

IN THE SUPREME COURT OF OHIO

ORIGINAL

IN RE: C.P. : Case No. 2010-0731  
Adjudicated Delinquent Child :  
and Serious Youthful Offender : On Appeal from the  
Athens County Court of Appeals  
Fourth Appellate District  
C.A. Case No. 09CA41

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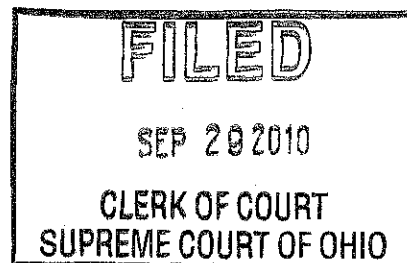
**BRIEF OF AMICI CURIAE, NATIONAL JUVENILE DEFENDER CENTER, ET. AL.,  
IN SUPPORT OF APPELLANT, C.P.**

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## INTEREST OF *AMICI CURIAE*

*Amici Curiae*, National Juvenile Defender Center is joined by the American Civil Liberties Union of Ohio Foundation, Inc., the Association for the Treatment of Sexual Abusers, Children's Law Center, the Central Juvenile Defender Center, the Juvenile Justice Coalition, Ohio Justice & Policy Center, and Dr. Elizabeth J. Letourneau and Dr. Morris Jenkins.

The **National Juvenile Defender Center** (NJDC) was created to ensure excellence in juvenile defense and promote justice for all children. The NJDC responds to the critical need to build the capacity of the juvenile defense bar in order to improve access to counsel and quality of representation for children in the justice system. The NJDC gives juvenile defense attorneys a more permanent capacity to address important practice and policy issues, improve advocacy skills, build partnerships, exchange information, and participate in the national debate over juvenile justice. The NJDC provides support to public defenders, appointed counsel, child advocates, law school clinical programs and non-profit law centers to ensure quality representation and justice for youth in urban, suburban, rural and tribal areas. The NJDC also offers a wide range of integrated services to juvenile defenders and advocates, including training, technical assistance, advocacy, networking, collaboration, capacity building and coordination.

The **American Civil Liberties Union of Ohio Foundation, Inc.** is a non-profit, non-partisan membership organization devoted to protecting basic constitutional rights and civil liberties for all Americans. Because of the ACLU of Ohio's commitment to the principles of due process, the rights of juveniles, and the importance of a justice system that offers individualized responses to problems rather than blanket solutions, it offers this brief to assist the Court in resolving this case.

**The Association for the Treatment of Sexual Abusers** The Association for the Treatment of Sexual Abusers (ATSA) is a non-profit, interdisciplinary organization focused on preventing sexual abuse through effective management of individuals who have sexually abused or are at risk to abuse. Through research and shared learning, ATSA was founded to foster research, facilitate information exchange, further professional education and provide for the advancement of professional standards and practices in the field of sex offender evaluation and treatment. ATSA's members include the world's leading researchers in the study of sexual violence as well as professionals who conduct evaluations and treat sexual offenders, sexually violent predators, and victims. Members work closely with public and private organizations such as prisons, probation departments, child protection agencies, State Attorney's Offices, Public Defender's Offices, the National Council Against Sexual Violence, and state legislatures in an effort to protect citizens from sexual assaults. ATSA advocates for evidence-based practices and policies that are most likely to protect the public from sexual violence, while allowing for the rehabilitation of sexual offenders.

**The Children's Law Center, Inc.** has as its mission to protect the rights of children in Ohio and Kentucky through legal representation, research and policy development, and training and education of attorneys and others regarding the rights of children. The Center strives to ensure that youth receive the due process protections to which they are entitled, and seeks to enhance the capacity of the public defender programs designed to ensure that the right to counsel is protected and that children receive effective assistance of counsel at all critical stages.

**The Central Juvenile Defender Center** is one of the nine Regional Centers of the National Juvenile Defender Center. The Center focuses on juvenile law issues in Arkansas, Indiana, Kansas, Kentucky, Missouri, Ohio, and Tennessee. The Center coordinates regional

activities, including helping to compile and analyze juvenile indigent defense data, facilitating organizing and networking opportunities for juvenile defenders, offering targeted, state-based training and technical assistance, and providing case support specifically designed for complex or high profile cases. The Central Juvenile Defender Center is based at the Children's Law Center, Inc., in Covington, Kentucky.

The **Juvenile Justice Coalition** is an Ohio non-profit membership organization, has as its mission to promote effective programs, equitable treatment of youth, and public policy that will reduce juvenile delinquency in Ohio. JJC understands that the brain development of adolescents makes teenagers less able to understand the consequences of their behavior, less likely to think through the potential outcomes of their actions, and more capable of reform.

The **Ohio Justice & Policy Center** is a non-profit law office that works for productive, statewide reform of the criminal justice system by promoting rehabilitation of incarcerated people, enabling them to successfully reintegrate into the community, and eliminating racial disparities in the criminal justice system.

**Dr. Elizabeth J. Letourneau** is a leading researcher and national expert on sex offender policy and intervention. Funded research projects include multiple federally-funded examinations of sex offender registration and public notification policies and the largest randomized clinical trial to date examining treatment effectiveness for juveniles who sexually offended. Dr. Letourneau is committed to the rigorous empirical evaluation of legal and clinical policies aimed at reducing sex crimes. Ultimately, the results of this research can inform appropriate interventions aimed at preventing sex crimes. In particular, Dr. Letourneau hopes her research will facilitate the dismantling of clinical and legal policies fail to distinguish between children and adolescents vs. adults, given that such policies seem more likely to harm children

and adolescents rather than achieve the community safety aims for which these policies were intended.

**Dr. Morris Jenkins** is an Associate Professor and Chair, Department of Criminal Justice and Social Work, University of Toledo. His publishing and research is in the area of civic education as a means of violence prevention in communities, gangs, restorative justice, and juvenile justice policy. Through his teaching, research, service, and legislative testimony, he advocates for juvenile justice policy reform and the concepts of restorative justice and rehabilitation for juveniles in the justice system.

### **STATEMENT OF THE CASE AND FACTS**

*Amici Curiae* adopt the Statement of the Case and Facts set forth in the Brief of Appellant, C.P.

### **SUMMARY OF THE ARGUMENT**

A longstanding emphasis on the juvenile court's rehabilitative and protective function has in recent times been reiterated and reinforced by courts relying on scientific research and findings regarding adolescent behavior and brain development. Social science evidence has established, and Courts agree that juveniles should be held to a lesser degree of culpability than their adult counterparts and are more amenable to reform. A statute that imposes adult sanctions and punishments for a juvenile adjudication, without allowing for juvenile court discretion, runs counter to those principles. This is even more critical where those consequences can exact harsh public scrutiny and restrictive life-long requirements upon a juvenile.

Children like C.P. who are adjudicated delinquent for a sex offense and subject to mandatory public registration without opportunity for court review or modification for a minimum of 25 years, will be stigmatized and harmed by the consequences surrounding public scrutiny of their juvenile offense.

This Court should overturn the delinquency adjudication of C.P. and find that Revised Code Section 2152.86, which requires mandatory tier III classification of juveniles, ages 14 to 17, as Public Registry-Qualified Juvenile Offender Registrant, violates a juvenile's right to due process and fundamental fairness, equal protection and to be protected against cruel and unusual punishment, as provided by the Ohio and United States Constitutions.

## ARGUMENT

### INTRODUCTION

#### **I. THE ROLE OF THE JUVENILE COURT IS TO ADDRESS THE REHABILITATIVE NEEDS OF JUVENILES CHARGED WITH DELINQUENCY OFFENSES.**

##### **A. From Its Inception, the Juvenile Court Distinguished Itself From the Adult Criminal Justice System, Emphasizing Treatment and Rehabilitation Over Punishment.**

In the early twentieth century, a separate judicial system for children was established based on the belief that children, as compared to adults, are both less culpable for their crimes and more capable of reform. See Coupet, Sacha M. Coupet, *What to Do with the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality About Youth Offenders in the Constructive Dismantling of the Juvenile Justice System*, 148 U. Pa. L. Rev. 1303, 1312 (2000). The purpose of the juvenile court was to promote rehabilitation rather than to focus on punishment, as opposed to adult court. *Id.* Although youth who have been alleged to commit egregious violations of law may be transferred to adult court, Ohio maintains discretionary transfer, allowing the court to determine whether the child is amenable to rehabilitation. Ohio Rev. Code Ann. §§ 2152.10, 2152.12. A child who is retained in the juvenile court through this discretionary process is deemed more appropriate for rehabilitation than punishment. *Id.* § 2152.12; see also, Laurence Steinberg & Robert G. Schwartz, *Developmental Psychology Goes to Court*, in *Youth on Trial: A Developmental Perspective on Juvenile Justice*, 9, 13-14 (Thomas Grisso & Robert G. Schwartz eds., 2000). The core function of the juvenile court remains unchanged and continues to focus on the rehabilitation of child offenders by: (i) diverting child offenders from the criminal justice system in an effort to avoid the harmful consequences of criminal sanctions; and (ii) intervening in the lives of child offenders to address the alleged

causes of their delinquency. See Franklin E. Zimring, *American Juvenile Justice* 34 (Oxford University Press 2005).

**B. Recent Research on Adolescent Behavior and Brain Development Provides Scientific Support to the Long-Held Belief that Juveniles are Less Culpable and More Capable of Reform than Adults.**

For over a century, the belief that child offenders are less blameworthy and more amenable to reform has justified the juvenile court's discretion both to spare children the types of punishments that adult criminals receive for similar crimes, and to order individualized dispositions for children to promote their rehabilitation. The United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), and more recently in *Graham v. Florida*, 130 S. Ct. 2011 (2010), as modified (July 6, 2010), highlight recent research on adolescent behavior, establishing that child offenders are in fact less culpable and more capable of reform than adults who commit similar crimes.

The Court accepted the research establishing that children and adolescents have a "lack of maturity and an underdeveloped sense of responsibility," and are "more vulnerable or susceptible to negative influences and outside pressures" as their characters are "not as well formed." *Graham*, 130 S. Ct. at 2026 (quoting *Roper*, 543 U.S. at 569-70; 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)). The Court also noted that these characteristics clearly differentiate a child's actions from those of an adult; further, the Court stated that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds." *Graham*, 130 S. Ct. at 2026.

In addition to the research on adolescent behavior cited in *Roper* and *Graham*, recent developments in neurobiology provide further support for the view that child offenders are less culpable and more capable of reform than adult criminals. Since the area of the brain associated with reasoning, planning, judgment, and impulse control is not fully developed in children, child offenders have a lesser ability to make reasoned decisions under pressure, and are thus less blameworthy than their adult counterparts for choosing to commit crimes. Steinberg, *et al.*, *Are Adolescents Less Mature Than Adults? Minors Access to Abortion, the Juvenile Death Penalty, and the Alleged APA Flip Flop*, 64 Am. Psychologist 583, 587 (2009). In the same vein, child offenders are also more capable of reform than their adult counterparts because the part of the brain associated with reasoned rational decision making is still developing in children. Praveen Kambam & Christopher Thompson, *The Development of Decision-Making Capacities in Children and Adolescents: Psychological and Neurological Perspectives and Their Implications for Juvenile Defendants*, 27 Behav. Sci. Law 173, 185 (2009).

**C. The Juvenile Court is Supposed to Protect Children from the Harmful Consequences of Involvement in the Criminal Justice System.**

**i. Diversion From the Criminal Justice System Promotes Rehabilitation.**

Maintaining a child in the juvenile court through diversion from the criminal justice system has long been believed to promote the rehabilitation of juvenile offenders. See *Kent v. U.S.*, 383 U.S. 541, 554-54 (1966). Underlying this belief is the premise that if children are protected from the harmful features of the criminal justice system that would inhibit their development they can “outgrow their criminal behavior” and be rehabilitated. See Zimring, *supra*, at 35-38, 62-64. Children maintained in the juvenile justice system are spared from exposure to features of the criminal justice system that disrupt their development and diminish their capacity to reform. See *Id.* See also, David S. Tanenhaus, *The Evolution of Juvenile Courts*,



in *A Century of Juvenile Justice*, 42-69 (Rosenheim, Zimring, Tanenhaus, & Dohrn, eds., 2002). Examples of such features include the recognition that children are impressionable and if incarcerated with adult criminals they are schooled on how to engage in more sophisticated criminal activities. See Zimring, *supra*, at 36. Additionally, because proceedings and records of the criminal court are open to the public, there is recognition that children who face the public stigma resulting from this exposure find it difficult to reintegrate into their communities after completing their sentences. See *U.S. v. Juvenile Male*, 590 F.3d 924, 928-29, 935 (2010); see also *U.S. v. Three Juveniles*, 61 F.3d 86, 88 (1<sup>st</sup> Cir. 1995). The practice of the juvenile court of shielding children from public exposure has long been considered necessary to enable children to rehabilitate and reintegrate into society as law-abiding citizens. See Tanenhaus, *supra*, at 42, 61.

**ii. Imposition of the Criminal Justice System's Retributive Focus on Juveniles Fails to Deter Criminal Conduct and is Disproportionately Harsh, Impeding Rehabilitation.**

In *Roper* and *Graham*, the United States Supreme Court recognized that the traditional goals of adult sentencing of deterrence and retribution are less appropriate for juvenile offenders. *Roper*, 543 U.S. at 571; *Graham*, 560 S. Ct. at 2028-29. Instead the United States Supreme Court insisted that juvenile court's core principles should be to promote individualized rehabilitation and treatment, noting that youth, because they are still malleable and in development, are more amenable to such rehabilitative interventions than adults. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971); *In re Gault*, 387 U.S. 1, 15-16 (1967).

The Court in *Graham* held that based on this reasoning, a juvenile could not be reliably classified among the worst offenders for purposes of sentencing. *Graham*, 130 S. Ct. 2011. The *Graham* majority was unequivocal in its insistence that irrevocable judgments about the character of juvenile offenders are impermissible under the Constitution where they deny

juveniles any opportunity to prove their rehabilitation and their eligibility to re-enter society. The Supreme Court in both cases is explicit in its belief that a juvenile offender's capacity to change and grow, combined with their reduced blameworthiness and inherent immaturity of judgment, set them apart from adult offenders in fundamental and constitutionally relevant ways.

Ohio has similarly recognized that juvenile courts were established to serve a protective function for children. *Children's Home of Marion County et al. v. Fetter et al.*, 106 N.E. 761 (Ohio 1914). This Court has repeatedly noted that the function of the juvenile court should be to provide social and rehabilitative services, care, protection, development, and corrective treatment of youthful offenders in the juvenile justice system. *In re T.R.*, 556 N.E.2d 439, 448 (Ohio 1990) ("The mission of the juvenile court is to act as an insurer of the welfare of children and a provider of social and rehabilitative services"); *In re Agler*, 249 N.E.2d 808, 810 (Ohio 1969) ("The Juvenile Court stands as a monument to the enlightened conviction that wayward boys may become good men"); *In re Caldwell*, 666 N.E.2d 1367, 1368 (Ohio 1996) (Stated that "to provide for the care, protection, and mental and physical development of children, to protect the public from the wrongful acts committed by juvenile delinquents, and to rehabilitate errant children and bring them back to productive citizenship, or, as the statute states, to supervise, care for and rehabilitate those children. Punishment is not the goal of the juvenile system, except as necessary to direct the child toward the goal of rehabilitation.").

While juvenile courts exist to promote rehabilitation, they do not exist to deter juvenile misconduct. As juveniles do not fully understand the consequences of their actions, they are less affected by the threat of sanctions, therefore harsher sentences do not serve as a deterrent. *Roper*, at 571-72. In light of the research indicating significant physiological differences in the teenage brain, it is necessary to rethink questions about juvenile culpability and punishment. *Graham* at

2028-29. Adolescents' inability to perceive and understand the long term consequences of their actions means they look only to the immediate future, one to three days, when assessing choices. The International Justice Project, *Brain Development, Culpability and the Death Penalty*, <http://www.internationaljusticeproject.org/pdfs/juvbraindev.pdf>. While these limitations do not negate knowledge of right and wrong, they demonstrate that adolescents are not just small adults and should not be treated as such. *Id.*

The traditional justifications for imposing adult criminal sanctions on juveniles fail not only because adult sanctions do not deter criminal behavior, but also because adult sanctions are not proportionate to the juvenile's culpability. The *Roper* court stated, "Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity." *Roper*, 543 U.S. at 571. The scientific research, which has been accepted and applied by the Supreme Court, requires that courts do not hold juveniles to the same degree of responsibility as adults who commit similar offenses. *Id.*

**D. Juvenile Offenders are Amenable to Treatment and Can Become Productive Members of Society.**

As discussed generally above, in addition to keeping a child away from the harmful consequences of involvement in the criminal justice system, the juvenile court's purpose is to provide rehabilitative assistance to children involved in the juvenile court. Traditionally, the juvenile court has been given broad discretion to ensure appropriate treatments that are tailored to the needs of each child. *See Zimring, supra*, at 42; Steinberg & Schwartz, *supra*, at 9 and 12. The court's rehabilitative role was viewed "in loco parentis" taking on the role of a parent whose primary concern is to ensure the welfare of the child appearing before the court, rather than a

focus on the punishment of the child. *See* Coupet, *supra*, at 1312. The belief behind this focus of the juvenile court's rehabilitative role is that by attending to the negative influences in a child's environment, the child would no longer be inclined to engage in criminal activity. *Id.* In *Roper*, the Supreme Court recognized that, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Roper*, 543 U.S. at 570. "The reality that juveniles still struggle to define their identity means that it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character." *Id.* at 553.

## **II. JUVENILE SEX OFFENDERS, REGISTRATION AND NOTIFICATION.**

### **A. Development of Sex-Offender Registries: The Broad Expansion from a Law Enforcement Tool to Track Adult Sex Offenders To a Registry for the Public at Large to Track Sex Offenders.**

At first, registration and notification laws were used largely as a law enforcement tool to help track adults who had been convicted of violent sexual offenses. Abril R. Bedraf, *Examining Sex Offender Community Notification Laws*, 83 Cal. L. Rev. 885, 892 (1995). However, over the past decade, federal sex offender registration and notification laws have drastically broadened in scope and application, allowing for unfettered public access to comprehensive databases listing all registered sex offenders nationwide.

In 1994 the U.S. Congress passed the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act. 42 U.S.C.A. § 14071. The law required states to establish sex offender registries, subject to the loss of a percentage of federal funding if they did not. *Id.* § 14071(b)(2)(A). Under the legislation, people convicted of sexual abuse of children or sexually violent crimes against adults were required to register their current addresses with local law enforcement for 10 years following their release into the community. *Id.* § 14071(b)(6). The

law authorized, but did not require, law enforcement officials to release to the public information on a registered sex offender when, in their discretion, they determined public notification about the registered sex offender's presence in the community was necessary to protect public safety. *Id.* § 14071(e).

After the 1994 rape and murder of seven-year-old Megan Kanka, parents and concerned citizens pressed for an expansion of the federal sex offender registration law (The Jacob Wetterling Act) to include community notification. *See E.B. v. Verniero*, 119 F.3d 1077, 1081 (3d Cir. 1997). Congress responded by passing Megan's Law in 1996, which required law enforcement authorities to make information regarding individual sex offenders available to the public. Megan's Law, Pub. L. No. 104-145, 110 Stat. 1345 (1996). All 50 states and the District of Columbia also passed their own Megan's Laws. Doron Teichman, *Sex, Shame, and the Law An Economic Perspective on Megan's Laws*, 42 Harv. J. on Legis. 355, 378 (2005).

Further expanding on Megan's Law, the Sex Offender Registration and Notification Act, Title I of the Adam Walsh Child Protection and Safety Act of 2006 was signed into law by President Bush on July 27, 2006. 42 U.S.C. §§ 16902, 16911 (2006).<sup>1</sup> The Sex Offender Registration and Notification Act (hereinafter referred to as "SORNA") provides a set of federal guidelines that aim to further expand the breadth of registration and notification in the states, the District of Columbia, principal U.S. territories, and federally-recognized tribal territories. 42 U.S.C. §§ 16901-29 (2006). In order to come into compliance with SORNA, jurisdictions are required to expand their sex offender registries and internet websites to include children, increase the number of offenses for which registration is required, require registered offenders to keep

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<sup>1</sup> The act was named after Adam Walsh, son of *America's Most Wanted* host and powerful anti-sex offender lobbyist John Walsh. *See Caitlin Young, Children Sex Offenders: How the Adam Walsh Child Protection and Safety Act Hurts the Same Children it is Trying to Protect*, 34 New Eng. J. on Crim. & Civ. Confinement 459, 460 (2008).

their information current in each jurisdiction in which they reside, work, and attend school, and classify the risk level of each sex offender based solely on the crime of conviction or adjudication. These requirements represent a drastic change in the way jurisdictions have previously managed sex offenders. States that fail to comply with SORNA will forfeit 10% of their Omnibus Crime Federal Byrne Grant funding. Justice Policy Institute, *Registering Harm: A Briefing Book on the Adam Walsh Act*, available at [http://www.justicepolicy.org/images/upload/08-11\\_BRF\\_WalshActRegistries\\_JJ-PS.pdf](http://www.justicepolicy.org/images/upload/08-11_BRF_WalshActRegistries_JJ-PS.pdf).

While a few states quickly amended their sex offender laws to comply with SORNA, many states are considering not adopting SORNA, citing a concern that this federalized system of registration and notification is extremely costly and yet will do very little, if anything, to increase public safety.<sup>2</sup> Despite the federal mandate, four years later, only four states, Delaware, Florida, South Dakota and Ohio, have been deemed to be in compliance with SORNA. U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART), *Final SORNA Guidelines* (July 2, 2008) at 11, [http://www.ojp.usdoj.gov/smart/pdfs/final\\_sornaguidelines.pdf](http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf). On May 14, 2010 the Department of Justice issued proposed Supplemental Guidelines for SORNA. Supplemental Guidelines for Sex Offender Registration and Notification, 75 Fed. Reg. 27,362, 27,363 (proposed May 14, 2010). The proposed supplemental guidelines provide modifications to many of the compliance requirements for SORNA. *Id.* One of the proposed changes would give jurisdictions the discretion to exempt juvenile offenders from public website posting. *Id.* There

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<sup>2</sup> By July 27, 2010, 237 registration jurisdictions (50 States, District of Columbia, Puerto Rico, American Samoa, Virgin Islands, the Northern Mariana Islands, and Native American Tribes) requested and received extensions until July 27, 2011, to substantially implement SORNA. US Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART), *SORNA Extensions Granted* (Aug. 2, 2010), [http://www.ojp.usdoj.gov/smart/pdfs/SORNA\\_Extensions\\_Granted.pdf](http://www.ojp.usdoj.gov/smart/pdfs/SORNA_Extensions_Granted.pdf).

are increasing concerns that the overbroad juvenile provisions of SORNA will cause much more harm than good. See Joanna S. Markman, *Community Notification and the Perils of Mandatory Juvenile Sex Offender Registration: The Dangers Faced by Children and Their Families*, 32 Seton Hall Legis. J. 261, 281-83 (2008); discussion *infra* Part II.D.

SORNA expands the definition of “sex offense,” increases the period of registration requirements and consequences for failure to register, requires offenders to provide additional information, and creates a national sex offender database available through a publicly accessible Web site; most importantly, SORNA expands the offenses that require registration to include some juvenile adjudications. 42 U.S.C. §§ 16902-16920 (2006).

Pursuant to SORNA § 111(1), a “sex offender” is a person who was “convicted” of a sex offense. SORNA broadens the definition of “conviction” to include juvenile delinquency adjudications. SORNA § 111(1). SORNA § 111(8) provides that delinquency adjudications count as “convictions” when “the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse.”<sup>3</sup>

**B. Ohio's Efforts to Comply with the Sex Offender Registration and Notification Act: Senate Bill 10.**

In an effort to comply with SORNA, Ohio passed Senate Bill 10 Am.Sub. S.B. 10. (hereinafter S.B. 10). S.B. 10 drastically changed the landscape of Ohio's sex-offender registries. Most notable was the creation of a three-tiered, offense-based classification scheme. Ohio Rev. Code Ann. §§ 2950.01(E), (F), & (G) (West 2010); Former Ohio Rev. Code Ann. §§ 2950.09 (Repealed July 1, 2007). As part of that system, S.B. 10 has created a new class of juvenile sex

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<sup>3</sup> Department of Justice, Office of the Attorney General. The National Guidelines for Sex Offender Registration and Notification; Federal Register: May 30, 2007 (Volume 72, Number 103). Docket No. OAG 121; A.G. Order No. 2880-2007. RIN 1105-AB28. pp. 16-17.

offender registrants, known as public registry-qualified juvenile offender registrants (hereinafter referenced as "PRQJOR"). Ohio Rev. Code Ann. §§ 2152.86 (West 2010).

The SORNA guidelines mandate that states eliminate the use of risk assessment tools to help identify those offenders who are likely to reoffend. Under SORNA, all states must re-classify and classify registrants based solely on the crime of conviction. 42 U.S.C. § 16911. Ohio has a three a three-tiered classification system: tier I is the lowest tier, requiring 15 years of registration and notification; tier II is the second-highest tier, requiring twenty-five years of registration and notification; tier III is the highest tier level. Ohio Rev. Code Ann. § 2950.01 (West 2010). Tier III registrants are statutorily deemed to be the most sexually violent offenders and assumed to be at the highest risk of re-offending. *Id.* Juveniles and adults classified as Tier III offenders are subjected to lifetime registration. *Id.* Under Ohio law, a PRQJOR is automatically classified as a Tier III registrant. *Id.* § 2152.86.

A PRQJOR is a juvenile who is fourteen, fifteen, sixteen or seventeen years of age, has been adjudicated delinquent of one of several specific sexually oriented offenses, and was found to be a serious youthful offender in relation to that offense. *Id.* § 2152.86. For such youth, their classification as a Tier III registrant, community notification, and their inclusion on the Ohio Attorney General's electronic sex offender registration and notification database is mandatory. *Id.* § 2152.86.

The state may initiate serious youthful offender (hereinafter "SYO") proceedings by obtaining a serious youthful offender indictment against the child or obtaining a waiver thereof; requesting a serious youthful offender disposition against the child in the original complaint; or filing a notice of intent to seek a serious youthful offender disposition within twenty days. *Id.* § 2152.13. The discretion to initiate SYO proceedings falls on the prosecutor, who has the power



to dictate, therefore, whether a juvenile will be labeled a PRQJOR. *Id.* Once a child is found to be an SYO based on prosecutorial discretion, and is over the age of 13, the court no longer has discretion as to whether the juvenile becomes a PRQJOR, instead the juvenile will automatically be labeled a PRQJOR if the juvenile committed certain enumerated offenses. *See generally* § 2152.86(A)(1).

Unlike children who are classified as juvenile offender registrants without a serious youthful offender designation, children who are classified under § 2152.86 as PRQJORS are automatically classified as Tier III juvenile offender registrants, with a duty to comply with registration requirements every 90 days for life. Ohio Rev. Code Ann. §§ 2152.86(B)(1) & 2950.06(B)(3) (West 2010). Tier III classification imposes a penalty-like lifetime registration requirement well beyond the age of jurisdiction of the juvenile court. *See* Ohio Rev. Code Ann. § 2151.23 (West 2010).

Further, and unlike other juvenile offender registrants, PRQJORS are automatically subject to community notification provisions. Ohio Rev. Code Ann. § 2950.11. As part of community notification, local Sheriffs disseminate juvenile sex offenders' personal information to neighbors, local children's services agencies, school officials, day care centers, local universities, and volunteer organizations in contact with minors. § 2950.11(A). These entities receive information regarding the youth's residence, place of employment, school, as well as the adjudicated offense, and a photograph. § 2950.11(B).

In Ohio, in addition to community and victim notification, PRQJOR youth are also included in the internet sex offender database maintained by the Ohio Attorney General, pursuant

to R.C. §§ 2950.08 and 2950.13, which is updated every 90 days. Taken together, the registration duties and responsibilities of the PRQJOR are nearly identical to the adult provisions of S.B.10.<sup>4</sup>

The inclusion of youth adjudicated delinquent on a public sex offender registry, especially as PRQJORs under § 2152.86, is fraught with problems that undermine both the history of the juvenile court system and the intended purpose of SORNA.<sup>5</sup> It ignores the very foundation of this country's juvenile court system: a belief confirmed by scientific research, that children can and should be rehabilitated. *See, e.g., Graham*, 560 U.S. at 2028. And it dilutes the effectiveness of the registry as a public safety tool, by flooding it with thousands of juvenile offenders, the majority of whom, will never commit another sex offense.

**C. Registration and Notification is Not Appropriate in Instances of Juvenile Sexual Offending.**

**i. Juvenile Sex Offenders Are Distinct From Adult Sex Offenders.**

Classifying juvenile sex offenders based solely on the nature of the offense effectively treats juvenile offender registrants the same as adult offenders, yet without affording juveniles the same due process rights that their adult counterparts have enjoyed prior to their classifications.

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<sup>4</sup> The only discernable difference between an adult offender registrant and PRQJORs is that residency restrictions do not apply to any juvenile offender registrants. Ohio Rev. Code Ann. § 2950.034 (West 2010).

<sup>5</sup> It is appropriate for this Court to rebuff the juvenile portions of SORNA. Beyond the general standard of substantial implementation, 42 U.S.C. § 16925(b) includes special provisions for cases in which the highest court of a jurisdiction has held that the jurisdiction's constitution is in some respect in conflict with the SORNA requirements. The Guidelines instruct that if a jurisdiction believes that it faces such a situation, it should inform the SMART Office. "If it is not possible to overcome the problem, then the SMART Office may approve the jurisdiction's adoption of reasonable alternative measures that are consistent with the purposes of SORNA." U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART), *Final SORNA Guidelines* (July 2, 2008) at 11, [http://www.ojp.usdoj.gov/smart/pdfs/final\\_sornaguidelines.pdf](http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf).

Juvenile sexual offending is vastly different from adult sexual offending. See Sarah W. Craun, & Poco D. Kernsmith, *Juvenile Sex Offenders and Sex Offender Registries: Examining the Data Behind the Debate*, 70 Federal Probation Journal 8 (Dec. 2006). But, the legislation proposed by the SORNA and its predecessors is based upon the tragic misconception that “juvenile offenders are simply smaller, younger versions of adult sexual offenders. That is, it is assumed that they are on a singular trajectory to becoming adult sexual offenders.” Mark Chaffin & Barbara Bonner, *Don’t Shoot, We’re Your Children: Have We Gone Too Far in our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?* 3 Child Maltreatment, 314 (Nov. 1998). These new registration requirements, which are indiscriminately applicable to juveniles, have imposed criminal punishments on members of society who have historically been protected from criminal punishment.

Policymakers’ understanding of sexual offending by juveniles is informed largely by misconceptions. The scientific studies suggest that even though the conduct of juveniles who commit sexual offenses may appear similar to the conduct of adult sex offenders, the underlying mechanisms triggering the conduct may be different. Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 Dev. in Mental Health L. 34, 42-43 (2008).

Importantly, the sexual offending of youth is not typically evidence of psychological deviance. The conduct is seldom characterized as predatory by mental health professionals and infrequently meets the criteria for pedophilia under the Diagnostic and Statistical Manual of Mental Disorders since only an adult may be diagnosed as a pedophile. Mark Chaffin, Barbara Bonner & Kerri Pierce, *What Research Shows About Adolescent Sex Offenders*, (National Center on Sexual Behavior of Youth, available at

<http://www.ncsby.org/pages/publications/What%20Research%20Shows%20About%20Adolescent%20Sex%20Offenders%20060404.pdf>.

**ii. Juvenile Sex Offending Doesn't Predict Adult Offending.**

The vast differences between adult offenders and juvenile offenders demonstrate that juvenile sex offending does not predict adult sex offending. With juveniles, their patterns are not ingrained, some of the acts are experimental in nature and their sex offenses tend to be less violent. It should not be assumed that these juvenile offenders will become adult offenders. SORNA's application to individuals adjudicated delinquent is based on the misconception that "juvenile offenders are simply smaller, younger versions of adult sexual offenders. That is, it is assumed that they are on a singular trajectory to becoming adult sexual offenders." Chaffin & Bonner, *We're Your Children*, *supra* at 314. This assumption is false. Adolescent sex offenders are considered to be more responsive to treatment than adult sex offenders and typically do not continue re-offending into adulthood, especially when provided with appropriate treatment. Association for the Treatment of Sexual Abusers (ATSA), *The Effective Legal Management of Juvenile Sex Offenders*, Mar. 11, 2000, <http://www.atsa.com/ppjuvenile.html>. Adolescent sex offenders have fewer numbers of victims than adult offenders and, on average, engage in less serious and aggressive behaviors. David L. Burton & Joanne Smith-Darden, *North American Survey of Sexual Abuser Treatment and Models: Summary Data*, The SaferSociety Foundation, Inc., Brandon, VT: SaferSociety Press (2000). Most adolescents do not have deviant sexual arousal and/or deviant sexual fantasies that many adult sex offenders have. *See generally* Alexis O. Miranda & Colette Corcoran, *Comparison of Perpetration Characteristics Between Male*

*Juvenile and Adult Sexual Offenders: Preliminary Results* (2000), 12 Sexual Abuse, A Journal of Research and Treatment 179 (2000).

Most juveniles are not sexual predators nor do they meet the accepted scientific criteria for pedophilia. *Judith V. Becker et al., Factors Associated with Recidivism in Adolescent Sex Offenders*, 11 Journal of Psychopathology & Behavioral Assessment 363 (1989). Furthermore, adolescents do not have the same long-term tendencies to commit sexual offenses as some adult offenders. Margaret A. Alexander, *Sexual Offender Treatment Efficacy Revisited*, 11 Sexual Abuse, A Journal of Research and Treatment, 101 (1999). A number of re-compiled youth cohort studies over the last few decades provide us with an opportunity to obtain valid and comprehensive data on patterns of juvenile sexual offenders and these youths' transitions into adulthood. The general pattern discovered by these studies overwhelmingly demonstrated that age and maturity appear to reduce the risk of future sexual offending in juveniles adjudicated delinquent of sex offenses. Over 98% of all children and adolescents adjudicated delinquent of sex offenses did not have an adult sex offense by age twenty-seven. Franklin E. Zimring *et al., The Predictive Power of Juvenile Sex Offending: Evidence from the Second Philadelphia Birth Cohort Study* (June 21, 2007), available at, <http://ssrn.com/abstract=995918>.

From this study researchers determined that age, with or without intensive sex offender-specific treatment, appears to bring about a decline in criminal versatility; offenders tend to mature out of sexual offending behavior as they get older. *Id.* This fact alone begs the question of whether juveniles should be subject to lifetime registration and notification.

### **iii. Juveniles Are More Amenable To Treatment Than Adults**

Because the juvenile brain is still developing they are more amenable to treatment than adult offenders. See Association for the Treatment of Sexual Abusers, *The Effective Legal*

*Management of Juvenile Sexual Offenders* ATSA, March 11, 2000, <http://www.atsa.com/ppjuvenile.html>. The fluidity of the adolescent brain indicates that cognitive development is not stable and that aspects of personality may change over time as part of the developmental process. David Prescott, *Twelve Reasons to Avoid Risk Assessment*, in *Risk Assessment of Youth Who Have Sexually Abused: Theory, Controversy, and Emerging Strategies* (David Prescott ed., 2006). Consequently, a juvenile who appears to be trending toward sexual pathology may respond far better to treatment than adults, partly because children are malleable and because the juvenile's brain is still maturing. See Association for the Treatment of Sexual Abusers, *The Effective Legal Management of Juvenile Sexual Offenders*, ATSA, March 11, 2000, <http://www.atsa.com/ppjuvenile.html>. See also *McKeiver*, 403 U.S. 546; *In re Gault*, 387 U.S. at 15-16.

The research establishes that adolescents who engage in sexual offending behavior are more responsive to treatment than adult sex offenders with the proper intervention, whether that be sex offender-specific treatment or not. See Association for the Treatment of Sexual Abusers (ATSA), *The Effective Legal Management of Juvenile Sex Offenders*, Mar. 11, 2000, <http://www.atsa.com/ppjuvenile.html>.

Understanding the underlying reason for some juvenile sexual behavior, as well as recognizing the low recidivism rate among juveniles, suggests that juvenile sex offenders should not be treated like adult sex offenders and are unlikely to become adult sex offenders. Franklin E. Zimring, Alex R. Piquero, & Wesley G. Jennings, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 *Criminology & Pub. Pol'y* 507 (2007). Given that juvenile sexual offenders are completely different from adult sex offenders in both their development and their risk of reoffending, it is poor public policy for

juveniles to be included in the same registration and notification system as adults. Michael F. Caldwell, *et al.*, *An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles*, 14 Psychol. Pub. Pol'y & L. 89, 104-05 (2008).

**D. Registration And Notification Is Not Likely To Enhance Public Safety.**

Despite their existence for over a decade, little work has been done to examine the effectiveness of registration and notification laws on sexual offense rates. Registration laws have become harsher and exponentially more costly. At the same time, we, as a nation, have neglected to engage in any cogent dialogue regarding the efficacy and constitutionality of sex offender registration and notification laws. When it comes to sex offender legislation, we have allowed the myths and misconceptions about sexual offending to misguide our criminal justice policy.

The vast majority (96%) of all adult sex crimes are committed by people not known to be juvenile sex offenders. Michael F. Caldwell, *Sexual Offense Adjudication and Sexual Recidivism Among Juvenile Offenders*, 19 Sex Abuse 107, (2007). Consequently, legal policies that target juvenile sex offenders will have limited, if any, capability to reduce subsequent sex crimes. Studies indicate that registration and notification of juvenile sex offenders neither deter initial sex crimes by previous non-offenders, Elizabeth J. Letourneau, *et al.*, *Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?*, 37 Criminal Justice and Behavior, 553 (West 2010), nor have a significant influence on recidivism of known juvenile sex offenders. Elizabeth J. Letourneau, *et al.*, *The Effects of Sex Offender Registration Policies on Juvenile Justice Decision Making*, 21 Sexual Abuse: A Journal of Research and Treatment, 149 (2009).

Although only a few studies have looked at the effect of registration and notification on recidivism, most have found no reduction in rates of recidivism as a result of these laws. See

David Prescott & Jill Levenson, *Youth Who Have Sexually Abused: Registration, recidivism, and risk*, available at <http://www.atsa.com/pdfs/ppYouth.pdf>. Findings from an examination of South Carolina's Sex Offender and Notification policies revealed that implementation of the SORNA provisions on juveniles had no apparent impact on public safety. See Letourneau Letourneau, *et al.* (in press), *Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes?*, *Criminal Justice and Behavior*.

If registration and notification requirements had some valid and measurable therapeutic purpose, perhaps then such measures could be justified in light of the juvenile court's long-standing commitment to the care, protection, and rehabilitation of juvenile offenders. But research demonstrates that registries and public notification cut offenders off from social, school, and community networks, and create social stigma and isolation. Franklin E. Zimring, Alex R. Piquero, & Wesley G. Jennings, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 *Criminology & Pub. Pol'y* 507 (2007). Social isolation and alienation of youth from schools and communities enhance the risk for delinquent reoffending and may result in additional barriers to successful reintegration into society. *Id.* They do not aid in the rehabilitation of a juvenile offender. Instead registration and notification laws create barriers to offender reintegration into the community, increasing the likelihood that an ex-offender will engage in other illegal behavior in the future, remain in the justice system and negatively impact public safety at large.

**E. A National Consensus Is Developing Against Public Juvenile Sex Offender Registration Laws**

There is a growing national consensus among courts, legislatures and attorney groups that requiring long-term, public registration and notification for juveniles is bad public policy. Courts, as a result of legal challenges to the juvenile provisions of SORNA, are beginning to



recognize the differences between juvenile sexual offending behavior and adult sexual offending behavior and the developing punitive effect of registration laws like SORNA and SB 10. *See U.S. v. Juvenile Male*, 590 F.3d 924 (9<sup>th</sup> Cir. 2010).

SORNA's offense-based system of registration takes discretion away from juvenile judges. No longer are juveniles afforded a hearing to assess their dangerousness. Juveniles are being tragically engulfed into a system that requires them to register for life based on an adjudication of delinquency. This offense-based system subjects youth to extremely detrimental registration requirements, the effects of which never could have been envisioned by judges, prosecutors, offenders and defenders in the plea, adjudication and sentencing proceedings. Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 Dev. Mental Health L. 34, 49 (2008).

Legislatures across the country are also wary of the efficacy of long-term, public juvenile sex offender registries, as evidenced by the fact that four years after the passage of the Adam Walsh Act, only four states have passed laws that comply with the Act's requirements. U.S. Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART), *Final SORNA Guidelines* (July 2, 2008) at 11, [http://www.ojp.usdoj.gov/smart/pdfs/final\\_sornaguidelines.pdf](http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf). An April 2009 fifty state survey on SORNA, conducted by the National Consortium for Justice Information and Statistics revealed that no state was in a position to comply with SORNA by the original July 2009 deadline. National Consortium for Justice Information and Statistics, *Survey on State Compliance with the Sex Offender Registration and Notification Act (SORNA)* (2009). States cited a number of factors impacting their ability to comply with SORNA. "The most commonly

cited barrier to SORNA compliance was the act's juvenile registration and reporting requirements, cited by 23 states." *Id.* at 2.

Both the American Bar Association (hereinafter ABA) and the Council of State Governments have spoken out against juvenile sex offender registries of the type endorsed by SORNA. The ABA has gone on record opposing the application of the Act to juvenile offenders as contrary to a number of its Juvenile Justice Standards. Letter from Denise Cardman, ABA Governmental Affairs Office, to David J. Karp, Senior Counsel, Office of Legal Policy, U.S. Department of Justice, (April 30<sup>th</sup>, 2007), available at <http://www.abanet.org/crimjust/juvjust/scj.doc>. So onerous are the provisions as applied to youthful offenders, and potentially so expensive, the Council of State Governments has recently passed a resolution in strong opposition to the Act. Council of State Governments, *Resolution in Opposition of the Sex Offender Registration and Notification Act as it Applies to Juvenile Offenders*, December 6<sup>th</sup>, 2008.

### **PROPOSITION OF LAW I**

**BY CONFERRING ADULT CONSEQUENCES ON JUVENILE OFFENDERS, AND PLACING THEM ON A PUBLIC REGISTRY WITHOUT ANY JUVENILE COURT DISCRETION, R.C. 2152.86 EXCEEDS THE BOUNDS OF FUNDAMENTAL FAIRNESS IN VIOLATION OF DUE PROCESS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 16 OF THE OHIO CONSTITUTION.**

Through a series of cases that began in 1966, the United States Supreme Court established the juvenile's right to due process protections when facing delinquency proceedings. *In re Gault*, 387 U.S. at 12 (1967); *Kent*, 383 U.S. at 553 (1966); *In re Winship*, 397 U.S. 358,

359 (1970); *McKeiver*, 403 U.S. at 543 (1971). As developed by *Gault* and *Winship*, the applicable due process standard in juvenile proceedings is fundamental fairness. *McKeiver*, 403 U.S. at 543. See also *Schall v. Martin*, 467 U.S. 253, 263 (1984); *Breed v. Jones*, 421 U.S. 519, 531 (1975). S.B. 10 violates due process standards because it takes away judicial discretion regarding the imposition on juveniles of serious, adult, life-long punishments.

**A. The Ability of the Juvenile Court to Employ Discretion in Making Decisions Regarding a Juvenile's Case is an Important Safeguard to Protect their Due Process Rights.**

As discussed above, Ohio's bill implementing the Adam Walsh Act, S.B. 10, establishes a comprehensive scheme for classification of sexual offenders including juvenile offenders. While the prior law allowed for judicial discretion in forming determinations as to the likelihood of re-offense,<sup>6</sup> S.B. 10 generally abandons that approach. Under S.B. 10, juvenile offenders are classified as Tier I, Tier II, or Tier III based on the offense of conviction. Ohio Rev. Code Ann. § 2950.01. If the court labels the juvenile a serious youthful offender, the juvenile is fourteen years of age or older, and the juvenile commits certain enumerated acts, then the court must label the juvenile a PRQJOR, and thus a Tier III offender. Ohio Rev. Code Ann. § 2152.86 (A)(1). Classification based on offense of conviction disregards the circumstances and facts surrounding the offense. It also acts in direct contradiction to the core function of the juvenile court—to promote rehabilitation of child offenders who are less culpable and more amenable to reform than adult offenders. See discussion, *supra* Part I.A.

Unlike the scheme established by S.B. 10, in other instances where a child is adjudicated delinquent the juvenile court retains significant discretion in determining and reassessing the child's disposition. See Robert G. Schwartz, *Juvenile Justice and Positive Youth Development*,

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<sup>6</sup> Former R.C. 2950.09(B)(3) provides a list of possible, but not exclusive, factors that courts were required to consider in determining a juvenile offenders appropriate classification.

Youth Development: Issues, Challenges and Directions (Public/Private Ventures, 2000) 233, 248. Juvenile courts across the country allow for the review of a juvenile's case every six to nine months to determine if the child's disposition continues to be appropriate or should be modified. *Id.* Under S.B. 10, however, Ohio does not review the classification of a PRQJIR for at least 25 years. Ohio Rev. Code Ann. § 2950.15(C)(2).

This need for juvenile court discretion is grounded in the fact that, unlike criminal courts, juvenile courts remain centrally concerned with the care, protection, development, treatment, and rehabilitation of juveniles who remain in the juvenile system. *State v. D.H.*, 120 Ohio St. 3d 540, 548 (Ohio 2009); *In re Kirby*, 101 Ohio St. 3d 312, 316 (Ohio 2004); *In re Caldwell*, 76 Ohio St. 3d 156, 158 (Ohio 1996); *In re Anderson*, 92 Ohio St. 3d 63, 69-71 (Ohio 2001); *State ex rel. Plain Dealer Publ'g Co. v. Geauga Cnty. Court of Common Pleas, Juvenile Div.*, 90 Ohio St. 3d 79, 83 (Ohio 2000).

The importance of juvenile court discretion cannot be understated. Recently this Court determined that while juveniles adjudicated serious youthful offenders are entitled to a jury trial, they are not entitled to jury trials during the dispositional phase. *State v. D.H.*, 120 Ohio St.3d 540 at 549 (2009). The court relied heavily on the notion that for dispositional purposes, judicial discretion is of the utmost importance:

[t]he [juvenile] court's dispositional role is at the heart of the remaining differences between juvenile and adult courts. It is there that the expertise of a juvenile judge is necessary. The judge, given the factors set forth in R.C. 2152.13(D)(2)(a)(i), must assess the strengths and weaknesses of the juvenile system vis-à-vis a particular child to determine how this particular juvenile fits within the system and whether the system is equipped to deal with the child successfully. That assessment requires as much familiarity with the juvenile justice system as it does a familiarity with the facts of the case. To leave that determination to an expert, given the juvenile system's goal of rehabilitation, does not offend fundamental fairness, especially since the adult portion of the blended sentence that the judge imposes upon a jury verdict is not immediately, and may never be enforced.

*State v. D.H.*, 120 Ohio St.3d 540 at 550 (2009). The Court continued: "Because of the state's stake in the rehabilitation of the juvenile offender and its theoretically paternal role that the state continues to play in juvenile justice, a balanced approach is necessary to preserve the special nature of the juvenile process while protecting procedural fairness." *D.H.*, at 548 (citing *Santosky v. Kramer*, 455 U.S. 745, 766 (1982); *In re Winship*, 397 U.S. at 366; *Breed*, 421 U.S. at 531; *McKeiver*, 403 U.S. at 543).

**B. The Automatic Imposition of Tier III Classification to a Juvenile Fourteen Years of Age or Older, who receives a Serious Youthful Offender Dispositional Sentence and is Adjudicated Delinquent for Violations Enumerated in R.C. 2152.86 (A)(1), is a Violation of the Juvenile's Due Process Rights as it Eliminates Juvenile Court Discretion Undermining Principles of Fundamental Fairness to which a Juvenile is Entitled.**

Removing the court's discretion in determining the appropriate classification for juveniles who receive a serious youthful offender dispositional sentence, thus requiring the court to automatically classify a serious youthful offender as a Tier III juvenile offender registrant and PRQJOR, undercuts notions of fundamental fairness. Under this provision, the court cannot make an assessment of what would be most appropriate for the child. This means the Court cannot take into account individual factors about the child, cannot shape and re-examine the number of years a child must register,<sup>7</sup> nor the frequency with which a child must register, the locales of registration, or the level of public exposure that a child must be subject to. Ohio Rev. Code Ann. § 2950.01. This mandatory classification provision significantly impedes a juvenile's opportunity to benefit from the supportive, rehabilitative focus of the court and reintegrate into society successfully. This automatic requirement to register continues well into

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<sup>7</sup>After 25 years, a juvenile PRQJOR is eligible to make a motion requesting the court terminate the duty to register. R.C. 2950.15 (C) (22). There is no opportunity for earlier or even intermediate review.

adulthood, far surpassing the time when an individual would normally be subject to the jurisdiction of the juvenile court. By removing the court's discretion in imposing a Tier III classification, the juvenile faces consequences that contravene the purpose of the juvenile justice system and violate established principles of fundamental fairness. Thus, the juvenile no longer receives protection from public disclosure and faces adult criminal sanctions for a juvenile adjudication of delinquency. *See generally, supra* Part I.C.ii. (discussing the protective and rehabilitative function of juvenile courts). *See also, infra* Part V.A. (addressing the punitive effect of the sanctions that can be imposed on a PRQJOR with a juvenile adjudication).

An underlying premise of Ohio's juvenile court system is to shield the juvenile from the public eye. *See supra* Part I.C.ii; *see also*, 18.U.S.C. 5038(e) ("[N]either the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding."); *State ex. Rel. Plain Dealer Publishing Co. v. Floyd*, 855 N.E.2d 35, 42 (2006) (finding juvenile records should be kept confidential if disclosure would cause more harm for the child than benefit for society). Court records and proceedings are confidential in order to protect children from public stigmas associated with juvenile court involvement. *See supra* Part I.C.ii; *see also supra* part V.A.ii ; *see also* Juv. R. 37(B) (juvenile court records historically kept private). As discussed above, this has long been considered necessary to enable children to benefit from rehabilitation and treatment and to reintegrate into society as productive members of society. *See Id. See also, Tanenhaus, supra*, at 42, 61.

In addition to the public registration and notification provisions of a PRQJOR classification, S.B. 10 imposes, outside of the court's discretion, adult criminal sanctions on juveniles adjudicated in juvenile court based solely on the offense committed. Ohio Rev. Code Ann. § 2950.99 (West 2010). This results in a juvenile receiving adult penalties and sanctions

without being transferred to the adult system, which is in direct contradiction to the United States Supreme Court finding that penalogical justifications for criminal sanctions do not apply to juveniles who are less culpable and more amenable to rehabilitation than adult defendants. *See Roper*, 531 at 571-572. *See also, infra* Part I.B. Once labeled a PRQJOR, the juvenile must comply with every registration provision of S.B. 10, every 90 days for the rest of his or her life (unless he or she becomes eligible after a minimum of 25 years to have the disposition reviewed). Ohio Rev. Code Ann. § 2950.01 (West 2010). This consequence attaches immediately, upon disposition without an opportunity for the juvenile to demonstrate compliance with their disposition or to benefit from treatment or rehabilitative opportunities. Ohio Rev. Code Ann. § 2152.14. (West 2010). No opportunity exists for a juvenile or their counsel to present evidence demonstrating they should not be required to register publicly for the rest of their lives. The consequences for failure to comply are severe as they lead to an adult felony conviction and significant jail time. Ohio Rev. Code Ann. § 2950.99 (West 2010).

Imposing, without any judicial discretion, felony, adult, criminal sanctions on a juvenile adjudicated in juvenile court, is a punitive sanction, violating principles of fundamental fairness and constituting a due process violation in contravention of the Fourteenth Amendment to the United States Constitution and Article I Section 16 of the Ohio Constitution.

### **PROPOSITION OF LAW II**

**BY ARBITRARILY CLASSIFYING REGISTRATION ELIGIBLE YOUTH AS PUBLIC REGISTRY-QUALIFIED JUVENILE OFFENDER REGISTRANTS, R.C. 2152.86 VIOLATES JUVENILES' RIGHTS TO EQUAL PROTECTION AS GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 2 OF THE OHIO CONSTITUTION.**

The United States and Ohio Constitutions guarantee all citizens equal protection of the laws. U.S. Const. amend. XIV; Ohio Const., art. I, §2. The Ohio Constitution states, in relevant

part, “all political power is inherent in the people. Government is instituted for their equal protection and benefit...” Ohio Const., art. I, §2. The equal protection guarantee provides that all laws must be “applicable to all persons under like circumstances and ... not subject individuals to an arbitrary exercise of power and operate alike upon all persons similarly situated.” *City of Dayton v. Keys*, 21 Ohio Misc. 105, 114 (Ohio Com. Pl. 1969). The Equal Protection clauses of the United States and Ohio Constitutions have been interpreted to confer nearly identical rights. *Sorrell v. Thevenir*, 69 Ohio St. 3d 415, 424 (Ohio 1994). Under both Constitutions, governmental restrictions must be rationally related to a legitimate state interest. See, e.g., *Groch v. Gen. Motors Corp.*, 117 Ohio St. 3d 192, 220 (Ohio, 2008); *Vacco v. Quill*, 521 U.S. 793, 799 (1997).

S.B. 10’s PRQJOR provision is not rationally related to a legitimate government interest. The law makes arbitrary distinctions among similarly situated juveniles based on age and statutorily delineated classifications, forcing certain groups to register as sex offenders publically and well into adulthood and allowing similarly situated juveniles to avoid such registration. The potential for public, registration every 90 days for the rest of a juvenile’s life, without potential for review for a minimum of 25 years, and without regard for offense- free conduct and rehabilitative success, serves no rational basis.

**A. Senate Bill 10 Creates Classes Of Similarly Situated People Who Are Treated Differently.**

S.B. 10 treats similarly situated juveniles differently by requiring some juveniles to register publically and others not. Ohio Rev. Code Ann. § 2152.83 (West 2010). S.B. 10 requires juvenile PRQJORS to register publically for a minimum of twenty five-years if, “the child was fourteen, fifteen, sixteen or seventeen years of age at the time of committing the act, the court imposed on the child a serious youthful offender dispositional sentence,” and if the juvenile



committed one of the enumerated acts. Ohio Rev. Code Ann. § 2152.86(A)(1) (West 2010). This statute creates classes that are differentiated based on either: (i) the age of the offender, or (ii) whether the prosecutor decides to pursue a serious youthful offender disposition. *Id.*

**B. The Distinctions Are Not Rationally Related To A Legitimate Government Interest.**

The classes created by S.B. 10 do not rationally relate to any governmental interest because public and lengthy sex offender registries for juveniles do not serve any legitimate purpose. And, assuming *arguendo* that they do serve a legitimate purpose, the distinction based on age and prosecutorial pursuits are not related to the state interest.

**i. Public, Life-Long Registries For Juveniles Serve No Legitimate Purpose.**

The stated purpose of S.B. 10 is, “to further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems.” Ohio Rev. Code Ann. § 2950.01. This rationalization does not make sense for juveniles adjudicated in juvenile court because, by adjudicating individuals in juvenile instead of adult court, we believe such individuals can be rehabilitated. *See* discussion *supra* Part I.C. Putting a juvenile on a public and nearly life-long registry contravenes the rehabilitative focus and aims of the juvenile court. *See supra* Part I.C.ii. Social science evidence establishes: (i) the low recidivism rates among juvenile sex offenders, and (ii) the negative consequences of public shaming and stigmatizing of juveniles that accompany public, life-long registration and notification. *See* discussion, *infra* Part V.A.ii. (discussing shaming attributes of registration).

The imposition of registration and notification requirements on juveniles adjudicated for sexual offenses is disproportionate to their moral culpability and these laws also have no therapeutic or rehabilitative value. As the research makes clear, registration and notification

requirements themselves do not reduce rates of recidivism. *See* discussion, *supra* Part II.D. In fact, the research indicates the anomalous finding that registration and notification may actually increase the risk for reoffending because offenders find themselves isolated from important social, educational, and family networks. *See Id.*

Without question, the detailed reporting requirements, limitations on movement, and the potential for disseminating private information make it nearly impossible for a juvenile offender to be rehabilitated and reintegrated into society. *See* discussion *supra* part I.C.i. S.B. 10 imposes limitations that are inconsistent with the foundational goals of the juvenile court, as set forth in history, by statute, and by court rule and serve no legitimate purpose.

**ii. Any Stated Purpose For Public, Life-Long Registries For Juveniles Does Not Provide A Rationale For The Arbitrary Distinctions Based On Age or Prosecutorial Discretion.**

The distinctions that S.B. 10 attempts to make between juveniles based on age or prosecutorial discretion are arbitrary. A serious youthful offender disposition is only imposed if a prosecutor decides to proceed in that manner against a juvenile. Ohio Rev. Code Ann. § 2152.13 (West 2010). This implicates concerns regarding the basis for which PRQJOR classification can be arbitrarily imposed on juveniles. Additionally, as the Supreme Court stated: "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." *Roper*, 543 at 573. Citing the lack of maturity, underdeveloped sense of responsibility, and the susceptibility to negative influences that children have, the Court noted that the character of a child is not as well formed as an adult. *Roper*, 543 at 570. The Court continued: "If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial

personality disorder, we conclude that States should refrain from asking jurors to issue a far greater condemnation.” *Roper*, 543 at 573. These findings apply generally to all adolescents under the age of 18. That being the case, R.C. 2152.86 erroneously presumes, in violation of Equal Protection, that age or an individual prosecutor’s discretion can distinguish which juveniles need to be placed on public, long-term sex-offender registry—distinctions the court recognized cannot reasonably be made among juveniles less than eighteen years of age, even by trained psychologists.

### **PROPOSITION OF LAW III**

**BY IMPOSING PUBLIC, LONG-TERM SANCTIONS ON JUVENILES, THE CLASSIFICATION OF A REGISTRATION ELIGIBLE YOUTH AS A PUBLIC REGISTRY-QUALIFIED JUVENILE OFFENDER REGISTRANT VIOLATES THE PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENTS AS GUARANTEED BY THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I SECTION 9 OF THE OHIO CONSTITUTION.**

Both the Eighth Amendment to the United States Constitution and Section 9, Article I of the Ohio Constitution prohibit the infliction of cruel and unusual punishment by the state. As the Court explained in *Atkins v. Virginia*, 536 U.S. 304 (2002), the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. This right flows from the basic “precept of justice that punishment for crime should be graduated and proportioned to [the] offense.” *Atkins*, 536 U. S., at 311 (quoting *Weems v. United States*, 217 U. S. 349 (1910)). By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons.

“The prohibition against cruel and unusual punishments, like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and

precedent, and with due regard for its purpose and function in the constitutional design.” *Roper*, 543 U.S. at 560 (citing *Trop v. Dulles*, 356 U. S. 86, 100-101 (1958)). To implement this framework, federal courts have established the propriety and affirmed the necessity of referring to “the evolving standards of decency that mark the progress of a maturing society” to determine which punishments are so disproportionate as to be cruel and unusual. *Trop*, 356 U. S. at 100-101. The Eighth Amendment requires that the “punishment for crime . . . be graduated and proportioned to the offense.” *Atkins*, 536 U.S. at 311 (quoting *Weems*, 217 U.S. at 367). R.C. 2152.86 imposes public and criminal sanctions on juveniles that are disproportionate to their culpability in violation of the United States and Ohio Constitutional provisions prohibiting cruel and unusual punishment.

**A. Registry and Notification Provisions of R.C. 2152.86 that are Public and Lead to Adult Criminal Consequences Constitute Serious Punishment Disproportionate to the Culpability of Juvenile Sex Offenders.**

**i. Juvenile Offenders Are Less Culpable Than Adult Offenders and Therefore Should Not Be Punished Like Adults.**

Put simply, juveniles are different than adults, and the Supreme Court has recognized this fact, particularly in its Eighth Amendment jurisprudence. *See e.g. Graham*, 130 S.Ct. at 2025 (“developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds”). In *Roper*, and in *Graham*, the Supreme Court highlighted recent research on adolescent behavior that supports the view that child offenders are less culpable and more capable of reform than adults who commit similar crimes. *Graham*, 130 S. Ct. at 2025; *see discussion, supra* Part I.B; *see also Thompson v. Oklahoma*, 487 U.S. 815, 834-835 (1988), citing *California v. Brown*, 479 U.S. 538, 545 (1985). This recognition is fundamental to determining the constitutionality of particular forms of punishment because “the judicial exercise

of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question.” *Graham*, 130 S.Ct. at 2026 (discussing how to interpret the Eighth Amendment). The State must be wary, therefore, of implementing the harshest available penalties on juvenile offenders, offenders who are less culpable for their actions. *See, e.g., Roper*, 543 U.S. at 571-572.

The Supreme Court’s Eighth Amendment jurisprudence as it relates to juveniles has evolved over the last twenty-two years to recognize that punishments reserved for the worst offenders should not be imposed on juveniles, who, because they are still developing mentally, physically, and emotionally, are more susceptible to rehabilitation and less susceptible to deterrence. The United States Supreme Court, in *Thompson v. Oklahoma*, explained that the fundamental differences between adult and juvenile offenders beg for greater protection of juveniles when assessing penalties associated with that youth’s actions. *See Thompson*, 487 U.S. at 835 (barring the imposition of the death penalty on anyone less than sixteen years of age); *see also. Roper*, 543 U.S. 551 (abolishing the death penalty for any juvenile under the age of eighteen); *see also. Graham* 130 S.Ct. 2011 (barring the imposition of a sentence of life without the possibility of parole for non-homicide crimes for juveniles under the age of eighteen). The Court understands that it does not have the expertise, then, to “distinguish the few incorrigible juvenile offenders from the many that have the capacity for change.” *Graham*, 130 S.Ct. at 2032. States, therefore, should not impose the harshest available punishment, punishment reserved for the worst sex offenders, on juveniles.

The criminal aspects of juvenile delinquency have been highlighted with the advent of S.B. 10, which has drastically changed the penalties associated with delinquency adjudications for sexually oriented offenders in Ohio. S.B. 10 imposes on juvenile offenders burdens that have

historically been regarded as punishment and operate as affirmative disabilities and restraints. The burdens of S.B. 10 impose criminal punishments that are greater than the culpability of juveniles through: (1) public disclosure; and (2) adult criminal sanctions.

**ii. Public Disclosures Are Punitive in Effect, and Disproportionate to the Culpability of Juvenile Sex Offenders.**

There are numerous requirements regarding public disclosure that R.C. 2152.86 places on a juvenile designated a PRQJOR. PRQJORs and their families are restricted in their movements as they cannot leave their county of residence for a period that exceeds three days without giving prior notice and they must notify the sheriff in the county they are visiting; they also must notify the sheriff in the counties in which they are working or attending school. Ohio Rev. Code Ann. § 2950.04(A) (West 2010). A sheriff is now permitted to request that the juvenile offender's landlord or the manager of the juvenile offender's residence verify that the juvenile offender currently resides at the registered address. Ohio Rev. Code Ann. § 2950.11(A)(1) (West 2010). The result of address verification necessarily disseminates information into the offender's community. As, part of S.B. 10 the sheriff provides notice of, and information about, the PRQJOR to neighbors, schools, and a host of other community members, who can then further disseminate the information themselves. Ohio Rev. Code Ann. § 2950.11(A)(1)-(10) (West 2010). Moreover, juveniles, who are less mobile and less capable, are held to the same level of responsibility for reporting information and updating details as adults. They must timely appear at the county sheriff office with their information or face serious felony filings. Ohio Rev. Code Ann. § 2950.99 (West 2010).

Publication is particularly harmful for juveniles, especially when the internet is used. Sex offender registration and notification laws “may have a negative impact on the normal development of the youthful offender. This is contrary to the fundamental underpinnings of the

juvenile justice system and ‘parens patriae,’ which seeks to correct the course of juvenile offenders by rehabilitation and oversight.” Timothy E. Wind, *The Quandary of Megan’s Law: When the Child Sex Offender is a Child*, 37 J. Marshall L. Rev. 73, 116 (2003). “[C]ommunity notification can deny a child the opportunity to grow up normally by subjecting him or her to false labels of sexual dysfunction, ostracism, reduced life chances, and harassment.” Elizabeth Garfinkle, *Coming of Age in America: The Misapplication of Sex-Offender Registration and Community-Notification Laws to Juveniles*, 91 Cal. L. Rev. 163, 204 (2003). It is a matter of common understanding that the labels of “rapist” or “sex offender” – or, even worse, “child molester” – are among the most heinous and despised in contemporary society. *Neal v. Shimoda*, 131 F.3d 818, 829 n.12 (9th Cir. 1997) (“We can hardly conceive of a state’s action bearing more ‘stigmatizing consequences’ than the labeling . . . as a sex offender” – except “[p]erhaps being labeled a ‘child molester.’”). Research shows that calling a child a “sex offender” or “rapist” can have severely damaging psychological and practical consequences. See Judith V. Becker, *What We Know About the Characteristics and Treatment of Adolescents Who Have Committed Sexual Offenses*, 3 Child Maltreatment 317, 317 (1998); Mark Chaffin & Barbara Bonner, *Don’t Shoot: We’re Your Children: Have We Gone Too Far in Our Response to Adolescent Sexual Abusers and Children with Sexual Behavior Problems?*, 3 Child Maltreatment 314 (1998).

Rehabilitation is facilitated by “interpersonal development through positive interaction with family members, school personnel, peers, and the community.” Stacey Hiller, Note, *The Problem with Juvenile Sex Offender Registration: The Detrimental Effects of Public Disclosure*, 7 B.U. Pub. Int. L.J. 271, 292 (1998). However, notification inhibits positive interactions. “Disclosure of a juvenile sex offender’s past to his community may only serve to increase his or

her alienation, possibly encouraging re-offending, because of the negative attitudes the public will emit toward the youth.” *Id.*

Public notification obstructs juveniles’ normal development by hurting their ability to form new friendships and damaging their self-esteem, as well as causing “unnecessary stress to the juvenile offenders by exposing them to scrutiny and ridicule in the community, further harming their efforts at rehabilitation and increasing the likelihood of recidivism.” Wind, *supra*, at 116. “Community notification may particularly hamper the rehabilitation of juvenile offenders because the public stigma and rejection they suffer will prevent them from developing normal social and interpersonal skills -- the lack of these traits have been found to contribute to future sexual offenses.” Michele L. Earl-Hubbard, *The Child Sex Offender Registration Laws: The Punishment, Liberty Deprivation, and Unintended Results Associated with the Scarlet Letter Laws of the 1990s*, 90 NW. U. L. Rev. 788, 855-56 (1996) (citing J.V. Becker, *Adolescent Sex Offender*, 11 Behav. Therapist, 185 (1988)). “To function in the community, the offender has to feel a part of the community like anyone else. Sex offender registration and public notification laws compromise the sex offender’s ability to do so in a healthy and safe way.” Robert E. Freeman-Longo, *Revisiting Megan’s Law Sex Offender Registration: Prevention or Problem*, American Probation and Parole Ass’n, at 12, available at <http://www.ccoso.org/library/articles/revisitingmegan.pdf>. Rehabilitation is further hampered by the consequences public notification can have on a juvenile offender’s education, job search, and treatment. “Rehabilitation is about restoring a child to a healthy stature in society. However, a child cannot restore himself in his own eyes when social stigma may inhibit his ability to get a job or even walk into a store without neighbors casting doubtful looks in his direction.” Hiller, *supra*, at 293. Juveniles also suffer when their schools are notified of their status as sex offenders. Patricia



Coffey, *The Public Registration of Juvenile Sex Offenders*, ATSA Forum (Ass'n for the Treatment of Sexual Abusers), Winter 2007 at 5 (noting that even "Juveniles are ostracized and banned from attending classes with their peers . . . [and] refused admittance to certain colleges."); *see also*, Lisa C. Trivits & N. Dickon Reppucci, *Application of Megan's Laws to Juveniles*, 57 Am. Psychologist 690, 694 (2002) ("Notifying schools . . . may increase the social ostracism . . . with peers likely targeting the juvenile for ridicule and possible physical assault and parents protesting the presence of a sex offender in the school."). This could severely impede the juvenile's education options. The requirements may also prevent sex offenders from seeking treatment because their fear of public humiliation will force them "to 'go underground' and hide their tendencies from others, including their therapists." Earl-Hubbard, *supra*, at 855. Indeed, notification laws "subject children to the exact sort of debilitating consequences that the juvenile justice system was designed to eliminate. [They] mark children as sexual predators, subjecting them to stigma, prejudice, and denied opportunities." Garfinkle, *supra*, at 194. Internet publication is a particularly harmful type of notification.

The lower court, in this instance, rejected the notion that sex offender registries and notification laws for juveniles constitute punishment, relying heavily on the Supreme Court's decision in *Smith v. Doe*, 438 U.S. 84 (1978). *In re C.P.* 2010 -Ohio- 1484. While the Supreme Court found that Alaska's Sex Offender Registration Act ("ASORA"), a sex registry that imposed less burdens than S.B. 10, was non-punitive in its effect, the registry in that case did not provide for dissemination of formerly confidential information regarding juveniles. *See Smith v. Doe*, 538 U.S. 84, 85. The Supreme Court held in *Smith v. Doe* that ASORA "restrains [no] activities sex offenders may pursue but leaves them free to change jobs or residences." *Id.* However, the critical distinction is that the offenders affected by ASORA were exclusively adult.

*see Id.*. S.B. 10, on the other hand, provides public access to private information about juveniles and sets clear restrictions on the ability of juveniles to gain access to jobs, residential placements, treatment programs, and job training. This form of punishment is disproportionate to the diminished culpability of juvenile sex offenders.

**iii. The Threat of Criminal Sanctions Well Into Adulthood Constitutes Punishment Disproportionate to the Culpability of Juvenile Sex Offenders.**

S.B. 10 was intended to be, and is in fact, punitive because of the fact that failure to register can result in prosecution. Ohio Rev. Code Ann. § 2950.99 (West 2010). As discussed above, many courts, including the lower court in this instance, relied on Supreme Court precedent to rule that S.B. 10 and its equivalents are not punitive. *See* discussion, *supra* Part V.A.ii. But, these courts have been misguided in equating the Supreme Court's logic in *Smith* and *Doe* to S.B. 10 because the courts have disregarded both the harm to juveniles in public registration, as mentioned above, and the potential criminal sanctions. *Smith v. Doe*, 538 U.S. 84 (2003); *Conn. Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003).

In *Smith* the Court determined that ASORNA was not punitive. *Smith*, 538 U.S. at 85. In doing so, the Court considered analogies to shaming punishments and considered the social effects on employment and housing. *Id.* The lower court in this case relied on *Smith* to rule that S.B. 10 is also not punitive, writing, “[w]e see no material difference in the nature of the dissemination of information between Ohio’s notification scheme and Alaska’s notification scheme.” *In re C.P.*, 2010-Ohio-1484 at 3. But, the lower court disregards the point that, unlike ASORNA, failure to comply with S.B. 10 can lead to a felony conviction and punishment of up to ten years in prison, Ohio Rev. Code Ann. § 2950.99 (West 2010), consequences which are historically, traditionally, and currently regarded as punishment. *See* Cory Rayburn Yung, *One of*

*These Laws is not Like the Others*, 46 Harv. J. on Legis. 369, 398. Imposing adult, criminal punishments on juvenile sex offenders exceeds the limited culpability of juveniles.

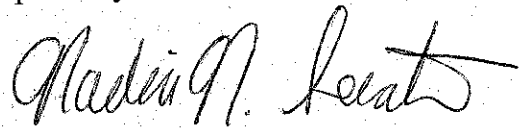
The lower court's misguided reliance on *Doe* demonstrates the fundamental disconnect between the view of juveniles that animates policy in the U.S. juvenile courts and the view of sex offenders that underlies the assumptions and policy choices of SORNA. The juvenile court regards the child as neither fully mature nor set in his ways, but rather as a malleable entity. By contrast, the image of the adult sex offender subject to registration and notification laws is that of a person who poses a sexual threat to the community, who has fixed preferences of victims, who is driven by all-but-inevitable urges to recidivate and who is unable to rehabilitate. See Phoebe Geer, *Justice Served? The High Cost of Juvenile Sex Offender Registration*, 27 Dev. Mental Health L. 34, 38-39 (2008). The two images are in conflict: to impose severe punishments in juvenile court, where offenders are necessarily less culpable, as if dealing with the sex offender imagined by SORNA, violates basic concepts of human dignity at the core of the constitutional amendments banning cruel and unusual punishment "because it is disproportionate to the moral culpability of the offender." *Gregg v. Georgia*, 428 U.S. 153, 182 (1976).

R.C. 2152.86, by imposing, public, long-term, and adult sanctions on juvenile offenders, violates the prohibition against cruel and unusual punishment as guaranteed by the Eighth Amendment and Fourteenth Amendment to the United States Constitution and Article I Section 9 of the Ohio Constitution.

## CONCLUSION

For the foregoing reasons, *Amici Curiae* National Juvenile Defender Center, *et al.*, respectfully request that this Court overturn the delinquency adjudication of C.P. and hold that the Revised Code Section 2152.86 as applied to juveniles violates their right to due process and fundamental fairness, equal protection and right to be protected against cruel and unusual punishment. As such it violates both the Ohio and United States Constitutions.

Respectfully Submitted,



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Dated: September 29, 2010

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing BRIEF OF AMICI CURIAE, NATIONAL JUVENILE DEFENDER CENTER, ET. AL., IN SUPPORT OF APPELLANT, C.P. was forwarded by regular U.S. Mail, postage prepaid, this 29<sup>th</sup> day of September, 2010, to the office of George Reitmeier, Assistant Athens County Prosecutor, 1 South Court Street, Athens, Ohio 45701.

*Nadia Seeratan per authority by*  
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