

IN THE SUPREME COURT OF OHIO

In re: D.R.,
A MINOR, APPELLEE

:
: Case No. 2021-0934
:
: On APPEAL from the Hamilton
: County Court of Appeals
: First Appellate District
:
: C.A. Case No. C-190594
:

BRIEF OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER

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Introduction

A central feature of the juvenile court system is the broad discretion afforded to juvenile court judges. *See, e.g., In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446, 967 N.E.2d 729, ¶ 77. Juvenile courts are in a unique position to evaluate the treatment needs of the child in front of them and to determine what level of sanctions and services is necessary to rehabilitate the child. Juvenile court judges are also capable of recognizing the devastating consequences of keeping children on the juvenile registry when these children pose very little risk to the community.

However, R.C. 2152.84 prevents juvenile courts from exercising their discretion and removing these children from the registry. Instead, the statute mandates that certain children remain on the registry for three more years, substituting a juvenile court's expertise and careful consideration with a one-size-fits-all approach. Mandatory registrants who were initially classified tier I have no opportunity to be removed from the registry at their end-of-disposition hearing. The hearing is essentially meaningless—it is mandatory, and yet, there is no option for the child's registration duty to be modified. Accordingly, amicus the Office of the Ohio Public Defender urges this Court to find that fundamental fairness requires that juvenile courts retain discretion to remove mandatory registrants at the end-of-disposition hearing.

Statement of Interest of Amicus Curiae

The Office of the Ohio Public Defender (OPD) is a state agency, designed to represent criminal defendants and to coordinate criminal defense efforts throughout Ohio. The OPD also plays a key role in the promulgation of Ohio statutory law and procedural rules. The primary focus of the OPD's litigation efforts is on the appellate phase of criminal cases, including direct appeals and collateral attacks on convictions. In addition, the OPD seeks to promote the proper administration of criminal justice by enhancing the quality of criminal defense representation, educating legal practitioners and the public on important defense issues, and supporting study and research in the criminal justice system.

As amicus curiae, the OPD offers this Court the perspective of practitioners who routinely handle direct appeals and collateral challenges across a varied range of proceedings, including juvenile adjudications, juvenile bindover convictions, general felony cases, and death penalty cases. Accordingly, the OPD has a unique and enduring interest in protecting the constitutional adequacy, integrity, and manageability of Ohio's appellate and postconviction procedures. Towards that end, the OPD respectfully urges adoption of the First District's holding, which is that R.C. 2152.84's prohibition on declassification of mandatory registrants unconstitutionally denies children their right to due process.

Statement of the Case and Facts

Amicus curiae adopt the Statement of the Case and Facts presented in D.R.'s Brief on the merits.

D.R.'s Response to State's Proposition of Law

Automatic continued classification at the end of disposition under R.C. 2152.84(A)(2) for mandatory juvenile sex offender registrants classified as a Tier I violates fundamental fairness and procedural due process.

I. The discretion of the juvenile court is an essential component of fundamental fairness.

When a child commits sexual harm, juvenile courts are entrusted to fashion an appropriate disposition that addresses the rehabilitative needs of the child while simultaneously protecting the person that was harmed and the community. Juvenile courts are afforded broad discretion to craft an individualized disposition to address each child's unique strengths and needs. *See* R.C. 2152.01(A); 2152.16.

This discretion is so central to the juvenile court process that when a statute strips juvenile courts of their discretion, this Court has struck it down as unconstitutional. *See, e.g., C.P.*, 131 Ohio St.3d 513, 967 N.E.2d 729, at ¶ 85 (finding that R.C. 2152.86 "undercuts the rehabilitative purpose of Ohio's juvenile system and eliminates the important role of the juvenile court's discretion in the disposition of juvenile offenders"). In *C.P.*, this Court noted that "fundamental fairness to the child demands the unique expertise of a juvenile judge." *Id.* at ¶ 76. Further, the automatic imposition of lifetime registration and

notification eliminated “th[e] essential element of the juvenile process”—the judge’s discretion. *Id.* at ¶ 77.

Conversely, this Court has upheld other statutes—including serious youthful offender sentencing and sex offender registration—on the condition that the juvenile court retained some degree of discretion. *State v. D.H.*, 120 Ohio St.3d 540, 2009-Ohio-9, 901 N.E.2d 209, ¶ 61 (holding that due process was not violated when the juvenile court exercised its discretion in imposing a serious youthful offender blended sentence); *In re D.S.*, 146 Ohio St.3d 182, 2016-Ohio-1027, 54 N.E.3d 1184, ¶ 32-37 (overruling a due-process challenge to sex offender registration requirements continuing beyond ages 18 and 21 when the court has discretion as to tier level and can modify and terminate the classification in the future). “When it comes to juvenile offenders facing penalties into adulthood: ‘[f]undamental fairness requires that the judge decide the appropriateness of any such penalty.’” *D.S.* at ¶ 34, quoting *C.P.* at ¶ 78.

In upholding the constitutionality of juvenile sex offender registration and notification under Senate Bill 10, this Court noted the juvenile court’s ongoing discretion to modify and terminate the registration duty:

Under R.C. 2152.84(A)(1), when a child is classified as a juvenile-offender registrant before the completion of disposition for the sexually oriented offense, the juvenile court judge “shall conduct a hearing” upon the completion of the child’s disposition “to determine whether the prior classification of the child as a juvenile offender registrant should be continued or terminated” or modified. R.C. 2152.84(A)(1). Thus, the juvenile-offender-registrant status is subject to statutorily prescribed

review and can be modified or terminated *at the discretion of the juvenile court*.

D.S. at ¶ 35 (emphasis added).

For children placed on the juvenile registry, the broad discretion of the juvenile court necessarily continues throughout the disposition, until the court determines the child has met their rehabilitative goals, justifying their removal from the sex offender registry. However, R.C. 2152.84 strips juvenile courts of this discretion and mandates that certain children remain on the registry for three years after they completed their disposition. In these circumstances, juvenile courts must keep children and young adults on the sex offender registry despite finding that the child poses so little risk that the lowest tier level was appropriate *prior to* engaging in any treatment.

II. The state relies on myths, misconceptions, and scare tactics to argue that removal at end of disposition is never appropriate.

The state, the Ohio Attorney General, and the Ohio Prosecuting Attorney's Association claim that registering children as sex offenders is essential to allow the public to protect themselves against a group of individuals who have a high risk to commit another sexual offense. Brief of Appellant at pp. 6-7; Brief of Amicus Ohio Prosecuting Attorney's Association, p. 17. But, collectively, the state makes this claim citing to precisely zero scientific sources. *See* Brief of Appellant at Table of Contents; Brief of Amicus Ohio Prosecuting Attorney's Association at Table of Contents; Brief of Amicus Ohio Attorney General at Table of Contents. In essence, this argument relies on two faulty

premises: first, that juveniles who commit sex offenses are at a high risk to reoffend; and, second, that it is the general public who is most in danger of being victimized by these individuals.

A. The myth of high risk: Children adjudicated delinquent for committing a sex offense rarely reoffend.

Because children are developmentally different than adults, children who commit sexual harm have an extremely low rate of recidivism. Caldwell, *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, 22 Psychol. Pub. Pol’y & L. 414 (2016). The vast majority of these children will never commit another sexual offense again. Many members of the public assume that children who commit sex offenses, even serious ones, are not able to respond to treatment and will continue to offend into adulthood. This is a false assumption. Scientists have been researching rates of recidivism of children who commit sexual harm for decades, following up with tens of thousands of individuals after their adjudications for sexual offenses.

In his seminal 2016 study, Dr. Michael Caldwell reviewed recidivism statistics for 33,783 youth. *Id.* at 1. The recidivism rate was 4.92% for all youth, and just 2.75% for youth studied since the year 2000. *Id.* at 1. Further, Dr. Caldwell’s study showed a 73% decrease in recidivism rates over the past 30 years. *Id.* at 1. Put another way, 95% to 97% of children who are adjudicated delinquent of committing sexual harm will never do so again. *Id.* See also Letourneau et al., *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24 Psychol. Pub. Pol’y & L. 105, 115 (2018); Finkelhor et al.,

Juveniles Who Commit Sex Offenses Against Minors, OJJDP Juvenile Justice Bulletin (Dec. 2009) 4; Feige, Opinion, *When Junk Science About Sex Offenders Infects the Supreme Court*, N.Y. Times (Sep. 12, 2017). This group of individuals – children who commit sex offenses – pose a uniquely low risk to reoffend. *Id.* Yet, the state and amici continue to advocate for a policy based on a myth that has been soundly discredited by decades of scientific research.

B. *The myth of “stranger danger”: Children who commit sexual offenses rarely offend against a stranger.*

The concept of “stranger danger,” the belief that children primarily offend against strangers, or, members of the general public, is false. *See, e.g.,* Fuselier et al., *The Child Sexual Abuser: Perceptions of College Students and Professionals*, 14 *Sexual Abuse: J. Res. & Treatment* 271 (2002); Quinn et al., *Societal Reaction to Sex Offenders: A Review of the Origins and Results of the Myths Surrounding Their Crimes and Treatment Amenability*, 25 *Deviant Behav.* 215 (2004); Rogers & Ferguson, *Punishment and Rehabilitation Attitudes Toward Sex Offenders Versus Nonsexual Offenders*, 20 *J. Aggression Maltreatment & Trauma*, 395 (2011); Sahlstrom & Jeglic, *Factors Affecting Attitudes Toward Juvenile Sex Offenders*, 17 *J. Child Sexual Abuse* 180 (2008). A study published by the Bureau of Justice Statistics in 2000 showed that 93% of sexual abuse perpetrated against children was perpetrated by someone known to the victim. U.S. Department of Justice Bureau of Justice Statistics, No. NCJ-182990, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics* (2000). Similarly, a 2014 Canadian study showed that

in 88% of all sexual offenses against minors that were reported to the police, the perpetrator was known to the victim. Cotter & Beaupré, *Police-Reported Sexual Offences Against Children and Youth in Canada*, 34 Juristat (2014). In the vast majority of cases, children adjudicated delinquent of a sexual offense commit their offense against a family member (25%) or an acquaintance (63.2%). Finkelhor, OJJDP Juvenile Justice Bulletin. Just 2.5% of kids who commit sexual harm offend against someone who is a stranger to them. *Id.* The state and amici argue that registration is necessary for public safety, but the statistics show that the overwhelming majority of children who offend sexually do so against someone they already know, and many times, someone in their own household. Keeping children on the registry does not protect those victims.

III. Juvenile courts can be trusted to appropriately determine that a child is ready to be removed from the registry at the end of their disposition because they understand that placing children on sex offender registries is not an effective method to prevent future sex offenses.

A. A one-size-fits-all approach does not work because there are myriad reasons why children commit sexual harm.

“Early thinking about juvenile sex offenders was based on what was known about adult child molesters, particularly adult pedophiles.” Finkelhor, OJJDP Juvenile Justice Bulletin at 2. However, current research indicates there are important differences between juveniles and adults who commit sexual offenses. *Id.* at 3.

Children who engage in illegal sexual behaviors are a diverse group, coming from “a variety of social and family backgrounds.” *Id.* Some may be motivated by sexual

curiosity, while others have a demonstrated pattern of violating the rights of others. *Id.* They may have committed the offense when they were seriously mentally ill. *Id.* Or, there can be situations where they misinterpreted what they believed was mutual sexual interest or engaged in normative but illegal consensual acts. Often, they are impulsive and exhibit poor judgment. *Id.* And, some are traumatized children acting out their own sexual victimization. *Id.*

Further, the role of deviant sexual preferences in juveniles was overestimated. *Id.* Dr. Elizabeth Letourneau, Director of the Moore Center for the Prevention of Child Sexual Abuse within the Johns Hopkins Bloomberg School of Public Health, notes that “[k]ids who offend are often not motivated by any sexual interest in young children.” Der Bedrosian, *When the Abuser is a Child, Too*, John Hopkins Magazine (2018) 3. Rather, offenders may be young children reenacting their own sexual abuse, or children who are experimenting without a mature understanding of the harm they may be inflicting. *Id.* at 3-4.

One-third of all [sexual offenses against minors] are committed by teens, usually boys between the ages of 12 and 15. Offenses by juveniles often involve close relationships and opportunity—perhaps a sibling or close family friend. They’re most likely to occur in someone’s home * * * And there is a steep drop-off in incidents as children approach their later teen years and learn about boundaries and healthy sexual behavior. * * * “[T]heir brains are not as developed, and they are more impulsive in nature. They have less of an understanding of sexual norms as well as the consequences of their behavior. The intention is simply not the same” as when an adult chooses to sexually abuse a child.

Id. at 4, quoting Letourneau.

Many adolescents engage in unlawful sexual behaviors as they begin to explore their own sexuality, without knowing they are illegal. A 2019 study of 144 adolescents found that *nearly half* had engaged in at least one registrable behavior, including sexting, indecent exposure, sexual solicitation, and forcible touching. Cleary & Najdowski, *Awareness of Sex Offender Registration Policies and Self-Reported Sexual Offending in a Community Sample of Adolescents*, 17 *Sexuality Res. & Soc. Pol'y* 486 (2020). Far from being deviant, at times a child ends up on the juvenile sex offender registry for engaging in normative—albeit illegal—teenage behavior.

B. Children who commit sex offenses are especially amenable to treatment, which contributes to low recidivism rates.

Although children commit sexual harm for a variety of reasons, often related to their immaturity, sexual curiosity, ignorance of the law, or past trauma, as a group they tend to respond very well to appropriate treatment. “Adolescent sex offenders are considered to be more responsive to treatment than adult sex offenders and do not appear to continue re-offending into adulthood, especially when provided with appropriate treatment.” Chaffin et al., *What Research Shows About Adolescent Sex Offenders*, National Center on Sexual Behavior of Youth (2003).

Early treatment models were carried over from adult treatment programs with few modifications for juveniles. Letourneau & Borduin, *The Effective Treatment of Juveniles Who Sexually Offend: An Ethical Imperative*, 18 *Ethics & Behav.* 286 (2008). With the growing

recognition of the unique needs of children, there are now effective treatment options that offer developmentally appropriate responses to a child's unique needs while also recognizing their strengths and protective factors. A child's participation in specialized treatment has been shown to further reduce their already low risk of reoffending. Worling et al., *20-Year Prospective Follow-Up Study of Specialized Treatment for Adolescents Who Offended Sexually*, 28 Behav. Sci. & L. 46 (2010).

Studies have found that one of the most effective treatment models for juveniles with sexual behavior problems is multisystemic therapy ("MST"). See, e.g., Calvert & Bauer, *Juveniles with Sexual Behavior Problems: A Treatment Program Evaluation*, Open Psychology 1 (2019); Letourneau et al., *Two-Year Follow-Up of a Randomized Effectiveness Trial Evaluating MST for Juveniles Who Sexually Offend*, 27 J. Fam. Psychol. 978 (2013). MST emphasizes family involvement, which is especially vital to the child's success in treatment, often while keeping the child in the community. Calvert at 2. "To be effective, interventions need to move beyond a focus on the individual youth to address behavioral drivers that occur at the family, peer, school, and community systems in which the youth is embedded." Letourneau, 18 Ethics & Behav. at 291-92. "These findings highlight the importance of including multiple systems in any treatment program and discourage focusing on the juvenile in isolation from their family and community." Calvert at 2.

Not only are these treatment models effective, but they offer results after a rather short period of time. Studies have found that treatment for less than one year in an

outpatient or community setting are often sufficient to attain positive outcomes and low recidivism rates. Dopp et al., *Evidence-Based Treatments for Youths Who Engage in Illegal Sexual Behaviors*, 46 J. Clinical Child & Adolescent Psychol. 631 (2017). One study found average treatment duration for multi-systemic therapy was approximately 7.1 months. Letourneau et al., *Multisystemic Therapy for Juvenile Sexual Offenders: 1-Year Results from a Randomized Effectiveness Trial*, 23 J. Fam. Psychol. 89, 94 (2009).

For children replaying their own abuse, clinicians recommend trauma-focused cognitive behavioral therapy, as opposed to a lengthy prison term. Der Bedrosian, *When the Abuser is a Child, Too*, at 7. See also 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*, 13 Child Maltreatment 110, 119 (2008) (noting that “juvenile sex offenders are one of the few remaining populations where long-term institutional care is accepted on a routine basis,” despite the fact that “there is little foundation to policies or practices dictating long-term treatment or placing these children into residential treatment facilities on more than an occasional basis”).

C. *Keeping children on sex offender registries does not impact sexual recidivism rates – which are already extremely low.*

“[E]very published study evaluating the effects of state and federal juvenile registration policies has failed to find any evidence that these policies exert any public safety effects.” Letourneau, 24 Psych. Pub. Pol’y & L. at 115.

In the first study to examine the effects of U.S. registration and notification laws on juvenile sexual offenders matched with nonregistered controls, “[r]esults generally failed to support the effectiveness of this policy.” Letourneau & Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 *Sexual Abuse: J. Res. & Treatment* 393, 403 (2008). In fact, the authors noted only two sexual recidivism events for the entire sample of 222 individuals. *Id.*

In 2017, Sandler et al. found that “[n]o research has found any evidence of any recidivism reductions” due to classification and registration schemes. Sandler et al., *Juvenile Sexual Crime Reporting Rates Are Not Influenced by Juvenile Sex Offender Registration Policies*, 23 *Psychol. Pub. Pol’y & L.* 131, 136-137 (2017).

As discussed above, the overwhelming majority of children who commit sexual harm never reoffend sexually. And, juveniles who commit sex offenses are more amenable to treatment than their adult counterparts. It is not surprising, then, that keeping children on sex offender registries for years has no effect on recidivism rates.

D. Requiring children to continue to register as sex offenders does not deter other children from committing sexual harm.

Not only does sex offender registration have no effect on the recidivism rates of those who have already committed a sexual offense, but there is also no evidence that it deters first-time offenders.

A 2018 study examined the effects of Maryland and Oregon’s juvenile sex offender registration and notification laws on first-time sexual offenses. Letourneau et al., *Juvenile*

Registration and Notification Policies Fail to Prevent First-Time Sexual Offenses: An Extension of Findings to Two New States, 30 *Crim. Just. Pol’y Rev.* 1109 (2019). The authors found that neither state’s registration policies had any general deterrence effects: there was no impact on first-time sexual offense charges or adjudications after implementation of sex offender registration and notification laws. *Id.* Another study published almost a decade prior found that South Carolina’s sex offender registration and notification laws had no general deterrent effect on juvenile sexual offenses. Letourneau et al., *Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?*, 37 *Crim. Just. & Behav.* 553 (2010).

“One potential reason why prior work has found no general deterrent impact of registration policies on first-time sexual offending could be that adolescents simply do not know about them.” Cleary, 17 *Sexuality Res. & Soc. Pol’y* at 488. In a study published in 2019, only 52% of adolescents in the sample knew that someone their age could be required to register as a sex offender. *Id.* at 492. However, even among those adolescents who knew that certain behaviors could result in sex offender registration, the researchers found no correlation between this knowledge and their likelihood to engage in the illegal behavior. *Id.* “[Y]outh who knew that sexting could result in juvenile sex offender registration were no less (or more) likely to send sexts than youth who were unaware of the policy, and this was true for each of the four behaviors we assessed.” *Id.* at 492-93.

The results are in. Juvenile registration and notification schemes have failed to accomplish what they were enacted to do: protect the public from perceived high-risk predators. Children commit sexual harm for a variety of reasons, but rarely as a result of deviant sexual preferences. Given their amenability to treatment and extremely low risk to reoffend, as well as many juveniles' ignorance of the law, the registration and surveillance of these children does not lower recidivism rates or prevent first-time offenses. And, as discussed below, the consequences of keeping children on the sex offender registry—even for just three more years—can be disastrous and lead to future victimization.

IV. During this critical period of identity formation and brain development, the consequences of sex offender registration are especially devastating to children and their families.

Life as a registrant is difficult, which is in part why this Court recognizes registration as punishment. *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, 952 N.E.2d 1108, ¶ 16. But, it cannot be overstated that for many on the registry, life is *unbearably* difficult. Registration is not just checking in with a sheriff's deputy at specified periods. It is an all-encompassing weight that permeates into every aspect of a child's life, often before they figure out how to navigate the world on their own. This Court understands how difficult registration is for kids:

Here, too, the registration and notification requirements are different from such a penalty for adults. 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.

C.P., 131 Ohio St.3d 513, 967 N.E.2d 729 at ¶ 45. Scientific studies show that the consequences of life on the registry are so severe and so certain, that many professional organizations across the country are calling for an end to juvenile registration altogether, calling it cruel and abusive. Brandt et al., *Registration and Community Notification of Children and Adolescents Adjudicated of a Sexual Crime: Recommendations for Evidence Based-Reform*, Association for the Treatment of Sexual Abusers Literature Review and Policy Recommendations 16 (2020) (offering a recommendation that state governments “end policies that subject children or adolescents to sex offender registration and notification requirements and related residence, education, and employment restrictions”). And, a child's late adolescence is a period typified by identity formation and executive functioning development. Andrea MacIver, *The Clash Between Science and the Law: Can Science Save Nineteen-Year-Old Dzhokhar Tsarnaev's Life?*, 35 N. Ill. U. L. Rev. 1, 15 (2014). If a juvenile court judge does not want to expose a child to the consequences of continued

registration during this critical period of brain development, there are certain circumstances in which they don't have the option to do so. Therein lies the exact problem with R.C. 2152.84's prohibition.

A. Children on the registry experience housing insecurity and homelessness.

First, children on the registry experience difficulties obtaining employment and housing because their registrant status appears on background checks. *See* R.C. 109.57(E)(2)(b); Farkas & Miller, *Reentry and Reintegration: Challenges Faced by the Families of Convicted Sex Offenders*, 20 Fed. Sentencing Rep. 88 (2007); Levenson & Cotter, *The Effect of Megan's Law on Sex Offender Reintegration*, 21 J. Contemp. Crim. J. 49 (2005); Levenson et al., *Megan's Law and its Impact on Community Re-Entry for Sex Offenders*, 25 Behav. Sci. & L. 587 (2007); Mercado et al., *The Impact of Specialized Sex Offender Legislation on Community Re-Entry*, 20 Sexual Abuse: J. Res. & Treatment 188 (2008); Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. Contemp. Crim. Just. 67 (2005); Zevitz & Farkas, *Sex Offender Community Notification: Managing High Risk Criminals or Exacting Further Vengeance?*, 18 Behav. Sci. & L. 375 (2000); Levenson & Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 Am. J. Crim. Just. 54 (2009); Tewksbury & Levenson, *Stress Experiences of Family Members of Registered Sex Offenders*, 27 Behav. Sci. & L. 1 (2009).

This is an insidiously multi-layered problem, because it involves problems in both securing housing for the registrants themselves, or registrants being able to live with

supportive family members. Levenson & Hern, *Sex Offender Residence Restrictions: Unintended Consequences and Community Re-Entry*, 9 J. Res. & Pol'y 59 (2007). As stated above, the overwhelming majority of children offend against someone in their household, which restricts (either from the perspective of the victim's wishes or from court order) registrants from being able to continue living in that household. So registrants, when they themselves are still children, are then forced to leave their homes and either find a relative or friend to house them, enter foster care, or live on their own. And, while child registrants do not have the same residency restrictions as adults, private landlords are permitted to and routinely do deny housing to registrants or evict them once they learn their registrant status. Similarly, homeless shelters are permitted to refuse entry to those on the registry; and, public housing authorities can evict or deny housing to registrants. Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* (2013), 66. To this end, 44% of registrants report that they experience homelessness or housing insecurity while registering. *Id.* at 65.

B. Children on the registry are excluded from school and denied employment.

Further, children on the registry experience systematic exclusion from both secondary and post-secondary education: child registrants experience high rates of school expulsions and school interruptions. Harris et al., *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, 28 Sexual Abuse: J. Res. & Treatment 770 (2015). Because of these school interruptions, kids

then have reduced access to prosocial activities. *Id.*; Tewksbury & Zgoba, *Perceptions and Coping with Punishment: How Registered Sex Offenders Respond to Stress, Internet Restrictions, and the Collateral Consequences of Registration*, 54 Int'l J. Offender Therapy & Comp. Criminology 537 (2010). And, because of the appearance of registrant status on background checks, registrants are routinely denied access to college; are almost exclusively denied access to the military; and, when entering the workforce, are denied job opportunities. Certain employers are legally required to investigate the backgrounds of applicants, including healthcare professionals, lawyers, and certified licensed positions. Taken together, this means that child registrants, often before they even reach adulthood, are a group that are highly likely to be unhoused, unemployed or underemployed, and denied access to institutions that could provide prosocial interactions and financial stability. Certainly, this is not what the legislature intended in devising the registration scheme.

C. Children on the registry experience violence and harassment from vigilantes.

Children on the registry experience vigilante threats, harassment, and property damage. *Raised on the Registry* at 56; Hackett et al., *Community Reactions to Young People Who Have Sexually Abused and Their Families: A Shotgun Blast, Not a Rifle Shot*, 29 Child. & Soc'y 243 (2015) (finding that "[t]he overwhelming level of negative community reactions experienced by youth was described *** as 'akin to a shotgun...with the impact spreading in unpredictable ways across systems'"). Many children (52%) on the registry experience

violence or threat of violence to themselves personally, but many more experience those same harms directed at their family members. *Raised on the Registry* at 56. News stories about vigilantes harming or killing registrants are not uncommon. See, e.g., Conley, *Omaha Man Says Killing Sex Offender Was Justified and Doesn't Think a Jury Will Convict Him*, Omaha World Herald (Jun. 11, 2020). So, even if a child doesn't experience that harm directly, our children on the registry see these stories, and they experience vicarious trauma, living in fear and paranoia that someone will discover their registration status and choose to hurt or harass them.

D. The registry is a detriment to children's mental health.

Children on the registry experience measurably more stress, shame, stigma, isolation, loss of friendships, and hopelessness than those not on the registry. Comartin et al., *Family Experiences of Young Adult Sex Offender Registration*, 19 J. Child Sexual Abuse 204 (2010); Ackerman & Sacks, *Can General Strain Theory Be Used to Explain Recidivism Among Registered Sex Offenders?*, 40 J. Crim. Just. 187 (2012); Hanson & Morton-Bourgon, *The Characteristics of Persistent Sexual Offenders: A Meta-Analysis of Recidivism Studies*, 6 J. Consulting & Clinical Psychol. 1154 (2005); Levenson, *The New Scarlet Letter: Sex Offender Policies in the 21st Century*, in *Applying Knowledge to Practice: Challenges in the Treatment and Supervision of Sexual Behavior* 21–41 (Prescott, 2007); Levenson & D'Amora, *Social Policies Designed to Prevent Sexual Violence the Emperor's New Clothes?*, 18 Crim. Just. Pol'y Rev. 168 (2007); Ostrowsky & Messner, *Explaining Crime for a Young*

Adult Population: An Application of General Strain Theory, 33 J. Crim. Just. 463 (2005). The experience of these negative psychological effects is especially detrimental for youth because adolescence is a period of a person's life characterized by identity formation – in other words, people figure out who they are. Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 Criminology & Pub. Pol'y 508 (2007). When a child experiences the label of “sex offender,” that label can become a core part of their identity and make it difficult for them to become a well-adjusted and functioning adult. *Id.* The increased severity in depression and suicidal ideation has been found to exist regardless of whether registration status is private or public. Denniston, *The Relationship Between Juvenile Sex Offender Registration and Depression in Adulthood* (2016) (Ph.D. dissertation, Walden University), available at <https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2986&context=dissertations> (accessed Jan. 13, 2022).

E. Suicide is a predictable consequence of placing children on the registry.

Placing children on the registry for any amount of time puts them at an unacceptable risk for suicide. In 2012, the Human Rights Watch released a report about the juvenile sex offense registry. The authors interviewed 281 individuals who were on the juvenile registry. *Raised on the Registry* at 51. Almost 20% of the people (58 individuals) they interviewed reported that they had attempted suicide since being on the registry, and 3 of the registrants they interviewed eventually completed suicide during the course

of their study. *Id.* These findings were confirmed in a similar study done in 2018 by Dr. Elizabeth Letourneau from Johns Hopkins University. Letourneau, 24 Psychol. Pub. Pol’y & L. at 115. The study revealed that compared to their non-registered counterparts, children on the registry were *4 times* more likely to report having attempted suicide in the preceding 30 days. *Id.* at 112. One interviewee of the Human Rights Watch Report, Christian W., was 14 years old when he went on the registry for sexually inappropriately touching his younger cousin. *Raised on the Registry* at 51. 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.

Id. And, one expert interviewed by the Human Rights Watch stated, “Suicide [among children placed on sex offender registries] is a possibility *** even predictable.” *Id.*

Further, in the 2018 study done by Dr. Letourneau, children on the registry were found to be *five times* more likely to report having been approached by an adult for sex in the preceding year, and twice as likely to report having been the victim of a sexual assault. Letourneau, 24 Psychol. Pub. Pol’y & L. at 114. The reason for these findings is almost purely logistical: children go to the same place that adults go to register, and often spend periods of time waiting in line for their turn to register alongside adult registrants. *See Id.*; *see Raised on the Registry* at 51. As an interviewee by the Human Rights Watch report

pointed out, “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.” *Raised on the Registry* at 51. In addition, certain children on Ohio’s registry have their name, address, and personal information disseminated to the public via postcards or community notification. This provides a roadmap for adult offenders directly to the community’s most vulnerable individuals. Put more simply, the registry perpetuates exactly that which it purports to prevent – child sexual abuse.

F. Family members of children on the registry experience all the same negative effects as registrants themselves.

The negative effects of the registry are not only experienced by the registrants themselves, but have ripple effects into their families as well. In 2020, the Association for the Treatment of Sexual Abusers (“ATSA”), an international organization that sets standards and practice guidelines for treatment providers, released a policy paper advocating for an end to juvenile sex offense registration. Brandt et al., *Registration and Community Notification of Children and Adolescents Adjudicated of a Sexual Crime: Recommendations for Evidence Based-Reform*, Association for the Treatment of Sexual Abusers Literature Review and Policy Recommendations (2020) 16. The ATSA panel of authors found that it was not only registrants that suffered the effects of the registry:

In addition to the collateral consequences to family members of adult and adolescent registrants mentioned above, there are added concerns for parents and caregivers regarding the safety of their child or adolescent required to register. Parents often experience fear and paranoia over concerns for their child’s public safety, their vulnerability to future false

allegations because of their registrant status, unintended mistakes that could have legal consequences to their child as they attempt to abide by complex registration requirements, information about their child being publicly disseminated, and about how ingrained the label might become in their child (Comartin et al., 2010). This often leads to a sense of powerlessness and hopelessness by parents due to their inability to protect their children from these negative consequences, as well as, for some, a prevailing feeling that no matter how many good things their child did, they were not allowed to be proud of them because their offense overrode everything (Comartin et al., 2010). Family members also often suffered the loss of friendships, and even family relationships, when others were embarrassed to associate with them, ostracized them, or if conflicts occurred from misunderstandings about the “sex offender” label or the offense behavior (Comartin et al., 2010). Additionally, public registration and notification essentially results in the “registration” of the parents, family, neighborhood and school as those addresses are often listed on the public registry as well.

Brandt at 12. Having a child on the registry places burden on family members well into that child’s adulthood because they must continue to provide for their loved one’s basic needs such as food, housing, and healthcare. Comartin, 19 J. Child Sexual Abuse at 218. If that child reaches adulthood and manages to have a family of their own, the registry will in turn effect a second generation of children. *Raised on the Registry* at 58-60. The effects of the registry are far reaching.

Conclusion

Given all of this, the suggestion by the state and amici that children *need* a longer time to register or that they are “better off” than adult registrants either ignores the reality of the dire effects of the registry, or it implies that it’s okay that a certain set of kids suffers

from those dire effects. (Brief of Amicus Ohio Prosecuting Attorney's Association at pp. 1, 2, 6).

Further, to imply that the length of the dispositional period is *not* long enough to rehabilitate a child ignores the reality of how juvenile court dispositions work. Juvenile courts have an array of dispositional options available for children adjudicated delinquent of sexual offenses under R.C. 2152.19, but any juvenile dispositional option can last until age 21. To that end, children, regardless of the age they begin registering, have been doing the hard work of rehabilitation and suffering the harsh effects of the registry for several years before their end of disposition hearing. And then, they must wait another three years before they're able to be declassified. Some mandatory registrants under this scheme cannot be declassified at all: for example, a child classified as a tier I under R.C. 2152.82 (the juvenile repeat offender statute) at age 14 and placed on community control until age 21, would not be able to petition for declassification because their duty to register would expire before they became eligible to petition. And, it is a reality that many courts don't hold the end of disposition hearing when a child's disposition is completed—this Court has held that a juvenile court is permitted to hold an end of disposition hearing even after that time has passed. *In re R.B.*, 162 Ohio St.3d 281, 2020-Ohio-5476, 165 N.E.3d 288, ¶ 49. As such, these dispositional periods are quite significant, often lasting many years during which children are subject to a myriad of regulations and harsh consequences.

Contrary to the state's uncited contentions, the science is settled that juvenile registration and notification laws *do not work* for their intended outcomes. These laws have done little to reduce sexual recidivism (which is already extremely low for this population) or prevent first-time sex offenses. Children adjudicated or convicted of harmful sexual behavior are a heterogenous group who cross all socioeconomic, ethnic, gender, educational, and cultural lines. They are especially amenable to treatment, and the vast majority never reoffend. Juvenile court judges know this. But, R.C. 2152.84 prohibits judges from exercising their discretion and removing these low-risk children from the registry to mitigate the harms of registration. As such, amicus urges this Court to uphold the First District's ruling in this case.

Respectfully submitted,

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Certificate of Service

This is to certify that a copy of the foregoing **AMICUS BRIEF** was forwarded via fax to Joseph Deter, Hamilton County Prosecutor, at 513-946-3105, on this 25th day of January, 2022.

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