

24619

APPEAL NO. 24619

SUPREME COURT  
STATE OF SOUTH DAKOTA  
FILED

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

FEB 12 2008

*Shirley A. Johnson*  
Clerk

THE PEOPLE OF THE STATE OF SOUTH DAKOTA  
IN THE INTEREST OF Z.B., MINOR CHILD, H.B., RESPONDENT  
MOTHER, A.B., RESPONDENT FATHER

APPEAL FROM THE CIRCUIT COURT  
FOURTH JUDICIAL CIRCUIT  
BUTTE COUNTY, SOUTH DAKOTA

HONORABLE JOHN W. BASTIAN  
CIRCUIT COURT JUDGE

MINOR CHILD APPELLANT'S REPLY BRIEF

FRANCY E. FORAL and  
STACI L. REINDL  
Reindl Law  
121 W. Hudson Street  
Spearfish, SD 57783

Attorneys for Minor Child and  
Appellant

TIMOTHY VANDER HEIDE  
Attorney at Law  
849 Fifth Avenue  
Belle Fourche, SD 57717

Butte County State's  
Attorney

LAWRENCE E. LONG  
Attorney General  
1302 Highway 14 #1  
Pierre, SD 57501

Attorney for Appellee,  
State of South Dakota

24619

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES . . . . .	ii
PRELIMINARY STATEMENT . . . . .	1
JURISDICTIONAL STATEMENT . . . . .	1
STATEMENT OF LEGAL ISSUES . . . . .	2
STATEMENT OF THE CASE AND FACTS. . . . .	3
ARGUMENTS . . . . .	3
ISSUE I: SDCL 22-24B-2 CONFLICTS WITH TITLE 26 OF THE SOUTH DAKOTA CODIFIED LAWS THEREBY VIOLATING THE EXCLUSIVE JURISDICTION OF JUVENILE COURTS. . . . .	5
ISSUE II: THE APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR- OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT VIOLATES THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 2, OF THE SOUTH DAKOTA CONSTITUTION. . . . .	9
ISSUE III: THE APPLICATION OF SDCL 22-24B-2 TO A 15- YEAR-OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT VIOLATES THE RIGHT TO EQUAL PROTECTION GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 18, OF THE SOUTH DAKOTA CONSTITUTION. . . . .	13
ISSUE IV: THE APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR- OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 23, OF THE SOUTH DAKOTA CONSTITUTION. . . . .	14
CONCLUSION . . . . .	17
CERTIFICATE OF SERVICE . . . . .	18

## TABLE OF AUTHORITIES

### Page

#### Cases

<u>In re J.R.</u> , 341 Ill. App.3d 784, 791, 793 N.E.2d 687 (2003). . . . .	.11, 12
<u>In re J.W.</u> , 204 Ill.2d 50, 787 N.E.2d 747 (2003). . . . .	.12
<u>In re M.A.H.</u> , 20 S.W.3d 860 (Tex. App. 2000). . . . .	.13, 14
<u>In re N.J.W.</u> , 273 NW2d 134, 137 (SD 1978). . . . .	.6
<u>In re Ronnie A.</u> , 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003). . . . .	.10, 11
<u>Meinders v. Weber</u> , 2000 S.D. 2, 604 N.W.2d 248. . . . .	3, 4, 6, 9, 14
<u>State v. Bonner</u> , 1998 SD 30, P17, 577 NW2d 575, 580. . . . .	15
<u>State v. Jones</u> , 521 N.W.2d 662, 667 (S.D. 1994). . . . .	.5
<u>State v. King</u> , 82 S.D. 514, 516, 149 N.W.2d 509, 510 (S.D. 1967). . . . .	14

#### Statutes

Ark. Code Ann. § 9-27-356 (2007). . . . .	.15
Del. Code Ann. tit. 11, § 4120(i) (1995 & Supp. 1996). . . . .	8
730 Ill. Comp. Stat. 150/7 (West 2000). . . . .	.11, 12
Mont. Code Ann. § 41-5-1513 (2007). . . . .	.16
Mo. Rev. Stat. § 211.425 (2007). . . . .	16
N.C. Gen. Stat. § 14-208.26 (1999). . . . .	.16

Okla. Stat. Tit. 10 § 7308-1.2 (2007). . . . .	16
S.C. Code Ann. § 23-3-490(D)(3) (Supp. 2002). . . . .	11
SDCL 22-24B-2. . . . .	9, 14, 16
SDCL ch. 26-8A. . . . .	8
Tex. Code Crim. Proc. Ann. art. 62.12(b)(1). . . . .	13, 14
Wis. Stat. § 938 (2005-06). . . . .	16

### Other Authorities

Hiller, Stacey. <i>Note: The Problem with Juvenile Sex Offender Registration: The Detrimental Effects of Public Disclosure</i> , 7 B.U. Pub. Int. L.J. 271 (1998). . . . .	7
--	---

PRELIMINARY STATEMENT

The Minor Child/Appellant will use the following abbreviations throughout this reply brief:

Z.B. Appellant/ minor child . . . . . Z.B.

The Settled Record consists of Butte County file 09JUV09000006, which will be cited as "SR" followed by the page number(s) of the page(s) cited. Any reference to the Appellant's Appendix will be designated as "AX" followed by the page number(s) of the page(s) cited. The transcripts referred to in this brief will be cited in the following manner followed by the page number(s):

Adjudicatory Hearing, March 9, 2007 . . . . . ADJH

Dispositional Hearing, May 16, 2007 . . . . . DH

The State of South Dakota, Appellee, in this matter, will be referred to as "State." Any reference to the State's Brief will be designated as "SB" followed by the page number(s) of the page(s) cited.

JURISDICTIONAL STATEMENT

Appellant relies upon the Jurisdictional Statement as previously stated in Appellant's Brief.

## STATEMENT OF LEGAL ISSUES

### I.

WHETHER SDCL § 22-24B-2 CONFLICTS WITH TITLE 26 OF THE SOUTH DAKOTA CODIFIED LAWS THEREBY VIOLATING THE EXCLUSIVE JURISDICTION OF JUVENILE COURTS.

The Circuit Court ordered Z.B. to register as a sex offender pursuant SDCL §22-24B-2.

Most relevant cases: In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); People in Interest of L.V.A., 248 N.W.2d 864 (S.D. 1976); State v. Jones, 521 N.W.2d 662 (SD 1994); People in Interest of D.R. v. Rios, 499 N.W.2d 906 (SD 1993).

### II.

WHETHER THE APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR-OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT VIOLATES THE DUE PROCESS CLAUSE OF THE 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 2, OF THE SOUTH DAKOTA CONSTITUTION.

The Circuit Court ordered Z.B. to register as a sex offender pursuant SDCL §22-24B-2.

Most relevant cases: Lassiter v. Dep't of Social Services, 452 U.S. 18, 101 S.Ct. 2153; 68 L.Ed.2d 640 (1981); In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed.2d 527 (1967); State v. Jones, 521 N.W.2d 662 (SD 1994); State v. Lohnes, 324 N.W.2d 409, 414 (SD 1982).

### III.

WHETHER THE APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR-OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT VIOLATES THE RIGHT TO EQUAL PROTECTION GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 18, of the SOUTH DAKOTA CONSTITUTION.

The Circuit Court ordered Z.B. to register as a sex offender pursuant SDCL §22-24B-2.

Most relevant cases: Behrns v. Burke, 89 S.D. 96, 229 N.W.2d 86, 88 (SD 1975); City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313, 320 (1985); State v. Krahwinkel, 656 N.W.2d 451 (SD 2002); State v. King, 82 S.D. 514, 516, 149 N.W.2d 509, 510 (SD 1967).

#### IV.

WHETHER APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR-OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 23, OF THE SOUTH DAKOTA CONSTITUTION.

The Circuit Court ordered Z.B. to register as a sex offender pursuant SDCL §22-24B-2.

Most relevant cases: State v. Bonner, 1998 SD 30, P13, 577 N.W.2d 575 (1998); Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005); Harmelin v. Michigan, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991); Naovarath v. State, 105 Nev. 525, 779 P.2d 944 (Nev 1989).

#### STATEMENT OF THE CASE AND FACTS

Appellant relies upon the Statement of the Case and Facts as previously stated in Appellant's Brief.

#### ARGUMENTS

##### A. Introduction

To the exclusion of nearly all other cases, the State in its brief relies upon this Court's ruling in Meinders v. Weber, 2000 S.D. 2, 604 N.W.2d 248. See SB, 8. The State repeatedly suggests that counsel was not mindful or otherwise disregarded that ruling. Frequently the State reiterates the Meinders holding that the South Dakota Sex

Offender Registration laws as applied to adults is remedial in and not penal in nature. Id. at 262. This Court, however, has not previously been called on to address the issues raised in this appeal. As applied to Z.B. and other similarly situated children, SDCL 22-24B-2 is unconstitutional for the reasons set forth in Appellant's Brief and further highlighted and emphasized here. The State misses or neglects the fundamental question: whether children, adjudicated delinquent for certain crimes, are to be treated differently than adults. The State quickly concludes that Meinders applies as equally to children as adults. However, Meinders is not the panacea for these issues, despite the State's proposition that it is.

Most importantly, the facts in Meinders are wholly distinguishable from the instant case. For example, Meinders was an adult who was convicted by a jury for statutory rape pursuant to SDCL § 22-22-1(5). Meinders, 2000 S.D. at 3, 604 N.W.2d at 252. Therefore, Meinders was afforded all of the rights guaranteed under the state and federal constitutions.

The question is not whether the sanctions and constraints of South Dakota's sex offender registration statutory scheme is either remedial or penal, but rather application of these sanctions and restraints, regardless

of whether remedial or penal, to certain juvenile offenders is in keeping with the most basic concepts of our treatment of juveniles and if such is constitutional. Therefore, the instant case is one of first impression in South Dakota.

I.

SDCL § 22-24B-2 DIRECTLY CONFLICTS WITH TITLE 26 OF THE SOUTH DAKOTA CODIFIED LAWS THEREBY VIOLATING THE EXCLUSIVE JURISDICTION OF JUVENILE COURTS.

Juvenile adjudicatory hearings are governed by the rules of civil procedure with the purpose of the juvenile court to rehabilitate and not punish the juvenile behavior. SB 9, (citing State v. Jones, 521 N.W.2d 662, 667 (S.D. 1994)). The State misstates that the instant issue creates an "unresolvable conflict" between the criminal sanction imposed by the mandatory registration requirement for certain 15-year-olds under SDCL 22-24B-2 and the juvenile court system. SB 9. The focus of juvenile court proceedings is on rehabilitation and the best interest of the child, not on punishment. Jones, 521 N.W.2d at 667. Nonetheless, the State relies on Meinders to support its argument that no conflict can be found.

At the time of the Meinders decision (2000), this Court noted that, "[a]lthough registration information is subject to South Dakota's open records laws, and is thus available to the public, there are no affirmative community

notification provisions." Meinders, 604 N.W.2d at ¶18, (citing SDCL 22-22-40: registration information is a public record as provided in Chapter 1-27). The Meinders Court further noted that a member of the public had to specifically request the information from a government office. Id. Although no restrictions were placed on who may access the information, when Meinders was decided, the law had not been changed to allow for immediate public access into the home or office of anyone with a computer via the Internet. In 2006, the South Dakota State Legislature amended the sex offender registry laws to provide a public access Internet site, listing all offenders registered in the State. See <http://sor.sd.gov/> (last visited on 2/6/08).

Therefore, the Court here is asked to address a fundamentally new question, and one of first impression: how does the rapid advancing technology resulting in nearly universal Internet access, coupled with the 2006 amendment just mentioned, impact the principles in Meinders, specifically as applied to children adjudicated delinquent of certain crimes?

The State in its role of "parens patriae" has the right and obligation to protect *all* children and act in the best interest of the child. In re N.J.W., 273 NW2d 134,

137 (SD 1978). The required disclosure of a juvenile sex offender's identity to the public contradicts both the state's interest in protecting minors under the philosophy of *parens patriae* and the basic premise underlying the creation of juvenile courts - rehabilitation - because disclosure inhibits such rehabilitation. See Hiller, Stacey. *Note: The Problem with Juvenile Sex Offender Registration: The Detrimental Effects of Public Disclosure*, 7 B.U. Pub. Int. L.J. 271 (1998).

The State is obligated to protect children against violence from sex crime, but is it not equally obligated to protect and assist children before the Juvenile Court, who have a chance at rehabilitation? To address the State's reliance on the *Meniders* holding that the sex offender registration laws is remedial: a registration requirement for juvenile sex offenders and a community notification requirement, defined as notice to local law enforcement, is not as objectionable when information is kept confidential and accessible only to local police. Problems arise, however, when this information is displayed in such a far more accessible nature as over the Internet, resulting in full public disclosure. This public disclosure about a child alerts the public to the child's past and creates the potential for all manner of effects upon the child.

This state-influenced harm is contrary to the state's protective role under *parens patriae*, which aims to protect the child in the juvenile system, as well as the rehabilitative goals on which the juvenile court system is built. The danger in this public disclosure is so acute that some states specifically prohibit the release of registration information to the public. See Del. Code Ann. tit. 11, § 4120(i) (1995 & Supp. 1996) (stating that only law enforcement officers, and those potential employers of a person in a sensitive area dealing with children, may obtain the registration information; only information on medium and high level offenders is available over the Internet).

South Dakota's disclosure of sex offender registration information does nothing to protect the child offender. Disclosing information about a 15-year-old adjudicated delinquent of a crime that requires registration as a sex offender, thus subjecting him or her to public ridicule and physical harm not only fails to protect the child, but actually constitutes neglect. See SDCL ch. 26-8A. As a result, allowing public disclosure on the Internet of a 15-year-old sex offender's identity is counter to the State's fundamental responsibilities to that child. Registration of juvenile sex offenders should be tailored so that

records are kept confidential. Only then can the State fulfill its parens patriae duty and commitment to protect all children, whether delinquent or not.

## II.

THE APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR-OLD CHILD ADJUDICATED DELINQUENT OF CERTAIN CRIMES VIOLATES DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ART. VI, § 2, OF THE SOUTH DAKOTA CONSTITUTION.

SDCL 22-24B-2 violates the Due Process Clause because it does not provide notice and an opportunity to be heard. For example, the statute at no time requires a hearing specifically on the question of whether the child is a continued threat to society upon reaching adulthood. SDCL 22-24B-2. The public dissemination of information on the South Dakota Sex Offender Registry violates Z.B.'s right to privacy, which is a protectable liberty interest under Article VI, § 1 of the South Dakota Constitution.

Again, the State assumes this Court has already made its determination by suggesting that the Meinders holding applies to juveniles adjudicated delinquent of certain crimes. The public notification provisions of SDCL 22-24B-2 burden the liberty interests of these children whom the government would here seek to regulate as adults. Here Z.B. has a liberty and privacy interest protected by the South Dakota Constitution and implicated by the requirement

that he register, the disclosure of his accumulated personal information on request, and the statutory branding of him once and forever as a public danger, a sex offender, without any distinction being made that the act occurred when he was a child.

The liberty interest at stake in the instant case is Z.B.'s right to privacy. Z.B. is denied notice and the opportunity to be heard because while a child, he was ordered to register for life and will be unable to ever address whether he is a danger to society upon reaching adulthood. Clearly Z.B. has a liberty and privacy interest protected by the state and federal constitutions that entitles him to procedural due process: (1) the requirement that he register with local police; (2) the disclosure of accumulated personal information on request; (3) the possible harm to his earning capacity; (4) the harm to his reputation; and, most important, (5) the statutory branding of him as public danger, a sex offender.

The State cites the South Carolina case In re Ronnie A. to support its claim that lifetime registration requirement on the South Dakota Sex Offender Registry is not punitive and "therefore no liberty interest is implicated." 355 S.C. 407, 409, 585 S.E.2d 311, 312 (2003); SB 15. In the South Carolina case, the juvenile appellant

was under the age of twelve at the time of his adjudication, which resulted in a registration requirement under South Carolina law, however, information collected for the registry was not to be made available to the public. Id.; see also, S.C. Code Ann. § 23-3-490(D)(3) (Supp. 2002). The South Carolina Court reasoned that because "the registry information will not be made available to the public because of appellant's age at the time of his adjudication, there is no undue harm to his reputation even if we were to recognize a liberty interest in a juvenile's reputation." In re Ronnie A., 385 S.C. at 410. In the instant case, registry information for Z.B. is widely and publicly available.

The State also relies on the Illinois case of In re J.R., 341 Ill. App.3d 784, 791, 793 N.E.2d 687 (2003). Under Illinois law, however, unless the juvenile is considered a sexual predator, a juvenile sex offender would be required to register for the limited and specified period of 10 years after adjudication. See 730 ILCS 150/7 (West 2000). Moreover, Illinois' Notification Law "specifically addresses juvenile sex offenders and provides that information concerning juvenile sex offenders is *not available on the Internet* and public access to information concerning juvenile sex offenders is limited to those whose

safety might be compromised for some reason related to the juvenile sex offender." In re J.R., 341 Ill. App.3d at 801 (internal citations omitted); and see 730 ILCS 152/120(e) (West 2000) (emphasis added). Inclusion of information about juvenile sex offenders in the Illinois state police database did not violate safeguards applicable to juveniles because the dissemination of information about juveniles was appropriately limited. People v. J.R. (In re J.R.), 341 Ill. App. 3d 784, 275 Ill. Dec. 916, 793 N.E.2d 687, 2003 Ill. App. LEXIS 831 (1 Dist. 2003).

Additionally, the State cites In re J.W., 204 Ill.2d 50, 787 N.E.2d 747 (2003), in support of its argument that the lifetime registration requirement for a juvenile does not violate due process. SB 16. However, the Court in In re J.W. reasoned that:

Information concerning a juvenile sex offender may be disseminated to a member of the public only if that person's safety might be compromised for some reason and only in the appropriate agency's or department's discretion. Information concerning juvenile sex offenders is not available over the Internet. We find, therefore, that the extremely limited dissemination of information concerning juvenile sex offenders supports a finding that the registration of juvenile sex offenders is a reasonable means of protecting the public.

In re J.W., 204 Ill.2d 50, 70, 787 N.E.2d 747 (2003); and see 730 ILCS 152/120(e) (West 2000) (the Illinois

Notification Law specifically addresses juvenile sex offenders is not available on the Internet in Illinois and public access to information concerning juvenile sex offenders is limited to those whose safety might be compromised).

By contrast, the mandatory lifetime registrations requirement under SDCL 22-24B-2 as applied to Z.B. violates his constitutional right to due process.

### III.

THE APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR-OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT VIOLATES THE RIGHT TO EQUAL PROTECTION GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 18, OF THE SOUTH DAKOTA CONSTITUTION.

Despite the suggestion that Meinders has rendered Z.B.'s claims invalid, the State looks to foreign jurisdictions to support its argument. For example, the State cites In re M.A.H., a Texas Court of Appeals case, where it was determined that a juvenile offender must comply with registration requirements. In re M.A.H., 20 S.W.3d 860 (Tex. App. 2000); and see Tex. Code Crim. Proc. Ann. art. 62.12(b)(1). However, unlike in South Dakota, in Texas the juvenile registers for a set period of either ten years from the date of disposition of his case or ten years

from the date of his completion of the terms of the disposition, whichever is later. Id., cf. SDCL 22-24B-2.

The State claims "Z.B. finds no rational reason for registering juvenile sex offenders." SB 22. However, it is the very public dissemination of information concerning a 15-year-old adjudicated delinquent of committing certain offenses that is not rational to the purpose of public safety. The imposition of different punishments upon one than is imposed upon all for like offenses is a violation of equal protection. State v. King, 82 S.D. 514, 516, 149 N.W.2d 509, 510 (S.D. 1967). Under SDCL 22-24B-2, Z.B. must stay on the South Dakota Sex Offender Registry for the rest of his life with no redress. SDCL 22-24B-2. Z.B.'s equal protection claim is proper and the violation is evident.

#### IV.

THE APPLICATION OF SDCL 22-24B-2 TO A 15-YEAR-OLD CHILD ADJUDICATED DELINQUENT FOR CERTAIN CRIMINAL SEXUAL CONDUCT CONSTITUTES CRUEL AND UNUSUAL PUNISHMENT UNDER THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION AND ARTICLE VI, § 23, OF THE SOUTH DAKOTA CONSTITUTION.

The sex offender registration requirement for adults is not penal, as held in Meinders. Meinders, 2000 S.D. 2, 604 N.W.2d 248. The State would like to extend the holding in Meinders to children. The State argues that Z.B.'s

argument that the law as applied to him constitutes cruel and unusual punishment is made without authority. SB 24. Cited in Appellant's previous brief, the test as set forth in State v. Bonner states:

To assess a challenge to proportionality [the Court must] first determine whether the sentence appears grossly disproportionate. To accomplish this, [the Court] consider[s] the conduct involved, and any relevant past conduct, with utmost deference to the Legislature and the sentencing court. If these circumstances fail to suggest gross disproportionality, [the Court's] review ends.

State v. Bonner, 1998 SD 30, P17, 577 NW2d 575, 580 (citing Harmelin v. Michigan, 501 U.S. 957, 1000, 111 S. Ct. 2680, 2704, 115 L. Ed. 2d 836, 868 (1991)).

In the instant case, Z.B. was ordered to register as a sex offender at age fifteen. DH 4. Z.B. did not have any prior history in the juvenile court system. Additionally, the sentencing court believed that there was no alternative but to order that Z.B. register. DH 4. In fact, the Court specifically stated,

"I still feel that there are parts of this process that are not only unfortunate, but are in violation of [Z.B.'s] constitutional rights as a juvenile, and I will, I guess, for purposes of that, specify that in terms of our statute, including particularly 22-24B-2 which requires a 15-year-old to register for the rest of his life as a sex offender, is based on the allegations that he admitted to."

DH 4.

Unlike many other states, the current statutory conflict results in treatment of certain juvenile offenders no differently than adults. See Ark. Code Ann. § 9-27-356 (2007); Mo. Rev. Stat. § 211.425 (2007); Mont. Code Ann. § 41-5-1513 (2007); N.C. Gen. Stat. § 14-208.26 (1999); Okla. Stat. Tit. 10 § 7308-1.2 (2007); and Wis. Stat. § 938 (2005-06). Moreover, unlike many other states, as previously discussed, there is no set term or established period for juvenile offenders to be registered. See SDCL ch. 22-24B. Finally, because of Z.B.'s status as a child, he is considered to be more responsive to treatment than adult sex offenders.

SDCL 22-22B-2 providing for lifetime unlimited public access is unconstitutional as it applies to the instant case, where there is a child adjudicated delinquent, because its result is punitive, its remedial objectives do not overcome the impact of the sanction, and such punishment is for life despite the fact that the crime was committed by a child. As a result, Z.B. should have the opportunity to be released from the registration requirements of SDCL 22-22B-2, unless procedures are instituted to limit public access to Z.B.'s registry information and provide some mechanism for relief from the lifetime registration requirement. Juvenile offenders or

not, our state and our society cannot punish children as harshly as we do adults. To do so, would be cruel and unusual.

#### CONCLUSION

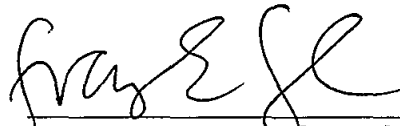
The Appellant respectfully requests, based upon the argument and authorities above, that this Court find SDCL 22-24B-2, as applied to Z.B., a Minor Child, adjudicated of certain offenses, directly conflicts with the fundamental precepts of Title 26 of the South Dakota Codified Laws and violates the Due Process, Equal Protection, and Cruel and Unusual Punishment provisions of the Constitutions of the State of South Dakota and United States.

Counsel respectfully requests the opportunity to present oral argument.

Dated this 11<sup>th</sup> day of February, 2008.

Respectfully submitted,

REINDL LAW



---

Francy E. Foral and  
Staci L. Reindl  
Attorneys at Law  
121 W. Hudson Street  
Spearfish, SD 57783  
(605) 722-1552

IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA

The People of the State of South Dakota )  
in the Interest of )

Z. B., )

Minor Child, )

H.B., )

Respondent Mother, )

A.B., )

Respondent Father. )

CERTIFICATE OF SERVICE

APPEAL NO. 24619

Francy E. Foral, Attorney for Minor Child, Z.B., hereby certifies that she served two (2) true and correct copies of the **Appellant's Reply Brief** in the above-entitled matter upon the persons herein next designated all on the date below show, by depositing such in the United States mail on the 11 day of February, at Spearfish, South Dakota in a postage paid envelope addressed to said persons, to wit:

H. B., Respondent Mother  
18928 Spotted Mule Lane  
Belle Fourche, SD 57717

A. B., Respondent Father  
18928 Spotted Mule Lane  
Belle Fourche, SD 57717

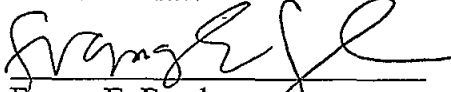
Mr. Timothy Vander Heide  
Butte County State's Attorney  
849 Fifth Ave.  
Belle Fourche, SD 57717

Mr. Lawrence E. Long  
Attorney General's Office  
1302 E. Highway 14 #1  
Pierre, SD 57501

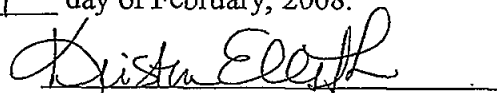
which address is the last address of the addressee known to the subscriber.

Dated this 11 day of February, 2008.

REINDL LAW

  
Francy E. Foral

Subscribed and sworn to before me this 11 day of February, 2008.

  
Notary Public  
My commission exp 9-10-13

