

**IN THE COURT OF COMMON PLEAS OF LANCASTER COUNTY, PENNSYLVANIA
JUVENILE DIVISION**

In the Interest of : [REDACTED]
: [REDACTED]
: [REDACTED]
: [REDACTED]
: [REDACTED]
A Minor. :

In the Interest of : [REDACTED]
: [REDACTED]
: [REDACTED]
: [REDACTED]
: [REDACTED]
A Minor. :

In the Interest of : [REDACTED]
: [REDACTED]
: [REDACTED]
: [REDACTED]
: [REDACTED]
A Minor. :

MEMORANDUM OF LAW IN SUPPORT OF *NUNC PRO TUNC* MOTIONS

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Dated: May 22, 2013

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INTRODUCTION

Juvenile courts were established to “provide guidance and rehabilitation for the child and protection for society, not to affix criminal responsibility, guilt and punishment.” *Kent v. U.S.*, 383 U.S. 541, 554 (1966). Pennsylvania’s juvenile justice system protects the public by providing for the supervision, care, and rehabilitation of children who commit delinquent acts through a system of balanced and restorative justice. The system is designed to meet those goals in the least restrictive way, disrupting the child’s life no more than necessary to effectively intervene. This is met by providing avenues for anonymity and confidentiality to children—juvenile proceedings are generally private; court records are confidential under most circumstances; and juveniles have historically had broad rights to expungement of their records. “It is the law’s policy ‘to hide youthful errors from the full gaze of the public and bury them in the graveyard of the forgotten past.’” *In re Gault*, 387 U.S. 1, 24 (1967) (quoting *In re Gault*, 407 P.2d 760, 767 (Ariz. 1965) (internal citations omitted).

To meet its rehabilitative goals, Pennsylvania has long treated children in the juvenile justice system differently from adults.¹ Since 1901, when Pennsylvania adopted its first Juvenile Court Act, children charged with committing criminal offenses were treated as “children in need of assistance” and not criminals. Following the landmark United States Supreme Court decisions of the 1960’s demanding that juvenile court conform to the due process safeguards of the Constitution, the Pennsylvania General Assembly responded with the passage of the Juvenile Court Act of 1972, codifying the rights of children accused of crimes to receive written notice of charges against them, to be assisted by counsel, to confront accusers, and to be convicted only upon proof beyond a reasonable doubt. *Id.* at 21. Over the last forty years, significant

¹ See, e.g. *J.D.B. v. North Carolina*, 131 S.Ct. 2394 (2011); *Graham v. Florida*, 130 S.Ct. 2011 (2010); *In re Gault*, 387 U.S. 1 (1967); *Commonwealth v. Knox*, 2012 Pa. Super 148 (2012).

amendments have been made to the Juvenile Act to ensure adequate protection to youth throughout the proceedings as well as to ensure fidelity to the commitment to balanced and restorative justice principles.²

On December 20, 2012, Pennsylvania took a large step backward in its distinct treatment of children with the implementation of the juvenile offender³ provisions of the Sex Offender Registration and Notification Act (SORNA). *See* 42 Pa.C.S. § 9799.10 *et seq.*⁴ Mandatory,

² In 1995, the General Assembly passed Act 33, which imbedded balanced and restorative justice principles into the Juvenile Act. Act 33's BARJ principles hold juvenile offenders accountable for their offenses by including in their case management requirements to remedy the harms that their offenses have caused victims and the community. In emphasizing accountability and the mitigation of harms, BARJ has retained the previous goals of supervision, care, and rehabilitation of juvenile offenders. In fact, BARJ has brought the implementation of these concepts to new levels by requiring training in skill-building in combination with eliminating negative behaviors. *See* Pennsylvania Council on Crime and Delinquency, *Balanced and Restorative Justice in Pennsylvania*, available at <http://www.portal.state.pa.us/portal/server.pt?open=512&objID=5254&&PageID=495412&level=2&css=L2&mode=2>.

³ Pennsylvania's mandatory sex offender registration statute applies to "juvenile offenders," defined as:

(1) An individual who was 14 years of age or older at the time the individual committed an offense which, if committed by an adult, would be classified as an offense under 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse) or 3125 (relating to aggravated indecent assault) or an attempt, solicitation or conspiracy to commit an offense under 18 Pa.C.S. § 3121, 3123 or 3125 and either:

(i) is adjudicated delinquent for such offense on or after the effective date of this section; or

(ii) has been adjudicated delinquent for such offense and on the effective date of this section is subject to the jurisdiction of the court on the basis of that adjudication of delinquency, including commitment to an institution or facility set forth in section 6352(a)(3) (relating to a disposition of delinquent child).

(2) An individual who was 14 years of age or older at the time the individual committed an offense similar to an offense under 18 Pa.C.S. § 3121, 3123 or 3125 or an attempt, solicitation or conspiracy to commit an offense similar to an offense under 18 Pa.C.S. § 3121, 3123 or 3125 under the laws of the United States, another jurisdiction or a foreign country and was adjudicated delinquent for such an offense.

(3) An individual who, on or after the effective date of this paragraph, was required to register in a sexual offender registry in another jurisdiction or foreign country based upon an adjudication of delinquency.

42 Pa.C.S. § 9799.12.

⁴ In 2006, the Adam Walsh Child Protection and Safety Act went into effect. Title I of this Act, the Sex Offender Registration and Notification Act (SORNA), requires states to establish uniform sex offender registration mechanisms, including definitions, in order to facilitate a national registry and enforcement. *See* 18 Pa.C.S. § 2250 (a) (SORNA Proposed Guidelines, 72 Fed. Reg. 30210-01, 30213, May 30, 2007). In order to ensure states' cooperation in creating the national registry, the Adam Walsh Act mandated a ten percent deduction of certain federal funding for states that did not substantially implement its provisions. 42 U.S.C. § 16925(a). Importantly, the original version of SORNA did not extend to children in the juvenile justice system. In 2006, in response to lobbying by the parents of an 8-year-old girl sexually assaulted by a 14-year-old boy, the Wisconsin governor signed a law into effect that required police chiefs and sheriffs to assess the public risk of each person on the registry whose offenses occurred as juveniles and notify the community about those considered likely to re-offend. Subsequently, the family of the young girl lobbied Congress to enact similar federal legislation and add Section 111 to extend the

lifelong registration with attendant onerous reporting requirements flies in the face of the constitutional and distinctive protections afforded children since *Gault* and its progeny.

Following SORNA's federal enactment, states came into varying levels of compliance—some requiring children as young as 10 to register based solely on the offense, *see* Del. Code. Tit. 11 § 4120, while others require an individual risk-assessment to determine whether registration was necessary to promote a public safety interest, *see* Ohio Rev. Code § 2950.01. Still other states opted to forgo the financial incentive, acknowledging that 1) registration was contrary to the individualized rehabilitative model of their juvenile justice systems; 2) the high cost of creating and maintaining a juvenile registry would outweigh any federal monetary benefit; and 3) there was not enough evidence suggesting it increased public safety.⁵ The Adam Walsh Child Protection and Safety Act specifically provides that state courts have the authority to evaluate their individual registration schemes under state and federal constitutions. 42 U.S.C. § 16913. Upon determination that the registration scheme is in violation with constitutional law, it must be stricken without jeopardizing the state's federal financial benefits. 42 U.S.C. § 16925. Indeed, an international human rights organization, Human Rights Watch, recently issued a report in which is recommends that all state and federal laws be amended to explicitly exempt

AWA to juveniles. The law redefined the term “convicted” or a variant thereof, used with respect to a sex offense, to include adjudication of delinquency as a juvenile. 42 U.S.C. § 16911 (2006). Importantly, it did not require an individual risk assessment to determine whether juveniles are likely to reoffend.

⁵ In an August 17, 2011 letter to the Department of Justice, Jeffrey Boyd, General Counsel and Acting Chief of Staff to Texas Governor Rick Perry, wrote: “In dealing with juvenile sex offenders, Texas law more appropriately provides for judges to determine whether registration would be beneficial to the community and the juvenile offender in a particular case.” North Carolina General Assembly, “SORNA General Information,” October 13, 2011, at http://www.ncleg.net/documentsites/committees/JLOCJPS/October%2013,%202011%20Meeting/RD_SORNA_General_Information_2011-10-13.pdf (accessed April 18, 2013). In a similar letter from the State of New York, Risa Sugarman, Director of the Office of Sex Offender Management, wrote, “New York has a long standing public policy of treating juvenile offenders differently from adult offenders so that juveniles have the best opportunity of rehabilitation and reintegration. The federal requirement that juveniles be placed on the Sex Offender Registry under SORNA is in direct conflict with that public policy.” Letter from Risa S. Sugarman to Linda Baldwin, “SORNA General Information,” August 23, 2011 at http://www.ncleg.net/documentsites/committees/JLOCJPS/October%2013,%202011%20Meeting/RD_SORNA_General_Information_2011-10-13.pdf (accessed April 18, 2013). The state also expressed concern over the “fiscal impact of implementation... with no improvement in public safety.”

Children's Home of Reading and then stepped down to SafeGuards Specialized Foster Care in July, 2012. He is dually adjudicated dependent and delinquent. He is currently in 12th grade at West Lawn High School. He participates in a Supervised Independent Living program to prepare for when he ages out of foster care at age 21.

██████████ was adjudicated delinquent on March 17, 2008, for two counts of rape (F1) and three counts of indecent assault (M1), offenses committed between November 2007 and January 2008, when he was 14 years old. ██████████ was in placement at Concern, Adelphoi Village Secure Treatment Unit and South Mountain Secure Treatment Unit prior to being discharged in 2012. ██████████ last prior known address was a homeless shelter.

██████████ was adjudicated delinquent on October 25, 2011 for involuntary deviate sexual intercourse (F1), two counts of indecent assault (M1) and indecent exposure (M1), offenses committed when he was 14 years old. He was subsequently adjudicated delinquent on November 30, 2011 on one count of criminal solicitation to commit sexual abuse of children (F2). He was committed to Adelphoi Village at LaSaQuick where he currently resides. He is in eleventh grade at the on-site school and has maintained excellent grades and consistent placement on the honor roll.

PROPOSED FINDINGS OF FACT

I. CHILDREN, INCLUDING JUVENILE SEXUAL OFFENDERS, ARE DIFFERENT FROM THEIR ADULT COUNTERPARTS.

A. Children Are Less Mature, More Vulnerable to Negative Influences and More Open to Rehabilitation Than Adults.

Kids are different. *Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 130 S.Ct. 2011(2010); *J.D.B. v North Carolina*, 131 S.Ct. 2394 (2011); *Miller v. Alabama*, 132 S.Ct. 2455

(2012). This is “more than a chronological fact” but a fact established by scientific research. *Miller*, 132 S.Ct. at 2467 (quoting *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982)). See also *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2403 (2011) (citing *Eddings v. Oklahoma*, 455 U.S. 104, 115 (1982); *Gall v. United States*, 552 U.S. 38, 58 (2007); *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Johnson v. Texas*, 509 U.S. 350, 367 (1993)).

Research demonstrates that children are less mature, more vulnerable to negative influences and have less control over their surroundings than adults. *Miller*, 132 S.Ct. at 2464, 2468. In addition, children have “greater prospects for reform” than adults. *Miller*, 132 S.Ct. at 2458. The “signature qualities of youth are transient; as individuals mature, the impetuosity and recklessness that may dominate in younger years can subside.” *Roper*, 543 U.S. at 553, quoting *Johnson*, 509 U.S. at 368. All of these facts are consistent with research showing that brain regions responsible for executive function and decision-making are immature in adolescents. *Miller*, 132 S.Ct. a 2464.

1. Children Lack Maturity and Responsible Decision-Making Skills.

“As any parent knows and as the scientific and sociological studies . . . tend to confirm, “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults.” *Roper*, 543 U.S. at 569; see also *Miller*, 132 S.Ct. at 2464. This leads to “recklessness, impulsivity, and heedless risk-taking.” *Miller*, 132 S.Ct. at 2464, 2467. Research shows that “[a]dolescents are less able to control their impulses; they weigh the risks and rewards or possible conduct differently; and they are less able to envision the future and apprehend the consequences of their actions.”⁷ “[A]dolescents are overrepresented statistically

⁷ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 8, cited in *Miller*, 132 S.Ct. 2454 n. 5, available at <http://www.apa.org/about/offices/ogc/Amicus/miller-hobbs.aspx>, citing Lawrence Steinberg, *Adolescent Development and Juvenile Justice*, 5 Rev. Clinical Psychol. 47, 55-56 (2008), available at <http://www.annualreviews.org/doi/pdf/10.1146/annurev.clinpsy.032408.153603>.

in virtually every category of reckless behavior.” *Roper*, 543 U.S. at 569, quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 *Developmental Rev.* 339 (1992). “These observations are independent of the nature of the crime, and apply equally to adolescents involved in homicide and adolescents involved in other heinous crimes that do not involve death.”⁸

Children’s “immaturity, impetuosity, and failure to appreciate risks and consequences” impact children in both the juvenile and criminal justice systems. *See, e.g., Miller*, 132 S.Ct. at 2468. A child “might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, his inability to deal with . . . prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys.” *Miller*, 132 S.Ct. at 2468. *See also J.D.B.*, 131 S.Ct. at 2403 (“The law has historically reflected the same assumption that children characteristically lack the capacity to exercise mature judgment and possess only an incomplete ability to understand the world around them.”).

2. Children Are Vulnerable to Negative Influences and Outside Pressures.

“[C]hildren ‘are more vulnerable . . . to negative influences and outside pressures’” than adults. *Miller*, 132 S.Ct. at 2464, quoting *Roper*, 543 U.S. at 569. Childhood “is a moment and ‘condition of life when a person may be most susceptible to influence and to psychological damage.’” *Miller*, 132 S.Ct. at 2467, quoting *Johnson*, 509 U.S. at 368. Research demonstrates that the mere presence of peers makes children, but not adults, more likely to engage in risk-taking behavior.⁹

⁸ Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 13, cited in *Miller*, 132 S.Ct. at 2464 n. 5, available at <http://eji.org/files/Amicus%20-%20Aber%20et%20al.PDF>.

⁹ Margo Gardner & Laurence Steinberg, *Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood*, 41 *Developmental Psychol.* 625, 634 (2005), available at <http://www.wisspd.org/htm/ATPracGuides/Training/ProgMaterials/Conf2011/AdDev/PInfluence.pdf>.

Children’s vulnerability to negative influences is “explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment.” *Roper*, 543 U.S. 551, 569 (2005), citing Laurence Steinberg & Elizabeth S. Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003). “Difficult family and neighborhood conditions are major risk factors for juvenile crime, including homicide.”¹⁰ Children “lack the ability to extricate themselves from horrific, crime-producing settings.” *Miller*, 132 S.Ct. at 2464. A child is influenced by “the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional.” *Miller*, 132 S.Ct. at 2468.

Children who offend sexually or non-sexually are both characterized by families that express less positive communication, less warmth and more parental violence than families of non-delinquent youth.¹¹ Additionally, children who commit sexual offenses are often themselves victims of sexual abuse.¹²

3. Children Have a Greater Capacity for Rehabilitation Than Adults.

Children have a greater capacity for rehabilitation and reform than adults because “a child’s character is not as ‘well-formed’ as an adult’s; his traits are ‘less fixed’ and his actions less likely to be ‘evidence of irretrievabl[e] deprav[ity].” *Miller*, 132 S.Ct. at 2464, quoting *Roper*, 543 U.S. at 570. “For most teens, [risky or antisocial] behaviors are fleeting; they cease

¹⁰ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 15-16, citing, e.g., Alan Kazdin, *Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths in Youth on Trial* at 47 (Thomas Grisso & Robert Schwartz eds., 2000).

¹¹ *Juvenile Sex Offenders* at 299 citing M. Ford & J. Linney, *Comparative Analysis of Juvenile Sex Offenders, Violent Nonsexual Offenders, and Status Offenders*, 10 Journal of Interpersonal Violence 56-70 (1995).

¹² Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 Calif. L. Rev. 163, 205 (2003).

with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.” *Roper*, 543 U.S. at 553, quoting Laurence Steinberg & Elizabeth Scott, *Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty*, 58 Am. Psychologist 1009, 1014 (2003); see also *Miller*, 132 S.Ct. at 2464 (same). A significant body of research recognizes the ability of children to reform and change.¹³ Research consistently points to an “age-crime curve,” in which criminal activity “‘peak[s] sharply’ in adolescence ‘drop[s] precipitously in young adulthood.”¹⁴ “It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption.” *Graham*, 130 S.Ct. at 2026, quoting *Roper*, 543 U.S. at 573. Studies have “consistently concluded that the behavior of juveniles who will and will not continue as criminal offenders through adulthood is ‘often indistinguishable during adolescence.’”¹⁵ “Simply

¹³ See, e.g., Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court*, in *Youth on Trial* at 9, 23 (Thomas Grisso & Robert Schwartz eds., 2000); Scott & Steinberg, *Rethinking Juvenile Justice* 32, 49; John H. Laub & Robert J. Sampson, *Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70* (2003) (documenting the criminal histories of 500 individuals who had been adjudicated delinquent and were able to change and lead law-abiding lives as adults).

¹⁴ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 7-8, quoting Terrie Moffitt, *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 Psychol. Rev. 674, 675 (1993), available at http://www.psychology.sunysb.edu/ewaters/55204/slide%20sets/brian_mcfarland_aggression/moffitt_aggression.pdf; Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 30.

¹⁵ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 23, quoting Kathryn Monahan et al., *Trajectories of Antisocial Behavior and Psychological Maturity from Adolescence to Youth Adulthood*, 45 Developmental Psychol. 1654, 1655 (2009), and citing Edward Mulvey & Elizabeth Cauffman, *The Inherent Limits of Predicting School Violence*, 56 Am. Psychologist 797, 799 (2001); Thomas Grisso, *Double Jeopardy: Adolescent Offenders with Mental Disorders* 64-65 (2004). See also John Edens et al., *Assessment of ‘Juvenile Psychopathy’ and Its Association with Violence*, 19 Behav. Sci. & L. 53, 59 (2001).

put, while many criminals may share certain childhood traits, the great majority of juvenile offenders with those traits will not be criminal adults.”¹⁶

4. The Brains of Adolescents Are Not Developed in the Areas Responsible for Decision-Making and Impulse Control.

The developmental research demonstrating children’s immaturity, vulnerability to negative influences and capacity to reform is supported by neuroscience research.

“[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds.” *Graham*, 130 S.Ct. at 2026. “[A]dolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance.” *Miller*, 132 S.Ct. at 2464 n. 5, quoting Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 4. The frontal lobes of the brain, and especially the pre-frontal cortex, continue to develop through adolescence and into one’s twenties.¹⁷

Adolescents also undergo changes “in the brain’s ‘incentive processing system’—especially the parts that process rewards and social cues.”¹⁸ Dopamine levels peak in a key region, “increasing propensity to engage in risky and novelty-seeking behavior.” Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 16.

The “rapid, pubertal changes in the brain’s incentive and social processing systems outpace[e] the slower, steadier, and later-occurring changes in areas related to executive function

¹⁶ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 22, 24.

¹⁷ Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 15-16; see also Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 25, citing Laurence Steinberg, *Should the Science of Adolescent Brain Development Inform Public Policy?*, 64 *Am. Psychologist* 739, 742 (2009).

¹⁸ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 5, 17, 26, citing numerous studies.

and self control.”¹⁹ Because of this “disjunction” “middle adolescence (roughly 14-17) should be a period of especially heightened vulnerability to risky behavior, because sensation-seeking is high and self-regulation is still immature. And in fact, many risk behaviors follow this pattern, including unprotected sex, criminal behavior, attempted suicide, and reckless driving.”²⁰

On the other hand, the “immaturity and plasticity” of the adolescent brain makes children open to change and reform.²¹ Brain malleability in a child “enhance[s] the prospect that, as the years go by and neurological development occurs, his “deficiencies will be reformed.” *Miller*, 132 S.Ct. at 2465, quoting *Graham*, 130 S.Ct. at 2027, quoting *Roper*, 543 U.S. at 570.

B. Children Who Offend Sexually Are Not Unlike Other Juvenile Offenders.

The research cited in *Roper*, *Graham* and *Miller* establishes that children—even children who commit the most heinous crimes, including murder—can change and reform as they grow up. So too can children who offend sexually. The belief that “sex offenders are a very unique type of criminal” is not supported with respect to juvenile offenders.²² Research studies demonstrate “that juvenile sexual offenders are no different from non-sexual juvenile offenders; sexual offenses in juveniles are a result of delinquency in general not specifically sexual in origin.” del Busto, Exhibit I at ¶ 16, 19 (hereinafter “del Busto”). “Many demographic studies fail to identify differences in personality and psychosocial circumstances between juvenile sex

¹⁹ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 29-30, citing Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 82 *Brain & Cognition* 160, 162 (2010).

²⁰ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 30, quoting Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 *Brain and Cognition* 160 (2010).

²¹ Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 10-12.

²² Elizabeth Letourneau and Michael Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 *Sexual Abuse: A Journal of Research and Treatment* 293, 296 (2005); see also *Sex Offenders* at 299 citing M. Ford & J. Linney, *Comparative Analysis of Juvenile Sex Offenders, Violent Nonsexual Offenders, and Status Offenders*, 10 *Journal of Interpersonal Violence* 56-70 (1995).

offenders and non-sex offenders. Furthermore, their patterns of reoffense are similar with non-sexual offenses predominating.” *Id.* at ¶ 16.

1. Sexual Recidivism Rates for Children Who Sexually Offend Are Exceptionally Low.

“There are now more than 30 published studies evaluating the recidivism rates of youth who sexually offend. The findings are remarkably consistent across studies, across time, and across populations: sexual recidivism rates are low.” Affidavit of Elizabeth J. Letourneau, Ph.D., Exhibit H at ¶ A (hereinafter “Letourneau”).²³ “In summary, data has shown that very few adolescents who commit sexual crimes will become sexually deviant as adults.” Affidavit of Elena del Busto, M.D., Exhibit I at ¶ 19. “As a group, juvenile sex offenders have been found to pose a relatively low risk to sexually re-offend, particularly as they age into young adulthood.” Affidavit of Michael F. Caldwell, Psy.D., Exhibit J, at ¶ 3(C) (hereinafter “Caldwell”).

In “the most extensive” research study to date, a meta-study of over 63 studies and over 11,200 children “found an average sexual recidivism rate of 7.09% over an average 5 year follow-up.” *Id.* at ¶ 3(C); *see also* del Busto, Exhibit I at ¶ 14. “[W]hen rare sexual recidivism events do occur, it is nearly always within the first few years following the original

²³ *See also* Caldwell, M., *Sexual offense adjudication and recidivism among juvenile offenders*, *Sexual Abuse: A Journal of Research and Treatment*, 19, 107-113 (2007), available at http://www.njjn.org/uploads/digital-library/resource_557.pdf; Caldwell, Ziemke, & Vitacco, *An examination of the sex offender registration and notification act as applied to juveniles: Evaluating the ability to predict sexual recidivism* in *Psychology, Public Policy, and Law*, 14(2), 89-114 (2008), available at <http://www.ncjfcj.org/sites/default/files/examinationofthesexoffender.pdf>; Driessen, E., *Characteristics of youth referred for sexual offenses*. Unpublished doctoral dissertation, University of Wisconsin-Milwaukee (2002), available at <http://ijo.sagepub.com/content/54/2/197.refs>; Hagan, Gust-Brey, Cho, & Dow, *Eight-year comparative analyses of adolescent rapists, adolescent child molesters, other adolescent delinquents, and the general population*, *International Journal of Offender Therapy and Comparative Criminology*, 43(3), 314-324 (2011), available at <http://ijo.sagepub.com/content/45/3/314.refs>; Zimring, Jennings, Piquero, & Hays, *Investigating the continuity of sex offending: Evidence from the second Philadelphia birth cohort*, *Justice Quarterly*, 26, 59-76 (2009), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1590&context=facpubs>; Zimring, Piquero, & Jennings, *Sexual delinquency in Racine: Does early sex offending predict later sex offending in youth and young adulthood?*, *Criminology and Public Policy*, 6(3), 507-534 (2007), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9133.2007.00451.x/pdf>; Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism*, *International Journal of Offender Therapy and Comparative Criminology*, 54(10) (2009), available at <http://ijo.sagepub.com/content/54/2/197.full.pdf>.

adjudication.” Letourneau, Exhibit H at ¶ A. Even “youth initially evaluated as ‘high risk’ are unlikely to reoffend, particularly if they remain free of offending within th[e] relatively brief period of time following initial adjudication.” *Id.* at ¶ A. These rates are compared with a 13% recidivism rate for adults who commit sexual offenses. *Raised on the Registry*, at 30 citing R. Karl Hanson and Monique T. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 *J. of Consulting & Clin. Psych.* 348-62 (1998).

Additionally, sexual recidivism cannot be predicted by offense. “The extant research has not identified any stable, offense-based risk factors that reliably predict sexual recidivism in adolescents.” Caldwell, Exhibit J at ¶ 3(D-G) (citing numerous studies). In a study that compared the sexual recidivism rates of children assigned to three groups according to the severity of their offense, “[t]here was no significant difference in the recidivism rates of juvenile offenders” in each of the three groups. Letourneau, Exhibit H at ¶ C1(iii); Caldwell, Exhibit J at ¶ 3(F-G).

Finally, the failure to register or accurately provide registration information is not a significant predictor of sexual recidivism. *Raised on the Registry*, at 86. Though failing to register is the most common offense leading to reincarceration for individuals on the registry, there is no link to re-offense. *Id.*

2. Sexual Recidivism Is the Same for Children Who Committed Sexual and Non-Sexual Offenses.

Research studies have found no statistically significant difference between the sexual recidivism rates of children who committed sexual offenses and children who committed nonsexual violent offenses. Letourneau, Exhibit H at ¶ B, C1(iii).²⁴ One research study found

²⁴ See also Caldwell, M., *Sexual offense adjudication and recidivism among juvenile offenders*, *Sexual Abuse: A Journal of Research and Treatment*, 19, 107-113 (2007), available at http://www.njjn.org/uploads/digital-library/resource_557.pdf; Caldwell, Ziemke, & Vitacco, *An examination of the sex offender registration and notification act as applied to juveniles: Evaluating the ability to predict sexual recidivism* in *Psychology, Public Policy, and Law*, 14(2), 89-114 (2008), available at <http://www.ncjfcj.org/sites/default/files/examinationofthesexoffender.pdf>; Driessen, E., *Characteristics of youth referred for sexual offenses*. Unpublished

“the risk of sexual recidivism was statistically equal for youth treated in a residential facility for either sexual or nonsexual delinquent offenses.” *Id.* Both sexually and non-sexually delinquent youth are far more likely to re-offend with *nonsexual crimes* than sexual crimes. del Busto, Exhibit I at ¶ 16.²⁵

3. Requiring Children to Register as Sex Offenders Does Not Improve Public Safety.

Public safety may be improved either by deterring first time offenders or by reducing recidivism. Requiring children to register as sex offenders accomplishes neither. Letourneau, Exhibit H at ¶ C. Registration of adolescents “has consistently been found to have no effect on the incident of first-time adolescent sexual offending.” Caldwell, Exhibit J at ¶ 4(D). Research has also found that the recidivism rate is not measurably different for registered and unregistered children who committed sexual offenses. *Id.* at ¶ 4(C).

In fact, including youth on a registry may diminish public safety by diverting resources away from high-risk offenders. Requiring children to register for life “overburdens law enforcement with large numbers of people to monitor, undifferentiated by their dangerousness. With thousands of new registrants added each year, law enforcement is stymied in their attempt to focus on the most dangerous offender.” *Raised on the Registry*, at 7.

doctoral dissertation, University of Wisconsin-Milwaukee (2002), available at <http://ijo.sagepub.com/content/54/2/197.refs>; Hagan, Gust-Brey, Cho, & Dow, *Eight-year comparative analyses of adolescent rapists, adolescent child molesters, other adolescent delinquents, and the general population*, *International Journal of Offender Therapy and Comparative Criminology*, 43(3), 314-324 (2011), available at <http://ijo.sagepub.com/content/45/3/314.refs>; Zimring, Jennings, Piquero, & Hays, *Investigating the continuity of sex offending: Evidence from the second Philadelphia birth cohort*, *Justice Quarterly*, 26, 59-76 (2009), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1590&context=facpubs>; Zimring, Piquero, & Jennings, *Sexual delinquency in Racine: Does early sex offending predict later sex offending in youth and young adulthood?*, *Criminology and Public Policy*, 6(3), 507-534 (2007), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1745-9133.2007.00451.x/pdf>; Caldwell, *Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism*, *International Journal of Offender Therapy and Comparative Criminology*, 54(10) (2009), available at <http://ijo.sagepub.com/content/54/2/197.full.pdf>.

²⁵ See also Letourneau, E. J., & Miner, M. H., *Juvenile sex offenders: A case against the legal and clinical status quo*, *Sexual Abuse: A Journal of Research and Treatment*, 17, 313-331 (2005).

One law enforcement official stated that “focusing attention and resources on an overly broad group of ex-offenders detracts attention from the smaller number of sexually violent offenses that occur, leaving communities vulnerable to sexual abuse, creating a false sense of security, and exhausting valuable resources by tracking the ‘wrong offender’—that is, individuals not likely to ever reoffend sexually.” *Raised on the Registry*, at 23.

4. Children Who Offend Sexually Are Nothing Like Adult Sex Offenders.

“Evidence is clear that juvenile sex offenders represent a very different population from adult sex offenders.” del Busto, Exhibit I at ¶ 13, 19. Children who offend sexually have much lower rates of sexual recidivism than adults. “Because impulse control tends to improve with maturation and is more amenable to treatment, sexually reoffense rates for juveniles tend to be fairly low, only about 7%. *Id.* at ¶ 14. “This is half as frequent as adult sex offenders for whom sexual recidivism has been estimated at about 13%.” *Id.*

The recidivism rate is lower for children than for adults because children are different. “Multiple studies have confirmed that juveniles sexually offend for different reasons than adults. It is rare for juvenile sexual offenders’ motivations to be of the sexual nature as seen in adults. Juveniles tend to offend based on impulsivity and sexual curiosity, to name a few.” *Id.* at ¶ 13 (internal citations omitted). “[W]ith maturation, a better understanding of sexuality, and decreased impulsivity, most of these behaviors stop. Of the population of adolescents who experiment with sexual deviance, only a small fraction will maintain sexually deviant behavior in adulthood.” *Id.* at ¶ 15.

5. Children And Their Families Suffer Psychologically As A Result Of Sex Offender Registration.

Children who must register as sex offenders for life “will face innumerable barriers to successful prosocial development.” Letourneau, Exhibit H at ¶ D3. “The process of identifying oneself as a registered sex offender multiple times per year, and of being arrested and possibly charged for new offenses due in part to this label seems likely to cause registered youth to view themselves as ‘delinquent’ even when they are law-abiding.” *Id.* at ¶ D1. “Policies that promote youths’ concepts of themselves as lifetime sex offenders will likely interrupt the development of a positive self-identity.” *Id.*, citing Letourneau, E. J., & Miner, M. H., *Juvenile sex offenders: A case against the legal and clinical status quo in Sexual Abuse: A Journal of Research and Treatment*, 17, 313-331 (2005). “The result of such stigma on adolescent development only serves to worsen self-esteem, contribute to depression in some cases leading to suicide, and perpetuate criminal acts, etc.” del Busto, Exhibit I at ¶ 18. Among a group of 281 children registered on sex offender registries, nearly 20% indicated that they had attempted suicide. *Raised on the Registry*, at 51. One young person stated, “I live in a general sense of hopelessness, and combat suicidal thoughts almost daily due to the life sentence and punishment of being a registrant.” *Id.* A former registrant took his own life after several years living on the registry. His mother reported that nearly ten years after his offense, he faced difficulty obtaining housing and employment in college. Within weeks of graduating from college, he committed suicide, seemingly because “he was going to look for professional work and knew his background would come up in every job interview.” *Id.* at 53.

If a child’s status as a registered sex offender becomes known in the community, the result is “a seriously detrimental effect on development and social integration.” *Id.* at ¶ 19. The child may experience “adverse consequences such as unemployment, relationship loss, threats, harassment, physical assault, and property damage as well as psychological symptoms such as

shame, embarrassment, depression or hopelessness as result of public disclosure.” Caldwell, Exhibit J at ¶ 5(A). “Furthermore, evidence has shown that public registration results in a sense of isolation and a loss of hope for the future, sentiments which can have devastating effects on adolescent emotional development.” del Busto, Exhibit I at ¶ 18.

These same consequences apply to a registered sex offender’s family. Family members may also experience “being threatened, harassed, and assaulted or having property damaged.” Caldwell, Exhibit J at ¶ 5(A). Any household containing a “juvenile offender” is ineligible for public housing. 42 U.S.C.S. § 13663(a); 24 C.F.R. 960.204. Family members of registered as sex offenders may also be “forced to move” by a landlord. Caldwell, Exhibit J at ¶ 5(A). They may lose friends or feel isolated. *Id.* at ¶ 5(A).

6. Children Suffer Irreparable Harm As A Result Of Being Required To Register.

In addition to psychological harm, children required to register encounter numerous obstacles to participating in the most routine aspects of daily life. A recent Human Rights Watch report highlights the harm that children suffer as a result of placement on a sex offender registry. *See Raised on the Registry*, Exhibit L.

Many youth have encountered obstacles to obtaining education or employment or have lost jobs once their registration status became known. Most states have laws that expressly prohibit individuals on a registry from obtaining licenses for certain jobs, including jobs in the health care industry, education, and child development. *Id.* at 73. In one case, a young man stated that he lost at least 17 jobs because of being on the registry. *Id.* at 38. Many children adjudicated of sex offenses can also be expelled from public school. *Id.* at 71. Among 296 youth registrants nationwide, over 50% reported that they had been denied access to or experienced severe interruptions in their education due to registration. *Id.* at 72.

Children can also suffer homelessness because of residency restrictions placed on them. Out of 296 youth registrants, over 44% said that they had experienced at least one period of homelessness as a result of the restrictions attendant to registration. *Id.* at 65. One individual on the registry became homeless after being required to register based upon a statutory rape charge. Because his wife was the “victim,” he was prohibited from living with her. *Id.* One youth had to move out of campus housing because she received threatening messages and ended up living in a homeless shelter for 90 days while attending college. *Id.* at 46. Registration can also divide families. In one case, a youth explained that because the registration restrictions prohibited him from living with any children, he and his mother moved away from his father and his siblings. *Id.* at 60.

Finally, many children and their families may also suffer violence because of a child’s registration status. One youth reported that when he was placed on the registry at age 14, strange cars began following him home from school and one day a car driving by fired gunshots through his living room window as his family was inside. *Id.* at 56. Another youth reported harassment and threats from school, which eventually led to his being severely beaten by people in his community. *Id.* at 57.

II. SORNA REQUIRES CHILDREN TO REGISTER, RETROACTIVELY, AS SEX OFFENDERS FOR THE REST OF THEIR LIVES.

Pennsylvania has never required children adjudicated delinquent to register as sex offenders. Under SORNA, Pennsylvania requires a “juvenile offender” to register as a sex offender. A “juvenile offender” is defined, in relevant part, as a child, fourteen or older at the time of offense, who was adjudicated delinquent for rape, involuntary deviate sexual intercourse,

aggravated indecent assault, or the attempt, solicitation or conspiracy to commit one of these offenses. 42 Pa.C.S. § 9799.12.²⁶

Petitioners were not registered as sex offenders at the time of their adjudications. They have been retroactively registered as “juvenile offenders” under SORNA. 42 Pa.C.S. § 9799.12. The registration term is effectively for life. 42 Pa.C.S. § 9799.15.²⁷

A. Initial Registration

A child who must register as a sex offender must register a long, detailed and personal list of information. 42 Pa.C.S. § 9799.16. This includes all of the following: name, alias, nickname, “any designation or monikers used for self-identification in Internet communications or postings,” any “[d]esignation used by the individual for purposes of routing or self-identification in Internet communications or postings,” any telephone phone number “including cell phone number, and any other designation used by the individual for purposes of routing or self-identification in telephonic communications,” social security number, the address of each “residence or intended residence . . . and the location at which the individual receives mail,” any “passport and documents establishing immigration status,” the name and address of current and future employers, the name and address of any part time job, defined as four or more days during any seven day period or fourteen or more days during any calendar year. 42 Pa.C.S. §§ 9799.12, 9799.16. If the child does not have “a fixed workplace,” he or she must register “general travel routes and general areas” where the child works. 42 Pa.C.S. § 9799.16(b)(9). The child must

²⁶ This petition does not address another category of youth who must register as sexual offenders under SORNA. “Sexually violent delinquent children” are children who have been involuntarily civilly committed for inpatient treatment “as a result of having been adjudicated delinquent for the act of sexual violence.” 42 Pa.C.S. §§ 6403, 9799.13(9). Involuntary civil commitment follows a finding that the child is in need of commitment for involuntary treatment due to a mental abnormality or personality disorder, either of which results in “serious difficulty in controlling sexually violent behavior.” 42 Pa.C.S. §§ 6358, 9799.24.

²⁷ A “juvenile offender” may petition for removal in twenty-five years if he or she “successfully completed court-ordered supervision without revocation,” had no conviction for a second degree misdemeanor or higher and successfully completed a court-recognized treatment program. 42 Pa.C.S. § 9799.17.

register any occupational and professional licensing information, the name and address of any school where the child is or will be a student, any motor vehicle “including watercraft and aircraft” the child owns or operates, including a description, license plate number, registration or other identification number and vehicle location, the child’s driver’s license or identification card, birth date “and purported date of birth.” 42 Pa.C.S. § 9799.16. If the child will be away from his or her residence for seven days or more, the child must register the address, length of time and dates of the “temporary lodging,” 42 Pa.C.S. § 9799.16(b)(7). This information is required by statute.

The Pennsylvania State Police will also collect additional information during the initial registration.²⁸ According to the Pennsylvania State Police registration form, SP4-218, the child will be asked to register the following: “all locations where Vehicle 1 is parked” and whether the car is registered to an “acquaintance,” “member of household,” “relative that does not share residence,” “personal,” “work,” etc. Sexual Offender Registration Notification Form SP4-218, Exhibit A at ¶ J, 9. The child will be told that an occupational or professional license may include a “car dealer, barber, realtor.” *Id.* at 11, ¶ 2(c)(9). The child will be told that a “general travel route and general area” of work is where, “e.g., you have a delivery route.” *Id.* at 11, ¶ 2(b)(3). The child will be asked to register his or her “room no.” at school. *Id.* at ¶¶ H, I, 8. The child will be asked to register the telephone number at work and his or her supervisor’s name. *Id.* at ¶¶ H, I, 8.

²⁸ The probation department may enter the registry information electronically into the Sex Offender Registry Tool (“PA SORT”) or use a paper registration form, numbered SP4-218. Captain Scott Price, Pennsylvania State Police, PSP Status Update 12/17/12, Exhibit B, available at http://www.portal.state.pa.us/portal/server.pt/community/pa_sexual_offender_management/20801/psp_status_update_12_17_2012/1352364. The registration form, SP4-218, is not designed for children. The registering official must check off the “juvenile offender” box. Sexual Offender Registration and Notification Form, SP4-218, Exhibit A at 7.

Three particularly unclear registration terms are “any designation or monikers used for self-identification in Internet communications or postings,” any “[d]esignation used by the individual for purposes of routing or self-identification in Internet communications or postings,” and “any other designation used by the individual for purposes of routing or self-identification in telephonic communications.” 42 Pa.C.S. § 9799.16(b)(1-3). According to SP4-218, the child will be asked to register “ALL email addresses affiliated with the sexual offender” and “all identifiers affiliated with the sexual offender (e.g., Facebook, Twitter, Tagged, MySpace).” SP4-218, Exhibit A at ¶ K. The child will be asked to register “any other phone number (not associated with an address) the sexual offender can be reached at.” *Id.* at ¶ A(11). These are examples. A child could potentially be asked to register other designations, including: “routing” designations; logins for blogs or online newspapers that allow users to identify themselves and comment, online discussion groups, listserves or other online communities; or Internet commerce sites that allow users to register, rate or comment on products or services. *Doe v. Nebraska*, 2012 U.S. Dist. LEXIS 148770, *31 (Neb. 2012).

A child who is registered as a sex offender must also provide physical and biological information. The registry will include a physical description. 42 Pa.C.S. § 9799.16(c)(1). This includes whether the child wears glasses, height, weight, hair color, eye color, race, ethnicity, birth state/territory and birth country. SP4-218, Exhibit A at ¶ F. The registry will also include “the location(s) and description(s) of any scars on the sexual offender’s body” and location and description of tattoos, amputations, and “any marks” on the child’s body. SP4-218, Exhibit A at ¶ F(31-34). “Marks” may include “deformities,” a “mole,” “skin discoloration,” or “unknown.” SP4-218, Exhibit A at 7.

The child will be photographed on both his face and body. Pa.C.S. §§ 9799.15(c)(4), 9799.39. The facial photograph is a “mugshot,” utilizing the same procedures as if the child were being arrested. Photograph Standards, Exhibit C available at http://www.portal.state.pa.us/portal/server.pt/community/pa_act_111_of_2011/20820/photograph_standards/1133435. For example, “[f]or subjects who normally wear eyeglasses, a frontal mugshot image should be captured of the subject without glasses.” *Id.* “Subject illumination shall be accomplished using a minimum of three (3) point balanced illumination.” *Id.* The child will also be photographed for “any scars, marks, tattoos or other unique features of the individual,” with no written exception for scars or marks in private areas. 42 Pa.C.S. § 9799.39. The child must also provide fingerprints and palm prints, which will be taken either electronically via” LiveScan” or in ink. 42 Pa.C.S. § 9799.16(c)(5).²⁹ The child must also provide a DNA sample. 42 Pa.C.S. § 9799.16(c)(6).

B. The Child Must Verify the Registry Information at Least Every 90 Days.

A child who is registered as a sex offender must report in person to the Pennsylvania State Police to verify the registry information every ninety days, even if there have been no changes to that information. 42 Pa.C.S. § 9799.15(e). Each time, the child will be asked to verify all of the above information and will be subject to a new mugshot. 42 Pa.C.S. § 9799.15(e). There is no exception if the child attends school, works full time, or both; under the statute this requirement applies to children as young as fourteen. *Id.*

A child’s verifications must take place at an “approved registration site” designated by the Pennsylvania State Police. 42 Pa. C. S. §§ 9799.12, 9799.32. It is the child’s obligation to find transportation to an approved registration site at least every ninety days for the rest of his or

²⁹ Captain Scott Price, PSP Status Update 12/17/2012, Exhibit B, available at http://www.portal.state.pa.us/portal/server.pt/community/pa_sexual_offender_management/20801/psp_status_update_12_17_2012/1352364; Pennsylvania Commission on Crime and Delinquency, Guidelines and Technology Standards for the Collection and Transmission of Booking Center Captured Offenders’ Identification Information, 42 Pa.B. 4585, Doc. No. 12-1340 (July 21, 2012).

her life. There are three approved registration sites in Lancaster County: Lancaster City Police, 39 West Chestnut Street, Lancaster PA 17603; Lancaster County Probation, 40 East King Street, Lancaster PA 17603; State Police Lancaster, 2099 Lincoln Highway East, Lancaster PA 17602. See State Police, Sex Offender Registration Approved Registration Sites, 42 Pa.B. 7628, Doc. No. 12-2460 (Dec., 15 2012). See also Approved Registration/ Verification Sites at <http://www.pameganslaw.state.pa.us/VerificationSites.aspx>. The published list of approved registration sites does not include the hours of operation and does not state whether an appointment is necessary. *Id.* It does not state how long the verification process, including waiting room times, is estimated to take. It does not suggest public transportation routes.

In addition to appearing in person every ninety days for the rest of his or her life, a registered child must also report in person to register changes to registry information whenever they occur. The child must appear within three business days of a change in any of the following: name, residence, employment, school, telephone number, “temporary lodging,” “e-mail address, instant message address or any other designations used in internet communications or postings,” or occupational license. 42 Pa.C.S. § 9799.15(g). The child must appear to report any changes with regard to a vehicle “owned or operated” by the child. *Id.* This includes a change in where the vehicle is “parked.” SP4-218, Exhibit A at 11 ¶ 2(b)(6); 42 Pa.C.S. § 9799.15(g). If the child plans to travel internationally, he or she must report in-person to Pennsylvania State Police “no less than 21 days in advance” and provide the dates of travel, destinations and temporary lodging. 42 Pa.C.S. § 9799.15(i). The child, who is growing and developing, must also submit to a photograph whenever “there is a significant change in appearance.” *Id.* at (c)(4).

C. Children Who Lack a Stable Residence Will Be Required To Register As a Transient.

If the child does not have a residence for thirty consecutive days, he or she will be categorized as a “transient.” 42 Pa. C. S. §§ 9799.12, 9799.15(h)(2). While “transient,” the child must register in person at an approved registration site every month. 42 Pa. C. S. §§ 9799.15(h)(1), 9799.25, 9796(b)(2). The child must register his or her “temporary habitat or other temporary place of abode or dwelling, including, but not limited to, a homeless shelter or park” and list places where she or he “eats, frequents and engages in leisure activities and any planned destinations, including those outside this Commonwealth.” 42 Pa. C. S. § 9799.16(B)(6).

D. Children Will Be Subject To Mandatory State Prison Sentences for Failure To Register.

The registration form, SP4-218, contains a summary of registration requirements, which are to be read to the child and which the child must sign. These are written in legal terms, e.g. “A Juvenile offender or Sexually Violent Delinquent Child must appear in person at an approved registration site quarterly.” SP4-218, Exhibit A at 11. Moreover, they are written with advanced vocabulary (e.g. furnish, commencing, periodic, disseminated), *id.* at 11-12, in over an eleventh grade reading level using Flesch-Kincaid Readability Statistics.³⁰ According to the registration form, the child is told that “[i]t is your responsibility as a sex offender to review and verify all information on this form and ensure it is correct. You should immediately bring any errors to the attention of the registering official before leaving the registration site. Failure to provide complete and accurate information when registering will subject you to arrest and felony prosecution. . . .” *Id.* at 12.

³⁰ The SP4-218 scored an 11.5 Flesch Kincaid Reading Level Score. This test rates text on a U.S. school grade level. For example, a score of 8.0 means that an eighth grader can understand the document. The formula for the Flesch-Kincaid Grade Level score is: $(.39 \times \text{ASL}) + (11.8 \times \text{ASW}) - 15.59$ where: ASL = average sentence length (the number of words divided by the number of sentences) and ASW = average number of syllables per word (the number of syllables divided by the number of words). See Microsoft Office, Test your Document’s Readability at <http://office.microsoft.com/en-us/word-help/test-your-document-s-readability-HP010148506.aspx> (last visited May 17, 2013).

If the child gives incomplete or inaccurate information, does not appear every ninety days, or does not appear within three business days of a change in any of the required information, the child is subject to prosecution for a new crime of failure to register, verify or provide accurate information. 18 Pa.C.S. § 4915.1. The Pennsylvania State Police have a statutory obligation to initiate arrest proceedings. They will notify the United States Marshals Service and the municipal police, who “shall locate” and arrest the child. 42 Pa.C.S. § 9799.25(b)(2-3); *see also* 42 Pa.C.S. § 9799.22. If child is not arrested, the district attorney will seek an arrest warrant. 42 Pa.C.S. § 9799.22.

The above-described failure to comply with sex offender registration requirements is a felony. There are three categories of offenses: failure to register, failure to verify, and failure to provide accurate information. 18 Pa.C.S. § 4915.1. Failure to register or verify is a felony of the second degree as a first offense and, thereafter, a felony of the first degree. 18 Pa.C.S. § 4915.1(c)(1-2). Failure to provide accurate information is always a felony of the first degree. 18 Pa.C.S. § 4915.1(c)(3). The statutory maximum sentence, in adult court, for a felony of the second degree is ten years incarceration; for a felony of the first degree it is twenty years. 18 Pa.C.S. §106.

In adult court, the crimes of failure to register, verify or provide accurate information carry *mandatory* minimum prison sentences. 42 Pa.C.S. § 9718.4. Failure to register or verify carries a mandatory minimum sentence of three to six years for a first offense and, thereafter, five to ten years. 42 Pa.C.S. §§ 9718.4(a)(1)(iii), (a)(2)(i). Failure to provide accurate information carries a mandatory five to ten years for a first offense and, thereafter, seven to fourteen years. 42 Pa.C.S. §§ 9718.4(a)(1)(iv), (a)(2)(ii).

There is little to no defense to a failure to register or verify prosecution. The Pennsylvania State Police are to mail the child notices of his or her reporting requirements. 42 Pa.C.S. § 9799.25(c). “*Failure to send or receive notice of information under this section shall not relieve the sexual offender from the requirements of this subchapter.*” 42 Pa.C.S. § 9799.25(d) (emphasis added). “This letter will not be forwarded.” SP4-218, Exhibit A at 11 ¶ 2(c). “[A] natural disaster or other event requiring evacuation of residences” does not relieve a child of his or her registration requirements.” 42 Pa.C.S. § 9799.25(e).

Studies have shown that the difficulty of maintaining registration is severe, noting the “sheer volume of obligations and the constant vigilance required of registrants to stay in compliance.” *Raised on the Registry*, at 81. For children, this difficulty is amplified. Many youth are convicted for failing to register for technical details, including being unable to afford the registration fee, obtain identification, or have a stable residence. *Id.* One youth recounted a conviction for failing to register because he forgot to give his online virtual high school’s email address. *Id.* at 84.

E. Information About A Child On The Registry Will Be Released.

Although Pennsylvania purports to have a non-public sex offender registry for children, “registrant information never has and never will be susceptible of public embargo. No reason exists to conclude that the Commonwealth’s exemption for adjudicated juvenile sex offender registrants will prove an exception to this historic reality.” Affidavit of Wayne Logan, Exhibit K at ¶ 27 (hereinafter “Logan”). As set forth below, a child’s registry information will be disclosed automatically to primary sources, will be released to secondary sources and will often be disseminated by law when child leaves the Commonwealth, even for a short period of time.

1. Primary Release of Registry Information

Within three business days, the Pennsylvania State Police will make the child's registration information available to a jurisdiction where the child resides, works or goes to school, a jurisdiction where the child terminates a residence, job or school, the United States Attorney General, the Department of Justice, the United States Marshals Service, the district attorney where the child resides, works or goes to school, the district attorney where the child terminates a residence, job or school, the chief law enforcement officer where the child resides, works or goes to school and the county office of probation and parole where the child resides, works or goes to school. 42 Pa.C.S. § 9799.18. For children in a court-ordered, full-time placement, the director of the facility will receive notice. 42 Pa.C.S. § 9799.19(h)(1)(ii)(3).

The child's registry information will also be disseminated further. The child will be included in the National Sex Offender Registry, the National Crime Information Center (NCIC) and any other database established by the Attorney General, Department of Justice or United States Marshals Service. 42 Pa. C. S. § 9799.18. The child's "criminal history" registry information will be available for employment-related background checks under section 3 of the National Child Protection Act of 1993. 42 Pa.C.S. § 9799.18(e). The Pennsylvania registry will communicate with sex offender registries of the federal government and other jurisdictions. 42 Pa. C. S. § 9799.16(a). If the child intends to move or travel internationally, the Pennsylvania State Police will notify the United States Marshals Service, the Department of Justice and any jurisdiction requiring registration. 42 Pa.C.S. § 9799.18(c-d). The Pennsylvania State Police will provide registry information to a federal public housing agency, upon request. 42 U.S.C.S. § 13663(b)(2). The child's fingerprints and palm prints will be submitted to the Federal Bureau of Investigation Central Database. 42 Pa.C.S. § 9799.16(c)(5). The child's DNA will be submitted into the combined DNA Index System (CODIS). 42 Pa. C. S. § 9799.16(c)(6). The

child's fingerprints and photographs, including photographs of "scars, marks, tattoos or other unique features" will be maintained "for general law enforcement purposes." 42 Pa.C.S. § 9799.39.

2. Secondary Release of Registry Information

SORNA contains no prohibition on any official recipient's release of a juvenile offender's registry information. 42 Pa.C.S. § 9799.18. Recipients, such as municipal governments or municipal police may release this information "in the exercise of their discretionary authority." Logan, Exhibit K at ¶ 14. For example, a police officer may release information to a community if the officer believes it is necessary to protect the public interest, regardless of whether there is any true, identifiable reason. A police officer may also release this information upon request of a person who deduces or believes that a child is on the registry. Indeed, when "ostensibly private" registries have been used historically, "registry information was commonly provided to members of the public by police." Id. at ¶¶ 11, 12.

If information is released to even a few members of the public, it may be widely distributed, as there exists no prohibition against dissemination. People may make fliers, post notices on social media websites, inform the public, notify neighbors, employers and anyone else. Id. at ¶¶ 13, 26.

A child's status as a sex offender may also be released unintentionally as the child attempts to fulfill his or her obligations. A child's registration status may be disseminated to household members, including foster families or group home members, who see quarterly notices from the Pennsylvania State Police in the mail. 42 Pa.C.S. § 9799.25(c).³¹ A child's status as a registered sex offender may be disseminated to members of the public, who see the

³¹ Most children are not the first to sort the mail in their households. Even if others do not open the child's mail, the envelopes will state that the letter is from "Headquarters, Pennsylvania State Police, M.L.S." Envelope from Pennsylvania State Police, Megan's Law Section, Exhibit E.

child enter and exit the registration site, and to anyone whom the child asks for help with transportation. Logan, Exhibit K at ¶¶ 15, 16. “The lack of any requirement that confidentiality be maintained in such public circumstances presents obvious disclosure risk.” Id. at ¶ 15. A court-ordered placement may encourage a child to discuss his or her registration status during group therapy.

“[E]ducational environments present additional risk of disclosure, as registrants are obliged to report and provide information to campus security authorities, or otherwise face expulsion or dismissal.” Id. at ¶18. Campus security officials may then disseminate registry information, “consistent with the loosened privacy restrictions and authority of the federal Campus Sex Crimes Prevention Act of 2000.” Id. at ¶ 18; *see also* 20 U.S.C.A. § 1232g(b)(7)(A) (permitting disclosure of registry information). It is also possible that county probation departments may inadvertently leave a child’s status as a sex offender vulnerable to a data-breach through the use of email. Data-breach is a serious and recognized problem in Pennsylvania. *See* 73 P.S. § 2301, *et seq.* (“Breach of Personal Information Notification Act”). A letter from the Pennsylvania State Police states that if the county probation department is unable to register a child electronically via PA SORT, “the webcam should remain functional; allowing digital photographs to be taken. It is directed that these photographs should be transmitted by email along with a copy of the registration form to the Pennsylvania State Police, Megan’s Law Section as a jpeg file attachment to ra-pspmeganslawphoto@pa.gov.”³² There is no written requirement that the email be sent through an encrypted account or any additional safeguards for privacy. This is not an imagined risk; “[n]umerous examples exist of individuals or entities gaining unauthorized access to registry information and publicly disseminating such information,

³² Contingency Letter, Pennsylvania State Police, Megan’s Law Section, Exhibit D, available at http://www.portal.state.pa.us/portal/server.pt/community/pa_sexual_offender_management/20801/psp_status_update_12_20_2012/1358131.

including via the Internet, with it[s] expansive reach and indelible data storage capability.”

Logan, Exhibit K at ¶ 13.

If the Pennsylvania State Police believe that a child has failed to fulfill the registration requirements, there are a number of ways the child’s registration status will be disseminated. The municipal police may call or go to the child’s residence, job or school to “locate and arrest” the child. 42 Pa.C.S. § 9799.22(a)(2). In one case, Florida police officers visited the homes of registrants driving a “patrol vehicle with ‘Sexual Offender Enforcement’ prominently emblazoned on its sides.” Logan, Exhibit K at ¶ 24. If the child is arrested, the charge of failure to comply with registration requirements, 18 Pa.C.S. § 4915.1, will appear on the child’s public record, even if the child is still a juvenile. 42 Pa.C.S. § 6307(b). If the child is an adult, the court docket will be posted on Unified Judicial System website at <http://ujportal.pacourts.us/>. This criminal history information will generally be available by request, such as for an employer or landlord background check. 18 Pa.C.S. § 9121. The availability of criminal filings on the Internet will increase over the life of the child. *See, e.g.,* Amaris Elliott-Engle, FJD Starts Electronic-Filing Pilot Project for Criminal Cases, *The Legal Intelligencer* (Apr. 15, 2013).

III. CHILDREN REGISTERED AS SEX OFFENDERS IN PENNSYLVANIA WILL BE TREATED DIFFERENTLY AND MORE HARSHLY BY OTHER STATES WHEN TRAVELING OUTSIDE THE COMMONWEALTH.

Registered juveniles face not only the onerous requirements imposed by Pennsylvania’s SORNA, but must navigate the complex, inconsistent and ever-changing requirements of the federal government and each of the 50 states—a task that is daunting for attorneys and nearly impossible for registrants. *See generally,* Catherine L. Carpenter & Amy Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 *Hastings L.J.* 1071, 1076-1100 (2012) (discussing the various schemes and parameters of state sex offender laws).

Any Pennsylvania juvenile offender who enters another state for any reason will likely be labeled a sex offender in that state, be put on the public website, and will be subject to all the restrictive laws of that state.³³ Yet, to determine the exact nature of a juvenile's obligations in each state, requires a complicated analysis of the federal requirements along with each states' laws. The juvenile must be able to find and understand (a) whether another state treats Pennsylvania juvenile sex offenders as sex offenders in that state; (b) what types of contact with the state will trigger registration requirements; (c) whether the registration information will be publicly disclosed; and (d) what residency, employment, or other restrictions are imposed.

Most states require a Pennsylvania registrant to register upon minimal contact with the state and will publicly disclose registry information, nullifying Pennsylvania's seemingly non-public juvenile registration. Many states also impose significant residency, work, and education restrictions. Overlying the entire scheme is the reality that the inevitable failure to correctly navigate these laws will lead to prosecution and significant time in jail.³⁴

A. Pennsylvania Juvenile Offenders Are Deemed Sex Offenders By Most Jurisdictions.

1. Federal Classification

All Pennsylvania juvenile offenders are also sex offenders under federal law. 42 U.S.C.S. § 16911(8). Federal law sets the minimum requirements for interstate registration. *See* 42 U.S.C.S. §

³³ SORNA unreasonably burdens constitutionally protected freedom of movement and the right to intrastate and interstate travel because it requires different, and sometimes more harsh or public registration and notification obligations on Pennsylvania youth who travel out of state. It also requires in-person registration for changes in temporary address, even within the Commonwealth. 42 Pa.C.S. § 9799.15. The U.S. Supreme Court has upheld a fundamental right to travel, stating that “[t]he nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.” *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969).

³⁴ *See, e.g.*, 730 Ill. Comp. Stat. 150/10(a); 730 Ill. Comp. Stat. 5/5-4.5-40 (providing for at least a 2 year mandatory prison sentence for a first offense and at least a 3 year mandatory prisons sentence for second or subsequent offenses); Mass. Gen. Laws. ch. 6, § 178H (providing for a mandatory 6 month minimum prison sentence for a first offense and a 5 year mandatory prison term for second or subsequent violations).

16901 *et seq.* Sex offenders as defined by federal law have a duty to register. 42 U.S.C.S. §§ 16911-16913. A juvenile registrant who travels to another state and changes his “name, residence, employment, or student status” must “appear in person in at least 1 jurisdiction involved” to update his registration information or face up to 10 years in federal prison. 42 U.S.C.S § 16913 (registration requirements); 18 U.S.C.S. § 2250 (establishing crime). Federal law defines reside as “the location of the individual’s home or other place where the individual habitually lives.” 42 U.S.C.S. § 16911(13). Juvenile offenders who travel, vacation, or even briefly stay in another state will not trigger federal obligations. The federal requirements, however, set a floor, not a ceiling, and comprise the extent of a registrant’s obligations in only the five states that expressly exempt or clearly exclude registration of out-of-state juveniles—Alaska, Arkansas, Connecticut, Maine, and New Mexico.³⁵ Every other state imposes its own more inclusive and restrictive regulations.

2. State Classifications

In forty-five states, Pennsylvania registrants are included as registerable sex offenders under most circumstances.³⁶ These states adopt different approaches to determine whether a juvenile

³⁵ Alaska, Ala. Stat. § 12.63.100, Arkansas, *see* A.G. Opinion No. 2009-198 (not requiring registration); Connecticut, Conn. Gen Stat. § 54-250 *et seq.*, Maine, Me. Rev. Stat. tit. 34A § 11202, New Mexico, N.M. Stat. § 29-11A-3.

³⁶ *See* Ala. Code §§ 15-20A-3; 15-20A-5; Ariz. Rev. Stat. §§ 13-3821(A)-(R); Cal. Pen. Code §§ 290-002 to 005 (appearing to require adjudicated juveniles in California to register but only those out of state registrants who work or go to school in California to register); Colo. Rev. Stat. § 16-22-108 (2012); Del.Code. 11 § 4120; Fl. Stat. § 985.4815(d)(2); Ga. Code § 42-1-12(e)(6)-(8); Haw. Rev. Stat. § 846E-2(b); Idaho Code § 18-8403; 730 Ill. Comp. Stat. 150/2 to 150/6; Ind. Code § 11-8-8-4.5(b)(1) (2013); Iowa Code § 692A.103; Kan. Stat. § 22-4902(a)(4) (2013); Ky. Rev. Stat. § 17.510(7); La. R.S. 15:542.1.3; Md. Code, Crim. Pro. §§ 11-704(a)-(b) & 11-704.1 (2012); Mass. Gen. Laws. ch. 6, § 178E; 6 (2012); Mich. Comp. Laws §§ 28.723., 28.724(6) (2013); Minn. Stat. § 243.166, subd. 1b(b)(3); Miss. Code §§ 45-33-25(1)(a)(2012); (b); Mo. Rev. Stat. §§ 211.425(1), 589.400 (because Pennsylvania juvenile offenders will likely be deemed adult offenders); Mont. Code § 46-23-502(9)(b); Neb. Rev. Stat. § 29-4003(1)(iv) (2013); Nev. Rev. Stat. §§ 179D.095, 179D.097 (2012); N.H. rev. Stat. §§ 651-B:1(V)(c), 651-B:2 (2013); N.J. Stat. §§ 2C:7-2(a)(2), 2C:7-2(b)(3) (2013); N.M. Stat. § 29-11A-3 (2013); N.D. Cent. Code, § 12.1-32-15(3)(b) (2012); Okl. Stat. tit. 10A § 2-8-102(4); Or. Rev. Stat. §§ 181.597(6), 181.609 (2013); 42 P.A.C.S. § 9799.13(8); R.I. Gen. Laws § 11-37.1-3(d) (2013); S.C. Code § 23-3-430 (2012); S.D. Codified Laws § 22-24B-2 (2012); Tenn. Code §§ 40-39-202 to 203; Tex. Code Crim. Proc. art. §§ 62.001, 62.002 (2013); Vt. Stat. tit. 13 § 5401(10)(D) (2013); Va. Code §§ 9.1-901, 9.1-902; Wash. Rev. Code § 9A.44.128(2), (10); W. Va. Code § 15-12-9(c) (2013); Wis. Stat. § 301.45(1g)(dj) (2012) (but only if still on supervision as a result of the offense); Wyo. Stat.

offender is a registerable sex offender. In twenty-six states, registration is required for Pennsylvania juveniles if they were required to register in the adjudicating state.³⁷ See, e.g., S.C. Code Ann. § 23-3-430(a) (“[a]ny person, regardless of age, residing in the State of South Carolina . . . who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere, or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred.”).

Twelve states require registration for children whose offenses in the adjudicating state are similar to registerable offenses under their own laws.³⁸ Pennsylvania juvenile registrants will almost universally be required to register under this scheme, but all children must engage in a complicated multi-step comparison of definitions and criminal codes to be certain of their obligation. See, e.g., Del. Code. 11 §§ 4120(e)(1), 4121; 765-80 (cross referencing each provision); 730 Ill. Comp. Stat. 150/2 (the same). Six other states and Pennsylvania adopt a catch-all approach of

§§ 7-19-301 to 302 (2013). Four more states, specifically New York, North Carolina, Ohio, and Utah do or appear to require registration, but the statutes or current state of the law make determining the scope the law ambiguous. See N.Y. Correct. Law § 168-a(2)(d) (not expressly clear as to whether a “conviction” as understood by New York law applies to out of state adjudications, but see *Matter of Daniel Kasckarow v. Bd. Of Exam*, 936 N.Y.S.2d 498 (N.Y. Sup. 2011); *People v. Kuey*, 83 N.Y.2d 278 (N.Y. App. 1994) (suggesting conviction includes adjudications)). In North Carolina any person must register if he has “a final conviction in another state of an offense that requires registration under the sex offender registration statutes of that state.” N.C. Gen. Stat. § 14-208.6(4)(b). The statute however does not define what is or is not a “final conviction.” Yet, North Carolina does register juvenile offenders. N.C. Gen. Stat. § 14-208.26. Given that North Carolina punishes failures to register as a felony, N.C. Gen. Stat. § 14-208.11, it would be unwise to fail to inform the State Police. See also Ohio Rev. Code § 2950.01; but see *In re. C.P.*, 967 N.E.2d 729 (Ohio 2012) (holding juvenile registration is punishment); Utah Code § 77-41-102.

³⁷ Ariz. Rev. Stat. §§ 13-3821(A)-(R); Cal. Pen. Code §. 290-002-005; Colo. Rev. Stat. § 16-22-108; Fl. Stat. § 985.4815(d)(2) (2013); Ga. Code § 42-1-12(e)(6)-(8) (2013); Haw. Rev. Stat. § 846E-2(b); Idaho Code § 18-8403 (2013); Ind. Code § 11-8-8-4.5(b)(1) (2013); Iowa Code § 692A.103 (2013); Kan. Stat. § 22-4902(a)(4) (2013); Ky. Rev. Stat. § 17.510(7); Mich. Comp. Laws §§ 28.723., 28.724(6); Minn. Stat. § 243.166, subd. 1b(b)(3); Mont. Code § 46-23-502(9)(b); Neb. Rev. Stat. § 29-4003(1)(iv) (2013); N.H. Rev. Stat. §§ 651-B:1(V)(c), 651-B:2 (2013); N.Y. Correct. Law § 168-a(2)(d); N.C. Gen. Stat. § 14-208.6(4)(b) & N.C. Gen. Stat. § 14-208.26; Okl. Stat. tit. 10A § 2-8-102(4); S.C. Code § 23-3-430 (2012); S.D. Codified Laws § 22-24B-2 (2012); Vt. Stat. tit. 13 § 5401(10)(D) (2013); Va. Code §§ 9.1-901, 9.1-902; Wash. Rev. Code § 9A.44.128(2), (10); W. Va. Code § 15-12-9(c) (2013); Wis. Stat. § 301.45(1g)(dj) (2012) (but only if still on supervision as a result of the offense).

³⁸ Ala. Code §§ 15-20A-3; 15-20A-5; Del. Code. 11 § 4120 et seq.; 730 Ill. Comp. Stat. 150/2 to 150/6; LA. R.S. 15:542.1.3; Mass. Gen. Laws. ch. 6, § 178E; 6 (2012); Mo. Rev. Stat. § 211.425(1); N.D. Cent. Code, § 12.1-32-15(3)(b) (2012); Ohio Rev. Code § 2950.01; R.I. Gen. Laws § 11-37.1-3(d) (2013)(requiring the offense to be similar but also on the registry of another state); Tex. Code Crim. Proc. art. §§ 62.001, 62.002 (2013); Utah Code § 77-41-102; Wyo. Stat. §§ 7-19-301 to 302 (2013).

registering juveniles who were placed on a registry in the state in which they were adjudicated or were adjudicated of offenses similar to those enumerated in 42 Pa.C.S. § 9799.12.³⁹ *See, e.g., Nev. Rev. Stat. Ann. § 179D.097(s)-(t)* (illustrating a catchall approach). This detailed analysis of each states' comparison is only the beginning of what a juvenile offender must do upon traveling. Once he determines if his registration in Pennsylvania requires registration in another state, the juvenile registrant must then determine what type of contact with the state demands registration.

B. Contacts with Other States Trigger Registration Requirements.

As under federal law, juvenile offenders will have to register upon residing, working, or becoming a student in another state. Each state sets forth different triggering contacts, some of which are so minimal that just stepping foot into the state can trigger registration. *See, e.g., Wyo. Stat. § 7-19-301* (including “hotels, motels, public or private housing, camping areas, parks, public buildings, streets, roads, highways, restaurants, libraries or other places . . .”). These contacts generally fall into three categories—establishing some form of residence, taking on work (both paid and volunteer), or becoming a student. *See infra* sections B(1) and (2).

Oklahoma, however, takes a unique approach. Although there is no residency, work, or schooling criteria for purposes of registration, the District Attorney may make an application to include the juvenile in the state registry. Okl. Stat. tit. 10A § 2-8-104. The application will include an assessment and criteria for a court to review to determine if the juvenile warrants inclusion. *Id.* While in some respects this approach is more protective of juveniles, this statute places nearly unfettered discretion in the hands of the local district attorney to determine if a juvenile offender shall register. A child registrant coming in from out of state cannot know

³⁹ Md. Code , Crim. Pro. §§ 11-704(a)-(b)& 11-704.1 (2012); Miss. Code §§ 45-33-25(1)(a)(2012); Nev. Rev. Stat. §§ 179D.095, 179D.097 (2012); N.J. Stat. §§ 2C:7-2(a)(2), 2C:7-2(b)(3) (2013); Or. Rev. Stat. §§ 181.597(6), 181.609 (2013); Tenn. Code §§ 40-39-202 to 203.

whether he will be subject to registration. The only sure method for avoiding Oklahoma registration is to not enter the state. The differences in each state's minimal contacts provisions will require a juvenile to assess each and every state's triggering contacts to conclusively determine if he has to register.

1. **Residence**

Pennsylvania requires a sex offender to register upon establishing a "residence within the Commonwealth" 42 Pa.C.S. § 9799.13(8). Residence is defined as "a location where an individual is domiciled or intends to be domiciled for 30 consecutive days or more during a calendar year." 42 Pa.C.S. § 9799.12. This definition is generally much more forgiving than those of other states. In Alabama, a juvenile sex offender must register within 3 days of establishing a "residence." Ala. Code § 15-20A-32(a). Residence is defined as

Each fixed residence or other place where a person resides, sleeps, or habitually lives or will reside, sleep, or habitually live. If a person does not reside, sleep, or habitually live in a fixed residence, residence means a description of the locations where the person is stationed regularly, day or night, including any mobile or transitory living quarters or locations that have no specific mailing or street address. Residence shall be construed to refer to the places where a person resides, sleeps, habitually lives, or is stationed with regularity, regardless of whether the person declares or characterizes such place as a residence.

Ala. Code § 15-20A-4(20).

This sort of sweeping yet ambiguous definition is not uncommon. *See, e.g.,* Ariz. Rev. Stat. § 13-3821(R) ("residence" means the person's dwelling place, whether permanent or temporary"); Colo. Rev. Stat. § 16-22-102(5.7) ("a place or dwelling that is used, intended to be used, or usually used for habitation by a person" or a "temporary shelter used for 14 consecutive days or more"); La. Rev. Stat. 15:542.1.3 ("[r]esidence" means a dwelling where an offender regularly resides, regardless of the number of days or nights spent there" and includes places where a homeless offender habitually stays). In Delaware, the court stepped in to require some

level of permanence to the statutory definition there. *Andrews v. State*, 34 A.3d 1061 (Del. 2011). Nevada has adopted an unclear circular definition: “[r]esides’ means the place where an offender resides” Nev. Rev. Stat. § 179D.090.

Many states require registration for even very short stays in the state.⁴⁰ Florida, for example, requires registration of a permanent residence, which means any “place where the person abides, lodges, or resides for 5 or more consecutive days.” Fla. Stat. §§ 775.21(2)(k)-(l); 985.481 to 985.4815. It is unclear whether one can have more than one permanent residence. Fla. Stat. § 775.21(2)(k)-(m). Indiana considers it sufficient if the “offender spends or intends to spend at least seven (7) days (including part of a day) in Indiana during a one hundred eighty (180) day period.” Ind. Code. § 11-8-8-7(a)(1). In Montana, the law states “[r]esidence’ means the location at which a person regularly resides, regardless of the number of days or nights spent at that location, that can be located by a street address, including a house, apartment building, motel, hotel, or recreational or other vehicle.” Mont. Code § 46-23-502(7)(a). Idaho simply refers to a residence as a person’s “present place of abode.” Idaho Code § 18-8303(15).

Kentucky’s statute mandates nearly universal registration. It defines residence as “any place where a person sleeps.” Ky. Rev. Stat. § 17.500(7). Such sweeping language explicitly

⁴⁰ See also, e.g., Del.Code. 11 § 4120(a) (definitions); Colo. Rev. Stat. § 16-22-102 (14 days or longer); Ga. Code. § 42-1-12; Haw. Rev. Stat. § 846-2 (not defining residence but discussing addresses in terms of length of stay); 730 Ill. Comp. Stat. 150/1 et seq.; Iowa Code § 692A-101 (“Residence’ shall be construed to refer to the places where a sex offender resides, sleeps, habitually lives, or is stationed with regularity, regardless of whether the offender declares or characterizes such place as the residence of the offender.”); Kan. Stat. § 22-4902(j) (30 days); Ky. Rev. Stat. § 17.500(7) (any place where a person sleeps); Mass. Laws. G.L. ch. 6 § 178C; Mich. Comp. Laws. § 28.722; Minn. Stat. § 243.166; Miss. Code § 45-33-23 (7 or more consecutive days); Mo. Rev. Stat. §§ 211.425(1); 589.400 (at least 7 days in a 12 month period); Mont. Code § 46-23-504(10 consecutive days or 30 aggregate days in a year); Neb. Rev. Stat. §§ 29-4001.1, 29-4004 (at least seven days); N.H. Rev. Stat. § 651-B.4 (statute otherwise does not define the term); (“Resides” means the place where an offender resides); Nev. Rev. Stat. § 179D.120 (any employment, pay or volunteer for any amount of time); N.J. Stat. §§ 2C:7-2(a)(2); N.Y. Correct. Law § 168-k (obligation upon moving into the state and requiring significant actions); N.C. Gen. Stat. § 14-208.5 et seq. (multiple requirements and unclear application); N.D. Cent. Code, § 12.1-32-15 (30 or more days); R.I. Gen. Laws § 11-37.1-2 to -3; S.C. Code § 23-3-430 (30 or more days in calendar year); S.D. Codified Laws § 22-24B-2 (specifying domicile and temporary domicile but not defining those terms); Tenn. Code §§ 40-39-202(17) (establishing a physical presence within the state).

means that spending a night in a hotel, getting stuck at the airport, or even parking a car while driving through the state will set off the chain of local registration. Registration may simply depend on which state one falls asleep in.

As a result of these liberal definitions of “residence,” “when a Pennsylvania juvenile registrant travels to another state, for instance during a family vacation, or relocates with his family to another state, perhaps as a result of a parent’s job demands, the juvenile will be subject to the other state’s” registration requirements. Logan, Exhibit K at ¶ 22. Juveniles, who may have little control over their own movements, will not likely understand these counter-intuitive yet highly demanding regulations.

2. Work or School

“Residency” is not the only type of contact that requires registration. Most states include work and school requirements as well.⁴¹ Michigan’s registration statute is typical of requirements nationwide. “Designated offenders “shall register with the local law enforcement agency, sheriff’s department, or the department immediately after becoming domiciled or temporarily residing, working, or being a student in this state.” Mich. Comp. Laws. § 28.724 sec. 4(6). However, like the term residence, each state defines work, employment or schooling differently. Michigan, for instance, defines work in terms of employment. It broadly provides

⁴¹ See, e.g., Ala. Code § 15-20A-28 (unclear if juveniles must register upon becoming employed as it is not discussed by the statute); Ala. Code § 15-20A-4(5) (to include any pay or volunteer for any amount of time); Del.Code. 11 § 4120(a) (definitions); 730 Ill. Comp. Stat. 150/1 et seq.; Iowa Code § 692A-101; Minn. Stat. § 243.166 subd. 1a(k) (“work” is any employment or volunteer service for 14 or more days); Miss. Code §§ 45-33-23 to 25 (specifying employment but not defining it); Mo. Rev. Stat. §§ 211.425(1); 589.400 (juvenile offenders are not required to register upon working or starting school, but because pa registrants will likely be adult offenders, works or attends school for 7 or more days in a calendar year); Mont. Code § 46-23-504(does not include work or schooling); Neb. Rev. Stat. §§ 29-4001.1 to 29-4004 (requiring registration upon “entering” state and taking up work or school but not defining those terms); N.H. Rev. Stat. §§ 651-B:1, B:4 (requiring registration for work and schooling, but not defining the terms); Nev. Rev. Stat. § 179D.120 (any employment, pay or volunteer for any amount of time); Nev. Rev. Stat. § 179D.110 (student); N.Y. Correct. Law §168-a (definitions); N.C. Gen. Stat. § 14-208.6 (14 consecutive days or enrolment); N.C. Gen. Stat. § 14-208.6 (definitions); N.D. Cent. Code, § 12.1-32-15(5)-(7) (stating but not defining); R.I. Gen. Laws § 11-37.1-2 to -3 (applying federal definitions); Tenn. Code § 40-39-202 (definitions).

that: “[e]mployee’ means an individual who is self-employed or works for any other entity as a full-time or part-time employee, contractual provider, or volunteer, regardless of whether he or she is financially compensated.” Mich. Comp. Laws. § 28.722 sec.2(e). Working for Habitat for Humanity, even for a day, would require registration under Michigan law.

New Jersey’s law poses significant hurdles to a juvenile offender living close to its border and trying to work or go to school.

A person who in another jurisdiction is required to register as a sex offender and (a) is enrolled on a full-time or part-time basis in any public or private educational institution in this State, including any secondary school, trade or professional institution, institution of higher education or other post-secondary school, or (b) is employed or carries on a vocation in this State, on either a full-time or a part-time basis, with or without compensation, for more than 14 consecutive days or for an aggregate period exceeding 30 days in a calendar year, shall register.

N.J. Stat. § 2C:7-2(a)(2). The terms are not further defined. However, schooling would appear to cover on-line courses if “enrolled” as a student even if no physical contact with the state ever occurred. A person who wanted to engage in contracting or delivery work would not be able to go to New Jersey without registering, substantially limiting job opportunities.

South Dakota similarly defines student as “any person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade, or professional institution, or institution of higher education.” S.D. Codified Laws § 22-24B-4. No exception is made for on-line courses.

Colorado defines “temporary resident” to include students and workers. Colo. Rev. Stat. § 16-22-102(8). Although not intuitive, temporary residence includes those who are:

(a) Employed in this state on a full-time or part-time basis, with or without compensation, for more than fourteen consecutive business days or for an aggregate period of more than thirty days in any calendar year; or (b) Enrolled in any type of educational institution in this state on a full-time or part-time basis; or (c) Present in Colorado for more than fourteen consecutive business days or

for an aggregate period of more than thirty days in a calendar year for any purpose, including but not limited to vacation, travel, or retirement.

Colo. Rev. Stat. § 16-22-102(8). This definition also expressly includes vacationing in Colorado.

Juvenile offenders will, if they understand the risks and are able, limit traveling so as to avoid trying to decipher these laws and to avoid the risk of failing to register. Over a lifetime, however – and Pennsylvania’s juvenile registrants must deal with these demands and risks for life – children will grow up and will travel to other states where they will be forced to register.

C. Juvenile Offender Information Will Be Publicly Disclosed Under Other State Statutory Schemes.

Beyond navigating the above regulatory hurdles, Pennsylvania juvenile registrants are subject to additional consequences under other state schemes. Pennsylvania seemingly protects juvenile registrants from having their information disclosed publicly. The provisions governing this state’s public internet website do not include “juvenile offenders.” *See* 42 Pa.C.S. § 9799.28. However, most states do include juvenile offenders in their public notification schemes when registration is required by that state. Moreover, once public, that information is linked to the Dru Sjodin National Sex Offender Website and numerous private sex offender notification websites. Logan, Exhibit K at ¶ 23. Essentially, once the information becomes publicly available, it will remain available. *Id.* at ¶ 13.

1. States Requiring Registration Will Notify the Public.

At least twenty-eight states include juvenile offenders on a public registry with little or no restrictions.⁴² These states often include sweeping amounts of information, including internet

⁴² *See* Ala. Code § 15-20A-08; Ariz. Rev. Stat. § 13-3827; Cal. Pen. Code §§ 290-045 to 046 (placing out of state working and student registrants on the website); Colo. Rev. Stat. § 16-22-112 (once over the age of 18); Del. Code. 11 § 4121(e); Fl. Stat. § 943.043; (2013); Ga. Code § 42-1-12(i) (2012); Haw. Rev. Stat. § 846E-3; 730 Ill. Comp. Stat. 152/115 and 152/21 (2013); Ind. Code § 11-8-8-7(j) (2013); Iowa Code § 692A.121 (2013); Kan. Stat. § 22-4909; Ky. Rev. Stat. § 17.580(3); La. R.S. 15:542.1.5; Miss. Code § 45-33-36; (b); Mo. Rev. Stat. §§ 211.425(1)–(3) (because PA juvenile offenders will likely be deemed to qualify as adult/serious offenders); Mont. Code § 46-23-508; Neb. Rev. Stat. § 29-4009 (2013); Nev. Rev. Stat. § 179D.475 (2012); N.M. Stat. § 29-11A-3 (2013); N.Y.

identifiers. Eight more states publicly disclose information about juvenile registrants, but limit disclosure to certain offenders or groups.⁴³ Only five states which register juvenile offenders exempt them from public notification.⁴⁴

The states that disclose information do so in a variety of ways. Alabama exemplifies the standard practice where all specified registration information is made publicly available on a state maintained website. Ala. Code § 15-20A-08. Arizona not only provides a basic public website “for each convicted or adjudicated guilty except insane sex offender in this state who is required to register . . . ,” Ariz. Rev. Stat. § 13-3827(b), but an additional one for the internet identifiers of offenders who are classified at least a level II risk (which can be found automatically if the chief of police does not have enough information, *see* § 13-3825).

In addition to a website, Florida statutes require that its department of law enforcement set up a phone alert system and may publicly disclose all information that is not otherwise deemed confidential. Fl. Stat. § 943.043. Nothing about a juvenile registrant’s information is deemed confidential. Accordingly, a juvenile offender who spends five days on vacation in Florida has to register and would immediately be subject to public scrutiny. *See* Fl. Stat. § 775.21.

Correct. Law §168-p (special telephone database); N.D. Cent. Code, § 12.1-32-15(15) (2012); Or. Rev. Stat. § 181.592 (2012); S.C. Code § 23-3-490 (2012); S.D. Codified Laws §§ 22-24B-15, -21 (2012); Tex. Code Crim. Proc. art. § 62.005 (2013); Vt. Stat. tit. 13 § 5411(a) (2013); Va. Code § 9.1-913; Wash. Rev. Code § 4.24.550 (2012); W. Va. Code § 15-12-5 (2013). Utah and Ohio disclosure is not clear based upon current legal status.

⁴³ Idaho Code § 18-8404, 8410 (2013) (separate juvenile registry which may be disclosed or transferred to adult registry upon which disclosure occurs); Mass. Gen. Laws. ch. 6, § 178L (2012) (only those considered class 2 or 3 offenders); Minn. Stat. § 243.166, subd. 7a (if the juvenile is out of compliance or is now 16 or older); N.J. Stat. §§ 2C:7-13(e) (2013) (if offenders are deemed at least a moderate risk level); N.C. Gen. Stat. § 14-208.29 (available to school boards); Okl. Stat. tit. 57 § 581 et seq. (2012) (listing adult offenses? where juvenile registrants may be transferred to the adult registry); R.I. Gen. Laws § 11-37.1-13 (2013) (if upon assessment the offender’s risk level is moderate to high); Wyo. Stat. §§ 7-19-303(c) (2012) (serious offenses).

⁴⁴ Md. Code , Crim. Pro. § 11-704.1 (2012); Mich. Comp. Laws § 28.728(4)(b); N.H. rev. Stat. § 651-B:7; Tenn. Code §§ 40-39-206, 207(j) (unless second or subsequent offense); Wisconsin does not appear to require registration upon examination of any statute.

Many states also actively notify the community of juvenile offenders. “‘Active’ community notification might entail making juvenile registrant information available to schools and distributing it to individuals and community organizations.” Logan, Exhibit K at ¶ 23. For example, in Georgia, in addition to maintaining a public website, local Sheriffs “may post the list of sexual offenders in any public building in addition to those locations enumerated in subsection (h) of this Code section.” Ga. Code Ann. § 42-1-12(j)(2). Further, “[o]n at least an annual basis, the Department of Education shall obtain from the Georgia Bureau of Investigation a complete list of the names and addresses of all registered sexual offenders and shall provide access to such information, accompanied by a hold harmless provision, to each school in this state.” Ga. Code Ann. § 42-1-12(l)(1). Under the scheme, if a juvenile offender stays in Georgia for 10 consecutive days, all of the information which Pennsylvania keeps private will be uploaded to a public website, posted on public buildings, and sent to every school in the state.

Nevada takes an exceptionally active role in notifying the public. With respect to any registrants, the local police

Shall immediately provide all updated information obtained from the Central Repository . . . to: (1) Each school, religious organization, youth organization and public housing authority in which the offender or sex offender resides or is a student or worker; (2) Each agency which provides child welfare services as defined in NRS 432B.030; (3) Volunteer organizations in which contact with children or other vulnerable persons might occur;

Nev. Rev. Stat. Ann. § 179D.475(2)(a). Nevada gives the state registry significant discretion in disclosing the information to hundreds of entities and potentially thousands of people. *See also* W. Va. Code § 15-12-5 (2013) (including dissemination to religious and volunteer organizations).

Nevada is not alone in giving wide discretion to state officials to disclose registrants’ information. Virginia, for example, gives its State Police the ability to publish not only age,

name, photographs and offenses, but “such other information as the State Police may from time to time determine is necessary to preserve public safety” Va. Code Ann. § 9.1-913. These are not unusual provisions. *See supra*.

A few states publicly disclose juvenile offenders in the same manner as adult offenders with singular exceptions that appear meant only for states that choose to register juveniles for statutory sexual assaults or misdemeanors, neither of which apply to juvenile offenders. Iowa, for example, discloses information for all offenders except juveniles who committed a statutory sex offense. *See* Iowa Code § 692A.121(2)(b)(2)(a). Vermont also places limitations on public disclosure, but the limitations will never exempt any Pennsylvania juvenile offender. VT. Stat. Ann. tit. 13 § 5411a(a)(7) (providing disclose if the registerable offense “in the other jurisdiction was: (i) a felony; or (ii) a misdemeanor punishable by more than six months of imprisonment.”).

Even in states with limited disclosure, it is still highly consequential. New Jersey’s policy offers a good example. When a juvenile offender moves to or resides in New Jersey, he must be assessed by a county prosecutor to determine his risk severity. *See Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws*, New Jersey, Rev. March 2000, available at <http://www.state.nj.us/lps/dcj/megan1.pdf>; N.J. Stat. §§ 2C:7-7 to 10. If assessed to be at least a moderate risk for reoffending, even if the individual was not found to be a sexually violent delinquent child in Pennsylvania, they are then added to the public website. N.J. Stat. § 2C:7-13(e).

The Internet is also not the only form of notification in New Jersey. The Attorney General has provided for community notification as follows:

Where a registrant’s risk of re-offense is moderate or high, notification is to be provided to organizations in the community deemed “likely to encounter” a

registrant. The Prosecutor's Office shall maintain a list of community organizations which are eligible to receive notification. Organizations to be included on the notification list are to be limited to those groups, agencies and organizations that own or operate an establishment where children gather under their care, or where the organization cares for women. All public, private and parochial educational institutions up through grade 12, licensed day care centers and summer camps will be automatically included on the notification list and do not need to register.

New Jersey Attorney General Regulations at 10. These regulations further demonstrate that literally thousands of people will learn of an individual's juvenile offender status because of the simple act of traveling or moving out of state.

2. Information Will Be Publicly Available and Disclosed on the Federal Internet Website and Federal Registry.

The federal government maintains a searchable website independent of, but reliant on each state's website. *See National Sex Offender Public Website, available at* <http://www.nsopw.gov> (last visited April 15, 2013). Called the Dru Sjodin National Sex Offender Public Website, *see* 42 U.S.C.S. § 16920, the "Website shall include relevant information for each sex offender and other person listed on a jurisdiction's Internet site." § 16920(b). The website enables individuals to conduct a search for any offender nationwide. All 50 states, the District of Columbia, numerous territories and Indian tribes are included. *See* <http://www.nsopw.gov/en-us/Registry/Allregistries> (listing registries included) (last visited April 15, 2013); Logan, Exhibit K at ¶ 23. The website conducts searches in real time, *see*, National Sex Offender Website FAQs, *at* <http://www.nsopw.gov/en-us/Home/FAQ#answer-06>, (last visited April 15, 2013). As long as a juvenile offender is listed on any one jurisdiction's website, he will be nationally searchable.

3. Private Websites Will Retrieve Any Data Disclosed.

Many private websites also mine state registries in efforts to disseminate information about and track registered sex offenders. One website, Family Watchdog, uploads public registries every 24 hours and then facilitates offender searches based on its own criteria. *See* <http://www.familywatchdog.us/faq.asp> (last visited April 15, 2013); Logan, Exhibit K at ¶ 25. The website states that it “can proactively notify you when a registered sexual predator moves within five miles of your given address. Family Watchdog also tracks offenders and sends notifications if the specified offender has had a change.” *Id.* If a juvenile offender has to register in a different state, websites such as this will notify the public, even if a state does not provide for active notification.

There are several other sites that provide similar services. *See, e.g.,* <http://www.homefacts.com/offenders.html>. One website called Felon Spy specifically states on its homepage: “Are you in danger? It’s your right to know.” <http://www.felonspy.com/> (last visited, April 15, 2013). Another site, Map Sex Offenders, uses its own search system to create a zoomable map which pinpoints locations of sex offenders in 45 states. *See* <http://mapsexoffenders.com/aboutus.php>. The stated purpose of the site is to make national sex offender searches easier and less time consuming. *Id.* Of course, any juvenile offender listed on a state site will be uploaded by these sites and then searchable by the public. These sites are also under no obligation to remove information which may be inaccurate or taken down by the state.

Further, social networking websites may contribute to public notification even when an offender does not leave the state. Pennsylvania maintains a registry separate from the website which contains all of the information registered by a juvenile offender. 42 Pa.C.S. § 9799.16. That registry shares all information with the National Sex Offender Registry, § 9799.16, and is

maintained by the U.S. Attorney General. 42 U.S.C.S. § 16919. Information on that registry is not made available on the Internet.

In 2008, however, Congress passed the Keeping the Internet Devoid of Sexual Predators Act. 110 P.L. 400; 122 Stat. 4224. That law set up a system “that permits social networking websites to compare the information contained in the National Sex Offender Registry with the Internet identifiers of users of the social networking websites, and view only those Internet identifiers that match.” 42 U.S.C.S. § 16915b(a)(1). Social networking sites then may use the system to determine whether registered sexual offenders are using their sites. § 16915b. While the law prohibits public disclosure, social networking sites are not penalized for disclosing the information except that they may lose the privilege of using the site. § 16915b(c)(2).

D. SORNA’s Other Out-of-State Effects.

Once ensnared in another state’s laws, juveniles will face numerous residency and employment restrictions.⁴⁵ Often, they will be unable to live in any urban center. Oklahoma, for instance, prohibits either temporarily or permanently residing

within a two-thousand-foot radius of any public or private school site, educational institution, property or campsite used by an organization whose primary purpose is working with children, a playground or park that is established, operated or supported in whole or in part by city, county, state, federal or tribal government, or licensed child care center as defined by the Department of Human Services.

⁴⁵ See, e.g., Ga. Code § 42-1-15 (2011) (prohibiting sex offenders from living within 1000 feet of schools, daycare facilities, etc.); Fl. Stat. § 775.215 (2012) (prohibiting residing within 1000 feet of school, daycare, or park); Ky. Rev. Stat. § 17.545 (2012) (barring sex offenders from residing within 1000 feet of any preschool, primary or secondary school public playground or licensed child day-care facility); See also, Ohio Rev. Code § 2950.034 (West 2011) (100 feet of school) invalidated by *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011) (finding section of the law unconstitutional); Okl. Stat. tit. 57 § 590 (prohibiting sex offenders from living with 2000 feet of a playground, park, school or camp); Utah Code § 77-27-21.7 (2012) (prohibiting sex offenders from being in the area, on foot or in or on any motorized or nonmotorized vehicle, of any day-care facility, public park, or primary or secondary school). See also, *Kennedy v. Louisiana*, 554 U.S. 407, 457 n.5 (2008) (Alito, J., dissenting) (collecting statutes).

Okl. Stat. tit. 57 § 590. Any person who intentionally moves into a prohibited area faces a mandatory minimum of one year in jail. § 590(C). California similarly bans “any person for whom registration is required pursuant to Section 290 [sex offender code] to reside within 2000 feet of any public or private school, or park where children regularly gather.” Cal . Penal Code § 3003.5(b).

“Twenty-three states have also implemented electronic monitoring systems, utilizing global positioning software (GPS), to provide information to probation and parole officials regarding the location of sex offenders.” Emily A. White, *Prosecutions under the Adam Walsh Act: Is America Keeping its Promise?*, 65 Wash. & Lee L. Rev. 1783, 1790 (2008). These monitoring restrictions are not limited to those offenders serving probation or parole, but in some cases may apply for life. *See, e.g.*, Sarah Shekhter, *Note, Every Step You Take, They’ll Be Watching You: The Legal and Practical Implications of Lifetime GPS Monitoring of Sex Offenders*, 38 Hastings Const. L.Q. 1085, 1085-92 (2011).

Even when states do not impose residency restrictions, many municipalities will. *See, e.g.*, *Wilson v. Flaherty*, 689 F.3d 332 (4th Cir. 2012) (Wynn, J., dissenting) (compiling ordinances and cases) (“Commerce, Tex., Code of Ordinances ch. 66, art. IV, § 66-102(2) (2007)[;]...Killeen, Tex., Code of Ordinances ch. 16, art. VIII, § 16-141 (2007)[;] . . . Stephenville, Tex., Code of Ordinances tit. XIII, § 130.82 (2007) . . .); *see also, e.g.*, *Doe v. Miller*, 298 F. Supp. 2d 844, 851 (S.D. Iowa 2004) (discussing Des Moines ordinance). Many communities with ordinances now even erect “tiny parks” to prevent registered offenders from living in the towns. *See* Ian Lovett, *Neighborhoods Seek to Banish Sex Offenders by Building Tiny Parks*, N.Y. Times (March 9, 2013).

PROPOSED CONCLUSIONS OF LAW

IV. **SORNA IMPOSES ADDITIONAL PUNISHMENT IN VIOLATION OF THE *EX POST FACTO* CLAUSES OF THE PENNSYLVANIA AND UNITED STATES CONSTITUTIONS.**

Pennsylvania's SORNA retroactively imposes mandatory lifetime registration on children as young as fourteen who were adjudicated delinquent of certain sexual offenses and are still under the supervision of the juvenile court. 42 Pa.C.S. § 9799.13(8)-(8.1). SORNA controls, monitors and punishes children who have committed sexual offenses regardless of the child's dangerousness, capacity to reform, or reduced level of maturity and culpability. Registration, when applied to children, can no longer be couched in the legal fiction of remedial or administrative aims. The mandatory nature of its imposition, the nearly insurmountable registration obligations, the ever-increasing threat of incarceration, and the accompanying loss of jobs, housing, schooling and reputation all lead to the singular conclusion that this law is punitive. This Court should recognize what a growing number of states now hold, that sex offender registration is punishment and cannot apply retroactively, especially to children.

“Critical to relief under the *Ex Post Facto Clause* is not an individual's right to less punishment, but the lack of fair notice and governmental restraint when the legislature increases punishment beyond what was prescribed when the crime was consummated.” *Weaver v. Graham*, 450 U.S. 24, 30 (1981). “The Pennsylvania and United States Constitutions afford separate bases for proscribing ex post facto laws.” *Lehman v. Pennsylvania State Police*, 839 A.2d 265, 270 n.4 (Pa. 2003); U.S. Const. Art I, § 10; Pa. Const. Art. I, § 17. Although our Supreme Court has traditionally applied the same test for determining whether a law violates both the state and federal *Ex Post Facto* Clauses, *see, e.g., Commonwealth v. Gaffney*, 733 A.2d 616, 622 (Pa. 1999), Pennsylvania's Constitution affords greater protection than federal law

where compelling reasons exist. *Interest of B.C.*, 453 Pa.Super. 294, 683 A.2d 919, 927 (1996) (citing *Commonwealth v. Gray*, 509 Pa. 476, 484-85, 503 A.2d 921, 926 (1985)). Our high court has not bound itself indefinitely to federal law, but instead ensured that Pennsylvanians may receive added protection when the circumstances require. *Id.* See also *Com. v. Edmunds*, 526 Pa. 374, 390, 586 A.2d 887, 895 (Pa. 1991). Federal *ex post facto* analysis does not bar or limit an independent analysis of Pennsylvania's *ex post facto* prohibition, but rather, an *ex post facto* claim must be analyzed under both Constitutions because the interests may not truly be identical. *Edmunds* at 389; *Gaffney* at 622. SORNA's effect on juveniles is so pervasive and so damaging that this Court must find—under both Constitutions—that the law is overwhelmingly punitive.

Pennsylvania courts assess both state and federal *ex post facto* claims under the two level inquiry established by the United States Supreme Court in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 169 (1963). *Commonwealth v. Williams*, 832 A.2d 962, 971 (Pa. 2003). The inquiry asks “whether the legislature’s intent was to impose punishment, and, if not, whether the statutory scheme is nonetheless so punitive either in purpose or effect as to negate the legislature’s non-punitive intent.” *Commonwealth v. Lee*, 935 A.2d 865, 873 (Pa. 2007) (quoting *Williams*, 832 A.2d at 971) (additional citations omitted); see also *Lehman*, 839 A.2d at 270-71 (citing *Smith v. Doe*, 538 U.S. 84 (2003)).

If the intent is found to be civil and non-punitive, the inquiry continues, to determine whether the statute is “so punitive either in purpose or effect as to negate [Congress’] intention to deem it civil.” *Smith v. Doe*, at 1147 (internal quotes omitted). This second prong enlists seven factors the Supreme Court has found to be “useful guideposts” for determining whether a statute unconstitutionally imposes retroactive punishment. *Id.*, at 1149; see *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). The “*Mendoza-Martinez*” factors are: 1) whether the sanction involves an affirmative disability or restraint; 2) whether it has historically been regarded as a punishment; 3) whether it comes into play only on a finding of scienter; 4) whether its operation will promote the traditional aims of punishment—retribution and deterrence; 5) whether the behavior to which it applies is already

a crime; 6) whether the alternative purpose to which it may rationally be connected is assignable for it; and 7) whether it appears excessive in relation to the alternative purpose assigned. *Id.*, at 168–69, 83 S.Ct. 554.

Lehman, 839 A.2d at 271.

In reviewing the seven *Mendoza-Martinez* factors, “clearest proof” is required to establish that a law is punitive in effect. *Lee*, 935 A.2d at 876-77 (internal quotations and citations omitted). The “clearest proof” standard mandates that the “factors must weigh heavily in favor of a finding of punitive purposes or effect . . . to negate the General Assembly’s intention that the act be deemed civil and remedial.” *Id.* (quotation omitted). However, this standard does not require that all factors must weigh in favor of punishment. In fact, the Pennsylvania Supreme Court has observed that the seventh factor alone might be dispositive—that a statute may be punitive when it is “so excessive relative to [its] remedial objective.” *Lee* at 876 n.24.

In *Juvenile Male*, the United States Supreme Court held that mootness prevented the Court from determining whether the retroactive application of federal SORNA registration to a juvenile violated the *Ex Post Facto* Clause. *U.S. v. Juvenile Male*, 131 S.Ct. 2860, 2864-5. At the same time, the high court noted that “[t]he statutory duty to register . . . might provide grounds for a pre-enforcement challenge to SORNA’s registration requirements.” *Id.* The Pennsylvania Supreme Court has applied an *ex post facto* analysis to prior versions and particular portions of Megan’s Law previously applicable only to adults. *See Lee*, 935 A.2d 865 (whether lifetime registration provisions for “sexually violent predators” in Megan’s Law II was punishment); *Williams*, 832 A.2d 962 (whether “sexually violent predator” provisions of Megan’s Law II was punishment); *Gaffney*, 733 A.2d 616 (whether Megan’s Law I was punitive); *see also*, *Commonwealth v. Fleming*, 801 A.2d 1234 (Pa. Super. 2002) (whether Megan’s Law II was

punitive). Because Pennsylvania has never before required children adjudicated delinquent in this Commonwealth to register as sex offenders, no court has yet considered whether lifetime sex offender registration of children is excessive or punitive.

SORNA is not Megan’s Law. SORNA’s requirements and provisions are severe, intimately connected to the criminal process, and apply automatically.⁴⁶ For both adults and juveniles, sex offender registration is often the single most important factor in the decision to plead guilty or take a case to trial. SORNA imposes increased in-person reporting requirements, inevitable public disclosure and community notification, innumerable obligations, and many other previously unheard of requirements. The punitive effects are significantly amplified when applied to children—children who are neither mature nor self-reliant; who are amenable to rehabilitation and unlikely to recidivate; and whose lifetime reporting requirements will last years, if not decades longer than the same penalty imposed upon adults.

A. SORNA’s Remedial Legislative Intent Is Inconsistent With Its Punitive Nature.

The General Assembly passed SORNA “to bring the Commonwealth into substantial compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248, 120 Stat. 597).” 42 Pa.C.S. § 9799.10(1). The General Assembly’s stated purpose is reflected in its legislative findings and declaration of policy.

This Commonwealth’s laws regarding registration of sexual offenders need to be strengthened. The Adam Walsh Child Protection and Safety Act of 2006 provides

⁴⁶ Courts now recognize that even some legislation facially designated “civil” is “so severe,” so “intimately related to the criminal process,” and so “nearly an automatic result’ of some convictions” that it demands some of the constitutional protections afforded within the criminal sphere. *Chaldez v. United States*, 133 S.Ct. 1103, 1110 (2013) (quoting *Padilla v. Kentucky*, 130 S.Ct. 1473, 1481-82 (2010)). The United States Supreme Court “breached” the “chink-free wall between direct and collateral consequences: Notwithstanding the then-dominant view” that collateral consequences of a conviction do not give rise to rights in the criminal setting. *Id.*; see also *People v. Fonville*, 804 N.W. 2d 878, 894-5 (Mich. Ct. App. 2011) (holding that sex offender registration requires the effective assistance of counsel); *United States v. Riley*, 72 M.J. 115, 121 (C.A.A.F. 2013) (holding that “in the context of a guilty plea inquiry, sex offender registration consequences can no longer be deemed a collateral consequence of the plea”).

a mechanism for the Commonwealth to increase its regulation of sexual offenders in a manner which is nonpunitive but offers an increased measure of protection to the citizens of this Commonwealth.

...

(1) It is the intention of the General Assembly to substantially comply with the Adam Walsh Child Protection and Safety Act of 2006 and to further protect the safety of and general welfare of the citizens of this Commonwealth by providing for increased regulation of sexual offenders, specifically as that regulation relates to registration of sexual offenders and community notification about sexual offenders.

(2) It is the policy of the Commonwealth to require the exchange of relevant information about sexual offenders among public agencies and officials and to authorize the release of necessary and relevant information about sexual offenders to members of the general public as a means of assuring public protection and shall not be construed as punitive.

42 Pa.C.S. §§ 9799.11(a)(2); (b)(1).

SORNA's purposes are similar, but not identical to the purposes of earlier versions of Megan's Law. The Pennsylvania Supreme Court stated the purpose of Megan's Law II was to "identify potential recidivists and avoid recidivism by providing awareness of particular risks to members of the public and treatment of offenders" and to "promote public safety through a civil, regulatory scheme." *Williams*, 832 A.2d at 971-72 (quoting *Gaffney*). Earlier versions of Megan's Law, however, were significantly limited in scope and often duration, and were specifically designed to target "sexually violent predators." The last factor is particularly significant, as the status of "sexually violent predator" requires a specific court finding of dangerousness. 42 Pa.C.S. § 9791(a)(2); *see also* 42 Pa.C.S. § 9791(a) (referencing "sexually violent predators" numerous times). SORNA completely eviscerates all of these limits.

Although the General Assembly explicitly declared its intent, it simultaneously significantly expanded every aspect of sexual offender laws in Pennsylvania. This attempt to

push the boundary between punitive and remedial consequences fails under common sense, current practice, and under the *Mendoza-Martinez* test.

B. SORNA is Punitive in Effect Under the Seven *Mendoza-Martinez* Factors.

1. SORNA Imposes an Affirmative Disability or Restraint.

To determine whether a retroactive law imposes an affirmative disability, a court must “inquire how the effects of the Act are felt by those subject to it.” *Smith*, 538 U.S. at 99-100. Specifically, a court must determine whether the disability or restraint is major or minor, direct or indirect. This Commonwealth’s *ex post facto* jurisprudence demonstrates that SORNA imposes an affirmative disability. In *Commonwealth v. Wall*, the Superior Court concluded that a mere \$200 “assessment” imposed at the time of a DUI conviction was a direct effect and punitive. *Commonwealth v. Wall*, 867 A.2d 578, 582-83 (Pa. Super. 2005). Similarly, the Pennsylvania Supreme Court held that prohibition on felons in possession of a firearm was a direct disability, even though the other factors weighed against finding the restriction punitive. *Lehman*, 839 A.2d at 272. SORNA’s direct impact on a child is overwhelmingly greater than a single assessment of a \$200 fine or a ban on purchasing a firearm.

As described in detail in the Proposed Findings Of Fact, *supra*, the disabilities imposed on children under SORNA are anything but minor. These affirmative disabilities severely damage the physical, social, emotional, economic and psychological well-being of children who must register. This is a major break from precedent in this Commonwealth, which has shielded children from harsh, lasting obligations and social stigma because children are generally unable to control their own destiny, immature and have a great capacity for rehabilitation. *See Commonwealth v. S.M.*, 769 A.2d 542, 544 (Pa. Super. 2001). *See also* Section I.A, *supra*

(detailing how children are less mature, more vulnerable to negative influences, and more open to rehabilitation than adults).

i. SORNA Imposes Major Direct Disabilities and Restraints.

SORNA requires more onerous affirmative obligations and restraints than any prior sex offender registration law in this Commonwealth and, for the first time, imposes these requirements on children. The law requires juveniles to register in-person quarterly, to disclose an extraordinary amount of information, and to appear in-person to update that information under the threat of lengthy mandatory prison sentences. *See* Section II, *supra* (detailing registration and reporting requirements); 18 Pa.C.S. § 4915. Additionally, for the first time in Pennsylvania, SORNA will automatically result in the categorical exclusion of expungement for certain juvenile crimes. *See* 18 Pa.C.S. § 9123(a.1) (prohibiting expungement for juveniles who commit registerable offenses).

The leading Pennsylvania and federal cases to consider whether Megan's Law imposes an affirmative disability or restraint are not dispositive of SORNA, especially as applied to children. In *Smith*, the United States Supreme Court explained that Alaska's sex offender law did not impose an affirmative disability upon adults sufficient to tilt the balance. Alaska's law, however, did not cover juveniles, did not require in-person reporting and otherwise disclosed adult convictions as part of the public record. *See Smith*, 538 U.S. at 89-90; Alaska Stat. §§ 12.63.010 *et seq.* Similarly, although the Pennsylvania Supreme Court held that Megan's Law II was a only a minor restraint, *Williams* was concerned with registration requirements significantly less onerous than SORNA, as applied to adults and as applied only after a risk-assessment. *Williams*, 832 A.2d 973-75.

Under SORNA, a child required to register under SORNA must report in-person four times a year. 42 Pa.C.S. § 9799.15. In many instances, the “approved registration site” may be miles from a child’s home and not accessible by public transportation. State Police, Sex Offender Registration Approved Registration Sites, 42 Pa.B. 7628, Doc. No. 12-2460 (Dec. 15, 2012). Moreover, the child must also appear at a registration site within 72 hours to report any changes, additions, or deletions of nearly all required registration information, including name, residence, employment, school, telephone numbers, “temporary lodging,” “e-mail address, instant message address or any other designations used in Internet communications or postings,” vehicle information, or occupational license. 42 Pa.C.S. § 9799.15(g). *See also* Section II, *supra* (detailing registration and reporting requirements).

It is useful to consider the practical effects of this requirement, as applied to children. Children by nature have less ability to control their mobility. As an example, if a child is in the custody of a children and youth agency, each new foster home will add numerous new obligations. *See, e.g., In re: Adoption of S.E.G.*, 901 A.2d 1017, 1019 (Pa. 2006) (discussing the problem of “foster care drift,” in which children are moved from home to home). In some jurisdictions, registrants cannot be released from incarceration until they have a permanent address and many children in foster care lack that permanency. *Raised on the Registry*, at 68. Furthermore, in this electronically wired age, signing up for an EBay account or posting a comment on Lancasteronline.com (York and Lancaster’s online news source) will require a trip to a registration site. Lancasteronline Comments Rules and Policy, *available at* <http://lancasteronline.com/pages/site/talkback.php>, last visited May 20, 2013 (describing the various social networking websites an individual must use to sign in), attached as Exhibit M. The statute requires a child to appear and report *any* change in the vehicle he operates (without

exception for even a single day's use); he will even have to report a change in parking location. SP4-218, Exhibit A at 11 ¶ 2(b)(6); 42 Pa.C.S. § 9799.15(g). If the child is, for example, limited to on-street parking, every time he uses the car—including trips to the “approved registration site” itself—and re-parks in a new space, SORNA, on its face, requires yet another trip to the approved site.

Indeed, other state Supreme Courts have recognized that quarterly, in-person registration requirements are an affirmative restraint. *See, e.g., Doe v. Alaska*, 189 P.3d 999, 1009 (Alaska 2008) (holding that “even though [SORNA] imposed no physical restraints, the “significant affirmative and intrusive” obligations that compel offenders to repeatedly contact law enforcement constitute an affirmative disability); *Wallace v. Indiana*, 905 N.E.2d 371, 380 (Ind. 2009) (“Considered as a whole [SORNA’s] registration and notification provisions impose substantial disability on registrants.”); *Williams*, 952 N.E.2d at 1113 (decision of Ohio Supreme Court holding that in-person registration requirement was an affirmative disability); *State v. Letalien*, 985 A.2d 4, 18 (Me. 2009) (decision of Maine Supreme Court holding that quarterly in-person verification requirements “is undoubtedly a form of significant supervision by the state”); *Doe v. Department of Public Safety and Correctional Services*, 62 A.3d 123, 139 (Md. 2013) (holding that the application of sex offender registration “has essentially the same effect on his life as placing him on probation”).

SORNA also imposes an affirmative disability because it requires juveniles to disclose massive amounts of personal information. Before SORNA, only judges, court staff, probation officers, attorneys, or other agents having a legitimate interest in the proceedings could access a juvenile’s record. 42 Pa.C.S. § 6308; Pa.R.J.C.P. 160A. In contrast, under SORNA a child must, for the rest of his life, disclose personal and often non-public details such as routes to work, 42

Pa.C.S. § 9799.16(b)(9), vehicle information, email addresses, Internet names and “all identifiers affiliated with the sexual offender (e.g., Facebook, Twitter, Tagged, MySpace).⁴⁷” SP4-218, Exhibit A at ¶ K; 42 Pa.C.S. § 9799.16; *see generally* Section II.A, *supra*. (detailing registration and reporting requirements). *See also United States v. Jones*, ___ U.S. ___, 132 S.Ct. 945, 956 (2012) (Sotomayor, J., concurring) (“[T]he Government’s unrestrained power to assemble data that reveal private aspects of identity is susceptible to abuse” and “chills associational and expressive freedoms.”).

The state police will then disseminate a child’s personal information to numerous state, county and federal officials, regardless of whether they are connected to the child’s case. 42 Pa.C.S. § 9799.18; Section II.E., *supra* (detailing how information about juvenile registrants will be released). Further, unlike the traditional juvenile disclosure rules, SORNA does not impose limits or punishment on the secondary disclosure of that information. *See* Pa.R.J.C.P. 160C; Logan, Exhibit K at ¶ 13.

SORNA also imposes direct disabilities on children by permanently removing their right to have their juvenile record expunged. Pennsylvania law entitles juveniles to expunge their records provided that they have not committed any new offenses for five years after supervision concludes. 18 Pa.C.S. § 9123(a)(3); *In re A.B.*, 987 A.2d 769 (Pa. Super. 2009), *appeal denied*, 12 A.3d 369 (Pa. 2010). SORNA removed this right. This removal directly conflicts with the

⁴⁷ The disclosure of Internet identifiers alone imposes a disability, which raises its own constitutional concerns. Since a child must register every designation used online, his ability to speak freely and anonymously is directly infringed. *See Melvin v. Doe*, 836 A.2d 42, 50 (Pa. 2003) (“There is no question that generally, the constitutional right to anonymous free speech is a right deeply rooted in public policy”); *Reno v. ACLU*, 521 U.S. 844, 870 (1997); *Pilchesky v. Gatelli*, 12 A.3d 430, 438-39 (Pa. Super. 2011) (“Any ruling that does not fully protect the anonymity of the anonymous Internet speaker may deter anonymous Internet speech.” (internal citations omitted)). The registration and disclosure of anonymous Internet identifiers removes a child’s constitutional right to, for example, chat anonymously in an online Sports forum, comment anonymously to an online news article, or ever again speak anonymously on the Internet.

goal of the expungement statute—to protect juveniles from lifelong consequences resulting from delinquent acts. *See In re A.B.*, 987 A.2d at 778-79.

ii. SORNA Imposes Extraordinary Secondary Disabilities and Restraints.

SORNA also imposes substantial, secondary affirmative disabilities and restraints. SORNA directly impacts a child’s ability to travel and move out of state, his social and psychological well-being, the likelihood he or she will be subject to violence, and his or her ability to find housing, employment and schooling. *See* Section I.B.5, *supra* (detailing how children and their families suffer psychologically as a result of registration); *Raised on the Registry* at 47-75. Although these effects are not statutorily imposed by SORNA, they flow directly and inevitably from the duty to register and the imposition of the sex offender label.

In current practice, the secondary effects of SORNA are intimately connected to the criminal case. Both attorneys and defendants often view these consequences as more severe and more important than a jail sentence or probation. *See generally*, Gabriel J. Chin & Margaret Love, *Status as Punishment, A Critical Guide to Padilla v. Kentucky*, 25-Fall Crim. Just. 21 (2010) (discussing the rise, severity, and importance of what were previously deemed collateral/secondary effects). Like deportation, sex offender registration is so “enmeshed” with and “intimately related to the criminal process” that it cannot be ignored. *See Padilla v. Kentucky*, 130 S.Ct. 1473, 1481-82 (2010). *See also Taylor v. State*, 698 S.E.2d 384, 388 (Ga. App. 2010) (“[L]ike deportation, registration as a sex offender is ‘intimately related to the criminal process’ in that it is an “automatic result” following certain criminal convictions. [. . . and] is ‘most difficult’ to divorce the requirement of registration from the underlying criminal conviction.”).

For a juvenile registrant who seeks to move or travel outside of Pennsylvania, the fact of registration now requires him to scour and interpret the laws of other states, find state police locations, register in-person in those states, and in some instances, subject himself to court proceedings and psychological assessments. *See* Sections II (detailing registration and reporting requirements) and III (detailing out-of-state impact on Pennsylvanian registrants), *supra*; *Attorney General Guidelines for Law Enforcement for the Implementation of Sex Offender Registration and Community Notification Laws*, New Jersey, Rev. March 2000, available at <http://www.state.nj.us/lps/dcj/megan1.pdf>; N.J. Stat. §§ 2C:7-7 to 10. Because each state individually defines what information must be registered and when, and imposes different obligations, the task of interstate registration is anything but minor.

SORNA significantly limits where a child registrant may live, vacation, visit relatives or even go to school because many states and communities impose stringent residency restrictions on registered sex offenders. *See* Section III.D *supra* (detailing the impact of registration when a juvenile moves out of Pennsylvania); *Raised on the Registry* at 47-48. Many states and communities trigger registry restrictions after the briefest of stays. *See, e.g.*, Fla. Stat. §§ 775.21(2)(k)-(l); 985.481 to 985.4815 (5 days or more creates a residence). *See also* Section III, *supra* (detailing out of state registration obligations for juveniles registered in Pennsylvania).⁴⁸

Children who must register as sex offenders will face innumerable barriers to social development, which may lead to depression and in extreme cases, suicide. Section I.B.5, *supra*; Letourneau, Exhibit H at ¶ D3. As illustrated in Sections II.E.2 and III.C *supra*, a child's status

⁴⁸ Pennsylvania's Supreme Court invalidated similar residency restrictions on preemption grounds in *Fross v. County of Allegheny*, 20 A.3d 1193 (Pa. 2011). *Fross* directly addressed only Allegheny's County Ordinance. While the holding likely extends to other municipal ordinances, many municipalities in Pennsylvania still have active sex offender residency restriction laws on the books. *See, e.g.*, Township of Bristol, PA, Ordinance Chapter 161 (imposing a 2500 foot restriction); Borough of Manheim, PA, Ordinance Chapter 176 (imposing a 500 foot restriction); Borough of Lehighton, Ordinance § 186-2 (barring residences in blocks "surrounding" childcare facilities); City of Hazelton, PA, Ordinance 2007-8 (applying to "sexually violent predators").

as a sex offender will be released to the community. Once publicly disseminated, the child may experience “psychological symptoms such as shame, embarrassment, depression or hopelessness as result of public disclosure.” Caldwell, Exhibit J at ¶ 5(A). Human Rights Watch detailed numerous examples of juveniles who experienced threats, loss, and in many instances suicide due to placement on the registry. *Raised on the Registry*, at 50-60. In an illustrative example: “[o]ne child was adjudicated delinquent for a sex offense at age 11. At the age of 17 he took his own life. His mother explained, ‘Under the law at the time he was looking at being put on the public registry when he turned 18. His picture, address and information on the Web. . . He just couldn’t bear it.’” *Id.* at 53 (citation omitted).

Juveniles and their families may also become targets of harassment and violence. *See* Caldwell, Exhibit J at ¶ 5(A). As Maryland’s highest court recently recognized, “[a] study by the United States Department of Justice indicated that 77% of registrants in another state surveyed reported “threats/harassment[.]” *Doe v. Department of Public Safety and Correctional Services*, 62 A.3d 123, 142 (Md. Ct. App. 2013) (internal quotations omitted).

Registrants also face significant difficulty finding and maintaining housing and employment. Federal law permanently bars only two classes of people from admission to public housing: individuals who were convicted of manufacturing methamphetamine in publicly owned housing, 42 U.S.C. § 1437n(f), and lifetime registered sexual offenders. 42 U.S.C. § 13663(a). Thus, if a child’s parents live in public housing, the child or the entire family may be evicted. *See* Caldwell, Exhibit J at ¶ 5(A). Human Rights Watch reported that of 296 youth offender registrants over 44 percent (132 respondents) experienced at least one period of homelessness as a result of the restrictions that come with being registered. *Raised on the Registry*, at 65.

Registration affects children in far more grievous ways than an adjudication of delinquency alone. *See also* Eric Janus, *Failure to Protect: America's Sexual Predator Laws and the Rise of the Preventative State*, Cornell Univ. Press (2006). Given the severity of these consequences, SORNA must be found to impose affirmative restraints and disabilities on children.

2. SORNA Is Similar to Traditional Forms of Punishment.

The application of SORNA to Pennsylvania's children imposes two traditional forms of punishment—probation and shaming.

The limitations and burdens imposed by SORNA are extraordinarily similar to probation in Pennsylvania. Both impose obligations to report followed by penalties for failure to comply. Both statutory schemes appear in the same sentencing code. They share a similar purpose, rest on a common assumption, and have many structural similarities. First, probation and SORNA share the stated purpose of promoting public safety. The stated purpose of probation “is to assist the offenders in their rehabilitation and reassimilation into the community *and to protect the public.*” 42 Pa. C.S. § 9912(a) (emphasis added). Juvenile dispositions likewise are designed to account for the “child’s treatment, supervision, rehabilitation, and welfare, [and] provide balanced attention to the protection of the community, the imposition of accountability” 42 Pa.C.S. § 6352(a). SORNA provides that “[i]t is the intention of the General Assembly” “to further protect the safety of and general welfare of the citizens of this Commonwealth by providing for increased regulation of sexual offenders” 42 Pa.C.S. § 9799.11(b)(1); *see also* 42 Pa.C.S. § 9799.11(b)(2) (“as a means of assuring public protection”); 42 Pa.C.S. § 9799.10.

Second, both probation and SORNA rest on the assumption that the individual requires supervision. A “basic assumption of the institution of probation is that the probationer ‘is more

likely than the ordinary citizen to violate the law,” thus requiring monitoring and regulation. *Commonwealth v. Chambers*, 55 A.3d 1208, 1212 (Pa. Super. 2012) (quoting *Commonwealth v. Moore*, 805 A.2d 616, 619 (Pa. Super. 2002)). The legislative purpose of SORNA is similar. The General Assembly notes that underlying the law is the assumption that registrants are more likely to recidivate as “[s]exual offenders pose a high risk of committing additional offenses.” 42 Pa.C.S. § 9799.11(4).

Probation is imposed by the trial court at the time of sentencing in criminal court or at a dispositional hearing in juvenile court. 42 Pa.C.S. §§ 6352, 9721, 9754; Pa.R.J.C.P. 512. The requirement to register under SORNA is also imposed “at the time of the disposition” or sentencing. 42 Pa.C.S. § 9799.23.⁴⁹ In the case of probation, a judge will make a statement and impose probation conditions. 42 Pa.C.S. § 9754(a)-(b). In the case of SORNA, the judge will inform the child at disposition of the registration consequence. 42 Pa.C.S. §§ 9799.23(a), 9799.20(2). A juvenile standing before a judge to accept his disposition is unlikely to distinguish the requirements of probation from the requirements of registration. The interconnectedness of SORNA to the sentencing/dispositional hearing is further exemplified by pending amendments to the Rules of Juvenile Court Procedure. *See Proposed Pa.R.J.C.P.* 161, 195, 302, 407, 409, 512, 800 and 614, attached at Exhibit N. The proposed rules would mandate an extensive colloquy for any admission to a SORNA offense and would codify in the juvenile rules the many obligations of probation officers in enforcing SORNA. *See Proposed Rules* 407, 195(A)(13)-(14). The proposed rule governing dispositions would include an entire section on SORNA and would

⁴⁹ *See also* 42 Pa. Cons. Stat. Ann. § 9799.15, “For an individual who is a juvenile offender, the period of registration shall commence upon: (A) release from an institution or facility set forth in section 6352(a)(3) (relating to disposition of delinquent child), if the juvenile offender is, on or after the effective date of this section, subject to the jurisdiction of a court pursuant to a disposition entered under section 6352 and is under court-ordered placement in an institution or facility set forth in section 6352(a)(3); or (B) disposition, if the juvenile offender is, on or after the effective date of this section, subject to the jurisdiction of a court pursuant to a disposition entered under section 6352 and is placed on probation or is otherwise subject to jurisdiction of a court pursuant to a disposition under section 6352 that did not involve out-of-home placement.”

require the dispositional court to “classify” the juvenile as a “juvenile offender,” notify him of his duties, make him sign the registration form, and “issue any orders to a juvenile offender requiring the juvenile to provide information to the chief juvenile probation officer as set forth in 42 Pa.C.S. § 9799.16(B).” Proposed Rules 512(E). Moreover, courts often impose reporting probation which mandates that the defendant appear in person to check in with his probation officer at designated intervals. 42 Pa.C.S. § 9754(c)(10). SORNA imposes extreme reporting requirements, more intense than most reporting requirements imposed as a condition of probation. *See* Section II.A-B *supra* (detailing registration and reporting requirements).

Probation has historically involved the imposition of conditions for which an offender must comply or face sanctions. *Korematsu v. United States*, 319 U.S. 432, 434-35 (1943). SORNA is the same. Violation of the terms and conditions of probation results in a hearing at which the sentencing court may impose a sentence of imprisonment or further sanctions, 42 Pa.C.S. § 9771(b); violations of SORNA’s reporting obligations lead to arrest and incarceration for a minimum of three to six years. 18 Pa.C.S. §§ 4915, 9718.4, 9771; Section II.D *supra* (detailing mandatory sentences for failure to register). Probation and parole officers are tasked with enforcing the law by reporting any individual who fails to comply with SORNA’s requirements. 42 Pa.C.S. § 9799.22(d).

A growing number of state courts have determined that SORNA requirements are akin to and in some cases more severe than the criminal sanction of probation. The Maryland Supreme Court found that:

[SORNA’s] restrictions and obligations have the same practical effect as placing Petitioner on probation or parole. *See Doe v. State*, 189 P.3d 999, 1012 (Alaska 2008); *Wallace*, 905 N.E.2d at 380–81. As a result of Petitioner’s conviction; he was required to register with the State, and he must now regularly report in person to the State and abide by conditions established by the State or he faces re-incarceration. This is the same circumstance a person faces when on probation

or parole; as the result of a criminal conviction, he or she must report to the State and must abide by conditions and restrictions not imposed upon the ordinary citizen, or face incarceration.

Doe, 62 A.3d at 139 (Md. Ct. App. 2013). *See also Smith*, 538 U.S. at 115 (Ginsburg, J., dissenting); *Smith*, 538 U.S. at 111 (Stevens, J., dissenting); *Doe v. Nebraska*, 898 F. Supp. 2d 1086, 1126 (D. Neb. 2012) (holding that “[t]he impact of these statutes is to impose what is essentially a long-term, and, in some cases, a life-term, period of ‘supervised release’ comparable to a federal judge’s *criminal sentence* for a sex offense”) (emphasis in the original); *Doe v. State*, 189 P.3d 999, 1009, 1012 (Alaska 2008) (“[SORNA] treats offenders not much differently than the state treats probationers and parolees”); *Wallace v. Indiana*, 905 N.E.2d 371, 380 (Ind. 2009) (finding that Indiana’s sex offender “registration and reporting provisions are comparable to conditions of supervised probation or parole”); *Commonwealth v. Gehris*, 54 A.3d 862, 878 (Pa. 2012) (“[R]egistration obviously has serious and restrictive consequences for the offender, including prosecution if the requirement is violated.”) (Castille, J.) (opinion in support of reversal).

SORNA is also similar to the punishment of shaming, especially when applied to children. In *Williams*, the Pennsylvania Supreme Court discussed at length whether public notification of “sexually violent predator” status under Megan’s Law was similar to shaming. 832 A.2d at 975-76. The *Williams* court recognized correctly that shaming punishments disclosed essentially the same information as disclosed by Megan’s Law, and served to warn the community that the individual might reoffend and might have serious reputational consequences. *Id.* The Court fell short of accepting the analogy, however, finding that the historic intent of shaming was to stigmatize the individual, but that Megan’s Law only had the potential effect of

creating that stigma. *Id.* at 976. Further, the effects, even if sufficient to make the law similar to shaming, were reasonable given the need to protect the community. *Id.*

This logic fails when applied to juveniles. Pennsylvania has historically shielded information about juvenile offenders from public disclosure. Our courts have noted “[t]here is a compelling interest in protecting minor children’s privacy rights and the protection of a minor child’s privacy is a key aspect of the Juvenile Act.” *In the Interest of T.E.H.*, 928 A.2d 318, 323 (Pa. Super. 2007). “Pennsylvania’s Juvenile Act demonstrates our legislature’s compelling interest in safeguarding children involved in juvenile proceedings.” *In re M.B.*, 819 A.2d 59, 65 (Pa. Super 2003).

Indeed, Pennsylvania’s attempt to shield juvenile registrants’ information from public notification by creating a non-public registry is presumably reflective of the State’s otherwise longstanding commitment to protect children. 42 Pa.C.S. § 9799.28. However, as set forth above, the information will undoubtedly become public and will remain public once disclosed. Logan, Exhibit K at ¶ 13; Sections II.E.2 and III.C, *supra* (describing how juvenile registration information will be directly and indirectly disclosed). Once public, the attendant harm is far-reaching and long-lasting. *See* Section I.B, *supra* (discussing both immaturity of juveniles and effects on juveniles placed on the registry); Section VI, *supra* (discussing the difference between having a record and being labeled a sex offender); Jill S. Levenson et al., *Public Perceptions About Sex Offenders and Community Protection Policies*, *Analyses of Soc. Issues and Pub. Pol’y*, Vol. 7, No. 1, 1, 10-13 (2007).

The combination of lifetime reporting, inevitable disclosure of ‘confidential’ information and the ban on expungement paints these children as beyond rehabilitation – a notion wholly at odds with history and purpose of Pennsylvania’s juvenile justice system. Section VIII.B, *infra* (arguing

that SORNA is inconsistent with the Juvenile Act’s rehabilitative purpose); Section I.B.3 , *supra* (showing juveniles are more amenable to rehabilitation); *In re J.B.*, 39 A.2d 421, 427 (Pa. Super. 2012) (“The purpose of juvenile proceedings is to seek treatment, reformation and rehabilitation, and not to punish.”). SORNA bluntly rejects these principles in favor of a lifetime characterization of these children as criminals—a message and practice historically consistent with public shaming. “The result is that the dissemination of information about registrants, like Petitioner, is the equivalent of shaming them, and is, therefore, punitive for ex post facto purposes.” *Doe v. Department of Public Safety and Correctional Services*, 62 A.3d 123, 140-41 (Md. Ct. App. 2013); *see also Doe v. Alaska*, 189 P.3d at 1012 (same); *Wallace*, 905 N.E.2d at 380 (same).

3. SORNA Applies Only Upon a Finding of Scienter.

The third factor asks whether the requirement comes into play only on a finding of *scienter*. “The existence of a *scienter* requirement is customarily an important element in distinguishing criminal from civil statutes.” *Kansas v. Hendricks*, 521 U.S. 346, 362 (1997). In other words, if there is no *mens rea* element, it is less likely a condition was intended as a punishment. *Wallace*, 905 N.E.2d at 381 (Ind. 2009). Here, the regulatory obligations flow directly from a finding of criminal conduct, and the regulatory purpose is the reduction of future offending. *Scienter* is thus a necessary part of the regulatory objective, satisfying this prong of the *Mendoza-Martinez* test. *Smith*, 538 U.S. at 105.

4. SORNA Promotes the Traditional Aims of Punishment.

a. SORNA Exacts Retribution.

SORNA punishes children by exacting retribution for past crimes. *Mendoza-Martinez*, 372 U.S. at 168. SORNA automatically imposes the lifetime consequence of sex offender registration immediately after an adjudication of delinquency. SORNA does not distinguish

between children who pose a risk for future sexual crimes and those who do not. Nor does SORNA take into account the facts or circumstances of the underlying offense. Rather, under SORNA, lifetime sex offender registration is based on the adjudication of delinquency alone.

When compared to Act 21, the juvenile sexual offender involuntary civil commitment statute, SORNA's retributive nature becomes apparent. *See In re S.A.*, 925 A.2d 838 (Pa. Super. 2007). Act 21 requires the committing court to conduct a hearing to determine by clear and convincing evidence whether the child "is in need of commitment for involuntary treatment due to a mental abnormality . . . or a personality disorder, either of which results in serious difficulty in controlling sexually violent behavior." 42 Pa.C.S. §§ 6358, 9799.24. The Superior Court, in an *ex post facto* analysis, found that because the law related directly to the "juvenile's current and continuing status as a person" in need of treatment and did "not affix culpability for prior criminal conduct" the law did not constitute retribution. *In re: S.A.*, 925 A.2d at 842-44 (emphasis in the original). SORNA is exactly the opposite. The requirements of SORNA apply as a result of "prior criminal conduct" only.

SORNA punishes children adjudicated delinquent of a predicate offense regardless of the underlying facts or circumstances or the risks that they will reoffend. Although the list of offenses is limited, SORNA sweeps up children who engaged in a broad array of behavior. For example, SORNA requires lifetime registration for consensual sexual activity with a twelve year old, even if the offender is himself a child. 18 Pa.C.S. §§ 3121(c), 3123(b), 3125(a)(7). This could include consensual sex, or touching alone, between a fourteen year old boy and his girlfriend just shy of thirteen. 18 Pa.C.S. § 3125(a)(7).⁵⁰ *See, e.g. In re: O.M.*, No. JV-551-2012

⁵⁰ SORNA could also require lifetime registration as a sex offender for a child who is wrongfully convicted, perhaps because of his youthful inability to testify persuasively or to assist counsel. *Miller*, 132 S.Ct. at 2468 (observing that a child "might have been charged and convicted of a lesser offense if not for incompetencies associated with youth—for example, . . . his incapacity to assist his own attorneys"). Similarly, SORNA requires lifetime

(Pa. Ct. Comm. Pl. Westmoreland) (Memorandum opinion on file with Petitioners) (suggesting that sex offender registration is unconstitutional in this scenario). SORNA also requires lifetime sex offender registration for children who may have committed no physical act, but are nevertheless adjudicated delinquent of attempt, solicitation, or conspiracy to commit a SORNA offense. 42 Pa.C.S. § 9799.12.

Because SORNA imposes lifetime registration on all children adjudicated of certain delinquent acts, regardless of the facts supporting the adjudication or the risk that the child will recidivate, the U.S. Supreme Court’s reasoning regarding the non-retributive effect of Alaska’s registration law is inapposite. *Smith v. Doe*, 538 U.S. at 101-04. There, the Supreme Court found that the Alaska law did not have a retributive effect because the law divided the predicate offenses into different tiers imposing different registration requirements based upon the reasonable danger of recidivism. *Id.* In contrast, Pennsylvania’s statute has only one category of registration for “juvenile offenders” under SORNA—life.

Requiring all children to register for what is likely a lifetime can only be seen as retributive in light of the substantial body of research in this area. “The extant research has not identified any stable, offense-based risk factors that reliably predict sexual recidivism in adolescents.” Caldwell, Exhibit J at ¶ 3(D-G) (citing numerous studies). In the absence of such risk-assessment,⁵¹ none of the predicate SORNA offenses would justify lifetime sexual offender registration.

registration for a child whose “deference to authority and lack of sophistication can result in both false confessions and agreements to plead guilty to crimes that they may not have committed.” *Raised on the Registry* at 88.

⁵¹ It is notable that the Pennsylvania Supreme Court has acknowledged, as to sexually violent predators, that Megan’s Law II could have a “retributive effect.” *Williams*, 832 A.2d at 978. But, the Court ultimately held that, “assuming the legislative findings . . . are substantially valid,” this “retributive effect” was “ancillary” to the community notification provisions of that law. *Id.* However, in the case of children, SORNA’s “retributive effect” is primary because the registry is purportedly non-public, community notification is not required, and there is overwhelming evidence that children generally have very low rates of recidivism.

In addition, the legislative history of the Adam Walsh Act demonstrates that SORNA has a retributive effect. The Declaration of Purpose of the Adam Walsh Act explains that it is a “response to the vicious attacks by violent predators” against children listed in the statute and that it will “protect the public from sex offenders and offenders against children.” 42 U.S.C. § 16901.⁵²

The remarks of the signatories to Adam Walsh confirm that SORNA is retributive. Congressman Keller, *id.* at 20192-20193, stated “I am a cosponsor of the Children’s Safety Act because we must crackdown against child molesters by making sure they serve longer sentences and by requiring sex offenders who fail to comply with registration requirements to go back to jail where they belong.” In a floor statement, Senator Grassley remarked, “I can honestly tell you that I would just as soon lock up all the child molesters, child pornography makers and murderers in this country and throw away the key.” *Juvenile Male*, 590 F.3d at 938 (citing 152 Cong. Rec. S8012, S8021 (daily ed. July 20, 2006)). This sentiment was explicit in President Bush’s signing statement: “By enacting this law we’re sending a clear message across the country: those who prey on our children will be caught, prosecuted and *punished* to the fullest extent of the law.” *President Signs H.R. 4472, The Adam Walsh Child Protection and Safety Act of 2006*, The White House Office of Communications, July 27 2006, *available at* 2006 WL 2076691 (emphasis added).

b. SORNA Promotes Deterrence.

In addition to retribution, SORNA clearly seeks to promote deterrence, another aim of punishment, albeit ineffectually. Indeed, deterrence can be seen as an “obvious” goal of sex offender registration laws. *Gehris*, 54 A.3d at 878 (J. Castille) (opinion in support of reversal)

⁵² Notably, early versions of the federal Adam Walsh Act did not require juveniles to register. 151 Cong. Rec. S. 9245 (July 28, 2005).

(sex offender registration “encompasses the recidivist philosophy in addition to its perhaps more obvious goals of public protection and deterrence”). In *Williams*, the Pennsylvania Supreme Court discounted adult sex offender registration as a deterrent, because of “the substantial period of incarceration attached to the predicate offense.” *Williams*, 832 A.2d at 978. The same cannot be said of children, who cannot be incarcerated past age twenty-one by the juvenile court. For children, lifetime sex offender registration is a permanent punishment, far graver than any disposition traditionally within the purview of the juvenile court to impose.

5. The Behavior to Which SORNA Applies is Already a Crime.

SORNA applies only after a child has been adjudicated delinquent of a qualifying offense. “The fact that the [a]ct uses past crime as the touchstone, probably sweeping in a significant number of people who pose no real threat to the community . . . there is room for serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones.” *Letalien*, 985 A.2d at 4 (quoting *Smith*, 538 U.S. 108 (Souter, J., concurring)).

As several state Supreme Courts have observed, SORNA does not apply to children who pose a threat, and may be arrested for predicate SORNA offenses, but are not adjudicated delinquent. *See, e.g. Doe v. Alaska*, 189 P.3d 999 (Alas. 2008); *Wallace v. Indiana*, 905 N.E.2d 371 (Ind. 2009). For example, SORNA does not apply to children who are incompetent to proceed to trial; who committed sexual offenses but negotiated plea bargains to non-SORNA charges; whose convictions were precluded due to suppression of evidence; who committed sexual acts, but for whom the evidence was not sufficient for proof beyond a reasonable doubt. If lifetime sex offender registration were simply a civil, regulatory framework, the Commonwealth might have chosen to register some or all of these children. It did not. Lifetime sex offender

registration is imposed only on children who are adjudicated delinquent because it is a punishment.

6. SORNA Is Not Rationally Related to a Non-Punitive Purpose.

As applied to children, SORNA cannot be considered rationally-related to a non-punitive purpose for two reasons. First, the rate of sexual offense recidivism for children is exceedingly low. Second, the registry, while plainly porous as described above, was not intended to be available to the public.

Pennsylvania courts look at recidivism rates when determining whether a sex offender registration scheme is punitive. *Lee*, 935 A.2d at 882. However, the oft-repeated adult statistic, a “high rate of recidivism among convicted sex offenders,” is inapplicable to children.⁵³ *See Williams*, 832 A.2d at 979. Children and adults are vastly different. Section I, *supra* (detailing how children, including children who sexually offend, are different from adults and adult sex offenders). *See also Roper*, 543 U.S. 551; *Graham*, 130 S.Ct. 2011; *J.D.B.*, 131 S.Ct. 2394; *Miller*, 132 S.Ct. 2455. Children who offend sexually have much lower rates of sexual recidivism than adults, who already have lower rates of recidivism than other categories of offenders. del Busto, Exhibit I at ¶ 14. “Criminal acts of adults and adult statistics should not be utilized as a red herring to justify the application of adult driven laws to juveniles.” *Id.*

The recidivism rate of sexual offenses is lower for children than for adults because children are different. Section I.B.1-2,4, *supra* (detailing how juvenile sex offenders differ from adult sex offenders). As applied to children, SORNA is not rationally-related to a non-punitive

⁵³ This conclusion about adult sex offenders has also faced significant recent criticism. *See, e.g.*, Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 La. L. Rev. 509, 520-22 (2013) (referencing numerous recent studies); Richard Tewksbury, Ph.D., Wesley G. Jennings, Ph.D., Kristen Zgoba, Ph.D., *Final Report on Sex Offenders: Recidivism and Collateral Consequences*, National Criminal Justice Reference Service, Dep’t of Justice (March 2012) (making numerous findings of low rates of recidivism and ineffectiveness of SORNA).

purpose because the rate of recidivism is low. Studies have universally shown that juveniles are unlikely to recidivate and therefore pose little risk to the community. Letourneau, Exhibit H at ¶ A; del Busto, Exhibit I at ¶ 19; Caldwell, Exhibit J, at ¶ 3(C).

Moreover, “when rare sexual recidivism events do occur, it is nearly always within the first few years following the original adjudication.” Letourneau, Exhibit H at ¶ A. Even “youth initially evaluated as ‘high risk’ are unlikely to reoffend, particularly if they remain free of offending within th[e] relatively brief period of time following initial adjudication.” *Id.* at ¶ A. This time period corresponds exactly to the period of time when the child will be under the supervision of the juvenile court, if not placed at a juvenile treatment facility.

Research has also shown that requiring children to register does not improve public safety. *See* Section I.B.3, *supra*. Registration has no impact on the already very low rates of recidivism. *Id.* at ¶ 4(C). Nor has registration been demonstrated to prevent first offenses. Caldwell, Exhibit J at ¶ 4(D). Conversely, requiring a child to register as a sex offender may have a negative impact on public safety in the realm of *non-sexual* offenses, by setting up obstacles between a child and a normal, productive life. In light of their low recidivism rate, including children on a sex offender registry could also diminish public safety by diverting resources away from high-risk offenders. Moreover juvenile registration requirements may actually impede the prosecution of juvenile sex cases as it reduces families and prosecutors’ willingness to move forward.⁵⁴

⁵⁴ Moreover, a recent South Carolina study of the effects of juvenile sex offender registration showed that, in addition to an absence of any deterrent effect, the

results indicated a significant decline in the likelihood of prosecutors’ moving forward on juvenile sex crime cases after the implementation of SORN; thus, community safety was not improved and in fact could be compromised as a result of the reduced likelihood of prosecution for juvenile sex crimes.

Letourneau, et. al, *Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?* *Criminal Justice and Behavior*, vol. 37, 3553-569, 565 (2010).

In addition to children's low recidivism rates, the public safety rationale for SORNA is weak because the registry is, at least on its face, non-public. 42 Pa.C.S. § 9799.28(b). SORNA states that "[i]f the public is provided adequate notice and information about sexual offenders, the community can develop constructive plans to prepare for the presence of sexual offenders in the community. This allows communities to meet with law enforcement to prepare and obtain information about the rights and responsibilities of the community and to provide education and counseling to residents, particularly children." 42 Pa.C.S. § 9799.11(3). For children on a non-public registry, this is illogical.

The leading federal and state cases have held that adult sex offender laws promote public safety by allowing members of the public to protect themselves. In *Williams*, the Pennsylvania Supreme Court held that active community notification allows the public to "take certain steps to avoid victimization by a sex offender." 832 A.2d at 979. In *Smith v. Doe*, the United States Supreme Court held that the Alaska adult sex offender registry alerts the public to the risk of sex offenders in their community. *Smith*, 538 U.S. at 106. This reasoning does not apply to juvenile offenders.

7. Lifetime Sex Offender Registration for Juveniles Is Excessive.

SORNA is excessive as applied to children. This factor alone is enough to make the law punishment. *Lee*, 935 A.2d 865, n. 24 (leaving open the possibility that "a show of sufficient excessiveness. . . might warrant a finding that those provisions are punitive."). In *Williams*, the Pennsylvania Supreme Court observed that "if the Act's imprecision is likely to result in individuals being deemed sexually violent predators who in fact do not pose the type of risk to the community that the General Assembly sought to guard against, then the Act's provisions could be demonstrated to be excessive . . ." *Williams*, 832 A.2d at 983. This reasoning applies

here. SORNA requires children to register as sex offenders for their entire life, with no finding that they are likely to re-offend; as explained in detail above, studies have overwhelmingly demonstrated that children convicted of sexual offenses rarely re-offend. *See* Section I.B.1-2, *supra* (confirming sexual recidivism rates for children are minimal). SORNA thus sweeps up many, many children—perhaps more than 90% of all children who are required to register—who will never commit another sexual offense in their lifetime. Caldwell, Exhibit J, at ¶ 3(C); del Busto, Exhibit I at ¶ 14.

Lifetime registration for children is also unnecessary as Pennsylvania already has a law specifically designed to treat children at high risk of sexual recidivism. Act 21 provides for involuntary civil commitment of children adjudicated delinquent for sexual offenses who are approaching age twenty-one and continue to need sex offender treatment. *In re: A.C.*, 991 A.2d 884, 892 (Pa. Super. 2009). The law allows courts to civilly commit a person based upon a showing that the person has “serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.” 42 Pa.C.S. § 6403(a)(3). The category of “juvenile offenders” under SORNA is comprised entirely of children who are *not* civilly committed under Act 21. 18 Pa.C.S. § 9799.12 (defining “juvenile offender” and “sexually violent delinquent child.”). Yet, in the absence of any finding of current dangerousness or correlation to future risk, these children are nevertheless required to register for life.

Recent United States Supreme Court jurisprudence emphasizes that for children—the vast majority of whom will never re-offend—lifetime punishment is undoubtedly much longer than lifetime punishment for an adult. *See Graham*, 130 S.Ct. at 2028; *see also In re: C.P.*, 967 N.E.2d 729, 741 (Ohio 2012). A child adjudicated delinquent for a SORNA offense at fourteen

will be a registered sex offender through his entire life,⁵⁵ a substantially longer period of time than a comparably situated adult.

The specific requirements of SORNA establish that the law is excessive. In addition to imposing a lifetime stigma, SORNA established a set of exceedingly onerous and complicated requirements which would be difficult for even the most mature, well-educated and affluent citizen to follow. *See* Section II, *supra* (detailing registration and reporting requirements). A registrant must appear in person at an “approved registration site” quarterly, and must also make in person appearances whenever his or her personal information changes. The list of personal information is extensive. It includes items as vague as any “[d]esignation used by the individual for purposes of routing or self-identification in Internet communications or postings,” and as minute as the location where a vehicle he or she “operates” is parked. 42 Pa.C.S. § 9799.16; *see also* Sexual Offender Registration Notification Form SP4-218, Exhibit A. In practice, this means that a child will be forced to go back and forth to the state police many times a year.

If a child “travels to another state, for instance during a family vacation, or relocates with his family to another state, perhaps as a result of a parent’s job demands, the juvenile will be subject to the other’s states” laws, including, often, a “fuller disclosure policy.” Logan, Exhibit K at ¶ 22. *See also* Section III, *supra* (detailing the out-of-state impact on children registered in Pennsylvania). These may also require public Internet registry and active community notification. Logan, Exhibit K at ¶ 23. “[A]dverse consequences” include lack of housing, “unemployment, relationship loss, threats, harassment, physical assault, and property damage as

⁵⁵ As stated above, it is petitioner’s position that the potential for removal after twenty-five years is illusory. A child is disqualified if his or her probation is revoked as a child; or if he or she has even one misdemeanor of the second degree. Unfortunately, life on the registry is itself “associated with increased risk of new charges.” Letourneau, Exhibit H at ¶ C1(ii). “Significantly, registered youth were significantly more likely than nonregistered youth to be charged with relatively minor misdemeanor offenses (e.g., public order offenses). While it is possible that the burdens related to registration actually increase youth misbehavior, we believe it is more likely that these findings reflect a surveillance effect,” as the police may “arrest registered youth for behaviors that do not trigger the arrest of nonregistered youth.” Affidavit of Elizabeth J. Letourneau, Ph.D., Exhibit H at ¶ D1.

well as psychological symptoms such as shame, embarrassment, depression, or hopelessness as a result of public disclosure.” Caldwell, Exhibit J at ¶ 5.

Over the course of a lifetime, it is virtually certain that a juvenile offender will fail to comply at some point with SORNA’s numerous requirements. “Studies of the failure-to-register offense among all offenders (adults and children) emphasize the difficulty of maintaining registration, noting the sheer volume of obligations and the constant vigilance required of registrants to stay in compliance.” *Raised on the Registry* at 81. The challenge to follow the registry requirements is particularly acute for children. “For young people, who are inherently immature, keeping track of and complying with these requirements may be even more confusing and challenging than for adults.” *Id.* In Pennsylvania, the penalty for even a minor misstep is a mandatory prison sentence of three to six years or five to ten years. 42 Pa.C.S. § 9718.4.

V. JUVENILE REGISTRATION VIOLATES THE PENNSYLVANIA AND UNITED STATES CONSTITUTIONAL BANS ON THE INFLECTION OF CRUEL AND UNUSUAL PUNISHMENT.

As set forth above, SORNA’s requirements constitute punishment for the purposes of the *ex post facto* clauses of the United States and Pennsylvania Constitutions. *See* Section IV, *supra*. As such, SORNA also violates the Pennsylvania and United States constitutional bans on the infliction of cruel and unusual punishment. Pa. Const. Art I. Sec 13;⁵⁶ U.S. Const. Amend. VIII; *See also Miller*, 132 S. Ct. at 2455. Central to the Constitution’s prohibition against cruel and unusual punishment is the “precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” *Id.* at 2463 quoting *Weems v. United States*, 217 U.S. 349, 367 (1910); *Jackson v. Hendrick*, 503 A.2d 400, 405 (Pa. 1986) (“Among unnecessary and wanton inflictions of pain are those that are totally without penological justification.” (internal citations

⁵⁶ Art I. Sec 13 of the Pennsylvania Constitution prohibits “cruel punishments.”

omitted). A proportionality review bars the imposition of SORNA's registration requirements on juveniles. As the Ohio Supreme Court reasoned "for a juvenile offender who remains under the jurisdiction of the juvenile court, the Eighth Amendment forbids the automatic imposition of lifetime sex-offender registration and notification requirements." *See In re C.P.*, 967 N.E.2d at 732. *See also, Commonwealth v. Knox*, 50 A.3d 749 (Pa. Super. 2012); *Commonwealth v. Lofton*, 57 A.3d 1270 (Pa. Super. 2012). SORNA is unconstitutional because it is a disproportionate punishment. Its mandatory nature further renders it unconstitutional for children.

A. Lifetime Sex Offender Registration Is A Disproportionate Punishment For Children.

Under proportionality review, "the Court implements the proportionality standard by certain categorical restrictions considering the nature of the offense and the characteristics of the offender." *Graham*, 130 S.Ct. at 2021-22. In *Graham*, the Court engaged in a two-step process in adopting categorical rules in regard to punishment: First, the court considers whether there is a national consensus against the sentencing practice at issue, and second, the court determines "in the exercise of its own independent judgment whether the punishment in question violates the Constitution." *Id.* at 2022. "The judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crime and characteristics, along with the severity of the punishment in question . . . and whether the challenged sentencing practice serves legitimate penological goals." *Id.* at 2026.

1. National Consensus

Although many states indeed require juveniles to register, there exists no national consensus to the way juvenile registration is administered nationwide.⁵⁷ Juvenile registration

⁵⁷ Although the Supreme Court has previously held that national consideration of a sentencing practice is necessary, a finding is not determinative. In *Miller*, the Court reasoned that previous decisions did not rely on simply counting the number of states that imposed the sentence. *Miller*, 132 S.Ct. at 2471-72. ("In *Graham*, we prohibited life-

requirements vary across states. Notably, as of 2011 only a small number of states opted to register children based solely upon the type of offense as in Pennsylvania. *Raised on the Registry*, at 24 citing Carole J. Petersen and Susan M. 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, 11 (2011). For example, prior to ruling juvenile registration unconstitutional, Ohio provided hearings prior to tier classification, *See In re G.M.*, 935 N.E.2d 459, 461 (Ohio 2010) citing Ohio Rev. Code. § 2152.831(A). In Oklahoma, a child accused of committing a registerable offense undergoes a risk assessment reviewed by a panel of experts and judge who make a recommendation as to treatment. The decision regarding their registration is deferred until their release from placement or treatment. Okl. Stat. tit. 10A § 2-8-104. New Jersey does not require in-person reporting. N.J. Stat. § 2C:7-2. Some states maintain juvenile registration information on a publicly-accessible website, *see, e.g.* Ala. Code § 15-20A-08, and others actively notify the public. *See Nev. Rev. Stat. § 179D.475(2)(a).*

2. Culpability of Child Sex Offenders

In *Miller*, the Court stated that even in sentencing contexts outside life without parole, the characteristics of youth weaken the rationales for punishment. “‘An offender’s age,’ we made clear in *Graham*, ‘is relevant to the Eighth Amendment,’ and so ‘criminal procedure laws that fail to take defendants’ youthfulness into account at all would be flawed.’” *Miller*, 132 S.Ct at 2466 (quoting *Graham*, 130 S.Ct. at 2031). While SORNA purports to take the distinguishing characteristics of youth into account by establishing a non-public registry for juveniles, this

without-parole terms for juveniles committing nonhomicide offenses even though 39 jurisdictions permitted that sentence. ... That is 10 more than impose life without parole on juveniles on a mandatory basis. And...in *Atkins*, *Roper*, and *Thompson*, we similarly banned the death penalty in circumstances in which “less than half” of the “States that permit [ted] capital punishment (for whom the issue exist[ed])” had previously chosen to do so. So we are breaking no new ground in these cases.” (internal citations omitted.) The Court further reasoned that simply counting state statutes provided a distorted view because the way in which the sentence was administered varied across jurisdictions. *Id.* at 2472.

privacy is illusory; in all other key respects juvenile and adult sex offenders are treated alike. As set forth in Section I, *supra*, juveniles are categorically less culpable than adults for their criminal conduct. Additionally, juveniles' delinquent acts are "less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *Graham*, 130 S.Ct. at 2026 (quoting *Roper*, 543 U.S. at 570). Because lifelong registration is irrevocable, a juvenile's potential for rehabilitation is "particularly relevant." *See In re C.P.* 967 N.E.2d at 741. Therefore, a proportionality analysis of mandatory, lifelong juvenile offender registration must consider the reduced culpability of juveniles.

3. Nature of Offenses

The offenses implicated by the statutory scheme are rape, involuntary deviate sexual intercourse, aggravated indecent assault, or an attempt, solicitation or conspiracy to commit any of these. 42 Pa.C.S. § 9799.12. As the Supreme Court noted in *Graham*, although an offense like rape is "a serious crime deserving serious punishment," those crimes differ from homicide crimes in a moral sense." *Graham*, 130 S.Ct at 2027 (internal citations omitted). The Ohio Supreme Court explained part of its reasoning for declaring juvenile sex offender registration unconstitutional as follows:

[A]s the Court pointed out in *Graham*, 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. Thus, when we address the constitutionality of the penalties resulting from an application of [SORNA to juveniles], we first recognize that those punishments apply to juveniles with a reduced degree of moral culpability.

In re C.P. 967 N.E.2d at 741.

4. Severity of Punishment

For juveniles, lifelong registration is a particularly harsh punishment. Although it is not lifelong incarceration, a juvenile registrant will spend a greater portion of his/her life subject to

registration requirements than will an adult offender. *See Graham*, 130 S.Ct. at 2028. The Ohio Supreme Court described this aspect of registration:

For juveniles, the length of the punishment is extraordinary, and it is imposed at an age at which the character of the offender is not yet fixed. Registration and notification necessarily involve stigmatization. For a juvenile offender, the stigma of the label of sex offender attaches at the start of his adult life and cannot be shaken. With no other offense is the juvenile's wrongdoing announced to the world. Before a juvenile can even begin his adult life, before he has a chance to live on his own, the world will know of his offense. He will never have a chance to establish a good character in the community. He will be hampered in his education, in his relationships, and in his work life. His potential will be squelched before it has a chance to show itself. A juvenile—one who remains under the authority of the juvenile court and has thus been adjudged redeemable—who is subject to sex-offender notification will have his entire life evaluated through the prism of his juvenile adjudication. It will be a constant cloud, a once-every-three-month reminder to himself and the world that he cannot escape the mistakes of his youth.

In re C.P. 967 N.E.2d at 741-42. It is difficult to overstate the depth and breadth of the impact that sex offender registration can have on a juvenile's life and livelihood. Even if a juvenile is somehow able to petition for removal from the registry after 25 years, 42 Pa.C.S. § 9799.17, the onerous registration and reporting requirements will likely have already imposed irrevocable damage.

5. Penological Justifications

Penological justifications for a sentencing practice are relevant to the Eighth Amendment proportionality analysis. *Graham*, 130 S. Ct. at 2028, *Kennedy v. Louisiana*, 554 U.S. 407, 441-42 (2008); *Roper*, 543 U.S. at 571-72; *Atkins v. Virginia*, 536 U.S. 304, 318-20 (2002). Noting that legislatures have discretion to choose among a variety of penological interests when crafting criminal punishments, the *Graham* Court acknowledged that the purposes and effects of penal sanctions are still relevant to the determination of whether a sanction violates the Eighth Amendment. Indeed, “[a] sentence lacking any legitimate penological justification is by its nature disproportionate to the offense.” *Graham* 130 S.Ct. at 2028.

Miller, Graham, and Roper all recognized that the distinctive attributes of youth substantially negate the penological justifications for imposing harsh sentences on juvenile offenders.

Because “[t]he heart of the retribution rationale” relates to an offender’s blameworthiness, “the case for retribution is not as strong with a minor as with an adult.” *Graham*, 130 S.Ct. at 2029 (quoting *Tison v. Arizona*, 411 U. S. 137, 149 (1987); *Roper*, 543 U. S. at 571). Nor can deterrence do the work in this context, because “the same characteristics that render juveniles less culpable than adults”—their immaturity, recklessness, and impetuosity—make them less likely to consider potential punishment. *Graham*, 130 S.Ct. at 2028 (quoting *Roper*, 543 U. S., at 571). Similarly, incapacitation could not support the life-without-parole sentence in *Graham*: 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.” 130 S.Ct. at 2029 (quoting *Workman v. Commonwealth*, 429 S. W. 2d 374, 378 (Ky. App. 1968)).

Miller, 131 S.Ct. at 2464-65.

Because youth would not likely be deterred by the registration requirements imposed by SORNA, the goal of deterrence does not justify the statutory scheme. Criminological studies showing that adult sentences fail to deter youth further illustrate that the goals of deterrence are not well-served by juvenile sex offender registration. See Jeffrey Fagan, *Juvenile Crime and Criminal Justice: Resolving Border Disputes*, 18 *Future of Child*. 81, 102-03 (2008); David Lee and Justin McCrary, *Crime, Punishment, and Myopia* (Nat’l Bureau of Econ. Research, Working Paper No. W11491, 2005). See also Donna Bishop, *Juvenile Offenders in the Adult Criminal System*, 27 *Crime & Just.* 81 (2000) (citing Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 *Crime & Delinq.* 96, 96-104 (1994)); Richard Redding & Elizabeth Fuller, *What Do Juveniles Know About Being Tried as Adults? Implications for Deterrence*, *Juvenile & Family Court Journal* (Summer 2004) in Elizabeth S. Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 199 (2008)). If the threat of

adult sentences generally fails to deter youth, the possibility of lifetime sex offender registration is unlikely to do so either.

“The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender.” *Tison*, 481 U.S. at 149. As *Roper* observed, “[w]hether viewed as an attempt to express the community’s moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult.” 543 U.S. at 571. (internal citations omitted). Severely retributive punishment is inappropriate in light of juvenile immaturity and capacity to change. *Id.*

Finally, mandatory, lifelong registration is in direct conflict with the legitimate penological interest of rehabilitation. *See* Section VIII.B, *supra* (describing how SORNA contravenes the rehabilitative purpose of the Juvenile Act). Lifetime registration, like lifetime incarceration, obviously “forswears altogether the rehabilitative ideal.” *Graham*, 130 S.Ct. at 2030. By restraining a juvenile’s housing and employment opportunities at a minimum, and stigmatizing the juvenile forever as a sexual offender, the Commonwealth “makes an irrevocable judgment about that person’s value and place in society” at odds with a child’s capacity for change. *Id.*

B. Mandatory, Lifelong Registration is Unconstitutional as Applied to Juveniles.

The mandatory sentencing scheme prescribing lifetime registration for children adjudicated of certain sex offenses violates the United States and Pennsylvania Constitutions. The mandatory registration requirement unconstitutionally forecloses the court’s consideration of a host of youthful attributes, including age, immaturity, impulsivity, underdeveloped sense of responsibility, reduced mental capacity, susceptibility to negative influences and outside pressures, reduced role in the offense, capacity for change or any other factors related to his or

her young age. These are precisely the characteristics that the United States Supreme Court has deemed applicable to all juvenile offenders under 18, regardless of the specific crime with which they are charged. *See Miller*, 132 S.Ct. at 2465, 2470 (Noting that “none of what [*Graham*] said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime-specific....”). The Court in *Miller* noted that “everything we said in *Roper* and *Graham* about that stage of life also appears in [our decisions requiring individualized sentencing in death penalty cases]”, *see* Section I.A., *supra*, and describing as especially pertinent the fact that “we insisted in these rulings that a sentencer have the ability to consider the ‘mitigating qualities of youth.’” *Id.* at 2467.

Mandatory, lifelong registration schemes by definition allow for no individualized determinations and further offend the federal and state constitutions by imposing those requirements for the remainder of the offender’s life. The statute disregards the settled research discussed above and now adopted as axiomatic by the Supreme Court since *Roper*. *See, e.g., J.D.B.*, 131 S. Ct. at 2403-04. It is precisely this “one size fits all” feature that is so directly at odds with the Court’s holding in the *Roper* line of cases, as it prohibits consideration of age as a factor at all while simultaneously proscribing any “realistic opportunity” for the juvenile offender to demonstrate his or her rehabilitation. *Graham*, 130 S.Ct. at 2034.

Similar to the sentencing schemes struck down in *Roper*, *Graham* and *Miller*, mandatory registration imposes a life-long penalty on juveniles that fails to account for the child’s “chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.” *Miller*, 132 S. Ct. at 2468. The statute also disregards the documented differences between juveniles adjudicated or convicted of sex offenses and adults

convicted of the same offenses—and imposes a “one size fits all” approach to sex offender registration. *See* Section I.B, *supra*. *See also* Letourneau, Exhibit H.

Under SORNA, the juvenile court judge is denied any opportunity to consider factors related to the juvenile’s overall level of culpability before imposing registration. SORNA runs afoul of the Supreme Court’s jurisprudence analyzing irrevocable penalties as applied to juveniles. .

VI. IN PROVIDING FOR MANDATORY LIFETIME REGISTRATION, SORNA CREATES AN IRREBUTTABLE PRESUMPTION IN VIOLATION OF THE PENNSYLVANIA CONSTITUTION.

Mandatory registration creates an unconstitutional irrebuttable presumption that children adjudicated delinquent of the enumerated offenses require lifetime registration based solely on their juvenile adjudication, regardless of their rehabilitation following treatment, likelihood of recidivism, natural maturation and desistance over time, or other specific need to be placed on a registry. The Pennsylvania Supreme Court has found that irrebuttable presumptions violate due process when “the presumption is deemed not universally true and a reasonable alternative means of ascertaining that presumed fact are available.” *Department of Transportation, Bureau of Driver Licensing v. Clayton*, 684 A.2d 1060, 1063 (Pa. 1996) (citing *Vlandis v. Kline*, 412 U.S. 441, 452 (1973)).⁵⁸ If a presumption is found to implicate fundamental freedoms, procedural due process requires that people have a “meaningful” opportunity to challenge the “paramount factor” behind the regulatory scheme in question. *Clayton*, 684 A.2d at 1065.

⁵⁸ Courts are most likely to apply the irrebuttable presumption doctrine articulated in *Vlandis* when the presumption in question affects a suspect class or implicates fundamental freedoms. *See, e.g., Com., Dept. of Transp., Bureau of Traffic Safety v. Slater*, 75 Pa. Commw. 310, 321-332 (1983) (concluding that possession of Class 4 license is not a fundamental right and thus declining to apply irrebuttable presumption doctrine as articulated in *Vlandis et al*); *Malmed v. Thornburgh*, 621 F.2d 565, 575-576 (3d Cir. 1980) (irrebuttable presumption that state court judges must retire at age 70 did not involve suspect class or implicate fundamental interest, and thus was subject to rational basis test, not *Vlandis* analysis).

The “paramount” factor at issue here is the General Assembly’s conclusion that “[s]exual offenders pose a high risk of committing additional sexual offenses and protection of the public from this type of offender is a paramount governmental interest.” 42 Pa.C.S. § 9799.11(a)(4). Therefore, in order for the irrebuttable presumption embodied in SORNA to pass constitutional muster, either it must be universally true that all “juvenile offenders” pose a high risk of committing additional sexual offenses or there must be no reasonable alternative means of ascertaining whether individual juvenile offenders pose such a risk.⁵⁹ See *Clayton*, 684 A.2d at 1063; *Vlandis*, 412 U.S. at 452.

*Clayton*⁶⁰ is particularly instructive. In overturning a presumptive license revocation upon a driver’s epileptic seizure, the court noted that the regulatory scheme in question provided for a hearing that did not allow for consideration of the “paramount factor behind the instant regulations,” i.e. competency to drive. *Clayton*, 684 A.2d at 1065. Although the driver could be heard on whether he had in fact suffered an epileptic seizure, he could not be heard on the issue of whether that fact rendered him incompetent to drive. As such, the court found that the regulation violated the due process requirement that a hearing be “meaningful” and “appropriate to the nature of the case.” *Id.* at 351-353 (citing *Soja v. Pennsylvania State Police*, 500 Pa. 188,

⁵⁹ Although the U.S. Supreme Court ruled, in *Connecticut Dept. of Safety v. Doe*, that due process was not implicated when the Connecticut statute provided no hearing on the issue of future dangerousness prior to imposing notification provisions on convicted sex offenders, *Doe’s* reasoning is inapposite. See 538 U.S. 1 (2003). First, Petitioners in the instant case seek relief under Pennsylvania’s judicially created irrebuttable presumption doctrine. Second, notwithstanding the inapplicability of the decision on this motion, juveniles who act out sexually are very different from adult sex offenders and cannot be held to the same rules of law. Finally, in *Doe*, the Court upheld the statute because the Connecticut law explicitly provided for registration based on the conviction alone, with no other fact relevant to the dissemination of the registrants’ information. *Doe*, 538 U.S. at 7.

⁶⁰ In *Clayton*, the issue was whether a regulation which provided for the revocation of one’s operating privilege for a period of one year upon the occurrence of only a single epileptic seizure, without the licensee having an opportunity to present medical evidence in an effort to establish his or her competency to drive, created an irrebuttable presumption in violation of due process. The Pennsylvania Supreme Court noted the state’s important interest in precluding unsafe drivers, and even potentially unsafe drivers, from driving on the state’s highways. 546 Pa. at 353. However, it held that this interest did not outweigh a person’s interest in retaining his or her license so as to justify the recall of that license without first affording the licensee due process—i.e., a hearing that considered whether the individual was competent to drive. *Id.*

194 (1982) for proposition that “the essential elements of due process are notice and opportunity to be heard and to defend in an orderly proceeding adapted to the nature of the case before a tribunal having jurisdiction of the cause;” *Fiore v. Commonwealth of Pennsylvania, Board of Finance and Revenue*, 632 A.2d 1111, 1114 (Pa. 1993) for notion that due process requires not just “any” hearing, but rather an “appropriate” hearing; and *Bell v. Burson*, 402 U.S. 535 (1971) for notion that “any hearing which eliminates consideration of [the paramount factor behind the instant regulations] is violative of procedural due process.”). *See also Pennsylvania v. Aziz*, 724 A.2d 371, 375 n.2 (Pa. Super. 1999) (noting the right to rebut the presumption asserted); *Goss v. Lopez*, 419 U.S. 565, 579 (1975) (Due process and fundamental fairness includes a meaningful opportunity to be heard on the matter at issue at a “hearing appropriate to the nature of the case.”) (internal citations omitted).

Similarly, in *D.C. v. School District of Philadelphia*, the Commonwealth Court ruled unconstitutional a statute requiring, *inter alia*, Philadelphia youth returning from delinquent placement to be automatically placed in one of four alternative education settings. 879 A.2d 408 (2005). The court ruled the statute created an irrebuttable presumption that students convicted or adjudicated of specific underlying offenses could not be returned directly to a regular classroom, and instead should be assigned to alternative education settings. *Id.* at 420. The court pointed out that students subject to the automatic exclusion were presumed unfit to return to the regular classroom, “regardless of whether the student performed in an exemplary manner during juvenile placement or otherwise does not pose a threat to the regular classroom setting.” *Id.* at 418. As such, the legislation failed to provide students with an opportunity to “challenge on the central issue” at hand in the regulatory scheme, i.e. the need to protect the regular classroom environment against disruption, and thus violated due process. *Id.* at 418.

Pennsylvania courts subject irrebuttable presumptions to a higher degree of scrutiny on procedural due process grounds⁶¹ without analysis of whether the interests are fundamental. *Clayton, supra* (citing *Bell*, noting that *Bell* “remains valid precedent, is directly on point in the instant matter and, indeed, is dispositive.”); *D.C., supra*. In both *D.C.* and *Clayton*, the affected parties had opportunities to challenge the *underlying* fact, but not the *presumed* fact upon which the regulatory scheme was founded.⁶² Similarly, under SORNA, juvenile offenders will have been adjudicated delinquent in a hearing complete with required due process safeguards, but will not have had an opportunity to challenge the statute’s presumption that their adjudication means that they “pose a high risk of committing additional sexual offenses,” or that their registration will “[offer] an increased measure of protection to the citizens of this Commonwealth.” 42 Pa.C.S. § 9799.11. As in *Clayton*, the Commonwealth has used its legitimate interest in promoting public safety to improperly conflate two unrelated facts. In *Clayton*, the Commonwealth conflated an epileptic seizure with incompetency to drive; here, it has conflated the adjudication of the underlying offense with future dangerousness. Though legitimate, the interest in protecting communities from sex offenders cannot render “inviolable” an unlawful, irrebuttable presumption. *See Clayton*, 684 A.2d at 1065. Indeed, because future dangerousness is the paramount factor behind the instant regulations, any hearing which eliminates

⁶¹ The U.S. Supreme Court has held that in juvenile proceedings the applicable due process standard is “fundamental fairness.” *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971). To assure due process and fundamentally fair proceedings, children must be treated differently from adults. The New Jersey Supreme Court has noted that the concept of fundamental fairness “effectuates imperatives that government minimize arbitrary action” and thus when applied in the SORNA context, it necessitates procedural protections that ensure the classification and consequences are “tailored to his particular characteristics and are not the product of arbitrary action.” *Doe v. Poritz*, 662 A.2d 419, 422 (N.J. 1995).

⁶² In *D.C.*, the students had been subject to either the delinquency or criminal process and had been either adjudicated or convicted. In *Clayton*, the drivers had the right to a *de novo* hearing at which hearing they could present evidence to rebut the fact that they had had a seizure. However, neither process afforded the litigants the opportunity to rebut the presumed fact at issue. The delinquency and criminal processes adjudicate questions of “guilt” or “innocence”; they are “not adapted to consideration of [the returning students’ fitness to return to the regular classroom].” *D.C.* at 418. In *Clayton*, the *de novo* hearing was “meaningless” as it did not afford the Appellee the opportunity to present objections to the presumption of incompetency to drive. *Clayton* at 353.

consideration of that very factor is violative of procedural due process.” *See id.* *See also, In re W.Z.*, 957 N.E.2d 367, 376-80 (2011) (concluding that procedural due process demanded a hearing on whether the juvenile has been rehabilitated before he could be subject to registration and reporting requirements and stating that “without any other findings or support of the likelihood of recidivism, a child who commits a one-time mistake is automatically, irrebuttably, and permanently presumed to be beyond redemption or rehabilitation.”).

Moreover, in finding that the students in *D.C.* lacked a “meaningful” opportunity to challenge their transfer to an alternative education setting, the Commonwealth Court specifically noted that the determination of a returning student’s fitness for the regular classroom “turns on factors that could not be known at the time of juvenile adjudication.” 879 A.2d at 418. The same can be said about the relationship between a juvenile’s adjudication for sexual offenses and the child’s risk of committing additional sexual offenses. In fact, because an adjudication of delinquency amounts to a finding that the child has committed a delinquent act and is in need of treatment, supervision or rehabilitation, it is inconsistent—and punitive—to presume that one who has been adjudicated delinquent *and* undergone treatment continues to pose a threat to his/her community. The right to a meaningful hearing that considers the central issue at hand is plainly violated by substituting the delinquency hearing, which addresses guilt or innocence, for a determination on the need for registration. The adjudicatory hearing neither considers nor addresses whether the child poses a high risk of committing additional sexual offenses. Because SORNA’s mandatory registration scheme turns on assumptions that cannot be reliably known at the time of adjudication, it is further unconstitutional for failing to provide children with an opportunity to challenge the registration requirements on an individual basis.

VII. REGISTRATION IMPOSES STIGMA AND RESTRICTIONS THAT IMPEDE PETITIONER'S REPUTATION RIGHTS EXPRESSLY PROTECTED BY THE PENNSYLVANIA CONSTITUTION.

Pennsylvania expressly protects a fundamental right of reputation. Article I, Section 1 of the Pennsylvania Constitution provides that “[a]ll men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.” Pa. Const. art. I, § 1. Reputation is a fundamental right that cannot be abridged without compliance with state constitutional standards of due process and equal protection.

Balletta v. Spadoni, 47 A.3d 183, 192 (Pa. Commw. Ct. 2012).

Where laws infringe upon certain rights considered fundamental, such as the right to privacy, the right to marry, and the right to procreate, courts apply a strict scrutiny test. [. . .] Under that test, a law may only be deemed constitutional if it is narrowly tailored to a compelling state interest.

Nixon v. Dep't of Pub. Welfare, 576 Pa. 385, 399-403 (Pa. 2003) (internal citations omitted).

In *R. v. Com., Dept. of Welfare*, the court recognized that although the U.S. Supreme Court has held that reputation is not an interest by itself “to invoke the procedural protections of the 14th Amendment’s due process clause,” 636 A.2d 142, 149 (1994), in Pennsylvania, reputation is “recognized and protected by our highest state law: our Constitution.” *Id.*

Information contained in the juvenile sex offender registry can easily be accessible to the general public because (1) the law does not prevent personal information from being released by law enforcement, courts, or private individuals outside of the State Police website; (2) the law requires frequent and regular in person reporting, which can lead to conclusions about an individual’s activities at the approved registration sites; (3) the law does not take into account that the internet domain can be accessible by the general public even if it is on a private website;

(4) the law does nothing to prohibit an individual who knows information about a registered individual from sharing it widely; and (5) the law makes registration information accessible to schools. 42 Pa.C.S. §9799.10 *et seq.*

Being labeled a sex offender is unquestionably stigmatizing. To the extent Pennsylvania's registry is more porous than actually sealed for juvenile offenders, children cannot escape this stigma. SORNA requires some dissemination of children's information. Additionally, internet domains such as *Offendex* and *HomeFacts* provide information on both previous and current sex offenders, including people who are supposedly already removed from the public registry. These websites are accessible by the public and could create the potential for public knowledge. Juvenile offenders are also required to report in person to the State Police every 90 days. 42 Pa.C.S. §9799.19. In small communities, or even in large communities where few approved registration sites are available, the simple act of reporting to the registration site raises suspicion and may inadvertently cause private registrants' information to become public. People who deduce that the individual is on the registry are free to request the information from the State Police, make fliers, inform the public, notify neighbors, employers, and anyone else. *See also* Section II.E, *supra* (detailing how information on the registry will be directly and indirectly released). *See also* Logan, Exhibit K. One Texas youth, required to register at age 10 was placed on a non-public registry. A few months later, the local newspaper published his name and address in a story warning families of where registered sex offenders reside so they can avoid their homes during Halloween trick-or-treating. *Raised on the Registry*, at 44.

Being labeled a sex offender is not comparable to having a juvenile record, even one that is available for public review. Despite uncontroverted research demonstrating children who sexually offend are unlikely to re-offend, the public often believe offenders are dangerous and more likely to

re-offend than other criminals, are resistant to change or treatment, and that they offend against strangers. *See e.g.*, Jill S. Levenson et al., *Public Perceptions About Sex Offenders and Community Protection Policies*, *Analyses of Soc. Issues and Pub. Pol’y*, Vol. 7, No. 1, 1, 10-13 (2007). *See also Raised on the Registry*, at 21 (discussing that public assumption is that anyone on a registry must be a child molester or rapist, when the inclusion of offenses can vary widely). Children on registries have reported being called “pedophiles” by passing strangers. *Raised on the Registry*, at 38. While a juvenile conviction increasingly carries collateral consequences for children long after juvenile court jurisdiction has ended, the stigma of being labeled a sex offender permeates every aspect of one’s participation in civil society. The fact that this designation is likely incorrect only compounds the harm.

Being placed on a sex offender registry sends a message to the public that the registered sex offender is likely to re-offend, is mentally ill, and is dangerous. *See Eric Janus, Failure to Protect: America’s Sexual Predator Laws and the Rise of the Preventative State*, Cornell Univ. Press (2006) (discussing generally perceptions and realities regarding sex offenders); *Unjust and Ineffective*, *The Economist*, August 6, 2009 (assessing Georgia registrants and concluding that 65% of them posed little threat. Another 30% were potentially threatening, and 5% were clearly dangerous.”). This message is false and highly stigmatizing. A child who is a registered sex offender in Pennsylvania is required to register by virtue of his or her adjudication of delinquency, not because of any finding of future dangerousness.

Finally, the right to reputation cannot be taken away without due process. *Simon v. Com.*, 659 A.2d 631, 637 (Pa. Commw. Ct. 1995). Because SORNA impacts this fundamental right of reputation, SORNA must be struck unless it satisfies strict scrutiny review. *Nixon v. Dep’t of Pub. Welfare*, 576 Pa. 385, 399-403 (2003). SORNA fails this test. It is not narrowly tailored to meet the

Commonwealth's justifications to prevent recidivism and notify community members about risky sexual offenders in their neighborhoods. 42 Pa.C.S. § 9799.11(a). Nearly all children subject to SORNA are at a low risk for reoffending, *see* Section I.B, *supra* (detailing how rates of juvenile sexual offending are minimal). Juvenile registration information could become publicized, and due process is not burdensome. Due process rights tip favorably to citizens in balancing individual and governmental rights; therefore, it should shift in favor of youth adjudicated for registerable offenses in this case. *Simon*, 659 A.2d at 639.

VIII. LIFETIME JUVENILE SEX OFFENDER REGISTRATION CONTRAVENES THE PENNSYLVANIA JUVENILE ACT.

A. The Juvenile Court Has No Authority To Impose A Punishment That Extends Over The Lifetime of the Juvenile, Where the Juvenile Court's Jurisdiction Otherwise Ends At Age 21.

The Pennsylvania Juvenile Act applies to “proceedings in which a child is alleged to be delinquent or dependent.” 42 Pa.C.S. § 6303(a)(1). In relevant part, the act defines “child” as “(1) an individual under the age of 18; (2) an individual under the age of 21 who committed an act of delinquency before reaching the age of 18. . .” 42 Pa.C.S. § 6302. This definition is inconsistent with SORNA’s definition of a juvenile offender.⁶³ The Superior Court has held that “[j]uvenile court jurisdiction terminates at 21, regardless of whether or not the appellants continue to pose a threat to society.” *Commonwealth v. Zoller*, 498 A.2d 436, 440 (Pa. Super. 1985). This holding as well as the plain language of 42 Pa.C.S. § 6302 forbid juvenile court judges from imposing penalties or conditions of disposition extending beyond the child’s twenty-first birthday. Thus, lifetime SORNA registration is proscribed.

⁶³ This definition of “child” would exclude a number of individuals who would be subject to SORNA’s registration and reporting requirements. A juvenile offender adjudicated delinquent for one of the specified offenses must register for life. 42 Pa.C.S. § 9799.15(a)(4). They must appear at a registration site four times a year. 42 Pa.C.S. §9799.15(h)(2).

Although there are two specific circumstances in which juvenile adjudications may lead to adult consequences—civil commitment and continuing restitution obligations—they are distinguishable from SORNA’s reporting and registration requirements because SORNA does not provide for any individualized assessment of the juvenile to whom the penalties may apply. First, under Pennsylvania’s civil commitment statute, an adult court has the power to order certain juveniles convicted of sexual offenses to be involuntarily committed for an indefinite amount of time, even after they have turned 21. 42 Pa.C.S. § 6403(d).⁶⁴ However, before civil commitment is permitted, the juvenile is first subject to an assessment by the State Sexual Offenders Assessment Board (SOAB). 42 Pa.C.S. § 6403(b). If the Board finds a *prima facie* case for commitment, a petition is filed describing the reasons and a hearing is scheduled. *Id.* At the hearing, the juvenile can present expert testimony on his or her behalf and can cross-examine any witnesses against him or her. 42 Pa.C.S. § 6403(c). The court must find clear and convincing evidence that “the person has a mental abnormality or personality disorder which results in serious difficulty in controlling sexually violent behavior that makes the person likely to engage in an act of sexual violence.” 42 Pa.C.S. § 6403(d). The decision to involuntarily commit an individual is thus based on careful consideration of the unique needs and circumstances of the juvenile in question, and the deprivation of liberty is directly tied to the issues to be determined at the hearing. Commitment, with the approval of the SOAB and juvenile court, is initially for a period of one year. 42 Pa.C.S. § 6404(a). The commitment is then reviewed *annually* by the director of the inpatient facility, the SOAB, and finally by the court to determine if there is a continuing *need* for inpatient treatment. 42 Pa.C.S. § 6404(b).

⁶⁴ The juveniles subject to civil commitment must have (1) been previously adjudicated delinquent for rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault, or incest; (2) been placed in a juvenile facility and remained there until reaching 21 years of age; (3) been found by the court to be in need of involuntary treatment for a mental abnormality or personality disorder that prevents them from controlling their sexually violent behavior. 42 Pa.C.S. § 6403(a).

SORNA gives the juvenile court the authority to impose lifelong registration and reporting requirements on a juvenile with no further review – *for a minimum of twenty five years*. The requirements are tied to the disposition of the original juvenile offense. Without periodic review by the court imposing the registration requirement, the authority of the juvenile court to continue to impose the requirements after the age of 21 is not established.

Secondly, juveniles can be required to fulfill remaining restitution obligations resulting from their adjudications after they have been released from juvenile court supervision. 42 Pa.C.S. § 6352(a)(5). Any order by the juvenile court for payment of restitution, reparations, fines, fees, or costs is considered a judgment against the juvenile in favor of the county's adult probation department. This permits the continued collection of monetary obligations even after the juvenile court's supervision has terminated. Like civil commitment, however, the amount of restitution is based on an individualized assessment of the juvenile and the damages he has caused. This individualized determination is mandated by the Juvenile Act.⁶⁵ Although restitution obligations may follow a juvenile beyond his or her 21st birthday, they were initially based on a careful assessment of the juvenile's unique circumstances and subject to review separate from the adjudication.

Similarly, the Ohio Supreme Court justified its rejection of SORNA as applied to juveniles by emphasizing the lack of a role for a juvenile court judge in determining whether the

⁶⁵ The Court considers (1) The amount of loss suffered by the victim; (2) The fact that defendant's action caused the injury; (3) The amount awarded does not exceed defendant's ability to pay; [and] (4)The type of payment that will best serve the needs of the victim and the capabilities of the defendant. *In re Dublinski*, 695 A.2d 827, 829 (Pa. Super. 1997) (quoting *Commonwealth v. Valent*, 463 A.2d 1127, 1128 (Pa. Super. 1983)). While restitution obligations of adult defendants are not adjusted based on the financial resources of the defendant, *see* 18 Pa.C.S. § 1106, the court in *Dublinski* emphasized that the language of the Juvenile Act demands that orders for payment consider "the nature of the acts committed and the earning capacity of the child." 695 A.2d. at 830 (quoting 42 Pa.C.S. § 6352(a)(5)). The court further described factors relevant to the analysis, including her "mental ability, maturity and education; her work history, if any; the likelihood of her future employment and extent to which she can reasonably meet a restitution obligation; the impact of a restitution award on her ability to acquire higher education and thus increase her earning capacity; and her present ability to make restitution." *Id.*

registration and reporting requirements should apply. *Id.* at 748-49. The Court explained that when an adult sentence may be imposed on a serious youthful offender (SYO)⁶⁶ the juvenile court must first determine that the juvenile has committed an additional bad act while under supervision, must determine that the juvenile is unlikely to be rehabilitated while under juvenile court supervision, and may modify the previously determined adult sentence. *Id.* at 749. Under Pennsylvania's SORNA, the adult penalties are automatically applied to juveniles who have been adjudicated for a covered crime and the juvenile judge does not have a comparable level of discretion. *Id.* This reasoning prompted the Ohio Supreme Court to hold that its version of SORNA violated due process. *Id.* at 750.

The Ohio Supreme Court's reasoning in *In re J.V.* is also instructive. 979 N.E.2d 1203 (Ohio 2012). *In re J.V.* also dealt with a SYO who initially received a blended sentence for a non-SORNA offense. The Ohio Supreme Court found that the juvenile court lacked jurisdiction over J.V. when it imposed post-release conditions at age 22 and voided the disposition. *Id.* at 1210-11. The Court held that even though the juvenile court could impose a blended-sentence that would follow J.V. into adulthood, this dispositional authority did not give the court jurisdiction over J.V. beyond the age of 21.⁶⁷ *Id.*

⁶⁶ Ohio law creates a class of juveniles who receive sentences that incorporate elements of both the juvenile justice system and the adult justice system. Juveniles classified as "serious youthful offenders" receive a juvenile disposition and an adult sentence. 21 Oh. R.C. § 2152.13. The adult sentence is stayed pending the completion of the juvenile disposition. *Id.* Only if the juvenile fails to complete his or her juvenile disposition successfully will he or she be required to serve the adult sentence. *Id.* When Ohio implemented SORNA, it differed from this system because the registration requirements were imposed on the juvenile regardless of his completion of the terms of his juvenile disposition. *In re CP*, 967 N.E.2d at 735.

⁶⁷ Notably, Pennsylvania courts do not impose blended sentences for juveniles. Registration must therefore end when juvenile court jurisdiction ends. The juvenile court is "vested with 'original and exclusive jurisdiction of the child.'" *Kent*, 383 U.S. at 556. To vest an adult criminal court with jurisdiction over a juvenile court disposition is impermissible under due process. "[W]ithout ceremony" or "without hearing," the juvenile court may not relinquish control to the adult criminal court, nor may it continue imposing punishment when its jurisdiction has ceased. *Id.* at 554.

Finally, Pennsylvania law requires that any penalties imposed by the juvenile court must be expressly provided in the Juvenile Act. *In re J.J.*, 848 A.2d 1014, 1016-17 (Pa. Super. 2004) (“Dispositions which are not set forth in the Act are beyond the power of the juvenile court.”). Because of this limit on the dispositional authority of the court, § 6352⁶⁸ expressly provides both for the imposition of restitution and its continued collection under § 9728. Even after the enactment of SORNA, nothing in § 6352 expressly grants the juvenile court authority to require registration and reporting pursuant to SORNA.

B. Lifetime Registration For Juvenile Offenders Contradicts The Rehabilitative Purposes Of The Juvenile Act.

Rehabilitation and attention to the long-term interests of juveniles remain integral to the express purpose of the Pennsylvania juvenile justice system. With a focus on “development of competencies” to ensure that youth who go through the system become “productive members of the community,” the system is not intended to impose harsh, long-lasting punishment, such as sex offender registration. The Juvenile Act provides that the court must use the “least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision, and treatment needs of the child.” 42 Pa.C.S. § 6301(b)(2). Moreover, the Act requires “employing evidence-based practices whenever possible and, in the case of a delinquent child, by using the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child.” 42 Pa.C.S. § 6301(b)(3)(1).

⁶⁸ A juvenile’s disposition includes “[1] any orders authorized by § 6351. [2] Probation as provided by § 6363. [3] Committing child to an institution, youth development center, camp, or facility for delinquent children operated under the direction or supervision of the court or other public authority and approved by the Dept. of Public Welfare. [4] If 12 years or older, committing to committing child to an institution operated by Dept. of Public Welfare. [5] Ordering fees, fines, costs, restitutions, as deemed appropriate.” 42 Pa.C.S. § 6352 (a)(1-6).

Pennsylvania courts have consistently underscored these rehabilitative aims. In *Commonwealth v. S.M.*, the Superior Court stated “[T]he purpose of juvenile proceedings is to seek treatment, reformation and rehabilitation of the youthful offender, not to punish.” 769 A.2d 542, 544 (Pa. Super. 2001) (internal quotations omitted). The rehabilitative purpose has notable practical effects on the way in which the court system responds to criminal behavior, as the court has emphasized in the context of certification proceedings. In *Commonwealth v. Ghee*, the court listed the benefits of a youth remaining under the juvenile court’s jurisdiction, reasoning that “the juvenile system’s goal is to rehabilitate the juvenile on an individual basis without marking him or her as a criminal, rather than to penalize the juvenile.” 889 A.2d 1275, 1279 (Pa. Super. 2005) (discussing the lack of publicity and disqualification from public employment as well as the limits on detention as important distinctions between adult and juvenile dispositions). See also, *In re B.T.C.*, 863 A.2d 1203, 1205 (Pa. Super. 2005) (“[T]he rehabilitative purpose of the Juvenile Act is attained through accountability and the development of personal qualities that will enable the juvenile offender to become a responsible and productive member of the community.”)

Generally, in ordering a disposition, the court “shall provide (as appropriate to the individual circumstances of the child’s case) balanced attention to the protection of the community, imposition of accountability for offenses committed, and development of competencies to enable the child to become a responsible and productive member of the community.” 42 Pa.C.S. § 6352 (a). In other words, the juvenile court judge is required to consider the protection of the public interest, and to fashion a sentence which is best suited to the child’s treatment, supervision, rehabilitation, and welfare, under the individual circumstances of

each child's case. *In re R.W.*, 855 A.2d 107 (Pa. Super. 2004). Mandatory juvenile registration contravenes these goals.

As described in Section IV, *supra*, SORNA is punitive in effect; this runs counter to the express rehabilitative purpose of the Juvenile Act as set forth above.⁶⁹ It clearly limits the ability of juvenile offenders to become "responsible and productive member[s] of society." Because the registration and reporting requirements continue over the full duration of the juvenile's life, it will impede their opportunities to develop competencies, be held accountable and then move forward. Similarly, registration fails to "provide for the care, protection, safety and wholesome mental and physical development of children [adjudicated delinquent of the enumerated offenses]." 42 Pa.C.S. § 6302. To the contrary, SORNA ensures that children will encounter difficulties that run counter to their wholesome development and, in some cases, safety, well into adulthood.

SORNA also fails to comply with the Act's mandate to "provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community." As discussed above, the deterrent and incapacitating effects of registration are negligible at best and the registration requirements are antithetical to the

⁶⁹ Courts in other jurisdictions have found that SORNA contravenes the rehabilitative purpose of juvenile court. In 2009, the Ninth Circuit addressed the purpose of the juvenile justice system, describing it as making the juvenile feel that he is "the object of the state's care and solicitude" and that he will be rehabilitated with clinical procedures rather than punitive measures. *Juvenile Male*, 590 F.3d at 932. Juveniles subject to SORNA would face public humiliation and obstacles in finding jobs, housing, and educational opportunities. *Id.* at 935. That kind of exposure, the court concluded, was more typical of the punitive adult justice system than the rehabilitative system for juveniles. *Id.* at 941. *See also In re C.P.*, 967 N.E.2d 729 (2012) (holding that SORNA imposed cruel and unusual punishment on juvenile sex offenders). In a decision prior to the Ohio Supreme Court's ruling in *In re C.P.*, the Ohio Court of Appeals found that registration and reporting under SORNA conflicted with two essential elements of the rehabilitative purpose of the juvenile justice system: confidentiality and stigmatization. *In re W.Z.*, 957 N.E.2d 367, 376 (2011).

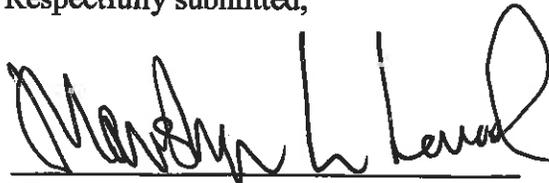
development of competencies to enable juvenile offenders to become productive members of the community.

Lastly, SORNA fails to employ evidence-based practices in responding to juvenile sex offending. Quite the opposite—requiring lifelong registration for this population directly contravenes uncontroverted research about the risk of re-offending among juveniles convicted of sex offenses. *See* Section I, *supra*. Rather than employing “the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child,” SORNA directly inhibits the rehabilitation and treatment needs of the child.

CONCLUSION

WHEREFORE, Petitioners, by and through counsel, respectfully request that this Honorable Court declare 42 Pa.C.S. § 9799.10 *et seq.* unconstitutional as it applies to juvenile offenders and violative of the Juvenile Act, declassify Petitioners as “juvenile offenders” and order the Pennsylvania State Police to remove their names, photographs, and all other information from the sex offender registry.

Respectfully submitted,

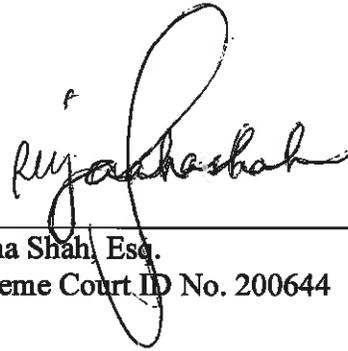


Marsha L. Levick, Esq., ID No. 22535
Riya Saha Shah, Esq., ID No. 200644
Juvenile Law Center
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551

Dated: May 22, 2013

VERIFICATION

On this 22nd day of May, 2013, I hereby verify that the facts set forth in the Memorandum of Law are true and correct to my knowledge, information and belief, and that any false statements made are subject to penalties of the Crimes Code, 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

A handwritten signature in black ink, appearing to read "Riya Saha Shah", written over a horizontal line.

Riya Saha Shah, Esq.
PA Supreme Court ID No. 200644

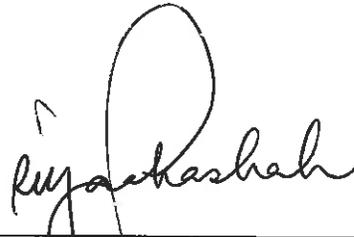
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2013 I am serving a true and correct copy of the foregoing Memorandum in Support of Motions for *Nunc Pro Tunc* Relief as follows:

Clerk of Courts, Juvenile Court
Lancaster County
50 North Duke Street
Lancaster, PA 17602

Office of Juvenile Probation
Lancaster County
50 North Duke Street
Lancaster, PA 17602

Office of the District Attorney of Lancaster County
Amber Czerniakowski
Courthouse
50 North Duke Street
P.O. Box 83480
Lancaster, PA 17608-3480



Riya Saha Shah, Esq.
PA Supreme Court ID 200644
Juvenile Law Center

EXHIBIT

A

Sexual Offender Registration
Notification Form, SP 4-218



**PENNSYLVANIA STATE POLICE
SEXUAL OFFENDER REGISTRATION
MEGAN'S LAW
1-866-771-3170**



Instructions for Completing the Sexual Offender Registration Form

USE: This form is to be used by the registering official ONLY when the PA SORT system is unavailable for use or in other unusual circumstances for registering/verifying/updating sexual offenders.

Check the appropriate box(es) indicating the reason(s) for submission (new registration, verification, etc.).

- If preparing this form for a **New Registration**, complete all sections.
- If preparing this form for a **Verification, Address Change, School Change, Employment Change, or Other Change**, complete all sections except B, C, D, E, F, M, and N, unless information in those specific sections has changed.

NOTE: The National Crime Information Center (NCIC) provides universal acceptable values for data fields such as hair color and eye color. These values should be recorded in the applicable fields as noted.

SECTION A - OFFENDER INFORMATION

This section is used to record the **sexual offender's information**.

1. **PA SID:** Enter the sexual offender's Pennsylvania State Identification Number (SID). Leave blank if the sexual offender does not have a PA SID.
2. **Social Security Number:** Enter the 9-digit social security number.
3. **Date of Birth:** Enter the date of birth numerically by month, day, and 4-digit year.
4. **First Name:** Enter the first name.
5. **Middle Name:** Enter the middle name.
6. **Last Name:** Enter the last name.
7. **Gender:** Place an "X" in the appropriate box.
8. **Suffix:** Enter the suffix, if applicable.
9. **Does Offender Have a Mobile Telephone?:** Place an "X" in the appropriate box.
10. **Mobile Telephone:** If YES is selected in Block 9, enter the number, including the area code.
11. **Other Telephone:** Enter any other telephone number (not associated with an address) the sexual offender can be reached at, including the area code.

SECTION B - REGISTRATION INFORMATION

This section is used to record the **sexual offender's registration information**.

12. **Offender Status:** Place an "X" in the appropriate box.
13. **Offender Type:** Place an "X" in the appropriate box. If offender type is unknown, select "Tier Pending."

SECTION C - PHYSICAL DESCRIPTION

This section is used to record the **sexual offender's physical description**.

14. **Does Offender Wear Glasses?:** Place an "X" in the appropriate box.
15. **Height:** Enter the height in feet and inches.
16. **Weight:** Enter the weight in pounds.
17. **Hair Color:** Enter the hair color by using NCIC values.
18. **Eye Color:** Enter the eye color by using NCIC values.
19. **Race:** Place an "X" in the appropriate box.
20. **Ethnicity:** Place an "X" in the appropriate box.
21. **Birth State/Territory:** Enter the state in which the sexual offender was born. If born outside of the U.S., write "unknown."
22. **Birth Country:** Enter the country in which the sexual offender was born.

SECTION D – IDENTIFIERS

This section is used to record the **sexual offender's identifiers**.

23. **Have Palm Prints Been Taken?:** Place an "X" in the appropriate box. Palm prints are required for all Megan's Law sexual offenders at initial registration.
24. **Has DNA Been Taken?:** Place an "X" in the appropriate box. DNA collection is required for all Megan's Law sexual offenders at initial registration.
25. **Passport Number:** Enter the passport number, if applicable.
26. **Inmate Number:** Enter the inmate number, if applicable.
27. **Immigration (Alien) ID:** Enter the immigration (alien) identifier (ID), if applicable.
28. **Immigration Status:** Enter the immigration status, if applicable.
29. **FBI Number:** Enter the FBI number, if applicable.

SECTION E – ALIASES

This section is used to record the **sexual offender's aliases**.

30. **Current Aliases/Nicknames:** Enter ALL aliases/nicknames pertaining to the sexual offender.

SECTION F – SCARS/MARKS/TATTOOS/MISSING BODY PARTS (AMPUTATIONS)

This section is used to record the **sexual offender's scars, marks, tattoos, and missing body parts (amputations)**.

31. **Scars:** Enter the location(s) and description(s) of any scars on the sexual offender's body.
32. **Tattoos:** Enter the location(s) and description(s) of any tattoos on the sexual offender's body.
33. **Amputations:** Enter the location(s) and description(s) of any amputations.
34. **Marks:** Place an "X" in the appropriate box, and enter the location(s) and description(s) of any marks on the sexual offender's body.

SECTION G – ADDRESS INFORMATION

This section is used to record all of the **sexual offender's addresses** where the offender resides or receives mail, including a correctional facility. If the sexual offender is being released from a correctional facility, do not complete the facility section.

Correctional Facility

35. **Name of Facility:** Enter the name of the correctional facility where the sexual offender is incarcerated.
36. **Description:** Enter the description of the correctional facility (e.g., prison, county, state, federal, work release center, detention).
37. **Telephone Number:** Enter the telephone number of the correctional facility.
38. **Street Address 1:** Enter the street address of the correctional facility.
39. **Street Address 2:** Enter any additional street address information for the correctional facility.
40. **City:** Enter the city of the correctional facility.
41. **State:** Enter the state of the correctional facility.
42. **Zip Code:** Enter the zip code of the correctional facility.
43. **County:** Enter the county of the correctional facility.
44. **Municipality:** Enter the city/township/borough of the correctional facility.
45. **Country:** Enter the country of the correctional facility.
46. **Start Date:** Enter the first day of incarceration (numerically by month, day, and 4-digit year).
47. **End Date:** Enter the date of release from incarceration (numerically by month, day, and 4-digit year).
48. **Responsible Agency Having Jurisdiction:** Enter the responsible law enforcement agency having jurisdiction at the correctional facility.

Primary Residence

49. **Description:** Enter a description of the primary residence of the sexual offender (e.g., house, apartment, cabin, shelter).
50. **Telephone Number:** Enter the telephone number of the primary residence, including the area code.
51. **Street Address 1:** Enter the street address of the primary residence.
52. **Street Address 2:** Enter any additional street address information for the primary residence (include building name, apartment/room no., etc.).
53. **City:** Enter the city of the primary residence.
54. **State:** Enter the state of the primary residence.
55. **Zip Code:** Enter the zip code of the primary residence.
56. **County:** Enter the county of the primary residence.
57. **Municipality:** Enter the city/township/borough of the primary residence.
58. **Country:** Enter the country of the primary residence.

59. **Responsible Agency Having Jurisdiction:** Enter the responsible agency having jurisdiction where the residence is located.
60. **Transient/Temporary:** If applicable, place an "X" in the appropriate box.

Secondary Residence

61. **Description:** Enter a description of the secondary residence of the sexual offender (e.g., house, apartment, cabin, shelter).
62. **Telephone Number:** Enter the telephone number of the secondary residence, including the area code.
63. **Street Address 1:** Enter the street address of the secondary residence.
64. **Street Address 2:** Enter any additional street address information for the secondary residence (include building name, apartment/room no., etc.).
65. **City:** Enter the city of the secondary residence.
66. **State:** Enter the state of the secondary residence.
67. **Zip Code:** Enter the zip code of the secondary residence.
68. **County:** Enter the county of the secondary residence.
69. **Municipality:** Enter the city/township/borough of the secondary residence.
70. **Country:** Enter the country of the secondary residence.
71. **Responsible Agency Having Jurisdiction:** Enter the responsible law enforcement agency having jurisdiction where the residence is located.
72. **Transient/Temporary:** If applicable, place an "X" in the appropriate box.

Mailing Address

73. **Is the Mailing Address the Same as the Physical Address?:** Place an "X" in the appropriate box. If NO is selected, complete Blocks 74-79.
74. **Street Address 1:** Enter address where mail is received.
75. **Street Address 2:** Enter any additional address information about where mail is received (include P.O. Box, building name, apartment/room no., etc.).
76. **City:** Enter the city of the mailing address.
77. **State:** Enter the state of the mailing address.
78. **Zip Code:** Enter the zip code of the mailing address.
79. **County:** Enter the county of the mailing address.

SECTION H – SCHOOL INFORMATION

This section is used to record the **sexual offender's school information**. (Complete only if enrolled as a student.)

80. **Name of School:** Enter the name of the school the sexual offender attends.
81. **Additional Information:** Enter any additional information concerning the school.
82. **Telephone Number:** Enter the telephone number of the school, including the area code.
83. **Street Address 1:** Enter the street address of the school.
84. **Street Address 2:** Enter any additional street address information for the school (include building name, room no., etc.).
85. **City:** Enter the city of the school.
86. **State:** Enter the state of the school.
87. **Zip Code:** Enter the zip code of the school.
88. **County:** Enter the county of the school.
89. **Municipality:** Enter the city/township/borough of the school.
90. **Country:** Enter the country of the school.
91. **Start Date:** Enter the enrollment date (numerically by month, day, and 4-digit year).
92. **End Date:** If known, enter the date the sexual offender will no longer attend school (numerically by month, day, and 4-digit year).
93. **Responsible Agency Having Jurisdiction:** Enter the responsible law enforcement agency having jurisdiction where the school is located.

SECTION I – EMPLOYMENT INFORMATION

This section is used to record the **sexual offender's employment information**.

Employer 1

94. **Employer:** Enter the name of the place of employment of the sexual offender.
95. **Occupation:** Enter the type of work performed (e.g., landscaper, teacher, framer).
96. **Supervisor's Name:** Enter the name of the supervisor.
97. **Telephone Number:** Enter the telephone number of Employer 1, including the area code.
98. **Street Address 1:** Enter the street address of Employer 1.

99. **Street Address 2:** Enter any additional street address information for Employer 1 (include building name, room no., etc.).
100. **City:** Enter the city of Employer 1.
101. **State:** Enter the state of Employer 1.
102. **Zip Code:** Enter the zip code of Employer 1.
103. **County:** Enter the county of Employer 1.
104. **Municipality:** Enter the city/township/borough of Employer 1.
105. **Country:** Enter the country of Employer 1.
106. **General Work Area:** Enter the portion(s) of the workplace in which the sexual offender moves about while fulfilling work tasks if the sexual offender's employment is not at a fixed address.
107. **Start Date:** Enter the first day of employment at Employer 1 (numerically by month, day, and 4-digit year).
108. **End Date:** If known, enter the last day of employment at Employer 1 (numerically by month, day, and 4-digit year).
109. **Responsible Agency Having Jurisdiction:** Enter the responsible law enforcement agency having jurisdiction where Employer 1 is located.

Employer 2

110. **Employer:** Enter the name of the place of employment of the sexual offender
111. **Occupation:** Enter the type of work performed (e.g., landscaper, teacher, framer).
112. **Supervisor's Name:** Enter the name of the supervisor.
113. **Telephone Number:** Enter the telephone number of Employer 2, including the area code.
114. **Street Address 1:** Enter the street address of Employer 2.
115. **Street Address 2:** Enter any additional street address information for Employer 2 (include building name, room no., etc.).
116. **City:** Enter the city of Employer 2.
117. **State:** Enter the state of Employer 2.
118. **Zip Code:** Enter the zip code of Employer 2.
119. **County:** Enter the county of Employer 2.
120. **Municipality:** Enter the city/township/borough of Employer 2.
121. **Country:** Enter the country of Employer 2.
122. **General Work Area:** Enter the portion(s) of the workplace in which the sexual offender moves about while fulfilling work tasks if the offender's employment is not at a fixed address.
123. **Start Date:** Enter the first day of employment at Employer 2 (numerically by month, day, and 4-digit year).
124. **End Date:** If known, enter the last day of employment at Employer 2 (numerically by month, day, and 4-digit year).
125. **Responsible Agency Having Jurisdiction:** Enter the responsible law enforcement agency having jurisdiction where Employer 2 is located.

SECTION J – VEHICLE INFORMATION

This section is used to record the **sexual offender's vehicle information** for all vehicles owned or operated.

Vehicle 1

126. **Vehicle Type:** Place an "X" in the appropriate box.
127. **Year:** Enter the year of Vehicle 1.
128. **Make:** Enter the make of Vehicle 1 (e.g., Ford, Chevy, GMC).
129. **Vehicle Primary Color:** Enter the primary color of Vehicle 1.
130. **Model:** Enter the model of Vehicle 1 (e.g., Escort, Corvette, Accord).
131. **Style:** Enter the body style of Vehicle 1 (e.g., pickup truck, 2-door or 4-door coupe, SUV, minivan, wagon, sports car, convertible, hybrid, luxury).
132. **Vehicle Secondary Color:** If Vehicle 1 has a secondary color, record the color.
133. **Vehicle Ownership:** Place an "X" in the appropriate box.
134. **Vehicle Identification Number (VIN):** Enter the vehicle identification number of Vehicle 1.
135. **Is This Vehicle Registered?:** Place an "X" in the appropriate box.
136. **Plate #:** Enter the license plate number of Vehicle 1.
137. **State:** Enter the state where Vehicle 1 is registered.
138. **Is License Plate Expiration Date Non-expiring?/Plate Expiration Date:** Place an "X" in the appropriate box, and enter the expiration date if NO is selected.
139. **License Plate Type:** Enter the type of license plate for Vehicle 1 (e.g., auto, truck, dealer).
140. **Additional Details:** Enter any additional details for Vehicle 1.
141. **General Parking Locations:** Enter all locations where Vehicle 1 is typically parked.

Vehicle 2

142. **Vehicle Type:** Place an "X" in the appropriate box.
143. **Year:** Enter the year of Vehicle 2.
144. **Model:** Enter the model of Vehicle 2 (e.g., Escort, Corvette, Accord).
145. **Vehicle Primary Color:** Enter the primary color of Vehicle 2.
146. **Make:** Enter the make of Vehicle 2 (e.g., Ford, Chevy, GMC).
147. **Style:** Enter the body style of Vehicle 2 (e.g., pickup truck, 2-door or 4-door coupe, SUV, minivan, wagon, sports car, convertible, hybrid, luxury).
148. **Vehicle Secondary Color:** If Vehicle 2 has a secondary color, enter the color.
149. **Vehicle Ownership:** Place an "X" in the appropriate box.
150. **Vehicle Identification Number (VIN):** Enter the vehicle identification number of Vehicle 2.
151. **Is This Vehicle Registered?:** Place an "X" in the appropriate box.
152. **Plate #:** Enter the license plate number of Vehicle 2.
153. **State:** Enter the state where Vehicle 2 is registered.
154. **Is License Plate Expiration Date Non-expiring?/Plate Expiration Date:** Place an "X" in the appropriate box, and enter the expiration date if NO is selected.
155. **License Plate Type:** Enter the type of license plate for Vehicle 2 (e.g., auto, truck, dealer).
156. **Additional Details:** Enter any additional details for Vehicle 2.
157. **General Parking Locations:** Enter all locations where Vehicle 2 is typically parked.

SECTION K – INTERNET IDENTIFIERS

This section is used to record the **sexual offender's Internet identifiers.**

158. **Email Address:** Enter ALL email addresses affiliated with the sexual offender.
159. **Site Identifiers/Site Affiliation(s):** Enter all Internet website identifiers affiliated with the sexual offender (e.g., Facebook, Twitter, Tagged, MySpace).

SECTION L – LICENSE INFORMATION

This section is used to record the **sexual offender's license information.**

Driver's License

160. **Driver's License Number:** Enter the sexual offender's driver's license number.
161. **Issuing State:** Enter the state in which the driver's license was issued.
162. **Expiration Date:** Enter the expiration date (numerically by month, day, and 4-digit year).
163. **Is License Current?:** Place an "X" in the appropriate box.

Professional License (Complete this section only if applicable).

164. **License Number:** Enter the sexual offender's professional license number.
165. **License Type:** Enter the type of professional license (e.g., plumber, barber, pilot).
166. **Issuing Agency:** Enter the issuing agency of the professional license.
167. **Issuing State:** Enter the state that issued the professional license.
168. **Expiration Date:** Enter the expiration date of the professional license (numerically by month, day, and 4-digit year).
169. **Is license Current?:** Place an "X" in the appropriate box.

SECTION M – OFFENSE

This section is used to record the **sexual offender's offense(s).**

170. **Country of Conviction:** Enter the country in which the sexual offender was convicted.
171. **State of Conviction:** Enter the state of conviction.
172. **County of Conviction:** Enter the county of conviction.
173. **OTN:** Enter the Offense Tracking Number (OTN).
174. **Offense:** Enter the offense.
175. **Offense Date:** Enter the date of the offense (numerically by month, day, and 4-digit year).
176. **Arrest Date:** Enter the actual date of arrest (numerically by month, day, and 4-digit year).
177. **Conviction Date:** Enter the date of conviction/guilty plea (numerically by month, day, and 4-digit year).
178. **Was Offender Adjudicated Delinquent as a Juvenile?:** Place an "X" in the appropriate box.
179. **Was the Juvenile Offender Civilly Committed as a Sexually Violent Delinquent Child (SVDC)?:** Place an "X" in the appropriate box.
180. **Additional Information:** Enter any additional information for the offense.
181. **Were Any of Offender's Victims Minors?:** Place an "X" in the appropriate box.
182. **Victim 1/Age/Gender/Relationship:** Enter the age of Victim 1 at the time of the offense. Place an "X" in the appropriate box for gender, and enter the relationship of Victim 1 to the sexual offender.

183. **Victim 2/Age/Gender/Relationship:** Enter the age of Victim 2 at the time of the offense. Place an "X" in the appropriate box for gender, and enter the relationship of Victim 2 to the sexual offender.

SECTION N – SUPERVISION

This section is used to record the **sexual offender's supervision by a probation/parole agency.**

184. **Is Offender Under Supervision?:** Place an "X" in the appropriate box.

185. **Supervising Agency:** Enter the agency that supervises the sexual offender.

186. **Supervision Start Date:** Enter the first day of probation/parole (numerically by month, day, and 4-digit year).

187. **Supervision End Date:** If known, enter the end date of parole/probation (numerically by month, day, and 4-digit year).

188. **Parole Number:** Enter the parole number.

ADDITIONAL COMMENTS

This section is used to record any additional comments necessary.

REQUIREMENTS STATEMENTS

This section is used to convey the registration requirements to the offender. The sexual offender must read and check all registration requirement statements. This form must be signed and dated by both the sexual offender and the registering official.

- If completing this form for a **New Registration**, submit the form along with a **facial (frontal) photograph; photograph(s) of scars, marks, and tattoo(s) (if applicable); fingerprints; and palm prints of the offender** to the Pennsylvania State Police at the address found at the end of this form.
- If completing this form for **Verification, Address Change, School Change, Employment Change, or Other**, submit the form along with the necessary **photograph(s)** to the Pennsylvania State Police at the address found at the end of this form.

Fingerprints, palm prints, and DNA are required for New Registrations at initial registration, or if a sexual offender's identity is in question. A facial (frontal) photograph is required for each appearance.

Questions regarding DNA collection or DNA-associated paperwork and requests for DNA kits may be directed to:

Forensic DNA Division
80 N. Westmoreland Avenue
Greensburg, PA 15601
724-832-5423

CHECK THE APPROPRIATE REASON(S) BELOW:

New Registration Verification Address Change Employment Change Other

SECTION A - OFFENDER INFORMATION

1. PA SID		2. SOCIAL SECURITY NUMBER		3. DATE OF BIRTH	
				/ /	
4. FIRST NAME			5. MIDDLE NAME		
6. LAST NAME			7. GENDER		8. SUFFIX
			<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN		
9. DOES OFFENDER HAVE A MOBILE TELEPHONE? <input type="checkbox"/> YES <input type="checkbox"/> NO		10. MOBILE TELEPHONE		11. OTHER TELEPHONE	

SECTION B - REGISTRATION INFORMATION

12. OFFENDER STATUS		13. OFFENDER TYPE			
<input type="checkbox"/> Active	<input type="checkbox"/> Inactive - Deported	<input type="checkbox"/> Tier I	<input type="checkbox"/> Sexually Violent Predator	<input type="checkbox"/> Tier Pending	
<input type="checkbox"/> Active - Incarcerated	<input type="checkbox"/> Inactive - Moved	<input type="checkbox"/> Tier II	<input type="checkbox"/> Sexually Violent Delinquent Child		
<input type="checkbox"/> Active - Transient		<input type="checkbox"/> Tier III	<input type="checkbox"/> Juvenile Offender		
* If Offender Type is unknown, place an "X" in "Tier Pending."					

SECTION C - PHYSICAL DESCRIPTION

14. DOES OFFENDER WEAR GLASSES? <input type="checkbox"/> YES <input type="checkbox"/> NO		15. HEIGHT		16. WEIGHT	17. HAIR COLOR	18. EYE COLOR
		Feet Inches		Lbs.		
19. RACE			20. ETHNICITY			
<input type="checkbox"/> White <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Unknown			<input type="checkbox"/> Hispanic <input type="checkbox"/> Non-Hispanic <input type="checkbox"/> Unknown			
<input type="checkbox"/> Black <input type="checkbox"/> American Indian/Alaskan Native						
21. BIRTH STATE/TERRITORY			22. BIRTH COUNTRY			

SECTION D - IDENTIFIERS

23. HAVE PALM PRINTS BEEN TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> NO		24. HAS DNA BEEN TAKEN? <input type="checkbox"/> YES <input type="checkbox"/> NO		25. PASSPORT NUMBER		26. INMATE NUMBER
27. IMMIGRATION (ALIEN) ID		28. IMMIGRATION STATUS			29. FBI NUMBER	

SECTION E - ALIASES

30. CURRENT ALIASES/NICKNAMES	
FIRST NAME	LAST NAME
* If the alias is only one name, place an "X" in the "First Name" field and write the alias in the "Last Name" field.	

SECTION F - SCARS/MARKS/TATTOOS/MISSING BODY PARTS (AMPUTATIONS)

31. SCARS		32. TATTOOS	
LOCATION	DESCRIPTION	LOCATION	DESCRIPTION
33. AMPUTATIONS		34. MARKS	
LOCATION	DESCRIPTION	<input type="checkbox"/> DEFORMITIES <input type="checkbox"/> MOLE <input type="checkbox"/> SKIN DISCOLORATION <input type="checkbox"/> UNKNOWN	
		LOCATION	
		DESCRIPTION	
		<input type="checkbox"/> DEFORMITIES <input type="checkbox"/> MOLE <input type="checkbox"/> SKIN DISCOLORATION <input type="checkbox"/> UNKNOWN	
		LOCATION	
		DESCRIPTION	

SECTION G - ADDRESS INFORMATION

CORRECTIONAL FACILITY		
35. NAME OF FACILITY		37. TELEPHONE NUMBER
36. DESCRIPTION		

38. STREET ADDRESS 1		39. STREET ADDRESS 2	
40. CITY	41. STATE	42. ZIP CODE	43. COUNTY
44. MUNICIPALITY (City/Township/Borough)		45. COUNTRY	
46. START DATE / /	47. END DATE / /	48. RESPONSIBLE AGENCY HAVING JURISDICTION	
RESIDENCE(S) ADDRESS(ES) – PHYSICAL LOCATION OF OFFENDER			
PRIMARY RESIDENCE			
49. DESCRIPTION		50. TELEPHONE NUMBER - -	
51. STREET ADDRESS 1		52. STREET ADDRESS 2 (Include Apartment/Room No.)	
53. CITY	54. STATE	55. ZIP CODE	56. COUNTY
57. MUNICIPALITY (City/Township/Borough)		58. COUNTRY	
59. RESPONSIBLE AGENCY HAVING JURISDICTION			60. TRANSIENT <input type="checkbox"/> TEMPORARY <input type="checkbox"/>
SECONDARY RESIDENCE			
61. DESCRIPTION		62. TELEPHONE NUMBER - -	
63. STREET ADDRESS 1		64. STREET ADDRESS 2 (Include Apartment/Room No.)	
65. CITY	66. STATE	67. ZIP CODE	68. COUNTY
69. MUNICIPALITY (City/Township/Borough)		70. COUNTRY	
71. RESPONSIBLE AGENCY HAVING JURISDICTION			72. TRANSIENT <input type="checkbox"/> TEMPORARY <input type="checkbox"/>
MAILING ADDRESS			
73. IS THE MAILING ADDRESS THE SAME AS THE PHYSICAL ADDRESS? <input type="checkbox"/> YES <input type="checkbox"/> NO (IF NO, COMPLETE THE MAILING ADDRESS INFORMATION BELOW)			
74. STREET ADDRESS 1		75. STREET ADDRESS 2 (Include Apartment/Room No.)	
76. CITY	77. STATE	78. ZIP CODE	79. COUNTY
SECTION H - SCHOOL INFORMATION (Complete only if enrolled as a student.)			
80. NAME OF SCHOOL		81. ADDITIONAL INFORMATION	
82. TELEPHONE NUMBER - -	83. STREET ADDRESS 1		84. STREET ADDRESS 2 (Include Room No.)
85. CITY	86. STATE	87. ZIP CODE	88. COUNTY
89. MUNICIPALITY (City/Township/Borough)		90. COUNTRY	
91. START DATE / /	92. END DATE / /	93. RESPONSIBLE AGENCY HAVING JURISDICTION	
SECTION I - EMPLOYMENT INFORMATION			
EMPLOYER 1			
94. EMPLOYER			
95. OCCUPATION		96. SUPERVISOR'S NAME	97. TELEPHONE NUMBER - -
98. STREET ADDRESS 1		99. STREET ADDRESS 2	
100. CITY	101. STATE	102. ZIP CODE	103. COUNTY

104. MUNICIPALITY (City/Township/Borough)		105. COUNTRY	
106. GENERAL WORK AREA		107. START DATE / /	108. END DATE / /
109. RESPONSIBLE AGENCY HAVING JURISDICTION			
EMPLOYER 2			
110. EMPLOYER			
111. OCCUPATION		112. SUPERVISOR'S NAME	113. TELEPHONE NUMBER - -
114. STREET ADDRESS 1		115. STREET ADDRESS 2	
116. CITY	117. STATE	118. ZIP CODE	119. COUNTY
120. MUNICIPALITY (City/Township/Borough)		121. COUNTRY	
122. GENERAL WORK AREA		123. START DATE / /	124. END DATE / /
125. RESPONSIBLE AGENCY HAVING JURISDICTION			

SECTION J - VEHICLE INFORMATION

IF ADDITIONAL SPACE IS REQUIRED FOR MORE THAN 2 VEHICLES OPERATED OR OWNED, LIST ON SEPARATE PAGE

VEHICLE 1

126. VEHICLE TYPE <input type="checkbox"/> Aircraft <input type="checkbox"/> Motorcycle <input type="checkbox"/> Auto <input type="checkbox"/> Trailer <input type="checkbox"/> Boat <input type="checkbox"/> Truck		127. YEAR	128. MAKE		129. VEHICLE PRIMARY COLOR
		130. MODEL	131. STYLE		132. VEHICLE SECONDARY COLOR
133. VEHICLE OWNERSHIP <input type="checkbox"/> Loaner <input type="checkbox"/> Registered to Member of Household <input type="checkbox"/> Other <input type="checkbox"/> Registered to Relative That Does not Share Residence <input type="checkbox"/> Personal <input type="checkbox"/> Rental <input type="checkbox"/> Registered to Acquaintance <input type="checkbox"/> Work				134. VEHICLE IDENTIFICATION NUMBER (VIN)	
				135. IS THIS VEHICLE REGISTERED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
136. PLATE #	137. STATE	138. IS LICENSE PLATE EXPIRATION DATE NON-EXPIRING? <input type="checkbox"/> YES <input type="checkbox"/> NO		PLATE EXPIRATION DATE / /	139. LICENSE PLATE TYPE
140. ADDITIONAL DETAILS			141. GENERAL PARKING LOCATIONS		

VEHICLE 2

142. VEHICLE TYPE <input type="checkbox"/> Aircraft <input type="checkbox"/> Motorcycle <input type="checkbox"/> Auto <input type="checkbox"/> Trailer <input type="checkbox"/> Boat <input type="checkbox"/> Truck		143. YEAR	144. MODEL		145. VEHICLE PRIMARY COLOR
		146. MAKE	147. STYLE		148. VEHICLE SECONDARY COLOR
149. VEHICLE OWNERSHIP <input type="checkbox"/> Loaner <input type="checkbox"/> Registered to Member of Household <input type="checkbox"/> Other <input type="checkbox"/> Registered to Relative That Does not Share Residence <input type="checkbox"/> Personal <input type="checkbox"/> Rental <input type="checkbox"/> Registered to Acquaintance <input type="checkbox"/> Work				160. VEHICLE IDENTIFICATION NUMBER (VIN)	
				151. IS THIS VEHICLE REGISTERED? <input type="checkbox"/> YES <input type="checkbox"/> NO	
152. PLATE #	153. STATE	154. IS LICENSE PLATE EXPIRATION DATE NON-EXPIRING? <input type="checkbox"/> YES <input type="checkbox"/> NO		PLATE EXPIRATION DATE / /	155. LICENSE PLATE TYPE
156. ADDITIONAL DETAILS			157. GENERAL PARKING LOCATIONS		

SECTION K - INTERNET IDENTIFIERS

158. EMAIL ADDRESS List ALL email addresses affiliated with offender.	159. SITE IDENTIFIERS SITE AFFILIATION(S) List ALL identifiers affiliated with offender (e.g., Facebook, Twitter, Tagged, Myspace).
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SECTION L - LICENSE INFORMATION

DRIVER'S LICENSE			
160. DRIVER'S LICENSE NUMBER	161. ISSUING STATE	162. EXPIRATION DATE / /	163. IS LICENSE CURRENT? <input type="checkbox"/> YES <input type="checkbox"/> NO
PROFESSIONAL LICENSE			
164. LICENSE NUMBER	165. LICENSE TYPE	166. ISSUING AGENCY	
167. ISSUING STATE	168. EXPIRATION DATE / /	169. IS LICENSE CURRENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	

SECTION M - OFFENSE

170. COUNTRY OF CONVICTION	171. STATE OF CONVICTION	172. COUNTY OF CONVICTION	173. OTN
174. OFFENSE	175. OFFENSE DATE / /	176. ARREST DATE / /	177. CONVICTION DATE / /
178. WAS OFFENDER ADJUDICATED DELINQUENT AS A JUVENILE? <input type="checkbox"/> YES <input type="checkbox"/> NO		179. WAS THE JUVENILE OFFENDER CIVILLY COMMITTED AS A SEXUALLY VIOLENT DELINQUENT CHILD (SVDC)? <input type="checkbox"/> YES <input type="checkbox"/> NO	
180. ADDITIONAL INFORMATION			181. WERE ANY OF THE OFFENDER'S VICTIMS MINORS? <input type="checkbox"/> YES <input type="checkbox"/> NO
182. Victim 1 Age Victim 1 Gender <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN Victim 1 Relationship		183. Victim 2 Age Victim 2 Gender <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE <input type="checkbox"/> UNKNOWN Victim 2 Relationship	

SECTION N - SUPERVISION

184. IS OFFENDER UNDER SUPERVISION? <input type="checkbox"/> YES <input type="checkbox"/> NO	185. SUPERVISING AGENCY	
186. SUPERVISION START DATE / /	187. SUPERVISION END DATE / /	188. PAROLE NUMBER

ADDITIONAL COMMENTS:

REQUIREMENTS STATEMENTS

<p>1.</p> <p><input type="checkbox"/></p>	<p>You are required to register as a sexual offender because you have been convicted of a sexually violent offense, were adjudicated delinquent of an offense requiring registration, or were required to register as a sex offender in another jurisdiction. You will be notified by the Pennsylvania State Police when your registration period is over.</p>
<p>2.</p>	<p>The following is a summary of the sexual offender registration requirements contained in Megan's Law (42 Pa.C.S. Chapter 97, Subchapter H) that you must comply with:</p>
<p>a.</p> <p><input type="checkbox"/></p>	<p>You must register with the Pennsylvania State Police and furnish all registration information required by Megan's Law, including but not limited to: information about your residence, employment and school enrollment, vehicles owned or operated by you, your photograph(s), your fingerprints (and palm prints), and your DNA sample. Depending on what you have been convicted of (or how many convictions you have), you may be required to register during your entire lifetime. Failing or refusing to complete your initial registration or comply with any other provision of Megan's Law at any other time will subject you to arrest and felony prosecution pursuant to 18 Pa.C.S. § 4915.1.</p>
<p>b.</p> <p><input type="checkbox"/></p>	<p>In-person appearance to update information: You must appear in-person, within three (3) business days, at any approved registration site to notify the Pennsylvania State Police of any of the following:</p> <p>(1) Any change in name, including any alias.</p> <p>(2) Any change in residence, including but not limited to: beginning to live in a residence, adding an additional residence, moving out of a previously registered residence, or failing to have a residence (thereby becoming a transient; i.e., homeless). NOTE: If you become a transient (homeless), you must provide a list of places where you eat, frequent, engage in leisure activities, and any planned destinations, including those outside this Commonwealth. If you change, add to, or remove any of these places listed during a monthly reporting period, you must list these changes when verifying at the next monthly reporting interval.</p> <p>(3) Any change in employment, including but not limited to: beginning employment, adding additional employment or leaving previously registered employment for any reason. If you are not employed at a fixed address (e.g., you have a delivery route), you must report your general area of employment and employment-travel route(s) and any changes to them.</p> <p>(4) Any enrollment as a student, including but not limited to: enrolling as a student, adding additional places of study, or termination of enrollment as a student.</p> <p>(5) Any change in telephone number (including landline, cell phone, or virtual), including but not limited to: obtaining a new phone number, terminating your phone number, or otherwise modifying your phone number.</p> <p>(6) Any change in information related to any vehicle (including watercraft or aircraft) you own or operate, including but not limited to: adding or terminating vehicle ownership or operation. This includes any change in the location where the vehicle is stored or parked and any change in license plate number, registration numbers, and other identifiers.</p> <p>(7) Any temporary lodging information, including but not limited to: commencing temporary lodging, a change in temporary lodging, or a termination of temporary lodging. You must provide the specific length of time and the dates during which you will be temporarily lodged away from your registered residence(s) for seven (7) days or more.</p> <p>(8) Any change in e-mail address, instant message address, or any other designations used in Internet communications or postings (e.g., social networking sites, Internet message boards). This includes, but is not limited to, the addition, deletion, or modification of any Internet identifier.</p> <p>(9) Any change in occupational or professional licensing information (e.g., car dealer, barber, realtor).</p>
<p>c.</p> <p><input type="checkbox"/></p>	<p>Shortly before your verification date, the Pennsylvania State Police will send a letter to your registered mailing address. This letter will not be forwarded. Failure to receive this letter does not relieve you of your obligation to comply with the law.</p>
<p>d.</p> <p><input type="checkbox"/></p>	<p>Periodic verification of registration information is mandatory by all offenders as follows:</p> <p>(1) A Tier I offender must appear in person at an approved registration site annually.</p> <p>(2) A Tier II offender must appear in person at an approved registration site semiannually.</p> <p>(3) A Tier III offender must appear in person at an approved registration site quarterly.</p> <p>(4) A Sexually Violent Predator must appear in person at an approved registration site quarterly.</p> <p>(5) A Juvenile offender or Sexually Violent Delinquent Child must appear in person at an approved registration site quarterly.</p> <p>(6) A Transient (homeless) offender must appear in person at an approved registration site monthly.</p>
<p>e.</p> <p><input type="checkbox"/></p>	<p>If you begin to reside, work, or go to school outside of Pennsylvania, you must register with the appropriate law enforcement agency in that other jurisdiction within three (3) business days of beginning to reside, work, or go to school. You must also appear at an Approved Registration Site and notify the Pennsylvania State Police in the manner described in paragraph 2(b).</p>
<p>3.</p> <p><input type="checkbox"/></p>	<p>If you are a Sexually Violent Predator or a Sexually Violent Delinquent Child, you are required to attend counseling sessions at least monthly. If you have been designated a sexually violent predator (or similar designation) in another jurisdiction and are required to undergo counseling, you are required to attend monthly counseling sessions in Pennsylvania. If you fail to attend monthly counseling sessions, you are subject to arrest and prosecution pursuant to 18 Pa.C.S. § 4915.1.</p>

EXHIBIT

B

Captain Scott Price,
Pennsylvania State Police,
PSP Status Update 12/17/2012



PSP Status Update 12/17/2012

Colleagues,

First and foremost, thank you all for your dedication and effort in implementing the provisions of Act 111/Act 91. Each stakeholder has experienced unique obstacles to be overcome to meet the legislative mandates and I remain impressed by the efforts of so many people.

As we approach the final hours prior to the December 20 enactment date of the majority of provisions of Act 111/Act 91, I'd like to provide a final status report and implementation strategy. The PA SORT application has been developed as planned and the application, itself, is functional. Unfortunately, however, due to various network and firewall configurations extant at each local facility, beta testing has revealed the potential for connectivity problems.

In order to facilitate your efforts in the most efficient means possible, we have developed protocols to essentially beta test each site; to ensure connectivity and functionality of the PA SORT application.

This process will involve sequential roll-out and testing of connectivity subsequent to the December 20 implementation date. On December 20, if you are able to efficiently connect to PA SORT; you may utilize the application as envisioned. If, however, you experience connectivity issues, we will ask that you complete registrations on paper concomitant with the previously disseminated contingency plan (attached hereto for reference).

Also attached, in an attempt to ease the burden placed on your agency, are two templates of form SP4-218. One is a protected version which can be utilized to enter the appropriate information to facilitate completion of applicable sections. The second is an unprotected version which may provide a conduit to exporting data currently saved in local databases; depending upon the parameters of your archive.

Should you achieve SORT connectivity and functionality on December 20, you may submit registrations directly through the SORT application. You may also choose to submit paper registrations (i.e. for offenders not entered through SORT) to augment electronic data submissions. Realizing the registrations required in the initial 48 hours and/or 90 days are voluminous; submissions of paper registrations in this fashion may allow a greater number of registrations to be completed within mandated timeframes since equipment availability will not then impede the process.

If your agency completes paper registrations using the attached templates, please print the completed form and obtain original signatures from the offender and the registering official. The completed, signed forms should then be mailed to the Megan's Law Section, 1800 Elmerton Avenue, Harrisburg, PA, 17110. In addition, should LiveScan equipment not become available (i.e. as a result of vendor supply difficulties on the part of MorphoTrust), inked fingerprint cards should be included with the completed SP4-218. Photographs should be captured digitally and may be transmitted electronically (i.e. via e-mail) to ra-pspmeganslawphoto@state.pa.us.

As provided on the contingency plan, PSP Megan's Law Section staff will correlate this information and make required entries into PA SORT to preclude you from performing redundant tasks.

In ensuing weeks, we will be sending a site survey asking for specific information which your local information officer (technology officer, etc.) should be able to provide regarding local network, router and security configurations. Upon receiving that information, personnel from our Bureau of Information Technology will coordinate testing of PA SORT connectivity with your site. Upon successful testing, submission of paper registration forms will then be discontinued for these sites; reverting to contingency procedures only in the event of further equipment or connectivity issues going forward.

Those sites identified as county registration sites should have, or will be, receiving a supply of "hard copies" of form SP4-218 via U. S. Mail.

We realize the tremendous effort expended on the part of each and every one of you and it is our desire these protocols ameliorate some of your burden. Please contact myself or Lieutenant Harman with any questions.

Captain Scott C. Price | Director, Operational Records Division
 Pennsylvania State Police | Bureau of Records and Identification
 1800 Elmerton Avenue | Hbg PA 17110
 Phone: 717-772-2602 | Fax: 717-772-4073
scprics@pa.gov

EXHIBIT

C

Photograph Standards

Photograph Standards

Booking Center System Standard Specifications

The Pennsylvania Commission on Crime and Delinquency (PCCD) and its partners have developed this set of guidelines and technology standards to facilitate achieving the goals of Act 81 of 2008 and the Federal Walsh Act requirements. It has always been the desire of PCCD and its partners that, over time, ultimately, every Pennsylvania criminal arrest is digitally recorded with fingerprints, hand impressions, photographs, images of scars, marks, and tattoos, arrest demographics, and offenses charged; and then successfully submitted to the computerized central repositories at the Pennsylvania State Police. It is also desired that any other submissions (applicant, Megan's Law registrations, etc.) to those repositories also meet standards for data quality. Further implementation of these guidelines and technology standards will help the Commonwealth to move towards achieving these goals and desires.

POSE

The full-face or frontal pose is the most commonly used pose in photo lineups and shall always be captured. This pose is in addition to profiles or intermediate angled poses captured to acquire perspective and other information. For subjects who normally wear eyeglasses, a frontal mugshot image should be captured of the subject without glasses. This is required due to the glare from external illumination. An additional image can optionally be captured of the subject wearing eyeglasses.

DEPTH OF FIELD

The subject's captured facial image shall always be in focus from the nose to the ears. Although this may result in the background behind the subject being out of focus, it is not a problem. For optimum quality of the captured mugshot, the f-stop of the lens should be set at two f-stops below the maximum aperture opening when possible.

CENTERING

The facial image being captured (full-face pose) shall be positioned to satisfy all of the following conditions:

The approximate horizontal mid-points of the mouth and of the bridge of the nose shall lie on an imaginary vertical straight line positioned at the horizontal center of the image.

An imaginary horizontal line through the center of the subject's eyes shall be located at approximately the 55% point of the vertical distance up from the bottom edge of the captured image.

The width of the subject's head shall occupy approximately 50% of the width of the captured image. This width shall be the horizontal distance between the mid-points of two imaginary vertical lines. Each imaginary line shall be drawn between the upper and lower lobes of each ear and shall be positioned where the external ear connects to the head.

LIGHTING

Subject illumination shall be accomplished using a minimum of three (3) point balanced illumination. Appropriate diffusion techniques shall also be employed and lights positioned to minimize shadows, and to eliminate hot spots on the facial image. These hot spots usually appear on reflective areas such as cheeks and foreheads. Proper lighting shall contribute to the uniformity of illumination of the background described in the exposure requirement.

BACKGROUND

The subject whose image is being captured shall be positioned in front of a background which is 18% gray with a plain smooth flat surface. A Kodak or other neutral gray card or densitometer shall be used to verify this 18% gray reflectance requirement.

EXPOSURE

The exposure shall be keyed to the background. Several areas of the recorded 18% gray background shall be used to verify the proper exposure. The averages of the 8-bit Red, Green, and Blue (RGB) components within each area shall be calculated. Each of the RGB means shall fall between 105 and 125 with a standard deviation of plus or minus 10. Furthermore, for every area examined, the maximum difference between the means of any two of the RGB components shall not exceed 10.

ASPECT RATIO

The Width:Height aspect ratio of the captured image shall be 1:1.25.

MINIMUM NUMBER OF PIXELS

The minimum number of pixels in an electronic digital image shall be 480 pixels in the horizontal direction by 600 pixels in the vertical

direction. It should be noted that the image quality of the captured mugshots and facial images will be improved as the number of pixels in both directions are increased. However, as images are captured with an increased number of pixels, the 1:1.25 (Width:Height) aspect ratio will be maintained.

Two considerations must be noted regarding this aspect of the recommendation. First, the normal orientation of many available cameras is the landscape format which specifies a greater number of pixels in the horizontal than in the vertical direction. Unless these cameras capture at least 600 pixels in the vertical direction, it may be necessary to rotate the camera 90 degrees. Second, the 480x600 capture format exceeds the VGA display format of 640x480. Therefore, at a minimum, an SVGA specification of 800x600 pixels will be required to display the facial image. The image will occupy less than the total number of available horizontal pixels.

COLORSPACE

Captured electronic color facial images are required. Digital images shall be represented as 24-bit RGB pixels. For every pixel, eight (8) bits will be used to represent each of the Red, Green, and Blue components. The RGB colorspace is the basis for other colorspace including the Y, Cb, Cr and YUV. Additional color management techniques are available from the International Color Consortium. Information regarding these techniques can be downloaded from the following URL: www.color.org

PIXEL ASPECT RATIO

Digital cameras and scanners used to capture facial images shall use square pixels with a pixel aspect ratio of 1:1.

COMPRESSION ALGORITHM

The algorithm used to compress mugshot and facial images shall conform to the JPEG Sequential Baseline mode of operation as described in the specification approved by the ANSI X3L3 Standards committee. The target size for a JPEG compressed color mugshot image file shall be 25,000 to 45,000 bytes.

FILE FORMAT

The JPEG File Interchange Format (JFIF) shall contain the JPEG compressed image data. The JFIF file shall then be part of the transaction file for interchange which conforms to the requirements as contained in ANSI/NIST-CSL 1-1993 and ANSI/NIST-ITL 1a-1997.

****Content Last Updated 5/14/2012****

EXHIBIT

D

Contingency Letter,
Pennsylvania State Police,
Megan's Law Section



**Pennsylvania State Police
Megan's Law Section**



Colleagues,

As we approach the December 20, 2012 enactment date of Act 111-2011, we are moving toward the execution of a production environment of the PA SORT application for use by registration sites throughout the state. We also realize you are finalizing plans for implementation in each county and working through the myriad issues incumbent with this project.

We have recently become aware of a potential complication with availability of LiveScan equipment. The vendor, MorphoTrust, as we understand it, is experiencing difficulty obtaining necessary components (scanner parts) from a third party supplier. In conjunction with the Local Technology Working Group (LTW) and the Pennsylvania Commission on Crime and Delinquency (PCCD), we remain in communication with MorphoTrust in an attempt to resolve this issue. Within the past week, we have been advised by MorphoTrust the needed parts have been acquired and delivery is expected to begin shortly. At this time, however, no delivery schedule is available; though we remain optimistic the vendor will be able to deliver equipment prior to our "go-live" date.

Nonetheless, we have begun to develop a contingency plan to allow registrations to proceed should LiveScan equipment not become available (or in the event of equipment failure; connectivity problems, etc. going forward).

As you may recall from previous correspondence, the PA SORT application is essentially independent of the LiveScan equipment. Assuming the PA SORT application is available, upon completion of the PA SORT data entry process, a registration number will be provided and will be printed on the registration report; the data is then "pulled" from PA SORT to the LiveScan device utilizing the provided number. If a facility has access to functional PA SORT equipment, the data entry portion of the registration should be completed using the application; and the offender then transported to a facility which does have LiveScan availability to obtain finger and palm prints.

A similar scenario would involve a functional PA SORT application; with no access to LiveScan equipment (as a result of equipment failure). As above, the data entry portion of the registration should be completed in PA SORT. In these scenarios, to assuage the burden placed on county entities, the Pennsylvania State Police Megan's Law Section will accept "inked" fingerprint cards. As in the past, these cards should be forwarded, via mail, to the Pennsylvania State Police, Megan's Law Section, 1800 Elmerton Avenue, Harrisburg, Pennsylvania, 17110 along with a copy of the registration form (PSP form SP4-218). Such cards would require clear documentation of identifiers; including the registration number as obtained via PA SORT. Upon receipt, the Pennsylvania State Police, Megan's Law Section will facilitate scanning of the inked prints, through the Criminal Records Identification Division; and entry of the fingerprints into the appropriate offender record. This process is somewhat burdensome, and increases the potential for



**Pennsylvania State Police
Megan's Law Section**



error as well as sub-standard prints; and does not facilitate capture of palm prints (as noted below).

We are aware some facilities may have existing LiveScan units without palm capability; and some are awaiting palm upgrades. Should these upgrades not become available prior to the effective date of Act 111, fingerprints should be obtained via LiveScan. Inked palm prints are not a viable alternative because such prints cannot be scanned into the ten print/latent comparison database. Palm prints will be obtained as soon as possible (at next verification) after LiveScan devices are upgraded with palm capability. When capturing palms where prints were captured previously, the transaction should be done as a Suspect ID on the LiveScan device.

Conversely, in the event PA SORT is unavailable, paper registration forms (PSP form SP4-218) will be distributed to PSP Stations and county registration sites prior to the December 20, 2012 implementation date (distribution is currently in progress).

Should it become necessary to complete a paper registration form for data capture (PSP form SP4-218), due to a PA SORT outage, the completed form should be forwarded to: Pennsylvania State Police, Megan's Law Section, 1800 Elmerton Avenue, Harrisburg, PA, 17110. Our staff will then enter this data into PA SORT to avoid delays in registration and preclude the necessity for your site to perform redundant tasks. These forms should be mailed as quickly as possible as the Act only allows 3 days for PSP to have the offender listed on the website.

Because LiveScan and PA SORT are independent of one another, should a PA SORT outage be experienced (but LiveScan be available); fingerprinting of the offender can, nonetheless, be accomplished utilizing LiveScan. Should this occur, as had been done in the past, LiveScan transactions should continue to be processed as "ML Reg".

Should connectivity with PA SORT be interrupted, the webcam should remain functional; allowing digital photographs to be taken. These photographs should be transmitted by email along with a copy of the registration form to the Pennsylvania State Police, Megan's Law Section as a jpeg file attachment at: ra-pspmeganslawphoto@pa.gov. Similarly, if the provided webcam is unavailable due to hardware failure, a digital camera may be utilized; provided the photograph meets the standards as provided on the hardware specifications. Documentation of identifying offender information must be included with photographs to ensure they are entered in the appropriate record.

Should a scenario develop in which neither LiveScan nor PA SORT are accessible, submission of PSP SP4-218, in conjunction with inked ten print cards should proceed as described above.



Pennsylvania State Police
Megan's Law Section



In all cases when performing an initial registration, DNA collection will be required and can proceed independent of PA SORT and/or LiveScan. Realizing ten prints cards must accompany DNA database collection kits; unavailability of LiveScan would require submission of inked prints with the collection kit.

Previously disseminated electronic copies of form PSP form SP4-218 may be reproduced as necessary. Sites must use this paper registration form to complete an initial registration, address change, verification or any other mandatory information updates. These forms can be completed electronically and emailed but must also be printed to obtain original signatures and mailed to the Pennsylvania State Police, Megan's Law Section.

--search PA--

Criminal Justice > PA Sexual Offender Management



PSP Status Update 12/20/2012

Today, we begin the process of transitioning to the PA SORT application. We believe PA SORT technical issues have been resolved internally. The application will become available at 0800 hours, December 20, 2012. At that time, if you have access to CLEAN (PSPortals), you may begin to attempt to access PA SORT. We realize, as previously indicated, some entities attempting to access PA SORT may be unable to do so; due to local connectivity issues. In that instance, please resort to paper registrations as described in the contingency plan. **If you are unable to connect to PA SORT**, complete the attached form electronically and email it to vlaudermilch@pa.gov; or complete the form by hand and mail to Pennsylvania State Police, Megan's Law section, 1800 Elmerton Avenue, Harrisburg, PA, 17110; attention Victoria Laudermilch.

As with any IT application implementation there will be problems that arise. Some problems may require business decisions on the part of the end user; some may involve a learning process; and some will be legitimate IT application problems. During our adaptation to the new system, please follow these steps:

1. Be certain you read the screen and are performing actions the application expects or is instructing you to complete.
2. Review the fields on the screen to ensure you did not make any data entry errors (typographical, etc.).
3. If you believe you experience a legitimate IT application error (**once you have actually been able to access PA SORT**) contact the Help desk at 1-877-777-3375.

We all expect to experience the growing pains associated with creating an IT application that meets the majority of user's needs; as well as the challenge that comes with any major implementation. Rest assured our staff has worked tirelessly and will continue to do so to ensure we overcome any issues and ultimately experience significant improvements in our abilities to manage sexual offenders across the Commonwealth.

For general offender questions, contact the Megan's Law Section at 1-866-771-3170.

Thank you for your cooperation and support in working through this monumental task. We realize every stakeholder has had to overcome many obstacles and we are proud to be associated with each of you.

Captain Scott C. Price | Director, Operational Records Division
 Pennsylvania State Police | Bureau of Records and Identification
 1800 Elmerton Avenue | Hbg PA 17110
 Phone: 717-772-2602 | Fax: 717-772-4073

scprice@pa.gov
<http://www.psp.state.pa.us>

- [Problem Form](#)
- [Contingency Letter](#)
- [Equipment Scenarios](#)

****Content Last Updated 12/20/2012****

This website is for informational purposes only. Should you have a question regarding a specific statute, please seek the advice of counsel for your agency.

--search PCCD--

GO

EXHIBIT

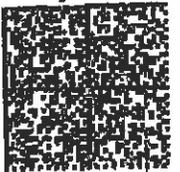
E

Envelope from Pennsylvania State Police,
Megan's Law Section

HEADQUARTERS
PENNSYLVANIA STATE POLICE
M.L.S.
1800 ELMERTON AVENUE
HARRISBURG, PA 17110

D/S #ZE - 8
MAILED AT 196

PRESORTED
FIRST CLASS



Hester

068-126514427
\$00.350
03/06/2012
Mailed From 17110
US POSTAGE

RETURN SERVICE REQUESTED

JUAN CASTRO



13-07-13

TJD
378 34017

NOT AT THIS ADDRESS
RETURN TO SENDER

RECEIVED 15407



EXHIBIT

F

Letter from

Johnstown Housing Authority

Daniel J. Kanuch
Executive Director

Beverly A. Sipes
Deputy Executive Director



Johnstown Housing Authority

P.O. Box 419
Johnstown, PA 15907
Phone: (814) 535-7771
FAX: (814) 536-1768
TDD: (814) 535-2711

MARCH 28, 2013

[REDACTED]
[REDACTED]
[REDACTED]
JOHNSTOWN, PA 15902

Dear Mr. Rice:

Your application to be add [REDACTED] to your lease has been **DENIED**.

In review of your application, it has been determined that [REDACTED] **IS NOT ELIGIBLE** for admission to the above apartment of the Johnstown Housing Authority for the following reason(s):

*If any household member is currently registered as a **SEX OFFENDER** under a state registration requirement, regardless of whether it is a lifetime requirement, the family member will be **DENIED**.*

If you disagree with the above decision and wish to schedule an Informal Meeting to discuss it, please contact me at (814)532-5572. If we do not hear from you within ten (10) days from the date of this letter is mailed, your application status will remain the same.

In addition, if [REDACTED] is currently residing with you, he must leave the premises. You must provide the Solomon Management Office, within 30 Days from the date of this letter, proof of other residence for [REDACTED], as well as, removing him from your State Assistance Case.

Sincerely,

Carey Forster

CAREY FORSTER
SOLOMON MANAGEMENT OFFICE

PC: Tenant

EXHIBIT

G

U.S. Department of Housing

and Urban Development

Notice PIH 2012-28

(June 11, 2012)

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Housing

Office of Public and Indian Housing

Special Attention of:
Multifamily Hub Directors
Multifamily Program Center Directors
Supervisory Housing Project Managers
Project Managers
Resident Management Corporations;
Contract Administrators
Owners and Management Agents Administering
Multifamily Housing Rental Assistance Programs

NOTICE: PIH 2012-28
NOTICE: H 2012-11

Issued: June 11, 2012
Expires: This notice remains in
effect until amended, superseded, or
rescinded

Public Housing Agency Directors
Section 8 and Public Housing Administrators
HUD Directors of Public Housing
PIH Program Center Coordinators
Public Housing Division Directors

Supersedes: H 2009-11 and
PIH 2009-35 (HA)

SUBJECT: State Registered Lifetime Sex Offenders in Federally Assisted Housing

I. PURPOSE

This guidance reiterates owners' and agents' (O/As) and Public Housing Agencies' (PHAs) statutory- and regulatory-based responsibilities to prohibit admission to individuals subject to a lifetime registration requirement under a State sex offender registration program. If a participant who is subject to such a lifetime registration requirement was erroneously admitted into a federal housing program identified under Section II, below, and is found to be receiving housing assistance, O/As and PHAs must pursue eviction or termination of assistance for these participants. In addition, this Notice clarifies regulations concerning admissions and strongly recommends additional steps to prevent individuals subject to a lifetime registration requirement under a State sex offender registration program from receiving federal housing assistance.

II. APPLICABILITY

Screening requirements for state registered lifetime sex offenders apply to O/As and PHAs administering the following rental assistance programs:

- Section 202 Project Rental Assistance Contracts (PRAC)
- Section 811 PRAC
- Section 811 Project Rental Assistance (PRA) demonstration

- Section 202/162 Project Assistance Contract (PAC)
- Section 202/8
- Section 202 Senior Preservation Rental Assistance Contracts (SPRACs)
- Section 8 Project-based
- Section 236
- Section 236 Rental Assistance Payment (RAP)
- Section 221(d)(3) Below Market Interest Rate (BMIR)
- Section 101 Rent Supplement
- Public Housing
- Tenant-based Housing Choice Voucher
- Project-based Certificate and Housing Choice Voucher
- Moderate Rehabilitation

III. BACKGROUND

The Office of Inspector General (OIG) conducted an audit of the Department of Housing and Urban Development's requirement prohibiting lifetime registered sex offenders from admission to HUD-subsidized housing. The result of this audit estimated that 2,094 to 3,046 assisted households included a lifetime registered sex offender as a household member. A copy of the Audit Report 2009-KC-0001, dated August 14, 2009, is located at: www.hudoig.gov/pdf/Internal/2009/ig0970001.pdf.

Although this estimate is small in relation to the total number of households assisted through HUD programs, the potential public safety concern remains paramount. It is critical to ensure that HUD-assisted housing comply with the law barring admission of lifetime registered sex offenders in order to maximize resident safety.

IV. STATUTORY AND REGULATORY CLARIFICATIONS

- A. Mandatory Prohibition for Lifetime Sex Offenders-** HUD regulations at 24 CFR § 5.856, § 960.204(a)(4), and § 982.553(a)(2) prohibit admission after June 25, 2001, if any member of a household is subject to a State lifetime sex offender registration requirement. This regulation reflects a statutory prohibition. A household receiving assistance with such a member is receiving assistance in violation of federal law.

O/As and PHAs must follow the guidelines outlined in paragraphs B and C below in order to ensure that no lifetime sex offenders are admitted into federally assisted housing. Furthermore, if an O/A or PHA discovers that a household member was erroneously admitted (the household member was subject to a lifetime registration requirement at admission and was admitted after June 25, 2001), the O/A or PHA must immediately pursue eviction or termination of assistance for the household member. Regulations for hearings for the Public Housing (PH) and Housing Choice Voucher (HCV) programs, at 24 CFR § 966 Subpart B and § 982.555, respectively, continue to apply.

If an O/A or PHA erroneously admitted a lifetime sex offender, the O/A or PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA or O/A must terminate assistance for the household.

For admissions before June 25, 2001, there is currently no HUD statutory or regulatory basis to evict or terminate the assistance of the household solely on the basis of a household member's sex offender registration status.

- B. Applicant Residential History** – Pursuant to 24 C.F.R. § 5.856 and § 5.905, O/As and PHAs must perform criminal background checks during the application stage to determine if an applicant, or a member of an applicant's household, is subject to a lifetime registration requirement under any State sex offender registration program. Criminal background checks must be performed in the state in which the housing is located and for states where the applicant and members of the applicant's household may have resided. **As such, applicants for admission into the applicable HUD-assisted housing programs must provide a complete list of all states in which any household member has resided.**¹ Failure to accurately respond to any question during the application process is cause to deny the family admission. **Additionally, PHAs and O/As must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime sex offender registration requirement in any state.** PHAs and O/As are reminded of their obligations with respect to Limited English Proficiency when processing applications of families for admission and at recertification. HUD's Final Guidance to Federal Financial Assistance Recipients: Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance) can be found in the Federal Register at 72 FR 2732 (January 22, 2007).

O/As and PHAs determine, in accordance with their screening standards, whether the applicant and the applicant's household members meet the screening criteria. If the processes described above reveal an applicant's household includes an individual subject to State lifetime sex offender registration, the O/As and PHAs must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHAs and O/As must deny admission to the family.

Before a PHA can deny admission to an applicant for PHA-administered programs covered in this Notice, the applicant must be notified of the right to dispute the accuracy and relevance of the criminal background check information (see § 960.204(c) and § 982.553(d)).

For other programs covered in this Notice, an O/A must provide a rejected

¹ Alternatively, if a PHA has access to a national database covering sex offender registries in all states, the PHA may use this in lieu of asking for a complete list of states on the application. The chosen method must be indicated in the PHA admissions and occupancy and/or administrative plans. This option is not available for O/As.

applicant with a written rejection notice in accordance with the requirements at Paragraph 4-9.C of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

- C. **Criminal Background Check Record Retention** – PHAs must destroy the results of a criminal background check in accordance with the records management requirements in 24 C.F.R. §5.905(c); however, a record of the screening, including the type of screening and the date performed, must be retained.

O/As must retain the results of the search, along with the application, in accordance with the requirements at Paragraph 4-22 of Handbook 4350.3 REV-1, *Occupancy Requirements of Subsidized Multifamily Housing Programs*.

V. **RECOMMENDED PROCEDURES**

In addition to the above regulatory requirements, HUD recommends that O/As and PHAs adopt new procedures at admission and at annual recertification/reexamination to prevent lifetime registered sex offenders from receiving federal housing assistance.

- A. **Admission** – O/As and PHAs should verify the criminal history information, provided by the applicant. For example, PHAs and O/As are encouraged to use the Dru Sjodin National Sex Offender Database, an online, searchable database hosted by the Department of Justice, which combines the data from individual state sex offender registries and/or other available national, state, or local resources. The Dru Sjodin National Sex Offender database is available at: <http://www.nsopw.gov>. O/As and PHAs should also explore the use of other available databases through their local law enforcement agencies.

In addition to screening adult members of the applicant's household, HUD recommends that criminal background screening include juvenile members of the applicant's household, to the extent allowed by state and local law.

- B. **Annual Recertification/Reexamination** – HUD recommends that at annual recertification or reexamination, O/As and PHAs ask whether the tenant or any member of the tenant's household is subject to a State lifetime sex offender registration program in any state. O/As and PHAs should verify this information using the Dru Sjodin National Sex Offender Database and/or other official federal, state, and local resources and document this information in the same manner as at admission.

If the recertification screening reveals that the tenant has falsified information or otherwise failed to disclose criminal history on his/her application and/or recertification forms, the O/A or PHA should pursue eviction or termination of assistance, as described in section IV.a, above.

EXHIBIT

H

Affidavit of Elizabeth J. Letourneau, Ph.D

AFFIDAVIT OF
Elizabeth J. Letourneau, Ph.D.
Associate Professor, Department of Mental Health
Director, Moore Center for the Prevention of Child Sexual Abuse
Johns Hopkins Bloomberg School of Public Health

I, Elizabeth J. Letourneau, verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

My name is Dr. Elizabeth J. Letourneau and I am a leading researcher and national expert on sex offender policy and intervention particularly as applied to juvenile offenders. My research efforts include five federally funded research projects specifically designed to examine the effects of sex offender registration and related policies.

As detailed below, strong and empirically rigorous evidence indicates:

(A) Sexual recidivism rates for youth who sexually offend are low.

(B) Sexual recidivism risk for youth who sexually offend is similar to that of other delinquent youth.

(C) Registration of juveniles fails, in any way, to improve community safety.

(D) Registration is associated with unintended and impactful consequences on the adjudication of youth.

A. Sexual Recidivism Rates for Youth who Sexually Offend are Low

There are now more than 30 published studies evaluating the recidivism rates of youth who have sexually offended. The findings are remarkably consistent across studies, across time, and across populations: sexual recidivism rates are low. In our research utilizing data on more than 1,200 male juvenile offenders adjudicated for sex crimes in South Carolina, the rate of new convictions for new sex crimes was just 2.5%. Recidivism risk varies for individual youth but it is also highly relevant to note that risk changes and risk is “front loaded”. That is, when rare sexual recidivism events do occur, it is nearly always within the first few years following the original adjudication. Moreover, even youth initially evaluated as “high risk” are unlikely to reoffend, particularly if they remain free of offending within this relatively brief period of time following initial adjudication.

B. Sexual Recidivism Risk is Similar for Youth who Sexually Offend and Other Delinquent Youth

In our research we compared the sexual recidivism rates of youth who sexually offended with youth who committed nonsexual violent offenses and youth who committed robbery offenses. The sexual recidivism rates of these three groups did not differ in a meaningful or statistically significant manner. Other researchers have reported similar findings. For example, one study indicated that the risk of sexual recidivism was statistically equal for youth treated in a residential facility for either sexual or nonsexual delinquent offenses (Caldwell, 2007). Thus, distinguishing between youth likely to sexually reoffend or not involves more than simply knowing that a youth has a history of such offending.

C. Registration Policies Fail to Improve Community Safety

There are two principal ways in which registration policies might influence community safety. First, these policies should be associated with reduced sexual recidivism (re-offense) rates. Second, these policies could be associated with deterrence of first-time sex crimes. They are not.

C1. Registration Fails to Reduce Juvenile Sexual or Violent Recidivism Rates

Using data from South Carolina, my colleagues and I have completed several evaluations of registration policy effects on juveniles. As detailed in two publications, registration failed to influence sexual and nonsexual violent recidivism rates in both studies.

- i. In the first study (See Ref # 1) registered and nonregistered male youth were matched on year of index sex offense, age at index sex offense, race, prior person offenses, prior nonperson offenses, and type of index sex offense (111 matched pairs). Recidivism was assessed across an average 4-year follow-up. **The sexual offense reconviction rate was less than 1%** (just two events for 222 youth). The nonsexual violent offense reconviction rates also did not differ between registered and nonregistered juveniles.
- ii. In the second study (see Ref # 2) recidivism rates of all male youth with sex crime adjudications ($N = 1,275$) were examined across an average 9-year follow-up period. Survival analyses examined the influence of factors that might have influenced recidivism rates, including registration status (registered or not). Results indicated that registration had no influence on nonsexual violent recidivism. Results also indicated that registration increased the risk of youth being *charged* but not convicted of new sex offenses and being *charged* but not convicted new nonviolent offenses. **Thus, not only does registration fail to reduce recidivism, it appears to be associated with increased risk of new charges that do not result in new convictions—possibly indicating a surveillance or “scarlet letter” effect of registration.**
- iii. **Other investigators examining registration effects on juvenile recidivism rates also failed to find any support for these policies.** Other researchers have demonstrated that federal standards for juvenile sex offender registration fail to distinguish between youth who will reoffend or not (Batastini, Hunt, Present-Koller, & DeMatteo, 2011; Caldwell, Ziemke, & Vittacco, 2008) as do state-specific standards for establishing juvenile registration requirements in New Jersey, Texas, and Wisconsin (Caldwell & Dickinson, 2009; Caldwell et al., 2008). The basis for these federal and state policy failures might lie, in part, with the low sexual

recidivism rate of youth adjudicated for sex offenses (Caldwell, 2002; Vandiver, 2006) and policy failures to correctly distinguish between youth risk levels.

More specifically, Dr. Caldwell and his colleagues have completed several studies examining different aspects of juvenile sex offending. Recently, they examined whether registration tier designations as defined in the Sex Offender Registration and Notification Act within the Adam Walsh Act correctly distinguished between lower and higher risk youth. Each Tier designation is based on a youth's adjudication offense and past adjudications (if any). Tiers I-III are associated with increasingly longer registration duration and should correspond with increasingly higher recidivism risk, such that youth assigned to Tier I should reoffend at a lower rate than youth assigned to Tier II or Tier III (see Ref # 3). Analyses examined recidivism across an average 72-month follow-up period for 91 juvenile sex offenders and 174 juvenile nonsexual violent offenders. **Results indicated no significant differences in the sexual recidivism rates of youth in Tiers I-III.** Thus, basing tier designations on youth offense and offense history is an ineffective method for identifying the small minority of higher risk youth. **Moreover, youth classified in the highest (Tier III) designation had the lowest nonsexual violent recidivism rate.** As noted previously, the sexual recidivism rates were the same for the juvenile sex offenders and the juvenile nonsex offenders, suggesting that distinctions between these two groups of youth are misplaced.

C2. Registration Fails to Deter First-Time Juvenile Sex Crimes

We have completed the only study, to date, evaluating the effects of registration on the prevention or deterrence of initial sex crimes (see Ref # 4). Examining more than 3,000 juvenile sex offense cases from 1991 through 2004, trend analyses modeled the effects of South Carolina's initial registration law (which did not include online registration) and subsequent revision (that permitted online registration of registered youth). If either the original or amended policy deterred first-time offenders, then rates of first-time sex crimes should have declined following enactment of South Carolina's SORN policies. **Results indicated no significant deterrent effect for the original registration policy or for the revised policy. Thus, registration was not associated with deterrence of first-time juvenile sex crimes.**

D. Registration is Associated with Unintended and Impactful Consequences on Youth Adjudication

D1. Registration Increases Juveniles' Risk of Sustaining New Nonviolent Charges

We have found that South Carolina's registration policy is associated with increased risk of new charges but not new convictions, particularly for nonviolent offenses. Specifically, registered youth were significantly more likely than nonregistered youth to be charged with relatively minor, misdemeanor offenses (e.g., public order offenses). While it is possible that the burdens related to registration actually increase youth misbehavior, we believe it is more likely that these findings reflect a surveillance effect. That is, youth who are required to register with law enforcement agencies and who are known as "registered sex offenders" are likely to be viewed (inaccurately) as more dangerous than youth with the same history of

sex offending but without the registration label. This perception may cause law enforcement agents to arrest registered youth for behaviors that do not trigger the arrest of nonregistered youth and that ultimately do not result in new convictions (see Ref # 2). **Requiring youth to register multiple times per year with law enforcement has significant negative consequences for youth and is not merely inconvenient.** The process of identifying oneself as a registered sex offender multiple times per year, and of being arrested and possibly charged for new offenses due in part to this label seems likely to cause registered youth to view themselves as “delinquent” even when they are law-abiding. Ample evidence indicates that youth who view themselves as delinquent or outside the mainstream are less likely to change patterns of offending. Policies that promote youths’ concepts of themselves as lifetime sex offenders will likely interrupt the development of a positive self-identity (See Ref # 5).

D2. Registration Influence Judicial Processing of Juvenile Sex Offense Cases

We have completed two studies examining the influence of South Carolina’s registration policy on case processing. Both studies revealed evidence that this policy dramatically influenced whether and how juvenile sex offense cases were addressed in family court.

- i. In our first study (see Ref # 6) we examined the effects of registration on the likelihood that prosecutors would choose to move forward on versus drop or dismiss juvenile sex offense cases. Prosecutor decisions and final dispositions were examined for more than 5,500 juvenile sex offense cases across a 15-year time period. Results indicated that prosecutors were significantly less likely to move forward on serious sexual offense charges after registration policy implementation. **Specifically, there was a 41% decline in moving forward on juvenile sex offense cases following enactment of registration.** We interpreted this finding as evidence that prosecutors altered their decision-making procedures in order to “protect” many juveniles from long term registration requirements.
- ii. In our second study (see Ref # 7) we examined the effects of registration on the likelihood that juvenile sex offense charges would be pled down to lesser, non-sex offense charges. Examining data from nearly 3,000 youth initially charged with sex offenses, we identified dramatic and significant increases in plea bargains corresponding with enactment of South Carolina’s registration policy. **Specifically, there was a 124% increase in plea bargains to non-sex offense charges from the period predating registration to the period following initial enactment of registration** and another 50% increase in plea bargains following enactment of online registration notification. These results indicate that prosecutors amended initial sex offense charges to non-sex offense (typically assault) charges to help youth avoid registration and notification.

D3. Unintended Effects of Registration on the Prosecution of Juvenile Sex Offense Cases Might Reduce Community Safety

That prosecutors alter their behavior in response to harsh policies is not surprising, particularly when those policies target juveniles and treat juveniles as if they culpable to the same degree as adults, as in the case of lifetime registration. Moreover, because registration fails to improve community safety, it might seem that community safety is not harmed when prosecutors choose to dismiss, divert, or change the charges for juvenile sex offense cases.

This perception is misleading. For example, juveniles who have actually committed sex offenses but whose charges were dismissed or amended to non-sex offense charges are unlikely to receive appropriate clinical services or supervision. Moreover, youth demographic factors including age and race also influenced prosecutors' decisions, thus introducing the possibility of inequity. Finally, the underlying message to victims—that the harm caused by their offenders did not warrant a sex offense adjudication—might negatively impact victims. Thus, **rather than relying upon prosecutors to selectively protect some youth from ineffective and harmful policies, a more just and equitable solution would be to avoid such policies altogether.**

In closing, juveniles who have sexually offended should not be subjected to registration. Long-term registration based on a youth's adjudication offense fails to identify high-risk youth, fails to reduce sexual or violent recidivism, fails to deter first-time juvenile sex crimes, and influences judicial case processing in ways that might actually impair community safety. Moreover, youth who are labeled for life as sex offenders will face innumerable barriers to successful prosocial development and might face public notification and other collateral consequences such as residency restrictions and restrictions on attending public schools if they move to a new state, based solely on their registration status in PA. These consequences will create barriers to the prosocial development and ultimate success of these youth, without improving community safety.

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1. Letourneau, E. J. & Armstrong, K. S. (2008). Recidivism rates for registered and nonregistered juvenile sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 20, 393-408.
2. Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153.
3. Caldwell, M. F., Zemke, M. H., & Vittacco, M. J. (2008). An examination of the sex offender registration and notification act as applied to juveniles. *Psychology, Public Policy and Law*, 14, 89-114.
4. Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The effects of sex offender registration policies on juvenile justice decision-making. *Sexual Abuse: A Journal of Research and Treatment*, 21, 149-165.
5. Letourneau, E. J., & Miner, M. H. (2005). Juvenile sex offenders: A case against the legal and clinical status quo. *Sexual Abuse: A Journal of Research and Treatment*, 17, 313-331.
6. Letourneau, E. J., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes? *Criminal Justice and Behavior*, 37, 553-569.
7. Letourneau, E. J., Armstrong, K. S., Bandyopadhyay, D., & Sinha, D. (2011). *Sex offender registration and notification policy increases juvenile plea bargains*. Manuscript currently under review.

DATED this 22nd day of April, 2013.


Signature

SUBSCRIBED AND SWORN to before me
This 22nd day of April, 2013.


NOTARY PUBLIC in and for said COUNTY and STATE

**PATRICIA E. SCOTT, NOTARY PUBLIC
STATE OF MARYLAND
COUNTY OF BALTIMORE
MY COMMISSION EXPIRES 10/06/2014**

CURRICULUM VITAE

ELIZABETH JANE LETOURNEAU

Associate Professor & Director
 The Moore Center for the Prevention of Child Sexual Abuse
 Department of Mental Health
 Johns Hopkins Bloomberg School of Public Health
 624 N Broadway/Suite 850
 Baltimore, MD 21205-1999

Major Interests

My research interests intersect around the development of a public health approach that emphasizes prevention of child sexual abuse. More specifically, I have conducted research on the evaluation of sex offender public policy effects; development and evaluation of assessment instruments and clinical interventions addressing youth and adult sex offending behaviors; development and evaluation of interventions addressing youth sexual risk behaviors. Additionally, I have adapted and evaluated an intervention addressing youth HIV medication adherence problems.

Education

9/1984 to 6/1988 State University of New York, Buffalo, NY; B.A. (Magna cum Laude)
 Major Area: Psychology
 9/1988 to 8/1990 University of Orono, Orono, ME; Doctoral Candidate
 Major Area: Clinical Psychology
 9/1990 to 5/1995 Northern Illinois University, DeKalb, IL; M.A. (12/1992) Ph.D. (5/95)
 Major Area: Clinical Psychology

Academic Appointments

2011 to present Associate Professor, Department of Mental Health, Bloomberg School of Public Health, Johns Hopkins University.
 2011 to present Adjunct Associate Professor, Department of Psychiatry and Behavioral Sciences, Medical University of South Carolina.
 2006 to present Associate Professor, Department of Psychiatry and Behavioral Sciences. Medical University of South Carolina.
 2000 to 2006 Assistant Professor, Department of Psychiatry and Behavioral Sciences. Medical University of South Carolina.
 1997 to 2000 Research Psychologist, U.S. Air Force and Navy
 1998 to 2000 Adjunct Assistant Professor, MUSC.
 1996 to 1997 Assistant Professor, Augusta State University, Department of Psychology, Augusta, GA.
 1994 to 1996 Postdoctoral Fellow at the National Crime Victims Research and Treatment Center, Medical University of South Carolina, Charleston, SC.
 1993 to 1994 Predoctoral Intern at the Medical University of South Carolina Psychology Internship Program, Charleston, SC.

Clinical Licenses

- Licensed Clinical Psychologist (#631). South Carolina
- Licensed Clinical Psychologist (#2107—inactive status). Georgia

Professional Memberships

- Association for the Treatment of Sexual Abusers (National and State Chapter)
- American Professional Society on the Abuse of Children (National and State Chapter)
- American Society of Criminology

Awards (since 1990)

- APSAC Outstanding Research Article (2008)
- Nominated for ProHumanitate Literary Award (Herbert A. Raskin Child Welfare Article Award) (2008)
- Pro Humanitate Literary Award (Herbert A. Raskin Child Welfare Article Award) (2007)
- APSAC Outstanding Article in *Child Maltreatment* (2007)
- Summer Research Institute Participant (1996). National Data Archive on Child Abuse & Neglect.
- Significant Achievement Award for Graduate Student Research on Sexual Aggression, ATSA (1992)

Professional Service

Federal Grant Reviews

- National Institutes of Health:
 - NIDA RFA-DA-13-009: *Translational Research on Interventions for Adolescents in the Legal System: TRIALS (U01)*
 - *Loan Repayment Progra* (2010, 2011, 2013)
 - *B-START Application* (2007)
- Centers for Disease Control and Prevention: *Sexual Violence Prevention RFAs* (2008, 2009)
- National Institute of Justice:
 - *Community Corrections: Evaluating the Effectiveness of Electronic Monitoring of Moderate to High-Risk Offenders under Supervision* (2009)
 - *Technical Assistance and Support Program: Final Report Reviews* (2011, 2013)
- Office of Juvenile Justice and Delinquency Prevention: *Sex Offender Treatment Program Development and Capacity Building* (2007)

Other Grant Reviews

- San José State University: *Grants Academy at the Center for Applied Research in Human Services* (2011)

Editorial Boards

2010 to present	Consulting Editor, <i>Journal of Consulting and Clinical Psychology</i>
2006 to 2013	Associate Editor, <i>Sexual Abuse: A Journal of Research and Treatment</i> 2007 impact factor of 1.643, 4 th journal of 29 classified under "criminology and penology"
2000 to 2006	Editorial Board, <i>Sexual Abuse: A Journal of Research and Treatment</i>
2008	Guest Editor <i>Child Maltreatment</i> , 13, 2008. Special Issue on Children with Sexual Behavior Problems: Dedicated to William Friedrich, Ph.D. Guest Editors: Jane F. Silovsky and Elizabeth J. Letourneau
1996 to 2005	Editorial Board, <i>Child Maltreatment</i>

Ad Hoc Reviewer

JAMA Pediatrics
 AIDS and Behavior
 Child Maltreatment
 Criminology
 Drug Court Review
 International Journal of Offender Therapy and Comparative Criminology
 Journal of Clinical Child and Adolescent Psychology
 Journal of Interpersonal Violence
 Journal of Traumatic Stress

2012 Invited topic expert of the Office of Justice Programs (OJP), Sex Offender Management Assessment and Planning Initiative (SOMAPI) Forum, Washington, DC, February 8-9, 2012.

2011 Invited topic expert in the area of treating sexual offending behaviors in adolescents. California Evidence-Based Clearinghouse for Child Welfare (CEBC). San Diego, CA.

Grants and Gifts - Ongoing

1. Open Society Foundation (Elizabeth Letourneau & Andrew Harris) 10/01/2012 – 9/30/2014
Collateral Consequences of Juvenile Sex Offender Registration and Notification
 This study will include (1) a survey of clinical practitioners regarding their views of the collateral consequences of subjecting juveniles to registration and notification procedures and (2) a survey of youth and their caregivers regarding collateral consequences of registration and notification on several domains, including youth mental health, school achievement, victimization, peer relationships and parent consequences.
 Total Award: \$200,000.
 Role: Principal Investigator

2. 2011-MU-FX-4004 (Elizabeth Letourneau, PI) 10/01/2012 – 4/30/2015
 Office of Justice Programs
Juvenile Registration and Notification Policy Effects: A Multistate Evaluation Project
 The proposed study will evaluate the effects of sex offender registration and notification (SORN) policies applied to juveniles who have sexually offended. Specifically, this study will examine the influence of Maryland, Oklahoma, and Texas SORN policies on three classes of outcomes pertaining to the (1) general deterrence of youth sex offending, (2) specific deterrence of youth sex and violent recidivism, and (3) judicial processing of juvenile sex offense cases.
 Total Award: \$499,974
 Role: Principal Investigator

3. 2011-MC-CX-0002 (Gregg Dwyer, PI) 10/01/2012 – 9/30/15
 Office of Justice Programs
Protecting Children Online: Using Research-Based Algorithms to Prioritize Law Enforcement Internet Investigations.
 The proposed project will use data from Internet Crimes Against Children task forces across the United States -- offender characteristics, crime characteristics, and online behavior -- to develop empirically-based algorithms to assist law enforcement in prioritizing (1) cases involving production of child pornography over possession/distribution; (2) cases involving online luring for the purpose of meeting the minor to commit sexual offenses, over luring restricted to online behavior such as sexual chat or exchanging pornographic images; and (3) cases involving offenders who have committed hands-on sexual offenses against children over cases involving offenders with no known history.
 Total Award: \$766,574
 Role: Co-Principal Investigator

4. Moore Center Gift (Elizabeth Letourneau, PI) 10/1/2012 – 9/30/2017
Moore Center for the Prevention of Child Sexual Abuse
 The Moore Center for the Prevention of Child Sexual Abuse aims to promote a public health approach to Child Sexual Abuse (CSA). The overarching goal is to move our nation's response to child sexual abuse from a criminal justice orientation focused on after-the-fact responses to a more comprehensive approach that focuses significant resources on the prevention of CSA before harm occurs. The Center will engage in policy analysis, original scholarly research, and agenda-setting public discourse. Our goal is to bring public health expertise and perspectives to the complex policy issues related to the prevention of child sexual abuse.
 Total Award: Masked per benefactor request
 Role: Director

5. Let Go Let Peace Come In Gift (Elizabeth Letourneau, PI) 3/15/2012 – 3/14/2013
Let Go Let Peace Come In
 The first installment of this multi-focused gift funded a secondary data analysis study based on the PRC longitudinal study. The specific aims will include first identifying those within the sample who have a conviction for a sexual offense and/or who self-reported perpetrating sexual abuse and then conducting analyses to determine (1) whether early aggression and other factors in childhood and adolescence (e.g., history of child sexual victimization, school achievement, mental health problems) predict future sexual offending; (2) whether the Good Behavior Game intervention, which has been demonstrated to reduce aggression across the school-age years resulting in fewer

criminal offenses as adults, can also reduce sexual offending; and (3) whether outcome effects are influenced by a youth's own history of sexual victimization.

Total Award: \$136,000

Role: Principal Investigator

6. 2010-MC-CX-0001 (Andrew Harris) 10/01/2010-11/30/2013
Office of Justice Programs
Building a Prevention Framework to Address Teen 'Sexting' Behaviors
This study will use teen focus groups to explore the reasons that youth have for sending and receiving nude or semi-nude photos of themselves and their friends "sexting" and the immediate risk and protective factors for engaging in these behaviors. Focus groups with parents and school personnel will be used to elicit intervention components to address teen sexting behaviors. Ultimately, we aim to develop policy recommendations for addressing teen sexting behaviors with a public health focus.
Total Award: \$662,919
Role: Co-Principal Investigator
7. R01 DA025880-04S1 (Elizabeth Letourneau, PI) 09/25/2011- 06/30/2013
National Institute of Drug Abuse
Targeting HIV Risk Behaviors in Juvenile Drug Court-Involved Youth
Supplement to the randomized controlled trial to cover costs associated with adding a recruitment site.
Total Award: \$70,982
Role: Principal Investigator
8. R01 DA025880 (Elizabeth Letourneau, PI) 09/25/2008–06/30/2013
National Institute of Drug Abuse
Targeting HIV Risk Behaviors in Juvenile Drug Court-Involved Youth
This randomized clinical trial will provide an initial test of efficacy for an intervention targeting substance use and sexual risk behaviors in juvenile drug court-involved youth. The investigational intervention combines Contingency Management for youth substance use problems and a CM-based platform (i.e., involving specific contingencies tied to behaviors) for sexual risk reduction. Treatment is aimed equally at the youth and his or her caregiver. This intervention is compared to usual services, which typically provide group-based interventions aimed primarily at youth, with limited caregiver involvement and without use of evidenced-based CM or other interventions.
Total Award: \$1,795,836
Role: Principal Investigator

Grants and Gifts - Completed

1. R34 MH077500-01A1 (Elizabeth Letourneau, PI) 02/01/2007-01/31/2011
National Institute of Mental Health
Adapting MST to Address Transmission Risk Behaviors in HIV+ Youth People
This randomized clinical pilot trial provided an initial test of efficacy for a home-based, caregiver-focused intervention targeting adolescent medication HAART adherence problems and other HIV transmission risk behaviors. Specifically, Multisystemic Therapy (MST) was adapted to address adherence and other risk behaviors in youth. Results indicated significant viral load reductions for youth in the MST condition vs. youth treated with usual services bolstered by a single session of Motivational Interviewing.
Total Award: \$616,136
Administrative Supplement (awarded 8-09): \$73,750
Role: Principal Investigator
2. National Institute of Justice: (Kristen Zgoba, PI) 11/1/2008-10/31/2011
A Multi-state Recidivism Study Using Static-99 and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act.
This multi-site study will evaluate the predictive validity of several commonly utilized sex offender recidivism risk instruments. South Carolina is one of five participating sites. Specifically, data from 500 convicted sex offenders released from incarceration will be used to score four recidivism risk

instruments. These scores will then be used to predict actual recidivism rates across a 10-year follow-up period.

Total Award: \$220,000 (November 2008 – October 2011)

Role: Co-investigator and site PI.

3. R49-000-567 (Elizabeth Letourneau, PI) 09/01/2005-08/30/2009
Center for Disease Control and Prevention
Preventing Sexual Violence: Does Sex Offender Registration and Notification Work?
This study examined the effects of South Carolina's sex offender registration and notification policy as applied to juvenile offenders. Primary outcomes examined included recidivism, general deterrence, and judicial decision making. Results indicated that South Carolina's policy of lifetime registration and public notification for nearly all juveniles adjudicated for sex crimes neither deters neither recidivism nor first-time offending. Registration as associated with increased risk for new misdemeanor arrests, likely due to a surveillance effect. Registration also was associated with significantly increased rates of plea bargains (to nonsex charges) and increased rates of dismissing sex crime cases outright.
Total Award: \$886,112
Role: Principal Investigator
4. 200-WG-BX-0002 (Elizabeth Letourneau, PI) 08/01/2006-07/31/2009
National Institute of Justice
Evaluating the Effectiveness of Sex Offender Registration & Notification Policies for Reducing Sexual Violence against Women
This study examined the effects of South Carolina's sex offender registration and notification policy as applied to adult offenders. Primary outcomes examined included recidivism, general deterrence, and judicial decision making. Additionally, the relationship of failure to register offenses and recidivism was examined. Results indicated that South Carolina's policy of lifetime registration and internet-based notification for all convicted sex offenders failed to deter recidivism and was associated with both increased likelihood of prosecution (due to increased plea bargains) but reduced likelihood of conviction for those cases that did not plea. South Carolina's policy also appears to be associated with a general deterrent effect on first-time sex crimes.
Total Award: \$484,106
Role: Principal Investigator
5. 1R01MH65414 (Scott Henggeler, PI) 03/14/2003-02/29/2009
National Institute of Mental Health
Effectiveness Trial: MST with Juvenile Sexual Offenders
This randomized clinical trial provided the largest test of effectiveness for an intervention targeting juvenile sexual offending. Specifically, this trial compared outcomes of youth treated with Multisystemic Therapy compared to youth treated with a cognitive-behavioral relapse prevention intervention (total $N = 126$). Relative to youth in the CBT-RP condition, youth in the MST condition demonstrated significant reductions in sexual risk behaviors (per youth and caregiver report), delinquency (per youth report) and substance youth (per youth report). Youth in MST also were significantly less likely to be placed in costly and/or confining out-of-home settings throughout the course of the 24-month follow-up. Mediators of outcomes included parental discipline and peers.
Total Award: \$2,500,000
Role: Project Director
6. SES-0455124 (Elizabeth Letourneau, PI) 4/1/2005-3/31/2006
National Science Foundation
Offender Registration: Examination of Intended and Unintended Effects on Juvenile Offenders
This project involved obtaining data on South Carolina juvenile arrests and convictions in preparation for examining the effects of registration and notification.
Total Award: \$250,000
Role: Principal Investigator
7. 1 R01 DA19107-01 A1 (Sonja Schoenwald, PI) 04/01/05-07/30/05
National Institute of Drug Abuse

Testing Context Effects on Treatment of Drug Using Youths.

This study was a follow-up to the MST Continuum of Care study, in which outcomes were specifically tracked for youth with substance use problems

Role: Research Coordinator

8. Contract No. 96.2013 (Scott Henggeler, PI) 06/01/96-2/28/04
The Annie E. Casey Foundation
An MST-Based Continuum of Care
This RCT examined the use of MST within a continuum of care framework that included access to brief residential and foster care placements in addition to traditional MST interventions. Youth with delinquency and mental health problems and their caregivers were recruited from the department of juvenile justice.
Role: Research Coordinator
9. 1R01MH59138-02 (Sonja Schoenwald, PI) 09/01/99-05/31/04
NIH/NIMH
Transportability of New Treatments: MST as a Test Case
This study examined organizational effects on the dissemination of MST to 42 usual care sites.
Role: Project Coordinator
10. ATSA New Investigator Award (Elizabeth Letourneau, PI) 10/1/97-09/30/98
Association for the Treatment of Sexual Abusers
A Comparison of Penile Plethysmography and Visual Reaction Time Measures of Sexual Arousal
This study involved comparing results from penile plethysmography testing to visual reaction time testing in a sample of incarcerated sex offenders recruited from a maximum security military prison. This was the first direct comparison of these two instruments conducted outside the VRT developer's laboratory.
Total Direct Costs: \$25,000
Role: Principle Investigator

Peer-reviewed Publications

1. O'Donohue, W. T. & Letourneau, E. J. (1992). A review of the psychometric properties of the penile tumescence assessment of child molesters. *Journal of Psychopathology and Behavioral Assessment*, 14(2), 123-175.
2. O'Donohue, W. T. & Letourneau, E. J. (1993). Brief group treatment for the denial of child sexual abuse: Outcome and follow-up data. *Child Abuse and Neglect*, 17, 299-304.
3. Letourneau, E. J., Resnick, H. S., Kilpatrick, D. G., Saunders, B. E., & Best, C. L. (1996). Comorbidity of sexual problems and PTSD in female crime victims. *Behavior Therapy* 27, 321-336. doi: 10.1016/S0005-7894(96)80020-7
4. O'Donohue, W. T., Letourneau, E. J., & Downing, H. (1997). Development and psychometric evaluation of the Sex Fantasy Questionnaire. *Sexual Abuse: A Journal of Research and Treatment*, 9, 167-178.
5. Letourneau, E. J., & O'Donohue, W. T. (1997). Classical conditioning of female sexual arousal. *Archives of Sexual Behavior* 26, 63-78.
6. Letourneau, E. J., Schewe, P., and Frueh, B. C. (1997). Sexual problems in combat veterans with PTSD. *Journal of Traumatic Stress* 10, 125-132.
7. Holmes, M. M., Letourneau, E. J., & Vermillion, S. T. (1998). A psychiatrist's guide to sexual dysfunction in women. *Medical Update for Psychiatrists*, 3.
8. Letourneau, E. J., Holmes, M., & Chasedunn-Roark, J. (1999). Gynecological health consequences to victims of interpersonal violence. *Women's Health Issues*, 9(2), 115-120.
9. Letourneau, E. J., & Lewis, T. C. (1999). The portrayal of child sexual assault in introductory psychology textbooks. *Teaching of Psychology*, 26, 253-258.
10. Smith, D. W., Letourneau, E. J., Saunders, B. E., Kilpatrick, D. G., Resnick, H. S. & Best, C. L. (2000). Delay in disclosure of childhood rape: Results from a national survey. *Child Abuse and Neglect*, 24, 273-287.
11. Henggeler, S., W., Schoenwald, S., K., Liao, J. G., Letourneau, E. J., & Edwards, D. L. (2002). Transporting efficacious treatment to field settings: The link between supervisory practices and therapist fidelity in MST programs. *Journal of Clinical Child Psychology*, 31, 155-167

12. *Letourneau, E. J. (2002). A comparison of objective measures of sexual arousal and interest: Visual reaction time and penile plethysmography. *Sexual Abuse: A Journal of Research and Treatment*, 14, 207-224.
13. Chaffin, M., Letourneau, E., & Silovsky, J. (2002). Adults who sexually abused children: A review of international treatment and policy issues. *Dziecko Kryzwdzone*, 1, 53-68.
14. Schoenwald, S., K., Sheidow, A. J., Letourneau, E. J., & Liao, J. G. (2003). Transportability of Multisystemic Therapy: Evidence for multi-level influences. *Mental Health Services Research*, 4, 223-239.
15. Letourneau, E. J. (2004). Commentary on the First Report. *Sexual Abuse: A Journal of Research and Treatment*, 16, 77-81.
16. Letourneau, E. J., Schoenwald, S. K., & Sheidow, A. J. (2004). Children and adolescents with sexual behavior problems. *Child Maltreatment*. 9, 49-61.
17. Schoenwald, S., K., Sheidow, A. J., & Letourneau, E. J. (2004). Toward effective quality assurance in evidence-based practice: Links between expert consultation, therapist fidelity, and child outcomes. *Journal of Clinical Child and Adolescent Psychology*, 33, 94-104.
18. Letourneau, E. J., & Miner, M. H. (2005). Juvenile sex offenders: A case against the legal and clinical status quo. *Sexual Abuse: A Journal of Research and Treatment*, 17, 313-331. doi: 10.1037/a0014352
19. Schoenwald, S. K., Letourneau, E. J., & Halliday-Boykin, C. A. (2005). Predicting therapist adherence to a transported family-based treatment for youth. *Journal of Clinical Child and Adolescent Psychology*, 34, 658-670.
20. Halliday-Boykin, C. A., Schoenwald, S. K., & Letourneau, E. J. (2005). Caregiver-therapist ethnic similarity predicts youth outcomes from an empirically based treatment. *Journal of Consulting and Clinical Psychology*, 73, 808-818.
21. **Chaffin, M., Hanson, R., Saunders, B. E., Nichols, T., Barnett, D., Zeanah, C., Berliner, J., Egeland, B., Newman, E., Lyon, E., Letourneau, E., & Miller-Perrin, C. (2006). Report of the ASPAC Task Force on Attachment Therapy, Reactive Attachment Disorder, and Attachment Problems. *Child Maltreatment*, 11, 76-89.
22. Letourneau, E. J., & Borduin, C. M. (2008). The effective treatment of juveniles who sexually offend: An ethical imperative. *Ethics and Behavior*, 18 (2-3), 286-306.
23. Silovsky, J.F., & Letourneau, E. (2008). Introduction to special issue on children with sexual behavior problems. *Child Maltreatment*. 13, 107-109.
24. ***Letourneau, E. J., Chapman, J., & Schoenwald, S. K. (2008). Treatment outcome and future offending by youth with sexual behavior problems. *Child Maltreatment*, 13, 133-144.
25. Letourneau, E. J. & Armstrong, K. S. (2008). Recidivism rates for registered and nonregistered juvenile sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 20, 393-408. doi: 10.1177/1079063208324661
26. Henggeler, S. W., Letourneau, E. J., Chapman, J. E., Borduin, C. M., Schewe, P. A., & McCart, M. R., (2009). Mediators of change for multisystemic therapy with juvenile sexual offenders. *Journal of Consulting and Clinical Psychology*, 77, 451-462.
27. Letourneau, E. J., Henggeler, S. W., Borduin, C. M., Schewe, P. A., McCart, M. R., Chapman, J. E., & Saldana, L. (2009). Multisystemic therapy for juvenile sexual offenders: 1-year results from a randomized effectiveness trial. *Journal of Family Psychology*, 23, 89-102.
28. Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009a). The effects of sex offender registration policies on juvenile justice decision making. *Sexual Abuse: A Journal of Research and Treatment*, 21, 149-165. doi: 10.1177/1079063208328678
29. Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009b). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153. doi: 10.1177/0887403408327917
30. Levenson, J. S., Letourneau, E. J., Armstrong, K. S., & Zgoba, K. M. (2010). Failure to register as a sex offender: Is it associated with recidivism? *Justice Quarterly*, 27, 305-331. doi: 10.1080/07418820902972399
31. Chaffin, M., Levenson, J. S. Letourneau, E. J., & Stern, P. (2009). How safe are trick-or-treaters? An analysis of child sex crime rates on Halloween. *Sexual Abuse: A Journal of Research and Treatment*, 21, 363-374. doi: 10.1177/1079063209340143
32. Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2010). Effects of

- South Carolina's sex offender registration and notification policy on adult recidivism. *Criminal Justice Policy Review*, 21, 435-458.
33. Letourneau, E. J., Ellis, D. A., Naar-King, S., Cunningham, P. B., & Fowler, S. L. (2010). Case study: Multisystemic Therapy as an intervention for adolescents who engage in HIV transmission risk behaviors. *Journal of Pediatric Psychology*, 35, 120-127.
 34. Bandyopadhyay, D., Sinha, D., Lipsitz, S., & Letourneau, E. (2010). Changing approaches of prosecutors to juvenile repeat sex offenders: A Bayesian evaluation. *The Annals of Applied Statistics*, 4, 805-829.
 35. Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D., (2010). The effects of sex offender registration and notification on judicial decisions. *Criminal Justice Review*, 35, 295-317.
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 37. Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). Effects of South Carolina's sex offender registration and notification policy on deterrence of adult sex crimes. *Criminal Justice and Behavior*, 37, 537-552.
 38. Dwyer, R. G., & Letourneau, E. J. (2011). Juveniles who sexually offend: Recommending a treatment program and level of care. *Child and Adolescent Psychiatric Clinics of North America: Special Issue on Forensic Child and Adolescent Psychiatry*, 20, 413-429.
 39. Fanniff, A. & Letourneau, E. J. (2012). Another piece of the puzzle: Psychometric properties of the J-SOAP-II. *Sexual Abuse: A Journal of Research and Treatment*, 24, 378-408.
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 43. Letourneau, E. J., Ellis, D. A., Naar-King, S., Chapman, J. E., Cunningham, P. B., & Fowler, S. (in press). Multisystemic therapy for poorly adherent youth with HIV: Results from a pilot randomized controlled trial. *AIDS Care*.
 44. Chapman, J. E., McCart, M. R., Letourneau, E. J., & Sheidow, A. J. (in press). Comparison of youth, caregiver, therapist, trained, and treatment expert raters of therapist adherence to a substance abuse treatment protocol. *Journal of Consulting and Clinical Psychology*.
 45. La Flair, L. N., Reboussin, B. A., Storr, C. L., Letourneau, E. J., Green, K. M., Mojtabai, R., Pacek, L. R., Alvanzo, A. A. H., Cullen, B., & Crum, R. M. (in press). Childhood abuse and neglect and transitions in stages of alcohol involvement among women: A latent transition analysis approach. *Drug and Alcohol Dependence*.

* Article was selected for special editorial mention in same issue.

** Article received the 2007 APSAC Outstanding Article award for a Child Maltreatment publication.

** Article received the 2007 ProHumanitate Literary Award (Herbert A. Raskin Child Welfare Article Award).

*** Article received the 2008 APSAC Outstanding Research Article award and was nominated for the 2008 ProHumanitate Literary Award (Herbert A. Raskin Child Welfare Article Award).

Book Chapters

1. Letourneau, E. J. & O'Donohue, W. T. (1993). Assessment and treatment of inhibited sexual desire disorder. In W. T. O'Donohue and J. H. Geer (Eds.) *Handbook of the assessment and treatment of sexual dysfunctions*. Boston: Allyn & Bacon.
2. O'Donohue, W. T., Letourneau, E. J., & Geer, J. H. (1993). Assessment and treatment of premature ejaculation. In W. T. O'Donohue and J. H. Geer (Eds.), *Handbook of the assessment and treatment of sexual dysfunctions*. Boston: Allyn & Bacon.
3. Gold, S. R., Letourneau, E. J., & O'Donohue, W. T. (1994). Sexual interaction skills. In W. T.

- O'Donohue and J. H. Geer (Eds.), *Handbook of psychological skills training*. Boston: Allyn & Bacon.
4. Letourneau, E. J., Cunningham, P. B., & Henggeler, S. W. (2002). Multisystemic treatment of adolescent antisocial behavior. In S. Hofmann & M. C. Tompson (Eds.) *Handbook of psychological treatments for severe mental disorders*. Guilford.
 5. Letourneau, E. J., & Lewis, T. C. (2002). The portrayal of child sexual assault in introductory psychology textbooks. In R. A. Griggs (Ed), *Handbook for teaching introductory psychology: Vol. 3: With an emphasis on assessment*. (pp. 83-88). Mahwah, NJ, US: Lawrence Erlbaum Associates, Publishers.
 6. Chaffin, M., Letourneau, E. J., & Silovsky, J. F. (2002). Adults, adolescents and children who sexually abuse children: A developmental perspective. In J. Briere, L. Berliner & T. Reid (Eds.) *The APSAC handbook on child maltreatment* (2nd ed., 205-232). Thousand Oaks, CA: Sage.
 7. Letourneau, E. J. (2005). Legal consequences to juvenile sex offending in the United States. In H. Barbaree & W. Marshall (Eds.) *The Juvenile Sex Offender (Second Edition)*. New York: Guilford Publications.
 8. Letourneau, E. J., & Prescott, D. (2005). Ethical issues in sexual offender assessments. In S. W. Cooper, A. P. Giardino, V. I. Vieth, & N. D. Kellogg (Eds.). *Medical & legal aspects of child sexual exploitation: A comprehensive review of child pornography, child prostitution, and Internet crimes against children* (278-296). St. Louis, Missouri: G. W. Medical Publishing.
 9. Letourneau, E. J., & Swenson, C. C. (2005). Sexual offending and sexual behaviour problems: Treatment with Multisystemic Therapy (pp. 251-268). In M. C. Calder (Ed.) *Children and young people who sexually abuse: New theory, research and practice developments*. Dorset, UK: Russell House Publishing.
 10. Swenson, C.C., & Letourneau, E. J. (2005). Multisystemic therapy with juvenile sex offenders. In B. Schwartz (Ed.), *The sex offender*, Vol 5. New York: Civic Research Institute.
 11. Saldana, L., Swenson, C. C., & Letourneau, E. J. (2006). Multisystemic therapy with juvenile sexual offenders. In R. Longo & D. Prescott (Eds.), *Current perspectives on working with sexually aggressive youth and youth with sexual behavior problems*. Holyoak, MA: NEARI Press.
 12. Letourneau, E. J., Borduin, C. M., & Schaeffer, C. M (2008). Multisystemic therapy for youth with problem sexual behaviors. In A. Beech, L. Craig & K. Browne (Eds.) *Assessment and Treatment of Sexual Offenders: A Handbook* (pp 453-472). London: Wiley.
 13. Swenson, C.C., & Letourneau, E. J. (2011). Multisystemic therapy with juveniles who sexually offend (Chapter 57). In B. Schwartz (Ed.), *Handbook of Sex Offender Treatment*. New York: Civic Research Institute.
 14. Letourneau, E. J., & Levenson, J. S. (2010). Preventing sexual abuse: Community protection policies and practice. In J. Meyers (Ed.), *The APSAC handbook on child maltreatment* (3rd ed, pp 307-322.). Thousand Oaks, CA: Sage.
 15. Letourneau, E. J., & Schaeffer, C. (in press). Multisystemic therapy for youth problem sexual behavior: A case example. In W. T. O'Donohue (Ed.), *Case studies in sexual deviance*. Academic press.

Book Reviews

1. Letourneau, E. J. (1996). [Review of Child survivors and perpetrators of sexual abuse: Treatment innovations]. *APSAC Advisor*, 9(3), 27-28.
2. Letourneau, E. J. (1996). [Review of Adult survivors of sexual abuse]. *APSAC Advisor*, 9(3), 27-28.

Other Publications

1. Borduin, C. M., Letourneau, E. J., Henggeler, S. W., Saldana, L. *Multisystemic Therapy for youth with problem sexual behaviors: Treatment manual*. Charleston, SC: Family Services Research Center.
2. Chaffin, M., Letourneau, E. J., & Silovsky, J. F. (2002). Dorosli sprawcy wykorzystywania seksualnego dzieci - przegląd zagadnień. In T. B. Praktyka (Eds.) *Dziecko Nr1 2002 krzywdzone wykorzystywanie seksualne dzieci* (1). (translated from the original).
3. Letourneau, E. J., & Borduin, C. M. (2008). MST: Treatment for adolescents with delinquent sexual behavior. Invited contribution for a special issue of the *APSAC Advisor*.
4. Contributor, [The War Zone](#) (educational guide to the movie). Learning Enrichment, Inc.

Other Professional Service

Association for the Treatment of Sexual Abusers:

- President-Elect: 2012-present
- Research Committee: 2003-2012 (Committee Chair 2002-2005)
- ATSA Strategic Planning Committee (2008-2009)
- ATSA Awards Committee (2008-present)
- ATSA Executive Board (1999-2005)
- Ethics Committee (1999-2003, including Chair from 2000-2003)
- Conference Planning Committee (1997-2000)

Office on Violence Against Women Rapid Response Project. Role: network expert (2011-present)

National Advisory Committee member, Safer Society Foundation (2007-present)

Charter member and past-president, South Carolina Association for the Treatment of Sexual Abusers

Miscellaneous Service (since 2000)**Amicus Briefs**

- In re C.P. 2010-0731. Amicus Brief filed on September 28, 2010 with OH Supreme Court. Brief disputes Ohio law pertaining to registration requirements for a minor adjudicated delinquent of rape.
- In re D.B. 2010-0240. Brief filed on August 24, 2010 with OH Supreme Court. Brief disputes fairness of rape adjudication for 12-year-old boy who engaged in consenting sex with and 11 and 12-year-old male peers.

Adam Walsh Act Working Group – research advisor (2009-2012)

Charleston Juvenile Drug Court Advisory Committee (2009-2011)

CURRICULUM VITAE

Elizabeth J. Letourneau

PART II

TEACHING*Advisees**Humphrey Fellow*

George Leveridge	MD, Psychiatrist, Jamaica	2012-2013
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Thesis Committees

Megan Schuler	PhD, Mental Health	2010
Maya Nadison	PhD, Mental Health	2010

MHS Advisee

Christine Kwitkowski		2010-2011
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Preliminary Oral Participation (PhD)

Megan Schuler	Mental Health	2011
Lauren Ropelewski	Mental Health	2011

*Final Oral Participation (PhD)**Other Institutions*

<i>Medical University of South Carolina, Masters in Science of Medical Students</i>		
Advisor to Josh Eichenberger		2010

<i>Griffith University, Brisbane, Australia, Doctor of Philosophy in Clinical Psychology</i>		
External dissertation reviewer for Belinda Crissman		2010

<i>Adelphi University, Doctor of Philosophy in Clinical Psychology</i>		
Dissertation committee member for Victor Kersey		2005

Classroom Instruction

<i>Childhood Victimization: A Public Health Perspective (330.640)</i>		2013
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Guest Lectures

2012-2013	Current Issues, Professor Edith Schoenrich (December 7, 2012) Manuscript Writing, Professor Tamar Mendelson (November 12, 2012) Grant Writing, Professor Philip Leaf (December 11, 2012)	
2011-2012	Wednesday Noon Seminar Series, Department of Mental Health <i>Substance Use and Sexual Risk Reduction for Juvenile Drug Court Involved Youth</i> Wednesday Noon Seminar Series, Department of Mental Health <i>Juveniles who Sexually Offend: Research, Treatment, and Policy Milestones.</i>	
2010	Wednesday Noon Seminar Series, Department of Mental Health <i>What is the right policy for sex offenders? Using evidence to optimize individual rights and public safety.</i>	

Other Teaching

2010	Clinical Trials: Developing and Editing Manuscripts	
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- 1997 Graduate School, Medical University of South Carolina
Elective individual research instruction.
Child Development
Department of Psychology, Augusta State University
Undergraduate course
- 1997 Abnormal Psychology
Department of Psychology, Augusta State University
Masters of Arts, Clinical Psychology graduate program
- 1996 Child Development
Department of Psychology, Augusta State University
Undergraduate course
- 1996 Intellectual Assessment
Department of Psychology, Augusta State University
Masters of Arts, Clinical Psychology graduate program

ACADEMIC SERVICE

Johns Hopkins Bloomberg School of Public Health

- Anna Baejter Society. Panelist: *Mental Health as Public Health: Global Implications*, April, 2013
- Panelist: *A Global Perspective on Human Trafficking (Dispelling Myths)*, December, 2012
- Co-Chair, First Annual Symposium, Child Sexual Abuse: A Public Health Perspective, April 2012.
- Committee on Policies and Procedures for Youth Programs, 2011- 2012

Other Institutions

Medical University of South Carolina

- Institutional Review Board Member (2010-2011)
- Executive Research Committee Member (2009-2011)
- Appointment, Promotion, and Tenure Committee (2007-2010)

PRESENTATIONS

Invited Colloquia

- Kaufman, K., & Letourneau, E. J. (2000, September). Take back the Presses: Publishing your clinical data. Full day workshop presented at the 18th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA.
- Kaufman, K., & Letourneau, E. J. (2001, November). Take back the presses: Publishing your clinical data. Full day workshop presented at the 19th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, San Jose, CA.
- Letourneau, E. J. (2001, March). Violent media and violent behavior: The childhood connection. Colloquium presented at The Citadel, Charleston, SC.
- Letourneau, E. J. (2001, May). Penile plethysmography and sex offenders. Full-day workshop. Wisconsin Sex Offender Treatment Network. Madison, WI.
- Ball, C., Kinscherff, R. T., Latham, C., Letourneau, E. J., & Palmer, B. (2002, October). Best Practices: Ethical Considerations. Workshop presented at the 20th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Montreal, Quebec.
- Swenson, C. & Letourneau, E. J. (2002, October). Multisystemic Therapy with Adolescent Sex Offenders. Full day workshop presented at the 20th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Montreal, Quebec.
- Letourneau, E. J. (April, 2003). Multisystemic Therapy. Keynote Presentation at the Annual Mental Health Seminar, Roanoke, VA.
- Letourneau, E. J. (2004, May). Treatment of Juvenile Sex Offenders with Multisystemic Therapy. Workshop presentation at the 7th Annual Conference of the California Coalition of Sexual Offenders. San Francisco, CA.
- Letourneau, E. J. (2004, October). MST and Juvenile Sex Offenders. Conference presentation at the annual conference of the International Association for Treatment of Sexual Abusers, Athens, Greece.

- Letourneau, E. J. (2004, October). Legal Consequences of Juvenile Sex Offending. Conference presentation at the annual conference of the International Association for Treatment of Sexual Abusers, Athens, Greece.
- Letourneau, E. J. (2005, October). Multisystemic Therapy (MST): Bases of Success in Treating Serious Clinical Problems in Children and Adolescents. Keynote presentation at Kind & Adolescent. Amersfoort, The Netherlands.
- Letourneau, E. J., & Jones, D. (2005, November). MST with Juvenile Sexual Offenders. Full-day preconference workshop presented at the 24th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers. November 16-19, Salt Lake City, Utah.
- Letourneau, E. J. & Borduin, C. (2006, March). Adaptations of MST for Juvenile Sexual Offenders. In S. W. Henggeler (Chair) *Developing and Adapting MST for New Populations*. Symposium presented at the Blueprints Conference, March 13-15, Denver, Colorado.
- Letourneau, E. J. (2007, June). Sex offender registration and notification policies as applied to youths. Three hour training provided to therapists and probation officers at Webster University, North Charleston, SC.
- Letourneau, E. J. (2007, September). Do Sex Offender Registration and Notification Policies Work? Grand Rounds presented at the Medical University of South Carolina, Department of Psychiatry and Behavioral Sciences.
- Letourneau, E. J., Henggeler, S. W., Borduin, C. M., Schewe, P. A., McCart, M. R., Chapman, J. E., & Saldana, L. (2008, April). *Effectiveness of Multisystemic therapy with juvenile sex offenders: 1-yr outcomes of a randomized trial*. Presented at the first convening of the sex offender researcher roundtable. Banff, Canada.
- Letourneau, E. J. (2008, September). *Multisystemic therapy with juvenile sex offenders*. Workshop presented at the 18th annual conference and practice workshops of the National Organization for the Treatment of Abusers, Cardiff, UK.
- Letourneau, E. J. (2008, September). *Multisystemic therapy for juvenile sex offenders: Results from a randomized effectiveness trial*. Keynote presentation at the 18th annual conference and practice workshops of the National Organization for the Treatment of Abusers, Cardiff, UK.
- Letourneau, E. J. (2008, April). *Effectiveness of MST with Juvenile Sex Offenders: 1-year Outcomes*. Presentation delivered to monthly interprofessional training at Dee Norton Low Country Children's Center, Charleston, SC.
- Letourneau, E. J. (2009, April). *The effects of lifetime registration when applied to juvenile sex offenders*. Invited speaker to the South Carolina Children's Advocacy Centers annual conference. Columbia, SC.
- Letourneau, E. J., Ellis, D., Naar-King, S., Cunningham, P.B., & Fowler, S. (2009, November). MST-HIV: Description of Adaptations and Results from a Recently Completed Pilot. *Grand Rounds, Department of Psychiatry and Behavioral Sciences, Medical University of South Carolina*.
- Letourneau, E. J. (2010, March). Sex offender registers and adolescents: Helpful, harmful, or no effect? Invited policy presentation for Australia-New Zealand Association for Sexual Abuse (ANZATSA). Sydney, Australia.
- Letourneau, E. J. (2010, April). Effects of Sex Offender Registration and Notification as Applied to Juveniles. Griffith University Research Policy Practice Symposium. Brisbane, Australia.
- Letourneau, E. J. (2010, July). Juveniles who sexually offend: Policy and practice research. Family Justice Center/SAIN Annual Conference. Tampa, Florida.
- Letourneau, E. J. (2010, October). Research update on juveniles who have sexually offended. Pre-conference seminar at the Association for the Treatment of Sexual Abuser's 29th Annual Research and Treatment Conference. Phoenix, AZ.
- Letourneau, E. J. (2011, May). Juveniles Who Sexually Offend: Using Evidence to Optimize Individual Rights and Public Safety. Presentation of the Children's Law Office, Charleston, SC.
- Letourneau, E. J. (2011, November). Juveniles who Sexually Offender: Research, Treatment, and Policy Milestones. Plenary session, 30th Annual Research and Treatment Conference. Association for the Treatment of Sexual Abusers. Toronto, CA.
- Letourneau, E. J. & Hales, S. (2011, November). Risk reduction therapy for adolescents. Full day preconference seminar. 30th Annual Research and Treatment Conference. Association for the Treatment of Sexual Abusers. Toronto, CA.
- Letourneau, E. J. (2011, December). Juveniles who sexually offend: Using evidence to optimize individual rights and public safety. Trial with Style, XXVI, Juvenile Justice Program Track sponsored by the

Juvenile Justice Center of Barry University School of Law.

- Letourneau, E. J. (2012, April). Prevention of Child Sexual Abuse. First Annual Symposium, Child Sexual Abuse: A Public Health Perspective. Johns Hopkins Bloomberg School of Public Health, Baltimore, MD.
- Letourneau, E. J. (2012, June). Teens, technology and social interactions. Invited presentation at the Charlest County School District Leadership Conference. Charleston, South Carolina.
- Letourneau, E. J. (2012, June). The effects of sex offender registration and notification as applied to Juveniles. Youth Justice: Pathways for Promising Futures. Dover, Delaware.
- Rothman, D., & Letourneau, E. J. (2012, October). Adolescents with problem sexual behaviors: Empirically and ethically supported practice guidelines. Half-day preconference seminar. 31st Annual Research and Treatment Conference, Association for the Treatment of Sexual Abusers. Denver, CO.
- Letourneau, E. J. (2012, October). Influence of childhood victimization on subsequent sexual offending. Treating Teens Psychiatry Program, The Reading Hospital and Medical Center. Reading, PA.

Reviewed Paper Presentations

- Letourneau, E. J. & O'Donohue, W. (1992, October). Development and psychometric evaluation of the Sex Fantasy Questionnaire. Paper presented at the Association for the Treatment of Sexual Abusers Annual Conference, Portland, OR.
- Letourneau, E. J. and O'Donohue, W. (1992, November). The modification of denial in child abusers. Paper presented at the AABT 26th Annual Convention, Boston, MA.
- Letourneau, E. J., Saunders, B. E., Kilpatrick, D., Resnick, H., & Best, C. (1994, February). Consistent versus inconsistent reporting of child rape in a longitudinal study. Paper presented at the San Diego Conference on Responding to Child Maltreatment, San Diego, CA.
- Smith, D. W., Letourneau, E. J., Saunders, B. E., & Kilpatrick, D. G. (1995, July). Patterns of disclosure in a longitudinal study of adult survivors of child rape. Paper presented at The 4th International Family Violence Research Conference, Durham, NH.
- Smith, D. W., Letourneau, E. J., Saunders, B. E., Kilpatrick, D. G., Resnick, H. S. & Best, C. L. (1995, November). Correlates of delay in disclosing child rape: National Women's Study data. Poster presented at AABT 29th Annual Convention, Washington, D.C.
- Letourneau, E. J., Schewe, P., Frueh, B. C., Resnick, H. S., & Kilpatrick, D. G. (1995, November). Comorbidity of sexual problems and PTSD. In D. Riggs (chair), Intimacy and relationships in the wake of trauma. Symposium conducted at the AABT 29th Annual Convention, Washington, D.C.
- Kilpatrick, D. G., Saunders, B. E., Best, C. L., Swenson, C. C., Resnick, H. S., & Letourneau, E. J. (1995, November). Violence, PTSD, and substance use: National Survey of Adolescents. Paper presented at the 11th Annual Meeting of the International Society for Traumatic Stress Studies, Boston, MA.
- Letourneau, E. J., Saunders, B. E., & Kilpatrick, D. (1996, January). Risk factors for child sexual assault: Results from the National Survey of Adolescents. Paper to be presented at the San Diego Conference on Responding to Child Maltreatment, San Diego.
- Saunders, B. E., Kilpatrick, D. G., Letourneau, E. L. (1996, January). Case characteristics of sexual assault from the National Survey of Adolescents. Symposium conducted at the San Diego Conference on Responding to Child Maltreatment, San Diego, CA.
- Saunders, B.E., Kilpatrick, D.G., Letourneau, E.L., & Resnick, H. (1996, March). Childhood victimization and Posttraumatic stress disorder as correlates of teenage substance abuse: Results from the National Survey of Adolescents. ACJS, Los Angeles, CA.
- Swenson, C. C., Kirk, L., Brown, E., & Letourneau, E. J. (1996, June). Physically abuse children: A look at service delivery. Paper presented at the Fourth National Colloquium of the American Professional Society on the Abuse of Children, Chicago, IL.
- Letourneau, E. J., Saunders, B. E., Kilpatrick, D. G., Crouch, J. L., Resnick, H.S., & Best, C. L. (1996, July). A comparison of the reporting of violent and non-violent events in a longitudinal study. Paper presented at Trauma and Memory: An International Research Conference, Durham, NH.
- Letourneau, E. J. (1996, October). Presented Grand Rounds at the Medical College of Georgia, Augusta, GA.
- Letourneau, E. J. & Crouch, J. L. (1996, November). The Juvenile Sex Fantasy Questionnaire. Paper presented at Association for the Treatment of Sexual Abusers, Chicago, IL.
- Letourneau, E. J. (1997, October). Research in action: Altering deviant sexual arousal in adult male sex offenders. Paper presented at the 16th Annual Research and Treatment Conference of the Association

for the Treatment of Sexual Abusers, Washington, DC.

- Letourneau, E. J., Swenson, C. C., & Keener, C. (1997, October). Multiple systems treatment of a preadolescent female for inappropriate sexual behavior problems. Paper presented at the 16th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Washington, DC.
- *Letourneau, E. J., Holmes, M. M., & *Chasedunn-Roark, J.* (1998, January). Long Term Physiological Consequences of Interpersonal Violence. Paper presented at the San Diego Conference on Responding to Child Maltreatment, San Diego, CA.
- Letourneau, E. J. (1999, June). Recidivism Factors Related to Sex Offender Probationers. Research presentation at the 7th Annual Colloquium of the American Professional Society on the Abuse of Children, San Antonio, TX.
- Letourneau, E. J. (1999, September). A Comparison of the Penile Plethysmograph with the Abel Assessment for Sexual Interest on Incarcerated Military Sex Offenders. Symposium presentation at the 18th Annual 1999 Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Orlando, FL.
- Letourneau, E. J. (1999, October). Comparison of Sex Offender Disclosure Prior to and During Polygraph Assessment. Workshop at the 15th Annual Midwest Conference on Child Sexual Abuse and Incest, Madison, WI.
- Letourneau, E. J. (1999, October). Comparison of Sex Offender Treatment Completers and Noncompleters. Workshop at the 15th Annual Midwest Conference on Child Sexual Abuse and Incest, Madison, WI.
- Letourneau, E. J. (2001, November). Self-reported data from incarcerated sex offenders: Results from the MSI, the Abel Assessment for Sexual Interest, and the penile plethysmograph. Symposium presentation at the 20th Annual 2001 Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, San Antonio, TX.
- Schoenwald, S. K., Letourneau, E. J., Halliday-Boykins, C. A., & Sheidow, A. J. (2002, March). Then what? Evaluation of community-based implementation of an evidence based practice. In S. W. Henggeler & K. E. Hoagwood (Chairs), Criteria for transporting treatments to the field: What types, how much, and then what? Symposium conducted at the annual research conference of the Florida Mental Health Institute, Tampa, FL.
- Letourneau, E. J. (2002, April). MST and Adolescent Sex Offenders. Psychiatry Grand Rounds, Medical University of South Carolina.
- Letourneau, E. J. (2002, May). MST and Adolescent Sex Offenders. Presented at "A Day of Discovery," Department of Psychiatry and Behavioral Sciences, Medical University of South Carolina.
- Letourneau, E. J. (2002, October). Best practices: Ethical considerations in forensic psychology. Paper presented at the 21st Annual Research and Treatment Conference, Montreal, Canada.
- Letourneau, E. J. (2003, February). Children and adolescents with sexual behavior problems: Treatment outcome. Paper presented at the San Diego Conference on Responding to Child Maltreatment, San Diego, CA.
- Letourneau, E. J. (2003, April). The treatment of juvenile sex offenders. Paper presentation at the Annual Mental Health Seminar, Roanoke, VA.
- Letourneau, E. J. (2003, August). Effectiveness Trial of Multisystemic Therapy With Juvenile Sexual Offenders. In C. Borduin (Chair) Multisystemic Therapy With Juvenile Sexual Offenders: Developing an Empirical Base. Symposium conducted at the American Psychological Association National Convention, Toronto, Canada.
- Sheidow, A. S., Letourneau, E. J., Schoenwald, S. K., & Henggeler, S. W. (2003, August). Adherence to multisystemic therapy principles: Are you really doing MST? Paper presentation at the American Psychological Association annual conference, Toronto, Canada.
- Letourneau, E. J. (2003, August). Effectiveness trial: MST with juvenile sexual offenders. Paper presentation at the American Psychological Association annual conference, Toronto, Canada.
- Letourneau, E. J., Sheidow, A. J., Schoenwald, S. K., & Henggeler, S. W. (2003, August). In between treatment and outcome: Moderators of multisystemic therapy outcomes. Paper presentation at the American Psychological Association annual conference, Toronto, Canada.
- Letourneau, E. J. (2004, October). MST and the Treatment of Juvenile Sex Offenders. Paper presentation at the International Association for the Treatment of Sexual Offenders (IATSO). Athens, Greece.
- Letourneau, E. J. (2004, October). Legal Policies for Juvenile Sexual Offenders in the United States. Paper

- presentation at the International Association for the Treatment of Sexual Offenders (IATSO). Athens, Greece.
- Letourneau, E. J. (2004, October). Community treatment of Sex Offenders (Symposium Chair). Association for the Treatment of Sexual Abusers Annual Conference. Albuquerque, NM.
- Letourneau, E. J. (2004, November). Understanding Sex Offender Assessments. Half-day workshop presented at the South Carolina Association for the Treatment of Sexual Abusers (SCATSA) professional workshop. Charleston, SC.
- Letourneau, E. J., Schoenwald, S. K., & Chapman, J. (2005, November). 2-year follow-up of children and adolescents with non-criminal sexual behavior problems. In E. J. Letourneau (Chair) *Children and Adolescents with Sexual Behavior Problems Become Sexual Offenders: Fact or Fiction?* Symposium presented at the 24th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers. November 16-19, Salt Lake City, Utah.
- Letourneau, E. J. (2006, July). Sex offender registration and notification policies applied to youths. Paper presentation at the National Institute of Justice 2006 Conference (K. Bachar, chair). Washington, DC.
- Letourneau, E. J. (2006, September). Registration and notification with juvenile sex offenders. Paper presentation at the Association for the Treatment of Sexual Abusers 25th Annual Research and Treatment Conference, Chicago, IL.
- Letourneau, E. J. (2006, October). The Ethics of Randomized Clinical Trials with Juveniles who Sexually Offend. Paper presented at the Conference on Ethics of Intervention Research with Children and Adolescents. Cleveland.
- Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2007, January). Intended and unintended effects of sex offender registration and notification policies as applied to minors. Paper presentation at the 21st Annual San Diego International Conference on Child and Family Maltreatment. San Diego, CA.
- Letourneau, E. J. (2007, October). Chair: *Relevant Subgroups of Juveniles Who Have Sexually Offended*. Symposium at the Association for the Treatment of Sexual Abusers 25th Annual Research and Treatment Conference, San Diego, IL.
- Letourneau, E. J., Saldana, L. (2007, October). Chair: *Relevant Distinctions Between Juveniles Who Sexually Offend*. Paper presented at the Association for the Treatment of Sexual Abusers 25th Annual Research and Treatment Conference, San Diego, IL.
- Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2007, November). Displaced Discretion: Unintended consequences of registration and notification policies on judicial decision making. Paper presented at the American Society of Criminology 59th Annual Meeting (K. Bachar, chair). Atlanta, GA.
- Letourneau, E. J., Henggeler, S. W., Borduin, C. M., Schewe, P. A., McCart, M. R., Chapman, J. E., & Saldana, L. (2008, February). *Effectiveness of MST with Juvenile Sex Offenders: 12-month Outcomes*. Paper presented at the *Research and Training Center for Children's Mental Health 21st Annual Conference*, Tampa, FL.
- Letourneau, E. J. (2008). Multisystemic therapy for juvenile sexual offenders: 1-year results from a randomized effectiveness trial. In M. Miner (chair) *Insights from the field: What recent research tells us about juvenile sexual offenders and intervention*. Association for the Treatment of Sexual Abusers 27th Annual Research and Treatment Conference. Atlanta, GA.
- Letourneau, E. J. (2008). What research is telling us about registration. In K. M. Bumby (chair) *Juvenile sex offender registration: Research, judicial perspective and shaping policy*. Association for the Treatment of Sexual Abusers 27th Annual Research and Treatment Conference. Atlanta, GA.
- Letourneau, E. J., Levenson, J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2008, November). Effects and effectiveness of sex offender registration. In K. Bacher (chair) *Sex offender laws and research realities: Judicial events, registration, notification, and recidivism*. Paper presented at the American Society of Criminology 2008 annual conference, St. Louis.
- Levenson, J., Letourneau, E. J., Zgoba, K., & Armstrong, K. (2008). The Relationship between Sex Offender Failure to Register and Recidivism. In K. Bacher (chair) *Sex offender laws and research realities: Judicial events, registration, notification, and recidivism*. Paper presented at the American Society of Criminology 2008 annual conference, St. Louis.
- Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2009, March). The Effects of Lifetime Registration when Applied to Juvenile Offenders. Annual Conference of the National Council of Juvenile and Family Court Judges. Orlando, FL.

- Letourneau, E. J. (2010, June). Effects of South Carolina's Sex Offender Registration and Notification Policy. In K. Bachar (Moderator) *Sex Offenders in the Community: Post-release, registration, notification, and residency restrictions*. The NIJ Conference, 2010.
- Chapman, J. E., McCart, M. R., Sheidow, A. J., & Letourneau, E. J. (2010, September). The use of Rasch and Many-Facet Rasch Models to compare untrained and partially-trained raters in the measurement of therapist adherence. In R. Lennox (Chair), *Applications in Mental Health*. Symposium conducted at the International Conference on Outcomes Measurement, Bethesda, MD.
- Letourneau, E. J. (2010, October). MST for problem sexual behaviors: 2-year follow-up of a randomized controlled trial. *Sexually abusive youth: community intervention and community reintegration* (unchaired symposium). Association for the Treatment of Sexual Abuser's 29th Annual Research and Treatment Conference. Phoenix, AZ.
- McCart, M.R., Sheidow, A.J., Letourneau, E.J., & Hales, S.B. (2010, December). *Targeting HIV-risk behavior in substance abusing juvenile offenders*. Paper presented at the 2010 Joint Meeting on Adolescent Treatment Effectiveness, Baltimore, Maryland.
- Paternite, C.E., Letourneau, E., & Hales, S. (2011, September). A youth centric prevention framework to address teen sexting behaviors. Paper presented at the 16th Annual Conference on Advancing School Mental Health, Charleston, SC.
- Letourneau, E. J., Armstrong, K. S., Bandyopadhyay, D., & Sinha, D. (2011, November). Sex offender registration and notification policy increases juvenile plea bargains. 30th Annual Research and Treatment Conference. Association for the Treatment of Sexual Abusers. Toronto, CA.
- Letourneau, E. J., McCart, M. R., & Sheidow, A. J. (2012, April). Risk Reduction Therapy for Adolescents: Preliminary Findings. Joint Meeting on Adolescent Treatment Effectiveness. Washington DC.
- Letourneau, E. J. (2012, October). Effects of early school-based interventions on the prevention of future child sexual abuse. Paper presented at the 31st Annual Research and Treatment Conference. Association for the Treatment of Sexual Abusers. Denver, CO.

Presentations and posters presented by students and postdoctoral fellows

- Lewis, T., & Letourneau, E. J. (1997, March). Backlash in the classroom. Poster session presented at the annual Southeastern Psychological Association Convention, Atlanta, GA.
- Molnar, V. H. & Letourneau, E. J. (1997, May). Impact of Mood and Behavior During a Voluntary 24-hour Relay Running Event. Poster presented at the Undergraduate Research Conference, Birmingham, AL.
- McKie, K., & Letourneau, E. J. (1997, October). Long-term physical health sequela of interpersonal violence: Theories and research. Paper presented at the 4th Annual Conference of the Southern Regional Chapter of the Association for Women in Psychology, Wilmington, NC.
- Fickle, A., & Letourneau, E. J. (1997, October). Do universities have the right or the responsibility to act as Internet censors? Paper presented at the 16th Annual Research and Treatment Conference of the Association for the Treatment of Sexual Abusers, Washington, DC.
- Letourneau, E. J. & Lewis, T. C. (1998, January). Backlash in the Classroom: The Portrayal and Betrayal of Child Sexual Assault Victims in Introductory Psychology Textbooks. Paper presented at San Diego Conference on Responding to Child Maltreatment, San Diego, CA.
- Mauro, P. M., Letourneau, E. J., McCart, M. R., & Sheidow, A. J. (2013, June). Contingency management intervention tailored for juveniles in drug court: Preliminary short-term substance use outcomes of a randomized controlled trial. Oral presentation at the 2013 College on Problems of Drug Dependence Scientific Meeting, San Diego, CA.
- La Flair, L.N., Reboussin, B., Storr, C., Letourneau, E., Green, K., Mojtabai, R., Pacek, L., Alvanzo, A., Cullen, B., and Crum, R.M. (accepted) "Childhood Victimization and Transitions in Stages of Alcohol Involvement among Women," College on Problems of Drug Dependence Annual Meeting, June 15-20, 2013. San Diego, CA (poster presentation)

Government Services

- 2012 Department of Justice, Sex Offender Management Research and Practice Forum. Role: participant
- 2010 The Swedish Council on Health Technology Assessment. Role: External reviewer for *Treatment methods for child molesters or those at risk of committing sexual offences against children: A*

systematic literature review.

Media Presentations

- PBS News Hour (2012)
- Fox 45, Baltimore, MD (2012)
- Radio Free America (Russia) (2008)
- NPR *Talk of the Nation* (2005, 2006 & 2008)

Clinical Experience

2000 to present	Consultant for legal proceedings involving sex crimes, including federal pornography cases, juvenile registration requirements, civil commitment, adult sex offense cases.
2007 to 2010	Supervisor for MST-HIV study therapists.
2004 to 2007	Consultant for MST-JSO study team.
2003 to 2006	Consultant for MST teams.
1999 to 2001	Sex offender evaluations, South Eastern Offender Assessments, Summerville, SC.
1997	Part-time therapist, Psychological Specialists, Augusta, GA.
1994 to 1996	Postdoctoral Fellow/NIMH Training Grant, National Crime Victims Research & Treatment Center, MUSC. Duties: Advanced research and clinical training in assessment and treatment of sequela to interpersonal violence, victims and perpetrators.
1994	Behavior modification consultant, Community Mental Health, Charleston, SC. <i>Duties:</i> Design and execution of intensive, in-home behavior modification program.
1993 to 1994	Clinical psychology intern, MUSC, Internship Consortium. <i>Duties:</i> Rotations at VA Substance Abuse Center, VA PTSD Clinic, Anxiety Treatment Center, Community Mental Health Child Center, and National Crime Victims Center.
1993	Behavior modification consultant, Cerebral Palsy Foundation, Augusta, IL. <i>Duties:</i> Design behavior modification programs for patients with disruptive behaviors.
1991 to 1993	Student clinician, Northern Illinois Psychology Clinic, DeKalb, IL. <i>Duties:</i> Assessment and treatment of student and community clients.

EXHIBIT

I

Affidavit of Elena del Busto, M.D.

AFFIDAVIT OF
Elena del Busto
M.D.

I, Elena del Busto, M.D., verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

1. My name is Dr. Elena del Busto. I hold a medical license in the state of Pennsylvania. I am Board Certified by the American Board of Psychiatry and Neurology since 2012 in the field of general adult psychiatry and am board eligible in the field of forensic psychiatry. I will be taking my forensic psychiatry boards in October 2013.
2. I obtained a Medical Doctor (M.D.) degree from Drexel University College of Medicine in 2005, and have been in good standing with the state of Pennsylvania, where I was trained and have practiced since that time. Prior to my M.D. degree, I earned a B.A. degree in Biology from Barnard College in New York, NY.
3. I am currently a member of the American Psychiatric Association (APA) and of the American Academy of Psychiatry and the Law (AAPL). I am serving my second term on the AAPL Sex Offender Committee, an appointment which is based on credentials and merit.
4. For the past 6 years I have aggressively pursued the academic research of sex offenders. My research has culminated in the publication of book chapters as well as national and international presentations. I have chaired numerous talks on male and female sex offenders at national conferences in addition to local presentations. I have presented my research of sex offenders both nationally and internationally. During my forensic psychiatry fellowship I completed a research project on juvenile sex offenders and the Adam Walsh Act. At the 2012 AAPL conference in Montreal, Canada this project was incorporated into a presentation comparing the treatment of juvenile sex offenders in the United States and United Kingdom.
5. In 2008 I was awarded the prestigious Rappeport Fellowship by AAPL which is given to a Psychiatry resident in training for excellence in forensic research. My mentor was John Bradford, a world renowned forensic psychiatrist specializing in adult sex offenders.
6. I currently hold an academic appointment as Clinical Associate Faculty at the University of Pennsylvania in Philadelphia, Pennsylvania. I teach residents of all levels of general psychiatry and sub-specialties such as forensic psychiatry and sleep medicine. Additionally I work for Main Line Health Systems through which I am involved in education of Psychiatry residents from Thomas Jefferson University Hospital.
7. Based on my academic research, presentations both nationally and internationally, as well as my awards for achievements in research, I am considered by my peers to be an expert in sex offenders.

8. Beginning in 1994, multiple pieces of state and federal legislation have been passed regarding the management of sex offenders after release from prison. Almost all of these laws were born from heinous acts committed against children: Jacob Wetterling, Megan Kanka, and Adam Walsh. The failure of early laws led to a progressive escalation in the stringency of sex offender legislation. Each revision has been driven by fear and anger with the assumption that stricter laws would be more effective. Thus, the trend has been to simply reinforce perceived deficiencies rather than using scientific evidence to guide more effective legislation; this has resulted in laws which continue to be ineffective at preventing sexual recidivism (1-3). Furthermore, evidence suggests that while stricter policies do not make these laws more effective, they do make rehabilitation more difficult, thus perpetuating criminal behavior (4-6).
9. The Adam Walsh Act was enacted to tighten control of sex offenders. Definitions of sexual offenses were broadened and more restrictions placed on those adjudicated of sexual offenses. This was largely due to studies on adult male sex offenders that demonstrated a high recidivism rates in certain populations. It was argued that individuals who commit sexual acts against children are highly likely to do it again and therefore stricter laws are needed to decrease the likelihood of sexual reoffenses and to act as a deterrent for repeat sexual offenses.
10. Significant data regarding sex offenders has emerged over the last few decades. In reviewing the relevant research, it is clear that the data used to develop sex offender legislation is incorrect or incomplete. This has contributed to the failure of current legislation to protect society from certain sex offenders. Simply bolstering current laws fails to address the actual problem; laws will continue to fail until fact and data are used in the development of sex offender legislation.
11. Data has repeatedly confirmed that sex offenders are a heterogeneous population. They differ not only in the types of crimes committed, but also in the motivation behind their crimes. This has been used to determine various factors that can act as predictors of sexual recidivism. For example, pedophilia and antisocial personalities are perhaps the greatest predictors of future sexual offense (7-9).
12. If we use documented facts, rather than emotions, to draw conclusions about how sex offender registries should be utilized, we get a very different picture from the current state of sex offender registries. Certain offenders are motivated more by general criminal tendencies and more likely to offend non-sexually than sexually. Conversely, there exist populations of sex offenders who are guided by sexual deviances such as pedophilia and have a high rate of recidivism (7, 8). Current law lumps all sexual offenders together and creates a tier system based purely on the offense committed. This creates a false sense of security and devotes significant time and money to certain people who are unlikely to sexually recidivate (10). For such a system to be effective it should utilize risk assessment and focus its attention on those that are most likely to sexually reoffend--a risk based system rather than an offense based system. With the current system, individuals unlikely to reoffend sexually (such as juveniles) may be placed on tier 3, the most stringent tier, needlessly using appropriated funds. Similarly, individuals at high risk for sexual reoffense may be placed on tier 1, the most lax tier, resulting in a false sense of security. For laws to be effective, they must be guided by data that supports their ultimate goals (not by the anger and fear elicited by a few of the most egregious cases.)

13. Multiple studies have confirmed that juveniles sexually offend for different reasons than adults. It is rare for juvenile sexual offenders' motivations to be of the sexual nature as seen in adults (11-14). Juveniles tend to offend based on impulsivity and sexual curiosity, to name a few. Additionally, the gold standard test for sexual deviance is measured by penile plethysmography, which has only been shown to be a strong predictor of sexual reoffense in adults (8, 15); there is no convincing evidence that the same is true for adolescents (10). **The evidence is clear: juvenile sex offenders represent a very different population from adult sex offenders.**
14. Juveniles represent a distinct population from adult sex offenders, and therefore they show very different recidivism rates. Because impulse control tends to improve with maturation and is more amenable to treatment (16), sexual reoffense rates for juveniles tend to be fairly low, only about 7% (14). This is half as frequent as adult sex offenders, who tend to be the majority of sex offenders, for whom sexual recidivism has been estimated at about 13% or higher (8). **Criminal acts of adults and adult statistics should not be utilized as a red herring to justify the application of adult driven laws to juveniles.**
15. The justification for the inclusion of juveniles on sex offender registries is based on irrelevant facts and flawed logic. It is argued that since over 50% of adult sex offenders report committing their first sexual offense in adolescence, adolescents who offend sexually will grow into adult sex offenders (17). This is inherently flawed logic and the data has shown it not to be true. A vast majority of the general population begins experimenting with their sexuality during adolescence (18-20); this is considered normal. Part of this experimentation at times may involve acts that as adults would be considered inappropriate, however, with maturation, a better understanding of sexuality, and decreased impulsivity, most of these behaviors stop (12-14, 21). Of the population of adolescents who experiment with sexual deviance, **only a small fraction will maintain sexually deviant behavior in adulthood (12-14, 21).**
16. Although the AWA posits that juvenile sex offenders represent a unique population amongst juvenile delinquents, the research states otherwise. Many demographic studies fail to identify differences in personality and psychosocial circumstances between juvenile sex offenders and non-sexual juvenile offenders (22-25). Furthermore, their patterns of reoffense are similar and non-sexual offenses predominate (11-14). Together, the data demonstrates that **juvenile sexual offenders are no different from non-sexual juvenile offenders and recidivism tends to be nonsexual in nature (10).**
17. The juvenile justice system was established with the understanding that the young mind is in a constant state of change and is more amenable to rehabilitation than the adult mind (26). There is no evidence that this is any less true for juveniles convicted of sexual offenses. However, because of anger and fear elicited by the egregious acts of some predatory adults, there has been push to treat juvenile sex offenders as we would adult sex offenders.
18. Placing juveniles on the sex offender registry for life undermines the rehabilitation goals of the juvenile justice system. These juveniles are branded for life and will forever be perceived as sexually deviant criminals. The result of such a stigma on adolescent development only serves to worsen self-esteem, contribute to depression that in some cases leads to suicide, and perpetuate

criminal acts, etc (6). Children tend to conform to the perceptions of those around them. Branding a child as a criminal for life only encourages them to hone their criminal tendencies and pushes them to associate with other criminals (10, 27). Furthermore, evidence has shown that public registration results in a sense of isolation and a loss of hope for the future (28, 29), sentiments which can have devastating effects on adolescent emotional development. Together these may actually increase the likelihood of further criminal activity (10, 27).

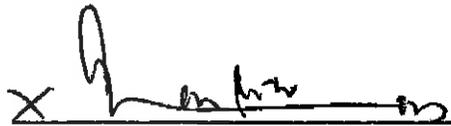
19. In summary, data has shown that very few adolescents who commit sexual crimes will become sexually deviant as adults. Furthermore, they do not represent the same population as adults who commit sexual crimes. The Adam Walsh Act proposes that juvenile sex offenders be treated differently from non-sex offending juveniles. This is based on the assumption that juvenile sex offenders represent a unique and distinct population of delinquents. Data has repeatedly shown that sex offending and non-sex offending juveniles are NOT distinct populations and should NOT be treated differently by legislation. Finally, public registration has been shown to have a seriously detrimental effect on development and social integration which undermines attempts at rehabilitation and only serves to potentiate future criminal behavior. Until emotionally driven misconceptions are set aside and legislation becomes guided by facts and logic, the current system will continue to fail, dragging down and destroying the lives of countless children with it.

References

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6. **Letourneau EJ, Bandyopadhyay D, Sinha D, Armstrong KS** 2009 The Influence of Sex Offender Registration on Juvenile Sexual Recidivism. *Criminal Justice Policy Review* 20
7. **Hanson RK, Morton-Bourgon KE** 2005 The characteristics of persistent sexual offenders: a meta-analysis of recidivism studies. *Journal of consulting and clinical psychology* 73:1154-1163
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16. **Letourneau EJ, Henggeler SW, Borduin CM, Schewe PA, McCart MR, Chapman JE, Saldana L** 2009 Multisystemic therapy for juvenile sexual offenders: 1-year results from a randomized effectiveness trial. *Journal of Family Psychology* 23:89-102
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20. **Leigh BC, Morrison DM, Trocki K, Temple MT** 1994 Sexual behavior of American adolescents: results from a U.S. national survey. *The Journal of adolescent health : official publication of the Society for Adolescent Medicine* 15:117-125

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24. **Ronis ST, Borduin CM** 2007 Individual, family, peer, and academic characteristics of male juvenile sexual offenders. *Journal of abnormal child psychology* 35:153-163
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26. **Gardner MR** 2009 *Understanding Juvenile Law*. 3rd ed: Lexus Nexus
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DATED this 19 day of April, 2013.

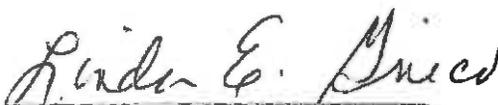


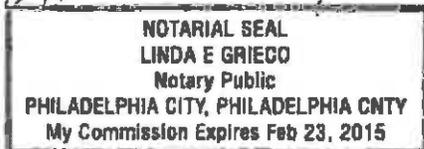
 Signature

SUBSCRIBED AND SWORN to before me
 This 19 day of April, 2013.

Phil, la.

 NOTARY PUBLIC in and for said COUNTY and STATE





ELENA DEL BUSTO, M.D.
CURRICULUM VITAE

Address: Psychiatric Associates of Pennsylvania
2 Bala Plaza, Suite 300
Bala Cynwyd, PA 19004

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EDUCATION

8/1993-6/1994		State University of NY at Albany, AFROTC
8/1994-6/1998	BA	Barnard College (Biology), Dean's List
8/2000-5/20/2005	MD	Drexel University College of Medicine

AFFILIATIONS/WORK EXPERIENCE

3/2013- Present	Clinical Associate Faculty University of Pennsylvania Perelman School of Medicine Department of Psychiatry 3535 Market Street Suite 3085 Philadelphia, PA 19104
1/2013- Present	President and Co-Founder Psychiatric Associates of Pennsylvania 2 Bala Plaza Suite 300 Bala Cynwyd, PA 19004
1/2013-Present	Forensic Psychiatrist Mental Health Associates Philadelphia Court of Common Pleas 1401 Arch Street Philadelphia, PA 19102

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9/2012-Present	Staff Psychiatrist Veteran's Affairs Medical Center 3900 Woodland Ave Philadelphia, PA 19104
8/2012-Present	Addictions and Consult Psychiatrist Mirmont Treatment Center Main Line Health Systems 100 Yearsley Mill Road Media, PA 19063
5/2008-Present	Psychiatrist Main Line Health Psychiatric Associates Main Line Health Systems Bryn Mawr Hospital 130 S. Bryn Mawr Ave Bryn Mawr, PA 19010

POSTGRADUATE TRAINING AND FELLOWSHIP APPOINTMENTS

2011-2012	Forensic Psychiatry Fellowship University of Pennsylvania Philadelphia, PA
2009-2010	Sleep Fellowship Thomas Jefferson University Hospital Philadelphia, PA
2005-2009	Residency in Psychiatry Thomas Jefferson University Hospital Philadelphia, PA
2008-2009	Chief Resident in Psychiatry Philadelphia, PA

MILITARY EXPERIENCE

1992-1993	Air Force Reserves Officer Training Corps
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LICENSURE

Medical License: Pennsylvania active, issued 7/19/2007 expires 12/31/2012

Federal DEA: active, expires 6/2013

Buprenorphine DEA: active, expires 6/2013

BLS Certified: active, expires 6/2013

CERTIFICATIONS

American Board of Psychiatry and Neurology: Part 1: Passed, Part 2: Passed
Board Eligible in Forensic Psychiatry and Sleep Medicine

HONORS AND AWARDS

Woman of Achievement Award, St. Joseph Hill Academy, 2010

Rappeport Fellow, American Academy of Psychiatry and the Law, 2009-2010

Lieberman Award for Excellence in Writing during Residency, 2009

Full Air Force Reserves Officer Training Corps Scholarship, 1993-1994

Spellman Honors Convocation, 1994

Academic Achievement Award, 1994

MEMBERSHIPS IN PROFESSIONAL AND SCIENTIFIC SOCIETIES

American Academy of Sleep Medicine (Member)

American Psychiatric Association (Member)

American Academy of Psychiatry and the Law (Member Sex Offender Committee
1/2008-Present)

International Association for the Treatment of Sex Offenders (Member)

INTERNATIONAL PRESENTATIONS

Co-morbid Mental Disorders in Incarcerated Pedophiles

International Association for the Treatment of Sex Offenders (IATSO) Congress, Oslo, Norway
September 3, 2010

NATIONAL PRESENTATIONS

Not guilty by reason of Parasomnia? Giving new meaning to the term "The defense rests"
American Psychiatric Association 2012 Annual Meeting, Philadelphia, PA May 8, 2012

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Uncovering the Taboo: A Review of Female Sex Offenders
American Academy of Psychiatry and the Law 2009 Annual Meeting, Baltimore, MD
November 1, 2009

Chemical and Surgical Castration: Ethics and Efficacy,
American Academy of Psychiatry and the Law 2008 Annual Meeting, Seattle, WA
October 26, 2008

Parasomnias, Violence and the Law, *Sexsomnia: Forensics and Phenomenology*
American Psychiatric Association 2008 Annual Meeting, Washington, DC May 8, 2008

Starting and Growing a Successful Consult-Liaison Service: Essential Tools and Concepts, *How to Organize a Successful Contemporary Consult-Liaison Psychiatry Service: Administrative Pearls And Pitfalls* Academy of Psychosomatic Medicine 2007 Annual Meeting, Amelia Island, FL November 17, 2007

Texas Civil Commitment: A 5 year Risk Management Review of SVP Commitment Laws, *SVP Civil Commitment Laws* American Academy of Psychiatry and the Law 2007 Annual Meeting, Miami Beach, FL October 21, 2007

Assessing Capacity to Drive: A Practical Approach to the Psychiatrist's Role and Responsibilities American Psychiatric Association 2007 Annual Meeting, San Diego, CA May 21, 2007

LOCAL PRESENTATIONS

Adolescent Sex Offenders: Does the punishment fit the crime?
Practical Applications of Forensic Psychiatry Seminar, Department of Psychiatry, University of Pennsylvania, Philadelphia, PA April 17, 2012

Violent Non-REM Parasomnias: An Overview
Practical Applications of Forensic Psychiatry Seminar, Department of Psychiatry, University of Pennsylvania, Philadelphia, PA November 8, 2011

Determining the validity of the Stop-Bang questionnaire in the non-surgical sleep disordered population
Sleep Disorders Center, Department of Human Behavior and Psychiatry, Thomas Jefferson University Hospital,
Philadelphia, PA June 16, 2010

Violent Parasomnias and the Law
Department of Human Behavior and Psychiatry, Thomas Jefferson University Hospital,
Philadelphia, PA March 17, 2010

Violent Parasomnias and the Legal System, A review of Sleep Science and Parasomnias

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Practical Applications of Forensic Psychiatry Seminar, Department of Psychiatry, University of Pennsylvania, Philadelphia, PA February 2, 2010

Parasomnias, Hypnotics and Criminal Liability: *Good Science or Lame Excuse?*
Practical Applications of Forensic Psychiatry Seminar, Department of Psychiatry, University of Pennsylvania, Philadelphia, PA December 16, 2008

Testosterone Lowering Modalities for the Treatment of Sex Offenders: *Is it the Magic Bullet We've been looking for?*

Department of Human Behavior and Psychiatry, Thomas Jefferson University Hospital, Philadelphia, PA December 10, 2008

Department of Psychiatry, Cooper Hospital, Camden, NJ February 3, 2009

Surgical and Chemical Castration: A Treatment for Sex Offenders
Department of Forensic Psychiatry, University of California at Davis
Napa State Hospital, Napa CA September 11, 2008

SVP Commitment Laws: An Overview
Practical Applications of Forensic Psychiatry Seminar,
Department of Psychiatry, University of Pennsylvania, Philadelphia, PA January 28, 2008

Establishing a Psychosomatic Medicine Fellowship
Thomas Jefferson University Hospital, Philadelphia, PA December 21, 2007

Capacity and Guardianship: A case report
Department of Psychiatry and Human Behavior, Thomas Jefferson University Hospital,
Philadelphia, PA March 23, 2007

POSTER PRESENTATIONS

del Busto, ET, Adiele, T, Stoddard, FS, Harlow, MC: American and British Juvenile Sex Offender Treatment: Worlds Apart?
American Academy of Psychiatry and the Law 2012 Annual Meeting, Montreal, Canada
October 27, 2012

Adiele, T, del Busto, ET, Harlow, MC: Female Sex Offenders-Speaking the unspeakable
Royal College of Psychiatrists, Forensic Faculty Annual Conference
Newcastle-upon-Tyne, UK February 1-3, 2012

del Busto, ET, Harlow, MC, Adiele, T, Seabloom, W, Davidson, CM: American Castration Laws: Legal, Medical and Ethical Issues
International Association for the Treatment of Sex Offenders 11th International Conference,
Oslo, Norway September 1-4, 2010

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del Busto, ET, Harlow, MC, Margery, S, Adiele, T, Davidson, CM: The American Female Sex Offender: Not Just a Taboo
International Association for the Treatment of Sex Offenders 11th International Conference, Oslo, Norway September 1-4, 2010

Harlow, MC, **del Busto ET**, Davidson, CM: Self-Injurious Behaviors in Corrections Environments: System Challenges
American Academy of Psychiatry and the Law 2009 Annual Meeting, Baltimore, MD October 31, 2009

PEER REVIEWED PUBLICATIONS

del Busto, ET, Sadoff, RL: A Victim's Right to Privacy Versus the Defendant's Right to a Fair Trial, Journal of the American Academy of Psychiatry and the Law 40:2:281-283 (2012)

Adiele T, Davidson CM, Harlow MC, **del Busto ET**: Co-Morbid Mental Disorders in Incarcerated Paedophiles, Sexual Offender Treatment, Vol. 6, Issue 2 (2011)

Also published as:

Adiele T, Davidson CM, Harlow MC, **del Busto ET**: Komorbide psychische Störungen bei inhaftierten Pädophilen, Forensische Psychiatrie und Psychotherapie, Vol. 1 (2012)

Weiss K, **del Busto ET**: Early American Jurisprudence of Sleep Violence, The Sleep Clinics November (2011)

Weiss K, Watson C, Doghramji K, Markov D, **del Busto ET**: Parasomnias, Violence and the Law, Journal Psychiatry and the Law, Vol. 39, No. 2 (Fall 2011)

Weiss, KJ, **del Busto, ET**: Sleep-Driving and Pathological Intoxication: Saved by the FDA?, American Journal of Forensic Psychiatry, Vol. 31, Issue 1 (2010)

Kunkel ES, **del Busto ET**, et al: Physician Staffing for the Practice of Psychosomatic Medicine in General Hospitals: A Pilot Study, Psychosomatics (2008)

del Busto ET: *Parle v. Runnels*: Sum of Errors and Due Process Owed to Mentally Ill Defendant, Journal of the American Academy of Psychiatry and the Law 36:3:415-418 (2008)

Bailey RK, Watson C, **del Busto ET**: An Updated Review of Civil Commitment Statutes Concerning Sexually Violent Predators, Journal of the American Academy of Psychiatry and the Law (manuscript in progress)

ELENA DEL BUSTO, M.D.

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BOOK CHAPTERS

del Busto ET, Harlow, M: American Sex Offender Castration Treatment and Legislation, International Perspectives on Sex Offender Assessment and Treatment: Theory, Practice and Research, IATSO, 2009

Scott CL, del Busto ET: Chemical and Surgical Castration, Sex Offender Laws: Failed Policies and New Directions, Springer International Publishing, 2009

LANGUAGES

Spanish, Russian, Hungarian, Greek (spoken only)

VOLUNTEER ACTIVITIES

Founder of the Sam and Frank Telegadis Educational Fund For Educational Advancement, 2007

Operation Smile, St. Petersburg, Russia: translated surgical procedures from English to Russian in the Operating Room, 1993

EXHIBIT

J.

Affidavit of Michael F. Caldwell, Psy. D.

**AFFIDAVIT OF
DR. MICHAEL F. CALDWELL
LICENSED PSYCHOLOGIST**

I, Michael F. Caldwell, Psy.D., verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

1. I have a 1/3rd appointment as a Lecturer at the University of Wisconsin – Madison in Madison, Wisconsin, and I am employed at the Mendota Juvenile Treatment Center as a staff psychologist. In that capacity I chair the Sexually Violent Person’s Review committee that is charged with reviewing juvenile cases that are incarcerated on the basis of a sexual offense, to determine if they may meet the criteria for commitment under the Wisconsin Sexually Violent Persons statute. I earned my doctoral degree in Psychology from the University of Denver in 1987. I earned my Masters in Counseling Psychology from Kansas State University in 1976, and my Bachelor’s in Life Sciences from Kansas State University in 1974.
2. I am the author of over 40 articles, publications, book chapters, and presentations in the area of adolescent sex offender risk and treatment of violent juvenile delinquents. In addition, I maintain a clinical practice as a licensed psychologist evaluating adult and juvenile sexual offenders for courts. I have also worked as a psychotherapist for over 35 years, and in that capacity I provided sex offender treatment services to adults and juveniles. I have been qualified as an expert witness in five state Circuit Courts and the Federal Court in Baltimore, Maryland. I am currently the President of the Wisconsin Chapter of the Association for the Treatment of Sexual Abusers and I am Co – Chair of the 2014 National Conference of the Association for the Treatment of Sexual Abusers. I have also served as a consultant to the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, the Wisconsin Governor’s Commission on Juvenile Justice, the Mind Institute at the University of New Mexico, and the Office of Juvenile Justice and Delinquency Prevention Federal Advisory Committee on Juvenile Justice, and the Georgetown University Juvenile Justice Reform Network.
3. Overview of Sex Offender Registration and Notification (SORN) Policies
 - A. On July 27, 2006, President Bush signed the Adam Walsh Child Protection and Safety Act in to law. The Adam Walsh Act has seven different Titles. Title I of the Adam Walsh Act, entitled the Sex Offender Registration and Notification Act (SORNA), provides a comprehensive set of minimum standards addressing sex offender registration and notification. The stated purpose of SORNA is to protect the public from sex offenders by identifying a subgroup of high risk sex offenders who are then subject to registration.
 - B. Sex offender registration statutes are applied to juvenile offenders using one of two schemes. First, some states use an individualized risk assessment and judicial or administrative review of each case to determine whether the juvenile should be required to comply with sex offender registration. Second, some states apply sex offender registration to juveniles based on the characteristics of the adjudicated offense. SORNA applies to certain juvenile offenders whose offenses include certain specific characteristics.
 - C. As a group, juvenile sex offenders have been found to pose a relatively low risk to sexually re – offend, particularly as they age into young adulthood. In the most extensive

review of juvenile sex offender recidivism rates, Caldwell (2010) reviewed 63 studies involving over 11,200 youths and found an average sexual recidivism rate of 7.09% over an average 5 year follow – up. Studies that used follow – up times greater than 5 years did not have higher recidivism rates than those that used follow – up times between 3 and 5 years. In addition, 31 of the 63 studies reported sexual recidivism rates under 5%, while only 4 reported recidivism rates over 14%. Because the overall risk of sexual recidivism among juvenile sex offenders is low, it is extremely difficult to identify the small subgroup of offenders who pose a high risk for sexual re-offense.

- D. A substantial body of research has attempted to identify specific and stable factors that will identify high risk juvenile sexual offenders. The most common finding is that there is no significant relationship between discreet risk factors and juvenile sexual recidivism. The extant research has not identified any stable, offense – based risk factors that reliably predict sexual recidivism in adolescents.
- E. Two studies have specifically examined the criteria for juvenile registration under SORNA. Caldwell, Zempke, & Vitacco, (2008) compared 91 adolescent sex offenders with 174 juvenile delinquents with no prior known sexual misconduct. All adolescents in the study were consecutively released from a maximum-security juvenile correctional facility. These youth were among the most aggressive and criminally prone youth in the local juvenile justice system. These youth were followed for an average of 71.6 months (SD = 18.1 months) to identify who was charged with general, violent, and sexual offenses. The SORNA criteria captured 70.3% of the adolescent sex offenders in this study. The sex offenders were charged with new felony sexual offense charges at nearly the same rate as the non – sex offending delinquents (12.1% and 11.6%, respectively) among the juvenile sex offenders. The adolescent offenders who were captured by the SORNA Tier 3 designation had a lower rate of new violent offense charges than their non – SORNA designated counterparts. Similarly, the SORNA designated adolescents had lower rates of felony sexual offense charges than the non – designated adolescent sex offenders (10.9% versus 14.8%, respectively).
- F. The results of Caldwell, Zempke, & Vitacco (2008), were replicated and extended in a study of community – based juvenile sex offenders completed by Batastini and her colleagues (Batastini, Hunt, Present-Koller, & DeMatteo, 2011). This study examined the re – arrest rates of a group of 112 adjudicated juvenile sexual offenders over a two – year period post treatment. Sixty – seven of the participants (62%) met the criteria for Tier 3 registration under SORNA. Only one of the 67 juveniles who qualified for registration sexually reoffended in the 2 – year follow – up period, and one of the 41 juvenile sexual offenders who did not qualify for registration sexually reoffended. There were no significant differences in the rates of general offending between the SORNA designated groups.
- G. In a more extensive study of adult sex offenders, Zgoba and her colleagues conducted a multi – state study that examined the Adam Walsh Act SORNA tier assignment system, applied retrospectively to adult offenders released between 1990 and 2004 (Zgoba, Miner, Knight, Letourneau, Levenson, & Thornton, 2012). The researchers found a significant inverse relationship between Adam Walsh Act tier designation and 10 – year sexual recidivism rates. That is: individuals who were classified as higher risk and placed on more restrictive tiers using the Adam Walsh Act criteria had lower sexual recidivism rates.

4. Studies of the Deterrent Effects of Sex Offender Registration Policies

- A. The potential for sex offender registration to have a general or specific deterrent effect on sexual offending has been studied extensively. At least 15 studies have examined the effects of sex offender registration and community notification statutes on recidivism or the rate of sexual offending in a community. The majority of these have studied adult sexual offenders. Nine studies compared recidivism rates among samples of adult sexual offenders before and after the adoption of registration statutes. These “time series” studies have been complicated by the steady decline in the rate of sexual offending in the United States over the last several decades (Finkelhor & Jones, 2004), and the adoption of a variety of other statutes and policy initiatives designed reduce sexual violence. These factors must be statistically controlled in order to determine if the decline in sexual violence is due to the adoption of sex offender registration statutes or other causes. Of the nine time series studies two studies found a significantly lower rate of sexual recidivism among registered offenders or offenders subject to broader notification, compared to unregistered or offenders subject to less extensive notification who were processed at an earlier time (Duwe & Donnay, 2008; Washington State Institute for Public Policy, 2005). However, neither study controlled for the general trend of declining sexual offending over time. The remaining six studies found no significant relationship between the adoption of registration statutes and rates of sexual violence (Sandler, Freeman, & Socia, 2008; Schram & Milloy, 1995; Vasquez, Maddan, & Walker, 2008; Veysey, Zgoba, & Dalessandro, 2009; Zevitz, 2006; Zgoba, Witt, Dalessandro, & Veysey, 2009). One of the time series studies (Prescott & Rockoff, 2011), found mixed results using economic data analytic techniques in place of more widely used social science techniques. Some analyses indicated that larger registries (that increased in size over time), were associated with a lower incidence of sexual recidivism in adult sex offenders. However, their most clear cut finding was that the adoption of community notification laws was associated with a significant increase in sexual recidivism among individuals subject to these laws. The data suggested that any potential benefit derived from having a sex offender registry was eliminated by adopting community notification provisions.
- B. Among the studies of adult sex offenders, only two studies have compared registered to unregistered sex offenders processed at similar times (Adkins, Huff, & Stageberg, 2000; Freeman, 2012). These studies found that registration was not associated with significantly different sexual or general re-offense rates between the registered and unregistered sex offenders.
- C. Only four studies have examined the effects of sex offender registration and notification among juvenile sexual offenders. Letourneau and her colleagues examined the arrest data for 26,574 youth adjudicated in South Carolina between 1991 and 2004 (Letourneau, Bandyopadhyay, Armstrong, & Sinha, 2010). After controlling for several other policy issues they found that applying registration and notification laws to adolescent offenders had no significant deterrent effect on juvenile sexual offending. In a subsequent study Letourneau and Armstrong (2008) found no significant differences in rates of new convictions between a group of 111 registered juvenile sex offenders and a matched group of 111 non – registered delinquents. In a similar study Letourneau and her colleagues found no significant differences in new arrests for crimes against persons in a group of 574 registered juvenile sex offenders compared to 701 non – registered juveniles (Letourneau, Bandyopadhyay, Sinha, & Armstrong, 2009). Similarly, Caldwell & Dickinson (2009), examined risk measures and recidivism rates between samples of 106 registered and 66 unregistered juvenile sex offenders followed for an average of 49.2

months after being released from secured custody. They found that the youth that were required to register had significantly *lower* risk scores on scales that most accurately predicted recidivism, but registered youth were charged with new crimes at rates similar to those of unregistered youth. Thus registration appeared to be applied to lower risk youth, but those youth then reoffended at rates that were similar to higher risk youth. At a minimum, the findings indicate that the statutory criteria that trigger registration fail to identify higher risk youth. The results also suggest that registration may increase recidivism rates of relatively low risk youth, to that of relatively higher risk youth.

- D. In summary, the potential for sex offender registries to have a deterrent effect with adult or juvenile sexual offenders has been extensively studied. With rare exceptions, registration has failed to have any deterrent effects with adult offenders. In studies involving registration of adolescent offenders, registration has consistently been found to have no effect on the incidence of first – time adolescent sexual offending, or on sexual recidivism. In addition, research has consistently demonstrated that SORNA criteria have failed to identify high risk offenders, and may increase the risk of low risk adolescent offenders.

5. The Collateral Effects of Sex Offender Registration

- A. The problems of re-entry that are faced by sexual offenders are exacerbated by sex offender registration. For the offender, successfully establishing a stable residence, employment and supportive relationships are key elements of successful community reintegration, and have been found to lower recidivism rates for adult sex offenders (Colorado Department of Public Safety, 2004; Kruttschnitt, Uggen, & Shelton, 2000; Uggen, 2002). The stigma of sex offender registration and community notification is well documented, as are the ways in which they can impede community re-entry and adjustment, (Levenson & Cotter, 2005b; Levenson, D'Amora, & Hern, 2007; Mercado, Alvarez, & Levenson, 2008; Red Bird, 2009; Sample & Streveler, 2003; Tewksbury, 2004, 2005; Tewksbury & Lees, 2006; Zévit & Farkas, 2000.) Registered sex offenders have been surveyed in Florida, Indiana, Connecticut, New Jersey, Wisconsin, Oklahoma, Kansas, and Kentucky. They consistently reported adverse consequences such as unemployment, relationship loss, threats, harassment, physical assault, and property damage as well as psychological symptoms such as shame, embarrassment, depression, or hopelessness as result of public disclosure. Approximately one in five report problems with obtaining housing or losing housing due to being on the register. Obstacles to employment include the public disclosure of information (including employer address) on the registry, and restrictions prohibiting sex offenders from working within close proximity to a school, library, park or other locations. Between 20% and 30% report losing a job as a result of registration. Approximately a third report being threatened or assaulted by others in the community. Over half report feeling socially isolated due to being registered. As a result, sex offender registration may result in a greater risk of recidivism among some offenders, reducing community safety.
- B. As a result of the stigma associated with sex offender registration, registered offenders often must rely on family members for housing and financial support. Studies have shown that the families of registered sex offenders also suffer the collateral consequences of SORNA registration. A survey of 584 family members of registered sex offenders 68% reported experiencing stress related to SORNA “very frequently (Tewksbury & Levenson, 2009). Over half reported that they had been forced to move when a landlord or neighbors discovered that their family member was on the sex offender registry. Over a third reported that the children of a registered sex offender had been threatened,

harassed, assaulted, injured, or suffered property damage by someone who discovered their parent was on the registry. Nearly 3 out of 4 reported losing friends or feeling isolated because of SORN. Over 48% reported often fearing for their safety because of SORN (Levenson, & Tewksbury, 2009; Tewksbury & Levenson, 2009). In fact, the rates of being threatened, harassed, and assaulted or having property damaged were similar for the families of registered sex offenders and for the sex offenders themselves. In this way a significant unanticipated collateral consequence of SORNA is that it reduces the safety of those community members who are family members of the registered offender.

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DATED this 10 day of April, 2013.

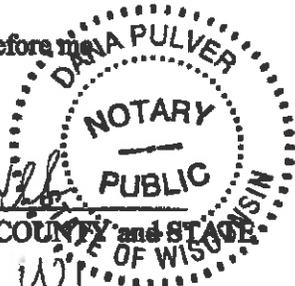
Michael Caldwell, Esq.
Signature

SUBSCRIBED AND SWORN to before me
This 10th day of April, 2013.

Dana Pulver

NOTARY PUBLIC in and for said COUNTY and STATE

Dane County, WI
my commission expires on 9/25/2016



Michael F. Caldwell, Psy.D.

Licensed Psychologist

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EDUCATION:

Doctorate; Clinical Psychology
University of Denver, 1988

Master of Science; Counseling
Kansas State University, 1978

Bachelor of Science; Life Science
Kansas State University, 1976

OTHER CREDENTIALS:

Licensed Psychologist in Wisconsin, June 1989; License Number: 1456.

Certified by the Council for the National Register of Health Service Providers in Psychology, 1992; Certificate Number: 41980.

Certified in the use of the Psychopathy Checklist – Revised and the Psychopathy Checklist – Short Version, May 14, 1998; Certificate Number: 98-05.

President: Wisconsin Association for the Treatment of Sexual Abusers.

Consultant: National Center on Sexual Behavior of Youth, University of Oklahoma Health Sciences Center.

Co-Investigator: Mind Research Network, Project on the study of Psychopathy, University of New Mexico.

Consultant: Georgetown University Juvenile Justice Reform Network

OTHER TRAINING: (Partial list)

Sexually Violent Person's Evaluations. Wisconsin Department of Corrections, June 1995. Completed a two-day workshop on research findings related to sex offender recidivism risk and conducting evaluations related to the Wisconsin Sexually Violent Person's Law.

OTHER TRAINING: (Cont.)

Risk Appraisal for Sex Offenders. Twelfth Annual Midwest Conference on Child Sexual Abuse and Incest, September 18, 1996. Completed a one-day workshop on research findings and risk assessment methods presented by Vernon Quinsey, Ph.D.

Hare Psychopathy Checklist scales three-day training and certification. Completed in May, 1998; Certification number 98-05.

Minnesota Sex Offender Screening Tool - Revised (MnSOST-R): Development and Application, December, 1999. Completed a two-day workshop on sexual offender research and risk assessment using the MnSOST-R, presented by Douglas Epperson, Ph.D.

Forensic Assessment of Violent Juvenile Offenders; American Academy of Forensic Psychology, San Jose, California, January 18, 2001. Completed a one-day workshop on current issues presented by Thomas Grisso, Ph.D., ABPP.

Ethical Issues for the Forensic Practitioner. American Academy of Forensic Psychology, San Jose, California, January 19, 2001. A one-day workshop presented by Donald N. Bersoff, J.D., Ph.D.

Assessing Psychopathy. American Academy of Forensic Psychology, San Jose, California, January 20, 2001. Completed a one-day workshop updating recent research findings with the Hare Psychopathy Checklist scales presented by Stephen D. Hart, Ph.D., ABPP.

Sex Offenders. American Psychology – Law Society, Austin, Texas, March 8, 2002. Completed a half-day presentation on recent developments in the assessment and community management of sexual offenders presented by John F. Edens, Ph.D.

Ethical Issues in the Psychological Treatment of Juvenile Offenders, XXVII International Congress on Law and Mental Health, Amsterdam, The Netherlands, July 11, 2002. A two-hour seminar on treatment of delinquent offenders presented by Robin Perkins-Dock, Ph. D., Georgia State University.

Juvenile Justice: Mental Health, Adjudication, and Sentencing. XXVII International Congress on Law and Mental Health, Amsterdam, The Netherlands, July 10, 2002. A half-day seminar on issues related to juvenile justice and treatment of juvenile offenders. Tracy D. Gunther, M.D. (Chair).

Adolescent Offenders: Assessing their Clinical & Developmental Needs. Pewaukee, Wisconsin, November 5, 2004. Presented by Thomas Grisso, Ph.D.

Development of an Actuarial Risk Tool for Juveniles, Madison, Wisconsin, May 19, 2005. Presented by Douglas Epperson, Ph.D.

OTHER TRAINING: (Cont.)

Treatment and Assessment: Using Research to Guide Practice: Juvenile Sexual Offender Risk Assessment & Treatment Approaches conference, Madison, Wisconsin, May 20, 2005. Presented by David Prescott, LCSW.

Wisconsin Psychological Association Workshop on the Static – 99R and the Static - 2002. Madison, Wisconsin, April 3, 2009. Presented by Leslie Helmus.

Wisconsin Psychological Association Workshop on the VRS – SO. Madison, Wisconsin, July 19 & 20, 2012. Presented by Mark Oliver, Ph.D.

EMPLOYMENT:

Michael F. Caldwell, Psy.D., Madison, Wisconsin
February, 1989 to Present

Private independent practice specializing in court evaluation of sexual offense risk, competency to stand trial, criminal responsibility, and sentencing issues. Also provide consultation to community mental health agencies on professional standards and peer review issues.

Mendota Mental Health Institute, Madison, Wisconsin
September, 1995 to Present

Staff Psychologist in the Mendota Juvenile Treatment Center responsible for specialized evaluations and supervision of grant funded research activities. Evaluations include violence risk assessment and evaluations related to petitions under the Wisconsin Sexually Violent Person's law.

Lecturer, University of Wisconsin – Madison, Madison, Wisconsin
January, 2000 to Present

A 1/3rd time appointment lecturing on Juvenile Delinquency and Forensic Psychology. Conducted seminars with advanced undergraduate students on juvenile justice and the psychology of juvenile delinquency.

Mendota Mental Health Institute, Madison, Wisconsin
February, 1989 to September 1995

Psychologist/Consultant in the Forensic and Child Programs, specializing in evaluation of dangerousness and juvenile violence. Supervised the maximum-security Forensic Management Unit from 1992 to 1995.

EMPLOYMENT: (Cont.)

Madison Psychiatric Associates, Madison, Wisconsin
September, 1993 to September, 1997

Private group practice specializing in psychodiagnostic evaluation and psychotherapy.

Bethesda Mental Health Center, Denver, Colorado
February, 1985, to September, 1987

Outpatient psychotherapist specializing in treatment of high-risk patients and PTSD.

RESEARCH ACTIVITIES:

August, 1997: Principal Investigator: Office of Juvenile Justice and Delinquency Prevention, Challenge Grant CG-97-ST- 0003. A two-year \$100,000.00 award to study factors related to juvenile violence and develop treatment methods for persistently violent juveniles.

August, 1999: Principal Investigator: Office of Juvenile Justice and Delinquency Prevention, Challenge Grant CG-99-ST- 0002. A two-year \$83,573.00 award to implement and assess efficacy of a newly developed model for treatment of persistently violent juvenile delinquents.

August, 2001: Principal Investigator: Office of Justice Assistance, Juvenile Justice Accountability Incentive Block Grant JB-99-SW-0071. A one-year \$71,881.00 award to augment the implementation of a newly developed treatment model for persistently violent juvenile delinquents.

December 2001: Principal Investigator: Office of Justice Assistance, Juvenile Justice Accountability Incentive Block Grant JF-01-ST-0017. A one-year \$100,000.00 award to implement enhanced mental health services to re-integrate persistently violent juvenile delinquents into their home communities.

March 2002: Principal Investigator: Office of Justice Assistance, Juvenile Justice Formula Block Grant JF-01-ST-0069. A one-year \$56,249.00 award to re-integrate persistently violent minority juvenile delinquents into inner-city settings.

December 2002: Principal Investigator: Office of Juvenile Justice and Delinquency Prevention, Challenge Grant CG-02-ST- 0001. A one-year \$66,480.00 award to study outcomes of an intensive aftercare project for serious and violent juvenile delinquents.

RESEARCH ACTIVITIES (cont.):

December 2003: Principal Investigator: Office of Juvenile Justice and Delinquency Prevention Formula Grant, JF-03-ST-0002. A \$50,000.00 award to study outcomes of an intensive aftercare project for serious and violent juvenile delinquents.

April 2006: Principal Investigator: Office of Juvenile Justice and Delinquency Prevention Formula Grant, JF-03-ST-0025. A \$50,000 award to study the effect of intensive treatment on biophysiological markers of stress and behavior in chronically aggressive delinquents.

July 2012: Co – Investigator; Mind Research Network, University of New Mexico. Part of a multi – site research study into the neuroscience of personality development and antisocial behavior.

PUBLICATIONS:

Caldwell, M. (1984) Diagnosis and treatment of PCP toxic psychosis. *Proceedings of the Ohio Drug Studies Institute*. Ohio Department of Mental Health, Columbus.

Caldwell, M. (1992) Post-traumatic stress disorder among staff victims of patient violence, *Hospital and Community Psychiatry*, 43, (9).

Caldwell, M. (1994) Applying social constructionism in the treatment of patients who are intractably aggressive, *Hospital and Community Psychiatry*, 45, (6).

Van Rybroek, G., Caldwell, M., & Robbins, K. (1995) Intractable inpatient aggression. *Emergency Psychiatry*, 1, (2), 27-31.

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MEMBERSHIPS

Association for the Treatment of Sexual Abusers
President: Wisconsin Association for the Treatment of Sexual Abusers
Society for the Scientific Study of Psychopathy
American Psychology – Law Society

EXHIBIT

K.

Affidavit of Wayne A. Logan

AFFIDAVIT OF PROFESOR WAYNE A. LOGAN

1. I, Wayne A. Logan, have been retained as an expert by Petitioners in the action *In the Interest of J.M.*, CP-67-JV-726-2010, filed in the Court of Common Pleas, York County, Pennsylvania, Juvenile Division.
2. I am a tenured faculty member of the Florida State University College of Law, where for the past six years I have held the Gary and Sallyn Pajcic Endowed Professorship. From 2008-2011, I served as the Associate Dean for Academic Affairs at Florida State Law.
3. Prior to my arrival at Florida State, I was the William Mitchell Research Professor of Law at William Mitchell College of Law, in St. Paul, Minnesota (2000-2006), and a visiting professor of law at William and Mary College of Law, Williamsburg, Virginia (fall 2006). From 1997 to 2000 I served on the faculty at the State University of New York at Albany, School of Criminal Justice, Rockefeller College of Public Affairs.
4. My teaching and scholarly expertise lies in the areas of Criminal Law, Criminal Procedure, and Sentencing. My written work has appeared in many of the nation's leading law journals, including the *Georgetown Law Journal*, the *Michigan Law Review*, the *Vanderbilt Law Review*, and the *Pennsylvania Law Review*.
5. I am an elected member of the American Law Institute, where I serve on the member's consultative group in the ongoing revisions to the *Model Penal Code: Sentencing* provisions; I have also served as Chair of the Association of American Law Schools Section on Criminal Justice.
6. I am the author of what is generally considered the definitive scholarly book on the law, policy and history of the nation's registration and community notification provisions, *KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA* (Stanford University Press, 2009) [hereinafter *KNOWLEDGE AS POWER*]. I have also written nearly twenty articles and delivered numerous presentations to scholarly and national organizations on the subject of registration and community notification.
7. A copy of my *curriculum vitae* is attached.
8. I have reviewed the provisions of Pennsylvania's "Megan's Law," contained in Pennsylvania Consolidated Statutes, Title 42, Chapter 97, Subchapter H, and based on my background and expertise on the law and operation of sex offender registration and community notification laws, offer the opinions contained in this Affidavit.
9. My opinions will be limited to two particular issues. First, the possibility that the ostensibly non-public information collected from adjudicated juveniles required to

register in Pennsylvania will remain private to others in Pennsylvania. Second, the prospect that registry information regarding such individuals will be subject to more expansive public disclosure in the event they visit or move to other states that do not preclude public disclosure of juvenile registrant information.

Registrant Information "Leakage" in Pennsylvania

10. In the U.S., provisions requiring that convicted individuals register with government authorities first took root in the 1930s, in the Los Angeles, California area. See KNOWLEDGE AS POWER, *supra*, Chapter 2 (detailing historical evolution of registration laws from the 1930s through late 1980s).
11. Before 1990, when the State of Washington enacted the first law allowing for public dissemination of registrant information (community notification), *id.*, Chapter 3, state and local registration laws expressly prohibited the public dissemination of such information. Nevertheless, it was known that the ostensibly private registry information was commonly provided to members of the public by police. See Note, *Criminal Registration Ordinances: Police Control Over Potential Recidivists*, 103 U. PENN. L. REV. 60, 81 (1954).
12. Today, with community notification laws in effect nationwide, registry information is made generally available, with the exception of particular registrant sub-populations whose registry information and registrant status is exempted from public disclosure. However, as in the past, such prohibitions are more illusory than real. As one federal trial court has noted, any government promise of "zero 'leakage' to unauthorized persons is unattainable." *Paul P. v. Farmer*, 80 F. Supp. 2d 320, 325 (D. N.J. 2000).
13. Numerous examples exist of individuals or entities gaining unauthorized access to registry information and publicly disseminating such information, including via the Internet, with its expansive reach and indelible data storage capability. See KNOWLEDGE AS POWER, *supra*, at 229.
14. Pennsylvania law exempts information on adjudicated juvenile registrants from public disclosure, see 42 Pa. C.S. § 9799.28 (2012), yet requires that the information be provided to a wide range of individuals and entities, and fails to impose limits on such individuals and entities in the exercise of their discretionary authority to achieve the "strengthened" goals of the Commonwealth's recently amended law, consistent with the greater disclosure expectations of the federal Adam Walsh Act. See 42 Pa. C.S. § 9799.11(a)(2) (2012).
15. In addition, a juvenile's registrant status could be disclosed when satisfying the Commonwealth's requirement that juveniles verify their registry information "in person" four times a year, at an approved registration/verification site. See 42 Pa. C.S. §§ 9799.15(h), 9799.16(b) (2012). The lack of any requirement that

confidentiality be maintained in such public circumstances presents obvious disclosure risk.

16. Such risk is magnified by the requirement that juvenile registrants report in-person (again, at a designated public government office space) to inform authorities of any changes in the lengthy list of registrant information required (e.g., school location, phone number or address), and do so within three business days. *See* 42 Pa. C.S. § 9799.15(g) (2102).
17. In the event that a juvenile registrant fails to satisfy the quarterly verification or updating requirement, their registry information will be publicly disseminated *inter alia* by means of the Pennsylvania State Police Internet web site. *See* 42 Pa. C.S. § 9799.22(a)(b) (2012).
18. Finally, educational environments present additional risk of disclosure, as registrants are obliged to report and provide information to campus security authorities, or otherwise face expulsion or dismissal. *See, e.g.*, York College, "Sexual Misconduct and Reporting Procedures," available at <http://www.ycp.edu/offices-and-services/campus-safety/reporting-crimes-&-other-emergencies/sexual-misconduct-policy-&-reporting-procedures/>. Campus safety maintains a list of list of registrants on campus and will "make it available in its office," consistent with the loosened privacy restrictions and authority of the federal Campus Sex Crimes Prevention Act of 2000. *Id.*

Registrant Information Disclosure Outside Pennsylvania

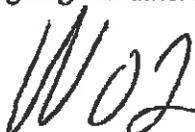
19. Today, state laws differ significantly on the issue of whether adjudicated juvenile registry information should be exempted from public disclosure. Indeed, the federal government's initial insistence in the Adam Walsh Act (2006) that such information should be subject to disclosure was a prime reason for sustained state-level refusal to enact changes demanded by the Act. *See In re C.P.*, 967 N.E.2d 729, 739 (Ohio 2012) (noting "national foot-dragging" in this regard).
20. After the federal government softened its position in January 2011, and made public disclosure of juvenile registrant information optional, not mandatory, and lifted the requirement that jurisdictions provide juvenile registrant information to schools and others who request it, did states such as Pennsylvania acquiesce to the Walsh Act's significant changes, allowing them be deemed in "substantial compliance" with the Act (and avoid loss of federal funding). Sara Ganim, *PA's Version of Adam Walsh Act Would List Teens as Sex Offenders*, PATRIOT-NEWS, Oct. 27, 2011, available at http://www.pennlive.com/midstate/index.ssf/2011/10/pas_version_of_adamwalsh_act.html.
21. Today, many states have laws that conflict with Pennsylvania policy of non-disclosure and fail to exempt adjudicated juvenile registrants from community

notification. *See, e.g.*, Ariz. Rev. Stat. § 13-3827; Del. Code 11 § 4121(2); Fla. Stat. § 943.043; S.C. Code § 23-3-490. Because other states very often rely upon Pennsylvania's registrant eligibility designation, a Pennsylvania juvenile registrant will be subject to such other state's community notification policy.

22. As a result, when a Pennsylvania juvenile registrant travels to another state, for instance during a family vacation, or relocates with his family to another state, perhaps as a result of a parent's job demands, the juvenile will be subject to the other state's fuller disclosure policy. *See* Wayne A. Logan, *Horizontal Federalism in an Age of Criminal Justice Interconnectedness*, 154 U. PENN. L. REV. 257 (2005).
23. Community notification occurs in such other states by a variety of means. "Active" community notification might entail making juvenile registrant information available to schools and distributing it to individuals and community organizations. "Passive" community notification occurs, at a minimum, as a result of state-run publicly accessible web sites, which enjoys magnified effect as a result of being part of the federal Dru Sjodin National Sex Offender Website, providing ready access to information contained in all state registries. *See* KNOWLEDGE AS POWER, *supra*, at 76-79.
24. These formal bases for disclosure, occurring by operation of other states' laws, however, by no means exhaust the ways registrant information can be made public. Local government policy and practice can play a role. In Bay County, Florida, for instance, the sheriff's department has an employee visit the home of registrants in a patrol vehicle with "Sexual Offender Enforcement" prominently emblazoned on its sides. *See Bay County Sheriff's Office Is Making Neighbors Aware of Sexual Offenders*, Sept. 9, 2011, WJHG.com, [http://www.wjhg.com/home/headlines/Bay County Sheriff's Office is making neighbors aware of sexual offenders who move nearby 129498878.html](http://www.wjhg.com/home/headlines/Bay%20County%20Sheriff's%20Office%20is%20making%20neighbors%20aware%20of%20sexual%20offenders%20who%20move%20nearby%20129498878.html).
25. Disclosure can also occur as the result of services provided by any number of non-governmental entities, including of a for-profit nature, which disseminate registry information, including by means of email alerts and web site postings. *See, e.g.*, Family Watchdog, <http://www.familywatchdog.us/faq.asp>.
26. As in the past, private individuals also can act on their own to disseminate registrant information. In Washington State, for instance, a 17-year-old high school student, proclaiming that he was providing a "public service," accessed information on a classmate and posted handbills containing the information around the school campus. *See* Brent Champaco, *Sex Offenders in School: What Are the Rules?*, NEWS-TRIBUNE (Tacoma), Dec. 8, 2007, <http://www.thenewstribune.com/2007/12/08/223929/sex-offenders-in-school-what-are.html>. The boy's mother thereafter stood outside local businesses and distributed the handbills to individuals in the vicinity. *Id.*

27. In sum, registrant information never has and never will be susceptible of public embargo. No reason exists to conclude that the Commonwealth's exemption for adjudicated juvenile sex offender registrants will prove an exception to this historic reality.

I declare under penalty of perjury that the foregoing Affidavit is true and correct.
This the 21st day of April, 2013.



Wayne A. Logan

WAYNE A. LOGAN

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LEGAL ACADEMIC EMPLOYMENT

Florida State University College of Law, Tallahassee, Florida

- Gary and Sallyn Pajcic Professor of Law (2007-present)
- Associate Dean for Academic Affairs (2008-2011)
- Courses: Criminal Procedure I, Criminal Procedure II, Criminal Law, Sentencing, Capital Punishment, Torts

College of William and Mary, Marshall-Wythe School of Law, Williamsburg, Virginia

- Visiting Professor of Law (fall 2006)

William Mitchell College of Law, St. Paul, Minnesota

- William Mitchell Research Professor of Law (2005-2007)
- Professor of Law (2004-2005, awarded early tenure); Associate Professor of Law (2000-2004)

School of Criminal Justice, Rockefeller College of Public Affairs and Public Policy, State University of New York at Albany

- Assistant Professor (1997-2000)

PUBLICATIONS CONCERNING REGISTRATION AND NOTIFICATION

KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA (Stanford University Press, 2009)

Sex Offender-Related Consequences, in COLLATERAL CONSEQUENCES OF CRIMINAL CONVICTION: LAW, POLICY AND PRACTICE (Margaret E. Love et al. eds., West Pub., 2013)

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"Megan's Law as a Case Study in Political Stasis," Annual Meeting of American Academy of Psychiatry and the Law, Boston, Massachusetts, Oct. 28, 2011

- “Author Meets Readers: KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA,” Annual Meeting of the Law and Society Association, Chicago, Illinois, May 30, 2010
- “Animal Rights, Registration Wrongs?,” University of Chicago Law School, May 11, 2010
- “Social and Political Catalysts Driving Modern-Day Registration and Community Notification Laws,” University of Houston Law Center, Apr. 7, 2010
- “The Adam Walsh Act and the Failed Promise of Administrative Federalism,” ABA Section of Administrative Law & Regulatory Practice, 2009 Administrative Law Conference, Oct. 22, 2009
- “Criminal Justice Federalism and National Sex Offender Policy,” Southeastern Association of Law Schools Annual Conference, Palm Beach, Florida, Aug. 3, 2009
- “Sex Offender Registries: Constitutionality and Federalism,” National Conference of State Legislatures, Atlanta, Georgia, Dec. 12, 2008
- “Sex Offender Policy: Past, Present, and Future,” New England College of Law, Symposium: Probation and Parole in Massachusetts,” NEW ENGLAND JOURNAL OF CRIMINAL AND CIVIL CONFINEMENT, Mar. 16, 2007 (keynote speaker)
- “Horizontal Federalism in an Age of Criminal Justice Interconnectedness,” Marquette University School of Law, Oct. 25, 2005
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EXHIBIT

L.

Human Rights Watch Report:

Raised On The Registry



HUMAN
RIGHTS
WATCH

RAISED ON THE REGISTRY

The Irreparable Harm of Placing Children on Sex Offender Registries
in the US



Raised on the Registry
The Irreparable Harm of Placing Children on
Sex Offender Registries in the US

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Printed in the United States of America

ISBN: 978-1-62313-0084

Cover design by Rafael Jimenez

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Raised on the Registry

The Irreparable Harm of Placing Children on Sex Offender Registries in the US

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Summary

Jacob C. was 11 years old and living in Michigan when he was tried in juvenile court for touching, without penetrating, his sister's genitals. Found guilty of one count of criminal sexual conduct,¹ Jacob was placed on Michigan's sex offender registry and prevented by residency restriction laws from living near other children.

This posed a problem for his family— Jacob's parents were separated, his father lived in Florida, and Jacob could not live in the same house as his little sister. As a result, he was placed in a juvenile home. When Jacob was 14—and still unable to return home—he became the foster child of a pastor and his wife. According to Jacob, the couple helped him to “deal with the trauma” of growing up on the registry.

Since his offense fell under juvenile court jurisdiction, Jacob was placed on a non-public registry. But that changed when he turned 18 during his senior year in high school, and his status as a sex offender became public. Parents of his schoolmates tried to get him expelled and he had to “fight to walk across the stage” at graduation. Jacob attended a local university in Big Rapids, Michigan, but ended up dropping out. “[I was] harassed for being on the registry,” he said. “The campus police followed me everywhere.”

In February 2005, at age 18, Jacob left Michigan to start a new life in Florida and reconnect with his father living there. Jacob worked for his father's company for a few months. He soon fell in love, married, and had a daughter. A year later, he and his wife divorced, and Jacob was awarded joint custody of his daughter. During this time, Jacob tried to follow Florida's sex offender laws, but continually ran afoul of residency restrictions that required him to check-in with police on a daily basis and provide them with a home address. At one point, for example, Jacob's home was too close to a school and he had to move. Another time, he failed to register a new address after a period of homelessness and was arrested and convicted of the felony of failure to register.

¹ For readability, this summary avoids the term “adjudicated delinquent” to describe a finding of guilt in a juvenile court judgment. However, this phrase is used in the remainder of this report because juvenile court judgments are not considered convictions.

While court documents describe Jacob as a doting parent to his daughter, Jacob's wife came under investigation by Florida's Department of Children's Services in 2009 for not having electricity in the house. However, when the court in that case learned of Jacob's felony conviction for failure to register, the judge denied him custody of his daughter, citing Florida's Keeping Children Safe Act and the fact that Jacob had a criminal felony conviction for failure to register. Jacob continues to fight for custody and visitation but cannot afford a lawyer because he has been unable to find a job. Now age 26, Jacob was removed from the registry in Michigan in 2011, but remains on the registry in Florida, and his life continues to be defined by an offense he committed at age 11.

Jacob's story is not unique. Throughout the United States, people who commit sex offenses as children (also referred to in this report as "youth sex offenders") must comply with a complex array of legal requirements that apply to all sex offenders, regardless of age.

Upon release from juvenile detention or prison, youth sex offenders are subject to **registration laws** that require them to disclose continually updated information including a current photograph, height, weight, age, current address, school attendance, and place of employment. Registrants must periodically update this information so that it remains current in each jurisdiction in which they reside, work, or attend school. Often, the requirement to register lasts for decades and even a lifetime. Although the details about some youth offenders prosecuted in juvenile courts are disclosed only to law enforcement, most states provide these details to the public, often over the Internet, because of **community notification laws**. **Residency restriction laws** impose another layer of control, subjecting people convicted of sexual offenses as children to a range of rules about where they may live. Failure to adhere to registration, community notification, or residency restriction laws can lead to a felony conviction for failure to register, with lasting consequences for a young person's life.

This report challenges the view that registration laws and related restrictions are an appropriate response to sex offenses committed by children. Even acknowledging the considerable harm that youth offenders can cause, these requirements operate as, in effect, continued punishment of the offender. While the law does not formally recognize registration as a punishment, Jacob's case and those of many other youth sex offenders

detailed below illustrate the often devastating impact it has on the youth offenders and their families. And contrary to common public perceptions, the empirical evidence suggests that putting youth offenders on registries does not advance community safety—including because it overburdens law enforcement with large numbers of people to monitor, undifferentiated by their dangerousness.

Human Rights Watch undertook this investigation because we believe the time is right to better understand what it means to be a youth offender raised on the registry. Sex offender laws that trigger registration requirements for children began proliferating in the United States during the late 1980s and early 1990s. They subject youth offenders to registration for crimes ranging from public nudity and touching another child’s genitalia over clothing to very serious violent crimes like rape. Since some of these state laws have been in place for nearly two decades, and the federal law on sex offender registration is coming up on its eighth anniversary, their effects have been reverberating for years.

A Policy Based on a Misconception

Sexual assault is a significant problem in the United States and takes a huge toll on survivors, including children. According to the US Department of Justice (DOJ), there were an estimated 125,910 rapes and sexual assaults in 2009 (the most recent year for which data is available). In an estimated 24,930 of these cases, the victims were between the ages of 12 and 19. The DOJ study did not examine how many of these incidents involved an adult or youth offender. Thus, we do not know how many were similar to the vast majority of the cases investigated for this report—that is, cases of sexual offenses committed by children against another child. Nevertheless, the public and lawmakers have understandable concern, even understandable outrage, about sex crimes. Sex offender registration laws have been put in place to respond to those concerns.

The overlapping systems of sex offender registration, community notification, and residency restrictions were initially designed to help police monitor the “usual suspects”; in other words, to capture the names and addresses of previously convicted adult sex offenders on a list, which could be referred to whenever a new offense was committed. In theory, this was a well-intentioned method to protect children and communities from further instances of sexual assault.

Available research indicates that sex offenders, and particularly people who commit sex offenses as children, are among the least likely to reoffend.

In reality, however, this policy was based on a misconception: that those found guilty of a sex offense are likely to commit new sex offenses. Available research indicates that sex offenders, and particularly people who commit sex offenses as children, are among the least likely to reoffend.

In 2011, the national recidivism rate for all offenses (non-sexual and sexual combined) was 40 percent, whereas the rate was 13 percent for adult sex offenders. Several studies—including one study of a cohort that included 77 percent youth convicted of violent sex offenses—have found a recidivism rate for youth sex offenders of between four and ten percent, and one study in 2010 found the rate to be as low as one percent. These rates are so low that they do not differ significantly from the sex crime rates found among many other (and much larger) groups of children, or even the general public.

A 2006 study of approximately 250 Philadelphia youth sex offenders stated, “[s]ex offending as a juvenile does almost nothing to assist in predicting adult sexual offending.” The study concludes that if the goal of registration is to identify likely future sex offenders, it would be more effective to register youth with five or more contacts with law enforcement for non-sexual offenses than to register youth found guilty or delinquent of a sex offense.

Long-Term Impact on Youth Sex Offenders and Their Families

When first adopted, registration laws neither required nor prohibited inclusion of youth sex offenders. However, by the mid-1990s, many state sex offender registration laws were amended to include children adjudicated delinquent of sex offenses, as well as children tried and convicted of sex offenses in adult court. The resulting policies swept children into a system created to regulate the post-conviction lives of adult sex offenders.

Children accused of sexual offenses were caught at the convergence of two increasingly harsh “tough on crime” policy agendas: one targeting youth accused of violent crimes and the other targeting persons convicted of sexual offenses. In an effort to protect children from sexual assault and hold sex offenders accountable, lawmakers failed to consider that

some of the sex offenders they were subjecting to registration were themselves children, in need of policy responses tailored to their specific needs and circumstances.

The harm befalling youth sex offenders can be severe. Youth sex offenders on the registry experience severe psychological harm. They are stigmatized, isolated, often depressed. Many consider suicide, and some succeed. They and their families have experienced harassment and physical violence. They are sometimes shot at, beaten, even murdered; many are repeatedly threatened with violence. Some young people have to post signs stating “sex offender lives here” in the windows of their homes; others have to carry drivers’ licenses with “sex offender” printed on them in bright orange capital letters. Youth sex offenders on the registry are sometimes denied access to education because residency restriction laws prevent them from being in or near a school. Youth sex offender registrants despair of ever finding employment, even while they are burdened with mandatory fees that can reach into the hundreds of dollars on an annual basis.

Youth sex offender registrants often cannot find housing that meets residency restriction rules, meaning that they and their families struggle to house themselves and often experience periods of homelessness. Families of youth offenders also confront enormous obstacles in living together as a family—often because registrants are prohibited from living with other children.

Finally, the impacts of being a youth offender subject to registration are multi-generational—affecting the parents, and also the children, of former offenders. The children of youth sex offenders often cannot be dropped off at school by their parent. They may be banned by law from hosting a birthday party involving other children at their home; and they are often harassed and ridiculed by their peers for their parents’ long-past transgressions.

Onerous Restrictions

Some restrictions imposed on the lives of registrants are so onerous and labyrinthine, it is surprising that registrants actually manage to adhere to them. Many do not. The consequences of running afoul of sex offender registration laws can be severe. The crime of “failure to register” is a felony in many states, carrying lengthy prison sentences. The complex rules and regulations that govern the lives of sex offenders on the registry are

particularly difficult to navigate when youth offenders, like the majority of those interviewed for this report, first begin registering when they are still children.

Many youth sex offenders never learn that they will have to register until after they accept a plea deal and often after they serve their time in prison or juvenile detention. This is especially likely to be true of children in the juvenile system, where there is no clear legal obligation that they be informed of the consequences of their admissions of guilt. Youth sex offenders are also sometimes subjected to retroactive registration requirements for offenses committed decades in the past—even after years of living safely in the community. Recent laws, like the Adam Walsh Act, reserve the harshest punishments for those who target children. Yet this means that it is often children themselves who experience these harsher penalties, because their crimes almost always involve other kids.

It is unknown how many persons are subject to registration laws in the United States for crimes committed as children. However, in 2011, there were 747,408 sex offender registrants (adult and youth offenders) in the country. What proportion of these people committed sexual offenses as children is impossible to determine from publicly available national data.

Human Rights Watch tried in various ways to obtain this information, but to no avail. We requested data on offenders registered for crimes committed as children from all 50 states. Two states responded with aggregate counts but we were unable to determine the percentage of total registrants these individuals represent. Our attempts to use public registries to obtain counts were stymied by the fact that states and the federal government do not independently track the age of registrants at offense; moreover, state data may undercount the reality. Since the family members of youth sex offenders often must abide by residency restriction laws if they want to live together, the numbers of people in the US affected by these laws is significant.

Faulty Assumptions About Youth Sex Offenders

Faulty assumptions about youth sex offenders' tendency to recidivate are but one set of flawed assumptions underpinning registration laws. Registering sex offenders and publicizing information about them is predicated on the idea that sex crimes are committed by strangers. However, evidence suggests that about 86 percent of sex offenses are

committed by persons known to the victim. According to the Justice Department, 93 percent of sexually abused children are molested by family members, close friends, or acquaintances. Registration will not protect a victim from a family member.

Moreover, early thinking about juvenile sexual offending behavior was based on what was known about adult child molesters, particularly the adult pedophile, under the mistaken belief that a significant portion of them began their offending during childhood. However, more recent clinical models emphasize that this retrospective logic has obscured important motivational, behavioral, and prognostic differences between youth sex offenders and adult sex offenders and has therefore overestimated the role of deviant sexual tendencies in people convicted of sex offenses as children. More current models emphasize the diversity among children who commit sexual offenses, who in the great majority of cases have a favorable prognosis for never reoffending sexually.

Registering youth sex offenders is bad public policy for other reasons, including the fact it overburdens law enforcement with large numbers of people to monitor, undifferentiated by their dangerousness. With thousands of new registrants added each year, law enforcement is stymied in their attempt to focus on the most dangerous offenders. Sex offender registries treat very different types of offenses and offenders in the same way. Instead of using available tools to assess the dangerousness of particular people who commit sex offenses as children, most sex offender laws paint them all with the same brush, irrespective of the variety of offenses they may have committed and in total denial of their profound differences from adults.

Not all states apply sex offender registration law indiscriminately to youth offenders. In Oklahoma, for example, children adjudicated delinquent of sex offenses are treated in a manner more consistent with juvenile sexual offending behavior. There, a child accused of committing a registerable sex offense undergoes a risk evaluation process reviewed by a panel of experts and a juvenile court judge. The preference is for treatment, not registration, and most high-risk youth are placed in treatment programs with registration decisions deferred until they are released, at which point they may no longer be deemed high-risk. The programs and attention provided by the state to high-risk youth means that very few youth are ultimately registered. The few children that are placed on the registry have their information disclosed only to law enforcement, and youth offenders are removed once they reach the age of 21.

Accountability That Fits

The harm that people convicted of sex offenses as children have caused to victims of sexual assault must be acknowledged, and justice often requires punishment. As a human rights organization, Human Rights Watch seeks to prevent sexual violence and to ensure accountability for sexual assaults.

But accountability achieved through punishment should fit both the offense and the offender. Good public policy should deliver measurable protection to the community and measurable benefit to victims. There is little reason to believe that registering people who commit sexual offenses as children delivers either. Under human rights law, youth sex offenders should be treated in a manner that reflects their age and capacity for rehabilitation and respects their rights to family unity, to education, and to be protected from violence. Protecting the community and limiting unnecessary harm to youth sex offenders are not mutually incompatible goals. Instead, they can enhance and reinforce each other.

Human Rights Watch believes that unless and until evidence-based research shows that sex offender registration schemes or other means of monitoring youth sex offenders have real benefits for public safety, persons convicted of sex offenses committed as children should not be subject to registration, community notification, or residency restriction requirements. If some youth offenders are subject to these laws, they should never be automatically placed on registries without undergoing an individualized assessment of their particular needs for treatment and rehabilitation, including a periodic review of the necessity of registration. Society's goal should be returning them to the community, not ostracizing them to the point that they and their families are banished from any semblance of a normal life.

Methodology

This report is based primarily on an investigation conducted at Human Rights Watch by Soros Senior Justice Advocacy Fellow Nicole Pittman, between September 2011 and early March 2013. Pittman is considered a leading national expert on the application of sex offender registration and notification laws to children. Before joining Human Rights Watch, she worked as an attorney at the Defender Association of Philadelphia, where she specialized in and consulted nationally on child sexual assault cases and registries. Pittman has provided testimony to numerous legislatures, including the US Congress, on the subject.

In this report, in line with international law, the terms “child” and “children” refer to a person or persons below the age of 18. We use the term “youth sex offender” to describe any person who was below the age of 18 at the time they committed the sex offense that led to their placement on a registry, even if they are now an adult. Individuals who were required to register as sex offenders while they were below age 18 are referred to in this report as “youth registrants” or “child registrants.”

In all, we investigated 517 cases of individuals who committed sexual offenses as children across 20 states for this report, including in Delaware, Florida, Louisiana, Maryland, Michigan, New Jersey, New York, Pennsylvania, Texas, and Washington. Additional information was collected from Arizona, California, Colorado, Georgia, Idaho, Illinois, Iowa, Kansas, Missouri, Nevada, Ohio, South Carolina, Virginia, and Wisconsin.

We conducted in-person interviews with 281 youth sex offenders, as well as immediate family members of another 15, in those 20 states. These 296 in-person interviews form the basis for many of the findings of this report.

Human Rights Watch selected the 20 states because of their geographic diversity and different policy approaches to youth sex offenders. At the time of our research:

- Ten of the 20 research states were deemed to have “substantially implemented” the national Sex Offender Registration and Notification Act (Delaware, Florida,

Kansas, Maryland, Michigan, Missouri, Nevada, Ohio, Pennsylvania, and South Carolina).²

- Four of the 20 states did not subject any children found delinquent of sex offenses in juvenile court proceedings (as opposed to criminal court proceedings) to sex offender registration (Georgia, Nevada, New York, and Pennsylvania).
- Ten of the states subjected children found guilty in both juvenile and criminal court proceedings to sex offender registration laws, and had done so since the mid-1990s (Arizona, Delaware, Illinois, Kansas, Michigan, Missouri, New Jersey, Texas, South Carolina, and Washington). Several of the states had no minimum age of juvenile jurisdiction and had put children as young as eight on their registries.
- The three states with the largest number of registered sex offenders (adults and children) were California (106,216), Texas (68,529), and Florida (57,896).³

In addition to our interviews with people placed on sex offender registries for offenses committed as children, we spoke with family members of registrants, defense attorneys, prosecutors, judges, law enforcement officials, academic experts, juvenile justice advocates, mental health professionals, and victims of child-on-child sexual assault. Individuals placed on the registry for offenses committed as adults were not interviewed for this report.

Approximately 95 percent of the youth offenders we interviewed were found delinquent of sex offenses in juvenile court proceedings; less than five percent were convicted in criminal courts. Many of the registrants were subjected to the same sex offender registration, public disclosure, and residency restrictions as adults.

We identified the majority of interviewees through a written request we posted in a bulletin circulated among loved ones of individuals on registries, mental health treatment providers, juvenile advocates, social workers, and defense attorneys. Approximately 100

² The Sex Offender Registration and Notification Act (SORNA) is section 111 of the Adam Walsh Act Child Protection and Safety Act of 2006, codified at 42 U.S.C. §16911, which governs the applicability of SORNA's sex offender registration requirements to juvenile offenders who are adjudicated delinquent of a sex offense. 42 U.S.C. §16911(8) requires jurisdictions to expand sex offender registration to juveniles. At the time this report was written, only 18 states in the nation were deemed to be in "substantial compliance" with the federal law.

³ "Number of Registered Sex Offenders in the US Nears Three-Quarters of a Million," National Center for Missing and Exploited Children, press release, January 23, 2012, <http://www.prnewswire.com/news-releases/number-of-registered-sex-offenders-in-the-us-nears-three-quarters-of-a-million-137880068.html> (accessed March 8, 2013).

interviewees were identified by a search of state sex offender registries. In addition to seeking geographic diversity, we sought registrants from an array of locations (including both rural and urban areas) and ethnic and racial backgrounds.

The overwhelming majority of the individuals interviewed for this report started registering when they were children (under age 18). Registrants were between the ages of 14 and 48 at the time we interviewed them. We made a substantial effort to interview registrants of various ages to better assess the impact of being a child or adolescent on the sex offender registry. The majority of the interviews with youth offenders were conducted at their homes. All interviews were conducted in private. A family member or significant other was present for a portion of most of the interviews.

Interviews were semi-structured and covered a range of topics related to how, if at all, being on the sex offender registry affected aspects of a registrant's life—such as the ability to go to school, obtain and maintain employment, secure housing, and associate with family. Registrants were also asked a series of questions to determine whether the registrant experienced psycho-social harm, felt vulnerable to or experienced violence, or was subject to discrimination because of his or her status as a registrant.

Before each interview, Human Rights Watch informed each interviewee of the purpose of the investigation and the kinds of issues that would be covered, and asked whether they wanted to participate. A parent or guardian gave permission before contact was made with potential interviewees under the age of 18. We informed interviewees that they could discontinue the interview at any time or decline to answer any specific questions without consequence. No financial incentives were offered or provided to persons interviewed.

Human Rights Watch has disguised with pseudonyms the identities of all interviewees, except in two cases where the degree of publicity surrounding the cases made disguising the identities impossible, and we had the informed consent of the two individuals to use their real names. All documents cited in the report are publicly available or on file with Human Rights Watch.

I. Background

Child-on-Child Sexual Violence in the United States

Sexual violence is a serious problem in the United States. According to a US Department of Justice (DOJ) study, an estimated 125,910 rapes and sexual assaults occurred in the United States in 2009 (the most recent year for which data are available).⁴ An estimated 24,930 of the victims were between the ages of 12 and 19 at the time of the assaults.⁵ The DOJ study did not examine how many of these incidents involved adult or youth offenders.

While 24,930 incidents of sexual violence against children is a disturbing number, it may be an underestimate. Victim fear, shame, or loyalty to the abuser can each contribute to the underreporting of sexual violence.⁶ For example, a study by the National Institute of Justice found that only one in five adult women rape victims (19 percent) reported their rapes to police.⁷ Failure to disclose sexual abuse is also common among children.

There is evidence, however, that victims today—including child victims—are more likely to disclose abuse, at least to loved ones, than they once were. Dr. Marc Chaffin, an expert and professor of pediatrics at University of Oklahoma Health Sciences Center, told Human Rights Watch that recent studies suggest that “about half of child victims tell someone.”⁸ While this does not necessarily mean more incidents are getting reported to police, it is clear that child victims are more likely to disclose abuse than in decades past.⁹

⁴ US Department of Justice, Bureau of Justice Statistics, “Criminal Victimization, 2009,” October 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cv09.pdf> (accessed March 21, 2013). These data are compiled by the National Crime Victimization Survey, in which a representative sample of US households reports on non-fatal crimes (irrespective of whether they are reported to police).

⁵ These estimates, as reported by the Department of Justice, are based on 10 or fewer sample cases. US Department of Justice, Bureau of Justice Statistics, “Criminal Victimization, 2009,” October 2010, <http://bjs.ojp.usdoj.gov/content/pub/pdf/cv09.pdf> (accessed March 21, 2013).

⁶ Anna Salter, *Transforming Trauma: A Guide to Understanding and Treating Adult Survivors of Child Sexual Abuse* (New York: Sage Publications, 1995).

⁷ Patricia Tjaden and Nancy Thoennes, National Institute of Justice (NIJ), “Extent, Nature, and Consequences of Rape Victimization: Findings from the National Violence against Women Survey,” January 2006, <http://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (accessed July 13, 2007).

⁸ Human Rights Watch email correspondence with Dr. Marc Chaffin, March 5, 2013. See also MaryLee Floric and Matthew Broyles, *Sexual Abuse* (New York: The Rosen Publishing Group, Inc., 2012).

⁹ *Ibid.*

Historically, the reluctance or inability of survivors of abuse or their family members to report sexual assault crimes has contributed to under-enforcement of the law: the vast majority of sex crimes do not lead to arrests and convictions.¹⁰ A study examining data from 1991 to 1996 found that sexual assaults on child victims were more likely to result in an arrest (29 percent) than were assaults on adults (22 percent), but assaults on children under age six resulted in an arrest in only 19 percent of the cases.¹¹

For adults, the emotional and psychological consequences of sexual violence can be profound and enduring and include depression, anxiety, and post-traumatic stress disorder.¹² According to the American Psychological Association, children who have been sexually abused may suffer a range of short- and long-term problems, including depression, anxiety, eating disorders, guilt, fear, withdrawal, self-destructive behaviors, and sexual acting out.¹³ This study did not differentiate between the experiences of victims who were abused by adults and those abused by other children. According to Dr. Marc Chaffin, who has studied the specific impacts on child victims of child-on-child sexual offenses,

The overarching summary of the research is this—there are a substantial number of victims who recover and are not highly affected beyond a short time. There is a middle group with moderate effects. And there is a group with severe and often lasting effects.¹⁴

In many cases, the trauma of child sexual abuse is made more complex because the abuse occurs within the family. Denise, a single mother of two boys, Troy (age 15) and Ted (age 12), recalled the day Ted confided in her that he had been sexually abused by Troy: “Ted explained that ‘he had been touched on his private parts’ by his older brother.”¹⁵ Denise continued, “I felt like I had heard the worst thing a mother can hear. I felt confused and

¹⁰ Howard N. Snyder, Bureau of Justice Statistics, “Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics,” July 2000, <http://bjs.gov/content/pub/pdf/saycrlc.pdf> (accessed March 21, 2013), p. 11.

¹¹ *Ibid.*

¹² Safe Horizon, “After Sexual Assault: A Recovery Guide for Survivors,” undated, http://www.safehorizon.org/files/After_Sexual_Assault_Bklt.pdf (accessed January 8, 2007).

¹³ American Psychological Association, “Understanding Child Sexual Abuse: Education, Prevention, and Recovery,” 2001, <http://www.apa.org/releases/sexabuse/effects.html> (accessed July 13, 2007).

¹⁴ Human Rights Watch email correspondence with Dr. Marc Chaffin, March 5, 2013.

¹⁵ Stop It Now! *PARENTtalk*, “Loving Them Both,” vol. 5, no. 1 (Spring 2005), http://www.stopitnow.org/files/webfm/Parent%20Talk/PT_Spring05_V5N1.pdf (accessed March 21, 2013). *PARENTtalk* is a Stop It Now! publication by and for parents and caregivers of youth with sexual behavior problems. (The name “Denise” is a pseudonym for the mother in this story, whose name was “anonymous” in the publication).

shocked. As I listened to Ted, I began feeling everything through him and seeing it through his eyes. I felt so deeply sad for what he had been through, and I battled with feelings of responsibility. What could I have done to prevent this? Why didn't I see the signs?"¹⁶ Denise immediately began getting help for both her sons and making sure they were both safe from repeating these behaviors. She stated that it,

[B]ecame clear the boys could not be left alone together. At first, it actually felt like things were getting worse not better, especially when Ted confided in me saying, "I lock my bedroom door at night," as he described how he fears a visit from his brother.... I wish I could explain what it is like to be the parent of both a child who has been abusing and a child who has been victimized. The feelings are so mixed and confusing. I love both my sons, but at times I felt guilty and ashamed that I cared for Troy even though he had hurt Ted.¹⁷

Child sexual abuse is a complicated form of harm. The effect sexual violence can have on survivors, their family members, and their communities can be harrowing. After a sexual assault, victims may experience a wide range of emotions, such as sadness, anger, fear, shame, guilt, grief, or self-blame; and they may grow up to experience a variety of psychological, social, relationship, and physical difficulties.¹⁸ Not only are victims left to cope with the very personal and intense after-effects of a sexual assault, but they also must deal with the tangible costs associated with the assault, including medical care, counseling, and potential lost wages.¹⁹ In light of all of this, and given the potential consequences for child victims, ending sexual offenses against children is a legitimate priority.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Dean G. Kilpatrick and Anne Seymour, National Victim Center & the Crime Victims Research and Treatment Center, Medical University of South Carolina, "Rape in America: A Report to the Nation," April 23, 1992, http://www.musc.edu/nvcv/resources_prof/rape_in_america.pdf (accessed April 19, 2013); Ted R. Miller, Mark A. Cohen, and Brian Wiersema, National Institute of Justice (NIJ), "Victim Costs and Consequences: A New Look," January 1996, <https://www.ncjrs.gov/pdffiles/victcost.pdf> (accessed April 19, 2013).

¹⁹ Center for Sex Offender Management (CSOM), "Understanding sex offenders: An introductory curriculum," undated, www.csom.org/train/etiology/index.html (accessed April 19, 2013).

History of Sex Offender Registration and Notification Laws in the US

In part as a result of high-profile cases of sexual abuse in the late 1980s and 1990s, state and federal policymakers passed an array of registration, community notification, and residency restriction laws for individuals convicted of sex offenses.

- **Registration** refers to a set of procedures that offenders must follow to disclose information to law enforcement authorities and to periodically update or “register” that information so that it remains current.
- **Community notification** refers to systems by which information about registrants is transmitted to the public or portions of the public.
- **Residency restriction laws** refer to mostly state and local ordinances that limit registrants’ ability to live in or spend any time in specific locations (such as near a school).

Each state, US territory, and federally-recognized Indian Tribe now has its own set of sex offender registration, notification, and residency restriction laws. Overlaying this diversity is a series of federal laws.

Early Sex Offender Registration and Community Notification Laws

The first federal law addressing sex offender registration, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1994 (the “Wetterling Act”) established a national database of sex offenders and conditioned states’ receipt of federal anti-crime funds on state compliance with the act.²⁰ Specifically, it required states to create registries of offenders convicted of sexually violent offenses or crimes against children and to establish heightened registration requirements for highly dangerous sex offenders. States moved quickly to implement federal sex offender legislation, with a majority passing notification and registration statutes for adult sex offenders between 1994 and 1996.²¹

²⁰ Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322 tit. XVII, subtit. A, 108 Stat. 2038-2042 (1994). Title XVII of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. 14071 et seq. The Wetterling Act was passed in response to the unsolved abduction of Jacob Wetterling while he was riding his bicycle in a small town in Minnesota.

²¹ Center for Sex Offender Management, “Sex Offender Registration: Policy Overview and Comprehensive Practices,” October 1999, <http://www.csom.org/pubs/sexreg.pdf> (accessed March 21, 2013).

Congress passed its first community notification law in 1996 in response to the abduction and murder of seven-year-old New Jersey resident Megan Kanka.²² Under Megan’s Law, community notification requirements applied only to individuals identified as “potentially dangerous sex offenders.”²³ Community notification systems proliferated rapidly through a series of amendments to Megan’s Law. Some form of community notification for adult sex offenders has been present in all 50 states and the District of Columbia since 1996.

The Lychner Act, passed in 1996, amended the federal community notification laws, providing for a national database to track sex offenders and subjecting certain offenders to lifetime registration and notification requirements.²⁴ Both of these laws have been superseded by the 2006 Adam Walsh Act (discussed below).²⁵

Incorporation of Youth Sex Offenders in Registration and Notification Laws

When first adopted, federal registration and notification laws neither required nor prohibited inclusion of persons convicted of sex offenses as children (youth sex offenders). But by the mid-1990s, many state sex offender registration laws were drafted to include children adjudicated delinquent of sex offenses as well as children tried and convicted of sex offenses in adult court. The resulting policies swept youth sex offenders into a system created to regulate the post-conviction lives of adult sex offenders.

Youth sex offenders were caught at the convergence of two increasingly harsh “tough on crime” policy agendas: one targeting persons convicted of sexual offenses, and the other targeting youth accused of violent offenses, who were often portrayed at the time as “superpredators”—a notion that has since been discredited.²⁶ The overheated rhetoric

²² Megan’s Law of 1996, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (codified at 42 U.S.C. § 14071(e)(2) (2000)). Megan’s adult attacker, previously convicted of child molestation, lived near her home in a community release program. In testimony before Congress, Megan’s parents, Richard and Maureen Kanka, asserted that they would have been more vigilant had they known about the offender’s presence.

²³ Megan’s Law of 1996, Pub. L. No. 104-145, 110 Stat. 1345 (1996) (codified at 42 U.S.C. § 14071(e)(2) (2000)).

²⁴ Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093 (42 U.S.C. 14072, as amended). Pam Lychner was a 31-year-old woman who was attacked by a previously convicted sexual offender in Houston, Texas.

²⁵ 42 U.S.C. §16911, §129(a) of the The Sex Offender Registration and Notification Act (SORNA) of the Adam Walsh Act Child Protection and Safety Act of 2006 (States that “Sections 170101 (42 U.S.C. 14071) and 170102 (42 U.S.C. 14072) of the Violent Crime Control and Law Enforcement Act of 1994, and section 8 of the Pam Lychner Sexual Offender Tracking and Identification Act of 1996 (42 U.S.C. 14073) are repealed.”).

²⁶ Recent decades have been marked by periods of intense media coverage of crimes committed by children. For example, presidential candidate Bob Dole said during his 1996 campaign, “[u]nless something is done soon, some of today’s

surrounding the issue scared the public, and politicians responded, including with increasingly broad laws affecting youth sex offenders. In an effort to protect children from sexual assault and hold sex offenders accountable, lawmakers failed to fully consider that some of the sex offenders they were targeting were themselves children, in need of policy responses tailored to their specific needs and circumstances.²⁷

Today, federal law and the laws of all 50 states require adults to register with law enforcement. Eleven states and the District of Columbia do not register any child offenders adjudicated delinquent in juvenile court. However, these 12 jurisdictions do require registration for children convicted of sex offenses in adult court.²⁸ Thirty-eight states register both children convicted of sex offenses in adult court and those adjudicated in the juvenile system.²⁹

State notification laws establish public access to registry information, primarily by mandating the creation of online registries that provide a former offender's criminal history, current photograph, current address, and other information such as place of employment. In many states, everyone who is required to register is included on the online registry. In the 50 states and the District of Columbia, adults and children convicted in

newborns will become tomorrow's superpredators—merciless criminals capable of committing the most vicious of acts for the most trivial of reasons." Policymakers used the notion of the juvenile "superpredator" (coined by academic John Dilulio) as a justification for increasingly punitive and harsh treatment of children under new criminal laws. See generally Jonathon Simon, *Governing through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press, 2007) (addressing the importation of crime control into school administration); Aaron Kupchik, *Judging Juveniles: Prosecuting Adolescents in Adult and Juvenile Courts* (New York: New York University Press, 2006) (describing a "sequential model of justice," or a system that borrows both a criminal justice model and a juvenile justice model, as a way of understanding prosecution of adolescents in criminal court). The superpredator myth has been discredited. Dire predictions that "the rise in violent arrests of juveniles in the early 1990s would combine with a growing youth population to produce an extended crime epidemic" have proved inaccurate. Juvenile crime rates began a steady decline around 1994, reaching low levels not seen since the late 1970s. Lori Dorfman & Vincent Schiraldi, *Building Blocks for Youth, "Off Balance: Youth, Race & Crime in the News,"* April 2001.

²⁷ Elizabeth Garfinkle, "Coming of Age in America: The Misapplication of Sex Offender Registration and Community Notification Laws to Juveniles," *California Law Review*, vol. 91, no. 1 (January 2003), pp. 163-208.

²⁸ Quyen Nguyen and Nicole Pittman, "A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States," *Pennsylvania Juvenile Defenders*, July 2011, <http://www.pajuvdefenders.org/file/snapshot.pdf> (accessed March 12, 2013), pp. 44-53; National Conference of State Legislatures (NCSL), "Juvenile Sex Offender Registration and SORNA," May 2011, <http://www.ncsl.org/issues-research/justice/juvenile-sex-offender-registration-and-sorna.aspx> (accessed March 12, 2013). The 13 jurisdictions are Alaska, Connecticut, District of Columbia, Georgia, Hawaii, Maine, Montana, Nebraska, New Mexico, New York, Utah, Vermont, and West Virginia.

²⁹ *Ibid.* The 38 jurisdictions are: Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming.

criminal court are generally subject to public notification, meaning that these individuals are included on the online registry. Children adjudicated delinquent in juvenile court are subject to the same public notification as adults in 27 states, allowing for the disclosure of child offenders' private information to the public.³⁰

A growing number of states and municipalities have also prohibited registered offenders from living within a designated distance (typically 500 to 2,500 feet) of places where children gather, such as schools, playgrounds, and daycare centers.

The Adam Walsh Act's SORNA

In an effort to standardize the vast and growing number of state sex offender registration systems, Congress passed the Adam Walsh Child Protection and Safety Act in 2006.³¹ Title I of the Adam Walsh Act, the Sex Offender Registration and Notification Act (SORNA), provides a set of federal guidelines that further expands the breadth of sex offender registration and notification in the 50 states, the District of Columbia, the five US territories, and federally-recognized tribal territories. The Adam Walsh Act did not, in its initial draft, specifically address the situation of child offenders. However, an amendment known as the Amie Zyla Provision expanded the scope of the act to include certain juvenile

³⁰ See American Bar Association, Juvenile Collateral Consequences Project, "Think before you plead: Juvenile collateral consequences in the United States," undated, <http://www.beforeyouplea.com/> (accessed April 19, 2013); Nguyen and Pittman, "A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States," pp. 44-53; National Conference of State Legislatures (NCSL), "Juvenile Sex Offender Registration and SORNA," May 2011; The 27 states are California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, South Carolina, Texas, Virginia, Washington, and Wisconsin. For children adjudicated delinquent in juvenile court, Illinois, Massachusetts, Ohio, Oregon, and Michigan limit the information available to the public. Illinois: 730 Ill. Comp. Stat. 152/120(a) (2010) (limited information on children adjudicated delinquent is made available to the public); Massachusetts: Mass. Gen. Laws ch. 6, § 178K (2)(c) (2010) (Children designated at risk levels 2 and 3 are subject to public notification); Ohio: Ohio Rev. Code Ann. § 2152.86 (2010) (A child determined to be a "Public Registry Qualified Juvenile Offender Registrant" (PRQJOR) is subject to public notification); Oregon: Or. Rev. Stat. § 181.592(2)(b) (2009) (limited information on children adjudicated delinquent is made available to the public); Michigan: Mich. Comp. Laws Ann. § 28.728 (2010) (children adjudicated delinquent in juvenile court will not be listed on the public sex offender registry until they turn 18; once they turn 18, their registration will become public and they will be listed on the web-based public registry). See generally *in re Wentworth*, 651 N.W.2d 773, 777 (2002).

³¹ During the March 2006 discussion, Representative John Conyers (D-MI) noted that "this legislation, all 164 pages, has managed to completely circumvent the traditional legislative process." 152 Cong. Rec. H677 (2006) (statement of Rep. John Conyers). In a July 2006 discussion on the Act, Representative Robert Scott (D-VA) avowed that "unlike most of my colleagues we will hear from today, I believe that we can do better than this bill to effectively address the scourge of child sexual assault." 152 Cong. Rec. H5723-24 (2006) (statement of Rep. Robert Scott). Regrettably, lawmakers misinformed their peers that individuals convicted of sex offenses are more serious offenders because of their propensity to reoffend. US Representative Ric Keller (R-FL) noted that "[t]he best way to protect children is to keep child predators locked up in the first place, because someone who has molested a child will do it again and again and again." Hearing Before the Subcommittee on Crime, Terrorism, and Homeland Security of the Committee on the Judiciary, 109th Cong.

court adjudications in the act's definition of "conviction" (children convicted in adult court already fell within the definition).³²

SORNA made several broad changes to existing federal guidelines on sex offender registration that include, but are not limited to:

- Mandating that children register, if prosecuted and convicted as adults *or* adjudicated delinquent in family court for a sex offense comparable or more serious than "aggravated sexual abuse or sexual abuse."³³
- Establishing a new federal and state criminal offense of "failure to register," punishable by a term of imprisonment.³⁴
- Requiring registration for offenses that may not be considered sexual offenses in some jurisdictions, such as indecent exposure, kidnapping, false imprisonment of a child, public urination, rape, incest, indecency with a child by touching, and possession of child pornography.³⁵
- Requiring jurisdictions to reclassify the risk level of each sex offender based solely on the crime of conviction or adjudication, with no reference to individualized risk assessment.³⁶

³² Title I, §111.8 of the Adam Walsh Act, Pub. L. No. 109-248, (2006). The Amie Zyla provision was named after Amie Zyla of Waukesha, Wisconsin, who was 8 years old when she was sexually assaulted and threatened by 14-year-old Joshua Wade. Wade was adjudicated delinquent in juvenile court, and was therefore required under Wisconsin law to register with local police as a sex offender. Less than a decade later, while still being monitored as a sex offender, Wade was arrested for assaulting and enticing children to his apartment. Wade was never convicted of these charges. However, Amie Zyla and her parents were successful in lobbying the state legislature to take some additional action against children accused of sexual misconduct. Amie and her parents then took their cause to Washington, DC. The Chairman of the Subcommittee on Crime, Terrorism, and Homeland Security, James Sensenbrenner (R-WI), who was also from Waukesha County, arranged for Ms. Zyla to speak behind closed doors, without any expert testimony, before members of Congress, advocating for extending the Adam Walsh Act to children by placing them on public sex offender registries. "The simple truth is that juvenile sex offenders turn into adult predators.... I want to challenge you to look deep down inside. Isn't it time to put our kids' safety before the rights of sexual offenders, adult or juvenile? When is enough going to be enough?" asked Ms. Zyla. After Ms. Zyla's brief speech, Congressional supporters of the act proposed that the Adam Walsh Act be expanded to include children. In less than an hour, without supporting data or expert testimony, Congress voted, for purposes of sex offender registration and notification, to expand the definition of a "criminal conviction" to include an "adjudication of delinquency" of a child. The provision extending sex offender registration and notification was eventually named after the 17-year-old and is now referred to as SORNA Section 111 - Amie Zyla Expansion of Sex Offender Definition provision (Amie Zyla expansion is codified by 42 U.S.C. §16911(8)).

³³ Amie Zyla expansion is codified by 42 U.S.C. §16911(8); The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030 (July 2, 2008).

³⁴ Title 42 U.S.C.S. § 16913 creates the sex offender registration requirements, and 18 U.S.C.S. § 2250(g) imposes criminal penalties for failing to register under SORNA.

³⁵ 42 U.S.C.S. § 16911(5); The US Department of Justice, under SORNA, expands the definition of "specified offense against a minor" to include all offenses by children. The term "specified offense against a minor" means an offense against a minor that involves any of a list of itemized offenses.

³⁶ 42 U.S.C.A. § 16911 (2)-(4) (Section 111(2)-(4) of SORNA defines three "tiers" of sex offenders. The tier classifications have implications in three areas: (i) under section 115, the required duration of registration depends primarily on the tier; (ii) under

To comply with SORNA, jurisdictions must also require registered offenders to keep their information current in each jurisdiction in which they reside, work, or attend school.³⁷ Jurisdictions that fail to enact the SORNA guidelines risk losing 10 percent of their Edward Byrne Memorial Justice Assistance federal funding.³⁸

After the federal government granted several extensions, the deadline to comply with SORNA was July 2011. Five years after the act was signed into law, no jurisdiction has “completely implemented” SORNA, and only 13 have “substantially implemented” the law. On the deadline, several states signaled that they still were unable to implement SORNA.³⁹ According to a 2013 US Government Accountability Office (GAO) report on the status of SORNA implementation, as of November 2012, 37 of 56 jurisdictions had submitted complete implementation packages for review, and the US Department of Justice’s (DOJ) Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) office had determined that 19 of those jurisdictions (16 states and 3 territories) had substantially implemented SORNA and another 17 had not.⁴⁰ The 16 states deemed by the DOJ to have substantially implemented SORNA were Alabama, Delaware, Florida, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wyoming.⁴¹

An Overbroad Policy of Questionable Effectiveness

Throughout the United States, sex offender registries include offenders convicted for a range of acts, from offensive or vulgar behavior to heinous crimes. Registries create the

section 116, the required frequency of in-person appearances by sex offenders to verify registration information depends on the tier. SORNA sorts offenders into three tiers to determine the duration of their registration obligations. Tier III includes any sex offender whose offense is punishable by imprisonment for more than 1 year and is comparable to or more severe than aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18). 42 U.S.C.A. § 16911(4). Tier III offenders must register for life. Id. § 16915(a)(3). Tier II includes offenders convicted of sex offenses against minors. Id. § 16911(3). Individuals in Tier II must register for 25 years. Id. § 16915(a)(2). SORNA designates all offenders not included in Tiers II or III as Tier I offenders who must register for 15 years. Id. § 16911(2); § 16915(a)(1). SORNA’s registration requirements apply to offenders whose convictions pre-date the statute. 28 C.F.R. § 72.3.

³⁷ 42 U.S.C. § 16913(b). Under SORNA, registration information is to be provided immediately to “[e]ach jurisdiction where the sex offender resides, is an employee, or is a student.”

³⁸ 42 U.S.C. §§ 16924(a), 16925(a). Each jurisdiction has until July 27, 2009 to substantially comply with the requirements of SORNA or lose part of its federal funding.

³⁹ United States Governmental Accountability Office, GAO-13-211 Report to the Subcommittee of Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives, “Sex Offender Registration and Notification Act,” February 2013.

⁴⁰ *Ibid*; Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), “SORNA,” <http://www.ojp.usdoj.gov/smart/sorna.htm> (accessed March 5, 2013).

⁴¹ SMART, “SORNA,” <http://www.ojp.usdoj.gov/smart/sorna.htm>.

impression that neighborhoods are thick with recidivist sexual predators, making it impossible for residents, including parents, to discern who actually is dangerous.⁴² Sex-offender registries now include not only persons who committed sexually violent offenses or crimes such as kidnapping or false imprisonment of a minor, but also people who have committed offenses like public urination, indecent exposure (such as streaking across a college campus), and other more relatively innocuous offenses. Many people assume that anyone listed on the sex offender registry must be a rapist or a child molester. But most states spread the net much more widely.⁴³

Sex offender registration schemes were initially designed to help police monitor the “usual suspects”; that is, to capture the names and addresses of previously convicted adult sex offenders on a list, which could be referred to whenever a new offense was committed. In theory, this was a well-intentioned method to protect children and communities from further instances of sexual assault. In reality, this policy was based on a misconception: that everyone found guilty of a sex offense is a recidivist pedophile. However, according to the National Center on Sexual Behavior of Youth, “most adolescents are not sexual predators nor do they meet the accepted criteria for pedophilia.”⁴⁴

Individuals who commit sexual offenses are not all the same. A one-size-fits-all approach to sex offender registration does not contribute to public safety, especially since, as described further below, the most dangerous offenders are often supervised in the same way as very low-risk offenders who are not likely to commit new sex offenses.

A 2008 report from the Texas Department of Public Safety revealed that the number of registered sex offenders in Texas more than tripled between 1999 and 2008. The 2008 figure was 54,000 offenders, including nearly 7,500 who were placed on the registry for offenses committed as children.⁴⁵ Ray Allen, a former chair of the Texas House Corrections

⁴² Human Rights Watch, *No Easy Answers: Sex Offender Laws in the US*, vol. 19, no. 4(G), September 2007, <http://www.hrw.org/reports/2007/09/11/no-easy-answers>, pp. 55-58.

⁴³ In our 2007 report *No Easy Answers*, Human Rights Watch found that at least five states required men to register if they were caught visiting prostitutes. At least 13 states required individuals to register for urinating in public (in two states, only if a child was present). Thirty-two states registered flashers and streakers. No fewer than 29 states required registration for teenagers who had consensual sex with another teenager. Human Rights Watch, *No Easy Answers*, p.39.

⁴⁴ Mark Chaffin, Barbara L. Bonner, and Keri Pierce, National Center on Sexual Behavior of Youth, “What Research Shows About Adolescent Sex Offenders,” July 2003, <http://www.dshs.wa.gov/pdf/ca/NCSBYfactsheet.pdf> (accessed March 21, 2013) (citing American Psychiatric Association, “Diagnostic and Statistical Manual of Mental Disorders (4th Edition), Washington, DC, 1994).

⁴⁵ Lisa Sandberg, “Texas Group Fights Sex Crime Stigma Members Call Unfair,” *Houston Chronicle*, December 14, 2008.

Committee who once helped push the tougher sex offender registration bills into law, admitted that he and his colleagues went too far. “We cast the net widely to make sure we got all the sex offenders ... it turns out that really only a small percentage of people convicted of sex offenses pose a true danger to the public.”⁴⁶

Does the Registry Prevent Sex Offenses?

Despite the massive growth in the number of registered sex offenders, studies of states that have implemented registration requirements are inconclusive as to whether the registries have any effect on the incidence of reported sex offenses. One study of 10 states with registries concluded that “the results do not offer a clear unidirectional conclusion as to whether sex offender notification laws prevent rapes.”⁴⁷ A study in New Jersey found that sex offense rates have been on a consistent downward trend since 1985, with the data showing that the greatest rate of decline in sex offending occurred prior to 1994 (the year registration laws were passed) and the least rate of decline occurred after 1995 (the year registration laws were implemented).⁴⁸ There are at least three flaws that help to explain the ineffectiveness of sex offender registries in deterring crime.

First, sex offender registries are focused on preventing recidivism, when instead the focus should be on deterring the first offense from ever happening.⁴⁹ The focus on recidivism is misguided because sex offenders are among the least likely to reoffend. Individuals labeled as “sex offenders” have extremely low recidivism rates when compared to persons convicted of robbery, non-sexual assault, burglary, larceny, motor vehicle theft, fraud, drug offenses, and public order offenses.⁵⁰ The only type of offense with lower recidivism rates is homicide.⁵¹

⁴⁶ Ibid.

⁴⁷ Jeffrey T. Walker et al., National Criminal Justice Reference Service (NCJRS), “The Influence of Sex Offender Registration and Notification Laws in the United States,” 2006, <https://www.ncjrs.gov/App/publications/Abstract.aspx?id=236182> (accessed March 21, 2013).

⁴⁸ Kristen Zgoba, et al., New Jersey Department of Corrections, Office of Policy & Planning, The Research & Evaluation Unit, “Megan’s Law: Assessing the practical and monetary efficacy,” 2008, <https://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf> (accessed April 20, 2013).

⁴⁹ As noted by Elizabeth Barnhill, the Executive Director of the Iowa Coalition against Sexual Assault, “The long-term solutions to eradicating sexual violence from our society, however, do not lie in measures taken to stop reoffense, but rather in preventing sexual violence from happening in the first place.” Elizabeth Barnhill, Testimony to Nebraska Judiciary Committee, February 16, 2006, http://legis.wisconsin.gov/lc/committees/study/2006/PLACE/files/murray2_place.pdf (accessed March 21, 2013).

⁵⁰ Bureau of Justice Statistics, “Recidivism of Prisoners Released in 1994,” Table 10: Rearrest Rates of State Prisoners Released in 1994, by most serious offense for which released and charge at rearrest, <http://bjs.gov/content/pub/pdf/rpr94.pdf> (accessed April 22, 2013) (giving the following percentages of prisoners rearrested within three years of release for the same type of offense: 1.2 percent for homicide, 2.5 percent for rape, 13.4

As discussed in detail in the following chapter, youth offenders, including youth sex offenders, have even lower rates of recidivism than adults. The emotion provoked by the sexual abuse of a child is powerful—powerful enough to make many overlook the embedded false presumptions and misperceptions about risks of reoffending, especially with regard to children who have committed sexual offenses against other children.⁵² But research indicates that these terrible crimes are extremely unlikely to be committed by an individual who was labeled a sex offender as a child.

Second, sex offender registration overburdens law enforcement. Detective Bob Shilling, a 29-year decorated veteran of the Seattle Police Department who spent 20 years as a detective in the Special Victim’s Unit, Sex and Kidnapping Offender Detail, for the Seattle Police, explained how his officers were required to make home visits to registered sex offenders. He stated that focusing attention and resources on an overly broad group of ex-offenders detracts attention from the smaller number of sexually violent offenses that occur, leaving communities vulnerable to sexual abuse, creating a false sense of security, and exhausting valuable resources by tracking the “wrong offenders”—that is, individuals not likely to ever reoffend sexually. The detective said, “the most recent laws dilute the effectiveness of the registry as a public safety tool, by flooding it with thousands of low risk offenders like children, the vast majority of whom will never commit another sex offense.”⁵³

Third, registration fails to target resources where they are most needed. Federal guidelines adopted under SORNA risk worsening the problem by mandating that states eliminate the use of risk assessment tools to help identify those offenders who are likely to reoffend. Instead, as noted above, the guidelines require states to use “crime of conviction” as the sole means to classify offenders. Detective Schilling described the focus on crime of conviction “inherently flawed,” because sex offenders differ greatly in their level of impulsiveness, persistence, risk to the community, and desire to change their deviant behavior. Assigning sex offender tiers based on crime of conviction provides very little

percent for robbery, 22 percent for non-sexual assault, 23.4 for burglary, 33.9 percent for larceny/theft, 11.5 percent for motor vehicle theft, 19 percent for fraud, 41.2 percent for drug offenses, and 31.2 percent for public order offenses).

⁵¹ Ibid.

⁵² Mark Chaffin, “Our minds are made up—don’t confuse us with the facts: Commentary on policies concerning children with sexual behavior problems and juvenile sex offenders,” *Child Maltreatment*, vol. 13, no. 2 (May 2008), pg. 114.

⁵³ Presentation by Bob Shilling, Annual National Juvenile Defender Center Leadership Summit, Seattle, Washington, October 18, 2011 (copy on file at Human Rights Watch).

information about who a sex offender is and what his or her risk for reoffense may be.⁵⁴ All of these factors add more nonviolent, lower risk offenders to the registry—including youth offenders. While the sex offender database grows exponentially, funding for monitoring sex offenders is on the decline.⁵⁵

A 2011 review of state sex offender registration legislation applied to child offenders found that only a small number of states were registering child sex offenders based *solely* upon the type of offense.⁵⁶ Most states that included child offenders in pre-SORNA registration schemes also designed safeguards to protect them, such as judicial discretion, consideration of individual circumstances, assessment of risk, or early termination of juvenile registration. The authors of the survey characterized these findings as noteworthy because “the need to comply with SORNA is pushing states in the opposite direction.”⁵⁷

⁵⁴ Detective Robert Schilling on “Barriers to timely Implementation of SORNA,” Testimony to US House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, March 10, 2009.

⁵⁵ William Pfeifer, “Too many registered sex offenders make dangerous sex offenders difficult to track,” *Legal News Examiner*, September 4, 2009, <http://www.examiner.com/article/too-many-registered-sex-offenders-make-dangerous-sex-offenders-difficult-to-track> (March 21, 2013).

⁵⁶ Carole J. Petersen and Susan M. Chandler, “Sex Offender Registration and the Convention on the Rights of the Child: Legal and Policy Implications of Registering Juvenile Sex Offenders,” *William & Mary Policy Review*, vol. 3, no. 1 (2011), pg. 11.

⁵⁷ *Ibid.*

II. Children Are Different

[C]hildren are constitutionally different from adults.... [J]uveniles have diminished culpability and greater prospects for reform ... [and] are less deserving of the most severe punishments.... [C]hildren have a lack of maturity and an underdeveloped sense of responsibility ... [c]hildren are more vulnerable ... to negative influences and outside pressures ... [a]nd ... a child's character is not as well formed as an adult's.

—*Miller v. Alabama*, United States Supreme Court, 2012 (No. 10 - 9646, slip op. at 8 (2012)).

Federal and state laws on sex offender registration and notification fail to take into account relevant—indeed, fundamental—differences between children and adults. These include not only differences in cognitive capacity, which affect their culpability, but also differences in their amenability to rehabilitation, in the nature of their sexual behaviors and offenses and in the likelihood that they will reoffend. Indeed recent laws, like the Adam Walsh Act, reserve the harshest punishments for those who target children without seeming to appreciate that child offenders, whose crimes almost always involve other kids, are particularly likely to be subjected to these harsher penalties. As noted by Berkeley law professor Frank Zimring, “nobody is making policy for 12-year-olds in American legislatures.... What they’re doing is they’re making crime policy and then almost by accident extending those policies to 12-year-olds—with poisonous consequences.”⁵⁸

Cognitive and Developmental Differences

It is axiomatic that children are in the process of growing up, both physically and mentally. Their forming identities make young offenders excellent candidates for rehabilitation—they are far more able than adults to learn new skills, find new values, and re-embark on a better, law-abiding life. Justice is best served when these rehabilitative principles, which are at the core of human rights standards, are at the heart of responses to child sex offending.

⁵⁸ Diane Jennings, “Franklin Zimring Objects to Juvenile Sex Offender Registration,” *The Dallas Morning News*, July 19, 2009.

Psychological research confirms what every parent knows: children, including teenagers, act more irrationally and immaturely than adults. Adolescent thinking is present-oriented and tends to ignore, discount, or not fully understand future outcomes and implications.⁵⁹ Children also have a greater tendency than adults to make decisions based on emotions, such as anger or fear, rather than logic and reason.⁶⁰ And stressful situations only heighten the risk that emotion, rather than rational thought, will guide the choices children make.⁶¹ Research has further clarified that the issue is not just the cognitive difference between children and adults, but a difference in “maturity of judgment” stemming from a complex combination of the ability to make good decisions and social and emotional capability.⁶²

Neuroscientists are now providing a physiological explanation for the features of childhood that developmental psychologists—as well as parents and teachers—have identified for years.⁶³ MRI (magnetic resonance imaging) images of the anatomy and function of the brain at different ages and while an individual performs a range of tasks reveal the immaturity of the portions of children’s brains associated with reasoning and emotional equilibrium.⁶⁴ It is in large part these developmental and cognitive differences that have caused the US Supreme Court to conclude that juveniles are “categorically less culpable” than adults when they commit offenses.⁶⁵

⁵⁹ See, for example, William Gardner and Janna Herman, “Adolescent’s AIDS Risk Taking: A Rational Choice Perspective,” in William Gardner et al., eds., *Adolescents in the AIDS Epidemic* (San Francisco: Jossey Bass, 1990) (“Adolescent’s AIDS Risk Taking”), pp. 17, 25-26; Marty Beyer, “Recognizing the Child in the Delinquent,” *Kentucky Child Rights Journal*, vol. 7 (Summer 1999), pp. 16-17.

⁶⁰ See Thomas Grisso, “What We Know About Youth’s Capacities,” in Thomas Grisso and Robert G. Schwartz, eds., *Youth on Trial: A Developmental Perspective on Juvenile Justice* (Chicago: University of Chicago Press, 2000), pp. 267-69 (reviewing literature on effects of emotion on children’s cognitive capacities).

⁶¹ See, for example, Kim Taylor-Thompson, “States of Mind/States of Development,” *Stanford Law and Policy Review*, vol. 14 (2003), p. 155, fn. 107-108 (reviewing research on effects of stress on juvenile decision-making) (“States of Mind/States of Development”).

⁶² Elizabeth Cauffman and Laurence Steinberg, “(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults,” *Behavioral Sciences and the Law*, vol. 18 (2000), p. 741; see also Laurence Steinberg, Elizabeth Cauffman, et al., “Age Differences in Sensation-Seeking and Impulsivity as Indexed by Behavior and Self-Report: Evidence for a Dual Systems Model,” *Developmental Psychology*, vol. 44 (2008), pp. 1764-1778; and M. Gardner and Laurence Steinberg, “Peer Influence on Risk Taking, Risk Preference, and Risky Decision making in Adolescence and Adulthood: An Experimental Study,” *Developmental Psychology*, vol. 41 (2005), pp. 625-635.

⁶³ See, for example, Jeffrey Arnett, “Reckless Behavior in Adolescence: A Developmental Perspective,” *Developmental Review*, vol. 12 (1992), p. 339; Charles E. Irwin, Jr., “Adolescence and Risk Taking: How are They Related?” in Nancy J. Bell and Robert J. Bell, eds., *Adolescent Risk Taking* (Thousand Oaks: SAGE Publications, January 1993), p. 7.

⁶⁴ See, for example, Jay N. Giedd et al., “Brain Development During Childhood and Adolescence: A Longitudinal MRI Study,” *Nature Neuroscience*, vol. 2 (1999), p. 861 (discussing an MRI study of the brains of 145 children, images taken up to five times per child over ten years); Kenneth K. Kwong, et al., “Dynamic Magnetic Resonance Imaging of Human Brain Activity During Primary Sensory Stimulation,” *Proceedings of the National Academy of Science*, vol. 89 (1992), p. 5675.

⁶⁵ *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

Moreover, the fact that young people continue to develop into early adulthood suggests that they may be particularly amenable to change.⁶⁶ “The reality that juveniles still struggle to define their identity,” noted the US Supreme Court in its 2005 *Roper v. Simmons* decision, “means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”⁶⁷ Both criminologists and development experts agree that “[f]or most teens, these [risky or illegal] behaviors are fleeting. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.”⁶⁸

Child Sexual Misconduct: A Distinct and Varied Set of Behaviors

The image of the adult sexual predator is a poor fit for the vast majority of children who commit sexual offenses. Children are not merely younger versions of adult sexual offenders.⁶⁹

Current science contradicts the theory that children who have committed a sexual offense specialize in sexual crime, nor is there any evidence of the kind of fixed, abnormal sexual preferences that are part of the image of a pedophile.⁷⁰ Although those who commit sex offenses against children are often described as “pedophiles” or “predators” and are assumed to be adults, it is important to understand that a substantial portion of these offenses are committed by other youth who do not fit such labels.

Dr. Marc Chaffin, a leading expert on child sexual offending behavior and professor of pediatrics at the University of Oklahoma Health Sciences Center, explains that “early thinking about juvenile sex offenders was based on what was known about adult child molesters, particularly adult pedophiles, given findings that a significant portion of them began their offending during adolescence.” However, current clinical typologies and models

⁶⁶ The malleability of a youth's brain development suggests that young people through their twenties may be especially capable of change as they grow older and attain adult levels of development. Laurence Steinberg et al., “The Study of Developmental Psychopathology in Adolescence: Integrating Affective Neuroscience with the Study of Context,” in Dante Cicchetti and Donald Cohen, eds., *Developmental Psychopathology* (Oxford: John Wiley & Sons, 2006), p. 727.

⁶⁷ *Roper v. Simmons*, 543 U.S. 551, 570 (2005).

⁶⁸ *Ibid.*

⁶⁹ J.V. Becker, “What we know about the characteristics and treatment of adolescents who have committed sexual offenses,” *Child Maltreatment*, vol. 3 (1998), pp. 317-329.

⁷⁰ Franklin E. Zimring, *An American travesty: Legal responses to adolescent sexual offending* (Chicago: University of Chicago Press 2004).

suggest that this assessment is flawed.⁷¹ In fact, empirical evidence, as discussed below, shows that if a history of child sexual offending is used to predict a person's likelihood of future sex offending, that prediction would be wrong more than nine times out of ten.⁷²

Compared to adult sexual offending, sexual misconduct by children is generally less aggressive, often more experimental than deviant, and occurs over shorter periods of time.⁷³ That said, there is considerable diversity in the sexual behaviors that bring children into clinical settings. Child sex offenses range from “sharing pornography with younger children, fondling a child over the clothes, [and] grabbing peers in a sexual way at school, [to] date rape, gang rape, or performing oral, vaginal, or anal sex on a much younger child.”⁷⁴ Enormous diversity also exists within the population of children who commit sex offenses.⁷⁵ One expert explains that the population includes:

⁷¹ David Finkelhor, Richard Ormrod, and Mark Chaffin, Office of Juvenile Justice and Delinquency Prevention, “Juveniles Who Commit Sex Offenses Against Minors,” December 2009 (citing Letourneau and Miner, 2005), <https://www.ncjrs.gov/pdffiles1/ojjdp/227763.pdf> (accessed March 21, 2013), p. 3.

⁷² Zimring, *An American travesty: Legal responses to adolescent sexual offending* (citing M.F. Caldwell, 2002); “What we do not know about juvenile sexual reoffense risk,” *Child Maltreatment*, vol. 7, pp. 291-203 (concluding, based on criminal justice cohorts analyzed by Franklin E. Zimring, that “more than nine out of ten times the arrest of a juvenile sex offender is a one-time event, even if the same offender may be apprehended in the future for the same mix of non-sexual offenses that is typical of other juvenile delinquents.”).

⁷³ David Finkelhor, Richard Ormrod, and Mark Chaffin, “Juveniles Who Commit Sex Offenses Against Minors,” p. 3.

⁷⁴ Ibid.

⁷⁵ M. Chaffin, “Our minds are made up—don’t confuse us with the facts: Commentary on policies concerning children with sexual behavior problems and juvenile sex offenders,” *Child Maltreatment*, vol. 13 (2008), pp. 110-121—citing studies including but not limited to: M.F. Caldwell, “Sexual offense adjudication and sexual recidivism among juvenile offenders,” *Sexual Abuse: A Journal of Research and Treatment*, vol. 19 (2007), pp. 107-113; M.F. Caldwell, “What we do not know about juvenile sexual reoffense risk,” *Child Maltreatment*, vol. 7 (2002), pp. 291-302; M. Carpentier, J.F. Silovsky, and M. Chaffin, “Randomized trial of treatment for children with sexual behavior problems: Ten-year follow-up,” *Journal of Consulting and Clinical Psychology*, vol. 74 (2006), pp. 482-488; M. Chaffin et al., *Report of the ATSA Task Force on Children with Sexual Behavior Problems* (Beaverton, OR: Association for the Treatment of Sexual Abusers, 2006); M. Chaffin and B. Bonner, “Don’t shoot, we’re your children: Have we gone too far in our treatment of adolescent sexual abusers and children with sexual behavior problems,” *Child Maltreatment*, vol. 3 (1998), pp. 314-316; J.A. Hunter et al., “Juvenile sex offenders: Toward the development of a typology,” *Sexual Abuse: Journal of Research & Treatment*, vol. 15 (2003), pp. 27-48; A.E. Kazdin and J.R. Weisz, “Identifying and developing empirically supported child and adolescent treatments,” *Journal of Consulting and Clinical Psychology*, vol. 66 (1998), pp. 19-36; E. Letourneau and M. Miner, “Juvenile sex offenders: The case against legal and clinical status quo,” *Sexual Abuse: A Journal of Research and Treatment*, vol. 17 (2005), pp. 293-312; R.E. Longo and D.S. Prescott, *Current perspectives: Working with sexually aggressive youth and children with sexual behavior problems* (Holyoke, MA: NEARI Press, 2006); J.K. Marques et al., “Effects of a relapse prevention program on sexual recidivism: Final results from California’s Sex Offender Treatment and Evaluation Project (SOTEP),” *Sex Abuse: Journal of Research and Treatment*, vol. 17 (2005), pp. 79-107; W. Marshall et al., “Early onset and deviant sexuality in child molesters,” *Journal of Interpersonal Violence*, vol. 6 (1991), pp. 323-335; R. Martinez, J. Flores, and B. Rosenfeld, “Validity of the Juvenile Sex Offender Assessment Protocol—II (JSOAP-II) in a sample of urban minority youth,” *Criminal Justice and Behavior*, vol. 34 (2007), pp. 1284-1295; M.J. O’Brien and W. Bera, “Adolescent sexual offenders: A descriptive typology,” *Newsletter of the National Family Life Education Network*, vol. 1 (1986), pp. 1-5; D. David Finkelhor, Richard Ormrod, and Mark Chaffin, Office of Juvenile Justice and Delinquency Prevention, “Juveniles Who Commit Sex Offenses Against Minors”; G.A. Parks and D.E. Bard, “Risk factors for adolescent sex offender recidivism: Evaluation of predictive factors and comparison of three groups based upon victim type risk factors for adolescent sex,” *Sexual Abuse: A Journal of Research and Treatment*, vol. 18 (2006), pp. 319-342;

Traumatized young girls reacting to their own sexual victimization; persistently delinquent teens who commit both sexual and nonsexual crimes; otherwise normal early-adolescent boys who are curious about sex and act experimentally but irresponsibly; generally aggressive and violent youth; immature and impulsive youth acting without thinking; so-called Romeo and Juliet cases; those who are indifferent to others and selfishly take what they want; youth misinterpreting what they believed was consent or mutual interest; children imitating actions they have seen in the media; youth ignorant of the law or the potential consequences of their actions; youth attracted to the thrill of rule violation; youth imitating what is normal in their own family or social ecology; depressed or socially isolated teens who turn to younger juveniles as substitutes for age-mates; seriously mentally ill youth; youth responding primarily to peer pressure; youth preoccupied with sex; youth under the influence of drugs and alcohol; youth swept away by the sexual arousal of the moment; or youth with incipient sexual deviancy problems.⁷⁶

Youth sex offenders come from a variety of social and family backgrounds.⁷⁷ In some cases, a history of childhood sexual abuse appears to contribute to child sexual offending behavior, but most child sex abuse survivors do not become sex offenders in adolescence or adulthood.⁷⁸ Some child offenders have experienced significant adversity, including maltreatment or exposure to physical violence; others have not.

Many of the sexual behaviors of youth are problematic, and need to be addressed in a clinical setting or by the justice system, but placing children who commit sex offenses on a registry—often for life— is going too far.

A.R. Piquero, T.E. Moffitt, and B.E. Wright, "Self-control and criminal career dimensions," *Journal of Contemporary Criminal Justice*, vol. 23 (2007), pp. 72-89; R. Prentky et al., "Risk management of sexually abusive youth: A follow-up study," Justice Resource Institute, 2002.

⁷⁶ M. Chaffin, "Our minds are made up—don't confuse us with the facts: Commentary on policies concerning children with sexual behavior problems and juvenile sex offenders," *Child Maltreatment*, vol. 13 (2008), pp.110-121.

⁷⁷ David Finkelhor, Richard Ormrod, and Mark Chaffin, "Juveniles Who Commit Sex Offenses Against Minors."

⁷⁸ Finkelhor, Ormrod, and Chaffin, "Juveniles Who Commit Sex Offenses Against Minors," citing I. Lambie et al., "Resiliency in the victim-offender cycle in male sexual abuse," *Sexual Abuse: A Journal of Research and Treatment*, vol. 14 (2002), pp. 31-48; C.S. Widom and M.A. Ames, "Criminal consequences of childhood sexual victimization," *Child Abuse and Neglect*, vol. 18 (1994), pp. 303-318.

Recidivism of Youth Sex Offenders

As noted above, there is no scientific foundation for the belief that children who commit sexual offenses pose a danger of future sexual predation.⁷⁹ Once detected, most adolescents who have engaged in sexually abusive behavior do not continue to engage in these behaviors.⁸⁰ Studies consistently find that adult sex offenses are committed by individuals not known to have been youth sex offenders.⁸¹

Recidivism rates for youth sex offenders are consistently low. One study that included a cohort composed mostly of youth convicted of violent sex offenses found a recidivism rate of 10 percent.⁸² Several studies have found recidivism rates for all youth sex offenders (violent and nonviolent offenses) at between four and seven percent, and one recent study found the rate to be as low as one percent.⁸³ A meta-analysis that reviewed 63 data sets reporting on the re-offense behavior of 11,219 youth sex offenders found an estimated mean sexual recidivism rate of 7.08 percent across a 5-year follow-up period.⁸⁴ These rates should be compared with a 13 percent recidivism rate for adults who commit sexual offenses⁸⁵ and a national recidivism rate of 40 percent for all criminal offenses.⁸⁶

⁷⁹ Franklin E. Zimring, *An American travesty: Legal Responses to Adolescent Sexual Offending* (Chicago: University of Chicago Press, 2004).

⁸⁰ Michael Caldwell, "Study Characteristics and Recidivism Base Rates in Juvenile Sex Offender Recidivism," *International Journal of Offender Therapy and Comparative Criminology*, vol. 54 (2010), pp. 197-212.

⁸¹ *Ibid.*, p. 207; Franklin E. Zimring et al., "The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study," December 2006, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=995918 (accessed November 30, 2011); see also Margaret A. Alexander, "Sexual Offender Treatment Efficacy Revisited," *Sexual Abuse: A Journal of Research and Treatment*, vol. 11 (1999), pp. 101-116.

⁸² Franklin E. Zimring et al., "The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study," June 21, 2007, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=995918 (accessed November 30, 2011) (some believe that studies report low sex re-offense rates because they sample offenders who commit minor, non-violent offenses; in this study, however, 77 percent of the youth had been convicted of violent sexual offenses.)

⁸³ Michael Caldwell, "Sexual Offense Adjudication and Recidivism Among Juvenile Offenders," *Sexual Abuse: A Journal of Research and Treatment*, vol. 19 (2007), pp. 107-113; Donna Vandiver, "A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults," *Journal of Interpersonal Violence*, vol. 21 (2006), pp. 673-688; E.J. Letourneau et al., "Do sex offender registration and notification requirements deter juvenile sex crimes?" *Criminal Justice and Behavior*, vol. 37 (2010), pp. 553-569. See also Finkelhor, Ormrod, and Chaffin, "Juveniles Who Commit Sex Offenses Against Minors," <https://www.ncjrs.gov/pdffiles1/ojdp/227763>, p.3 (noting that "multiple short and long-term clinical followup studies of juvenile sex offenders consistently demonstrate that a large majority (about 85-95 percent) of sex offending youth have no arrests or reports for future sex crimes.").

⁸⁴ Caldwell, "Study characteristics and recidivism base rates in juvenile sex offender recidivism," *International Journal of Offender Therapy and Comparative Criminology*, pp. 197-212.

⁸⁵ R. Karl Hanson and Monique T. Bussiere, "Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies," *Journal of Consulting and Clinical Psychology*, vol. 66(1998), pp.348-362.

⁸⁶ Pew Center on the States, "State of Recidivism: The Revolving Door of America's Prisons," April 2011, http://www.pewcenteronthestates.org/news_room_detail.aspx?id=85899358615 (accessed November 30, 2011). The 40

A 2007 study by University of California, Berkeley law professor Franklin Zimring found that youth sex offenders have “a low volume of sexual recidivism during their juvenile careers, and an even lower propensity for sexual offenses during young adulthood.”⁸⁷ Another study found that when youth sex offenders are re-arrested, it is “far more likely to be for nonsexual crimes such as property or drug offenses than for sex crimes.”⁸⁸ One of Zimring’s studies found that youths with five or more arrests for offenses other than sex offenses pose twice the risk of being arrested in adulthood for a sex offense than do youth sex offenders with fewer than five arrests.⁸⁹ Given the low rates of recidivism among youth sex offenders, Zimring points out that if the goal of sex offender registration is to compile a list of names of possible future sex offenders, it would be more effective to register youth offenders with five or more contacts with law enforcement for non-sexual offenses as potential future sex offenders than to register youth sex offenders.

percent recidivism rate applies to prison inmates released in 1999 who returned to prison within three years due to a new criminal conviction or for violating conditions of release.

⁸⁷ Franklin E. Zimring et al., “The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study,” June 21, 2007, http://papers.ssm.com/sol3/papers.cfm?abstract_id=995918 (accessed March 21, 2013).

⁸⁸ David Finkelhor, Richard Ormrod, and Mark Chaffin, “Juveniles Who Commit Sex Offenses Against Minors,” p.3 (citing Alexander, 1999; Caldwell, 2002; Reitzel and Carbonell, 2007).

⁸⁹ Franklin Zimring, “The Wages of Ignorance,” University of California, Berkeley School of Law, July 30, 2009, p. 12.

III. Who are Youth Sex Offender Registrants?

The enactment across the United States of increasingly comprehensive sex offender registration laws has brought predictable results: the number of individuals (adult and youth offenders) placed on sex offender registries has exploded. In February 2001, approximately 386,000 individuals nationwide were listed on sex offender registries.⁹⁰ By 2011, there were 747,408 registered sex offenders in the country.⁹¹

While it may be safe to assume that the number of registered youth offenders has expanded alongside adult registrants, there are no disaggregated national statistics on youth sex offenders. This chapter therefore contains information Human Rights Watch culled mainly from our interviews with 281 youth sex offenders and the family members of another 15 youth (comprising 296 cases).⁹² The interviewees were identified through chain-referral sampling (where attorneys, family members, advocates, and registrants recruit future subjects from among their networks), so the resulting data involves selection bias.⁹³ Even with that limitation, our interviews provide important insights into the backgrounds of many youth offenders on sex offender registries.

⁹⁰ Devon Adams, Bureau of Justice Statistics, "Summary of State Sex Offender Registries, 2001," March 1, 2002, <http://bjs.gov/content/pub/pdf/ss550r01.pdf> (accessed April 19, 2013).

⁹¹ "Number of Registered Sex Offender in the US Nears Three-Quarters of a Million," National Center for Missing and Exploited Children (NCMEC) press release, January 23, 2012. NCMEC is a 501(c)(3) nonprofit organization established in 1984, authorized by Congress and working in partnership with the US Department of Justice. It is a public-private partnership, funded in part by Congress and in part by the private sector, which has operated under Congressional authority as the national resource center and clearinghouse on missing and exploited children. NCMEC created the survey in 2006, following the enactment of the Adam Walsh Child Protection and Safety Act in July of that year. Each year since the survey was created, NCMEC contacts the sex offender registry in each state as well as registries located in the District of Columbia and five US territories (Puerto Rico, the US Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands). The US Virgin Islands, St. Thomas, and St. Croix maintain separate sex offender registries, bringing the total number of registries surveyed to 57. NCMEC has conducted 13 sex offender register surveys since 2006, and they were performed quarterly until 2009. Since then, they have been done twice each year.

⁹² Of these interviews, 281 were with the individuals themselves; 15 were conducted with family members of registrants.

⁹³ Since Human Rights Watch was seeking individuals willing to speak about the impact registration has had on their lives, it is impossible to know how those interviewed are similar or different from other registrants. Demographic information provided here is not generalizable to a larger population; it merely represents the experiences of the 296 individuals whose cases were examined in this report.

Age

Throughout the United States, children as young as nine years old who are adjudicated delinquent may be subject to sex offender registration laws. For example, in Delaware in 2011, there were approximately 639 children on the sex offender registry, 55 of whom were under the age of 12.⁹⁴ In 2010, Michigan counted a total of 3,563 youth offenders adjudicated delinquent on its registry, a figure that does not include Michigan's youth offenders convicted in adult court.⁹⁵ In 2010, Michigan's youngest registered sex offenders were nine years old.⁹⁶ A 2009 Department of Justice study, which focused only on sex crimes committed by children in which other children were the victims, found that one out of eight youth sex offenders committing crimes against other children was younger than 12.⁹⁷

Human Rights Watch recorded several important dates for each of the youth sex offenders interviewed for this report, allowing us to determine their age at conviction and the age they were first placed on the registry. The median age at conviction or adjudication was 15. The median age at first registration was 16. Eight interviewed registrants were age 10 or younger at the time of their conviction and when registration began, with the youngest being 9 years old. A full 84 percent of those interviewed by Human Rights Watch were 17 years old or younger when they began registering.

Offenses

Most jurisdictions mandate registration of children convicted of a wide range of sex offenses in adult court. The federal Sex Offender Registration and Notification Act (SORNA) expanded the range of sex offenses requiring registration.⁹⁸ Notably, it was expanded to include certain sex offenses committed by children adjudicated delinquent in juvenile court.⁹⁹ Under the Act, a "sex offense" includes offenses having "an element involving a

⁹⁴ Quyen Nguyen, Nicole Pittman, and Kirsten Rønholt, "Executive Report: A Snapshot of Juvenile Sex Offender Registration and Notification Laws," Pennsylvania Juvenile Defenders, July 27, 2011, <http://www.pajuvdefenders.org/file/snapshot.pdf>. (These figures were clarified by the Delaware Public Defender Juvenile Chief, Lisa Minutola, in July 2011).

⁹⁵ Ibid. (citing David A. Garcia, "Juveniles crowd Michigan Sex Offender Registry: More than 3,500 teen and pre-teen sex offenders on state list," *The Michigan Messenger*, February 10, 2010).

⁹⁶ Ibid. (citing Valerie Anderson, "Application of Mandatory Registration and Notification Laws to Juvenile Sex Offenders," unpublished manuscript, March 26, 2010).

⁹⁷ Finkelhor, Ormrod, and Chaffin, "Juveniles Who Commit Sex Offenses Against Minors," <https://www.ncjrs.gov/pdffiles1/ojdp/227763.pdf>.

⁹⁸ The Sex Offender Registration and Notification Act (SORNA) is Section 111 of the Adam Walsh Act Child Protection and Safety Act of 2006, codified at 42 U.S.C. §16911.

⁹⁹ 42 U.S.C.S. § 16911(8) (Lexis Nexis 2011).

sexual act or contact with another”;¹⁰⁰ “video voyeurism”; having possession, producing, or distributing child pornography; and “[a]ny conduct that by its nature is a sex offense against a minor.”¹⁰¹ The “sexual act[s]” or “contact” covered under SORNA include (i) oral-genital or oral-anal contact, (ii) any degree of genital or anal penetration, and (iii) direct genital touching of a child under the age of 16.¹⁰²

Implementation of registration, including the federal SORNA provisions, varies across jurisdictions, resulting in a wide variety of offenses and offenders triggering registration requirements. For example:

- In Kansas, any child convicted of a sex offense in adult court is subject to the same registration requirements as adults. Juveniles adjudicated delinquent for a sex offense in Kansas are also subject to registration for a long list of offenses including rape, indecent liberties with a child, criminal sodomy, indecent solicitation of a child, aggravated incest, electronic solicitation, and unlawful sexual relations. The list also includes attempt or conspiracy to commit the above crimes, criminal solicitation of the crimes, or “any act determined beyond a reasonable doubt to have been sexually motivated.”¹⁰³
- In Arkansas, the courts have discretion to order registration requirements for youth offenders convicted in adult court as well as children adjudicated delinquent for “any offense with an underlying sexually motivated component.”¹⁰⁴
- Maryland applies registration requirements to youth offenders convicted in adult court, but has different requirements for children adjudicated delinquent.¹⁰⁵

The following are examples of the wide range of offenses that can trigger registration requirements for youth sex offenders:

- In 2005, in Orange County, California, three boys were convicted of sexually assaulting a 16-year-old girl and videotaping the incident. The crime occurred when

¹⁰⁰ 42 U.S.C.S. § 16911(5)(A)(i) (Lexis Nexis 2011).

¹⁰¹ 42 U.S.C.S. § 16911(7)(F)-(I) (Lexis Nexis 2011).

¹⁰² 42 U.S.C.S. § 16911(8)(Lexis Nexis 2011).

¹⁰³ KANSAS STAT. ANN. § 22-4906(h)(1) (2011).

¹⁰⁴ ARK. CODE ANN. § 9-27-356(b)(1) (2011).

¹⁰⁵ MD. CODE ANN., CRIM. PROC. § 11-704.1(b)(1).

one of the boys was 16 and two were 17 years old. All three are subject to sex offender registration requirements.¹⁰⁶

- In 1997, in Texas, a 12-year-old boy pled guilty to aggravated sexual assault. He inappropriately touched a 7-year-old girl at his babysitter's house. After completing two years of juvenile probation and therapy, he had to register for ten years. He was finally removed from the registry at age 25.¹⁰⁷
- In 2004, in Western Pennsylvania, a 15-year-old girl was charged with manufacturing and disseminating child pornography for having taken nude photos of herself and posted them on the internet. She was charged as an adult, and as of 2012 was facing registration for life.¹⁰⁸
- In March 2010, in Bethlehem, Pennsylvania, an 18-year-old young man pled guilty to two felony counts of sexual assault and two of indecent assault, which will require him to register. The crimes occurred between October 2003 and December 2008, when the offender was between 11 and 16 years old, and involved multiple rapes of a six- or seven-year old girl and a six-year-old boy.¹⁰⁹
- In 2006, a 13-year old girl from Ogden, Utah was arrested for rape for having consensual sex with her 12-year-old boyfriend. The young girl, impregnated by her younger boyfriend at the age of 13, was found guilty of violating a state law that prohibits sex with someone under age 14. Her 12-year-old boyfriend was found guilty of violating the same law for engaging in sexual activity with her, as she was also a child under the age of 14 at the time.¹¹⁰
- In 2000, in New Jersey, then-12-year-old T.T. inserted a "douche" (feminine product) in his 6-year-old half-brother's anus on one occasion.¹¹¹ When asked why he did it, T.T. responded, "I don't know."¹¹² T.T. subsequently pled guilty to aggravated sexual

¹⁰⁶ Claire Luna, "3 Guilty of Sexual Assault in O.C. Gang-Rape Retrial," *Los Angeles Times*, March 24, 2005, <http://articles.latimes.com/2005/mar/24/local/me-haidl24> (accessed March 21, 2013).

¹⁰⁷ Human Rights Watch interview with Mason T., Pinehurst, Texas, April 27, 2012.

¹⁰⁸ Human Rights Watch telephone interview with Sheila F., Pittsburgh, Pennsylvania, September 28, 2012.

¹⁰⁹ Riley Yates, "Bethlehem Teen Sentenced for Rapes," *Morning Call*, March 3, 2010, http://articles.mcall.com/2010-03-03/news/all-a7_3gonzalez2.71939672mar03_1_unstable-childhood-giordano-assaulting (accessed March 21, 2013).

¹¹⁰ Human Rights Watch telephone interview with C.C., Utah, February 21, 2012; *State ex rel. Z.C.*, 2007 UT 54, 165 P.3d 1206 (2007). In 2011, the conviction requiring the young girl to register was reversed when the Utah Supreme Court concluded that while the children violated this particular law as it is worded, the law was not intended to apply to such cases.

¹¹¹ *In the Matter of Registrant T.T.*, 188 N.J. 321 (N.J. 2006): Application for Judicial Review of Notification (A-58-2005) NJ Appellate Division (2005).

¹¹² *Ibid.*

assault and was sent to a juvenile placement. After incarceration, T.T. was given three years of probation and required to register for life.

- In 1997, Stella A., a 17-year-old high school student, was arrested and pled guilty to sodomy for performing consensual oral sex on a 15-year-old male classmate.¹¹³ Stella was placed on probation and required to register on the state’s sex offender registry. Her photograph, address, and identifying information were publicly available for neighbors and the public to see.

The 296 cases examined for this report had a total of 352 convictions (often due to multiple charges arising from the same incident).¹¹⁴ For purposes of practicality, we grouped the convictions into 53 offense categories, based on similar offense descriptions. Sexual battery was the most common category of conviction, followed by “lewd lascivious molestation” and “unlawful criminal sexual contact.”

Offense Category	Number of Convictions	Percentage of Convictions
Sexual Battery	70	7.6%
Lewd Lascivious Molestation	38	4.1%
Unlawful Criminal Sexual Contact	34	3.7%
Sexual Assault	24	2.6%
Aggravated Sexual Assault – Child	21	2.3%
Sexual Abuse	13	1.4%
Rape	11	1.2%
Sodomy	10	1.1%
Sexual Battery (multiple counts)	10	1.1%
Indecency with a child – contact	10	1.1%
<i>There were an additional 111 convictions in 43 other crime categories</i>		
Total	352	

¹¹³ Human Rights Watch interview with attorneys for Stella A., Southern Center for Human Rights, Atlanta, Georgia, March 3, 2012; *Whitaker v. State*, 283 Ga. 521 (Ga. 2008).

¹¹⁴ Some individuals were convicted of multiple offenses in the same case, while others were convicted of crimes over a period of years. If an individual was convicted of multiple counts of the same crime, this was labeled as a “single conviction (multiple counts).” If there were two convictions with different codes, these were coded as separate offense categories.

Statutory Rape

When sexual interactions involve a non-consenting party, the sexual interactions are, by definition, abusive.¹¹⁵ In these circumstances, the person (adult or child) who forces sex is referred to as the “perpetrator” and the non-consenting person is recognized as a “victim” of sexual abuse.¹¹⁶ When it comes to child-on-child sexual behavior, the lines between “willingness” and “consent” often become blurred.¹¹⁷ A child may be “willing” to engage in sexual interactions with a peer, but however willing they may be in one sense, children do not have the psychological capacity to give consent.¹¹⁸ Therefore, in a state in which the legal age of consent is 14 years old, a 14-year-old female engaging in consensual sexual interactions with her 13-year-old neighbor is a crime. Under many current laws, she could be adjudicated delinquent and required to register as a sex offender.

Some children are convicted and required to register after engaging in allegedly consensual sex with other children. These cases, known as statutory rape cases, have received a great deal of press attention and have in some cases led states to reform their laws so that children convicted of statutory rape are not required to register.

The intent of sex offender registration and notification laws is to protect children from sexual victimization and exploitation by adults,¹¹⁹ and it was not the original intent of federal legislators to criminalize sexual interactions between adolescent peers when there is no evidence of coercion.¹²⁰ Unfortunately, such criminalization occurs all too frequently.

For instance, in Michigan, 17-year-old Alexander D. was convicted of criminal sexual conduct for having sex with his 15-year-old girlfriend.¹²¹ He has been registering as a sex offender since 2003. Alexander and his girlfriend met when they were freshmen in high school and dated for nearly a year before having sex. In Michigan, the legal age of consent is 16.¹²²

¹¹⁵ H.E. Barbaree, W.L. Marshall, and S.M. Hudson, eds., *The Juvenile Sex Offender* (New York: The Guilford Press, 1993).

¹¹⁶ *Ibid.*

¹¹⁷ *Ibid.*

¹¹⁸ B. Rind, P. Tromovitch, and R. Bauserman, “A Meta-Analytic Examination of Assumed Properties of Child Sexual Abuse Using College Samples,” *Psychological Bulletin*, vol. 124, no. 1 (1998), <http://digilib.bc.edu/reserves/sc563/mcgu/sc56310.pdf> (accessed March 21, 2013), pp. 22–53.

¹¹⁹ Barbaree, Marshall, and Hudson, *The Juvenile Sex Offender*.

¹²⁰ *Ibid.*

¹²¹ Human Rights Watch interview with Alexander D., Muskegon, Michigan, March 22, 2012.

¹²² Lee Higgins, “Young Pittsfield Township man struggles with the sex offender label,” *AnnArbor.com*, December 18, 2009, <http://www.annarbor.com/news/a-young-man-struggles-with-the-sex-offender-label/> (accessed March 21, 2013).

Alexander has been penniless, has lost jobs, and has been called a “pedophile” by passing strangers.¹²³ His girlfriend’s parents have written letters on his behalf, asking for his removal from the registry. However, Alexander will remain on the sex offender registry until the year 2028.

In Florida, an 18-year-old boy, Grayson A., had sex with his 15-year-old girlfriend. The girlfriend, Lily A., became pregnant and the couple got married. Despite their marriage, Grayson was arrested and subsequently convicted of “lewd or lascivious molestation.” Originally charged with rape, Grayson pled no contest to the lewd or lascivious molestation charge.¹²⁴ He served two years in prison and was required to register as a sex offender for life.¹²⁵ The couple, now ages 31 and 35, have two children together. In a 2009 interview, Grayson stated that he lost at least 17 jobs because of being on the sex offender registry.¹²⁶ Because his wife was also his victim, the couple could not live together. Grayson became homeless and ended up living in his car.¹²⁷ In 2008, the couple consulted a lawyer to challenge the impact the law was having on their family. In 2009, Attorney General Bill McCollum voted to pardon the conviction and remove Grayson from Florida’s registry.¹²⁸

¹²³ Human Rights Watch interview with Alexander D., March 22, 2012.

¹²⁴ Human Rights Watch interview with Bert Oram, attorney, Tallahassee, Florida, July 2009.

¹²⁵ Human Rights Watch interview with Grayson A., Panama City Beach, Florida, May 3, 2012.

¹²⁶ Bill Kaczor, “Crist delays decision on Florida ‘Romeo and Juliet’ Case,” *South Florida Sun-Sentinel*, June 11, 2009, <http://www.sun-sentinel.com/news/local/florida/sfl-romeo-juliet-sex-offender-061009,0,1939750.story> (accessed March 5, 2013).

¹²⁷ Human Rights Watch interview with Bert Oram, July 2009.

¹²⁸ Opinion Staff, “Sex Offender No More,” *The Palm Beach Post*, August 3, 2009, <http://blogs.palmbeachpost.com/opinionzone/2009/08/03/sex-offender-no-more/> (accessed April 19, 2013).

Date of Registration, Race, and Gender

States and local jurisdictions have had registration systems in place for more than two decades; however, with the advent of federal efforts to set minimum registration standards in 1994, followed by the passage of Megan’s Law in 1996, more and more youth offenders became subject to registration. With SORNA’s passage in 2006, registrations increased. Among those interviewed by Human Rights Watch for this report, the majority were first placed on sex offender registries between 2007 and 2011. Over 60 percent of the interviewees had been registered for five years or less at the time of our interviews with them.

Although there are no national statistics on the race and gender of youth offenders subject to sex offender registration, a 2009 Department of Justice study of youth offenders, examining 2004 data on youth offenders committing sex offenses against other children, found that 93 percent of the offenders were male.¹²⁹ The study did not examine the race of the youth offenders or their victims. Among the youth offenders interviewed by Human Rights Watch for this report, 96.6 percent were male, 60 percent were white, 31 percent were black, and 5.7 percent were Latino.

¹²⁹ Finkelhor, Ormrod, and Chaffin, “Juveniles Who Commit Sex Offenses Against Minors,” <https://www.ncjrs.gov/pdffiles1/ojdp/227763.pdf> (citing “Using the National Incident-Based Reporting System (NIBRS) to Investigate Juvenile Sex Offenders”).

IV. Registration of Youth Offenders in Practice

After they have served out their sentences in juvenile detention or prison, youth sex offenders must comply with a complex array of legal requirements applicable to all sex offenders, whether children or adults. Under sex offender registration laws, youth offenders must register with law enforcement, providing their name, home address, place of employment, school address, a current photograph, and other personal information.

Perhaps the most onerous aspects of registration from the perspective of the youth offender are the community notification and residency restriction requirements, which can relegate a youth sex offender who has served their time to the margins of society. Under community notification laws, the police make registration information accessible to the public, typically via the Internet. And under residency restriction laws, youth sex offenders are prohibited from living within a designated distance of places where children gather, such as schools, playgrounds, parks, and even bus stops. These requirements can apply for decades or even a youth offender's entire life.

Read in isolation, certain sex offender registration requirements may appear reasonable and insignificant to some. It is only once the totality of the requirements, their interrelationship, and their operation in practice are examined that their full impact can be understood.

Community Notification for Youth Offenders

Community notification involves publicizing information about persons on sex offender registries. States and the federal government provide information about sex offenders through publicly accessible websites. Communities are also notified about sex offenders in their area through public meetings, fliers, and newspaper announcements. Some jurisdictions have expanded notification to include highway billboards, postcards, lawn signs, and publicly available and searchable websites produced by private entities. One youth offender told Human Rights Watch, "I have to display a sign in my window that says 'Sex Offender Lives Here'."¹³⁰

¹³⁰ Human Rights Watch telephone interview with Nicholas T., August 26, 2012.

A series of newspaper clippings that a father of two sons has collected over the years. The two sons are listed on the public sex offender registry for offenses committed when they were ages 9 and 11, and they were often publicly named in the local newspapers. © 2013 Mariam Dwedar/Human Rights Watch.



Community notification was initially reserved for offenders classified as having a high risk of reoffending. But today, every jurisdiction that registers sex offenders also makes publicly available certain information about them, regardless of individual risk classifications and irrespective of the fact that a registrant was a youth offender.

Community notification, as the term is commonly understood, embraces both the public disclosure of registrants' information and the disclosure of the information to law enforcement officials only (the latter is often called "non-public" community notification). However, as discussed below, the capacity of states and law enforcement to protect the integrity of "non-public" community notification is eroding.

Public Disclosure of Child Registration Information

With the passage of SORNA in 2006, federal guidelines for community notification became more stringent, requiring that states post on publicly accessible websites the picture, home address, and location of the school and employer of certain categories of sex offenders—whether or not they were juveniles at the time of the offense. The state websites are linked together via the National Sex Offender Public Website (NSOPW).¹³¹

¹³¹ The National Sex Offender Public Website (NSOPW), located at www.nsopw.gov, was created by the US Department of Justice in 2005. The NSOPW works like a search engine by pulling information that is placed by states and local jurisdictions on their own public websites; it does not independently verify that information. US Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART), "Sex Offender Registration and Notification in the United States: Current Case Law and Issues," July 2012.

Since 2007, the number of states subjecting children to community notification via the internet has grown as jurisdictions passed legislation to come into compliance with SORNA.¹³² As noted by one expert, “[t]hat means on many state sex-offender web sites, you can find juveniles’ photos, names and addresses, and in some cases their birth dates and maps to their homes, alongside those of pedophiles and adult rapists.”¹³³

The Department of Justice (DOJ) received hundreds of critical public comments about the treatment of children as adults for purposes of public notification.¹³⁴ Perhaps as a result, under the Supplemental SORNA Guidelines issued on January 11, 2011, DOJ allowed “jurisdictions to use their discretion to exempt information concerning sex offenders required to register on the basis of a juvenile delinquency adjudication from public Web site posting.”¹³⁵ However, as of January 2013, not one state previously deemed in compliance with SORNA went back to amend its laws to exempt children from public disclosure.¹³⁶

¹³² To the best of our knowledge, it appears that seven states (Florida, Louisiana, Maryland, Mississippi, Nevada, Tennessee, and Wyoming) changed their laws between 2007 and 2012 to require that children be subjected to community notification via the internet. In December 2012, Pennsylvania enacted SORNA and included children on the registry for the first time; however, the new law does not require children to be posted on the web.

¹³³ Maggie Jones, “How Can You Distinguish a Budding Pedophile From a Kid With Real Boundary Problems?” *New York Times Magazine*, July 22, 2007 (interviewing Brenda V. Smith, author of *Breaking the Code of Silence: A Correction Officer’s Handbook on Identifying and Addressing Staff Sexual Misconduct with Offenders*, US Department of Justice, National Institute of Corrections Project on Addressing Prison Rape, DC (June 2007)).

¹³⁴ 76 F.R. 1632. Official Public Comments to the National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030, July 2, 2008, <https://www.federalregister.gov/articles/2011/01/11/2011-505/supplemental-guidelines-for-sex-offender-registration-and-notification#h-9> (accessed March 21, 2013). Several comments focused on how, as a society, Americans generally refuse to punish the nation’s youth as harshly as they do other adults, or to hold them to the same level of culpability as people who are older and more mature. The avowed priority of the US juvenile justice system (in theory if not always in practice) has, historically, been rehabilitation rather than retribution. Juvenile proceedings by and large take place away from the public eye, and delinquency adjudications do not become part of a young person’s permanent criminal record.

¹³⁵ 42 U.S.C. §16901 (2006), *et seq.* All United States Code references are current as of December 2012. Two sets of guidelines have been issued to assist in the implementation of SORNA. The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030 (July 2, 2008) [*hereinafter* Final Guidelines], and the Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1630 (Jan. 11, 2011) [*hereinafter* Supplemental Guidelines]. SORNA’s minimum standards require that jurisdictions register juveniles who were at least 14 years old at the time of the offense and who have been adjudicated delinquent for committing (or attempting or conspiring to commit) a sexual act with another by force, by the threat of serious violence, or by rendering unconscious or drugging the victim. “Sexual Act” is defined in 18 U.S.C. §2246. The Supplemental Guidelines for Sex Offender Registration and Notification give jurisdictions full discretion over whether they will post information about juveniles adjudicated delinquent of sex offenses on their public registry website. Supplemental Guidelines, *supra* note 6 at 1636-37.

¹³⁶ United States Governmental Accountability Office, GAO-13-211 Report on the Sex Offender Registration and Notification Act to the US House of Representatives, Committee on the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security, February 2013.

As of 2011, most jurisdictions subjected children convicted of sex offenses in adult court to the same community notification regimes as adult sex offenders.¹³⁷ Fourteen states apply the same notification standards applied to adults to both children convicted in adult court and children adjudicated delinquent of sex offenses.¹³⁸ Other states give judges some discretion over which youth sex offenders are subject to community notification. Some jurisdictions permit youths to petition to be removed after a number of years. In some states, a juvenile adjudicated delinquent has to be 14 to be listed on public sex-offender registries. In others, children may be eligible for public Internet community notification at age 10, 11, or 12.¹³⁹ Handling of photographs varies as well by state: some jurisdictions do not post the picture of children unless they reoffend, while others post the image of a child upon their initial registration at ages as young as 9, 10, 12, or 14.

“Non-Public” Notification

Even in jurisdictions requiring disclosure of registry information only to law enforcement agencies (also known as “non-public” disclosure), a child’s information and picture can be, and often is, still disseminated publicly. Members of the public can obtain information on non-public registrants upon request and, with a few clicks of a button, widely disseminate a child’s photograph and personal information.

Youth sex offender registrants interviewed for this report described various ways in which their photographs and personal information were made public even when not posted on official state sex offender registration websites:

- Nicholas T. was placed on the registry at the age of 16 for the attempted rape of a younger neighbor.¹⁴⁰ He stated that “a member of the community made flyers that said ‘Beware – Sex Offender in the Neighborhood.’ The flyers, with my grade school picture, offense, and address, were posted all over the place.”¹⁴¹

¹³⁷ Quyen Nguyen, Nicole Pittman, and Kirsten Rønholt, “Executive Report: A Snapshot of Juvenile Sex Offender Registration and Notification Laws,” Pennsylvania Juvenile Defenders, July 27, 2011, <http://www.pajuvdefenders.org/file/snapshot.pdf> (accessed March 21, 2013), pp. 44-53.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Human Rights Watch telephone interview with Nicholas T., August 26, 2012.

¹⁴¹ Ibid.

- “My son, [Max B.], started registering at the age of 10 when he was found guilty of inappropriately touching his 8-year-old sister. The local police assured us that they would allow him to register as a non-public registrant until he turned 12. However, a few months after [Max] went on the registry, the local newspaper ran a Halloween story entitled ‘Know where the Monsters are Hiding,’ warning families to beware of the registered sex offenders in the neighborhood when taking their little ones out to go trick-or-treating. The article listed all the sex offenders in our town. [Max’s] name and address was listed.”¹⁴²
- The police in a small town in Illinois created a “Wall of Shame” containing photographs, names, and addresses of all the registered sex offenders in the area, including child registrants and those deemed low-risk and subject to law-enforcement registration only. People from the town frequently visit the police station to check out the wall of shame.¹⁴³

Official sex offender registration information is also available for purchase or use by private security companies, which sometimes create their own searchable web-based sex offender registries. Companies such as Offendex (also known as The Official Sex Offender Archive©) and HomeFacts (also known as RealtyTrac Holdings, LLC™) transfer all state sex offender registration information, including registrant pictures and addresses, to their websites, iPhone/Droid Android applications, or Facebook, to be searched freely by anyone. These companies appear to take no responsibility for deleting records of persons removed from the registry.¹⁴⁴ The Offendex website indicates that the company distinguishes itself from official government records because it includes “both current and past sex offender records nationwide.”¹⁴⁵ Stating that “[e]ven if the sex offender is not required to register that does not mean the record itself goes away [sic]. The information is still public and available through many court and private databases nationwide.”¹⁴⁶

¹⁴² Human Rights Watch interview with Bruce W., Texas, May 1, 2012.

¹⁴³ Human Rights Watch telephone interview with Mary S., February 22, 2012.

¹⁴⁴ A disclaimer on the HomeFacts website states, “No representation is made that the person listed here is currently on the state’s offenders registry.... Owners of Homefacts.com assume no responsibility (and expressly disclaim responsibility) for updating this site to keep information current or to ensure the accuracy or completeness of any posted information.” HomeFacts, <http://www.homefacts.com/offenders.html> (accessed March 21, 2013).

¹⁴⁵ See HomeFacts “Terms of Use,” <http://www.homefacts.com/termsofuse.html> (accessed March 21, 2013).

¹⁴⁶ See, for example, Offendex home page, <http://offenders.offendex.com/> (accessed March 21, 2013).

A newspaper clipping that a father retained regarding the location of sex offenders on Halloween. According to the law, on Halloween registered sex offenders must remain inside their homes, turn the porch light off, and place a sign in their yard that states, "No candy at this residence." Local police officers also make home visits to ensure compliance. © 2013 Mariam Dwedat/Human Rights Watch.



Maya R.

Maya R., now age 28 and a resident of Michigan, was arrested at the age of 10 for sexual experimentation. "Me and my step brothers, who were ages 8 and 5, 'flashed' each other and play-acted sex while fully-clothed."¹⁴⁷ A year later, Maya pled guilty to the charges of criminal sexual conduct in the first and second degree, offenses that required her to register as a sex offender for 25 years.¹⁴⁸ In court proceedings, Maya told the judge that she engaged in sexual activity with both boys. However, she says she lied in court to get away from her stepmother.¹⁴⁹

Maya was committed to a girl's juvenile prison and spent 18 months there. "I successfully completed the treatment program and was released back into the community."¹⁵⁰ Upon her return, she says, she felt like a stranger. "[W]hen I was arrested I was in the sixth grade. When I returned from prison I was in the ninth grade. I was on probation from 1998 to 2002 while I attended high school. I also wrote for my school's newspaper, sang in the choir, performed in theatre, was involved with Students Against Drunk Driving (SADD), and was the president of Diversity Club."¹⁵¹

¹⁴⁷ Human Rights Watch interview with Maya R., Howell, Michigan, February 2, 2012; at the time of the offense, second-degree criminal sexual conduct was defined as indecent exposure such as public urination, public nudity (flashing breasts etc.), and lewd behavior in public and a violation of Mich. Crim. Laws § 750.520c(1)(b).

¹⁴⁸ Human Rights Watch interview with Maya R., March 18, 2013.

¹⁴⁹ Ibid.; see Katie Walmsley, "NJ Case Raises Questions About Meghan's Laws," ABC News, July 27, 2011, <http://abcnews.go.com/US/nj-case-raises-questions-meghans-laws/story?id=14171897> (accessed March 21, 2013).

¹⁵⁰ Human Rights Watch interview with Maya R., March 18, 2013.

¹⁵¹ Ibid.

In 1999, when Maya turned 18, her photograph and name were added to the state sex offender public website.¹⁵² In Michigan all children, whether adjudicated delinquent in juvenile court or tried as adults, must register.¹⁵³ While children adjudicated delinquent are still under 18 years of age, juvenile registration and included materials are exempt from the public notification requirements.¹⁵⁴ However, *public* registration is required when the child, adjudicated for certain sexual offenses, turns 18 years old.¹⁵⁵ As a result of being placed on the public registry, Maya was fired from her job. “Despite the setback, I graduated high school in 2002 with academic and leadership honors and took the next step of applying to college.” she said.¹⁵⁶

In her freshman year of college, Maya lived in the campus dormitory. She says she “found angry messages taped to her dorm room door and received threatening instant messages.”¹⁵⁷ She eventually had to move out of the dorm. “Even more stressful than students in the dorms telling me to ‘move out or else,’ was the constant inability to find and keep employment.”¹⁵⁸ Maya moved into off campus housing but quickly ran out of money and could not get a job. Maya said she was forced to drop out of college. “Without student loans to survive off of, I lived in a homeless shelter for about 90 days. I was told by managers at Subway, Burger King, and McDonalds, ‘We don’t hire sex-offenders,’ I was without a car, and also could not afford a cell phone.”¹⁵⁹

Maya told us, “Being on the registry has caused much stress and frustration in my life. The laws make it very difficult for me locate places where I can live. Once while attempting to register my address, a police officer refused to give me the paperwork and instead stated, ‘We’re just taking your kind out back and shooting them.’ This comment, coupled with not being able to get an internship, or a job, all contributed to me falling into a depression, which still comes and goes depending on the discrimination I experience each day.”¹⁶⁰

Despite her the sex offender label, Maya continued to try to find ways to succeed. She worked as a missionary and taught English overseas. While abroad, she fell in love and married a Filipino man. As of early 2013, Maya and her husband were living in Michigan with a two-year-old girl and a baby boy on the way.

¹⁵² Ibid.

¹⁵³ Michigan Compiled Laws (MCL) § 28.721, et seq. describes confidentiality; exemption from disclosure of juvenile offenders.

¹⁵⁴ See MCL 28.728(2) and *In re Ayres*, 239 Mich App 8, 12 (1999).

¹⁵⁵ See MCL 28.728(2) and *In re Ayres*, 239 Mich App 8, 12 (1999).

¹⁵⁶ Human Rights Watch interview with Maya R., March 18, 2013.

¹⁵⁷ Ibid.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ Human Rights Watch interview with Maya R., March 18, 2013.

Residency and Zoning Restrictions

Officials in many jurisdictions have imposed residency and zoning restrictions on registered sex offenders, including children.¹⁶¹ Local ordinances prohibit registrants from residing in or traveling within a certain distance of schools, day care centers, parks, and other locations where children commonly congregate.¹⁶²

Yet research on the effectiveness of residency restrictions imposed on adult sex offenders offers no indication that these laws achieve their intended goals of preventing abuse, protecting children, or reducing reoffending.¹⁶³ For example, recidivism by adult sex offenders is not more likely to occur near schools.¹⁶⁴ Rather, abuses happen when adults are able to establish relationships with children and their families and misuse positions of familiarity, trust, and authority.¹⁶⁵ Children are most likely to be assaulted by people they know, not strangers lurking in schoolyards.

¹⁶¹ Richard Tewksbury, "Collateral consequences of sex offender registration," *Journal of Contemporary Criminal Justice*, vol. 21 (2005), pp. 82-90; see, for example Cal. Penal Code §3003.5 (2012); Idaho Code § 18-8329 (2012); 57 Okla. Stat. §590 (2012).

¹⁶² Paul A. Zandbergen, Jill S. Levenson, and Timothy C. Hart, "Residential proximity to schools and daycares: An empirical analysis of sex offense recidivism," *Criminal Justice & Behavior*, vol. 37, no. 5 (May 2010).

¹⁶³ Richard Tewksbury and Wesley G. Jennings, "Assessing the Impact of Sex Offender Registration and Community Notification on Sex Offending Trajectories," *Criminal Justice and Behavior*, vol. 37, no. 5 (2010), pp. 577-580 (comparing the number of charges filed for sex offenses with minor victims in the 12 months prior to the enforcement of the Iowa residency restriction with the number of charges filed within 24 months after implementation. No reduction in sex crime rates was detected; in fact, follow-up revealed that the number of charges steadily increased each year. Furthermore, when the distances to places where children commonly congregate were considered along with other risk factors, proximity was not a significant predictor of recidivism among registrants.); Paul A. Zandbergen and Timothy C. Hart, "Geocoding accuracy considerations in determining residency restrictions for sex offenders," *Criminal Justice Policy Review*, vol. 20, no. 1 (March 2009), pp. 62-90 (concluding that individuals in Florida on the sex offender registry who lived closer to schools and daycares were not more likely to reoffend, and living farther from schools and daycares did not diminish the probability of sexual reoffending); Zandbergen, Levenson, and Hart, "Residential proximity to schools and daycares: An empirical analysis of sex offense recidivism," *Criminal Justice & Behavior* (examining whether a broader local buffer zone was more effective in protecting children than the state's 1,000-foot restriction. The authors of the study were unable to find evidence that a larger buffer zone of 1,500 or 2,000 feet was more effective in protecting children than the state's 1,000-foot restriction.).

¹⁶⁴ J.L. Schulenberg, "Predicting noncompliant behavior: Disparities in the social locations of male and female probationers," *Justice Research and Policy*, vol. 9, no. 1 (2007), pp.25-57; G.M. Willis and R.C. Grace, "Assessment of community reintegration planning for sex offenders: Poor planning predicts recidivism," *Criminal Justice and Behavior*, vol. 36 (2009), pp. 494-512; P.A. Zandbergen and T.C. Hart, "Reducing housing options for convicted sex offenders: Investigating the impact of residency restriction laws using GIS," *Justice Research and Policy*, vol. 8, no. 2 (2006), pp. 1-24; Zandbergen et al., "Residential proximity to schools and daycares: An empirical analysis of sex offense recidivism," *Criminal Justice & Behavior*, vol. 37, no. 5 (2010).

¹⁶⁵ According to the Justice Department, 93 percent of sexually abused children are molested by family members, close friends, or acquaintances. US Department of Justice, Bureau of Justice Statistics, "Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics (No. NCJ 182990)," 2000.

In 2002, Iowa enacted a law that prohibits sex offenders from living within 2,000 feet of a school or daycare center. The executive director of the Iowa County Attorneys Association, Corwin R. Ritchie, said that the law “has overburdened law enforcement, has concentrated sex offenders in areas where they are allowed to live and has led to an increase in the number of sex offenders who have stopped registering with local authorities and gone missing.¹⁶⁶ Further, Ritchie contended, “I defy anyone to try and convince me, scientifically or logically that those requirements have any affect at all. It makes great sense politically, but has no affect [sic] whatsoever on public safety.”¹⁶⁷

Because residency restrictions have such questionable utility in deterring offenses committed by adults, there is little reason to expect they would deter children from committing sex offenses. Meanwhile, sex offender residency restrictions have been shown to increase transience, homelessness, and instability.¹⁶⁸

Duration of Registration

The duration of registration required of youth offenders convicted in adult court is, in most states, the same as that required of adults. But children adjudicated delinquent are often subject to shorter requirements or may petition to be removed from the registry. Federal SORNA, however, is changing the required minimum duration of registration, establishing a “tier” system based on the offense (whether criminal conviction or adjudication in juvenile court), with Tier I offenses having the lightest and Tier III the most stringent requirements. Under SORNA, children convicted of offenses categorized in Tier III are

¹⁶⁶ Peter Whoriskey, “Some Curbs on Sex Offenders Called Ineffective, Inhumane,” *Washington Post*, November 22, 2006, http://www.washingtonpost.com/wp-dyn/content/article/2006/11/21/AR2006112101468_pf.html# (accessed March 21, 2013).

¹⁶⁷ *Ibid.*

¹⁶⁸ A recent study in three states, including Florida, has shown that most citizens live within 2,500 feet of a school, park, daycare, or bus stop, and therefore as distance buffers grow, compliant housing for individuals on registries becomes harder to find. Preliminary data from Broward County, Florida illustrated that cities with larger buffer zones had significantly lower numbers of compliant dwellings. Broward Sex Offender & Sexual Predator residence Task Force Report, July 2009. See also “Final Report: Broward Sex Offender & Sexual Predator Residence Task Force Report,” July 2, 2009, <http://www.ovsom.texas.gov/docs/FL-Residence-Task-Forc-%20Final-Report-August-2009.pdf> (accessed April 23, 2013), p. 26 (These facts raised concern for Broward county commissioners because in the State of Florida, registrants who cannot find housing may be forced to register as “transient” or “homeless.”). In 2009 Broward County Commissioners appointed a task force in an effort to research and anticipate the possible outcomes of increased residency restrictions. The task force, made up of various stakeholders in the community, held differing views and perspectives. However, they agreed on two issues: “that children need to be protected from sexual abuse, and that a public policy should not cause any human being—even a sex criminal—to face homelessness.” The task force made clear in their report that their findings and conclusions were not motivated by sympathy for “sex offenders or a lack of concern for children.” They stated that their main objective was simply to inform the development of effective strategies to better protect communities from the threat of sexual violence.

required to register for life. The following are two examples of youth offenders subject to lifetime registration requirements:

- In New Jersey in 1995, ten-year-old J.G. pled guilty in juvenile court to second-degree sexual assault of his cousin, an eight-year-old girl. J.G. received a suspended sentence on condition that he attend a family therapy program and not be left unsupervised with young children. J.G. got into no further trouble. But 16 months after successfully completing treatment, J.G. was notified that under New Jersey's newly enacted "Megan's Law," he would be required to register with local police as a sex offender for the rest of his life.¹⁶⁹
- In Texas, a juvenile court found ten-year-old Gabriel P. guilty of indecency with a child (touching) in an incident in which he and his two friends were playing with a seven-year-old cousin. He is subject to lifetime registration.¹⁷⁰

Even when registration is limited in duration, youth offender registrants can experience severe difficulties and high costs in purging their information from the registry. One told Human Rights Watch, "My 10 years of registration was supposed to end on September 27, 2012. It is now 2013 and I am still on the state website and all those other registration sites. I feel like it will never end."¹⁷¹ Another told us, "Even though the law stated that I was to be removed from the registry, I had to pay over \$3,000 in fees to have my name completely removed from all the various websites."¹⁷²

¹⁶⁹ *In re Registrant J.G.*, 169 N.J. 304, (2001).

¹⁷⁰ Human Rights Watch interview with Gabriel P., Bryan, Texas, May 2, 2012.

¹⁷¹ Human Rights Watch interview with Diego G., Houston, Texas, May 2, 2012; and telephone interview, January 5, 2013.

¹⁷² Human Rights Watch interview with Nolan L., Ypsilanti, Michigan, April 2, 2012.

V. Life on the Registry

Sex offender registration and notification laws impose harsh, sometimes debilitating, and often lifelong sanctions on children convicted or adjudicated guilty of sex offenses. Many of the individuals interviewed for this report described being placed in a juvenile facility for a few years after being found guilty of the underlying sex offense; those convicted as adults spend time in adult prison. When they return to their communities as teenagers or young adults, they are already significantly behind their contemporaries in education, socialization, establishing stable family relations, and developing employment skills. Yet, required to register as sex offenders, they soon learn they face further obstacles that may be nearly impossible to overcome.

As we document below, youth placed on registries are often ostracized, threatened, and subject to strict residency requirements. Many are in effect banished from their neighborhoods, prevented from attending school, and subjected to restrictions that “potentially permeate every aspect of their lives.”¹⁷³ The following sections offer a portrait of life as a youth sex offender growing up on the sex offender registry.

Psychological Impact

Stigmatization and Isolation

Adolescence is a developmental period characterized by identity formation.¹⁷⁴ Labels stick and can last a lifetime. The label of “sex offender,” “child molester,” or “sexually violent predator” can cause profound damage to a child’s development and self-esteem.¹⁷⁵ Stigmatization can also lead to fear or mistrust by others, suspicion, rejection, or isolation from family and friends.

¹⁷³ *Smith v. Doe*, 538 U.S. 84, 84 (2003) Brief for Office of the Public Defender for the State of New Jersey et al. as Amici Curiae 7-21; Citing *E.B. v. Verniero*, 119 F.3d 1077 (3d Cir.1997).

¹⁷⁴ M. Chaffin and B. Bonner, “Don’t shoot, we’re your children: Have we gone too far in our response to adolescent sexual abusers and children with sexual behavior problems?” *Child Maltreatment*, vol. 3, no. 4 (1998), pp. 314–316.

¹⁷⁵ See Franklin E. Zimring and et al., “Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?” *Criminology and Public Policy*, vol. 6, no.3 (2007), pp. 507-534.

These harms are compounded by the shame that comes with registration and notification, which often lacks an endpoint.¹⁷⁶ Subjecting alienated and confused youth sex offenders to long-term public humiliation, stigmatization, and barriers to education and employment exacerbates the psychological difficulties they already experience.

Among the 281 youth offenders and family members of 15 additional youth offenders interviewed for this report, most (250 people, or 84.5 percent) described negative psychological impacts that they attributed to their status as a registrant, such as depression, a sense of isolation, difficulty forming or maintaining relationships, and suicide ideation. Nearly a fifth of those interviewed (58 people, or 19.6 percent) said they had attempted suicide; three of the registrants whose cases we examined did commit suicide.

The following are examples of the psychological harm youth offenders experience:

- Christian W. was 14 years old when he went on the registry for sexually inappropriately touching his younger cousin. At age 26, Christian told Human Rights Watch, “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. The stigma and shame will never fully go away, people will always remember. The consequences will always be there even if one could eventually get off the registry.”¹⁷⁷
- “As a female, I feel like a piece of meat when I have to go update my registration. I think they assume that because I am on the registry I am easy.”¹⁷⁸
- “He’s changed.... [H]e is angry and depressed. I’m afraid this shame and stigma is more than my son can stand.”¹⁷⁹
- “I have been registering since I was 12 years old. I am now 26. Sex offender registration is slow death by humiliation.”¹⁸⁰
- “The police always expect you are the worst of the worst sex offenders and so they treat you that way. Most of them look down on you as if you are the scum of the earth.”¹⁸¹

¹⁷⁶ See note, “Shame, Stigma, and Crime: Evaluating the Efficacy of Shaming Sanctions in Criminal Law,” *Harvard Law Review*, vol. 116, no. 7 (May 2003), pp. 2186-2207.

¹⁷⁷ Human Rights Watch telephone interview with Christian W., June 2, 2012.

¹⁷⁸ Human Rights Watch interview with Jocelyn K., Dover, Delaware, June 3, 2012.

¹⁷⁹ Human Rights Watch interview with mother of Chase V., Florida, May 27, 2012.

¹⁸⁰ Human Rights Watch interview with Joshua Gravens, Dallas, Texas, April 29, 2012.

¹⁸¹ Human Rights Watch interview with Elijah B., Houston, Texas, April 28, 2012.

- A 16-year-old who has been on the registry in Louisiana for two years told us, “for sex offenders, our mistake is forever available to the world to see. There is no redemption, no forgiveness. You are never done serving your time. There is never a chance for a fresh start. You are finished. I wish I was executed because my life is basically over.”¹⁸²

Typically, children and adolescents have difficulty navigating close interpersonal relationships. Because of the stigma associated with sex offenders, registration laws place youth offender registrants’ personal relationships “in grave jeopardy.”¹⁸³ For example, Dominic G. was placed on the registry for an offense committed when he was 13. Now age 22, he is still on the registry and on sex offender parole, which means that anyone he wants to talk to, by phone or in person, is required to first fill out a form and obtain approval by his parole officer.¹⁸⁴ Another youth offender told Human Rights Watch, “I’m a ghost. I can’t put my name on a lease, I never receive mail. No one cares if I am alive. In fact, I think they would prefer me dead.”¹⁸⁵

The alienation that emerges from a system set up to regulate personal relationships can thwart healthy development in young people. By contrast, young people who are encouraged to connect with their communities and family members “build hope, a sense of control over one’s environment, expectations for success in school and work,” and a chance for healthier development.¹⁸⁶

Suicide

Human Rights Watch found that, left with little hope of ever leading a normal life, some youth offenders on the registry opted for what they may have viewed as the only remaining route of escape—suicide. One expert told us, “Suicide [among children placed on sex offender registries] is a possibility ... even predictable.”¹⁸⁷

¹⁸² Human Rights Watch interview with Austin S., Denham Springs, Louisiana, March 2012.

¹⁸³ *Smith v. Doe*, 538 U.S. 84, 84 (2003) Brief for Office of the Public Defender for the State of New Jersey et al. as Amici Curiae 7-21; citing *Otte*, 259 F.3d at 987.

¹⁸⁴ Human Rights Watch interviews with Grace N., grandmother of Dominic G., San Antonio, Texas, November 23, 2012; and with Dominic G., San Antonio, Texas, November 23, 2012.

¹⁸⁵ Human Rights Watch interview with Elijah B, April 28, 2012.

¹⁸⁶ See Mark W. Fraser, “Aggressive Behavior in Childhood and Early Adolescence: an Ecological-Developmental Perspective on Youth Violence,” *Social Work*, vol. 347 (July 1, 1996).

¹⁸⁷ See Abigail Goldman, “Young, But ‘Predators’ for Life: New Sex Offender Laws, Meant to Protect, May Instead Ruin Lives and Increase Risks,” *The Las Vegas Sun*, January 6, 2008, <http://www.lasvegassun.com/news/2008/jan/06/young-but-predators-for-life/> (accessed April 22, 2013).

A registrant told Human Rights Watch, “I attempted suicide when I was 20 due to an article printed in the newspaper about my case. I was just a kid.”¹⁸⁸ Another said, “I sometimes pray that I won’t wake up the next day.”¹⁸⁹ A third said, “when I was 19 I slit both wrists. I would have bled to death if my friend hadn’t found me.”¹⁹⁰

Parents described how their children were flooded by feelings of despair when they realized that the “sex offender” label would stay with them forever, regardless of whether their name could be found on the state registry. One child was adjudicated delinquent for a sex offense at age 11. At the age of 17 he took his own life. His mother explained, “Under the law at the time he was looking at being put on the public registry when he turned 18. His picture, address and information on the Web.... He just couldn’t bear it.”¹⁹¹

Another young man who was placed on the registry at age 12 committed suicide at age 17, a few months after Michigan passed a law to remove offenders who were under 14 at the time of the offense from the registry. His mother said “Everyone in the community knew he was on the sex offender registry, it didn’t matter to them that he was removed ... the damage was already done. You can’t un-ring the bell.”¹⁹²

The mother of a former registrant told Human Rights Watch about the circumstances that led to her son, Carson E., taking his own life in 2008. Adjudicated delinquent at the age of 13 for rape, he successfully completed sex offender treatment and as a result was later removed from the public registry and subject to law-enforcement-only registration. But nearly 10 years after his offense, he started facing serious difficulties. Carson’s mother reports that during college he was denied housing and employment due to his status, which was revealed during criminal background checks. At the age of 25, and within weeks of graduating from college, Carson committed suicide. His mother says she knows in her heart that he killed himself because upon graduation, he was going to look for professional work and knew his background would come up in every job interview.¹⁹³

¹⁸⁸ Human Rights Watch interview with Reginald W., Mount Pleasant, New Jersey, February 2, 2012.

¹⁸⁹ Human Rights Watch interview with Jayden C., Baton Rouge, Louisiana, February 25, 2012.

¹⁹⁰ Human Rights Watch interview with Gavin R., Grand Rapids, Michigan, April 3, 2012.

¹⁹¹ Human Rights Watch interview with Elizabeth M., mother of Noah M., Flint, Michigan, April 1, 2012.

¹⁹² Human Rights Watch interview with Julia L., mother of Nathan L. (who is deceased), Grand Rapids, MI, March 3, 2012.

¹⁹³ Human Rights Watch interview with Patricia E., mother of Carson E. (who is deceased), Lacey, Washington, April 26, 2012.

Dominic G.

Dominic G. was living in Texas when Human Rights Watch interviewed him in 2012. In 2006, when he was 15 years old, Dominic was charged with having molested his sister when he was approximately 14 and she was approximately 12. Dominic denied the allegations. In 2007, after Dominic had spent over a year going back and forth between a psychiatric hospital and jail, his defense attorney told Dominic and his mother that if he did not admit to the allegations, he would be transferred to adult court and face up to 20 years in prison. Grace N., Dominic's grandmother, said Dominic later told her, "Grandma, I didn't know what to say." Dominic admitted to the allegations by entering a plea in December 2007 and was committed to the Texas Youth Commission (the Texas juvenile detention system).

While in detention, Dominic received honors and was known for his artistic skill. By the age of 17 he was granted special permission to attend college courses off campus. He was able to work and earn money. Dominic's mother died in 2009, when he was 18, and his younger brother and sister have lived with his maternal grandmother, Grace, ever since. In April 2012, at the age of 21, Dominic was released from detention and placed on parole under the jurisdiction of the adult criminal court until the year 2037.

In December 2012, Dominic's sister came home and broke down crying to her grandmother. Grace told Human Rights Watch that the young woman "was sobbing hysterically, screaming 'Don't hate me. Don't hate me.' Then finally she said, 'I made the whole story up about Dominic, he never touched me. They kept telling me that I was going to go to jail if I didn't tell the story right.'"¹⁹⁴

Dominic is subject to sex offender registration and notification requirements. Shortly before his release on parole, Dominic met with a parole officer who gave him "stacks of papers and rules to read and sign."¹⁹⁵ Dominic was told that he was being placed on "Condition X" parole, which requires him to register as a sex offender.¹⁹⁶ Among other conditions, he must:

- Not participate in any volunteer activities without prior written approval of the parole officer;
- Not enroll in or attend any institution of higher learning, including a community college, without prior parole board approval and notification to the victims of "the sex offense";

¹⁹⁴ Human Rights Watch interviews with Grace N., grandmother of Dominic G., San Antonio, Texas, November 23, 2012; and with Dominic G., San Antonio, Texas, November 23, 2012.

¹⁹⁵ Human Rights Watch interview with Dominic G., November 23, 2012.

¹⁹⁶ The Texas Code of Criminal Procedure permits a judge to impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform an offender. Tex. Code Crim. Proc. art. 42.12 § 11(a) (Supp. 2008).

- Not view, possess, purchase, or subscribe to any photographs, literature, magazines, books, or visual media that depict sexually explicit images;
- Submit to polygraph examinations as approved by the parole officer and board;
- Not attend any program that includes participants who are 17 years of age or younger or go within 500 feet of any place that children commonly gather, including schools, day care facilities, playgrounds, and public swimming pools;
- Not become involved in dating, marriage, or platonic relationships with anyone who has children 17 years old or younger without the written approval of the parole officer;
- Not reside with, have unsupervised contact with, or cause to be contacted by any child 17 years or younger (other than his own children, should he have any) in person or by telephone, correspondence, or video or audio device ;
- Not own, maintain, or operate computer equipment without written authorization from the parole officer;
- Not own, maintain, or operate photographic equipment, including still photos, videos, or any electronic imaging equipment unless approved in writing by the parole officer; and
- Submit to a search of the person, motor vehicle, place of residence, and property, without a warrant at any time, day or night.

During the pre-release meeting, Dominic also had to sign a Collateral Contact Form, which required him to identify a contact to assist in monitoring his behavior. The form states that this person may be, for example, a roommate, employer, family member, spouse, significant other, pastor, sponsor, or friend. Dominic specified his maternal grandmother, Grace. But Grace was told that she can never have Dominic in her home because his sister, the victim, resides there.

In early January 2013, Dominic tried to commit suicide. Grace said “he slashed his wrists and I knew I had to call his parole officer to get permission to take him to the hospital.”¹⁹⁷ Even though it was an emergency, the parole officer threatened to arrest Dominic for violating parole if he was not brought to the parole office first to sign papers before going to the hospital.¹⁹⁸ Grace took her bleeding grandson to the parole office, parked the car, and ran inside so she could sign the papers. The parole officers demanded that she bring Dominic from the car into the office so that he could sign the papers. After a stressful few minutes, a parole officer came out and told Grace that she could take Dominic to the hospital.¹⁹⁹ Dominic remained in the hospital for nearly two weeks.²⁰⁰

¹⁹⁷ Human Rights Watch Interview with Grace N., grandmother of Dominic G., January 31, 2013.

¹⁹⁸ Ibid.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

Violent Attacks

Laws that place youth offenders on sex offender registries expose them to vigilante attacks and are at odds with existing state laws that protect the confidentiality of juvenile records. Among the 296 cases examined for this report, 154 (52 percent) youth offenders experienced violence or threats of violence against themselves or family members that they directly attributed to their registration. For example:

- Isaac E. has been on the registry since he was 12 years old, after pleading guilty to a charge of “indecent liberties by forcible compulsion” for touching the chest of a girl. The victim of his offense, a female classmate, was also 12. Isaac states that the state registry does not provide information about the date of conviction for the sex offense, and updates the age of the registrant each year.²⁰¹ As time passes, this makes people who committed sex offenses as children look like adult sex offenders. If someone looks Isaac up on the registry, unless they take the time to find out that the offense was committed nearly 15 years earlier, it appears as if he is an adult who sexually assaulted a 12-year-old child. Isaac says “it is very misleading and makes people very angry. My brother, who looks like me, was once harassed and nearly beaten to death by a drunk neighbor who thought he was me.”²⁰²
- Bruce W. is the father of two sons placed on registry at ages 10 and 12 for the same offense committed against their younger sister, then age 8. He says that a man once held a shotgun to his 10-year-old son’s head.²⁰³
- Camilo F. was placed on the registry at age 14. He says strange cars started following him home from school. “One time a man from one of those cars yelled ‘child molester’ at me.”²⁰⁴ Camilo said a week later several bullets were fired from a car driving by. “The bullets went through the living room window as my family and me watched TV.”²⁰⁵
- Carson E., from northern Washington, started registering at the age of 13. For the first few years, his picture was on the public website. During this time, he faced

²⁰¹ Human Rights Watch interview with Isaac E., Spokane, Washington, August 27, 2012. Human Rights Watch visited the Washington State Sex Offender Registry in December 2011 to verify the difficulty in determining how old a registrant was at the time of conviction or adjudication. Similar difficulty was experienced on other state registries, such as the Ohio State Sex Offender Registry, available at: <http://www.drc.state.oh.us/OffenderSearch/Search.aspx> (accessed April 23, 2013).

²⁰² Human Rights Watch interview with Isaac E., August 27, 2012.

²⁰³ Human Rights Watch interview with Bruce W., Texas, May 1, 2012.

²⁰⁴ Human Rights Watch Interview with Camilo F., Florida, June 2012.

²⁰⁵ Ibid.

harassment and threats from his peers at school. At one point when he was in ninth grade, Carson was beaten severely by some people in the area, his mother recalled. Despite pleading from his parents, Carson refused to file a report with the police.²⁰⁶

- “Neighbors harassed our family. We later found out that one of the neighbors shot our family dog,” said the mother of one registrant.²⁰⁷
- Terrance W. was placed on the sex offender registry for an offense committed when he was 14. He said, “I fear for my father’s life since I live with him. The registry is being used more and more as a publicly available hit list for vigilantes to murder or assault those on the registry.”²⁰⁸



Family photos of two boys at ages 10 and 8 (now adults in their late twenties) who were subject to sex offender registration for offenses committed at ages 12 and 10. Individuals aware of their registration have thrown molotov cocktails through the window of the family home, as well as threatened, insulted, and shouted profanities at all members of the family. Weatherford, Texas, May 1, 2012.
© 2012 Nicole Pittman

²⁰⁶ Human Rights Watch interview with Patricia E., mother of Carson E. (who is deceased), April 2012.

²⁰⁷ Human Rights Watch interview with the mother of Zachary S., Dallas, Texas, April 28, 2012.

²⁰⁸ Human Rights Watch interview with Terrance W., Missouri, July 2012.

Other registrants experienced harassment as a result of their registration status. One female youth sex offender explained, “I was on the public registry at age 11 for the offense of unlawful sexual contact. They thought I was not a virgin. Random men called my house wanting to ‘hook up’ with me.”²⁰⁹

A male youth offender living in Texas recounted several incidents of harassment: “I was in the [school] parking lot and this truck drove by and started throwing beer bottles at me. I had to run inside. They yelled, ‘Get out of our school, you child molester! I wish I could kill you!’” Another time, he says, he was approached by a man who said, “that’s my house over there and those are my kids and if you ever come near my house, I’m gonna blow your brains out.” The male youth sex offender also told us that “multiple people had said they planned on throwing me off the town water tower.”²¹⁰

Impact on Families

Registration laws can have a severe impact on the families of registrants.²¹¹ Among the 296 youth offender registrants whose cases were examined for this report, 76.7 percent said their registration status had serious repercussions for their families and family relationships. These included, among others, adding to the family’s economic challenges, difficulty in securing or maintaining an approved residence, and straining or severing family relationships.

Young people exiting custody in the juvenile justice system or adult prisons are often discharged back to families already struggling with domestic violence, substance abuse, mental health issues, unemployment, and poverty.²¹² Plans are rarely in place to support

²⁰⁹ Human Rights Watch interview with Molly K., Dover, Delaware, August 2012.

²¹⁰ Human Rights Watch interview with Joshua Gravens and his wife, Dallas, Texas, April 27, 2012

²¹¹ Mary A. Farkas and Gale Miller, “Reentry and Reintegration: Challenges Faced by the Families of Convicted Sex Offenders,” *Federal Sentencing Reporter*, vol. 20, no. 2 (December 2007), pp.88-92; Jill Levenson and Richard Tewksbury, “Collateral damage: Family members of registered sex offenders,” *American Journal of Criminal Justice*, vol. 34 (June 2009), pp. 54-68; Richard Tewksbury and Jill S. Levenson, “Stress Experiences of Family Members of Registered Sex Offenders,” *Behavioral Sciences and the Law*, vol. 27, no. 4 (2009), pp. 611-626. Researchers Levenson and Tewksbury found several common themes, including: 86 percent of family members reported that registration has caused stress in their lives; 77 percent often felt a sense of isolation; 49 percent often felt afraid for their own safety due to public disclosure of the sex offender’s status; 50 percent reported a loss of friend or a close relationship as a result of community notification; 66 percent said that shame and embarrassment often kept them from engaging in community activities. Levenson and Tewksbury, “Collateral Damage: Family members of registered sex offenders,” *American Journal of Criminal Justice*.

²¹² Ashley Nellis and Richard Hooks Wayman, The Sentencing Project, “Back on Track: Supporting Youth Reentry From Out-of-Home Placement to the Community,” 2009, http://www.sentencingproject.org/doc/publications/CC_youthreentryfallogreport.pdf (accessed March 21, 2013).

youth when they return to their families. Children face unemployment, school enrollment challenges, and sometimes homelessness upon release.²⁴³

The impact may be more pronounced for families with children subject to sex offender registration requirements. “With parents often the targets of blame for the sins of their children, parents of sex offenders can experience just as much fear, shame and paranoia as their children,” social worker David Prescott said.²⁴⁴

Many registrants and family members told Human Rights Watch about the stresses placed on families as a result of registration. These include the following examples:

- Luna L. has two sons on the sex offender registry stemming from the same offense: sexual battery, or inappropriate touching, of a 10-year-old foster child who lived in their home. The brothers, Camilo F. and Julián C., were ages 14 and 16 at the time of the offense. Luna had to petition the local government to make an exception for her young boys to return to her house after their release from juvenile detention. Still today, six years after her sons were arrested, Luna worries about the possibility they will be arrested if they do not come home before curfew. She says she cannot sleep until both arrive home from 12-hour workdays as restaurant managers, before their 11 p.m. curfew.²⁴⁵
- One young man who spoke to Human Rights Watch, Ignacio P., was six years old when his brother Fernando P., then 12, was placed on the sex offender registry for allegedly molesting a child in the neighborhood. In 2011, after registering as a sex offender for nearly 14 years, Fernando was acquitted of the sex offense and removed from the registry when the neighbor recanted the allegations. Ignacio, who is now 20 years old, initially described being a sibling of a child registrant as “easy,” but then said his parents were so “consumed with fighting to help Fernando that they ignored me. I was invisible. I could do anything and not get in trouble ... as long as I didn’t get arrested.”²⁴⁶

²⁴³ Ibid.

²⁴⁴ See Emanuella Grinberg, “Mothers of sex offenders share responsibility, burden of label,” CNN, May 12, 2012 (“‘Moms often feel terrible that they didn’t recognize the signs sooner or weren’t able to provide a better environment for their kids to prevent whatever offense occurred,’ said Prescott, former president of the Association for the Treatment of Sexual Abusers and current clinical director of the Becket Programs of Maine, which provide treatment for troubled youth in Maine and New Hampshire.”).

²⁴⁵ Email communication from Luna L. to Human Rights Watch, September 29, 2012.

²⁴⁶ Human Rights Watch interview with Ignacio P., brother of Fernando P., Grand Rapids, Michigan, April 1, 2012.

- In 2008, Julián C. was adjudicated delinquent of sexual battery of a child for an offense that occurred when he was 16 and the victim was 10 years old. The offense involved penetration of the child victim, who was a foster child living in the home at the time. Julián was committed to a juvenile prison and, once released, was required to attend sex offender treatment, placed on an electronic monitor, and sentenced to six years' on adult sex offender probation. At the time Human Rights Watch interviewed Julián, he was still on probation while working full time and attending classes at a local college in Jacksonville, Florida. Julián lives at home with his mother, father, brother, and the brother's fiancée. Julián's brother and fiancée were expecting a baby girl in November 2012. Probation told Julián that he would need to move from the home when the baby was born, or that his brother, fiancée, and the baby would need to live elsewhere. The family challenged this condition in court. Each member of the household had to sign a five-page document explaining that the baby would never be alone with Julián. The Judge granted the exception and Julián was allowed to remain at home with his family.²¹⁷
- A youth sex offender who was placed on the registry at age 14 explained, "because of sex offender restrictions my family had to be divided up. I could not live with children. My father stayed in our house with my younger brother. My mother and me moved in with my grandparents 2 hours away."²¹⁸

Families also suffer as a result of the public stigma associated with the registration status of their loved one. One youth sex offender explained, "A neighbor put a sign on our lawn saying 'the State let a 13 year old rapist go free and he lives here.'"²¹⁹

Financial Burdens

Parents of registrants reported experiencing increased financial burdens from the moment their child was placed on the registry. Some family members of registrants lost their jobs as a result of the sex offender registration status of their family member. "I was a principal of a school. I lost my job when the school district found out that I had a young child on the registry."²²⁰

²¹⁷ Human Rights Watch interview with Julián C., Duval County, Florida, May 26, 2012.

²¹⁸ Human Rights Watch interview with Sebastian S., Laredo, Texas, February 13, 2012; email correspondence and telephone conversation with Sebastian S., June 12, 2012.

²¹⁹ Human Rights Watch interview with Phillip R., New Castle, Delaware, February 12, 2012.

²²⁰ Human Rights Watch interview with Karen S., Everett, Washington, February 26, 2012.

The fees associated with registration can be prohibitively high for a young person. These expenses often fall on the family, especially when the individual on the registry is a dependent child. Depending on the jurisdiction and the registrant's classification level, initial registration fees can cost anywhere between \$50 and several hundred dollars per year. In the state of Louisiana, Human Rights Watch documented a case (see text box "James" below) in which registration fees and costs associated with registration totaled just over \$1,000 annually. The fees associated with registration can be prohibitively high for a young person. These expenses often fall on the family, especially when the individual on the registry is a dependent child. Depending on the jurisdiction and the registrant's classification level, initial registration fees can cost anywhere between \$800 and \$1,200 and total upwards of \$2,000 per year.



Jackson D., at age 12, near his home in Garland, Texas, the year he was placed on the sex offender registry. © 2012 Nicole Pittman.

Jackson D., who has been registering as a sex offender since he was 12 years old, said, "my mom had to pay my fees. I was too young to work. If you don't pay, they re-arrest you and convict you for failure to register."²²¹ Jackson turned 23 on the day we interviewed him. He still lives with his mother. He struggles to keep jobs to help his mother prevent the house from going into foreclosure.

Children of Registered Sex Offenders

The effects of registration can touch later generations of children as well. Many of the individuals we spoke with were placed on the registry as children but are now married with children of their own. Offender registration laws can have especially harmful impacts on the children of registrants. A 2009 study found that 75 percent of the children of registrants had lost friendships as a result of a parent's status as a registered sex offender. Additionally, 59 percent reported that other children at school treated them differently when it was

²²¹ Human rights Watch interview with Jackson D., Garland, Texas, May 2, 2012.

discovered that they had a parent on the registry.²²² Another study found that a Kentucky policy restricting registered sex offender parents from attending their children's school functions interfered with their parenting role and could have serious deleterious consequences for the entire family.²²³ Children of registrants reportedly experience adverse consequences including stigmatization, violence, harassment, and differential treatment by teachers and classmates. In one instance, a teenage girl in Texas shot herself to death after her father's photo appeared on the state Internet registry, embarrassing her at school.²²⁴

Most youth offender registrants with children we spoke with had very young children who had not yet attained school age. We were able, however, to interview a few school-age children with a parent on the registry. These children reported being treated differently or teased because of their parent's registration status.

Hunter E. said he was sad that his father was on the sex offender registry. He added that "everyone at school knows my father is a registered sex offender," and he feels like his classmates and teachers "look at him strangely."²²⁵ At age 11, Hunter is the same age his father was when he was arrested for the sex offense that placed him on the registry.

Mark O. is a registered sex offender for having had sexual intercourse when he was 17 years old with his 15-year-old girlfriend.²²⁶ He was placed on the sex offender registry after he signed the birth certificate of the daughter he fathered with that girlfriend. Years later, after Mark and his no-longer-underage partner married and had a second child, their first daughter was mortified when a teacher warning her class about sexual predators punched

²²² J.S. Levenson and R. Tewksbury, "Collateral Damage: Family members of registered sex offenders," *American Journal of Criminal Justice*, vol. 34 (June 2009), pp. 54-68.

²²³ Richard Tewksbury and Travis Humkey, "Prohibiting Registered Sex Offenders from Being at School: Assessing the Collateral Consequences of a Public Policy," *Justice Policy Journal*, vol. 7, no. 2 (Fall 2010). The study examined the effects of a Kentucky law (KRS 17.545.2) requiring a registered sex offender parent to obtain written permission in order to be on their child's school grounds for any event. Events requiring permission include but are not limited to: attending a parent/teacher conference, attending a play or concert in which the student is involved, attending a graduation ceremony, attending a sporting event in which the student is participating, and attending a "bring your parent to school day."

²²⁴ *Smith v. Doe*, 538 U.S. 84 (U.S. 2003), Amicus Brief of the Office of the Public Defender for the State of New Jersey, the Association of Criminal Defense Lawyers of New Jersey, and the American Civil Liberties Union of New Jersey; DOC 178.pg.23 (a teenage girl in Texas shot herself to death after her father's photo appeared on Internet registry, embarrassing her at school); (Amici have lodged with the Court a number of affidavits, newspaper articles, and other materials that shed light on the experiences of the offenders subject to these laws and other issues relevant to this case. The materials lodged under seal are designated as "PD ___"; those not under seal are cited "DOC ___.")

²²⁵ Human Rights Watch interview with Hunter E., Delran, New Jersey, July 30, 2012.

²²⁶ Human Rights Watch interview with Mark O. and his family, Grand Rapids, Michigan, March 2012.

the school's ZIP code into the online sex offender registry and her dad's name came up. Her parents had told her that her dad was on the sex offender registry, "but it wasn't something the whole class knew, until then."²²⁷

A 10-year-old child, Cindy D., said she can never have a birthday party at her own house. "I cannot bring my friends here because my father cannot be around other children," she said.²²⁸ Cindy's father was 14 when he had consensual sex with his 13-year-old girlfriend. In Delaware, where they live, a child under 14 years of age cannot legally give consent. Cindy's father is now 28 years old and has not been in trouble with the law since, but because he is a registered sex offender, he cannot have unsupervised contact with children under the age of 18.

We asked both non-registered and registered parents to describe ways that their children have been directly affected by sex offender registration laws. They reported that because of various restrictions, the registered parent is unable to participate in most of the child's activities such as attending a school play, going to sporting events, and attending their child's birthday party. Individuals placed on the registry for offenses committed over a decade ago, when they were children, cannot even pick up their own children at school.

Jerry M. was placed on the registry for an offense he describes as "sexual play during 'truth or dare' with younger kids when I was 11 years old."²²⁹ Now as a parent in his late twenties, Jerry says "I worry about my two little children, ages 4 and 2, having to live in a publicly identified house and having to pay this lifelong price for something that happened years before they were born. I want to be involved in their lives but I also want them to be able to live free to be who they are without having to carry such a burden."²³⁰

One girl with a father on the sex offender registry wrote Human Rights Watch a letter about her life as a child of a registered sex offender. The young woman did not want her name or location identified in this report for "fear it would put us in more danger," but she wrote,

I would like to take the time to tell you what it is like to be a child of a [registered] sex offender. I wake up every morning wondering how many [sex

²²⁷ Ibid.

²²⁸ Human Rights Watch interview with Cindy D., St. Louis, Missouri, July 18, 2012.

²²⁹ Human Rights Watch interview with Jerry M., Wilmington, Delaware, July 28, 2012.

²³⁰ Ibid.

offender] signs may be on our front lawn; how many people are going to ride by our house, point, and take pictures; how many people are going to watch every move we make today; and how many times people are going to call the police to report that my parent has done something for which an average person would be normal but because my parent is a known “Sex Offender” its suspicious behavior how many more birthdays will be with just family because other parents will not let their kids come to my party; how many parties will I not be invited to [sic]; how many more sports games will my parent not be allowed to watch me play; and how many field trips will I not attend because it is too hard to listen to the whispers of the other parents?²³¹

Housing

Local lawmakers have passed municipal ordinances prohibiting individuals on sex offender registries from residing or traveling within close proximity to places where children commonly congregate. Given the large number of parks, schools, daycare centers, and playgrounds in some cities, there can be very few places where sex offenders can live.

In one study, adult registrants cited difficulties in finding housing and being forced to move as the most common problems resulting from their registrant status.²³² A study conducted in Orange County, Florida found that the law banning individuals on the sex offender registry from living within 1,000 feet of a school, daycare, or bus stop would allow them to reside in less than four percent of the county.²³³ In Miami-Dade County, Florida, which has a 1,750-foot residency restriction, affordable housing is nearly nonexistent.²³⁴ In Kentucky, a study showed that 45 percent of individuals registering for adult sex offenses reported a loss of housing or inability to find housing.²³⁵ A Wisconsin study revealed that 83 percent of the adult registrants had trouble finding and/or maintain housing.²³⁶ In

²³¹ Human Rights Watch correspondence with Sophie L. on the life of a child of a registered sex offender, July 26, 2012.

²³² Richard Tewksbury and Travis Humkey, “Prohibiting Registered Sex Offenders from Being at School: Assessing the Collateral Consequences of a Public Policy.”

²³³ Paul A. Zandbergen and Timothy C. Hart, “Reducing housing options for convicted sex offenders: Investigating the impact of residency restriction laws using GIS,” *Justice Research and Policy*, vol. 8, no. 2 (2006), pp. 1-24.

²³⁴ Paul A. Zandbergen and Timothy C. Hart, “Geocoding accuracy considerations in determining residency restrictions for sex offenders,” *Criminal Justice Policy Review*, vol. 20, no. 1 (March 2009), pp. 62-90.

²³⁵ Richard Tewksbury, “Exile at home: The unintended collateral consequences of sex offender residency restrictions,” *Harvard Civil Rights-Civil Liberties Law Review*, vol. 42 (2007), pp. 531-541.

²³⁶ Richard G. Zevitz and Mary Ann Farkas, “The impact of sex offender community notification on probation and parole in Wisconsin,” *International Journal of Offender Therapy and Comparative Criminology*, vol. 44, no. 1 (2000), pp. 8-21.

South Carolina, one study found that nearly half of all the houses in the state would be restricted under the local 1,000-foot restriction zone.²³⁷

Studies show that adolescents and young adults on sex offender registries have an even harder time securing housing than older adults on registries.²³⁸ Of the 296 youth offender registrants whose cases were examined for this report, over 44 percent (132 respondents) told us they had experienced at least one period of homelessness as a result of the restrictions that come with being registered.

Aaron I., who is on the registry in Florida for an offense committed at the age of 15, constantly struggles to find housing for himself and his wife. “I have found a few places to rent but as soon as we move in the police and neighbors harass us until we get evicted. They keep us homeless. I am banned from living in a homeless shelter. It is impossible to meet these expectations.”²³⁹ Another youth offender said, “It really never ends. Currently I am homeless ... for something that happened when I was 12 years old.”²⁴⁰

The majority of parents with a child on the registry interviewed by Human Rights Watch reported having trouble providing shelter for their family due to residency restrictions requiring the child registrant to live a certain distance from schools, parks, playgrounds, daycare centers, or bus stops. And once they are living on their own, registrants face similar challenges in procuring housing. For example:

- Audrey R. faced a choice between keeping a house she owned and living with her 14-year-old son, who was on the sex offender registry for inappropriately touching an 8-year-old girl Audrey had been babysitting. Audrey sent her son to live in another county with relatives while she tried to sell her house.²⁴¹
- Luna L. said that the Florida Department of Juvenile Justice told her that her son, who had been adjudicated delinquent at age 14, would not be allowed to live in her house because it was too close to a school. She contested this decision and won.

²³⁷ J. C. Barnes, T. Dukes, R. Tewksbury, and T. De Troye, “Predicting the Impact of a Statewide Residence Restriction Law on South Carolina Sex Offenders,” *Criminal Justice Policy Review*, July 8, 2008.

²³⁸ Abigail Goldman, “Young, But ‘Predators’ for Life: New Sex Offender Laws, Meant to Protect, May Instead Ruin Lives and Increase Risks,” *Las Vegas Sun*.

²³⁹ Human Rights Watch interview with Aaron I., Palm Beach, Florida, June 1, 2012.

²⁴⁰ Human Rights Watch interview with Kyle W., San Antonio, Texas, July 5, 2012.

²⁴¹ Human Rights Watch interview with Audrey R., Lake County, Florida, May 26, 2012.

But Luna’s voice cracked as she recalled, “my son had to stay in jail an additional year while we fought to get my house approved.”²⁴²

- David H., a foster child living with a foster family in Michigan, was found guilty of a sex offense that required him to start registering at the age of 13.²⁴³ He was accused of fondling his foster parents’ young daughter. David completed treatment and therapy and later went on to college. At the beginning of his first semester in college, David was arrested for failure to register. David was charged not because he failed to update his record with his college address but because he failed to inform the State Police that he was attending an institution of higher learning. He simply did not know he needed to inform the police of his attendance on campus. Failure to register is a felony punishable by up to four years in prison.²⁴⁴

Public housing authorities can also evict the family of a child on the sex offender registry. The federal Office of Housing and Urban Development allows local housing authorities to terminate assistance to an entire family if any member of the household is arrested or adjudicated delinquent of certain sex offenses.²⁴⁵

Because state registration, notification, and residency restrictions often stipulate that offenders may not live in or near the homes of victims, housing issues can become extremely complicated when the victim of a youth offender registrant is a sibling. In these instances, parents are faced with a horrible choice between which of their children to keep in the home. Some parents are forced to place a child with a relative or family friend, or to place a child in the care of the state.

Lucas W. was 17 when he was arrested and adjudicated delinquent of aggravated sexual assault for having consensual sex with his younger girlfriend, Emma J. Lucas was given five years deferred adjudication for the sexual offense. Later, he and Emma married. But Lucas was subsequently arrested twice for violations of probation. He described a “vicious cycle”

²⁴² Human Rights Watch interview with Luna L., Duval County, Florida, May 25, 2012.

²⁴³ Human Rights Watch interview with David H., Grand Rapids, Michigan, March 30, 2012.

²⁴⁴ Ibid.

²⁴⁵ University of North Carolina Center for Civil Rights, “Juvenile Delinquency Adjudication, Collateral consequences, and Expungement of Juvenile Records: A Survey of Law and Policy in Delaware, Virginia, North Carolina, and Florida,” 2011, <http://www.law.unc.edu/documents/civilrights/centerforcivilrightsexpungementreport.pdf> (accessed March 21, 2013). See also Human Rights Watch, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, November 18, 2004, <https://www.hrw.org/reports/2004/11/17/no-second-chance-o>.

whereby he was unable to find a job due to his status as a sex offender or a place for his family to live that complied with residency restrictions, and thus could not afford his registration and mandatory therapy fees.²⁴⁶

In 2000, Lucas was arrested for failure to register and subsequently sentenced to 10 years in prison. While incarcerated, his wife gave birth to their daughter. Emma, who refused to help prosecutors nearly 15 years ago, said that “[Lucas] has always been my true love but the registration laws have taken a toll on all of [us].”²⁴⁷ Emma took their daughter to visit Lucas regularly during his entire incarceration. In 2009, Lucas was finally released from prison to a halfway house where he was to remain until he could find proper housing. But he had problems finding suitable housing outside of the city’s sprawling child safety zones, and as a result, Lucas had to remain apart from Emma and their daughter for yet another year.

Lewis A.

At the age of 14, Lewis A. was adjudicated delinquent of criminal sexual contact in the first degree and was placed in a juvenile treatment facility for about a year. Upon his release, Lewis was made a ward of the state and placed in foster care because his Dad said he could not manage him. At the age of 18, he no longer qualified for foster care and was on his own.

Upon release from foster care, Lewis contacted Isabella D., a grade school teacher who knew him before his arrest. “I was his special education teacher before this happened in a classroom for students classified as having cognitive impairments (mental retardation.) When he got out of foster care he managed to find me and I have tried to help him get his life back on track as much as possible,” said Isabella.²⁴⁸

When Human Rights Watch first interviewed Lewis, he was just 18 years old and had spent nearly nine months homeless in Kalamazoo, Michigan. He survived the previous winter by living in an abandoned building. “It used to be a restaurant, maybe 15 years ago. It was a boarded up abandoned building with no running water.”²⁴⁹ Isabella and another teacher helped Lewis by giving him places to shower and wash his clothes.

²⁴⁶ Human Rights Watch interview with Lucas W., Bartlett, Texas, April 29, 2012.

²⁴⁷ Human Rights Watch interview with Emma J., wife of Lucas W., Bartlett, Texas, April 29, 2012.

²⁴⁸ Human Rights Watch email correspondence with Isabella D., former teacher of Lewis A., October 22, 2012.

²⁴⁹ *Ibid.*

Isabella describes her former student as “a sweet and honest young man who is very vulnerable.”²⁵⁰ Isabella worked with Lewis to get him assessed with a disability so that he could get some services. The results of his IQ test helped him qualify for adult educational services, \$200 monthly in social security benefits, \$200 monthly in food stamps, and a housing voucher. The voucher, through Michigan Rehabilitation Services, helped with the rent, but it took months to find an apartment that would (1) accept the voucher and (2) rent to a registered sex offender. As the voucher ran out they had to apply for an extension to get more time to look for housing. Finally in August 2012, Lewis moved into his own apartment. He also enrolled in an adult program and was working towards getting his GED.

Lewis was supposed to spend Thanksgiving 2012 with Isabella and her family, but he decided to spend the weekend with his father. Immediately after the holiday, Lewis was arrested for vandalizing a cemetery with some older men. Lewis’ housing voucher was revoked and he lost his apartment. In December 2012, Lewis pled guilty to the vandalism charge and has since served his time. But he still sits in jail. As a registered sex offender, Lewis cannot be released from jail until he has a permanent address. Lewis cannot live in public assisted housing because he is a registered sex offender.

Isabella has tried to help get Lewis shelter and made referrals to shelters and other agencies. She recently contacted agencies that assist individuals with mental disabilities and was told that all referrals must come from the community mental health center. The community mental health center will not consider making a referral until it can conduct intake, i.e., until Lewis is out of jail and center staff can meet with him in person. Isabella said, “it is impossible to find him housing. I don’t know how he is ever going to be released from jail... We are scrambling, he has no place to go.”²⁵¹

Isabella and the other teacher still visit Lewis every week in jail. She told us, “I do understand that he is 18 years old and is responsible for his own actions but he is a young man with a disability who was removed from his home at the age of 14.”²⁵²

Even though Michigan law does not subject juveniles adjudicated as young as Lewis to public notification, it is very difficult for him to live day-to-day. “He will never show up on the registry because he was 14 when he committed his offense, but life is still one mess after another. He can’t get housing, a job, pay his fees.”²⁵³ At the time this report was written, Lewis remained in jail, unable to be released without a residence and unable to get a residence because he is in jail.

²⁵⁰ Human Rights Watch telephone interview and email correspondence with Isabella D., former teacher of Lewis A., in October 2012 and January 2013.

²⁵¹ Human Rights Watch telephone interview with Isabella D., former teacher of Lewis A., January 11, 2013.

²⁵² Ibid.

²⁵³ Ibid.

Restrictions on Movement

In addition to residency restrictions, most jurisdictions also impose “no loitering/child safety zones” around schools, playgrounds, parks, daycare centers, and other locations where children congregate. Essentially, these restrictions ban registrants from passing through certain areas of the city.

Interviewees reported having to map out routes before traveling anywhere. For example, Blake G., originally from Connecticut, was arrested at the age of 15.²⁵⁴ His crime was having a sexual relationship with his 13-year-old girlfriend.²⁵⁵ Since his girlfriend was under the age of consent, Blake was charged as an adult for a sexual offense and subsequently placed on the sex offender registry. Shortly after the conviction, Blake’s parents moved the family from Connecticut to a new state. Blake was required to register as a sex offender in the new state. The county where Blake and his family moved to also had stringent residency and zoning restrictions. Blake, who is still a minor, is banned from being “within 300 feet of a place where children regularly congregate, including but not limited to, a school, day care center, playground, park, or bus stop.”²⁵⁶ Blake described the difficulty he faces navigating his new city, saying, “I have to look at a map before I walk anywhere. I can be arrested if I am walking anywhere near a school or park.”²⁵⁷ Blake’s mother said she thinks her son is afraid to leave the house.

There are also strict restrictions on the presence of registrants near bus stops. Bus stops are plentiful and not well-defined. In rural areas, school bus stops are not marked or labeled and are often at the end of a driveway or any designated location where the school bus picks up a child. In Orange County, Florida, where the law prohibits a registered sex offender from residing within 2,500 feet of a school bus stop, day care center, park, or school, researchers mapped residential parcels of land and found that 99.6 percent of parcels were located within 2,500 feet of a bus stop.²⁵⁸

²⁵⁴ Human Rights Watch interviews with Blake G., Gainesville, Florida, March 2012 and May 2012.

²⁵⁵ Connecticut § 53a-70 (a)(2); § 53a-71 (a)(1). Sexual intercourse with a person under age 13 if the actor is more than two years older is categorized as first-degree sexual assault.

²⁵⁶ Local ordinance 09-019 in Lee County, Florida.

²⁵⁷ Ibid.

²⁵⁸ Zandbergen and Hart, “Reducing housing options for convicted sex offenders: Investigating the impact of residency restriction laws using GIS,” *Justice Research and Policy*, pp. 1-24.

Travel or Moving to Another Jurisdiction

Because they live with their parents or other adult caregivers, children and very young adults have little control over where they live. Since there is no uniformity among the various states' registration and notification laws, registration becomes even more complex and onerous when a registrant travels or moves to a new jurisdiction. States differ as to which offenses trigger registration, and state systems do a very poor job of working together to ensure registrants who travel are treated fairly.

For example, Elijah B. started registering at age 16. When he moved to Texas, he transferred his registration from Flint, Michigan to Houston. A few years later, Elijah met his wife. Both were working and they lived together in a new apartment. Elijah explained to Human Rights Watch,

One day while I was at work, the police pulled up in an unmarked car and placed me in the back of the car. Everyone at my job was coming to see me get arrested. Then my general manager made a point to come and publicly fire me in front of everyone because I'm labeled a "so-called sex offender." I was extradited from Texas to Michigan, handcuffed in a van going state to state picking up other inmates in other states.... It took a full week to get to Flint. I sat in jail for three months accused of failing to register in Michigan. I was finally released when they realized that I was no longer required to update my address in Michigan because I was a resident of Texas and registered properly there.²⁵⁹

After his release, Elijah had to find his own way home to his wife in Texas.

When a person has an out-of-state conviction or adjudication, most states require registration which is "comparable, similar, or substantially similar to" a listed registerable offense. However, all too often state registration systems treat individuals convicted of sexual offenses in other states differently from individuals convicted of the same offenses within the state. For instance, in Florida, "exposing the genitals in a

²⁵⁹ Human Rights Watch interview with Elijah B., Houston, Texas, April 28, 2012.

lewd or lascivious manner” is a sexual offense requiring registration.²⁶⁰ In Alabama, however, this offense is not a felony, and if committed by an Alabama resident would not trigger Alabama’s registration requirements. However, Alabama law would require a Florida resident who committed the same crime to register as a sex offender if he moves to Alabama.²⁶¹

Interference with Education

Since registered sex offenders are often banned from being near schools, registration can have an immediate impact on a youth offender’s school attendance and educational opportunities.

Children can find their access to education curtailed even before they begin registering. Many children convicted of sexual offenses are expelled from public school.²⁶² Often, the school’s code of conduct allows students to be disciplined in school for behavior that occurs outside of school and off school grounds. In most jurisdictions, discipline can take the form of suspension, expulsion, or alternative school placement, any of which can affect the quality of the student’s education and access to higher education opportunities.²⁶³ In some jurisdictions, certain charges brought against a child can lead the school district to place the student in an alternative education program even without an adjudication of delinquency.²⁶⁴

²⁶⁰ Joanna S. Markman, “Community Notification and the Perils of Mandatory Juvenile Sex Offender Registration: The Dangers Faced by Children and their Families,” *Seton Hall Legislative Journal*, vol.32 (2007), pp. 261, 285, http://works.bepress.com/joanna_markman/1 (accessed March 21, 2013) (citing Ala. Code § 15-20-21(4)(m) & -23(b)(3) (LexisNexis 1995 & Supp. 2007)).

²⁶¹ Alabama Sex Offender Act, sec. 1, 15-20-214(4)(m) and (b)(3); see Joanna S. Markman, “Community Notification and the Perils of Mandatory Juvenile Sex Offender Registration: The Dangers Faced by Children and their Families”; Michele L. Earl Hubbard, “The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990’s,” *90 NW, U.L. Rev.* 788 (1996), p. 791 (Time limits vary as to when an offender must register when he moves to a different state, as well as the length of time an offender must remain in the registry).

²⁶² University of North Carolina Center for Civil Rights, “Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records: A Survey of Law and Policy in Delaware, Virginia, North Carolina, and Florida”; “Convicted Sex Offender Expelled from Montana High School,” Associated Press, October 31, 2007, <http://www.foxnews.com/story/0,2933,306976,00.html#ixzz2O2cMtb9> (accessed March 21, 2013).

²⁶³ VA. CODE ANN. §22.1-277.2:1; VA. CODE ANN. §16.1-260(G). Under Virginia law, a student can be placed in an alternative education program if the student is found guilty or not innocent of an offense not related to homicide, weapons or firearms possession, felonious assault, criminal sexual assault, possession of controlled substances, arson, burglary, robbery, criminal street gang activity or recruitment, consumption of alcohol, or any crime that resulted in or could have resulted in injury to another.

²⁶⁴ University of North Carolina Center for Civil Rights, “Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records: A Survey of Law and Policy in Delaware, Virginia, North Carolina and Florida”; “Convicted Sex Offender Expelled From Montana High School,” Associated Press, October 31, 2007; see also American Bar Association, Juvenile Collateral Consequences Project, “Think before you plead: Juvenile collateral consequences in the United States,” undated,

Crimes committed on school grounds can have immediate consequences in many states. For example, in Delaware, if police find probable cause to believe a child committed a crime at school, the student must be immediately suspended and referred to alternative services.²⁶⁵ The Delaware attorney general also “reports any serious crimes committed off school grounds directly to schools.”²⁶⁶

Among the 296 youth offender registrants whose cases were examined for this report, a majority (52.4 percent, or 154 respondents) stated that they had been denied access to or experienced severe interruptions in their primary or secondary education as a result of their registration. Others had difficulties in school because of the public nature of their registration status. One youth offender said, “Someone in my high school made flyers of my registration page. They taped them all over the school.”²⁶⁷ Another said, “This all started in 2003 when I was 12 years old. I didn’t go back to regular school until 10th grade. By then it was too late and I was terrified everyone would find out I was a registered sex offender. I dropped out but later got my GED.”²⁶⁸

Registration can negatively affect a child’s access to higher education. Most applications for higher education require information about the applicant’s criminal convictions.²⁶⁹ While individuals generally do not need to disclose juvenile delinquency adjudications because they are not criminal convictions, registration laws require that they do so if the delinquency involves sexual offenses. Several individuals we spoke with believe this has negatively affected their college admissions.

<http://www.beforeyouplea.com/> (accessed April 19, 2013); certain charges brought against a child can result in the school district placing the student in an alternative education program even without an adjudication of delinquency in states such as California (Cal. Educ. Code §§ 48915(d), 48915.01 (2010)), Tennessee (Tennessee State Board of Education, *Alternative School Program Standards*, <http://www.state.tn.us/sbe/atemativeschool.htm>), and Virginia (VA. CODE ANN. §22.1-277.2:1).

²⁶⁵ University of North Carolina Center for Civil Rights, “Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records,” p. 6.

²⁶⁶ *Ibid.*

²⁶⁷ Human Rights Watch interview with Liam L., Fulton, Missouri, March 25, 2012.

²⁶⁸ Human Rights Watch interview with Jackson D., Garland, Texas, May 2, 2012.

²⁶⁹ University of North Carolina Center for Civil Rights, “Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records.”

Ongoing Economic Consequences

Employment

The most commonly reported consequence of registration for adult sex offenders is difficulty finding and maintaining employment.²⁷⁰ While most employment applications, like college applications, request information about the applicant's criminal convictions, not juvenile adjudications, sex offender registration status must be disclosed by job applicants regardless of whether the individual was adjudicated delinquent or convicted in adult court. Individuals we interviewed said that their registration status for offenses committed as children decades ago continues to limit their job opportunities.

Certain institutions, including public schools, child care centers, and nursing homes, are legally required to investigate and obtain criminal histories of all applicants for professional or certified licensed positions.²⁷¹ State laws prohibit individuals on the sex offender registry from applying for licenses and certifications which require a criminal background check, thus precluding registrants from becoming nurses, doctors, lawyers, and emergency medical technicians such as paramedics. Some states implement blanket laws to prevent registered sex offenders from obtaining certain types of employment or volunteer positions.²⁷² In addition to the obvious prohibitions, such as on working at a school or day care center, some states have sought to limit employment in other areas, such as operating an ice cream truck or a school bus; working at a carnival, circus, street fair, amusement park, or long-term care facility; or serving as an athletic coach, manager, or trainer.²⁷³

²⁷⁰ J.S. Levenson and R. Tewksbury, "Collateral Damage: Family members of registered sex offenders," *American Journal of Criminal Justice*, vol. 34 (June 2009), pp. 54-68.

²⁷¹ University of North Carolina Center for Civil Rights, "Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records."

²⁷² Council of State Governments (CSG), "Legislating Sex Offender Management: Trends in State Legislation 2007 and 2008," 2010, <http://www.csg.org/policy/documents/SOMLegislativeReport-FINAL.pdf> (accessed April 22, 2013). Most state bills introduced in the 2007 and 2008 sessions dealt with jobs that would bring the offender into contact with children. Recent legislation also sought to prevent sex offenders from being able to obtain or retain certain professional licenses. According to a 2010 survey conducted by the Council for State Governments (CSG), in at least four states—Arizona, California, Hawaii, and Utah—legislators acted to require the revocation or suspension of teaching credentials upon a conviction of certain sexual offenses. California passed a law (CA Senate Bill 252) to deny or revoke dental licenses and massage therapy licenses to convicted sex offenders. Massachusetts now prohibits certain sex offenders from obtaining licenses to drive buses (MA House Bill 4396), while New York targeted real estate licenses (NY Senate Bill 1531).

²⁷³ Council of State Governments (CSG), "Legislating Sex Offender Management: Trends in State Legislation 2007 and 2008," 2010.

Maya R., whose case is profiled in section IV above, was arrested and charged with a sexual offense at age 10 for an incident in which she and her stepbrothers, then ages 8 and 5, “flashed” each other and play-acted sex while fully-clothed.²⁷⁴ A year later, Maya pled guilty to the charges of criminal sexual conduct in the first and second degree, offenses that required her to register as a sex offender for 25 years. Maya also spent nearly four years at a juvenile prison. She said, “My experiences in a juvenile prison helped motivate me to want to become a social worker. Being part of the juvenile justice system, made me determined to prove that with determination, love, and a little support, productive citizens can emerge.²⁷⁵ I could not believe how many young girls in the facility were lost and without one caring family member. Many girls in there were forced into prostitution by a parent.”²⁷⁶

Upon release from prison, Maya persevered and overcame the barriers inherent in being on the registry to graduate from high school, obtain a Bachelor of Arts degree in both social work and comparative religion, and earn a Masters in Social Work (MSW) degree.²⁷⁷ In 2011, a year after she got her MSW, Maya was relieved of her duty to register under a newly passed Michigan law.²⁷⁸ Maya was on track to get her social work license, but background checks and old information on the internet revealed she was once on the registry. “I was first accepted for and then refused an internship with a great organization. This was my dream placement, but most agencies and organizations in my field have policies that don’t allow the employment of individuals on the sex offender registry. I have been refused internships by countless other organizations because of being on the public registry,” Maya stated.²⁷⁹ She lost her internship and has been unemployed since. Despite being 16 years removed from her only arrest and despite having been taken off the registry, the stigma remains. Maya is hopeful that she will one day complete an internship, become a licensed social worker, and realize her dream of helping homeless individuals.²⁸⁰

²⁷⁴ Human Rights Watch interview with Maya R., Howell, Michigan, February 2, 2012.

²⁷⁵ Ibid.

²⁷⁶ Human Rights Watch interview with Maya R., Howell, Michigan, March 18, 2013.

²⁷⁷ Ibid.

²⁷⁸ Public Acts 17-19 of 2011 amended Michigan’s Sex Offender Registration Act (SORA), effective July 1, 2011. Individuals who were under the age of 14 at the time of their adjudication are not required to register. Anyone currently on the registry must petition the court for removal if not automatically removed.

²⁷⁹ Human Rights Watch interview with Maya R., March 18, 2013.

²⁸⁰ Ibid.

Elijah B. said, “I get hired and fired from so many jobs. I can usually keep a job for a few weeks until the employer’s name and address goes up on the sex offender registry [because registrants must provide this information]. Employers say its ‘bad for business’ to keep me on. I accumulate about 20 W-2 forms at the end of each year.”²⁸¹ Another registrant told Human Rights Watch, “Working for the city cleaning out tunnels with acid was the only job I could get for a while.”²⁸² A third said, “employment is difficult. I have to support my wife and kids. I estimate that between January to April 2012 I have applied for 250 positions.”²⁸³

Registration Fees and Associated Costs

Many states require sex offenders to pay a one-time initial registration fee. For example, Colorado imposes a registration fee of between \$150 and \$400, depending on the seriousness of the sex offense.²⁸⁴ California imposes a fee of \$300 on registrants.²⁸⁵ New York state charges a \$50 registration fee,²⁸⁶ Indiana charges \$50, and Ohio charges \$100 per year.²⁸⁷ An Illinois law requires registrants to subsidize the sex offender registration process by paying a fee of \$100 to the local police department.²⁸⁸

A registrant must keep the registration current in each jurisdiction where the offender resides, is an employee, or is a student, by appearing in-person at least once a year. Certain fees and costs related to registration can be assessed at each appearance. States often impose additional costs on registrants, some of which are imposed on all persons convicted of offenses of a particular severity (such as all felons) in the state. For example, New York state imposes a mandatory surcharge of \$300 on persons convicted of felonies, a crime victim assistance fee of \$25, a DNA databank fee of \$50, a sex offender registration fee of \$50, as well as (for certain crimes, including incest) a supplemental sex offender

²⁸¹ Human Rights Watch interview with Elijah B., Houston, Texas, April 28, 2012.

²⁸² Human Rights Watch interview with Jackson D., Garland, Texas, May 2, 2012

²⁸³ Human Rights Watch interview with Joshua Gravens and his wife, Dallas, Texas, April 27, 2012

²⁸⁴ Colorado Criminal Code, Section 18-21-103.

²⁸⁵ California Criminal Code, Chapter 337, Section 18.

²⁸⁶ New York Penal Law, Article 60, Section 60.35.

²⁸⁷ Jessica McMaster, “State Sen. Rick Jones Wants Sex Offenders To Pay Annual Fee,” Fox17 News, <http://fox17online.com/2013/02/05/state-sen-rick-jones-wants-sex-offenders-to-pay-annual-fee/#ixzz2Qg1qcUUA> (accessed April 22, 2013).

²⁸⁸ Illinois Child Sex Offender Registration Law. 730 ILCS 150/3; Public Act 094-0994 (2007); Frank Main, “Sex offenders file suit to get \$100 registration fee waived,” *Chicago Sun Times*, November 7, 2012, <http://www.suntimes.com/news/metro/16220825-418/sex-offenders-file-suit-to-get-100-registration-fee-waived.html> (accessed March 21, 2013).

victim fee of \$1,000.²⁸⁹ Given the challenges many registrants face in finding employment, registration fees and associated costs can be extremely difficult or impossible to pay.

A youth sex offender in Texas said, “The fees are impossible to pay. The first year I received a bill to pay \$461 for court costs, \$2,500 fine, \$50 crimestoppers. That’s \$3,000! If you don’t pay it you go back to jail for failure to register.”²⁹⁰

In Louisiana, attorney Ethan Ashley explained the serious economic hurdles his clients face in paying registration fees and associated costs, which can total more than \$1,000 (see text box “James,” below): “The fees associated with registering as a sex offender in Louisiana are absurd. It would be hard for an individual who works a full-time job to be able to manage these types of fees and the demands of registering in general.”²⁹¹

James O.

James O. was sentenced at age 15 to life without the possibility of parole for aggravated rape in 1979. He spent 27 years and 8 months in prison, primarily at Angola State Penitentiary. He was released from prison at the age of 44, after the Supreme Court ruled in *Graham v. Florida* that the sentence of life without parole was unconstitutional for juveniles convicted of non-homicide offenses. James was required to register as a sex offender within three days of release from prison. He was also required to:

- Obtain a valid driver’s license and state identification card, printed with the words “sex offender.” Each document cost him \$20.
- Pay fees associated with community notification within 21 days of registration. During that time, registrants’ living arrangements and addresses are verified. Notifications are broken down into two categories:
 - 1) *Postcard notification*—Registrants must send a postcard with their photograph, address, offense, and personal information to every address within a 0.3 mile radius of their residence, if living within the city of New Orleans. It cost James, who was living in New Orleans, \$744 to send out

²⁸⁹ New York Penal Law, Article 60, Section 60.35.

²⁹⁰ Human Rights Watch interview with Lydia B., Killeen, Texas, April 27, 2012.

²⁹¹ Human Rights Watch interview with Ethan Ashley, Juvenile Justice Project of Louisiana, New Orleans, Louisiana, February 29, 2012.

postcards. Attorney Ethan Ashley noted, “You *can* do [postcard notifications] on your own for less money. Doing postcard notification on your own means that you have to pay for printing cost and mailing, that’s going to run you between \$200 and \$400. It’s less money *but* here’s the kicker—if you do postcard notification on your own in the State of Louisiana and you miss one house, you violate. If you violate you go back to jail.”²⁹²

And 2) *Newspaper Notification*—Registrants must let the public know where they will be residing by placing two newspaper advertisements. Newspaper notifications cost \$193 per advertisement.

James’ attorney, Ethan Ashley, added up the fees that James was required to pay, and said,

We are now at \$1,050 or so in sex offender registration fees for James. Now mind you, James was released from prison after 27 years with a \$10 check and an identification card—a card that is not even a valid state ID—it’s a prison identification card. That \$10 won’t even get you a proper ID and remember you only have 21 days to get this done.

Most jobs would not pay you within two weeks of starting the job. It would be difficult for an individual who was on the outside with a decent job to scrape together these fees.

Another thing to note is that if the registrant moves, he has to re-start this process and pay all these initial fees again—even if the landlord sells the house or the registrant has to move through no fault of his own, he has to pay again. These fees are associated with the registrant wherever he goes for the rest of his life. They are forever a tax on his life.²⁹³

²⁹² Human Rights Watch interview with Ethan Ashley, Juvenile Justice Project of Louisiana, New Orleans, Louisiana, February 29, 2012.

²⁹³ *Ibid.*

Oklahoma's Public Health Approach to Juvenile Sex Offenders

Oklahoma takes a public health approach to sex offenders in the juvenile justice system that could serve as a model for other states considering alternative approaches to youth sex offender registration. While Oklahoma does not currently take the same approach to youth offenders sentenced in the criminal court system, there is no reason in principle why it could not do so.

Most youth sex offenders in Oklahoma are treated differently than adults. The system includes the following features:

Public Notification—The adult registry in Oklahoma is public and fully accessible online. The juvenile registry is confidential and only accessible by law enforcement officials.

Offenses—Children registering based on a criminal conviction in adult court are subject to the same automatic offense-based registration system that applies to adults. Children adjudicated delinquent of a sex offense, however, can be placed on the registry only after an individualized assessment of the risk they may pose.

Expiration—Juvenile registration expires at age 21. A child can be rolled over to the adult registry, but this requires a separate petition, hearing, and judicial determination.

In Oklahoma, before a child found guilty in the juvenile system of a registerable sex offense is placed on the registry, his or her case must be evaluated using a three-step process.

First, the local prosecutor must make a determination that the child in question, even after completing treatment, still poses a significant risk of reoffending sexually. If so, the prosecutor files an application to have the court require the child to register as a sex offender upon release from custody. The filing of this application triggers phase two of the process, in which the child must undergo evaluation by a panel of two mental health professionals who prepare a report for the court recommending for or against registration. The third phase is handled by the presiding juvenile court judge, who must decide after reviewing the panel recommendation whether to accept or deny the prosecutor's application to register the child.

Over the first 10 years that the sex offender registry existed in Oklahoma, only 10 youth

offenders adjudicated delinquent were required to register, according to the Oklahoma Office of Juvenile Affairs.²⁹⁴ In 2011, the most recent year studied, just one adjudicated youth was on the registry.²⁹⁵

Dr. Marc Chaffin, a professor of pediatrics at the University of Oklahoma's Health Sciences Center and a national expert on child sexual offending behavior, told us that the specialized scheme in Oklahoma makes sense because "[children] are not simply younger versions of adult sex offenders, nor do most of them age into becoming adult sex offenders."²⁹⁶ Dr. Chaffin also explained,

Oklahoma youth who do appear to present a high risk typically receive residential services provided by the state. Under the Oklahoma process any juvenile sex offender registration and notification determination is then deferred until they are eligible for release [and thus are no longer high-risk, and no longer subject to registration]. This creates the main reason why so few youth are registered... Those in the community who could be registered don't have enough risk, and those with enough risk aren't in the community. In short, the treatment system and how it works eliminates the point of registration—i.e. notifying the public about high risk juveniles in the community. Obviously, the cornerstone of this is an individual risk-based system rather than the offense based system that the Adam Walsh Act requires.²⁹⁷

Federal law mandates that any state that does not meet the requirements of the Adam Walsh Act will receive up to a 10 percent reduction in federal grant money. Based on past funding, that might amount to a loss of about \$200,000 for Oklahoma.²⁹⁸ Some judges and law enforcement officials believe Oklahoma should retain its current approach even if it means losing the federal funds.

²⁹⁴ Alex Cameron, "Risky Business: Registering Juvenile Sex Offenders in Oklahoma," NewsOn6, Tulsa, Oklahoma, July 12, 2011, <http://www.newson6.com/story/15070600/risky-business-registering-juvenile-sex-offenders-in-oklahoma> (accessed April 22, 2013).

²⁹⁵ Ibid.

²⁹⁶ Ibid. (quoting Dr. Marc Chaffin).

²⁹⁷ Human Rights Watch email correspondence with Dr. Marc Chaffin, October 12, 2012.

²⁹⁸ Steve Berg, "Sex offender non-compliance costs Oklahoma federal funds," KRMG.com, <http://www.krmg.com/news/news/local/sex-offender-oklahoma/nSYZP/> (accessed April 22, 2013).

VI. Failure-to-Register Violations: Additional Punishment

Nearly all jurisdictions have made failure to register a criminal offense punishable by fines and imprisonment. In many states, the sentence for a single offense of failure to register can be as long as 10 years in prison, and in two states—Louisiana and Nebraska—the sentence for a second failure-to-register conviction is 20 years imprisonment.²⁹⁹

Our research suggests that most youth offenders do not understand the many rules incumbent on registrants or the full implications of failing to comply with all of the rules. In many cases, they do not even know that a serious criminal sentence is hanging over their heads should they fail to comply with every particular.

As noted above, registrants begin their sex offender registration after release from detention, jail, or prison. Over 84 percent of the youth offenders we interviewed were still age 17 or younger at release. Many youth offenders we spoke with reported that they were not permitted to have a parent or guardian accompany them during their initial registration at the local state police or sheriff's office, where they had to read, acknowledge, and sign multiple forms with long lists of detailed conditions, indicating that they understood and acknowledged their duty to register as sex offenders.

Connor S., who first began registering at age 13, described how nervous he was during his initial registration: "I was shaking when I went to the sheriff's office to register ... the volume of information they throw at you is a lot ... it's just too much information to remember." Connor said he had to read a list of 70 requirements that "you have to initial and acknowledge that you understand."³⁰⁰ When Human Rights Watch interviewed Connor, he was 21 years old and had recently been arrested and convicted for failing to register his college dorm address. "I had to plead guilty to the failure-to-register charge. They had paperwork from when I was 13 where I acknowledged that I understood that condition."³⁰¹

²⁹⁹ The range of sentences imposed by states for failure-to-register crimes is discussed in the 2008 Georgia Supreme Court case *Bradshaw v. State*, 284 Ga. 675 (November 25, 2008), <http://statecasefiles.justia.com/documents/georgia/supreme-court/s08a1057.pdf> (accessed April 23, 2013).

³⁰⁰ Human Rights Watch interview with Connor S., Williamson, Texas, March 15, 2012.

³⁰¹ *Ibid.*

To date, no study has examined failure to register from the perspective of individuals placed on the registry for offenses committed as children. Our interviews indicate that it may be particularly difficult for youth offenders to meet all registration requirements, for reasons linked to their youth and immaturity as well as the onerous nature of the requirements.

Why Youthful Offenders Fail to Register

Studies of the failure-to-register offense among all offenders (adults and children) emphasize the difficulty of maintaining registration, noting the sheer volume of obligations and the constant vigilance required of registrants to stay in compliance.³⁰² For young people, who are inherently immature, keeping track of and complying with these requirements may be even more confusing and challenging than for adults. Many of the young people interviewed for this report who were convicted of failure to register were unable to afford registration fees, obtain a proper residence, or otherwise comply with requirements to obtain identification. For example:

- Gabriel P. was arrested in 1996, when he was 11 years old, for sexually touching a playmate. He has not reoffended, but now, at age 26, Gabriel has three felony convictions for failure to register associated with his inability to obtain a proper residence. Since being released from the Texas Youth Center (TYC) at age 17, Gabriel has struggled with finding housing and employment due in part to his status as a sex offender. By law, he was restricted from living in public housing, certain areas, or in a house with children under the age of 14. Gabriel quickly found himself homeless. In 2003, less than a year after being released from TYC, Gabriel was arrested and convicted for his first failure-to-register offense: he was living on the streets, moving nightly from place to place, and had failed to register a suitable address. He served nearly a year in prison. Once released, he again found himself homeless and, in 2004, he was arrested and convicted for again failing to provide an adequate address. He served four more years. In 2010, Gabriel was arrested for his third failure-to-register offense for not residing at the address on record. He served nearly a year for this offense. Since his release from prison in late 2010, Gabriel has not been convicted for a new failure-to-register offense.³⁰³ He attributes

³⁰² In most states, mistake or ignorance of the law is not an affirmative defense to an arrest for failure to register.

³⁰³ Human Rights Watch interview with Gabriel P., Bryan, Texas, October 2012.

much of his recent success to his wife, whom he married while in prison, and who helped find a place where they could live together.

- Jason Q. was 15 when he was released from the Texas Youth Center for an offense committed at the age of 11. In Texas, registered sex offenders must obtain a “special driver’s license.”³⁰⁴ The license is required regardless of whether the registrant plans to drive or is of driving age.³⁰⁵ Registrants must obtain this special license no later than the 30th day after the date of their release. Jason says that he put off going to get his driver’s license because he was scared. “I had just gotten out of juvenile prison. I didn’t know what was going on.”³⁰⁶ Finally, he said “on the 30th day of getting home from placement, my mom dragged me down to the Department of Motor Vehicles.”³⁰⁷ Jason recounts the trip:

The room was filled with teenagers waiting to get their driver’s permits or something. When the lady called my name, I nervously walked across the room to her window. She looked at my paperwork and shouted, “since you are a registered sex offender I have to call the main office in Austin.” It felt like she just announced it over the loudspeaker. The teenage girls in the lobby started snickering. I started getting sweaty, dizzy, and ran out of the DMV mortified. My mother and I came back the next day. The DMV notified the police that I was in violation of my registration requirements [because I was then one day late]. I was arrested for failure to register for failing to obtain my driver’s license within 30 days of release.³⁰⁸

- Samuel L., who started registering at age 13, said he received his first failure-to-register conviction at age 18, during his senior year of high school. He told Human Rights Watch that he tried to register on his birthday as required by state law, but the state police turned him away, saying they changed their registration hours to

³⁰⁴ Texas Code of Criminal Procedure - Article 42.016. Special Driver's License or Identification Requirements For Certain Sex Offenders.

³⁰⁵ The legal driving age in Texas is 16 years old. Individuals under age 18 must meet extra requirements to obtain a driver’s license. See Texas Department of Public Safety, “Fast Facts from the DPS,” http://www.txdps.state.tx.us/director_staff/public_information/pr122101.htm (accessed March 21, 2013).

³⁰⁶ Human Rights Watch interview with Jason Q., Beaumont, Texas, April 27, 2012.

³⁰⁷ *Ibid.*

³⁰⁸ *Ibid.*

Wednesdays only. “I showed up that next Wednesday around 4:30 p.m. and was told that they stopped doing registrations at 4:00 p.m. and to come back next week,” he said. Samuel said this was the week of final exams and he had two term papers and two final exams. “With all my attention focused on my schoolwork, I forgot to re-register. I remembered weeks later and went to the police station. I was informed on the spot that I was under arrest for failure to register.”³⁰⁹

- Max. B. began registering as a sex offender at age 12 in Texas. Being on the registry interfered with his ability to complete high school and left him completely isolated during his formative developmental years. On his 19th birthday, in an act of defiance, Max failed to go to the sheriff’s office to update his registration. Max’s father states, “he was an angry young man and sick of it all.”³¹⁰ Max ended up serving one year in prison for failure to register, which is a felony conviction. Max is now in his late twenties and completed his 15-year obligation to register, but his failure-to-register conviction has meant that many employers will not hire him.
- David H., who first began registering at age 13, was 21 years old when he was interviewed by Human Rights Watch about his failure-to-register conviction. He spoke about the volume of information he felt was thrown at him when going to register at the sheriff’s office: “It’s just too much information to remember. There are over 70 requirements you have to initial and acknowledge that you understand.”³¹¹ David said he told his university and the campus police department that he was a registered sex offender attending the school, and thought he had fulfilled his duty to notify the university. He continued, “I registered my new address with the local state police, but was not aware that I also needed to tell them that I was a student.... I was not trying to deceive anyone. I was just unaware.”³¹²
- After being released from a juvenile facility at the age of 17, Luke J., who was a registered sex offender since the age of 14, learned that he could not go back to school. Sex offender buffer zones barred him from coming within 1,000 feet of a school or place where children congregate. Luke’s former counselor from the juvenile treatment facility helped him enroll in an online virtual high school. Shortly

³⁰⁹ Human Rights Watch interview with Samuel L., Troy, Michigan, April 1, 2012.

³¹⁰ Human Rights Watch interview with Bruce W., father of Max B., Weatherford, Texas, May 1, 2012.

³¹¹ Human Rights Watch interview with David H., Grand Rapids, Michigan, March 30, 2012.

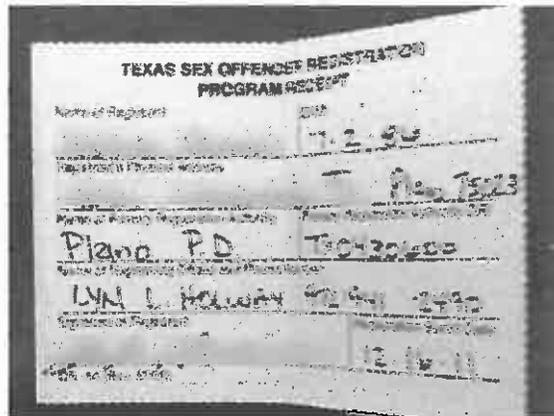
³¹² *Ibid.*

after the start of his first semester of high school, Luke was arrested and convicted of failing to provide the email identifier for his new online school. Under the state law, registered sex offenders are required to submit their email addresses and any identifiers they use before logging into websites, Facebook, MySpace, or making comments on newspaper websites. Luke explained, “I registered but I forgot to add my new email address that was given to me from my online virtual high school.”³¹³

Special Drivers’ Licenses

All states require individuals on the sex offender registry to carry some form of additional identification, and they can be asked, by law enforcement, to produce this identification at any time. In Oklahoma and Louisiana, individuals on the sex offender registry are required to have a valid state issued driver’s license or identification card with the words “sex offender” printed in bold-face type across it.

In Texas, registrants must carry a “blue card” (see photo). Joshua Gravens, a registrant in Texas, showed Human Rights Watch this card.³¹⁴ Josh described how police drop by his apartment unannounced to make sure he is residing at his listed address.³¹⁵ They also ask to see his “blue card,” as individuals on the sex offender registry must carry it at all times.



The “blue card” required to be carried by registered sex offenders at all times in Texas. © 2012 Nicole Pittman

In Florida, registrants must carry a driver’s license or identification card containing a restriction code, which declares that the card holder is a sex offender. The driver’s license does not have the words sex offender printed on it but must include the code “943 0435 F.S.” which indicates that the card holder is on the sex offender registry.

³¹³ Human Rights Watch interview with Luke J., Orlando, Florida, May 26, 2012.

³¹⁴ Human Rights Watch interview with Joshua Gravens, Dallas, Texas, April 29, 2012.

³¹⁵ *Ibid.*



Jayden C. was placed on the sex offender registry at age 14. The photograph, taken February 25, 2012 in Baton Rouge, Louisiana, shows the driver's license and identification card required to be updated yearly and carried at all times by registered sex offenders.

© 2012 Nicole Pittman

of these registrants is clearly labeled with the words "sex offender" in red print in three distinct places (see photo). Registrants are required to renew the license or ID card annually.

As a teenager living in Oklahoma, Nathaniel H. carried a driver's license with the words "sex offender" stamped in red below his picture. He told us, "I went to buy a pack of cigarettes and the clerk asked for my license. He looked at my ID, which has the words 'Sex offender' printed across it. The clerk threw my license and told me to get out of the store. A woman standing behind me looked at my license as she picked it up off the floor. She handed it back to me with a look of disgust on her face."³¹⁸

In Louisiana, individuals placed on the sex offender registry, including those adjudicated delinquent as juveniles, must obtain a Louisiana driver's license displaying the words "sex offender" in orange capital letters (see photo).³¹⁶

Human Rights Watch met 16-year-old Jayden C. in Louisiana in February 2012.³¹⁷ At the time, Jayden had been registering as a sex offender for a little over a year. He showed us his Louisiana driver's license and a state identification card, both had his photograph, address, and the words "sex offender" in big, bright, bold font.

In Oklahoma, certain state residents, including some youth sex offenders who are listed on the Department of Corrections Sex Offender Registry, are required to be identified when they apply for either an original or renewal driver's license, a commercial driver's license, or a state identification card. The driver's license or ID card



Identification card that must be updated yearly and carried at all times by registered sex offenders in Oklahoma.

³¹⁶ La. Rev. State 32:412(I).

³¹⁷ Human Rights Watch interview with Jayden C., Baton Rouge, Louisiana, February 25, 2012.

³¹⁸ Human Rights Watch telephone interview with Nathaniel H., February 2009.

Failure to Register and Recidivism

The serious sentences imposed on youth offenders for failure-to-register crimes appear disproportionate to the offenses, given that their youth and immaturity can make it exceptionally difficult for them to comply with registration laws.

It is unclear whether prosecutions for failure to register are having the desired effect of deterring subsequent sex crimes. Four published studies have examined the relationship between failure to register and sex-offense recidivism.³¹⁹ These studies, which looked at all sex offenders (adults and children), concluded that,

- Failure to register is not a significant predictor of sexual recidivism, casting doubt on the idea that sex offenders who are noncompliant with registration are especially sexually dangerous.³²⁰ Instead, results indicate only that a failure-to-register conviction significantly increases the likelihood of subsequent failure-to-register arrests.³²¹
- Failure to register is the most common offense leading to reincarceration for convicted sex offenders released from prison, facilities, or treatment and placed on the registry.³²²
- Registered offenders with failure-to-register convictions are more likely to be subsequently rearrested than registered offenders without such convictions. Most of the new convictions, however, are for general, non-sexual crimes and new failure-to-register crimes.³²³

³¹⁹ Washington State Institute for Public Policy, "Sex offender sentencing in Washington State: Failure to Register as a Sex Offender—Revised," January 2006, <http://www.wsipp.wa.gov/rptfiles/06-01-1203a.pdf> (accessed April 22, 2013); Grant Duwe and William Donnay, "The effects of failure to register on sex offender recidivism," *Criminal Justice and Behavior*, vol. 37, no. 5 (2010), pp. 520-536, <http://www.doc.state.mn.us/publications/documents/03-10FailuretoRegisterstudy.pdf> (accessed April 22, 2013); Jill Levenson, Elizabeth Letourneau, Kevin Armstrong & Kristen Marie Zgoba, "Failure to register as a sex offender: Is it associated with recidivism?" *Justice Quarterly*, vol. 27, no. 3 (2010), pp. 305-331; Zgoba and Levenson, "Failure to Register as a Predictor of Sex Offense Recidivism: The Big Bad Wolf or a Red Herring?" *Sexual Abuse: A Journal of Research and Treatment*, vol. 24 (2012), pp. 328-349.

³²⁰ Zgoba and Levenson, "Failure to Register as a Predictor of Sex Offense Recidivism: The Big Bad Wolf or a Red Herring?" *Sexual Abuse: A Journal of Research and Treatment*.

³²¹ Duwe and Donnay, "The effects of failure to register on sex offender recidivism," *Criminal Justice and Behavior*.

³²² Minnesota Department of Corrections, "The Effects of Failure to Register on Sex Offender Recidivism," March 2010, <http://www.doc.state.mn.us/publications/documents/03-10FailuretoRegisterstudy.pdf> (accessed March 21 2013).

³²³ Washington State Institute for Public Policy, "Sex offender sentencing in Washington State: Failure to Register as a Sex Offender—Revised," 2006.

Human Rights Watch was not able to find any studies on the relationship between failure to register and sex offense recidivism among youth sex offenders, but there is no reason to think one would find a stronger correlation in the youth offender population than in the overall offender population. Given that existing research finds very low rates of sex offense recidivism among youth sex offenders, neither public safety nor crime deterrence appears to justify their incarceration for failure-to-register crimes. Even if one thinks registration is appropriate for some youth sex offenders, there is strong reason to question whether offenders under age 18 should be subjected to criminal prosecution for failure to register.

VII. Due Process Concerns

At times, the juvenile or adult court proceedings that result in convictions for sexual offenses are marred by due process failings, prompting additional questions about the fairness of subjecting youth sex offenders to registration.

Guilty Pleas

Children accused of any type of offense (not only sexual offenses) are particularly vulnerable during criminal proceedings. Children and adolescents are less mature than adults and have less life experience on which to draw, and this makes understanding the court process, the charges, and the consequences of a plea more difficult.³²⁴ Like individuals with mental impairment, children may also be more compliant, especially when pressured by adult authority figures.³²⁵ There is also evidence that children are more vulnerable to police pressure during interrogations.³²⁶ Their deference to authority and lack of sophistication can result in both false confessions and agreements to plead guilty to crimes that they may not have committed.³²⁷ The decision to confess or to plead guilty is particularly momentous in the case of sexual assault crimes, since convictions often trigger onerous registration requirements.

³²⁴ Amanda C. Ferguson, Megan M. Jimenez, and Rebecca L. Jackson, "Juvenile False Confessions and Competency to Stand Trial: Implications for Policy Reformation and Research," *The New School Psychology Bulletin*, vol. 7, no.1 (2010).

³²⁵ *Ibid.*

³²⁶ *Ibid.*

³²⁷ *Ibid.*

Ethan A.

Ethan A. was 11 years old, growing up in Amarillo, Texas, when his life changed forever.

His mother, Eva, told Human Rights Watch that Ethan was “the fixer-upper type who loved taking things apart and seeing how they worked—the toaster, the television, the radio.”³²⁸ Bel said that Ethan was often picked on by the kids in the neighborhood for being the “good kid.”³²⁹



A photograph of Ethan A. (pseudonym) held by his mother, showing her son at age 11, 4 months before he was arrested for committing a sex offense and placed on the sex offender registry in Texas. © 2013 Private

Ethan’s parents divorced when he was very young. At the age of 10, Ethan and his younger brother went to live with their father and stepmother in Amarillo. In 1998, when Ethan was 11, his step-mother accused Ethan of molesting his 3-month-old sister and of touching the genitals of his younger brother.

Ethan recalls being terrified and “shaking with fear” at the police station.³³⁰ Ethan denies touching his stepsister and brother, but his stepmother maintained her accusations. He wrote to Human Rights Watch that when he was 11, he “did not think he was allowed to disagree with the police officer.”³³¹ Ethan entered a plea to aggravated sexual assault of a child and indecency with a child by contact. He was sentenced to serve six years and four months in Texas juvenile detention. After three years, Ethan was released on juvenile probation to the custody of his mother

³²⁸ Human Rights Watch interview with Eva K., mother of Ethan A., Brownwood, Texas, October 5, 2012.

³²⁹ Ibid.

³³⁰ Human Rights Watch correspondence with Ethan A., October 5, 2012.

³³¹ Ibid.

and required to register as a sex offender. He had his first photograph taken for the registry in 2001, at the age of 13.

Ethan's mother said "the rest of his life was drastically altered."³³² While Ethan was in juvenile detention, he fell behind his peers in school and had to attend an alternative school upon release. Being on the registry permeated most aspects of Ethan's life and affected his family; he was not allowed to be around his siblings and other young relatives until they turned 18, he was repeatedly stopped by police because they knew he was on the registry, and he was harassed and threatened by neighbors. Because the registry lists the perpetrator's current age but the victim's age at the time of the offense, as Ethan grew older the registry gave the impression of an increasingly wide age divide between him and his victims.

As a teenager, Ethan was anxious to get a job so he could help his mother pay the bills. Even though Ethan was not a convicted felon, employers refused to hire him when he disclosed that he was on the sex offender registry. Finally things started to look up for Ethan. In 2009, at age 22, he had a girlfriend and got a job working in an auto body shop. Ethan told us that when people in his community learned of his registration status, however, some "told the manger to fire him," and the manager did so.³³³

A few months after getting fired, in August 2009, Ethan went for his yearly registration verification and was arrested on the spot for failing to report that he had been fired from his job. He sat for one year in jail awaiting trial. On August 5, 2010, he was found guilty of failure to register and sentenced to three years in prison. In Texas and most states, registered sex offenders may be prosecuted if they fail to register, fail to verify registration information, or fail to provide notice of change of address or place of employment. Ethan was immediately arrested, convicted, and sentenced to three years in prison for this felony offense.³³⁴

While in prison, Ethan has persevered. He obtained his GED in December 2012 and is due to be released in June 2013. Upon release, Ethan will be placed on the highest level of adult parole for 10 years and required to resume his sex offender registration until 2020.

³³² Human Rights Watch interview with Eva K., October 5, 2012.

³³³ Human Rights Watch correspondence with Ethan A., October 5, 2012.

³³⁴ Texas Code of Criminal Procedure Article 62.102 - Failure To Comply With Registration Requirements.

In several cases investigated by Human Rights Watch, children (often with little legal advice) agreed to plead guilty to a sex offense without being informed of the registration requirements they would be subject to for years or decades thereafter. For example, in 1999, Mason T. was adjudicated delinquent for aggravated sexual assault for inappropriately touching a 7-year-old girl when he was 12. After completing two years of therapy and probation, at the age of 14, Mason was informed that he had to register as a sex offender for 10 years. This news shocked both Mason and his mother. The family was not told before entering the plea that Mason would be required to register as a sex offender. They were never informed that anyone could access the state's online sex offender registry and see details of Mason's offense, his photograph, and their family home address.³³⁵

It is common practice in the US criminal justice system for attorneys and judges to sometimes use the threat of trial and long sentences to obtain a plea. Elijah B., a youth offender interviewed by Human Rights Watch, said, "I stood in court at the age of 17 and the judge told me: 'if you enter a plea of not guilty you will serve at least 15 years in prison. If you say guilty you can go home on probation.'"³³⁶ Another youth offender said, "The attorney told me that if I didn't admit to the charge I would be charged as an adult and get 20 years to life in prison."³³⁷ A mother of a youth offender told Human Rights Watch,

His attorney advised us to just plead guilty to the charges. He told us that by entering a plea [Justin] would just get some counseling and we could save everyone from the embarrassment of a trial. I agreed. It turned out that [Justin] would be required to register as a sex offender for 10 years starting on the last day of his probation. He was 13 when he started registering.³³⁸

The vast majority of youth sex offenders interviewed for this report pled guilty (280 people, or 94.6 percent). In only 39.2 percent of the 296 cases examined for this report did youth offenders describe being informed of registration requirements before entering their plea.

³³⁵ Renee C. Lee, "Juveniles wait years to get past sex crimes," *Houston Chronicle*, September 21, 2009, <http://www.chron.com/news/houston-texas/article/juveniles-wait-years-to-get-past-sex-crimes-1601637.php> (accessed March 21, 2013).

³³⁶ Human Rights Watch interview with Elijah B., Houston, Texas, April 28, 2012.

³³⁷ Human Rights Watch interview with Mason T., Pinehurst, Texas, May 2, 2012.

³³⁸ Human Rights Watch interview with mother of Justin Z., Fort Worth, Texas, April 27, 2012.

Retroactive Application of Registration Requirements

The federal Sex Offender Registration and Notification Act (SORNA) expanded the number of youth sex offenders subject to registration by adding more nonviolent, lower-risk offenders to the federal registry. SORNA also opened the door to the retroactive application of registration requirements to individuals convicted of sex offenses (whether in juvenile or criminal court proceedings) before the registration laws went into effect.

Of the youth sex offenders interviewed for this report, 57 (19 percent) were subject to registration requirements imposed retroactively after their convictions. Some of these individuals had completed the terms of their parole and juvenile or adult probation, started families, and made lives for themselves. Due to the changes wrought by SORNA, others who had shown no risk of reoffending were now considered high-risk offenders because of a crime that occurred decades ago. Some pled guilty to crimes and lived for a time without being subject to registration, only to learn much later that they had agreed to terms which now trigger harsh consequences. While records of juvenile delinquency are normally kept confidential, the retroactive application of SORNA requires individuals who previously pled to acts of juvenile delinquency— and who did so with the expectation that their adjudication would remain confidential— to publicly expose that information to friends, family, colleagues, and neighbors. Some, had they known that they would years later be subject to registration requirements, might not have pled to the charges at all.

As of 2012, all but one appellate district in the United States allowed for the retroactive application of registration requirements to past convictions or adjudications. The one exception is the Ninth Circuit Court of Appeals. In the case of *U.S. v. Juvenile Male*, the court found that the retroactive application of SORNA to juvenile adjudications was unconstitutional.³³⁹ In 2010, the US Supreme Court reviewed the case but did not address the constitutionality of the retroactive application of SORNA.³⁴⁰

³³⁹ 581 F.3d 977 (9th Cir. 2009), vacated and remanded, 131 S. Ct. 2860 (2011), appeal dismissed as moot, 653 F.3d 1081 (9th Cir. 2011).

³⁴⁰ *USA v. Juvenile Male*, 131 S. Ct. 2860 (2011).

Fewer Protections in the Juvenile System?

Juveniles adjudicated delinquent of sexual offenses are **less** protected from accepting a plea without being informed of registration requirements than children subject to the jurisdiction of adult courts. Many courts have found that a defendant charged as an adult must know the collateral consequences of entering a plea to a criminal offense, such as registration, community notification, and residency requirements.³⁴¹ Conversely, the law is less settled as to whether children must be informed of the collateral consequences that result from entering a plea to a juvenile offense.³⁴² For example, a 2011 study of registration requirements in Delaware, Florida, North Carolina, and Virginia emphasized,

None of the four states studied requires administrators of the juvenile justice system to notify juvenile offenders or their guardians of the collateral consequences of juvenile records or of the opportunity to expunge those records. In each of the states, a youth could have many interactions with the administrators of the juvenile courts, including his attorney, and not learn the potential ramifications of juvenile delinquency adjudications of sexual offenses – i.e. registration.³⁴³

³⁴¹ *Padilla v. Commonwealth of Kentucky*, 559 U.S. 356 (2010) (requiring defense attorneys to inform clients of the collateral consequences in immigration law of a criminal conviction). See also *Taylor v. State*, 698 S.E.2d 384, 388 (Ga. Ct. App. 2010) (applying *Padilla* to sex offender registration). But see *Maxwell v. Larkins*, No. 4:08 CV 1896 DDN, 2010 WL 2680333, at 10 (E.D. Mo. July 1, 2010) (declining to extend *Padilla* to sex offender registration).

³⁴² See, for example, *Interest of L.T.*, 2011 ND 120, PP 20-22, 798 N.W.2d 657, 663 (declining to require the court to advise the child or respondent-parent of the requirement to register as a sexual offender before accepting an admission of guilt to an offense requiring the juvenile to register).

³⁴³ University of North Carolina Center for Civil Rights, “Juvenile Delinquency Adjudication, Collateral Consequences, and Expungement of Juvenile Records: A Survey of law and Policy in Delaware, Virginia, North Carolina, and Florida,” 2011, <http://www.law.unc.edu/documents/civilrights/centerforcivilrightsexpungementreport.pdf> (accessed March 21, 2013).

VIII. Human Rights and Registration of Youth Sex Offenders

International human rights law requires all governments to protect people within their jurisdiction from violence, including by deterring crimes such as sex offenses.³⁴⁴ While at least six other countries—Australia, Canada, France, Ireland, South Africa, and the United Kingdom—have implemented sex offender registration, they have done so in a more restricted manner, in order to more closely conform with international human rights standards. Thus, in these six countries there are often no public notification or residency requirements and the inclusion of youth offenders is heavily circumscribed.

The important duty of government to protect persons from harm has undoubtedly inspired the creation of sex offender registration schemes in the United States. However, the onerous nature of the schemes and their specific application to youth offenders raise serious questions under human rights law.

The Child's Right to Special Treatment

Conviction for even a very serious sex offense does not extinguish a child's claim to just treatment at the hands of government, nor does it free a government to ignore fundamental rights when imposing punishment or "collateral" obligations such as registration.

International law recognizes that juvenile offenders require special protection. The International Covenant on Civil and Political Rights (ICCPR), to which the United States became a party in 1992, specifically acknowledges the need for special treatment of children in the criminal justice system and emphasizes the importance of their

³⁴⁴ Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which the US has been party since 1992, guarantees the right to security of the person, including a right to protection of bodily integrity. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200 A(XXI), 21 U.N. GAOR Supp (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 161, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 9. The United Nations Human Rights Committee (HRC) has made it clear that states party to the ICCPR and other conventions must "take appropriate measures or ... exercise due diligence to prevent [and] punish ... the harm caused by [rights violations] by private persons or entities." UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 9. Similarly, the Committee Against Torture (CAT) requires state parties to exercise due diligence in investigating, prosecuting, and punishing perpetrators—including private actors—of rape and sexual assault. UN Committee Against Torture (CAT), General Comment No. 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2 (2008).

rehabilitation.³⁴⁵ Article 10(3) requires the separation of youth offenders from adults and the provision of treatment appropriate to their age and legal status. Article 14(4), which was co-sponsored by the United States,³⁴⁶ mandates that criminal procedures for children “take account of the age and the desirability of promoting their rehabilitation.”³⁴⁷ The ICCPR requires states to respond to the offenses children commit by focusing on positive measures and education rather than punishment.³⁴⁸

Those in favor of youth sex offender registration often argue that the requirements—whether registration alone, or registration in combination with community notification and residency restrictions—are distinguishable from criminal punishment. Since registration is imposed only after a child completes his or her criminal sentence, they argue, it is at most a collateral consequence of punishment and as such is distinct from the original punishment. However, the international human rights law requirement that children be treated in a manner that takes into account their age and particular vulnerabilities does not hinge upon whether government is imposing a criminal punishment or instituting other types of administrative procedures that constitute “collateral consequences.” In all cases, juveniles must be treated differently.

In the United States, many sex offender registration laws at both the state and federal levels treat youth offenders no differently from adults. This is true of youth offenders subject to the jurisdiction of adult courts, but also of many children adjudicated delinquent in juvenile courts. When children and adults are subjected to exactly the same procedures and laws, the United States violates provisions of the ICCPR requiring special measures for children. In order to comply with its obligations under international human rights law, the United States should abolish sex offender registration schemes that are not specifically tailored to address the situation of youth offenders.

³⁴⁵ The Human Rights Committee has interpreted the ICCPR’s provisions on youth offenders to apply to all persons under the age of 18. Human Rights Committee, General Comment no. 1, Forty-fourth Session (1992), para. 13, in *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, HRI/GEN/1/Rev.7, p. 155.

³⁴⁶ The United States co-sponsored this provision together with Great Britain and India, and it was adopted unanimously. See Marc Bossuyt, *Guide to the “Travaux Préparatoires” of the International Covenant on Civil and Political Rights* (The Netherlands: Martinus Nijhoff Publishers, 1987), p. 307.

³⁴⁷ The ICCPR contains three additional provisions related to juvenile justice. Article 6(5) prohibits imposing the death penalty on persons who committed crimes while under the age of 18. Article 10(2), subparagraph b, mandates the separation of accused children from adults and the swift adjudication of their cases. Article 14(1) provides an exception for cases involving children to the general requirement that judgments be made public.

³⁴⁸ Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (Kehl: N.P. Engel, 1993), p. 266.

Recent cases in the US Supreme Court raise serious questions under US constitutional law about any scheme in which the differences between youth and adults are not taken into account. In a case abolishing the death penalty for juveniles, the court stated, “From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”³⁴⁹ Similarly, the court has given weight to:

Developments in psychology and brain science [that] continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence. Juveniles are more capable of change than are adults, and their actions are less likely to be evidence of “irretrievably depraved character” than are the actions of adults.³⁵⁰

Moreover, in abolishing the mandatory imposition of life without parole sentences on juveniles, the US Supreme Court based its decision on the fact that the child’s status cannot properly be weighed:

By removing youth from the balance — by subjecting a juvenile to the same life-without-parole sentence applicable to an adult — these laws prohibit a sentencing authority from assessing whether the law’s harshest term of imprisonment proportionately punishes a juvenile offender. That contravenes *Graham’s* (and also *Roper’s*) foundational principle: that imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children.³⁵¹

In a recent opinion outside of the sentencing realm, moreover, the Supreme Court recognized that children’s perception is different from that of adults and that police officers must take into account the age of children when deciding whether they are in custody and need to be informed of their rights under the 1966 case *Miranda v. Arizona*. The Supreme Court stated, “[o]ur history is replete with laws and judicial recognition’ that

³⁴⁹ *Roper v. Simmons*, 543 U.S. 551, pincite, (2005).

³⁵⁰ *Graham v. Florida*, 130 S. Ct. 2011, 2026 (2010).

³⁵¹ *Miller v. Alabama*, 132 S. Ct. 2455, 2466 (2012).

children cannot be viewed simply as miniature adults. We see no justification for taking a different course here.”³⁵²

Disproportionate Infringement on Other Rights

Other human rights of children threatened by youth sex offender registration include the rights to protection from harm, family unity, education, health and well-being, and freedom of movement. None of these rights are absolute. But laws that infringe upon these rights must be necessary to serve a legitimate public interest, the relationship between the interest and the means chosen to advance it must be a close one, and the laws must be the least restrictive possible. For example, as the United Nations (UN) Human Rights Committee, which assesses compliance with the ICCPR, has stated with regard to limiting the right to movement,

[I]t is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected.³⁵³

If a state restricts a right, it can only do so to the extent consistent with “the provisions, aims, and objectives of the Covenant” and only to the extent “reasonable in the particular circumstances.”³⁵⁴ Reasonableness is achieved if the restriction is “both proportional to the end sought and necessary in the circumstances.”³⁵⁵

Some of the most fundamental rights of children (and adults who are former youth offenders) are put at risk by sex offender registration laws. Given the low recidivism rates of youth sex offenders, it is doubtful whether registration truly furthers the government’s

³⁵² *JDB v. North Carolina*, 131 S. Ct. 2394, 2404 (2011) (internal citations omitted).

³⁵³ General Comment 16/32, in ICCPR/C/SR.749, March 23, 1988, para. 4. *Nicholas Toonen v. Australia*, Human Rights Committee, 50th Sess., Case No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992, para. 8.3. Although the Committee was addressing freedom of movement, the criteria it enunciated apply for all protected rights.

³⁵⁴ *Ibid.*

³⁵⁵ *Ibid.*

objective of protecting future victims from new sex offenses. Therefore, the infringements on rights imposed by these laws appear to be disproportionate to their purpose.

The Approach of Other Jurisdictions

The US is not alone in implementing registration systems for sex offenders. At least six other countries (Australia, Canada, France, Ireland, South Africa, United Kingdom) have sex offender registries, either for perpetrators of all sex offenses or only offenses in which the victim was a child, and others are contemplating establishing registries.³⁵⁶ However the US is alone in the scope of the registries, in particular the public and easily accessible nature of the information on the registries, the onerous conditions imposed on registrants, the imposition of residency restrictions, and the broad application of many of these aspects to youth sex offenders.

Sex offender registries in other countries have come under judicial challenge, and courts have found the more circumscribed registration requirements compatible with protection for human rights, only in so far as each scheme strikes the appropriate balance between the rights of the individual on a register and the public safety interest that the registries are designed to meet. The US sex offender registration schemes fail to meet these standards.

The European Court of Human Rights (ECtHR) has acknowledged that registries pursue legitimate aims (such as the prevention of crime and the protection of the rights and freedoms of others) and are consistent with states' duty to protect individuals from grave forms of violence.³⁵⁷ In finding that conditions of registration in both the UK and France imposed a proportionate constraint on offenders' private and family lives, the Court set

³⁵⁶ Australia operates a National Child Offender Register (ANCOR) for those who have committed offenses against children, and there are multiple state laws (Victoria *Serious Sex Offenders Monitoring Act 2005*, Victoria *Sex Offenders Registration Act 2004*, NSW *Child Protection (Offenders Registration) Act 2000*, NT *Child Protection (Offender Reporting and Registration) Act 2004*, QLD *Child Protection (Offender Reporting) Act 2004*, WA *Community Protection (Offender Reporting) Act 2004*). Canada has a National Sex Offender Registry (governed by the Sex Offender Information Registration Act). Ireland provides for registration under the Sexual Offenders Act 2001, and the UK operates a Violent and Sex Offender Register governed by the Sexual Offences Act 2003. South Africa operates a national Register for Sex Offenders established by an Act of Parliament in 2007. In France, Law no. 2004-204 created a national judicial database of sex offenders (later extended to include violent offenders) known as FIJISV (*Le fichier judiciaire automatisé des auteurs d'infractions sexuelles ou violentes*) governed by the Code of Criminal Procedure. New Zealand and Samoa are both actively considering whether to establish national sex offender registers.

³⁵⁷ See, for example, *Ibbotson v. United Kingdom*, No. 40146/98, Decision of October 21, 1998; *Adamson v. United Kingdom*, Application 4223/98, Decision of January 26, 1999; *Massey v. United Kingdom*, Application No. 14399/02, Decision of April 8, 2003. Under the UK law, an offender is required to provide basic information to the police who can monitor where they reside, but there is no general public access to the police-held information.

down clear criteria for assessing proportionality.³⁵⁸ For example, in its examination of the French law the Court noted that sex offenders could appeal to the prosecutor against their automatic inclusion on the registry, then to an appellate chamber, and then to the president of the investigating chamber. The Court said,

[T]his judicial procedure for removing the information ensures independent review of the justification for the retention of the information according to defined criteria and provides adequate and sufficient safeguards in relation to respect for private life, with regard to the seriousness of the offences justifying registration on the sex offenders' register.³⁵⁹

The criteria the European Court set out was relied on by the UK Supreme Court to strike down a provision in UK law requiring lifetime registration for a person convicted of an offense carrying a sentence of 30 months or more imprisonment.³⁶⁰ In this case one of the registrants, F, was a youth sex offender, who had been convicted at age 11 of the rape of a younger boy, and was required to register for life. The UK Supreme Court endorsed the conclusion of the Court of Appeal that,

“[A]n offender was, as a matter of principle, entitled to have the question of whether the notification requirements continued to serve a legitimate purpose determined on a review. *This entitlement was even stronger in the case of child offenders because of the fact that children change as they mature.*” (emphasis added)³⁶¹

Relying directly on ECHR standards on safeguarding the right to privacy, the UK Supreme Court ruled that the life-long notification requirement was a disproportionate interference with sex offenders' right to private and family life, because it was automatic without any opportunity for review.³⁶² The European Court has expressly endorsed the UK Supreme

³⁵⁸ *Bouchacourt v. France*, application 5335/06; *Gardel v. France*, application 16428/05; and *M.B. v. France*, application 22115/06, Judgment of December 17, 2009.

³⁵⁹ *Ibid.*, para 68.

³⁶⁰ *R (on the application of F) and Thompson v. Secretary of State for the Home Department*, April 21, 2010, [2010] UKSC 17.

³⁶¹ *Ibid.*, para 40.

³⁶² The lead case is *S and Marper v. United Kingdom*, Application 30562/04 and 30566/04, Judgment December 4, 2008 [2008] ECHR 1581, in which the European Court found that the blanket, indiscriminate, and indefinite retention of DNA samples of suspects, who were never convicted of criminal offences, violated the right to privacy protected by the convention.

Court's assessment.³⁶³ The UK High Court has also struck down on privacy grounds other procedures for disclosing information about offenders.³⁶⁴

Protection from Violence

Two categories of children suffer harm as a result of sexual offenses and the sex offender registration laws described in this report. The most obvious category is the child victims of sexual assault, who have rights to protection from harm and to redress for the harms they have suffered.

However, youth sex offenders are also entitled to protection from harm, including from vigilante violence. The United States has signed and ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention against Torture) and the International Covenant on Civil and Political Rights (ICCPR). Each of these treaties prohibits cruel, inhuman, or degrading treatment or punishment³⁶⁵ and includes requirements that the state act to prevent acts of violence directed at anyone—adults and children—committed by private actors.³⁶⁶

³⁶³ *M.M. v United Kingdom*, Application No. 24029/07, Judgment November 13, 2012. In this case the applicant had been cautioned for child abduction, and that caution remained on her record for life. Twelve years after the caution, the applicant lost an offer of employment as a health worker when she disclosed the caution as part of a criminal-record check by the prospective employer. The disclosure had been made with the applicant's consent, but the court found that she had no real choice as the employer was entitled to insist on disclosure. The Court held that the retention of a caution on a criminal record for life was a violation of the right to privacy and there were insufficient safeguards in the system to ensure that information relating to the offender's private life would not be disclosed. At para. 197, the ECtHR expressly endorsed the UK Supreme Court: "The Court also notes that the Supreme Court in *R (F and another)* recognized the need for a right to review in respect of the lifelong notification requirements imposed pursuant to sex offenders' legislation (see paragraph 120 above). In doing so, Lord Phillips noted that no evidence had been placed before the court that demonstrated that it was not possible to identify from among those convicted of serious offences, at any stage in their lives, some at least who posed no significant risk of reoffending. In light of the ensuing uncertainty, he considered that the imposition of notification requirements for life was not proportionate. The Court is of the view that similar considerations apply in the context of a system for retaining and disclosing criminal record information to prospective employers."

³⁶⁴ In a case brought by four nurses who were prevented from working with children due to minor sex offenses, the UK High Court ruled a system of automatically banning those convicted of or who admitted certain crimes from working with children and vulnerable adults without allowing them to make representations breached their rights to a fair trial. *The Royal College of Nursing & Ors, R (on the application of) v. Secretary of State for the Home Department & Anor* [2010] EWHC 2761 (Admin) (November 10, 2010). In another case, the High Court ruled that the failure to allow an offender to make representations before information could be disclosed by police about them under the Child Sex Offender Disclosure Scheme (CSOD) violated human rights law. The police had a duty to afford the offender an opportunity to make representations before disclosure was made. Without the offender being afforded such an opportunity, the court reasoned, the decision maker might not have all the information necessary to conduct the balancing exercise that he is required to perform justly and fairly. *X (South Yorkshire) v Secretary of State for the Home Department and Chief Constable of Yorkshire* [2012] EWHC 2954.

³⁶⁵ ICCPR, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994, art. 16.

³⁶⁶ The United Nations Human Rights Committee (HRC) has made it clear that states party to the ICCPR and other conventions violate their obligation under these treaties not only when state actors are responsible for the action, but also when the state fails to take necessary steps to prevent violations caused by private actors. The HRC's General Recommendation 31 to the ICCPR notes

Protection from violence, moreover, is an essential component in securing other human rights including the right to physical integrity. Additionally, the harassment and violence some youth offenders endure as a result of state sex offender registries and related policies may end up depriving them of their right to live together with their family, or to an education on equal terms with their peers. Such harassment and violence may also have serious mental health consequences and infringe upon the right of youth to the enjoyment of the highest attainable standard of health.³⁶⁷

Privacy and Family Unity

Sex offender registration laws interfere with a child's right to privacy, which international human rights law recognizes as more robust than an adult's right to privacy. Even in instances in which registration is not explicitly combined with community notification requirements, the reproduction of such records by public and private actors in a variety of ways and locations—particularly in our electronic age—makes it nearly impossible for the heightened privacy rights of children to be respected.

The Convention on the Rights of the Child (CRC), which the United States has signed but not ratified,³⁶⁸ and the ICCPR both prohibit arbitrary or unlawful interference with a child's privacy.³⁶⁹ This prohibition—along with other international legal guarantees of treatment with dignity, respect, and protection from cruel, inhuman, or degrading treatment—underlie the minimum standards for privacy set forth in the UN Standard Minimum Rules for the Administration of Juvenile Justice (the “Beijing Rules”). These minimum standards require that every child's privacy be respected at all stages of the juvenile justice process, including with regard to dissemination of a youth offender's criminal record.³⁷⁰

that state parties must “take appropriate measures or ... exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.” UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 9.

³⁶⁷ Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, signed by the United States on February 16, 1995, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (accessed April 2, 2013), arts. 28, 24(1).

³⁶⁸ By signing the treaty the US is obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. See Vienna Convention on the Law of Treaties, 1969, article 18.

³⁶⁹ Article 16 of the CRC, following closely the language of article 17 of the ICCPR, states “(1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honor and reputation. (2) The child has the right to the protection of the law against such interference or attacks.”

³⁷⁰ Administration of Juvenile Justice (“The Beijing Rules”), adopted November 29, 1985, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985) (“The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling.”).

Some youth offenders in the US have challenged mandatory registration and community notification laws on the basis that those laws open their records to public view, whereas existing law has generally permitted children to keep their juvenile records confidential or have them expunged. US federal courts have recognized juveniles' heightened "liberty interest" in the confidentiality of their records but have yet to overturn sex offender registration or notification laws on that basis.³⁷¹

The right to family unity finds articulation in numerous human rights treaties.³⁷² The concept is also incorporated into the domestic law of the United States. For example, in the context of custody rights for grandparents, the US Supreme Court has held that the "right to live together as a family" is an important right deserving constitutional protection, and an "enduring American tradition."³⁷³

In some instances, however, the youth offender's strong right to family unity is subordinated to the best interests of his or her siblings, who the state assumes would be at risk if the youth offender is allowed to reside with the family. Cases outlined in this report raise questions about whether government is striking the right balance even in these cases.

Education, Health, Well-being, and Freedom of Movement

The Universal Declaration of Human Rights states that everyone has a right to education, to freedom of movement and residence within the borders of their country, and to a standard of living adequate for health and well-being, including housing.³⁷⁴ Sex offender registration

³⁷¹ *US v. Juvenile Male*, 590 F. 3d 924, 927 (9th Cir. 2010) (dismissed by the US Supreme Court on mootness grounds). One court specified that the issue of confidentiality was immaterial in that particular jurisdiction, mainly because disclosure of juvenile information under its community notification law was limited to law enforcement. *In re Appeal in Maricopa County Juvenile Action No. JV-132744*, 933 P.2d 1248 (Ariz. Ct. App. 1996). This implies that if notification went beyond law enforcement, it would violate juveniles' expectation of privacy. Another federal court held that juveniles have a particularized liberty interest in the established policy of "setting aside" their criminal records. However, the court stopped short of finding community notification an impermissible violation of this particularized liberty interest for all juveniles. Rather, it held that procedures to determine who would be subject to notification must consider juveniles' heightened liberty interests. *Doe No. 1 v. Williams*, 167 F.Supp. 2d 45, 64 (D.D.C. 2001).

³⁷² The Universal Declaration of Human Rights states that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the State." Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), U.N. Doc. A/810 at 78 (1948), art. 16(3). The Declaration also states, "Motherhood and childhood are entitled to special care and assistance." UDHR, art. 25(2). The ICCPR states in Article 17(1) that no one shall be "subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence." Article 23 states that "[t]he family is the natural and fundamental group unit of society and is entitled to protection by society and the state," and that all men and women have the right "to marry and to found a family." The right to found a family includes the right "to live together." UN Human Rights Committee, General Comment 19: Protection of the Family, the right to marriage and equality of the spouses, art. 23, July 27, 1990.

³⁷³ *Moore v. City of East Cleveland*, 431 U.S. 494, 500, 503, n.12 (1977) (plurality).

³⁷⁴ UDHR, arts. 13(1), 17, 25, and 26.

laws can interfere with all of these rights. Residency restrictions and the contradictions between state laws often interfere with registrants' ability to move residences, including between states within the US. The restrictions also have a profound impact on children's ability to secure housing, and thus can lead to homelessness.

Sex offender registration, notification, and residency restrictions also have the effect of interfering with children's access to education. When children are unable to attend school because they are banned from going near or entering school buildings, or when other restrictions on their residency or freedom of movement make it impossible for them to maintain a home and thus the stability to attend school, their access to education is curtailed.

Registration and community notification laws also have a deleterious impact on registrants' standard of living because they can interfere with access to employment. State and local laws often ban a registered youth offender from working anywhere near children—so registered teens cannot seek jobs at the local mall, fast food restaurants, camps, and recreational centers. Current laws require registrants to provide their employers' business name and address to be posted on the internet—further deterring employers from hiring them. Finally, the shaming and publicity associated with community notification can negatively impact registrants' mental health.

IX. Recommendations

To the US Congress and State Legislatures

- Amend state and federal law to explicitly exempt all persons who were below the age of 18 at the time of their offense (youth sex offenders) from all sex offender registration, community notification, and residency restriction laws unless and until evidence-based research demonstrates that such requirements provide a significant, measurable improvement in public safety that outweighs the harms to former youth sex offenders and their families.
- To the extent that youth sex offenders remain subject to registration, amend state and federal law to ensure that youth sex offenders are placed on registries only after an individualized assessment. We recommend that such assessments require that a judge determine by clear and convincing evidence at an evidentiary hearing where the youth offender is represented by counsel that: (a) a panel of qualified experts using a validated risk assessment tool has determined that the youth poses a high risk of sexual reoffending, and (b) public safety cannot be adequately protected through any means other than the youth being subject to registration.
 - The determination that registration is necessary should be reviewed at least on an annual basis for as long as the registration requirement lasts.
 - All determinations should be made with an eye towards reducing the threat of unnecessary stigmatization to the youth offender and his or her victim.
 - At periodic reviews, youth offender registrants should be able to present evidence of rehabilitation, change in life circumstances, incapacitation (for example, disease or disability) or substantial time living in the community without reoffending as grounds for termination of the requirement to register or a change in their assigned level of risk.
 - In the initial registration hearing and at all periodic reviews, the burden of proof should remain on the state to prove that a registrant poses a public safety risk and thus must remain on the registry.
- Do not subject any youth offenders to lifetime registration requirements.
- To the extent youth offenders determined to pose a high risk of sexual reoffending continue to be subject to registration, use registration information solely for

purposes of law enforcement. Do not subject these offenders to community notification, internet publication, or having their records open to public inspection.

- Do not apply residency restrictions to youth sex offenders, apart from appropriate restrictions on return to a residence where the victim of their offense lives. In the latter cases (as where a sibling is the victim), return to the home should be managed as a part of child welfare, probation, or parole systems and should be made on a case-by-case basis with the input of professionals expert in, for example, child development, psychiatry, and child protection.
- Do not require youth sex offenders to register with their schools or places of employment.
- Amend federal and state legislation to ensure that individuals who are non-registrants in one state are not required to register simply because they move to another state.

To State Legislatures and Agencies

- Require that all persons who are charged with a sexual offense committed before age 18 are represented by counsel.
- Create an impartial body, including representatives from law enforcement agencies and the criminal defense bar, to regularly review all registration information to ensure its accuracy and to remove youth offenders from registries as soon as registration requirements have ended. Additionally, this body should be empowered to ensure that the information on registration sites is not misleading (for example, the age at which the registrant committed the offense should be included).
- Amend state penal law on the crime of “failure to register” to allow for an exception for “good faith” efforts to comply with registration requirements. For those with an underlying juvenile sex offense, “failure to register” should be a juvenile court offense and should remain within juvenile court jurisdiction.
- Support development of a range of strategies to prevent sexual abuse, including educational programs for families, treatment and other resources for survivors of sexual violence, promotion of safety precautions by youth and adults, and campaigns that take a public health approach to the reduction of sexual violence.
- Work with national organizations such as the Center for Sex Offender Management (CSOM) and the National Center for Sexual Behavior of Youth (NCSBY), national experts, and relevant local agencies and organizations to conduct community

meetings when registrants move into a neighborhood. Community meetings should aim at safe reintegration of the registrant, as well as provide fact-based education about where the most serious risks of sexual abuse lie and guidance on how to prevent sexual abuse before it occurs.

- Involve youth offenders, family members, survivors of sexual abuse and their communities in the development of prevention and protection programs, and ensure that their particular perspectives—reflecting their different cultural, ethnic, and spiritual backgrounds—are taken into account in the design of such programs.

To State and Federal Judges

- As a part of any plea negotiation, ensure that all persons accused of sexual offenses who are below the age of 18—whether in juvenile or adult court proceedings—are advised, using language tailored to the child’s level of understanding, of the implications of an adjudication or conviction for a sexual offense, including the registration, community notification, and residency requirements.

To Prosecutors

- Exercise prosecutorial discretion to interpret any vague or ambiguous statutes to exclude youth from sex offender registration requirements.
- As a part of any sentencing or plea negotiation, ensure that all persons accused of sexual offenses who are below the age of 18—whether in juvenile or adult court proceedings—are advised of the implications of an adjudication or conviction for a sexual offense, including the registration, community notification, and residency requirements.

To Defense Attorneys

- Using language tailored to the child’s level of understanding, advise all clients below the age of 18—whether in juvenile or adult court proceedings—of the implications of an adjudication or conviction for a sexual offense, including the registration, community notification, and residency requirements and the consequences of a failure-to-register conviction.
- Ensure that courts hold all required periodic review hearings.

- Work to ensure that all youth charged with sexual offenses are represented by counsel.

To Police and Other Law Enforcement Agencies

- If a subgroup of youth sex offenders remain subject to community notification, eliminate the use of posters, flyers, and other easily replicable materials to alert communities of the presence of a registered sex offender in their neighborhood. Inform community members individually, using accurate and responsible language to describe the potential threat posed by the registrant.
- Recognize law enforcement and other local officials' responsibility and authority to keep all community members safe, including people who have been convicted of sex offenses. In deciding the method and scope of community notification, take into consideration the potential for community hostility against registrants and take any necessary steps to mitigate the potential hostility.
- For officers involved in the investigation of sexual offenses, institute training on adolescent development, issues surrounding youth sexual offending, youth sex offender treatment, and recidivism rates.

Acknowledgments

We are deeply grateful to the Soros Open Society Foundation for their generous support and encouragement. Special gratitude to Lenny Noisette, Luisa Taveras, Adam Culbreath, Christina Voight, and Sarah Baker.

We further thank the Defender Association of Philadelphia for providing office space and support for Nicole Pittman.

Research for this report was conducted by Nicole Pittman, Soros Senior Justice Advocacy Fellow, with the volunteer support of Cassandra Milnes and Quyen Nguyen. This report was written jointly by Nicole Pittman and Alison Parker, US Program director at Human Rights Watch.

The report was edited primarily by Alison Parker; Maria McFarland, US Program deputy director; Elizabeth Calvin, Children's Rights Division senior advocate; and Zama Coursen-Neff, Children's Rights Division director. Brian Root, quantitative analyst in the US Program, helped analyze the data and assess the impact of the laws on registrants. Antonio Ginatta, US Program advocacy director, helped provide a consistent and clear message for the report. Elena Vanko and Samantha Reiser, US Program associates, provided significant administrative assistance and support.

Special thanks to former and current Human Rights Watch staff members Sarah Tofte, Corinne Carey, and Jamie Fellner for taking the bold lead by writing the 2007 Human Rights Watch report, *No Easy Answers: Sex Offender Laws in the US*.

Marc Chaffin, expert on child sexual offending behavior and professor of pediatrics at the University of Oklahoma Health Sciences Center, provided continuous encouragement and support and reviewed and commented on parts of the manuscript. Consultants Alisa Klein and Joan Tabachnick; staff at the Juvenile Division of the Ohio Public Defender; and staff at the Juvenile Law Center in Philadelphia, Pennsylvania lent support and expertise and made specific suggestions for the recommendations section of the report.

We are deeply grateful to all the individuals directly impacted by sex offender registration and notification laws and their families who shared their experiences for this report. Many of these individuals courageously shared their deeply personal and often traumatic experiences of growing up on the registry for the first time, despite the fear of repercussions or further stigmatization.

We are tremendously appreciative of the assistance, encouragement, and warm hospitality from the following organizations, including, but not limited to: Wayne Bowers; eAdvocate; Charlie Sullivan and the CURE community; Terry, founder and director of New Jersey Families Advocating Intelligent Reform (NJ Fair); Reform Sex Offender Laws (RSOL); Mary Sue Molnar, director of Texas Voices for Reason and Justice; Jan Fewell; Diane Iosue; Phil Harris; Illinois Voices; Texas defense attorney Laura Peterson; Mary Devoy, Reform Sex Offender Laws of Virginia (RSOL); Sharon Denniston; Matthew 25 Ministries and Miracle Village; Leticia Rodriguez; and Vicki Henry, president of Women Against Registry.

Nicole Pittman expresses her gratitude for the continued support of the Defender Association of Philadelphia; National Juvenile Defender Center (NJDC); National Juvenile Justice Network (NJJN); Southern Center for Human Rights; Miriam Aukerman, West Michigan regional staff attorney at the ACLU Michigan; Shelli Weisberg, legislative director of the ACLU Michigan; Carrie Lee, director of the Juvenile Justice Center at Barry University School of Law; Rob Mason, director of the Juvenile Division for the Office of the Public Defender, Fourth Judicial Circuit; Katayoon Majd and the Public Welfare Foundation; and Bob Shilling, former chief of sex crimes for the Seattle Police Department.

Special thanks to the courageous experts who have been spent decades providing valuable, robust, and rigorous scientific data on child sexual offending behavior and the effect of US legal sexual offender policies on youth. These include, but are not limited to: Dr. Robert Prentky, professor and director of graduate training in forensic psychology at Farleigh Dickinson University; Dr. Timothy Foley, forensic evaluator and psychologist; Franklin E. Zimring, William G. Simon professor of law, Wolfen distinguished scholar at Berkeley School of Law; Dr. Jane Silvosky, professor of pediatrics at the University of Oklahoma Health Sciences Center; Dr. Marc Chaffin, professor of pediatrics at the University of Oklahoma Health Sciences Center; Dr. Barbara Bonner, professor of developmental pediatrics at the University of Oklahoma Health Sciences Center; Dr. Michael Caldwell, associate professor, Department of Psychology, University of Wisconsin-

Madison; Dr. Fred Berlin, founder of the Johns Hopkins **Sexual Disorders Clinic**; Dr. Elizabeth Letourneau, assistant professor, Department of Mental Health, Bloomberg School of Mental Health at Johns Hopkins University; and Dr. Andy Harris, associate professor, Department of Criminal Justice & Criminology at the University of Massachusetts-Lowell.

We also extend our special gratitude to Katherine Muns and Sujatha Baliga for their insight on survivors and victims' issues.

This report is dedicated to the memory of Mary Duval, who passed away after battling cancer on June 19, 2011. Mary was a dedicated mother and activist, and CEO of www.sosen.org. She successfully fought to have her teenage son removed from the registry for a consensual relationship with a peer. Mary left behind a lasting legacy. Through her tireless efforts and dedication, she helped bring the complex issue of US sex offender laws to national prominence and inspired the passage of laws to protect children charged with certain offenses from a lifetime on the sex offender registry.

RAISED ON THE REGISTRY

The Irreparable Harm of Placing Children on Sex Offender Registries in the US

Under a raft of US public safety laws enacted over the past 20 years, children found guilty of a wide range of behaviors prosecuted as sex offenses not only serve time in prison or juvenile detention, but afterwards are condemned to decades or even a lifetime of stigma and discrimination as an adult. Sex offender registration requirements—which are applied to both youth offenders and adults—require that offenders' personal information be made publicly available via online registries, which all too often makes offenders targets of harassment, humiliation, and even violence. The harm suffered by victims of sexual assault, as well as their family members and their communities, can be harrowing, and offenders should be held accountable. But sex offender registration laws, especially when applied to youth sex offenders, do little to further the public safety objectives for which they are designed.

Despite the existence of the laws for nearly two decades, this report is the first examination of the collateral consequences of registration and notification for youth sex offenders. This report describes how the restrictions permeate nearly every aspect of a young person's life by severely restricting where, and with whom, youth sex offenders may live, work, attend school, and even spend time. In these circumstances, youth sex offenders are often depressed and even suicidal. And if they miss a deadline to register, youth sex offenders can find themselves back in prison, often for lengthy terms.

The laws are ineffective at deterring crime, since youth sex offenders are among the least likely to reoffend, and there is no conclusive evidence that registration has any effect on rates of reported sexual violence. And because they cover a wide range of offenses, from the relatively innocuous to the very serious, the laws require that police monitor all categories of offenders, even the least dangerous.

Human Rights Watch calls on states and the federal government to exempt youth sex offenders from registration in combination with community notification. Short of a full exemption, states should remove all youth sex offenders from registration schemes that are not specifically tailored to take account of the nature of their offense, the risk they pose (if any) to public safety, their particular developmental and cognitive characteristics, their needs for treatment, and their potential for rehabilitation.



A photograph of Ethan A. (pseudonym) held by his mother, showing her son at age 11, four months before he was arrested for committing a sex offense and placed on the sex offender registry in Texas.

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EXHIBIT

M.

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EXHIBIT

N.

Proposed SORNA Rules

INTRODUCTION

The Juvenile Court Procedural Rules Committee is eliciting public comment on proposed modifications to Rules 161, 195, 302, 407, 409, 512, and 800 and new proposed Rule 614. These proposed modifications address the adoption of the new Pennsylvania "SORNA" and "Act 21" legislation.

The Committee requests that interested persons submit suggestions, comments, or objections concerning this proposal to the Committee through counsel, Christine Riscili at juvenile.rules@pacourts.us. Email is the preferred method for receiving comments in an effort to conserve paper and expedite the distribution of comments to the Committee. Emailed comments need not be reproduced and sent via hard copy. The Committee will acknowledge receipt of your comment.

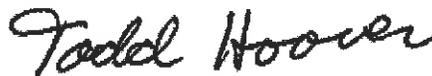
For those who do not have access to email, comments may be faxed to the Committee at 717-231-9541 or written comments may be mailed to:

Christine Riscili, Esq.
Supreme Court of Pennsylvania
Juvenile Court Procedural Rules Committee
Pennsylvania Judicial Center
601 Commonwealth Ave, Suite 6200
P.O. Box 62635
Harrisburg, PA 17106-2635.

All comments shall be received no later than Friday, February 1, 2013.

11/19/2012

BY THE JUVENILE COURT PROCEDURAL RULES
COMMITTEE:



Honorable Todd A. Hoover, Chair



Christine Riscili
Counsel

REQUEST FOR PUBLIC COMMENT

The Juvenile Court Procedural Rules Committee (Committee) is seeking public comment on amendments to Rules 161, 195, 302, 407, 409, 512, and 800 and new proposed Rule 614.

With the adoption of Act 111 of 2011 (P.L. 446, No. 111, Cl. 18) and Act 91 of 2012 (P.L. 880, No. 91, Cl. 18), the legislature has placed several requirements upon the Chief Juvenile Probation Officer and the court to follow when a juvenile is adjudicated delinquent on an enumerated sexual offense. These proposed rule additions reflect these statutory changes.

Rule 161

Rule 161 has been specifically questioned because requirements in this new legislation affect the inspection and copying of juvenile probation files by the State Sexual Offenders Assessment Board (SOAB).

When Rule 161 was adopted by the Court, it was intended to make inspection and copying of juvenile probation files more accessible to attorneys, SOAB, and JCJC. However, this rule never was intended to bypass other legal restrictions placed upon records or reports. For example, there may be confidential communications between a patient and psychiatrist that is protected by law. See *Commonwealth v. Carter*, 821 A.2d 601 (Pa. Super. Court. 2003), for clarification of protected information.

The addition of “unless the court has determined that the information sought is otherwise protected by law” was added to paragraph (A) to clarify the original intent of the rule. If the juvenile probation office fails to permit inspection and/or copying of specific information, the court must to determine whether the information sought is protected communications.

Rule 195

As stated *supra*, the chief juvenile probation officer must follow specific directives in carrying out the registry requirements for juveniles classified as “juvenile offenders.” In addition, if a juvenile is in a placement facility ninety days prior to turning twenty years old and is in placement on an enumerated sexual offense, which could lead to an “Act 21” placement, the chief juvenile probation officer must make a referral to the SOAB.

To assist the chief juvenile probation officer in his or her duties, Rule 195 requires assigned juvenile probation officers to assist their Chief in fulfilling the

mandated duties for notification and registry of “juvenile offenders” and juveniles adjudicated delinquent for acts of sexual violence that may be designated as a “sexually violent delinquent child” in the future.

Rules 302, 409, and 800

Rules 302 and 409 require the court to *classify* an out-of-county juvenile as a “juvenile offender” at the time of the adjudication of delinquency. This differs from 42 Pa.C.S. § 9799.23, which requires the court to classify the “juvenile offender” at the time of disposition.

An out-of-county juvenile is required to *register* as a “juvenile offender” at the time of the adjudication of delinquency pursuant to 42 Pa.C.S. § 9799.19(H). Before a juvenile can register, the juvenile first must be classified as a “juvenile offender” by the court. Therefore, Rule 800 makes these two requirements consistent. See Rule 800 for partial suspension of 42 Pa.C.S. § 9799.23(A).

Rule 407

Rule 407 requires the juvenile to complete a mandatory written admission colloquy with the juvenile prior to entering the courtroom if the juvenile is admitting to the delinquent act(s). A part of this colloquy requires the attorney to review the consequences of an adjudication of delinquency with the juvenile. In addition to this explanation by the attorney, the rule also requires an independent inquiry by the court asking the juvenile if the juvenile understands the consequences that stem from admitting to the delinquent act(s).

Act 111 now requires a juvenile to register as a “juvenile offender” or “a sexually violent delinquent child” for certain sexual offenses and to follow many requirements for that registry. To explain these new requirements to the juvenile, a separate colloquy must be performed in those specific cases when the juvenile is admitting to an enumerated sexual offense. This new “SORNA” and “Act 21” colloquy is an addendum to the admission colloquy. The court is to review both colloquies with the juvenile when making a determination that the admission is knowingly, intelligently, and voluntarily made.

Because the consequences of an adjudication of delinquency on an enumerated sexual offense include reporting requirements for the rest of the juvenile’s life and could include a mandatory jail sentence for non-compliance, the “SORNA” and “Act 21” colloquy is being mandated.

Rule 512

The court must classify the juvenile as a “juvenile offender” at the time of the disposition. See 42 Pa.C.S. § 9799.19(H). For out-of-county juveniles, see Rules 302 and 409.

In addition to the classification, the court must notify the juvenile of specific duties as set forth in paragraph (E)(1) and fulfill specific duties as provided in paragraph (E)(2).

Rule 614

This new proposed rule provides the steps that the Chief Juvenile Probation Officer must take when a juvenile has committed an enumerated sexual offense that actuates possible involuntary civil commitment if the juvenile is in placement ninety days prior to the juvenile’s twentieth birthday for that triggering offense.

Initial proceedings to “evaluate” the juvenile begin in juvenile court but once a petition has been filed by the county solicitor or a designee, civil proceedings are commenced.

The rule specifically provides that the Chief Juvenile Probation Officer has specific duties, which include explaining to juveniles what could occur if they have been adjudicated delinquent for an act of sexual violence and are in a placement facility ninety days prior to their twentieth birthdays.

RULE 161. INSPECTING, COPYING, AND DISSEMINATING JUVENILE PROBATION FILES

A. **Inspecting and copying.** Except as provided in paragraph (C), juvenile probation files shall be open to inspection and/or copying, **unless the court has determined that the information sought is otherwise protected by law**, only by:

- 1) the juvenile's attorney;
- 2) the attorney for the Commonwealth;
- 3) the State Sexual Offenders Assessment Board;
- 4) the Juvenile Court Judges' Commission; or
- 5) any other person, agency, or department by order of court.

* * *

COMMENT

* * *

Nothing in this rule is intended to preclude the juvenile probation office from sharing information in its file with the juvenile.

Pursuant to paragraph (A)(5), the court is to order the specific information that may be subject to inspection and/or copying and by whom the file may be viewed.

See Commonwealth v. Carter, 821 A.2d 601 (Pa. Super. Ct. 2003) for clarification of protected information.

Part (D)(2)
Juvenile Probation Officers

Rule 195. Powers, Duties, and Training of a Juvenile Probation Officer

A. Powers and Duties of a Juvenile Probation Officer. Subject to any limitation imposed by the court, a juvenile probation officer shall:

* * *

13) provide information for “juvenile offenders” and assist the chief juvenile probation officer:

- a) by identifying adjudicated juveniles who are designated as “juvenile offenders”;**
- b) by informing these identified juveniles of the duty to register as a sexual offender;**
- c) by requiring the juvenile to sign a form acknowledging such duty;**
- d) in collecting information to forward to the Pennsylvania State Police for inclusion in the Registry;**
- e) by ensuring the juvenile’s information is current prior to the release of the juvenile from a placement facility;**
- f) in filling out a form prescribed by the Pennsylvania State Police each time a sexual offender is arrested, recommitted to a placement facility, or refuses to provide information pursuant to paragraph (A)(13)(d); and**
- g) by notifying the chief juvenile probation officer when a juvenile refuses to provide the information as required;**

14) provide information for juveniles adjudicated delinquent for acts of sexual violence and assist the chief juvenile probation officer:

- a) in notifying and aiding the State Sexual Offenders Assessment Board (SOAB), concerning any juvenile who is in a placement facility, as a result of having been adjudicated delinquent for an act(s) of sexual violence, ninety days prior to the juvenile’s twentieth birthday:**
 - i) of the status of the juvenile;**
 - ii) by specifying where the juvenile is presently committed; and**

- iii) in obtaining information required by SOAB pursuant to 42 Pa.C.S. §§ 6358(B) and 9799.24 (C) & (H);
- b) by informing any adjudicated juvenile who are designated as a “sexually violent delinquent child” of the duty to register as a sexual offender;
- c) by requiring the juvenile to sign a form acknowledging such duty;
- d) in collecting information to forward to the Pennsylvania State Police for inclusion in the Registry;
- e) by ensuring the juvenile’s information is current prior to the release of a “sexually violent delinquent child” from involuntary treatment facility if the juvenile is under the juvenile court’s supervision;
- f) in filling out a form prescribed by the Pennsylvania State Police each time a sexual offender is arrested, recommitted to an inpatient facility, or refuses to provide information pursuant to paragraph (A)(14)(d) if the juvenile is under the juvenile court’s supervision; and
- g) by notifying the chief juvenile probation officer when a juvenile refuses to provide the information as required; and

15[3]) perform any other functions as designated by the court.

* * *
COMMENT
* * *

Pursuant to paragraph (A)(13), a juvenile probation officer may perform any other function designated by the court to carry out the purposes of the Juvenile Act.

Paragraphs (A)(13)(a) - (g) & (A)(14)(a)-(g) were added in 201- after the adoption of the Act of December 11, 2011 (P.L. 446, No. 111), as amended by the Act of July 5, 2012 (P.L. 880, No. 91), bringing Pennsylvania into compliance with the Federal Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248, 120 Stat. 597), particularly the Sexual Offender Registration and Notification Act. There are several requirements placed upon the chief juvenile probation officer by these statutory amendments. This rule requires juvenile probation officers to notify and assist the chief juvenile probation officer in carrying out his or her obligations.

Juvenile probation officers are to notify all juveniles who are classified as “juvenile offenders” and/or “sexually violent delinquent children”, as defined by 42 Pa.C.S. §§ 6402 & 9799.12, about the duty to register and provide information as a sexual offender. “Juvenile offenders” are designated by the court pursuant to Rule 512(D)(8). The juvenile probation officer is to ensure the juvenile signs a form acknowledging this duty. See paragraphs (A)(13)(b)&(c) & (A)(14)(b)&(c).

Pursuant to 42 Pa.C.S. § 9799.16(B)&(C), the juvenile is to provide specific information to the Pennsylvania State Police to be included in the Registry. It is the duty of the chief juvenile probation officer to: 1) inform the juvenile of the juvenile’s duty to register; 2) require the juvenile to read and sign a form stating that the duty to register has been explained and the juvenile understands the registration requirements; and 3) collect the information required under 42 Pa.C.S. §

9799.16(B)&(C) and forward the information to the Pennsylvania State Police for inclusion in the Registry. See 42 Pa.C.S. § 9799.20. Paragraphs (A)(13)(d) & (A)(14)(d) ensures the juvenile probation officer assists the chief juvenile probation officer in forwarding this information to the Pennsylvania State Police.

Under 42 Pa.C.S. § 9799.33(A)(2), the chief juvenile probation officer is to notify the Pennsylvania State Police each time a sexual offender is arrested or recommitted to a placement facility if the juvenile is under the court's supervision. The juvenile probation officer is to assist the chief juvenile probation officer in fulfilling this duty. See paragraphs (A)(13)(f) & (A)(14)(f).

Pursuant to paragraphs (A)(14)(e)&(f), the juvenile probation officer is to ensure the juvenile's information is current prior to release of a "sexually violent delinquent child" from involuntary treatment facility and fill out a form prescribed by the Pennsylvania State Police each time a sexual offender is arrested, recommitted to an inpatient facility, or refuses to provide information pursuant to paragraph (A)(14)(d) if the juvenile is still under the juvenile court's supervision. In most instances, juvenile court supervision will be terminated prior to these occurrences.

Paragraphs (A)(13)(g) & (A)(14)(g) require the juvenile probation officer to notify the chief juvenile probation officer if the juvenile refuses to provide this information. Pursuant to 42 Pa.C.S. 9799.22(D), the chief juvenile probation officer is to notify the Pennsylvania State Police of such violation. The juvenile will then be charged with a violation of 18 Pa.C.S. § 4915.1(relating to failure to comply with registration of sexual offenders requirements).

Ninety days prior to the twentieth birthday of a juvenile who was adjudicated delinquent for an act(s) of sexual violence and who remains in a placement facility upon attaining twenty years of age, as specified in 42 Pa.C.S. § 6358(A), a probation officer is to notify SOAB about the status of the juvenile, where the juvenile is presently placed, and is to assist SOAB in obtaining access to any information, including the juvenile's official court record and juvenile probation file, required by SOAB to perform an assessment. See 42 Pa.C.S. §§ 6358(B) & 9799.24(H). The juvenile probation office is to cooperate with SOAB when an assessment is ordered. See 42 Pa.C.S. § 9799.24(C). See paragraph (A)(14)(a).

See, e.g. Com. v. Knoble, 42 A.3d 976 (Pa. 2012) for participation in sexual history therapeutic polygraph examination for sexual offender treatment if a condition of probation.

* * *

RULE 302. INTER-COUNTY TRANSFER

*** * ***

D. “Juvenile offenders.” Upon an adjudication of delinquency, the court shall:

- 1) classify the out-of-county juvenile as a “juvenile offender” pursuant to Rule 409(D); and**
- 2) order the “juvenile offender” to provide information to the chief juvenile probation officer as set forth in 42 Pa.C.S. § 9799.16(B) if:**
- 3) the following two conditions have been met:**
 - a) the adjudication of delinquency occurs in any county other than the juvenile’s county of residence; and**
 - b) the court intends to transfer the juvenile’s case for disposition to the juvenile’s county of residence under this rule and 42 Pa.C.S. § 6321(C).**

COMMENT

*** * ***

See Rule 800 for partial suspension of 42 Pa.C.S. § 9799.23(A).

RULE 407. ADMISSIONS

* * *

C. **Written admission colloquy.** If a juvenile is making an admission, the colloquy shall be:

- 1) in writing;
- 2) reviewed and completed with the juvenile by an attorney;
- 3) submitted to and reviewed by the court; [and]
- 4) substantially in the following form:

* * *

5) and; if the juvenile is admitting to a sexual offense for which the juvenile shall register as a "juvenile offender" or "sexually violent delinquent child," an addendum to the admissions form shall be in substantially the following form:

(THIS IS AN ENTIRELY NEW PROPOSED FORM)
ADDENDUM TO ADMISSIONS FORM

SEXUAL OFFENDER REGISTRATION AND/OR ACT 21 COLLOQUY

In re	:	Docket #
_____	:	
(Juvenile)	:	Delinquent Act(s):
_____	:	
_____	:	
_____	:	
_____	:	

INTRODUCTION

This supplemental colloquy* should be used in conjunction and submitted with the written admission colloquy form as mandated by Pa.R.J.C.P. 407.

*It is recommended that this colloquy be placed on the record in open court.

**If Part A of this colloquy is applicable, both Parts A and B must be completed.
If Part A does not apply, complete Part B only.**

PART A

Sexual Offender Registration - 14 yrs. or older*

*Age at time of commission of delinquent act

SORNA CASES

I committed at least one of the following delinquent act(s) on or after my fourteenth birthday; AND

If I am adjudicated delinquent by the court for any of these acts,

I understand that I must register as a "juvenile offender" for the rest of my life.

See 42 Pa.C.S. §§ 9799.12 and 9799.17.

Check all that apply:

<input type="checkbox"/> Rape, 18 Pa.C.S. §3121	<input type="checkbox"/> Attempt	<input type="checkbox"/> Solicitation	<input type="checkbox"/> Conspiracy
<input type="checkbox"/> Involuntary Deviate Sexual Intercourse, 18 Pa.C.S. §3123	<input type="checkbox"/> Attempt	<input type="checkbox"/> Solicitation	<input type="checkbox"/> Conspiracy
<input type="checkbox"/> Aggravated Indecent Assault, 18 Pa.C.S. §3125	<input type="checkbox"/> Attempt	<input type="checkbox"/> Solicitation	<input type="checkbox"/> Conspiracy

General Information:

- 1) My birthday is _____. (MM/DD/YYYY)
- 2) The delinquent act(s) was committed on _____. (MM/DD/YYYY).
- 3) I was at least fourteen (14) years old at the time of the commission of the delinquent act(s) designated as an offense of a "juvenile offender" enumerated above.
Yes No

See 42 Pa.C.S. § 9799.12 (Definition of "juvenile offender")

- 4) My home state is _____.

If I am not a resident of Pennsylvania, I understand the provisions of this colloquy are applicable at the time of the adjudication of delinquency and my home state may have additional requirements not presented in this colloquy. _____ initials

Understanding of Registration Requirements

- 5) I understand that I must give the juvenile probation office specific information and have my photograph taken before I am released from a placement facility or when I am placed on probation. _____ initials

See 42 Pa.C.S. §§ 6352(A)(2)-(3), 9799.15 (Period of registration), 9799.16 (Registry), and 9799.19 (Initial Registration).

- 6) I understand "registration" means that I will be required to appear at a location approved by the Pennsylvania State Police (PSP) periodically to give my name and certain information about me which can be seen by other people. _____

initials

- 7) I understand that I am required to appear at a PSP site to provide and verify specific information and be photographed every three months for the rest of my life unless I am a transient juvenile offender as provided in paragraph (9).

_____ initials

See 42 Pa. C.S. §§ 9799.15, 9799.16(B), and 9799.25.

- 8) I understand that if I change my name, telephone number, email address, move my residence, change employment or student status, have transportation changes, or any other changes in my personal status as required by 42 Pa.C.S. § 9799.15(G), I am required to appear at a PSP site within three business days of the change to provide current information. _____ initials

See 42 Pa. C.S. § 9799.15(G).

- 9) I understand that I am a transient juvenile offender if I do not have a permanent home but live in a temporary place in Pennsylvania and that I must appear in person every month at a PSP site to provide or verify specific information and to be photographed until I establish a residence. _____ initials

See 42 Pa.C.S. §§ 9799.15(h) (Relating to transient juvenile offenders) and 9799.16(B) (Registry information).

- 10) I understand that I will be included on a statewide registry of sexual offenders which means other people will be able to see certain information about me.

_____ initials

See 42 Pa.C.S. § 9799.16 (Registry).

- 11) I understand that after 25 years of compliance, I am eligible to petition the court to have my registration terminated if I have not been convicted of any new crimes.

_____ initials

See 42 Pa.C.S. § 9799.17 (Termination of period of registration for juvenile offenders)

- 12) I understand that the failure of the court to provide notice to me of all the registration requirements does not relieve me from registering. _____ initials

See 42 Pa. C.S. § 9799.25(D).

Failure to Register is a new crime

- 13) I understand that I may be charged with a new offense which is a felony if I knowingly fail to:

a) register with the PSP as required (felony of the second degree);

_____ initials

- b) verify my address or be photographed as required (felony of the second degree); or _____ initials
- c) provide accurate information when registering (felony of the first degree). _____ initials

See 18 Pa.C.S. § 4915.1, 42 Pa.C.S. §§ 9799.15 (relating to period of registration), 9799.19 (relating to initial registration), or 9799.25 (relating to verification by sexual offenders and Pennsylvania State Police).

Consequences of Failure to Register

- 14) I understand that I may be arrested for failure to meet any of the registration requirements. _____ initials

See 18 Pa.C.S. § 4915.1.

- 15) If prosecuted as an adult, I understand that if I am found to have failed to meet the registration requirements and convicted, the court is required to send me to jail for at least three years if I violate 18 Pa.C.S. § 4915.1(A)(1)&(2) and five years if I violate 18 Pa.C.S. § 4915.1(A)(3). _____ initials

See 42 Pa.C.S. § 9718.4.

I understand that if I am under eighteen years old, petitioned with a felony delinquent act, and prosecuted in juvenile court for failing to meet the registration requirements, I would be subject to the provisions of the Juvenile Act which could include transfer to adult court or placement in a juvenile placement facility.
_____ initials

See 42 Pa.C.S. §§ 6352 and 6355.

Part B

Juvenile who may be Subject to Civil Commitment for Involuntary Treatment

CIVIL COMMITMENT CASES

I committed at least one of the following delinquent act(s); AND

If I am adjudicated delinquent by the court; AND

If I am in a placement facility upon attaining the age of twenty,

I understand that I may be civilly committed for involuntary inpatient treatment at a facility as a “sexually violent delinquent child.”

See 42 Pa.C.S. § 6401 et seq.

Check all that apply:

<input type="checkbox"/> Rape, 18 Pa.C.S. §3121	<input type="checkbox"/> Sexual Assault, 18 Pa.C.S. §3124.1
<input type="checkbox"/> Involuntary Deviate Sexual Intercourse, 18 Pa.C.S. §3123	<input type="checkbox"/> Indecent Assault, 18 Pa.C.S. §3126
<input type="checkbox"/> Aggravated Indecent Assault, 18 Pa.C.S. §3125	<input type="checkbox"/> Incest, 18 Pa.C.S. §4302

- 1) I understand that if I am in a placement facility upon attaining the age of twenty (20), the State Sexual Offenders Assessment Board (SOAB) will conduct an assessment to determine if I have a mental abnormality or personality disorder which results in serious difficulty controlling my sexually violent behavior that makes me likely to engage in an act of sexual violence. _____ initials

See 42 Pa.C.S. § 6358.

- 2) I understand that if the SOAB concludes that I am in need of involuntary inpatient treatment, the court will conduct a dispositional review hearing. _____ initials

See 42 Pa.C.S. § 6358.

- 3) I understand that if the court, at the dispositional review hearing, finds there is a *prima facie* case that I am in need of involuntary commitment pursuant to 42 Pa.C.S. § 6401 *et seq.*, the court will direct the county solicitor or a designee to file a petition to commence involuntary commitment proceedings. _____ initials

See 42 Pa.C.S. § 6358.

- 4) I understand that if a petition has been filed to commence involuntary commitment proceedings, the court will conduct a hearing to determine if I have serious difficulty controlling my sexually violent behavior that makes me likely to engage in an act of sexual violence. _____ initials

See 42 Pa.C.S. § 6403.

- 5) I understand that if, at a hearing pursuant to 42 Pa.C.S. § 6401 *et seq.*, the court determines that I have serious difficulty controlling my sexually violent behavior that makes me likely to engage in an act of sexual violence, I will be committed to an involuntary inpatient facility. _____ initials

See 42 Pa.C.S. § 6403.

- 6) I understand that I must give the juvenile probation office specific information and have my photograph taken at the time of commitment to an involuntary inpatient center. _____ initials

See 42 Pa.C.S. §§ 9799.15 (Period of registration), 9799.16 (Registry), and 9799.19 (Initial Registration).

- 7) I understand that once committed to an involuntary inpatient facility, my case will be reviewed every year and I will not be released until it is determined that I no longer have serious difficulty controlling my sexually violent behavior that makes me likely to engage in an act of sexual violence. _____ initials

See 42 Pa.C.S. § 6404.

- 8) I understand that if I am released from the inpatient facility, I will be transferred for involuntary outpatient treatment and subject to registration requirements listed in Part B, paragraphs (12) - (22). _____ initials

See 42 Pa.C.S. § 6404.1.

- 9) I understand that my involuntary outpatient treatment will be reviewed by the court each year. _____ initials

See 42 Pa.C.S. § 6404.2.

- 10) I understand that if I am released from outpatient treatment, I must attend at least monthly counseling sessions and follow other requirements for the rest of my life, including the registration requirements listed in Part B, paragraphs (12) - (22), as conditions of my release. _____ initials

See 42 Pa.C.S. §§ 6404.1 & 6404.2.

- 11) I understand that if I fail to meet any of the required conditions of my treatment plan, including registration, or the court determines I am having serious difficulty controlling sexually violent behavior, I will be sent back to an involuntary inpatient facility. _____ initials

See 18 Pa.C.S. § 4915.1 & 42 Pa.C.S. § 6404.2.

- 12) I understand “registration” means that I will be required to appear at a location

approved by the Pennsylvania State Police (PSP) periodically to give my name and certain information about me that can be seen by other people. _____ initials

- 13) I understand that I am required to appear at a PSP site to provide and verify specific information and be photographed every three months for the rest of my life unless I am a transient as provided in paragraph (15). _____ initials

See 42 Pa. C.S. §§ 9799.15, 9799.16(B), and 9799.25.

- 14) I understand that if I change my name, telephone number, email address, move my residence, change employment or student status, have transportation changes, or any other changes in my personal status that are required by 42 Pa.C.S. § 9799.15(G), I am required to appear at a PSP site within three business days of the change to provide current information. _____ initials

See 42 Pa. C.S. § 9799.15(G).

- 15) I understand that I am a transient if I do not have a permanent home but live in a temporary place in Pennsylvania and that I must appear in person every month at a PSP site to provide or verify specific information and to be photographed until I establish a residence. _____ initials

See 42 Pa.C.S. §§ 9799.15(H) (Relating to transient juvenile offenders) and 9799.16(B) (Registry information).

- 16) I understand that information about me will be included on a statewide registry of sexual offenders which means other people will be able to see certain information about me on a public internet web-site maintained by the PSP. _____ initials

See 42 Pa.C.S. § 9799.16 (Registry).

- 17) I understand that the failure of the court to provide notice to me of all the registration requirements does not relieve me from registering. _____ initials

See 42 Pa. C.S. § 9799.25(D).

Failure to Register or attend outpatient counseling is a new crime

- 18) I understand that I may be charged with a new offense which is a felony if I knowingly fail to:
- a) register with the Pennsylvania State Police as required (felony of the second degree); _____ initials
 - b) verify my address or be photographed as required (felony of the second degree); or _____ initials

c) provide accurate information when registering (felony of the first degree). _____ initials

See 18 Pa.C.S. § 4915.1, 42 Pa.C.S. §§ 9799.15 (relating to period of registration), 9799.19 (relating to initial registration), or 9799.25 (relating to verification by sexual offenders and Pennsylvania State Police).

19) I understand that I may be charged with a new offense which is a misdemeanor of the first degree if I fail to attend outpatient counseling. _____ initials

See 18 Pa. C.S. § 4915.1.

Consequences of Failure to Register

20) I understand that I may be arrested for failure to meet any of the registration or counseling requirements. _____ initials

See 18 Pa.C.S. § 4915.1.

21) I understand that if I am found to have failed to meet the registration requirements and convicted, the court is required to send me to jail for at least three years if I violate 18 Pa.C.S. § 4915.1(A)(1)&(2) and five years if I violate 18 Pa.C.S. § 4915.1(A)(3). _____ initials

See 42 Pa.C.S. § 9718.4.

22) I understand that if I am found to have failed to attend counseling sessions, I may also be recommitted to an involuntary inpatient facility or prosecuted for a new offense. _____ initials

See 18 Pa.C.S. § 4915.1 & 42 Pa.C.S. § 9799.36.

Lawyer's Representation and Opportunity to Speak with Guardian

23) Are you okay with what your lawyer did for you and how he or she explained everything? Yes No

24) Did you talk with your parent or guardian about the lifetime implications of being adjudicated for the enumerated delinquent act(s)? Yes No

I have read this form or someone has read this form to me.

Parts A and B have been completed.

Part B only has been completed.

I understand the form and which sections apply to me. The signature below and initials on each page of this form are mine.

JUVENILE

DATE

I, _____, lawyer for the juvenile, have reviewed this form with my client. My client has told me and I believe that he or she understands this form. I have completed the following sections with my client and explained the applicability of these sections to him or her.

- Parts A and B have been completed.**
- Part B only has been completed.**

LAWYER FOR JUVENILE

DATE

COMMENT

*** * ***

The admission colloquy **and the addendum for sexual offense cases** can be downloaded from the Supreme Court's webpage at <http://www.pacourts.us/T/BoardsCommittees/JuvenileCourtProcedural/>. The **[admission] forms are [is]** also available in Spanish.

The Pennsylvania Juvenile Collateral Consequences checklist is also available on the Supreme Court's webpage.

RULE 409. ADJUDICATION OF DELINQUENCY

*** * ***

D. Out-of-County “Juvenile Offenders” Classification. The court shall classify an out-of-county juvenile as a “juvenile offender” if:

- 1) the adjudication of delinquency was a result of an offense as defined by 42 Pa.C.S. § 9799.12;**
- 2) the court has adjudicated the juvenile delinquent pursuant to paragraph (A)(2)(a) and the case is being transferred pursuant to Rule 302.**

COMMENT

*** * ***

Pursuant to paragraph (A)(2)(b)(ii), a case reference number is to be included to help track this case. *See Comment* to Rule 170 for further description of a case reference number.

Pursuant to paragraph (D), the court is to classify the out-of-county juvenile as a “juvenile offender” if the juvenile is found delinquent for a “juvenile offender” offense as defined by 42 Pa.C.S. § 9799.12. See 42 Pa.C.S. §§ 9799.19 (H) for out-of-county classification and 9799.23 for court’s notification and classification requirements.

See Rule 302 for procedures for out-of-county juvenile offenders. An out-of-county juvenile is defined in Rule 302(D)(3)(a)&(b).

See also Rule 800 for partial suspension of 42 Pa.C.S. § 9799.23(A).

*** * ***

RULE 512. DISPOSITIONAL HEARING

*** * ***

D. Court's findings. The court shall enter its findings and conclusions of law into the record and enter an order pursuant to Rule 515. On the record in open court, the court shall state:

*** * ***

- 6) any findings necessary to ensure the stability and appropriateness of the juvenile's education, and when appropriate, the court shall appoint an educational decision maker pursuant to Rule 147; **[and]**
- 7) any findings necessary to identify, monitor, and address the juvenile's needs concerning health care and disability, if any, and if parental consent cannot be obtained, authorize evaluations and treatment needed;
- 8) If juvenile is adjudicated delinquent for any of the following offenses after turning fourteen years of age, the court shall classify the juvenile as a juvenile offender:**

- a) rape, 18 Pa.C.S. § 3121;**
- b) involuntary deviant sexual intercourse, 18 Pa.C.S. § 3123**
- c) aggravated indecent assault, 18 Pa.C.S. § 3125; or**
- d) attempt, solicitation, or conspiracy to the enumerated offenses in paragraph (8)(a)-(c).**

E. Classification of juvenile offender. Upon classification of a juvenile as a "juvenile offender," the court shall:

- 1) explain to the juvenile that the juvenile has the following duties:**
 - a) the duty to register pursuant to 42 Pa.C.S. § 9799.10 et seq.;**
 - b) the duty to register in accordance with 42 Pa.C.S. § 9979.15 (Relating to Period of Registration), 9799.16 (Relating to Registry), 9799.19 (Relating to Initial Registration) and 9799.25 (Relating to Verification by Sexual Offenders and Pennsylvania State Police);**
 - c) the duty to register with authorities in another jurisdiction within three business days pursuant to 42 Pa.C.S. 9799.23;**

- d) the duty to submit to fingerprints, palm prints, DNA sample, and photograph at the time of the disposition; and**
- 2) fulfill the following duties of the court:**
- a) classify the juvenile as a “juvenile offender” if juvenile is found delinquent for an offense that is a “juvenile offender” offense as defined by 42 Pa.C.S. § 9799.12;**
- b) ensure the juvenile offender has signed the form stating that the duty to register has been explained; and**
- c) issue any orders to a juvenile offender requiring the juvenile to provide information to the chief juvenile probation officer as set forth in 42 Pa.C.S. § 9799.16(B).**

COMMENT

*** * ***

Pursuant to the Juvenile Act, the court has authority to order a physical or mental examination of a juvenile and medical or surgical treatment of a minor, who is suffering from a serious physical condition or illness which requires prompt treatment in the opinion of a physician. The court may order the treatment even if the guardians have not been given notice of the pending hearing, are not available, or without good cause inform the court that they do not consent to the treatment. 42 Pa.C.S. § 6339(b).

If the juvenile is classified by the court as a “juvenile offender,” as defined by 42 Pa.C.S. § 9799.12, pursuant to 42 Pa.C.S. § 9799.19(H), the judge is to order the juvenile to provide information required pursuant to 42 Pa.C.S. § 9799.16(B) to the chief juvenile probation officer at the time of disposition. See 42 Pa.C.S. § 9799.19(H)(1). Pursuant to 42 Pa.C.S. § 9799.20, the court is to: 1) inform the juvenile of the juvenile’s duty to register; 2) require the juvenile to read and sign a form stating that the duty to register has been explained and the at the juvenile understands the registration requirements; and 3) collect the information required under 42 Pa.C.S. § 9799.16(B)&(C) and forward the information to the Pennsylvania State Police for inclusion in the Registry. See 42 Pa.C.S. § 9799.20.

Additionally, 42 Pa.C.S. § 9799.23(A) requires at the time of disposition, the court to: 1) specifically classify the juvenile as a “juvenile offender”; 2) ensure the sexual offender has signed the form stating that the duty to register has been explained; and 3) issue any orders to a juvenile offender requiring the juvenile to provide information to the chief juvenile probation officer as set forth in 42 Pa.C.S. § 9799.16(B).

The court, at the time of disposition, also is to inform the ‘juvenile offender’ of the following duties: 1) the duty to register as a sexual offender pursuant to 42 Pa.C.S. § 9799.10 *et seq.*; 2) the duty of the sexual offender to register in accordance with 42 Pa.C.S. §§ 9799.15 (Relating to period of registration), 9799.16 (Relating to Registry), 9799.19 (Relating to Initial Registration) and 9799.25 (Relating to Verification by Sexual Offenders and Pennsylvania State Police); 3) the duty of the sexual offender to register with authorities in another jurisdiction within three business days of specific occurrences as described in 42 Pa.C.S. 9799.23(A)(3); and 4) the duty of the sexual offender to submit to fingerprints, palm prints, DNA Sample, and photograph at the time of the disposition in accordance with 42 Pa.C.S. § 9799.16(C). See 42 Pa.C.S. § 9799.23.

In inter-county transfer cases for “juvenile offenders,” the procedures differ. The court is to make the classification at the time of adjudication of delinquency. See Rule 302 and 800.

*** * ***

RULE 614. SEXUALLY VIOLENT DELINQUENT CHILDREN.

A. Chief Juvenile Probation Officer's Duties. The Chief Juvenile Probation Officer shall:

- 1) notify and aid SOAB concerning any juvenile, who is in a placement facility, as a result of having been adjudicated delinquent for an act(s) of sexual violence, ninety days prior to the juvenile's twentieth birthday:**
 - a) of the status of the juvenile;**
 - b) by specifying where the juvenile is presently committed; and**
 - c) in obtaining information required by SOAB pursuant to 42 Pa.C.S. §§ 6358(B) and 9799.24 (C) & (H);**

- 2) when applicable for a juvenile, who is adjudicated delinquent for an act(s) of sexual violence, explain to the juvenile that if the juvenile remains in placement upon turning twenty years of age:**
 - a) the SOAB will perform an assessment to determine if the juvenile has a mental abnormality or personality disorder which results in serious difficulty controlling sexually violent behavior that makes the juvenile likely to engage in an act of sexual violence;**
 - b) if the SOAB concludes that the juvenile is in need of involuntary inpatient treatment, the court will conduct a dispositional review hearing;**
 - c) if the court, at the dispositional review hearing, finds there is a *prima facie* case that the juvenile is in need of involuntary commitment pursuant to 42 Pa.C.S. § 6401 *et seq.*, the court will direct the county solicitor or a designee to file a petition to commence involuntary commitment proceedings;**
 - d) if a petition has been filed to commence involuntary commitment proceedings, the court will conduct a hearing to determine if the juvenile has serious difficulty controlling sexually violent behavior that makes the juvenile likely to engage in an act of sexual violence;**
 - e) if, at a hearing pursuant to 42 Pa.C.S. § 6401 *et seq.*, the court determines that the juvenile has serious difficulty controlling sexually violent behavior that makes the juvenile likely to engage in an act of sexual violence, the juvenile will be:**
 - i) committed to an involuntary inpatient facility; and**
 - ii) classified as a "sexually violent delinquent child;"**

- f) if the juvenile is classified as a “sexually violent delinquent child,” the juvenile must give the juvenile probation office specific information and have his or her photograph taken at the time of commitment to an involuntary inpatient center;**
- g) if the juvenile is committed to an involuntary inpatient facility, the juvenile's case will be reviewed every year and the juvenile will not be released until it is determined that the juvenile no longer has serious difficulty controlling sexually violent behavior that makes the juvenile likely to engage in an act of sexual violence;**
- h) if the juvenile is released from the inpatient facility, the juvenile will be transferred for involuntary outpatient treatment and subject to registration requirements, including:**
 - i) the duty to register pursuant to 42 Pa.C.S. § 9799.10 *et seq.*;**
 - ii) the duty to register in accordance with 42 Pa.C.S. § 9979.15 (Relating to period of registration), 9799.16 (Relating to Registry), 9799.19 (Relating to Initial Registration) and 9799.25 (Relating to Verification by Sexual Offenders and Pennsylvania State Police);**
 - iii) the duty to register with authorities in another jurisdiction within three business days pursuant to 42 Pa.C.S. 9799.23;**
 - iv) the duty to submit to fingerprints, palm prints, DNA sample, and photograph at the time of the disposition; and**

B. Court's duties. The court shall:

- a) conduct a dispositional review hearing to determine if the juvenile is a “sexually violent delinquent child,” if after an assessment, SOAB has determined the juvenile is in need of involuntary inpatient treatment;**
- b) order the solicitor or designee to file a petition to commence involuntary commitment proceedings if the court finds there is a *prima facie* case that the juvenile is in need of involuntary commitment pursuant to 42 Pa.C.S. § 6301 *et seq.*;**
- c) conduct a hearing pursuant to 42 Pa.C.S. § 6301 *et seq.* and determine whether the juvenile has serious difficulty controlling sexually violent behavior that makes the juvenile likely to engage in an act(s) of sexual violence;**
- d) classify the juvenile as a “sexually violent delinquent child” if the court determines the juvenile has serious difficulty controlling the juvenile's**

sexually violent behavior that makes the juvenile likely to engage in an act(s) of sexual violence, as defined by 42 Pa.C.S. § 9799.12;

i) ensure the sexual offender has signed the form stating that the duty to register has been explained if the juvenile is classified as a “sexually violent delinquent child;” and

ii) issue any orders to a sexual offender requiring the juvenile to provide information to the chief juvenile probation officer as set forth in 42 Pa.C.S. § 9799.16(B) if the juvenile is classified as a “sexually violent delinquent child;” and

e) send a copy of any order to SOAB within ten days of the hearing

COMMENT

See 42 Pa.C.S. §§ 6358 and 9799.24 for assessments of delinquent children by the SOAB. See also 42 Pa.C.S. § 9799.23 for court notification.

**CHAPTER 8
SUSPENSIONS**

RULE 800. SUSPENSIONS OF ACTS OF ASSEMBLY

This rule provides for the suspension of the following Acts of Assembly that apply to delinquency proceedings only:

* * *

- 13) The Act of December 20, 2011, P.L. 446, No. 111, § 18, 42 Pa.C.S. § 9799.23(A), which provides for classification of the “juvenile offender” at the time of disposition, is suspended only insofar as the Act is inconsistent with Rules 302 and 409, which require the classification of a “juvenile offender” for out-of-county cases at the time of the adjudication of delinquency.
- 14) The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6323(a)(2), which provides that a delinquent child may be referred for an informal adjustment by a juvenile probation officer, is suspended only insofar as the Act is inconsistent with Rule 312, which provides that only an *alleged* delinquent child may be referred for an informal adjustment because the filing of informal adjustment shall occur prior to the filing of a petition.
- ~~[14]~~15)Section 5720 of the Wiretapping and Electronic Surveillance Control Act, Act of October 4, 1978, P.L. 831, No. 164, 18 Pa.C.S. § 5720, is suspended as inconsistent with Rule 340 only insofar as the section may delay disclosure to a juvenile seeking discovery under Rule 340(B)(6); and Section 5721(b) of the Act, 18 Pa.C.S. § 5721(b), is suspended only insofar as the time frame for making a motion to suppress is concerned, as inconsistent with Rules 347 and 350.
- ~~[15]~~16)The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6340(c), which provides consent decree shall remain in force for six months unless the child is discharged sooner by probation services with the approval of the court, is suspended only insofar as the Act is inconsistent with the requirement of Rule 373 that a motion for early discharge is to be made to the court.
- ~~[16]~~17)The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6335, which provides for a hearing within ten days of the juvenile’s detention unless the exceptions of (a)(1)&(2) or (f) are met, is suspended only insofar as the Act is inconsistent with Rule 391, which provides for an additional ten days of detention if a notice of intent for transfer to criminal proceedings has been filed.
- ~~[17]~~18)The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6355(g), which provides the burden of establishing by a preponderance of evidence

that the public interest is served by the transfer of the case to criminal court *and* that a child is not amenable to treatment, supervision, or rehabilitation as a juvenile shall rest with the Commonwealth unless the exceptions of paragraphs (g)(1) and (2) apply, is suspended only insofar as the Act is inconsistent with Rule 394, which provides *only* the burden of establishing by a preponderance of evidence that the public interest is served by the transfer of the case to criminal court shall rest with the Commonwealth unless the exceptions of paragraph (g)(1) and (2) apply.

[18]19)The Act of July 9, 1976, P.L. 586, No. 142, § 2, 42 Pa.C.S. § 6353(a), which requires dispositional review hearings to be held at least every nine months when a juvenile is removed from the home, is suspended only insofar as it is inconsistent with the requirement of Rule 610, which requires dispositional review hearings to be held at least every six months.

COMMENT

The authority for suspension of Acts of Assembly is granted to the Supreme Court by Article V § 10(c) of the Pennsylvania Constitution. *See also* Rule 102.

The partial suspension of 42 Pa.C.S. § 9799.23(A) is due to the requirement of 42 Pa.C.S. § 9799.19(H), which requires the out-of-county juvenile to register at the time of the adjudication of delinquency. For the juvenile to register, it is first required that the juvenile be classified as a juvenile offender.

* * *