

In the Matter of C.K.

Superior Court of New Jersey
Appellate Division
Docket No. A-5469-13T4

***AMICUS BRIEF ON BEHALF OF JUVENILE LAW CENTER, AS AMICUS CURIAE, IN
SUPPORT OF APPELLANT C.K.'S APPEAL OF DISMISSAL OF PETITION FOR
POST-CONVICTION RELIEF***

Petition for Post-Conviction Relief
Superior Court of New Jersey
Appellate Division

Sat Below: Hon. James J. Guida, J.S.C.

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Ashley Batastini, et al. <i>Federal Standards for Community Registration of Juvenile Sex Offenders: An Evaluation of Risk Prediction & Future Implications</i> , 17 <i>Psychol. Pub. Pol’y & L.</i> 451 (2011).....	11
Judith Becker & Scotia Hicks, <i>Juvenile Sexual Offenders: Characteristics, Interventions, & Policy Issues</i> , 989 <i>Ann. NY Acad. Sci.</i> 397 (2003)	12
Michael Caldwell et. al., <i>An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism</i> , 14 <i>J. Psychol., Pub. Pol., & Law</i> 89 (2008).....	10
Michael Caldwell, <i>Sexual Offense Adjudication & Sexual Recidivism among Juvenile Offenders</i> . 19 <i>Sexual Abuse: J. Res. & Treatment</i> 107 (2007)	10, 12
Michael Caldwell, et al., <i>Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism</i> , 54 <i>Int’l J. Offender Therapy & Comp. Criminology</i> 197 (2010)	10, 11, 12, 13
Michael Caldwell, <i>What We Do Not Know About Juvenile Sexual Re-offense Risk</i> , 7 <i>Child Maltreatment</i> 291 (2002)	9, 12
Catherine L. Carpenter & Amy Beverlin, <i>The Evolution of Unconstitutionality in Sex Offender Registration Laws</i> , 63 <i>Hastings L.J.</i> 1071 (2012)	16, 17
E.M. Driessen, <i>Characteristics of Youth Referred for Sexual Offenses</i> . Unpublished doctoral dissertation, University of Wisconsin-Milwaukee (2002).....	10
John Edens et al, <i>Assessment of “Juvenile Psychopathy and Its Association with Violence</i> , 19 <i>Behav. Sci. & L.</i> 53 (2001)	7
Michelle Ford & J. Linney, <i>Comparative Analysis of Juvenile Sex Offenders, Violent Nonsexual Offenders, and Status Offenders</i> , 10 <i>Journal of Interpersonal Violence</i> 56 (1995)	6, 9
Margo Gardner & Laurence Steinberg, <i>Peer Influence on Risk Taking, Risk Preference, and Risky Decision Making in Adolescence and Adulthood</i> , 41 <i>Developmental Psychol.</i> 625 (2005).....	5
Elizabeth Garfinkle, <i>Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles</i> , 91 <i>Calif. L. Rev.</i> 163 (2003).....	6

Alison Gray, et al., <i>Children with Sexual Behavior Problems and Their Caregivers</i> , 9 <i>Sexual Abuse: J. Res. & Treatment</i> 267 (1997).....	6
Thomas Grisso, <i>Double Jeopardy: Adolescent Offenders with Mental Disorders</i> (University of Chicago Press 2004).....	7
Michael Hagan, et al., <i>Eight-year Comparative Analyses of Adolescent Rapists, Adolescent Child Molesters, Other Adolescent Delinquents, and the General Population</i> , 43 <i>Int'l J. Offender Therapy & Comp. Criminology</i> 314 (2011).....	10
R. Karl Hanson and Monique T. Bussiere, <i>Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies</i> , 66 <i>J. of Consulting & Clin. Psych.</i> 362 (1998).....	11
Human Rights Watch, <i>Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US</i> (May 2013).....	<i>passim</i>
Alan Kazdin, <i>Adolescent Development, Mental Disorders, and Decision Making of Delinquent Youths in Youth on Trial</i> (Thomas Grisso & Robert Schwartz eds., 2000).....	5
John H. Laub & Robert J. Sampson, <i>Shared Beginnings, Divergent Lives: Delinquent Boys to Age 70</i> (Harvard University Press 2003).....	6
Elizabeth Letourneau, et al., <i>Do Sex Offender Registration & Notification Requirements Deter Juvenile Sex Crimes</i> , 37 <i>Crim. Just. & Behav.</i> , 553 (2010).....	13
Elizabeth Letourneau & Kevin Armstrong, <i>Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders</i> , 20 <i>Sexual Abuse: J. of Res. and Treatment</i> 393 (2008)	13
Elizabeth Letourneau & Michael Miner, <i>Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo</i> , 17 <i>Sexual Abuse: J. Res. & Treatment</i> 293 (2005).....	<i>passim</i>
Jill Levenson & Richard Tewksbury, <i>Collateral Damage: Family Members of Registered Sex Offenders</i> , 34 <i>Am. J. Crim. J.</i> 54 (2009)	15
Wayne A. Logan, <i>Knowledge as Power: Criminal Registration and Community Notification Laws in America</i> (Stanford Univ. Press 2009)	26, 28
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Terrie Moffit, <i>Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy</i> , 100 <i>Psychol. Rev.</i> 674 (1993)	7

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Edward Mulvey & Elizabeth Cauffman, <i>The Inherent Limits of Predicting School Violence</i> , 56 <i>Am. Psychologist</i> 797 (2001)	7
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Laurence Steinberg, <i>A Behavioral Scientist Looks at the Science of Adolescent Brain Development</i> , 82 <i>Brain & Cognition</i> 160 (2010).....	8
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Donna Vandiver, <i>A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults</i> . 21 <i>J. Interpersonal Violence</i> 673 (2006).....	11
Emily A. White, <i>Prosecutions under the Adam Walsh Act: Is America Keeping its Promise?</i> , 65 <i>Wash. & Lee L. Rev.</i> 1783 (2008).....	33
Franklin Zimring, et al., <i>Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort</i> , 26 <i>Justice Q.</i> (2009).....	10

Franklin Zimring, et al., <i>Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?</i> 6 Crim. & Public Policy 507 (2007).....	9, 10, 12
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STATEMENT OF INTEREST

Juvenile Law Center, founded in 1975, is the oldest public interest law firm for children in the United States. Juvenile Law Center advocates on behalf of youth in the child welfare and criminal and juvenile justice systems to promote fairness, prevent harm, and ensure access to appropriate services. Recognizing the critical developmental differences between youth and adults, Juvenile Law Center works to ensure that the child welfare, juvenile justice, and other public systems provide vulnerable children with the protection and services they need to become healthy and productive adults. Juvenile Law Center participates as *amicus curiae* in state and federal courts throughout the country, including the United States Supreme Court, in cases addressing the rights and interests of children.

Juvenile Law Center has been involved in litigation and research concerning juvenile sex offender registration for many years, including writing amicus briefs to courts in Kansas, Illinois, Ohio, and New Jersey and directly challenging registration laws in Pennsylvania. Juvenile Law Center successfully argued against the constitutionality of Pennsylvania's juvenile SORNA before the Pennsylvania Supreme Court. The Court ruled juvenile sex offender registration unconstitutional under the due process guarantees of the United States and Pennsylvania constitutions, holding the registration scheme, which required registration based solely on the adjudication of delinquency, violated due process by utilizing an irrebuttable presumption that children who commit sexual offenses are likely to reoffend. The Court relied on scientific research demonstrating the extremely low rates of juvenile recidivism for sexual offenses and further reasoned that registration negatively affects youths' access to education, employment, and housing, which in turns inhibits rehabilitation.

Juvenile Law Center takes particular interest in the instant case because it seeks to change the registration obligation for youth required to register as sex offenders for conduct they committed when they were under 18 years old.

STATEMENT OF PROCEDURAL HISTORY

Amicus incorporates by reference Appellant C.K.'s Statement of Procedural History.

STATEMENT OF MATERIAL FACTS

Amicus incorporates by reference Appellant C.K.'s Statement of Facts.

ARGUMENT

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.*, 131 S.Ct. at 2403 (citing *Eddings*, 455 U.S. at 115); *Gall v. U.S.*, 552 U.S. 38, 58 (2007); *Roper*, 543 U.S. at 569; *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 2464. 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 570 (quoting *Johnson*, 509 U.S. at 368). This is consistent with research showing that brain regions responsible for executive function and decision-making are immature in adolescents. *Miller*, 132 S.Ct. at 2464-65.

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.”¹ “[A]dolescents are overrepresented statistically 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.”²

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.

¹ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners at 8, *Miller v. Alabama*, 132 S.Ct. 2455 (2012) (No. 10-9646), 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 (2009), available at <http://fairsentencingofyouth.org/wp-content/uploads/2010/02/Adolescent-development-and-juvenile-justice.pdf>).

² Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners at 13, *Miller v. Alabama*, 132 S.Ct. 2455 (2012) (No. 10-9646), available at <http://eji.org/files/Amicus%20-%20Aber%20et%20al.PDF>.

“[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 *Eddings*, 455 U.S. at 115). Research demonstrates that the mere presence of peers makes children, but not adults, more likely to engage in risk-taking behavior.³

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. at 569 (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.”⁴ 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

³ 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 <https://secure.uwf.edu/smathews/documents/peerroleinrisktakinggardnerandsteinberg.pdf>.

⁴ 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)).

non-delinquent youth.⁵ Additionally, children who commit sexual offenses are often themselves victims of sexual abuse.⁶

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 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 570 (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.⁷ Research consistently points to an “age-crime curve,” in which

⁵ Elizabeth Letourneau & Michael Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 Sexual Abuse: J. Res. & Treatment 293, 299 (2005) 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).

⁶ Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 Calif. L. Rev. 163, 191, 205 (2003) (citing Alison Gray et al., *Children with Sexual Behavior Problems and Their Caregivers*, 9 Sexual Abuse: J. Res. & Treatment 267, 270 (1997)).

⁷ 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); Elizabeth Scott & Laurence Steinberg, *Rethinking Juvenile Justice* 32, 49 (2008); 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).

criminal activity “‘peak[s] sharply’ in adolescence ‘drop[s] precipitously in young adulthood.’”⁸ “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*, 560 U.S. at 68 (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.’”⁹ “Simply put, while many criminals may share certain childhood traits, the great majority of juvenile offenders with those traits will not be criminal adults.”¹⁰

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*, 560 U.S. at 68. “[A]dolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse

⁸ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 7-8 (quoting Terrie Moffit, *Adolescent-Limited and Life-Course-Persistent Antisocial Behavior: A Developmental Taxonomy*, 100 *Psychol. Rev.* 674, 675 (1993); Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 30.

⁹ 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)) (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).

¹⁰ Brief of the American Psychological Association, et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 22, 24.

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.¹¹

Adolescents also undergo changes “in the brain’s ‘incentive processing system’”—especially the parts that process rewards and social cues.¹² 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 and self control.”¹³ 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.”¹⁴

¹¹ 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)).

¹² 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).

¹³ *Id.* at 29-30 (citing Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 82 *Brain & Cognition* 160, 162 (2010)).

¹⁴ *Id.* at 30 (quoting Laurence Steinberg, *A Behavioral Scientist Looks at the Science of Adolescent Brain Development*, 72 *Brain and Cognition* 160 (2010)).

On the other hand, the “immaturity and plasticity” of the adolescent brain makes children open to change and reform.¹⁵ 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*, 560 U.S. at 68).

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

The belief that “sex offenders are a very unique type of criminal” is not supported with respect to juvenile offenders. Elizabeth Letourneau & Michael Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 *Sexual Abuse: J. Res. & Treatment* 293, 296 (2005)[hereinafter “Letourneau, *Against the Status Quo*”]; see also *Id.* at 299 (citing Michelle Ford & Jean Linney, *Comparative Analysis of Juvenile Sex Offenders, Violent Nonsexual Offenders, and Status Offenders*, 10 *J. Interpersonal Violence* 56-70 (1995)). 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. Letourneau, *Against the Status Quo* at 293, 296. Many demographic studies find no differences in personality and psychosocial circumstances between juvenile sex offenders and non-sex offenders. Furthermore, youth patterns of re-offending are similar with non-sexual offenses predominating. *Id.* at 297 (citing Michael Caldwell, *What We Do Not Know About Juvenile Sexual Re-offense Risk*, 7 *Child Maltreatment* 291-302 (2002) [hereinafter “Caldwell, *Reoffense Risk 2002*”]; Franklin Zimring, *An American Tragedy: Legal Responses to Adolescent Sexual Offending* (2004)). Research studies have found no statistically significant difference between the sexual recidivism rates of children who committed sexual offenses and

¹⁵ Brief of J. Lawrence Aber et al. as *Amicus Curiae* in Support of Petitioners, *Miller v. Alabama* at 10-12.

children who committed nonsexual violent offenses. See Franklin Zimring, et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?* 6 Crim. & Public Policy 507, 534 (2007) [hereinafter “Zimring, *Early Sex Offending and Late Sex Offending*”] Michael Caldwell, *Sexual Offense Adjudication & Sexual Recidivism among Juvenile Offenders*. 19 Sexual Abuse: J. Res. & Treatment, 107-113 (2007) available at http://www.njcn.org/uploads/digital-library/resource_557.pdf [hereinafter “Caldwell, *Recidivism Study 2007*”] (finding “the risk of sexual recidivism was statistically equal for youth treated in a residential facility for either sexual or nonsexual delinquent offenses.”). Both sexually and non-sexually delinquent youth are far more likely to re-offend with *nonsexual crimes* than with sexual crimes. See also Letourneau, *Against the Status Quo* at 313, 331.

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

Numerous published studies evaluate the recidivism rates of youth who sexually offend. Michael Caldwell, et al., *Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 Int’l J. Offender Therapy & Comp. Criminology 197, 198 (2010) (citing to recidivism studies dating back to 1994) [hereinafter “Caldwell, *Recidivism Study 2010*”]. The findings are remarkably consistent across studies, across time, and across populations: sexual recidivism rates among youth are exceptionally low. *Id.*¹⁶ In summary, data has shown that very

¹⁶ See also Michael Caldwell, *Sexual Offense Adjudication and Recidivism Among Juvenile Offenders*, 19 Sexual Abuse: J. Res. and Treatment 107-113 (2007), available at http://www.njcn.org/uploads/digital-library/resource_557.pdf; Michael Caldwell et. al., *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, 14 J. Psychol., Pub. Pol., and Law, 2, 89-114 (2008), available at <http://www.ncjfcj.org/sites/default/files/examinationofthesexoffender.pdf>; E.M. Driessen, *Characteristics of Youth Referred for Sexual Offenses*. Unpublished doctoral dissertation, University of Wisconsin-Milwaukee (2002); Michael Hagan, et al., *Eight-year Comparative Analyses of Adolescent Rapists, Adolescent Child Molesters, Other Adolescent Delinquents, and the General Population*, 43 Int’l J. Offender Therapy & Comp. Criminology 3, 314-324 (2011);

few adolescents who commit sexual crimes will become sexually deviant as adults. *Id.* at 197; A *Multi-State Recidivism Study Using Static-99R & Static-2002 Risk Scores & Tier Guidelines from the Adam Walsh Act*, National Institute of Just. 24, 32

<https://www.ncjrs.gov/pdffiles1/nij/grants/240099.pdf> [hereinafter “*Multi-State Recidivism Study*”]. 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. *Multi-State Recidivism Study* at 24.

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.” Caldwell, *Recidivism Study 2010* at 197-98. When rare sexual recidivism events do occur, it is nearly always within the first few years following the original adjudication. *Id.* at 205. Even youth initially evaluated as ‘high risk’ are unlikely to reoffend, particularly if they remain free of offending within the relatively brief period of time following initial adjudication. Donna Vandiver, *A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults*. 21 *J. Interpersonal Violence*, 673-688 (2006). These rates are compared with a 13% recidivism rate for adults who commit sexual offenses. Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* at 30 (May 2013) [hereinafter “*Raised on the Registry*”] (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) [hereinafter “Hanson, *Meta-Analysis of Recidivism*”]).

Franklin Zimring, et al., *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort*, 26 *Justice Q.*, 59-76 (2009), available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1590&context=facpubs>; Franklin Zimring, et al., *Sexual delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 *Criminology & Pub. Pol.* 3, 507-534 (2007).

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. Ashley Batastini, et al. *Federal Standards for Community Registration of Juvenile Sex Offenders: An Evaluation of Risk Prediction & Future Implications*, 17 Psychol. Pub. Pol’y & L. 3, 451, 457-58 (2011) (describing the heterogeneous behaviors of child sex offenders). In a study that compared the sexual recidivism rates of children assigned to three groups according to the severity of their offense, there was no significant difference in the recidivism rates of juvenile offenders in the three groups. Zimring, *Early Sex Offending and Late Sex Offending* at 507-34; *See also* Caldwell, *Recidivism Study 2007* at 107-113 (reporting no significant difference in the rate of adult sexual offense charges between 249 juvenile sex offenders and 1,780 non-sex-offending delinquents over a 5-year follow-up).

2. Children Who Offend Sexually Differ From Adult Sex Offenders In Significant Ways.

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, among other reasons. Caldwell, *Reoffense Risk* 2002; Judith Becker & Scotia Hicks, *Juvenile Sexual Offenders: Characteristics, Interventions, & Policy Issues*, 989 Ann. NY Acad. Sci. 397, 399-400, 406 (2003); Caldwell, *Recidivism Study 2010* at 197-98. With maturation, a better understanding of sexuality, and decreased impulsivity, most of these behaviors stop, and only a small fraction will maintain sexually deviant behavior in adulthood. Caldwell, *Recidivism Study 2010* at 205.

As set forth above, the United States Supreme Court has produced a controlling body of law rooted in the science of adolescent development and diminished capacity. All of the extant

research on adolescent sex offending, in particular, fully comports with the high Court's precedent. Juveniles who commit sex offenses are unlikely to reoffend and have a deep capacity to mature and change—facts consistent with C.K.'s case, in which expert, Dr. Sean Hiscox, concluded that "C.K. presently poses little or no risk to the public and that there is no clinical need for supervision or registration to insure that the public is safe from C.K." Superior Court Op. at 20-21

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. *See* Elizabeth Letourneau, et al., *Do Sex Offender Registration & Notification Requirements Deter Juvenile Sex Crimes*, 37 *Crim. Just. & Behav.*, 553, 556 (2010). Registration has no impact on the already very low rates of recidivism, nor has registration been demonstrated to prevent first offenses. *See generally* Caldwell, *Recidivism Study 2010*. 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. Research has also found that the recidivism rate is not measurably different for registered and unregistered children who committed sexual offenses. Elizabeth Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *Sexual Abuse: J. of Res. and Treatment*, 393-408 (2008).

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.

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

Children who must register as sex offenders for life “will face innumerable barriers to successful prosocial development.” Nicole Pittman and Quyen Ngyuen, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States* (2011); *see also In re J.B.*, ---A.3d ---, 2014 WL7369785, *10 (Dec. 29, 2014) (“registration also negatively affects juvenile offenders ability to obtain housing, schooling, and employment, which in turn hinders their ability to rehabilitate.”).

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. Letourneau, *Against the Status Quo*, at 313-331. Policies that promote youths’ concepts of themselves as lifetime sex offenders will likely interrupt the development of a positive self-identity. *Id.* at 303-07. The result of such stigma on adolescent development can worsen self-esteem, contribute to depression and in some cases leading to suicide. 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.

The body of literature on the subject uniformly concludes that registration and notification severely limit an individual’s future employment, ability to keep a job, ability to find or retain housing, and can lead to depression, hopelessness, and fear for their own safety. Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 Am. J. Crim. J. 54, 54-58 (2009) (collecting and referencing studies reaching these conclusions). Indeed, some registrants have experienced vigilante activities such as property damage, harassment, and even physical assault. *Id.*

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 passim.*

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. *Raised on the Registry* 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.

These same consequences apply to a registered sex offender’s family. Any household containing a “juvenile offender” is ineligible for public housing. 42 U.S.C. § 13663(a); 24 C.F.R. 960.204. Family members of registered as sex offenders may also be forced to move by a landlord. They may lose friends or feel isolated. 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. CHILDREN REGISTERED AS SEX OFFENDERS IN NEW JERSEY WILL BE TREATED DIFFERENTLY AND MORE HARSHLY BY OTHER STATES WHEN TRAVELING OUTSIDE THE STATE.

C.K. will face not only the onerous requirements imposed by New Jersey’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 New Jersey registrant 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.¹⁷ 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 New Jersey juvenile registrants 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 New Jersey registrant to register upon minimal contact with the state and will publicly disclose registry information, nullifying New Jersey’s seemingly non-public juvenile registration. Many states also impose significant residency, work, and education

¹⁷ 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 registered youth who travel out of state. 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). Although, *Shapiro v. Thompson* was overruled, however this right to travel was not. *Shapiro* cites *Passenger Cases*, 7 How. 283, 492, 12 L.Ed. 702 (1849) in reference to this long-standing principle.

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.¹⁸

A. New Jersey Registrants Are Deemed Sex Offenders By Most Jurisdictions.

Federal Classification

As a New Jersey registrant, C.K. is also a sex offender under federal law. 42 U.S.C. § 16911(8). Federal law sets the minimum requirements for interstate registration. *See* 42 U.S.C. § 16901 *et seq.* Sex offenders as defined by federal law have a duty to register. 42 U.S.C. §§ 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. § 16913 (registration requirements); 18 U.S.C. § 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. § 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 the few states that expressly exempt or clearly exclude registration of out-of-state juveniles including Alaska and Maine¹⁹ Every other state imposes its own more inclusive and restrictive regulations.

State Classifications

¹⁸ *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).

¹⁹ Alaska, Ala. Stat. § 12.63.100.; Maine, Me. Rev. Stat. tit. 34A § 11202, New Mexico, N.M. Stat. § 29-11A-3.

In forty-five states, New Jersey registrants are included as registerable sex offenders under most circumstances.²⁰ These states adopt different approaches to determine whether a juvenile offender is a registerable sex offender. In twenty-six states, registration is required for juveniles if they were required to register in the adjudicating state.²¹ *See, e.g.*, S.C. Code Ann. § 23-3-430(a)

²⁰ *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 PA.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. §§ 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.

²¹ 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.

("[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.²² Most New Jersey 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). Seven other states (including New Jersey) adopt a catch-all approach of registering children who are either registered in another state or

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). 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).

²² 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).

adjudicated delinquent of an offense similar to those requiring registration in their state.²³ *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 New Jersey 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 registrants 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.

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

²³ 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.

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 immediately, whether or not the offender actually establishes "residence." Ala. Code § 15-20A-32(a). Entering with the intent to establish a residence, accept school, or start employment is enough. *Id.* 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 here 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.²⁴ 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

²⁴ 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); 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.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).

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 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 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. Juveniles, who may have little control over their own movements, will not likely understand these counter-intuitive yet highly demanding regulations.

Work or School

“Residency” is not the only type of contact that requires registration. Most states include work and school requirements as well.²⁵ Michigan’s registration statute is typical of

²⁵ 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) (anyone who is employed or works in Delaware); 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.

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 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,

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).

trade, or professional institution, or institution of higher education.” S.D. Codified Laws § 22-24B-4. It requires the offender to register within 3 days of “coming into any county to... attend school.” *Id.*

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 New Jersey’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, juvenile registrants are subject to additional consequences under other state schemes. New Jersey seemingly protects juvenile registrants from having their information disclosed publicly. 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. Wayne A. Logan, *Knowledge as Power: Criminal Registration and Community Notification Laws in America* 138 (Stanford

Univ. Press 2009) [hereinafter “*Knowledge As Power*”]. Essentially, once the information becomes publicly available, it will remain available. *Id.* at 229.

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.²⁶ These states often include sweeping amounts of information, including internet identifiers. Eight more states publicly disclose information about juvenile registrants, but limit disclosure to certain offenders or groups.²⁷ Only five states which register juvenile offenders exempt them from public notification.²⁸

²⁶ See Ala. Code § 15-20A-08; Ariz. Rev. Stat. § 13-3827; Cal. Pen. Code §§ 290.45 to 290.46 (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. Correct. Law §168-p (special telephone database); N.D. Cent. Code, § 12.1-32-15(15) (2012); Or. Rev. Stat. § 181.835 (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.

²⁷ 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 § 584 (H) (2012) (requiring the Department of Corrections to maintain a file of all sex offenders and allowing the department to promulgate its own rules about dissemination of information to the public); 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).

²⁸ 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.

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.

Many states also actively notify the community of juvenile registrants. “‘Active’ community notification might entail making juvenile registrant information available to schools and distributing it to individuals and community organizations.” *Knowledge as Power* at 76-79. 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 New Jersey 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.

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 juvenile registrant from another state. 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 [*hereinafter New Jersey Attorney General Regulations*]. 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 Mar. 1, 2015). Called the Dru Sjodin National Sex Offender Public Website, *see* 42 U.S.C. § 16920, the “Website shall include relevant information for each sex offender and other person listed on a jurisdiction’s Internet site.” 42 U.S.C. § 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 Mar. 1, 2015); *Knowledge As Power*, 76-79. 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 Mar. 15, 2015). 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 Mar. 1, 2015); *Knowledge As Power*, 76-79. 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, Mar. 1, 2015). Another site, Map Sex Offenders, uses its own search system to create a zoom-able map which pinpoints locations of sex offenders in over 40 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. The state 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. § 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. § 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.²⁹ 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.

Okl. Stat. tit. 57 § 590. Any person who intentionally moves into a prohibited area faces a mandatory minimum of one year in jail. *Id.* 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), *abrogated by In Re Taylor* 209 Cal. App. 4th 201 (2012) (finding the provision to be unconstitutionally broad and unreasonable when applied as a parole restriction), *review granted*, 290 P.3d 1171 (2013).

“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*

²⁹ 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 when retroactively applied.); Okla. 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).

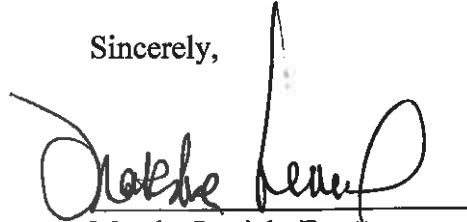
Keeping its Promise?, 65 Wash. & Lee L. Rev. 1783, 1790 (2008). These monitoring restrictions are not limited to those offenders serving probation or parole, but in some cases may apply for life. See, e.g., Sarah Shekhter, *Note, Every Step You Take, They'll Be Watching You: The Legal and Practical Implications 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).

CONCLUSION

Wherefore, Juvenile Law Center respectfully requests that for the foregoing reasons this Honorable Court reverse the denial of Petitioner's Post-Conviction Relief Petition.

Sincerely,



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(*Pro hac vice pending*)

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Dated: April 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2015, I caused the foregoing document to be filed via United States mail to the Clerk of the Superior Court, Appellate Division at P.O. Box 006, Trenton, N.J. 08625. Additionally, I caused copies of the foregoing document to be served via United States mail to:

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