

To: New Jersey Law Revision Commission
From: Whitney G. Schlimbach, Counsel
Re: Juvenile Lifetime Registration and Notification Held Unconstitutional by *State in Interest of C.K.*, 233 N.J. 44 (2018)
Date: January 16, 2024

MEMORANDUM

Project Summary¹

In New Jersey, qualifying sex offenders must comply with the registration and notification obligations of Megan’s Law.² Individuals who are convicted, adjudicated delinquent, or found not guilty by reason of insanity, of a qualifying sex offense are subject to lifetime registration and notification, pursuant to N.J.S. 2C:7-2.³

The registration statute permits an application to terminate registration and notification obligations “upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility . . . , and is not likely to pose a threat to the safety of others.”⁴ Pursuant to subsection (g), however, a sex offender is not eligible for termination of registration and notification requirements if he or she has been adjudicated delinquent of “more than one sex offense” or certain offenses specified in the statute.⁵

In *State in Interest of C.K.*, the New Jersey Supreme Court held that lifetime registration and notification obligations are unconstitutional as applied to juvenile offenders adjudicated delinquent of qualifying sex offenses.⁶

Statute Considered

N.J.S. 2C:7-2 states, in relevant part:

a. (1) A person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sex offense as defined in subsection b. of this section shall register as provided in subsections c. and d. of this section.

f. Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense

¹ The issue discussed in this Memorandum was brought to Staff’s attention by Fletcher Duddy, Deputy Public Defender, Special Litigation Unit, New Jersey Office the Public Defender, while he was providing assistance with another NJLRC project.

² N.J. STAT. ANN. §§ 2C:7-1 to -23 (West 2024).

³ N.J. STAT. ANN. § 2C:7-2(b) (West 2024) (defining “sex offense”).

⁴ N.J. STAT. ANN. § 2C:7-2(f).

⁵ N.J. STAT. ANN. § 2C:7-2(g).

⁶ *State in Interest of C.K.*, 233 N.J. 44, 77 (2018).

within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

g. A person required to register under this section who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.⁷

Background

In *State in Interest of C.K.*, the defendant (C.K.) was charged with sex offenses occurring when he was a juvenile.⁸ Although over eighteen at the time of the charge, C.K. was not prosecuted as an adult and he pled guilty to aggravated sexual assault in juvenile court.⁹ In 2003, he was sentenced to three years of probation and ordered to comply with Megan’s Law requirements.¹⁰

As an adult, C.K. graduated college and obtained a Master’s degree.¹¹ At the time the Court heard the case, he was employed at a “nonprofit agency [that provided] adults suffering from mental illness a range of services.”¹² The Court noted that it had been “more than twenty years since C.K. engaged in any unlawful conduct and more than fourteen years since his juvenile adjudication.”¹³

Five years after his conviction, C.K. filed a petition for post-conviction relief (PCR) “seeking . . . a judicial declaration that the Megan’s Law lifetime registration and notification requirements violated his constitutional rights.”¹⁴ In 2012, he filed a second PCR alleging ineffective assistance with respect to the constitutional challenge of the Megan’s Law requirements.¹⁵ The PCR court held an evidentiary hearing, during which multiple experts testified regarding “the treatment and rehabilitation of both juvenile and adult sex offenders.”¹⁶

⁷ N.J. STAT. ANN. § 2C:7-2 (emphasis added).

⁸ *C.K.*, 233 N.J. at 49 (“The State charged C.K. with committing, while he was a juvenile, the offense of aggravated sexual assault against his adopted brother.”).

⁹ *Id.* (“Defendant was adjudicated delinquent”).

¹⁰ *Id.* (“As a Tier One offender, C.K. is required to register annually with the law enforcement agency in the municipality where he resides.”).

¹¹ *Id.* at 50.

¹² *Id.* (noting also that “C.K. . . . turned down opportunities for professional advancement from fear that a background check might ‘out’ his status as a Megan’s Law registrant”).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 51.

The PCR court concluded that “the evidence presented by [the experts was] credible and persuasive,” but held that “any loosening of the strictures of Megan’s Law must come from [the Supreme Court] in assessing the constitutionality of the registration scheme as applied to juveniles, or from the Legislature.”¹⁷

The Appellate Division affirmed the PCR court’s denial, finding that, although the “constitutional arguments [we]re compelling,’ . . . [the] Court’s decisions in *Doe v. Poritz*, . . . and *In re Registrant J.G.* . . . foreclosed any basis for relief.”¹⁸

The Supreme Court granted the defendant’s petition for certification.¹⁹

Analysis

The Supreme Court’s review was limited to the issue of “the constitutionality of imposing the Megan’s Law lifetime registration and notification requirements on juveniles adjudicated of committing certain sex offenses.”²⁰

With respect to the constitutionality of lifetime registration of juveniles pursuant to N.J.S. 2C:7-2(g), C.K. argued that the requirement “violate[d] his federal and state constitutional rights to substantive due process and to be free from cruel and unusual punishment.”²¹ He further contended that the “irrebuttable presumption” of lifetime registration for juveniles “makes no allowance for a juvenile’s rehabilitation and low risk of re-offense,” meaning the registration scheme is “penal, not remedial, in nature and advances no legitimate governmental objective.”²²

The State asserted that lifetime registration “‘passes constitutional muster’ under *Doe* and *J.G.*” and that the defendant’s “concerns about imposing lifetime registration on adolescents ‘are appropriately directed at the Legislature.’”²³ In addition, the State criticized the studies relied upon

¹⁷ *Id.* at 55 (noting “that it was constrained by the precedents of this Court and, on that basis, ‘the adverse consequences of Megan’s Law registration’ do not give rise to a constitutional issue”).

¹⁸ *Id.* (citing *Doe v. Poritz*, 142 N.J. 1 (1995) (“The question before us is whether . . . the Registration and Community Notification Laws, are constitutional. . . . We hold that they are, but that the prosecutor’s decision to provide community notification, including the manner of notification, is subject to judicial review before such notification is given, and that such review is constitutionally required.”) and *In re Registrant J.G.*, 169 N.J. 304 (2001) (rejecting a ten-year-old defendant’s argument that “the lifetime registration requirement of Megan’s Law constitutes cruel and unusual punishment in violation of the federal and state constitutions . . . in view of [the *J.G.* Court’s] determination to terminate registration and notification requirements at age eighteen for adjudicated delinquents whose sex offenses were committed prior to age fourteen and who prove by clear and convincing evidence that they are not likely to pose a threat to the safety of others”) (emphasis added)).

¹⁹ *Id.* at 56 (“Our grant of certification is limited to addressing the constitutionality of N.J.S.A. 2C:7–2(g) as applied to juveniles, which, unlike subsection (f), imposes categorical lifetime registration requirements for certain sex offenses.”).

²⁰ *Id.* at 58 (explaining that “[t]ypically, [the Supreme Court] would not consider a constitutional challenge on a second PCR,” but “‘when a constitutional problem presented is of sufficient import to call for relaxation of the rules [related to post-conviction relief,] . . . we may consider the question on its merits’” (alteration in original)).

²¹ *Id.* at 56.

²² *Id.* (adding that Megan’s Law requirements “erect[] barriers to a juvenile’s acceptance into society, career advancement, and personal happiness”).

²³ *Id.* at 57.

by the defendant’s experts “because they do not distinguish between the general class of juvenile sex offenders and the subclass of offenders affected by subsection (g).”²⁴

The *C.K.* Court provided an overview of the registration requirements imposed by N.J.S. 2C:7-2, as well as the purpose and legislative history of the statute. Following conviction or adjudication for a sex offense, as defined in N.J.S. 2C:7-2(b), an offender “must register with the police department in the municipality where he lives,” which involves the collection of fingerprints and other identifying information.²⁵

Additionally, a registered offender is required to inform police regarding his internet access and any change in relevant information.²⁶ The Court explained that eligibility for the lifetime registration requirement in subsection (g) is “categorical,” meaning that “[a] juvenile, fourteen years or older, who has committed an enumerated sex offense, or multiple sex offenses, . . . cannot seek relief ever from those requirements.”²⁷

Legislative History

Subsection (g) of N.J.S. 2C:7-2 was enacted in 2002, “with the intended purpose of conforming [New Jersey’s] registration and notification scheme to Congress’s 1996 amendments to the . . . Jacob Wetterling Act.”²⁸ The provision of the Jacob Wetterling Act cited by New Jersey’s Legislature when enacting “the permanent, offense based bar” in subsection (g), required “offenders who committed certain enumerated sex crimes [to be] subject to lifetime registration requirements.”²⁹

The *C.K.* Court explained that “[t]he rationale behind the passage of subsection (g) evidently was to comply with federal law and ensure continued specified federal crime funding.”³⁰ However, the Jacob Wetterling Act was repealed in 2006 and replaced with the Adam Walsh Child Protection and Safety Act.³¹ Title 1 of that Act, the Sex Offender Registration and Notification Act (SORNA) “requires that states receiving federal crime funds substantially comply with the guidelines it outlines.”³² Although New Jersey has “not substantially implemented SORNA,” SORNA does not contain a “permanent lifetime registration provision for juveniles.”³³

²⁴ *Id.*

²⁵ *Id.* at 59.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 61 (citing 42 U.S.C. §§ 14071–73 (repealed 2006)).

²⁹ *Id.* (quoting 42 U.S.C. § 14071(b)(6) (repealed 2006)).

³⁰ *Id.*

³¹ 34 U.S.C. §§ 20901-20991 (2024). Title

³² *C.K.*, 233 N.J. at 61.

³³ *Id.* at 61-62 (“[a] juvenile Tier III offender, [which is the SORNA classification *C.K.* would fall into,] although subject to presumptive lifetime registration, is eligible” to terminate registration requirements if the individual has a “clean record” after twenty-five years).

Specifically with respect to juvenile offenders, SORNA allows states the discretion to decide whether to include juveniles on public sex-offender registries.³⁴ In 2016, the United States Attorney General issued guidelines providing that “states that do not register juveniles who have committed serious sex offenses may still be compliant with SORNA if the federal government finds that those states have nonetheless ‘substantially implemented SORNA’s juvenile registration requirements’ through other means.”³⁵

Furthermore, if implementation of a SORNA provision “would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction’s highest court,” the United States Attorney General may provide an exemption.³⁶

Constitutionality of Lifetime Sentences Imposed on Juvenile Offenders

The *C.K.* Court discussed the historical approach to imposing life sentences on juveniles in both New Jersey and the rest of the United States.³⁷ The Court “recognize[d] that juveniles are different from adults – that juveniles are not fully formed, that they are still developing and maturing, that their mistakes and wrongdoing are often the result of factors related to their youth, and therefore they are more amenable to rehabilitation and more worthy of redemption.”³⁸

Explaining that the “juvenile justice system is a testament to society’s judgment that children bear a special status,” the Court emphasized that “rehabilitation and reformation of the juvenile [are] a hallmark of the juvenile system.”³⁹ The Court also pointed to the “series of landmark cases”⁴⁰ in which the United States Supreme Court excluded juveniles from capital punishment,⁴¹ mandatory life without parole for homicide offenses,⁴² and life without parole for non-homicide offenses.⁴³ In addition, pursuant to the decision in *State v. Zuber*, the New Jersey

³⁴ *Id.* at 62.

³⁵ *Id.* at 62-63.

³⁶ *Id.* at 63.

³⁷ *Id.* at 66-72.

³⁸ *Id.* at 66. In coming to this conclusion, courts have relied “on scientific and sociological studies” finding that: (1) “[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults,” . . . ; (2) “juveniles are more vulnerable or susceptible to negative influences” and “have less control . . . over their own environment,” . . . ; and (3) the personality and character traits of juveniles “are more transitory, less fixed,” and “not as well formed as that of an adult[.]”

Id. at 69 (quoting *Roper*, 543 U.S. at 569-70).

³⁹ *Id.* at 67-68 (explaining that a purpose of New Jersey’s Juvenile Code is “to remove from children committing delinquent acts certain statutory consequences of criminal behavior, and to substitute therefor an adequate program of supervision, care and rehabilitation, and a range of sanctions designed to promote accountability and protect the public”) (citing N.J. STAT. ANN. § 2A:4A:21-(b) (West 2023)).

⁴⁰ *Id.* at 68.

⁴¹ *Roper v. Simmons*, 543 U.S. 551 (2005).

⁴² *Miller v. Alabama*, 567 U.S. 460 (2012).

⁴³ *Graham v. Florida*, 560 U.S. 48 (2010).

Supreme Court expanded the reasoning to “sentences that are the practical equivalent of life without parole.”⁴⁴

With respect to the constitutionality of juvenile life sentences, the U.S. Supreme Court found that such a sentence “denies a juvenile ‘some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.’”⁴⁵ Furthermore, life without parole “precludes any ‘consideration of [a juvenile’s] chronological age and its hallmark features—among them, immaturity, impetuosity, and failure to appreciate risks and consequences.’”⁴⁶

Constitutionality of New Jersey’s Lifetime Registration and Notification Requirements Imposed on Juvenile Sex Offenders

The *C.K.* Court analyzed whether application of N.J.S. 2C:7-2(g) to “juveniles between the ages of fourteen and seventeen adjudicated delinquent in family court”⁴⁷ “passes muster under the substantive due process guarantee of [New Jersey’s] Constitution.”⁴⁸ To be constitutional, the statute must “reasonably relate to a legitimate legislative purpose and not impose arbitrary or discriminatory burdens on a class of individuals.”⁴⁹

The Court reiterated the “commonsense and historical” tradition of treating children differently from adults, demonstrated by the goals and purposes of the separate juvenile justice system.⁵⁰ The Court also acknowledged the large body of scientific and sociological material indicating that “generally, juvenile sex offenders are less likely to reoffend than adult sex offenders and . . . recidivism is particularly low for those who have not reoffended for a long period”⁵¹

⁴⁴ *State v. Zuber*, 277 N.J. 422, 429 (2017) (explaining that the “proper focus belongs on the amount of real time a juvenile will spend in jail and on the formal label attached to his sentence”).

⁴⁵ *C.K.*, 233 N.J. at 70 (quoting *Graham*, 560 U.S. at 75).

⁴⁶ *Id.* (quoting *Miller*, 567 U.S. at 477).

⁴⁷ *Id.* at 66 (focusing on juveniles between ages fourteen and eighteen given the holding in *J.G.* addressing juvenile offenders under fourteen); *see supra* note ----.

⁴⁸ *Id.* at 72-73.

⁴⁹ *Id.* at 73. The *C.K.* Court also considered other states’ approaches to long-term registration and notification requirements imposed on juvenile sex offenders. *Id.* at 70-72. For instance, the Ohio Supreme Court held a statute that imposed “automatic and mandatory lifetime” registration and notification obligations on certain juvenile sex offenders to be “violative of the cruel-and-unusual-punishment and due-process clauses of the Federal and Ohio Constitutions,” although the statute permitted “potential . . . reclassification after twenty-five years.” *Id.* at 70 (citing *In re C.P.*, 131 Ohio St.3d 513 (2012)). In Pennsylvania, the state’s Supreme Court held that the statutory requirement of “lifetime registration and notification requirements on sexually violent juvenile offenders violated the state constitution’s due process guarantee.” *Id.* at 71-72 (citing *In re J.B.*, 630 Pa. 408 (2014)). The Pennsylvania Court found that lifetime registration of juvenile offenders violated due process “by utilizing the irrebuttable presumption that all juvenile offenders ‘pose a high risk of committing additional sexual offenses.’” *Id.* at 72 (quoting *J.B.*, 630 Pa. at 429). The Pennsylvania Court concluded that presumption “is not universally true and a reasonable alternative means currently exists for determining” a juvenile’s risk of re-offense. *J.B.*, 630 Pa. at 429.

⁵⁰ *C.K.*, 233 N.J. at 74.

⁵¹ *Id.* (noting also that “the permanent status of sex-offender registrant will impair a juvenile, as he grows into adulthood, from gaining employment opportunities, finding acceptance in his community, developing a healthy sense of self-worth, and forming personal relationships”).

N.J.S. 2C:7-2(g) “is grounded on the irrebuttable presumption that juveniles adjudicated delinquent for committing certain sex offenses will forever pose a danger to society.”⁵² The Court characterized this presumption as “disregard[ing] any individual assessment of whether a particular registrant is likely to reoffend,” and essentially “brand[ing juvenile offenders] as irredeemable [at a time] before their personalities are fully formed.”⁵³ This “irrebuttable lifetime presumption is not supported by scientific and sociological studies or [New Jersey’s] jurisprudence and is not needed given the fifteen-year look back required by subsection (f).”⁵⁴

The “perverse effect” of the irrebuttable presumption is that juveniles subject to subsection (g), “who have completed their rehabilitation, not reoffended, and who can prove after a fifteen-year look-back period that they are not likely to pose a societal threat,” must remain on the registry permanently.⁵⁵ Once “the remedial purpose of Megan’s Law – rehabilitation of the offender and protection of the public – is satisfied,” lifetime registration, which is a “continued constraint[] on [juveniles’] lives and liberty . . . , takes on a punitive aspect that cannot be justified by [the New Jersey] Constitution.”⁵⁶

The Court concluded that, “at that point . . . subsection (g), as applied to juveniles, no longer bears a rational relationship to a legitimate state purpose and arbitrarily denies those individuals their right to liberty and enjoyment of happiness guaranteed by Article I, Paragraph 1 of the New Jersey Constitution.”⁵⁷ Therefore, the *C.K.* Court held “that N.J.S.A. 2C:7-2(g) is unconstitutional as applied to juveniles adjudicated delinquent as sex offenders.”⁵⁸

Pending Bills

There are no bills currently pending that address the constitutionality of N.J.S. 2C:7-2(g) as applied to juvenile sex offenders.

Conclusion

Staff requests authorization to conduct further research and outreach to determine whether N.J.S. 2C:7-2 would benefit from a modification incorporating the holding of *State in Interest of*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 74-75.

⁵⁵ *Id.* at 75 (explaining that “C.K.’s case in many ways exemplifies why subsection (g) does not bear a reasonable relationship to a legitimate state purpose when applied to juvenile offenders” given that “[t]wenty years have passed since C.K. committed his offense as a juvenile, and his adjudication occurred more than fourteen years ago[; he] is now thirty-eight years old and has not committed an offense in twenty years[;] . . . he has complied with his Megan’s Law responsibilities [and] graduated from college and received a master’s degree in counseling, remained gainfully employed working for a nonprofit agency that provides services for adults suffering from mental illness, and has been a contributing member of his community[, in addition to the fact that m]ultiple psychological evaluations attest that he is an extremely low risk to reoffend” but “[n]evertheless, C.K. remains a sex-offender registrant”).

⁵⁶ *Id.* at 75-76.

⁵⁷ *Id.* at 76 (noting that “[e]ven a lifetime presumption with a twenty-five year lookback period has been found violative of some states’ constitutions”).

⁵⁸ *Id.* at 77.

C.K. that subsection (g) “is unconstitutional as applied to juveniles adjudicated delinquent as sex offenders.”⁵⁹

⁵⁹ *Id.*