THIS APPEAL INVOLVES A DELINQUENT MINOR PROCEEDING UNDER THE JUVENILE COURT ACT

No. 1-15-3047

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN THE INTEREST OF	)	Appeal from the Circuit Court of Cook County, Illinois
ADAM C., a minor	)	14 JD 1155
Respondent-Appellant.	)	Honorable Cynthia Ramirez, Judge Presiding.

BRIEF AND ARGUMENT FOR RESPONDENT-APPELLANT

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NATURE OF THE CASE

Respondent-Appellant Adam C. appeals from his adjudication of delinquency and dispositional order of probation. A finding of guilt was entered against Adam for the offense of aggravated criminal sexual abuse, and the trial court ordered him to serve three years of probation. This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

JURISDICTION

Adam C. appeals to this Court from a final judgment entered on October 9, 2015. (C. 365) Notice of appeal was timely filed on October 28, 2015. (C. 371) Jurisdiction therefore lies in this Court pursuant to Article VI, Section 6, of the Illinois Constitution, and Supreme Court Rules 660, 603 and 606.

ISSUES PRESENTED FOR REVIEW

I. Whether the provisions of the Sex Offender Registration and Notification Act that apply to juveniles, which remove all discretion from juvenile judges and automatically subject juveniles adjudicated delinquent of certain sex offenses to register as sex offenders for either 10 years or life, with no opportunity to be relieved from those requirements until at least five years, violate substantive and procedural due process, as well as the Eighth Amendment and Illinois's proportionate penalties clause.

II. Whether the provisions of the Sex Offender Registration and Notification Act that apply to juveniles are unconstitutional as applied to Adam C., a 16-year-old child with no criminal history who is now attending college and who was determined by both a clinical psychologist as well as his probation officer to be at low risk of sexually re-offending.

STATUTES INVOLVED

The juvenile portions of the Sex Offender Registration and Notification Act at issue in this case are as follows: 730 ILCS 150/2 (2013); 730 ILCS 150/3 (2013); 730 ILCS 150/3-5 (2013); 730 ILCS 150/6 (2013); 730 ILCS 150/8 (2013); 730 ILCS 150/10 (2013); and 730 ILCS 152/121 (2013). The complete text of these statutes may be found in the Appendix.

STATEMENT OF FACTS

The State filed a petition for adjudication of wardship against 16-year-old Adam C., alleging that, on May 12, 2013, he committed aggravated criminal sexual abuse against K.J., who was under the age of nine. (C. 5)

Prior to the adjudicatory hearing, Dr. Michael H. Fogel, a licensed clinical psychologist, completed a forensic psychological evaluation of Adam. (C. 95-112) Dr. Fogel determined that Adam was at low risk of sexually re-offending, and was "among a group of adolescent sex offenders who are the least likely to sexually recidivate." (C. 96, 112) On a juvenile sex offender risk assessment, Adam scored only 4 out of 56 possible points, and psychological testing also showed Adam did not have any deviant sexual interests or disorders (C. 96, 103, 108-11) Adam also accepted full responsibility for his conduct and expressed remorse. (C. 96, 111)

After receiving this report, trial counsel requested that the State amend the charge so that the sex offender registration laws would not apply, if Adam pled guilty. (C. 114) On January 12, 2015, the parties conducted a Rule 402 conference before the Honorable Andrew Berman. (R1. 45-47) According to a motion filed by defense counsel following Adam's adjudicatory hearing, at that conference Judge Berman also opposed sex offender registration. He noted that this was Adam's

only encounter with law enforcement, that Adam had strong family support and had been accepted into multiple universities, and that requiring him to register would not protect the public while also hindering Adam's rehabilitation. (C. 294) According to the motion, the State did not amend the charge because it believed the label and requirements of registration were part of the punishment. (C. 294)

At an adjudicatory hearing before the Honorable Judge Cynthia Ramirez on May 6, 2015, 10-year-old K.J. testified that, on May 11, 2013, when she was eight years old, her older half-brother J. had a few friends over to spend the night, including Adam. (R1. 93, 95-97) K.J.'s mother was out of town, so J.'s grandmother, Diane W., was babysitting. (R1. 117, 129-30) The boys slept in the basement, and K.J. slept in her room on the second floor. (R1. 97) Around 1:00 or 2:00 a.m., K.J. woke up because the plastic on her mattress was moving, and she felt someone going up and down on her behind. (R1. 98) K.J. was face-down on the bed; and her shorts and underwear had been partially pulled down. (R1. 98-100) K.J. looked back and saw Adam on top of her. (R1. 101-02) After two or three seconds, Adam got up and went to the bathroom across the hall. (R1. 101-02) Adam then returned and used a wet tissue to wipe off some "clear crust" from K.J.'s rear end. (R1. 102-03) Adam then threw the tissue away in the bathroom and went downstairs. (R1. 103) After Adam left, K.J. told Diane what happened. (R1. 103-04)

Diane W. testified that, around 2:00 a.m., K.J. climbed into bed with her and asked if she could tell her something. (R1. 120) K.J. then stated, "that boy Adam was freaking on me." (R1. 121) Diane asked if K.J. had been dreaming, and K.J. said no. (R1. 121-22) K.J. said the bed had been moving and that Adam said, "Let me get some tissue. You got some white stuff on you." (R1. 122) Diane

slept with K.J. the rest of the night, who was crying and shaking. (R1. 124)[1]

Kimberly J.-H., K.J.'s mother, testified that she returned to Chicago on May 13, 2013. (R1. 130-31) After speaking to K.J., Kimberly retrieved a tissue from the trash can of the upstairs bathroom, which she placed into a paper bag. (R1. 132-35) Kimberly also retrieved K.J.'s pajamas, underwear, and the sheets from K.J.'s bed; and placed those items into two more paper bags. (R1. 135-36) Kimberly then took K.J. to Children's Memorial Hospital. (R1. 136-37)

Chicago Police Evidence Technician Carla Rodriguez picked up the three paper bags from Kimberly on May 14, 2013. Rodriguez inventoried and stored those items. (R1. 139-47) Jennifer Wagenmaker, a forensic biologist employed by the Illinois State Police crime lab, received the evidence and identified semen stains on the toilet paper and on two different locations on K.J.'s underwear. (R1. 157-58) Wagenmaker prepared cuttings from each of these stains, as well as blood standards collected from K.J. and Adam. (R1. 158-61, 223-29)

Lisa Kell, a forensic DNA analyst at the Illinois State Police crime lab, extracted the three cuttings prepared by Wagenmaker. (R1. 201-03) She identified a human male DNA profile on the toilet paper, which matched the DNA on Adam's buccal swab. (R1. 202) The profile she identified would be expected to occur in one in 27 quintillion black, one in three sextillion white, and one in 2.1 sextillion Hispanic unrelated individuals. (R1. 202)

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[1]The statement K.J. made to Diane W. was admitted at trial following a hearing to determine its admissibility under 725 ILCS 5/115-10 on April 14, 2015. (C. 154-57) The transcripts for this date were not included in the record on appeal. Appellate counsel has ordered the transcripts and will supplement the record with the transcripts upon receipt. Appellate counsel is filing this brief without the transcript in order to comply with the deadline set in this expedited appeal, and so as not to cause unnecessary delay.

From the back of K.J.'s underwear, Kell identified a female profile that matched K.J., as well as a mixture of DNA. (R1. 203) The major profile on that mixture was the same profile Kell had found on the toilet paper, which matched Adam. (R1. 203-04) Kell also identified a partial human male profile on the sperm fraction of the cutting from the crotch area of K.J.'s underwear, to which Adam could not be excluded from having contributed. (R1. 206) The frequency of the partial sample was one in 15 quintillion black, one in one quintillion white, or one in 900 quadrillion Hispanic individuals. (R1. 206-07)

Sergeant Athena Mullen interviewed Adam at 3:25 p.m. on November 16, 2013, in the presence of his mother and another detective. (R1. 234-35) After Mullen provided Adam with his *Miranda* warnings, Adam said something like, "[H]e didn't penetrate that girl." (R1. 236) Mullen asked, "What do you mean? Like a hotdog in a bun?" (R1. 236) Adam responded, "[S]omething like that." (R1. 236) After Adam said the girl had been lying on her stomach, the interview was terminated. (R1. 237) Adam told Mullen he wanted to get some help. (R1. 237)

The juvenile judge found that the State proved Adam committed aggravated criminal sexual abuse, and entered a finding of delinquency. (R2. 12-13)

On July 8, 2015, a probation officer completed Adam's social investigation report. (C. 175-184) The report indicated that Adam had no prior police contacts and had never before been referred to juvenile court. (C. 177) Adam had recently graduated from high school with a 3.0 GPA, and was enrolled to begin college in the fall. (C. 178, 179)[2] The probation officer also attached a memorandum to

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[2] An admissions letter explains that pursuant to the "Parkland Pathway to Illinois program" at the University of Illinois, Adam would attend two years as a full-time student at Parkland College, and then be guaranteed admission

the report, in which she indicated that she had reviewed Dr. Fogel's sex offender evaluation and that his findings were congruent with her own professional opinion that Adam was "a low risk to sexually re-offend." (C. 185) The probation officer also indicated that though Adam placed a high value on education and had performed well academically, the sex offender notification laws would require that his school be informed of his sex offender registration. (C. 185) She explained how placing Adam on the sex offender registry could threaten his enrollment status, ability to receive financial aid, and campus housing, which did not encourage a positive contribution to society, and thus could aggravate his risk level. (C. 185-86)

On August 10, 2015, trial counsel filed a Motion to Declare the Sex Offender Registration Act unconstitutional as applied to Adam. (C. 293) Counsel alleged that the Act violated Adam's Eighth Amendment rights, as well as his rights to substantive and procedural due process. (C. 293-301) The State filed a response on September 8, 2015. (C. 328-42) Trial counsel filed a reply, in which he indicated that the University of Illinois had informed trial counsel of its policy to notify the roommate of any sex offender of the offender's status, and to notify everyone else in the residential hall as well as the connecting halls that a sex offender was on the premises. (C. 346-48) Counsel attached a copy of an email from the Assistant Dean of Students at the university to support his claim. (C. 350-51) Following a hearing on September 22, 2015, the juvenile judge denied the motion. (R2. 71) Adam filled out his sex offender registration form on October 9, 2015. (C. 364)

Following a dispositional hearing, the juvenile judge sentenced Adam to

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into the University of Illinois. (C. 146) A supplemental social investigation report submitted in October of 2015 confirmed that, as of that date, Adam was attending classes at Parkland College and performing well. (C. 357-58)

three years of probation. (C. 365; R2. 90-92) The order required, *inter alia*, that Adam complete 50 hours of community service and undergo juvenile sex offender counseling. (C. 365; R2. 90-92) This appeal followed.

ARGUMENT

I. The provisions of the Illinois Sex Offender Registration and Notification Act that apply to juveniles violate the United States and Illinois constitutions, in that they require all children adjudicated delinquent of certain offenses to register as a sex offender for at least five years, and require limited dissemination of the juvenile's confidential records, without first considering the child's recidivist tendencies.

Adam C. was only 16 years old and had no prior contacts with the police when he was charged with aggravated criminal sexual abuse. (C. 175, 177) Both before and after Adam was adjudicated delinquent of that offense, Adam was deemed to be at a low risk of sexually re-offending; and Adam's probation officer indicated that requiring Adam to register could aggravate his risk level. (C. 95-112, 185-86) Nonetheless, the juvenile judge was mandated by a series of provisions in the Sex Offender Registration and Notification Act that relate to juveniles (hereinafter referred to collectively as the "juvenile SORNA laws") to require Adam to register as a sexual predator who, by default, must register for the rest of his life. *See* 730 ILCS 150/2(E)(1) (2013); 730 ILCS 150/7 (2013); and 730 ILCS 150/3-5 (a,b) (2013).

To fulfill the registration requirements, Adam, and all other juvenile sex offenders, must appear in person with the chief of police or sheriff of any city or county in which he resides, is temporarily domiciled for a period of time of three or more aggregate days during any calendar year, or attends school. 730 ILCS 150/3(a),(b) (2013). The juveniles must pay $100 in initial and annual registration fees, and provide the law enforcement agency with a host of information, including,

but not limited to, an address, telephone number, employer's telephone number, school attended, all e-mail addresses and internet communication identities that the child uses or plans to use, all internet sites to which the child has uploaded any content or posted any messages, and a copy of the terms and conditions of his parole. *Id.* The juvenile must re-register annually, and also appear in person to register within three days of beginning school or establishing a residence or place of employment. 730 ILCS 150/3(b) (2013); 730 ILCS 150/6 (2013). If the juvenile is ever temporarily absent, he must notify a law enforcement officer who has jurisdiction over his current address, and provide his travel itinerary. *Id.* If the child fails to comply with the registration requirements, either willfully or accidentally, he will be guilty of a Class 3 offense for his first violation, and a Class 2 offense for any subsequent violations. 730 ILCS 150/10(a) (2013).

Moreover, while the juvenile is on the registry, law enforcement is mandated to provide a copy of his registration to the principal or chief administrative officer of the juvenile's school, as well as to his guidance counselor. 730 ILCS 152/121(b) (2013). Law enforcement is also given discretion to disseminate registration information to ***any*** other person, if the officer believes that person's safety "***may*** be compromised for some reason related to the juvenile sex offender." 730 ILCS 152/121(a) (2013) (emphasis added). There is no requirement that the individuals to whom this information is disclosed keep it confidential. *Id.* The only means by which a juvenile may ever be relieved from the registry is through a burdensome process which allows him to petition for termination no less than five years after registration began, at which time he must show by a preponderance of the evidence that he does not pose a risk to the community. 730 ILCS 150/3-5(c-i) (2013).

The juvenile SORNA laws create affirmative disabilities and restraints which infringe upon juveniles' liberty interests. Thus, the inability of juvenile judges to consider whether the juvenile is at risk of re-offending before requiring registration violates substantive and procedural due process, as well as the Eighth Amendment and the proportionate penalties clause of the Illinois Constitution.

The constitutionality of the juvenile SORNA laws was raised and litigated below. (C. 293-301, 328-43, 346-48; R. 37-71) While defense counsel only challenged the laws as they applied to Adam, the same factors and analysis apply to a facial challenge of the laws. *See People v. Thompson*, 2015 IL 118151, ¶36 (noting that while facial and as-applied challenges are not "interchangeable," they both address constitutional infirmities of the statute). Moreover, a challenge to a statute's constitutionality may be raised at any time. *People v. McCarty*, 223 Ill. 2d 109, 123-24 (2006). Review is *de novo*. *People v. Harris*, 2012 IL App (1st) 092251, ¶11.

A. The juvenile SORNA laws violate substantive due process.

The due process clauses of the United States and Illinois constitutions prohibit the government from depriving any person of life, liberty, or property, without notice and a meaningful opportunity to be heard. U.S. Const. amends. V, XIV; Ill. Const. 1970, art. I, §3; *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). The concept of liberty is "not confined to mere freedom from bodily restraint. Liberty ... extends to the full range of conduct which the individual is free to pursue, and . . . cannot be restricted except for a proper governmental objective." *Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954). In terms of substantive due process, if the statute infringes on a fundamental right, strict scrutiny applies: the statute must serve a compelling government interest and employ the least restrictive means to serve that interest.

People v. Cornelius, 213 Ill. 2d 178, 204 (2004). If the statute does not impact a fundamental right, then the statute violates substantive due process when it bears no rational relationship to the public interest the statute is intended to serve, or where the means adopted to serve that interest are unreasonable. *Id.*

In *In re J.W.*, 204 Ill. 2d 50 (2003), the Illinois Supreme Court held that requiring juveniles to register as sex offenders does not violate due process because it is rationally related to the protection of the public. Yet, the juvenile defendant in *J.W.* did not contend that any fundamental right was violated, and thus the Court did not analyze whether juvenile registration infringed on any fundamental rights or was subject to strict scrutiny. *Id.* at 67. Thus, *J.W.* does not preclude this Court from finding that strict scrutiny should apply. *See Gouker v. Winnebago County Id. of Supervisors*, 37 Ill. 2d 473, 476 (1967) ("a statute which has been held constitutional does not preclude us from later declaring it unconstitutional on other grounds"). Moreover, even if this Court does not find that any fundamental rights are infringed by the juvenile SORNA laws, recent studies from across the country have shown that the public is not benefitted by the inclusion of juveniles in the registry. Thus, the juvenile SORNA laws – which categorically require all juveniles adjudicated delinquent of certain sex offenders to register, without regard to individual risk of re-offending – violate substantive due process.

1. Strict Scrutiny

Initially, strict scrutiny should apply because the juvenile SORNA laws infringe on several fundamental liberty rights. First, the burden of registration is an affirmative disability which imposes on an individual's liberty. Registration "is a continuing, intrusive, and humiliating regulation of the person himself."

Doe v. Attorney General, 686 N.E. 2d 1007, 1016 (Mass. 1997). *See also State v. Guidrey*, 96 P.3d 242, 249 (Haw. 2004) (noting how registration is comparable to government surveillance in that it keeps the offender "within voice and view of the criminal magistrate, not being able to change his domicile without giving notice to the 'authority immediately in charge of his surveillance"). In *State v. Letalien*, 985 A.2d 4, 24-25 (Me. 2009), the Maine Supreme Court recognized that Maine's adult sex offender law, which required registrants to appear in person every 90 days and verify their identification, residence, and school was "a substantial disability or restraint on the free exercise of individual liberty."

Illinois employs an annual system of registration. 730 ILCS 150/3 (2013). Yet, in many ways Illinois's system is even more confusing and burdensome than the Maine statute, given that an individual required to register does not have a simple duty to appear every 90 days, but must appear within three days of any triggering event. *Id.* Moreover, as this Court recently recognized in *People v. Dodds*, 2014 IL App (1st) 122268, ¶38, because any violation of SORNA is a "strict liability offense punishable by jail time," the duties of registration place "a severe constraint on a defendant's liberty." *See also Marks v. United States*, 430 U.S. 188, 191 (1977) (criminal penalties implicate liberty interests and are subject to due process). These burdens are even more harsh on juveniles, who may be dependent upon their family for transportation to appear in person to register. Thus, the registration requirements of the juvenile SORNA laws infringe on juveniles' liberty.

The notification provisions of the juvenile SORNA laws also impact additional liberty interests, namely, the rights to privacy, happiness, and reputation. First,

Illinois citizens have the right to be secure against unreasonable violations of privacy. Ill. Const. 1970 art. I, §6. Moreover, the Illinois legislature further established a right of privacy for juvenile offenders. The Juvenile Court Act provides for the confidentiality of juvenile records by limiting who may inspect those records. 705 ILCS 405/1-7, 1-8 (2013); 705 ILCS 405/5-901(1)(a), 5-905(1) (2013). The requirement of referring to minors in juvenile appellate proceedings by just their first name and last initial, or simply by their initials, is another means of protecting delinquent juveniles' anonymity. *In re A Minor*, 149 Ill. 2d 247, 253 (1992); Ill. S. Ct. R. 660(c) (2013). In *In re K.D.*, 279 Ill. App. 3d 1020, 1023 (2d Dist. 1996), the court explained that a minor "has a 'compelling interest' in avoiding the invasion of his or her privacy," which is furthered by "[t]he general purpose of the [Juvenile Court] Act [] to protect the interests of minors," including "protecting the confidentiality of the minor's identity." *See also In re Lakisha M.*, 227 Ill. 2d 259, 273 (2008) (agreeing that Juvenile Court Act affords minors privacy protections with respect to the general public, but finding that requiring juvenile felons to submit DNA samples did not invade that right because the only individuals given access to the genetic marker of the juvenile were law enforcement officials).

A juvenile's interest in privacy is vital toward rehabilitation, in that it enables him to avoid the stigma attached to the public condemnation of criminals. *See United States v. Three Juveniles*, 61 F.3d 86, 88 (1st Cir. 1995) ("[t]he confidentiality provisions of the [Federal Juvenile Delinquency] Act are ... essential to the Act's statutory scheme and rehabilitative purpose"); and *United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990) (juvenile court proceedings "remove juveniles

from the ordinary criminal process in order to avoid the stigma of a prior criminal conviction and to encourage treatment and rehabilitation"). Thus, as recognized by an Ohio appellate court that struck down Ohio's juvenile SORNA laws as a violation of due process, statutory protections of privacy given to juveniles are protected liberty interests. *In re W.Z.*, 957 N.E.2d 367, 375-81 (Ct. App. Ohio 2011).

Yet, Illinois's juvenile SORNA laws automatically require juveniles found guilty of sex offenses to report to local authority, require the authority to disclose the registration information to the juvenile's school, and allow additional disclosure to anyone else law enforcement believes could be threatened by the juvenile, with no provision that the individuals who receive that information keep it confidential. 730 ILCS 152/121 (2013). Thus, information ordinarily kept private ***must*** be disseminated, impacting the juveniles' privacy rights. *See People v. Dipiazza*, 778 N.W.2d 264, 271 (Ct. App. Mich. 2009) (adult defendant tried under Michigan statute which allowed his crime not to be considered a conviction, as long as he completed an assignment, "suffered a disability and losses of rights or privileges" by being included in the Michigan sex offender registry, because it "created public access to compiled information that was otherwise closed to public inspection").

The juvenile SORNA laws also impinge upon the juveniles' constitutionally protected liberty interest in the right to pursue happiness. *See* Ill. Const. 1970, art. I, §1 ("All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness."). "Where a person's good name, reputation, honor, or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard

are essential." *Wisconsin v. Constantineau*, 400 U.S. 433, 436-37 (1971).

The juvenile SORNA laws dramatically affect a juvenile's right to pursue happiness by infringing upon his honor and good name. As noted above, once the juvenile is subject to the registry, his school is automatically notified. 730 ILCS 152/121(a), (b) (2013). According to Adam's probation officer, many institutions of higher education will rescind offers of admission or financial assistance once information about being a sex offender is disclosed. (C. 185-86) Yet, even if those results do not occur, the juvenile SORNA laws still impact the good name of the juvenile in his school, when education is undeniably crucial to a juvenile's rehabilitation. And, because there is no confidentiality requirement imposed on the individuals who receive notice of the juvenile's status as a sex offender, his good name may be further impugned to his peers. Indeed, in this case, Adam's university will disclose his status as a sex offender to his roommate. (C. 346-48) Other schools could go further. Moreover, any individual who received this information at the discretion of law enforcement could also disseminate it. Thus, the juvenile's right to pursue happiness is impacted by the SORNA laws.

Finally, the Illinois Constitution also protects the right to reputation by requiring that "every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation." Ill. Const. 1970, art. 1, § 12. While an injury to reputation alone is not enough to invoke the due process clause, the stigma plus the loss of future or present employment is sufficient. *Lyon v. Dept. of Children and Family Svcs.*, 209 Ill. 2d 264, 273 (2004). As explained above, the juvenile SORNA laws directly impact the ability of juveniles

to obtain future employment because they can negatively affect a juvenile's ability to pursue a higher education. *See In re J.B.*, 107 A.3d 1, 7, 16-17 (Penn. 2014) (finding that Pennsylvania's juvenile SORNA laws, which obligated State Police to make information about juvenile sex offenders available to any jurisdiction where the juvenile resides, works, or is a student, and contained no prohibition against distribution from the individuals who received that information, affected juveniles' right to reputation under the Pennsylvania Constitution because it could negatively affect the juveniles' ability to obtain housing, school, and employment).

Over 10 years ago, this Court held in *In re J.R.*, 341 Ill. App. 3d 784, 799 (1st Dist. 2003), that the juvenile sex offender registry does not infringe upon a juvenile's right to reputation because the information it conveys is not false, since the registry does not report a current level of dangerousness, but only that the juvenile has been found guilty of a sex offense. However, harm to reputation is not limited to the facts disclosed, but also considers what the individual who receives that information may reasonably understand the communication to mean. *May v. Myers*, 254 Ill. App. 3d 210, 213 (3d Dist. 1993). In *J.B.*, 107 A.3d at 16, the Pennsylvania Supreme Court recognized that the "common view of registered sex offenders is that they are particularly dangerous and more likely to reoffend than other criminals." *See also Hawaii v. Bani,* 36 P.3d 1255, 1264 (Haw. 2001) ("notification provisions imply that [defendant] is potentially dangerous, thereby undermining his reputation and standing in the community"). As will be explained in Part A(2), *infra*, new studies have shown that juvenile sex offenders are not likely to reoffend, and indeed as less likely to reoffend than other types of offenders.

Thus, the manner in which the juvenile is held out to be particularly dangerous by virtue of the disclosure of his sex offense falsely impugns his reputation.

Where the juvenile SORNA laws impact numerous fundamental liberty interests, they must be analyzed under strict scrutiny. *Cornelius*, 213 Ill. 2d at 204. Under strict scrutiny, the laws fail, because they do not employ the least restrictive means consistent with attaining the intended goal. *Id.* The purposes of the laws are to assist law enforcement in the protection of children and to protect the public from sex offenders. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 203 (2009); *J.W.*, 204 Ill. 2d at 67-68. Yet, the juvenile SORNA laws are over-inclusive to fulfill these interests, where they require ***all*** juveniles adjudicated delinquent of certain sex offenses to register with absolutely no consideration of the particular juvenile's risk of re-offending. 730 ILCS 150/2 (2013). Without any mechanism to assess the risk of re-offending prior to imposing registration, the laws do not use the least restrictive means of achieving its goals.

2. Rational Basis

Yet, even if this Court declines to apply strict scrutiny, the statute also fails the rational basis test. When a statute does not impact a fundamental right, the government is no longer required to employ the least restrictive means available, but the law will be upheld if it bears a rational relationship to the public interest the statute is intended to serve. *Cornelius*, 213 Ill. 2d at 204.

As noted, the Illinois Supreme Court held in 2003 that the juvenile SORNA laws then in place – which did not authorize early termination but also did not

require dissemination of the juvenile's status as a sex offender to any particular individual (*see* 730 ILCS 152/120(e) (2000)) – were rationally related to the protection of the public because it found a "direct relationship between the registration of sex offenders and the protection of children." *J.W.*, 204 Ill. 2d at 67-72. However, when applying a rational basis test, changes in the underlying circumstances may warrant a finding that a statute no longer relates to a legitimate government purpose. *United States v. Carolene Products, Inc.*, 304 U.S. 144, 153-54 (1938). *See, e.g., State v. Bloss*, 613 P.2d 354, 356, 361 (Haw. 1980) (State law prohibiting minors from loitering near pinball machines unconstitutional because even though it was justified at the time of its enactment, it no longer bore reasonable relationship to the harm sought to be avoided); *Bierkamp v. Rogers*, 293 N.W.2d 577, 580-81 (Iowa 1980) (citing trend among state courts to find "guest statutes" unconstitutional by concluding that whatever rational basis they once possessed no longer existed).

In *Bowers v. Hardwick*, 478 U.S. 106, 187-96 (1986), the United States Supreme Court upheld laws which forbid two persons of the same sex to engage in certain intimate conduct against a substantive due process challenge, holding that there was no fundamental liberty interest in consensual homosexual activity, and that the statute bore a rational relationship to notions of morality. Yet 23 years later, the Court reversed that decision in *Lawrence v. Texas*, 539 U.S. 558, 564-78 (2003), holding that these statutes did violate substantive due process, because of an emerging awareness that liberty does protect adults in deciding how to conduct their private lives in matters pertaining to sex, and thus the statute no longer rationally protected morality. *See also Brown v. Board of Ed. of Topeka,*

Shawnee County, Kan., 347 U.S. 483 (1954) (striking down school segregation laws because purpose of laws in ensuring that minority children had access to equal educational opportunities was not proving true, given studies showing inferiority children felt in being separated from children of similar qualifications).

Moreover, just last month, the Illinois Supreme Court reconsidered a common law principle which had previously been settled in Illinois, in light of new studies which upset the presumption on which that law was based. In *People v. Lerma*, 2016 IL 118496, ¶24, the court rejected a prior decision which had expressed skepticism and cautioned against expert testimony on eyewitness identification. The court noted that, in the 25 years since that decision, advances in DNA testing had shown that eyewitness identifications were not as reliable as they appeared, and that new studies had shown why, from a scientific standpoint, that was often the case. *Id.* As such, the Court's prior decision was no longer sound.

So too is the case with Illinois's juvenile SORNA laws. While the legislature may have believed it was protecting the public in creating these laws, and while the Supreme Court may have found that goal rational, new studies have consistently shown not only that there is no relationship between the registration of juvenile sex offenders and the protection of the public, but also that requiring all juvenile sex offenders to register ***harms*** the public. Thus, *J.W.* should be reconsidered.

In March of 2014, the Illinois Juvenile Justice Commission – a federally mandated advisory group to the governor and General Assembly of Illinois (C. 231) – issued a report regarding the efficacy of juvenile sex offender registration to enhance public safety. Illinois Juvenile Justice Commission, *Improving Response*

to Sexual Offenses Committed by Youth (2014).[3] The Commission found that "Illinois' current practice of requiring youth to register as sex offenders and imposing collateral restrictions without regard to risk does not enhance public safety; moreover, research indicates that applying these strategies can actually undermine rehabilitation and the long-term well-being of victims, families, youth, and communities." *Id.* at 4. (C. 233) The Commission urged Illinois to "[r]emove young people from the state's counter-productive sex offender registry and the categorical application of restrictions and collateral consequences." *Id.* at 5. (C. 234)

To support these findings, the Commission explained how research had established that youth are highly amenable to treatment and highly unlikely to sexually reoffend. *Id.* at 6. (C. 235) The Commission cited meta-analyses of multiple studies conducted on juvenile sex offenders over several decades which collectively "indicate that youth are unlikely to sexually reoffend in adulthood." *Id.* at 23. (C. 254) Indeed, even as early as 2001, the federal Office of Juvenile Justice and Delinquency Prevention engaged in an extensive review of the recidivism of juvenile sex offenders, and concluded that sexual recidivism in juveniles is "relatively infrequent"; and that what "virtually all of the studies show, contrary to popular opinion, is that relatively few [juvenile sex offenders] are charged with a subsequent sex crime." Sue Righthand & Carlann Welch, *Juveniles Who Have Sexually Offended, A Review of the Professional Literature*, Report to the Office of Juvenile Justice

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[3]Available at http://ijjc.illinois.gov/youthsexualoffenses (last visited Jan. 20, 2016). The report is also included in the record on appeal. (C. 188, 231-93)

and Delinquency Prevention, pp. 30-31 (March 2001).[4] *See also* Catherine L. Carpenter, *Against Juvenile Sex Offender Registration*, 82 U.Cin. L.Rev. 747, 786 (Spring 2014), *citing* Michael F. Caldwell in *Juvenile Sex Offenders, in Choosing the Future for American Juvenile Justice* (D. Tanenhaus & F. Zimring, eds. 2014) (citing one meta-analysis report which compiled several decades of research and 22 studies, and revealed that the juvenile sex offense recidivism rate was less than 5%, more than six times lower than the general recidivism rate of 43%).

The Commission also noted how requiring all juvenile sex offenders to register creates "significant obstacles" to public safety, where the registry is over-inclusive and creates a stigma which interferes with rehabilitation. *Id.* at 42-45. (C. 273-76) The Commission explained how, although registry information of juveniles is not publicly available online, that information is still made vulnerable to becoming public, since the laws do not require individuals to whom registration information is disclosed keep it private. *Id.* at 42. (C. 273) The Commission also explained how the notification laws create hurdles to school and housing, and interfere with the manner in which juveniles could be rehabilitated through stable living environments, educational opportunities, and a network of pro-social peers. *Id.* at 45. (C. 276) *See also* Amy E. Halbrook, *Juvenile Pariahs*, 65 Hastings L.J. 1, 16 (December 2013) (juvenile sex offender registration can increase crime by alienating juveniles from social supports and institutions crucial to rehabilitation, by impeding brain development and increasing suicide, and by raising barriers

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[4] Available at https://www.ncjrs.gov/pdffiles1/ojjdp/184739.pdf) (last visited Jan. 21, 2016).

to successful participation in society); and Shannon C. Parker, *Branded for Life: The Unconstitutionality of Mandatory and Lifetime Juvenile Sex Offender Registration and Notification*, 21 Va. J. Soc. Pol'y & L. 167, 202-03 (Winter 2014) (mandating juvenile sex offender registration may cause individuals not to report an offense against a child out of fear that child will be required to register).

The Commission also explained that Illinois already allows restrictions on delinquent youth, without a registry. *Id.* at 50. (C. 281) *See* 705 ILCS 405/5-701 (2013) (requiring that sex offender evaluation be performed for any minor found guilty of a sex offense); 705 ILCS 405/5-710 (2013) (allowing juvenile judges to confine juvenile in the Juvenile Department of Corrections); and 705 ILCS 405/5-715 (2013) (allowing judges to enter an order of probation requiring minor to, *inter alia*, appear in person before any person or agency, undergo medical or psychiatric treatment, attend residential or non-residential programs, participate in community corrections programs, and successfully complete sex offender treatment).

Finally, the Commission noted the severity of Illinois's registration requirements as compared to other states, where 11 states and the District of Columbia do not have a juvenile registry at all, another 19 states only impose the registry through an individualized assessment of risk, and the remaining states which do utilize an offense-based system do so only for older juveniles. *Id.* at 52. (C. 283) *See also In re C.P.*, 967 N.E. 2d 729, 739 (Ohio 2012) (noting how, in 2008, the Counsel of State Governments issued a resolution against the national SORNA guidelines, which led the Attorney General to decide that states need not disclose any information about juvenile sex offenders to schools and other organizations

to receive federal funding tied to compliance with national SORNA guidelines).

In short, it is now known that requiring ***all*** juvenile sex offenders to register, with no individualized determination of risk, thwarts rather than furthers that aim. Certainly, this new research compels a finding that the statutes do not survive strict scrutiny. To employ the least restrictive means available to protect the public, the State needs to eliminate the inclusion of low-risk juveniles whose duties of registration could only aggravate that risk by only requiring juveniles who are proven to pose a further risk to the community to register. Yet, even if this Court does not find that the juvenile SORNA laws infringe on fundamental rights, the laws still fail the rational basis test because, as studies now show, the categorical inclusion of all juvenile sex offenders is not reasonably related to the protection of the public. As such, the juvenile SORNA laws violate substantive due process.

B. The juvenile SORNA laws violate procedural due process.

By establishing a *per se* rule that categorizes all juveniles adjudicated delinquent of certain sex offenses to register as sex offenders or sexual predators, the juvenile SORNA laws also violate procedural due process. The right to procedural due process is grounded in the right to a "meaningful opportunity to be heard" before being deprived of life, liberty, or property. U.S. Const. amend. XIV; Ill. Const. 1970, Art. I, §2; *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972). To resolve a procedural due process claim, the court should consider: (1) the private interest affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probative value of additional or substitute procedural safeguards; (3) the government's interest, including the function involved; and

(4) the fiscal and administrative burden that the additional or substitute procedural requirement would entail. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

In *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 201-02 (2009), the Illinois Supreme Court found that a minor's right to procedural due process was not violated by the juvenile SORNA laws because his adjudication of a sex offense triggered the laws, and the minor was equipped with procedural safeguards during the delinquency proceedings which resulted in that adjudication. However, it is this very offense-based classification system which violates procedural due process.

More specifically, when a law affects children, the right to due process is all the more important. As the United States Supreme Court has repeatedly recognized, "fundamental differences between juvenile and adult minds" make children under the age of 18 less culpable than adults for the same offense. *Miller v. Alabama*, 132 S.Ct. 2455, 2464-65 (2012); *J.D.B. v. North Carolina*, 131 S.Ct. 2694, 2403-06 (2011); *Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 572-73 (2005). Thus, "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed." *Graham*, 560 U.S. 481. Courts must instead make an individualized determination about the appropriateness of a particular penalty on a child, which includes consideration of a child's youth and its attendant characteristics. *Miller*, 132 S.Ct. at 2771.

The mandate to make individualized decisions about children has been extended by at least two other state courts to juvenile SORNA laws. In *In re C.P.*, 967 N.E.2d 729, 736-37 (Ohio 2012), and *In re J.B.*, 107 A.3d 1, 6-8 (Penn. 2014), the Ohio and Pennsylvania Supreme Courts each addressed state SORNA laws

which required juveniles found guilty of certain sex offenses to register for life, and allowed for early termination after 25 years. The Ohio SORNA law published juveniles on its internet sex offender database. *C.P.*, 967 N.E. 2d at 737. The Pennsylvania law did not allow information about juveniles to be posted publically, but did require police to make information about the juvenile's registration available to the district attorney and chief law enforcement officer of any jurisdiction where the juvenile resided, studied, or was employed. *J.B.*, 107 A.3d at 7.

In both cases, the courts found that the offense-based classification system violated the rights of juveniles to due process. *C.P.*, 967 N.E. 2d at 746-50; *J.B.*, 107 A.3d at 14-20. The Ohio Supreme Court cited the instruction of the U.S. Supreme Court to treat juveniles differently from adults, as well as Ohio's interest in the rehabilitation of juvenile offenders. *C.P.*, 967 N.E.2d at 747. The court reiterated that "juvenile offenders are less culpable and more amenable to reform than adult offenders," and found that Ohio's juvenile SORNA laws improperly eliminated the discretion of the juvenile judge to consider individual factors about the child, or determine how publication of the offense might affect the juvenile's rehabilitation, "at the most consequential part of the dispositional process." *Id.* at 748-49. Since the court viewed registration as a "most important role in rehabilitation," fundamental fairness required a judge to determine the appropriateness of the registration requirements before placing the juvenile on the registry. *Id.*

The Pennsylvania Supreme Court also cited *Miller* and addressed the differences between adult and juvenile sex offenders, noting that studies had shown that many juveniles who commit sex offenses do so as a result of impulsivity and

sexual curiosity, which diminishes with rehabilitation and maturation. *J.B.*, 107 A.3d at 17-18. The court determined that the Pennsylvania laws violated juveniles' due process rights because they removed the juvenile judges' ability to consider the rehabilitative prospects of the individual juvenile, or his likelihood of recidivating. *Id.* at 17-18. A more reasonable alternative means would be to utilize an individualized risk assessment to determine which juveniles posed a high risk of recidivating before placing them on the registry. *Id.* at 19.

In defiance of *Miller*, Illinois also does not allow judges to consider a juvenile's youth before the registration requirements are imposed. While Illinois does allow the juvenile to petition for release from lifetime registration requirements earlier than in *C.P.* and *J.B.*, the fundamental import of those holdings was that a juvenile's risk of recidivism must be determined ***before*** subjecting him to the registration requirements in the first place. *C.P.*, 967 N.E.2d at 748-49; *J.B.*, 107 A.3d at 19. Moreover, analysis of Illinois's juvenile SORNA laws under the *Mathews* factors shows how they violate due process, even with the early termination allowance.

1. Private interest at issue.

As discussed in Subpart A, *supra*, the Juvenile SORNA laws affect several liberty interests. The fact that a juvenile may petition to have registration and notification requirements terminated after five years does absolutely nothing to assuage this infringement, since the five years following a juvenile's adjudication are the same five years when a juvenile would be enrolled in public school or pursuing a higher education. Since those schools will be notified automatically of the juvenile's status as a sex offender, any termination of those requirements

five years later would be without effect. So too could numerous other individuals have already been informed of the juvenile's status as a sex offender during his first five years of registration, either through the discretion of law enforcement, or because of how the juvenile's school chose to disseminate that information itself.

As also explained in Subpart A, *supra*, the juvenile SORNA laws also constrain the juveniles' liberty through burdensome registration duties which carry a penalty of a felony conviction if any mistake is made. *Dodds*, 2014 IL App (1st) 122268, ¶38. Again, these burdens are the most cumbersome on juveniles during the first five years of registration, when the juveniles may be dependent upon their family for transportation. Moreover, suffering a felony conviction for failing to comply with the registration requirements would also significantly hinder a juvenile's ability to show after five years that he does not pose a threat to the community, and thus should be removed from the registry. Thus, Illinois's shoot-first-and-ask-questions-later policy of juvenile registration greatly impacts the juveniles' liberty interests during the initial mandated registration of at least five years.

2. Risk of erroneous deprivation and probative value of additional or substitute procedural safeguards.

The automatic application of the juvenile SORNA laws to all juvenile sex offenders also creates a strong risk that their liberty will be unjustly deprived. Indeed, this case shows precisely how individuals who should not be listed on the registry are still included. When a juvenile seeks after five years to be removed from the registry, the judge determines whether the juvenile poses a danger to the community by considering: (1) a risk assessment performed by an evaluator

approved by the Sex Offender Management Board: (2) the sex offender history of the juvenile; (3) evidence of the juvenile's rehabilitation; (4) the age of the juvenile at the time of the offense; (5) information related to the juvenile's mental, physical, educational, and social history; (6) victim impact statements; and (7) any other factors deemed relevant by the court. 730 ILCS 150/3-5(d),(e) (2013). Thus, the legislature has obviously determined that a juvenile who can show through these factors that he is not a danger to the community should not be required to register. Yet, Adam has already shown he is not a danger through these factors.

Prior to his adjudicatory hearing, Adam completed the risk assessment required under 730 ILCS 150/3-5(e) (2013); and it revealed that he did not possess any mental health issues or have any unusual personality traits, and that his risk of recidivism is low, causing both his evaluator and the probation officer to request that he not be included in the registry. (C. 95-112, 185-86) Adam also had no prior history of adjudications for sexual or non-sexual offenses; and in the two-and-a-half years which passed between this offense and Adam's dispositional hearing, Adam still committed no crimes. (C. 177) Adam showed additional signs of rehabilitation, accepting responsibility for his actions and feeling remorse toward the victim, and graduating from high school and enrolling in college. (C. 5, 110-11, 357-58) Yet, low-risk juveniles like Adam are automatically required to register, showing why the juvenile SORNA laws allow erroneous deprivations of liberty.

And again, merely providing Adam and other juveniles with an opportunity to attempt to show five years later that they still do not belong on the sex offender registry is not enough. In addition to how the juvenile will have already suffered

unnecessarily for the five years preceding that hearing, the juvenile may not be able to afford counsel or the costs of an evaluation, and the juvenile may have made a mistake in complying with registration, which would have led to a criminal conviction and thus would suggest that the minor has not been rehabilitated. Instead of requiring the juvenile to prove five years after the fact that he is not a danger to reoffend, the juvenile should be heard ***before*** the registration requirements are imposed. *J.B.*, 107 A.3d at 19; *C.P.*, 967 N.E. 2d at 748-50.

3. The government's interest.

As noted, Illinois courts have repeatedly found that the State's interest in including juveniles on the sex offender registry is for the protection of the public. *Konetski*, 233 Ill. 2d at 203; *J.W.*, 204 Ill. 2d at 67-68. Yet, this interest does not diminish the value of the additional procedural safeguard in requiring an individualized determination of dangerousness before placing a juvenile on the registry. If there is a value in monitoring the whereabouts of juvenile sex offenders to prevent re-offending, then there is also value in ensuring that the State's resources are directed at those offenders who pose an actual risk of re-offending.

Nor is the State's interest furthered by making the juvenile register for five years to make sure he will not re-offend. As explained in Subpart A, *supra*, the Juvenile Court Act already allows juvenile judges to enter dispositions which include incarceration in the Department of Juvenile Justice, as well as intensive reporting probation. 705 ILCS 405/5-710 (2013); 705 ILCS 405/5-715 (2013). Thus, the State would already be involved in monitoring the juvenile's whereabouts and activities, rendering additional registration as a sex offender unnecessary.

In fact, even if the State were to argue that a proper assessment on a juvenile's risk of recidivism could not yet be made at the dispositional hearing, there is still no reason why that should work against the juvenile through the requirement of automatic registration. If the State wanted to see what would happen to a juvenile over the next few years, a determination on his need to register would be better deferred once he has completed his dispositional sentence, and thus had a chance to be rehabilitated. *See W.Z.*, 957 N.E.2d at 376-77, 381 (due process required juvenile sex offender subjected to lifetime registration to complete dispositional sentence and be given chance at rehabilitation before being placed on registry).

4. Fiscal or administrative burden.

The final factor to consider is whether additional procedural safeguards would impose undue fiscal or administrative burdens on the State. *Mathews*, 424 U.S. at 335. The answer to this question should be an easy no. As noted above, juveniles adjudicated delinquent of sex offenses already receive a sex offender risk assessment. 705 ILCS 405/5-701 (2013). Information concerning the juveniles' criminal history, background, and efforts toward rehabilitation is also readily available at the dispositional hearing, as are victim impact statements. 705 ILCS 405/5-701 (2013); 705 ILCS 405/5-705 (2013). Thus, allowing the juvenile court to use that information to make an individualized determination about registration would impose no additional burden on the State. To the contrary, such a process would save money and judicial resources by avoiding the need for the State and the juvenile court to exert additional resources in a separate hearing five years down the road. It would also preserve State resources in monitoring sex offenders

by not requiring law enforcement agencies to keep tabs on juveniles like Adam, who have a low risk of re-offending, and who, as explained above, would already either be incarcerated or reporting to a probation officer.

In short, the juvenile SORNA laws subject ***all*** juvenile sex offenders to register, with no opportunity for a hearing or individualized determination as to whether these children actually pose an ongoing threat to the public. For the reasons set forth above, this violates procedural due process.

C. The juvenile SORNA laws violate the Eighth Amendment and the proportionate penalties clause.

Finally, the consequences of the automatic application of juvenile SORNA laws also violate the Eighth Amendment of the U.S. Constitution and Article I, §11 of the Illinois Constitution. The Eighth Amendment prohibits "cruel and unusual punishments" for criminal offenses. U.S. Const. amends. VIII, XIV. The Illinois Constitution, which extends beyond the Eighth Amendment, provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art I, §11. *See People v. Clemons*, 2012 IL 107821, ¶¶37-40.

Both the U.S. and Illinois Supreme Court have held that SORNA laws are regulatory, not criminal. Yet, the U.S. Supreme Court has never considered how these statutes affect juveniles, but only made this finding in the context of adult offenders. *See Smith v. Doe*, 538 U.S. 84, 96-106 (2003) (Alaska's notification laws were not punitive because, *inter alia*, they reported information which was already public). Since juvenile SORNA laws ***do*** turn otherwise private information public,

a finding that adult SORNA laws are not punitive does not address the issues raised here. Moreover, the U.S. Supreme Court has repeatedly held that what is permissible for adults may not be so for juveniles. *Miller*, 132 S.Ct. at 2464-65; *J.D.B.*, 131 S.Ct. at 2403-06; *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 572-73.

The Illinois Supreme Court has determined that juvenile SORNA laws are not punitive. *See Konetski*, 233 Ill. 2d at 207. Yet, to reach this conclusion, the Court merely cited to older decisions where the Court found the SORNA laws were regulatory, and noted that these findings also supported the regulatory intent of juvenile SORNA laws, which limited the notification requirements of juvenile sex offender registration were limited, and allowed for early termination. *Konetski*, 233 Ill. 2d at 203, 207, citing *J.W.*, 204 Ill. 2d at 75; *People v. Malchow*, 193 Ill.2d 413, 424 (2000); and *People v. Adams*, 144 Ill.2d 381, 386-90 (1991). However, even when the legislature's ***intent*** is not to create a punitive scheme, such intent will be disregarded when the statute's effect is punitive. *Smith*, 538 U.S. at 92. Moreover, the U.S. Supreme Court developed a mechanism for addressing this dichotomy in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), and applied it to sex offender registry statutes in *Smith v. Doe*, 538 U.S. 84 (2003).

The Illinois Supreme Court has not yet applied this test to the current SORNA laws. In *Adams*, 144 Ill. 2d at 385, 387-88, the Court rejected the application of *Mendoza-Martinez*, and instead focused on the purpose of the statute. In *Malchow*, 193 Ill. 2d at 421, the Court did recognize that "[e]ven if the legislature's intent is not to create a punitive scheme, in certain circumstances the legislature's intent will be disregarded where the party challenging the statute demonstrates by 'the

clearest proof' that the statute's effect is so punitive that it negates the legislature's intent." Yet the Court only utilized the *Mendoza-Martinez* test to analyze the 1998 SORNA laws. *Id.* at 418-24. The 2013 SORNA laws are much more onerous than the laws in place in 1998. These laws: (1) expand who must register as a sex offender (*compare* 730 ILCS 150/3(c) (1998) *with* 730 ILCS 150/3(c)(2.1) (2013)); (2) expand the number of agencies with which a registrant must register in person (*compare* 730 ILCS 150/3(a)(1998) *with* 730 ILCS 150/3(a) (2013), 730 ILCS 150/3(d) (2013), and 730 ILCS 150/6 (2013)); (3) increase the number of times a registrant must appear to register (*compare* 730 ILCS 150/6 (1998) *with* 730 ILCS 150/6 (2013)); (4) shorten the time for doing so (*compare* 730 ILCS 150/3(b), (c)(3), (c)(4) (1998) *with* 730 ILCS 150/3(b), (c)(3), (c)(4) (2013)); (5) increase the quantity of information a registrant must provide (*compare* 730 ILCS 150/3(c)(5) (1998) *with* 730 ILCS 150/3(a) (2013) and 730 ILCS 150/6 (2013)); (6) increase the initial and annual registration fees (*compare* 730 ILCS 150/3(c)(6) (1998) *with* 730 ILCS 150/3(c)(6) (2013)); and(7) punish noncompliance more severely. *Compare* 730 ILCS 150/10 (1998) *with* 730 ILCS 150/10 (2013). Indeed, since *Malchow*, other state courts have used *Mendoza-Martinez* to determine that SORNA schemes had crossed the line from remedial to punitive, and thus were unconstitutional. *See Doe v. State*, 189 P.3d 999 (Alaska 2008); *Starkey v. Okla. Dept. of Corrections*, 305 P.3d 1004 (Okla. 2013); *State v. Letalien*, 985 A.2d 4 (Maine 2009); *Gonzalez v. State*, 980 N.E.2d 312 (Ind. 2013); and *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011).

Thus, the current Illinois SORNA laws have never been specifically analyzed by the Supreme Court under the *Mendoza-Martinez* factors, especially when applied

to juveniles. This Court should do so now. Under *Mendoza-Martinez,* a punitive effect may be found in a regulatory statute when: (1) the sanction involves an affirmative disability or restraint; (2) the sanction has historically been regarded as a punishment; (3) the sanction comes into play upon a finding of scienter; (4) the sanction promotes the traditional aims of punishment; (5) the behavior to which the sanction applies is already a crime; (6) the sanction has an alternative rational purpose; and (7) the sanction appears excessive in relation to the alternative purpose assigned. *Mendoza-Martinez*, 372 U.S. at 168-69.

1. The juvenile SORNA laws have a punitive effect.

a. An Affirmative Disability Akin to Punishment

First, the juvenile SORNA laws require juveniles to appear in person to register annually and within three days of a triggering event. 730 ILCS 150/3(a), (b), (c)(3), (c)(4) (2013). Such in-person registration has been found to render SORNA laws in other states punitive, even for adults. *See Starkey*, 305 P.3d at 1021-25 (requirements of Oklahoma's SORNA "are similar to the treatment received by probationers subject to continued supervision," and requirement of in-person registration within three days of a triggering event, along with felony penalties for failure to register, rendered statute punitive); *Doe v. Dep't of Public Safety & Correctional Svcs.*, 62 A.2d 123, 137 (Md. App. Ct. 2013) (Maryland's registration requirements "had the same effect as placing [registrant] on probation" because "he or she must report to the State and must abide by conditions and restrictions not imposed upon by the ordinary citizen, or face incarceration").

Illinois's juvenile SORNA laws also impose conditions similar to probation or mandatory supervised release ("MSR"). *See generally* 730 ILCS 5/3-3-7 (conditions of MSR); 730 ILCS 5/5-6-3 (conditions of probation). In fact, the juvenile SORNA laws are even more punitive than probation. A finding of a probation violation will, at worst, result in a revocation of probation and a more severe sentence on a conviction already imposed; and courts also have discretion not to find a violation of probation for non-willful conduct. *See* 730 ILCS 5/5-6-4 (2013). By contrast, a violation of the registration requirements results in a separate felony conviction, and is also a strict liability offense. *Dodds*, 2014 IL App (1st) 122298, ¶38.

The juvenile SORNA laws also have a punitive effect where, despite the fact that the notification requirements for juveniles are more limited than adults, *Konetski*, 233 Ill. 2d at 206-08, the laws still open up confidential records to local law enforcement agencies, and to the juvenile's school and other individuals, with no limitations on what the individuals who receive that information may do with it. 730 ILCS 152/121 (2013). *See Dipiazza*, 778 N.W.2d at 271 (dissemination of non-public information tends to label defendant as dangerous, and such branding is properly recognized as punishment); *C.P.*, 967 N.E.2d at 746 (making private juvenile adjudications records public on internet constitutes punishment because it brands the juvenile as an "undesirable" wherever he goes).

b. Historical Considerations

The requirements under SORNA laws are recent, making historical analysis difficult. Yet as explained, registration resembles probation or MSR, provisions historically regarded as punishment. *See Wallace v. State*, 905 N.E.2d 371, 380

(Ind. 2009) ("the fact that the [Indiana] Act's reporting provisions are comparable to supervised probation or parole standing alone supports a conclusion that the second *Mendoza-Martinez* factor favors treating the effects of the Act as punitive").

c. *Scienter*

The juvenile SORNA laws do not require a finding of *scienter*, but its effects are instead triggered by adjudication of a sex offense. 730 ILCS 150/2 (2013). This factor has been found to cut both ways in the analysis. *Compare Gonzalez v. State of Indiana*, 980 N.E.2d 312, 318 (Ind. 2013) (lack of *scienter* weighs in favor of finding SORNA laws punitive); with *Letalien*, 985 A.2d at 21 (finding lack of *scienter* to show statute not punitive). In any event, the United States Supreme Court has dismissed this factor as having little weight. *Smith*, 538 U.S. at 105.

d. The traditional aims of punishment.

The traditional aims of punishment include retribution, deterrence, incapacitation, and rehabilitation. *Graham*, 130 S. Ct. at 2027. As will be explained in Subpart 2, *infra*, the juvenile SORNA laws do not legitimately advance any of these goals. Nonetheless, the laws do still bear a retributive effect. *See Wallace*, 905 N.E. 2d at 382 (acknowledging that Indiana legislature did not pass SORNA laws to offer vengeance, but finding that laws still had that effect). The fact that juvenile SORNA laws occur automatically upon adjudication further show its punitive effect. *See Commonwealth v. Baker*, 295 S.W.3d 437, 444 (Ky. 2009) ("When a restriction is imposed equally on all offenders, with no consideration given to how dangerous any particular registrant may be to public safety, that restriction

begins to look far more like retribution for past offenses than a regulation intended to prevent future ones."); *accord Doe v. State*, 189 P.3d 999, 1014 (Alaska 2009).

e. Application only to Criminal Behavior

Where registration under the juvenile SORNA laws "does not arise based on individualized assessment of an offender's risk of recidivism, and cannot be waived on proof that an offender poses little or no risk, [the law] applies exclusively to behavior that is already a crime," and is punitive. *Letalien*, 985 A.2d at 22; *Starkey*, 305 P.3d at 1028.

f. Advancing a Non-Punitive Interest

The juvenile SORNA laws advance a legitimate regulatory purpose. *See J.W.*, 204 Ill. 2d at 68 (juvenile SORNA laws serve a public interest to "assist law enforcement in the protection of the public from juvenile sex offenders"). This factor alone, however, does not render the effects of these laws non-punitive.

g. Excessive Legislation in Relation to Civil Intent

In *Wallace*, 905 N.E. 2d at 383, the Indiana Supreme Court explained that, even though its own SORNA laws were a legitimate way to protect the public from sex offenders, "if the registration and disclosure are not tied to a finding that the safety of the public is threatened, there is an implication that the Act is excessive." Here as well, while the juvenile SORNA laws have a legitimate civil purpose in promoting public safety, their scope exceeds this purpose by applying to all juveniles adjudicated delinquent of a triggering offense, without regard to their future dangerousness. As explained above, Adam exemplifies this principle,

where he has been placed on the sex offender registry despite the fact that a forensic psychologist and the probation department agree that he poses little risk of re-offending. (C. 95-112, 185-86) Where the juvenile SORNA laws ensnare children who pose no danger to their community, the effect is punitive.

2. The punitive effect of the juvenile SORNA laws is cruel and unusual as well as disproportionate.

The punitive effect of the juvenile SORNA laws in requiring juveniles who pose a low risk of recidivating to register, and opening up their private juvenile records to local law enforcement agencies and to their schools, is cruel and unusual. In considering whether a punishment is cruel and unusual, a court must consider whether there is a national consensus against the practice, and also exercise its own independent judgment. *Atkins v. Virginia*, 536 U.S. 304, 312 (2002).

With respect to juvenile SORNA laws, the Supreme Court of Ohio recognized in *C.P.*, 967 N.E.2d at 738-39, that the national majority does not favor the automatic registration of children, explaining how the Counsel of State Governments promulgated a resolution against the national SORNA guidelines as applied to juveniles. *Id.* As noted in Subpart A, *supra*, the Illinois Juvenile Justice Commission also noted in 2014 that 11 states and the District of Columbia do not have a juvenile registry at all, another 19 states only impose the registry through an individualized assessment of risk, and that in the remaining states that do utilize a categorical offense classification, over half limit the registry to the oldest juveniles. Illinois Juvenile Justice Commission at 52. (C. 283) Thus, a national consensus exists against automatically requiring all juvenile sex offenders to register.

An independent review of Illinois's juvenile SORNA laws also shows their punitive effect to be cruel and unusual. In *Miller*, 132 S.Ct. at 2470, the U.S. Supreme Court recognized fundamental differences between the neurological and psychological development of juveniles and adults, and held that juveniles' actions are less likely to be evidence of irretrievable depravity. *Id.* at 2464. Thus, the court struck down mandatory life-without-parole sentencing statutes, because they prevented trial courts from taking into account the juvenile's youth before imposing the sentence. *Id.* at 2466. *Miller* required that "a sentencer follow a certain process – considering an offender's youth and its attendant characteristics – ***before*** imposing a certain penalty." *Id.* at 2471 (emphasis added).

While Illinois's juvenile SORNA laws are not the harshest penalty in Illinois, the logic of *Miller* still applies because a sex offense is not as severe as murder. *See C.P.*, 967 N.E. 2d at 741 (noting that *Graham*, 130 S.Ct. at 2027, held that a juvenile who did not kill or intend to kill has "twice diminished moral culpability" on account of his age and the nature of his crime, and thus finding that Ohio's practice of placing lifetime registration requirements on juveniles who committed sex offenses was proportionately unconstitutional). Ironically, the same juveniles forced to register for sexual misconduct are so young that they are themselves presumed unable to consent to sexual activity, thus making it unlawful for an adult to engage in sexual activity with the child. *See* 720 ILCS 5/11-1.50(c) (2013). Moreover, many of the children who commit sex offenses do so because they are impulsive and have sexual curiosity. *J.B.*, 107 A.3d at 17. Thus, automatically placing harsh registration requirements on juveniles, with only a possibility of

having them lifted after five years of compliance, fails to take into account the juvenile's youth and diminished culpability before the penalty is imposed.

The automatic application of this harsh scheme also does not further the traditional aims of sentencing, including retribution, deterrence, incapacitation, and rehabilitation. *Graham*, 130 S.Ct. at 2028. In *C.P.*, 967 N.E. 2d 729, the Ohio Supreme Court addressed these factors in finding that the Ohio juvenile SORNA laws violated the Eighth Amendment. *Id.* at 741-44. The court explained how the U.S. Supreme Court already held that the case for retribution is not as strong with juveniles as it is with adults, and that juveniles lack the maturity to be deterred by taking possible punishment into account when making decisions. *Id.*, *citing Graham*, 130 S.Ct. at 2028-29. The court found that if juveniles were unlikely to be deterred by traditional punishment, they were even less likely to understand or be deterred by the concept of the loss of future reputation. *Id.*, *citing Graham*, 130 S.Ct. at 2028-29. The court also determined that its juvenile SORNA laws did not incapacitate the juvenile in any way, and that any aims toward rehabilitation were undermined by the effects of registration. *C.P.*, 967 N.E.2d at 743.

The four aims of sentencing are also not furthered by Illinois's practice of automatically imposing registration upon a juvenile. The case for retribution is not strong, given juveniles' diminished capacity. Illinois juveniles are also less likely to be deterred by the effects of registration; and there is no incapacitation which results from the juvenile SORNA laws. *C.P.*, 967 N.E.2d at 741-44. Moreover, as explained in Subpart A, *supra*, the goal of rehabilitation is undermined by the hurdles and stigmas created by the juvenile SORNA laws. Thus, the cruel effects

of registration are automatically being suffered by juveniles, including those who pose no danger to the community, without serving any valid penological purpose.

Finally, automatically subjecting all juveniles adjudicated delinquent of sex offenses to the juvenile SORNA laws also violates the proportionate penalties clause of the Illinois Constitution. Under this clause, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, §11. This clause exists beyond the Eighth Amendment, requiring all sentences to have a rehabilitative aim. *Clemons*, 2012 IL 107821, ¶¶37-40. Illinois has long recognized that minors do not deserve the same harsh treatment as adults, due to the "unformed and unsettled characteristics of youth." *People ex rel. Bradley v. Illinois State Reformatory*, 148 Ill. 413, 423 (1984). Yet, as explained, the juvenile SORNA laws work against rehabilitating the juvenile. Illinois Juvenile Justice Commission at 42-45. As such, the juvenile SORNA laws violate the Illinois Constitution.

In conclusion, Illinois automatically requires ***all*** juvenile offenders adjudicated delinquent of certain sex offenses to register as a sex offender for either 10 years or life, in complete disregard of the actual risk that the particular juvenile has of re-offending for the first five years of that registration. These laws violate due process, as well as the Eighth Amendment and proportionate penalties clause. Thus, this Court should strike down these laws as unconstitutional.

D. Alternative Remedies

If this Court does not strike down all of the juvenile SORNA laws, it should

still find some of those provisions invalid. First, as explained throughout, part of the problem with placing the registration requirements on juveniles is that the penalty for violating those requirements is a strict liability offense which carries an adult felony conviction. 730 ILCS 150/10(a) (2013). The Illinois Supreme Court has repeatedly struck down statutes which impose a strict liability offense, if those statutes could potentially punish purely innocent behavior. *See In re K.C.*, 186 Ill. 2d 542, 576 (1999) (law which imposed strict liability for damaging or removing vehicle parts unconstitutional because it could potentially punish purely innocent behavior); *People v. Zaremba*, 158 Ill.2d 36, 40-43 (1994) (portion theft statute which criminalized knowing control over property in custody of law enforcement agency was unconstitutional because it potentially punished innocent conduct without requiring a culpable mental state); and *People v. Wick*, 107 Ill.2d 62, 66-67 (1985) (section of aggravated arson statute that made penalty for setting fire more severe when fire caused injuries to firefighter or police officer was unconstitutional because statute did not require an unlawful purpose in setting the fire). Here, SORNA also allows juveniles to potentially be punished for innocent behavior, where a juvenile who intended to register could still fail to do so simply because he was dependent on someone else for transportation, and could not find anyone available to take him to register within three days of a triggering event. As such, 730 ILCS 150/10(a) is unconstitutional as applied to juveniles.

Additionally or alternatively, the notification requirements of 730 ILCS 152/121 (2013) are unconstitutional. As explained throughout this brief, these notification laws impose burdens on juveniles above and beyond those created

by the registration requirements, infringing more substantially on the juveniles' liberty. As such, even if the laws which categorically require all juvenile sex offenders to register withhold constitutional scrutiny, imposing the notification requirements on every single juvenile adjudicated of a sex offense does not.

II. The juvenile SORNA laws are unconstitutional as applied to Adam C., who has no criminal history and is now attending college, and was determined by both a clinical psychologist as well as his probation officer to be at low risk of sexually re-offending.

Because Adam C. was found guilty of aggravated criminal sexual abuse, he must register for the rest of his life, unless he can prove after five years that he does not pose a threat to the community. 720 ILCS 11/1.60(c)(2)(i) (2013); 730 ILCS 150/2 (2013); 730 ILCS 150/3-5(d) (2013). As explained in Argument I, the juvenile SORNA laws cause significant intrusions on the liberty of those required to register, and also hinder rehabilitation. Placing these burdens upon Adam is outrageous because he has already been shown to be at a low risk of re-offending, and requiring him to register could aggravate his risk of recidivism. (C. 96, 112, 185-86) Thus, the juvenile SORNA laws are unconstitutional as applied to Adam.

An "as-applied" challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party. *People v. Thompson*, 2015 IL 118151, ¶36. An "as-applied" constitutional challenge is reviewed *de novo*. *People v. Fisher*, 184 Ill. 2d 441, 448 (1998). In this case, trial counsel argued below that the juvenile SORNA laws violated substantive and procedural due process, as well as the Eighth Amendment, as applied to Adam. (C. 293-301, 328-43, 346-48; R. 37-71) While trial counsel did not include this issue

in a motion for a new adjudicatory hearing, juveniles are not required to include claims of error in a written post-adjudication motion to preserve such errors for review. *In re W.C.*, 167 Ill. 2d 307, 327 (1995). The Supreme Court has also recently held that, even in adult cases, the failure to include a constitutional issue properly raised at trial in a post-trial motion will not result in the forfeiture. *People v. Cregan*, 2014 IL 113600, ¶¶15–20. Thus, this issue has been properly preserved.

A. Substantive and Procedural Due Process

As explained in Argument I, a law violates substantive due process when it bears no reasonable relationship to the public interest it is intended to serve. U.S. Const. amend. XIV; Ill. Const. 1970, Art. I, §2; *People v. Morris*, 136 Ill. 2d 157, 161 (1990). Similarly, an individual's right to procedural due process is denied when he is deprived of life, liberty, or property without a "meaningful opportunity to be heard." U.S. Const. amend. XIV; Ill. Const. 1970, Art. I, §2; *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *Wisconsin v. Constantineau*, 400 U.S. 433, 437 (1971). The juvenile SORNA laws violate Adam's substantive and procedural due process rights because undisputed evidence shows that his registration is not rationally related to the protection of the public, and he has been deprived of several fundamental liberty interests with no opportunity to be heard.

As noted in Argument I, *supra*, the purpose of the juvenile SORNA laws is to protect the public. *In re J.W.*, 204 Ill. 2d 50, 68-72 (2003). Yet, as also explained, Illinois allows a juvenile to be removed from the registry after five years, if a court determines he is not a danger to the community in light of a risk assessment; the juvenile's sex offense history, rehabilitative efforts, and age at the time of

the offense; his mental, physical, educational, and health history; and victim impact statements. 730 ILCS 150/3-5 (d), (e) (2013). In this case, all of this evidence already demonstrated that Adam was not a threat to the community, and thus placing him on the registry was not rationally related to the protection of the public.

First, in December of 2014, a juvenile sex offender risk assessment was performed on Adam by Dr. Michael H. Fogel, a clinical psychologist. (C. 95-112) After interviewing Adam twice, performing additional psychological tests on him, reviewing the police reports and other materials in the case, and interviewing Adam's mother, Dr. Fogel concluded that Adam's risk of sexually re-offending was "low," and indeed that Adam was "among a group of adolescent sex offenders who are the least likely to sexually recidivate." (C. 96, 112) Dr. Fogel explained that Adam did not possess any adverse developmental factor associated with child delinquency or later violent juvenile offending. (C. 96, 101) Adam had no contact with the juvenile justice system outside of this case, and also had no pattern of any other disruptive behavior, mental health issues, or deviant sexual interests or disorders. (C. 96-97, 101-04) Adam also accepted full responsibility and expressed remorse for how he had harmed the victim, even before the juvenile judge found him guilty. (C. 96, 111) Moreover, on the juvenile sex offender risk assessment, Adam scored only 4 out of 56 possible points. (C. 108-11) Dr. Fogel noted that Adam's behavior in this offense could be related to the fact that he was only 16 years old when the offense occurred, at a time when his brain structure was prone to engage in behavior largely based on immediate developmental forces. (C. 97, 104-05)

The findings and opinion of Dr. Fogel were echoed by the probation

department, which prepared a social investigation report on Adam in July of 2015. Probation Officer Claire Johnson indicated that, based on the information she collected during clinical interviews of Adam and his mother, Dr. Fogel's opinion was congruent with her own professional opinion that Adam was a low risk to sexually re-offend. (C. 185) Johnson advised the court that "[r]equiring this minor, who is low risk, to register could have an aggravating effect on his risk level, contrary to the rehabilitative philosophy on which the juvenile justice system is based." (C. 186) Johnson emphasized that Adam placed a very high value on education and had performed well academically, and explained how being placed on the juvenile sex offender registry could pose a significant threat to Adam's enrollment status, ability to receive financial aid, and campus housing. (C. 185)

Crucially, while the date of the charged offense was May 12, 2013 (C. 5), the probation officer reached her opinion regarding Adam's risk level in July of 2015. (C. 185) Thus, Adam had already gone two years without sexually re-offending before his five-year registration period began, and when his probation officer concluded that his risk of re-offending was low. Moreover, Adam's social investigation report was updated again in October of 2015, at which time he still had not committed any crimes and was already enrolled in college courses and performing well. (C. 357) Yet, as both Dr. Fogel and Johnson agreed, placing Adam on the juvenile sex offender registry could only hinder the progress Adam had made toward rehabilitation, without promoting public safety. Where requiring Adam to register as a sex offender fails to protect the public, but instead could harm it, the application of the juvenile SORNA laws to Adam does not reasonably serve the interest the

statute was intended to protect, violating substantive due process.

Adam's right to procedural due process was also violated by denying him the opportunity to be heard before being placed on the registry. As explained in Argument I, *supra*, the burdens of registration – along with the criminal sanctions which occur if even one mistake is made – place "a severe constraint" on Adam's liberty. *People v. Dodds*, 2014 IL App (1st) 122298, ¶38. Moreover, Adam is being required to comply with the terms of his registration while he is living away from home for the first time, attending college, and also working at Chipotle. (C. 364)

As also explained in Argument I, *supra*, Adam has fundamental rights to privacy and reputation which are impacted by the notification aspects of the juvenile SORNA laws. *Constantineau*, 400 U.S. at 436-37; *In re K.D.*, 279 Ill. App. 3d 1020, 1023 (2d Dist. 1996) While Adam has shown exceptional rehabilitation by graduating high school and enrolling in college (C. 357), Adam's ability to continue achieving a meaningful education is at risk, as well as his reputation and his good name, because of the juvenile SORNA laws. Adam is involved in the Parkland Pathways program at the University of Illinois in Champaign. (C. 357) If he completes two years at Parkland Community College, he will be admitted into the University of Illinois. (C. 146) Certainly, Adam's privacy, good name, and reputation have already been affected at Parkland College, where the juvenile SORNA laws have likely already resulted in the disclosure of his status as a sex offender. 730 ILCS 152/121 (2013). Yet, once Adam transfers to the University of Illinois, that school will also be notified of his sex offender status. Based on trial counsel's communication with the university, Adam will be precluded from living in numerous residence

halls, his roommate will be notified of his status, and both the residence hall Adam resides in as well as any connected residence halls will be informed of the presence of a sex offender. (C. 351) There are no limitations as to what Adam's roommate may do with that information, and nothing precludes the university from disclosing Adam's identity to anyone who makes inquiries regarding the sex offender living in their hall. 730 ILCS 152/121 (2013). Further, if Adam fails to comply with any of his registration terms, the university may cancel his housing contract. (C. 351) Thus, Adam will face difficulties in maintaining housing, and could also suffer social ostracism from his peers. *See* Illinois Juvenile Justice Commission, Improving Response to Sexual Offenses Committed by Youth, 45 (2014) (youth rehabilitate more quickly with educational opportunities and network of pro-social peers).

In short, the manner in which the juvenile SORNA laws infringe on Adam's liberty over at least the next five years are substantial. Thus, the denial of any opportunity for Adam to rely on evidence that shows he is not a risk to the community violates his right to procedural due process.

B. Eighth Amendment and Proportionate Penalties Clause

Finally, since Adam is not a threat to the community, subjecting him to the affirmative disabilities and restraints of the juvenile SORNA laws constitutes punishment. *See Wallace v. State*, 905 N.E.2d 371, 383 (Ind. 2009) (when registration is not tied to an individualized risk of dangerousness, it amounts to punishment). *Accord Commonwealth v. Baker*, 295 S.W.3d 437, 444 (Ky. 2009); *Doe v. State*, 189 P.3d 999, 1014 (Alaska 2009). Indeed, this fact was certainly not lost on the State, whom counsel said would not allow Adam to plead guilty to an offense which

did not trigger registration because the State believed registration was "part of the punishment for the act" committed by Adam. (C. 294) Yet, both the U.S. and Illinois Constitutions protect an individual from cruel and unusual punishment, and the Illinois Constitution also goes further to require that all penalties be determined with the objective of restoring the offender to useful citizenship. U.S. Const. amends. VIII, XIV; Ill. Const. 1970, art. I, §11; *People v. Clemons* 2012 IL 107821, ¶¶37-40. These constitutional provisions are violated here.

Adam, who was born on April 12, 1997, had just turned 16 years old when he committed this offense on May 12, 2013. (C. 5) Adam had no other contact with the police or juvenile justice system, before or after this offense. (C. 175) Though he did commit a sexual act on a girl younger than him (C. 175; R. 137), he did not use force to commit that act, and no penetration occurred. Instead, Adam got off the victim two or three seconds after she woke up. (R. 100-01, 111) Certainly, Adam needed to be punished for this offense, and steps also needed to be taken to make sure nothing like this happened again. However, Adam was already punished through his dispositional order of probation and community service, and rehabilitative efforts were also being made through probation, which included juvenile sex offender counseling. (C. 365) Moreover, as explained in Argument I, *supra*, none of the penological goals of sentencing are achieved through applying the SORNA laws to juveniles. *See Graham v. Florida*, 560 U.S. 48, 67-74 (2010). Thus, since Adam does not pose a threat to the community, subjecting him to the additional restraints of the juvenile SORNA laws is cruel and unusual.

Forcing Adam to register as a sex offender also violates the proportionate

penalties clause of the Illinois Constitution. As explained in Argument I, this clause provides that all penalties must be imposed "with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, §11. Illinois has long recognized that minors do not deserve the same harsh treatment as adults, due to the "unformed and unsettled characteristics of youth." *People ex rel. Bradley v. Illinois State Reformatory*, 148 Ill. 413, 423 (1984); *see also People v. Miller*, 202 Ill. 2d 328, 341-42 (2002) ("[A]s a society we have recognized that young defendants have greater rehabilitative potential."). In *Miller*, *id.* at 341-43, the Court held that an Illinois statute requiring the imposition of a life sentence for a minor defendant found guilty by accountability for two murders was unconstitutionally disproportionate as applied to him. The court emphasized the "long-standing distinction in Illinois between adult and juvenile offenders," and noted that young defendants have greater rehabilitative potential. *Id.* at 340.

In this case, Adam's probation officer informed the juvenile judge specifically that requiring Adam to register as a sex offender would hinder his chances toward rehabilitation. (C. 185-86) Dr. Fogel also explained how studies had shown that the social isolation of a minor caused by registration heightened a risk of sexual recidivism. (C. 98-01, 103) That explanation was echoed by the Illinois Juvenile Justice Commission, which also detailed how studies had shown that the collateral consequences of the juvenile SORNA laws adversely affect the resiliency of the juvenile and create a sense of hopelessness, thus hindering rehabilitation. *See* Illinois Juvenile Justice Commission, *Improving Response to Sexual Offenses Committed by Youth*, 49-50 (2014)(C. 280-81) Finally, while the State did advance

arguments in this case on why the juvenile SORNA laws were not unconstitutional as applied to Adam, the State never disputed Adam's low risk of sexually re-offending, or that requiring him to register would hinder rehabilitation. (C. 328-43; R2. 60-69) A penalty which undisputedly hinders rehabilitation does not satisfy the mandate of the Illinois constitution that all penalties be fashioned with an objective of restoring the offender to useful citizenship. Thus, the juvenile SORNA laws also violate the Illinois constitution, as applied to Adam.

The juvenile SORNA laws violate Adam's substantive and procedural due process, as well as the Eighth Amendment and the proportionate penalties clause. Thus, this Court should strike down the application of these laws to Adam.

CONCLUSION

For the foregoing reasons, Respondent-Appellant Adam C. respectfully requests that this Court find the juvenile SORNA laws unconstitutional, either facially (Issue I) or as applied to Adam (Issue II).

Respectfully submitted,

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