



February 19, 2019

To: Chairman Lathrop and Members of the Judiciary Committee
From: Juliet Summers, Policy Coordinator at Voices for Children in Nebraska
Re: LB 510 – Change applicability of Sex Offender Registration Act to certain out-of-state juvenile adjudications

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Children deserve the opportunity for second chances and shouldn't be labelled forever for behaviors they engage in while young. Voices for Children in Nebraska supports LB 510 because it provides statutory protection to codify federal case law holding that youth who engage in sexual misconduct are not, by definition, sex offenders.

I recognize that the terms "sexual misconduct" and "sex offender" are chilling. However, **most young people adjudicated in juvenile court on sexual offenses are engaging in actions that we generally do not think of as sex crimes.** Among younger children, behaviors may be related to sexual exploration that can be addressed with appropriate education about bodies and boundaries. Behaviors we think of as normal and non-threatening, even consensual behavior like sex or sexting between teens, can be considered sex offenses under the law. Sometimes, tragically, sexual offenses occur because the offending child has themselves been perpetrated on by an adult. Moreover, numerous studies show that the re-arrest rates for sexual offenses among juveniles are extremely low, far lower than recidivism rates for juvenile offenses overall.¹

Nebraska law is already clear that Nebraska adjudications in juvenile court, as opposed to convictions in criminal court, do not give rise to registry requirements. However, a troubling loophole had persisted with regard to juveniles adjudicated in other states which required registry. Prior to joining Voices for Children, I was a juvenile public defender in Douglas County, representing teens and children accused of crimes. I occasionally saw cases wherein a young client, adjudicated at a young age in juvenile court for a sex offense, not registerable in Nebraska, moved across state lines to a state where they would be required to register based on that adjudication. Then they moved back (in one case, precisely because of the other's state's onerous registry requirements). And though under Nebraska law their adjudication did not initially expose them to registering as a sex offender, because they had been on the registry in another state, they were suddenly required to. This was and is an absurd result.

¹ *Youth Who Commit Sex Crimes: Fact or Fiction*. Justice Policy Institute. Available at http://www.justicepolicy.org/uploads/justicepolicy/documents/08-08_fac_sornafactfiction_jj.pdf

A panel of the 8th Circuit federal Court of Appeals appeared to rectify this issue in 2017 in the *A.W.* case, holding that under Nebraska law, the term “sex offender” has as its “usual accepted meaning” a person who has been *convicted of a crime* involving unwanted sexual conduct.² Because juvenile adjudications are not convictions, an adjudication in Nebraska or elsewhere cannot form the basis of a designation as a sex offender for purposes of lifetime registry. After the decision, the Nebraska State Patrol removed 65 names of juveniles from the public registry.³

In 2018, however, the Nebraska Supreme Court held in *State v. Clemens* that, despite the 8th Circuit’s decision in *A.W.*, the plain language of our SORA statute requires registry not based on a “conviction” in another state, but based on “required registration” in another state. The Court issued what amounts to an invitation to the Legislature to clarify this language, holding in part:

If the policy of Nebraska is to exclude registration when a person moves to Nebraska with a registration requirement in another state based on a juvenile adjudication, then our Legislature would need to make that decision and amend our statutes.⁴

Voices for Children supports this bill, because codification into statute provides an additional layer of clarity and will close a loophole leading to absurd and unfair outcomes. For this reason, I would also like to put on the record that we would strongly oppose any proposed amendment that would walk back Nebraska’s current statute protecting children from being labelled for life for behaviors they will never engage in again.

I’d like to thank Senator McCollister for bringing this bill, and the Committee for your time and consideration.

Sincerely,



² *A.W. v. Wood*, No. 16-1898 (8th Cir. 2017)

³ Lori Pilger. *8th Circuit says Nebraska’s sex offender list doesn’t apply to boy*. Lincoln Journal Star, August 1, 2017. Available at https://journalstar.com/news/local/crime-and-courts/th-circuit-says-nebraska-s-sex-offender-list-doesn-t/article_1b9ea9c7-2fe5-5b7b-879b-784692612bf2.html

⁴ *State v Clemens*, 300 Neb. 601, 614 (2018)