

The American Law Institute
4025 Chestnut Street
Philadelphia, PA 19104

February 28, 2022

RE: Proposed Model Penal Code Section 213.11A(3) – Registration of Children as Sex Offenders

Dear ALI Council Members:

Juvenile Law Center, joined by 78 organizations and individuals, writes to express our support for the proposed section 213.11A(3) of the Model Penal Code, which eliminates sex offender registration for nearly all individuals who were under 18 at the time of the offense. Collectively, we bring decades of experience in advocacy on behalf of children in the criminal and youth legal system and child welfare system. Our advocacy is informed by developments in social science research, evidence-based harm reduction, state law precedent, and a deep understanding of the inequities of our legal system.

As noted in the executive summary, reporter's notes, and comments to section 231.11, experts confirm that registering youth as sex offenders does not advance public safety and instead imposes devastating consequences on youth. ALI's proposal to eliminate this harmful practice is consistent with the goals of the juvenile court system. We write to provide further support of the proposal by highlighting the numerous constitutional concerns created by youth registration and the significant disproportionality in implementation of these laws.

Thirty-eight states place children adjudicated delinquent on sex offender registries.¹ The scope and duration of registration is determined by state law. In Alabama, for example, registration is mandatory for children of any age and can last from 10 years to life.² In contrast, youth ages 14 and older in Oklahoma receive a hearing prior to registration and registration typically ends when the youth turns 21.³ In 22 states, children adjudicated delinquent can be registered for their lifetimes.⁴ And while some states claim their registries are private, they are nevertheless porous and provide ample opportunity for public disclosure.⁵ The law in twenty-five states either explicitly requires or allows children to be placed on publicly available registries.⁶

While some states impose registration mandatorily based on adjudication, others use a discretionary model, but they too fail to address the problems with youth registration. Because of youths' low sexual recidivism rate, risk assessments and

professional evaluations cannot accurately predict which youth may reoffend.⁷ Discretionary registration schemes also potentially exacerbate the disparities in youth registration.

Research supports nothing less than fully eliminating registration for youth.⁸ Any period of registration for young people is harmful. It can force families into homelessness,⁹ create major educational disruptions for registered children, and imposes stigmatization and community isolation, which can lead to self-harm behaviors and suicide.¹⁰ And research confirms that registries do not advance public safety as intended. In fact, these laws significantly increase the likelihood that registered youth may be sexually victimized.¹¹

Registration contravenes the principles of the juvenile court system

The juvenile court system was founded on the understanding that young people hold tremendous potential for growth and rehabilitation and are less culpable for the harm they cause.¹² In recognition of adolescents' potential, the system included confidentiality provisions from the start.¹³ Labeling youth as sex offenders and placing them on registries contravenes the purpose of the juvenile court system by fixing young people with one of the worst labels a person can be given, "sex offender."¹⁴ This label creates both psychological challenges for young people as well as practical challenges as they start their adult lives shrouded in stigma. Moreover, state laws can require young people to disclose or make public their registration status.¹⁵ Even where youth do not face public or lifetime registration, they may be subjected to such provisions if they travel or move to a new state.

Youth registration has significant constitutional deficiencies

Registration has always been intended to be a public safety measure. Yet, the absence of empirical support for youth registration as a public safety measure and the well-documented harms to registered youth set forth in the summary and comments to section 213.11 prompt significant questions regarding the constitutionality of youth registration schemes. Evidence confirming that youth registration does not improve public safety due to the low rates of recidivism for youth adjudicated of sexual offenses¹⁶ makes youth registration attenuated from the purported purpose of registration.¹⁷

State and federal courts across the country have examined registration schemes against this backdrop. An increasing number of courts have held that harms caused by youth registration constitute punishment,¹⁸ in some cases in violation of the Eighth Amendment.¹⁹ The presumption of dangerousness inherent in the sex offender label and the imposition of lifetime registration without an opportunity for review have led courts to hold that youth registration violates substantive due process.²⁰ Further, residential restrictions often separate families, violating individuals' rights to family integrity.²¹ The differences between state registration schemes and the immense difficulty youth face navigating those schemes

unreasonably burdens a young person's constitutionally protected freedom of movement, and the right to intrastate and interstate travel.²² Discretionary registration schemes also create a greater risk of arbitrary and discriminatory application of youth registration.²³

Youth registration disproportionately affects Black, Brown, Indigenous, and LGBTQ+ youth

Registration is more likely to impact marginalized youth—particularly Black, Brown, and Indigenous youth, low-income youth, and LGBTQ+ youth. These children are overrepresented in the juvenile legal system²⁴ and are disproportionately placed in foster care where supervision is high and mandatory reporting requirements apply to even normative sexual behaviors.²⁵ In tribal communities, Indigenous youth are subject to increased surveillance and federal prosecution, which results in federal sex offender registration.²⁶ One study found that, in California, 76% of registered youth are youth of color, while white youth make up only 24% of registered youth.²⁷ Discretionary registration schemes create an additional opportunity for implicit bias to enter the proceedings, potentially increasing the likelihood that Black, Brown, and LGBTQ+ youth will be placed on the registry.²⁸ Further, requiring youth tried as adults to register disproportionately impacts Black youth who represent over 50% of youth transferred to adult court.²⁹

Registration for youth is never appropriate

ALI's proposal to end registration for nearly all youth is a tremendous step toward ensuring that youths' constitutional rights are protected, and that youth are not harmed by the lifetime label of sex offender. The research ALI cites confirms that registration for any period of time for a youth of any age is harmful. While ALI's proposal is strong and transformational, the ample research it relies upon supports removing the registration requirement for all individuals who were under age 18 at the time of the offense, including youth ages 16 and older charged with the most serious sexual offenses in adult court. Research confirms that the seriousness of the offense does not predict recidivism.³⁰ Inclusion of any youth on registries supports the myth that there is a class of particularly dangerous young people.³¹

If adopted, section 213.11A(3) will provide a significant incentive for states and the federal government to eliminate youth registration aligning with empirical research and allowing individuals to reintegrate into their communities and live fuller and safer lives.

Sincerely,

Juvenile Law Center
Riya Saha Shah, Managing Director
Vic Wiener, Skadden Fellow

Organizations

Black and Pink National

Blume & Blume, Attorneys at Law, PC

Center for Children's Law and Policy

Center for Family Representation

Children & Family Justice Center

Children's Defense Fund

Children's Law Center, Inc.

Children's Rights

Citizens for Juvenile Justice

Civitas ChildLaw Center at Loyola University Chicago School of Law

Colorado Justice Advocacy Network

Cook County Public Defender

International CURE

Delaware Office of Defense Services

Florida's 12th Judicial Circuit - Public Defender's Office's Office

Franklin County Public Defender Office

James B. Moran Center for Youth Advocacy

Justice Policy Institute

Juvenile and Children's Advocacy Project (JCAP)

Kentucky Department of Public Advocacy

King County Department of Public Defense

Knox County Public Defender's Community Law Office

Lambda Legal Defense & Education Fund, Inc.

Law Office of Dorene A. Kuffer, P.C.

Law Office of Kathy Manley

Lawndale Christian Legal Center

Louisiana Center for Children's Rights

Marsh & Wagner, P.C.

Minnesota Board of Public Defense

Minnesota Board of Public Defense

Missouri State Public Defender

National Association for Rational Sexual Offense Laws (NARSOL)
National Juvenile Justice Network
NJ Office of the Public Defender
Office of the Ohio Public Defender
Office of the Public Defender - Hennepin County, Kassius Benson, Chief Public Defender and Lisa McNaughton, Managing Attorney, Juvenile Division
Open City Advocates
Pacific Juvenile Defender Center
Pathways for Change, Inc.
Phoenix Transition Program
Pima County Public Defender
Promise of Justice Initiative
Restorative Action Alliance
TeamChild
The Gault Center
The Hope Project
The Sentencing Project
The Washington State Office of Public Defense
Transgender Law Center
Washington Association of Criminal Defense Lawyers
Washington Defender Association
Youth Justice Project, Oregon Justice Resource Center
Youth, Rights & Justice

Individuals

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Carolyn Frazier, Clinical Professor of Law, Bluhm Legal Clinic, Northwestern Pritzker School of Law
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Cynthia J. Najdowski, Ph.D., Associate Professor, University at Albany
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Douglas P. Killian, Metropolitan Public Defender

Dylan Jones - Concerned Citizen

Edward King Alexander, Chief of Appellate Section of the Calcasieu Parish Public Defenders Office; elected member of the Louisiana Republican State Central Committee, and Chair of its Resolutions Committee.

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Nickole Miller, Director of the Joan and Lyle Middleton Center for Children's Rights at Drake Law School

Ryan C. Davis Law, PLLC

Tyshun Braxton

Wayne Logan, Professor, Florida State University

¹ MALIK PICKETT, EMILY SATIFKA, & RIYA SAHA SHAH, WITH VIC WIENER, JUVENILE LAW CENTER, LABELED FOR LIFE 3 (2020), <https://jlc.org/resources/labeled-life-review-youth-sex-offender-registration-laws> [hereinafter LABELED FOR LIFE] (while Pennsylvania still has statutory provisions providing for youth registration, the Pennsylvania Supreme Court declared youth registration unconstitutional in 2014. *See In re J.B.*, 107 A.3d 1, 2 (Pa. 2014).

² *Id.* at 16.

³ *Id.* at 56.

⁴ *Id.* at 4.

⁵ Wayne A. Logan, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA 229 (Stanford Univ. Press 2009).

⁶ *Id.* at 4–5.

⁷ Michael F. Caldwell, *Quantifying the Decline in Juvenile Sexual Recidivism Rates*, 22 PSYCHOL. PUB. POL'Y & L. 414, 421 (2016).

⁸ *See generally* Letter from Social Scientists and Legal Scholars with Expertise on Juvenile Sexual Offending to the Council of the American Law Institute (Feb. 24, 2022) (on file with Dr. Elizabeth Letourneau) [hereinafter Letter from Social Scientists and Legal Scholars].

⁹ *Id.* at 6–7; *see also* HUMAN RIGHTS WATCH, RAISED ON THE REGISTRY: THE IRREPARABLE HARM OF PLACING CHILDREN ON SEX OFFENDER REGISTRIES IN THE U.S. 65 (2013),

https://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf [hereinafter RAISED ON THE REGISTRY] (44% of youth on the registry report experiencing homelessness at some point); Jill Levenson & Richard Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 AM. J. CRIM. JUST. 54, 55–57, 61–62 (2009) (1 in 5 families reported being forced to move after a landlord found out a family member was on the registry).

¹⁰ Letter from Social Scientists and Legal Scholars, *supra* note 8, at 6–7; Elizabeth J. Letourneau et al., *Effects of Juvenile Sex Offender Registration on Adolescent Well-Being: An Empirical Examination*, 24 PSYCHOL. PUB. POL'Y & L. 105, 114 (Corrected 2018) (Children on sex offender registries are four times more likely to report a recent suicide attempt than non-registered children who have engaged in harmful or illegal sexual behavior); RAISED ON THE REGISTRY, *supra* note 9, at 72 (Over 50% of 296 youth registrants surveyed reported that they had been denied access to or experienced severe interruptions in their education due to registration).

¹¹ Letourneau et al., *supra* note 10, at 114.

¹² CENTER ON JUVENILE AND CRIMINAL JUSTICE, JUVENILE JUSTICE HISTORY, <http://www.cjcg.org/education1/juvenile-justice-history.htm> (last visited Feb. 10, 2021).

¹³ OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE JUSTICE REFORM INITIATIVES IN THE STATES: 1994-1996, at 36 (1997), <https://www.ncjrs.gov/pdffiles/reform.pdf>.

¹⁴ David Van Biema, *Burn Thy Neighbor: Where Can a Child Molester Go After Serving Time? Not Home*, Time (July 26, 1993), <http://content.time.com/time/subscriber/article/0,33009,978924-1,00.html>; see also Elizabeth Letourneau & Michael Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 SEXUAL ABUSE: J. RES. & TREATMENT 293, 307 (2005) (“Programs that promote youths’ concepts of themselves as sex offenders, either intentionally (e.g., treatment programs that force youth to recount their offenses and label themselves as sex offenders at the start of therapy sessions) or unintentionally (e.g., treatment programs that last years) seem likely to interrupt the natural process of developing a positive identify of oneself.”).

¹⁵ LABELED FOR LIFE, *supra* note 1, at 4–5.

¹⁶ Letter from Social Scientists and Legal Scholars, *supra* note 8, at 1–2; Caldwell, *supra* note 7, at 419.

¹⁷ See, e.g., 42 U.S.C. 16901 (the Adam Walsh Child Protection Act of 2006 was intended “to protect the public from sex offenders and offenders against children”).

¹⁸ See *In re T.B.*, 489 P.3d 752, 769 (Colo. 2021); *In re C.K.*, 182 A.3d 917, 935 (N.J. 2018); *In re C.P.*, 967 N.E.2d 729, 750 (Ohio 2012).

¹⁹ *T.B.*, 489 P.3d at 772; *C.P.*, 967 N.E.2d at 732.

²⁰ See *In re T.R.*, 80 P.3d 1276, 1281 (Nev. 2003) (holding Nevada’s discretionary youth registration scheme was void for vagueness because “the statute lacks explicit standards to guide the district court in reaching its decision, it is subject to arbitrary and discriminatory application); *J.B.*, 107 A.3d at 2, (under the Pennsylvania Constitution, “SORNA’s registration require violates juvenile offenders’ due process rights through the use of an irrebuttable presumption”); *C.K.*, 182 A.3d at 919 (holding that “[p]ermanently barring juveniles who have committed certain sex offenses from petitioning for relief from the Megan’s Law requirements bears no rational relationship to a legitimate governmental objective” in violation of the New Jersey Constitution); *C.P.*, 967 N.E.2d at 750 (holding that automatic tier III registration for serious youthful offenders “undercuts the rehabilitative purpose of Ohio’s juvenile system and eliminates the important role of the juvenile court’s discretion in the disposition of juvenile offenders and thus fails to meet the due process requirement of fundamental fairness”).

²¹ See *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) (“[T]he Constitution protects the sanctity of the family precisely because the institution of the family is deeply rooted in this Nation’s history and tradition.”).

²² See *Shapiro v. Thompson*, 394 U.S. 618, 629 (1969), *overruled in part on other grounds by Edelman v. Jordan*, 415 U.S. 651 (1974) (“The nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.”).

²³ See *T.R.*, 80 P.3d at 1281.

²⁴ Henrika McCoy & Emalee Pearson, *Racial Disparities in the Juvenile Justice System*, ENCYCLOPEDIA OF SOC. WORK (2019), <https://doi.org/10.1093/acrefore/9780199975839.013.1288> (while Black youth are only 14% of the US population, 36% of youth in the juvenile justice system).

²⁵ *Black Children Continue to Be Disproportionately Represented in Foster Care*, ANNIE E. CASEY FOUNDATION, KIDS COUNT DATA CENTER (Apr. 13, 2020), <https://datacenter.kidscount.org/updates/show/264-us-foster-care-population-by-race-and-ethnicity> (in 2018, 23% of youth in foster care were Black); Laura Baams, Bianca D.M. Wilson & Stephen T Russell, *LGBTQ Youth in Unstable Housing and Foster Care*, 143 PEDIATRICS 1, 4 (2019) (around 30% of youth in foster care identify as LGBTQ).

²⁶ Matthew Hendley, *Most Kids in Federal Justice System are Native American*, KIDS IMPRISONED (Aug. 3, 2020), <https://kidsimprisoned.news21.com/blog/2020/08/most-kids-in-federal-justice-system-are-native-american/>.

²⁷ *Ending the Abusive Practice of Placing Children on Sex Offender Registries*, IMPACT JUSTICE, <https://impactjustice.org/impact/center-on-youth-registration-reform/> (last visited Feb. 10, 2022).

²⁸ Research shows that Black youth are viewed as older and more culpable than white youth. See Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 532, 539–40 (2014). Prosecutors disproportionately charge lesbian, gay, and bisexual youth with sexual offenses for age-appropriate consensual sexual activity and courts sometimes inappropriately order LGBTQ+ youth to undergo sex offender treatment. KATAYOON MAJD ET AL., HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS 62–63 (2019), https://www.nclrights.org/wp-content/uploads/2014/06/hidden_injustice.pdf.

²⁹ McCoy & Pearson, *supra* note 24, at 9 (citing M. Sickmund, A. Sladky & W. Kang, *Easy Access to Juvenile Court Statistics: 1985–2016* (2017), <https://www.ojjdp.gov/ojstatbb/ezajcs/>).

³⁰ Ashley Batastini et al., *Federal Standards for Community Registration of Juvenile Sex Offenders*, 17 PSYCHOL. PUB. POL'Y & L. 451, 457–58 (2011); Franklin E. Zimring et al., *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 CRIMINOLOGY & PUB. POL'Y 507, 527–28 (2007).

³¹ The debunked “superpredator” myth of the 1990s shaped juvenile justice policy for over a decade, overwhelmingly harming Black youth. Carroll Bogert & LynNell Kancock, *Analysis: How the Media Created a ‘Superpredator’ Myth that Harmed a Generation of Black Youth*, NBC NEWS (Nov. 20, 2020), <https://www.nbcnews.com/news/us-news/analysis-how-media-created-superpredator-myth-harmed-generation-black-youth-n1248101>.