

# RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-3883-21

IN THE MATTER OF  
REGISTRANT B.K.

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Submitted October 12, 2023 – Decided November 6, 2023

Before Judges Currier, Firko and Susswein.

On appeal from the Superior Court of New Jersey, Law  
Division, Union County, Docket No. ML-12201365.

Maynard Law Office, LLC, attorney for appellant B.K.  
(James H. Maynard, on the briefs).

William A. Daniel, Union County Prosecutor, attorney  
for respondent (Michele C. Buckley, Assistant  
Prosecutor, of counsel and on the brief).

PER CURIAM

Megan's Law<sup>1</sup> registrant B.K. appeals from a July 5, 2022 Law Division  
order denying his application to terminate his statutory registration obligations.

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<sup>1</sup> Megan's Law is a collection of statutes governing the registration of certain sex offenders, N.J.S.A. 2C:7-1 to -5, and notification requirements to the community with regard to certain sex offenders, N.J.S.A. 2C:7-6 to -11. See In re Registrant J.G., 169 N.J. 304, 309 (2001).

B.K. made his application nine years after he was adjudicated delinquent for sex crimes committed against children. Judge Thomas K. Isenhour ruled that pursuant to N.J.S.A. 2C:7-2(f), B.K. is not eligible for relief from his Megan's Law registration requirements until fifteen years have elapsed without committing a new offense. B.K. contends the fifteen-year look-back period is unconstitutional as applied to juvenile sex offenders. We have carefully reviewed the record in light of the governing legal principles and are unpersuaded by B.K.'s constitutional arguments. Accordingly, we affirm substantially for the reasons explained in Judge Isenhour's comprehensive written opinion.

In October 2011, when B.K. was fifteen years old, he hacked into Facebook and email accounts of multiple boys, who were twelve to fourteen years old. B.K. extorted and threatened the boys into engaging in sexual conversations, sending nude photographs, and taking photos of themselves masturbating. B.K. was charged by juvenile complaint with multiple counts of endangering the welfare of a child, N.J.S.A. 2C:24-4(b)(5), and one count of harassment, N.J.S.A. 2C:33-4(c).

On June 27, 2012, he was tried as a juvenile on two of the endangering charges and found guilty. He thereafter pled guilty pursuant to a plea agreement

to the remaining counts of second-degree endangering. A forensic psychosexual evaluation determined he presented a low risk to the community. In August 2012, the trial court imposed two years of probation and required B.K. to register as a sex offender under Megan's Law.

It is undisputed that B.K. has not been charged with a new offense since his juvenile adjudication. In May 2018, he graduated from college magna cum laude with a Bachelor of Science degree in accounting and a minor in finance. B.K. works as a senior financial analyst at an international telecommunications company. A psychological evaluation conducted in August 2021 determined that he presents a low risk of reoffending.

In early 2022, B.K. filed a motion to be relieved of Megan's Law registration requirements pursuant to N.J.S.A. 2C:7-2(f). Judge Isenhour denied the motion without an evidentiary hearing. Judge Isenhour concluded the plain language of N.J.S.A. 2C:7-2(f) requires an applicant to wait fifteen years before becoming eligible to terminate Megan's Law registration obligations. He also rejected B.K.'s constitutional arguments, holding the fifteen-year look-back period prescribed in N.J.S.A. 2C:7-2(f) serves a legitimate purpose as applied to juvenile sex offenders.

On appeal, B.K. reprises the constitutional arguments he raised in the Law Division. He contends the fifteen-year time bar as applied to juvenile sex offenders violates substantive due process under the New Jersey Constitution because: (1) it infringes on their fundamental rights while serving no public need, and (2) it fails to recognize that juveniles differ substantially from adults in overall brain development, sexual arousal patterns, social/emotional maturation, reasoning, decision-making, and impulse control skills.

B.K. also contends the categorical nature of the fifteen-year time bar violates the due process clause under the New Jersey Constitution by creating an irrebuttable presumption that compliance with Megan's Law registration requirements for a minimum of fifteen years is needed to protect the community. It precludes B.K. and other juvenile sexual offenders from demonstrating at a hearing convened before expiration of the fifteen-year period that there is no longer a need for them to comply with those requirements. B.K. further contends N.J.S.A. 2C:7-2(f) violates the equal protection clause because juvenile sex offenders are no more likely to commit future sex offenses than juvenile offenders who are not sex offenders.

We review rulings of law and issues of constitutionality or interpretation of statutes de novo. State v. Hemenway, 239 N.J. 111, 125 (2019). "Our courts

have demonstrated a steadfast adherence to the principle 'that every possible presumption favors the validity of an act of the Legislature.'" State v. Trump Hotels & Casino Resorts Inc., 160 N.J. 505, 526 (1999) (quoting N.J. Sports & Exposition Auth. v. McCrane, 61 N.J. 1, 8 (1972)). We must "exercise 'extreme self restraint' before using 'the judicial power to invalidate a legislative act[.]' and we will not declare a legislative act void 'unless its repugnancy to the Constitution is clear beyond a reasonable doubt.'" LaManna v. Proformance Ins. Co., 184 N.J. 214, 223 (2005) (alteration in original) (quoting Trump Hotels & Casino Resort Inc., 160 N.J. at 526).

In Doe v. Poritz, our Supreme Court upheld the constitutionality of the registration and community notification provisions that comprise Megan's Law, stressing they "are not retributive laws, but laws designed to give people a chance to protect themselves and their children." 142 N.J. 1, 13 (1995). The Court recognized that even when convicted sex offenders have successfully reintegrated into their communities, the Legislature concluded that "despite such integration, reoffense is a realistic risk, and knowledge of their presence a realistic protection against it." Ibid.

To address that risk, N.J.S.A. 2C:7-2(f) provides:

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 within [fifteen] 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.

It is not disputed that B.K. has not committed an offense since he was found guilty of the sex crimes requiring him to register under Megan's Law. Nor does the State dispute that he is not likely to pose a threat to the safety of others. B.K.'s application was denied solely because fifteen years have not yet elapsed since his adjudication of delinquency.<sup>2</sup>

We first address B.K.'s contention the statute violates the substantive due process rights of juveniles. Article I, Paragraph 1 of the New Jersey Constitution provides: "[a]ll persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." N.J. Const. art. I, ¶ 1. "The guarantee of substantive due process requires that a statute reasonably relate to

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<sup>2</sup> Because the trial court imposed a disposition of noncustodial probation, the fifteen-year look-back provision is measured from the entry of the judgment of adjudication.

a legitimate legislative purpose and not impose arbitrary or discriminatory burdens on a class of individuals." State in Int. of C.K., 233 N.J. 44, 73 (2018).

B.K. asserts his right to pursue and obtain safety and happiness is infringed by the fifteen-year look-back provision, which categorically bars termination of registration requirements before that period has elapsed. The gravamen of his argument is that imposing an ongoing registration requirement on juveniles who do not actually pose a risk to the public is not rationally related to any legitimate state interest. In practical effect, B.K. challenges any fixed time-bar on an application to terminate registration requirements. If we accepted B.K.'s rationale, juvenile sex offenders could be immediately excused from Megan's Law's public safety features if they proved they are not likely to pose a threat to the safety of others. The prerequisite that a registrant abstain from new criminal activity for a prescribed period guards against the possibility that an individualized psychosexual risk-assessment might turn out to be wrong.

We decline to hold that immediate eligibility to terminate the registration requirement—a policy that runs so far afield of the public safety-oriented policy adopted by the Legislature—is constitutionally compelled. Requiring a post-adjudication period of crime-free conduct while in the community is, without question, rationally related to the goal of public safety by augmenting the

protection afforded by a predictive risk assessment. Indeed, it is hard to imagine there could be more direct and convincing evidence that a sex offender will be able and willing to remain crime-free going forward than proof that he or she has refrained from committing a new crime for a sustained period following adjudication of guilt.

Nor are we prepared to rule that the fifteen-year period of crime-free behavior in the community chosen by the Legislature is too long to satisfy constitutional standards. In reaching that conclusion, we find guidance and instruction in our Supreme Court's unanimous decision in C.K. There, the Court invalidated a provision of Megan's Law imposing a lifetime bar on termination of registration requirements for juveniles. C.K., 233 N.J. 48-49. That provision, N.J.S.A. 2C:7-2(g), reads:

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.[A].2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.[A].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.



The C.K. Court held that subsection (g) violates the substantive due process rights of juveniles under our State Constitution. See 233 N.J. at 74-75. The Court reasoned that a mandatory and irreducible lifetime registration requirement

is grounded on the irrebuttable presumption that juveniles adjudicated delinquent for committing certain sex offenses will forever pose a danger to society. That irrebuttable presumption disregards any individual assessment of whether a particular registrant is likely to reoffend, long after the adjudication and long after the juvenile has become an adult. Those juveniles are, in effect, branded as irredeemable—at a point when their lives have barely begun and before their personalities are fully formed. They must carry this stigma even if they can prove that they pose no societal threat. But that irrebuttable lifetime presumption is not supported by scientific and sociological studies or our jurisprudence and is not needed given the fifteen-year look back required by subsection (f).

[Ibid. (emphasis added).]

Importantly for purposes of this appeal, the Court solved the constitutional infirmity of subsection (g) by allowing C.K. to apply for termination from the Megan's Law requirements after a fifteen-year look-back. Id. at 48-49. Although subsection (g) expressly provides that such sex offenders are not

eligible for the fifteen-year look-back feature codified in subsection (f),<sup>3</sup> the Court essentially eliminated that exclusion, extending the reach of subsection (f) to include juveniles adjudicated delinquent for more serious or repetitive sex crimes.

Contrary to B.K.'s contention, nothing in the text or rationale of C.K. supports his argument that the fifteen-year look-back provision itself is unconstitutional as applied to juveniles. The Court did not question the rationality of the fifteen-year period. To the contrary, it embraced that period as the solution to the constitutional infirmity of the lifetime bar codified in subsection (g). See *ibid.* Nor did the Court imply that subsection (f) is unconstitutional as to the class of juvenile offenders the Legislature determined were eligible for a fifteen-year look-back. We therefore decline to hold a fifteen-year look-back is unconstitutional as applied to juveniles, like B.K., who were found guilty of second-degree sexual crimes committed against children.

We next address B.K.'s argument that imposing Megan's Law registration policies without making accommodations for the differences between adults and juveniles lacks a rational basis. No one disputes that juvenile sex offenders

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<sup>3</sup> We note that N.J.S.A. 2C:7-2(f) correspondingly begins with the caveat, "[e]xcept as provided in subsection g. of this section."

differ in important respects from their adult counterparts. However, as Judge Isenhour aptly noted, our Supreme Court addressed when and in what circumstances juveniles can be relieved of Megan's Law registration requirements in J.G. See J.G., 169 N.J. at 337.

In J.G., the juvenile offender asserted that Megan's Law registration requirements should not apply to him because he was only ten years old when he committed the offense for which he was adjudicated delinquent. Id. at 319. The Court compared the requirements under Megan's Law to relevant provisions of the New Jersey Code of Juvenile Justice (Juvenile Code), N.J.S.A. 2A:4A-20 to -49. Id. at 320-21. The Court focused on statutory provisions that draw a distinction between juveniles over and under age fourteen. Id. at 325. To harmonize the goals of the Juvenile Code and Megan's Law, the Court held:

[W]ith respect to juveniles adjudicated delinquent for sexual offenses committed when they were under age fourteen[,] Megan's Law registration and community notification orders shall terminate at age eighteen if the Law Division, after a hearing held on motion of the adjudicated delinquent, determines on the basis of clear and convincing evidence that the delinquent is not likely to pose a threat to the safety of others.

[Id. at 337.]

Here, B.K. was fifteen years old when he committed the sexual offenses for which he was adjudicated delinquent. Therefore, he does not qualify for

early termination under the rule announced in J.G. We have no authority to disregard or redraw the age line drawn by the Supreme Court after its careful statutory and constitutional analysis. Cf. Pannucci v. Edgewood Park Senior Hous.-Phase 1, LLC, 465 N.J. Super. 403, 414 (App. Div. 2020) ("[Plaintiff] asks us to change the law the Supreme Court has established. That, we may not do.") (citing State v. Steffanelli, 133 N.J. Super. 512, 514 (App. Div. 1975)). Stated another way, we are bound by Supreme Court precedent that already accounts for the fact that juvenile sex offenders are different from adult sex offenders and thus are to be treated differently for purposes of determining when Megan's Law registration requirements can be terminated. It is for our Supreme Court and the Legislature—not an intermediate appellate court—to weigh the benefits and costs of the policy shift B.K. urges us to adopt.<sup>4</sup>

Nor are we persuaded by B.K.'s reliance on judicial decisions in other states that address the constitutionality of long-term registration and notification requirements. In In re C.P., the Ohio Supreme Court struck down a statute

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<sup>4</sup> We add that B.K. argues the restrictions and requirements of Megan's Law impinge on his ability to move about New Jersey and the United States. In J.G., the Court rejected the contention the registration and notification requirements of Megan's Law violate the fundamental right to freedom of movement. 169 N.J. at 339.

imposing automatic lifetime sex offender registration and notification requirements on juveniles subject to potential reclassification after twenty-five years. 967 N.E.2d 729, 748-50 (Ohio 2012). In the case of In re J.B., the Pennsylvania Supreme Court struck down a statute imposing lifetime registration and notification requirements on juvenile offenders that could be terminated after twenty-five years. 107 A.3d 1, 8, 20 (Pa. 2018). There is a substantial difference between twenty-five years and fifteen years. We decline to hold that a fifteen-year period of ineligibility to terminate registration requirements violates substantive due process under the State Constitution.

We likewise reject B.K.'s contention the fifteen-year time bar of subsection (f) constitutes an irrebuttable presumption that violates procedural due process under the State Constitution. This contention cannot be reconciled with C.K., where the Supreme Court relied on the fifteen-year look-back provision in subsection (f) even as it struck down the lifetime bar in subsection (g) as an impermissible irrebuttable presumption. 233 N.J. at 74-75. We decline to hold the fifteen-year crime-free period the C.K. Court relied upon to solve the constitutional infirmity of subsection (g) is itself an impermissible irrebuttable presumption that violates the State Constitution. We reiterate that the statutorily prescribed period during which sex offenders must remain crime free while they

are in the community following their conviction/adjudication serves a bona fide public safety function, providing a backstop to psychosexual evaluations that predict the likelihood of future recidivism. The Legislature acted within its constitutional authority by requiring proof that a convicted/adjudicated sex offender has not recidivated for a prescribed period. The State Constitution does not command that protection from recidivism be achieved solely by means of a psychological evaluation to predict what might happen in the future. We acknowledge that fixed ineligibility periods, by definition and legislative intent, irrefutably preclude earlier termination. But a prescribed minimum period of registration does not automatically violate the New Jersey Constitution. Were it otherwise, the C.K. Court would not have replaced the lifetime bar in subsection (g) with the fifteen-year bar in subsection (f).

Nor are we persuaded by B.K.'s argument that "an evidentiary hearing is necessary to create a record of the scientific data and analyses relied upon for subsequent appellate review." As Judge Isenhour aptly noted, "juvenile brain" research has already been acknowledged by our Supreme Court in many different contexts. It is well-accepted that juveniles are different from adults, as J.G. and C.K. both make clear. See J.G., 169 N.J. at 321-26; see also C.K., 233 N.J. at 48. That does not mean, however, that juvenile sex offenders do not

pose a risk to public safety that justifies requiring them to register with law enforcement authorities for a prescribed period following their adjudication of delinquency.

Finally, we are unpersuaded by B.K.'s equal protection arguments. He contends the time bar in subsection (f) violates equal protection because "[juvenile sex offenders] are no more likely to commit a future sex offense than juvenile offenders who are not sex offenders." As our Supreme Court made clear in Doe, the imperative of equal protection does not categorically preclude the use of classifications but requires only that those classifications not be arbitrary. 142 N.J. at 91. "A classification that does not impact a suspect class or impinge upon a fundamental constitutional right will be upheld if it is rationally related to a legitimate government interest." Id. at 92 (citing Brown v. City of Newark, 113 N.J. 565, 573 (1989)). The Doe Court dispositively concluded that classification of an offender based on a conviction for an enumerated sex offense is rationally related to the government's interest in protecting the public. Id. at 95; see Pannucci, 465 N.J. Super. at 414 (noting we have no authority to change the law our Supreme Court has established).

In sum, it is not irrational to require a statutorily prescribed period of crime-free behavior before juvenile Megan's Law registrants may move to

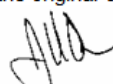
terminate their registration obligations. Applying the principle that a legislative act should not be declared null and void "unless its repugnancy to the Constitution is clear beyond a reasonable doubt," B.K. has failed to establish grounds upon which we might invalidate N.J.S.A. 2C:7-2(f) as to juvenile sex offenders. Trump Hotels & Casino Resorts Inc., 160 N.J. at 8.

Nor do we have the authority to shorten the minimum period that juvenile sex offenders must go crime free before they can terminate their Megan's Law obligations. We therefore offer no opinion on whether there should be a shorter look-back period for juveniles who were older than fourteen at the time of their sexual crimes. Cf., J.G., 169 N.J. at 337. That policy decision rests with the Legislature, subject to review by our Supreme Court, not an intermediate appellate court.

To the extent we have not specifically addressed them, any remaining arguments raised by B.K. lack sufficient merit to warrant discussion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION