No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

BILLY S. JEFFRIES, *Petitioner*

v.

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET and COMMONWEALTH OF KENTUCKY, *Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

Timothy G. Arnold
Post-Trial Division Director
tim.arnold@ky.gov

Department of Public Advocacy
5 Mill Creek Park
Frankfort, Kentucky 40601
(502) 564-8006
(502) 687-6769 (fax)

January 11, 2021

QUESTIONS PRESENTED

In *Smith v. Doe*, 538 U.S. 84, 105 (2003), this Court found that Alaska's sex offender registration statute was a "civil regulatory scheme" which was "nonpunitive." The statute evaluated in *Smith* required little more than that the offender keep their address current, and that the address information be placed on a public registry. However, since that time, largely driven by Federal policies, states like Kentucky have used the status of being a registered sex offender to impose increasing restrictions on travel, movement and conduct, so much so that in 2017 this Court took note of the ". . .troubling fact that the law imposes severe restrictions on persons who already have served their sentence and are no longer subject to the supervision of the criminal justice system . . .." *Packingham v. North Carolina*, __ U.S. __, 137 S.Ct. 1730, 1737 (2017). Courts have split on how to handle challenges to those restrictions, with the majority reviewing each amendment individually and generally finding the amendment to be nonpunitive, but a growing minority reviewing the statutory scheme in its entirety anew to determine whether it remains nonpunitive, and frequently finding that the statute is now punitive for ex post facto purposes. Likewise, cases have split as to the extent, if any, that courts should consider the fact that the offender is a juvenile or that scientific studies fail to find merit to the non-punitive rationale factor into a constitutional analysis of sex offender registration statutes.

This case presents the following questions:

1. Whether a court evaluating an ex post facto challenge to a statute that has previously been found to be nonpunitive and has since been amended should review the entire statute holistically in its current form, as several jurisdictions have done, or whether stare decisis and related concepts requires that the court presume the statute is nonpunitive and review only the amendments?

2. Whether the imposition of sex offender registration and accompanying disabilities can be retroactively imposed on a juvenile offender without violating the Due Process Clause or ex post facto provisions, where scientific evidence establishes that registration is contrary to the state's asserted public safety interest, and the system in its current form imposes a number of probation-like conditions?

LIST OF PARTIES

1. Billy S. Jeffries is represented by Hon. Timothy G. Arnold, Department of Public Advocacy, 5 Mill Creek Park, Frankfort, Kentucky 40601.

2. The Kentucky Justice and Public Safety Cabinet is represented by Hon. Graham Gray, and Hon. Brenn O. Combs, Kentucky Justice and Public Safety Cabinet, 919 Versailles Road, Frankfort, KY 40601

3. The Commonwealth of Kentucky, was represented in the lower courts by Hon. Graham Gray and Hon. Brenn O. Combs. Hon. Daniel Cameron, Attorney General, 1024 Capital Center Drive, Frankfort, Kentucky 40601, has also been served.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

Billy S. Jeffries, Petitioner, respectfully petitions for a writ of certiorari to review the order of the Kentucky Supreme Court, affirming a finding that his placement on the Kentucky sex offender registry was constitutional.

OPINIONS BELOW

The unpublished order of the Kentucky Supreme Court denying review is attached at Appendix A. The published opinion of the Kentucky Court of Appeals in *Jeffries v. Justice and Public Safety Cabinet,* 605 S.W.3d 79 (Ky.Ct.App. 2019) is attached at Appendix B. The trial court's unpublished ruling in the case is attached at Appendix C.

JURISDICTION

Petitioner filed the current action in the Franklin Circuit Court in Frankfort, Kentucky in late 2017. After relief was denied in the trial court, the Kentucky Court of Appeals denied relief on all federal claims in a published opinion in 2019. *Jeffries v. Justice and Public Safety Cabinet*, 605 S.W.3d 79 (Ky.Ct.App. 2019)(Appendix B). The Kentucky Supreme Court denied review of the claim on August 13, 2020, in a summary order (Appendix A). This Petition is filed within the time allotted for a Petition for Certiorari, as extended by this Court's March 20, 2020 order. Throughout this case, the Petitioner has consistently asserted the federal questions now presented by this Petition. This Court has jurisdiction under 28 U.S.C. § 1257(a) to review the final decision of the Kentucky Supreme Court on a matter of federal law.

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 10, provides in relevant part that "No state shall. . . pass any . . . ex post facto law . . .."

The Fourteenth Amendment of the United States Constitution provides in relevant part: "No State shall … deprive any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV.

STATUTORY PROVISIONS INVOLVED

The following Kentucky statutory provisions are included in Appendix G:

- KRS 17.510 – Registration system for adults who have committed sex crimes or crimes against minors -- Persons required to register -- Exemption for registration

for juveniles to be retroactive -- Manner of registration -- Penalties -- Notifications of violations required.

- KRS 17.520 – Period of registration.
- KRS 17.545 – Registrant prohibited from residing or being present in certain areas -- Violations – Exception
- KRS 17.546 – Registrant prohibited from using social networking Web site or instant messaging or chat room program accessible by minors, exception for parents -- Registrant prohibited from photographing, filming, or making a video of a minor without consent of minor's parent or guardian.
- KRS 17.580 – Duty of Department of Kentucky State Police to maintain and update Web site containing information about adults who have committed sex crimes or crimes against minors -- Immunity from liability for good-faith dissemination of information -- Justice and Public Safety Cabinet to establish toll-free telephone number -- Permission for local law enforcement agency to notify of registrants in jurisdiction.

STATEMENT OF THE CASE

I. The Kentucky Sex Offender Registration Act (SORA)

In January 1994, in response to several high profile crimes committed by sex offenders, the United States Congress adopted the Jacob Wetterling Act, which for the first time imposed a federal requirement for states to adopt a sex offender

registration system.[1] The Act directed the Attorney General to create a set of standards for states to use that required offenders who had committed a crime against a victim who was a minor or a sexually violent offense to register their address with law enforcement for a period of 10 years to life, depending on the offense. The act did not require notification to the public of the address, only registration by the offender.

Sex offender registration statutes quickly proliferated, and, spurred on by Federal legislation in the area, began to include a notification requirement.[2] Kentucky adopted the Sex Offender Registration Act (SORA) in 1994.[3] SORA was originally a registration statute, which did not require notification and did not impose any obligation other than a duty to inform authorities if a registrant changed his or her address. This statute was modified in 1998 and again in 2000, to include notification requirements, as well as the creation of a web site where the information

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[1] Pub.L. 103-322, § 170101 (103rd Congress, 1994).

[2] In 1996, Congress adopted "Megan's Law", which amended the Wetterling Act to require a state to "release relevant information that is necessary to protect the public concerning a specific person required to register under this section . . .." Pub.L. 104-145 § 2 (104th Congress, 1996). Later that same year Congress adopted the "Pam Lynchner Sexual Offender Tracking and Identification Act", Pub.L. 104-236 (104th Congress, 1996), which established a federal sexual offender database and further expanded notification requirements. In 1997, Congress further expanded notification and registration requirements and created a National Sex Offender registry as part of the appropriations bill for the Departments of Commerce, Justice, and State. Pub.L. 105-119 (105th Congress, 1997).

[3] 1994 Ky.Acts Ch. 392.

concerning registered sex offenders could be accessed by the public.[4]

At no point in the process of adopting or modifying SORA has the Kentucky General Assembly asserted a non-punitive purpose. Indeed, as the act has been amended as described below, the General Assembly has frequently acknowledged the punitive nature of sexual offender registration. *See e.g.* 2017 Ky.Acts Ch. 158 ("AN ACT related to crimes and punishments"); 2009 Ky.Acts Ch. 100 ("AN ACT related to crimes and punishments"); 2006 Ky.Acts Ch. 182 ("AN ACT relating to sex offenses and the punishment thereof").

In 2002, Kentucky's SORA survived its first constitutional challenge in *Hyatt v. Commonwealth*, 72 S.W.3d 566 (Ky. 2002). In *Hyatt*, the 1998 and 2000 laws were challenged on a number of grounds, including that the SORA violated ex post facto provisions, the registrant's right to privacy, double jeopardy, and separation of powers. The Kentucky Supreme Court affirmed as to all these grounds, finding that because registration and notification provided "the overwhelming public policy objective of protecting the public", it was "a reasonable and proper means for achieving its purpose and completely consistent with the exercise of the police power of the Commonwealth to protect the safety and general welfare of the public."[5]

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[4] 1998 Ky.Acts Ch. 606, §§ 140-154; 2000 Ky.Acts Ch. 401, §§ 15-30. Of note, the 1998 Act created a system for evaluating sex offenders for risk for the purpose of determining the length and extent of registration. However, the 2000 Act abandoned that approach, and made registration and notification completely dependent upon the offense, not the individual risk level of the offender.

[5] *Id.*, at 572-573.

The next year, in *Smith v. Doe*, 538 U.S. 84 (2003), this Court rejected an ex post facto challenge to the Alaska Sex Offender Registry by finding that the goals of the act were civil and non-punitive, and nothing about the enactment of a civil registration and notification scheme could be deemed sufficiently punitive to overcome the legislature's non-punitive intent. *Id.* Both the Kentucky and Alaska statutes that were challenged required only that offenders maintain a current address with authorities, that they respond periodically to requests to confirm that they are at the same address, and that certain non-confidential information be placed on an internet web site.

Since that time, Kentucky's SORA has been modified more than a half dozen times, in each case adding restrictions on the permitted activities of registered sex offenders. Under the current version of Kentucky's SORA, a registered sex offender is subject to the following requirements (in order of adoption):

- An obligation to report to a probation officer every two (2) years to re-register and provide a new photograph at the registrant's expense.[6]
- An obligation to report a change of address whenever the registrant is living anywhere for a period of fourteen (14) consecutive days, or more than thirty (30) days in a single calendar year.[7]

[6] KRS 17.510(4) (added in 2006 Ky.Acts Ch. 182, § 6).

[7] KRS 17.510(7) (also added in 2006 Ky.Acts. Ch. 182 § 6).

- A prohibition on residing within 1000 feet of a school, daycare, or publicly owned playground.[8]
- A prohibition for being on the property of a school, day care, or publicly owned playground, without the prior written permission of the facility, the school principal, or the local legislative body which controls or operates the property.[9]
- A prohibition on photographing or filming any minor without the express written consent of the parent or guardian.[10]
- An obligation to report and provide a travel itinerary no later than twenty-one (21) days before a registrant wishes to leave the country, as well as to

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[8] KRS 17.545 (1) (added in 2006 Ky.Acts Ch. 182, § 3, expanded in 2009 Ky.Acts Ch. 39, § 2, and again in 2017 Ky.Acts Ch 76, § 1). This statute was clearly intended to be retroactive, requiring individuals who were living within 1000 feet of a school or daycare to move within 90 days of its effective date. KRS 17.545(6). In *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009), the Kentucky Supreme Court concluded that while KRS 17.545 was not intended to be punitive, it was clearly punitive in effect. In reaching that determination, the Court found that residency restrictions are a traditional punishment, with no rational connection to a non-punitive purpose, especially in light of the fact that the burden is imposed without regard to risk. *Id.*, pp. 444-447. On this basis, the statute has not been applied retroactively, and therefore does not apply to Mr. Jeffries. That said, the punitive intent of the General Assembly is supported by the fact that even after the punitive nature of this provision was clearly established, the General Assembly only expanded its reach. Today, an offender who committed his or her offense after 2006 may be made to leave their ancestral home if a school, daycare or playground is opened within 1000 feet of it.

[9] KRS 17.545 (2) (also added in 2006 Ky.Acts Ch. 182, § 3, expanded in 2009 Ky.Acts Ch. 39, § 2, and again in 2017 Ky.Acts Ch 76, § 1).

[10] KRS 17.146(2) (added in 2013 Ky.Acts Ch. 41, § 1)

report again within five (5) days of return to the United States.[11]

- A prohibition on living in a home with a child under the age of 18, where the underlying offense is a crime against a minor.[12]

In addition, Kentucky's SORA contains very restrictive measures concerning the use of the internet, including a prohibition on using any site accessible by children under 18. However, those provisions were struck down while this action was pending, and have not been an issue herein.[13]

Throughout the evolution of the SORA, challenges have been made to its provisions. With the exception of the residency requirements and internet access, those challenges have been uniformly unsuccessful. The opinions rejecting these challenges consistently built upon *Hyatt* and subsequent cases, presuming that the registration statute was intended to be non-punitive, and evaluating each individual change to the statute to determine whether it, standing alone, was a punitive provision. *See, e.g., Bray v. Commonwealth*, 203 S.W.3d 160 (Ky.Ct.App. 2006)(Inclusion of internet registry does not violate ex post facto provisions, citing *Hyatt*); *Buck v. Commonwealth*, 308 S.W.3d 661 (Ky. 2010)(2006 Amendments did not render SORA punitive, citing *Hyatt*); *France v. Commonwealth*, 320 S.W.3d 60 (Ky. 2010)(SORA's enhanced penalty provisions do not violate ex post facto principles,

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[11] KRS 17.510(10)(e) (added in 2018 Ky. Acts Ch. 121, § 2).

[12] KRS 17.545(4) (added in 2018 Ky.Acts Ch 181, § 1).

[13] *See Doe v. Comm. ex rel Tilley*, 3:15-cv-00014-GFVT (April 6, 2018, E.D.Ky.).

citing *Hyatt*); *Moffitt v. Commonwealth*, 360 S.W.3d 247 (Ky. App. 2012)(rejecting substantive due process challenge to inclusion of kidnapping in registry statute); *Phillips v. Commonwealth*, 382 S.W.3d 52 (Ky.Ct.App. 2012)(retroactive elimination of requirement that sex offender registration be tied to a risk assessment did not violate ex post facto principles, citing *Hyatt* and *Bray*); *Stage v. Commonwealth*, 460 S.W.3d 921 (Ky.Ct.App. 2014)(Legislature's express description of statute as relating to punishment did not render statute punitive, citing *Hyatt, Bray* and *Buck*).

II. History of the Current Case.

Mr. Jeffries was 15 years of age in 1995 when he was accused of murder and attempted rape for his alleged involvement in the death of a 77 year old woman, offenses for which he was eventually convicted and sentenced to 35 years. Notably, Mr. Jeffries has never been accused of any offense against a child, nor has he ever been assessed to present a risk to children or anybody else. As noted above, at the time of the offense, and at the time of judgment, Kentucky law did not require a "youthful offender" like Mr. Jeffries to register as a sex offender.

Mr. Jeffries was incarcerated from the time of the offense in 1995 until 2017. At that time, he was released from custody more than ten years ahead of schedule, due to his good behavior in prison. Upon his release, Mr. Jeffries was advised upon his release that he would now have to register as a sex offender for 20 years, and was given a list of conditions he was required to comply with as a registered sex offender.

Mr. Jeffries married while in prison, and moved in with his wife and her two children in Whitley City, Kentucky, upon his release. Whitley City is a small town

with a population of around 1170, and so virtually all community events occur on fields or in buildings that sit on school property. As noted above, Mr. Jeffries was prohibited by Kentucky law from being on the grounds of a school or daycare facility without the written permission of the principal or school board.[14] Moreover, as a registrant step-parent he was prohibited from taking pictures of any child without the written permission of the child's parents.[15] Jeffries and his wife believed that informing anybody of his status as a registered sex offender would have negative consequences for Ms. Jeffries' teenage children. As a result, though Mr. Jeffries wished to act as a stepparent to those children, he was severely restricted in terms of where he could be, or what he could do, due to his status as a registered sex offender.

In light of these challenges, as well as other challenges Mr. Jeffries was experiencing finding and maintaining employment, Mr. Jeffries filed the instant action, seeking an injunctive order either removing him from the sex offender registry altogether, or enjoining the application of several of the restrictions to him. Mr. Jeffries made two claims that are pertinent to this action. Jeffries' first claim was that the Kentucky Sex Offender registry statutes had been repeatedly amended since the last major review of the law in 2002, and the changes that had been made had both reflected a punitive intention, and transformed the status of sex offender registration into a "probation-like" system of restrictions and conditions. He further

[14]KRS 17.545(2)

[15]KRS 17.546(3).

argued that in the nearly 20 years since the registry was first placed on the internet, the internet had taken on a central importance in our lives that made the use of internet notification had much more deleterious effects on his life than would have been the case in the early 2000's. Finally, Jeffries argued that the punitive elements of the law were exacerbated by the fact that Jeffries was a juvenile at the time of the crime, and therefore had no prior work history or other history to draw upon when released from prison.

Jeffries' second claim was that the law violated substantive due process provisions because in addition to imposing significant restrictions on core areas of his life, there was no relationship between the sex offender registration system, and the Government's asserted interest in public safety, especially where registration obligations are imposed without regard to the age of the offender at the time of the offense, or their risk of re-offense. In support of this claim, Jeffries submitted two affidavits from Dr. Elizabeth J. Letourneau, a Professor at the Johns Hopkins Bloomberg School of Public Health and a recognized authority on sex offender registration. Dr. Latourneau's affidavits stated that "strong and empirically rigorous evidence fails to support the effectiveness of sex offender registration and notification (SORN) policies for reducing sexual or nonsexual recidivism." "The available evidence indicates that neither SORN nor residency restrictions protect children or improve public safety."[16] Dr. Letourneau summarized the research in this area as follows:

[16] September 2013 Affidavit of Dr. Elizabeth J. Letourneau, Appendix D, pg. 1.

> . . . of 13 studies evaluating registration and notification effects on adult offenders, 8 studies failed to find any statistically significant association between state registration and notification policies and rates of sexual recidivism. These eight studies were conducted on approximately 79,000 sex offenders from eight states representing each of the principle US geographic regions. Three other studies found evidence of increased recidivism or mixed effects and only two studies identified a consistently positive impact on recidivism, and these two studies evaluated policy effects from states that use sophisticated risk assessment procedures for assigning sex offenders to specific registration tiers. Given the bulk of the evidence, ***registration and notification policies – and particularly policies based largely on the type of offense vs. actual risk – simply do not reduce sexual or nonsexual recidivism***.[17]

These findings were even stronger when registration involved individuals who were juveniles at the time of the offense. In those cases, "strong and empirically rigorous evidence indicates . . . [that] registration of juveniles fails, in any way, to improve community safety."[18] This is in part due to the fact that ". . [s]exual recidivism rates for youth who sexually offend are low [; and s]exual recidivism risk for youth who sexually offend is similar to that of other delinquent youth."[19] Moreover, studies further demonstrated that juvenile SORN statutes "indicated no significant deterrent effect . . . on first time sex crimes."[20] After reviewing the

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[17] *Id.*, at pg. 3.

[18] July 2016 Affidavit of Dr. Elizabeth J. Letourneau, Appendix E, pg. 1.

[19] *Id.*

[20] *Id.* at pg. 3.

substantial scientific evidence that is now available, Dr. Letourneau concluded "juveniles who have sexually offended should not be subject to registration. Long-term registration based on a youth's . . . offense fails to identify high risk youth, fails to reduce sexual or violent recidivism, [and] fails to deter first-time juvenile sex crimes . . .."[21]

On this second claim Jeffries also submitted documentation from the Federal agency responsible for implementing sex offender laws, including the federal mandate of juvenile sexual offender registration, stating their conclusion that "[s]ex offender management policies commonly used with adult sex offenders should not automatically be used with juveniles who commit sexual offenses. Empirical evidence concerning both the effectiveness and potential unintended consequences of policies (such as registration and notification . . .) should be carefully considered before they are applied to juvenile populations."[22] The reason for this is that "[t]he effectiveness of these policies with adult sex offenders remains questionable, and there is even less empirical evidence suggesting that they work with juveniles."[23]

In the trial court, the response filed by the Justice and Public Safety Cabinet (JPSC) did not dispute Jeffries' factual allegations or offer any additional evidence. Rather, the JPSC responded by arguing that Jeffries' position was old news, which

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[21] *Id.* at pg. 4.

[22] United States Department of Justice, "Sex Offender Management Assessment and Planning Initiative" (Office of Justice Programs, 2012), Appendix E, pg. 208.

[23] *Id.*

had already been rejected by the Kentucky state courts in several cases. While Jeffries' reply argued that the cases relied upon by the JSPC were not controlling, the trial court saw "no reason to break with precedent", and found in favor of the JPSC, dismissing the case.[24]

Mr. Jeffries appealed, and the Court of Appeals affirmed in a "to be published" decision.[25] With respect to the ex post facto issue, the Court of Appeals relied upon prior rulings finding the sex offender registration statute to be non-punitive.[26] Noting that it could not find that the General Assembly had "rejected the Supreme Court's three prior holdings and transformed SORA into a punitive law," the Court of Appeals rejected Jeffries argument that the General Assembly had made the punitive purpose of the statute clear through its subsequent amendments.[27] Finally, addressing whether the particular requirements that Jeffries stay off school property and refrain from photographing children without written permission, the court found that each of those provisions individually were "minimally taxing and serve a non-punitive purpose", so as to not run afoul of ex post facto provisions.[28]

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[24] Judgment, attached at Appendix C

[25] *Jeffries v. Justice and Public Safety Cabinet*, 605 S.W.3d 79 (Ky. App. 2019)(Appendix B).

[26] *Id.* at 85.

[27] *Id.*, at 87 (quoting *Stage v. Commonwealth*, 460 S.W.3d 921, 924 (Ky. App. 2014))

[28] *Id.* at 91.

With respect to the substantive due process issue, the Court of Appeals found that "[t]his Court extensively addressed both procedural and due process protections in *Moffitt v. Commonwealth*, 360 S.W.3d 247 (Ky. App. 2012), and held that SORA did not violate these protections in that case. We decline to disturb our holding in that case."[29] This was a troubling response, because the argument in *Moffitt* was solely that kidnapping was not a sex offense and therefore should not result in a registration requirement. *Moffitt* did not address anything having to do with juveniles or the effectiveness of SORA, which were Jeffries' claims.

Mr. Jeffries filed a motion with the Kentucky Supreme Court seeking discretionary review of that decision, which was denied in a summary order.[30] This petition follows.

REASONS FOR GRANTING THE WRIT

Since this Court last addressed this issue in 2003, sex offender registration schemes nationwide have been gradually evolving from a mere requirement that a registrant keep their address current, to a series of significant, probation-like restrictions on travel, movement and conduct. This change has happened gradually, and this gradual change has raised serious questions about how challenges to these amendments should be treated. Most jurisdictions have reviewed amendments

[29] *Id.* at 89.

[30] Appendix A.

individually, just as Kentucky did here, and have found the amendments to be non-punitive. This approach appears consistent with principles of stare decisis, but has enabled what might be considered a "boiling frog" problem,[31] where the gradual pace of change has resulted in the approval of a system that would not have been approved if originally proposed in its current form. This problem is evident here, as Mr. Jeffries is facing what is essentially a decades long period of probation, which will result in a felony offense if he violates any of its conditions.

Meanwhile, scientific study of sex offender registration policies has failed to bear out the asserted policy justifications for implementing them. Especially when applied to juvenile offenders like Mr. Jeffries, scientific studies have established that the only thing that sex offender registration statutes do effectively is punish offenders. And, whatever society felt these policies were doing when they were a relative novelty, opinion has coalesced that the requirement of registration is punitive. Commentators from all political perspectives now agree that sex offender registration is punishment.

In short, sex offender registration statutes now present two significant legal questions, which have been thoroughly litigated in the lower courts and are ripe for resolution by this Court. First, this Court should accept review to resolve how a court

[31] The term is based on a fable which posited that if a frog were thrown into a pot of boiling water it would immediately jump to safety, but if the frog were thrown into a pot of tepid water and the temperature very gradually raised, the pot would eventually boil and the frog would not notice the danger until it was too late.

should review an ex post facto challenge to a statutory scheme, where an earlier version of that scheme had been approved as non-punitive. Second, this Court should accept review to determine whether sex offender registration can continue be characterized as a civil, non-punitive scheme when it is imposed on a juvenile. Resolving the second question will require this Court to resolve what impact, if any, the failure of scientific studies to bear out any of the asserted non-punitive justifications would have on the analysis

I. Courts are Split on How to Evaluate Ex Post Facto Claims Related to Sexual Offender Registration.

As of 2019, approximately one in every 500 people was on a sex offender registry.[32] These registrants find themselves in an environment of constant change, with the rules they are required to live under generally growing more restrictive. Kentucky is certainly no exception – since its original adoption in 1994, the Kentucky has amended the SORA ten (10) times, or once every other regular session of the Kentucky General Assembly.[33] In many cases, as described above at pp. 6-8, they made changes that reduced the quality of life for registrants, by either restricting behavior or movement, or imposing additional affirmative obligations on registrants. Many of these changes have been driven by Federal statutes, most notably the Adam Walsh Act (Pub.L. 109-248), which established a national standard for sexual

[32] See Andrew J. Harris et. al., *States' Sorna Implementation Journeys: Lessons Learned and Policy Implications*, 23 New Crim. L. Rev. 315, 317 (2020)(Finding that there were approximately 900,000 registrants in 2019).

[33] Until 2000, the Kentucky General Assembly only met every other year.

offender registry laws. Kentucky's experience is not unique. Since the passage of the Adam Walsh Act, the National Conference of State Legislatures reports there have been more than 1000 bills filed in state legislatures attempting to amend state sexual offender registry statutes.[34]

Since sexual offender registration statutes are generally applied to all sex offenders, regardless of the date of offense, the continually changing legislation has created challenges for courts. This has resulted in a split of authority, with ten states and the Sixth Circuit finding that modern sexual offender registration schemes are punitive.[35] On the other side of the ledger is the majority of remaining jurisdictions,

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[34] https://www.ncsl.org/research/civil-and-criminal-justice/the-complexities-of-sex-offender-registries.aspx (Last accessed 1/11/2021).

[35] *See Commonwealth v. Muniz,* 164 A.3d 1189 (Pa. 2017), *cert. denied sub nom. Pennsylvania v. Muniz,* 138 S. Ct. 925 (2018)(retroactive application of states SORA violated state and federal ex post facto provisions); *Does v. Snyder,* 834 F.3d 696 (6th Cir. 2016) *cert. denied sub nom. Snyder v. John Does #1-5*, 138 S. Ct. 55 (2017)(finding that Michigan's sex offender registration act violated ex post facto clause of United States Constitution); *Doe v. State,* 167 N.H. 382, 111 A.3d 1077 (2015) (finding that effects of New Hampshire sex offender registration provisions violated ex post facto provisions of the New Hampshire Constitution); *Starkey v. Okla. Dept. of Corrections*, 305 P.3d 1004 (Okla. 2013) (finding that retroactive application of Oklahoma sex offender registration statute violated the Oklahoma Constitution); *Doe v. Dept. of Public Safety and Correctional Services*, 62 A.3d 123 (Md. 2013)(finding that retroactive application of Maryland SORA violated state ex post facto laws); *State v. Letalien*, 985 A.2d 4 (Me. 2009) (finding that retroactive application of Maine registration statute violated both Maine and United States Constitutions' Ex Post Facto Clauses); *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009)(finding retroactive imposition of Indiana SORA violated state ex post facto requirements); *Doe v. State*, 189 P.3d 999 (2008)(considering same statute at issue in *Smith*, and finding it violated state ex post facto requirements); Jane Ramage *Reframing the Punishment*

who have analyzed their sex offender statutes in exactly the same way the Kentucky courts did in this case, by ignoring any aspect of the law that had been previously addressed in any way, and then evaluating each change individually to determine if it is individually punitive.[36]

Perhaps the best example of the tension between these two approaches is found in two Federal cases challenging registration requirements. In both *United States v. Wass*, 7:18-CR-45-BO, 2018 WL 3341180 (E.D.N.C. July 6, 2018), *rev'd and remanded*, 954 F.3d 184 (4th Cir. 2020); and *Millard v. Rankin*, 265 F. Supp. 3d 1211 (D. Colo. 2017), *rev'd in part, vacated in part sub nom. Millard v. Camper*, 971 F.3d 1174 (10th Cir. 2020), Federal district courts found sex offender registration requirements to be punitive upon reviewing all the circumstances, only to have that determination rejected by the circuit court on appeal relying almost exclusively on *Smith v. Doe* and related precedent. *Millard*, in particular, is noteworthy for the extensive, evidence based analysis undertaken by the District Court, and the rather casual way that analysis was dispensed with by the 10th Circuit Court of Appeals.[37]

The split in circuits and states can largely be traced to this Court's reliance in

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Test Through Modern Sex Offender Legislation, 88 Fordham L. Rev. 1099 (2019)("Ramage")(discussing split)

[36] See Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions, 63 A.L.R.6th 351, § 3 (2011, 2020 Supp.)(collecting cases).

[37] *See Millard v. Camper*, 971 F.3d 1174, 1184 (10th Cir. 2020)(repeatedly "reject[ing] the district court's conclusions because they run counter to governing precedent", without regard to the district court's substantial factual findings).

Smith v. Doe on factors adopted in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), to determine whether sex offender registration statutes are punitive. In *Mendoza-Martinez*, this Court identified the following factors to be considered in determining whether a statute is punitive:

> (1) "[w]hether the sanction involves an affirmative disability or restraint";
>
> (2) "whether it has historically been regarded as a punishment";
>
> (3) "whether it comes into play only on a finding of scienter";
>
> (4) "whether its operation will promote the traditional aims of punishment—retribution and deterrence";
>
> (5) "whether the behavior to which it applies is already a crime";
>
> (6) "whether an alternative purpose to which it may rationally be connected is assignable for it"; and
>
> (7) "whether it appears excessive in relation to the alternative purpose assigned."

Id. at 168–69. The question *Mendoza-Martinez* was seeking to resolve was not an ex post facto issue, but a double jeopardy issue; however this Court has applied these factors to ex post facto claims, most notably in *Smith v. Doe, supra.* While in *Smith v. Doe* this Court noted that this test is "neither exhaustive nor dispositive," *id.* at 97, it is very difficult to find a decision which deviates from these factors in the lower courts.

These factors have several weaknesses when it comes to the evaluating evolving sex offender registration restrictions. First, most courts have interpreted

the "sanction" to refer to individual collateral consequences attached to sexual offender registration, rather than referring to the sexual offender registration system as a whole. So, in this case, the Court evaluated the challenges to the limits on presence on school grounds and limits on photography separately, finding each was not severe enough to constitute punishment. By contrast, states which have found sex offender registration schemes unconstitutional have reviewed the operation of the system as a whole. In this case, that would have included a requirement to report to law enforcement regularly, limitations on how long Mr. Jeffries could travel, and a requirement to report where Mr. Jeffries was travelling when he was travelling, as well as the prohibitions on being on community and public property, and prohibitions on photography evaluated by the Kentucky Courts. Mr. Jeffries raised those claims throughout his case, but the Kentucky courts found that prior authority had rejected them.

Second, the multifactor approach to evaluating whether the statute is punitive, coupled with the courts' tendency to regard legal questions as settled once decided, has impaired the Court's ability to reevaluate the statute in accordance with contemporary circumstances. For many, placement on the sex offender registry is a worse outcome than time in prison.[38] This is due to an evolution both in the central role the internet plays, but also a broader awareness of the sex offender registry and

[38] Rachel Marshall, I'm a Public Defender. My Clients Would Rather Go to Jail than Register as Sex Offenders https://www.vox.com/2016/7/5/12059448/sex-offender-registry (last accessed 1/10/2021).

social ostracism that placement on the registry brings. Dr. Letourneau's affidavit also supports this conclusion, noting that the effect of registration statutes was to substantially decrease guilty pleas to sex crimes.[39] More striking, Dr. Letourneau's team also found that guilty verdicts after trial, also declined after registration and internet notification became the law.[40] Both findings strongly suggest that the question of whether registration is punitive has already been answered by society at large, who clearly believe that it is.

For example, in rejecting the argument that placement on the internet registry was akin to public shaming punishments from the past, this Court said that such punishments were different because "[t]hey either held the person up before his fellow citizens for face-to-face shaming or expelled him from the community." *Smith v. Doe, supra* at 98. However, as time has gone on that distinction has not worn well. Increasingly being a registered sex offender is a vehicle for constant shame and ridicule, not only of the registrant, but of the registrant's family as well.[41] Moreover,

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[39] Appendix D, pg. 3.

[40] *Id.*

[41] Most parents, especially those who live in smaller communities, would sympathize with Ms. Jeffries' desire to refrain from informing school officials of Mr. Jeffries' status as a registrant. Kentucky does not require that the school approve of Mr. Jeffries' presence on school grounds, nor does it offer any restriction on what school officials do with the information once they have it. The probability that this information would be widely disseminated by school employees is therefore significant, as was the likelihood that her children would be ridiculed once the information became widely known.

in an era of "ban the box" and other efforts to allow the formerly incarcerated to rebuild their lives, placement on the sex offender registry for decades is especially damaging, as it prevents the registrant from burying his prior offenses "in the graveyard of the forgotten past," which is increasingly an objective of both the adult and juvenile justice systems.[42]

In short, the iterative approach taken by the lower courts in this case appears to have blinded them to the growing punitiveness of the Kentucky SORA. However, that is not to say that the reasoning is completely indefensible. The nature of stare decisis generally compels a court to treat previously resolved issues as settled law, and this approach satisfies that obligation. That is another reason why this Court must settle this question. This issue has been percolating through the courts for nearly two decades,[43] and it is unlikely that courts will ever coalesce around one position or another because each is, in its own way, correct. For that reason, this Court must take review if the question is to ever be resolved.

II. The Non-Punitive Rationale Offered for Sex Offender Registration Systems Can No Longer Be Sustained, Especially in Juvenile Cases.

Just as this Court has left open the question of how a state must analyze a statutory scheme that has been modified since a finding that it was non-punitive, it also has left open the question of what to do when the non-punitive basis for the

[42] *Application of Gault*, 387 U.S. 1, 24 (1967).

[43] The ALR annotation on ex post facto cases includes over 600 citations, for example. See 63 A.L.R.6th 351 (2011, 2020 Supp.), *supra* note 36.

statutory scheme cannot be defended, either because it does not apply to the individual, or because the rationale itself no longer holds water. This question has particular salience in this case, because of Mr. Jeffries' status as a juvenile at the time of his offense, and the plain fact that Kentucky has simply transplanted a criminal justice policy intended for adults onto youthful offenders like Jeffries.

Dr. Letourneau's affidavits clearly and specifically describe the state of scientific research into the efficacy of the sex offender registry, both for adults, and for juveniles. To summarize, Dr. Letourneau reviewed the history of research into the efficacy of the sex offender registry. With respect to adult offenders, Dr. Letourneau described a variety of studies that consistently found that implementation of a sex offender registry scheme had no statistically significant positive effect on recidivism.[44] Likewise, with respect to juveniles, Dr. Letourneau reviewed the research into the efficacy of sex offender registration, and found no positive effect on public safety.[45] Dr. Letourneau was not merely expressing an opinion – the lack of a public safety benefit, especially for juvenile offenders, is a fact that even the federal agency responsible for implementing federal sex offender registry laws has acknowledged.[46]

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[44] Appendix D.

[45] Appendix E.

[46] Appendix F.

These studies, analyzed in the context of Mr. Jeffries' case, bring home the simple fact that Kentucky's SORA statutes are merely exporting an adult policy to a juvenile population, without any accommodation to the differences between adults and juveniles. This Court has found that due to the "settled understanding that the differentiating characteristics of youth are universal", for legal purposes "children cannot be viewed simply as miniature adults".[47] Among the differences between juveniles and adults that this Court has recognized, are:

- "A lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults."[48]
- "Juveniles are more vulnerable or susceptible to negative influences" and "have less control over their own environment."[49]
- The personality and character traits of juveniles "are more transitory, less fixed," and "not as well formed as that of an adult."[50]

[47] *J.D.B. v. North Carolina*, 564 U.S. 261, 273-74 (U.S. 2011).

[48] *Roper v. Simmons*, 543 U.S. 551, 569, (2005)(quoting *Johnson v. Texas*, 509 U.S. 350, 367 (1993)) (Internal punctuation and citation omitted)

[49] *Id.*

[50] *Id.* at 570.

- Scientific studies reveal that one of the "fundamental differences between juvenile and adult minds" is that "parts of the brain involved in behavior control continue to mature through late adolescence."[51]
- As a result, "juveniles are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character.'"[52]
- As juveniles are still maturing, they "have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment, and there is a greater possibility . . . that a minor's character deficiencies will be reformed."[53]

In light of these findings, this Court has found that "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."[54]

The fact that Jeffries was 15 at the time of the offense made his placement on the sex offender registry upon his release from prison even more punitive to him than it would be had he committed his offense as an adult. As the Ohio Supreme Court found:

> Before a juvenile can even begin his adult life, before he has a chance to live on his own, the world will know of his offense. He will never have a chance to establish a good

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[51] *Graham v. Florida*, 560 U.S. 48, 68 (2010), *see also Miller v. Alabama,* 567 U.S. 460, 472 n.5 (2012) ("It is increasingly clear that adolescent brains are not yet fully mature in regions and systems related to higher-order executive functions such as impulse control, planning ahead, and risk avoidance.").

[52] *Graham*, 560 U.S. at 68 (quoting *Roper*, 543 U.S. at 570).

[53] *Roper*, 543 U.S. at 570.

[54] *Graham,* 560 U.S. at 76.

> character in the community. He will be hampered in his education, in his relationships, and in his work life. His potential will be squelched before it has a chance to show itself.

In re C.P., 967 N.E.2d 729, 741 (Ohio 2012). That cruelty is exacerbated by the fact that it is imposed upon a juvenile more than 20 years after his crime, without any regard to his rehabilitation or risk to reoffend.

These issues were raised to the Kentucky courts but received no analysis by any of the Courts it was presented to. However, other jurisdictions have found that application of the sex offender registry to a juvenile offender is unconstitutional, either as a violation of substantive due process principles, or as cruel punishment.[55] As such, a split of authority clearly exists on this issue.[56]

This issue is important because of the 900,000 total registrants, approximately 200,000 are believed to be registrants due to crimes they committed as children.[57] In almost every case, this is because of a state law that merely extends adult registration

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[55] *See, e.g., In the Interest of C.K.*, 192 A.3d 917 (N.J. 2018)(finding imposition of registration requirement on adjudicated juveniles violated substantive due process guarantees); *In the Interest of J.B.*, 107 A.3d 1 (Pa. 2014)(finding that the due process rights of adjudicated juveniles violated substantive due process requirements); *In re C.P.*, *supra,* (finding that requiring adjudicated juveniles to register for life violated due process requirements and was cruel and unusual punishment).

[56] *See State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register with Authorities as Applied to Juvenile Offenders—Constitutional Issues*, 37 A.L.R.6th 55 (2008, 2020 Supp.)(collecting cases).

[57] https://jlc.org/issues/juvenile-sex-offender-registry-sorna#:~:text=Approximately%20200%2C000%20people%20in%2038,young%20as%20eight%20years%20old. (last accessed 1/10/2021).

requirements to children indiscriminately, without regard to the age of the child or the risk they pose. Many lower courts have responded to arguments relating to juvenile offenders as the Kentucky Court did here, by substantially ignoring the arguments and addressing the issue purely on the more familiar terrain previously addressed by adult litigants. However, that has not stopped this Court from taking up such issues in the past, *see J.D.B., supra*, and it should not stop it from doing so here.

III. This Case is an Appropriate Vehicle for Reviewing These Issues.

To date, hundreds if not thousands of cases have been litigated attempting to resolve one or both of these claims, with only *Smith v. Doe* to guide them. More specific guidance is sorely needed. As noted above, few issues will touch so many lives as the ones presented by this case. The proliferation of restrictions imposed on registered sex offenders, coupled with the gradual evolution towards treating a registered sex offender as inherently shameful in a way that other felons are not treated, has caused commentators from all political stripes to call for the abolition of sex offender registration statutes. Legal scholars are coming to somewhat the same conclusion, calling for an end to the increasingly untenable argument that sexual offender registration is merely a civil, remedial statute, and not punishment.[58]

[58] *See, e.g.,* Ramage, *supra* note 35; Ryan W. Porte, *Sex Offender Regulations and the Rule of Law: When Civil Regulatory Schemes Circumvent the Constitution*, 45 Hastings Const. L.Q. 715 (2018).

Similarly, scholars and commentators alike are also calling for significant restrictions on the application of sex offender registration statutes to juvenile offenders.[59]

As such, this Court will eventually have to review these issues, and if it is to do so, this case is an ideal vehicle because there are no factual disputes in this case, and the lower court decided the Constitutional claims presented herein as a matter of law. Should one party or the other attempt to insert a factual disagreement at this stage, the procedural posture of this case – decided essentially as a motion to dismiss – allows this Court to avoid that attempt by simply remanding the case back to the Kentucky courts at the end, if relief is warranted. As such, this Court can determine these important questions without being dragged into a fact specific dispute.

CONCLUSION

Ask almost any non-attorney if Billy Jeffries was being punished by being placed on the sex offender registry, and almost all would agree he was. Courts cannot continue to describe something so obviously unpleasant as non-punitive, without undermining confidence in the Judiciary. This Court should accept review to address the important questions presented herein, and eventually, to reverse the judgment below.

WHEREFORE, for the reasons set forth above, Petitioner Billy S. Jeffries

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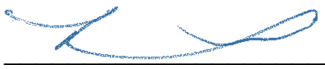
[59] See Spencer Klein, *The New Unconstitutionality of Juvenile Sex Offender Registration: Suspending the Presumption of Constitutionality for Laws That Burden Juvenile Offenders*, 115 Mich. L. Rev. 1365 (2017); Ashley R. Brost & Annick-Marie S. Jordan, P*unishment That Does Not Fit the Crime: The Unconstitutional Practice of Placing Youth on Sex Offender Registries*, 62 S.D.L. Rev. 806 (2017).

respectfully requests that this Petition be granted, and the judgment herein reversed.

Respectfully submitted,



Timothy G. Arnold, Director
Post-Trial Division
Department of Public Advocacy
5 Mill Creek Park
Frankfort, KY 40601
(502) 564-8006
(502) 695-6769 (fax)
tim.arnold@ky.gov

January 11, 2021

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2020

BILLY S. JEFFRIES, *Petitioner*

v.

KENTUCKY JUSTICE AND PUBLIC SAFETY CABINET and COMMONWEALTH OF KENTUCKY, *Respondents*

APPENDIX

Kentucky Supreme Court Opinion (8/13/20) ..... Appendix A

Court of Appeals Opinion (8/23/19) ..... Appendix B

Franklin Circuit Court Order & Opinion (8/5/18)… ..... Appendix C

Affidavit of Dr. Elizabeth J. Letourneau (September 2013)..... Appendix D

Affidavit of Dr. Elizabeth J. Letourneau (July 2016) ..... Appendix E

U.S. Department of Justice, "Sex Offender Management Assessment and Planning Initiative" (Office of Justice Programs, 2012) ..... Appendix F

Kentucky Statutes..... Appendix G

APPENDIX A

AUG 17 2020

Supreme Court of Kentucky

2019-SC-0577-D
(2018-CA-1322)

BILLY S. JEFFRIES — MOVANT

V.

FRANKLIN CIRCUIT COURT
2017-CI-01302

JUSTICE AND PUBLIC SAFETY CABINET, ET AL. — RESPONDENTS

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED: August 13, 2020.

CHIEF JUSTICE

APPENDIX B

605 S.W.3d 79
Court of Appeals of Kentucky.

Billy S. JEFFRIES, Appellant
v.
JUSTICE AND PUBLIC SAFETY CABINET and Commonwealth of Kentucky, Appellees

NO. 2018-CA-001322-MR
|
AUGUST 23, 2019; 10:00 A.M.
|
Discretionary Review Denied August 13, 2020

Synopsis

Background: Sex offender who was 15 years old at time of offense brought action against Justice and Public Safety Cabinet challenging his need to register under Sex Offender Registration Act (SORA) following his release. The Circuit Court, 48th Circuit, Franklin County, Thomas D. Wingate, J., entered judgment for Cabinet. Offender appealed.

Holdings: The Court of Appeals, J. Lambert, J., held that:

retroactive application of SORA did not violate prohibition against ex post facto laws;

SORA requirements did not violate offender's due process rights;

SORA requirements was not cruel and unusual punishment; and

SORA provisions prohibiting offender from entering school grounds and from photographing minors were not unconstitutional.

Affirmed.

***80** APPEAL FROM FRANKLIN CIRCUIT COURT, HONORABLE THOMAS D. WINGATE, JUDGE, ACTION NO. 17-CI-01302

Attorneys and Law Firms

BRIEFS FOR APPELLANT: Timothy G. Arnold, Frankfort, Kentucky.

BRIEF FOR APPELLEES: Graham Gray, Aaron Ann Cole, Frankfort, Kentucky.

BEFORE: GOODWINE, LAMBERT, AND MAZE, JUDGES.

OPINION

LAMBERT, JUDGE:

Billy S. Jeffries has appealed from the order of the Franklin Circuit Court denying his motion for summary judgment challenging his need to register as a sex offender pursuant to Kentucky's Sex Offender Registration Act (SORA), Kentucky Revised Statutes (KRS) 17.500 *et. seq.* Finding no error, we affirm.

The facts underlying this appeal were the subject of a joint stipulation, which we shall rely on in this opinion. In June 1997, Jeffries was convicted in Shelby Circuit Court (95-CR-00049) for the murder and attempted first-degree rape of a 77-year-old woman. Jeffries was 15 years old when the crimes took place. He was sentenced to 35 years in prison, and he served out his sentence on May 1, 2017. On April 25, ***81** 2017, Jeffries registered as a sex offender by completing a Kentucky Sex Offender Registration Form, which listed him as a 20-year registrant. Pursuant to KRS 17.580, his registration information was posted on the public website of the Kentucky State Police. This public Sex Offender Registry website permits members of the public to search for registrants by name, address, or location, and they may ask to be informed if a registrant changes residence. Jeffries currently lives in McCreary County, Kentucky. Several documents were jointly filed, including the final judgment in Jeffries' criminal case, his Sex Offender Registration Form, his current web flyer posted on the Kentucky State Police public website, his discharge notice from the Department of Corrections, and the Sex Offender Registrant Responsibilities form he signed.

On December 18, 2017, Jeffries filed a complaint with the Franklin Circuit Court seeking declaratory and injunctive relief related to his need to register as a sex offender pursuant to SORA. As defendants, he named the Justice and

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Public Safety Cabinet (the agency responsible for developing and implementing the system) and the Commonwealth of Kentucky (the entity initiating prosecutions for violations of SORA) (collectively, the Cabinet). Jeffries stated that upon his release from custody in May 2017, he moved in with his wife and her two children in McCreary County. Also upon his release, he was told that he had to register as a sex offender for 20 years and comply with a list of conditions. These conditions included the prohibition from being on school or daycare grounds without written permission of the principal or school board pursuant to KRS 17.545(2), and he claimed that having to notify the officials where his step-children attended school would result in community members being informed of his status as a sex offender. This, he claimed, would negatively affect the children's education. He was unable to participate in any school events involving the children or to assist in parental duties, including picking the children up from school. Jeffries also alleged that he was prohibited from taking photographs of or filming his step-children without his wife's written permission pursuant to KRS 17.546(2). Finally, he stated that his status as a sex offender registrant had made it difficult to find and maintain employment, which was significantly impairing his ability to provide for his family.

For his claims for relief, Jeffries contended that as a youthful offender, SORA's retroactive application to him violated both the Kentucky and United States Constitutions as it was an *ex post facto* law, was cruel and unusual punishment, and because the registration requirement was not rationally related to a legitimate governmental interest. He requested that SORA be declared unconstitutional as applied to him. In its answer, the Cabinet sought dismissal of Jeffries' complaint.

In March 2018, the parties entered into stipulated facts as set forth above, and a briefing schedule was set. Jeffries filed a motion for summary judgment or to set the matter for a trial, to which the Cabinet responded. On August 6, 2018, the circuit court entered an opinion and order denying Jeffries' motion for summary judgment and entering a judgment in favor of the Cabinet, thereby dismissing Jeffries' complaint. This appeal now follows.

Our standard of review is set forth in *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996), as follows:

> The standard of review on appeal of a summary judgment is whether the trial court correctly found that there were no genuine issues as to any material fact and that the moving party was entitled to judgment as a matter of law. ***82** Kentucky Rules of Civil Procedure (CR) 56.03. There is no requirement that the appellate court defer to the trial court since factual findings are not at issue. *Goldsmith v. Allied Building Components, Inc.*, Ky., 833 S.W.2d 378, 381 (1992). "The record must be viewed in a light most favorable to the party opposing the motion for summary judgment and all doubts are to be resolved in his favor." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, Ky., 807 S.W.2d 476, 480 (1991). Summary "judgment is only proper where the movant shows that the adverse party could not prevail under any circumstances." *Steelvest*, 807 S.W.2d at 480, *citing Paintsville Hospital Co. v. Rose*, Ky., 683 S.W.2d 255 (1985). Consequently, summary judgment must be granted "[o]nly when it appears impossible for the nonmoving party to produce evidence at trial warranting a judgment in his favor ..." *Huddleston v. Hughes*, Ky. App., 843 S.W.2d 901, 903 (1992), *citing Steelvest, supra* (citations omitted).

"Because summary judgment involves only legal questions and the existence of any disputed material issues of fact, an appellate court need not defer to the trial court's decision and will review the issue *de novo*." *Lewis v. B&R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001) (footnote omitted).

Here, the parties have stipulated to the facts; therefore, the only issues before us involve questions of statutory interpretation, which constitute questions of law:

> This appeal involves the interpretation of a statute. Statutory construction is an issue of law and, accordingly, we review the circuit court's statutory construction *de novo*. *See Cumberland Valley Contractors, Inc. v. Bell County Coal Corp.*, 238 S.W.3d 644, 647 (Ky. 2007).
>
> > The primary purpose of judicial construction is to carry out the intent of the legislature. In construing a statute, the courts must consider the intended purpose of the statute—the reason and spirit of the statute—and the mischief intended to be remedied. The courts should reject a construction that is unreasonable and absurd, in preference for one that is reasonable, rational, sensible and intelligent.
>
> *Commonwealth v. Kash*, 967 S.W.2d 37, 43-44 (Ky. App. 1997) (internal quotation marks and citations omitted). In construing a statute, a court should "use the plain meaning of the words used in the statute." *Monumental Life Insurance Company v. Department of Revenue*, 294 S.W.3d 10, 19 (Ky. App. 2008).

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Commonwealth v. Davis, 400 S.W.3d 286, 287-88 (Ky. App. 2013).

The version of KRS 17.510 in effect when Jeffries registered as a sex offender provided as follows:[1]

(1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.

(2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.

***83** (3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

(4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, DNA sample, and photograph. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided a DNA sample as of July 1, 2009, shall provide a DNA sample to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.

(5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprint card, and photograph, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.

(b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.

(c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.

(6) Any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the ***84** registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.

(7) If a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the

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United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

(8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.

(9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.

(10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.

(b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.

2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.

(c) If the electronic mail address or any instant messaging, chat, or other Internet communication name identities of any registrant changes, or if the registrant creates or uses any new Internet communication name identities, the registrant shall register the change or new identity, on or before the date of the change or use or creation of the new identity, with the appropriate local probation and parole office in the county in which he or she resides.

***85** (d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.

2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection or learns of the registrant's new or changed electronic mail address or instant messaging, chat, or other Internet communication name identities under paragraph (c) of this subsection, that office shall forward this information as set forth under subsection (5) of this section.

(11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(13) (a) The cabinet shall verify the addresses and the electronic mail address and any instant messaging, chat, or other Internet communication name identities of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3). If the cabinet determines that a person has moved or has created or changed any electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person without providing his or her new address, electronic mail address, or instant messaging, chat, or other Internet communication name identity to the appropriate local probation and parole office or offices as required under subsection (10)(a), (b), and (c) of this section, the cabinet shall notify

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> the appropriate local probation and parole office of the new address or electronic mail address or any instant messaging, chat, or other Internet communication name identities used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.
>
> (b) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:
>
> 1. Shall consider revocation of the parole, probation, postincarceration supervision, or conditional discharge of any person released under its authority; and
>
> 2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

For his first argument, Jeffries contends that requiring him to register under SORA ***86** violates state and federal *ex post facto* provisions due to its retroactive application to youthful offenders. The Cabinet, in turn, argues that the issues Jeffries raises have already been addressed by the Supreme Court.

In *Buck v. Commonwealth*, 308 S.W.3d 661 (Ky. 2010), the Kentucky Supreme Court held that the 2006 amendments to SORA did not make the statute punitive in nature and therefore did not violate the *ex post facto* clauses of the Kentucky or United States Constitutions. The *Buck* Court was tasked with evaluating its earlier decision in *Hyatt v. Commonwealth*, 72 S.W.3d 566 (Ky. 2002), which held that prior versions of SORA did not violate the *ex post facto* clause of the Kentucky or the United States Constitutions in light of its retroactive application.[2] The Court set forth the history of SORA (also known as Megan's Law), which was enacted in 1994 and subsequently amended multiple times. It then explained the applicable law as follows:

> Both the United States Constitution and the Kentucky Constitution prohibit *ex post facto* laws. U.S. Const. art. I, § 10; Ky. Const. § 19(1). An *ex post facto* law is any law, which criminalizes an act that was innocent when done, aggravates or increases the punishment for a crime as compared to the punishment when the crime was committed, or alters the rules of evidence to require less or different proof in order to convict than what was necessary when the crime was committed. *Purvis v. Commonwealth*, 14 S.W.3d 21, 23 (Ky. 2000) (citing *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390, 1 L.Ed. 648 (1798)). The key inquiry is whether a retrospective law is punitive. *Martin v. Chandler*, 122 S.W.3d 540, 547 (Ky. 2003) (citing *California Dept. of Corr. v. Morales*, 514 U.S. 499, 506 n. 3, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995)). *See also Commonwealth v. Baker*, 295 S.W.3d 437, 442 (Ky. 2009), *cert. denied*, 559 U.S. 992, 130 S.Ct. 1738, 176 L.Ed.2d 213 (2010).
>
> To determine whether a retrospective law is punitive, "we must determine whether the legislature intended to establish a civil, nonpunitive, regulatory scheme, or whether the legislature intended to impose punishment." *Baker*, 295 S.W.3d at 442 (citing *Smith v. Doe*, 538 U.S. 84, 92, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003)). If the legislature intended to impose punishment, then the law is punitive. *Id.* Where the "legislature intended to enact a civil, nonpunitive, regulatory scheme, then we must determine whether the statutory scheme is so punitive either in purpose or effect as to negate the State's intention to deem it civil." *Id.* (internal quotations and citations omitted).
>
> In determining whether a civil, nonpunitive, regulatory scheme is punitive in either purpose or effect, this Court and the U.S. Supreme Court have applied five of the factors discussed in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963). These factors are "whether, in its necessary operation, the regulatory scheme" (1) has been regarded in our history and traditions as punishment, (2) promotes the traditional aims of punishment, ***87** (3) imposes an affirmative disability or restraint, (4) has a rational connection to a nonpunitive purpose, or (5) is excessive with respect to the nonpunitive purpose. *Baker*, 295 S.W.3d at 443-44 (citing *Doe*, 538 U.S. at 97, 123 S.Ct. 1140). These factors provide a "useful framework," but are "neither exhaustive nor dispositive." *Doe*, 538 U.S. at 97, 123 S.Ct. 1140.
>
> *Buck*, 308 S.W.3d at 664-65.

The *Buck* Court recognized that "SORA requires an intervening, independent failure or omission (i.e., failure to register or providing false, misleading, or incomplete registration information) before it becomes punitive. When a statute is not expressly punitive, the relevant question for *ex post facto* purposes is what the statute *requires*—not the consequences of noncompliance." *Id.* at 667. The Court ultimately concluded, "[a]nalyzing SORA and its 2006

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amendments in light of what it requires from the registrant, we continue to believe that SORA is a remedial measure with a rational connection to the nonpunitive goal of protection of public safety, and we see no reason to depart from our holding in *Hyatt*." *Buck*, 308 S.W.3d at 667-68.

As to whether juveniles are exempt from registration, our Supreme Court addressed this issue in *Murphy v. Commonwealth*, 500 S.W.3d 827, 832 (Ky. 2016), holding that public policy did not exempt juveniles from registering under SORA. In doing so, the Court analyzed KRS 17.510(6) and 17.510(7) and rejected Murphy's claim that the statute only applied to adults and youthful offenders.

Jeffries specifically argues that SORA was intended to be punitive and therefore violative of the *ex post facto* clauses. He argues that the additional requirements added in amendments to SORA enacted after *Hyatt* was rendered made it punitive. He claims that changes made in statutes limiting how a sex offender may behave expressly stated a punitive intent, making SORA's retroactive application constitutionally impermissible. We rejected this argument in *Stage v. Commonwealth*, 460 S.W.3d 921 (Ky. App. 2014), as Jeffries noted in footnote 6 of his brief, and we decline his request to hold that this and other cases rejecting that argument were wrongly decided.

In *Stage*, we explained:

> In 2011, as part of a large-scale overhaul of Kentucky's criminal code, the General Assembly amended SORA in a bill entitled, "AN ACT relating to the criminal justice system, making an appropriation therefor, and declaring an emergency." *See* 2011 Ky. Acts ch. 2 (hereinafter referred to as "HB 463"). HB 463 modified KRS 17.510 and 17.520 to include a sex offender's "postincarceration supervision" among the existing list of privileges a court may revoke for noncompliance with registration requirements.
>
> On appeal, Stage asserts that the 2011 changes to SORA, namely the title of the act containing them, made SORA punitive and, therefore, impermissibly retrospective. In other words, Stage asks us to conclude that the General Assembly, through HB 463, rejected the Supreme Court's three prior holdings and transformed SORA into a punitive law. We cannot oblige that request.
>
> Stage points emphatically to the General Assembly's use of the term "criminal justice system" in the title of HB 463. He argues that the inclusion of this term, defined by several sources as encompassing the punishment of criminals, signaled a punitive intent behind the changes HB 463 effected. *See Black's Law Dictionary* 431 (9th ed. 2009); *American Heritage Dictionary*, 430–31 ***88** (5th ed. 2011). This is a tenuous reading of our General Assembly's intent.
>
> Of course, this Court is bound by the well-established rule that we must assign the words employed in a statute their ordinary meaning. *See, e.g., Lynch v. Commonwealth*, 902 S.W.2d 813, 814 (Ky. 1995). However, the Supreme Court's inclusion of the term "criminal justice system" in the title of HB 463 does not so automatically cast four words added to two statutes in a punitive light. In fact, the Supreme Court has rejected the same argument Stage now makes concerning SORA, holding that the title of an act, while helpful, is not solely determinative of the intent behind it. *See Commonwealth v. Baker*, 295 S.W.3d 437, 443 (Ky. 2009). Hence, we look beyond the title of HB 463 for other evidence of the punitive intent Stage asserts was behind that bill.
>
> An examination of HB 463's changes to SORA reveals no evidence of the General Assembly's wish to transform SORA into a law which punished, as opposed to merely monitored, sex offenders. The identical additions to both KRS 17.510 and 17.520 simply acknowledge that other portions of the same bill made a sex offender eligible for "postincarceration supervision" in addition to other custodial options, and that revocation of that privilege was now possible. Giving these words their plain meaning, the acknowledgment they make does nothing to change the effect of the law or to increase the punishment of a registrant. In short, the addition of these words to these statutes constitutes neither a substantial, nor a punitive change to SORA or its purpose.
>
> We therefore reject Stage's argument that the title of HB 463 alone is somehow indicative of the General Assembly's punitive intent. At its core, this is a rehashed argument which our Supreme Court has previously rejected—*see Hyatt*, *Kash*, and *Baker*—even doing so in the face of seemingly more compelling indicia of legislative intent than the meager changes Stage now cites. *See Buck.* Accordingly, we conclude that the wisdom and reasoning the Supreme Court has previously employed in response to claims regarding SORA's constitutionality must prevail again.

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> That the General Assembly employed the term "criminal justice system" in the title of HB 463 indicates little more than the inevitable relationship between that ambitious and sweeping piece of legislation and our system of criminal justice, a system constructed not only for the punishment of criminals but also for the achievement and maintenance of the public's safety. To that end, SORA remains what it was prior to 2011 and what our Supreme Court has always professed it to be: "a remedial measure with a rational connection to the nonpunitive goal of protection of public safety[.]" *Buck* at 667,.

Stage, 460 S.W.3d at 924-25. We see no need to alter our decision in this case.

We also reject Jeffries' arguments that SORA is punitive as applied to him or that he should be distinguished and exempted from application of the law. He argued that he should be distinguished because he was transferred to circuit court as a youthful offender due to the homicide rather than the attempted rape conviction, which was the crime that triggered SORA's registration requirement. We find no merit in this argument.

Next, Jeffries argues that SORA violates his due process rights and constitutes cruel punishment. He relies in large part on the affidavits he filed from Dr. Elizabeth Letourneau from Johns Hopkins University related to the efficacy of sex ***89** offender registration and notification laws for both adults and juveniles. However, as the Supreme Court held in *Martinez v. Commonwealth*, 72 S.W.3d 581, 584 (Ky. 2002), "[t]he statutory system is a remedial measure designed to *protect and inform the public* and not to punish the offender." (Emphasis added.) This Court extensively addressed both procedural and due process protections in *Moffitt v. Commonwealth*, 360 S.W.3d 247 (Ky. App. 2012), and held that SORA did not violate these protections in that case. We decline to disturb our holding in that case.

For his third and final argument, Jeffries contends that KRS 17.545(2) and KRS 17.546(3)[3] are unconstitutional. KRS 17.545(2) provides:

> No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.

KRS 17.546(3), in turn, provides:

> No registrant shall intentionally photograph, film, or video a minor through traditional or electronic means without the written consent of the minor's parent, legal custodian, or guardian unless the registrant is the minor's parent, legal custodian, or guardian. The written consent required under this subsection shall state that the person seeking the consent is required to register as a sex offender under Kentucky law.

Jeffries argues that KRS 17.545(2) is akin to banishment, which was addressed in *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009), when the Supreme Court held that sex offender residency restrictions were punitive and therefore unconstitutional. That is not the case in the present appeal, as the statute merely prevents a sex offender from being on school property, a publicly owned playground, or a licensed day care facility without written permission. We find no merit in Jeffries' argument that being in a small community makes a difference in this analysis.

We find persuasive the Cabinet's citation to Ky. OAG 15-003 *2-3 (2015 WL 1523838) (Jan. 30, 2015), in which the Attorney General addressed the application of the statute at issue here:

> Regarding KRS 17.545(2), it must first be determined if the statute was intended to impose punishment. Based on the statutory language and the obvious purpose of the law, it is clear that there was no intention to punish convicted sex offenders any further by enacting the day care and school grounds exclusion. Unfortunately, schools and day cares have been a common target of attack throughout the county. Attempting to protect these facilities by simply directing a convicted sex offender to obtain permission prior to admittance onto ***90** the specific premises is directly related to nonpunitive goals of protecting the safety of the public. Therefore, KRS 17.545(2) was not intended to impose punishment on sex offenders and the determination

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that must now be made shifts to whether the statute is so punitive in purpose or effect that it negates the State's goal of deeming the enactment civil.

In *Baker*, the Court focused on five factors when making the determination of whether the regulatory scheme was punitive in effect: (1) has this type of act been regarded in our history and traditions as punishment, (2) does this act promote the traditional aims of punishment, (3) is there an affirmative imposition of disability or restraint, (4) is there a rational connection to nonpunitive purposes, or (5) is the scheme excessive with respect to the nonpunitive purpose. *Comm. v. Baker*, 295 S.W.3d at 443 (Ky. 2009).

Historically, the protection of children in this country has always been a top priority. As such, procedures utilized to help keep kids at school or day care safe have been strongly supported, and we see no indicia of abatement in this historical trend. Therefore, a statutory provision intended to help administrators, teachers, and care providers keep track of who is on campus is not punitive in nature and would not be regarded as such based on our history and traditions of punishment. This system simply furthers the goal of protecting children and those who care for them. Furthermore, establishing a routine of obtaining permission prior to entering the relevant premises does not promote any traditional aim of punishment. The statute does not contain an absolute bar to ever being present on the grounds of a day care or school. The statute simply requires those in charge be given notice of a sex offender's intention to enter the premises and the chance to review the situation. This procedure firmly supports the State's interest in protecting the public and is not a promotion of traditional punishment.

The next inquiry regarding KRS 17.545(2) is whether it imposes an affirmative disability or restraint. In contrast to having to move from a home bought before a crime or restricting the locations in which one may be able to live, the obligation to request permission to enter onto the premises of a school or day care is minimal. The statute does not require advanced notice prior to every visit to a school or day care; it simply mandates a convicted sex offender to inform the administrators or directors of an applicable facility of their registration status prior to an initial visit and be granted permission. Also, the question of whether the statute is rationally connected to a nonpunitive purpose must be answered in favor of retroactive enforcement. As mentioned above, there is a legitimate interest in protecting children and those working with them at schools and day care facilities. The obligation to obtain permission before entering the relevant premises is rationally connected to a nonpunitive purpose as it keeps employees aware of a convicted sex offender's presence, helps ensure the safety of children, and is minimally taxing on the offender. Furthermore, the process set forth in KRS 17.545(2) does not restrict a sex offender from performing any vital functions nor cause them any extreme inconvenience. "A statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Smith v. Doe*, 538 U.S. 84, 103, 123 S.Ct. 1140, 155 L.Ed.2d 164 (2003).

***91** Based on the above discussion, the Kentucky Office of the Attorney General is of the opinion that KRS 17.545(2) may constitutionally be applied to sex offender registrants that committed their registrable offenses prior to the enactment of the statute. The law was not meant to be punitive, nor is the enactment so punitive in purpose or effect that it negates the State's intentions of deeming it civil. Therefore, the Kentucky Office of the Attorney takes no issue with the retroactive enforcement of KRS 17.545(2).

And as to the photography restrictions in KRS 17.546(3), these, too, are minimally taxing and serve a non-punitive purpose in protecting children. Both of these statutes also contain exemptions in that a registered offender may request permission to be on school or daycare grounds or to take photographs of children. That permission may be denied does not make the statutes punitive and therefore unconstitutional.

Accordingly, we hold that the circuit court did not err as a matter of law in upholding the constitutionality of SORA, including KRS 17.545(2) and KRS 17.546(3), and granting a judgment in favor of the Cabinet.

For the foregoing reasons, the judgment of the Franklin Circuit Court is affirmed.

ALL CONCUR.

All Citations

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Footnotes

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1 The version in effect when Jeffries registered as a sex offender was part of HB 463 with an effective date of June 18, 2011. SORA was next amended on June 29, 2017, shortly after he registered.

2 The *Buck* Court quoted the following statement from *Hyatt*:

> The Kentucky 1998 and 2000 Sex Offender Registration Statutes are directly related to the nonpunitive goals of protecting the safety of the public. The statutes in question do not amount to a separate punishment based on past crimes.... Any potential punishment arising from the violation of [SORA] is totally prospective and is not punishment for past criminal behavior.

Buck, 308 S.W.3d at 665-66 (Ky. 2010) (quoting *Hyatt*, 72 S.W.3d at 572).

3 The statutory language at issue is now contained in subsection (2). Because the language in that subsection has not changed, we shall refer to the older version.

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APPENDIX C

17-CI-01302

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II

CIVIL ACTION No. 17-CI-01302

ENTERED
AUG 06 2018
FRANKLIN CIRCUIT COURT
AMY FELDMAN, CLERK

BILLY S. JEFFRIES — PLAINTIFF

vs.

JUSTICE AND PUBLIC SAFETY CABINET, ET AL. — DEFENDANTS

ORDER AND OPINION

This matter is before the Court upon Plaintiff, Billy S. Jeffries' ("Jeffries") *Motion for Summary Judgment*. Upon review of the parties' briefs and papers, and after being sufficiently advised, the Court hereby DENIES Jeffries' *Motion*.

STATEMENT OF FACTS

On June 9, 1997, Jeffries was convicted of one count of Murder and one count of Attempted Rape, first degree, in Shelby Circuit Court (95-CR-00049) and was sentenced to thirty-five (35) years in prison. The basis for the Murder and Attempted Rape, first degree, charges occurred when Jeffries was 15 (fifteen) years old. The victim was a seventy-seven (77) year old adult female. Jeffries served out his sentence and was discharged from incarceration on the Attempted Rape, first degree, charge on May 1, 2017.

Jeffries first registered as a sex offender in Kentucky by completing a Kentucky Sex Offender Registration Form, signed on April 15, 2017, and was listed on the form by the Department of Corrections as a twenty (20) year registrant. Pursuant to KRS 17.580, Jeffries registrant information is posted on the Kentucky State Police public website. The Kentucky State Police Sex Offender Registry public website allows the public to search

for registrants by name, address, or geographic location. The public may ask to be informed if registrants change their residence. Currently, Jeffries resides in McCreary County, Kentucky.

Pursuant to an order of the United States District Court for the Eastern District of Kentucky, Central Division, Frankfort, dated November 21, 2017, the Commonwealth is permanently enjoined from enforcing KRS 17.546(1), (2), KRS 17.510(10)(c), and the portions of KRS 17.510(13) pertaining to electronic mail addresses and any instant messaging, chat, or other Internet communication name identities.

Jeffries now challenges that he should not be required to register as a sex offender for four reasons: (1) requiring him to register as a sex offender violates ex post facto provisions and various state and federal constitutional provisions; (2) is cruel and unusual punishment; (3) violates his due process rights; and (4) that if he is required to register as a sex offender he should not be restricted in his access to school grounds, playgrounds, and similar facilities, nor should he be prohibited from taking pictures of his stepchildren or their friends.

STANDARD OF REVIEW

Summary judgment is appropriate when the Court concludes that no genuine issue of material fact for which the law provides relief exists. CR 56.03. Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.01.

The moving party bears the initial burden of showing the non-existence of a genuine issue of material fact, and the burden then shifts to the opposing party to affirmatively show the absence of a genuine issue of material fact. *Jones v. Abner*, 335 S.W.3d 471, 475 (Ky. Ct. App. 2011). The movant will only succeed by showing "with such clarity that there is no room left for controversy." *Steelvest, Inc. v. Scansteel Service Ctr.*, 807 S.W. 2d 476, 482 (Ky. 1991). "The inquiry should be whether, from the evidence on record, facts exist which would make it possible for the non-moving party to prevail. In the analysis, the focus should be on what is of record rather than what might be presented at trial." *Welch v. Am. Publ'g Co. of Kentucky*, 3 S.W.3d 724, 730 (Ky. 1999). In reviewing Motions for Summary Judgment, the Court views all facts in the light most favorable to the non-moving party and resolves all doubts in its favor. The Court will only grant summary judgment when the facts indicate that the nonmoving party cannot produce evidence at trial that would render a favorable judgment. *Steelvest*, 807 S.W. 2d at 480.

The Court recognizes that the summary judgment is a device that should be used with caution and is not a substitute for trial. "[T]he proper function of summary judgment is to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his favor." *Jones v. Abner*, 335 S.W.3d at 480. Thus, this Court finds that summary judgment will be proper when it is shown with clarity from the evidence on record that the adverse party cannot prevail, as a matter of law, under any circumstances.

ANALYSIS

I. Requiring Jeffries to register as a sex offender does not violate Sections 2, 11, 17, and 19 of the Kentucky Constitution and does not violate Article I, Section 10, Clause 1, or Amendments V, VI, VIII, and XVI of the United States Constitution.

Jeffries contends that requiring him to register as a sex offender under SORA violates state and federal ex post facto laws. U.S. CONST. art I, § 10, cl. 1; KY. CONST. § 19(1). The Court disagrees.

> An ex post facto law is any law, which criminalizes an act that was innocent when done, aggravates or increases the punishment for a crime as compared to the punishment when the crime was committed, or alters the rules of evidence to require less or different proof in order to convict than what was necessary when the crime was committed.

Buck v. Commonwealth, 308 S.W.3d 661, 663 (Ky. 2010) (citing *Purvis v. Commonwealth*, 14 S.W.3d 21, 23 (Ky. 2000) (citing *Calder v. Bull*, 3 U.S. 386, 390 (1798))). The Kentucky Supreme Court ruled that SORA does not violate the ex post facto clause of the United States Constitution or the Kentucky Constitution. *Id.* at 663. The Kentucky Supreme Court stated "we continue to believe that SORA is a remedial measure with a rational connection to the nonpunitive goal of protection of public safety..." *Id.* at 667. Jeffries alleges that at the time of his offense and judgment youthful offenders were not required to register as sex offenders. However, registration requirements are applied to persons at the time of release from incarceration and not the time of conviction. In *Murphy v. Commonwealth*, the Kentucky Supreme Court stated that juveniles were not exempt from registration as a matter of public policy. 500 S.W.3d 827, 832 (Ky. 2016) When Jeffries was released, he was required to register as a sex offender for twenty (20) years because he committed an eligible offense. It does not matter that at the time the offense was committed or at the time of conviction that juvenile offenders were not required to register. Registration

requirements are applied at the time of release from imprisonment and not at the time the offense occurred or judgment was entered. In *Hyatt v. Commonwealth*, the Kentucky Supreme Court emphasized that the application of SORA to an offender is not an "ex post facto law under either the United States Constitution or the Kentucky Constitution." 72 S.W.3d 566, 573 (Ky. 2002). The Court sees no reason to now diverge from the clear holdings of the Kentucky Supreme Court.

Jeffries' argument that the addition of youthful offenders to SORA was intended to be punitive is unfounded. The Court already noted that SORA is not punitive. Defendants correctly state that youthful offenders are only required to register if they are convicted of a registerable offense. Jeffries attempts to distinguish himself from other offenders stating that the only reason he is required to register is because the offense resulted in a homicide, which transferred him to circuit court. Jeffries was convicted of Murder and Attempted Rape, first degree. Attempted Rape, first degree, is a registerable offense. Pursuant to KRS 17.520(3), Jeffries is a twenty (20) year registrant. Thus, the Court disagrees with Jeffries' argument concerning the punitive intent on youthful offenders.

Additionally, the Court disagrees with Jeffries' assertion that it is cruel and unusual punishment to require a youthful offender to register and publish their information to the public. Jeffries cites notable United States Supreme Court cases that address various punishments deemed cruel and unusual for juveniles such as capital punishment, life without parole for non-homicide offenses, and mandatory life without parole for homicide offenses. *See Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 48 (2010); *Miller v. Alabama*, 567 U.S. 460 (2012). What the United States Supreme Court has deemed cruel and unusual punishment for youthful offenders is vastly different from

requiring a youthful offender convicted of a registerable offense to register as a sex offender, which, as discussed above, Kentucky courts have held is not punitive and not a punishment. In *McEntire v. Commonwealth*, the Kentucky Court of Appeals held that lifetime sex offender registration is not cruel and unusual punishment. 344 S.W.3d 125, 129 (Ky. Ct. App. 2010). Jeffries is a twenty (20) year registrant. Further, he was tried and convicted as an adult. As already stated above, in *Murphy*, the Kentucky Supreme Court held that juvenile offenders are not exempt from registration as a matter of public policy. 500 S.W.3d at 832. It is clear to the Court that if a juvenile offender is not exempt from registration, then a juvenile offender tried and convicted as an adult is also not exempt from registering as a sex offender for a registerable offense. It is not contested that Jeffries was convicted of Attempted Rape, first degree. Attempted Rape, first degree, is a sex crime under KRS 17.500(8)(b). Consequently, Jeffries is required to register as a sex offender as he meets the definition under KRS 17.500(5)(a)(1) and KRS 600.020(72).

Moreover, the publication of Jeffries status as a sex offender, like all registrants, is required by KRS 17.580. Jeffries has failed to cite any controlling authority to demonstrate that KRS 17.580 is unconstitutional. As statutes are presumed constitutional, it is the burden of the challenging party to establish that a statute is unconstitutional. *Bess v. Bracken County Fiscal Court*, 210 S.W.3d 177, 182 (Ky. 2006) (citing *Stephens v. State Farm Mut. Auto Ins. Co.*, 894 S.W.2d 624, 626 (Ky. 1995). Pursuant to KRS 17.580, Kentucky State Police is directed to display sex offender registrant information on a public website as long as a registrant is required to register. Jeffries is a registrant and therefore his information must be made public. There is no confidential registration for adult offenders or youthful offenders, and the Kentucky Supreme Court held that SORA is

merely a remedial measure designed to protect and inform the public. Thus, Jeffries rights under the Eighth Amendment of the United States Constitution and Section 17 of the Kentucky Constitution are not violated and it is not cruel and unusual punishment to require Jeffries and youthful offenders to register as sex offenders for eligible offenses.

Jeffries believes that sex offender registration is a punishment. First, the Court finds that the holdings in *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017), and *Doe v. Kentucky ex rel. Tilley*, 283 F.Supp.3d 608 (E.D. Ky. 2017), are not applicable to the current case. *Packingham* concerns a North Carolina statute which made it a felony for registered sex offenders to access social media when a sex offender knew the site allowed minors to access the website. The *Packingham* court found that the North Carolina statute was unconstitutional because it violated the Free Speech Clause of the First Amendment as it impermissibly restricted lawful speech. In *Tilley*, the U.S. District Court enjoined the Commonwealth from enforcing KRS 17.546(1), (2); KRS 17.510(10)(c); and the portions of KRS 17.510(13) finding that the statutes broadly prohibit sex offender registrants "from engaging in any speech whatsoever on a social media website, as innocent as that speech may be." 283 F.Supp.3d at 613. Jeffries argues that because he is required to register he is subject to public shaming to a greater effect because the internet is generally involved when searching for a job, establishing credit, etc. He additionally asserts that his status as a sex offender prevents him from picking his step-children up from school, attending school events, or watching a local sporting game without announcing his status as a sex offender.

Jeffries arguments concerning the expansion of technology and the ability for persons to rapidly obtain information on their smart phones are lost on this Court. As discussed, the purpose of the registry is to protect and inform the public. *Martinez v.*

Commonwealth, 72 S.W.3d 581, 584 (Ky. 2002). Jeffries seems concerned about the various websites, phone applications, etc. that enable citizens to obtain information about sex offenders. Jeffries argument fails for three reasons. First, Kentucky State Police is tasked with the responsibility under KRS 17.580 to display registrant information on a public website as long as a person is required to register. Second, there are laws in place to prevent the public from harassing registered offenders. Third, Jeffries argument about expanded technology supports the purpose to protect and inform the public. *Id.*

The Court disagrees with Jeffries that the requirements of SORA are historically considered punishment. In *Hyatt*, the Kentucky Supreme Court held that "the registration laws do not punish sex offenders. They have a regulatory purpose only. The dissemination of information has never been considered a form of punishment." 72 S.W.3d at 573. Further, in *Bray v. Commonwealth*, the Kentucky Court of Appeals affirmed the publication of sex offender registry information on the Internet and did not find that it constituted a punishment. 203 S.W.3d 160, 164 (Ky. Ct. App. 2006). Again, the Court finds no reason to break with precedent. The expansion of social media and the Internet in general does not take away from the Commonwealth's interest in informing and protecting its citizens. As there are laws in place to prevent the public from abusing registry information, there is no reason to believe that the present expansion of Internet usage would now make SORA, which has historically been held not to be a punishment, suddenly a punishment.

II. KRS 17.545(2) and KRS 17.546(3) are constitutional.

Jeffries contends that KRS 17.545(2) and KRS 17.546(2) are unconstitutional ex post fact laws and therefore he cannot be prohibited from being on the property of a school

or park or taking pictures of his step-children or other children. Again, the Court disagrees with Jeffries' argument. First, as discussed above, the Court already found that the application of SORA to offenders prior to its enactment is not ex post facto. The Court again finds that the application of KRS 17.545(2) and KRS 17.546(2) to Jeffries are not ex post facto because registration requirements are applied at the time of release from incarceration, not at conviction or sentencing. *See Buck*, 308 S.W.3d at 665. Jeffries now argues that he is unable to pick his step-children up from school, attend school events, or watch a local sporting game without announcing his status as a sex offender. He further states that he is required to get written permission from his wife before taking a picture of his step-children and is required to get permission from the parents of other children before taking their picture. Jeffries believes that notifying school officials of his status as a sex offender would have a negative impact on the education of his step-children and therefore he is unable to assist in parenting duties.

KRS 17.545(2) states:

> No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-count government, consolidated local government, charter county government, or unified local government that has legislative powers.

Ky. Rev. Stat. Ann. § 17.545(2) (West 2018). KRS 17.546(2) provides:

> No registrant shall intentionally photograph, film, or video a minor through traditional or electronic means without the written consent of the minor's parent, legal custodian, or guardian. The written consent required under this subsection shall state that the person seeking the consent is required to register as a sex offender under Kentucky law.

Ky. Rev. Stat. Ann. § 17.546(2) (West 2018).

The Court agrees with Defendants that both statutes contain exceptions to their application wherein a registrant can obtain written permission to enter school or playground property or photograph a minor. The Court disagrees with Jeffries' argument that the restrictions in KRS 17.545 and KRS 17.546 resemble the residency restrictions at issue in *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009). Defendants state that the restrictions in KRS 17.545 and KRS 17.546 concerning school property and photography are more limited in scope than the residence requirement. An Attorney General opinion held that "in contrast to having to move from a home bought before a crime or restricting the locations in which one may be able to live, the obligation to request permission to enter onto the premises of a school or day care is minimal." Ky. OAG 15-003.

Further, these statutes do not violate Jeffries due process rights. Jeffries believes that strict scrutiny should apply because the United States Supreme Court held that parents have a fundamental liberty interest in the care and custody of their children. *Troxell v. Granville*, 530 U.S. 57, 65 (2000); *Cabinet for Health and Family Services v. K.H.*, 423 S.W.3d 204, 209 (Ky. 2014). However, Jeffries incorrectly states the fundamental liberty interest regarding a parent's right in the care and custody of their children. There is no fundamental right concerning a parent child relationship here. Jeffries is not the legal or natural parent of his wife's children. He is a step-parent. It is admirable that Jeffries is performing duties as a step-parent to the children of his wife, however, he has no legal or

natural connection to the children to establish the fundamental liberty interest defined by the United States Supreme Court. *Id.*

Despite Jeffries argument that strict scrutiny should apply, rational basis review is the proper level of scrutiny to be applied. "Under the rational-basis standard, a statute passes constitutional muster if it is rationally related to a legitimate state purpose." *Moffitt v. Commonwealth*, 360 S.W.3d 247, 254 (Ky. Ct. App. 2012). This means that there must be a "reasonable fit between the state's purpose and the means chosen to advance that purpose." *Id.* The Commonwealth has a legitimate interest in protecting children. The Court agrees that requesting permission to enter a school facility is a minor inconvenience. Jeffries admits that he has never requested permission, so he does not know what the outcome will be or any true prejudices that will be applied to him or his step-children as a result. Again, both the school property and photography restrictions contain exceptions. Jeffries admits that he is able to take pictures of his step-children with written permission from his wife. These are "minimally taxing" on Jeffries. The obligation to obtain permission to enter a school facility or photograph a minor are rationally related to a nonpunitive purpose that protects children and are both "minimally taxing" on Jeffries.

III. The application of SORA to Jeffries does not violate due process.

Jeffries contends that the application of SORA to Jeffries, as a juvenile offender, violates due process. He cites to cases from Pennsylvania, New Jersey, and Colorado to demonstrate when other state courts have found registration for juvenile offenders improper and why strict scrutiny should apply. The cases cited by Jeffries bear no controlling authority on this Court and the laws of the Commonwealth. Jeffries believes that strict scrutiny should be applied because his rights to parent his step-children and his

right to privacy are being infringed upon because he is a registered sex offender. However, the Court disagrees. The Court already discussed Jeffries claim regarding his right to parent his step-children in Section II. Therefore, there is no need to rehash the Court's finding that there is no fundamental right concerning a parent child relationship here as Jeffries is the step-parent to his wife's children and has no legal or natural connection to them. Further, in Section II the Court addressed Jeffries argument concerning KRS 17.546 and the photography restriction. Thus, the Court will not address this argument again.

Again, the Court disagrees with Jeffries and finds that rational basis review is the proper level of scrutiny to apply in this case because there is no right to privacy at issue. "Under the rational-basis standard, a statute passes constitutional muster if it is rationally related to a legitimate state purpose." *Moffitt*, 360 S.W.3d at 254. This means that there must be a "reasonable fit between the state's purpose and the means chosen to advance that purpose." *Id.*

Jeffries argues that his right to privacy is being violated because SORA empowers "his neighbors, acquaintances, and random strangers to engage in harassment and hostile treatment within his private life." Plaintiff's Motion for Summary Judgment at 37. However, as logic follows, Jeffries was convicted of Murder and Attempted Rape, first degree. While Jeffries was incarcerated the legislature enacted SORA, which applies at the time a person is released from incarceration, and not when a person committed the offense or was convicted. One of Jeffries' crimes, Attempted Rape, first degree, is a registerable offense. So, Jeffries is properly deemed a registrant. In *Hyatt*, the Kentucky Supreme Court held:

> The Commonwealth of Kentucky has a serious and vital interest in protecting its citizens from harm which outweighs any inconvenience

> that may be suffered because of the notification and registration provisions. The statute clearly serves a public policy and is a wise use of government resources all of which is to be decided by the legislature.

566 S.W.3d at 574. As Jeffries was convicted of a registerable offense and is properly deemed a registrant, his right to privacy is not being violated because the Commonwealth's interest in protecting its citizens is outweighs the possible embarrassment Jeffries may experience as a registered sex offender.

The Court has repeatedly stated that Kentucky State Police is tasked with the responsibility under KRS 17.580 to display registrant information on a public website as long as a person is required to register. Further, Jeffries has not demonstrated that he has been subject to strong harassment. He even stated that he left his former job for reasons other than his co-workers learning of his status as a registered sex offender. Additionally, Jeffries admitted that he has not requested permission from the proper authorities to attend school events at his step-children's school or the local youth sporting events he cites. Finally, the sex offender registry, and its application to juvenile offenders for registerable offenses, meets rational basis review. In *Buck*, the Kentucky Supreme Court stated that "SORA is a remedial measure with a rational connection to the nonpunitive goal of protection of public safety..." *Buck*, 308 S.W.3d at 667. The registry is a tool that merely informs the public. Kentucky does not have a confidential registry. In *Murphy*, the Kentucky Supreme Court upheld the sentence of an out of state juvenile offender who failed to properly register in Kentucky. 500 S.W.3d at 833. Thus, it is clear that registration of juvenile offenders, who were tried and convicted as adults, like Jeffries, are also properly subjected to registration for registerable offenses, like Attempted Rape, first degree. The

Court finds that Jeffries' right to privacy is not violated by the requirement that he register as a sex offender.

CONCLUSION

Jeffries has failed to demonstrate that summary judgment should be awarded in his favor. Accordingly, the Court **DENIES** Jeffries' *Motion for Summary Judgment*. As this matter was submitted to the Court for adjudication upon completion of the parties' briefs, Defendants believes that they are entitled to judgment in their favor. The Court agrees and therefore dismisses this matter with prejudice.

This order is final and appealable and there is no just cause for delay.

SO ORDERED, this 2nd day of August, 2018.

THOMAS D. WINGATE
Judge, Franklin Circuit Court

17-CI-01302

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Order was mailed, this 10th day of August, 2018, to the following:

Hon. Graham Gray
Hon. Charles C. Haselwood II
Hon. Heather C. Wagers
919 Versailles Road
Frankfort, Kentucky 40601

Hon. Timothy G. Arnold
Department of Public Advocacy
5 Mill Creek Park
Frankfort, Kentucky 40601

Amy Feldman DF
Amy Feldman, Franklin County Circuit Court Clerk

APPENDIX D

AFFIDAVIT OF

Elizabeth J. Letourneau, Ph.D.
Associate Professor, Department of Mental Health
Director, Moore Center for the Prevention of Child Sexual Abuse
Johns Hopkins Bloomberg School of Public Health

My name is Dr. Elizabeth J. Letourneau and I am a leading researcher and national expert on sex offender policy and intervention. My research efforts include five federally funded research projects specifically designed to examine the effects of sex offender registration and related policies.

I verify that the statements made in this Affidavit are true and correct.

As detailed below, strong and empirically rigorous evidence fails to support the effectiveness of sex offender registration and notification (SORN) policies for reducing sexual or nonsexual recidivism. Moreover, these policies have been are associated with unintended and impactful consequences on judicial processing of sex crime cases. Residency restrictions are among the many collateral policies tied to SORN. These, too, have been uniformly evaluated as policy failures. The available evidence indicates that neither SORN nor residency restrictions protect children or improve community safety.

1. **Registration and notification of sex offenders fail to reduce sexual recidivism.**

   Numerous evaluations of registration and notification policies have been conducted since the mid-1990's. The majority of these find no evidence that registration and/or notification reduce sexual or nonsexual recidivism of adult offenders. This research is summarized here.

   a. In the earliest days of modern registration and notification, Schram and Milloy (1995) compared the recidivism rates of 90 Washington sex offenders designated as high risk and subject to aggressive notification with a sample of 90 similar offenders released prior to the enactment of notification policies. Schram and Milloy did not find statistically significant differences between the two groups. Over a four-and-a-half year follow-up period, 19% of the community notification group and 22% of the comparison group were arrested for new sexual offenses.

   b. An Iowa study tracked 223 sex offenders listed on the sex offender registry for a follow up period of approximately 4 years. Three percent of the registered sex offenders were rearrested for a new sex crime, compared with 3.5% of sex offenders who were not required to register because they were convicted before the law went into effect. This difference was not statistically significant (Adkins, Huff, & Stageberg, 2000).

   c. In Wisconsin 47 high-risk sex offenders exposed to aggressive community notification had higher (though not statistically significant) rates of recidivism (19%) than 166 high-risk sex offenders who were not subject to notification (12%) (Zevitz, 2006b). Zevitz concluded that "extensive amounts of public exposure for sex offenders…had little effect on their recidivism" (p. 204).

   d. Sandler, Freeman, and Socia (2008) examined the effects of New York's SORN policy on sex offender recidivism. Monthly sex crime arrests for nearly convicted sex offenders (***n*** = 68,617) were examined across a 21-year time period using autoregressive integrated moving average analyses. Results indicated that rates for sex crime recidivism did not significantly

decrease in the years following the implementation of the policy. The authors further noted that more than 95% of all sex offenses identified across the 21-year study period were committed by first-time offenders who would not have been found on registries (Sandler et al., 2008).

e. In a more recent study of formerly incarcerated sex offenders in Iowa (n = 1,582), Tewksbury and Jennings (2010) used group-based trajectory modeling to discern the impact of SORN on recidivism levels. Again, results suggested no effect, with pre-SORN and post-SORN cohorts displaying similar trajectory groupings. Specifically, both cohorts consisted of the same three groups of offenders--non-recidivists, low-rate recidivists, and high-rate recidivists.

f. Research conducted in New Jersey measured group differences in recidivism before and after implementation of Megan's Law and indicated limited utility and effectiveness of community notification and registration laws (Veysey, Zgoba, & Dalessandro, 2008; Zgoba, Veysey, & Dalessandro, 2010). The pre–post study consisted of a total of 550 male sex offenders released during the years 1990 and 2000, 250 of whom were released during 1990 and 1994 (i.e., the pre-Megan's Law group) and 300 of whom were released between 1995 and 2000 (i.e., the post-Megan's Law group). The results showed a significant decrease in nonsexual recidivism after Megan's Law implementation., No significant differences were identified, however, for measures of sex offense recidivism, the time it took for sex offenders to reoffend, or the number of victims. The authors concluded that the implementation of Megan's Law yielded no demonstrable reduction in sexual offenses.

g. Letourneau et al. (2010) analyzed outcomes for a South Carolina sample of 6,064 male offenders convicted of at least one sex crime between 1990 and 2004. Across a mean follow-up of 8.4 years, 490 offenders (8%) had new sex crime charges, and 299 offenders (4%) had new sex crime convictions. Cox's relative risks and competing risks models estimated the influence of registration status on the risk of sexual recidivism while controlling for time at risk. Registration status did not predict recidivism in any model.

h. Most recently, in a study carried out by Zgoba, Miner, Levenson, Knight, Letourneau & Thornton (2013), data from 1,789 adult sex offenders from four states (Minnesota, New Jersey, Florida, and South Carolina) were collected to evaluate Adam Walsh Act tiering procedures. On average, the sexual recidivism rate was approximately 5% at five years and 10% at ten years. AWA tier was unrelated to sexual reoffending, except in Florida, where it was inversely correlated with recidivism. The results indicate that use of the AWA classification scheme is likely to result in a system that is ineffective protecting the public and that substantial revision of the AWA classification system is necessary.

i. Of the remaining studies, whose results indicated that registration and/or notification policies might influence recidivism, one suggested that the policy increased recidivism (Freeman, 2012), two suggested that policies decreased recidivism (Barnoski, 2005; Duwe & Donney, 2009), and three found evidence of mixed results (Agan, 2011; Prescott & Rockoff, 2011; Vasquez et al., 2008). Of note, the two studies that attributed significant declines in recidivism to these policies (Barnoski, 2005; Duwe & Donney, 2009) were conducted in Minnesota and Washington--states that use empirically derived classification systems to assign sex offenders to risk categories and attach concordant registration and disclosure requirements.

In summary, of 13 studies evaluating registration and notification effects on adult offenders, 8 studies failed to find any statistically significant association between state registration and notification policies and rates of sexual recidivism. These eight studies were conducted on approximately 79,000 sex offenders from eight states representing each of the principle US geographic regions. Three other studies found evidence of increased recidivism or mixed effects and only two studies identified a consistently positive impact on recidivism, and these two studies evaluated policy effects from states that use sophisticated risk assessment procedures for assigning sex offenders to specific registration tiers. Given the bulk of the evidence, registration and notification policies—and particularly policies based largely on type of offense vs. actual risk—simply do not reduce sexual or nonsexual recidivism.

2. **Registration is Associated with Unintended and Impactful Consequences on Judicial Processing of Sex Crime Cases**

We (Letourneau, Levenson, Bandyopadhyay, Armstrong, & Sinha, 2010) completed a study examining the influence of South Carolina's registration policy on case processing. This study indicated the registration and notification policies were associated with vast increases in plea bargains from sex to nonsex offenses and that notification was associated with significant reductions in sex crime conviction rates. Statewide crime data from 1990 to 2004 corresponded with three time periods of interest: the five years immediately preceding enactment of registration and notification, the first four years of policy implementation, and the subsequent six years of policy implementation, which included Internet notification Results indicated that the likelihood of charges being reduced from sex to nonsex crimes doubled over time, from a 9% predicted probability of reduced charges in the years preceding SORN, a 15% predicted probability in following initial implementation of SORN, and a 19% predicted probability following initial implementation of Internet notification.

Results also indicated that the probability of a guilty disposition changed at each year group. In particular, results of guilty dispositions declined following implementation of Internet notification and, once plea bargain cases were removed (as these were nearly universally associated with guilty dispositions) this decline became more dramatic, with conviction rates below those of pre-policy implementation years. This finding suggests that judges and/or juries were less likely to convict offenders of sex crimes if consequences included online notification.

3. **Residency Restrictions are Unrelated to Offender Recidivism**

As public awareness of sex offenders living in communities has increased, so have efforts to restrict registered sex offenders from living near places where children are likely to be playing. As summarized by Letourneau and Levenson (2010), research has found that laws restricting where registered sex offenders can live are ineffective. Importantly, there appears to be no relationship between sexual recidivism and the distance an offender lives from schools or daycares. Even considering other relevant recidivism risk factors such as an offender's prior arrests, age, marital status, predator status, residential proximity to these venues did not predict recidivism (Zandbergen, Levenson, & Hart, (2010). In Colorado, sex offense recidivists and non-recidivists lived randomly throughout the geographical area with no pattern emerging of recidivists living closer to schools and daycare centers (Colorado Department of Public Safety, 2004). An analysis of 224 recidivistic sex offenses in Minnesota concluded that residential

restriction laws would not have prevented any repeat sex crimes (Duwe, Donnay, & Tewksbury, 2008). Most sex offenses are perpetrated against children well known to offenders, including relatives and other close acquaintances, and this is true whether offenders are registered or not; indeed, Duwe and colleagues found that in only 4% of recidivism events was the victim a neighbor of the offender. Thus, there is no evidence that residency policies improve the safety of children or communities.

In closing, sex offender registration and notification are routinely found to be nonpredictive of sexual and nonsexual recidivism and at least one study has linked registration and notification with substantial increases in plea bargains and has linked online notification with significant reductions in likelihood of conviction for sexual crimes. Moreover, numerous evaluations of residency restrictions fail to find any association between the distance an offender lives from places where children congregate and his likelihood of recidivism. In short, the available research suggests that child safety is not improved by the registration, notification, or residential restriction of sex offenders.

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DATED this 5th day of September, 2013.

Signature

SUBSCRIBED AND SWORN to before me
This 16 day of September 2013.

NOTARY PUBLIC in and for said COUNTY and STATE

PATRICIA E. SCOTT, NOTARY PUBLIC
STATE OF MARYLAND
COUNTY OF BALTIMORE
MY COMMISSION EXPIRES 10/06/2014

APPENDIX E

AFFIDAVIT OF

Elizabeth J. Letourneau, Ph.D.
Associate Professor, Department of Mental Health
Director, Moore Center for the Prevention of Child Sexual Abuse
Johns Hopkins Bloomberg School of Public Health

I, Elizabeth J. Letourneau, verify that the statements made in this Affidavit are true and correct. I understand that false statements herein are made subject to the penalties of perjury.

My name is Dr. Elizabeth J. Letourneau and I am a leading researcher and national expert on sex offender policy and intervention particularly as applied to juvenile offenders. My research efforts include five federally funded and two privately funded research projects specifically designed to examine the effects of sex offender registration and related policies.

As detailed below, strong and empirically rigorous evidence indicates:

(A) Sexual recidivism rates for youth who sexually offend are low.

(B) Sexual recidivism risk for youth who sexually offend is similar to that of other delinquent youth.

(C) Registration of juveniles fails, in any way, to improve community safety.

(D) Registration is associated with unintended and harmful consequences on the adjudication of youth.

A. Sexual Recidivism Rates for Youth who Sexually Offend are Low

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 recidivism rate is less than 3% (Ref # 1). In our research utilizing data on more than 1,200 male juvenile offenders 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% (Ref # 2). Recidivism risk varies for individual youth but it is also highly relevant to note that risk changes and risk is "front loaded". That is, when rare sexual recidivism events do occur, it is nearly always within the first few years following the original adjudication. Moreover, even youth initially evaluated as "high risk" are unlikely to reoffend, particularly if they remain free of offending within this relatively brief period of time following initial adjudication.

B. Sexual Recidivism Risk is Similar for Youth who Sexually Offend and Other Delinquent Youth

In our research we compared the sexual recidivism rates of youth who sexually offended with youth who committed nonsexual violent offenses and youth who committed robbery

offenses. The sexual recidivism rates of these three groups did not differ in a meaningful or statistically significant manner (Ref # 2). Other researchers have reported similar findings. For example, one study indicated that the risk of sexual recidivism was statistically equal for youth treated in a residential facility for either sexual or nonsexual delinquent offenses (Ref # 3). Thus, distinguishing between youth likely to sexually reoffend or not involves more than simply knowing that a youth has a history of such offending.

C. Registration Policies Fail to Improve Community Safety

There are two principal ways in which registration policies might improve community safety. First, these policies should be associated with reduced sexual recidivism rates. Second, these policies could be associated with deterrence of first-time sex crimes. Neither is true.

C1. Registration Fails to Reduce Juvenile Sexual or Violent Recidivism Rates

Using data from South Carolina, my colleagues and I have completed several evaluations of registration policy effects on juveniles. As detailed in two publications, registration failed to influence sexual and nonsexual violent recidivism rates in both studies.

i. In the first study (Ref # 4) registered and nonregistered male youth were matched on year of index sex offense, age at index sex offense, race, prior person offenses, prior nonperson offenses, and type of index sex offense (111 matched pairs). Recidivism was assessed across an average 4-year follow-up. **The sexual offense reconviction rate was less than 1%** (just two events for 222 youth). The nonsexual violent offense reconviction rates also did not differ between registered and nonregistered juveniles.

ii. In the second study (Ref # 2) recidivism rates of all male youth with sex crime adjudications (N = 1,275) were examined across an average 9-year follow-up period. Survival analyses examined the influence of factors that might have influenced recidivism rates, including registration status (registered or not). Results indicated that registration had no influence on nonsexual violent recidivism. Results also indicated that registration increased the risk of youth being *charged* but not convicted of new sex offenses and being *charged* but not convicted new nonviolent offenses. **Not only does registration fail to reduce recidivism, it appears to be associated with increased risk of new charges that do not result in new convictions—possibly indicating a surveillance or "scarlet letter" effect of registration.**

iii. **Other investigators examining registration effects on juvenile recidivism rates also failed to find any support for these policies.** Other researchers have demonstrated that federal standards for juvenile sex offender registration fail to distinguish between youth who will reoffend or not (Refs 5 & 6) as do state-specific standards for establishing juvenile registration requirements in New Jersey, Texas, and Wisconsin (Refs 6 & 7). The basis for these federal and state policy failures might lie, in part, with the low sexual recidivism rate of youth adjudicated for sex offenses and policy failures to correctly destinguish between youth risk levels.

More specically, Dr. Caldwell and his colleagues have completed several studies examining different aspects of juvenile sex offending. Recently, they examined whether registration tier designations as defined in the Sex Offender Registration and Notification Act within the Adam Walsh Act correctly distinguished between lower and higher risk youth. Each Tier designation is based on a youth's adjudication

offense and past adjudications (if any). Tiers I-III are associated with increasingly longer registration duration and should correspond with increasingly higher recidivism risk, such that youth assigned to Tier I should reoffend at a lower rate than youth assigned to Tier II or Tier III (see Ref # 6). Analyses examined recidivism across an average 72-month follow-up period for 91 juvenile sex offenders and 174 juvenile nonsexual violent offenders. **Results indicated no significant differences in the sexual recidivism rates of youth in Tiers I-III.** Thus, basing tier designations on youth offense and offense history is an ineffective method for identifying the small minority of higher risk youth. **Moreover, youth classified in the highest (Tier III) designation had the lowest nonsexual violent recidivism rate.** As noted previously, the sexual recidivism rates were the same for the juvenile sex offenders and the juvenile nonsex offenders, suggesting that distinctions between these two groups of youth are misplaced.

C2. Registration Fails to Deter First-Time Juvenile Sex Crimes

We have completed the only studies, to date, evaluating the effects of registration on the prevention or deterrence of initial sex crimes (Refs # 8 & 9). Examining more than 3,000 juvenile sex offense cases from 1991 through 2004, trend analyses modeled the effects of South Carolina's initial registration law (which did not include online registration) and subsequent revision (that permitted online registration of registered youth). If either the original or amended policy deterred first-time offenders, then rates of first-time sex crimes should have declined following enactment of South Carolina's SORN policies. We have recently replicated these analyses using National Incident Based Reporting System (NIBRS) data from four states. **Results from both studies indicated no significant deterrent effect for the registration policies on first-time sex crimes. Thus, registration was not associated with deterrence of first-time juvenile sex crimes.**

D. Registration is Associated with Unintended and Harmful Consequences on Youth Adjudication

D1. Registration Increases Juveniles' Risk of Sustaining New Nonviolent Charges

We have found that South Carolina's registration policy is associated with increased risk of new charges <u>but not</u> new convictions, particularly for nonviolent offenses (Ref # 2). 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 registraiton actually increase youth misbehavior, we believe it is more likely that these findings reflect a surveillance effect. That is, youth who are required to registered with law enforcement agencies and who are known as "registered sex offenders" are likely to be viewed (inaccurately) as more dangerous than youth with the same history of sex offending but withou the registration label. This perception may cause law enforcement agents to arrest registered youth for behaviors that do not trigger the arrest of nonregistered youth and that ultimately do not result in new convictions. **Requiring youth to register multiple times per year with law enforcement has significant negative consequences for youth and is not merely inconvenient.** The process of identifying oneself as a registered sex offender multiple times per year, and of being arrested and possibly charged for new offenses due in part to this label seems likely to cause registered youth to

view themselves as "delinquent" even when they are law-abiding. Ample evidence indicates that youth who view themselves as delinquent or outside the mainstream are less likely to change patterns of offending. Policies that promote youths' concepts of themselves as lifetime sex offenders will likely interrupt the development of a positive self-identity (Refs # 10 & 11).

D2. Registration Increases Juveniles' Risk of Suicide Attempt and Being Approached by an Adult for Sex

In an recently concluded study that includes 256 children 12-17 in treatment for sexual offending behavior, we find dramatic differences between those youth who have been subjected to any form of sex offender registration requirement (approximately 30% of the sample) and those who have not (Ref # 12). Specifically, 6.8% of registered youth have attempted suicide in the past 30 days as compared to 1.8% of the nonregistered youth. In addition to having nearly 4 times the odds of attempting suicide recently, registered youth had 2 times the odds of having been sexually abused/assaulted in the past year and 2 times the odds of having been approached by an adult for sex in the past year.

In closing, juveniles who have sexually offended should not be subjected to registration. Long-term registration based on a youth's adjudication offense fails to identify high-risk youth, fails to reduce sexual or violent recidivism, fails to deter first-time juvenile sex crimes, and influences judicial case processing in ways that might actually impair community safety. Moreover, youth who are labeled for life as sex offenders are at increased risk for some of the worst possible outcomes, including suicide and sexual predation by adult offenders and will face innumerable barriers to successful prosocial development, without improving community safety.

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Elizabeth J. Letourneau

Signature

APPENDIX F

U.S. Department of Justice
Office of Justice Programs
Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking

SEX OFFENDER MANAGEMENT ASSESSMENT and PLANNING INITIATIVE

SMART
Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking

U.S. Department of Justice
Office of Justice Programs
810 Seventh Street NW.
Washington, DC 20531

Eric H. Holder, Jr.
Attorney General

Karol V. Mason
Assistant Attorney General

Luis C. deBaca
Director, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking

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www.ojp.gov/smart

The Adam Walsh Child Protection and Safety Act of 2006 authorized the establishment of the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) within OJP. SMART is responsible for assisting with implementation of the Sex Offender Registration and Notification Act (SORNA), and also for providing assistance to criminal justice professionals around the entire spectrum of sex offender management activities needed to ensure public safety.

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The Office of Justice Programs provides federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist victims. OJP has six components: the Bureau of Justice Assistance; the Bureau of Justice Statistics; the National Institute of Justice; the Office of Juvenile Justice and Delinquency Prevention; the Office for Victims of Crime; and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking.

Chapter 3: Recidivism of Juveniles Who Commit Sexual Offenses

by Christopher Lobanov-Rostovsky

Introduction

Juveniles who commit sexual offenses have come under increasing scrutiny from the public and policymakers over the past 25 years. Previously, this population was not seen as a significant public safety threat and was instead viewed with a "boys will be boys" attitude. However, in a series of studies conducted in the late 1970s and early 1980s that featured retrospective sexual history interviews with adult sexual offenders, many adults reported they began their sexual offending during adolescence. These findings led practitioners and policymakers to focus more attention on juveniles who commit sexual offenses as a way to prevent adult sexual offending.

In the absence of an empirically based foundation of knowledge on juveniles who commit sexual offenses, interventions for juveniles who commit sex crimes were constructed using existing theories and practices designed for adults. Whether or not juveniles who commit sexual offenses might differ from adult sexual offenders was rarely considered. Also, little consideration was given to any differences that might exist between juveniles who commit sexual offenses and those who commit nonsexual offenses. Since the 1980s, a significant body of knowledge specific to juveniles who commit sexual offenses has been developed, particularly in relation to the characteristics of these youth and their propensity to reoffend. To accomplish this, researchers employed methodologies very different from those that retrospectively examined the offending history of adult sex offenders. These methodologies enabled researchers to better understand the experiences, characteristics, and behaviors of juveniles who commit sexual offenses, including rates and patterns of recidivism.

FINDINGS

- There does not appear to be a significant difference in the rate of either sexual or general recidivism between juveniles who commit sexual offenses against peer or adult victims and those who commit sexual offenses against child victims.
- The observed sexual recidivism rates of juveniles who commit sexual offenses range from about 7 percent to 13 percent after 59 months, depending on the study.
- Recidivism rates for juveniles who commit sexual offenses are generally lower than those observed for adult sexual offenders.
- A relatively small percentage of juveniles who commit a sexual offense will sexually reoffend as adults.
  - Juveniles who commit sexual offenses have higher rates of general recidivism than sexual recidivism.

The purpose of this chapter is to provide a review of recidivism research on juveniles who commit sexual offenses. Research findings concerning both sexual and general recidivism are presented. Findings concerning general recidivism are important because many juveniles who commit sexual offenses also engage or will engage in nonsexual criminal offending. In fact, research has demonstrated that juveniles who commit sexual offenses are more likely to recidivate in a nonsexual rather than a sexual manner. Sexual recidivism and general recidivism are both risks to public safety.

Prior to reviewing the recidivism research, a definition of recidivism is needed. Recidivism has been conceptually defined as the return to criminal behavior by an individual previously convicted of or adjudicated for a criminal offense (Maltz, 2001). It is indicative of a criminal offender's recurrent failure to follow the law despite having been subject to

some type of response from the criminal or juvenile justice system. Recidivism is not merely repeat offending, but rather refers to the recurrence of illegal behavior after a criminal offender receives negative legal consequences, including legal supervision, rehabilitative treatment, or some form of residential or institutional placement. (For more information on the "Effectiveness of Treatment for Juveniles Who Sexually Offend," see chapter 5 in the Juvenile section.) Given the profound impact that sexual recidivism has on victims and the community, it is important to know the patterns and rates of recidivism attributed to juveniles who commit sexual offenses. However, sexual recidivism has proven difficult to quantify for both juveniles and adults for a number of reasons; the main reason is the extent to which sexual crimes are underreported to authorities. As a result, sexual recidivism rates do not necessarily capture the true extent of sexual reoffense, and all analyses of recidivism research must be mindful of this limitation. In addition, recidivism has been defined and operationalized by researchers in various ways (e.g., self-report, rearrest/new charge, readjudication for juveniles under age 18 or reconviction for those who have now become adults, and recommitment for juveniles or reincarceration for adults). This hampers cross-study comparisons and often results in variations in observed recidivism rates that are primarily artifacts of different study methodologies. Despite these limitations, recidivism research on juveniles who commit sexual offenses provides an empirical basis for understanding both the absolute and relative risk of reoffense posed by this population. Trustworthy data on the recidivism rates of juveniles who commit sexual offenses, and how they compare to rates found for both adult sex offenders and other juvenile offenders, can help policymakers and practitioners at the federal, state, and local levels develop interventions that are not only effective, but also appropriate and proportionate.

This chapter does not present an exhaustive review of the recidivism research related to juveniles who commit sexual offenses, but instead focuses on studies deemed to be important for a general understanding of recidivism rates and patterns. This review also does not address the risk factors related to recidivism, the manner in which recidivism risk might be mitigated through treatment or supervision practices, or research findings on adult sexual offender recidivism. Research on the effectiveness of treatment for juveniles who commit sexual offenses is reviewed in chapter 5 of the Juvenile section. Findings from research on the recidivism of adult sexual offenders may be found in chapter 5 in the Adult section (upon which the organization of this chapter is based). Finally, it should be noted that for ease in reading, data presented in this chapter have been rounded to the nearest whole number.

Issues To Consider

The following measurement issues, which can impact the recidivism rates observed in studies, should be considered when reviewing the findings presented in this chapter:

- **Recidivism rates are not true reoffense rates.** As noted above, recidivism rates are typically based on official criminal or juvenile justice records pertaining to an arrest, criminal adjudication or conviction, or commitment or incarceration. These records do not include any of the substantial number of sexual offenses that do not come to the attention of criminal or juvenile justice authorities. For example, Bachman (1998) found that only about one in four rapes or sexual assaults were reported to police, and Tjaden and Thoennes (2006) found that only 19 percent of women and 13 percent of men who were raped since their 18th birthday reported the rape to the police. Child victims report at an even lower rate. Even when a sex crime is reported to police, relatively few are cleared by arrest and even fewer result in a conviction/adjudication or incarceration. In a prospective study of adolescents, for example, Grotpeter and Elliot (2002) found that the rate of arrest for those who reported committing a sexual offense was between 3 and 10 percent, depending on the severity of the sex crime (Grotpeter & Elliott, 2002). Therefore, observed recidivism rates for juveniles who commit sexual offenses likely underrepresent the true incidence of reoffense for this population, particularly for sexual crimes.

- **Recidivism rates are often calculated differently from one study to the next.** Different recidivism measures such as rearrest, readjudication as a juvenile or reconviction as an adult, and recommitment (for juveniles) or reincarceration (for adults) can produce different recidivism rates, as can variations in the length of the followup period used in a particular study. This makes cross-study comparisons of recidivism rates difficult. Studies using rearrest as a recidivism measure will typically produce higher observed recidivism rates than studies using readjudication or recommitment because only a subset of all arrests ultimately end in adjudication or commitment. Similarly, studies employing longer followup periods will tend to produce higher observed recidivism rates because the offenders being studied will have more time to reoffend and more time to be identified as a recidivist by authorities.

Differences in juvenile research populations may also lead to different recidivism results. Juveniles who have been released from a residential or correctional facility may be fundamentally different from those placed under community supervision in terms of overall risk for recidivism. Similarly, much of the juvenile recidivism literature involves youth of vastly different ages. There are significant differences between an 11-year-old and a 17-year-old, and the age of the juveniles in a study sample should be considered when interpreting individual study results or when making cross-study comparisons.

- **Recidivism rates for juvenile females who commit sexual offenses are relatively unknown.** Most studies of juveniles who commit sexual offenses employ samples or populations that are exclusively or predominantly male. Even those studies that do include females do not necessarily identify the unique recidivism rate for this population. Therefore, knowledge about recidivism for juvenile females remains obscure at this time, and the findings presented in this review should only be considered relevant for juvenile males.

Both underreporting and measurement variation need to be considered when interpreting findings presented in this review of recidivism research.

Recognizing that the observed recidivism rates for juveniles who commit sexual offenses are not true reoffense rates will help ensure that risk to public safety is not underestimated. Understanding how differences across research studies may impact recidivism findings can also assist policymakers and practitioners in avoiding interpretation errors and in identifying the most appropriate intervention strategies.

Summary of Research Findings

Empirical data on the recidivism rates of juveniles who commit sexual offenses come from two broad categories of research—single studies and meta-analyses. Single studies typically examine the recidivism rates of a group of juveniles at the end of one or more specified followup periods using one or more recidivism measures. Meta-analyses, on the other hand, examine the results of many different individual studies to arrive at an overall conclusion about a particular issue, such as the likelihood of recidivism. They employ statistical procedures that effectively combine the results of many single studies into one large study that includes all of the single studies and subjects. This approach helps the analyst overcome problems in single studies created by small sample sizes and the use of different recidivism measures or followup periods. Findings from both single studies and meta-analyses are presented below.

Pre-1980s Single Studies

As noted above, little was known about juveniles who commit sexual offenses prior to the mid-1980s, as little attention and arguably even less research were focused on this population. However, a handful of studies undertaken many years ago suggested that the recidivism rates of juveniles who commit sexual offenses were extremely low. One such study from the 1940s reviewed the recidivism rates of juveniles who commit sexual offenses without (n= 108) and with (n= 146) concurrent histories of nonsexual offenses. Those without a history of nonsexual offenses have been referred to as "exclusive offenders" or "specialists," and those

with a history of nonsexual offenses have been referred to as "mixed offenders" or "generalists." The study found rates of recidivism, as defined as a sexual rearrest, of 2 percent for the exclusive juveniles and 10 percent for the mixed juveniles (Doshay, 1943, as cited in Schram, Milloy, & Rowe, 1991).

A second pre-1980s study focused on juveniles ages 7-16 seen by the Toronto Juvenile Court between 1939 and 1948 (*n*= 116). Juvenile males who committed sexual offenses were returned to court for a new general criminal charge at a 41-percent rate (3 percent for sexual recidivism), as compared to a 55-percent rate of return to court for juveniles who committed nonsexual offenses (Atcheson & Williams, 1954).

Historical Studies of Adult Sexual Offenders: Sexual History Interviews

As noted above, very few studies focused on juveniles who commit sexual offenses were undertaken prior to the 1980s, and very little attention arguably was paid to this population by juvenile justice policymakers and practitioners. That all began to change, however, when a series of retrospective studies based on sexual history interviews with adult sex offenders was conducted in the late 1970s and early 1980s. In these studies, adult sex offenders self-reported a significant, previously unidentified history of sexual offending, which included sexual offending as a juvenile. For example, 24 to 75 percent of the adult sex offenders reported committing sexual offenses that were unidentified by authorities and 24 to 36 percent reported sexual offending that began when the respondent was a juvenile. In one of the studies (Longo & Groth, 1983), adult sexual offenders reported a juvenile history of indecent exposure and voyeurism, suggesting that juveniles who commit less severe sex crimes can progress to committing more serious adult sex offenses. Despite their limitations, these studies played a significant role in shifting policy and practice. Juveniles who commit sexual offenses began to be viewed as budding adult sex offenders, and efforts to intervene with this population began to be based on the assumption that they were fundamentally similar to adults who were engaged in sex offending behavior (see, for example, Groth, 1977; Groth, Longo, & McFadin, 1982; Longo & Groth, 1983; Marshall, Barbaree, & Eccles, 1991).

Practitioners and policymakers arguably misinterpreted findings from retrospective studies of adult sexual offenders by assuming that most juveniles who commit sexual offenses will continue to commit sexual offenses as adults if left unchecked. What was missing at that time was a forward-looking perspective that began with juveniles who commit sexual offenses and that examined the proportion of juveniles who commit sexual offenses who go on to recidivate later in life (examining their rates and patterns of recidivism later in life). However, the information presented above is exclusively focused on those who did report this progression from juvenile to adult sexual offenders and did not study those juveniles who did not engage in adult sexual offending. Further, no prospective recidivism data are offered on the adult sexual offenders in these studies, so much appeared to be unknown about the impact of juvenile sexual offending at that time. This outcome is an example of how studies can be misinterpreted and lead to inaccurate policies. As a result of these data, however, the assumption that juveniles who commit sexual offenses are the same as adult sexual offenders would become the subject of debate and study over the next two decades.

Prospective National Youth Sample That Included Juveniles Who Commit Sexual Offenses

The National Youth Survey is an ongoing longitudinal study that began in 1976. The study has followed over time a nationally representative sample of 1,725 youth who were ages 11-17 in 1976, surveying them about their behaviors, attitudes, and beliefs regarding various topics, including violence and offending. Members of the original study sample are now adults, and both they and their family members have been surveyed in recent waves of the study; hence, the study is now called the National Youth Survey Family Study.

In the 1992 survey wave (the latest for which relevant sexual offending data were collected), 6 percent of the sample reported having committed

a sexual assault(*n*= 90),which was defined as youth who reported one sexual assault during the initial first three waves of data collection, and 2 percent of the sample reported having committed a serious sexual assault(*n*= 41), which was defined as youth who reported two or more sexual assaults during the same timeframe. In addition, 70 percent of those acknowledging a sexual offense reported the onset to have been prior to age 18. It should be noted that only 3 percent of the sexual assaulters, as defined above, reported being arrested for the crime, while 10 percent of the serious sexual assaulters, as defined above, reported being arrested. In terms of recidivism, 58 percent of those youth committing a sexual assault reported committing a subsequent sexual assault. Of the serious sexual assaulters, 78 percent reported committing another serious sexual assault. The rate of general reoffense was reported at 99 percent for those youth who committed a sexual offense. Finally, in terms of adult sexual assaults, 10 percent of those who committed a sexual assault as a juvenile also committed an adult sexual offense, while 17 percent of those who committed a serious sexual assault as a juvenile also committed an adult sexual offense (Grotpeter & Elliott, 2002).

While this research provides valuable insights about both the extent of sexual offending within the juvenile population and the recidivism of juveniles who commit sexual offenses, it is important to keep the following in mind when interpreting the study's findings:

- The data produced in the study are based on self-reports.
- The juveniles who reported sexual reoffenses were generally not subject to juvenile justice system intervention; therefore, the impact of such a mediating factor on sexual recidivism is unknown.

Large-Scale Systematic Reviews, Including Meta-Analyses

As mentioned above, meta-analysis is a statistical technique that allows the analyst to synthesize the results of many individual studies. One feature of meta-analysis that is helpful for studying recidivism is its ability to generate an average recidivism rate based on a large number of offenders pooled from many different studies. Findings from three relevant meta-analyses of recidivism studies are presented below.

The first meta-analysis synthesized findings from 79 studies involving 10,988 study subjects overall. The studies were undertaken between 1943 and 1996. The overall sample consisted of 1,025 juveniles who had committed a sexual offense. The average sexual recidivism rate for juveniles who had committed sexual offenses was 5 percent for those studies with 1 year of followup, 22 percent for those studies with 3 years of followup, and 7 percent for those studies with 5 or more years of followup (Alexander, 1999).

A second meta-analysis involved 9 studies and 2,986 subjects, all of whom were juveniles who had committed a sexual offense. The vast majority of study subjects (2,604) were male. Based on an average followup period of 59 months, the study found a sexual recidivism rate of 13 percent, a nonsexual violent recidivism rate of 25 percent, and a nonsexual and nonviolent recidivism rate of 29 percent for study subjects (Reitzel & Carbonell, 2006).

The third meta-analysis reviewed involved 63 studies and a combined sample of 11,219 juveniles who committed sexual offenses. Recidivism was measured over a mean followup period of 59 months. The study found a weighted mean sexual recidivism rate of 7 percent and a weighted mean general recidivism rate of 43 percent for study subjects (Caldwell, 2010).

Single Studies

A number of single studies have examined the recidivism rates of juveniles who have committed a sexual offense. These studies have focused on offender populations from various intervention settings. In some studies, for example, the subjects have been released from a correctional institution or residential placement; in others, the subjects have been on community supervision. Since these variations in settings may reflect differential levels of risk for recidivism among study subjects, this review reports findings from studies focused on

juveniles released from an institutional placement separately from those derived from studies focused on juveniles released from a community-based setting.

Rather than presenting findings and study characteristics in narrative form, tables are used to summarize key features of each study's sample and to present sexual and general recidivism rate findings.[1] Many, but not all, of the studies identified the gender of sample members (the tables note gender if identified in the study). Keep in mind that many of the studies summarized in these tables do not provide detailed information about the type of intervention used, the risk level of the sample, the ages of sample members, and other contextual factors that are needed to make cross-study comparisons and to properly interpret recidivism results. These contextual factors can help explain variations in reported recidivism rates often found across different studies. Hence, caution is urged when making cross-study comparisons or when drawing inferences from the data.

Correctional or Residential Intervention Settings

Table 1 presents key characteristics and findings from eight studies that examined the recidivism rates of juveniles who committed sexual offenses and who were released from correctional and residential settings. Some researchers have questioned whether juveniles placed in residential or correctional intervention and treatment settings are a higher risk population than juveniles in community-based settings. However, risk was not typically quantified in most of the single studies reviewed. Therefore, it cannot necessarily be assumed that the studies in table 1 focused exclusively on high-risk subjects.

Overall, the reported rates of recidivism for juveniles released from a correctional or residential setting varied considerably across studies. Sexual recidivism rates ranged from a low of 0 percent after 1 year of followup to a high of 41 percent after 5 years of followup, while general recidivism rates ranged from 23 percent (based on reincarceration) after 3 years of followup to 77 percent after 5 years of followup. It is unclear whether the juveniles in these studies were also provided treatment, but most correctional and residential programs provide treatment.

Community-Based Intervention Settings

Table 2 presents key characteristics and findings from 13 studies that examined the recidivism rates of juveniles who committed sexual offenses and who were in community-based settings. Again, risk was not typically quantified in most of the single studies reviewed; therefore, it cannot automatically be assumed that the following studies involve subjects who are exclusively low risk.

Again, the reported rates of recidivism vary across studies. Sexual recidivism rates for the juveniles released from a community-based setting ranged from a low of 1 percent (based on reconviction) after 18 months of followup to a high of 25 percent after 7 years of followup, while general recidivism rates ranged from a low of 7 percent (based on reconviction) after 1 year of followup to a high of 79 percent after 7 years of followup. These reported rates of recidivism do not vary greatly from the rates of recidivism found for those juveniles released from correctional and residential settings. Interestingly, a similar pattern is discernible in the recidivism rates found for juveniles from different intervention settings by Alexander (1999) in her meta-analysis. In that study, a sexual recidivism rate of 6 percent was found for juveniles from community-based supervision settings (e.g., probation), a rate of 7 percent was found for juveniles from prison, and a rate of 9 percent was found for juveniles from hospital settings (Alexander, 1999).

"Research has not found a significant difference in sexual recidivism between juveniles who commit sexual offenses against peer or adult victims and those who commit sexual offenses against child victims."

Although it is difficult to base firm conclusions on these data, the relative similarity in observed recidivism rates found across different intervention settings indirectly suggests that (1) the risk levels

TABLE 1. RECIDIVISM RATES FOR JUVENILES WHO COMMITTED SEXUAL OFFENSES AND WERE RELEASED FROM CORRECTIONAL OR RESIDENTIAL SETTINGS

Sample Size	Year of Release or Offense	Followup Period	Sexual Recidivism (%)	General Recidivism (%)	Study Authors
197 males	1984	5 years	12 (rearrest)	51 (rearrest)	Schram, Milloy, & Rowe, 1991[a]
21 males	1990–2003	As of December 2005	38 (reconviction)	71 (reconviction)	Milloy, 2006[b]
256 juveniles	1992–1998	5 years	5 (rearrest)	53 (rearrest)	Waite et al., 2005[c]
86 males	1993–1995	4 years	8 (rearrest)	47 (rearrest)	Miner, 2002
319 (305 males and 14 females)	1995–2002	5 years	9 (reconviction)	60 (reconviction)	Barnoski, 2008[d]
22 juveniles	2001	5 years	41 (rearrest)	77 (rearrest)	Rodriguez-Labarca & O'Connell, 2007[e]
104 (103 males and 1 female)	2004	3 years	2 (reincarceration for any new offense or technical violation)	23 (reincarceration for any new offense or technical violation)	Garner, 2007
110 juveniles	2001	1 year	0 (rearrest)	38 (rearrest)	Maryland Department of Juvenile Services, 2007[f]

[a] The researchers noted that the greater risk was during the first year post-treatment when sample members were still juveniles. It was also noted that juveniles in institutional settings were more likely to recidivate than those in the community.

[b] This study focused on youth who were discharged from their sentence and referred for civil commitment evaluation based on risk and dangerousness, but who were ultimately not so committed.

[c] Juveniles in this study were specifically identified as high risk.

[d] Forty-one of these juveniles were classified as higher risk (level III), while 278 were classified as lower risk (levels I and II) via registration status assessment. The sexual recidivism rate for the higher risk juveniles was 12 percent while the sexual recidivism rate for the lower risk juveniles was 9 percent.

[e] Juveniles in this study were determined to be high risk.

[f] Between 4 and 5 percent of the juveniles were recommitted to the juvenile justice system, but none were incarcerated in the adult criminal justice system.

of youth from different settings may not be appreciably different, and therefore (2) appropriate intervention placement based on assessed risk may not have been occurring at the time these studies were undertaken. Given the importance of reserving more intensive interventions and services for high-risk offenders, these hypotheses and their relevance for contemporary sex offender management practice arguably should be tested in a more direct and rigorous manner.

Juveniles Who Commit Sexual Offenses, by Victim Type

Some recidivism studies that have focused on juveniles who have committed a sexual offense have differentiated offenders who victimize younger children (child molestation) from those who victimize peers or adults (rape). Table 3 presents key characteristics and findings from seven studies that examined the recidivism rates of juveniles who committed rape and/or child molestation.

TABLE 2. RECIDIVISM RATES FOR JUVENILES WHO COMMITTED SEXUAL OFFENSES AND WERE RELEASED FROM COMMUNITY-BASED SETTINGS

Sample Size	Followup Period	Sexual Recidivism (%)	General Recidivism (%)	Study Authors
220 males	55 months	15 (rearrest)	51 (rearrest)	Gretton et al., 2001[a]
155 males	Unknown	3 (reconviction)	19 (reconviction)	Lab, Shields, & Schondel, 1993
75 juveniles	1 year	4 (reconviction)	7 (reconviction)	Prentky et al., 2000
170 (167 males and 3 females)	5 years[b]	14 (readjudication)	54 (readjudication)	Rasmussen, 1999
122 males	18 years	4 (rearrest)	N/A	Seabloom et al., 2003
112 males	29 months	14 (rearrest)	35 (rearrest)	Smith & Monastersky, 1986
300 males	3–6 years after age 18	4 (rearrest)	53 (rearrest)	Vandiver, 2006
366 juveniles	18–35 months	4 (rearrest)	31–51 (rearrest)	Wiebush, 1996[c]
266 juveniles	18 months	1 (reconviction)	17 (reconviction)	Barnoski, 1997
303 males	7 years	25 (rearrest)	79 (rearrest)	Nisbet, Wilson, & Smallbone, 2005)[d]
46 (44 males and 2 females)	5 years	20 (reconviction)	65 (reconviction)	Langstrom & Grann, 2000[e]
359 males	10 years	12 (reconviction)	53 (reconviction)	Rojas & Gretton, 2007[f]
148 (139 males and 9 females)	16 years	16 (rearrest)	N/A	Worling, Littlejohn, & Bookalam, 2010[g]

[a] Juveniles with higher levels of psychopathy had significantly higher levels of sexual recidivism than juveniles with lower levels of psychopathy ($p < .05$).

[b] This study followed juveniles who committed sexual offenses until they reached age 19.

[c] The author looked at several different samples and did not report a general recidivism rate across all samples.

[d] The authors noted that once the sample reached adulthood, the sexual recidivism rate was 9 percent and the general recidivism rate was 61 percent.

[e] This study consisted of juveniles ages 15–20 in Sweden who received a court-ordered evaluation. Thus, the sample included both community-based and residential or correctional populations.

[f] The authors compared Canadian aboriginal ($n = 102$) to nonaboriginal (257) juveniles who committed sexual offenses and found that aboriginal youth had a significantly higher ($p < .01$) sexual recidivism rate (21 percent) than nonaboriginal youth (9 percent).

[g] The authors noted that the adult sexual recidivism rate was 11 percent. In addition, the study found a nonsexual, violent recidivism rate of 32 percent, a nonviolent, nonsexual recidivism rate of 43 percent, and a recidivism rate of 49 percent for any crime (overall general recidivism was not specifically noted).

Although it is difficult to draw firm conclusions from the data, there does not appear to be a significant difference in the rate of either sexual or general recidivism between juveniles who commit sexual offenses against peer or adult victims and those who commit sexual offenses against child victims, based on the results of these studies. It is interesting to note, however, that Alexander's (1999) meta-analysis of earlier studies produced somewhat similar findings. Alexander found an average sexual recidivism rate of 6 percent for those juveniles who commit rape and an average sexual recidivism rate of 2 percent for those who molested a child—a difference that was not statistically significant.

Juveniles Who Commit Sexual and Nonsexual Offenses

Studies have also compared the recidivism rates of juveniles who have committed sexual offenses exclusively (specialists) with those of juveniles who have either committed both sexual and nonsexual/general offenses (generalists), or those who have only committed nonsexual, general offenses. Table 4

TABLE 3. RECIDIVISM RATES FOR JUVENILES WHO COMMITTED RAPE AND/OR CHILD MOLESTATION OFFENSES

Sample Size	Followup Period	Sexual Recidivism (%)		General Recidivism (%)		Study Authors
		Child Molestation	Rape	Child Molestation	Rape	
223 males	4.3 years	5.6 (new charge)	1.5 (new charge)	32.6 (new charge)	45.5 (new charge)	Aebi et al., 2012*
176 males	1 & 2 years	0 (rearrest)	3.33 (rearrest)	7.94 (rearrest)	30 (rearrest)	Faniff & Kolko, 2012*
100 males	2–5 years	8 (reconviction)	10 (reconviction)	38 (reconviction)	54 (reconviction)	Hagan & Cho, 1996*
50 males	10 years	N/A	16 (reconviction)	N/A	90 (reconviction)	Hagan & Gust-Brey, 1999
150 males	8 years	20 (reconviction)	16 (reconviction)	N/A	N/A	Hagan et al., 2001
296 males	5 years	8 (rearrest)	1 (rearrest)	41 (rearrest)	46 (rearrest)	Kemper & Kistner, 2007
156 males	134 months	4	10	32	28	Parks & Bard, 2006

* The differences were not statistically significant.

TABLE 4. RECIDIVISM RATES FOR JUVENILES WHO COMMITTED SEXUAL OFFENSES EXCLUSIVELY (SPECIALISTS) AND THOSE WHO COMMITTED SEXUAL AND NONSEXUAL OFFENSES (GENERALISTS)

Sample Size	Followup Period	Sexual Recidivism (%)		General Recidivism (%)		Study Authors
		Specialists	Generalists	Specialists	Generalists	
156 males	57–68 months	10 (reconviction)	14 (reconviction)	24 (reconviction)	46 (reconviction)	Chu & Thomas, 2010

Note The difference in the sexual recidivism rate between specialists and generalists is not statistically significant, but the difference in the general recidivism rate (any recidivism) between the two groups is statistically significant ($p < .01$).

presents the key characteristics and findings of Chu and Thomas' (2010) study that reported comparative recidivism data for specialists and generalists. This is one of the few recent studies reporting this type of data found in the literature. Table 5 presents key characteristics and findings from seven studies that reported comparative recidivism data for juveniles who committed sexual offenses and juveniles who committed nonsexual, general offenses.

In the Chu and Thomas (2010) study comparing specialists and generalists, no significant difference in sexual recidivism was found between the two groups. However, generalists did have a significantly higher rate of general recidivism than specialists. In fact, their rates of both violent and nonviolent recidivism were also significantly higher than the rate for specialists.

On the other hand, comparisons involving juveniles who commit sexual offenses with those who commit nonsexual, general offenses produced mixed results. Some studies found that juveniles who commit sexual offenses had significantly higher rates of sexual and general recidivism than their general-offending juvenile counterparts, while others did not. Given the inconsistent findings, it is difficult to draw conclusions about the propensity of one group to recidivate relative to the other.

TABLE 5. RECIDIVISM RATES FOR JUVENILES WHO COMMITTED SEXUAL OFFENSES AND THOSE WHO COMMITTED NONSEXUAL, GENERAL OFFENSES

Sample Size	Followup Period	Sexual Recidivism (%)		General Recidivism (%)		Study Authors
		Sexual Offenses	General Offenses	Sexual Offenses	General Offenses	
150 males	8 years	18 (reconviction)	10 (reconviction)	N/A	N/A	Hagan et al., 2001[a]
110 juveniles	33 months	2	0	32	16	Brannon & Troyer, 1991
2,029 males	5 years	7 (charge)	6 (charge)	74 (charge)	80 (charge)	Caldwell, 2007[b]
1,645 juveniles	4 years	2 (charge)	3 (charge)	N/A	N/A	Letourneau, Chapman, & Schoenwald, 2008[c]
256 males	3 years	0 (reconviction)	1 (reconviction)	44 (reconviction)	58 (reconviction)	Milloy, 1994[d]
306 males	6 years	10 (rearrest)	3 (rearrest)	32 (rearrest)	44 (rearrest)	Sipe, Jensen, & Everett, 1998[e]
3,129 males	4–14 years after adulthood	9 (rearrest)	6 (rearrest)	N/A	N/A	Zimring, Piquero, & Jennings, 2007[f]

[a] The difference was statistically significant ($p > .05$).

[b] The difference in sexual recidivism was not statistically significant, but the difference in general recidivism was statistically significant ($p > .01$).

[c] The difference was not statistically significant.

[d] The differences were not statistically significant.

[e] The difference for sexual recidivism was statistically significant ($p > .04$), but the general recidivism rate was not significant.

[f] The difference was not statistically significant. The researchers concluded that the number of juvenile police contacts was far more predictive of future adult sex offenses.

[g] The authors noted that the adult sexual recidivism rate was 11 percent. In addition, the study found a nonsexual, violent recidivism rate of 32 percent, a nonviolent, nonsexual recidivism rate of 43 percent, and a recidivism rate of 49 percent for any crime (overall general recidivism was not specifically noted).

Summary

Drawing sound conclusions about the recidivism rates of juveniles who commit sexual offenses can be difficult due to a number of factors. Since many sex offenses are never reported to law enforcement or cleared by arrest, the observed recidivism rates of juveniles remain underestimates of actual reoffending. Measurement variation across studies, small sample sizes, short followup periods, and missing information about the characteristics of the sample studied and the interventions study subjects were exposed to make it difficult to draw definitive conclusions from the available data. Still, findings from recent research provide important insights regarding the sexual and general recidivism rates of juveniles who commit sexual offenses. Key conclusions that can be drawn from the empirical evidence are outlined below:

- **The observed sexual recidivism rates of juveniles who commit sexual offenses range from about 7 to 13 percent after 59 months, depending on the study.** Although the sexual recidivism rates reported in single studies tend to vary significantly because different methods and followup periods are employed across studies, findings from meta-analyses suggest that juveniles who commit sexual offenses have a sexual recidivism rate ranging from 7 to 13 percent after 59 months, depending on the recidivism measure employed. In addition,

there is empirical evidence indicating that the percentage of juveniles who commit sexual offenses who go on to sexually offend as adults is similarly low. Hence, policies and practices designed to address juvenile sexual offending should recognize that the potential for desistance prior to adulthood is substantial.

"Observed sexual recidivism rates range from about 7 to 13 percent. These rates are generally lower than the rates observed for adult sex offenders."

- **Recidivism rates for juveniles who commit sexual offenses are generally lower than those observed for adult sexual offenders.** For example, in a 2004 meta-analysis, Harris and Hanson found average sexual recidivism rates for adult offenders of 14 percent after a 5-year followup period, 20 percent after a 10-year followup period, and 24 percent after a 15-year followup period (Harris & Hanson, 2004). Hence, recidivism data suggest that there may be fundamental differences between juveniles who commit sexual offenses and adult sexual offenders, particularly in their propensity to sexually reoffend. **Given the above, the national experts at the SOMAPI forum recommended that policymakers and practitioners not equate the two groups.**

- **A relatively small percentage of juveniles who commit a sexual offense will sexually reoffend as adults.** The message for policymakers is that juveniles who commit sexual offenses are not the same as adult sexual offenders, and that all juveniles who commit a sexual offense do not go on to sexually offend later in life.

- **Juveniles who commit sexual offenses have higher rates of general recidivism than sexual recidivism.** Although this basic recidivism pattern would naturally be expected to occur, the magnitude of the difference found in research is somewhat striking. It suggests that juveniles who commit sexual offenses may have more in common with other juveniles who commit delinquent acts than with adult sexual offenders, and interventions need to account for the risk of general recidivism. However, policymakers and practitioners should also keep in mind that nonsexual offenses are more likely than sexual offenses to be reported to law enforcement, and that some crimes legally labeled as nonsexual in the criminal histories of sex offenders may indeed be sexual in their underlying behavior.

Although recent research provides important insights about the recidivism rates of juveniles who sexually offend, significant knowledge gaps and unresolved controversies remain. Variations across studies in the age and risk levels of sample members, the intervention setting, the operational definition of recidivism, the length of the followup period employed, and other measurement factors continue to make cross-study comparisons of observed recidivism rates difficult. Interpreting disparate findings and their implications for policy and practice also remains a challenge.

"Juveniles who commit sexual offenses have higher rates of general recidivism than sexual recidivism."

While the operational definitions and followup periods employed in recidivism research for juveniles who commit sexual offenses will largely be dictated by the available data, the SOMAPI forum participants identified the need for recidivism studies that produce more readily comparable findings. Studies employing followup periods that are long enough to capture sexual and nonsexual recidivism during adulthood are also needed. Future research should also attempt to build a stronger evidence base on the differential recidivism patterns of different types of juveniles who commit sexual and/or nonsexual offenses. Finally, recidivism research on juvenile females who commit sexual offenses is greatly needed.

SOMAPI forum participants also identified the need for more policy-relevant research on the absolute and relative risks that different types of juveniles who commit sexual offenses pose. The literature to date on recidivism for this population has thus far been unable to decisively identify the specific risk posed by juveniles and its meaning for public safety policy. There is little question that policies and practices aimed at the reduction of recidivism would

be far more effective and cost-beneficial if they better aligned with the empirical evidence; however, bridging the gap is plagued by both measurement problems associated with true rates of reoffending and the tendency on the part of policymakers and members of the public to equate juveniles with adult sexual offenders even though the current research does not support this conclusion.

Given the above, **the SOMAPI forum participants offered the following recommendations:**

- **Juveniles who commit sexual offenses should not be labeled as sexual offenders for life.** The recidivism research suggests that most juveniles do not continue on to commit future juvenile or adult sexual offenses. Therefore, labeling juveniles as sex offenders legally or otherwise—particularly for life—is likely to result in harm for many juveniles without a commensurate public safety benefit. The empirical evidence suggests that sexual offending prior to age 18 is not necessarily indicative of an ongoing and future risk for sexual offending. Moreover, the unintended but nevertheless harmful effects of inappropriate labeling have repeatedly been identified in other research. Therefore, this population should be referred to and treated as juveniles who commit sexual offenses, rather than juvenile sex offenders.

- **All policies designed to reduce sexual recidivism for juveniles who commit sexual offenses should be evaluated in terms of both their effectiveness and their potential iatrogenic effects on juveniles, their families, and the community.** Evaluations using scientifically rigorous research designs that examine the intended and unintended effects of policies and interventions aimed at juveniles who sexually offend should be undertaken and adequately funded.

- **Intervention policies should be individualized based on the unique risk and needs of each juvenile who commits a sexual offense. One-size-fits-all policies should be avoided.** Juveniles who sexually offend are a heterogeneous population, and intervention strategies aimed at this population should be similarly diverse. Some juveniles who commit sexual offenses certainly warrant management and treatment using methods similar to adult sexual offenders, but others may not be responsive to such methods.

- **Intervention efforts should be concerned with preventing both sexual recidivism and general recidivism.** Juveniles who sexually offend are more likely to recidivate with a nonsexual rather than a sexual offense. Hence, treatment and supervision efforts should be concerned with both types of reoffending.

- **Sex offender management policies commonly used with adult sex offenders should not automatically be used with juveniles who commit sexual offenses. Empirical evidence concerning both the effectiveness and potential unintended consequences of policies (such as registration and notification, residence restrictions, polygraph, and GPS monitoring) should be carefully considered before they are applied to juvenile populations.** (For more information on the "Registration and Notification of Juveniles Who Commit Sexual Offenses," see chapter 6 in the Juvenile section.) The effectiveness of these policies with adult sex offenders remains questionable, and there is even less empirical evidence suggesting that they work with juveniles. Jurisdictions should carefully consider the empirical evidence and weigh the costs and benefits for all stakeholders before any of the above management strategies are expanded or applied with juveniles. Research has begun to show that fundamental differences exist between juveniles who commit sexual offenses and adult sexual offenders, and that juveniles who sexually offend may have more in common with juveniles who commit nonsexual offenses. This information should be used by policymakers and practitioners to develop rehabilitation and management strategies that are effective, appropriate, and fair.

Notes

1. In this chapter's tables, general recidivism reflects all identified nonsexual recidivism in the study. However, general recidivism rates may or may not include all nonsexual crimes, as some studies only counted certain types of nonsexual crimes when

calculating the general recidivism rate. In addition, some juveniles may be counted twice as general recidivists, as they may have new criminal offenses in multiple categories (e.g., violent, nonsexual; nonviolent, nonsexual; any crime). The recidivism columns of these tables generally note what the recidivism rate was based on (e.g., rearrest, reincarceration); the "reconviction" label includes (1) readjudication as a juvenile or reconviction as an adult, or (2) recommitment as a juvenile or reincarceration as an adult in conjunction with readjudication or reconviction.

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APPENDIX G

17.510 Registration system for adults who have committed sex crimes or crimes against minors -- Persons required to register -- Exemption for registration for juveniles to be retroactive -- Manner of registration -- Penalties -- Notifications of violations required.

(1) The cabinet shall develop and implement a registration system for registrants which includes creating a new computerized information file to be accessed through the Law Information Network of Kentucky.

(2) A registrant shall, on or before the date of his or her release by the court, the parole board, the cabinet, or any detention facility, register with the appropriate local probation and parole office in the county in which he or she intends to reside. The person in charge of the release shall facilitate the registration process.

(3) Any person required to register pursuant to subsection (2) of this section shall be informed of the duty to register by the court at the time of sentencing if the court grants probation or conditional discharge or does not impose a penalty of incarceration, or if incarcerated, by the official in charge of the place of confinement upon release. The court and the official shall require the person to read and sign any form that may be required by the cabinet, stating that the duty of the person to register has been explained to the person. The court and the official in charge of the place of confinement shall require the releasee to complete the acknowledgment form and the court or the official shall retain the original completed form. The official shall then send the form to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

(4) The court or the official shall order the person to register with the appropriate local probation and parole office which shall obtain the person's fingerprints, palm prints, DNA sample, photograph, and a copy of his or her motor vehicle operator's license as well as any other government-issued identification cards, if any. Thereafter, the registrant shall return to the appropriate local probation and parole office not less than one (1) time every two (2) years in order for a new photograph to be obtained, and the registrant shall pay the cost of updating the photo for registration purposes. Any registrant who has not provided palm prints, a copy of his or her motor vehicle operator's license, or a copy of any other government-issued identification cards, if any, as of July 14, 2018, shall provide the information to the appropriate local probation and parole office when the registrant appears for a new photograph to be obtained. Any change to a registrant's motor vehicle operator's license number or any other government-issued identification card after the registrant appears for a new photograph shall be registered in accordance with subsection (10) of this section. Failure to comply with this requirement shall be punished as set forth in subsection (11) of this section.

(5) (a) The appropriate probation and parole office shall send the registration form containing the registrant information, fingerprints, palm prints, photograph, and a copy of his or her motor vehicle operator's license as well as any other government-issued identification cards, if any, and any special conditions imposed by the court or the Parole Board, to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601. The

appropriate probation and parole office shall send the DNA sample to the Department of Kentucky State Police forensic laboratory in accordance with administrative regulations promulgated by the cabinet.

(b) The Information Services Center, upon request by a state or local law enforcement agency, shall make available to that agency registrant information, including a person's fingerprints and photograph, where available, as well as any special conditions imposed by the court or the Parole Board.

(c) Any employee of the Justice and Public Safety Cabinet who disseminates, or does not disseminate, registrant information in good-faith compliance with the requirements of this subsection shall be immune from criminal and civil liability for the dissemination or lack thereof.

(6) (a) Except as provided in paragraph (b) of this subsection, any person who has been convicted in a court of any state or territory, a court of the United States, or a similar conviction from a court of competent jurisdiction in any other country, or a court martial of the United States Armed Forces of a sex crime or criminal offense against a victim who is a minor and who has been notified of the duty to register by that state, territory, or court, or who has been committed as a sexually violent predator under the laws of another state, laws of a territory, or federal laws, or has a similar conviction from a court of competent jurisdiction in any other country, shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register with the appropriate local probation and parole office in the county of residence within five (5) working days of relocation. No additional notice of the duty to register shall be required of any official charged with a duty of enforcing the laws of this Commonwealth.

(b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.

(7) (a) Except as provided in paragraph (b) of this subsection, if a person is required to register under federal law or the laws of another state or territory, or if the person has been convicted of an offense in a court of the United States, in a court martial of the United States Armed Forces, or under the laws of another state or territory that would require registration if committed in this Commonwealth, that person upon changing residence from the other state or territory of the United States to the Commonwealth or upon entering the Commonwealth for employment, to carry on a vocation, or as a student shall comply with the registration requirement of this section, including the requirements of subsection (4) of this section, and shall register within five (5) working days with the appropriate local probation and parole office in the county of residence, employment, vocation, or schooling. A person required to register under federal law or the laws of another state or territory shall be presumed to know of the duty to register in the Commonwealth. As used in this subsection, "employment" or "carry on a vocation" includes employment

that is full-time or part-time for a period exceeding fourteen (14) days or for an aggregate period of time exceeding thirty (30) days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit. As used in this subsection, "student" means a person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education.

(b) No person shall be required to register under this subsection for a juvenile adjudication if such an adjudication in this Commonwealth would not create a duty to register. This paragraph shall be retroactive.

(8) The registration form shall be a written statement signed by the person which shall include registrant information, including an up-to-date photograph of the registrant for public dissemination.

(9) For purposes of KRS 17.500 to 17.580 and 17.991, a post office box number shall not be considered an address.

(10) (a) If the residence address of any registrant changes, but the registrant remains in the same county, the person shall register, on or before the date of the change of address, with the appropriate local probation and parole office in the county in which he or she resides.

(b) 1. If the registrant changes his or her residence to a new county, the person shall notify his or her current local probation and parole office of the new residence address on or before the date of the change of address.

2. The registrant shall also register with the appropriate local probation and parole office in the county of his or her new residence no later than five (5) working days after the date of the change of address.

(c) If the:

1. Motor vehicle operator's license number or any other government-issued identification card number of any registrant changes; or

2. Registrant obtains for the first time a motor vehicle operator's license number or any other government-issued identification card number;

the registrant shall register the change or addition no later than five (5) working days after the date of the change or the date of the addition, with the appropriate local probation and parole office in the county in which he or she resides.

(d) 1. As soon as a probation and parole office learns of the person's new address under paragraph (b)1. of this subsection, that probation and parole office shall notify the appropriate local probation and parole office in the county of the new address of the effective date of the new address.

2. As soon as a probation and parole office learns of the person's new address under paragraph (b)2. of this subsection, that office shall forward this information as set forth under subsection (5) of this section.

(e) 1. A registrant shall register the following information with the appropriate

local probation and parole office no less than twenty-one (21) days before traveling outside of the United States:

a. His or her passport number and country of issue;

b. The dates of departure, travel, and return; and

c. The foreign countries, colonies, territories, or possessions that the registrant will visit.

2. The registrant shall register the following information with the appropriate local probation and parole office no later than five (5) working days after the date of his or her return from traveling outside of the United States:

a. The date he or she departed, traveled, and returned; and

b. The foreign countries, colonies, territories, or possessions that the registrant visited.

(11) Any person required to register under this section who knowingly violates any of the provisions of this section or prior law is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(12) Any person required to register under this section or prior law who knowingly provides false, misleading, or incomplete information is guilty of a Class D felony for the first offense and a Class C felony for each subsequent offense.

(13) (a) The cabinet shall verify the addresses, names, motor vehicle operator's license numbers, and government-issued identification card numbers of individuals required to register under this section. Verification shall occur at least once every ninety (90) days for a person required to register under KRS 17.520(2) and at least once every calendar year for a person required to register under KRS 17.520(3).

(b) If the cabinet determines that a person has:

1. Moved without providing his or her new address; or

2. A new name, motor vehicle operator's license number, or government-issued identification card number that he or she has not provided;

to the appropriate local probation and parole office or offices as required under subsection (10)(a), (b), and (c) of this section, the cabinet shall notify the appropriate local probation and parole office of the new address, name, motor vehicle operator's license number, or government-issued identification card number used by the person. The office shall then forward this information as set forth under subsection (5) of this section. The cabinet shall also notify the appropriate court, Parole Board, and appropriate Commonwealth's attorney, sheriff's office, probation and parole office, corrections agency, and law enforcement agency responsible for the investigation of the report of noncompliance.

(c) An agency that receives notice of the noncompliance from the cabinet under paragraph (a) of this subsection:

1. Shall consider revocation of the parole, probation, postincarceration

supervision, or conditional discharge of any person released under its authority; and

2. Shall notify the appropriate county or Commonwealth's Attorney for prosecution.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 42, sec. 3, effective July 14, 2018; and ch. 121, sec. 2, effective July 14, 2018. -- Amended 2017 Ky. Acts ch. 158, sec. 16, effective June 29, 2017. -- Amended 2011 Ky. Acts ch.2, sec. 92, effective June 8, 2011. -- Amended 2009 Ky. Acts ch. 100, sec. 6, effective June 25, 2009; and repealed, reenacted, and amended 2009 Ky. Acts ch. 105, sec. 5, effective March 27, 2009. -- Amended 2008 Ky. Acts ch. 158, sec. 13, effective July 1, 2008. -- Amended 2007 Ky. Acts ch. 85, sec. 100, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 182, sec. 6, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 401, sec. 16, effective April 11, 2000. -- Amended 1998 Ky. Acts ch. 606, sec. 138, effective July 15, 1998. -- Created 1994 Ky. Acts ch. 392, sec. 2, effective July 15, 1994.

Legislative Research Commission Note (7/14/2018). This statute was amended by 2018 Ky. Acts chs. 42 and 121. Where these Acts are not in conflict, they have been codified together. Where a conflict exists, Acts ch. 121, which was last enacted by the General Assembly, prevails under KRS 446.250.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 85, relating to the creation and organization of the Justice and Public Safety Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.

17.520 Period of registration.

(1) A registrant, upon his or her release by the court, the Parole Board, the cabinet, or any detention facility, shall be required to register for a period of time required under this section.

(2) (a) Lifetime registration is required for:

1. Any person who has been convicted of kidnapping, as set forth in KRS 509.040, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
2. Any person who has been convicted of unlawful imprisonment, as set forth in KRS 509.020, when the victim is under the age of eighteen (18) at the time of the commission of the offense, except when the offense is committed by a parent;
3. Any person convicted of a sex crime:
   a. Who has one (1) or more prior convictions of a felony criminal offense against a victim who is a minor; or
   b. Who has one (1) or more prior sex crime convictions;
4. Any person who has been convicted of two (2) or more felony criminal offenses against a victim who is a minor;
5. Any person who has been convicted of:
   a. Rape in the first degree under KRS 510.040; or
   b. Sodomy in the first degree under KRS 510.070; and
6. Any sexually violent predator.

(3) All other registrants are required to register for twenty (20) years following discharge from confinement or twenty (20) years following the maximum discharge date on probation, shock probation, conditional discharge, parole, or other form of early release, whichever period is greater.

(4) If a person required to register under this section is reincarcerated for another offense or as the result of having violated the terms of probation, parole, postincarceration supervision, or conditional discharge, the registration requirements and the remaining period of time for which the registrant shall register are tolled during the reincarceration.

(5) A person who has pled guilty, entered an Alford plea, or been convicted in a court of another state or territory, in a court of the United States, or in a court-martial of the United States Armed Forces who is required to register in Kentucky shall be subject to registration in Kentucky based on the conviction in the foreign jurisdiction. The Justice and Public Safety Cabinet shall promulgate administrative regulations to carry out the provisions of this subsection.

(6) The court shall designate the registration period as mandated by this section in its judgment and shall cause a copy of its judgment to be mailed to the Information Services Center, Department of Kentucky State Police, Frankfort, Kentucky 40601.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 121, sec. 3, effective July 14, 2018. -- Amended 2011 Ky. Acts ch.2, sec. 93, effective June 8, 2011. -- Amended 2007 Ky. Acts ch. 85, sec. 101, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 182, sec. 7, effective July 12, 2006. -- Amended 2000 Ky. Acts ch. 401, sec. 17, effective April 11, 2000. -- Amended 1998 Ky. Acts ch. 606, sec. 139, effective January 15, 1999. -- Created 1994 Ky. Acts ch. 392, sec. 3, effective July 15, 1994.

Legislative Research Commission Note (6/26/2007). 2007 Ky. Acts ch. 85, relating to the creation and organization of the Justice and Public Safety Cabinet, instructs the Reviser of Statutes to correct statutory references to agencies and officers whose names have been changed in that Act. Such a correction has been made in this section.

17.545 Registrant prohibited from residing or being present in certain areas -- Violations -- Exception.

(1) No registrant, as defined in KRS 17.500, shall reside within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility. The measurement shall be taken in a straight line from the nearest property line to the nearest property line of the registrant's place of residence.

(2) No registrant, as defined in KRS 17.500, nor any person residing outside of Kentucky who would be required to register under KRS 17.510 if the person resided in Kentucky, shall be on the clearly defined grounds of a high school, middle school, elementary school, preschool, publicly owned or leased playground, or licensed day care facility, except with the advance written permission of the school principal, the school board, the local legislative body with jurisdiction over the publicly owned or leased playground, or the day care director that has been given after full disclosure of the person's status as a registrant or sex offender from another state and all registrant information as required in KRS 17.500. As used in this subsection, "local legislative body" means the chief governing body of a city, county, urban-county government, consolidated local government, charter county government, or unified local government that has legislative powers.

(3) For purposes of this section:

(a) The registrant shall have the duty to ascertain whether any property listed in subsection (1) of this section is within one thousand (1,000) feet of the registrant's residence; and

(b) If a new facility opens, the registrant shall be presumed to know and, within ninety (90) days, shall comply with this section.

(4) (a) Except as provided in paragraph (b) of this subsection, no registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor shall have the same residence as a minor.

(b) A registrant who is eighteen (18) years of age or older and has committed a criminal offense against a victim who is a minor may have the same residence as a minor if the registrant is the spouse, parent, grandparent, stepparent, sibling, stepsibling, or court-appointed guardian of the minor, unless the spouse, child, grandchild, stepchild, sibling, stepsibling, or ward was a victim of the registrant.

(c) This subsection shall not operate retroactively and shall apply only to a registrant that committed a criminal offense against a victim who is a minor after July 14, 2018.

(5) Any person who violates subsection (1) or (4) of this section shall be guilty of:

(a) A Class A misdemeanor for a first offense; and

(b) A Class D felony for the second and each subsequent offense.

(6) Any registrant residing within one thousand (1,000) feet of a high school, middle school, elementary school, preschool, publicly owned playground, or licensed day care facility on July 12, 2006, shall move and comply with this section within ninety

(90) days of July 12, 2006, and thereafter, shall be subject to the penalties set forth under subsection (5) of this section.

(7) The prohibition against a registrant:

(a) Residing within one thousand (1,000) feet of a publicly leased playground as outlined in subsection (1) of this section; or

(b) Being on the grounds of a publicly leased playground as outlined in subsection (2) of this section;

shall not operate retroactively.

(8) This section shall not apply to a youthful offender probated or paroled during his or her minority or while enrolled in an elementary or secondary education program.

Effective: July 15, 2020

History: Amended 2020 Ky. Acts ch. 23, sec. 1, effective July 15, 2020. -- Amended 2018 Ky. Acts ch. 181, sec. 1, effective July 14, 2018. -- Amended 2017 Ky. Acts ch. 76, sec. 1, effective June 29, 2017. -- Amended 2009 Ky. Acts ch. 38, sec. 2, effective June 25, 2009. -- Repealed, reenacted, and amended 2006 Ky. Acts ch. 182, sec. 3, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 160, sec. 9, effective July 13, 2004. -- Created 2000 Ky. Acts ch. 401, sec. 29, effective April 11, 2000.

Formerly codified as KRS 17.495.

Legislative Research Commission Note (6/25/2009). A reference in subsection (5) of this statute to "subsection (3) of this section" has been changed in codification to "subsection (4) of this section" to accurately reflect the renumbering of subsections of this statute in 2009 Ky. Acts ch. 38, sec 2.

17.546 Registrant prohibited from using social networking Web site or instant messaging or chat room program accessible by minors, exception for parents -- Registrant prohibited from photographing, filming, or making a video of a minor without consent of minor's parent or guardian.

(1) (a) As used in this subsection, "electronic communications" means any transfer of information, including signs, signals, data, writings, images, sounds, text, voice, and video, transmitted primarily through the use of electrons or electromagnetic waves or particles.

(b) Except as provided in paragraph (c) of this subsection, a registrant who has committed a criminal offense against a victim who is a minor after July 14, 2018, shall not knowingly or intentionally use electronic communications for communicating with or gathering information about a person who is less than eighteen (18) years of age.

(c) It is not a violation of paragraph (b) of this subsection for a registrant to use electronic communications to communicate with or gather information about a person under the age of eighteen (18) years of age if:

1. The registrant is the parent of the person; and

2. The registrant is not prohibited by court order, or the terms of probation, shock probation, conditional discharge, parole, or any other form of early release, from communicating with or gathering information about a person.

(2) No registrant shall intentionally photograph, film, or video a minor through traditional or electronic means without the written consent of the minor's parent, legal custodian, or guardian unless the registrant is the minor's parent, legal custodian, or guardian. The written consent required under this subsection shall state that the person seeking the consent is required to register as a sex offender under Kentucky law.

(3) Any person who violates subsection (1) or (2) of this section shall be guilty of a Class A misdemeanor.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 42, sec. 1, effective July 14, 2018. -- Amended 2013 Ky. Acts ch. 41, sec. 1, effective June 25, 2013. -- Created 2009 Ky. Acts ch. 100, sec. 5, effective June 25, 2009.

17.580 Duty of Department of Kentucky State Police to maintain and update Web site containing information about adults who have committed sex crimes or crimes against minors -- Immunity from liability for good-faith dissemination of information -- Justice and Public Safety Cabinet to establish toll-free telephone number -- Permission for local law enforcement agency to notify of registrants in jurisdiction.

(1) The Department of Kentucky State Police shall establish a Web site available to the public. The Web site shall display:

(a) The registrant information, except for information that identifies a victim, DNA samples, fingerprints, palm prints, Social Security numbers, motor vehicle operator's license numbers, and government-issued identification card numbers obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510;

(b) The sex offender information, except for information that identifies a victim, DNA samples, Social Security numbers, and vehicle registration data, obtained by the Information Services Center, Department of Kentucky State Police, under KRS 17.510 prior to April 11, 2000; and

(c) The registrant's conviction, the elements of the offense for which the registrant was convicted, whether the registrant is currently on probation or parole, and whether the registrant is compliant or noncompliant.

The Web site shall be updated every day except for Saturdays, Sundays, and state holidays.

(2) The information pertaining to an individual shall be maintained on the Web site so long as that individual is registered in accordance with KRS 17.500 to 17.580.

(3) The following language shall be prominently displayed on the Web site: "UNDER KRS 525.070 AND 525.080, USE OF INFORMATION OBTAINED FROM THIS WEB SITE TO HARASS A PERSON IDENTIFIED ON THIS WEB SITE IS A CRIMINAL OFFENSE PUNISHABLE BY UP TO NINETY (90) DAYS IN THE COUNTY JAIL. MORE SEVERE CRIMINAL PENALTIES APPLY FOR MORE SEVERE CRIMES COMMITTED AGAINST A PERSON IDENTIFIED ON THIS WEB SITE."

(4) (a) Any Department of Kentucky State Police employee who disseminates, or does not disseminate, registrant information or sex offender information in good-faith compliance with the requirements of this section shall be immune from criminal and civil liability for the dissemination or lack thereof.

(b) Any person, including an employee of a sheriff's office, acting in good faith in disseminating, or not disseminating, information previously disseminated by the Department of Kentucky State Police shall be immune from criminal and civil liability for the dissemination or lack thereof.

(5) The cabinet shall establish a toll-free telephone number for a person to call to learn the identity of the Web site created in this section and the location of public access to the Web site in the county where the person resides.

(6) In addition to the Web site, a local law enforcement agency may provide personal

notification regarding the registrants located in its jurisdiction. Any notification shall contain the warning specified in subsection (3) of this section.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 42, sec. 4, effective July 14, 2018; and ch. 121, sec. 4, effective July 14, 2018. -- Amended 2009 Ky. Acts ch. 100, sec. 7, effective June 25, 2009; and repealed and reenacted 2009 Ky. Acts ch. 105, sec. 6, effective March 27, 2009. -- Amended 2008 Ky. Acts ch. 158, sec. 14, effective July 1, 2008. -- Amended 2007 Ky. Acts ch. 85, sec. 103, effective June 26, 2007. -- Amended 2006 Ky. Acts ch. 182, sec. 13, effective July 12, 2006. -- Created 2000 Ky. Acts ch. 401, sec. 19, effective April 11, 2000.

Legislative Research Commission Note (7/14/2018). This section was amended by 2018 Ky. Acts chs. 42 and 121, which do not appear to be in conflict and have been codified together.

Legislative Research Commission Note (6/25/2009). A reference in subsection (7) of this statute to "subsection (3) of this section" has been changed in codification to "subsection (4) of this section" by the Reviser of Statutes under the authority of KRS 7.136(1) to reflect the addition of a new subsection and renumbering of succeeding subsections in 2009 Ky. Acts ch. 100, sec. 7.