NW2d 132 (2022); *People v Stovall,* 510 Mich 301; 987 NW2d 85 (2022); *Hill v Snyder*, 900 F3d 260 (CA 6, 2018); *People v Carp,* 496 Mich 440; 852 NW2d 801 (2014).

Juvenile Law Center fights for rights, dignity, equity, and opportunity for youth. Juvenile Law Center works to reduce the harm of the child welfare and justice systems, limit their reach, and ultimately abolish them so all young people can thrive. Founded in 1975, Juvenile Law Center is the first non-profit public interest law firm for children in the country. Juvenile Law Center's legal and policy agenda is informed by—and often conducted in collaboration with—youth, family members, and grassroots partners. Since its founding, Juvenile Law Center has filed influential *amicus* briefs in state and federal courts across the country to ensure that laws, policies, and

practices affecting youth advance racial and economic equity and are consistent with children's unique developmental characteristics and human dignity.

INTRODUCTION

In *People v Kardasz,* the Michigan Supreme Court held that the 2021 SORA constitutes punishment. __ Mich __; __ NW3d __; 2025 WL 3691966 (2025) (Docket No. 165008). The Court also held that SORA was not cruel or unusual punishment on its face for adults convicted of first degree criminal sexual conduct (CSC-I) or as applied to the defendant in that case. The central question before the Court in this case—which was remanded for reconsideration in light of *Kardasz*—is whether SORA constitutes cruel or unusual punishment on its face for youth who were under the age of 18 at the time of their offense. Because SORA is imposed on children without any individualized consideration of their youth or assessment of their rehabilitative potential, and because it subjects them to extraordinarily severe burdens for—in most cases—life, SORA's application to children is facially unconstitutional. SORA is also cruel or unusual as applied to Mr. Malone because this punishment was imposed on him automatically for life without any consideration of his youth, maturity level, or rehabilitative potential.

Both the Michigan Supreme Court and the United States Supreme Court have held that, because children are developmentally distinct, they must be afforded special constitutional protections. See *People v Parks*, 510 Mich 225, 234-244; 987 NW2d 161 (2022); *Miller v Alabama*, 567 US 460, 471-472; 132 S Ct 2455; 183 L Ed 2d 407 (2012). Those protections rest on the recognition that youth offending, including sexual offending, often arises in developmentally distinct contexts marked by heightened peer influence, increased susceptibility to negative pressures, sexual curiosity or experimentation, and still-developing psychosocial self-

regulation, all of which contribute to diminished culpability and heightened rehabilitative potential.

SORA's application to youth is both cruel and unusual because it disregards these well-settled constitutional realities. It is imposed automatically, without any consideration of a youth's mitigating characteristics. It is also grossly disproportionate because, unlike other punishments imposed on children, it is mandatory and, in most cases, lifelong. And it runs directly counter to the rehabilitative aims of Michigan's juvenile-justice framework, which is designed to promote youth welfare, development, and reintegration rather than to impose permanent stigma and exclusion.

SORA's application to youth also fails to account for the uncontroverted social science research rebutting the efficacy of registration as a public safety tool and the insurmountable barriers to community reentry erected by registration on young people and their families. The physical and socio-emotional consequences, the lifelong supervision, the risk of harm, and the accompanying loss or interruption in employment, housing, and schooling all lead to the singular conclusion that the law is unconstitutionally punitive. It precludes a youth from establishing a life before they have even had an opportunity to begin one.

This Court should reverse its prior decision and hold—consistent with constitutional youth sentencing jurisprudence—that automatically imposing SORA's lengthy or lifetime registration requirements on children who were under the age of 18 at the time of their offense without any consideration of their youth, immaturity, or rehabilitative potential constitutes cruel or unusual punishment in violation of the Michigan Constitution. This Court need not decide whether some materially different regime, one tied to individualized considerations of a youth's risk of

reoffending, could ever be constitutionally applied to children. It can simply hold that the current *automatic* registration scheme that takes *no account of youthfulness* cannot.

LEGAL FRAMEWORK FOR YOUTH REGISTRATION

SORA imposes registration automatically on people convicted of certain offenses—in most cases for life—without any consideration of individual circumstances, maturity level, or rehabilitative potential. MCL 28.723. SORA applies to children in two ways. First, children who are tried as adults, including Mr. Malone, are automatically subject to SORA if convicted of a registrable offense. MCL 28.722(a)(i); MCL 28.723 (1). Registration is required regardless of the child's age at the time of the offense. Because children as young as 14 can be tried as adults (MCL 712A.4, MCL 600.606), even such young children are automatically subject to SORA if convicted of a registrable offense. For those youth, SORA imposes the exact same obligations and burdens as it does for adults. If convicted of Tier I or II offenses, they are subject to SORA for 15 or 25 years, respectively. If convicted of a Tier III offense, they are subject to SORA for life. Registered youth are branded as "sex offenders" on the public registry and subject to the same reporting requirements as adults who committed comparable offenses. See MCL 28.723; 28.728.

Second, the registry also includes children who were adjudicated in juvenile court. SORA has required registration for Tier III offenses if the youth was 14 years or older at the time of the offense. MCL 28.722(a)(iii); MCL 28.723(1). Tier III offenses vary greatly in severity. First degree criminal sexual conduct (MCL 750.520b) is Tier III, but so is third-degree criminal sexual conduct, which includes sex with a willing partner who is a minor (MCL 750.520d(1)(a)). MCL 28.722(v)(iv).

To have a qualifying juvenile offense statutorily considered a registrable "conviction" under SORA, the youth must have an "order of disposition" that is "open to the general public." MCL 28.722(a)(iii). In 2020, the Legislature amended the probate code to provide that juvenile

court records are "not open to the general public." MCL 712A.28(3); see also MCR 3.925(D)(1). As a result, youth who are adjudicated in juvenile court do not have an order of disposition that is open to the general public and, therefore, do not have a "conviction" for purposes of the SORA statute. See *In re MJB*, unpublished per curiam opinion of the Court of Appeals, issued March 14, 2024 (Docket No. 364707); 2024 WL 1131022. However, as a practical matter, there are still thousands of people who were adjudicated as juveniles on Michigan's registry, in part due to disagreement about how the amendments to MCL 712A.28(3) affect youth registrants adjudicated before January 1, 2021.[1] See Expert Report in *Does III v Whitmer*, 751 F Supp 3d 761 (ED Mich, 2024) ("*Does III* Expert Report) at 29, Exhibit A (finding that as of 2023, there were 2,037 individuals on Michigan's registry for juvenile adjudications)[2]. Of the individuals registered for juvenile adjudications evaluated in the report, half were fifteen or younger at the time of their offense. See *id.* at 30. Over 80% were sixteen or younger. See *id*. Though not listed on the online registry, MCL 28.728(4)(a)-(b), these youth are subject to SORA for life and face the same reporting requirements as adults.

[1] While this case does not present the question, amici believe that pursuant to the amendments to MCL 712A.28, SORA simply does not apply to any youth adjudicated in juvenile court whose disposition is not open to the general public, including youth adjudicated before January 1, 2021.The state's position on this question has been inconsistent. In the *Does III* litigation, the Michigan Department of Attorney General (representing the governor and Michigan State Police) stated that the amendments to MCL 712A.28(3) "effectively removed the requirement that any person adjudicated as a juvenile in probate court had to register as a sex offender under SORA." *Does III*, Defs Resp to Pls Mot for Prelim Inj, ECF No 39, PageID 1191, n 20. However, in litigation in Michigan state courts, the Attorney General has argued that while youth adjudicated in probate court after January 1, 2021 are not subject to registration, youth adjudicated before then must register for life. See *In re MD*, Michigan Court of Appeals Case No 334057, Response filed Sept 28, 2022. The Michigan Supreme Court remanded *In re MD* to this Court for resolution of that statutory interpretation question, but that case mooted out so the issue has yet to be resolved by the courts. See *In re MD*, unpublished order of the Supreme Court entered April 18, 2023 (Docket No. 165064).

[2] In the *Does III* litigation, experts analyzed Michigan's registry based on data in the SORA database on January 24, 2023.

Registration of youth on SORA is mandatory, and not discretionary. The court does not conduct any individualized assessment or consider any youth mitigating factors when applying SORA; all of SORA's burdens attach automatically based solely on the offense of conviction, without any individualized determination. MCL 28.723. Thus, a 14-year-old is subject to the exact same reporting requirements as 40-year-old who commits the same type of offense, without consideration of the youth's age, development, environment, or capacity for reform. And youth subject to lifetime registration are like to spend decades longer on the registry than adults.

ARGUMENT

I. SORA Registration Constitutes Punishment

In *People v Kardasz,* the Michigan Supreme Court held that "2021 SORA constitutes punishment." *Kardasz*, __ Mich at __; slip op at 33. There, the court found that SORA "approximates the traditional punishments of shaming and parole, burdens registrants with onerous requirements under the threat of imprisonment for noncompliance, and serves the penological goal of retribution." *Id.* at __; slip op at 32. Further, SORA "is excessive in relation to its stated purpose because it imposes various duties based on unscientific groupings rather than individualized risk profiles, includes a publication requirement that may diminish its overall effectiveness in reducing recidivism, and remains operative beyond any plausible point of utility for thousands of registrants." *Id*. Thus, under *Kardasz*, imposing SORA on youth offenders constitutes punishment.[3]

[3] Mr. Malone was convicted as an adult of a Tier III offense and is therefore subject to the same exact SORA requirements, i.e. the same exact punishment, as the defendant in *Kardasz*. Amici note, however, that under *Kardasz*, SORA also constitutes punishment for youth adjudicated as juveniles (if they are in fact subject to SORA, see note 1, *supra*) who are subject to very similar harms.

II. Subjecting Youth to SORA Constitutes Cruel or Unusual Punishment

The application of SORA to youth is *both* cruel and unusual, though under Michigan's Constitution it is barred if it is either. While the Eighth Amendment of the United States Constitution protects against "cruel and unusual punishment", Article 1, § 16, of Michigan's 1963 Constitution bars "cruel or unusual punishment." US Const, Am VIII; Const 1963, art 1, § 16. Michigan's "cruel or unusual" provision "is broader than the federal Eighth Amendment counterpart." *Parks*, 510 Mich at 241. This is because (1) "there are textual differences between the state and federal Constitutions; a bar on punishments that are either cruel *or* unusual is necessarily broader than a bar on punishments that are both cruel *and* unusual;" (2) "the framers and adopters of the 1963 Constitution had intended a broader view of the state constitutional protection"; and (3) "our state Constitution has historically afforded greater bulwarks against barbaric and inhumane punishments" than the United States Constitution. *Parks*, 510 Mich at 242-243, citing *People v Bullock*, 440 Mich 15, 30-33; 485 NW2d 866 (1992). Because Michigan's Constitution refers to cruel *or* unusual punishments, a sanction violates the Constitution if it is either cruel (but not unusual) or unusual (but not cruel). See *Bullock,* 440 Mich at 30 n 11.

Pursuant to this more expansive reading, Michigan courts consider four factors in evaluating challenges to sentences under the "cruel or unusual punishment" clause of the Michigan Constitution: "(1) the severity of the sentence imposed compared to the gravity of the offense, (2) the penalty imposed for the offense compared to penalties imposed on other offenders in Michigan, (3) the penalty imposed for the offense in Michigan compared to the penalty imposed for the same offense in other states, and (4) whether the penalty imposed advances the penological goal of rehabilitation." *People v Stovall*, 510 Mich 301, 314; 987 NW2d 85 (2022), citing *Bullock*, 440 Mich at 33-34. See also Const 1963, art 1, § 16. A youth's status, lesser culpability, and immaturity must be considered when applying the cruel or unusual punishment clause of the Michigan

Constitution to punishments imposed on youth. See *Parks*, 510 Mich at 267 ("The attributes of youth must be considered to ensure that the sentencing" of a youth "passes constitutional muster."). Applying the factors here, this Court should hold that the application of SORA's registration requirements to youth who were under 18 years old at the time of offense constitutes cruel or unusual punishment under the Michigan Constitution.[4]

A. Application of SORA to Youth Offenders is Grossly Disproportionate

Under the first *Bullock* factor, application of Michigan's SORA regime to youth is disproportionate for four interrelated reasons. First, registration is automatic without any individualized assessment or required consideration of youth mitigating factors. Second, as applied to youth offenders, SORA imposes lengthy, and often lifetime registration terms untethered to individualized assessment of reoffending risk. Third, SORA has devastating consequences on youth. Fourth, registration of youth does not promote but rather undermines public safety.

1. SORA is Cruel Because It is Imposed Automatically Without Sufficient Consideration of Youth Mitigating Factors

Michigan courts have repeatedly recognized that "children are constitutionally different from adults for sentencing purposes." *Parks*, 510 Mich at 235. Compared to adults, youth are "'more vulnerable . . . to negative influences and outside pressures,' including from their family and peers." *Parks*, 510 Mich at 235-36 (quoting *Miller v Alabama*, 567 US at 471). See *also Roper v Simmons*, 543 US 551, 569; 125 S Ct 1183; 161 L Ed 2d 1 (2005) ("Youth is . . . a time and condition of life when a person may be more susceptible to influence and to psychological damage."). In addition, their "traits are 'less fixed' and [their] actions less likely to be 'evidence of irretrievabl[e] deprav[ity].'" *Parks*, 510 Mich at 236 (quoting *Miller*, 567 US at 471). Because

[4] A decision under Article 1, § 16 makes it unnecessary to decide whether automatic, lifetime SORA also violates the Eighth Amendment to the federal Constitution.

youth are still developing neurologically and psychosocially, they are less able than adults to regulate impulses, appreciate long-term consequences, resist external pressures, and extricate themselves from criminogenic environments. See *Miller*, 567 US at 471. As a result, adolescent lawbreaking is not a reliable proxy for adult criminality. See Cavanagh, *Healthy Adolescent Development and the Juvenile Justice System: Challenges and Solutions,* 16 Child Dev Perspective 141, 142 (2022).[5] For these reasons, the U.S. and Michigan Supreme Court have held that youth must be considered as a mitigating factor when determining sentencing for juvenile offenders. See *Miller,* 567 US at 472 (the "distinctive attributes of youth diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes"). See also *People v Boykin*, 510 Mich 171, 184; 987 NW2d 58 (2022) ("Youth is a mitigating factor . . . courts must consider when sentencing juvenile offenders.").

Indeed, because youth are developmentally distinct from adults, the imposition of "automatically harsh punishment" on youth "without consideration of mitigating factors is unconstitutionally excessive." *Parks*, 510 Mich at 260. "Mandatory penalty schemes," such as SORA, "prevent the sentencer from taking account" of the mitigating qualities of youth. *Miller,* 567 US, at 474. By automatically subjecting a youth to the same registration and reporting requirements applicable to an adult, SORA "mak[es] youth (and all the accompanies it) irrelevant[;]. . . such a scheme poses too great a risk of disproportionate punishment." *Miller*, 576 US at 479.

SORA does not require inquiry into the youth's developmental capacity, environment, treatment response, or risk. Instead, it imposes the same registration and reporting requirements on adults and youth alike. Thus, a 14-year-old adjudicated for CSC-1 because of developmentally

[5] Available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/cdep.12461>.

immature sexual conduct would get the same Tier III classification—and as a result—the same lifetime registration term as an adult. That is unconstitutional.

In addition to consideration of youth mitigating factors, Michigan law also carries a strong presumption that sentencing should be individualized. As the Michigan Supreme Court has explained, "the modern view of sentencing is that the sentence should be tailored to the particular circumstances of the case and the offender in an effort to balance both society's need for protection and its interest in maximizing the offender's rehabilitative potential." *People v McFarlin*, 389 Mich 557, 574; 208 NW2d 504 (1973). *Bullock's* proportionality standard favors an individualized analysis, requiring consideration of "whether the punishment is tailored to the defendant's 'personal responsibility and moral guilt.'" *Kardasz,* __ Mich at __; slip op at 34 (quoting *Bullock*, 440 Mich at 39). That is even more true for youth, who "are likely to be biologically incapable of full culpability" as a result of their development. *Parks*, 510 Mich at 259. Mandating punishment on all youth convicted of certain crimes is "completely contrary to *Bullock*." *Id.*, quoting *Bullock*, 440 Mich at 39.

Meanwhile, there is no scientific justification for automatically imposing SORA's requirements on youth without any individualized consideration of their level of maturity or rehabilitative potential. As noted by the Michigan Supreme Court, "in the punishment context, science has always informed what constitutes 'cruel' or 'unusual' punishment in regards to certain classes of defendants" *Parks*, 510 Mich at 248-249. It is the court's "role to consider objective, undisputed scientific evidence when determining whether a punishment is unconstitutional as to a certain class of defendants." *Id.* at 249. Developmental science shows that youth have greater capacity for reform than adults. See *Miller*, 567 US at 479 (recognizing children's "heightened capacity for change"); *Parks*, 510 Mich at 246 (same). See also *Miller*, 567 US at 472-473

("Deciding that a 'juvenile offender forever will be a danger to society' would require 'mak[ing] a judgment that [he] is incorrigible'—but 'incorrigibility is inconsistent with youth.'") (citation omitted).

In sum, automatically imposing SORA's registration requirements on youth without any individualized review or consideration of their youthfulness is disproportional. To be clear, **the statute is *facially* unconstitutional because it is imposed *automatically***. If SORA had provisions that allowed sentencing judges to consider a person's youth, rehabilitative potential and other individual circumstances, there might be circumstances where a judge would find SORA's registration and reporting requirements appropriate for the particular individual. But even if the punishment outcomes could be constitutional in certain cases *if* imposed based on individualized consideration, SORA is facially unconstitutional with respect to youth because of the mandatory and automatic nature of the punishment without any consideration of youthfulness or capacity for rehabilitation. Cf *Miller,* 567 US, at 480 (similarly noting that the court's holding "do[es] not foreclose a sentencer's ability to" order LWOP for juvenile offenders in certain cases; rather, it "require[s] it to take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison"); *Montgomery v Louisiana,* 577 US 190, 195; 136 S Ct 718; 193 L Ed 2d 599 (2016) (noting that "*Miller* did not foreclose a sentencer's ability to impose life without parole on a juvenile," but instead first "required that sentencing courts consider a child's 'diminished culpability and heightened capacity for change'") (quoting *Miller*, 567 US, at 479).

2. SORA's Requirements Apply for Decades or Life, Irrespective of Risk

Tier III registrants—who must register for life, MCL 28.725(13)—make up the overwhelming majority of Michigan's SORA registry. See *Does III* Expert Report, p 2 (finding that 73% of registrants on SORA, as of 2023, were in Tier III). While there is no publicly-available

state-kept data on how many Michigan youth registrants are subject to SORA for life, it is likely to be the vast majority as all registrants who were adjudicated as juveniles are Tier III lifetime registrants. And the offenses that are most likely to lead to a youth being charged as an adult are also Tier III offenses. Even the few youth registrants who are Tier I or II are subject to SORA for decades. Lifetime punishment is especially severe when imposed on youth because juvenile offenders "will inevitably . . . spend a greater percentage of their lives" subject to SORA's punitive requirements compared to "similarly situated older adult offenders." *Parks*, 510 Mich at 257.

At least two other state courts—the Supreme Courts of Ohio and Colorado—have invalidated mandatory lifetime juvenile registration on cruel and unusual grounds for that very reason. See *In re CP*, 131 Ohio St. 3d 513; 2012-Ohio-1446; 967 NE2d 729 (2012); *People in Interest of TB*, 489 P3d 752; 2021 CO 59 (Colo, 2021). The Ohio Supreme Court's reason in *In re CP* maps directly onto Michigan's SORA regime. *In re CP,* three features of the Ohio scheme drove the court's holding: first, like Michigan's SORA, registration was automatic and mandatory; second, also like Michigan's SORA, lifetime registration attached based on offense category alone, without any judicial assessment of the individual youth's risk of reoffending or capacity for rehabilitation; finally—again like Michigan's SORA—the regime failed to account for youth's developmental characteristics, including their diminished culpability and increased capacity for change. *In re CP,* 131 Ohio St 3d at 532-536. As a result, the Ohio Supreme Court held that Ohio's registration and notification requirements, by virtue of having them apply "for life, with the possibility of having them lifted only after 25 years, [were] especially harsh punishments for a juvenile." *In re CP*, 131 Ohio St 3d at 525. The Colorado Supreme Court reached a similar conclusion in *People in Interest of TB*, 2021 CO 59 (2021).

Both the Ohio and Colorado Supreme Courts evaluated the intense harm caused by juvenile registration relative to its purported non-punitive purposes. As noted by both courts, juvenile registration imposes severe burdens on registrants, including barriers to education and employment, instability in housing, and damage to family, social, and community relationships. *In re CP,* at 525; *People in Interest of TB,* 489 P3d at 771. The *TB* court also reasoned that research shows serious psychological harms associated with registration, including increasing likelihood of youth suicide, as well as damage to emotional well-being and identity formation. *People in Interest of TB*, 489 P3d at 771. These burdens are especially profound for youth; juveniles subject to lifetime registration will spend more years and a larger proportion of their lives subject to SORA's restrictions than an adult registrant convicted of the same offense. Further, SORA's requirements attach "[b]efore a juvenile can even begin his adult life, before he has a chance to live on his own." *In re CP,* at 525.

For these reasons, this Court should join the Ohio and Colorado Supreme Courts in holding that the imposition of SORA on youth—automatically, and often for life—is unconstitutionally cruel punishment.

3. SORA Has Devastating Consequences on Youth

a. *Registration Subjects Youth to Lengthy or Lifelong Supervision and Imposes Severe Barriers to Reentry*

Michigan's youth sex offender registration law imposes a dizzying array of obligations and restrictions on youth required to register. See *SORA Summary of Restrictions,* Exhibit B.[6] As the Sixth Circuit said in *Does I,* SORA is a "byzantine code governing in minute detail the lives" of

[6] This document reflects what the statute requires. Some parts of the law were enjoined in *Does III.* See *Does v Whitmer*, 751 F Supp 3d 761 (ED Mich, 2024); 773 F Supp 3d 380 (ED Mich, 2025); *Does III*, Amended Final Judgment, ECF No. 177. An appeal in that case is currently pending before the Sixth Circuit.

Michigan registrants. *Does I*, 834 F3d at 697. SORA's requirements—which are too extensive to list in full here—require registered youth to report *in person* to law enforcement *every three months* in most cases *for life* and to disclose extensive private information. See *SORA Summary of Restrictions* at § 10. A Tier III youth who is on the registry from age 14 to 79—the average life expectancy[7]—would have to report in-person a minimum of 260 times, not counting reports to update information that changes between quarterly reporting dates.

Registered youth must also report changes to that information *in person within three days*. See *SORA Summary of Restrictions* at § 11. For example, a youth who enrolls in a college class or decides to volunteer at a homeless shelter must go to the police station in person within three days to inform the authorities. *Id.* at §§ 4, 7, 11. Indeed, a youth must report in person within three days if as part of their course of studies they are "present at any other location" than their own college. MCL 28.724a(1)(b). Thus, a youth who goes on a class field trip or does research at another university's library must report to law enforcement within three days. Many other changes must be reported within three days either in person or by mail. See *SORA Summary of Restrictions* at § 11.

Even exceedingly trivial information must be reported. For example, registrants must report every single vehicle they drive, ever, meaning that it is a crime for a youth who borrows a friend's car for an hour not to inform the police they have done so. See *Does III*, 773 F Supp 3d at 396. Similarly, even the most de minimis paid work—e.g. mowing a neighbor's lawn—must be reported within three days. *Id.* at 397. For most youth, these onerous reporting obligations last for life. MCL 28.722(a)(iii); 28.725(11)-(13).

[7] See National Center for Health Statistics, *Life Expectancy*, available at <https://www.cdc.gov/nchs/fastats/life-expectancy.htm> (accessed April 30, 2026).

Registered youth also cannot travel freely. Registrants must report within three days if they "intend[] to temporarily reside at any place other than his or her residence for more than 7 days." MCL 28.725(2)(b). For example, a youth cannot visit their grandparents for a week without having to report that trip. International travel lasting more than 7 days must be reported 21 days in advance. MCL 28.725(8). And registered youth are entirely barred from traveling during time periods that would interfere with their in-person reporting obligations, e.g. taking a month-long trip during months they are required to report. MCL 28.725a(3). Further, due to a lack of clarity around what constitutes an "intent" to travel or how to report if travel plans change, many registrants simply don't travel, missing professional opportunities, family events, or even their own parents' funerals. *Does III v Whitmer*, No. 22-cv-10209 (ED Mich), Statement of Material Facts (hereinafter *Does III* SOMF), ECF No. 123-1, ¶¶ 360–378. Registered youth must also submit to having their biometric information and photographs taken and pay an annual fee. See MCL 28.727(1); MCL § 28.727(1)(q), (p); MCL 28.725a(3), (6), (8). Registrants live in fear of violating SORA's complicated requirements and therefore avoid many normal activities that could land them in prison. *Does III* SOMF, ¶¶ 505, 518, 520.

For youth convicted as adults—like Mr. Malone—these harms are compounded because the state publicly labels them as sex offenders and includes extensive personal information about them on the online registry. "SORA brands registrants as moral lepers" and "consigns them to years, if not a lifetime, of existence on the margins." *Does I*, 834 F 3d at 705. In creating the online registry, the state "re-packag[es] information and provid[es] it to the public in a different form"—depicting registrants as "a highly dangerous type of criminal who requires constant public monitoring and scrutiny." *Does III,* 751 F Supp 3d at 790. The initial search page primes the dangerousness theme, warning of "future criminal sexual acts by convicted sex offenders." *Does*

III SOMF, PageID #3775. Each registrant's page displays a current photo alongside conviction information that can be decades old. The page describes weight, height, hair and eye color, tattoos/scars, birthdate, aliases, home address, work address, school address, vehicles, registration number, Michigan Department of Corrections (MDOC) number, last verification date, and "compliance" status. *Id.*, PageID #3778; MCL 28.728(2). The listed convictions lack context that would likely be apparent in court files—e.g., the offense involved two teenagers, one of whom was underage. The SORA website "encourage[s] browsing, mapping, and tracking registrants, rather than accessing targeted archival information." *Does III* SOMF, PageID #3781-3782. Simply clicking registrant icons on an interactive map reveals a person's photo and registry details. *Id.*, PageID #3775-3777. Prominent buttons on each registrant's page invite users to "track offender," "map offender," and "submit a tip"—reinforcing the message of highly dangerous individuals actively engaged in criminal conduct. With one click, users can sign up for registrant alerts. *Id.,* PageID #3778.

Because Michigan portrays registrants as dangerous pariahs, registrants have received death threats, been attacked at gunpoint, had their homes and cars vandalized, and been threatened in their own homes. *Id.*, PageID #3804-3805. Registrants' family members are stigmatized simply for associating with them; their children are bullied. Some families live apart so the family home won't be listed on the registry. *Id.*, PageID #3824-3825. Because work and home addresses are published online, many employers and landlords won't hire or rent to registrants, regardless of their qualifications. *Id.*, PageID #3807-3816. Of Michigan registrants living in the community, 45% were unemployed. *Id.*, PageID #3811. Of those who reported addresses for at least ten years, 12% have been homeless; many others have been evicted or forced into substandard housing. *Id.*, PageID #3807-3810.

Further, SORA—which carries penalties of up to ten years imprisonment, MCL 28.729—is aggressively enforced. Some 880-1,000 people are convicted annually of SORA violations. *Does III* SOMF, ¶ 310. Law enforcement has regularly engaged in SORA sweeps, including random residence or employment checks, which may cause registrants to lose their housing or jobs. *Id*., ¶¶ 292–308. A "failure to comply with these restrictions carries with it the threat of serious punishment, including imprisonment," for up to ten years. *Does #1-5 v Snyder*, 834 F3d at 703 (*Does I*). See also *People v Betts*, 507 Mich 527, 553; 968 NW2d 497 (2021); See *SORA Summary of Restrictions*, at § 14. Indeed, even something as simple as failing to sign the registration form, is a crime. *SORA Summary of Restrictions*, at § 14.

A youth's status as a registered sex offender also triggers countless other local, state and federal laws. For example, in Warren, Michigan, registrants are banned from public parks, playgrounds, or city recreation facilities. Warren, Mich Code of Ordinances, § 22-140. Landlords in Ludington, Michigan, are prohibited from renting to registrants when their property is located within 1,000 feet of school property. Ludington, Mich Code of Ordinances, § 34-232. In Jackson, Michigan, a "Fair Chance" housing ordinance permits landlords to evict or refuse to rent to anyone subject to a lifetime registration requirement. Jackson, Mich Code of Ordinances, § 14-606. And federal law bars life-time registrants from accessing federally subsidized housing. 42 USC § 13663. A person like Mr. Malone, whose offense occurred at age 16, will never be able to access such housing, even in his 80s or 90s. Private entities, including educational institutions, also have policies denying service to registrants. See Miller, *Lake Michigan College Bans Sex Offenders of*

Children from Its Campuses, Chronicle of Higher Education (March 3, 2010);[8] *Muskegon YMCA Kicks out Sex Offenders*, Associated Press (November 29, 2007).[9]

These requirements impose far more than just a minimal burden, and place significant barriers in youth's ability to obtain education, find and keep employment, and maintain supportive family and community relationships. The registry's numerous restrictions and frequent reporting requirements impose continuous conditions which impact and influence every subsequent decision, relationship, and opportunity. For an adult registrant, these burdens disrupt an already established life. For a child registrant, they foreclose the very possibility of establishing one. Juvenile registration—especially public registration—attaches a stigma "at the start of [a youth's] adult life." *In re CP*, 131 Ohio St 3d at 525. Because of that label, a juvenile offender on the registry "will never have a chance to establish a good character in the community." *Id.* The youth "will be hampered in [their] education, in [their] relationships, and in [their] work life. . . . [Their] potential will be squelched before it has a chance to show itself." *Id.* Even a "25-year requirement of community notification means everything to a juvenile. It will define his adult life before it has a chance to truly begin." *Id.*

b. *Sex Offender Registration Disrupts a Young Person's Healthy Development*

Sex offender registration disrupts healthy adolescent development because it undermines and destabilizes critical supports that research and developmental science have identified as necessary to such development. See Nat'l Acads of Sci, Eng'g, & Med, *The Promise of Adolescence: Realizing Opportunity for All Youth* (Washington DC: National Academies Press,

[8] Available at <https://www.chronicle.com/article/lake-michigan-college-bans-sex-offenders-of-children-from-its-campuses/>.

[9] Available at <https://www.mlive.com/grpress/2007/11/muskegon_ymca_kicks_out_sex_of.html>.

2019), ch 2;[10] Lobanov-Rostovsky, *Registration and Notification of Juveniles Who Commit Sexual Offenses,* Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking;[11] See *Healthy Adolescent Development and the Juvenile Justice System: Challenges and Solutions,* 16 Child Dev Perspective at 142;[12] Letourneau et al, *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24 Psych Pub Pol'y & L 105, 114 (2018).[13] Registration of youth labels them as "sex offenders", harming their sense of self and identity formation. *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US,* Human Rights Watch (May 1, 2013) (hereafter "*Raised on the Registry*").[14] It also results in damage to their relationships with peers, family members, and the community, often leading to social ostracization and stigma. See *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24 Psych Pub Pol'y at 114;[15] Comartin, Kernsmith, & Miles, *Family Experiences of Young Adult Sex Offender Registration,* 19 J Child Sexual Abuse 204 (2008).[16] Youth who are subject to juvenile registration experience significant mental health challenges as a result of such labeling, including heightened risk for depression and suicidal ideation. *Raised on the Registry.*

[10] Available at <https://www.ncbi.nlm.nih.gov/books/NBK545476/>.

[11] Available at <https://smart.ojp.gov/somapi/chapter-6-registration-and-notification-juveniles-who-commit-sexual-offenses>.

[12] Available at <https://onlinelibrary.wiley.com/doi/pdf/10.1111/cdep.12461>.

[13] Available at <https://psycnet.apa.org/record/2017-52425-001>.

[14] Available at <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us>.

[15] See note 13, *supra*.

[16] Available at <https://www.tandfonline.com/doi/full/10.1080/10538711003627207>.

Labeling youth as sex offenders imposes significant lifelong consequences and burdens. See Letourneau, *Sex Offender Registration and Community Notification Laws, Chapter 9: Juvenile Registration and Notification are Failed Policies That Must End* (Cambridge: Cambridge University Press, 2021);[17] Adolescence is a developmental period marked by formation of one's identity and sense of self. *Raised on the Registry.* When youth are labeled as "sex offenders" or "predators", youth can experience profound damage to their self-esteem and identity. *Id.* See also *Family Experiences of Young Adult Sex Offender Registration,* 19 J Child Sexual Abuse, 204 (2010) (parents of juvenile sex offenders reported that youth experienced low self-esteem, stigmatization, and shame from being labeled as sex offenders). There is little dispute about what the term "sex offender" means; "sex offenders [are viewed] as irredeemable monsters" in modern society. Van Biema, *Burn Thy Neighbor: Where Can a Child Molester Go After Serving Time? Not Home*, Time (July 26, 1993), p 2.[18] The term carries demonstrably false connotations, and irreparably damages the reputations of those so labeled. This label also establishes societal presumptions that the young person is untrustworthy or possesses other negative character traits, merits punishment, or is likely to commit crimes in the future. Elrod & Ryder, *Juvenile Justice: A Social, Historical, and Legal Perspective* (Burlington: Jones and Bartlett Learning, 4th ed, 2013), p 167. "[T]he common view of registered sexual offenders is that they are particularly dangerous and more likely to reoffend than other criminals." *In re JB*, 630 Pa 408, 433; 107 A3d 1 (2014). As such, labeling a youth as a "sex offender" interrupts the natural process of developing a positive, healthy self-identity and undermines the goals of rehabilitation. Letourneau & Miner, *Juvenile Sex*

[17] Available at <https://www.cambridge.org/core/books/abs/sex-offender-registration-and-community-notification-laws/juvenile-registration-and-notification-are-failed-policies-that-must-end/B0DDB6B0C94E638B08D72AD1DD297A39>.

[18] Available at <https://content.time.com/time/subscriber/article/0,33009,978924-1,00.html>.

Offenders: A Case Against the Legal and Clinical Status Quo, 17 Sexual Abuse 293, 307 (2005); *Juvenile Justice: A Social, Historical, and Legal Perspective,* p 167 (such labeling can alter a youth's self-image as well as societal views of their personal traits).

Youth who are placed on sex offender registries face social isolation and ostracism by peers, which deprives them of critical sources of psychological support. Becker, *What We Know About the Characteristics and Treatment of Adolescents Who Have Committed Sexual Offenses*, 3 Child Maltreatment 317 (1998). This is true whether the youth is placed on an online or law-enforcement-only registry. See *Raised on the Registry* (noting that even in jurisdictions requiring only non-public disclosure, "a child's information and picture can be, and often is, still disseminated publicly"). Children who must register as sex offenders are often unable to develop and maintain friendships, are excluded from extracurricular activities, or are physically threatened by classmates after their peers learn of their record. See Jones, *How Can You Distinguish a Budding Pedophile From a Kid with Real Boundary Problems?*, New York Times (July 22, 2007).[19] See also Stillman, *The List: When Juveniles Are Found Guilty of Sexual Misconduct, the Sex-offender Registry Can Be a Life Sentence*, New Yorker (March 6, 2016); *Raised on the Registry.*

Registration of youth also gives rise to various emotional and mental health harms. In an interview of 281 youth offenders, roughly 85% reported "negative psychological impacts that they attributed to their status as a registrant," including "depression, a sense of isolation, difficulty forming or maintaining relationships, and suicide ideation." *Id.* Further, one-fifth of those interviewed "said they had attempted suicide." *Id.* The social-emotional harm of sex offender

[19] Available at <http://www.newyorker.com/magazine/2016/03/14/when-kids-are-accused-of-sex-crimes>.

registration does not disappear because children are not on the public registry. See Logan, *Knowledge As Power: Criminal Registration And Community Notification Laws In America* (Stanford: Stanford Law Books, 2009), p 138, 229. They must, for the remainder of their lives, report in person to law enforcement every three months, identify themselves as sex offenders, and complete forms identifying them as sex offenders. Particularly because children are still maturing, the knowledge that they will forever be monitored by law enforcement as sexual criminals has devastating consequences on their development.

c. *Registration Impedes Youth Participation in the Workplace, Schools, and Other Daily Activities*

Children required to register encounter numerous obstacles to participating in the most routine aspects of daily life. See Levenson & Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 Am J Crim Just 54, 62 (2009) (82% of surveyed family members of registered individuals reported that registration impeded the registered person's ability to work and created financial hardship for the family); Levenson, D'Amora, & Hern, *Megan's Law and Its Impact on Community Re-Entry for Sex Offenders*, 25 Behav Scis & L 587, 593 (2007) (identifying "job loss, threats and harassment, property damage, and suffering of household members" as the most common consequences of registration). Youth classified as sex offenders suffer severe education disruptions; over 50% of 296 youth registrants surveyed in one report had been denied access to or experienced severe interruptions in their education due to registration. *Raised on the Registry*, p 72. Individuals registered as sex offenders are categorically barred from working in certain professions, or risk losing their jobs when their employers learn of their sex offender status. *Id*. at 73-74. By placing obstacles between youth and the most routine aspects of daily life, youth registration impedes successful rehabilitation and reintegration into society.

If registered youth travel outside of Michigan, they are forced to navigate the inconsistent and ever-changing requirements of the federal government and each of the 50 states; this task is daunting for attorneys, and nearly impossible for registrants. See generally Carpenter & 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). The difficulty of this task is exemplified by registration requirements in Michigan's neighboring states. For example, a registered young person who visits or intends to visit Indiana for "at least seven (7) days (including part of a day)" in a 180-day period, must register in Indiana and will be placed on Indiana's public registry. Ind Code Ann 11-8-8-5(b)(1); 11-8-8-7(a)(1)(A), (j); 36-2-13-5.5. As the neighboring states' registration requirements demonstrate, a young person's registration status may become public, even if they are among those youth whose registry status would be confidential in Michigan. The difficulty of navigating other states' laws and the risk of public notification unreasonably burden a young person's constitutionally protected freedom of movement, and the right to intrastate and interstate travel. *Shapiro v Thompson*, 394 US 618, 629; 89 S Ct 1322; 22 L Ed 2d 600 (1969), overruled in part on other grounds by *Edelman v Jordan*, 415 US 651 (1974)

d. *Youth Who Are Required to Register as Sex Offenders are at Risk of Violence and Victimization*

In direct contravention to the public safety aims of Michigan's registration scheme, youth registration impedes public safety by *increasing* the likelihood that children will experience physical and sexual violence. More than 50% of registered youth report experiencing violence or threats of violence against them or their family members that they directly attribute to their registration. *Raised on the Registry*, p 56. A 2017 study revealed that registered children are nearly twice as likely to have experienced a sexual assault in the past year when compared to offense-

and demographically-matched children who were not placed on a registry. *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24 Psych Pub Pol'y & L at 114. They are also five times more likely to report having been approached by an adult for sex in the past year. *Id.*

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. *Id.* Notably, registration is "positively correlated to increased severity of depression and suicidal ideation in the adult life of juvenile registrants, *regardless of whether registration status was private or public*." Association for the Treatment of Sexual Abusers, *Registration and Community Notification of Children and Adolescents Adjudicated of a Sexual Crime: Recommendation for Evidence-Based Reform* (2020), p 11 (emphasis added),[20] citing Denniston, *The Relationship Between Juvenile Sex Offender Registration and Depression in Adulthood* (2016) (Ph.D. dissertation, Walden University). One young person stated, "I live in a general sense of hopelessness, and combat suicidal thoughts almost daily due to the life sentence [registration] and punishment of being a registrant." *Raised on the Registry*, p 51 (alteration in original). Another former registrant took his own life after several years living on the registry because he knew the stigma associated with being labeled a sex offender would continue to jeopardize him in adulthood. *Id*. at 53.

Registration undermines public safety and is counterproductive to the registry's purported goals because as set forth above, registration sets up obstacles between a child and a normal, productive life. These barriers *increase* the likelihood that a registered youth will commit a non-

[20] Available at <https://www.atsa.com/Public/Adolescent/RegistrationCommunityNotificationofChildrenandAdolescents.pdf>.

sexual offense in the future. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 La L Rev 509, 524-528 (2013) (collecting studies finding that collateral consequences of registration "exacerbate existing 'risk factors leading to recidivism'"), quoting *Megan's Law and Its Impact on Community Re-Entry,* 25 Behav Scis & L at 590.

4. Youth Registration Does Not Protect, But Rather Undermines, Public Safety

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

SORA's application to youth is completely unsupported by the data on re-offending rates amongst this population. Even twenty years ago, when the United States Supreme Court commented on adult recidivism rates, its opinion lacked any scientific foundation. See Ellman & Ellman, *"Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics*, 30 Const Comment 495, 498 (2015) (identifying that the Supreme Court's contention that recidivism of sexual offenders was "frightening and high" was a "bare assertion" in a Psychology Today article made by an "author [who does not] appear to have the scientific credentials that would qualify him to testify at trial as an expert on recidivism"). Since then, research has conclusively proven that common perceptions about sexual re-offense rates are simply false. See, e.g., Hanson, *Long-Term Recidivism Studies Show That Desistance Is the Norm*, 45 Crim Just & Behav 1340, 1342-1343 (2018) (noting that sexual recidivism rates are lower than believed and decrease with time).

Data consistently show that youth have exceptionally low sexual recidivism rates—97.25% of youth adjudicated delinquent for a sexual offense do not commit another sexual offense. Caldwell & Lamb, *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, 22 Psych Pub Pol'y & L 414, 416, 419 (2016) (a meta-analysis of 98 studies including 33,783 youth showed a 2.75% sexual recidivism rate from studies in the preceding 15 years, and 4.97% weighted sexual

recidivism base rate over all the studies). The few youth who do sexually reoffend typically do so within three years of the original adjudication. *Id.* at 419.

Michigan-specific research is consistent with these national findings. In the *Does III* litigation, experts analyzed Michigan's registry data and found that of the 2037 people on Michigan's registry for a juvenile adjudication as of 2023, **99% have never been convicted of a second registrable offense**. *Does III* Expert Report, at 29. This is below the first-time sexual offending rate for males in the general population. *Id.* at 3.[21]

Research spanning decades also shows that sexual offending during adolescence does not predict adult sexual offending. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 Sexual Abuse 107, 112 (2007); Zimring et al, *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort*, 26 Just Q 58, 66 (2009) (finding that "using the juvenile sex records to predict who would become an adult sex offender in this scenario produced a false positive rate of 90 percent"); Zimring, Piquero & Jennings, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 Criminology & Pub Pol'y 507, 527 (2007) ("What percentage of the adult male police contacts for sex offenses do the juvenile offenders account for? Four percent. So investigating an adult sex offense committed by a male in the Racine data by interviewing the juvenile sex offenders would be wrong 96% of the time."). Most youth sexual offenders "are not sexual predators and will not go on to become adult offenders." *Report of the Michigan Task Force on the Prevention of Sexual Abuse of Children* (June 17, 2015), p 7.[22] Further,

[21] See also Lee, Brankley, & Hanson, *There Is No Such Thing as Zero Risk for Sexual Offending*, 65 Canadian J Criminology and Crim. Just 1 (2023).

[22] Available at <https://www.michigan.gov/mdhhs/-/media/Project/Websites/mdhhs/Adult-and-Childrens-Services/Abuse-and-Neglect/Childrens-Protective-Services/ReportRecommendations.pdf?rev=89864a4fc3754b5d8dc3f165772bc138>.

"most adolescent offenders . . . do not continue to exhibit sexually predatory behaviors." *Id.* As a result, "juveniles who commit sexual offenses should not be labeled as sexual offenders for life" and "should not automatically" be subject to the same "sex offender management policies commonly used with adult sex offenders." See Lobanov-Rostovsky, *Recidivism of Juveniles Who Commit Sexual Offenses* (2015), p 5.[23]

Youth who commit sexual offenses are also even more responsive to treatment than adults. *Id*. See *also* Petersen & Chandler, *Sex Offender Registration and the Convention on the Rights of the Child: Legal and Policy Implications of Registering Juvenile Sex Offenders*, 3 Wm & Mary Pol'y Rev 1, 31 (2011). Thus, youth sex offenders who receive treatment for their sexual offenses exhibit even lower recidivism rates than untreated youth sex offenders and even treated adult sex offenders. See Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration,* 27 Dev Mental Health L 34, 42 (2008).

Finally, SORA's registration and notification policies also fail to serve any deterrent effect for youth offenders. For example, a study comparing the likelihood of first-time sexual offenses across four states found no meaningful difference pre- and post-implementation of juvenile registration and notification policies. See Sandler et al, *Juvenile Sex Crime Reporting Rates Are Not Influenced by Juvenile Sex Offender Registration Policies,* 23 Psych Pub Pol'y & L 131 (2017).[24] In short, these policies only serve to harm youth, without advancing any legitimate penological justification. Thus, there is no scientific basis for mandatory imposition of SORA on youth.

[23] Available at <https://smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/juvenilerecidivism.pdf>.

[24] Available at <https://psycnet.apa.org/record/2017-02821-001>.

b. *Sexual Experimentation Is A Characteristic Of Adolescence And, Like Other Youthful Behaviors, Desists With Maturation*

Multiple studies confirm that children who commit sexual offenses are, like other teens who engage in illegal behaviors, motivated by impulsivity and curiosity. Caldwell, *What We Do Not Know About Juvenile Sexual Re-Offense Risk*, 7 Child Maltreatment 291, 298 (2002); *Juvenile Sex Offenders*, 17 Sexual Abuse at 296-301. The immature thought processes of children and young adolescents, combined with their emerging sexual curiosity, can lead youth to engage in peer sexual conduct for which they are unprepared and for which they do not bear the same level of culpability as an adult. See Crockett, Raffaelli, & Moilanen, *Adolescent Sexuality: Behavior and Meaning*, University of Nebraska-Lincoln Faculty Publications (2003).[25] See also Baker, *Fourteen Going on Forty: Challenging Sex Offender Registration for Juveniles Under the Fourteenth Amendment Equal Protection Clause,* 32 Wm & Mary Bill Rts J 845, 847 (2024) (noting that "[i]nstances of sexual misconduct involving children typically exhibit less aggression, occur over a shorter duration, and tend to be more experimental than deviant," and thus, "the policy of sex offender registration" should not "appl[y] indiscriminately[] without regard to differential levels of dangerousness or severity of the crime."). Learning to think of oneself as a sexual being and dealing with sexual feelings are important tasks of adolescence. *Adolescent Sexuality*. Sexual experimentation is one aspect of the trying on of different personalities and new behaviors that is necessary to the process of identity development. *Id*. At the same time, "[s]exuality is seldom treated as a strong or healthy force in the positive development of a child's personality," and youth face "conflicting and contradictory expectations in American society concerning sexuality." Martinson & Ryan, *Sexuality in the Context of Development from Birth to Adulthood*, in Ryan,

[25] Available at <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1244&context=psychfacpub>.

Leversee, & Lane, eds, *Juvenile Sexual Offending: Causes, Consequences and Corrections* (Hoboken: John Wiley & Sons, 3rd ed, 2010), p 31. "Adults demand that adolescents develop a healthy sexual maturity without engaging in learning experiences that make that maturity possible." *Id.* (citation omitted). When youth engage in sexual exploration, they run the risk of finding themselves in situations that they may not be emotionally ready to navigate. *Id.* (citation omitted).

It is natural that children become more interested in sex as they enter puberty. Significantly, the average onset of puberty now occurs earlier than it did a century ago—under the age of 10 for girls and at an only slightly older age for boys, as compared to ages 14 to 15 in the early 1900s. *Id*. at 42. Moreover, "the combination of earlier puberty and greater sexual stimuli in the environment" has contributed to children engaging in sexualized behaviors at a younger age today than in the past. *Id*. at 45. With maturation, a better understanding of sexuality, and decreased impulsivity, these behaviors stop, and only a small fraction of juvenile offenders will maintain sexually harmful behavior in adulthood. Caldwell, *Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 Int'l J Offender Therapy & Compar Criminology 197, 207 (2010).

c. *Registration of Youth Does Not Reduce Recidivism, But Instead is Counterproductive*

Youth registration has devastating impacts on youth yet has zero impact on sexual recidivism rates. Letourneau & Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 Sexual Abuse 393, 400 (2008) (In a study following 222 individuals adjudicated delinquent of a sexual offense where 111 were required to register, only 2 of youth had engaged in subsequent illegal sexual behavior after four years. Researchers found this recidivism rate was too low to support any conclusions on the efficacy of registration). To the

contrary, registration may increase the risk that youth will commit nonsexual offenses in the future. *Id.* at 404-405 (between registered and non-registered youth adjudicated for sexual offenses, registration was related to increased risk of conviction for a subsequent nonsexual offense, a result that may be explained by numerous factors); *The Expansion of Criminal Registries*, 73 La L Rev at 524-528 (collecting studies finding that collateral consequences of registration "exacerbate existing 'risk factors leading to recidivism'"), quoting *Megan's Law and Its Impact on Community Re-Entry*, 25 Behav Scis & L at 590. In sum, youth registration does nothing to reduce children's (already very low) re-offense rates, but instead makes the community less safe by destabilizing youth and increasing the likelihood that they will commit other non-sexual crimes.

B. Application of Michigan's SORA Regime to Youth is Unusual

The second and third *Bullock* factors look at the "unusualness" of a punishment by comparing it to sentences imposed in the same jurisdiction for other offenses and sentences imposed in other jurisdictions for the same offense. The unusualness of a penalty alone is enough to violate Article 1, § 16. *Bullock*, 440 Mich at 31. Automatic registration of youth for decades or life is an unusual punishment, and therefore violates § 16.

1. SORA is Unusual Compared to Other Sentences for Youth in Michigan

To determine how SORA compares to other sentences for youth in Michigan, we must first "identify the proper comparators." *Kardasz,* __ Mich at __; slip op at 36. As part of this intrajurisdictional comparison, we may look towards "other similarly serious offenses, some of which are sexual and some of which are not." *Id.*

Non-carceral sanctions differ from carceral sanctions in that they allow people to reintegrate into society while protecting the public. See Michigan Department of Corrections,

Parole & Probation.[26] SORA is uniquely harsh relative to other non-carceral sanctions imposed on youth in Michigan for other similar offenses. For youth tried as adults, probation terms generally last only a few years. MCL 771.2 (2-year probation term limit for most misdemeanors; 3 years for felonies); MCL 771.2a (4) (5-year probation term limit for violent felonies in most cases). Similarly, parole terms typically are one to four years, and cannot extend beyond the person's prison maximum date. See MCL 791.242(2); Michigan Department of Corrections, Parole & Probation; MDOC Policy Directive: Parole Process, PD 06.05.104, ¶ HH (August 14, 2023).[27] For youth adjudicated as juveniles, probation supervision terminates once the youth turns 19, see MCL 712A.5, or 21, if jurisdiction over the youth is extended. MCL 712A.2a.

SORA is also an outlier because there is *no* opportunity to shorten the supervision term based on rehabilitation or good conduct, if the youth (like Mr. Malone) was convicted as an adult. Even for youth adjudicated as juveniles and subject to SORA's registration requirements, the process to petition for removal only becomes available after 25 years of registration, and then only if the youth satisfies exacting criteria. MCL 28.728c(2), (13). In the probation context, judges generally can terminate probation early. MCL 771.2(2)-(4). Juvenile courts likewise retain authority to modify or terminate probation imposed on a juvenile, based on the juvenile's rehabilitation and progress. MCR 3.945(A); MCL 712A.18(1); MCL 712A.19(1). Similarly, parolees can be considered for early discharge, unless they are subject to SORA. MDOC Policy Directive: Parole Process, ¶ HH. Thus, SORA is unusual relative to other non-carceral punishments.

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[26] Available at <https://www.michigan.gov/corrections/parole-probation>.

[27] Available at <https://www.michigan.gov/corrections/-/media/Project/Websites/corrections/Files/Policy-Directives/PDs-06-Field-Operations/PD-06-05-Parole-Evaluation-Eligibility/06-05-104-Parole-Process-effective-10-04-21.pdf?rev=154f9e63a4bf4aeaac3f5ecd4cd0454a>.

SORA is also unusual as compared to carceral sentences in Michigan. Even for the most severe carceral sanctions, special consideration of youth is required. Federal and state jurisprudence recognizes that youth are not as culpable for their acts as adults. In *Miller,* the U.S. Supreme Court held that mandatory life without parole sentences for youth are unconstitutional because courts must individually consider a youth's "chronological age and its hallmark features" when imposing sentences. *Miller,* 567 US at 477. In particular, courts must consider the youth's "(1) chronological age and immaturity, impetuosity, and the failure to appreciate risks and consequences; (2) the offender's family and home environment; (3) circumstances of the offense, including the extent of participation in the criminal conduct and the effect of familial and peer pressures; (4) the effect of the offender's youth on the criminal-justice process, such as the offender's inability to comprehend a plea bargain; and (5) the possibility of rehabilitation." *Id.* at 477-478. In *Parks,* the Michigan Supreme Court extended *Miller's* holding to include 18-year-olds convicted of first-degree murder under Michigan's "cruel or unusual" provision. See *Parks,* 510 Mich at 225. And in *People v Taylor*, the Court applied *Miller's* individualized sentencing rationale to 19- and 20-year-olds. 510 Mich 112; 987 NW2d 132 (2022).

SORA is thus an anomaly amongst federal and state youth sentencing jurisprudence in that it provides no individual review or no consideration of youth mitigating factors. It is triggered automatically by the offense. The punishment imposed is automatic, without any judicial consideration of the youth's age, immaturity, susceptibility to peer influence, family circumstances, capacity for rehabilitation, or individualized risk of reoffending. By ignoring the mitigating attributes of youth described in *Miller*, *Parks*, and *Taylor*, SORA stands apart from carceral sentences for youth.

But what is most puzzling about SORA's application to youth is the asymmetry it creates based purely on forum. Under current Michigan law, a fourteen-year-old child found responsible for a Tier III offense in a juvenile proceeding would not be subject to SORA. See Legal Framework, *supra*. But if that same child were prosecuted as adult and convicted of the same Tier III offense for the *exact* same conduct, the child would be subject to SORA and required to register *for life*. There is no sound reason why, where two youths of the same age engaged in the same conduct, one is not subject to registration at all and the other is automatically subject to registration for life.

2. Michigan's SORA is Unusual Compared to Sentences for the Same Conduct Outside of Michigan

The third *Bullock* factor "looks to comparative law for guidelines in determining what penalties are widely regarded as proper for the offense in question." *People v Lorentzen*, 387 Mich 167, 179; 194 NW2d 827 (1972). "When no other state in the nation imposes a penalty even remotely as severe as Michigan's, this factor" indicates that defendant's punishment is grossly disproportionate. *Kardasz,* __ Mich at __; slip op at 38 (quoting *Bullock,* 440 Mich at 40). When Michigan's practices are "neither patently exceptional nor obviously commonplace," the relevant question is "whether 'there is a clear national trend' moving away from the punishment in question." *Kardasz,* __ Mich at __;slip op at 38 (quoting *Stovall,* 510 Mich at 318).

While all states have registries, they vary greatly in terms of who must register, for how long, what registration requirements apply, whether registration is based on individualized assessments, and whether there are opportunities for removal. This diversity makes accurate comparisons difficult. Nevertheless, Michigan's SORA is an outlier. To amici's knowledge, even

for adults, only fourteen other states mandate lifetime registration based solely on the offense of conviction, without any individualized risk assessment or opportunity to seek removal.[28]

Michigan's status as an outlier is even more pronounced when considering SORA's application to youth. Unlike many states that provide individualized review, discretionary registration, or shorter juvenile-registration periods, Michigan requires youth to register automatically, often for life, without any individualized assessment for a wide range of offenses. Only 20 states contemplate lifetime terms for registration of at least some juvenile offenders.[29] But even within that narrow subset, at least four states require some form of individualized findings before lifetime registration is imposed. In Indiana, for example, lifetime registration is only required if a youth is found, by clear and convincing evidence, to be likely to reoffend. See Ind Code § 11-8-8-5. In Virginia, lifetime registration is discretionary, requiring the court to first

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[28] These states are Arizona, Ariz Rev Stat 13-3821(M); Connecticut, Conn Gen Stat 54-251(a), 54-252(a); the District of Columbia, DC Code 22-4002(a)-(b); Kentucky, Ky Stat 17.520(2), 17.578; Maine, Me Rev Stat tit 34-A, § 11285(5)-(7); Maryland, Md Code Ann, Crim Proc 11-707(a)(4)(iii); Minnesota, Minn Stat 243.166 subd 6(d); Mississippi, Miss Code Ann 45-33-47(1)(d), (f); Missouri, Mo Rev Stat 589.400(4)(3); Nebraska, Neb Rev Stat 29-4005(1)(b); Nevada, Nev Rev Stat 179D.490(2)(c); New Mexico, NM Stat Ann 29-11A-4(L); 29-11A-5(D), (F); Ohio, Ohio Rev Code Ann 2950.07(B); and South Dakota, SD Codified Laws 22-24B-2.1. Even among these states, some have individualized review of some aspects of registration. See Ariz Rev Stat 13-3825 (risk assessments to determine community notification requirements); Minn Stat 244.052 (same). These states also vary significantly in what offenses trigger lifetime registration. To amici's knowledge, all other states have individualized review or an opportunity for removal for some or all of those subject to lifetime registration. See also Collateral Consequences Resource Center, *50-State Comparison: Relief from Sex Offense Registration Obligations* (October 2022) <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/>.

[29] These include Alabama, Delaware, Florida, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Mississippi, Montana, Nevada, North Dakota, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Virginia, and Wyoming. See Collateral Consequences Resource Center, *50-State Comparison: Relief from Sex Offense Registration Obligations* (October 2022), available at <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/>; Pickett, Satifka, & Shah, *Labeled for Life: A Review of Youth Sex Offender Registration Laws,* Juvenile Law Center (2020), available at <https://jlc.org/sites/default/files/attachments/2020-09/Labeled%20for%20Life%202020.pdf>.

consider multiple factors, including "the age and maturity of the offender," the "degree to which the delinquent act was committed with the use of force, threat, or intimidation," and "any other . . . mitigating factors relevant to the case." Va Code Ann § 9.1-902. Nevada provides another illustrative example. Although a juvenile may initially be required to register, Nevada does not automatically carry that registration into adulthood. At age 21, the juvenile court must hold a hearing and may relieve the youth from adult registration upon finding, by clear and convincing evidence, that the youth has been rehabilitated and is not likely to pose a threat to others. The court must consider factors including treatment history, psychological or psychiatric risk profiles, conduct while under juvenile jurisdiction, community safety, and other facts relevant to rehabilitation or future dangerousness. Nev Rev Stat § 62F.340. Finally, in Montana, a youth "who has been adjudicated for a sexual offense" is presumptively "exempt[ed] from the duty to register" unless the court finds that "the youth has previously been . . . adjudicated for a sexual offense" or "registration is necessary for protection of the public and that registration is in the public's best interest." Mont Code Ann § 41-5-1513(1)(d).

Other states, even when they impose serious registration obligations on youth, provide earlier and more meaningful opportunities for individualized reassessment. Ohio, for example, requires a review hearing upon completion of disposition and permits juvenile registrants to seek reclassification or declassification after three years, again three years later, and every five years thereafter. During the hearing, the judge must "review the effectiveness of the disposition, . . . the risks that the child might re-offend, to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated . . ., and to determine whether the prior determination made as" to the child's level of offense "should be continued or modified." See Ohio Rev Code §§ 2152.84(A)(1), 2152.85. Texas likewise permits a youth to move for relief

during or after disposition, at which point the court must hold a hearing to determine "whether the interests of the public require registration." TX Code Crim Pro § 62.351. The court may exempt a youth offender from registration if it finds "that the protection of the public would not be increased by registration" or "that any potential increase in protection of the public resulting from registration of the respondent is clearly outweighed by the anticipated substantial harm to the respondent and the respondent's family that would result from registration." TX Code Crim Pro § 62.352. By contrast, in Michigan youth convicted as adults of Tier II or III offenses can *never* petition for removal. MCL 28.728c. Youth adjudicated as juveniles must wait *25 years* after release from confinement to petition to petition for removal. MCL 28.728c(13) To amici's knowledge, there is no other state with a longer waiting period. See *Labeled for Life* at 8.

In sum, Michigan's automatic, lifelong, and burdensome registration scheme is one of the most punitive for juvenile registrants in the country.

C. Application of SORA to Youth Is Incompatible with the Goal of Rehabilitation

The Michigan Supreme Court has made clear that "[r]ehabilitation is a specific goal of our criminal punishment system." *Parks*, 510 Mich at 265. In fact, "it is the only penological goal enshrined in our proportionality test as a 'criterion rooted in Michigan's legal traditions[.]'" *Id.*, quoting *Bullock*, 440 Mich at 34. As this Court has explained, punishments for youth should emphasize rehabilitative rather than punitive goals. *In re Lee*, 282 Mich App 90, 99; 761 NW2d 432 (2009) (Michigan juvenile justice procedures should have an "emphasis on rehabilitation rather than retribution"), quoting *In re Whittaker*, 239 Mich App 26, 28-29; 607 NW2d 387 (1999). See also MCL 712A.1(3) (noting that the Juvenile Code is guided by the overarching goals of ensuring a youth "receives the care, guidance, and control . . . conducive to the juvenile's welfare"). The automatic application of SORA to youth is in irreconcilable conflict with that goal.

First, lifetime sentences are inherently suspect because they "'forswear[] altogether the rehabilitative ideal.'" *Parks*, 510 Mich at 265, quoting *Miller*, 567 US at 473. That is all the more true for youth, who—relative to adults—have a greater capacity for reform. See *Parks,* 510 Mich at 235, quoting *Miller*, 567 US at 471 (noting that youth have "greater prospects for reform, thereby making them 'less deserving of the most severe punishments.'"). Even those few youth who are registered for Tier I and Tier II offenses will spend 15 and 25 years, respectively, on the registry. This also runs afoul of Michigan's special emphasis on rehabilitation.

Second, SORA, by stigmatizing youth registrants and imposing onerous burdens on them, undermines the very factors necessary for reentry. See *Does III*, SOMF, ECF No. 123-1, ¶ 163. Michigan courts have recognized as much. As the Michigan Supreme Court has noted, SORA "does not . . . support a defendant's reintegration as a noncriminal member of society"). *People v Lymon*, 515 Mich 145, 184-189; 29 NW3d 58 (2024). This Court likewise observed that "even if [a] defendant needed rehabilitation, SORA's labeling him as a convicted sex offender works at an opposite purpose, preventing defendant from securing employment and otherwise moving forward with his life plans." *People v Dipiazza*, 286 Mich App 137, 156; 778 NW2d 264 (2009). See also *People v Jarrell*, 344 Mich App 464, 486; 1 NW3d 359 (2022) (mandatory lifetime registration would "not assist [the offender's] rehabilitation"). Youth who are subject to SORA face substantial barriers to education, employment, stable housing, and the development of supportive relationships—all of which are critical to successful reintegration into society after an offense. See Section I.A.3, *supra*. Further, the label of "sex offender" imposes stigma and social ostracization, undermining a young person's sense of self and identity formation. Together, these collateral consequences frustrate reintegration and impede youth offenders' healthy transition into

adulthood. See U.S. Dep't of Justice, *Roadmap to Reentry: Reducing Recidivism Through Reentry Reforms at the Federal Bureau of Prisons* (2016).[30]

Finally, SORA "does not address the underlying causes of a defendant's conduct." *Lymon,* 515 Mich at 189. It has no bearing on sexual recidivism rates—which are already very low for youth offenders. *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 Sexual Abuse at 400. In fact, registration of juvenile sex offenders has been shown to counterproductively increase the risk of youth committing nonsexual offenses in the future. *Id.* at 404-405. It also has no bearing on deterrence. See Section II.A.4.a, *supra*. In short, these policies only serve to harm youth and undermine rehabilitation, without advancing any legitimate penological justification.

III. SORA is Unconstitutional as Applied to Mr. Malone Because It Was Imposed Automatically for Life.

Because imposition of lifetime registration on children under the age of 18 is cruel or unusual punishment on its face, it is also cruel or unusual punishment as applied to Mr. Malone, who was 16 at the time of the offense and is cognitively and emotionally impaired. This Court, in its prior opinion, suggested that registration is appropriate here because Mr. Malone did not appear to benefit from treatment and was considered high risk. *People v Malone,* 348 Mich App 264; 18 NW3d 18 (2023). Respectfully, SORA is unconstitutional precisely because it does not allow a sentencing court (or reviewing court) to consider such facts. Children who excel in treatment and are clinically determined to be very low risk are equally subject to SORA's automatic registration requirements. The question here is not whether Mr. Malone could be subject to registration based on an individualized assessment under a properly constructed statute that provides for

[30] Available at <https://www.justice.gov/reentry/file/844356/dl?inline>.

consideration of a youth, maturity level. and rehabilitative potential. It is whether Mr. Malone can automatically be subjected to lifetime registration without any consideration of those factors. He cannot.

CONCLUSION

This Court should hold that SORA is facially unconstitutional when imposed on youth who committed their offenses before age 18. The statute prescribes punishment automatically and mandatorily, without any opportunity for the sentencing court to consider youth, individual circumstances, or rehabilitative potential. It imposes that punishment for lengthy terms—fifteen years, twenty-five years, or, in the overwhelming majority of cases, life. And it does so against a class of people whose defining constitutional characteristics are immaturity and the capacity to change. This is cruel. It is unusual. And it undermines Michigan's long-standing, constitutionally-rooted commitment to the rehabilitation of children who commit crimes.

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WORD COUNT CERTIFICATION AND STATEMENT REGARDING TAX-EXEMPT STATUS

Pursuant to MCR 7.212(B)(3), I hereby certify that this document contains 11,538 countable words in the sections covered by MCR 7.212(C)(6)-(8), based upon the word count of the word processing system used to prepare the brief.

This amicus brief is submitted on behalf of Juvenile Law Center, a 501(c)(3) tax-exempt organization and the American Civil Liberties Union of Michigan, a 501(c)(4) organization. The American Civil Liberties Union of Michigan has filed an accompanying motion for leave to file this brief on its own behalf.

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