STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

BRANCH 3 ­

In the Interest of:

**CLINT CLIENT,** Case No. 15-JV-00

A Person Under the Age of Seventeen.

**MOTION TO STAY THE S. 938.34(15m) DISPOSITION OF SEX OFFENDER REPORTING**

To: ADA Peter Prosecutor

PLEASE TAKE NOTICE that at a date and time to be determined by the Court the juvenile, by and through Attorney Lily Lawyer, will appear and respectfully move the Court for an order staying the disposition in sec. 938.34(15m), Stats., pursuant to sec. 938.34(16), Stats., and In the Interest of Cesar G., 2004 WI 61, 272 Wis. 2d 22.

As grounds therefore, the juvenile asserts the following:

1. Clint admitted to one count of attempted first-degree sexual assault of a child and one count of first-degree sexual assault of a child, contrary to sec. 948.02(1), Stats.
2. Sec. 938.34(15m)(bm), Stats., indicates that, if a juvenile is found delinquent for a violation of 948.02(1), the court shall require a juvenile to comply with sex offender registration and reporting requirements.
3. Sec. 938.34(16), Stats., indicates that the court can, after ordering a disposition in this section, enter an additional order staying the execution of the dispositional order.
4. The Wisconsin Supreme Court has held that “a circuit court has the authority under Wis. Stat. sec. 938.34(16) to stay that part of a dispositional order requiring a delinquent juvenile to register as a sex offender.” Cesar G., ¶ 52.
5. In so holding, the Court indicated that, in addition to the seriousness of the offense, the factors which the circuit court should consider in deciding to grant a stay are those spelled out in secs. 938.34 (15m)(c) and 301.45(1m)(e), Stats. Id., ¶ 47-50.
6. Examination of those factors in this case yields the following:

**1. The ages, at the time of the violation, of the juvenile and the victim of the violation.**

At the time of the offense one victim was 10, the other was almost 10 and Clint was 15.

**2. The relationship between the juvenile and the victim of the violation.**

One of the victims was a friend of Clint’s sister; the other was his sister. In addition, in an incident four years prior to the charged offense, the victims were his sisters and a close relative. “Incest offenders recidivate at a significantly lower rate than offenders who target victims outside the family” A. Harris, R. Karl Hanson, *Sex Offender Recidivism: A Simple Question*. One reason for this reduced risk is that the potential pool of victims is much smaller. Dr. Coffey recognized this more limited pool of potential victims when she acknowledged that his risk to offend is lower if he’s outside the home.

1. **Whether the violation resulted in bodily harm, as defined in s. 939.22(4), to the victim.**

I have not seen or been given any information that suggests the victims experienced any “physical pain or injury, illness, or any impairment of physical condition.” As with any victim of a sexual assault, there is probable psychological harm, but no bodily harm has been reported, nor would any have been likely given the nature of these assaults.

1. **Whether the victim suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.**

I have not seen or been given any information to suggest that the victims suffered from a mental illness or deficiency.

1. **The probability that the juvenile will commit other violations in the future.**

Dr. Coffey’s psychosexual assessment concludes that Clint is a moderate risk to re-offend and a low-risk to re-offend if he completes juvenile sex offender treatment.

1. **Any other factor that the court determines may be relevant to the particular case.**

There are other factors which the Court should find relevant and which weigh in favor of staying registration:

**A. THE CHANGING PERSONALITY TRAITS OF KIDS**, as highlighted by the Supreme Court in Roper v. Simmons, 543 U.S. 551 (2005). In rejecting the death penalty for juveniles, the Court highlighted the differences between adults and juveniles. Relevant to this question, the Court noted, “the character of the juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.” Id., at 570. The Court went on to note the important implications of these differences, including “[t]he reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably defined character.” Id. Further, “it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.” Id. And finally, “‘behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood.’” Id. (internal cites omitted)

**B. THE LOW LEVEL OF RECIDIVISM** for children in the system for child sex offenses. Justice Kennedy’s admonitions about remembering that kids can change are borne out in experts’ conclusions about recidivism in juvenile sex offenders. In her report, Dr. Coffey wrote that “juvenile sexual offenders have a lower rate of sexual recidivism than adult sexual offenders. . . .The recidivism rate for this population averages approximately 8%.” p.6 Dr. Coffey’s psychosexual report. In a 2007 study of juvenile sexual recidivism, Dr. Michael Caldwell, of the University of Wisconsin, found that only 6.8% of juvenile sex offenders committed another sexual crime over a 5 year follow-up period into adulthood. This is almost identical to the rate of juvenile *non-sexual* offenders who committed a sex crime over the same 5-year follow-up period. See study previously submitted to the court.

**C. THE POTENTIAL FOR VERY DAMAGING EFFECTS OF LABELING** a child as a sex offender, especially at a time where public access to that information is greatly enhanced. As the Court is certainly aware, with the passage of 2005 WI Act 5 (“Amie’s Law”), this state has granted unfettered discretion to police to release information about juveniles on the registry. One can imagine the ostracizing and stigmatizing effects on juveniles once neighbors, schools, and communities are made aware. It is this concern which led The Association for the Treatment of Sexual Abusers [“ATSA”] to issue a position paper on juvenile sex offenders. In explaining their recommendation that juveniles should be subject to community notification in only extreme cases, they indicate:

Despite the questionable safety benefits of community notification with juveniles, it is likely to stigmatize the adolescent, fostering peer rejection, isolation, increased anger, and consequences for the juvenile’s family members. Until research has demonstrated the protective efficacy of notification with juveniles and explored the impact of notification on the youth, their families and the community, notification – if imposed at all for juveniles – should be done conscientiously, cautiously and selectively.

ATSA, *The Effective Legal Management of Juvenile Sex Offenders*, March 11, 2000.

The damage that registration can do to a particular juvenile may, in theory, be counterbalanced by greater community safety, but in a recent paper published in “ATSA Forum,” Dr. Patricia Coffey surveyed the literature and concluded that “[t]here is no research that has demonstrated that public registration of adult or juvenile offenders will actually reduce the risk to reoffend.” Indeed, in her report filed with this court she writes “In general, the sexual offender registry has the potential to be harmful to the offender and victims with little benefit in terms of reducing the risk for reoffending. . . .for an increasing number of offenders this [being on the registry] has resulted in housing and employment difficulties, violence against them that includes murder, and other difficulties establishing a positive community adjustment.” p.9 Dr. Coffey’s psychosexual report.

In September 2007, Human Rights Watch published the results of a detailed study of the effects of sex offender registration laws and urged the abolition of juvenile offender notification requirements: “There is scant justification for ever registering juvenile offenders, even those who have committed serious offenses. Most are likely to outgrow such behavior, particularly if given treatment.” See attached digest of the 146-page HRW study.

**D. THE PRACTICE IN THIS COUNTY**. It would appear, based on statistics that this county has heeded the warning of ATSA to be cautious and selective. As the Court may be aware, this County has in recent years begun to study our system’s response to sex offender cases, meeting in large groups and small to break down every aspect of that response. As part of this increased attention, the Department gathered statistics regarding the outcome of cases in which sex offender registration was possible based on the referring charge. That report indicates that in the 58 referrals, 35 resulted in formal charges. Of those 35, only 2 juveniles were court ordered to register, both of whom were the only adjudications for a violation of s. 940.225(1), first degree sexual assault. In contrast, of the 25 formal petitions charging first degree sexual assault of a child, none have been placed on the sex offender registry.

7. The relative seriousness of the offense and the age difference notwithstanding, the above-factors indicate that a stay should be granted in this case.

Dated at Madison, Wisconsin, this first day of January, 2015.

Respectfully submitted,

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Lily Lawyer