

November 29, 2020

Members of the Michigan House Judiciary Committee,

Thank you for taking up HB 5679, SB 611, and SB 612 in Committee. In my 26 years as a juvenile advocate and consultant, I have worked with numerous adjudicated youths and seen first-hand the iatrogenic effects of registering adjudicated juveniles as sex offenders. I've shared with the committee in the past, that this policy is not supported by research; 1) the inclusion of adjudicated youth on the registry has had no impact on recidivism (which is already very low for youthful offenders), 2) it has no deterrent effect on first time offenders, and 3) research indicates inclusion of youth on a registry has unintended lifelong negative consequences. See "Effects of Juvenile Registration" (attached) for the supporting research.

Language has been drafted as a substitution to HB5679 (H-3 draft 2) which provides a way for all adjudicated youth to be removed from the registry, but needs to be added to the bill version before the committee. See the 3-Part bill language, and why it is needed (attached). I highly support this change as it promotes the evidence-based practice of sex offender treatment for adjudicated youth to effectively prevent future sexual abuse. There is no research-based evidence that juvenile sex offender registration is effective at preventing sexual abuse.

As legislators respond to the need for legislative changes to Michigan's Sex Offender Registration Act (MSORA) because of court decisions related to the Does v. Snyder case and the subsequent class action lawsuit decision related to that case, I advocate that in making those changes, language should also be included to provide a way in which all adjudicated youth have an opportunity to be removed from Michigan's sex offender registry (MSOR). Keep in mind that in the rare event where a case is especially egregious, youth can be classified as a "designated case" in juvenile court and treated as an adult, or be waived to adult court.

In addition, Michigan exceeds the federal Adam Walsh Act (SORNA) guidelines for juvenile registration. The legislature promised to correct this in 2011 after passing legislation to comply with the federal guideline. **Michigan registers juveniles for a number of offenses that are not required per the federal guideline.** This is in direct opposition to PA 602 enacted in 2018 stating the legislature will not exceed a federal guideline unless there is clear and convincing evidence to do so. This threshold has not been met, and in fact, the research supports that no juvenile offenders should be required to register. **At minimum, the corrective change in Part 1 (attached) must be included in the bill.**

Regarding HB 5679: I strongly oppose this bill without the updates I have attached here to remove juvenile offenders from the MSOR, and urge you to do the same if the bill has not been changed, at the very least, to finally correct the juvenile offenses for which registration is required (see language in Part 1 attached).

Regarding SB 611: I support this bill, but encourage legislative change to allow youth with CSC1 offenses to be able to petition the court to have their record Set-Aside at age 25.

Regarding SB 612: I support this bill, but encourage bill language to seal all past juvenile records as well.

Thank you for your time, consideration, and support of these issues. Please do not hesitate to contact me if you have any questions, or would like to discuss this further.

Sincerely,



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Juvenile Changes to HB5679 - 3 Parts

Part 1 – Remove language in MSORA that exceeds federal guidelines for juvenile offenders.

Special Note: In 2016 Rep. Pagel created draft, 06496'16 Draft 2 to do this. It addressed the legislature's erroneous over-inclusion of juveniles at the time the MSORA changes occurred in April 2011. The draft was put on hold in 2016 when the 6th Circuit COA decision came down with the idea this correction would be folded into the changes for the court. In 2011 the legislature openly indicated when legislating MSORA changes that they would not exceed the federal guidelines for juvenile offenders. Michigan did however, erroneously include offense statutes that if committed by juveniles required registration—which was not intended. I error was identified and acknowledged at the time SB 188 and SB 189 were being legislated. In an effort to meet a federal deadline, the House Judiciary passed the legislation and committed to correcting this mistake in the near future. Chris Hawkins, MSP Legislative Liaison, acknowledged this error at that time and the MSP indicated they would not oppose this correction. For 9 years now we have exceeded the guidelines of the federal Adam Walsh Act (SORNA, Title 1 or the Adam Walsh Act) regarding juvenile offenders. **This is in direct opposition to PA 602 enacted in 2018 stating the legislature will not exceed a federal guideline unless there is clear and convincing evidence to do so. This threshold has not been met, and in fact, the research supports the exclusion of ALL juvenile offenders from sex offender registration.** The Adam Walsh Act excludes juveniles whose offense does not include penetration using force, threat of violence, rendering unconscious, or drugging.

Change Needed: MCL 27.722, Sec. 2

(u) "Tier III offender" means either of the following:

- (i) A tier II offender subsequently convicted of a tier I, or II offense.
- (ii) Except as otherwise provided in this subparagraph, an individual convicted of a tier III offense. Tier III offender does not include an individual described in subdivision (B)(iii) or (iv) if the individual was convicted of 1 or more of the following:**
 - (A) A violation of section 338, 338A, or 338B of the Michigan Penal Code, 1931 PA 328, MCL 750.338, 750.338A, and 750.338B.**
 - (B) A violation of section of 349 of the Michigan Penal Code, 1931 PA 328, MCL 750.349.**
 - (C) A violation of section 350 of the Michigan Penal Code, 1931 PA 328, MCL 750.350.**

- (D) A violation of section 520B(1)(A) or (B)(i) or (ii) of the Michigan Penal Code, 1931 PA 328, MCL 750.520.B**
- (E) A violation of section 520C of the Michigan Penal Code, 1931, PA 1931 328, MCL 750.520C.**
- (F) A violation of section 520D(1)(A) of the Michigan Penal Code, 1931 PA 328, MCL 750.520D.**
- (G) A violation of section 520G(2) of the Michigan Penal Code, 1931 PA 328, MCL 750.520G.**

(v) “Tier III offense” mean 1 or more of the following:

Part 2 – Discontinue juvenile offender registration at age 25 for those that are required to register if they are registering solely for a juvenile offense.

This allows juvenile offenders where the court may not have ordered sex offender treatment to still be removed based on non-offending behavior over time (the courts typically do order sex offender treatment, but years ago they may not have). Age 25 is well out of the time period in which research tells us that if a juvenile offender does reoffend they are most likely to do it within 3 years of initial adjudication—a time when they are most likely to still be developmentally immature. Tennessee has been approved as having substantially implemented the Adam Walsh Act (SORNA), and their SOR law allows this.

Change Needed: MCL 28.725, Sec. 5

(18) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, or because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country, shall comply with this section until the age of 25.

Part 3 – Provide opportunity for juvenile offender registrants that are required to register to have their duty to register discontinued if the court determines the individual has successfully completed sex offender treatment.

This change allows new juvenile offenders, that would otherwise be required to register, and existing juvenile offender registrants, to petition for removal if they’ve completed sex offender treatment. These changes place focus on methods of sexual abuse prevention that have been proven to be effective--sex offender treatment. Maryland has been

approved as having substantially implemented the Adam Walsh Act (SORNA), and they register no juveniles after they have successfully complete probation.

Change Needed: MCL 28.728c, Sec. 8c

(4) This section is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act. This subsection does not prohibit an appeal of the conviction or sentence as otherwise provided by law or court rule. A petition filed under this section shall be filed in the court in which the individual was convicted of committing the listed offense. However, if the conviction occurred in another state or country and the individual is a resident of this state, the individual may file a petition in the circuit court in the county of his or her residence for an order allowing him or her to discontinue registration under this act only. ~~A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing.~~ (Moved to Subsection 12 (f).)

(12) (f) A petitioner has not previously filed a petition under this section that was denied by the court after a hearing

(15) The court shall grant a petition properly filed by an individual under subsection (3) if ~~either any~~ of the following applies:

(a) Both of the following:

(i) The petitioner was adjudicated as a juvenile.

(ii) The petitioner was less than 14 years of age at the time of the offense.

(b) The individual was registered under this act before July 1, 2011 for an offense that required registration but for which registration is not required on or after July 1, 2011.

(c) Both of the following:

(i) The petitioner is an individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d, or because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country.

(ii) The court determines that the petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 423 USC 16915(b)(1), or another appropriate sex offender treatment program.

Effects of Juvenile Registration and Notification

PROFESSOR ELIZABETH J. LETOURNEAU, PH.D.

1. I am a tenured full professor in the Department of Mental Health, Johns Hopkins Bloomberg School of Public Health, Johns Hopkins University, where I am also the inaugural director of the Moore Center for the Prevention of Child Sexual Abuse. This affidavit expresses my own opinions and not those of my employer.
2. My scholarly expertise lies in the area of child sexual abuse and particularly problem sexual behavior exhibited by children under the age of 18, including evaluation of sex crime policy (e.g., juvenile sex offender registration and notification), treatment effectiveness, and prevention efforts. I serve/have served as Principal Investigator or equivalent on research projects funded by numerous federal agencies (e.g., Centers for Disease Control and Prevention, National Institutes of Health, National Institute of Justice, National Science Foundation, and Office of Juvenile Justice and Delinquency Prevention), foundations (e.g., Annie E. Casey foundation, Bloomberg Foundation, Open Society Foundation), and private benefactors. Funding for my work exceeds \$15,000,000 and results of my work have been published in more than 100 research-based articles in my field's leading journals and chapters in high-impact books, including the Cambridge Handbook of Prevention Science.
3. My expertise on child sexual abuse is recognized nationally and internationally. Of particular relevance to this case, I served as external expert reviewer for an international effort to create Child Online Safety recommendations. This effort was led by the Broadband Commission for Sustainable Development's Working Group on Child Online Safety and supported by UNESCO and other international foundations. I currently serve on the National Academy of Sciences' Forum on Global Violence Prevention (2018-present) and previously served as a governor-appointed member of Maryland's State Council on Child Abuse and Neglect (2015-2019) and as the elected president of the Association for Treatment of Sexual Abusers (2013-2015). Internationally, I served on the World Health Organization Guideline Development for Guidelines Group for responding to the sexual abuse of children and adolescents (2016-2017), I was an expert witness for the Royal Australian Commission Into Institutional Responses to Child Sexual Abuse (2017), and I presently co-chair the Prevention Research Steering Group, Child Dignity Alliance, an effort supported by the Vatican.
4. I have been requested to offer an expert opinion on the following questions with regard to juveniles adjudicated delinquent for a sex offense, including offenses involving possession of sexual images of children (JSOs):
 - (A) "Is being under the age of 18 at the time of offense conduct, a factor that reliably and validly predicts a low rate of sex offense recidivism? If so, why?"
 - (B) "Is time offense-free in the community, a factor that substantially reduces JSO sex offense recidivism rates? If so, why?"
 - (C) "Is there any public safety benefit to subjecting JOSs to registration, notification, and other collateral consequences of sex offense adjudications for a minimum of 15 years? If not, what does the research reveal about the reasons for the lack of a public safety benefit?"
 - (D) "Is there any public safety benefit to subjecting JOSs to registration, notification and other collateral consequences of sex offense adjudications for any period of time?"

- (E) “Does subjecting JSOs and their families to registration, notification and other collateral consequences of sex offense adjudications inflict significant harmful consequences on them? If so, what types of harm to they suffer?”

A. ANSWER TO FORENSIC QUESTIONS (A) & (B):

“Is being under the age of 18 at the time of offense conduct, a factor that reliably and validly predicts a low rate of sex offense recidivism? If so, why?”

“Is time offense-free in the community, a factor that substantially reduces JSO sex offense recidivism rates? If so, why?”

5. There are considerable developmental differences between children and adults that influence how most illegal behavior is addressed. Yet, illegal *sexual* behavior is often perceived to negate these developmental differences and children may be treated like adults. In our reactions to the very real harm of child sexual abuse to victims, we sometimes mistakenly act as if children and adults have the same capabilities and thus share the same culpabilities; as if they present similarly high and enduring risks. As I detail in the following sections, my research and that of others uniformly finds that children engage in inappropriate sexual behaviors for a variety of reasons, frequently out of sheer ignorance and/or in response to their own victimization; that children who engage in inappropriate sexual behavior rarely reoffend after the behavior is detected; that reoffense becomes increasingly less likely over time; that community safety is not improved in any way, shape or form by juvenile sex offender registration and notification policies; and that children are severely harmed by registration and notification policies.
6. **Children (i.e., people under age 18) engage in inappropriate sexual behaviors for a wide variety of reasons, most of which do not signal a long-term propensity for sexual offending.** There is strong evidence that young adolescence represents the riskiest developmental period for engaging in inappropriate or illegal sexual behaviors with younger children. A surprising proportion of child sexual abuse cases are committed by young adolescents. For example, one review of U.S. national crime data¹ found that children committed about 35% of all sex crime cases involving child victims of any age and about 50% of sex crime cases involving child victims under age 12. Likewise, another analysis of national crime data found that 14 years of age is the peak age for engaging in inappropriate sexual behavior with prepubescent children and this risk declines sharply thereafter². In addition to studies that rely upon national crime data, studies that rely upon surveys of large, nationally representative samples of citizens also indicate that a large proportion — about 50% — of respondents who report having experienced a completed or attempted sexual abuse prior to the age of 18 report that the assailant was another child³.
7. **Children engage in problem sexual behaviors, including accessing online sexual images of other children for many reasons, quite often because they simply do not know better.** Parents, other caregivers, and educators effectively convey to older children that they must not engage in physically aggressive behavior with peers and especially not with younger children. Yet these same adults are

¹ Finkelhor, D., Ormrod, R., & Chaffin, M. (2009). *Juveniles who commit sex offenses against minors*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.

² Snyder, H. N. (2000). *Sexual assault of young children as reported to law enforcement: Victim, incident and offender characteristics*. ANIBRS statistical report. Washington, DC: Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice. Retrieved July 19, 2016, from <http://www.bjs.gov/content/pub/pdf/saycrlr.pdf>

³ Finkelhor, D., Vanderminden, J., Turner, H., Shattuck, A., & Hamby, S. (2014). Youth exposure to violence prevention programs in a national sample. *Child Abuse & Neglect*, 38, 677–686.

almost never as clear with rules that govern sexual behavior and related concepts such as consent, information that children clearly need as they begin their own sexual explorations or behaviors⁴. Collectively, we expect children who are just beginning to explore their own sexuality to somehow simply know that readily available online images of children are off-limits and to understand how to negotiate consent for sexual behaviors and with whom. This is a poor strategy, given the data reviewed above. Young adolescents are prone to making mistakes as they begin to navigate their own sexuality. Of note, most children do recognize that sexual behavior should be private or secret; society is quite effective at relaying that particular social norm.

Online opportunity is the most obvious risk factor for children to access or be exposed to abusive sexual images of other children. At present, half of the world's children have access to an Internet that was never designed with their use and safety in mind. Exposure to pornography has become a normative, if troubling experience of these digital natives. A study of U.S. college students (sample size = 536) indicated that 93% of the boys and 62% of girls had been exposed to online pornography prior to age 18⁵. Most of these children actively sought out online pornography (e.g., only 6.8% of boys said they had never looked for pornography on purpose). There were several reasons for searching, including a desire for sexual excitement, curiosity about sex, looking for information about sex, and being with friends who wanted to do it. More than one in six boys had been exposed to images of children. Another large-scale survey of 3,500 children ages 9 to 16 conducted in the E.U. found that approximately 20% had seen sexual images online and another 12% had received sexual image, representing increases from an earlier study.⁶ This study did not report the percent of images that involved children versus adults. As the rates of children accessing the internet has increased, their exposure to sexual images has increased as has their rates of arrest. Children under age 18 comprised 3% of U.S. arrests for child pornography possession in 200, 5% in 2006 and 7% in 2009.⁷ Rather than indicating some new phenomenon of children stricken with pedophilic interests, these increased arrest rates indicate the confluence of children's access to an internet that provides a ready conduit to inappropriate materials and few if any protections against that access.

Experts concur that there are insufficient protections to keep children from accessing harmful online material and insufficient knowledge among parents and especially children about such harms, including the illegality of accessing sexual images of children. Indeed, children often purposefully search for sexual images online, without appreciating that images of children their own age or younger is illegal. There is an urgent and almost entirely unmet need to ensure that online access is safe by default and safe by design for children. Children who access readily available sexual images of other children simply do not possess a similar degree of knowledge or capacity for understanding and behavioral control as adult offenders. Indeed, their emotional immaturity, their impulsivity, and their lack of sexual experience and lack of sophistication combined with sexuality curiosity, substantially increase the risk of them exercising poor judgment with regard to searching for, receiving and viewing sexual images of other children.

⁴ Letourneau, E. J., Schaeffer, C. M., Bradshaw, C. P., & Feder, K. A. (2017). Preventing the onset of child sexual abuse by targeting young adolescents with universal prevention programming. *Child Maltreatment*, 22, 100-111.

⁵ Sabina, C., Wolak, J., & Finkelhor, D. (2008). The nature and dynamics of internet pornography exposure for youth. *CyberPsychology & Behavior*, 11, 691-693.

⁶ Livingstone, S., Mascheroni, G., Ólafsson, K., & Haddon, L., with the networks of EU Kids Online and the Net Children Go Mobile (2014, November). *Children's online risks and opportunities: Comparative findings from EU Kids Online and Net Children Go Mobile*. Available at http://eprints.lse.ac.uk/60513/1/_lse.ac.uk_storage_LIBRARY_Secondary_libfile_shared_repository_Content_EU%20Kids%20Online_EU%20Kids%20Online-Children's%20online%20risks_2014.pdf

⁷ Wolak, J., Finkelhor, D., & Mitchell, K. J. (2012).

At this time there is insufficient evidence to conclude that the act by a child of accessing or viewing sexual images of other children is necessarily indicative of deviant or paraphilic sexual arousal versus age normative sexual curiosity and exploration.

Beyond ignorance and access, another significant risk factor for problem sexual behavior is victimization. Children who have been sexually exploited or abused, particularly boys, are at increased risk for engaging in harmful sexual behavior.^{8,9} Importantly, while a history of victimization is associated with an increased risk for an initial (or index) sexual offense, it is not associated with increased risk for recidivism once the index offense is detected. Thus, a history of victimization does not signal a long-term risk for reoffending. Other reasons that children are at increased risk for engaging in inappropriate or harmful sexual behavior relative to adults include impulsivity, immaturity, inadequate adult supervision, and imitating what they see in the media. Children typically age out of these risk factors as they develop and mature. Less common and more concerning risk factors include aggression and violence, peer pressure, drug or alcohol use, enjoyment of rule violation, and sexual preoccupation or sexual interest in young children¹⁰. These latter risk factors signal the need for mental or behavioral health evaluation and intervention.

- 8. Children who engage in inappropriate sexual behavior rarely reoffend once the behavior is detected.** There are now more than 100 published studies evaluating the recidivism rates of youth who have sexually offended. The findings are remarkably consistent across studies, across time, and across populations: the average 5-year sexual recidivism rate is less than 3%.¹¹ **That is, more than 97% of children who were adjudicated for sex crimes did not reoffend with new sex crimes.** This figure is based on a meta-analysis that included 106 studies and more than 33,000 cases. It is incontrovertible. In my own research utilizing data on more than 1,200 male children adjudicated for sex crimes in South Carolina, the rate of new convictions for new sex crimes across an average 9-year follow-up period was just 2.5%.¹² Many people will argue, correctly, that sexual offense reconviction rates do not account for all sexual offenses, because many sexual offenses are not reported. While reconviction rates will not identify all sexual reoffense *incidents*, or even all sexual offense victims, they will identify the majority of sexual *reoffenders*. This is true for two reasons: First, children who were once caught for a sexual offense are unlikely to be highly skilled at evading detection for a second sexual offense. Second, it only takes one disclosure to identify a reoffender. With a sufficiently long follow-up period (most experts recommend at least 3 years), the likelihood that at least one victim or bystander will come forward increases, thereby increasing the validity of recidivism research findings.

Less research has been conducted specifically on the recidivism rates of people convicted of child pornography related crimes. However, the available evidence suggests these rates are low. Recidivism rates of adults convicted of child pornography-related crimes are low. Less than 5% of adults convicted of child pornography crimes committed subsequent sexual offenses in one large

⁸ Ogloff, J. R. P., Cutajar, M. C., Mann, E., Mullen, P., Wei, F. T. Y., Hassan, H. A. B., & Yih, T. H. (2012). Child sexual abuse and subsequent offending and victimization: A 45 year followup study. *Trends and Issues in Crime and Criminal Justice*, 440, 1–6.

⁹ Seto, M. C., & Lalumiere M. L. (2010). What is so special about male adolescent sexual offending? A review and test of explanations through meta-analysis. *Psychological Bulletin*, 136, 526–575.

¹⁰ Chaffin, M. (2008). Our minds are made up, don't confuse us with the facts: Commentary on policies concerning children with sexual behavior problems and juvenile sex offenders. *Child Maltreatment*, 13, 110–121.

¹¹ Caldwell, M. F. (2016). Quantifying the decline in juvenile sexual recidivism rates. *Psychology, Public Policy and Law*, 22, 414–426.

¹² Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153.

study (sample size = 2,630).¹³ To my knowledge, just one study has examined the reoffense rates and patterns among children adjudicated for child pornography-related crimes¹⁴. This study was conducted in Zurich with children ages 10-18 (average age was 15) convicted of child pornography possession (sample size = 54), children convicted of possessing other forms of illegal pornography (sample = 42), children convicted of a contact sexual offense against a younger (sample = 64) and children convicted of a contact sexual offense against a peer or older person (sample = 104). Across a 3-year follow-up period, very few of these children reoffended with new sex crimes and children convicted of possessing child pornography had the lowest reoffense rates when looking at any type of crime.

- 9. Reoffense risk declines even further over time.** A child’s risk of reoffending after detection of the index offense is “front loaded”. That is, when rare sexual recidivism events do occur, they nearly always occur within the first year or two following detection of the index offense (or following release from confinement if a child is imprisoned or sent to residential treatment following the index offense). Thus, it is *recent* past behavior that best predicts future behavior and not merely any past behavior. Perhaps surprisingly, but again based on thousands of cases: After about three years and in the absence of new sexual offenses, the fact that a child once engaged in problematic sexual behavior is no longer predictive of doing so again in the future.^{15, 16}

B. ANSWER TO FORENSIC QUESTIONS (C) & (D):

“Is there any public safety benefit to subjecting JOSs to registration, notification and other collateral consequences of sex offense adjudications for a minimum of 15 years? If not, what does the research reveal about the reasons for the lack of a public safety benefit?”

“Is there any public safety benefit to subjecting JSOs to registration, notification and other collateral consequences of sex offense adjudications for any period of time?”

- 10. Juvenile sex offender registration and notification policies fail to improve community safety in any way.** Modern registration policies were developed in the early to mid 1990s to improve public safety from the threat posed by adult sexual offenders at high risk of recidivism. There are two principal ways in which registration policies might improve public safety. First, these policies could be associated with reduced sexual recidivism rates. Second, these policies could be associated with deterrence (or primary prevention) of first-time sex crimes. Neither is true, when it comes to juvenile registration.

(A) Registration and Notification Fail to Reduce Juvenile Sexual or Violent Recidivism

Rates. Four studies examine the impact of federal and state juvenile registration policies on sexual and violent recidivism. Registration policies vary widely across states and thus we might expect some to work better than others at improving public safety. Instead, what we find is that none of the studied policies works. That is, none of these studies finds that registration policies resulted in reduced sexual or violent recidivism rates.

¹³ Seto, M. C., Hanson, R. K., & Babchishin, K. M. (2011). Contact sexual offending by men with online sexual offenses. *Sexual Abuse: A Journal of Research and Treatment*, 23(1), 124-145.

¹⁴ Aebi, M., Plattner, B., Ernest, M., Kaszynski, K., & Bessler, C. (2014). Criminal history and future offending of juveniles convicted of the possession of child pornography. *Sexual Abuse*, 26, 375-390.

¹⁵ Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153.

¹⁶ Caldwell, M. F. (2002). What we do not know about juvenile sexual reoffense risk. *Child Maltreatment*, 7, 291–302.

- i. Using juvenile and criminal justice data from South Carolina, we compared the reoffense rates of 111 registered children with 111 nonregistered children who we matched on type of index sexual offense and the year that offense occurred, age at index offense, race, and prior violent and nonviolent offenses¹⁷. That is, we created two groups as similar as possible save for the fact that one group was subjected to registration and notification requirements and the other group was not. Over a mean (average) 4-year follow-up period, we found a sexual offense reconviction rate of less than 1%; that is, there were only two sexual recidivism events for 222 youth, with no differences between groups. Likewise the registered and nonregistered groups did not differ on nonsexual recidivism rates.
- ii. In a subsequent study we examined the recidivism rates of all male youth with sexual crime adjudications in South Carolina between 1991 and 2004 (sample size = 1,275), across an average 9-year follow-up period. This study is important because we studied the entire *population* of male child offenders, and not a smaller subsample of youth. Population-level research carries more weight in science as it does not suffer from selection effects. We used survival analysis to examine factors that might have influenced recidivism rates, including whether or not the child was registered. Registration was not associated with reduced sexual or nonsexual recidivism. Rather, we found that being registered increased the risk of youth being *charged* but not convicted of new offenses. This is an interesting pattern of findings. It suggests that adults view registered children as more dangerous than nonregistered children and were more likely to report registered children for behaviors that ultimately were not deemed criminal. Hence the increased risk of new charges but an equivalent risk for new convictions. We interpreted this to indicate that registration exerts a surveillance or “scarlet letter” effect on children, subjecting them to greater scrutiny even when their behavior is fundamentally the same as nonregistered children.
- iii. Using data on 108 Pennsylvanian youth adjudicated for sexual crimes in Pennsylvania, Batastini and colleagues reported a sexual reoffense rate of less than 2% across a 2-year follow-up. Moreover, these researchers examined the federal Adam Walsh Act system of placing offenders (including children) into one of three tiers, which are supposed to indicate lower, medium, and higher recidivism risk. Batastini and colleagues found that children who met federal “Tier III” sex offender registration and notification requirements – that is, children purported to be highest risk for reoffending - were no more likely to reoffend than youth who did not meet federal Tier III requirements.¹⁸
- iv. Using data on 172 youth adjudicated for sexual crimes in Wisconsin, Caldwell and Dickinson reported no differences in the recidivism rates for registered and unregistered youth across a 4-year follow-up period.¹⁹
- v. Using data on 91 youth adjudicated for sexual crimes and 174 youth adjudicated for violent nonsexual crimes, Caldwell and colleagues found that neither the federal Tier

¹⁷ Letourneau, E. J. & Armstrong, K. S. (2008). Recidivism rates for registered and nonregistered juvenile sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 20, 393-408.

¹⁸ Batastini, A. B., Hunt, E., Present-Koller, J., & DeMatteo, D. (2011). Federal standards for community registration of juvenile sex offenders: An evaluation of risk prediction and future implications. *Psychology, Public Policy, and Law*, 17, 451-474.

¹⁹ Caldwell, M. F., & Dickinson, C. (2009). Sex offender registration and recidivism risk in juvenile sexual offenders. *Behavioral Sciences and the Law*, 27, 941-956.

designations nor the state risk measures from three states - New Jersey, Texas, and Wisconsin — accurately distinguished between youth who sexually reoffended and youth who did not. Caldwell and colleagues did find that youth whose initial offense was violent but nonsexual were just as likely to commit a future sexual offense as youth whose initial offense was sexual.²⁰

(B) Registration and Notification Fail to Deter First-Time Juvenile Sex Crimes. Registration clearly fails to reduce sexual or other violent recidivism, based on the research reviewed just above. The only other way these policies could improve public safety is if they exerted a general deterrence or primary prevention effect. That is, these policies could, conceivably, reduce the likelihood that a child would commit a sexual offense in the first place. They do not. My colleagues and I have completed the only studies, to date, evaluating the effects of registration on the prevention or deterrence of first-time sex crimes and found no evidence supporting this effect.

- i. Examining the entire population of first-time sexual offenses in South Carolina, including more than 3,000 juvenile sexual offense cases from 1991 through 2004, we examined the effects of South Carolina’s registration and notification policies on first-time sexual crimes. There was no evidence that these policies exerted any general deterrence/primary prevention effects.²¹ Specifically, after the registration and notification policy was enacted, there was no significant change in the likelihood that a child would commit an initial sexual offense.
- ii. Using national data on tens of thousands of juvenile sex crime reports from four states - Idaho, South Carolina, Utah, and Virginia - we again evaluated the effects of these four state’s registration and notification policies on first-time sex crimes. We again found no evidence for a general deterrent/primary prevention effect of these policies.²²
- iii. Examining the entire population of first-time sexual offenses in Oregon and in Maryland, including nearly 19,000 youth charged with sexual crimes and more than 7,000 youth adjudicated for sexual crimes from these two states, we examined the effects of these two states’ juvenile registration policies and again found no deterrent/preventive effects.²³

In summary, the entire available body of published research fails to support any public safety effect of registration and notification on sexual recidivism or first-time sex crimes. This research includes empirically and methodologically rigorous evaluations of the federal Adam Walsh Act tiering system and the registration and notification policies of eight states; it comprises tens of thousands of juvenile sex crime cases. Despite variation between federal and state policies and despite examining policy effects on three different outcome effects (sex crime reports, charges, convictions), our results were completely

²⁰ Caldwell, M. F., Zemke, M. H., & Vittacco, M. J. (2008). An examination of the sex offender registration and notification act as applied to juveniles. *Psychology, Public Policy and Law*, 14, 89-114.

²¹ Letourneau, E. J., Bandyopadhyay, D., Armstrong, K. S., & Sinha, D. (2010). Do Sex Offender Registration and Notification Requirements Deter Juvenile Sex Crimes? *Criminal Justice and Behavior*, 37, 553-569.

²² Sandler, J., Letourneau, E. J., Vandiver, D., Shields, R. T., & Chaffin, M. (2017). Juvenile sexual crime reporting rates are not influenced by juvenile sex offender registration policies. *Psychology, Public Policy and the Law*, 23, 131-140.

²³ Letourneau, E. J., Shields, R. T., Nair, R., Kahn, G., Sandler, J. C., & Vandiver, D. M. (2018). Juvenile registration and notification policies fail to prevent first-time sexual offenses: An extension of findings to two new states. *Criminal Justice Policy Review*.

consistent across studies: juvenile sex offender registration and notification are failed policies that do nothing to improve public safety.

C. ANSWER TO FORENSIC QUESTION (E):

“Does subjecting JSOs and their families to registration, notification and other collateral consequences of sex offense adjudications inflict significant harmful consequences on them? If so, what types of harm to they suffer?”

11. Registration and Notification are Associated with Unintended and Harmful Consequences on Youth

(A) **Registration and Notification Increase Juveniles’ Risk of Sustaining New Nonviolent Charges.** We found that South Carolina’s registration and notification policy is associated with increased risk of new charges but not new convictions, particularly for nonviolent offenses.²⁴ Specifically, registered youth were significantly more likely than nonregistered youth to be charged with relatively minor, misdemeanor offenses (e.g., public order offenses). While it is possible that the burdens related to registration actually increase youth misbehavior, we believe it is more likely that this increase in the detection of low-level offenses reflects a surveillance or scarlett letter effect. That is, youth who are known as “registered sex offenders” are likely to be viewed (inaccurately) as more dangerous than youth with the same history of sexual offending but without the registration label. This perception may cause members of the public to report registered children and/or law enforcement agents to arrest registered children for behaviors that do not trigger reports or arrests of nonregistered youth engaged in the same behaviors and that ultimately do not result in new convictions. **Requiring youth to register annually or more frequently with law enforcement has significant negative consequences for youth and is not merely inconvenient.** The process of identifying oneself as a registered sex offender and of being arrested and possibly charged with new offenses due in part to this label seems likely to cause registered youth to view themselves as “delinquent” even when they are law-abiding. Ample evidence indicates that youth who view themselves as delinquent or outside the mainstream are less likely to change patterns of offending behavior. Policies that promote youths’ concepts of themselves as lifetime sex offenders will likely interrupt the development of a healthy self-identity as a valued member of society.²⁵

(B) **Therapists and counselors report severe harm to children subjected to sex offender registration or notification requirements.** Treatment providers offer a unique perspective with which to evaluate the potentially unintended effects of juvenile sex crime policies and approaches. Mental health professionals’ experience working with children who have engaged in problem sexual behaviors offers an important window through which to view policy in action. The abstract workings of registration and notification that exist at the policy level become concrete for professionals working with youth with problem sexual behavior and seeing the policy effects as these effects play out in the lives of young clients and clients’ family members. We surveyed 265 front-line practitioners in 48 states who provide services to children adjudicated or reported for sexual offending. Given variation between state juvenile registration and notification policies, we might have expected to see different responses in this national sample regarding how practitioners view the effects of registration

²⁴ Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K. S. (2009). The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153.

²⁵ Letourneau, E. J., & Caldwell, M. F. (2013). Expensive, harmful policies that don’t work or how juvenile sexual offending is addressed in the U.S. *International Journal of Behavioral Consultation and Therapy*, 8, 25-31.

and notification on children. Yet the responses from treatment providers were remarkably consistent, regardless of where they lived: treatment providers overwhelmingly perceived negative consequences associated with registration and notification policies aimed at children. Providers surveyed for this research reported that, relative to youth who had offended but were not required to register, children subjected to registration or notification are much more likely to experience negative mental health outcomes as a result of these policies. Further, providers endorsed the view that registered children are likely to experience harassment, difficulty in school, and trouble maintaining stable housing.²⁶ All of these effects – increased depression and anxiety, verbal and physical harassment, problems concentrating in school, and frequent disruptions caused by having to change caregivers – are known to negatively impact children’s educational attainment.

12. Juvenile registration and notification is associated with increased risk for children attempting suicide, for children being approached by adults for sex, and with the sexual assault victimization of children. It is no surprise that sex offenders are perceived as the worst of the worst offenders. Registration purposely signals to others that an individual is especially dangerous, even if the registrant is a child himself. Accordingly, reactions to children labeled as registered sex offenders can be severe. For example, there are reports of children who committed suicide after being threatened with registration and reports of registered children who were verbally harassed, physically assaulted, and targeted by gunfire.²⁷

(A) Registration and notification is associated with some of the worst possible outcomes for children. My colleagues and I conducted the first empirically rigorous evaluation of the collateral consequences of registration on children. We surveyed 256 children ages 12-17 years, all of whom were in treatment for problem sexual behavior. These children were recruited from 18 different states, and about 30% of them were subjected to registration policies. What we found was shocking. Compared to unregistered children who were in treatment for problem sexual behaviors, registered children were:

- i. five times as likely to report having attempted suicide in the past 30 days. That is, they reported not only thinking about suicide more often, but actually *attempting to kill themselves*. These are children were between the ages of 11 and 17.
- ii. four times as likely to report having been approached by an adult for sex in the past year.
- iii. twice as likely to report having sustained a hands-on sexual assault victimization in the past year. That is, we found evidence that **juvenile registration and notification is associated with the very type of harm it purports to prevent.**²⁸ It is difficult to imagine worse outcomes associated with a state policy for children.

(B) Families of registered youth also face significant collateral consequences. For example, in a small study of four parents whose children were listed on the Michigan sex offender

²⁶ Harris, A. J., Walfield, S., Shields, R., & Letourneau, E. J. (2016). Collateral consequences of juvenile sex offender registration and notification: Results from a survey of treatment providers. *Sexual Abuse: A Journal of Research and Treatment*, 28, 770-790.

²⁷ Human Rights Watch, (2013). *Raised on the registry: The irreparable harm of placing children on sex offender registries in the US*. Washington, D.C.: Human Rights Watch. Retrieved July 10, 2013 from: http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf.

²⁸ Letourneau, E. J., Harris, A. J., Shields, R. T., Walfield, S. M., Ruzicka, A. E., Buckman, C., Kahn, G. D., & Nair, R. (in press). Effects of juvenile sex offender registration on adolescent well-being: An empirical examination. *Psychology, Public Policy, and Law*.

registry²⁹, the parents reported feeling powerless to protect their children from harm and hopeless about the negative consequences of registration and notification on their children. They reported expending enormous resources trying to ensure their children's safety and help their children develop a positive self-identity despite the constant sex offender label. Other siblings reported resentment over the time devoted to the registered child. The shame and stigma of the label kept these young people from achieving their full potential, according to their parents. In particular, the shame and stigma increased the isolation of these youth, made it difficult to find and maintain employment, and increased their emotional and financial dependence upon their parents.

- (C) **Other collateral consequences are triggered by down-stream policies that affect only registrants.** Dozens of localities and states have enacted residence, education, and employment restrictions, limiting where registrants may live, work, and play. These effects are especially harmful to children, who may be unable to return to school or may be removed from school when a parent calls to complain about a "registered child" being in a child's class. Children thrive when provided appropriately monitored access to social, sporting, recreational, cultural and religious activities with peers. Registration and notification requirements limit and even remove access to these developmentally critical opportunities. Moreover, what is often overlooked is the fact that the sex offender's parents, cohabitants, neighborhood, and school are often effectively "registered" along with the child, in that the addresses of registrants' housing, schools, and employment are often listed on the registry³⁰. The collateral damage to the parents and siblings of a registered child is enormous.

D. CONCLUSION:

13. In my professional opinion, and to a reasonable degree of certainty, and based on the research I have conducted personally and the research I have reviewed, I have found no scientific evidence that demonstrates any public safety benefit to subjecting JADSOs to registration, notification and other collateral consequences of sex offense adjudications for a minimum of 15 years or, for that matter, for any period of time.
14. There are no indicators that subjecting JSOs to sex offender registration or notification schemes improves public safety. Registration and notification schemes are failed policies that do not become effective when applied to JSOs.
15. To summarize, significant harm is caused by subjecting children sex offender registration and notification policies. Such laws are associated with the worst possible outcomes for children, including increased suicide attempts and increased sexual victimization. Children subjected to these policies face increased risk for other serious mental health problems, risks to their physical safety, peer problems, and problems at school. The parents of children subjected to these policies also indicate emotional distress and fear for the lives of their children, with good reason. These risks are in no way offset by any increase in public safety.
16. While the research on adolescent use of online sexual images is nascent, we know that intentional and unintentional exposure to such images is a growing phenomenon. The Internet was designed specifically to reduce the time and extend the reach of access to all manner of materials. It does so effectively and with little thought to the impact on children. In many, perhaps most jurisdictions, the

²⁹ Comartin, Kernsmith, & Miles (2010). Family experiences of young adult sex offender registration. *Journal of Child Sexual Abuse*, 19, 204-225.

³⁰ Letourneau, E. J., & Caldwell, M. F. (2013). Expensive, harmful policies that don't work: how juvenile sex offending is address in the U.S. *International Journal of Behavioral Consultation and Therapy*, 8, 23-29.

law has been unable to keep up with the pace of innovation and often holds children accountable for behaviors as if they were adults. Children who engage in illegal sexual behavior are unlikely to repeat their offenses and respond well to evidence-based interventions. There is simply no good argument for subjecting them to registration and notification.

17. In conclusion, children who engage in problem sexual behavior – including accessing and viewing sexual images of children as well as other serious behavior that has harmed others – typically desist from such behaviors upon detection and present a low likelihood of recidivism that becomes indistinguishable from the risk posed by children with no sexual offenses over a relatively brief period of time. In particular, children who have not reoffended within two years of detection are unlikely to ever reoffend sexually. Pubescent children who are just beginning to explore their own sexuality are prone to making bad choices and mistakes of a sexual nature. Those mistakes are compounded by the ready availability of sexual images, both legal and illegal, on the Internet. Without question, it is important to recognize the harm caused to victims by such behaviors, and to ensure that such behaviors are not repeated. There are several well-validated, evidenced based interventions for youth with problem sexual behavior. An adjudication and finding of delinquency as sex offending juveniles that subjects children to sex offender registration and notification are not among these effective interventions. Rather, sex offender registration and notification are failed policies: unnecessary, wasteful, and harmful. Children who are labeled as sex offenders are at increased risk for the worst possible outcomes, including suicide and sexual predation by adult offenders and will face innumerable barriers to successful prosocial development. None of this supports the recovery of victims or the prevention of harm. None of this improves community safety.