SUPREME COURT, STATE OF COLORADO Ralph L. Carr Judicial Center 2 East 14th Avenue Denver, CO 80203 Certiorari to the Colorado Court of Appeals Case Number 2022CA594	DATE FILED March 3, 2025 3:41 PM FILING ID: 30222C6519B6F CASE NUMBER: 2024SC154
Petitioner TIMOTHY PAUL BEAGLE v. Respondent THE PEOPLE OF THE STATE OF COLORADO	
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OPENING BRIEF	

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

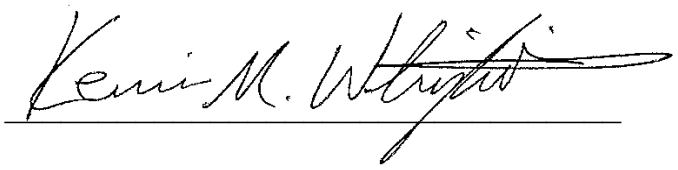
This brief complies with the applicable word limit set forth in C.A.R. 28(g).

It contains 9,500 words.

This brief complies with the standard of review requirement set forth in C.A.R. 28(a)(7)(A).

> For each issue raised by the Petitioner, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.



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2. Whether the sexually violent predator designation is cruel and unusual punishment as applied to Mr. Beagle.

STATEMENT OF THE CASE

Historical Facts

Timothy Paul Beagle was driving with his wife and daughter when they encountered E.S. and A.F. hitchhiking on the side of a rural stretch of highway—E.S. and A.F. had escaped from a residential mental health treatment facility. CF, pp. 128, 141-42, 157-60. Mr. Beagle picked them up and housed them with his family for ten days before he ultimately brought them to police. *Id.* They were sixteen at the time and were reported missing after their escape and during this period. CF, p. 141.

Throughout the ten days, E.S. and A.F. alleged Mr. Beagle gave them Xanax pills at least twice, they used his wife's medical marijuana, and they took psilocybin mushrooms. CF pp. 146, 148, 158-59.

One day, E.S. alleged that Mr. Beagle kissed her, digitally penetrated her, and then prepared to sexually penetrate her; Mr. Beagle admitted that he kissed E.S. but stated she drove the encounter and that he ended it when she put her hand down his pants. CF, pp. 145-48, 158-59.

After Mr. Beagle heard they were missing from a friend, he brought E.S. and A.F. to the police station and waited for their parents with police.[1] CF, pp. 157-59.

Trial Court Proceedings

The state charged Mr. Beagle with ten crimes, and Mr. Beagle pled guilty to two added charges for the dismissal of the original ten: one count of criminal attempt to commit sexual assault[2] and one count of distribution of a controlled substance to a minor – schedule III or IV[3]. CF, pp. 94-108, 327.

As a result of the attempt conviction, Mr. Beagle participated in the probation department's and Sex Offender Management Board's ("SOMB") sexually violent predator ("SVP") assessment ("SVPASI") and an offense-specific evaluation ("OSE") as part of his presentence investigation ("PSI"); the PSI recommended the

[1] The record is unclear exactly which police station—it was either the Wheat Ridge Police Department or the Park County Sheriff's Department substation. *See* CF, pp. 120-21, 142, 148, 157-58.
[2] §§ 18-3-402(1)(a), (2) (F4), C.R.S.; §§ 18-2-101(1), (4) (F5), C.R.S.
[3] §§ 18-18-405(1), (2)(b)(II) (DF2), C.R.S.

trial court designate Mr. Beagle an SVP. *See* CF, pp. 126-40 (PSI), 156-70 (OSE), 171-78 (SVPASI).

The OSE returned the following:

- Mr. Beagle's "NCIC report did not reveal a history of sex-related offenses," and Mr. Beagle is the victim of childhood sexual trauma. CF, pp. 162-63.
- Mr. Beagle scored a "2" on the Static-99R test that assesses one's risk of sexual reoffending, which estimated a 4.6% recidivism rate that is deemed as "average." CF, pp. 165-66. This was based primarily on Mr. Beagle's non-sexual prior criminal history. CF, p. 166.
- Mr. Beagle "did not show significant concerns within" the "Sexual Behaviors & Interests" domain because he "did not display a deviant sexual interest," nor did he "meet diagnostic criteria for any paraphilic interests" or "display evidence of sexual preoccupation" or "sexualized coping." CF, p. 167.
- The strongest predictor of his recidivism was his undetected non-sexual criminal activity and resultant "antisocial orientation." CF, p. 169.
- As "specific protective factors," the OSE noted that Mr. Beagle "does not exhibit signs of pedophilic disorder or other sex-related risk factors." CF, p. 169.

- The evaluator discussed the largest concerns for Mr. Beagle were an "impulsive lifestyle and frequent substance abuse." CF, p. 169.

The SVPASI found that Mr. Beagle met the 18-3-414.5 criteria. CF, pp. 171-78. Importantly, the evaluator found that (1) Mr. Beagle met the relationship criteria by promoting a relationship with E.S. primarily for the purpose of sexual victimization, and (2) based on the SVPASI's "Sex Offender Risk Scale" ("SORS"), Mr. Beagle met the recidivism criteria because of his prior non-sexual convictions. *Id*. The SVPASI also found that Mr. Beagle did not suffer from any "psychopathy or personality disorder" that would create a risk of violent sexual recidivism. CF, p. 177.

The PSI acknowledged the findings that Mr. Beagle did not pose a greater than average risk of sexual recidivism and discussed that his risk levels appear to be "more criminal in nature than due to sexual deviance." CF, p. 138. The probation department noted that Mr. Beagle was still found to meet the SVP criteria, though it was for the court to decide. CF, p. 138.

Mr. Beagle objected to a finding that he is an SVP. CF, pp. 209-14. Relevant here, Mr. Beagle cited the Eighth Amendment to the United States Constitution and argued that, in part, because of the punitive nature of the designation and his personal

characteristics, the court should deviate from the SOMB's recommendation and find that Mr. Beagle is not an SVP. *Id.*

The trial court dismissed the Eighth Amendment argument, finding that "[t]he punitive argument fails because, unlike a criminal sentence, the designation of a sexually violent predator is not punishment." TR 2/22/22, pp. 23-24. The trial court relied on *Allen v. People*, 2013 CO 44, ¶ 7, to hold the "designation's stated purpose is to protect the community," and that "the trial court's decision to designate a sex offender an SVP is legally and practically distinct from the sentencing function." TR 2/22/22, p. 23:7-11. The court explained that it was "bound by" *Allen*, though it had "no doubt that the designation will present some obstacles." TR 2/22/22, pp. 33-34.

The court designated Mr. Beagle an SVP and sentenced him to a cumulative term of fifteen years in the Department of Corrections ("DOC")—five years for the attempt conviction. TR 2/22/22, pp. 28-31; CF, p. 327.

The Court of Appeals

On appeal, Mr. Beagle argued the SVP designation is cruel and unusual punishment as applied to him under the United States and Colorado Constitutions. COA OB, pp. 10-25; COA RB, pp. 7-12.

Like the trial court, the division below found in an unpublished opinion that it was bound by *Allen* to hold that the SVP designation is not a criminal punishment,

and therefore it cannot be cruel and unusual punishment. *People v. Beagle*, 2024 WL 3824890, ¶¶ 23-24 (Colo. App. Jan. 4, 2024). The division acknowledged Mr. Beagle's argument that "there is arguable tension between the rationales of *T.B.*[4] and *Allen*," but, it held, "whether the *Allen* decision needs to be revisited in light of *T.B.* is not a decision for this court to make. Rather, it is the supreme court's sole prerogative to overrule its prior holdings." *Id.*

This Court granted certiorari on the issue of whether the SVP designation is punishment, and whether it is cruel and unusual as applied to Mr. Beagle. *See Beagle v. People*, 2024 WL 4896268, at *1 (Colo. Nov. 18, 2024) ("*Beagle II*").

SUMMARY OF THE ARGUMENTS

Contrary to this Court's proclamation in *Allen*, ¶ 7, the SVP designation is punitive in intent, and the General Assembly did not clearly express any contrary intent in the statute. Indeed, the designation is listed in the criminal code under sexual offenses, among other penalties and sentence enhancers, and the designation has no legislative declaration. Thus, the General Assembly intended the designation to be a punishment, akin to a habitual sexual offender designation.

[4] *People in Int. of T.B.*, 2021 CO 59.

Regardless, the designation is punishment under *Mendoza-Martinez*[5] because it involves affirmative disabilities and restraints; resembles traditional forms of punishment; furthers traditional goals of punishment; applies to conduct that is already a crime; is not rationally related to a nonpunitive purpose; and is excessive in relation to any nonpunitive purpose. Therefore, the balance of the *Mendoza-Martinez* factors shows the designation is punitive in its effects sufficient to override any nonpunitive intent.

Finally, the designation is grossly disproportionate to Mr. Beagle's crime and his personal characteristics—it is cruel and unusual punishment as applied to him. Given the nature of the underlying crime, Mr. Beagle's personal culpability and characteristics, and the comparable punishments for other crimes and in other jurisdictions, the designation and its penalties are an unconstitutionally disproportionate punishment for Mr. Beagle and his SVP-qualifying attempt crime of conviction.

[5] *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963).

ARGUMENTS

I. The SVP designation is criminal punishment because the General Assembly intended it to be punishment and, regardless, the *Mendoza-Martinez* factors weigh in favor of it being sufficiently punitive to outweigh any nonpunitive intent.

A. Standard of Review

This issue is preserved. CF, pp. 209-14; TR 2/22/22, pp. 23-24; COA OB, pp. 10-21; COA RB, pp. 7-12; *Beagle*, ¶¶ 18-24; *Beagle II*, at *1.

Issues of statutory interpretation and whether a punishment is cruel and unusual are reviewed de novo. *People in Int. of T.B.*, 2021 CO 59, ¶ 25; *People v. Gallegos*, 2013 CO 45, ¶ 7.

B. Background Law and Facts

1. The SVP Designation and Colorado's Statutory Scheme

The SVP designation is a heightened classification of sex offender for people who have committed certain sexual offenses under certain circumstances, created in 1997 and placed in the criminal code. *See* § 18-3-414.5, C.R.S. As explained below, some of the designation's requirements are unique, while the designation also increases the frequency and duration of some universal sex offense registration requirements.

First, section 18-3-414.5(1), C.R.S., establishes:

> (a) "Sexually violent predator" means an offender:

(I) Who is eighteen years of age or older as of the date the offense is committed or . . . tried as an adult . . .;

(II) Who has been convicted on or after July 1, 1999, of one of the following offenses, or of an attempt, solicitation, or conspiracy to commit one of the following offenses, committed on or after July 1, 1997;

(A) Sexual assault, in violation of section 18-3-402 or sexual assault in the first degree, in violation of section 18-3-402, as it existed prior to July 1, 2000;

(B) Sexual assault in the second degree, in violation of section 18-3-403, as it existed prior to July 1, 2000;

(C) Unlawful sexual contact, in violation of section 18-3-404(1.5) or (2) or sexual assault in the third degree, in violation of section 18-3-404(1.5) or (2), as it existed prior to July 1, 2000;

(D) Sexual assault on a child, in violation of section 18-3-405; or

(E) Sexual assault on a child by one in a position of trust, in violation of section 18-3-405.3;

(III) Whose victim was a stranger to the offender or a person with whom the offender established or promoted a relationship primarily for the purpose of sexual victimization; and

(IV) Who, based upon the results of a risk assessment screening instrument developed by the division of criminal justice in consultation with and approved by the sex offender management board established pursuant to section 16-11.7-103(1), C.R.S., is likely to subsequently commit one or more of the offenses specified in subparagraph (II) of

> this paragraph (a) under the circumstances described in subparagraph (III) of this paragraph (a).

Thus, only those convicted of the enumerated sex crimes and their pre-2000 versions are eligible for the designation. 18-3-414.5(1)(a)(II).

The General Assembly tasked the SOMB with creating the SVPASI to be used by the probation department to recommend to the court whether a person meets the SVP criteria. § 16-11.7-103(4)(d), C.R.S.; § 18-3-414.5(1)(a)(IV); *see* CF, pp. 171-78. The SVPASI analyzes all four criteria of the SVP designation but includes two main components: (1) whether the "relationship" prong is met; and (2) whether the person has qualifying prior sexual offenses or, if not, has a qualifying score in the SORS assessment based on all prior convictions. *Id.* However, "the trial court makes the ultimate SVP designation," and may deviate from the SOMB's assessment and the probation department's recommendation. *Allen v. People*, 2013 CO 44 ¶¶ 5, 8-17; *see also* § 18-3-414.5(2), C.R.S.

Practically, the SVPASI evaluation occurs with the PSI after a conviction for an enumerated crime, and the court makes specific findings regarding the statutory criteria when it issues a criminal sentence. *Id.*; *see* § 18-3-414.5(2), C.R.S.; *see also* CF, pp. 126-78 (PSI including OSE and SVPASI); TR 2/22/22, pp. 28-31 (trial court's SVP findings and sentence). The SVP designation is entered on the mittimus with the sentence. *See* CF, p. 327.

A person designated an SVP is subjected to the registration requirements of the Colorado Sex Offender Registration Act ("CSORA"), which creates additional and heightened requirements for those designated SVPs. § 16-22-108, C.R.S.; § 18-3-414.5(2).

CSORA requires that people classified as a "sex offender" must register with law enforcement upon sentencing to community supervision or release from incarceration and establishing a residence, and that law enforcement coordinate with the CBI. §§ 16-22-108(1)(a)-(c), C.R.S. The CBI maintains the statewide sex offender registry, which allows for a county-by-county search for people designated an SVP. §§ 16-22-110 to -112, C.R.S.*; see* CBI, *Sex Offender Registry*, https://apps.colorado.gov/apps/dps/sor/search/search-advanced.jsf.

Those designated an SVP must reregister their residence in-person with law enforcement every three months, § 16-22-108(1)(d)(I), C.R.S., and law enforcement must verify the reported residence quarterly. § 16-22-109(3.5)(a), C.R.S. One must bear the costs of registration and reregistration, with an additional fee imposed at the discretion of law enforcement; and the failure to register is a class six felony, with subsequent offenses constituting a class five felony. §§ 16-22-108(6), (7), C.R.S.; § 18-3-412.5(2)(a), C.R.S. Statute also mandates that when a person designated an SVP is suspected of failing to register, police "shall arrest the person suspected of

the crime," and the CBI must assist in the investigation and law enforcement must notify the CBI upon the person's arrest. § 16-22-115, C.R.S.; §§ 18-3-412.5(6)(a), (b), C.R.S.

If one designated an SVP is unhoused, they must notify police of their "location" every month and the failure to do so is a class two misdemeanor. § 16-22-109(3.5)(c)(II), C.R.S.; §§ 18-3-412.6(1), (3), C.R.S.

In addition to the residence or location reregistration requirement, one must reregister within five days of: changing address; changing name; establishing an additional residence; changing employment; enrolling in college; volunteering; and creating or changing an e-mail address or internet "identity." §§ 16-22-108(3)(a)-(i), C.R.S.

People designated an SVP are also exclusively subjected to community notification requirements pursuant to 16-13-901, *et seq.* § 16-13-903(1), C.R.S.; § 18-3-414.5(2), C.R.S. The SOMB creates the protocols for SVP community notification, which is carried out by local law enforcement. §§ 16-13-904(1), (2), C.R.S.; *see* §§ 16-13-903(3)(a)-(b), C.R.S.; *see also* CBI, *Sexually Violent Predator (SVP) and Community Notification Process*, https://apps.colorado.gov/apps/dps/sor/info-CNP.jsf.

The controlling protocols on community notification are from April 2018 and detail the presumptive form of community notification is a townhall-style meeting. *See* SOMB, *Criteria, Protocols and Procedures for Community Notification Regarding Sexually Violent Predators*, CN10.000, *et seq*. (April 2018). Law enforcement must provide the community with notice of the meeting and the ability to ask questions and make comments at such a meeting. *Id*. Alternative forms of community notification include a press release, 911 reverse calls, mailings, agency website publication, social media post, and local television channel broadcast. *Id.* Regardless of the method, community notification "must include the actual SVP bulletin, pursuant to § 16-13-901." *Id.*, at CN10.020 (emphasis added). The notification bulletin must include: a person's name, photo, address, physical description, vehicle information, work information, and crimes of conviction; whether the victim was a stranger or known to the person; conditions of release; and compliance with conditions of supervision. *Id.*; *see also id.*, CN10.090.

People designated an SVP are further subjected to limitations by local, state, and federal governments on housing and residency, employment and business, and assistance opportunities. *See T.B.*, ¶¶ 50-51 (citing, *inter alia*, *Ryals v. City of Englewood*, 2016 CO 8, ¶ 5); 42 U.S.C. § 13663(a); Alamosa Code of Ordinances ch. 11, art. III, §§ 11-54(b)-(e); Black Hawk Mun. Code ch. 10, art. XIV, § 10-

263(a)(1); Broomfield Mun. Code §§ 17-04-130, 17-04-202; Castle Rock Mun. Code Title 9, ch. 9.30; Commerce City Mun. Code ch. 9, art. III, div. 7, § 9-3705, ch. 12, art. VI, §§ 12-6010(a), (d); Dacono Mun. Code ch. 10, art. X, §§ 10-162 to -163; Englewood Code of Ordinances § 7-3-3; Greeley Mun. Code tit. 14, ch. 12, §§ 14-381 to -386; Johnstown Mun. Code ch. 10, art. XIV, §§ 10-273 through -276; Kiowa Mun. Code ch. 10, art. XI, §§ 10-241 to -245; Lakewood Mun. Code § 5.41.080; Mancos Mun. Code ch. 10, art. 11, §§ 10-11-10 to -40; Mead Mun. Code ch. 10, art. XIV, §§ 10-14-10 to -60; Westminster Code of Ordinances, §§ 6-17-1 to -6; Yuma Mun. Code § 9.24.020.

Finally, those designated an SVP are subjected to these requirements for the rest of their lives, with no reevaluation or other recourse. § 16-22-113(3)(a), C.R.S.; *see also* § 16-13-903; §18-3-414.5.

2. The Eighth Amendment and the SVP-designation-as-punishment under current Colorado law.

"No cruel and unusual punishment is to be inflicted" under the United States and Colorado constitutions. *Weems v. United States*, 217 U.S. 349, 369 (1910); *T.B.*, ¶ 26; U.S. Const. amends. VIII, XIV; Colo. Const. art. II, § 20. When considering whether a burden imposed resulting from a criminal conviction is cruel and unusual, a court must first determine if the challenged statute "constitutes punishment" under the United States and Colorado constitutions *T.B.*, ¶ 43.

Under *Mendoza-Martinez*, "courts apply a two-part intent-effects test to determine whether a statute is punitive." *T.B.*, ¶ 44. If the legislature did not clearly intend for a statute to be punitive, then "the court must consider whether the statute is so punitive in effect as to override the legislature's intent." *Id.* The Supreme Court listed seven factors for courts to use to analyze a statute's punitive effects: (1) whether the sanction involves an "affirmative disability or restraint," (2) whether the sanction "has historically been regarded as punishment," (3) whether the sanction "comes into play only on a finding of scienter," (4) whether the sanction's operation will "promote the traditional aims of punishment—retribution and deterrence," (5) "whether the behavior to which it applies is already a crime," (6) whether an "alternative purpose [to punishment] to which it may rationally be connected is assignable for it," and (7) "whether it appears excessive in relation to the alternative purpose assigned." *Mendoza-Martinez*, 372 U.S. at 168-69.

While this Court has not yet meaningfully decided whether the SVP designation is punishment, three divisions of the court of appeals held the designation's "purpose is to protect the community." *People v. Williamson*, 2021 COA 77, ¶ 28; *People v. Rowland*, 207 P.3d 890, 894 (Colo. App. 2009); *People v. Tuffo*, 209 P.3d 1226, 1231 (Colo. App. 2009). And two divisions applied the *Mendoza-Martinez* factors to find the designation's requirements, individually, are

not punishment. *See Rowland*, 207 P.3d at 892-95 (finding community notification requirements are not punishment); *People v. Stead*, 66 P.3d 117, 119-23 (Colo. App. 2002) (finding internet posting requirements are not punishment) *overruled in part by Candelaria v. People*, 2013 CO 47; *see also Jamison v. People*, 988 P.2d 177, 180 (Colo. App. 1999) (finding general registration requirements for sex offenders are not punishment but not conducting a *Mendoza-Martinez* analysis).

Further, while this Court opined on the SVP designation in *Allen*, 2013 CO 44, ¶ 7, it only issued dicta that the designation was not criminal punishment. This Court stated in *Allen*, ¶ 7, that "the SVP designation is not punishment," relying on the analyses of *Rowland*, *Stead*, and *Jamison*. And further opined the designation's location in the criminal code does not make its intent punitive given the civil burden. *Id.* In fact, though, the question of whether the SVP designation is criminal punishment was not before the Court; Allen challenged the trial court's deviation from the SOMB's recommendation that he was not an SVP, not that the designation was punishment. *Id.*, ¶¶ 1-3, 5. Therefore, as recognized by Justices Márquez and Coats in their concurrence and dissent, respectively, "the issue was not squarely raised," *Allen*, ¶ 28 n. 5 (Márquez, J., concurring), and that matter has "not yet been meaningfully decided by this court." *Allen*, ¶ 50 (Coats, J., dissenting).

This Court applied the *Mendoza-Martinez* factors to CSORA in *T.B.*, 2021 CO 59, ¶¶ 47-58, though, to determine that mandatory lifetime sex offender registration for juveniles was punitive in effects sufficient to constitute punishment. Notably, this Court's analysis in *T.B.* established the thrust of the following *Mendoza-Martinez* factors in Colorado as applied to CSORA, as well as directly contradicts the divisions' analyses and holdings in *Rowland* and *Stead* regarding them: (1) affirmative disabilities and restraints; (2) traditional forms of punishment; (3) traditional aims of punishment; (4) rational connection to a nonpunitive purpose; and (5) excessiveness. The application of these factors to the SVP designation is at issue here.

C. Analysis

The SVP designation—in total, including all its requirements and attendant restrictions—is punishment for two reasons. First, contrary to *Allen*, ¶ 7, the General Assembly clearly intended the designation to be a criminal punishment by listing it in the criminal code without a contrary legislative declaration. Second, regardless, the designation is punishment by its effects because the *Mendoza-Martinez* factors fall in favor of it being punitive.

1. The General Assembly clearly intended for the designation to be punishment.

First, unlike CSORA and the community notification requirement, the SVP designation itself does not have a legislative declaration espousing any purpose, let alone a potentially nonpunitive one. *Compare* § 18-3-414.5 *with* § 16-13-901. Thus, there is no clear nonpunitive intent for the *designation* in the SVP statute. *Cf. T.B.*, ¶ 45 ("Throughout the statutory scheme, the General Assembly indicated that it did not intend for CSORA to be punitive").

Second, the designation's characteristics indicate it was intended to be a criminal punishment. *See Allen*, ¶ 42 (Coats, J., dissenting).

Indeed, the SVP designation is housed in the criminal code, Article 3, "Unlawful Sexual Behavior." § 18-3-414.5. Moreover, it is near the section defining the designation of "habitual sexual offender against children" and its increased penalties. *See* § 18-3-412, C.R.S. This placement among sexual crimes and punishments indicates a punitive intent for the designation similar to a criminal "sentence enhancement." *Cf. Blakely v. Washington*, 542 U.S. 296, 309-10 (2004) (discussing "judicial sentence enhancements"); *Smith v. Doe*, 538 U.S. 84, 94 (2003) (finding Alaska's sex offender registration scheme to be civil when located in the "Health, Safety, and Housing" and "criminal procedure" codes). Further, being placed in a separate title from CSORA and the community notification statute

indicates the General Assembly intended for the designation, itself, to be a criminal punishment even if its requirements were not intended to be. *See Smith*, 538 U.S. at 94.

Accordingly, just as one's punishment is elevated to the habitual offender against children designation if a certain sex offense against children was committed under certain circumstances involving prior convictions, when a certain sexual offense is committed under certain circumstances, including an analysis of prior convictions, the punishment is elevated to the SVP designation. *Compare* § 18-3-412 *with* § 18-3-414.5; *see Smith*, 538 U.S. at 94.

Moreover, contrary to *Allen*, ¶ 7, the designation is not distinct from criminal sentencing but is in fact part of a criminal sentence. The SVPASI is prepared as a part of the PSI to prepare for criminal sentencing; the judge makes findings and imposes the designation immediately before imposing the sentence to probation or DOC; and the designation is entered on the mittimus. *See* CF, pp. 126-78, 327; TR 2/22/22, pp. 28-31. Thus, the designation was intended to be punishment as part of one's criminal sentence. *See Allen*, ¶ 42 (Coats, J., dissenting).

Criminal legal philosopher, H.L.A. Hart, classically defined "punishment" as having five characteristics: (1) involving pain or consequences normally considered unpleasant; (2) following from a criminal offense; (3) applying to the criminal

offender; (4) intentionally administered by people other than the offender; and (5) imposed by an authority constituted by and within the criminal legal system against which the crime was committed. H.L.A. Hart, *Punishment and Responsibility*, pp. 4-5 (1968). Here, these five characteristics are present: (1) the designation involves the unpleasant consequences of registration, notification, and the socially alienating label; (2) it follows from enumerated criminal offenses and (3) applies to the offender of one of those offenses; and it is (4) and (5) imposed and administered by the criminal sentencing court at criminal sentencing. *Id.*; *see* Issue I.B.1., *supra*.

Therefore, because the SVP statute does not clearly express a nonpunitive intent, and its characteristics resembling a traditional criminal punishment indicate it was intended to be part of one's conviction and sentence, the General Assembly clearly intended the designation to be criminal punishment.

2. The SVP Designation is punitive in its effects.

Alternatively, under the *Mendoza-Martinez* factors, the designation is punitive in its effects sufficient to overcome a nonpunitive intent.

i. The SVP designation involves affirmative disabilities and restraints.

First, the SVP designation involves more onerous lifelong registration requirements than this Court found to be affirmative disabilities or restraints in *T.B.*, ¶ 49.

Those designated an SVP are required, through quarterly, in-person registration, to disclose extensive personal information which is affirmatively broadcast to the community *at minimum* through the SVP bulletin. *See T.B.*, ¶ 49; Issue I.B.1., *supra*. If one is unhoused, they must report their location every month, and one must update their registration information within five days of almost any life change. *Id.* And people designated SVPs must pay for the costs of updated photographs and fingerprints, § 16-22-108(6), in addition to a registration fee imposed at the discretion of law enforcement, § 16-22-108(7)(a). *T.B.*, ¶ 49. Moreover, police have the affirmative duty to verify a person designated an SVP's residence on a quarterly basis. *See* Issue I.B.1., *supra*.

Failure to meet *any* of these requirements subjects a person to a criminal sanction and to local law enforcement and the CBI tracking them. *See* § 18-3-412.5; § 18-3-412.6; *T.B.*, ¶ 49.

Thus, the SVP designation involves the affirmative disabilities and restraints of at least quarterly in-person registration requirements for life. *T.B.*, ¶ 49; *see Does #1-5 v. Snyder*, 834 F.3d 696, 703-04 (6th Cir. 2016) (holding in-person registration requirements "for life" were "direct restraints on personal conduct"); *People v. Betts*, 968 N.W.2d 497, 510-12 (Mich. 2021) (finding "in-person reporting requirements .

. . imposed affirmative disabilities on registrants"); *Commonwealth v. Butler*, 226 A.3d 972, 988-89 (Penn. 2020).

Second, the SVP designation involves affirmative disabilities and restraints on residency and employment opportunities that many governments apply based on CSORA registration requirements or SVP status. *See T.B.*, ¶¶ 50-51.

Indeed, as in *T.B.*, municipalities may ban where people designated SVPs and required to register for life are able to reside—or if they are effectively unable to reside there, at all—and those designated SVPs have no recourse for the rest of their lives. *See T.B.*, ¶ 50 (citing *Ryals*, ¶ 5); *T.B.*, ¶ 50, n. 18 (collecting municipal ordinances with residency restrictions). Further, as detailed above, many laws create additional, more restrictive residency limitations for those designated an SVP and punishments for landlords that improperly rent to a person designated an SVP. *See* Issue I.B.1., *supra*. And "other states do impose statewide residency restrictions on sex offenders, which could apply to a sex offender who moves from Colorado to another state." *T.B.*, ¶ 51 (citing Ga. Code Ann. § 42-1-15 (2021); Iowa Code § 692A.114 (2021); Okla. Stat. tit. 57, § 590 (2021)); *see* § 16-22-105(1). C.R.S. Moreover, the federal government prohibits "dangerous sex offenders" that are "subject to a lifetime registration requirement under a State sex offender registration program" from admission to public housing. *See* 42 U.S.C. § 13663(a).

A person's status as an SVP "may also affect that person in his pursuit of gainful employment," *T.B.*, ¶ 51, in addition to municipalities restricting people designated a sex offender from obtaining certain business licenses, *see T.B.*, ¶ 51 n. 19 (collecting economic restriction cites).

Therefore, as in *T.B.*, ¶¶ 50-51, the SVP designation involves affirmative disabilities and restraints related to housing and employment restrictions imposed by the federal, state, and municipal governments. *See also Snyder*, 834 F.3d at 703-04; *Betts*, 968 N.W.2d at 510-12. Indeed, even if the designation, itself, does not restrict where one can live or work, or what benefits the person may access, the designation "involves" these disabilities and restraints. *See T.B.*, ¶¶ 50-51.

Finally, those designated an SVP are recommended to not be paroled by the SOMB when they are serving determinate sentences and are not receiving treatment within DOC and to be ineligible for "Young Adult Modification," and DOC policy dictates they are ineligible for early parole discharge if they have not received treatment. SOMB, *Standards and Guidelines for the Assessment, Evaluation, Treatment and Behavioral Monitory of Adult Sex Offenders*, Appendix C, Appendix Q (2025); DOC Administrative Regulation # 250-29(IV)(C)(6)(d) (2024). Thus, those designated SVPs are denied parole opportunities because of the designation, effectively increasing a person's term of imprisonment. *Id.*

Because of the inherent restrictions and disabilities from quarterly in-person registration requirements and decreased parole opportunities, and the attendant restrictions related to housing and employment, the designation involves affirmative disabilities and restraints. *See T.B.*, ¶¶ 49-51; *Snyder*, 834 F.3d at 703-04; *Betts*, 968 N.W.2d at 510-12; *see also Butler*, 226 A.3d at 988-89.

ii. The SVP designation and its accompanying requirements resemble traditional forms of punishment.

The SVP designation resembles three traditional forms of punishment: (1) public shaming and humiliation; (2) banishment; and (3) parole or probation.

First, "community notification programs resemble traditional forms of punishment, such as public shaming and humiliation." *T.B.*, ¶ 52. Indeed, the SVP community notification scheme goes further than the passive registry contemplated in *Smith*, 538 U.S. at 98-99. Here, the presumptive form of community notification is an in-person, town-hall style meeting where the community is allowed to question law enforcement about why the person is being allowed to live in their community. *See* Issue I.B.1., *supra*. And following the town-hall style meeting, or in lieu of it, law enforcement is then to affirmatively post a video on their homepage or social media account and send a bulletin in the mail to applicable residents. *Id.* And extensive information is required to be shared, as detailed above. *Id.*; *see also* Denver Police Dep't, *NEW Sexually Violent Predators – Community Notification*,

https://www.youtube.com/playlist?list=PL11e6v3zMr6Gt7d2bvjbVFG6G9cigR24d (last visited on February 27, 2025).

Thus, the affirmative community notification scheme presumptively resembling a town-hall resembles public shaming and humiliation. *T.B.*, ¶ 52; *see Snyder*, 834 F.3d at 702-03; *Betts*, 968 N.W.2d at 509; *see also Butler*, 226 A.3d at 990. This is acknowledged by the General Assembly in their recognition of the high degrees of vigilantism and harassment that such designations and notifications invite. *See* § 16-13-901; *cf. T.B.*, ¶ 46 (taking legislative declaration as suggestion that "the General Assembly was aware that the registration scheme may . . . be punitive *in effect*") (emphasis in original).

Second, the designation resembles "banishment." *See Snyder*, 834 F.3d at 701-02. As discussed above, municipal housing restrictions may severely limit where one may live and may effectively prohibit someone from living in a community entirely. *T.B.*, ¶ 50 (citations omitted); *see* Issue I.B.1., *supra*. Therefore, because a person designated an SVP encounters residency and loitering restrictions, sometimes effectively from entire municipalities, the designation's attendant disabilities resemble banishment. *See Snyder*, 834 F.3d at 701-02; *Betts*, 968 N.W.2d at 508-09.

Third, the designation and its heightened registration requirements and supervision resemble parole or probation. *See Snyder*, 834 F.3d at 703; *Betts*, 968 N.W.2d at 508-10; *see also Smith*, 538 U.S. at 111 (Stevens, J., concurring in part) ("The registration and reporting duties imposed on convicted sex offenders are comparable to the duties imposed on other convicted criminals during periods of supervised release or parole"). In fact, the SVP community notification statute notes that a central purpose is to facilitate "supervision." § 16-13-901. This includes one updating state law enforcement on a person's residence, employment, and internet identifiers. *See* Issue I.B.1, *supra*; *Snyder*, 834 F.3d at 703; *Betts*, 968 N.W.2d at 508-12. And the failure to comply with such monitoring and supervision is punished by criminal sanctions. *Snyder*, 834 F.3d at 703; *Betts*, 968 N.W.2d at 508-12. Moreover, law enforcement has an affirmative duty to verify information given by people registered as SVPs, and to coordinate with the CBI to track them in certain circumstances. *See* Issue I.B.1. Thus, the designation's requirements—and, moreover, the additional duties and monitoring mandated of law enforcement—resemble parole or probation. *See Snyder*, 834 F.3d at 703; *Betts*, 968 N.W.2d at 508-12.

The SVP designation therefore resembles traditional forms of punishment. *T.B.*, ¶ 52; *see Snyder*, 834 F.3d at 701-03; *Betts*, 968 N.W.2d at 509-10; *Butler*, 226 A.3d at 990; *see also Snyder*, 834 F.3d at 701 (citing Hart, pp. 4-5, *supra*).

iii. The SVP designation and its accompanying requirements further traditional aims of punishment.

The SVP designation also furthers two traditional aims of punishment: deterrence and retribution.

First, as acknowledged in *T.B.*, one of the CBI's stated "goals" for registration is "Deterrence of sex offenders for committing similar crimes," therefore at least attempting to further the aim of deterrence. *T.B.*, ¶ 53 (citing CBI, *Registration*, https://apps.colorado.gov/apps/dps/sor/information.jsf); *see also* §16-13-901; *Betts*, 968 N.W.2d at 512 ("Deterrence is necessarily encompassed by" the "stated purpose of 'preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders'").

Second, the designation is imposed for life regardless of a person's individual characteristics or current risk levels and therefore seem to be retributive in nature. *T.B.*, ¶ 53 (citing *Doe v. State*, 111 A.3d 1077, 1098 (N.H. 2015); *Commonwealth v. Baker*, 295 S.W.3d 437, 444 (Ky. 2009)). Indeed, the SVP designation provides for the lifetime registration of juveniles and young adults. § 18-3-414.5(1)(a)(I); *see T.B.*, ¶ 53; *cf. T.B.*, ¶ 74 (finding "lifetime sex offender registration for offenders

with multiple juvenile adjudications constitutes punishment," though without opining "on any other scheme requiring juvenile offenders to register as sex offenders"). And, as here for Mr. Beagle, there is no recourse for the SVP designation, even after one completes a lengthy prison sentence and has addressed the sources of concern listed in the OSE and PSI. Therefore, it is not tied to any current or reevaluated individualized risk assessment upon one entering a community, but rather is imposed as retribution for a past offense. *T.B.*, ¶ 53; *see Snyder*, 834 F.3d at 704; *Betts*, 968 N.W.2d at 512.

Thus, the SVP designation furthers the traditional aims of punishment of deterrence and retribution. *Id.*

iv. The SVP designation applies only to specific criminal charges and is related to the underlying criminal act.

Uniquely so in the CSORA context, the designation applies only to conduct that is already a crime. In addition to the designation only applying to the five specific enumerated crimes, the "relationship prong" explicitly requires the SVP designation to be applied only when a defendant acts with a certain primary purpose while perpetrating the crime of conviction. *See* Issue I.B.1., *supra*. This weighs in favor of punishment. *T.B.*, ¶ 54.

v. The SVP designation does not require a finding of scienter—but it does require a consideration of the person's primary "purpose" for committing a crime.

Mr. Beagle acknowledges this Court has held that it does not look to the underlying crime for the scienter requirement and that the SVP designation's "relationship prong" does not require scienter. *Candelaria*, ¶¶ 9-17. As in *T.B.*, ¶ 48, though, this factor is not dispositive. At any rate, this factor leans toward punishment here more than *T.B.*, if only slightly. The SVP designation has the unique requirement that the judge finds the person acted with a primary purpose, and that the person would act again primarily with that purpose—thus, the judge must pay attention to a person's purpose and mindset in undertaking the underlying criminal activity to impose an SVP designation in a way that normal CSORA eligibility criteria do not require.

vi. The SVP designation is not rationally connected to a nonpunitive purpose.

Mr. Beagle maintains that the designation is purposefully intended to be a criminal punishment. However, the designation, and its requirements, are also not rationally related to a potential nonpunitive purpose of community safety or protection. *See Allen*, ¶ 7.

To begin, the designation and its attendant requirements create social instability, which is generally agreed upon in the relevant stakeholder and academic

communities to create a risk of recidivism and crime without providing commensurate tangible benefits. *T.B.* ¶¶ 56-57 (citing, *inter alia*, Molly J. Walker Wilson, *The Expansion of Criminal Registries and the Illusion of Control*, 73 LA. L. REV. 509, 523, 523 n. 93 (2013)); *see also* SOMB, Annual Legislative Report, pp. 7-8 (Jan. 2023); SOMB, *White Paper on Adult Sex Offender Housing*, pp. 5-6 (Nov. 2011); CBI, *Sexually Violent Predator (SVP) and Community Notification Process*, https://apps.colorado.gov/apps/dps/sor/info-CNP.jsf. (citing SOMB, *White Paper on the Use of Residence Restrictions as a Sex Offender Management Strategy* (2009)); Association for the Treatment of Sexual Abusers, *Registration and Community Notifications of Adults Conviction of a Sexual Crime: Recommendations for Evidence-Based Reform*, 11-13, https://members.atsa.com/ap/CloudFile/Download/LWBnWg6P (2020).

Indeed, the General Assembly specifically acknowledged the high chance of vigilantism and community violence against a person designated an SVP caused by community notification, yet there is no evidence the notification scheme is effective at providing or increasing community safety. *Id.*; § 16-13-901; *see also* SOMB, Annual Legislative Report, pp. 3, 26 (Jan. 2022) (recommending elimination of SVP designation because it is not effective) *accord* SOMB, 2019 Sunset Review,

pp. 38-39 (Oct. 2019) ("The General Assembly should . . . replace 'sexually violent predator' with a risk classification system").

The lack of empirical support for the designation protecting communities combined with its risks thus indicates it is not rationally connected to a nonpunitive purpose of community safety. *See T.B.*, ¶¶ 55-57; *Snyder*, 834 F.3d at 704-05 ("Intuitive as some may find [a rational connection], the record before us provides scant support for the proposition that [the registration scheme] accomplishes its professed goals . . . Tellingly, nothing . . . in the record suggests that the residential restrictions have any beneficial effect on recidivism rates").

In addition, the designation and its requirements are not connected to the specifically identified risk factors in the PSI, OSE, or SVPASI, for two reasons.

First, the statute states that the specific risk to be evaluated is for one of the enumerated crimes to be committed again in a way that satisfies the relationship prong; the SVPASI SORS states it merely predicts further sexual or violent crimes generally and without definition. *See* CF, p. 176; § 18-3-414.5(1)(a)(IV). So, the tool and assessment underlying a court's finding and indeed justifying the designation are not rationally related to the potential nonpunitive purpose expressed by the statute of protecting the community specifically from the enumerated crimes. *See also* SOMB, SVPASI Handbook, 12-13 (2023).

Second, relatedly, the designation is not responsive to the OSE's and PSI's actual findings of risk. Mr. Beagle's case is a prime example. The evaluators specifically found Mr. Beagle does not have "sexual deviancies" because not only does he not have any sex-related disorders or any psychopathy or personality disorder that threaten sexual violence, but he also does not have any "sex-related risk factors" at all. *See* Issue I.B.1., *supra*.

The OSE and PSI noted that Mr. Beagle's risk factors resulted almost solely from his substance abuse disorder; yet, the SVP designation and its requirements do nothing related to substance abuse treatment, nor anything else to address the specific risk factors found to be present—nor can the designation be reevaluated in light of changed risk levels or successful monitored sobriety. Thus, the designation is not rationally related to a person's identified risk factors. Because the designation is not rationally connected to a person's risk, it is not rationally connected to mitigating any risk to keep the community safe. *See T.B.*, ¶¶ 55-57; *Snyder*, 834 F.3d at 704-05; *cf. Butler*, 226 A.3d at 991-92 (finding rational connection between SVP designation and community safety when Pennsylvania's SVP designation required a finding that the person is a "high likely reoffender due to a mental abnormality or personality disorder").

At best, any connection to keeping the community safe is uncertain and tenuous—therefore, there is not a rational connection between the designation and any nonpunitive rationale. *T.B.*, ¶¶ 55-57; *see Snyder*, 834 F.3d at 704-05.

vii. The SVP designation is excessive in relation to any nonpunitive purpose, regardless of a rational connection.

Finally, the SVP designation is excessive in relation to any nonpunitive purpose because it involves harsh affirmative disabilities and restraints that resemble and further the aims of traditional punishments, and that have no rational connection to a nonpunitive rationale. *T.B.*, ¶¶ 55-57.

First, as in *T.B.*, the designation applies for life regardless of a person's individualized risk. *T.B.*, ¶¶ 55-57; *see* Issues I.B.1., I.C.2.vi., *supra*; *see also Snyder*, 834 F.3d at 705-06; *Betts*, 968 N.W.2d at 513-15.

Indeed, the SVPASI and a court are to determine a person's risk at the time of sentencing; but as is the case for people like Mr. Beagle, several years may transpire between one's initial assessment and their return to the community which triggers their first registration with law enforcement and SVP community notification. *See* Issue I.B.1, *supra*. The designation thus does not remain tethered to any current assessment of one's risk to a community yet lasts for life. *T.B.*, ¶¶ 55-57; *cf. Butler*,

226 A.3d at 991-92 (finding Pennsylvania SVP designation not "excessive" in part because it allowed for petition for removal).

Further, as detailed above, the SVPASI does not assess for the specific risk for the five enumerated crimes committed in a way that satisfies the relationship prong that is supposed to be found by statute, but rather for a much broader risk of potentially non-sexual crime. *See* Issue I.C.2.vi., *supra*; *cf. Butler*, 226 A.3d at 991-92 (finding Pennsylvania SVP designation not "excessive" in part because it required more specific risk findings and included tailored counseling requirements). Moreover, as recognized by the social sciences and other courts across the country, the estimated recidivism risks of sexual offenders, in general, are overexaggerated and do not bare out long-term. *See Snyder*, 834 F.3d at 704-06 (collecting cases and academic sources); *see also,* R. Karl Hanson, *Long-Term Recidivism Studies Show That Desistance Is The Norm*, 45 CRIM. JUST. & BEHAVIOR 9, 1340-46 (Sept. 2018).

Thus, the designation's lifelong imposition without recourse or even reevaluation is excessive in relation to any nonpunitive rationale of protecting the community. *T.B.*, ¶¶, 55-57.

Second, the SVP registration and its attendant restrictions are imposed, again, regardless of risk, but also regardless of a person's need. *See* Issues I.B.1., I.C.2.vi., *supra*. Like juveniles in *T.B.*, those with disabilities have been found to have more

positive reactions to support and treatment than average and respond significantly worse than average to housing and social destabilization. *See* Issue I.C.2.vi., *supra*. And *T.B.* discussed that registration requirements have no statistically significant effect on reducing recidivism, regardless of age. *T.B.*, ¶¶ 55-57; *see also Snyder*, 834 F.3d at 704-06; *Betts*, 968 N.W.2d at 513-15; Issue I.C.2.vi, *supra*. Therefore, the designation is excessive because its burdens outweigh any benefits and are imposed indiscriminately. *See T.B.* ¶¶ 55-57.

Lastly, the General Assembly's acknowledgement of the risk for high rates of community violence and vigilantism created by the designation goes beyond the admonitions in CSORA acknowledged by *T.B.*, ¶ 48; *see* § 16-13-901. Indeed, this stated concern for the destabilizing risks of community notification potentially indicates the General Assembly is aware that the designation in operation is severely punitive and even counterproductive, *see T.B.*, ¶ 48, 55-57, and the same is true for the SOMB and the CBI. *See* Issue I.C.2.vi., *supra*.

Therefore, the lack of empirical support for the designation and its lifelong requirements benefiting a nonpunitive purpose combined with undisputed evidence the designation creates serious risks shows the designation is excessive in relation to any nonpunitive rationale. *T.B.*, ¶¶ 55-57; *see Snyder*, 834 F.3d at 704-06; *Betts*, 968 N.W.2d at 513-15; *see also* Issue I.C.2.vi., *supra*; *cf. Butler*, 226 A3d at 613 (SVP

designation not excessive when it included responsive "counseling" and allowed for petition for removal).

viii. The balance of the *Mendoza-Martinez* factors falls in favor of punishment.

In sum, the SVP designation and its attendant requirements: (1) involve affirmative disabilities and restraints; (2) resemble traditional forms of punishment of public shaming and humiliation, banishment, and parole or probation; (3) further or attempt to further the traditional aims of punishment of retribution and deterrence; (4) apply only to conduct that is already criminal; (5) do not come about upon a finding of scienter, but upon a finding of a "primary purpose"; (6) are not rationally related to a nonpunitive rationale; and (7) are excessive in relation to any nonpunitive rationale. *T.B.*, ¶ 58. The SVP designation and its requirements therefore constitute punishment for purposes of the Eighth Amendment because the *Mendoza-Martinez* factors weigh in favor of punishment. U.S. Const. amends. VIII, XIV; Colo. Const. art. II, § 20; *Mendoza-Martinez*, 372 U.S. at 168-69; *T.B.*, ¶ 58.

II. The SVP designation is cruel and unusual punishment as applied to Mr. Beagle given his actions underlying the convictions and his personal characteristics as found in the OSE, SVPASI, and PSI.

A. Standard of Review

This issue is preserved. CF, pp. 209-12; TR 2/22/22, pp. 23-24; COA OB, pp. 21-25; COA RB, pp. 11-12; *Beagle*, ¶¶ 23-24; *Beagle II*, at *1.

Whether a criminal punishment is grossly disproportionate, constituting cruel and unusual punishment, is reviewed de novo. *Wells-Yates v. People*, 2019 CO 90M, ¶ 35.

B. Argument

"The Eighth Amendment and article II, section 20 of the Colorado Constitution are identical and provide, 'Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.'" *Sellers v. People*, 2024 CO 64, ¶ 17 (quoting U.S. Const. amend. VIII, XIV; Colo. Const. art. II, § 20). "This prohibition 'guarantees individuals the right not to be subjected to excessive sanctions,'" *id.* (citing *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (quoting *Roper v. Simmons*, 543 U.S. 551, 560 (2005))), and "stems from the concept that punishment for a crime should be proportionate to both the offender and the offense." *Id.* (citing *Miller*, 567 U.S. at 469).

To determine whether a punishment "is proportionate to the crime for which the defendant was convicted . . . the trial court should consider (a) the gravity or seriousness of the offense along with (b) the harshness of penalty," and "the court may compare the defendant's sentence to the sentences for other crimes in the same jurisdiction and to sentences for the same crime committed in other jurisdictions." *Id.*, ¶ 44 (citations omitted); *see also Solem v. Helm*, 463 U.S. 277, 290-95 (1983).

Here, the SVP designation is cruel and unusual as applied to Mr. Beagle because it is grossly disproportionate to his culpability and his personal characteristics—it is an excessive sanction for his crime.

1. The conviction underlying Mr. Beagle's SVP designation—F5 attempt to commit sexual assault—and Mr. Beagle's conduct are not proportionate to the designation.

To start, this Court has not found attempt to commit sexual assault to be per se grave and serious, though Mr. Beagle acknowledges that some divisions have found sex crimes, generally, to be grave and serious. *See People v. Hargrove*, 2013 COA 165, ¶ 21 (finding that sexual assault – force was a "grave or serious crime") (citing *People v. Dash*, 104 P.3d 286, 293 (Colo. App. 2004); *People v. Strean*, 74 P.3d 387, 396 (Colo. App. 2002); § 16-10-301(1), C.R.S. (2013)), *abrogated by Wells-Yates*, 2019 CO 90M; *cf. People v. Walker*, 2022 COA 15, ¶ 72 ("trial court could have viewed the failure to register as a sex offender as per se grave or serious").

Further, attempted sexual assault is not per se grave and serious, because it does not always involve the causing of harm or even the possibility of harm in each instance. *See Melton v. People*, 2019 CO 89, ¶¶ 23-25. Colorado's attempt statute allows for factual impossibility of completing the crime, and therefore an attempt to commit sex assault could occur without threatening factually possible harm—it is

not *per se* grave and serious, but concededly it *may* be grave and serious. § 18-2-101(1); *see Melton*, ¶¶ 18-25.

Second, an analysis of the relevant factors indicates the crime here was not grave or serious. To consider whether a particular offense in a case is grave or serious, while the determination is "somewhat imprecise," *Wells-Yates*, ¶ 12, this Court has generally considered five factors: (1) the harm caused to the victim or society; (2) the magnitude of the crime; (3) whether the crime is a lesser-included or the greater-inclusive offense; (4) whether the crime involved an attempt or a completed act; and (5) whether the defendant was a principal or an accessory. *Sellers*, ¶ 46; *see also Solem*, 463 U.S. at 290-95.

Here, the harm and threat to the victims and society, and the magnitude of Mr. Beagle's crime, were lessened by some of the victims' accounts, Mr. Beagle's actions of returning the victims to police himself and cooperating with the state, and his guilty plea to an attempted crime. First, A.F. told investigators that they only took Xanax "twice" and ostensibly to help them sleep when they could not; E.S. told investigators they "tried [the mushrooms] just to try it" and felt no effects; and A.F. doubted the credibility of E.S.'s outcry, which Mr. Beagle's account also disputed despite admitting some physical contact with E.S. CF, pp. 1-14. Second, Mr. Beagle returned E.S. and A.F. to law enforcement and cooperated with the investigation and

prosecution. *See* Issue I.B.1., *supra*. Indeed, Mr. Beagle did not admit to knowing that his conduct was illegal at the time nor that E.S. was a juvenile and ended the situation when he found out about the victims' official runaway status. *See*, CF, pp. 121-78.

Finally, Mr. Beagle pled guilty to F5 *attempt* to commit sexual assault, which courts recognize as "less serious" than a completed crime. *Solem*, 463 U.S. at 293. And it is the lowest level felony that makes adults eligible for the designation. *Id.*; *see* § 18-3-414.5(1)(a)(II).

Therefore, Mr. Beagle's attempt crime of conviction is not grave and serious under the Eighth Amendment and article II, section 20 of the Colorado Constitution. *See Solem*, 463 U.S. at 290-91, 296-97.

2. The designation is overly harsh to the crime and Mr. Beagle.

The SVP designation is uniquely and excessively harsh for Mr. Beagle. *See T.B.*, ¶ 63.

To begin, those designated an SVP are precluded from parole opportunities and have the highest hurdles required to successfully parole. *See* Issue I.C.2.i., *supra*.

Moreover, the designation is harsh and "unconstitutionally disproportionate to the crime." *Wells-Yates*, ¶ 23. Indeed, based on the attempt crime of conviction, Mr. Beagle received a five-year determinate sentence, and would be able to petition

to discontinue the *annual* CSORA registry requirements ten years after completing that sentence. *See* §§ 16-22-113(1)(b), (3)(a). However, because of the SVP designation, Mr. Beagle will have to reregister *quarterly* for the rest of his life, a dramatic increase. *See* Issue I.B.1, *supra*; *see also T.B.*, ¶ 65.

Further, Mr. Beagle's pre-sentencing investigation and assessments include findings that he lacks: (1) "pedophilic disorder," (2) a history of sexual offenses, or (3) "sex-related risk factors" or sexual deviancies upon psychiatric assessment; and the evaluator and probation department also found that Mr. Beagle suffers from long-term mental illnesses and is himself the victim of childhood sexual trauma. CF, pp. 126-38, 158-69. The SVPASI further found that Mr. Beagle does not have any psychopathy or personality disorders that would create an elevated risk for sexual re-offense. CF, pp. 171-78. And, as cited above, the measures of sexual recidivism are often misguided and do not accurately predict long-term recidivism. *See* Issues I.C.2.vi., vii., *supra*; CF, p. 327.

Thus, the penalties of the SVP designation are disproportionate to Mr. Beagle's lowered and non-existent sex risk factors. *See Solem*, 463 U.S. at 296-98.

To continue, the SVP designation—and its requirements and the General Assembly's statutory concerns for the risks posed by those designated SVPs—are not related to Mr. Beagle's identified risk factors. As acknowledged in the PSI, Mr.

Beagle's risk factors are related to drug abuse, not sexual deviancy. And, as stated in the SVPASI, the SORS can predict violent, non-sex crimes, based on non-sex past crimes to satisfy section 18-3-414.5(1)(a)(IV); however, the SVP designation is only to be applied to people who are predicted to have a higher chance to commit five specifically enumerated *sex offenses*. *See* § 18-3-414.5(1)(a)(IV); CF, pp. 171-78. Therefore, the SVP designation is disproportionately harsh compared to Mr. Beagle's drug-related and non-sex risk factors. *See Solem*, 463 U.S. at 296-300.

Furthermore, Mr. Beagle could address the evaluators' concerns regarding his drug abuse and mental health—as he has had the opportunity to do in DOC—effectively mitigating the identified risks. Yet upon re-entry into the community, he will have harsh and punitive registration requirements and the socially alienating label for life. *See T.B.*, ¶¶ 65, 67-69, 72. This punishment is thus harsh compared to what the state acknowledged were the risks posed by Mr. Beagle because it is not commensurate with or responsive to those risks. *Id.*; *see also Solem*, 463 U.S. at 296-300.

Lastly, as a person with disabilities, Mr. Beagle has relied on federal assistance to survive; the SVP designation, as detailed above, will disqualify him from federal housing assistance programs upon release. CF, pp. 126-38, 158-69. Moreover, because of residency restrictions, Mr. Beagle will have geographically limited

opportunities for housing. *See* Issue I.B.1., *supra*. And Mr. Beagle has a family—his lifelong designation will undoubtedly impact his family, including his wife who also has disabilities. CF, pp. 157-59. The same concerns about the economic destabilization from registration requirements and their accompanying municipal restrictions that this Court found in *T.B.* apply to Mr. Beagle because of his disabilities and what will be his advanced age upon his release and registration—the SVP designation and its penalties are disproportionately harsh as applied to Mr. Beagle. *See T.B.*, ¶¶ 65-72; Issues I.C.2.vi., vii., *supra*.; *see also Solem*, 463 U.S. at 296-300.

Therefore, considering the offense at issue and the SVP designation's requirements and impact on Mr. Beagle's life and parole eligibility, the designation is excessively harsh compared to Mr. Beagle's personal characteristics and the underlying crime. *See Solem*, 463 U.S. at 295, 300.

3. More serious crimes are subject to the same SVP penalty as well as less serious penalties; further, other jurisdictions have less serious penalties accompanying an SVP or equivalent designation.

First, the most serious sex crimes—F2 sexual assault and F3 sexual assault on a child—are also subject to the SVP designation the same as F5 attempt to commit F4 sexual assault. *See* § 18-3-414.5(1)(a)(II). However, a person with one of those most serious sex crimes could potentially not be designated an SVP, while a person

convicted of a lesser, attempted sex crime, like Mr. Beagle, may still be designated an SVP based on non-sex risk factors, providing "some indication that the punishment at issue may be excessive." *Solem*, 463 U.S. at 291.

Second, because the designation only applies to the enumerated *sex* offenses, people convicted of much more serious completed offenses and crimes of violence are not eligible for the designation, despite the designation's imposition sometimes—as here—based on a perceived risk of violent crime, not sex crime, recidivism. *See* CF, pp. 171-78. For example, someone with the same or more developed and violent criminal record than Mr. Beagle, who has the same risk factors but to a worse degree, would not be eligible for the SVP designation when convicted of a completed extraordinary risk crime of violence if it is not an enumerated sex offense, despite such an offense being more serious than F5 attempted sexual assault. *See Solem*, 463 U.S. at 291, 293, 298-300.

Finally, other states, like Pennsylvania, allow for those designated SVPs to petition for removal from the registry and provide treatment and support as conditions of the designation. *Butler*, 226 A.3d at 613 (citing 42 Pa.C.S. § 9799.15(a.2)). In marked contrast, Mr. Beagle will suffer the public shame and humiliation, housing and financial destabilization, near-banishment from society,

and the other restrictions set forth above for the rest of his life without support or any recourse and despite any rehabilitative progress he makes.

Thus, looking to other convictions, penalties, and jurisdictions illustrates the imposition of the lifetime SVP designation for Mr. Beagle is grossly disproportionate. *Solem*, 463 U.S. at 296-303.

C. Remedy

Because the SVP designation is grossly disproportionate in violation of the federal and state constitutions as applied to Mr. Beagle, Mr. Beagle's SVP designation should be vacated. *See* U.S. Const. amend. VIII, XIV; Colo. Const. art. II, § 20; *Solem*, 463 U.S. at 296-303.

CONCLUSION

Therefore, respectfully, this Court should hold that the SVP designation is criminal punishment under the Eighth Amendment and article II section 20, and should vacate Mr. Beagle's SVP designation because it is cruel and unusual punishment as applied to him.

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CERTIFICATE OF SERVICE

I certify that, on March 3, 2025, a copy of this Opening Brief was electronically served through Colorado Courts E-Filing on Jaycey Dehoyos of the Attorney General's Office.