ATTACHMENT 1 to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFERY DESHAUN WATKINS,

Defendant-Appellant.

UNPUBLISHED
October 13, 2022

No. 356380
Tuscola Circuit Court
LC No. 19-014890-FH

Before: LETICA, P.J., and SERVITTO and HOOD, JJ.

PER CURIAM.

On remand from our Supreme Court,[1] defendant appeals by leave granted the trial court's order sentencing him, on the basis of a guilty plea, as a fourth-offense habitual offender, MCL 769.12, to 15 to 30 years' imprisonment each for two counts of third-degree criminal sexual conduct (CSC-III), MCL 750.520d(1)(a) (sexual penetration of a person at least 13 years old, and under 16 years old), and 2 to 15 years' imprisonment for delivery of a controlled substance to a minor, MCL 333.7410(1). On appeal, defendant submits that the trial court erred by denying his motion to withdraw his plea and that his plea was involuntary because the trial court failed to inform him of his obligation under the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq*. We remand for proceedings consistent with this opinion.

I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises out of defendant's repeated sexual assault of, and provision of marijuana to, a 15-year-old victim. The victim and defendant met through social media. In that forum, defendant represented to the victim that he was in his mid-20s, but he was actually 35 years old. He alleged the victim indicated that she was 16 years old. However, the victim purportedly revealed her true age before the two engaged in sexual acts. During their encounters, defendant apparently supplied the victim with marijuana. The victim also reported that defendant asked to record the sexual intercourse, but she did not agree to it. Nonetheless, it was alleged that there

[1] *People v Watkins*, 508 Mich 1024 (2022).

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was record evidence on defendant's cellphone that he attempted to record their intimate acts. Additionally, the police investigation purportedly found evidence on defendant's phone that he exchanged gift cards for video recordings of minor children engaged in sexual acts.

After defendant's arrest, the prosecution filed its felony complaint, which alleged 16 counts, including eight counts of CSC-III, MCL 750.520d(1)(a), four counts of delivery of a controlled substance to a minor, MCL 333.7410(1), and four counts of fourth-degree criminal sexual conduct (CSC-IV), MCL 750.520e(1)(a). After delineating the first eight CSC-III counts, the complaint contained a SORA notice regarding counts one through eight, stating: "This is a Tier III Offense under the Sex Offender Registration Act (SORA) unless the court finds that the victim was between the ages of 13 to 15 inclusive, consented to the conduct, and the defendant was not more than 4 years older than the victim. MCL 28.722(w)(*iv*)." Defendant waived his right to a preliminary examination and was bound over to the trial court. The prosecution submitted its felony information, alleging the same 16 counts from the complaint. This information contained a SORA notice identical with the notice in the complaint.

The parties entered into a plea agreement,[2] in which defendant pleaded guilty to two counts of CSC-III and one count of delivery of a controlled substance to a minor. The agreement provided for a 15-year cap on the minimum sentence and that the prosecution would dismiss the remaining 13 charges. The prosecutor also agreed not to pursue any additional charges, seemingly addressing the video content of the victim recorded on defendant's cellphone and his gift card exchange for inappropriate videos of minors. At the hearing on the plea agreement, the trial court questioned defendant regarding the plea. Defendant confirmed he understood "that any sentence in this matter would run consecutive to whatever parole sentence [he was] serving[.]" Regarding the specific charges, defendant confirmed he understood what the possible penalties could be as a result of his plea.

The trial court discussed defendant's rights at trial, and that defendant, by entering a plea, was waiving those rights. Defendant confirmed it was his choice to have pleaded guilty to the remaining three counts and affirmed three prior convictions on the record. Defendant provided the trial court with a factual basis for his plea, including that he met with the victim on two occasions that involved sexual penetration and provided her with marijuana. Defendant confirmed the victim was between 13 and 16 years old, and he was 35 years old at the time. The prosecution and defense attorneys denied "any promises, threats or inducements to plea that [had] not been disclosed on the record[,]" and confirmed the trial court complied with the court rules when taking defendant's plea. The trial court determined the plea was "accurate and offered voluntarily with knowledge and understanding of what [was] involved[,]" and accepted the plea. However, at the plea hearing, there was no discussion of registration and compliance with SORA.

Before sentencing, defendant moved to withdraw his plea under MCR 6.310. Defendant asserted "he felt pressured" to have pleaded guilty to the counts, and he did not enter the plea knowingly and understandingly, because he was unaware "of the sentencing consequences of

[2] The plea agreement was in accordance with *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993).

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convictions in this case and his status as a parolee, he was not aware that the maximum possible penalty could be life, and he was unaware of the requirements of sex offender registration at the time of his plea." Defendant also "assert[ed] his innocence and demand[ed] trial by jury on all charges and that his case be remanded to district court for preliminary examination."

The prosecution opposed the motion, arguing the plea hearing transcript established defendant was aware of the sentencing consequences and was advised life in prison was the maximum possible penalty. It was asserted that defendant learned of his obligations under SORA in the felony information, and the trial court was not obligated to inform defendant of the same at the plea hearing, because defendant was not subject to mandatory, lifetime electric monitoring, under MCR 6.302(B)(2). The prosecution denied defendant was innocent, citing the factual basis defendant provided for the charges on the record and alleging that there was physical evidence to support the charges. Lastly, the prosecution submitted it would be prejudiced by the plea's withdrawal, because "[t]he victim in this case has been very anxious throughout the entirety of this case and has finally received finality with Defendant's plea. The value of finality for a victim is very difficult to quantify but it is real and substantial." The prosecution concluded there was no evidence indicating defendant's plea was involuntary or not knowingly made.

After hearing oral argument on the motion,[3] the trial court determined the record supported its conclusion that defendant made a knowing, understanding, and voluntary plea because it was not provided with any evidence to dispute this conclusion and denied the motion. As noted, it then sentenced defendant to 15 to 30 years' imprisonment for each CSC-III count, and 2 to 15 years' imprisonment for the delivery of a controlled substance to a minor count with the sentences served consecutive to defendant's parole sentence.

II. PRESERVATION AND STANDARD OF REVIEW

A party "must raise an issue in the trial court to preserve it" for appellate review. *People v Heft*, 299 Mich App 69, 78; 829 NW2d 266 (2012). Because defendant argued he was entitled to withdraw his plea in his motion, this matter is preserved for appellate review. However, while defendant argued he was unaware of his obligation under SORA generally, he did not raise the issue of whether his plea was involuntary because the trial court, specifically, did not inform him of his obligation under SORA. Therefore, this matter is not preserved for appellate review. Unpreserved issues are reviewed for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.* "To obtain relief generally requires a showing of prejudice;

[3] Defense counsel stated that she was not the "original counsel on the case." Indeed, she replaced original retained counsel, who withdrew. Court-appointed counsel represented defendant at the plea hearing. Yet, there was no delineation on the record or in the motion to withdraw plea of information conveyed to defendant about SORA and its registration requirements at any stage of the proceedings.

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specifically, that the error affected the outcome of the lower court proceedings." *People v Solloway*, 316 Mich App 174, 202; 891 NW2d 255 (2016).

"A trial court's decision on a motion to withdraw a plea is reviewed for an abuse of discretion." *People v Cole*, 491 Mich 325, 329; 817 NW2d 497 (2012). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Grant*, 329 Mich App 626, 634; 944 NW2d 172 (2019) (quotation marks and citation omitted). "A trial court necessarily abuses its discretion when it makes an error of law." *People v Everett*, 318 Mich App 511, 516; 899 NW2d 94 (2017). "The proper interpretation and application of a court rule is a question of law that is reviewed de novo." *Cole*, 491 Mich at 330. "To the extent that this case implicates constitutional issues, they are likewise reviewed de novo." *Id.*

III. PLEA WITHDRAWAL UNDER MCR 6.310

Defendant first alleges the trial court erred when it denied his motion to withdraw his plea because he raised a claim of innocence and that the prosecution failed to establish substantial prejudice. We disagree.

Withdrawal of a plea after acceptance, but before a sentence is imposed, is governed by MCR 6.310(B):

> (B) Withdrawal After Acceptance but Before Sentence. Except as provided in subsection (3), after acceptance but before sentence,
>
> (1) a plea may be withdrawn on the defendant's motion or with the defendant's consent, only in the interest of justice, and may not be withdrawn if withdrawal of the plea would substantially prejudice the prosecutor because of reliance on the plea. If the defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would be required by subrule (C). [MCR 6.310(B)(1).]

"[A] motion to withdraw a plea before sentencing should only be granted if the defendant is able to show that withdrawal of the plea is 'in the interest of justice,' meaning that the defendant has to articulate 'a fair and just reason' for withdrawing the plea." *People v Fonville*, 291 Mich App 363, 377-378; 804 NW2d 878 (2011) (footnote and citation omitted). "Fair and just reasons include reasons like a claim of actual innocence or a valid defense to the charge. Things that are not considered fair and just reasons are dissatisfaction with the sentence or incorrect advice from the defendant's attorney." *Id.* at 378 (footnotes and citations omitted).

Defendant contends, without explanation, that he provided a valid basis for withdrawal of his plea because he asserted the prosecution lacked sufficient evidence. While this assertion qualifies as a "fair and just reason," *id*., defendant provided no support for his claim of innocence. Indeed, similar to the circumstances in *Fonville*, defendant provided the factual grounds for the charges under oath to the trial court, and his "admissions were in line with the elements of the charged crime[.]" *Id.* at 379. In addition, the prosecution asserted that DNA evidence established the elements of the crime, an assertion that defendant did not refute. Defendant did not provide sufficient evidence of innocence to justify withdrawal of his plea in the interest of justice.

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Therefore, he failed to meet the initial threshold burden of proving withdrawal of his plea was in the interest of justice, and we need not address whether the prosecution could establish substantial prejudice.

IV. INVOLUNTARY PLEA

Defendant also asserts that he was entitled to withdraw his plea because he was not informed of his obligations under SORA, and therefore, not apprised of the maximum possible punishment, rendering his plea involuntary. We vacate the judgment of sentence and remand for a determination whether defendant received due process of law with regard to the notice and registration provisions of SORA.

Recently, this Court concluded that, despite the 2021 amendment to SORA, it nonetheless maintains an aggregate punitive effect that negates the Legislature's intent to classify it as a civil regulation. *People v Lymon*, ___ Mich ___, ___; ___ NW2d ___ (2022) (Docket No. 327355); slip op at 18.[4] "Due process principles require a court to advise a defendant of a consequence of a guilty plea that constitutes 'punishment.' " *People v Nunez*, ___ Mich App ___, ___; ___ NW2d ___ (2022) (Docket No. 356659); slip op at 5.

In *Cole*, 491 Mich at 330-332, our Supreme Court recognized that the trial court must ensure compliance with the court rule addressing guilty pleas, but also determine that due process is afforded to the defendant:

> Guilty- and no-contest-plea proceedings are governed by MCR 6.302. The first sentence of subrule (A) provides that a "court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understanding, voluntary, and accurate." MCR 6.302(A). The second sentence mandates that the court "place the defendant or defendants under oath and personally carry out subrules (B)–(E)." *Id.* Subrules (B) through (D), in turn, individually address the "understanding, voluntary, and accurate" requirements of subrule (A), and subrule (E) addresses "Additional Inquiries," including the requirement that the court ask the attorneys "whether the court has complied with subrules (B)-(D). . . ."
>
> * * *
>
> While we agree that MCR 6.302(B) through (E) constitute explicit requirements imposed on a trial court conducting a plea hearing, the broader directive of MCR 6.302(A) that the plea must be "understanding, voluntary, and accurate" might, in a given proceeding, encompass more than the explicit requirements of the remainder of the court rule. Specifically, the "understanding,

[4] However, the *Lymon* Court further concluded that the inquiry did not end there. Rather, it also had to be determined whether the punishment was cruel and/or unusual after evaluating the harshness of the penalty in light of the gravity and whether the penalty imposed advanced the goal of rehabilitation among other factors. *Lymon*, ___ Mich App at slip op 18. We note that an application for leave to appeal and a cross-appeal are currently pending before our Supreme Court.

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> voluntary, and accurate" components of subrule (A) are premised on the requirements of constitutional due process, which might not be entirely satisfied by compliance with subrules (B) through (D). Therefore, regardless of the explicit wording of the subrules, a court may be required by the Due Process Clause of the Fourteenth Amendment to inform a defendant that mandatory lifetime electronic monitoring is a consequence of his or her guilty or no-contest plea. [*Cole*, 491 Mich at 330-331 (footnote and citation omitted, alteration in original).]

A trial court is required to speak with a defendant directly, before accepting a plea, and ensure the defendant understands:

> (1) the name of the offense to which the defendant is pleading; the court is not obliged to explain the elements of the offense, or possible defenses;
>
> (2) the maximum possible prison sentence for the offense and any mandatory minimum sentence required by law, including a requirement for mandatory lifetime electronic monitoring under MCL 750.520b or 750.520c[.] [MCR 6.302(B).]

"If there is a plea agreement, the court must ask the prosecutor or the defendant's lawyer what the terms of the agreement are and confirm the terms of the agreement with the other lawyer and the defendant." MCR 6.302(C)(2).

"[A]lthough not explicitly required by MCR 6.302(B), it is well settled that a trial court must inform the defendant of any consecutive and/or mandatory sentencing requirements." *People v White*, 337 Mich App 558, 571; 977 NW2d 138 (2021) (citation omitted). "[A] defendant entering a plea must be fully aware of the *direct consequences* of the plea." *Id*. at 574 (emphasis added).

> While courts have relied on different tests to distinguish direct from collateral consequences, the prevailing distinction relied on by a majority of courts turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment . . . . The most obvious direct consequence of a conviction is the penalty to be imposed. It is, therefore, well-recognized that the defendant must be apprised of the sentence that he will be forced to serve as the result of his guilty plea and conviction. [*Id.* (ellipses in original)]

"A defendant's ignorance of the collateral consequences of a guilty plea does not render the plea involuntary." *Id.*

> Examples of collateral or incidental consequences include the loss of employment, loss of the right to vote, loss of the right to travel freely abroad, loss of the right to a driver's license, loss of the right to possess firearms, a plea's possible enhancing effects on a subsequent sentence, institution of separate civil proceedings against the defendant for commitment to a mental-health facility, loss of good-time credit, . . . possibility of undesirable discharge from the armed forces,

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> disqualification from public benefits, and loss of business or professional licenses. [*Fonville*, 291 Mich App at 385.]

An individual convicted of CSC-III, under MCL 750.520d, is a tier III offender under SORA. MCL 28.722(u)(*ii*); MCL 28.722(v)(*iv*). Generally, tier III offenders must report under SORA for life. MCL 28.725(13). A tier III offense is a "listed offense" under SORA. MCL 28.722(i). Registration under SORA is mandatory for individuals domiciled in Michigan who are convicted of listed offenses after October 1, 1995. MCL 28.723(1)(a). As a tier III offense, defendant's convictions for CSC-III carried a mandatory requirement of SORA registration. *Id.*

In the trial court, an analysis occurred regarding whether the conditions set forth for guilty pleas, MCR 6.302(B)-(E) occurred. However, there was never an inquiry addressing whether due process was satisfied with regard to the notice and registration provisions of SORA. Indeed, the record is devoid of detail pertaining to the information defendant received from counsel regarding the ramifications of his plea in light of SORA. Although unlike in *Cole*, defendant was not subject to lifetime electronic monitoring, there was no analysis of whether a lifetime registration provision was punishment and whether it constituted a direct or collateral consequence of the plea. Moreover, irrespective of whether the trial court satisfied due process by addressing SORA, due process seemingly could have been satisfied by the advice of counsel or the probation or parole agent. We note that defendant failed to allege on appeal that he was not apprised of the SORA requirements resulting from his plea by his attorney.[5] Because the record on appeal is insufficient to demonstrate whether defendant was apprised of SORA obligations in a manner that satisfied principles of due process, we remand this case to the trial court for purposes of conducting an evidentiary hearing to determine if the appropriate notice was given.

We remand for an evidentiary hearing to determine if defendant was made aware of the SORA implications of his plea in a manner that satisfied due process. We retain jurisdiction.

/s/ Anica Letica
/s/ Deborah A. Servitto
/s/ Noah P. Hood

[5] A defense counsel's failure to inform a defendant of his obligations under SORA constitutes ineffective assistance of counsel. *Fonville*, 291 Mich App at 394-395.

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Court of Appeals, State of Michigan

ORDER

People of MI v Jeffery Deshaun Watkins

Docket No. 356380

LC No. 19-014890-FH

Anica Letica
Presiding Judge

Deborah A. Servitto

Noah P. Hood
Judges

Pursuant to the opinion issued concurrently with this order, this case is REMANDED for further proceedings consistent with the opinion of this Court. We retain jurisdiction.

Proceedings on remand in this matter shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. As stated in the accompanying opinion, the trial court shall hold an evidentiary hearing to determine if defendant was made aware of the SORA implications of his plea in a manner that satisfied due process. The proceedings on remand are limited to this issue.

The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, appellant shall file with this Court copies of all orders entered on remand.

The transcript of all proceedings on remand shall be prepared and filed within 21 days after completion of the proceedings.

Anica Letica
Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

October 13, 2022
Date

Jerome W. Zimmer Jr.
Chief Clerk

Exhibit A to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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No. 16-768

In the Supreme Court of the United States

RICHARD SNYDER, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS

v.

JOHN DOES, #1-5, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

JEFFREY B. WALL
Acting Solicitor General
Counsel of Record
KENNETH A. BLANCO
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
SARAH E. HARRINGTON
Assistant to the Solicitor General
JAMES I. PEARCE
Attorney

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

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QUESTION PRESENTED

Whether the retroactive application of the Michigan Sex Offenders Registration Act to respondents violates the Ex Post Facto Clause, U.S. Const. Art. I, § 9, Cl. 3.

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In the Supreme Court of the United States

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RICHARD SNYDER, GOVERNOR OF MICHIGAN, ET AL., PETITIONERS

v.

JOHN DOES, #1-5, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

This brief is submitted in response to the Court's order inviting the Acting Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. "Sex offenders are a serious threat in this Nation," *McKune* v. *Lile*, 536 U.S. 24, 32 (2002) (opinion of Kennedy, J.), and pose significant "public safety concerns," *United States* v. *Kebodeaux*, 133 S. Ct. 2496, 2503 (2013). Congress has enacted multiple laws to encourage and assist States in tracking where sex offenders live, work, and study, and in making that information available to the public. *Smith* v. *Doe*, 538 U.S. 84, 99 (2003).

a. In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Of-

fender Registration Act (Wetterling Act), Pub. L. No. 103-322, § 170101, 108 Stat. 2038. The Wetterling Act encouraged States, as a condition of receiving federal funds, to enact sex-offender-registration laws meeting certain minimum standards. See *Smith*, 538 U.S. at 89-90. By 1996, every State and the District of Columbia had enacted a sex-offender-registration law. *Id.* at 90. Congress then amended the federal scheme to create a national sex-offender registry, to require certain offenders to register, and to impose criminal penalties for failure to register.[1]

In 2006, Congress enacted the Sex Offender Registration and Notification Act (SORNA), Pub. L. No. 109-248, Tit. I, 120 Stat. 590 (42 U.S.C. 16901 *et seq.*), to bring uniformity to the "patchwork" of existing federal and state sex-offender-registration laws, *Reynolds* v. *United States*, 565 U.S. 432, 435 (2012). SORNA establishes "comprehensive registration-system standards" and requires state and federal sex offenders "to register with relevant jurisdictions (and to keep registration information current)." *Ibid.* In particular, SORNA instructs each covered jurisdiction (including all 50 States, 42 U.S.C. 16911(10)) to "maintain a jurisdiction-wide sex offender registry" that includes certain offender-specific information and to

[1] See Megan's Law, Pub. L. No. 104-145, § 2, 110 Stat. 1345 (42 U.S.C. 14071(e) (Supp. II 1996)); Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, § 2, 110 Stat. 3093 (42 U.S.C. 14072 (Supp. II 1996)); Department of Justice Appropriations Act, 1998, Pub. L. No. 105-119, Tit. I, § 115(a)(2)(F) and (6)(C), 111 Stat. 2463-2464 (42 U.S.C. 14071(b)(7), 14072(i) (Supp. III 1997)); Department of Justice Appropriations Act, 1999, Pub. L. No. 105-277, Div. A, § 101(b) [Tit. I, § 123(3)], 112 Stat. 2681-73 (42 U.S.C. 14072(i)(3) and (4) (Supp. IV 1998)).

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make registration information available on the internet. 42 U.S.C. 16912(a), 16914(b), 16918(a). SORNA then requires sex offenders to register and to keep their registrations current in jurisdictions where they live, work, and study. 42 U.S.C. 16913. The length of time an offender must remain registered and the frequency with which the offender must appear and verify registry information depends on the offender's "tier," which is based on the nature and severity of the offender's offenses. 42 U.S.C. 16915-16916. SORNA requires covered jurisdictions to criminally penalize the failure to register. 42 U.S.C. 16913(e).

Congress directed the Attorney General to "issue guidelines and regulations to interpret and implement" SORNA's provisions. 42 U.S.C. 16912(b). In 2008, the Attorney General promulgated final guidelines to assist covered jurisdictions in complying with SORNA's requirements. See *The National Guidelines for Sex Offender Registration and Notification*, 73 Fed. Reg. 38,030 (July 2, 2008) (*Guidelines*).

A SORNA jurisdiction that fails to "substantially implement" SORNA's requirements risks losing ten percent of the funds otherwise available under the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. No. 90-351, 82 Stat. 197. See 42 U.S.C. 16925(a). Congress established the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), which is under the jurisdiction of the Attorney General, to "administer the standards" that SORNA established and to provide technical assistance to covered jurisdictions. See 42 U.S.C. 16945.

b. In 1994, Michigan enacted the Sex Offenders Registration Act (SORA), 1994 Mich. Pub. Acts 1522-

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1527. SORA created a non-public registry maintained solely for law-enforcement use. Pet. App. 10a. SORA was amended in 1996 to require law-enforcement agencies to make certain offender information available to the public, 1996 Mich. Pub. Acts 2283-2285; in 1999 to require sex offenders to register in person at regular intervals, Pet. App. 10a; and in 2006 to establish school-safety zones by prohibiting sex offenders from living, working, or loitering within 1000 feet of a school, see *id.* at 10a-11a. A first violation of those provisions is a misdemeanor and a second violation is a felony punishable by up to two years in prison. See Mich. Comp. Laws Ann. §§ 28.734-28.735 (West 2012).

In 2011 (after SORNA was enacted), Michigan amended SORA in four important ways. First, offenders are classified into three tiers based on the nature and severity of their registration offenses and any prior sex-offense convictions. Mich. Comp. Laws Ann. § 28.722 (West 2012). Second, offenders must report in person any change in name, residence, employment, student status, vehicle use or ownership, temporary residence lasting more than seven days, e-mail address, instant message address, or "any other designations used in internet communications or postings" within three business days of the change. *Id.* § 28.725; see *id.* § 28.722(g). Third, certain information about a sex offender, including the offender's tier classification, is posted on the internet. *Id.* § 28.728(2)(*l*). Fourth, the most serious (tier-III) sex offenders are subject to a lifetime-registration requirement. *Id.* § 28.725.

2. Respondents are six individuals who qualify as tier-III sex offenders under SORA and therefore must register for life. Pet. App. 144a-146a. They filed this

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action to challenge SORA on numerous constitutional grounds. As relevant here, they contend that retroactive application of SORA's 2006 and 2011 amendments violates the Ex Post Facto Clause, U.S. Const. Art. I, § 9, Cl. 3. Pet. App. 142a.

The United States District Court for the Eastern District of Michigan dismissed respondents' ex post facto claims. Pet. App. 148a-158a. The court analyzed those claims using the two-part test set out in *Smith* v. *Doe*, *supra*, where this Court rejected an ex post facto challenge to Alaska's sex-offender-registration system, 538 U.S. at 92. Pet. App. 148a-158a. Under that two-part test, a court asks first whether the legislature meant the statute to punish or to establish a civil, non-punitive scheme. *Smith*, 538 U.S. at 92. If the legislature intended punishment, "that ends the inquiry." *Ibid.* If the legislature intended a civil scheme, the court then assesses, using factors identified in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144 (1963), whether the scheme is "so punitive either in purpose or effect" that it should be deemed punishment despite the State's intention. *Smith*, 538 U.S. at 92.

In this case, the district court first concluded that the Michigan legislature had no punitive intent in enacting SORA. Pet. App. 149a-151a. After examining SORA's text, structure, and "manner of codification," the court concluded that SORA is "a civil statute." *Id.* at 151a.

The district court then assessed whether the effects of SORA are "so punitive as to qualify as ex post facto punishment." Pet. App. 149a (citing *Smith*, 538 U.S. at 92). The court applied the seven *Kennedy* factors: (1) whether the sanction imposed by SORA

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"involves an affirmative disability or restraint"; (2) "whether the statute imposes sanctions that have historically been considered punishment"; (3) "whether application of the statute requires a finding of scienter"; (4) "whether SORA serves any traditional aims of punishment" such as retribution and deterrence; (5) "whether the statute applies to behavior that is already a crime"; (6) "whether the statute is rationally connected to a nonpunitive purpose"; and (7) whether SORA "is excessive in relation to its nonpunitive interests." Pet. App. 151a-158a; see *Kennedy*, 372 U.S. at 168-169. The court concluded that, although the third and fifth factors weigh in favor of respondents, neither had significant weight, and the other five factors establish "that SORA, as amended in 2011, is a regulatory, not criminal statute." *Id.* at 155a-156a, 158a.

In particular, the district court rejected respondents' arguments that SORA's in-person reporting requirements and school-safety zones impose a disability or restraint, explaining that SORA does not impose "any physical restraint" and that respondents are not precluded from changing jobs, moving, or traveling. Pet. App. 152a-153a. The court also noted that any disability or restraint resulting from the school-safety zones is "minor and indirect" because SORA exempts persons who were already living within those zones when they were created. *Ibid.* The court concluded that SORA does not resemble historical punishments such as banishment and shaming because it does not "expel offenders from the community in any real sense." *Id.* at 154a-155a. The court also determined that SORA's use of "broad, offense-based categories" (rather than individualized assess-

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ments) for classifying offenders is not retributive, *id.* at 155a, and that any incidental deterrent effects are insufficient to establish a punitive purpose, *id.* at 156a. Finally, the court concluded that SORA's non-punitive "public safety and community notification" purpose is "clear and obvious," *ibid.*, and that the lifetime reporting requirements reasonably further that non-punitive purpose, *id.* at 157a.

3. The court of appeals reversed. Pet. App. 10a-28a. It agreed with the district court that the legislature's intent in enacting SORA was non-punitive, *id.* at 17a, but concluded that the aggregate effect of SORA's provisions is so punitive that it qualifies as ex post facto punishment, *id.* at 18a-26a.

Focusing on five of the seven factors identified in *Kennedy*, the court of appeals first concluded that SORA resembles several traditional forms of punishment. Pet. App. 18a-21a. The court acknowledged that SORA does not formally banish offenders, but stated that the school-safety zones are "very burdensome" for offenders who are trying to find a place to live or work. *Id.* at 18a-20a. The court also characterized SORA as imposing a shaming penalty because it "ascribes and publishes tier classifications corresponding to the state's estimation of present dangerousness" without "any individualized assessment" and because in some cases it "discloses otherwise non-public information" such as sealed juvenile records. *Id.* at 20a. The court also analogized SORA's requirements to parole or probation because they restrict where offenders can live and work and require in-person reporting. *Id.* at 21a.

Second, the court determined that SORA imposes "direct restraints on personal conduct." Pet. App.

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22a. In reaching that conclusion, the court relied most heavily on SORA's "regulation of where registrants may live, work, and 'loiter,'" *id.* at 21a, and the in-person reporting requirements, *id.* at 22a.

Third, the court held that, although SORA promotes some traditional aims of punishment (such as incapacitation, retribution, and deterrence), "many of th[o]se goals can also rightly be described as civil and regulatory." Pet. App. 23a. The court therefore accorded "little weight" to that factor. *Ibid.*

Fourth, the court concluded that what it considered the most significant factor—whether SORA bears a rational connection to a non-punitive purpose—favors respondents. Pet. App. 23a. The court acknowledged that recidivism rates of sex offenders are "frightening and high" and that the information-sharing and school-zone provisions in SORA are designed to "prevent[] some of the most disturbing and destructive criminal activity" and "keep sex offenders away from the most vulnerable." *Id.* at 24a. But the court found only "scant support" in the record to support "the proposition that SORA in fact accomplishes its professed goals." *Ibid.* The court found evidence supporting the view that "offense-based public registration has, at best, no impact on recidivism" and found nothing in the record to "suggest[] that the residential restrictions have any beneficial effect on recidivism rates." *Id.* at 24a-25a.

Finally, the court determined that SORA's punitive effects "far exceed even a generous assessment of their salutary effects." Pet. App. 25a. The court again emphasized the school-safety zones and the "frequent, in-person appearances." *Ibid.*

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Taking all of the factors together, the court of appeals ultimately concluded that SORA, unlike the Alaska sex-offender-registration system at issue in *Smith*, has a punitive effect. Pet. App. 26a-28a. The court relied primarily on the cumulative effect of three features of SORA—(1) the school-safety zones, which "severely restrict[] where people can live, work, and 'loiter'"; (2) the tier-classification and disclosure system that purports to assess dangerousness but is not based on an individualized assessment; and (3) the "time-consuming and cumbersome in-person reporting" requirements—combined with what the court viewed as the "scant evidence" that those restrictions are "keeping Michigan communities safe." *Id.* at 26a. The court therefore held that retroactive application of the 2006 and 2011 SORA amendments to respondents violates the Ex Post Facto Clause. *Id.* at 27a.

DISCUSSION

Michigan's sex-offender-registration scheme contains a variety of features that go beyond the baseline requirements set forth in federal law and differ from those of most other States. After applying the multi-factor framework set out in *Smith* v. *Doe*, 538 U.S. 84 (2003), the court of appeals concluded that the cumulative effect of SORA's challenged provisions is punitive for ex post facto purposes. While lower courts have reached different conclusions in analyzing particular features of various state sex-offender-registration schemes, the court of appeals' analysis of the distinctive features of Michigan's law does not conflict with any of those decisions, nor does it conflict with this Court's holding in *Smith*. Every court of appeals that has considered an ex post facto challenge to a sex-offender-registry statutory scheme has applied the

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same *Smith* framework to determine whether the aggregate effects of the challenged aspects of that scheme are punitive. And although most state sex-offender-registry schemes share similar features, they vary widely in their form and combination of those features. Accordingly, to the extent the courts of appeals have reached different outcomes in state sex-offender-registry cases, those outcomes reflect differences in the statutory schemes rather than any divergence in the legal framework. Finally, petitioners' concern (Pet. 26-29) that the court of appeals' decision will prevent the State from receiving some federal funding does not warrant review. That concern is premature, as it may well be the case that Michigan can continue to receive federal funds notwithstanding this decision. And the decision does not prevent the State from implementing a sex-offender-registration scheme that is consistent with federal law. Further review is therefore not warranted.

1. The court of appeals applied the correct legal framework to assess respondents' challenge to SORA. The court recognized that this Court has a "well established" ex post facto framework, which the Court used to evaluate the Alaska sex-offender-registration scheme at issue in *Smith*. Pet. App. 15a-17a. Under that framework, a court must first determine whether a legislature intended a statutory scheme with retroactive application to be punitive, or instead intended the statute to function as "a regulatory scheme that is civil and nonpunitive." *Smith*, 538 U.S. at 92; see Pet. App. 16a. If the legislature intended the scheme to be non-punitive, a court must then assess "whether the statutory scheme is 'so punitive either in purpose or effect as to negate [the State's] intention to deem it

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civil.'" *Smith*, 538 U.S. at 92 (brackets in original; internal quotation marks omitted) (quoting *Kansas* v. *Hendricks*, 521 U.S. 346, 361 (1997)).

The court of appeals applied the *Smith* framework in this case. The court first determined that the Michigan legislature did not intend SORA to be punitive. Pet. App. 16a-17a. The court then "consider[ed] whether SORA's actual effects are punitive." *Id.* at 17a. The court of appeals correctly focused on the cumulative effects of the challenged aspects of SORA to decide if it is punitive, just as this Court had done in *Smith*. *Id.* at 17a-25a; see *Smith*, 538 U.S. at 97-106.[2] Also consistent with *Smith*, the court of appeals recognized the importance of respecting state policy judgments; the court acknowledged that "states are free to pass retroactive sex-offender registry laws" and that persons "challenging an ostensibly non-

[2] Relying on *Hudson* v. *United States*, 522 U.S. 93, 103-105 (1997), and *Weaver* v. *Graham*, 450 U.S. 24, 36 n.22 (1981), petitioners contend (Pet. Reply Br. 2-3) that lower courts should separately evaluate each individual component of a statutory scheme to determine whether each component is punitive. Petitioners are incorrect. In *Hudson*, the Court concluded that neither of the challenged statutory requirements indicated that the scheme had a punitive effect under *any* of the relevant factors identified in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963). *Hudson*, 522 U.S. at 103-105. The *Hudson* Court therefore had no need to consider the cumulative effect of such factors. In *Weaver*, when the Court analyzed changes to a state law governing the accrual of prison good-time credits, it expressly considered the aspects of the new law that reduced the availability of good-time credits *in conjunction with* other aspects of the law that expanded opportunities to obtain a reduction in sentence through means other than good behavior. 450 U.S. at 26-28, 34-36. Thus, the *Weaver* Court considered the cumulative effects of the new statutory scheme, just as the court of appeals did here.

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punitive civil law" will have a "difficult" time "show[ing] by the 'clearest proof' that the statute in fact inflicts punishment." Pet. App. 26a (quoting *Smith*, 538 U.S. at 105).

To assess whether SORA's effects are punitive, the court used the "guideposts" that this Court set out in *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963), and applied in *Smith*, 538 U.S. at 97. The court identified which of the seven factors were relevant to determining whether the challenged aspects of SORA are punitive, Pet. App. 17a-18a, and then applied them to this case, *id.* at 18a-27a. The court of appeals examined whether the challenged aspects of SORA resemble traditional punishment, impose affirmative disabilities or restraints, promote traditional aims of punishment, have a rational connection to a non-punitive purpose, or are excessive with respect to that purpose. *Id.* at 18a-26a; see *Smith*, 538 U.S. at 97. The court's assessment of those factors turned on record-specific evidence of the actual and aggregate effects of the challenged aspects of SORA. See, *e.g.*, Pet. App. 19a (citing map of Grand Rapids, Michigan, to illustrate effect of school-safety zones); *id.* at 24a (noting record evidence supporting respondents' contentions that "offense-based public registration" does not reduce recidivism).

The court of appeals thus applied the correct legal standard to assess respondents' ex post facto challenges. The court's application of that correct legal standard does not warrant this Court's review. Although the court's decision does limit the reach of certain provisions that Michigan deemed appropriate to address the serious problem of sex-offender recidivism, its holding does not prevent the State from

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implementing a scheme that is consistent with baseline federal standards or call into question other States' laws. In particular, because the court of appeals' holding is limited to "[t]he retroactive application of SORA's 2006 and 2011 amendments," Pet. App. 27a, Michigan remains free to enforce the pre-2006 version of SORA retroactively and to enforce the current version of SORA prospectively. Michigan may also be able to reenact in modified form a subset of the requirements in the 2006 and 2011 amendments. The court of appeals did not categorically bar the retroactive enforcement of exclusion zones or in-person registration requirements. Because the *Smith* analysis focuses on the cumulative effect of the statutory scheme, Michigan may be able to retroactively enforce amended versions of those requirements that are less onerous or far-reaching. Under those circumstances, the novel application of settled ex post facto standards to a single State's law does not warrant further review.

2. Petitioners err in contending (Pet. 16-24) that this Court's review is necessary to resolve conflicts between the court of appeals' decision and decisions of other courts of appeals and state courts of last resort. Petitioners are correct that courts have reached different conclusions about whether particular aspects of different sex-offender-registration laws have a punitive effect. But none of those decisions conflicts with the court of appeals' decision in this case about whether the cumulative effects of Michigan's SORA are punitive.

Petitioners are correct (Pet. Reply Br. 8) that "a handful of elements of modern" sex-offender-registration laws "span numerous jurisdictions." That

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is due at least in part to the influence of SORNA and accompanying federal *Guidelines*, which establish a floor of requirements to qualify for federal funding. Those standards include that sex offenders maintain a current registration in jurisdictions where they live, work, and study and that they periodically appear in person to update their registration. 42 U.S.C. 16913, 16915-16916. SORNA also directs complying jurisdictions to make publicly available certain information about registered sex offenders. 42 U.S.C. 16918(a).

But as petitioners acknowledge (Pet. Reply Br. 8-9), those common elements can and do vary in form and character from jurisdiction to jurisdiction—because SORNA does not establish a federal ceiling for the form and character of those elements. For example, although SORNA (through the implementing *Guidelines*) requires a jurisdiction to make public the sex offense for which an offender is registered, 73 Fed. Reg. at 38,059, it does not require a State to make public the tier classification assigned to a registrant, as Michigan has chosen to do, Mich. Comp. Laws Ann. § 28.728(2)(*l*) (West 2012). Similarly, SORA goes beyond SORNA's in-person reporting requirements. SORNA directs jurisdictions to require periodic in-person appearances to verify registration information and take a photograph, and SORNA specifies that such in-person appearances must occur at least annually for the lowest-tier offenders and at least quarterly for the highest-tier offenders. 42 U.S.C. 16916. SORNA also requires that a sex offender appear in person to update a registration within three business days after any change of name, residence, employment, or student status. 42 U.S.C. 16913(c). In contrast to Michigan's SORA, however, SORNA does not require a regis-

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trant to appear in person to update a registration after changes in, *inter alia*, motor vehicle information and internet identifiers. Compare Mich. Comp. Laws Ann. § 28.725(1)(e)-(g) (West 2012) with 42 U.S.C. 16914(a), 16915a(a); *Guidelines*, 73 Fed. Reg. at 38,054-38,058, 38,066. And SORNA does not require a jurisdiction to create any exclusion or school-safety zones, as Michigan has chosen to do. Mich. Comp. Laws Ann. § 28.734 (West 2012); see *id.* § 28.733(f). The sex-offender-registration laws of other jurisdictions similarly vary in their manner of implementing SORNA's core features and in their adoption of additional features not required by SORNA. See, *e.g.*, Center for Sex Offender Mgmt., *Fifty State Survey of Adult Sex Offender Registration Requirements*, http://www.csom.org/pubs/50%20state%20survey%20adult%20registries.pdf (last visited July 6, 2017).

In light of the variation among jurisdictions' sex-offender-registration laws, courts may reach different ex post facto results without creating conflicts over legal principles. That is true even when the two laws share common features when described at a relatively high level of generality. The details matter. The State's discussion of assertedly conflicting cases bears out that conclusion. Although noting disparate results, petitioners do not clearly identify any decisions that reach opposite conclusions about statutory provisions that are materially identical to each other or that are accompanied by other materially identical requirements.

For example, petitioners contend (Pet. 17-19) that a Tenth Circuit decision upholding as non-punitive a requirement that *transient* sex offenders make weekly in-person verification visits conflicts with the decision

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below holding that Michigan's requirement that *every* sex offender appear in person within three business days to report any change in certain information, including vehicle use and internet identifiers. Compare *Shaw* v. *Patton*, 823 F.3d 556, 564-566 (2016), with Pet. App. 26a. Because those statutory provisions differ in significant ways, judicial decisions reaching different conclusions about their punitive effect do not conflict. The practical concerns about monitoring and verifying the identity of transient individuals are obviously quite different from such concerns with respect to individuals with a stable address. Petitioners similarly elide (Pet. 19-21) material differences among statutory provisions establishing school-safety zones, suggesting that Michigan's ban on living, working, or loitering within 1000 feet of a school has the same effect as state laws that ban only living within a similar distance from a school.

To the extent any tension exists among appellate courts about whether certain common features (described at a relatively high level of generality) of sex-offender-registration laws are punitive, this case would not be a suitable vehicle for resolving any such feature-by-feature tension because the court of appeals' decision here is directed at the *aggregate* effect of the challenged aspects of Michigan's law. See Pet. App. 26a (finding SORA punitive based on the school-safety zones, the public classification of offenders without an individualized risk assessment, and the "time-consuming and cumbersome in-person reporting" requirement). Petitioners do not identify any decision that upholds a statutory scheme that includes features comparable to those the court of appeals found in the aggregate to be objectionable here. Be-

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cause the lower courts already apply the correct legal standard to the unique set of circumstances presented by each challenged law, further review in this case is not necessary to provide additional guidance to lower courts considering ex post facto challenges to sex-offender-registration laws.

3. Petitioners' contention (Pet. 24-26) that the court of appeals' decision conflicts with this Court's decision in *Smith* lacks merit. Petitioners do not dispute that the court of appeals applied the framework set out in *Smith*. Rather, petitioners argue that the decision below conflicts with *Smith* because *Smith* upheld a state registration law that included some (but not all) of the same features (though in different form) that are included in Michigan's law. No conflict exists between the decision in *Smith*, which considered the aggregate effects of a law containing a different combination of features, and the decision below. The court of appeals acknowledged some overlap between the two statutory schemes, but explained that it found Michigan's law to be "altogether different from and more troubling than Alaska's first-generation registry law." Pet. App. 26a. Unlike SORA, Alaska's law did not establish school-safety zones, did not publish a sex offender's tier classification, and did not require in-person appearances to update information such as temporary residence and e-mail address. See *Smith*, 538 U.S. at 90-91.

4. Finally, petitioners' contention (Pet. 26-29) that the court of appeals' decision jeopardizes Michigan's eligibility for certain federal funding by rendering the State out of compliance with SORNA is speculative and premature and may well be incorrect.

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The court of appeals explained that SORA is punitive because of the cumulative effect of three statutory features: the school-safety zones in which a sex offender is not permitted to live, work, or loiter; the requirement that an offender be categorized into a tier based on his underlying offense without an individualized assessment and that his assigned tier be made public; and the requirement that sex offenders appear in person "to report even minor changes to their information." Pet. App. 26a; see *id.* at 18a-26a.[3] The court thus held that those features of SORA—*i.e.*, "SORA's 2006 and 2011 amendments"—may not be applied retroactively. *Id.* at 27a; see *id.* at 11a (describing amendments). Because SORNA does not require States to enact statutory provisions paralleling those the court of appeals identified as problematic, it is doubtful that complying with the court of appeals' decision will imperil Michigan's eligibility for SORNA-related funds—particularly if the legislature amends the relevant provisions of SORA to address the court of appeals' concerns while satisfying the floor imposed by SORNA. See *Guidelines*, 73 Fed. Reg. at 38,046 (explaining that SORNA creates "a floor, not a ceiling").

In particular, SORNA does not require jurisdictions to adopt residential restrictions or school-safety zones at all. Michigan's inability to retroactively en-

[3] The court of appeals also noted that certain SORA provisions, including the in-person reporting requirements, apply to tier-III offenders for life. Pet. App. 22a. But the court's ultimate conclusion that the cumulative effects of SORA are punitive did not depend on that aspect of SORA. *Id.* at 26a (noting that the cumulative effects of aspects of SORA are punitive when they apply for "years" or for "a lifetime").

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force those provisions of SORA will therefore have no effect on the State's substantial compliance with SORNA. Although SORNA does require jurisdictions to subject offenders to different requirements based on each offender's offense tier (as defined under SORNA), 42 U.S.C. 16911(2)-(4), it does not require jurisdictions to make an offender's tier classification public—an aspect of SORA that the court of appeals found to "resemble traditional shaming punishments." Pet. App. 20a. Finally, although SORNA does mandate that jurisdictions require in-person appearances within three business days of a change to a registrant's name, residence, employment, or student status, 42 U.S.C. 16913(c), SORNA does not mandate that Michigan impose that requirement with respect to what the court of appeals viewed (Pet. App. 26a) as "even minor changes to their information," *i.e.*, changes to a registrant's vehicle use or ownership, temporary residence for more than seven days, e-mail address, instant message address, or "any other designations used in internet communications or postings," Mich. Comp. Laws Ann. § 28.725 (West 2012).

Petitioners assert (Pet. 27) that the State cannot substantially comply with SORNA if the court of appeals' decision stands. But the State's inability to enforce retroactively the school-safety zones, the publication of offenders' tier classification, and the in-person reporting requirement for changes to vehicle ownership, temporary residence, e-mail address, and other online designations would have no effect on its SORNA compliance. And those changes alone may be sufficient to eliminate the court of appeals' concerns about the ex post facto application of SORA. And even if the State chooses not to reinstate (through new

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legislation) the retroactive application of the few relevant features in SORA that are required by SORNA, the State would not necessarily lose any federal justice-assistance funding. Under 42 U.S.C. 16925(a), the Attorney General has discretion to determine that a jurisdiction has "substantially implement[ed]" the requirements of SORNA notwithstanding some degree of deviation from SORNA's requirements. In light of that discretion, the Attorney General's decision whether to reduce funding for Michigan would ultimately turn on any modifications the State might make to SORA as well as the nature and rationale behind any deviations from SORNA. Whether the State might lose some portion of its federal funds therefore depends at least in part on decisions within the State's control.

Even if the Attorney General determines that the court of appeals' decision prevents the State from substantially implementing SORNA at least until amending legislation is enacted, SORNA gives the State the option of applying for reallocation of any funds lost due to lack of substantial implementation if those funds will be used for the purpose of implementing SORNA. See 42 U.S.C. 16925(c). The SMART office within the Department of Justice has provided guidance to SORNA jurisdictions about how to request such reallocation. See Office of Justice Programs, Dep't of Justice, *Byrne JAG Grant Reductions under SORNA*, https://www.smart.gov/byrneJAG_grant_reductions.htm (last visited July 6, 2017). Petitioners' claimed practical effects of the decision below therefore are speculative and may never occur. Accordingly, review is not warranted on that basis.

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CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JEFFREY B. WALL
Acting Solicitor General
KENNETH A. BLANCO
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
SARAH E. HARRINGTON
Assistant to the Solicitor General
JAMES I. PEARCE
Attorney

JULY 2017

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Exhibit B to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

Senate Fiscal Agency
P.O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

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House Bill 5679 (Substitute H-5 as passed by the House)
Sponsor: Representative James A. Lower
House Committee: Judiciary
Senate Committee: Committee of the Whole

Date Completed: 12-9-20

CONTENT

The bill would amend the Sex Offender Registration Act to do the following:

-- Modify, from "immediately" (within three business days) to seven days, the time period by which a probation or parole agent must register an individual if the individual's probation or parole is transferred to the State.
-- Modify, from "immediately" to within three days, the time period for which individuals required to the registered under the Act must register or report status changes in person with a local law enforcement agency.
-- Modify the information required to be obtained or otherwise provided for registration purposes and that must be contained in the law enforcement database.
-- Specify that a requirement to report all electronic mail addresses would apply only to an individual required to be registered under the Act after July 1, 2011.
-- Delete a provision prohibiting an electronic mail address and instant message addresses assigned to an individual required to be registered under the Act from being made available on the public internet website.
-- Prohibit an individual's tier classification from being made available on the public internet website.
-- Require the Michigan State Police (MSP) to remove an individual from the law enforcement database and public internet website if the individual presented a court order that the conviction or adjudication requiring the individual to be registered under the Act had been set aside or expunged.
-- Modify the definition of "convicted.

The bill also would repeal Sections 33 to 36 of the Act, which pertain to student safety zones.

Definition of "Convicted"

Under the Act, the term "convicted" includes having a judgment of convictions or a probation order entered in any court having jurisdiction over criminal offense, including a tribal court or military court, and including a conviction subsequently set aside under Public Act (PA) 213 of 1965, which provides for setting aside convictions in certain criminal cases. Under the bill, "convicted" *would not* include a conviction that was subsequently set aside under PA 213 or otherwise expunged.

"Convicted" also includes either of the following:

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-- Being assigned to youthful trainee status under the Holmes Youthful Trainee Act (HYTA), before October 1, 2004; however, this provision does not apply if a petition was granted under Section 8c at any time allowing the individual to discontinue registration under the Act, including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on and after that date.
-- Being assigned to youthful trainee status under HYTA before October 1, 2004, if the individual is convicted of any other felony on or after July 1, 2011.

Instead, under the bill, "convicted" would include being assigned to youthful trainee status under HYTA before October 1, 2004. An individual who was assigned to and successfully completed a term of supervision under HYTA would not be convicted for purposes of the Act. The exception described above still would apply.

Registration

Under the Act, except as otherwise provided, for an individual convicted of a listed offense on or before October 1, 1995, if the individual's probation or parole is transferred to the State after October 1, 1995, the probation or parole agent must register the individual immediately after the transfer. "Immediately" means within three business days.

The bill, instead, would require the probation or parole agent to register the individual within seven days after the transfer. The bill also would delete the definition of "immediately".

The Act requires all of the following to register with the local law enforcement agency, sheriff's department, or the MSP immediately after becoming domiciled or residing, working, or being a student temporarily in the State:

-- An individual convicted in another state or country on or after October 1, 1995, of a listed offense as defined before September 1, 1999.
-- An individual convicted in another state or country of an offense added on September 1, 1999, to the definition of listed offenses.
-- An individual convicted in another state or country of a listed offense before October 1, 1995, and an individual convicted in another state or country of an offense added on September 1, 1999, to the definition of listed offenses, who is convicted of any other felony on or after July 1, 2011.
-- An individual required to be registered as a sex offender in another state or country regardless of when the conviction was entered.

The bill would require the above individuals to register within three business days, instead of immediately, after becoming domiciled or residing, working, or being a student temporarily in the State.

Reporting Status to Registering Authority

Section 4a of the Act requires an individual required to be registered under the Act who is not a Michigan resident to report his or her status in person to the registering authority having jurisdiction over a campus of an institution of higher education if either of the following occurs:

-- The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment.
-- As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or

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possession of the United States, or the individual discontinues his or her studies at that location.

An individual required to be registered under the Act who is a Michigan resident must report his or her status in person to the registering authority having jurisdiction where his or her new residence or domicile is located if any of the events described above occur.

The report required above must be made as follows:

-- For an individual registered under the Act before October 1, 2002, who is required to make his or her first report, by January 15, 2003.
-- Immediately after he or she enrolls or discontinues his or her enrollment as a student on that campus including study in Michigan or another state, a territory or possession of the United States, or another country.

The bill would require the report to be made within three days, instead of immediately, after he or she enrolled or discontinued enrollment as a student.

Reporting Status Changes

An individual required to be registered under the Act who is a Michigan resident must report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately after any of the following occur:

-- The individual changes or vacates his or her residence or domicile.
-- The individual changes his or her place of employment, or employment is discontinued.
-- The individual enrolls as a student with an institution of higher education, or enrollment is discontinued.
-- The individual changes his or her name.
-- The individual intends to temporarily reside at any place other than his or her residence for more than seven days.
-- The individual establishes any electronic mail or instant message address, or any other designations used in internet communications or postings.
-- The individual purchases or begins to regularly operate any vehicle, and when ownership or operation of the vehicle is discontinued.
-- Any change required to be reported under Section 4a.

Instead, under the bill, an individual required to be registered under the Act who is a Michigan resident would report in person, or in a manner prescribed by the MSP, and notify the registering authority having jurisdiction where his or her residence or domicile was located within three days after any of the following occurred:

-- The individual changed or vacated his or her residence or domicile.
-- The individual changed his or her place of employment, or employment was discontinued.
-- The individual enrolled as a student with an institution of higher education, or enrollment was discontinued.
-- The individual changed his or her name.
-- Any change required to be reported under Section 4a.

An individual required to be registered under the Act who was a Michigan resident would have to report in the manner prescribed by the MSP to the registering authority having jurisdiction where his or her residence or domicile was located within three days after either of the following occurred:

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-- The individual intended to reside temporarily at any place other than his or her residence for more than seven days.
-- Except as otherwise provided, any change in vehicle information, electronic mail addresses, internet identifiers, or telephone numbers registered to or used by the individual.

The requirement to report any change in electronic mail addresses and internet identifiers would apply only to an individual required to be registered under the Act after July 1, 2011. "Internet identifier" would mean all designations used for self-identification purposes or routing in internet communications or posting.

Under the Act, an individual required to be registered under the Act, who is not a Michigan resident but has his or her place of employment in Michigan must report in person and notify the registering authority having jurisdiction where his or her place of employment is located of the MSP post of the individual's place of employment immediately after the individual changed his or her place of employment or employment is discontinued. The bill would require the reporting within three days, instead of immediately.

Under the Act, immediately after either of the following occurs, the Michigan Department of Corrections (MDOC) must notify the local law enforcement agency or sheriff's department having jurisdiction over the area to which the individual is transferred or the MSP post of the transferred residence or domicile of an individual required to be registered under the Act:

-- The individual is transferred to a community residential program.
-- The individual is transferred into a level one correctional facility of any kind, including a correctional camp or work camp.

The bill would require notification to be made within seven days, instead of immediately.

The Act requires an individual required to be registered under the Act who is a Michigan resident to report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately before he or she changes his or her domicile or residence to another state. The bill would require the notification to be made within three days, instead of immediately.

Under the bill, if an individual required to be registered under the Act presented an order to the MSP or the appropriate registering authority that the conviction or adjudication for which the individual was required to be registered under the Act had been set aside under PA 213 or had been otherwise expunged, his or her registration under the Act would have to be discontinued. If this provision applied, the MSP would have to remove the individual from both the law enforcement database and the public internet website.

Notice to Registered Individuals

Section 5a of the Act specifies that upon the release of an individual registered under the Act who is in a State correctional facility, the MDOC must provide written notice to that individual explaining his or her duties under Section 5a and the Act and the procedure for registration, notification, and verification and payment of the registration fee. The individual must sign and date the notice. The MDOC must maintain a copy of the signed and dated notice in the individual's file. The MDOC must forward the original notice to the MSP immediately, regardless of whether the individual signs it. Under the bill, the MDOC would have to forward the original notice to the MSP within seven days, instead of immediately.

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The Act requires an individual required to be registered under the Act who is not incarcerated to report in person to the registering authority where he or she is domiciled or resides for verification of domicile or residence.

When an individual reports for domicile or residence verification, an officer or authorized employee of the registering authority must verify the individual's residence or domicile and any information required to be reported under Section 4a. The officer or authorized employee also must determine whether the individual's photograph required under the Act matches the appearance of the individual sufficiently to properly identify him or her from that photograph. If not, the officer or authorized employee must require the individual to immediately obtain a current photograph. The bill would require the individual to obtain a current photograph within seven days, instead of immediately.

Driver License or State ID Requirement

Section 5a of the Act requires an individual required to be registered under the Act to maintain either a valid operator's or chauffeur's license issued under the Michigan Vehicle Code or an official State personal identification card issued under PA 222 of 1972 with the individual's current address. Under the bill, this requirement would not apply to an individual required to be registered under the Act who was homeless. As used in this provision, "homeless" would mean someone who lacks a fixed or temporary residence.

Under the Act, an individual registered under the Act who is incarcerated must report to the Secretary of State immediately after he or she is released to have his or her digitalized photograph taken. The bill would require the individual to report to the Secretary of State within seven days, instead of immediately, after he or she was released.

Registration Information

The Act requires all registration information obtained under the Act to be forwarded to the MSP in the format the Department prescribes. The Act also requires the MSP to maintain a computerized law enforcement database of registrations and notices required under the Act. The information required to be obtained or otherwise provided for registration purposes and that the law enforcement database must contain includes the following, in addition to other prescribed information:

-- All telephone numbers registered to the individual or routinely used by the individual.
-- All electronic mail address and instant message addresses assigned to the individual or routinely used by the individual and all login names or other identifiers the individual used when using any electronic mail address or instant messaging system.
-- The license plate number, registration number, and any description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual and the location at which the vehicle, aircraft, or vessel is habitually stored or kept.

"Aircraft" means that term as defined in Section 2 of the Aeronautics Code: any contrivance used or designed for navigation of or flight in the air. "Vessel" means that term as defined in Section 44501 of the Natural Resources and Environmental Protection Act: every description of watercraft, other than a seaplane, used or capable of being used as a means of transportation on water irrespective of the method of operation or propulsion.

Instead, the bill would require the following information to be obtained or otherwise provided for registration purposes:

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-- All telephone numbers registered to the individual or used by the individual, including residential, work, and mobile telephone numbers.
-- The license plate number and any description of any vehicle owned or operated by the individual.
-- Except as otherwise provided, all electronic mail addresses used by the individual.

The requirement to obtain or otherwise provide for registration purposes electronic mail address information would apply only to an individual required to be registered under the Act after July 1, 2011.

The bill also would delete the definitions of "aircraft" and "vessel".

Public Internet Website

The Act requires the MSP to maintain a public internet website separate from the law enforcement database. Except as otherwise provided, the website must include certain information for each individual registered under the Act, including the license plate or registration number and any description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual. Instead, the bill would require the public internet website to contain for each individual registered under the Act the license plate number and any description of any vehicle owned or operated by the individual.

The Act also requires the public internet website to contain for each individual registered under the Act the individual's tier classification. The bill would delete this requirement.

The Act prohibits the following information from being made available on the public internet website:

-- The identity of any victim of the offense.
-- The individual's Social Security number.
-- Any arrests not resulting in conviction.
-- Any travel or immigration document numbers.
-- Any electronic mail address and instant message addresses assigned to the individual or routinely used by the individual and all login names or other identifiers the individual used when using any electronic mail address or instant messaging system.

The bill would delete from the list of information prohibited from being made available on the public internet website any electronic mail address and instant message addresses assigned to the individual or routinely used by the individual and all login names or other identifiers the individual used when using any electronic mail address or instant messaging system. The bill would include on the list the individual's tier classification.

Under the Act, if an individual provides the MSP with documentation showing that he or she is required to register under the Act for a violation that has been set aside under PA 213 or that has been otherwise expunged, the Department must note on the public internet website that the violation has been set aside or expunged. The bill would delete this provision.

Penalties

Under the Act, an individual who fails to comply with Section 5a, other than payment of the required registration fee, is guilty of a misdemeanor punishable by up to two years' imprisonment or a maximum fine of $2,000, or both. The bill would refer to an individual who *willfully* failed to comply with Section 5a, other than payment of the required fee.

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School Safety Zones

Section 33 of the Act prescribes the definitions for "listed offense", "loiter", "minor", "school", "school property", and "student safety zone".

Section 34 prohibits an individual required to be registered under the Act from working or loitering within a student safety zone, prescribes penalties for a violation, and specifies exceptions to the prohibition.

Section 35 prohibits an individual required to be registered under the Act from residing within a student safety zone, prescribes penalties for a violation, and specifies exceptions to the prohibition.

Section 36 specifies exemptions from the prohibitions prescribed in Sections 34 and 35 for individuals convicted of certain offenses as juveniles or who were discharged from youthful trainee status.

The bill would delete these sections.

MCL 28.722 et al.

BACKGROUND

The Michigan Sex Offender Registry (SOR) was created under the Sex Offender Registration Act in 1994. Since its creation, the Legislature has been amended the Act several times, including in 2006 (prohibiting certain individuals required to be registered under the Act from living, working, or loitering within a "school safety zone" (within 1,000 feet of school property), subject to exceptions),[1] and in 2011 (aligning the Act with the Federal Sex Offender Registration and Notification Act by categorizing offenses subject to the Act's registration and reporting requirements in a tier classification system).[2]

In 2015, a US Federal District Judge ruled that, among other things, the prohibitions on living, working, and loitering within a school safety zone were unconstitutionally vague in violation of the Due Process Clause and that the requirements to report all telephone numbers, electronic mail addresses, and instant message addresses routinely used by an individual required to be registered under the Act were unconstitutionally vague in violation of the Due Process Clause and First Amendment of the US Constitution. *Does v. Snyder*, opinion of the US District Court for the Eastern District of Michigan, Case No. 12-11194 (*Does I*). The plaintiffs (the individuals required to be registered under the Act) and defendants (the Snyder Administration) appealed the case to the Sixth Circuit Court of Appeals, which held that the Act imposes punishment and that the retroactive application of the 2006 and 2011 amendments was unconstitutional. *Does #1-5 v. Snyder*, 834 F3d 696 (US Court of Appeals for the Sixth Circuit) (2016). The Sixth Circuit remanded the case and the District Court entered a final judgment declaring the retroactive application of the Act's 2006 and 2011 amendments violated the Ex Post Facto Clause of the US Constitution and enjoined the Defendants from enforcing the 2006 and 2011 amendments against the plaintiffs. The Snyder Administration appealed to the US Supreme Court, but the Court refused to hear the case.

Shortly after the Sixth Circuit's decision in *Does I*, six plaintiffs filed a class action complaint challenging the constitutionality of the Act. Specifically, the plaintiffs challenged the retroactive application of the 2006 and 2011 amendments; that electronic mail and instant

[1] PA 121 and 127 of 2005.
[2] PA 17 of 2011.

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message address reporting requirements violated the First Amendment; that the prohibitions on living, working, and loitering within a school safety zone and the requirements to report all telephone numbers, electronic mail addresses, and instant message addresses were unconstitutionally vague; and that the imposition of a strict liability scheme for violations of the Act violated the Due Process Clause. A Federal District Judge certified a primary class that included all individuals required to be registered under the Act and two ex post facto subclasses.

In May 2019, the district court entered a stipulated order granting declaratory relief for the plaintiffs, holding that the 2006 and 2011 amendments were unconstitutional as applied to the ex post facto subclasses. The district court also deferred ruling on the issues of injunctive relief and the severability of the 2006 and 2011 amendment for 90 days to allow the Legislature to revise the Act to comply the *Does I* decision and address the Act's constitutional deficiencies.

In February 2020, the district court declared the Act null and void as applied to members of the ex post facto subclasses (any individual required to be registered under the Act who offense required registration prior to April 12, 2011) and prohibited the Defendants from enforcing any of the Act's provisions against members of the ex post facto subclasses. *Doe v. Snyder*, opinion of the US District Court for the Eastern District of Michigan, Case No. 16-13137 (*Does II*). The court prohibited the enforcement of the prohibitions on living, working, and loitering within a student safety zone; the requirements to report telephone numbers, electronic mail addresses, and instant message addresses routinely used by the individual required to be registered under the Act; and the requirement to report license plate and registration numbers of any motor vehicle, aircraft, or vessel regularly operated by the individual required to be registered under the Act. The district court also delayed the effective date of its decision until 60 days after entry of the final judgment to allow the Legislature to enact a new statute and to ensure that individuals required to be registered under the Act, prosecutors' offices, and law enforcement would receive notice of the order before relief took effect.

In April 2020, the district court issued an interim order delaying entry of final judgment in *Does II* because of the COVID-19 pandemic. The order prohibits the Defendants from enforcing regulation, verification, school zone, and fee violations that occurred after February 14, 2020, until the end of the COVID-19 pandemic. The court also ordered the parties to report every 30 days on their progress in completing the tasks set out in the court's February opinion.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill could have a minimal fiscal impact on the Department of State Police, which administers the SOR, as the Department reports that one of the provisions in its vendor contract for the SOR program requires the vendor to reprogram the system at no cost to the State if there is are legislatively mandated changes.

The bill's provisions allowing a registrant to report to a registering authority by means other than in person if prescribed by the Department, could require additional costs for MSP in the tens of thousands of dollars for postage (return receipt) and roughly $200,000 to $300,000 for SOR employees needed for processing costs, if the US Mail were chosen as a permissible reporting method.

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The SOR unit at MSP has a gross annual budget of approximately $1.0 million, 100% of which comes from the SOR Fund. The Fund is supported by fees collected from a $50 annual fee paid by registered sex offenders required to periodically report to a local registering authority (i.e., a local police department, sheriff's department, or MSP post) under the Sex Offenders Registration Act. It allocates $20 from each fee to the court, local law enforcement agency, sheriff's department, or MSP post that registers an offender. The remaining $30 is credited to the SOR Fund. In practice, the $20 retained by an MSP post also is credited to the SOR Fund. Approximately $890,000 to $900,00 is collected annually for deposit into the Fund; these amounts may be used by the Department for training concerning, and the maintenance and automation of, the SOR database, public internet website, or notification and offender registration duties.

Any additional costs necessitated by provisions in the bill would likely not be able to be covered by existing fee revenues and would therefore need to be supported by General Fund/General Purpose dollars.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

Exhibit C to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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STATE OF MICHIGAN
DEPARTMENT OF STATE POLICE
LANSING

GRETCHEN WHITMER
GOVERNOR

COL. JOSEPH M. GASPER
DIRECTOR

March 24, 2021

SOR Registrant
123 Street Address
Somewhere, Michigan 12345

Subject: Registration Number

On December 31, 2020, the Michigan Sex Offenders Registration Act (SORA) was amended to substantially conform its requirements to the federal Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006, as amended. See Public Act 295 of 2020.

You are receiving this correspondence because you are a registered individual under Michigan's amended SORA law based on the information maintained by the Michigan State Police's Sex Offender Registry Unit. This correspondence summarizes the major changes within the SORA that affect your registration responsibilities. **These changes take effect on March 24, 2021**. A more detailed explanation of your reporting obligations will be provided to you at your next verification period.

STUDENT SAFETY ZONES
The requirements that registered individuals not live, work, or loiter within 1000 feet of school property have been eliminated. See Public Act 295 of 2020, repealing MCL 28.733, 28.734, 28.735, and 28.736.

PUBLIC NATURE OF THE TIERING
The amended law also eliminates the publishing of the registrant's tiering on the public internet website. MCL 28.728(3)(e) ("The following information must not be made available on the public internet website described in subsection (2): . . . (e) *The individual's tier classification*.") (emphasis added).

REGISTERING AND REPORTING EMAIL AND INTERNET IDENTIFIERS
The amended law further provides that the obligations to register and report all electronic mail addresses and internet identifiers registered to or used by an individual only applies to individuals required to be registered under the Act after July 1, 2011. MCL 28.725(2)(a), 28.727(1)(i). In other words, individuals who were required to be registered under the Act prior to July 1, 2011, and who have committed no registrable offense since, have no obligation to register or report electronic mail addresses or internet identifiers under the amended law.

REPORTING OBLIGATIONS UNDER § 28.725 OF THE SORA
Under MCL 28.725(1), registered individuals must update their status for changes in residence or domicile, employment, enrollment as student, or name **in person** at the registering authority having jurisdiction over his or her residence **not more than three business days** after the change. MCL 28.725(1) (emphasis added).

Under MCL 28.725(2), registered individuals must update a change to their vehicle information, electronic mail addresses, internet identifiers, telephone numbers, or temporary residence **not more than three business days** after the change in the **manner prescribed by the Michigan State Police**. MCL 28.725(2).

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MANNER PRESCRIBED BY THE MICHIGAN STATE POLICE UNDER § 28.725(2) OF SORA

Under MCL 28.725(2), registered individuals must update a change to their vehicle information, electronic mail addresses, internet identifiers, telephone numbers, or temporary residence **not more than three business days** after the change in the following manner:

First class mail to the registering authority having jurisdiction over the registered individual's residence that provides updated information regarding the following:

(a) any change in vehicle information,

electronic mail addresses,

internet identifiers, or

telephone numbers registered to or used by the individual.

(The requirement to report any change in electronic mail addresses and internet identifiers applies only to an individual required to be registered under this Act after July 1, 2011.) [MCL 28.725(2)(a).]

(b) The individual intends to temporarily reside at any place other than his or her residence for more than 7 days. [MCL 28.725(2)(b).]

A copy of the Michigan State Police form (RI-004A) is included in this notification, which also provides an explanation of your duties.

Also, the form from the Michigan State Police (RI-004A) may be accessed by downloading it from the following website:

www.Michigan.gov/MSPforms

The letter must be postmarked no later than three business days after the date of the change.

Alternatively, the form may be dropped off, or the information may be provided, in person at the registering authority having jurisdiction over the registered individual's residence no later than three business days after the date of the change. But there is no requirement to drop off the updated information in person.

THE FORM SHOULD **NOT** BE MAILED TO THE MICHIGAN STATE POLICE SEX OFFENDER REGISTRY UNIT IN LANSING.

CLARIFICATIONS REGARDING TELEPHONE NUMBERS, ELECTRONIC MAIL ADDRESSES AND INTERNET IDENTIFIERS, AND VEHICLE INFORMATION

Under MCL 28.722(g), the amended law provides that the term 'internet identifier' means 'all designations used for self-identification or routing in internet communications or posting.'

Under MCL 28.727(1), registered individuals must provide all the following information for registration purposes, with changes to (h), (i), and (j):

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known. An individual who is in a witness protection and relocation program is only required to use the name and identifying information reflecting his or her new identity in a registration under this act. The registration and compilation databases must not contain any information identifying the individual's prior identity or locale.

(b) The individual's Social Security number and any Social Security numbers or alleged Social Security numbers previously used by the individual.

(c) The individual's date of birth and any alleged dates of birth previously used by the individual.

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(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection must identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the person spends or will spend the majority of his or her time.

(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision must include the dates the lodging is used or to be used.

(f) The name and address of each of the individual's employers. For purposes of this subdivision, 'employer' includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection must include the address or location of employment if different from the address of the employer. If the individual lacks a fixed employment location, the information obtained under this subdivision must include the general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment.

(g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, 'school' means a public or private postsecondary school or school of higher education, including a trade school.

(h) All telephone numbers registered to the individual or used by the individual, including, but not limited to, residential, work, and mobile telephone numbers.

(i) Except as otherwise provided in this subdivision, all electronic mail addresses and internet identifiers registered to or used by the individual. This subdivision applies only to an individual required to be registered under this act after July 1, 2011.

(j) The license plate number and description of any vehicle owned or operated by the individual.

(k) The individual's driver license number or state personal identification card number.

(l) A digital copy of the individual's passport and other immigration documents.

(m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.

(n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.

(o) A complete physical description of the individual.

(p) The photograph required under section 5a.

(q) The individual's fingerprints if not already on file with the department and the individual's palm prints. An individual required to be registered under this act shall have his or her fingerprints or palmprints or both taken not later than September 12, 2011 if his or her fingerprints or palmprints are not already on file with the department. The department shall forward a copy of the individual's fingerprints and palm prints to the Federal Bureau of Investigation if not already on file with that bureau.

(r) Information that is required to be reported under section 4a. [MCL 28.727(1).]

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ASSIGNED TO YOUTHFUL TRAINEE STATUS

Under MCL 28.722(a), an individual does not have a registerable conviction for purposes of the SORA when assigned to youthful trainee status under the Holmes Youthful Trainee Act (HYTA) unless that individual fails to successfully complete a term of supervision:

> (a) 'Convicted' means 1 of the following:
>
> > (i) Having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including, but not limited to, a tribal court or a military court. Convicted does not include a conviction that was subsequently set aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise expunged.
> >
> > (ii) Except as otherwise provided in this subparagraph, being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004. An individual who is assigned to and successfully completes a term of supervision under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, is not convicted for purposes of this act. This subparagraph does not apply if a petition was granted under section 8c at any time allowing the individual to discontinue registration under this act, including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on and after that date.
> >
> > (iii) Having an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28, if both of the following apply:
> >
> > > (A) The individual was 14 years of age or older at the time of the offense.
> > >
> > > (B) The order of disposition is for the commission of an offense that would classify the individual as a tier III offender.
> >
> > (iv) Having an order of disposition or other adjudication in a juvenile matter in another state or country if both of the following apply:
> >
> > > (A) The individual is 14 years of age or older at the time of the offense.
> > >
> > > (B) The order of disposition or other adjudication is for the commission of an offense that would classify the individual as a tier III offender.
>
> [MCL 28.722(a).]

CONVICTIONS THAT HAVE BEEN EXPUNGED

Under MCL 28.725(16), for an individual who has had his or her conviction set aside or otherwise expunged, the individual may present that order to the Michigan State Police or the appropriate registering authority having jurisdiction over his or her residence to have the registration discontinued:

> If an individual required to be registered under this act presents an order to the department or the appropriate registering authority that the conviction or adjudication for which the individual is required to be registered under this act has been set aside under 1965 PA 213, MCL 780.621 to 780.624, or has been otherwise expunged, his or her registration under this act must be discontinued. If this subsection applies, the department shall remove the individual from both the law enforcement database and the public internet website maintained under section 8.
>
> [MCL 28.725(16).]

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EXCEPTION TO MAINTAIN STATE IDENTIFICATION FOR HOMELESS PERSONS
Under MCL 28.725a(7), a registered individual who is homeless does not have to maintain a driver's license or state identification card:

> (7) Except as otherwise provided in this subsection, an individual required to be registered under this act shall maintain either a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, with the individual's current address. The license or card may be used as proof of domicile or residence under this section. In addition, the officer or authorized employee may require the individual to produce another document bearing his or her name and address, including, but not limited to, voter registration or a utility or other bill. The department may specify other satisfactory proof of domicile or residence. The requirement to maintain a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, does not apply to an individual required to be registered under this act who is homeless. As used in this subsection, 'homeless' means someone who lacks a fixed or temporary residence.
> [MCL 28.725a(7).]

An explanation of your duties to register as a sex offender will be provided to you at your next verification period. Please review the information carefully and familiarize yourself with the changes to the SORA.

If you have any questions regarding the amendments to the SORA or your reporting obligations, you may contact your legal counsel or the registering authority having jurisdiction over your residence, which is the local police agency, county sheriff, or local Michigan State Police post.

You may wish to retain this letter for future reference.

Sincerely,
Sex Offender Registry Unit

Authority: MCL. 28.721, et seq.
Compliance: MANDATORY
Penalty: Misdemeanor

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MICHIGAN SEX OFFENDER REGISTRY MAIL-IN UPDATE

I. Offender Information

Last Name	First Name	Middle Name	Suffix
Race	**Date of Birth**	**Sex**	**Last Verification Date**
Registration Number		**Michigan Department of Corrections Number**	

II. Temporary Residence Information

Address	City	State	ZIP Code	Start Date

III. Contact Information

Telephone Number #1	Phone Type	Telephone Number #2	Phone Type

The following email/internet information is only collected for those with offenses committed on or after **July 1, 2011.** For each account enter either "Email", followed by the full email address, or enter the name of the internet identifier, followed by the username or screen name

Email/Internet Identifier #1	User/Screen Name	Email/Internet Identifier #2	User/Screen Name
Email/Internet Identifier #3	**User/Screen Name**	**Email/Internet Identifier #4**	**User/Screen Name**
Email/Internet Identifier #5	**User/Screen Name**	**Email/Internet Identifier #6**	**User/Screen Name**

IV. Vehicle(s)

Make	Model	Style	Color	Year	License	State VIN
Make	Model	Style	Color	Year	License	State VIN
Make	Model	Style	Color	Year	License	State VIN

V. Mobile Home(s)

Make	Model	Style	Color	Year	License	State VIN

PLEASE READ CAREFULLY BEFORE SIGNING

I have reviewed my registration information and have verified the information is accurate and complete. I understand that willfully failing to comply with the requirements of the Sex Offenders Registration Act or knowingly providing false information is a crime and may result in criminal prosecution.

I acknowledge that I have been provided a written notice explaining my registration duties. I have read the "Explanation of Duties to Register as a Sex Offender" listed on pages two and three of this form and/or had them read to me and I understand my registration duties.

SIGNATURES

Signature of Offender _____ Signature of Parent, Legal Guardian, or Power of Attorney, if applicable _____ Date _____

Print, sign, and submit completed form via first class mail to local law enforcement agency, sheriff's office, or Michigan State Police post.

Authority: MCL. 28.721, et seq.
Compliance: MANDATORY
Penalty: Misdemeanor

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EXPLANATION OF DUTIES TO REGISTER AS A SEX OFFENDER

Each duty on this list is followed by the specific section of Michigan Complied Law (MCL) which requires that specific duty.

1. I am required by law to register as a sex offender. Failure to register as required by law is a felony and may result in prosecution under Michigan Compiled Law (MCL) 28.729(1).
   a. If I am a Tier I offender, I must register for 15 years. MCL 28.725(11)
   b. If I am a Tier II offender, I must register for 25 years. MCL 28.725(12)
   c. If I am a Tier III offender, I must register for the remainder of my life. MCL 28.725(13)
   d. I understand my registration period excludes all period(s) of incarceration. MCL 28.725(14)

2. I am required to sign the required registration form(s). Failure to sign the required registration form(s) is a misdemeanor and may result in criminal prosecution.

3 I am required by law to verify my address by reporting in-person and providing proof of residency at a local law enforcement agency, sheriff's office, or Michigan State Police post that has jurisdiction over my residence. Failure to verify my address as required by law is a misdemeanor and may result in prosecution.
   a. If I am a Tier I offender, I am required by law to verify my address once every year during my month of birth. MCL 28.725a(3)(a)
   b. If I am a Tier II offender, I am required by law to verify my address twice each year according to the following schedule: MCL 28.725a(3)(b)

Birth Month	Reporting Months	Birth Month	Reporting Months
January	January and July	July	January and July
February	February and August	August	February and August
March	March and September	September	March and September
April	April and October	October	April and October
May	May and November	November	May and November
June	June and December	December	June and December

   c. If I am a Tier III offender, I am required by law to verify my address four times each year according to the following schedule: MCL 28.725a(3)(c)

Birth Month	Reporting Months	Birth Month	Reporting Months
January	January, April, July, and October	July	January, April, July, and October
February	February, May, August, and November	August	February, May, August, and November
March	March, June, September, and December	September	March, June, September, and December
April	January, April, July, and October	October	January, April, July, and October
May	February, May, August, and November	November	February, May, August, and November
June	March, June, September and, December	December	March, June, September and, December

4. Upon registering as a sex offender, I am required by law to provide the following information:
   a. My legal name and any aliases, nicknames, tribal names, ethnic names, and any other name by which I have been known. MCL 28.727(1)(a)
   b. My social security number and any social security numbers or alleged security number that I have previously used. MCL 28.727(1)(b)
   c. My date of birth and any alleged dates of birth that I have previously used. MCL 28.727(1)(c)
   d. The address where I reside or will reside. If I do not have a residential address, then I must provide the location that I use in lieu of a residence. If I am homeless, then I must provide the name of the village, city, or township where I spend or will spend the majority of my time. MCL 28.727(1)(d)
   e. The name and address of any temporary lodging used or to be used when I am away from my residence for more than seven days. MCL 28.727(1)(e)
   f. The name and address of each of my employers. “Employers” includes contractors. If my employment location is not in a fixed location, then I must provide the general areas where I work and the normal travel routes that I take while working. MCL 28.727(1)(f)
   g. The name and address of any school that I attend or that has accepted me if I plan to attend. MCL 28.727(1)(g)
   h. All telephone numbers registered to me or used by me, including, but not limited to, residential, work, and mobile telephone numbers. MCL 28.727(1)(h)
   i. All electronic mail (email) addresses and internet identifiers registered to me or used by me. *This section only applies to individuals with offenses committed on or after July 1, 2011*. MCL 28.727(1)(i) (Internet identifiers means all designations used for self-identification or routing in internet communications or posting. MCL 28.722(g))
   j. The license plate number and description of any vehicle that I own or operate. MCL 28.727(1)(j)
   k. My passport and all other immigration documents that I may have. MCL 28.727(1)(l)
   l. All occupational and professional licensing information that I may have. MCL 28.727(1)(m)

Authority: MCL. 28.721, et seq.
Compliance: MANDATORY
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5. During my verification periods, I am required by law to review all of my registration information for accuracy. MCL 28.725a(4)

6. I am required by law to report in person not more than three business days after to a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence, all of the following:
   a. My new address after changing or vacating my residence within the state of Michigan. If I am homeless or lack a fixed or temporary residence, I am required by law to provide the village, city, or township where I spend the majority of my time. MCL 28.725(1)(a) and MCL 28.727(1)(d)
   b. The name and address of my employer upon obtaining, changing, or discontinuing employment, including volunteer work. MCL 28.725(1)(b)
   c. The name and location of the school upon enrolling or discontinuing enrollment at an institution of higher learning. MCL 28.725(1)(c)
   d. My new name upon changing my name. MCL 28.725(1)(d)

7. I am required by law to notify in person a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence not more than three business days before if I change my residence to another state. I shall indicate the new state and, if known, the new address. MCL 28.725(7)

8. If I am not a resident of the state of Michigan but my place of employment is in Michigan, I am required by law to report, not more than three business days after a change of my place of employment or the discontinuation of my employment. MCL 28.725(3)

9. I am required by law to report, not more than three business days after the change, by first class mail to a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence, all of the following:
   a. My temporary address and dates of travel if I intend to temporarily reside at any place other than my residence for more than seven days. MCL 28.725(2)(b) and MCL 28.727(1)(e)
   b. Any electronic mail (email) addresses and internet identifiers registered to me or used by me. *This section only applies to individuals with offenses committed on or after July 1, 2011*. MCL 28.725(2)(a)
   c. The license plate number and description of any vehicle that I own or operate. MCL 28.725(2)(a)
   d. All telephone numbers registered to me or used by me, including, but not limited to, residential, work, and mobile telephone numbers. MCL 28.725(2)(a)

10. I am required by law to provide my new or temporary address by reporting in person to a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence 21 days prior to traveling to another country for more than seven days or changing my residence to another country. Failure to report this information is a felony and may result in criminal prosecution. MCL 28.725(8)

11. The Michigan Department of Corrections may not release me until I provide the address of my proposed place of residence. A county jail located within Michigan will not release me until I provide the address of my proposed place of residence. MCL 28.725(4) and MCL 28.725(5)

12. I am required by law to maintain either a valid Michigan operator's or chauffeur's license or Michigan personal identification card with a digitized photograph. This card may be used as proof of residency. *This does not apply to an individual required to be registered under this act who is homeless as outlined in MCL 28.725a(7)*.

    Other proof of residency may be required, such as a voter registration card, utility bill, or other bill. Unless otherwise specified by law, my digitized photograph will be included on the public sex offender registry website. Failure to maintain the proper identification is a misdemeanor and may result in criminal prosecution. MCL 28.725a(7) and MCL 28.725a(8)

13. I am required by law to pay a $50.00 registration fee at the time of my initial registration and annually following the year of initial registration. The payment of the annual registration fee shall be paid at the time I report during the first verification reporting month for me unless I elect to prepay the annual registration fee for any future year for which an annual registration fee is required. Prepaying my annual registration fee does not change or alter my reporting requirements as detailed in section 3 above. The sum of the amounts paid under this section shall not exceed $550.00. If I am determined to be indigent by the collecting agency, this fee will be temporarily waived for 90 days. Failure to pay the registration fee is a misdemeanor and may result in criminal prosecution. MCL 28.725a(6) MCL 28.724a(5), and MCL 28.725b(3)

14. I am required by law to have my fingerprints and palm prints taken if they are not already on file with the department of State Police. Those fingerprints and palm prints will be forwarded to the Federal Bureau of Investigation if they are not already on file with the Federal Bureau of Investigation. I must be reprinted if my fingerprints or palm prints were expunged and/or returned to me. MCL 28.727(1) (q)

15. It is a felony to knowingly provide false or misleading information concerning a registration, notice, or verification, and doing so may result in prosecution. MCL 28.727(6)

16. I acknowledge that I have read the above requirements and/or had them read to me.

Exhibit D to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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COMPARATIVE CHART
MICHIGAN 2021 SORA AND FEDERAL SORNA

MICHIGAN SORA	FEDERAL SORNA (34 U.S.C. §)	FEDERAL SORNA 86 Fed. Reg. 69856–69887 (Dec 8, 2021) [Previous Interim or Final Guidelines] [72 Fed. Reg. 8894–8897 (Feb 28, 2007)] [73 Fed. Reg. 38030–38070 (July 2, 2008)] [75 Fed. Reg. 81849–81853 (Dec 29, 2010)] [76 Fed. Reg. 1630–1640 (Jan 11, 2011)] [81 Fed. Reg. 50552–50558 (Aug 1, 2016)] 28 C.F.R 72.1 *et seq.*
I. GENERAL		
28.721. Short title. Sec. 1. This act shall be known and may be cited as the "sex offenders registration act".	**§ 20902. Establishment of program.** This chapter establishes the Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program.	**72.1. Purpose.**
28.721a. Legislative declarations; purpose of registration requirements. Sec. 1a. The legislature declares that the sex offenders registration act was enacted pursuant to the legislature's exercise of the police power of the state with the intent to better assist law enforcement officers and the people of this state in preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders. The legislature has determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and particularly the children, of this state. The registration requirements of this act are intended to provide law enforcement and the people of this state with an appropriate, comprehensive, and effective means to monitor those persons who pose such a potential danger.	**§ 20901. Declaration of purpose.** In order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators against the victims listed below, Congress in this chapter establishes a comprehensive national system for the registration of those offenders: (1) Jacob Wetterling, who was 11 years old, was abducted in 1989 in Minnesota, and remains missing. (2) Megan Nicole Kanka, who was 7 years old, was abducted, sexually assaulted, and murdered in 1994, in New Jersey. (3) Pam Lychner, who was 31 years old, was attacked by a career offender in Houston, Texas. (4) Jetseta Gage, who was 10 years old, was kidnapped, sexually assaulted, and murdered in 2005, in Cedar Rapids, Iowa. (5) Dru Sjodin, who was 22 years old, was sexually assaulted and murdered in 2003, in North Dakota. (6) Jessica Lunsford, who was 9 years old, was abducted, sexually assaulted, buried alive, and murdered in 2005, in Homosassa, Florida. (7) Sarah Lunde, who was 13 years old, was strangled and murdered in 2005, in Ruskin, Florida. (8) Amie Zyla, who was 8 years old, was sexually assaulted in 1996 by a juvenile offender in Waukesha, Wisconsin, and has become an advocate for child victims and protection of children from juvenile sex offenders. (9) Christy Ann Fornoff, who was 13 years old, was abducted, sexually assaulted, and murdered in 1984, in Tempe, Arizona.	§ 72.1 Purpose. (a) This part specifies the registration requirements of the Sex Offender Registration and Notification Act (SORNA), 34 U.S.C. 20901 et seq., and the scope of those requirements' application. The Attorney General has the authority to specify the requirements of SORNA and their applicability as provided in this part pursuant to provisions of SORNA, including 34 U.S.C. 20912(b), 20913(d), and 20914(a)(8), (c). (b) This part does not preempt or limit any obligations of or requirements relating to sex offenders under other Federal laws, rules, or policies, or under the laws, rules, or policies of registration jurisdictions or other entities. States and other governmental entities may prescribe registration requirements and other requirements, with which sex offenders must comply, that are more extensive or stringent than those prescribed by SORNA.

	(10) Alexandra Nicole Zapp, who was 30 years old, was brutally attacked and murdered in a public restroom by a repeat sex offender in 2002, in Bridgewater, Massachusetts. (11) Polly Klaas, who was 12 years old, was abducted, sexually assaulted, and murdered in 1993 by a career offender in California. (12) Jimmy Ryce, who was 9 years old, was kidnapped and murdered in Florida on September 11, 1995. (13) Carlie Brucia, who was 11 years old, was abducted and murdered in Florida in February, 2004. (14) Amanda Brown, who was 7 years old, was abducted and murdered in Florida in 1998. (15) Elizabeth Smart, who was 14 years old, was abducted in Salt Lake City, Utah in June 2002. (16) Molly Bish, who was 16 years old, was abducted in 2000 while working as a lifeguard in Warren, Massachusetts, where her remains were found 3 years later. (17) Samantha Runnion, who was 5 years old, was abducted, sexually assaulted, and murdered in California on July 15, 2002.	

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28.722. Definitions.	§ 20911. Relevant definitions.	§ 72.2. Definitions.
Sec. 2. As used in this act: (a) "Convicted" means 1 of the following: (i) Having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including, but not limited to, a tribal court or a military court. Convicted does not include a conviction that was subsequently set aside under 1965 PA 213, MCL 780.621 to 780.624, or otherwise expunged. (ii) Except as otherwise provided in this subparagraph, being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004. An individual who is assigned to and successfully completes a term of supervision under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, is not convicted for purposes of this act. This subparagraph does not apply if a petition was granted under section 8c1 at any time allowing the individual to discontinue registration under this act, including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on and after that date. (iii) Having an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28, if both of the following apply: (A) The individual was 14 years of age or older at the time of the offense. (B) The order of disposition is for the commission of an offense that would classify the individual as a tier III offender. (iv) Having an order of disposition or other adjudication in a juvenile matter in another state or country if both of the following apply: (A) The individual is 14 years of age or older at the time of the offense.	(1) Sex offender The term "sex offender" means an individual who was convicted of a sex offense. (6) Criminal offense The term "criminal offense" means a State, local, tribal, foreign, or military offense (to the extent specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note)) or other criminal offense. (7) Expansion of definition of "specified offense against a minor" to include all offenses by child predators The term "specified offense against a minor" means an offense against a minor that involves any of the following: (A) An offense (unless committed by a parent or guardian) involving kidnapping. (B) An offense (unless committed by a parent or guardian) involving false imprisonment. (C) Solicitation to engage in sexual conduct. (D) Use in a sexual performance. (E) Solicitation to practice prostitution. (F) Video voyeurism as described in section 1801 of Title 18. (G) Possession, production, or distribution of child pornography. (H) Criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct. (I) Any conduct that by its nature is a sex offense against a minor. (8) Convicted as including certain juvenile adjudications The term "convicted" or a variant thereof, used with respect to a sex offense, includes adjudicated delinquent as a juvenile for that offense, but only if the offender is 14 years of age or older at the time of the offense and the offense adjudicated was comparable to or more severe than aggravated sexual abuse (as described in section 2241 of Title 18), or was an attempt or conspiracy to commit such an offense.	All terms used in this part have the same meaning as in SORNA.

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(B) The order of disposition or other adjudication is for the commission of an offense that would classify the individual as a tier III offender. (b) "Custodial authority" means 1 or more of the following apply: (i) The actor was a member of the same household as the victim. (ii) The actor was related to the victim by blood or affinity to the fourth degree. (iii) The actor was in a position of authority over the victim and used this authority to coerce the victim to submit. (iv) The actor was a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled. (v) The actor was an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled, or was a volunteer who was not a student in any public school or nonpublic school, or was an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person. (vi) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, the department of corrections who knew that the other person was under the jurisdiction of the department of corrections and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact. (vii) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, a private vendor that operated a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knew that the other person was under the jurisdiction of the department of corrections.	**[18 U.S.C. § 2241. Aggravated sexual abuse.]** [(a) By force or threat.--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act-- (1) by using force against that other person; or (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both. (b) By other means.--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly-- (1) renders another person unconscious and thereby engages in a sexual act with that other person; or (2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby-- (A) substantially impairs the ability of that other person to appraise or control conduct; and (B) engages in a sexual act with that other person; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both. (c) With children.--Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act	

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(viii) That other person was a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor was an employee or a contractual employee of, or a volunteer with, the county or the department of corrections who knew that the other person was under the county's jurisdiction and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

(ix) The actor knew or had reason to know that a court had detained the victim in a facility while the victim was awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor was an employee or contractual employee of, or a volunteer with, the facility in which the victim was detained or to which the victim was committed.

(c) "Department" means the department of state police.

(d) "Employee" means an individual who is self-employed or works for any other entity as a full-time or part-time employee, contractual provider, or volunteer, regardless of whether he or she is financially compensated.

(e) "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 174, MCL 761.1.

(f) "Indigent" means an individual to whom 1 or more of the following apply:

(i) He or she has been found by a court to be indigent within the last 6 months.

(ii) He or she qualifies for and receives assistance from the department of health and human services food assistance program.

(iii) He or she demonstrates an annual income below the current federal poverty guidelines.

under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of mind proof requirement.--In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.]

§ 20911. Relevant definitions. (Cont.)

(12) Employee

The term "employee" includes an individual who is self-employed or works for any other entity, whether compensated or not.

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	[§ 20916. Direction to Attorney General] [(e) Definitions (1) Of "social networking website" As used in this Act, the term "social networking website"— (A) means an Internet website-- (i) that allows users, through the creation of web pages or profiles or by other means, to provide information about themselves that is available to the public or to other users; and (ii) that offers a mechanism for communication with other users where such users are likely to include a substantial number of minors; and (iii) whose primary purpose is to facilitate online social interactions; and (B) includes any contractors or agents used by the website to act on behalf of the website in carrying out the purposes of this Act. (2) Of "Internet identifiers" As used in this Act, the term "Internet identifiers" means electronic mail addresses and other designations used for self-identification or routing in Internet communication or posting. (3) Other terms A term defined for the purposes of the Sex Offender Registration and Notification Act has the same meaning in this Act.]	
(g) "Internet identifier" means all designations used for self-identification or routing in internet communications or posting.		
(h) "Institution of higher education" means 1 or more of the following: (i) A public or private community college, college, or university. (ii) A public or private trade, vocational, or occupational school.		
(i) "Listed offense" means a tier I, tier II, or tier III offense.		
(j) "Local law enforcement agency" means the police department of a municipality.		

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	§ 20911. Relevant definitions. (Cont.)	
(k) "Minor" means a victim of a listed offense who was less than 18 years of age at the time the offense was committed.	(14) Minor The term "minor" means an individual who has not attained the age of 18 years.	
(l) "Municipality" means a city, village, or township of this state.	(9) Sex offender registry	
(m) "Registering authority" means the local law enforcement agency or sheriff's office having jurisdiction over the individual's residence, place of employment, or institution of higher learning, or the nearest department post designated to receive or enter sex offender registration information within a registration jurisdiction.	The term "sex offender registry" means a registry of sex offenders, and a notification program, maintained by a jurisdiction.	
(n) "Registration jurisdiction" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and the Indian tribes within the United States that elect to function as a registration jurisdiction.	(10) Jurisdiction The term "jurisdiction" means any of the following: (A) A State. (B) The District of Columbia. (C) The Commonwealth of Puerto Rico. (D) Guam. (E) American Samoa. (F) The Northern Mariana Islands. (G) The United States Virgin Islands. (H) To the extent provided and subject to the requirements of section 20929 of this title, a federally recognized Indian tribe.	
(o) "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a person has a residence separate from that of his or her husband or wife, that place at which the person resides the greater part of the time must be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.	(13) Resides The term "resides" means, with respect to an individual, the location of the individual's home or other place where the individual habitually lives.	

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(p) "Student" means an individual enrolled on a full- or part-time basis in a public or private educational institution, including, but not limited to, a secondary school, trade school, professional institution, or institution of higher education.	(11) Student The term "student" means an individual who enrolls in or attends an educational institution, including (whether public or private) a secondary school, trade or professional school, and institution of higher education.	
(q) "Tier I offender" means an individual convicted of a tier I offense who is not a tier II or tier III offender.		
(r) "Tier I offense" means 1 or more of the following: (i) A violation of section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c. (ii) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor. (iii) A violation of section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor. (iv) A violation of section 449a(2) of the Michigan penal code, 1931 PA 328, MCL 750.449a. (v) A violation of section 520e or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if the victim is 18 years or older. (vi) A violation of section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor. (vii) Any other violation of a law of this state or a local ordinance of a municipality, other than a tier II or tier III offense, that by its nature constitutes a sexual offense against an individual who is a minor. (viii) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a. (ix) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (viii). (x) An offense substantially similar to an offense described in subparagraphs (i) to (ix) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.	(2) Tier I sex offender The term "tier I sex offender" means a sex offender other than a tier II or tier III sex offender.	

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(s) "Tier II offender" means either of the following: (i) A tier I offender who is subsequently convicted of another offense that is a tier I offense. (ii) An individual convicted of a tier II offense who is not a tier III offender. (t) "Tier II offense" means 1 or more of the following: (i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a. (ii) A violation of section 145b of the Michigan penal code, 1931 PA 328, MCL 750.145b. (iii) A violation of section 145c(2) or (3) of the Michigan penal code, 1931 PA 328, MCL 750.145c. (iv) A violation of section 145d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.145d, except for a violation arising out of a violation of section 157c of the Michigan penal code, 1931 PA 328, MCL 750.157c.	(3) Tier II sex offender The term "tier II sex offender" means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and-- (A) is comparable to or more severe than the following offenses, when committed against a minor, or an attempt or conspiracy to commit such an offense against a minor: (i) sex trafficking (as described in section 1591 of Title 18); (ii) coercion and enticement (as described in section 2422(b) of Title 18); (iii) transportation with intent to engage in criminal sexual activity (as described in section 2423(a))1 of Title 18; (iv) abusive sexual contact (as described in section 2244 of Title 18); (B) involves-- (i) use of a minor in a sexual performance; (ii) solicitation of a minor to practice prostitution; or (iii) production or distribution of child pornography; or (C) occurs after the offender becomes a tier I sex offender.	
(v) A violation of section 158 of the Michigan penal code, 1931 PA 328, MCL 750.158, committed against a minor unless either of the following applies: (A) All of the following: (I) The victim consented to the conduct constituting the violation. (II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation. (III) The individual is not more than 4 years older than the victim. (B) All of the following:	(5)(C) Offenses involving consensual sexual conduct An offense involving consensual sexual conduct is not a sex offense for the purposes of this subchapter if the victim was an adult, unless the adult was under the custodial authority of the offender at the time of the offense, or if the victim was at least 13 years old and the offender was not more than 4 years older than the victim.	

(I) The victim consented to the conduct constituting the violation. (II) The victim was 16 or 17 years of age at the time of the violation. (III) The victim was not under the custodial authority of the individual at the time of the violation. (vi) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual 13 years of age or older but less than 18 years of age. This subparagraph does not apply if the court determines that either of the following applies: (A) All of the following: (I) The victim consented to the conduct constituting the violation. (II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation. (III) The individual is not more than 4 years older than the victim. (B) All of the following: (I) The victim consented to the conduct constituting the violation. (II) The victim was 16 or 17 years of age at the time of the violation. (III) The victim was not under the custodial authority of the individual at the time of the violation. (vii) A violation of section 462e(a) of the Michigan penal code, 1931 PA 328, MCL 750.462e. (viii) A violation of section 448 of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor. (ix) A violation of section 455 of the Michigan penal code, 1931 PA 328, MCL 750.455. (x) A violation of section 520c, 520e, or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e, and 750.520g, committed against an individual 13 years of age or older but less than 18 years of age. (xi) A violation of section 520c committed against an individual 18 years of age or older.		

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(xii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (xi). (xiii) An offense substantially similar to an offense described in subparagraphs (i) to (xii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law. (u) "Tier III offender" means either of the following: (i) A tier II offender subsequently convicted of a tier I or II offense. (ii) An individual convicted of a tier III offense. (v) "Tier III offense" means 1 or more of the following: (i) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual less than 13 years of age. (ii) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, committed against a minor. (iii) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350. (iv) A violation of section 520b, 520d, or 520g(1) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and 750.520g. This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim. (v) A violation of section 520c or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed against an individual less than 13 years of age. (vi) A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age. (vii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vi).	(4) Tier III sex offender The term "tier III sex offender" means a sex offender whose offense is punishable by imprisonment for more than 1 year and-- (A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense: (i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18); or (ii) abusive sexual contact (as described in section 2244 of Title 18) against a minor who has not attained the age of 13 years; (B) involves kidnapping of a minor (unless committed by a parent or guardian); or (C) occurs after the offender becomes a tier II sex offender. (5) Amie Zyla expansion of sex offense definition (A) Generally Except as limited by subparagraph (B) or (C), the term "sex offense" means-- (i) a criminal offense that has an element involving a sexual act or sexual contact with another; (ii) a criminal offense that is a specified offense against a minor;	

(viii) An offense substantially similar to an offense described in subparagraphs (i) to (vii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law. (w) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.	(iii) a Federal offense (including an offense prosecuted under section 1152 or 1153 of Title 18) under section 1591, or chapter 109A, 110 (other than section 2257, 2257A, or 2258), or 117, of Title 18; (iv) a military offense specified by the Secretary of Defense under section 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. 951 note); or (v) an attempt or conspiracy to commit an offense described in clauses (i) through (iv).	

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II. SEX OFFENDER REGISTRATION

28.723. Registration requirements.

Sec. 3. (1) Subject to subsection (2), the following individuals who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act:

(a) An individual who is convicted of a listed offense after October 1, 1995.

(b) An individual convicted of a listed offense on or before October 1, 1995 if on October 1, 1995 he or she is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or under the jurisdiction of the juvenile division of the probate court or the department of human services for that offense or is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, placed under the jurisdiction of the juvenile division of the probate court or family division of circuit court, or committed to the department of human services after October 1, 1995 for that offense.

(c) An individual convicted on or before October 1, 1995 of an offense described in section 2(d)(vi) as added by 1994 PA 295 if on October 1, 1995 he or she is on probation or parole that has been transferred to this state for that offense or his or her probation or parole is transferred to this state after October 1, 1995 for that offense.

(d) An individual from another state who is required to register or otherwise be identified as a sex or child offender or predator under a comparable statute of that state.

(e) An individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted of any other felony on or after July 1, 2011.

(2) An individual convicted of an offense added on September 1, 1999 to the definition of listed offense is not required to be registered solely because of that listed offense unless 1 of the following applies:

(a) The individual is convicted of that listed offense on or after September 1, 1999.

§ 20912. Registry requirements for jurisdictions.

(b) Guidelines and regulations

The Attorney General shall issue guidelines and regulations to interpret and implement this subchapter.

§ 72.3. Applicability of the Sex Offender Registration and Notification Act.

The requirements of SORNA apply to all sex offenders. All sex offenders must comply with all requirements of that Act, regardless of when the conviction of the offense for which registration is required occurred (including if the conviction occurred before the enactment of that Act), regardless of whether a jurisdiction in which registration is required has substantially implemented that Act's requirements or has implemented any particular requirement of that Act, and regardless of whether any particular requirement or class of sex offenders is mentioned in examples in this regulation or in other regulations or guidelines issued by the Attorney General.

Example 1 to § 72.3. A sex offender is federally convicted of aggravated sexual abuse under 18 U.S.C. 2241 in 1990 and is released following imprisonment in 2009. The sex offender is subject to the requirements of SORNA and could be held criminally liable under 18 U.S.C. 2250 for failing to register or keep the registration current in any jurisdiction in which the sex offender resides, is an employee, or is a student.

Example 2 to § 72.3. A sex offender is convicted by a state jurisdiction in 1997 for molesting a child and is released following imprisonment in 2000. The sex offender initially registers as required but relocates to another state in 2009 and fails to register in the new state of residence. The sex offender has violated the requirement under SORNA to register in any jurisdiction in which he resides, and could be held criminally liable under 18 U.S.C. 2250 for the violation because he traveled in interstate commerce.

§ 72.4. Where sex offenders must register.

A sex offender must register, and keep the registration current, in each jurisdiction in which the offender resides, is an employee, or is a student. For initial registration purposes only, a sex offender must also register in the jurisdiction in which convicted if that jurisdiction is different from the jurisdiction of residence.

(b) On September 1, 1999, the individual is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, under the jurisdiction of the family division of circuit court, or committed to the department of human services for that offense or the individual is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, placed under the jurisdiction of the family division of circuit court, or committed to the department of human services on or after September 1, 1999 for that offense. (c) On September 1, 1999, the individual is on probation or parole for that offense which has been transferred to this state or the individual's probation or parole for that offense is transferred to this state after September 1, 1999. (d) On September 1, 1999, in another state or country the individual is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections or a similar type of state agency, under the jurisdiction of a court that handles matters similar to those handled by the family division of circuit court in this state, or committed to an agency with the same authority as the department of human services for that offense.		

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(3) A nonresident who is convicted in this state on or after July 1, 2011 of committing a listed offense who is not otherwise described in subsection (1) shall nevertheless register under this act. However, the continued reporting requirements of this act do not apply to the individual while he or she remains a nonresident and is not otherwise required to report under this act. The individual shall have his or her photograph taken under section 5a.	**§ 20930. Registration of sex offenders entering the United States.** The Attorney General, in consultation with the Secretary of State and the Secretary of Homeland Security, shall establish and maintain a system for informing the relevant jurisdictions about persons entering the United States who are required to register under this subchapter. The Secretary of State and the Secretary of Homeland Security shall provide such information and carry out such functions as the Attorney General may direct in the operation of the system. **§ 20911. Relevant definitions. (Cont.)** (5)(B) Foreign convictions A foreign conviction is not a sex offense for the purposes of this subchapter if it was not obtained with sufficient safeguards for fundamental fairness and due process for the accused under guidelines or regulations established under section 20912 of this title.	**§ 72.7. How sex offenders must register and keep the registration current.** (2) Special rules for certain cases. The following special requirements apply: (i) Federal and military offenders. A sex offender who is released from Federal or military custody, or who is convicted for a Federal or military sex offense but not sentenced to imprisonment, must register within three business days of entering or remaining in a jurisdiction to reside following the release or sentencing. (ii) Foreign convictions. A sex offender required to register on the basis of a conviction in a foreign country must register within three business days of entering any jurisdiction in the United States to reside, work, or attend school.

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28.723a. Exceptions to registration; hearing procedure. Sec. 3a. (1) If an individual pleads guilty to or is found guilty of a listed offense or is adjudicated as a juvenile as being responsible for a listed offense but alleges that he or she is not required to register under this act because section 2(t)(v) or (vi)1 applies or section 2(v)(iv) applies, and the prosecuting attorney disputes that allegation, the court shall conduct a hearing on the matter before sentencing or disposition to determine whether the individual is required to register under this act. (2) The individual has the burden of proving by a preponderance of the evidence in a hearing under this section that his or her conduct falls within the exceptions described in subsection (1) and that he or she is therefore not required to register under this act. (3) The rules of evidence, except for those pertaining to privileges and protections set forth in section 520j of the Michigan penal code, 1931 PA 328, MCL 750.520j, do not apply to a hearing under this section. (4) The prosecuting attorney shall give the victim notice of the date, time, and place of the hearing. (5) The victim of the offense has the following rights in a hearing under this section: (a) To submit a written statement to the court. (b) To attend the hearing and to make a written or oral statement to the court. (c) To refuse to attend the hearing. (d) To attend the hearing but refuse to testify or make a statement at the hearing. (6) The court's decision excusing or requiring the individual to register is a final order of the court and may be appealed by the prosecuting attorney or the individual as a matter of right. (7) This section applies to criminal and juvenile cases pending on July 1, 2011 and to criminal and juvenile cases brought on and after that date.		

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28.724. Registration procedure. Sec. 4. (1) Registration of an individual under this act must proceed as provided in this section. (2) For an individual convicted of a listed offense on or before October 1, 1995 who on or before October 1, 1995 is sentenced for that offense, has a disposition entered for that offense, or is assigned to youthful trainee status for that offense, the following shall register the individual by December 31, 1995: (a) If the individual is on probation for the listed offense, the individual's probation agent. (b) If the individual is committed to jail for the listed offense, the sheriff or his or her designee. (c) If the individual is under the jurisdiction of the department of corrections for the listed offense, the department of corrections. (d) If the individual is on parole for the listed offense, the individual's parole agent. (e) If the individual is within the jurisdiction of the juvenile division of the probate court or the department of social services under an order of disposition for the listed offense, the juvenile division of the probate court or the department of social services. (3) Except as provided in subsection (4), for an individual convicted of a listed offense on or before October 1, 1995: (a) If the individual is sentenced for that offense after October 1, 1995 or assigned to youthful trainee status after October 1, 1995, the probation agent shall register the individual before sentencing or assignment. (b) If the individual's probation or parole is transferred to this state after October 1, 1995, the probation or parole agent shall register the individual not more than 7 days after the transfer. (c) If the individual is placed within the jurisdiction of the juvenile division of the probate court or family division of circuit court or committed to the department of health and human services under an order of disposition entered after October 1, 1995, the juvenile division of the probate court or family division of circuit court shall register the individual before the order of disposition is entered.	**§ 20913. Registry requirements for sex offenders.** (a) In general A sex offender shall register, and keep the registration current, in each jurisdiction where the offender resides, where the offender is an employee, and where the offender is a student. For initial registration purposes only, a sex offender shall also register in the jurisdiction in which convicted if such jurisdiction is different from the jurisdiction of residence. (b) Initial registration The sex offender shall initially register-- (1) before completing a sentence of imprisonment with respect to the offense giving rise to the registration requirement; or (2) not later than 3 business days after being sentenced for that offense, if the sex offender is not sentenced to a term of imprisonment. (d) Initial registration of sex offenders unable to comply with subsection (b) The Attorney General shall have the authority to specify the applicability of the requirements of this subchapter to sex offenders convicted before the enactment of this chapter or its implementation in a particular jurisdiction, and to prescribe rules for the registration of any such sex offenders and for other categories of sex offenders who are unable to comply with subsection (b).	

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(4) For an individual convicted on or before September 1, 1999 of an offense that was added on September 1, 1999 to the definition of listed offense, the following shall register the individual: (a) If the individual is on probation or parole on September 1, 1999 for the listed offense, the individual's probation or parole agent not later than September 12, 1999. (b) If the individual is committed to jail on September 1, 1999 for the listed offense, the sheriff or his or her designee not later than September 12, 1999. (c) If the individual is under the jurisdiction of the department of corrections on September 1, 1999 for the listed offense, the department of corrections not later than November 30, 1999. (d) If the individual is within the jurisdiction of the family division of circuit court or committed to the department of health and human services or county juvenile agency on September 1, 1999 under an order of disposition for the listed offense, the family division of circuit court, the department of health and human services, or the county juvenile agency not later than November 30, 1999. (e) If the individual is sentenced or assigned to youthful trainee status for that offense after September 1, 1999, the probation agent shall register the individual before sentencing or assignment. (f) If the individual's probation or parole for the listed offense is transferred to this state after September 1, 1999, the probation or parole agent shall register the individual within 14 days after the transfer. (g) If the individual is placed within the jurisdiction of the family division of circuit court or committed to the department of health and human services for the listed offense after September 1, 1999, the family division of circuit court shall register the individual before the order of disposition is entered. (5) Subject to section 3, an individual convicted of a listed offense in this state after October 1, 1995 and an individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted of any other felony on or after July 1, 2011, shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status for that listed offense or that other felony. The		

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probation agent or the family division of circuit court shall give the individual the registration form after the individual is convicted, explain the duty to register and accept the completed registration for processing under section 6.2 The court shall not impose sentence, enter the order of disposition, or assign the individual to youthful trainee status, until it determines that the individual's registration was forwarded to the department as required under section 6.

(6) All of the following shall register with the local law enforcement agency, sheriff's department, or the department not more than 3 business days after becoming domiciled or temporarily residing, working, or being a student in this state:

(a) Subject to section 3(1), an individual convicted in another state or country on or after October 1, 1995 of a listed offense as defined before September 1, 1999.

(b) Subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses.

(c) Subject to section 3(1), an individual convicted in another state or country of a listed offense before October 1, 1995 and, subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses, who is convicted of any other felony on or after July 1, 2011.

(d) An individual required to be registered as a sex offender in another state or country regardless of when the conviction was entered.

(7) If a prosecution or juvenile proceeding is pending on July 1, 2011, whether the defendant in a criminal case or the minor in a juvenile proceeding is required to register under this act must be determined on the basis of the law in effect on July 1, 2011.

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28.724a. Status report to registering authority; requirements; reports; written documentation; exception. Sec. 4a. (1) An individual required to be registered under this act who is not a resident of this state shall report his or her status in person to the registering authority having jurisdiction over a campus of an institution of higher education if either of the following occurs: (a) The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment. (b) As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or possession of the United States, or the individual discontinues his or her studies at that location. (2) An individual required to be registered under this act who is a resident of this state shall report his or her status in person to the registering authority having jurisdiction where his or her new residence or domicile is located if any of the events described under subsection (1) occur. (3) The report required under subsections (1) and (2) shall be made as follows: (a) For an individual registered under this act before October 1, 2002 who is required to make his or her first report under subsections (1) and (2), not later than January 15, 2003. (b) Immediately after he or she enrolls or discontinues his or her enrollment as a student on that campus including study in this state or another state, a territory or possession of the United States, or another country. (4) The additional registration reports required under this section shall be made in the time periods described in section 5a(2)(a) to (c) for reports under that section. (5) The local law enforcement agency, sheriff's department, or department post to which an individual reports under this section shall require the individual to pay the registration fee required under section 5a or section 7(1) and to present written documentation of employment status, contractual relationship, volunteer status, or student status. Written documentation under this		

subsection may include, but need not be limited to, any of the following: (a) A W-2 form, pay stub, or written statement by an employer. (b) A contract. (c) A student identification card or student transcript. (6) This section does not apply to an individual whose enrollment and participation at an institution of higher education is solely through the mail or the internet from a remote location.		

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28.725. Reporting requirements for registered individuals; changes in residence or domicile, employment, enrollment as student, name, vehicle information, electronic mail addresses, internet identifiers, or telephone numbers; registration periods; expunged conviction or adjudication.	**§ 20913. Registry requirements for sex offenders. (Continued.)**	**§ 72.7. How sex offenders must register and keep the registration current.**
Sec. 5. (1) An individual required to be registered under this act who is a resident of this state shall report in person, or in another manner as prescribed by the department, and notify the registering authority having jurisdiction where his or her residence or domicile is located not more than 3 business days after any of the following occur:	(c) Keeping the registration current A sex offender shall, not later than 3 business days after each change of	(c) Reporting of initiation and changes concerning
(a) The individual changes or vacates his or her residence or domicile.	name,	name,
(b) The individual changes his or her place of employment, or employment is discontinued.	residence,	residence,
(c) The individual enrolls as a student with an institution of higher education, or enrollment is discontinued.	employment,	employment,
(d) The individual changes his or her name.	or student status,	and school attendance.
(e) Any change required to be reported under section 4a.1	appear in person in at least 1 jurisdiction involved pursuant to subsection (a) and inform that jurisdiction of all changes in the information required for that offender in the sex offender registry. That jurisdiction shall immediately provide that information to all other jurisdictions in which the offender is required to register.	A sex offender who enters a jurisdiction to reside, or who resides in a jurisdiction and changes his name or his place of residence in the jurisdiction, must appear in person in that jurisdiction and register or update the registration within three business days. A sex offender who commences employment or school attendance in a jurisdiction, or who changes employer, school attended, or place of employment or school attendance in a jurisdiction, must appear in person in that jurisdiction and register or update the registration within three business days. (d) Reporting of departure and termination concerning residence, employment, and school attendance. (1) A sex offender residing in a jurisdiction must inform that jurisdiction (by whatever means the jurisdiction allows) if the sex offender will be commencing residence, employment, or school attendance in another jurisdiction or outside of the United States. The sex offender must so inform the jurisdiction in which he is residing prior to any termination of residence in that jurisdiction and prior to commencing residence, employment, or school attendance in the other jurisdiction or outside of the United States. (2) A sex offender who will be terminating residence, employment, or school attendance in a jurisdiction must so inform that jurisdiction (by whatever means the jurisdiction allows) prior to the termination of residence, employment, or school attendance in the jurisdiction.

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(2) An individual required to be registered under this act who is a resident of this state shall report in the manner prescribed by the department to the registering authority having jurisdiction where his or her residence or domicile is located not more than 3 business days after any of the following occur:

(a) Except as otherwise provided in this subdivision, any change in vehicle information, electronic mail addresses, internet identifiers, or telephone numbers registered to or used by the individual. The requirement to report any change in electronic mail addresses and internet identifiers applies only to an individual required to be registered under this act after July 1, 2011.

(b) The individual intends to temporarily reside at any place other than his or her residence for more than 7 days.

(3) An individual required to be registered under this act, who is not a resident of this state but has his or her place of employment in this state shall report in person and notify the registering authority having jurisdiction where his or her place of employment is located or the department post of the individual's place of employment not more than 3 business days after the individual changes his or her place of employment or employment is discontinued.

(4) If an individual who is incarcerated in a state correctional facility and is required to be registered under this act is granted parole or is due to be released upon completion of his or her maximum sentence, the department of corrections, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(5) If an individual who is incarcerated in a county jail and is required to be registered under this act is due to be released from custody, the sheriff's department, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(6) Not more than 7 days after either of the following occurs, the department of corrections shall notify the local law enforcement agency or sheriff's department having jurisdiction over the area to which the individual is transferred or the department post of the transferred residence or domicile of an individual required to be registered under this act:

§ 20916. Direction to Attorney General

(a) Requirement that sex offenders provide certain Internet related information to sex offender registries

The Attorney General, using the authority provided in section 114(a)(7) of the Sex Offender Registration and Notification Act, shall require that each sex offender provide to the sex offender registry those Internet identifiers the sex offender uses or will use of any type that the Attorney General determines to be appropriate under that Act. These records of Internet identifiers shall be subject to the Privacy Act (5 U.S.C. 552a) to the same extent as the other records in the National Sex Offender Registry.

(b) Timeliness of reporting of information

The Attorney General, using the authority provided in section 112(b) of the Sex Offender Registration and Notification Act, shall specify the time and manner for keeping current information required to be provided under this section.

(d) Notice to sex offenders of new requirements

The Attorney General shall ensure that procedures are in place to notify each sex offender of changes in requirements that apply to that sex offender as a result of the implementation of this section.

(e) Reporting of changes in information relating to

remote communication identifiers,

[All designations the sex offender uses for purposes of routing or self identification in

internet or

telephonic communications or postings,

including email addresses and telephone numbers.] [28 CFR 72.6(b).]

temporary lodging,

and vehicles.

A sex offender must report within three business days to his residence jurisdiction (by whatever means the jurisdiction allows) any change in remote communication identifier information, as described in § 72.6(b), temporary lodging information, as described in § 72.6(c)(2), and any change in vehicle information, as described in § 72.6(f).

(f) Reporting of international travel. A sex offender must report intended travel outside the United States, including the information described in § 72.6(d), to his residence jurisdiction (by whatever means the jurisdiction allows). The sex offender must report the travel information to the jurisdiction at least 21 days in advance of the intended travel and, if the sex offender is terminating his residence in the jurisdiction, prior to his termination of residence in the jurisdiction.

(g) Compliance with jurisdictions' requirements for registering and keeping the registration current.

(1) A sex offender who does not comply with a requirement of SORNA in conformity with the time and manner specifications of paragraphs (a) through (f) of this section must comply with the requirement in conformity with any applicable time and manner specifications of a jurisdiction in which the offender is required to register

Example 1 to paragraph (g)(1). A sex offender convicted in a state does not initially register before release from imprisonment, as required by 34 U.S.C. 20913(b)(1) and paragraph (a)(1) of this section, because the state has no procedure for pre-release registration of sex offenders. Instead, the state informs sex offenders that they must go to a local police station within seven days of release to register. The sex offender must comply with the state's requirements for initial registration, i.e., the offender must report to the police station to register within seven days of release.

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(a) The individual is transferred to a community residential program. (b) The individual is transferred into a level 1 correctional facility of any kind, including a correctional camp or work camp. (7) An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located not more than 3 business days before he or she changes his or her domicile or residence to another state. The individual shall indicate the new state and, if known, the new address. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state. (8) An individual required to be registered under this act, who is a resident of this state, shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located not later than 21 days before he or she changes his or her domicile or residence to another country or travels to another country for more than 7 days. The individual shall state the new country of residence or country of travel and the address of his or her new domicile or residence or place of stay, if known. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority. (9) If the probation or parole of an individual required to be registered under this act is transferred to another state or an individual required to be registered under this act is transferred from a state correctional facility to any correctional facility or probation or parole in another state, the department of corrections shall promptly notify the department and the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state. The department shall update the registration and compilation databases. (10) An individual registered under this act shall comply with the verification procedures and proof of residence procedures prescribed in sections 4a and 5a.	**§ 20914. Information required in registration.** (a)(7) Information relating to intended travel of the sex offender outside the United States, including any anticipated dates and places of departure, arrival, or return, carrier and flight numbers for air travel, destination country and address or other contact information therein, means and purpose of travel, and any other itinerary or other travel-related information required by the Attorney General. (c) Time and manner A sex offender shall provide and update information required under subsection (a), including information relating to intended travel outside the United States required under paragraph (7) of that subsection, in conformity with any time and manner requirements prescribed by the Attorney General. **§ 20915. Duration of registration requirement.** (a) Full registration period A sex offender shall keep the registration current for the full registration period (excluding any time the sex offender is in custody or civilly committed) unless the offender is allowed a reduction under subsection (b). The full registration period is--	Example 2 to paragraph (g)(1). A sex offender does not register when he is released from custody, or does not register upon entering a jurisdiction to reside as required by 34 U.S.C. 20913(c) and paragraph (c) of this section, because the jurisdiction, at the time, does not register sex offenders based on the offense for which he was convicted. The jurisdiction later sends the sex offender a notice advising that it has extended its registration requirements to include sex offenders like him and directing him to report to a specified agency within 30 days to register. The sex offender must report to the agency to register within the specified timeframe. Example 3 to paragraph (g)(1). A sex offender registers as required when released from imprisonment or upon entering a jurisdiction to reside, but the jurisdiction has no procedure for sex offenders to appear periodically in person to update and verify the registration information as required by 34 U.S.C. 20918 and paragraph (b) of this section. The jurisdiction later sends the sex offender a notice advising that it has adopted a periodic verification requirement and directing the sex offender to appear at a designated time and place for an initial update meeting. The sex offender must appear and update the registration as directed. Example 4 to paragraph (g)(1). A sex offender does not report his email address to the jurisdiction in which he resides when he initially registers, or within three business days of a change as required by paragraph (e) of this section, because email addresses are not among the information the jurisdiction accepts for inclusion in its registry. The jurisdiction later notifies the sex offender that it has extended the registration information it collects to include email addresses and directs him to send a reply within a specified time that provides his current email address. The sex offender must comply with this direction. (2) In a prosecution under 18 U.S.C. 2250, paragraph (g)(1) of this section does not in any case relieve a sex offender of the need to establish as an affirmative defense an inability to comply with SORNA because of circumstances beyond his control as provided in 18 U.S.C. 2250(c) and § 72.8(a)(2). **§ 72.5. How long sex offenders must register.** (a) Duration. A sex offender has a continuing obligation to register and keep the registration current (except when the sex offender is in custody or civilly committed) for the following periods of time:

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(11) Except as otherwise provided in this section and section 8c,3 a tier I offender shall comply with this section for 15 years.	(1) 15 years, if the offender is a tier I sex offender;	(1) 15 years, if the offender is a tier I sex offender;
(12) Except as otherwise provided in this section and section 8c, a tier II offender shall comply with this section for 25 years.	(2) 25 years, if the offender is a tier II sex offender; and	(2) 25 years, if the offender is a tier II sex offender; and
(13) Except as otherwise provided in this section and section 8c, a tier III offender shall comply with this section for life.	(3) the life of the offender, if the offender is a tier III sex offender.	(3) The life of the offender, if the offender is a tier III sex offender.
(14) The registration periods under this section exclude any period of incarceration for committing a crime and any period of civil commitment.	(b) Reduced period for clean record (1) Clean record	(b) Commencement. The registration period begins to run: (1) When a sex offender is released from imprisonment following conviction for the offense giving rise to the registration requirement, including in cases in which the term of imprisonment is based wholly or in part on the sex offender's conviction for another offense; or
(15) For an individual who was previously convicted of a listed offense for which he or she was not required to register under this act but who is convicted of any felony on or after July 1, 2011, any period of time that he or she was not incarcerated for that listed offense or that other felony and was not civilly committed counts toward satisfying the registration period for that listed offense as described in this section. If those periods equal or exceed the registration period described in this section, the individual has satisfied his or her registration period for the listed offense and is not required to register under this act. If those periods are less than the registration period described in this section for that listed offense, the individual shall comply with this section for the period of time remaining.	The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by-- (A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed; (B) not being convicted of any sex offense; (C) successfully completing any periods of supervised release, probation, and parole; and (D) successfully completing of1 an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.	(2) If the sex offender is not sentenced to imprisonment, when the sex offender is sentenced for the offense giving rise to the registration requirement.
(16) If an individual required to be registered under this act presents an order to the department or the appropriate registering authority that the conviction or adjudication for which the individual is required to be registered under this act has been set aside under 1965 PA 213, MCL 780.621 to 780.624, or has been otherwise expunged, his or her registration under this act must be discontinued. If this subsection applies, the department shall remove the individual from both the law enforcement database and the public internet website maintained under section 8.	(2) Period In the case of-- (A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and (B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this subchapter, the period during which the clean record shall be maintained is 25 years. (3) Reduction In the case of-- (A) a tier I sex offender, the reduction is 5 years; (B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.	(c) Reduction. If a tier I sex offender has maintained for 10 years a clean record, as described in 34 U.S.C. 20915(b)(1), the period for which the sex offender must register and keep the registration current under paragraph (a) of this section is reduced by 5 years. If a tier III sex offender required to register on the basis of a juvenile delinquency adjudication has maintained a clean record, as described in 34 U.S.C. 20915(b)(1), for 25 years, the period for which the sex offender must register and keep the registration current under paragraph (a) of this section is reduced to the period for which the clean record has been maintained.

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28.725a. Registration, notification, and verification procedure; reporting schedule; registration fee; maintenance of license or identification card; photographs; failure to report. Sec. 5a. (1) The department shall mail a notice to each individual registered under this act who is not in a state correctional facility explaining the individual's duties under this act as amended. (2) Upon the release of an individual registered under this act who is in a state correctional facility, the department of corrections shall provide written notice to that individual explaining his or her duties under this section and this act and the procedure for registration, notification, and verification and payment of the registration fee prescribed under subsection (6) or section 7(1).1 The individual shall sign and date the notice. The department of corrections shall maintain a copy of the signed and dated notice in the individual's file. The department of corrections shall forward the original notice to the department within 7 days, regardless of whether the individual signs it.	**§ 20919. Duty to notify sex offenders of registration requirements and to register.** (a) In general An appropriate official shall, shortly before release of the sex offender from custody, or, if the sex offender is not in custody, immediately after the sentencing of the sex offender, for the offense giving rise to the duty to register-- (1) inform the sex offender of the duties of a sex offender under this subchapter and explain those duties; (2) require the sex offender to read and sign a form stating that the duty to register has been explained and that the sex offender understands the registration requirement; and (3) ensure that the sex offender is registered. (b) Notification of sex offenders who cannot comply with subsection (a) The Attorney General shall prescribe rules for the notification of sex offenders who cannot be registered in accordance with subsection (a).	

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(3) Subject to subsection (4), an individual required to be registered under this act who is not incarcerated shall report in person to the registering authority where he or she is domiciled or resides for verification of domicile or residence as follows:	**§ 20918. Periodic in person verification.** A sex offender shall appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which that offender is required to be registered not less frequently than--	**§ 72.7. How sex offenders must register and keep the registration current. (Continued.)** (a) Initial registration.—(1) In general. Except as provided in paragraph (a)(2) of this section, a sex offender must register before release from imprisonment following conviction for the offense giving rise to the registration requirement, or, if the sex offender is not sentenced to imprisonment, within three business days after being sentenced for that offense. . . .
(a) If the individual is a tier I offender, the individual shall report once each year during the individual's month of birth.	(1) each year, if the offender is a tier I sex offender;	(b) Periodic in-person verification. A sex offender must appear in person, allow the jurisdiction to take a current photograph, and verify the information in each registry in which the offender is required to register. In carrying out the required verification of information in each registry, the sex offender must correct any information that has changed or is otherwise inaccurate and must report any new registration information. A sex offender must appear in person for these purposes not less frequently than—
(b) If the individual is a tier II offender, the individual shall report twice each year according to the following schedule: Birth Month — Reporting Months January — January and July February — February and August March — March and September April — April and October May — May and November June — June and December July — January and July August — February and August September — March and September October — April and October November — May and November December — June and December	(2) every 6 months, if the offender is a tier II sex offender; and	(1) Each year, if the offender is a tier I sex offender; (2) Every six months, if the offender is a tier II sex offender; and
(c) If the individual is a tier III offender, the individual shall report 4 times each year according to the following schedule: Birth Month — Reporting Months January — January, April, July, and October February — February, May, August, and [Nov] March — March, June, September, and [Dec] April — April, July, October, and January May — May, August, November, and [Feb] June — June, September, [Dec], and March July — July, October, January, and April August — August, November, [Feb], and May September — September, [Dec], March, and June October — October, January, April, and July November — November, February, May, and [Aug] December — December, March, June, and [Sept]	(3) every 3 months, if the offender is a tier III sex offender.	(3) Every three months, if the offender is a tier III sex offender.

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(4) A report under subsection (3) must be made no earlier than the first day or later than the last day of the month in which the individual is required to report. However, if the registration period for that individual expires during the month in which he or she is required to report under this section, the individual shall report during that month on or before the date his or her registration period expires. When an individual reports under subsection (3), the individual shall review all registration information for accuracy. (5) When an individual reports under subsection (3) an officer or authorized employee of the registering authority shall verify the individual's residence or domicile and any information required to be reported under section 4a. The officer or authorized employee shall also determine whether the individual's photograph required under this act matches the appearance of the individual sufficiently to properly identify him or her from that photograph. If not, the officer or authorized employee shall require the individual to obtain a current photograph within 7 days under this section. When all of the verification information has been provided, the officer or authorized employee shall review that information with the individual and make any corrections, additions, or deletions the officer or authorized employee determines are necessary based on the review. The officer or authorized employee shall sign and date a verification receipt. The officer or authorized employee shall give a copy of the signed receipt showing the date of verification to the individual. The officer or authorized employee shall forward verification information to the department in the manner the department prescribes. The department shall revise the law enforcement database and public internet website maintained under section 83 as necessary and shall indicate verification in the public internet website maintained under section 8(2). (6) Except as otherwise provided in section 5b,4 an individual who reports as prescribed under subsection (3) shall pay a $50.00 registration fee as follows: (a) Upon initial registration. (b) Annually following the year of initial registration. The payment of the registration fee under this subdivision must be made at the time the individual reports in the first reporting month for that individual as set forth in subsection (3) of each year in which the fee applies, unless an individual elects to prepay an annual registration fee for any future year for which an annual registration fee is required. Prepaying any annual registration fee must not		

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change or alter the requirement of an individual to report as set forth in subsection (3). The payment of the registration fee under this subdivision is not required to be made for any registration year that has expired before January 1, 2014 or to be made by any individual initially required to register under this act after January 1, 2027. The registration fee required to be paid under this subdivision must not be prorated on grounds that the individual will complete his or her registration period after the month in which the fee is due. (c) The sum of the amounts required to be paid under subdivisions (a) and (b) must not exceed $550.00. (7) Except as otherwise provided in this subsection, an individual required to be registered under this act shall maintain either a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, with the individual's current address. The license or card may be used as proof of domicile or residence under this section. In addition, the officer or authorized employee may require the individual to produce another document bearing his or her name and address, including, but not limited to, voter registration or a utility or other bill. The department may specify other satisfactory proof of domicile or residence. The requirement to maintain a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, does not apply to an individual required to be registered under this act who is homeless. As used in this subsection, “homeless” means someone who lacks a fixed or temporary residence. (8) An individual registered under this act who is incarcerated shall report to the secretary of state under this subsection not more than 7 days after he or she is released to have his or her digitalized photograph taken. The individual is not required to report under this subsection if he or she had a digitized photograph taken for an operator's or chauffeur's license or official state personal identification card before January 1, 2000, or within 2 years before he or she is released unless his or her appearance has changed from the date of that photograph. Unless the person is a nonresident, the photograph must be used on the individual's operator's or chauffeur's license or official state personal identification card. The individual shall have a new photograph taken		

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when he or she renews the license or identification card as provided by law, or as otherwise provided in this act. The secretary of state shall make the digitized photograph available to the department for a registration under this act.

(9) If an individual does not report under this section or under section 4a, the department shall notify all registering authorities as provided in section 8a5 and initiate enforcement action as set forth in that section.

(10) The department shall prescribe the form for the notices and verification procedures required under this section.

28.725b. Disposition of registration fee; sex offenders registration fund; waiver or payment of fee.

Sec. 5b. (1) Of the money collected by a court, local law enforcement agency, sheriff's department, or department post from each registration fee prescribed under this act, $30.00 must be forwarded to the department, which shall deposit the money in the sex offenders registration fund created under subsection (2), and $20.00 must be retained by the court, local law enforcement agency, sheriff's department, or department post.

(2) The sex offenders registration fund is created as a separate fund in the department of treasury. The state treasurer shall credit the money received from the payment of the registration fee prescribed under this act to the sex offenders registration fund. Money credited to the fund must only be used by the department for training concerning, and the maintenance and automation of, the law enforcement database, public internet website, information required under section 8,1 or notification and offender registration duties under section 4a. Except as otherwise provided in this section, money in the sex offenders registration fund at the close of the fiscal year must remain in the fund and must not lapse to the general fund.

(3) If an individual required to pay a registration fee under this act is indigent, the registration fee is waived for a period of 90 days. The burden is on the individual claiming indigence to prove the fact of indigence to the satisfaction of the local law enforcement agency, sheriff's department, or department post where the individual is reporting.

(4) Payment of the registration fee prescribed under this act must be made in the form and by means prescribed by the department. Upon payment of the registration fee

prescribed under this act, the officer or employee shall forward verification of the payment to the department in the manner the department prescribes. The department shall revise the law enforcement database and public internet website maintained under section 8 as necessary and indicate verification of payment in the law enforcement database under section 8(1).
(5) For the fiscal year ending September 30, 2020 only, $3,400,000.00 of the money in the sex offenders registration fund is transferred to and must be deposited into the general fund.

28.725c. Collection of fees by department of corrections.

Sec. 5c. The department of corrections shall not collect any fee prescribed under this act.

28.726. Copy and notice of registration or notification; duties of officer, court, or agency.

Sec. 6. (1) The officer, court, or agency registering an individual or receiving or accepting a registration under section 41 or receiving notice under section 5(1)2 shall provide the individual with a copy of the registration or notification at the time of registration or notice.

(2) The officer, court, or agency registering an individual or receiving or accepting a registration under section 4 or notified of an address change under section 5(1) shall forward the registration or notification to the department in a manner prescribed by the department immediately after registration or notification.

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28.727. Registration; information and content requirements; registration fee; notification of duties; execution of registration and notice; false or misleading information; forms; duties of department.	**§ 20914. Information required in registration. (Continued.)**	**§ 72.6. Information sex offenders must provide.**
Sec. 7. (1) Registration information obtained under this act must be forwarded to the department in the format the department prescribes. Except as provided in section 5b(3),1 a $50.00 registration fee must accompany each original registration. All of the following information must be obtained or otherwise provided for registration purposes:	(a) Provided by the offender The sex offender shall provide the following information to the appropriate official for inclusion in the sex offender registry:	Sex offenders must provide the following information for inclusion in the sex offender registries of the jurisdictions in which they are required to register:
(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known. An individual who is in a witness protection and relocation program is only required to use the name and identifying information reflecting his or her new identity in a registration under this act. The registration and compilation databases must not contain any information identifying the individual's prior identity or locale.	(1) The name of the sex offender (including any alias used by the individual).	(a) Name, date of birth, and Social Security number. (1) The name of the sex offender, including any alias used by the sex offender. (2) The sex offender's date of birth and any date that the sex offender uses as his purported date of birth.
(b) The individual's Social Security number and any Social Security numbers or alleged Social Security numbers previously used by the individual. (c) The individual's date of birth and any alleged dates of birth previously used by the individual.	(2) The Social Security number of the sex offender.	(3) The Social Security number of the sex offender and any number that the sex offender uses as his purported Social Security number.
(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection must identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the person spends or will spend the majority of his or her time.	(3) The address of each residence at which the sex offender resides or will reside.	(c) Residence, temporary lodging, employment, and school attendance. (1) The address of each residence at which the sex offender resides or will reside or, if the sex offender has no present or expected residence address, other information describing where the sex offender resides or will reside with whatever definiteness is possible under the circumstances.
(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision must include the dates the lodging is used or to be used.		(2) Information about any place in which the sex offender is staying when away from his residence for seven or more days, including the identity of the place and the period of time the sex offender is staying there.

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(f) The name and address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection must include the address or location of employment if different from the address of the employer. If the individual lacks a fixed employment location, the information obtained under this subdivision must include the general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment.	(4) The name and address of any place where the sex offender is an employee or will be an employee.	(3) The name and address of any place where the sex offender is or will be an employee or, if the sex offender is or will be employed but with no fixed place of employment, other information describing where the sex offender works or will work with whatever definiteness is possible under the circumstances.
(g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.	(5) The name and address of any place where the sex offender is a student or will be a student.	(4) The name and address of any place where the sex offender is a student or will be a student.
(h) All telephone numbers registered to the individual or used by the individual, including, but not limited to, residential, work, and mobile telephone numbers.		(b) Remote communication identifiers. All designations the sex offender uses for purposes of routing or self identification in internet or telephonic communications or postings, including email addresses and telephone numbers.
(i) Except as otherwise provided in this subdivision, all electronic mail addresses and internet identifiers registered to or used by the individual. This subdivision applies only to an individual required to be registered under this act after July 1, 2011.		
(j) The license plate number and description of any vehicle owned or operated by the individual.	(6) The license plate number and a description of any vehicle owned or operated by the sex offender.	(f) Vehicle information. The license plate number and a description of any vehicle owned or operated by the sex offender, including watercraft and aircraft in addition to land vehicles. If a vehicle has no license plate but has some other type of registration number or identifier, then the registration number or identifier must be provided. Information must also be provided as to where any vehicle owned or operated by the sex offender is habitually parked, docked, or otherwise kept.
(k) The individual's driver license number or state personal identification card number.	(8) Any other information required by the Attorney General.	
(l) A digital copy of the individual's passport and other immigration documents.		
(m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.	(b) Provided by the jurisdiction	(g) Professional licenses. Information concerning all licensing of the sex offender that authorizes the sex offender to engage in an occupation or carry out a trade or business.
(n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.	The jurisdiction in which the sex offender registers shall ensure that the following information is included in the registry for that sex offender:	(d) International travel. Information relating to intended travel outside the United States, including any anticipated itinerary, dates and places of departure from, arrival in, or return to the United States and each country visited, carrier and flight numbers for air travel, destination country or countries and address or other contact information therein, and means and purpose of travel.
(o) A complete physical description of the individual.	(1) A physical description of the sex offender.	
(p) The photograph required under section 5a.2	(4) A current photograph of the sex offender.	

(q) The individual's fingerprints if not already on file with the department and the individual's palm prints. An individual required to be registered under this act shall have his or her fingerprints or palm prints or both taken not later than September 12, 2011 if his or her fingerprints or palm prints are not already on file with the department. The department shall forward a copy of the individual's fingerprints and palm prints to the Federal Bureau of Investigation if not already on file with that bureau. (r) Information that is required to be reported under section 4a.3	(5) A set of fingerprints and palm prints of the sex offender.	(e) Passports and immigration documents. Information about each passport the sex offender has and, if the sex offender is an alien, information about any document or documents establishing the sex offender's immigration status, including passport or immigration document type and number.
(2) A registration must contain all of the following: (a) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the photograph required under this act.	(7) A photocopy of a valid driver's license or identification card issued to the sex offender by a jurisdiction.	
(b) The text of the provision of law that defines the criminal offense for which the sex offender is registered.	(2) The text of the provision of law defining the criminal offense for which the sex offender is registered.	
(c) Any outstanding arrest warrant information.	(3) The criminal history of the sex offender, including the date of all arrests and convictions; the status of parole, probation, or supervised release; registration status; and the existence of any outstanding arrest warrants for the sex offender.	
(d) The individual's tier classification.		
(e) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile has been entered into the federal combined DNA index system (CODIS).	(6) A DNA sample of the sex offender.	
(f) The individual's complete criminal history record, including the dates of all arrests and convictions.	(8) Any other information required by the Attorney General.	
(g) The individual's Michigan department of corrections number and status of parole, probation, or supervised release.		
(h) The individual's Federal Bureau of Investigation number.		
(3) The form used for notification of duties under this act must contain a written statement that explains the duty of the individual being registered to provide notice of changes in his or her registration information, the procedures for providing that notice, and the verification procedures under section 5a.		

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(4) The individual shall sign a registration and notice. However, the registration and notice must be forwarded to the department regardless of whether the individual signs it or pays the registration fee required under subsection (1). (5) The officer, court, or an employee of the agency registering the individual or receiving or accepting a registration under section 44 shall sign the registration form. (6) An individual shall not knowingly provide false or misleading information concerning a registration, notice, or verification. (7) The department shall prescribe the form for a notification required under section 55 and the format for forwarding the notification to the department. (8) The department shall promptly provide registration, notice, and verification information to the Federal Bureau of Investigation and to local law enforcement agencies, sheriff's departments, department posts, and other registering jurisdictions, as provided by law.		

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28.728. Law enforcement database of registrations and notices; contents; public internet website; availability; removal. Sec. 8. (1) The department shall maintain a computerized law enforcement database of registrations and notices required under this act. The law enforcement database must contain all of the following information for each individual registered under this act: (a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known. (b) The individual's Social Security number and any Social Security numbers or alleged Social Security numbers previously used by the individual. (c) The individual's date of birth and any alleged dates of birth previously used by the individual. (d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection must identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the individual spends or will spend the majority of his or her time. (e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision must include the dates the lodging is used or to be used. (f) The name and address of each of the individual's employers. For purposes of this subdivision, “employer” includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection must include the address or location of employment if different from the address of the employer. (g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, “school” means a public or private postsecondary school or school of higher education, including a trade school.	**§ 20920. Public access to sex offender information through the Internet.** (a) In general Except as provided in this section, each jurisdiction shall make available on the Internet, in a manner that is readily accessible to all jurisdictions and to the public, all information about each sex offender in the registry. The jurisdiction shall maintain the Internet site in a manner that will permit the public to obtain relevant information for each sex offender by a single query for any given zip code or geographic radius set by the user. The jurisdiction shall also include in the design of its Internet site all field search capabilities needed for full participation in the Dru Sjodin National Sex Offender Public Website and shall participate in that website as provided by the Attorney General.	

(h) All telephone numbers registered to the individual or used by the individual, including, but not limited to, residential, work, and mobile telephone numbers. (i) Except as otherwise provided in this subdivision, all electronic mail addresses and internet identifiers registered to or used by the individual. This subdivision applies only to an individual required to be registered under this act after July 1, 2011. (j) The license plate number and description of any vehicle owned or operated by the individual. (k) The individual's driver license number or state personal identification card number. (l) A digital copy of the individual's passport and other immigration documents. (m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business. (n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense. (o) A complete physical description of the individual. (p) The photograph required under section 5a.1 (q) The individual's fingerprints and palm prints. (r) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the photograph required under this act. (s) The text of the provision of law that defines the criminal offense for which the sex offender is registered. (t) Any outstanding arrest warrant information. (u) The individual's tier classification and registration status. (v) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile		

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has been entered into the federal combined DNA index system (CODIS). (w) The individual's complete criminal history record, including the dates of all arrests and convictions. (x) The individual's Michigan department of corrections number and the status of his or her parole, probation, or release. (y) The individual's Federal Bureau of Investigation number. (2) The department shall maintain a public internet website separate from the law enforcement database described in subsection (1) to implement section 10(2) and (3).2 Except as provided in subsection (4), the public internet website must contain all of the following information for each individual registered under this act: (a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known. (b) The individual's date of birth. (c) The address where the individual resides. If the individual does not have a residential address, information under this subsection must identify the village, city, or township used by the individual in lieu of a residence. (d) The address of each of the individual's employers. For purposes of this subdivision, “employer” includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection must include the address or location of employment if different from the address of the employer. (e) The address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, “school” means a public or private postsecondary school or school of higher education, including a trade school. (f) The license plate number and description of any vehicle owned or operated by the individual.		

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(g) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred. (h) A complete physical description of the individual. (i) The photograph required under this act. If no photograph is available, the department shall use an arrest photograph or Michigan department of corrections photograph until a photograph as prescribed in section 5a becomes available. (j) The text of the provision of law that defines the criminal offense for which the sex offender is registered. (k) The individual's registration status.		
(3) The following information must not be made available on the public internet website described in subsection (2): (a) The identity of any victim of the offense. (b) The individual's Social Security number. (c) Any arrests not resulting in a conviction. (d) Any travel or immigration document numbers. (e) The individual's tier classification. (f) The individual's driver license number or state personal identification card number.	(b) Mandatory exemptions A jurisdiction shall exempt from disclosure-- (1) the identity of any victim of a sex offense; (2) the Social Security number of the sex offender; (3) any reference to arrests of the sex offender that did not result in conviction; and (4) any other information exempted from disclosure by the Attorney General.	
(4) The public internet website described in subsection (2) must not include the following individuals: (a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d. (b) An individual registered solely because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country.	(c) Optional exemptions A jurisdiction may exempt from disclosure--	

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(c) An individual registered solely because he or she was convicted of a single tier I offense, other than an individual who was convicted of a violation of any of the following:

(i) Section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(ii) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor.

(iii) Section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor.

(iv) Section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

(v) An offense substantially similar to an offense described in subparagraphs (i) to (iv) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(5) The compilation of individuals must be indexed alphabetically by village, city, township, and county, numerically by zip code area, and geographically as determined appropriate by the department.

(6) The department shall update the public internet website with new registrations, deletions from registrations, and address changes at the same time those changes are made to the law enforcement database described in subsection (1). The department shall make the law enforcement database available to each department post, local law enforcement agency, and sheriff's department by the law enforcement information network. Upon request by a department post, local law enforcement agency, or sheriff's department, the department shall provide to that post, agency, or sheriff's department the information from the law enforcement database in printed form for the designated areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction. The department shall provide the ability to conduct a computerized search of the law enforcement database and the public internet website based upon the name and campus location of an institution of higher education.

(1) any information about a tier I sex offender convicted of an offense other than a specified offense against a minor;

(2) the name of an employer of the sex offender;

(3) the name of an educational institution where the sex offender is a student; and

(4) any other information exempted from disclosure by the Attorney General.

(d) Links

The site shall include, to the extent practicable, links to sex offender safety and education resources.

(e) Correction of errors

The site shall include instructions on how to seek correction of information that an individual contends is erroneous.

(f) Warning

The site shall include a warning that information on the site should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties.

§ 20912. Registry requirements for jurisdictions. (Continued.)

(a) Jurisdiction to maintain a registry

Each jurisdiction shall maintain a jurisdiction-wide sex offender registry conforming to the requirements of this subchapter.

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(7) The department shall make the law enforcement database available to a department post, local law enforcement agency, or sheriff's department by electronic, computerized, or other similar means accessible to the post, agency, or sheriff's department. The department shall make the public internet website available to the public by electronic, computerized, or other similar means accessible to the public. The electronic, computerized, or other similar means shall provide for a search by name, village, city, township, and county designation, zip code, and geographical area.

(8) If a court determines that the public availability under section 10 of any information concerning individuals registered under this act violates the constitution of the United States or this state, the department shall revise the public internet website described in subsection (2) so that it does not contain that information.

(9) If the department determines that an individual has completed his or her registration period, including a registration period reduced by law under 2011 PA 18, or that he or she otherwise is no longer required to register under this act, the department shall remove the individual's registration information from both the law enforcement database and the public internet website within 7 days after making that determination.

§ 20921. National Sex Offender Registry.

(a) Internet

The Attorney General shall maintain a national database at the Federal Bureau of Investigation for each sex offender and any other person required to register in a jurisdiction's sex offender registry. The database shall be known as the National Sex Offender Registry.

(b) Electronic forwarding

The Attorney General shall ensure (through the National Sex Offender Registry or otherwise) that updated information about a sex offender is immediately transmitted by electronic forwarding to all relevant jurisdictions.

§ 20922. Dru Sjodin National Sex Offender Public Website.

(a) Establishment

There is established the Dru Sjodin National Sex Offender Public Website (hereinafter in this section referred to as the “Website”), which the Attorney General shall maintain.

(b) Information to be provided

The Website shall include relevant information for each sex offender and other person listed on a jurisdiction's Internet site. The Website shall allow the public to obtain relevant information for each sex offender by a single query for any given zip code or geographical radius set by the user in a form and with such limitations as may be established by the Attorney General and shall have such other field search capabilities as the Attorney General may provide.

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	§ 20923. Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program. (a) Establishment of Program There is established the Megan Nicole Kanka and Alexandra Nicole Zapp Community Notification Program (hereinafter in this section referred to as the "Program"). (b) Program notification Except as provided in subsection (c), immediately after a sex offender registers or updates a registration, an appropriate official in the jurisdiction shall provide the information in the registry (other than information exempted from disclosure by the Attorney General) about that offender to the following: (1) The Attorney General, who shall include that information in the National Sex Offender Registry or other appropriate databases. (2) Appropriate law enforcement agencies (including probation agencies, if appropriate), and each school and public housing agency, in each area in which the individual resides, is an employee or is a student. (3) Each jurisdiction where the sex offender resides, is an employee, or is a student, and each jurisdiction from or to which a change of residence, employment, or student status occurs. (4) Any agency responsible for conducting employment-related background checks under section 40102 of this title. (5) Social service entities responsible for protecting minors in the child welfare system. (6) Volunteer organizations in which contact with minors or other vulnerable individuals might occur. (7) Any organization, company, or individual who requests such notification pursuant to procedures established by the jurisdiction. (c) Frequency Notwithstanding subsection (b), an organization or individual described in subsection (b)(6) or (b)(7) may opt to receive the notification described in that subsection no less frequently than once every five business days.	

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28.728a. Failure to register or update registration information; duties of registering authority and department. Sec. 8a. (1) If an individual fails to register or to update his or her registration information as required under this act, the local law enforcement agency, sheriff's office, or department post responsible for registering the individual or for verifying and updating his or her registration information shall do all of the following immediately after the date the individual was required to register or to update his or her registration information: (a) Determine whether the individual has absconded or is otherwise unlocatable. (b) If the registering authority was notified by a registration jurisdiction that the individual was to appear in order to register or update his or her registration information in the jurisdiction of the registering authority, notify the department in a manner prescribed by the department that the individual failed to appear as required. (c) Revise the information in the registry to reflect that the individual has absconded or is otherwise unlocatable. (d) Seek a warrant for the individual's arrest if the legal requirements for obtaining a warrant are satisfied. (e) Enter the individual into the national crime information center wanted person file if the requirements for entering information into that file are met. (2) If an individual fails to register or to update his or her registration information as required under this act, the department shall do all of the following immediately after being notified by the registering authority that the individual failed to appear as required: (a) Notify that other registration jurisdiction that the individual failed to appear as required. (b) Notify the United States marshal's service in the manner required by the United States marshal's service of the individual's failure to appear as required. (c) Update the national sex offender registry to reflect the individual's status as an absconder or as unlocatable. **28.728b. Repealed. 2004, Act 240, Eff Oct 1, 2004.**	**§ 20924. Actions to be taken when sex offender fails to comply.** An appropriate official shall notify the Attorney General and appropriate law enforcement agencies of any failure by a sex offender to comply with the requirements of a registry and revise the jurisdiction's registry to reflect the nature of that failure. The appropriate official, the Attorney General, and each such law enforcement agency shall take any appropriate action to ensure compliance.	

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28.728c. Petition to discontinue registration; eligibility; procedure; powers and duties of court. Sec. 8c. (1) An individual classified as a tier I offender who meets the requirements of subsection (12) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act. (2) An individual classified as a tier III offender who meets the requirements of subsection (13) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act. (3) An individual classified as a tier I, tier II, or tier III offender who meets the requirements of subsection (14) or (15) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act. (4) This section is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act. This subsection does not prohibit an appeal of the conviction or sentence as otherwise provided by law or court rule. A petition filed under this section shall be filed in the court in which the individual was convicted of committing the listed offense. However, if the conviction occurred in another state or country and the individual is a resident of this state, the individual may file a petition in the circuit court in the county of his or her residence for an order allowing him or her to discontinue registration under this act only. A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing. (5) A petition filed under this section shall be made under oath and shall contain all of the following: (a) The name and address of the petitioner. (b) A statement identifying the offense for which discontinuation from registration is being requested. (c) A statement of whether the individual was previously convicted of a listed offense for which registration is required under this act. (6) An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under section 423 of the Michigan penal code, 1931 PA 328, MCL 750.423.	**§ 20915. Duration of registration requirement. (Continued.)** (b) Reduced period for clean record (1) Clean record The full registration period shall be reduced as described in paragraph (3) for a sex offender who maintains a clean record for the period described in paragraph (2) by-- (A) not being convicted of any offense for which imprisonment for more than 1 year may be imposed; (B) not being convicted of any sex offense; (C) successfully completing any periods of supervised release, probation, and parole; and (D) successfully completing of1 an appropriate sex offender treatment program certified by a jurisdiction or by the Attorney General.	

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(7) A copy of the petition shall be filed with the office of the prosecuting attorney that prosecuted the case against the individual or, for a conviction that occurred in another state or country, the prosecuting attorney for the county of his or her residence, at least 30 days before a hearing is held on the petition. The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition. (8) If the name of the victim of the offense is known by the prosecuting attorney, the prosecuting attorney shall provide the victim with written notice that a petition has been filed and shall provide the victim with a copy of the petition. The notice shall be sent by first-class mail to the victim's last known address. The petition shall include a statement of the victim's rights under subsection (10). (9) If an individual properly files a petition with the court under this section, the court shall conduct a hearing on the petition as provided in this section. (10) The victim has the right to attend all proceedings under this section and to make a written or oral statement to the court before any decision regarding the petition is made. A victim shall not be required to appear at any proceeding under this section against his or her will. (11) The court shall consider all of the following in determining whether to allow the individual to discontinue registration under subsection (12) or (13) but shall not grant the petition if the court determines that the individual is a continuing threat to the public: (a) The individual's age and level of maturity at the time of the offense. (b) The victim's age and level of maturity at the time of the offense. (c) The nature of the offense. (d) The severity of the offense. (e) The individual's prior juvenile or criminal history. (f) The individual's likelihood to commit further listed offenses. (g) Any impact statement submitted by the victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.		

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(h) Any other information considered relevant by the court. (12) The court may grant a petition properly filed by an individual under subsection (1) if all of the following apply: (a) Ten or more years have elapsed since the date of his or her conviction for the listed offense or from his or her release from any period of confinement for that offense, whichever occurred last. (b) The petitioner has not been convicted of any felony since the date described in subdivision (a). (c) The petitioner has not been convicted of any listed offense since the date described in subdivision (a). (d) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole. (e) The petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole. (13) The court may grant a petition properly filed by an individual under subsection (2) if all of the following apply: (a) The petitioner is required to register based on an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28. (b) Twenty-five or more years have elapsed since the date of his or her adjudication for the listed offense or from his or her release from any period of confinement for that offense, whichever occurred last. (c) The petitioner has not been convicted of any felony since the date described in subdivision (b). (d) The petitioner has not been convicted of any listed offense since the date described in subdivision (b).	(2) Period In the case of-- (A) a tier I sex offender, the period during which the clean record shall be maintained is 10 years; and (B) a tier III sex offender adjudicated delinquent for the offense which required registration in a sex registry under this subchapter, the period during which the clean record shall be maintained is 25 years. (3) Reduction In the case of-- (A) a tier I sex offender, the reduction is 5 years;	

(e) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole. (f) The court determines that the petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole. (14) The court shall grant a petition properly filed by an individual under subsection (3) if the court determines that the conviction for the listed offense was the result of a consensual sexual act between the petitioner and the victim and any of the following apply: (a) All of the following: (i) The victim was 13 years of age or older but less than 16 years of age at the time of the offense. (ii) The petitioner is not more than 4 years older than the victim. (b) All of the following: (i) The individual was convicted of a violation of section 158, 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, and 750.338b. (ii) The victim was 13 years of age or older but less than 16 years of age at the time of the violation. (iii) The individual is not more than 4 years older than the victim. (c) All of the following: (i) The individual was convicted of a violation of section 158, 338, 338a, 338b, or 520c(1)(i) of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, 750.338b, and 750.520c. (ii) The victim was 16 years of age or older at the time of the violation. (iii) The victim was not under the custodial authority of the individual at the time of the violation.	(B) a tier III sex offender adjudicated delinquent, the reduction is from life to that period for which the clean record under paragraph (2) is maintained.	

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(15) The court shall grant a petition properly filed by an individual under subsection (3) if either of the following applies:

(a) Both of the following:

(i) The petitioner was adjudicated as a juvenile.

(ii) The petitioner was less than 14 years of age at the time of the offense.

(b) The individual was registered under this act before July 1, 2011 for an offense that required registration but for which registration is not required on or after July 1, 2011.

28.728d. Removal of registration from law enforcement database.

Sec. 8d. If the court grants a petition filed under section 8c,1 the court shall promptly provide a copy of that order to the department and to the individual. The department shall promptly remove an individual's registration from the database maintained under section 8(1).

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28.729. Violations; penalties. Sec. 9. (1) Except as provided in subsections (2), (3), and (4), an individual required to be registered under this act who willfully violates this act is guilty of a felony punishable as follows: (a) If the individual has no prior convictions for a violation of this act, by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both. (b) If the individual has 1 prior conviction for a violation of this act, by imprisonment for not more than 7 years or a fine of not more than $5,000.00, or both. (c) If the individual has 2 or more prior convictions for violations of this act, by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both. (2) An individual who willfully fails to comply with section 5a,1 other than payment of the fee required under section 5a(6), is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both. (3) An individual who willfully fails to sign a registration and notice as provided in section 7(4)2 is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. (4) An individual who willfully refuses or fails to pay the registration fee prescribed in section 5a(6) or 7(1) within 90 days of the date the individual reports under section 4a or 5a3 is guilty of a misdemeanor punishable by imprisonment for not more than 90 days. (5) The court shall revoke the probation of an individual placed on probation who willfully violates this act. (6) The court shall revoke the youthful trainee status of an individual assigned to youthful trainee status who willfully violates this act. (7) The parole board shall rescind the parole of an individual released on parole who willfully violates this act. (8) An individual's failure to register as required by this act or a violation of section 54 may be prosecuted in the judicial district of any of the following:	**20913. Registry requirements for sex offenders. (Continued.)** (e) State penalty for failure to comply Each jurisdiction, other than a Federally recognized Indian tribe, shall provide a criminal penalty that includes a maximum term of imprisonment that is greater than 1 year for the failure of a sex offender to comply with the requirements of this subchapter. **[18 U.S.C. § 2250. Failure to register.]** [(a) In general.--Whoever-- (1) is required to register under the Sex Offender Registration and Notification Act; (2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or (B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and (3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act; shall be fined under this title or imprisoned not more than 10 years, or both. (b) International travel reporting violations.--Whoever-- (1) is required to register under the Sex Offender Registration and Notification Act (42 U.S.C. 16901 et seq.); (2) knowingly fails to provide information required by the Sex Offender Registration and Notification Act relating to intended travel in foreign commerce; and (3) engages or attempts to engage in the intended travel in foreign commerce; shall be fined under this title, imprisoned not more than 10 years, or both.	**§ 72.8. Liability for violations.** (a) Criminal liability. (1) Offense. (i) A sex offender may be liable to criminal penalties under 18 U.S.C. 2250(a) if the sex offender— (A) Is required to register under SORNA; (B)(1) Is a sex offender as defined for the purposes of SORNA by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or (2) Travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and (C) Knowingly fails to register or update a registration as required by SORNA. (ii) A sex offender may be liable to criminal penalties under 18 U.S.C. 2250(b) if the sex offender— (A) Is required to register under SORNA; (B) Knowingly fails to provide information required by SORNA relating to intended travel in foreign commerce; and (C) Engages or attempts to engage in the intended travel in foreign commerce. (iii) As a condition of liability under 18 U.S.C. 2250(a)–(b) for failing to comply with a requirement of SORNA, a sex offender must have been aware of the requirement he is charged with violating, but need not have been aware that the requirement is imposed by SORNA. (2) Defense. A sex offender may have an affirmative defense to liability, as provided in 18 U.S.C. 2250(c), if uncontrollable circumstances prevented the sex offender from complying with SORNA, where the sex offender did not contribute to the creation of those circumstances in reckless disregard of the requirement to comply and complied as soon as the circumstances preventing compliance ceased to exist.

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(a) The individual's last registered address or residence. (b) The individual's actual address or residence. (c) Where the individual was arrested for the violation.	(c) Affirmative defense.--In a prosecution for a violation under subsection (a) or (b), it is an affirmative defense that-- (1) uncontrollable circumstances prevented the individual from complying; (2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and (3) the individual complied as soon as such circumstances ceased to exist. (d) Crime of violence.-- (1) In general.--An individual described in subsection (a) or (b) who commits a crime of violence under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years. (2) Additional punishment.--The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a) or (b).]	Example 1 to paragraph (a)(2). A sex offender changes residence from one jurisdiction to another, bringing into play SORNA's requirement to register in each jurisdiction where the sex offender resides and SORNA's requirement to appear in person and report changes of residence within three business days. See 34 U.S.C. 20913(a), (c). The sex offender attempts to comply with these requirements by contacting the local sheriff's office, which is responsible for sex offender registration in the destination jurisdiction. The sheriff's office advises that it cannot schedule an appointment for him to register within three business days but that he should come by in a week. The sex offender would have a defense to liability if he appeared at the sheriff's office at the appointed time and registered as required. The sex offender's temporary inability to register and inability to report the change of residence within three business days in the new residence jurisdiction was due to a circumstance beyond his control—the sheriff office's refusal to meet with him until a week had passed—and he complied with the requirement to register as soon as the circumstance preventing compliance ceased to exist. Example 2 to paragraph (a)(2). A sex offender cannot register in a state in which he resides because its registration authorities will not register offenders on the basis of the offense for which the sex offender was convicted. The sex offender would have a defense to liability because the state's unwillingness to register sex offenders like him is a circumstance beyond his control. However, if the sex offender failed to register after becoming aware of a change in state policy or practice allowing his registration, the 18 U.S.C. 2250(c) defense would no longer apply, because in such a case the circumstance preventing compliance with the registration requirement would no longer exist. Example 3 to paragraph (a)(2). A sex offender needs to travel to a foreign country on short notice—less than 21 days—because of an unforeseeable family or work emergency. The sex offender would have a defense to liability for failing to report the intended travel 21 days in advance, as required by § 72.7(f), because it is impossible to report an intention to travel outside the United States before the intention exists. However, if the sex offender failed to inform the registration jurisdiction (albeit on short notice) once he intended to travel, 18 U.S.C. 2250(c) would not excuse that failure, because the preventing circumstance—absence of an intent to travel abroad—would no longer exist. (b) Supervision condition. For a sex offender convicted of a Federal offense, compliance with SORNA is a mandatory condition of probation, supervised release, and parole. The release of such an offender who does not comply with SORNA may be revoked.

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28.730. Confidentiality of registration or report; inspection and disclosure of information; notification of public by subscription; penalties and remedies. Sec. 10. (1) Except as provided in this act, a registration or report is confidential and information from that registration or report shall not be open to inspection except for law enforcement purposes. The registration or report and all included materials and information are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243. (2) A department post, local law enforcement agency, or sheriff's department shall make information from the public internet website described in section 8(2)1 for the designated areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction available for public inspection during regular business hours. A department post, local law enforcement agency, or sheriff's department is not required to make a copy of the information for a member of the public. (3) The department may make information from the public internet website described in section 8(2) available to the public through electronic, computerized, or other accessible means. The department shall provide for notification by electronic or computerized means to any member of the public who has subscribed in a manner required by the department when an individual who is the subject of the public internet website described in section 8(2) initially registers under this act, or changes his or her registration under this act, to a location that is in a designated area or geographic radius designated by the subscribing member of the public. (4) Except as provided in this act, an individual other than the registrant who knows of a registration or report under this act and who divulges, uses, or publishes nonpublic information concerning the registration or report in violation of this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both. (5) An individual whose registration or report is revealed in violation of this act has a civil cause of action against the responsible party for treble damages. (6) Subsections (4) and (5) do not apply to the public internet website described in section 8(2) or information from that public internet website that is provided or made available under section 8(2) or under subsection (2) or (3).	**§ 20916. Direction to the Attorney General. (Continued.)** (c) Nondisclosure to general public The Attorney General, using the authority provided in section 118(b)(4) of the Sex Offender Registration and Notification Act, shall exempt from disclosure all information provided by a sex offender under subsection (a). **§ 20917. Checking system for social networking websites.** (a) In general (1) Secure system for comparisons The Attorney General shall establish and maintain a secure system that permits social networking websites to compare the information contained in the National Sex Offender Registry with the Internet identifiers of users of the social networking websites, and view only those Internet identifiers that match. The system— (A) shall not require or permit any social networking website to transmit Internet identifiers of its users to the operator of the system, and (B) shall use secure procedures that preserve the secrecy of the information made available by the Attorney General, including protection measures that render the Internet identifiers and other data elements indecipherable. (2) Provision of information relating to identity Upon receiving a matched Internet identifier, the social networking website may make a request of the Attorney General for, and the Attorney General shall provide promptly, information related to the identity of the individual that has registered the matched Internet identifier. This information is limited to the name, sex, resident address, photograph, and physical description. (b) Qualification for use of system A social networking website seeking to use the system shall submit an application to the Attorney General which provides—	

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	(1) the name and legal status of the website; (2) the contact information for the website; (3) a description of the nature and operations of the website; (4) a statement explaining why the website seeks to use the system; (5) a description of policies and procedures to ensure that— (A) any individual who is denied access to that website on the basis of information obtained through the system is promptly notified of the basis for the denial and has the ability to challenge the denial of access; and (B) if the social networking website finds that information is inaccurate, incomplete, or cannot be verified, the site immediately notifies the appropriate State registry and the Department of Justice, so that they may delete or correct that information in the respective State and national databases; (6) the identity and address of, and contact information for, any contractor that will be used by the social networking website to use the system; and (7) such other information or attestations as the Attorney General may require to ensure that the website will use the system— (A) to protect the safety of the users of such website; and (B) for the limited purpose of making the automated comparison described in subsection (a). (c) Searches against the system (1) Frequency of use of the system A social networking website approved by the Attorney General to use the system may conduct searches under the system as frequently as the Attorney General may allow. (2) Authority of Attorney General to suspend use The Attorney General may deny, suspend, or terminate use of the system by a social networking website that—	

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(A) provides false information in its application for use of the system;

(B) may be using or seeks to use the system for any unlawful or improper purpose;

(C) fails to comply with the procedures required under subsection (b)(5); or

(D) uses information obtained from the system in any way that is inconsistent with the purposes of this Act.

(3) Limitation on release of Internet identifiers

(A) No public release

Neither the Attorney General nor a social networking website approved to use the system may release to the public any list of the Internet identifiers of sex offenders contained in the system.

(B) Additional limitations

The Attorney General shall limit the release of information obtained through the use of the system established under subsection (a) by social networking websites approved to use such system.

(C) Strict adherence to limitation

The use of the system established under subsection (a) by a social networking website shall be conditioned on the website's agreement to observe the limitations required under this paragraph.

(D) Rule of construction

This subsection shall not be construed to limit the authority of the Attorney General under any other provision of law to conduct or to allow searches or checks against sex offender registration information.

(4) Payment of fee

A social networking website approved to use the system shall pay any fee established by the Attorney General for use of the system.

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(5) Limitation on liability

(A) In general

A civil claim against a social networking website, including any director, officer, employee, parent, contractor, or agent of that social networking website, arising from the use by such website of the National Sex Offender Registry, may not be brought in any Federal or State court.

(B) Intentional, reckless, or other misconduct
Subparagraph (A) does not apply to a claim if the social networking website, or a director, officer, employee, parent, contractor, or agent of that social networking website—

(i) engaged in intentional misconduct; or

(ii) acted, or failed to act—

(I) with actual malice;

(II) with reckless disregard to a substantial risk of causing injury without legal justification; or

(III) for a purpose unrelated to the performance of any responsibility or function described in paragraph (3).

(C) Minimizing access

A social networking website shall minimize the number of employees that are provided access to the Internet identifiers for which a match has been found through the system.

(6) Rule of construction

Nothing in this section shall be construed to require any Internet website, including a social networking website, to use the system, and no Federal or State liability, or any other actionable adverse consequence, shall be imposed on such website based on its decision not to do so.

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§ 20925. Development and availability of registry management and website software.

(a) Duty to develop and support

The Attorney General shall, in consultation with the jurisdictions, develop and support software to enable jurisdictions to establish and operate uniform sex offender registries and Internet sites.

(b) Criteria

The software should facilitate—

(1) immediate exchange of information among jurisdictions;

(2) public access over the Internet to appropriate information, including the number of registered sex offenders in each jurisdiction on a current basis;

(3) full compliance with the requirements of this subchapter; and

(4) communication of information to community notification program participants as required under section 20923 of this title.

(c) Deadline

The Attorney General shall make the first complete edition of this software available to jurisdictions within 2 years of July 27, 2006.

§ 20926. Period for implementation by jurisdictions.

(a) Deadline

Each jurisdiction shall implement this subchapter before the later of—

(1) 3 years after July 27, 2006; and

(2) 1 year after the date on which the software described in section 20925 of this title is available.

(b) Extensions

The Attorney General may authorize up to two 1-year extensions of the deadline.

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	§ 20927. Failure of jurisdiction to comply. (a) In general For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this subchapter shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3750 et seq.).1 (b) State constitutionality (1) In general When evaluating whether a jurisdiction has substantially implemented this subchapter, the Attorney General shall consider whether the jurisdiction is unable to substantially implement this subchapter because of a demonstrated inability to implement certain provisions that would place the jurisdiction in violation of its constitution, as determined by a ruling of the jurisdiction's highest court. (2) Efforts If the circumstances arise under paragraph (1), then the Attorney General and the jurisdiction shall make good faith efforts to accomplish substantial implementation of this subchapter and to reconcile any conflicts between this subchapter and the jurisdiction's constitution. In considering whether compliance with the requirements of this subchapter would likely violate the jurisdiction's constitution or an interpretation thereof by the jurisdiction's highest court, the Attorney General shall consult with the chief executive and chief legal officer of the jurisdiction concerning the jurisdiction's interpretation of the jurisdiction's constitution and rulings thereon by the jurisdiction's highest court. (3) Alternative procedures If the jurisdiction is unable to substantially implement this subchapter because of a limitation imposed by the jurisdiction's constitution, the Attorney General may determine that the jurisdiction is in compliance with this chapter if the jurisdiction has made, or is in the process of implementing2 reasonable alternative procedures or accommodations, which are consistent with the purposes of this chapter.	

	(4) Funding reduction If a jurisdiction does not comply with paragraph (3), then the jurisdiction shall be subject to a funding reduction as specified in subsection (a). (c) Reallocation Amounts not allocated under a program referred to in this section to a jurisdiction for failure to substantially implement this subchapter shall be reallocated under that program to jurisdictions that have not failed to substantially implement this subchapter or may be reallocated to a jurisdiction from which they were withheld to be used solely for the purpose of implementing this subchapter. (d) Rule of construction The provisions of this subchapter that are cast as directions to jurisdictions or their officials constitute, in relation to States, only conditions required to avoid the reduction of Federal funding under this section.	

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	§ 20928. Sex Offender Management Assistance (SOMA) program. (a) In general The Attorney General shall establish and implement a Sex Offender Management Assistance program (in this subchapter referred to as the "SOMA program"), under which the Attorney General may award a grant to a jurisdiction to offset the costs of implementing this subchapter. (b) Application The chief executive of a jurisdiction desiring a grant under this section shall, on an annual basis, submit to the Attorney General an application in such form and containing such information as the Attorney General may require. (c) Bonus payments for prompt compliance A jurisdiction that, as determined by the Attorney General, has substantially implemented this subchapter not later than 2 years after July 27, 2006, is eligible for a bonus payment. The Attorney General may make such a payment under the SOMA program for the first fiscal year beginning after that determination. The amount of the payment shall be— (1) 10 percent of the total received by the jurisdiction under the SOMA program for the preceding fiscal year, if that implementation is not later than 1 year after July 27, 2006; and (2) 5 percent of such total, if not later than 2 years after July 27, 2006. (d) Authorization of appropriations In addition to any amounts otherwise authorized to be appropriated, there are authorized to be appropriated such sums as may be necessary to the Attorney General, to be available only for the SOMA program, for fiscal years 2007 through 2009.	

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	§ 20931. Registration of sex offenders released from military corrections facilities or upon conviction. The Secretary of Defense shall provide to the Attorney General the information described in section 20914 of this title to be included in the National Sex Offender Registry and the Dru Sjodin National Sex Offender Public Website regarding persons— (1)(A) released from military corrections facilities; or (B) convicted if the sentences adjudged by courts-martial under chapter 47 of Title 10 (the Uniform Code of Military Justice) do not include confinement; and (2) required to register under this subchapter. **§ 20932. Immunity for good faith conduct.** The Federal Government, jurisdictions, political subdivisions of jurisdictions, and their agencies, officers, employees, and agents shall be immune from liability for good faith conduct under this subchapter.	

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	§ 20903. Tribal registry. (1) Establishment The Attorney General shall contract with any interested Indian tribe, tribal organization, or tribal nonprofit organization to develop and maintain— (A) a national tribal sex offender registry; and (B) a tribal protection order registry containing civil and criminal orders of protection issued by Indian tribes and participating jurisdictions. (2) Authorization of appropriations There is authorized to be appropriated to carry out this section $1,000,000 for each of fiscal years 2014 through 2018, to remain available until expended. **§ 20929. Election by Indian tribes.** (a) Election (1) In general A federally recognized Indian tribe may, by resolution or other enactment of the tribal council or comparable governmental body— (A) elect to carry out this part as a jurisdiction subject to its provisions; or (B) elect to delegate its functions under this part to another jurisdiction or jurisdictions within which the territory of the tribe is located and to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of this part. (2) Imputed election in certain cases A tribe shall be treated as if it had made the election described in paragraph (1)(B) if— (A) it is a tribe subject to the law enforcement jurisdiction of a State under section 1162 of Title 18;	

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	(B) the tribe does not make an election under paragraph (1) within 1 year of July 27, 2006 or rescinds an election under paragraph (1)(A); or (C) the Attorney General determines that the tribe has not substantially implemented the requirements of this part and is not likely to become capable of doing so within a reasonable amount of time. (b) Cooperation between tribal authorities and other jurisdictions (1) Nonduplication A tribe subject to this part is not required to duplicate functions under this part which are fully carried out by another jurisdiction or jurisdictions within which the territory of the tribe is located. (2) Cooperative agreements A tribe may, through cooperative agreements with such a jurisdiction or jurisdictions— (A) arrange for the tribe to carry out any function of such a jurisdiction under this part with respect to sex offenders subject to the tribe's jurisdiction; and (B) arrange for such a jurisdiction to carry out any function of the tribe under this part with respect to sex offenders subject to the tribe's jurisdiction.	

Exhibit E to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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HB-5679, House Concurred, December 16, 2020
HB-5679, As Passed Senate, December 16, 2020

SENATE SUBSTITUTE FOR

HOUSE BILL NO. 5679

A bill to amend 1994 PA 295, entitled

"Sex offenders registration act,"

by amending sections 2, 3a, 4, 4a, 5, 5a, 7, 8, and 9 (MCL 28.722, 28.723a, 28.724, 28.724a, 28.725, 28.725a, 28.727, 28.728, and 28.729), section 2 as amended by 2014 PA 328, section 3a as added by 2011 PA 17, sections 4, 4a, and 5 as amended by 2011 PA 17, section 5a as amended by 2019 PA 82, sections 7 and 9 as amended by 2011 PA 18, section 8 as amended by 2013 PA 2; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2. As used in this act:

~~(a) "Aircraft" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.~~

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(a) ~~(b)~~ "Convicted" means 1 of the following:

(*i*) Having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including, but not limited to, a tribal court or a military court. ~~, and including a conviction~~ **Convicted does not include a conviction that was** subsequently set aside under 1965 PA 213, MCL 780.621 to 780.624**, or otherwise expunged**.

~~(*ii*) Either of the following:~~

(*ii*) ~~(A) Being~~ **Except as otherwise provided in this subparagraph, being** assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004. **An individual who is assigned to and successfully completes a term of supervision under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, is not convicted for purposes of this act.** This ~~sub-subparagraph~~ **subparagraph** does not apply if a petition was granted under section 8c at any time allowing the individual to discontinue registration under this act, including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on and after that date.

~~(B) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004 if the individual is convicted of any other felony on or after July 1, 2011.~~

(*iii*) Having an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28, if both of

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the following apply:

(A) The individual was 14 years of age or older at the time of the offense.

(B) The order of disposition is for the commission of an offense that would classify the individual as a tier III offender.

(*iv*) Having an order of disposition or other adjudication in a juvenile matter in another state or country if both of the following apply:

(A) The individual is 14 years of age or older at the time of the offense.

(B) The order of disposition or other adjudication is for the commission of an offense that would classify the individual as a tier III offender.

(b) ~~(c)~~ "Custodial authority" means 1 or more of the following apply:

(*i*) The actor was a member of the same household as the victim.

(*ii*) The actor was related to the victim by blood or affinity to the fourth degree.

(*iii*) The actor was in a position of authority over the victim and used this authority to coerce the victim to submit.

(*iv*) The actor was a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled.

(*v*) The actor was an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled, or was a volunteer who was not a student in any public school or nonpublic school, or was an employee of this state or of

a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(*vi*) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, the department of corrections who knew that the other person was under the jurisdiction of the department of corrections and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

(*vii*) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, a private vendor that operated a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knew that the other person was under the jurisdiction of the department of corrections.

(*viii*) That other person was a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor was an employee or a contractual employee of, or a volunteer with, the county or the department of corrections who knew that the other person was under the county's jurisdiction and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

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(*ix*) The actor knew or had reason to know that a court had detained the victim in a facility while the victim was awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor was an employee or contractual employee of, or a volunteer with, the facility in which the victim was detained or to which the victim was committed.

(c) ~~(d)~~ "Department" means the department of state police.

(d) ~~(e)~~ "Employee" means an individual who is self-employed or works for any other entity as a full-time or part-time employee, contractual provider, or volunteer, regardless of whether he or she is financially compensated.

(e) ~~(f)~~ "Felony" means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 174, MCL 761.1.

~~(g) "Immediately" means within 3 business days.~~

(f) ~~(h)~~ "Indigent" means an individual to whom 1 or more of the following apply:

(*i*) He or she has been found by a court to be indigent within the last 6 months.

(*ii*) He or she qualifies for and receives assistance from the department of **health and** human services food assistance program.

(*iii*) He or she demonstrates an annual income below the current federal poverty guidelines.

(g) "Internet identifier" means all designations used for self-identification or routing in internet communications or posting.

(h) ~~(i)~~ "Institution of higher education" means 1 or more of

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the following:

(*i*) A public or private community college, college, or university.

(*ii*) A public or private trade, vocational, or occupational school.

(i) ~~(j)~~ "Listed offense" means a tier I, tier II, or tier III offense.

(j) ~~(k)~~ "Local law enforcement agency" means the police department of a municipality.

(k) ~~(*l*)~~ "Minor" means a victim of a listed offense who was less than 18 years of age at the time the offense was committed.

(*l*) ~~(m)~~ "Municipality" means a city, village, or township of this state.

(m) ~~(n)~~ "Registering authority" means the local law enforcement agency or sheriff's office having jurisdiction over the individual's residence, place of employment, or institution of higher learning, or the nearest department post designated to receive or enter sex offender registration information within a registration jurisdiction.

(n) ~~(o)~~ "Registration jurisdiction" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and the Indian tribes within the United States that elect to function as a registration jurisdiction.

(o) ~~(p)~~ "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a ~~wife~~ **person** has a residence separate from that of ~~the~~ **his or her** husband

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or wife, that place at which the person resides the greater part of the time ~~shall~~ **must** be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

(p) ~~(q)~~ "Student" means an individual enrolled on a full- or part-time basis in a public or private educational institution, including, but not limited to, a secondary school, trade school, professional institution, or institution of higher education.

(q) ~~(r)~~ "Tier I offender" means an individual convicted of a tier I offense who is not a tier II or tier III offender.

(r) ~~(s)~~ "Tier I offense" means 1 or more of the following:

(*i*) A violation of section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(*ii*) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor.

(*iii*) A violation of section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor.

(*iv*) A violation of section 449a(2) of the Michigan penal code, 1931 PA 328, MCL 750.449a.

(*v*) A violation of section 520e or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if the victim is 18 years or older.

(*vi*) A violation of section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

(*vii*) Any other violation of a law of this state or a local

ordinance of a municipality, other than a tier II or tier III offense, that by its nature constitutes a sexual offense against an individual who is a minor.

(*viii*) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(*ix*) An attempt or conspiracy to commit an offense described in subparagraphs (*i*) to (*viii*).

(*x*) An offense substantially similar to an offense described in subparagraphs (*i*) to (*ix*) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(s) ~~(t)~~ "Tier II offender" means either of the following:

(*i*) A tier I offender who is subsequently convicted of another offense that is a tier I offense.

(*ii*) An individual convicted of a tier II offense who is not a tier III offender.

(t) ~~(u)~~ "Tier II offense" means 1 or more of the following:

(*i*) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a.

(*ii*) A violation of section 145b of the Michigan penal code, 1931 PA 328, MCL 750.145b.

(*iii*) A violation of section 145c(2) or (3) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(*iv*) A violation of section 145d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.145d, except for a violation arising out of a violation of section 157c of the Michigan penal code, 1931 PA 328, MCL 750.157c.

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(*v*) A violation of section 158 of the Michigan penal code, 1931 PA 328, MCL 750.158, committed against a minor unless either of the following applies:

(A) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation.

(III) The individual is not more than 4 years older than the victim.

(B) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was 16 or 17 years of age at the time of the violation.

(III) The victim was not under the custodial authority of the individual at the time of the violation.

(*vi*) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual 13 years of age or older but less than 18 years of age. This subparagraph does not apply if the court determines that either of the following applies:

(A) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation.

(III) The individual is not more than 4 years older than the victim.

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(B) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was 16 or 17 years of age at the time of the violation.

(III) The victim was not under the custodial authority of the individual at the time of the violation.

(*vii*) A violation of section 462e(a) of the Michigan penal code, 1931 PA 328, MCL 750.462e.

(*viii*) A violation of section 448 of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor.

(*ix*) A violation of section 455 of the Michigan penal code, 1931 PA 328, MCL 750.455.

(*x*) A violation of section 520c, 520e, or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e, and 750.520g, committed against an individual 13 years of age or older but less than 18 years of age.

(*xi*) A violation of section 520c committed against an individual 18 years of age or older.

(*xii*) An attempt or conspiracy to commit an offense described in subparagraphs (*i*) to (*xi*).

(*xiii*) An offense substantially similar to an offense described in subparagraphs (*i*) to (*xii*) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(u) ~~(v)~~ "Tier III offender" means either of the following:

(*i*) A tier II offender subsequently convicted of a tier I or II offense.

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(*ii*) An individual convicted of a tier III offense.

(v) ~~(w)~~ "Tier III offense" means 1 or more of the following:

(*i*) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual less than 13 years of age.

(*ii*) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, committed against a minor.

(*iii*) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350.

(*iv*) A violation of section 520b, 520d, or 520g(1) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and 750.520g. This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.

(*v*) A violation of section 520c or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed against an individual less than 13 years of age.

(*vi*) A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age.

(*vii*) An attempt or conspiracy to commit an offense described in subparagraphs (*i*) to (*vi*).

(*viii*) An offense substantially similar to an offense described in subparagraphs (*i*) to (*vii*) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

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(w) ~~(x)~~ "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

~~(y) "Vessel" means that term as defined in section 44501 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.44501.~~

Sec. 3a. (1) If an individual pleads guilty to or is found guilty of a listed offense or is adjudicated as a juvenile as being responsible for a listed offense but alleges that he or she is not required to register under this act because section ~~2(u)(*v*) or (*vi*)~~ **2(t)(*v*) or (*vi*)** applies or section ~~2(w)(*iv*)~~ **2(v)(*iv*)** applies, and the prosecuting attorney disputes that allegation, the court shall conduct a hearing on the matter before sentencing or disposition to determine whether the individual is required to register under this act.

(2) The individual has the burden of proving by a preponderance of the evidence in a hearing under this section that his or her conduct falls within the exceptions described in subsection (1) and that he or she is therefore not required to register under this act.

(3) The rules of evidence, except for those pertaining to privileges and protections set forth in section 520j of the Michigan penal code, 1931 PA 328, MCL 750.520j, do not apply to a hearing under this section.

(4) The prosecuting attorney shall give the victim notice of the date, time, and place of the hearing.

(5) The victim of the offense has the following rights in a hearing under this section:

(a) To submit a written statement to the court.

(b) To attend the hearing and to make a written or oral

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statement to the court.

(c) To refuse to attend the hearing.

(d) To attend the hearing but refuse to testify or make a statement at the hearing.

(6) The court's decision excusing or requiring the individual to register is a final order of the court and may be appealed by the prosecuting attorney or the individual as a matter of right.

(7) This section applies to criminal and juvenile cases pending on July 1, 2011 and to criminal and juvenile cases brought on and after that date.

Sec. 4. (1) Registration of an individual under this act ~~shall~~ **must** proceed as provided in this section.

(2) For an individual convicted of a listed offense on or before October 1, 1995 who on or before October 1, 1995 is sentenced for that offense, has a disposition entered for that offense, or is assigned to youthful trainee status for that offense, the following shall register the individual by December 31, 1995:

(a) If the individual is on probation for the listed offense, the individual's probation agent.

(b) If the individual is committed to jail for the listed offense, the sheriff or his or her designee.

(c) If the individual is under the jurisdiction of the department of corrections for the listed offense, the department of corrections.

(d) If the individual is on parole for the listed offense, the individual's parole agent.

(e) If the individual is within the jurisdiction of the juvenile division of the probate court or the department of social

services under an order of disposition for the listed offense, the juvenile division of the probate court or the department of social services.

(3) Except as provided in subsection (4), for an individual convicted of a listed offense on or before October 1, 1995:

(a) If the individual is sentenced for that offense after October 1, 1995 or assigned to youthful trainee status after October 1, 1995, the probation agent shall register the individual before sentencing or assignment.

(b) If the individual's probation or parole is transferred to this state after October 1, 1995, the probation or parole agent shall register the individual ~~immediately~~ **not more than 7 days** after the transfer.

(c) If the individual is placed within the jurisdiction of the juvenile division of the probate court or family division of circuit court or committed to the department of ~~social services or family independence agency~~ **health and human services** under an order of disposition entered after October 1, 1995, the juvenile division of the probate court or family division of circuit court shall register the individual before the order of disposition is entered.

(4) For an individual convicted on or before September 1, 1999 of an offense that was added on September 1, 1999 to the definition of listed offense, the following shall register the individual:

(a) If the individual is on probation or parole on September 1, 1999 for the listed offense, the individual's probation or parole agent not later than September 12, 1999.

(b) If the individual is committed to jail on September 1, 1999 for the listed offense, the sheriff or his or her designee not later than September 12, 1999.

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(c) If the individual is under the jurisdiction of the department of corrections on September 1, 1999 for the listed offense, the department of corrections not later than November 30, 1999.

(d) If the individual is within the jurisdiction of the family division of circuit court or committed to the ~~family independence agency~~ **department of health and human services** or county juvenile agency on September 1, 1999 under an order of disposition for the listed offense, the family division of circuit court, the ~~family independence agency,~~ **department of health and human services,** or the county juvenile agency not later than November 30, 1999.

(e) If the individual is sentenced or assigned to youthful trainee status for that offense after September 1, 1999, the probation agent shall register the individual before sentencing or assignment.

(f) If the individual's probation or parole for the listed offense is transferred to this state after September 1, 1999, the probation or parole agent shall register the individual within 14 days after the transfer.

(g) If the individual is placed within the jurisdiction of the family division of circuit court or committed to the ~~family independence agency~~ **department of health and human services** for the listed offense after September 1, 1999, the family division of circuit court shall register the individual before the order of disposition is entered.

(5) Subject to section 3, an individual convicted of a listed offense in this state after October 1, 1995 and an individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted

of any other felony on or after July 1, 2011, shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status for that listed offense or that other felony. The probation agent or the family division of circuit court shall give the individual the registration form after the individual is convicted, explain the duty to register and accept the completed registration for processing under section 6. The court shall not impose sentence, enter the order of disposition, or assign the individual to youthful trainee status, until it determines that the individual's registration was forwarded to the department as required under section 6.

(6) All of the following shall register with the local law enforcement agency, sheriff's department, or the department ~~immediately~~ **not more than 3 business days** after becoming domiciled or temporarily residing, working, or being a student in this state:

(a) Subject to section 3(1), an individual convicted in another state or country on or after October 1, 1995 of a listed offense as defined before September 1, 1999.

(b) Subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses.

(c) Subject to section 3(1), an individual convicted in another state or country of a listed offense before October 1, 1995 and, subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses, who is convicted of any other felony on or after July 1, 2011.

(d) An individual required to be registered as a sex offender in another state or country regardless of when the conviction was

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entered.

(7) If a prosecution or juvenile proceeding is pending on July 1, 2011, whether the defendant in a criminal case or the minor in a juvenile proceeding is required to register under this act ~~shall~~ **must** be determined on the basis of the law in effect on July 1, 2011.

Sec. 4a. (1) An individual required to be registered under this act who is not a resident of this state shall report his or her status in person to the registering authority having jurisdiction over a campus of an institution of higher education if either of the following occurs:

(a) The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment.

(b) As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or possession of the United States, or the individual discontinues his or her studies at that location.

(2) An individual required to be registered under this act who is a resident of this state shall report his or her status in person to the registering authority having jurisdiction where his or her new residence or domicile is located if any of the events described under subsection (1) occur.

(3) The report required under subsections (1) and (2) ~~shall~~ **must** be made as follows:

(a) For an individual registered under this act before October 1, 2002 who is required to make his or her first report under subsections (1) and (2), not later than January 15, 2003.

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(b) ~~Immediately~~ **Not more than 3 business days** after he or she enrolls or discontinues his or her enrollment as a student on that campus including study in this state or another state, a territory or possession of the United States, or another country.

(4) The additional registration reports required under this section ~~shall~~ **must** be made in the time periods described in section 5a(2)(a) to (c) for reports under that section.

(5) The local law enforcement agency, sheriff's department, or department post to which an individual reports under this section shall require the individual to pay the registration fee required under section 5a or ~~section~~ 7(1) and to present written documentation of employment status, contractual relationship, volunteer status, or student status. Written documentation under this subsection may include, but need not be limited to, any of the following:

(a) A W-2 form, pay stub, or written statement by an employer.

(b) A contract.

(c) A student identification card or student transcript.

(6) This section does not apply to an individual whose enrollment and participation at an institution of higher education is solely through the mail or the internet from a remote location.

Sec. 5. (1) An individual required to be registered under this act who is a resident of this state shall report in person**, or in another manner as prescribed by the department,** and notify the registering authority having jurisdiction where his or her residence or domicile is located ~~immediately~~ **not more than 3 business days** after any of the following occur:

(a) The individual changes or vacates his or her residence or domicile.

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(b) The individual changes his or her place of employment, or employment is discontinued.

(c) The individual enrolls as a student with an institution of higher education, or enrollment is discontinued.

(d) The individual changes his or her name.

~~(e) The individual intends to temporarily reside at any place other than his or her residence for more than 7 days.~~

~~(f) The individual establishes any electronic mail or instant message address, or any other designations used in internet communications or postings.~~

~~(g) The individual purchases or begins to regularly operate any vehicle, and when ownership or operation of the vehicle is discontinued.~~

(e) ~~(h)~~ Any change required to be reported under section 4a.

(2) An individual required to be registered under this act who is a resident of this state shall report in the manner prescribed by the department to the registering authority having jurisdiction where his or her residence or domicile is located not more than 3 business days after any of the following occur:

(a) Except as otherwise provided in this subdivision, any change in vehicle information, electronic mail addresses, internet identifiers, or telephone numbers registered to or used by the individual. The requirement to report any change in electronic mail addresses and internet identifiers applies only to an individual required to be registered under this act after July 1, 2011.

(b) The individual intends to temporarily reside at any place other than his or her residence for more than 7 days.

(3) ~~(2)~~ An individual required to be registered under this act, who is not a resident of this state but has his or her place

of employment in this state shall report in person and notify the registering authority having jurisdiction where his or her place of employment is located or the department post of the individual's place of employment ~~immediately~~ **not more than 3 business days** after the individual changes his or her place of employment or employment is discontinued.

(4) ~~(3)~~ If an individual who is incarcerated in a state correctional facility and is required to be registered under this act is granted parole or is due to be released upon completion of his or her maximum sentence, the department of corrections, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(5) ~~(4)~~ If an individual who is incarcerated in a county jail and is required to be registered under this act is due to be released from custody, the sheriff's department, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(6) ~~(5) Immediately~~ **Not more than 7 days** after either of the following occurs, the department of corrections shall notify the local law enforcement agency or sheriff's department having jurisdiction over the area to which the individual is transferred or the department post of the transferred residence or domicile of an individual required to be registered under this act:

(a) The individual is transferred to a community residential program.

(b) The individual is transferred into a level 1 correctional facility of any kind, including a correctional camp or work camp.

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(7) ~~(6)~~ An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located ~~immediately~~ **not more than 3 business days** before he or she changes his or her domicile or residence to another state. The individual shall indicate the new state and, if known, the new address. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state.

(8) ~~(7)~~ An individual required to be registered under this act, who is a resident of this state, shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located not later than 21 days before he or she changes his or her domicile or residence to another country or travels to another country for more than 7 days. The individual shall state the new country of residence or country of travel and the address of his or her new domicile or residence or place of stay, if known. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority.

(9) ~~(8)~~ If the probation or parole of an individual required to be registered under this act is transferred to another state or an individual required to be registered under this act is transferred from a state correctional facility to any correctional facility or probation or parole in another state, the department of corrections shall promptly notify the department and the appropriate law enforcement agency and any applicable sex or child

offender registration authority in the new state. The department shall update the registration and compilation databases.

(10) ~~(9)~~ An individual registered under this act shall comply with the verification procedures and proof of residence procedures prescribed in sections 4a and 5a.

(11) ~~(10)~~ Except as otherwise provided in this section and section 8c, a tier I offender shall comply with this section for 15 years.

(12) ~~(11)~~ Except as otherwise provided in this section and section 8c, a tier II offender shall comply with this section for 25 years.

(13) ~~(12)~~ Except as otherwise provided in this section and section 8c, a tier III offender shall comply with this section for life.

(14) ~~(13)~~ The registration periods under this section exclude any period of incarceration for committing a crime and any period of civil commitment.

(15) ~~(14)~~ For an individual who was previously convicted of a listed offense for which he or she was not required to register under this act but who is convicted of any felony on or after July 1, 2011, any period of time that he or she was not incarcerated for that listed offense or that other felony and was not civilly committed counts toward satisfying the registration period for that listed offense as described in this section. If those periods equal or exceed the registration period described in this section, the individual has satisfied his or her registration period for the listed offense and is not required to register under this act. If those periods are less than the registration period described in this section for that listed offense, the individual shall comply

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with this section for the period of time remaining.

(16) If an individual required to be registered under this act presents an order to the department or the appropriate registering authority that the conviction or adjudication for which the individual is required to be registered under this act has been set aside under 1965 PA 213, MCL 780.621 to 780.624, or has been otherwise expunged, his or her registration under this act must be discontinued. If this subsection applies, the department shall remove the individual from both the law enforcement database and the public internet website maintained under section 8.

Sec. 5a. (1) The department shall mail a notice to each individual registered under this act who is not in a state correctional facility explaining the individual's duties under this act as amended.

(2) Upon the release of an individual registered under this act who is in a state correctional facility, the department of corrections shall provide written notice to that individual explaining his or her duties under this section and this act ~~as amended~~ and the procedure for registration, notification, and verification and payment of the registration fee prescribed under subsection (6) or section 7(1). The individual shall sign and date the notice. The department of corrections shall maintain a copy of the signed and dated notice in the individual's file. The department of corrections shall forward the original notice to the department ~~immediately,~~ **within 7 days,** regardless of whether the individual signs it.

(3) Subject to subsection (4), an individual required to be registered under this act who is not incarcerated shall report in person to the registering authority where he or she is domiciled or

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resides for verification of domicile or residence as follows:

(a) If the individual is a tier I offender, the individual shall report once each year during the individual's month of birth.

(b) If the individual is a tier II offender, the individual shall report twice each year according to the following schedule:

Birth Month	**Reporting Months**
January	January and July
February	February and August
March	March and September
April	April and October
May	May and November
June	June and December
July	January and July
August	February and August
September	March and September
October	April and October
November	May and November
December	June and December

(c) If the individual is a tier III offender, the individual shall report 4 times each year according to the following schedule:

Birth Month	**Reporting Months**
January	January, April, July, and October
February	February, May, August, and November
March	March, June, September, and December
April	April, July, October, and January
May	May, August, November, and February
June	June, September, December, and March
July	July, October, January, and April
August	August, November, February, and May

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September	September, December, March, and June
October	October, January, April, and July
November	November, February, May, and August
December	December, March, June, and September

(4) A report under subsection (3) must be made no earlier than the first day or later than the last day of the month in which the individual is required to report. However, if the registration period for that individual expires during the month in which he or she is required to report under this section, the individual shall report during that month on or before the date his or her registration period expires. When an individual reports under subsection (3), the individual shall review all registration information for accuracy.

(5) When an individual reports under subsection (3) ~~,~~ an officer or authorized employee of the registering authority shall verify the individual's residence or domicile and any information required to be reported under section 4a. The officer or authorized employee shall also determine whether the individual's photograph required under this act matches the appearance of the individual sufficiently to properly identify him or her from that photograph. If not, the officer or authorized employee shall require the individual to ~~immediately~~ obtain a current photograph **within 7 days** under this section. When all of the verification information has been provided, the officer or authorized employee shall review that information with the individual and make any corrections, additions, or deletions the officer or authorized employee determines are necessary based on the review. The officer or authorized employee shall sign and date a verification receipt. The officer or authorized employee shall give a copy of the signed

receipt showing the date of verification to the individual. The officer or authorized employee shall forward verification information to the department in the manner the department prescribes. The department shall revise the law enforcement database and public internet website maintained under section 8 as necessary and shall indicate verification in the public internet website maintained under section 8(2).

(6) Except as otherwise provided in section 5b, an individual who reports as prescribed under subsection (3) shall pay a $50.00 registration fee as follows:

(a) Upon initial registration.

(b) Annually following the year of initial registration. The payment of the registration fee under this subdivision must be made at the time the individual reports in the first reporting month for that individual as set forth in subsection (3) of each year in which the fee applies, unless an individual elects to prepay an annual registration fee for any future year for which an annual registration fee is required. Prepaying any annual registration fee must not change or alter the requirement of an individual to report as set forth in subsection (3). The payment of the registration fee under this subdivision is not required to be made for any registration year that has expired before January 1, 2014 or to be made by any individual initially required to register under this act after January 1, 2023. The registration fee required to be paid under this subdivision must not be prorated on grounds that the individual will complete his or her registration period after the month in which the fee is due.

(c) The sum of the amounts required to be paid under subdivisions (a) and (b) must not exceed $550.00.

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(7) ~~An~~ **Except as otherwise provided in this subsection, an** individual required to be registered under this act shall maintain either a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, with the individual's current address. The license or card may be used as proof of domicile or residence under this section. In addition, the officer or authorized employee may require the individual to produce another document bearing his or her name and address, including, but not limited to, voter registration or a utility or other bill. The department may specify other satisfactory proof of domicile or residence. **The requirement to maintain a valid operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, does not apply to an individual required to be registered under this act who is homeless. As used in this subsection, "homeless" means someone who lacks a fixed or temporary residence.**

(8) An individual registered under this act who is incarcerated shall report to the secretary of state under this subsection ~~immediately~~ **not more than 7 days** after he or she is released to have his or her digitalized photograph taken. The individual is not required to report under this subsection if he or she had a digitized photograph taken for an operator's or chauffeur's license or official state personal identification card before January 1, 2000, or within 2 years before he or she is released unless his or her appearance has changed from the date of that photograph. Unless the person is a nonresident, the photograph

must be used on the individual's operator's or chauffeur's license or official state personal identification card. The individual shall have a new photograph taken when he or she renews the license or identification card as provided by law, or as otherwise provided in this act. The secretary of state shall make the digitized photograph available to the department for a registration under this act.

(9) If an individual does not report under this section or under section 4a, the department shall notify all registering authorities as provided in section 8a and initiate enforcement action as set forth in that section.

(10) The department shall prescribe the form for the notices and verification procedures required under this section.

Sec. 7. (1) Registration information obtained under this act ~~shall~~ **must** be forwarded to the department in the format the department prescribes. Except as provided in section 5b(3), a $50.00 registration fee ~~shall~~ **must** accompany each original registration. All of the following information ~~shall~~ **must** be obtained or otherwise provided for registration purposes:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known. An individual who is in a witness protection and relocation program is only required to use the name and identifying information reflecting his or her new identity in a registration under this act. The registration and compilation databases ~~shall~~ **must** not contain any information identifying the individual's prior identity or locale.

(b) The individual's ~~social security~~ **Social Security** number and any ~~social security~~ **Social Security** numbers or alleged ~~social~~

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~~security~~ **Social Security** numbers previously used by the individual.

(c) The individual's date of birth and any alleged dates of birth previously used by the individual.

(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection ~~shall~~ **must** identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the person spends or will spend the majority of his or her time.

(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision ~~shall~~ **must** include the dates the lodging is used or to be used.

(f) The name and address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection ~~shall~~ **must** include the address or location of employment if different from the address of the employer. If the individual lacks a fixed employment location, the information obtained under this subdivision ~~shall~~ **must** include the general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment.

(g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.

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(h) All telephone numbers registered to the individual or ~~routinely~~ used by the individual**, including, but not limited to, residential, work, and mobile telephone numbers**.

(i) ~~All~~ **Except as otherwise provided in this subdivision, all** electronic mail addresses and ~~instant message addresses assigned to the individual or routinely~~ **internet identifiers registered to or** used by the individual. ~~and all login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.~~**This subdivision applies only to an individual required to be registered under this act after July 1, 2011.**

(j) The license plate number ~~, registration number,~~ and description of any ~~motor~~ vehicle ~~, aircraft, or vessel~~ owned or ~~regularly~~ operated by the individual. ~~and the location at which the motor vehicle, aircraft, or vessel is habitually stored or kept.~~

(k) The individual's driver license number or state personal identification card number.

(*l*) A digital copy of the individual's passport and other immigration documents.

(m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.

(n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.

(o) A complete physical description of the individual.

(p) The photograph required under section 5a.

(q) The individual's fingerprints if not already on file with

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the department and the individual's palm prints. An individual required to be registered under this act shall have his or her fingerprints or palm prints or both taken not later than September 12, 2011 if his or her fingerprints or palm prints are not already on file with the department. The department shall forward a copy of the individual's fingerprints and palm prints to the ~~federal bureau of investigation~~ **Federal Bureau of Investigation** if not already on file with that bureau.

(r) Information that is required to be reported under section 4a.

(2) A registration ~~shall~~ **must** contain all of the following:

(a) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the photograph required under this act.

(b) The text of the provision of law that defines the criminal offense for which the sex offender is registered.

(c) Any outstanding arrest warrant information.

(d) The individual's tier classification.

(e) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile has been entered into the federal combined DNA index system (CODIS).

(f) The individual's complete criminal history record, including the dates of all arrests and convictions.

(g) The individual's Michigan department of corrections number and status of parole, probation, or supervised release.

(h) The individual's ~~federal bureau of investigation~~ **Federal Bureau of Investigation** number.

(3) The form used for notification of duties under this act ~~shall~~ **must** contain a written statement that explains the duty of

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the individual being registered to provide notice of changes in his or her registration information, the procedures for providing that notice, and the verification procedures under section 5a.

(4) The individual shall sign a registration and notice. However, the registration and notice ~~shall~~ **must** be forwarded to the department regardless of whether the individual signs it or pays the registration fee required under subsection (1).

(5) The officer, court, or an employee of the agency registering the individual or receiving or accepting a registration under section 4 shall sign the registration form.

(6) An individual shall not knowingly provide false or misleading information concerning a registration, notice, or verification.

(7) The department shall prescribe the form for a notification required under section 5 and the format for forwarding the notification to the department.

(8) The department shall promptly provide registration, notice, and verification information to the ~~federal bureau of investigation~~ **Federal Bureau of Investigation** and to local law enforcement agencies, sheriff's departments, department posts, and other registering jurisdictions, as provided by law.

Sec. 8. (1) The department shall maintain a computerized law enforcement database of registrations and notices required under this act. The law enforcement database ~~shall~~ **must** contain all of the following information for each individual registered under this act:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.

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(b) The individual's ~~social security~~ **Social Security** number and any ~~social security~~ **Social Security** numbers or alleged ~~social security~~ **Social Security** numbers previously used by the individual.

(c) The individual's date of birth and any alleged dates of birth previously used by the individual.

(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection ~~shall~~ **must** identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the individual spends or will spend the majority of his or her time.

(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision ~~shall~~ **must** include the dates the lodging is used or to be used.

(f) The name and address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection ~~shall~~ **must** include the address or location of employment if different from the address of the employer.

(g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.

(h) All telephone numbers registered to the individual or ~~routinely~~ used by the individual**, including, but not limited to,**

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residential, work, and mobile telephone numbers.

(i) ~~All~~ **Except as otherwise provided in this subdivision, all** electronic mail addresses and ~~instant message addresses assigned to the individual or routinely~~ **internet identifiers registered to or** used by the individual. ~~and all login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.~~**This subdivision applies only to an individual required to be registered under this act after July 1, 2011.**

(j) The license plate number ~~or registration number~~ and description of any ~~motor~~ vehicle ~~, aircraft, or vessel~~ owned or ~~regularly~~ operated by the individual. ~~and the location at which the motor vehicle, aircraft, or vessel is habitually stored or kept.~~

(k) The individual's driver license number or state personal identification card number.

(*l*) A digital copy of the individual's passport and other immigration documents.

(m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.

(n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.

(o) A complete physical description of the individual.

(p) The photograph required under section 5a.

(q) The individual's fingerprints and palm prints.

(r) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the

photograph required under this act.

(s) The text of the provision of law that defines the criminal offense for which the sex offender is registered.

(t) Any outstanding arrest warrant information.

(u) The individual's tier classification and registration status.

(v) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile has been entered into the federal combined DNA index system (CODIS).

(w) The individual's complete criminal history record, including the dates of all arrests and convictions.

(x) The individual's Michigan department of corrections number and the status of his or her parole, probation, or release.

(y) The individual's ~~federal bureau of investigation~~ **Federal Bureau of Investigation** number.

(2) The department shall maintain a public internet website separate from the law enforcement database described in subsection (1) to implement section 10(2) and (3). Except as provided in subsection (4), the public internet website ~~shall~~ **must** contain all of the following information for each individual registered under this act:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.

(b) The individual's date of birth.

(c) The address where the individual resides. If the individual does not have a residential address, information under this subsection ~~shall~~ **must** identify the village, city, or township used by the individual in lieu of a residence.

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(d) The address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection ~~shall~~ **must** include the address or location of employment if different from the address of the employer.

(e) The address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.

(f) The license plate number ~~or registration number~~ and description of any ~~motor~~ vehicle ~~, aircraft, or vessel~~ owned or ~~regularly~~ operated by the individual.

(g) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred.

(h) A complete physical description of the individual.

(i) The photograph required under this act. If no photograph is available, the department shall use an arrest photograph or Michigan department of corrections photograph until a photograph as prescribed in section 5a becomes available.

(j) The text of the provision of law that defines the criminal offense for which the sex offender is registered.

(k) The individual's registration status.

~~(*l*) The individual's tier classification.~~

(3) The following information ~~shall~~ **must** not be made available on the public internet website described in subsection (2):

(a) The identity of any victim of the offense.

(b) The individual's ~~social security~~ **Social Security** number.

(c) Any arrests not resulting in a conviction.

(d) Any travel or immigration document numbers.

(e) ~~Any electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and any login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.~~**The individual's tier classification.**

(f) The individual's driver license number or state personal identification card number.

(4) The public internet website described in subsection (2) ~~shall~~ **must** not include the following individuals:

(a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d.

(b) An individual registered solely because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country.

(c) An individual registered solely because he or she was convicted of a single tier I offense, other than an individual who was convicted of a violation of any of the following:

(*i*) Section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(*ii*) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor.

(*iii*) Section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor.

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(*iv*) Section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

(*v*) An offense substantially similar to an offense described in subparagraphs (*i*) to ~~(*v*)~~ **(*iv*)** under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(5) The compilation of individuals ~~shall~~ **must** be indexed alphabetically by village, city, township, and county, numerically by zip code area, and geographically as determined appropriate by the department.

(6) The department shall update the public internet website with new registrations, deletions from registrations, and address changes at the same time those changes are made to the law enforcement database described in subsection (1). The department shall make the law enforcement database available to each department post, local law enforcement agency, and sheriff's department by the law enforcement information network. Upon request by a department post, local law enforcement agency, or sheriff's department, the department shall provide to that post, agency, or sheriff's department the information from the law enforcement database in printed form for the designated areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction. The department shall provide the ability to conduct a computerized search of the law enforcement database and the public internet website based upon the name and campus location of an institution of higher education.

(7) The department shall make the law enforcement database available to a department post, local law enforcement agency, or sheriff's department by electronic, computerized, or other similar

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means accessible to the post, agency, or sheriff's department. The department shall make the public internet website available to the public by electronic, computerized, or other similar means accessible to the public. The electronic, computerized, or other similar means shall provide for a search by name, village, city, township, and county designation, zip code, and geographical area.

(8) If a court determines that the public availability under section 10 of any information concerning individuals registered under this act violates the constitution of the United States or this state, the department shall revise the public internet website described in subsection (2) so that it does not contain that information.

(9) If the department determines that an individual has completed his or her registration period, including a registration period reduced by law under 2011 PA 18, or that he or she otherwise is no longer required to register under this act, the department shall remove the individual's registration information from both the law enforcement database and the public internet website within 7 days after making that determination.

~~(10) If the individual provides the department with documentation showing that he or she is required to register under this act for a violation that has been set aside under 1965 PA 213, MCL 780.621 to 780.624, or that has been otherwise expunged, the department shall note on the public internet website that the violation has been set aside or expunged.~~

Sec. 9. (1) Except as provided in subsections (2), (3), and (4), an individual required to be registered under this act who willfully violates this act is guilty of a felony punishable as follows:

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(a) If the individual has no prior convictions for a violation of this act, by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.

(b) If the individual has 1 prior conviction for a violation of this act, by imprisonment for not more than 7 years or a fine of not more than $5,000.00, or both.

(c) If the individual has 2 or more prior convictions for violations of this act, by imprisonment for not more than 10 years or a fine of not more than $10,000.00, or both.

(2) An individual who **willfully** fails to comply with section 5a, other than payment of the fee required under section 5a(6), is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.

(3) An individual who willfully fails to sign a registration and notice as provided in section 7(4) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $1,000.00, or both.

(4) An individual who willfully refuses or fails to pay the registration fee prescribed in section 5a(6) or ~~section~~ 7(1) within 90 days of the date the individual reports under section 4a or 5a is guilty of a misdemeanor punishable by imprisonment for not more than 90 days.

(5) The court shall revoke the probation of an individual placed on probation who willfully violates this act.

(6) The court shall revoke the youthful trainee status of an individual assigned to youthful trainee status who willfully violates this act.

(7) The parole board shall rescind the parole of an individual released on parole who willfully violates this act.

(8) An individual's failure to register as required by this act or a violation of section 5 may be prosecuted in the judicial district of any of the following:

(a) The individual's last registered address or residence.

(b) The individual's actual address or residence.

(c) Where the individual was arrested for the violation.

Enacting section 1. Sections 33 to 36 of the sex offenders registration act, 1994 PA 295, MCL 28.733 to 27.736, are repealed.

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Exhibit F to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v

GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of the Michigan State Police, in their individual capacities,

Defendants.

No. 2:22-cv-10209

HON. MARK GOLDSMITH

MAG. CURTIS IVY, JR.

MOTION TO DISMISS

DEFENDANTS MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendants Gretchen Whitmer and Joseph Gasper move this Court to dismiss Plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(1) and (6) for the reasons set forth in the accompanying brief in support.

Pursuant to Local Rule 7.1(a) and the Order Regarding Filings, the undersigned counsel certifies that he personally spoke to opposing

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counsel, explaining the nature of the relief sought by way of this motion and seeking concurrence in the relief; opposing counsel expressly denied concurrence. (ECF No. 15, PageID.963-964.)

For the reasons stated in the attached brief in support, Defendants request that the Court grant this motion, dismiss the complaint with prejudice and award any additional appropriate relief.

Respectfully submitted,

/s/ *Eric M. Jamison*
Assistant Attorney General
Attorney for Whitmer and Gasper
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
jamisone@michigan.gov
P75721

Dated: May 31, 2022

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all others similarly situated,

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BRIEF IN SUPPORT OF MOTION TO DISMISS

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/s/ *Eric M. Jamison*
Assistant Attorney General
Attorney for Whitmer and Gasper
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
jamisone@michigan.gov
P75721

Dated: May 31, 2022

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CONCISE STATEMENT OF ISSUES PRESENTED

1. Is there an Ex Post Facto violation when the new SORA does not impose punishment?

2. Were the Due Process rights of registrants impinged by the new SORA that reduced the impact of the regulatory scheme for tracking and monitoring registrants?

3. Does the new SORA violate the First Amendment by requiring registrants to provide certain information to law enforcement, or by requiring registrants to affirm that they understand their obligations?

4. Can an ordinary person understand what is required by the new SORA?

5. Should registrants that committed different offenses be treated the same under the guise of Equal Protection?

6. Has the statute of limitations lapsed on claims that arose more than a decade ago?

7. Are Plaintiffs' claims moot in light of SORNA's reporting requirements?

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CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority: Mich. Comp. Law § 28.721 *et. seq.*

34 U.S.C. § 20911 *et. seq.*

Willman v United States Off. of Att'y Gen.,, 972 F.3d 819 (6th Cir. 2020)

Smith v. Doe, 538 U.S. 84 (2003)

Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963)

Conn. Dep't of Pub. Safety v. Doe, 538 U.S. 1 (2003)

Speet v. Schuette, 762 F. 3d 867 (6th Cir. 2013)

American Civil Liberties Union v. National Sec. Agency, 493 F.3d 644 (6th Cir. 2007)

Columbia Nat. Res., Inc. v. Tatum, 58 F.3d 1101 (6th Cir. 1995)

F.C.C. v. Beach Communications, Inc., 508 U.S. 307 (1993)

Garza v. Lansing Sch. Dist., 972 F.3d 853 (6th Cir. 2020)

Lewis v. Continental Bank Corp., 494 U.S. 472 (1990)

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INTRODUCTION

While the complaint raises ten claims, the gravamen of the complaint can be digested into four: (1) the Ex Post Facto and Due Process challenges; (2) the First Amendment arguments; (3) the vagueness challenges; and (4) the Equal Protection challenges.

The short answer is that all of these claims fail because Michigan's Sex Offender Registration Act, as amended effective March 24, 2021 (the "new SORA"), is virtually identical in all significant substantive respects to the federal Sex Offender Registration and Notification Act ("SORNA"). And the federal courts – including the Sixth Circuit – have specifically rejected Ex Post Facto claims, and they have rejected the other claims on similar grounds to the parallel language within the SORNA. This Court should dismiss the complaint on all counts. The only way any of these claims may succeed is if the federal SORNA is also unconstitutional, which it is not, as almost every court has ruled.

For the Ex Post Facto claims, the analysis resolving these counts is straight-forward. Because Michigan's SORA is now on all fours with federal SORNA, this Court must apply the Sixth Circuit's decision to

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reject an Ex Post Facto argument against the federal SORNA to this complaint. *See Willman v* 972 F.3d 819. The Plaintiffs' effort to complain of the continuing application of the unamended parts of the Michigan's new SORA law from 2011 overlooks the fact that this Court can only afford relief if the SORA, as a whole, constitutes punishment. The new SORA does not. An individual review of the substantive provisions of Michigan's law confirms this fact.

For the Due Process arguments, Michigan's new SORA uses the conviction offense as the sole basis for registration, barring a procedural Due Process claim. The new SORA does not violate any substantive Due Process rights as it does not impinge upon a fundamental right of the Plaintiffs and is not punishment.

For the First Amendment challenges, the same reasoning applies regarding federal SORNA. The further point is that Michigan's new SORA does not impinge any cognizable First Amendment interests of the Plaintiffs.

For the vagueness challenges, the Michigan's new SORA is not unconstitutionally vague. It provides sufficient notice to the registrants

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of their obligations under Michigan law. The courts in reviewing the same language in other cases have so ruled.

For the Equal Protection challenges, Michigan's new SORA makes rational distinctions between classes of registrants. The same categorizations present in the federal SORNA have been upheld across the country.

Since many of the harms Plaintiffs complain of accrued over a decade ago, their claims are barred by the statute of limitations.

Finally, in light of the Plaintiffs' almost identical continuing reporting requirements under federal SORNA, all of their claims are also moot. This Court should dismiss the complaint.

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STATEMENT OF FACTS

Consistent with Fed. R. Civ. P. 10(c), Defendants adopt by reference the statement of facts set forth in their response to the motion for preliminary injunction. (ECF No. 39, PageID.1141-1222.)

STANDARD OF REVIEW

In a motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6), this Court must accept as true the allegations of the complaint and then determine whether the statements are sufficient to make out a right of relief. *United States v. Gaubert*, 499 U.S. 315, 327 (1991). However, although it must accept well-pled facts as true, the Court is not required to accept a plaintiff's legal conclusions. *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009). In evaluating the sufficiency of a plaintiff's pleadings, this Court may make reasonable inferences in the non-moving party's favor, "but [this Court is] not required to draw [p]laintiffs' inference." *Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1248 (11th Cir. 2005). Similarly, conclusory allegations are "not entitled to be assumed true." *Iqbal*, 556 U.S. at 681.

A complaint may be dismissed if the facts as pled do not state a claim for relief that is plausible on its face. *See Iqbal*, 556 U.S. at 679

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(explaining "only a complaint that states a plausible claim for relief survives a motion to dismiss"); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561–62, 570 (2007) (retiring the prior "unless it appears beyond doubt that the plaintiff can prove no set of facts" standard). In *Twombly,* the Supreme Court emphasized a complaint "requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do[.]" *Twombly*, 550 U.S. at 555. Factual allegations in a complaint need not be detailed but "must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (internal citations and quotations omitted).

In *Iqbal*, the Supreme Court reiterated that although Rule 8 of the Federal Rules of Civil Procedure does not require detailed factual allegations, it does demand "more than an unadorned, the-defendant-unlawfully-harmed-me accusation." 556 U.S. at 678. A complaint must state a plausible claim for relief, and "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The mere possibility the defendant acted unlawfully is

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insufficient to survive a motion to dismiss. *Id*. The well-pled allegations must nudge the claim "across the line from conceivable to plausible. . . ." *Twombly*, 550 U.S. at 570.

In a motion to dismiss for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1), the Court "must consider the allegations of fact in the complaint to be true and evaluate jurisdiction accordingly." *Gentek Bldg. Prods., Inc. v. Sherwin-Williams Co.*, 491 F.3d 320, 330 (6th Cir. 2007).

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ARGUMENT

I. There is no Ex Post Facto violation.

The case law from the U.S. Supreme Court and the Sixth Circuit provides the background to the general principles that govern this matter. But the dispositive issue is a relatively simple one. This Court is bound to follow the binding precedent from the Sixth Circuit. *United States v. White*, 920 F.3d 1109, 1115 (6th Cir. 2019) ("the [lower courts] should follow the case which directly controls") (citations omitted). And like the other circuits, the Sixth Circuit has ruled that the federal SORNA is not a violation of Ex Post Facto. *See Willman* 972 F.3d at 824–25, cert. denied sub nom. *Willman v. Wilkinson*, 141 S. Ct. 1269 (2021), reh'g denied sub nom. *Willman v. Garland*, 141 S. Ct. 1731 (2021).

Because Michigan's SORA is almost identical to federal SORNA in all material respects, the *Willman* decision binds this Court and requires it to dismiss the Ex Post Facto challenge. (ECF No. 39-3, PageID.1239-1299.) That is the beginning and end of it.

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A. The new SORA and SORNA are nearly identical and challenges to SORNA are routinely rejected.

The Michigan SORA and federal SORNA are almost a mirror image of each other. (ECF No. 39-3, PageID.1239-1299.) Finding that the new SORA violates Ex Post Facto principles, would mean that the federal SORNA is also unconstitutional. Such a finding would be inconsistent with courts across the country.

Ex Post Facto challenges to SORNA have been routinely rejected by federal courts, including the Sixth Circuit. *See, e.g.*, *Willman*, 972 F.3d at 824–25; s*ee also United States v. Parks*, 698 F.3d 1, 5–6 (1st Cir. 2012); *United States v. Guzman*, 591 F.3d 83, 94 (2d Cir. 2010), as amended (Jan. 8, 2010); *United States v. Shenandoah*, 595 F.3d 151, 158–59 (3d Cir. 2010), abrogated on other grounds by *Reynolds v. United States*, 565 U.S. 432 (2012); *United States v. Wass,* 954 F.3d 184, 189–93 (4th Cir. 2020); *United States v. Young*, 585 F.3d 199, 204–06 (5th Cir. 2009); *United States v. Felts*, 674 F.3d 599, 605–06 (6th Cir. 2012); *United States v. Leach*, 639 F.3d 769, 773 (7th Cir. 2011), abrogated in part on other grounds by *Nichols v. United States*, 578 U.S. 104 (2016); *Bacon v. Neer*, 631 F.3d 875, 878 (8th Cir. 2011); *United States v. Elkins*, 683 F.3d 1039, 1045 (9th Cir. 2012); *United*

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States v. Lawrance, 548 F.3d 1329, 1336 (10th Cir. 2008); *United States v. W.B.H.*, 664 F.3d 848, 855–60 (11th Cir. 2011).

In *Willman,* the Sixth Circuit reviewed constitutional challenges by a Michigan registrant who committed his sexual offense in 1993 for which he served ten years in prison. 972 F.3d at 822. Based on the *federal SORNA* enacted in 2006, he was required to register under Michigan's SORA. *Id.* Consistent with the Sixth Circuit decision in *Does I,* Willman obtained relief in 2019 when the federal court ordered the 2006 and 2011 amendments not to be enforced against him, that he be removed from the Michigan registry, and that he "no longer be subject to any registration or verification requirements." *Id.* The other defendant – the U.S. Attorney General – argued that the order had no bearing on his obligations under the federal SORNA. *Id.*

In response, Willman argued that the relief he obtained with respect to the state registry relieved him of his obligation to conform to the *federal SORNA*. The Sixth Circuit disagreed. *Willman,* 972 F.3d at 822. ("The main issue in this appeal is whether SORNA applies to plaintiff, even though he lacks state-law sex offender registration and notification obligations. We hold that it does.").

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Significantly, Willman also raised a claim that the SORNA violated the Ex Post Facto Clause, and the Sixth Circuit rejected that argument. *Id.* at 824 ("we considered and rejected the argument that SORNA violates that provision of the Constitution") (citing *United States v. Felts,* 674 F.3d 599, 605–06 (6th Cir. 2012) along with ten other circuits). Also, it explained that relief obtained was based on the Sixth Circuit's decision in *Does #1–5*, 834 F.3d 696, noting that Michigan's SORA before its amendment was found to be "an unconstitutional ex post facto law because it was retroactive, and its stringent restrictions (*such as severe limits on where sex offenders were allowed to live and work*) constituted punishment." *Id.* at 822 n.1 (emphasis added). Michigan law now matches the federal SORNA since the student safety zones and the other problematic provisions were repealed. Mich. Comp. Law § 28.733-736; 28.725(2)(a); and 28.728(3)(e).

In short, there is no support in law to conclude that the Michigan SORA and the federal SORNA run afoul of Ex Post Facto principles. Nonetheless, additional analysis is provided below to further support the argument that there is no Ex Post Facto violation with the new SORA.

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B. The new SORA does not violate the Ex Post Facto Clause.

Consistent with Fed. R. Civ. P. 10(c), Defendants adopt by reference their argument in their response to the motion for preliminary injunction regarding Ex Post Facto laws. (ECF No. 39, PageID. 1181-1206.)

II. Plaintiffs' Due Process claims regarding reporting requirements without a prior determination of current dangerousness must be dismissed.

Plaintiffs claim that the retroactive extension of reporting requirements from 25 years to life for some registrants, without an individualized assessment of a registrant's dangerousness, violates Due Process. (ECF No. 1, PageID.173-174, ¶¶ 667-675.) As explained below, Plaintiffs fail to make a valid procedural or substantive Due Process claim and the claims are untimely.

A. Plaintiffs' procedural Due Process claims must be dismissed for failure to state a claim.

Plaintiffs' claims that procedural Due Process requires a hearing to determine if they are currently dangerous prior to an extension of their registration period has been specifically rejected by the U.S. Supreme Court in *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003).

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Plaintiffs who assert a right to a hearing under the Due Process clause must show that the facts they seek to establish in that hearing are relevant under the statutory scheme. *Id.* at 8.

The requirement that Plaintiffs register for life under the new SORA is based solely on their prior conviction, which is "a fact that a convicted offender has already had a procedurally safeguarded opportunity to contest." *Id.* at 7. Even if Plaintiffs could prove that they are not likely to be currently dangerous, Michigan has decided that registrants convicted of certain specified offenses must register for life. Mich. Comp. Law § 28.725(13).

States are not barred by principles of "procedural due process" from drawing such classifications. *Fullmer v. Michigan Dept. of State Police,* 360 F.3d 579, 582 (6th Cir. 2004) (quoting *Conn. Dep't of Pub. Safety* 538 U.S. at 8). Additionally, SORA's lifetime registration requirement is not punishment. Plaintiffs' procedural Due Process claims must therefore be dismissed for failure to state a claim.

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B. Plaintiffs' substantive Due Process claims must be dismissed for failure to state a claim.

The substantive component of the Due Process clause protects "fundamental rights" that are so "implicit in the concept of ordered liberty" that "neither liberty nor justice would exist if they were sacrificed." *Palko v. Conn.*, 302 U.S. 319, 325 (1937). These rights include "the rights to marry, to have children, to direct the education and upbringing of one's children, to marital privacy, to use contraception, to bodily integrity, and to abortion." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). "The Supreme Court has cautioned, however, that it has 'always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open-ended.'" *Doe v. Michigan Dept. of State Police*, 490 F.3d 491, 500 (6th Cir. 2007) (quoting *Glucksburg*, 521 U.S. at 720).

Courts reviewing a substantive Due Process claim must first determine a "careful description of the asserted right," *Reno v. Flores*, 507 U.S. 292, 302 (1993), and then determine if that right is "deeply rooted in this Nation's history and tradition" and "implicit in the

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concept of ordered liberty," such that it can be considered a "fundamental right." *Glucksberg*, 521 U.S. at 721.

Plaintiffs do not have a fundamental right to be free from SORA registration and notification requirements. *See e.g.*, *Doe v. Michigan Dept. of State Police*, 490 F.3d at 500; *In re Wentworth*, 651 N.W.2d 773, 777–78 (Mich. Ct. App. 2002). Any liberty interest regarding after-the-fact registration obligations should be analyzed as a potential Ex Post Facto violation and not a substantive Due Process claim. Plaintiffs have failed to state a plausible claim that their Due Process rights have been violated.

III. The new SORA does not violate the First Amendment.

It is well established that the First Amendment protects "the right to speak freely and the right to refrain from speaking at all." *Wooley v. Maynard*, 430 U.S. 705, 714 (1977). Plaintiffs allege that the new SORA compels speech by requiring registrants to report extensive information. (ECF. No 1, PageID.182-184). Not so.

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A. Most registry information is not private.

First, it's important to note that the Constitution does not provide registrants the rights to keep their registry information private. *Cutshall v. Sundquist,* 193 F.3d 466, 481 (6th Cir. 1999). "The privacy interest of sex offenders in keeping their personal information confidential is not a privacy interest of constitutional dimension." *Willman v. United States Off. of Att'y Gen.*, No. 19-10360, 2019 WL 4809592, at *5 (E.D. Mich. Oct. 1, 2019), aff'd sub nom. *Willman v. United States Off. of Att'y Gen.*, 972 F.3d 819 (6th Cir. 2020) (noting that the Constitution does not encompass a general right to nondisclosure of private information and holding that the plaintiff's right to privacy claim with respect to SORNA was "not plausible on its face.")

Registration requirements are collateral consequence to a criminal conviction. *Leslie v. Randle*, 296 F.3d 518, 521-522 (6th Cir. 2002); *Bailey v. Wainwright*, 951 F.3d 343, 346 (6th Cir. 2020). "[T]here is no constitutional right to privacy in one's criminal record." *Cline v. Rogers,* 87 F.3d 176, 179 (6th Cir. 1996). "Although the public availability of the information may have a lasting and painful impact on the convicted

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sex offender, these consequences flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record." *Littlefield v. Slatery*, No. 3:19-CV-00490, 2020 WL 263585, at *3 (M.D. Tenn. Jan. 17, 2020) (ECF No. 30-4, PageID.1300-1304.) Cf. *Prynne v. Settle*, 848 F. App'x 93, 105 (4th Cir. 2021) (holding with respect to Virginia's sex offender registry statute that "to the extent that any of the information in the registry could be deemed nonpublic, such as a registrant's work or home address or appearance, the public disclosure is justified by the government's interest in protecting the public by alerting them of the location of known sex offenders).

B. SORA's registration requirements do not violate the First Amendment's prohibition against compelled speech.

Numerous courts have examined the question of whether reporting information is unlawful compelled speech and have held that it is not. *See e.g.*, *United States v. Arnold*, 740 F.3d 1032, 1035 (5th Cir. 2014) (holding that Congress enacted SORNA to protect the public by establishing a vehicle to identify those convicted of certain crimes); Cf. *United States v. Sindel,* 53 F.3d 874, 878 (8th Cir. 1995) (compelled

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disclosure of information on an IRS form was not unlawful compelled speech).

Despite Plaintiffs assertions, SORA only requires them to disclose facts, not to state a position or opinion. *See e.g.* Ex. A, Comparison Chart. Courts that have found that sex offender registration compels speech have repeatedly found that registration requirements satisfied strict scrutiny.[1] Ex. B, *United States v. Doby*, No. 18-CR-40057-HLT, 2019 WL 5825064, at *4 (D. Kan. Nov. 7, 2019) (SORNA's registration requirement satisfied strict scrutiny, meaning it was narrowly tailored to serve a compelling governmental interest); *United States v. Fox*, 286 F. Supp. 3d 1219, 1224 (D. Kan. 2018) (SORNA requires convicted sex offenders to disclose information to states who, in turn, publish that information in a database; it does not require sex offenders to declare their status to every person they meet. SORNA survives strict scrutiny

[1] Although the United States Supreme Court has not directly addressed this issue, they did suggest that a substantially similar process was constitutional. *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 800 (1988). In *Riley*, North Carolina had passed a law requiring professional fundraisers to disclose to potential donors what percentage of money they raised in the last year had gone to charity at the time of the solicitation. *Riley*, 487 U.S. at 785, 798. The Supreme Court suggested that a law requiring professional fundraisers to disclose the fundraisers' cut of the donations to the state who then could publish the information would pass constitutional muster. *Id* at 800. This is the procedure used by SORA. *See e.g. Fox*, 286 F. Supp. 3d. at 1224.

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and does not offend the First Amendment.); Ex. C *Prater v. Linderman,* No. 18-cv-992, 2019 WL 6711561, at *9 (E.D. Mich. December 10, 2019) (Michigan's SORA's in-person registration requirement does not violate the First Amendment, citing *Fox,* 286 F. Supp. 3d at 1035.)

Plaintiffs further argue that SORA requires registrants to sign a form stating that they understand their reporting responsibilities and criminalizes failure to do so unlawfully compels their speech in violation of the First Amendment. (ECF No.1, PageID.189-191.) This is also a requirement of federal SORNA, although SORNA does not appear to have a corresponding crime for non-compliance. 34 U.S.C. § 20919(a)(2) (the sex offender shall read and sign a form stating that they understand the registration requirement.)

First, it is worth noting that penalties associated with the SORA form are limited to the original registration.[2] "The individual shall sign a *registration and notice*." Mich. Comp. Law § 28.727(4) (emphasis added). The statute goes on to explain what is required for registration. *Id*. at (1)-(2). "An individual who willfully fails to sign a *registration*

[2] See Forms (michigan.gov), Sex Offender Registry, *RI-004 Michigan Sex Offender Registration/Verification/Update*

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and notice as provided in section 7(4) is guilty of a misdemeanor . . ." Mich. Comp. Law § 28.729(3) (emphasis added). While the form is for initial registration, verification, and in-person updates, there is no statutory authority to penalize someone who does not sign a "verification" or "in-person update."

In addition, a number of other states have statutes with the same requirements, some of them with criminal sanctions for non-compliance. *See e.g.,* Alabama, § 15-20A-10(g) (failure to comply a Class C felony); Illinois, 730 ILCS 150/4 and 150/5 (failure to comply results in revocation of probation or parole); Louisiana, LA R.S. 15§543(7); Massachusetts, MA ST 6 § 178E(a) (requiring that a registrant acknowledge duties and penalties in writing); Nevada, N.R.S. 179D.450(3)(a)(2) (failure to comply a class D felony); North Carolina, N.C.G.S.A. § 14-208.8(a)(1); Oklahoma, 57 Okl. St. Ann. § 585(A)(2) (failure to comply is a 5-year felony); Pennsylvania, 42 Pa.C.S.A. § 9799.20(2), 9799.23(a)(5); Vermont, 13 V.S.A. § 5406(3) (failure to comply is a 2-year felony); West Virginia, W. Va. Code, § 15-12-2(g). There are also several states that require more than an acknowledgement of notice, they require the registrant to sign a form

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stating that the requirements were explained to them. *See e.g.,* Kansas, K.S.A. 22-4904(a)-(e) (failure to comply a level 6 felony); Maine - 34-A M.R.S.A. § 11222(2)(f) (failure to comply is a class D felony); Ohio, R.C. § 2950.03(B) (requiring acknowledgement that requirements were explained and a finding by government official that registrant understands requirements); Rhode Island, Gen. Laws 1956, § 11-37.1-5(b)(6).

Second, despite the "compelled understanding" requirement being part of SORNA for sixteen years and the numerous related state statutes, it appears that there is not a single reported case of any court finding this to be unconstitutional, or even one challenging this requirement. The issue of whether a requirement that registrants sign a form stating that they understand their reporting responsibilities and criminalizes failure to do so unlawfully compels their speech in violation of the First Amendment appears to be an issue of first impression.

As Plaintiffs state in their complaint, any requirement that a registrant admit that they understand SORA's requirements is not contained in the statute, it is part of a form used by the Michigan State police. (ECF No.1, PageID.189-191.) On its face, nothing in the SORA

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statute requires a registrant to acknowledge understanding SORA's requirements, only that they sign a form that provides notice of those requirements. Mich. Comp. Law § 28.727(4).

Plaintiff's also challenge that the requirement that registrants sign the form, as applied, is unlawful compelled speech. Mandating speech that a person would not otherwise make alters the content of the speech and is considered a content-based regulation requiring strict scrutiny. *Riley v. National Federation of the Blind of North Carolina, Inc.,* 487 U.S. 781 (1988). As mentioned above, courts that have found that sex offender registration compels speech have repeatedly found that registration requirements satisfied strict scrutiny. Nonetheless, as this is an issue of first impression, additional analysis is provided below.

A law satisfies strict scrutiny when the government proves that the law is narrowly tailored to serve compelling governmental interests. SORA clearly serves a compelling state interest by protecting citizens through the identification of persons convicted of specified offenses. *See e.g., People v. Betts,* 507 Mich. 527, 558 (2021). The only question is whether the requirement that registrants sign a form stating they

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understand the reporting requirements is narrowly tailored to serve that purpose.

SORA protects the public by allowing the general public and state law enforcement to monitor offenders convicted of specified offenses. Mich. Comp. Law § 28.721. It does this, in part, by requiring offenders to notify law enforcement when they move. For the statutory scheme to be effective, it is important that all registrants both recognize their responsibilities under the law and are held accountable if they fail to comply.

The requirement that the offender sign a form stating that they have been given and understand the requirements emphasizes their importance, both to the offender and to the official explaining them to the offender. If the offender does not understand the requirements, they can ask questions to ensure that they do understand at the time the form is signed. Although the form may be used as evidence to show willful violation of the law as required by Mich. Comp. Law § 28.729, an offender can present contrary evidence that they interpreted or understood the requirements differently. This requirement in narrowly tailored to ensure that registrants make efforts to understand and take

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seriously their ongoing requirements under the law. This serves the compelling state interest in monitoring offenders by ensuring compliance. Therefore, it survives strict scrutiny and does not unlawfully compel speech.

C. The new SORA does not impermissibly infringe free speech.

Plaintiffs also allege that the new SORA's requirement that registrants report information relating to their internet accounts and activity ("Internet identifiers") is invalid under the First Amendment (as incorporated into the Fourteenth Amendment) because it substantially interferes with Plaintiffs' access to the internet as a forum for speech and eliminates Plaintiffs' opportunities for anonymous internet speech. (ECF No. 1, PageID.191-193, ¶¶ 753-762.) Plaintiffs, in making general statements about the effect of the new SORA on registrants, appear to be making a facial First Amendment challenge. (*See e.g.,* ECF No. 1, PageID.192, ¶¶ 767-760.)

A law is unconstitutional under the First Amendment if it operates as an outright ban or impermissibly burdens anonymous online speech. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011). However, "a state may permissibly infringe upon this right when its

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interest is important enough and the law is appropriately tailored to meet the stated interest." *Doe v. Shurtleff*, 628 F.3d 1217, 1222 (10th Cir. 2010). Courts look at the chilling effect the law's requirement of identification has on those individuals deciding whether to speak. *Id*. at 1225.

"Where a plaintiff makes a facial challenge under the First Amendment to a statute's constitutionality, the facial challenge is an overbreadth challenge." *Speet v. Schuette,* 762 F. 3d 867 (6th Cir. 2013) (quotes and citations omitted). However, the Sixth Circuit has made it clear that courts in this Circuit "will not apply the 'strong medicine' of overbreadth analysis where the parties fail to describe the instances of arguable overbreadth of the contested law." *Speet*, 726 F.3d at 878 (internal quotation marks and citation omitted). A plaintiff " 'must demonstrate from the text of the statute and from actual fact that a substantial number of instances exist in which the law cannot be applied constitutionally.' " *United States v. Coss*, 677 F.3d 278, 289 (6th Cir. 2012) (quoting *Am. Booksellers Found. for Free Expression v. Strickland*, 601 F.3d 622, 627 (6th Cir. 2010)).

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In an overbreadth challenge the plaintiff bears the burden: "to demonstrate that a 'substantial number of instances exist in which the law cannot be applied constitutionally.' " *Glenn v. Holder*, 690 F.3d 417, 422 (6th Cir. 2012) (quoting *Richland Bookmart, Inc. v. Knox Cnty.*, 555 F.3d 512, 532 (6th Cir. 2009)). A plaintiff may not "leverag[e] a few alleged unconstitutional applications of the statute into a ruling invalidating the law in all of its applications." *Connection Distrib. Co., v Holder*, 557 F.3d 321, 340 (2009).

The new SORA does not in any way limit Plaintiff's online speech or unmask registrants' anonymity to the public. *See Snyder,* 101 F. Supp. at 703. Plaintiffs claim that the new SORA will result in email addresses and internet identifiers of registrants being posted publicly (ECF No. 1, PageID.192.) However, they provide no facts to support those claims. Indeed, a cursory review of the public registry refutes the allegation.[3] Although new SORA does require registrants to disclose internet identifiers to law enforcement this does not unconstitutionally infringe on their right to anonymous speech. *Doe v. Shurtleff*, 628 F.3f 1217 (10th Cir. 2010); *Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014).

[3] https://mspsor.com/Home/Search.

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What is more, federal regulations prohibit the public posting of such information. 28 U.S.C. § 20916(c) and 20920(b)(4); 76 F.R. § 1630, 1637; 86 F.R. § 69856, 69858.

Plaintiffs have also failed to describe the specific instances of overbreadth of the law, or its chilling effect on prospective registrants, other than a subjective fear that they might be subject to possible harassment and intimidation. (ECF No. 1, PageID.192, ¶759.) "[T]o allege a sufficient injury under the First Amendment, a plaintiff must establish that he or she is regulated, constrained, or compelled directly by the government's actions, instead of by his or her own subjective chill." *American Civil Liberties Union v. National Sec. Agency*, 493 F.3d 644, 661 (6th Cir. 2007) (citing *Laird v. Tatum*, 408 U.S. 1, 11 (2007)).

IV. The new SORA is not unconstitutionally vague.

A statute is not unconstitutionally vague if an ordinary person can decipher what is prohibited by the statute. *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972). "[T]he Supreme Court has made it clear that the vagueness doctrine has two primary goals. First, to ensure fair notice to the citizenry; second, to provide standards for enforcement by the police, judges, and juries." *Columbia Nat. Res., Inc. v. Tatum*, 58

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F.3d 1101, 1104 (6th Cir. 1995). "The requirement of fair notice is not applied mechanically or without regard for the common sense judgment that people do not review copies of every law passed." *Id.*

A statute that penalizes someone for "passive conduct that does not alert the doer to the consequences of his deed" is violative of Due Process. *Lambert v. California*, 355 U.S. 225, 228 (1957). Void for vagueness challenges are evaluated as applied, rather than in the abstract. However, "[i]t is an intrinsic aspect of language that every word contains some degree of ambiguity. *Cf. Johnson v. United States,* 559 U.S. 133, 139 (2010) (Scalia, J.) ("[C]ontext determines meaning."). *Doe v. Snyder*, 101 F. Supp. 3d 672, 690–91 (E.D. Mich. 2015).

Moreover, "SORA was not enacted to serve a trap for individuals who have committed sex offenses in the past." *Id.* at 694. Registrants must have knowledge about their obligations before they may be convicted for a violation. *Id.* citing *Lambert v. California,* 355 U.S. 225, 240 (1957). [A]s a sort of 'junior version of the vagueness doctrine,' the canon of strict construction of criminal statutes, or rule of lenity, ensures fair warning by so resolving ambiguity in a criminal statute as

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to apply it only to conduct clearly covered." *United States v. Lanier,* 520 U.S. 259, 266 (1997).

Indeed, the new SORA amendments include a willful requirement – "an individual required to be registered under this act who *willfully* violates this act . . ." (emphasis added) Mich. Comp. Law § 28.729(1). In other words, before someone can be criminally liable, it must be shown that they understood the requirements and willfully disobeyed them. (*i.e.,* they know that all their friends call them "Zeke", and they know that they have a legal obligation to provide that name to law enforcement as a nickname by which they have been known, and they *willfully* withhold that name.)

A. The requirement to provide certain information is clear.

Plaintiffs take issue with several reporting and registration requirements of the new SORA:

> Reporting of telephone numbers registered to or used by the individual, including, but not limited to, residential, work, and mobile telephone numbers, and any changes must be reported within three business days.[4] Mich. Comp. Law § 28.725(2)(a) and 28.727(1)(h).

[4] This information may be updated by mail. See FN 1.

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Reporting of all electronic mail addresses and internet identifiers registered to or used by the individual, of those required to register after July 1, 2011, and any changes must be reported within three business days.[5] Mich. Comp. Law § 28.725(2)(a) and 28.727(1)(i).

Reporting of the license plate number and description of any vehicle owned or operated by the individual, and any changes must be reported within three business days. Mich. Comp. Law § 28.725(2)(a) and 28.727(1)(j).[6]

Reporting of the name and address of the individual's employers, and any changes must be reported within three business days. Mich. Comp. Law § 28.725(1)(b) and 28.727(1)(f).

Reporting of aliases, nicknames, ethic or tribal names, or other names by which the individual is or has been known. Mich. Comp. Law § 28.727(1)(a).

Reporting of the address where the individual resides and the address for temporary lodging used, or to be used, by the individual when the individual is away from their residence for more than seven days.[7] Mich. Comp. Law § 28.725(1)(a), (2)(b) and 28.727(d)(e).

Reporting of the name and address of trade schools. Mich. Comp. Law § 28.722(h) and 28.727(1)(g).

Registration for out of state offenders that commit substantially similar offences. Mich. Comp. Law § 28.722(r)(*x*), (t)(*vi*)(B)(*xiii*), and (v)(*viii*).

(ECF. No. 1, PageID.136-137, 140-141, 142-146).

[5] This information may be updated by mail. See FN 1.

[6] This information may be updated by mail. See FN 1.

[7] Temporary lodging information may be updated by mail. See FN 1.

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The statute is not unconstitutionally vague. Any lawyer worth their salt can come up with a myriad of different ways to interpret a statute and cast doubt on what a phrase means, however, that is not the standard.

The standard is whether an ordinary person can understand what is required. The plain language of the statute is clear and provides fair notice to registrants. *Patel v. Patel*, 324 Mich. App. 631, 640 (2018) (holding that courts look to plain language of statute to ascertain its meaning). Registrants may be burdened by the requirements, but that does not equate with being unconstitutionally vague.

1. Registered to, or used by, and owned, operated or used.

The new SORA requires registrants to report email addresses, internet identifiers and phone numbers "registered to" or "used by" registrants. It also requires reporting of vehicles "owned," "operated" or "used" by registrants. Plaintiffs allege they are confused by what these requirements are. (ECF No. 1, PageID 137.)

The language regarding the reporting of email addresses, internet identifiers and phone numbers registered to or used by the individual is clear. Mich. Comp. Law § 28.722(g); 28.727(i) and (h). What is more,

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the federal SORNA contains almost the same language. Ex. A, Comparison Chart. Consequently, a finding that the new SORA is unconstitutionally vague would mean that the federal SORNA is also unconstitutionally vague.

a. Email addresses and phone numbers.

The clear statutory language requires the reporting of email addresses and phone numbers "registered to" or "used by" registrants – there is not much, if any, room for debate about what is required to be reported. The plain language does not indicate that registrants must report every email address or phone numbers (or internet identifier, or vehicle) that have ever been used at any point during a registrant's lifetime. (ECF No. 1, PageID 137.) Had the Legislature intended to require all email address or phone numbers ever used during someone's lifetime, or all vehicles ever owned during someone's lifetime, the Legislature could have simply inserted language to that effect. (*e.g.,* all email addresses ever registered to or ever used by the individual.) They did not do so. Accordingly, the plain language of the statute is not vague in this regard. The federal SORNA contains the same reporting requirement. 28 C.F.R. § 72.6(b); 34 U.S.C. § 20916(a).

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b. Internet identifiers.

The new SORA defines internet identifiers. Mich. Comp. Law § 28.722(g). The federal SORNA requires reporting the same information and uses the same definition of internet identifier. 28 C.F.R. § 72.6(b); 34 U.S.C. § 20916(e)(2).

The Iowa Supreme Court recently examined a vagueness challenge to the "internet identifier" reporting requirement. The court found that "internet identifier" was not vague, and contrary to the criminal defendants' assertions that internet identifier could mean "email accounts, online banking accounts, blogging accounts, newspaper account logins, accounts for online video and music streaming services, social media accounts, Apple ID, and all online shopping accounts," the court found that that reading was too broad. *State v. Aschbrenner*, 926 N.W.2d 240, 252 (Iowa 2019).

The court reasoned that the commonsense interpretation of internet identifier meant "accounts used to send messages, posts, and other *user-generated* communications or postings that implicate the public safety concerns at issue with the sex offender registry." *Id.*

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Plaintiffs seem to be taking the same position as Aschbrenner, "all designations used for self-identification or routing in internet communications or posting . . .would include IP addresses of Plaintiffs' computers, laptops or tablets, and similar information for phones." (ECF. No. 1, PageID.137). That approach is obviously too broad.

Under Florida law, sex offenders must also report "all electronic mail address and internet identifiers" within 48 hours of use. *Delgado v. Swearingen*, 375 F. Supp. 3d 1251, 1255 (N.D. Fla. 2018). It was challenged as unconstitutionally vague.

The court found that although the statute was not a model of clarity, it gave fair notice to registrants of the conduct that is punishable. *Delgado* 375 F. Supp. 3d 1251, 1262. The court noted that there was a scienter requirement, which weighed into the analysis – *i.e.,* the registrant must know that they have to report a specific type of internet identifier and they knowingly failed to do so. (*Id*.) Ultimately, the court found that the statute is clear and the "ambiguity exists only at the margins." *Id*. at 1263.

Similar to the scienter requirement under Florida law, the Michigan law has a willfulness requirement. Mich. Comp. Law §

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28.729(1); and *see Hill v. Colorado*, 530 U.S. 703, 732 (2000) (explaining that a statutory scienter requirement "ameliorated" concerns of facial vagueness). And, while any law could be clearer, any vagueness is at the margins.

An Alabama district court explained due to the myriad of ways one might communicate on the internet, there is going to be some level of confusion. Ex. D, *Doe #1 v. Marshall*, No. 2:15-CV-606-WKW, 2018 WL 1321034, at *11 (M.D. Ala. Mar. 14, 2018). But the confusion really stems from the disbelief that the law can reach so far – must a registrant that connects to the wi-fi at a coffee shop report the IP address to law enforcement, or if s/he uses a neighbor's smartphone to check the weather? (The Alabama statute required reporting of IP addresses.) The court explained that no matter how intrusive the law is, the ordinary meaning or plain language commands. *Id*. at *12.

The Michigan law is clear about what needs to be reported.

c. Vehicle information.

The new SORA contains almost the verbatim text as the SORNA and requires the plate number and description of any vehicle owned or

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operated by the individual. Mich. Comp. Law § 28.727(1)(j); 34 U.S.C. § 20914(a)(6).

In earlier litigation, Plaintiffs alleged that the language "any motor vehicle . . . owned or regularly operated by the individual" was vague. *Doe v. Snyder*, 101 F. Supp. 3d 672, 686 (E.D. Mich. 2015). Plaintiffs took issue with the language "regularly operated." Now, in the style of whack-a-mole litigation, and after the statute was amended to remove the "regularly operated" provision, Plaintiffs take aim at the other words of the statute that remain unchanged – owned or operated.

The plain language is clear that any ownership or operation of a vehicle requires reporting. There is nothing unclear about it. Plaintiffs paint a picture of vagueness by asking whether borrowing a car from a friend or getting a loaner while their other car is being repaired means they must report it. (ECF No. 1, PageID.137, 139-140).

According to the plain language of the statute, the answer is simple – yes, they must report it. Mich. Comp. Law § 28.727(1)(j). If there is any doubt, the definition of "vehicle" found in Mich. Comp. Law 28.722(w) of the new SORA incorporates the Michigan Vehicle Code (MVC) definition found in Mich. Comp. Law § 257.79 which necessarily

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and implicitly incorporates the concepts of "operate" and "operating" as those terms are defined in the MVC (Mich. Comp. Law § 257.36) and have been applied by the courts.

The Michigan Supreme Court has already offered guidance on what "operate" means. *See People v. Yamat*, 475 Mich 49, 52-53 (2006) (holding that the term operate is not ambiguous and means the exercise of actual physical control over a motor vehicle.)

A district court in Nebraska examined a violation for vagueness challenge related to the specific language at issue here. Under Nebraska law, registrants had to report a description and regular storage location of any vehicle *owned or operated* by the person. *Doe v. Nebraska*, 734 F. Supp. 2d 882, 924 (D. Neb. 2010). The Court simply found that the "language is unambiguous." *Id*. at 925.

2. Employers.

The new SORA requires reporting the place of employment, just as the federal SORNA does. 34 U.S.C. § 29014(a)(4) (requiring the name and address of *any place* where the sex offender is an employee or will be an employee.) Mich. Comp. Law § 28.725(1)(b). The Alaska

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statute in *Smith*, also contained a reporting requirement for "place of employment." *Smith v. Doe*, 538 U.S. 84, 90 (2003).

Plaintiffs present a myriad of hypotheticals where they indicate that they are unsure whether they are required to report (*e.g.*, shoveling a neighbor's sidewalk.) (ECF No. 1, PageID 141-142.) However, as explained above, there is a knowledge requirement and under the canon of strict construction, the conduct must be clearly covered.

Black's Law Dictionary defines "place of employment as "[t]he location at which work done in connection with a business is carried out; the place where some process or operation related to the business is conducted." PLACE OF EMPLOYMENT, Black's Law Dictionary (11th ed. 2019). SORNA states that in instances where there is no fixed place of employment, the registrant may provide "other information describing where the sex offender works or will work with whatever definiteness is possible under the circumstances." 28 C.F.R. § 72.6(c)(3). This makes sense. There may be hundreds of nuanced situations regarding place of employment, but common-sense dictates what must be reported – the location where they work or other information with whatever definiteness is possible under the circumstances.

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3. Nicknames, temporary lodging, physical descriptions, and trade schools.

The new SORA and federal SORNA require that reporting of nicknames and aliases. Mich. Comp. Law § 28.727(1)(a); 34 U.S.C. § 20914(a)(1).

Plaintiffs seem to be grasping at straws here. The language is clear – nicknames and aliases must be reported. If someone had a nickname of "Slick" or "Gunner", under the plain language of the statute it should be reported. However, it does not stand to reason that if someone's nickname in 1975 was "Slugger" and the registrant doesn't recall that name, that they have to go back in time and try to come-up with that information. The statute does not say as much and cannot be reasonably implied.

The new SORA also requires reporting of temporary lodging "*to be used*" when a registrant is "*expected to be away*" from their residence more than seven days. Mich. Comp. Law § 28.727(1)(e). Similar information is required by federal SORNA. 28 C.F.R. § 72.6(c).

Of course, any number of situations may arise where travel plans do not go as expected – flights get canceled, weather happens, vehicles get flat tires, someone gets sick, etc., etc. A registrant may have to book

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a different hotel or stay longer than anticipated. However, the language is clear that registrants must report temporary lodging if they are expected to be away for more than seven days. Again, there may be endless travel situations that cause changes in plans, but the statutory language is not unconstitutionally vague.

Registrants must also provide a physical description under the new SORA and under federal SORNA. Mich. Comp. Law § 28.727(1)(o); and 34 U.S.C. § 20914(b)(1). Plaintiffs question whether they must report moles, toupees, scars, etc. (ECF No. 1, PageID 145.) However, the plain language of the statute does not indicate that the information is required. Had the Legislature wanted toupees to be reported, they could have included language in the statute, but they did not. A cursory review of the registry shows that the information regarding physical information is sex, race, hair color, height, weight, eye color, scars, marks and tattoos.[8]

Registrants must also provide information regarding trade schools. Mich. Comp. Law § 28.722(h). Federal SORNA requires reporting of student status. 34 U.S.C. § 20913(c). Plaintiffs question

[8] Search - Michigan Sex Offender Registry (mspsor.com)

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whether attending a cooking class is a trade school, or whether a private carpentry class is a trade school.

Had the Legislature intended to include such types of educational opportunities under the reporting requirements of the new SORA they could have included language in the statute. They did not. What the law requires is reporting regarding enrollment or discontinued enrollment in trade schools and other institutions of higher education. Mich. Comp. Law § 28.725(1)(c).

4. Substantially similar offenses.

The new SORA requires registration for those that have committed "substantially similar" offenses out-of-state. Mich. Comp. Law § 28.722(r)(x), (t)(xiii), (v)(viii). This requirement comes from the definition section of Michigan and points to federal law to explain what is substantially similar. *Id.*

Indeed, it is nearly impossible for a Legislature to draft language that covers every possible scenario and is easily understandable and not open to various interpretations. There is no constitutional violation just because there could be some vagueness around the edges.

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V. There is no Equal Protection violation.

The Equal Protection Clause commands that "no state shall ... deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. "The Equal Protection Clause of the Fourteenth Amendment . . . is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985). Plaintiffs alleging an equal protection claim must make two showings: first, that the defendants treated them differently from other similarly situated persons, and second, that this difference in treatment is not supported by a sufficiently strong governmental interest. *See e.g.*, *Jolivette v. Husted*, 694 F.3d 760, 771 (6th Cir. 2012); *Ctr. for Bio-Ethical Reform, Inc. v. Napolitano*, 648 F.3d 365, 379 (6th Cir. 2011); *Scarbrough v. Morgan Cty. Bd. of Educ.*, 470 F.3d 250, 260 (6th Cir. 2006).

Plaintiffs allege that certain registrants are being denied Equal Protection because they are not permitted to petition for removal from the registry like other types of offenders. (ECF No. 1, PageID.178-179.) They claim that offenders who are convicted of less serious offenses, or who committed offenses when they were juveniles, are the same as

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offenders that committed more serious offenses or committed their offenses as adults. *Id.*

Initially, Plaintiffs are not similarly situated to the individuals given the opportunity for removal from the registry. The Legislature afforded the opportunity for certain offenders to be removed from the registry if they met certain criteria. This includes offenders convicted of less serious offenders, certain juvenile offenders, and cases involving "consensual" sexual acts with a 13- to 16-year-old victim if the offender was not more than four years older than the victim.

In contrast, Plaintiffs were convicted of more serious offenses as adults and/or were more than four years older than the victim. It is similar to other circumstances where different facts lead to less serious offenses eligible for more lenient treatment (*e.g.*, someone convicted of manslaughter may be eligible for parole sooner that someone convicted of second-degree murder) or even no criminal liability (*e.g.* a 13 to 16 year old can legally consent to sexual contact with someone no more than five years older than them, Mich. Comp. Law § 750.520e(1)(a).) Plaintiffs do not claim that they have been treated any differently than other individuals who have been convicted of the same offenses and/or

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were less than four years older than the victims. Therefore, there is no Equal Protection violation. Nonetheless, additional analysis is provided below to further support the argument that SORA does not violate equal protection.

Unless the legislation classification under attack involves a suspect class, the classification need only be rationally related to a legitimate government goal to survive constitutional challenge. *See Cutshall*, 493 F.3d at 482 (citing *Chapman v. United States*, 500 U.S. 453 (1991)). The Sixth Circuit and other federal circuits have universally held that "sex offenders" are not a suspect class. *Does v. Munoz*, 507 F.3d 961, 966 (6th Cir. 2007); *Cutshall*, 493 F.3d at 482-483; *Wiley v. WV House of Delegates*, No. 2:14-CV-10974, 2017 WL 663671, at *7 (S.D.W. Va. Jan. 30, 2017), report and recommendation adopted sub nom., 2017 WL 663350 (S.D.W. Va. Feb. 17, 2017) (citing *Roe v. Marcotte*, 193 F.3d 72 (2d. Cir. 1999)); *Artway v. Atty. Gen.*, 81 F.3d 1235 (3d. Cir. 1996); *Stauffer v. Gearhart*, 741 F.3d 574, 587 (5th Cir. 2014); *United States v. Lemay*, 260 F.3d 1018, 1030-31 (9th Cir. 2001); *Riddle v. Mundragon*, 83 F.3d 1197, 1207 (10th Cir. 1996); *Doe v. Moore*, 410 F.3d 1337, 1346 (11th Cir. 2005); *Windwalker v. Gov. of*

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Alabama, 579 Fed.Appx. 769 (11th Cir. 2014)). "Legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest." *Cleburne*, 473 U.S. at 440.

"The Michigan legislature specified in [Mich. Comp. Law § 28.271(a)] that it had 'determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and particularly the children, of this state.'" *Doe v. Michigan Dept. of State Police*, 490 F.3d at 504. The state has a rational basis for treating sex offenders differently from other offenders by requiring them to register. *Munoz*, 507 F.3d at 966 (6th Cir. 2007); *Cutshall*, 493 F.3d at 482-483.

"[E]qual protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). "In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably

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conceivable state of facts that could provide a rational basis for the classification." *Id.* "Under rational-basis review, where a group possesses 'distinguishing characteristics relevant to interests the State has the authority to implement,' a State's decision to act on the basis of those differences does not give rise to a constitutional violation." *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 366-67 (2001) (quoting *Cleburne.*, 473 U.S. 432, 441 (1985)). Courts "will not overturn such [government action] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the [government's] actions were irrational." *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 84 (2000) (citing *Vance v. Bradley*, 440 U.S. 93, 97 (1979)).

As sex offenders are not a suspect class, the new SORA is presumed to be valid if the classification drawn by the statute is rationally related to a legitimate state interest. The Michigan Legislature chose to increase the length of the registration requirements for registrants based on the severity of the wrongdoing. The Legislature has the authority to make these kinds of categorical

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judgments so long as they are reasonably related to the statute's nonpunitive purposes and consistent with its regulatory objectives. *See Smith*, 538 U.S. at 102.

The Michigan Legislature made a determination that offenders convicted of less serious offenses should have the ability to be removed from the registry early if they meet certain criteria. Mich. Comp. Law § 28.728c(1). The determination that a less serious conviction indicates a lower level of potential risk is rationally related to their stated goal. The Legislature also provided this ability to juveniles and certain youthful offenders not more than four years older than their victims. Mich. Comp. Law § 28.728c(2) and (3). The state has a legitimate interest in not imposing the harshest collateral consequence on children and young adults, especially if the conduct is less likely to be predatory. *See e.g., Doe v. Settle,* 24 F.4th 932, 944-945 (4th Cir. 2022). The four-year gap provision, in recognizing that difference in ages between a victim and offender can be an indicator of risk, is rationally related this purpose. *Id.*

The choice of the Michigan Legislature to provide a path off the registry for certain classes of offenders does not violate Equal

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Protection, and "[t]he judiciary may not sit as a super legislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." *Doe v. Michigan Dept. of State Police*, 490 F.3d at 504 (citing *New Orleans v. Dukes*, 427 U.S. 297, 305 (1976)). A legislative choice may be "based on rational speculation unsupported by evidence or empirical data." *F.C.C. v. Beach Communications, Inc.,* 508 U.S. 307, 315 (1993).

VI. The Statute of Limitations has lapsed on many of the claims.

Since Congress did not specify a statute of limitations for cases brought under 42 U.S.C. 1983, federal courts look to limitations periods from the state where the action was brought. *Wolfe v. Perry*, 412 F.3d 707, 713-14 (6th Cir. 2005). "[T]he appropriate statute of limitations to be borrowed for § 1983 actions ... is the state's three-year limitations period for personal injury claims." *Garza v. Lansing Sch. Dist.*, 972 F.3d 853, 867 n.8 (6th Cir. 2020). The Sixth Circuit has consistently held that the limitations period for a § 1983 claim begins to run "when the plaintiff knows or has reason to know that the act providing the

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basis of his or her injury has occurred." *See Garza*, 972 F.3d at 867 n.8. The statute of limitations has lapsed on many of Plaintiffs claims.

First, Plaintiffs claim that their Due Process rights were violated because of the retroactive effects of a change in law resulting in their obligation to register, or to register for a longer period. (ECF No. 1, PageID.174.) (*e.g.,* John Doe C was reclassified as a Tier III offender because of the 2011 amendments, which extended his registration period from 25 years to life.) (ECF No. 1, PageID.18-19.)

Next, Plaintiffs claim a violation of Due Process based on the plea agreements that they made, which they allegedly would not have made had they known that the SORA registration law might change in the future. (ECF No. 1, PageID.184-186.) (*e.g.*, John Doe A alleges that had he known the child kidnapping conviction would result in registration, he would have proceeded to trial.) (ECF No. 1, PageID.14.)

Finally, Plaintiffs also claim a Due Process violation as a result of a provision of the SORA that requires registration for individuals that commit specific types of crimes – non-sex offenses. (ECF No. 1, PageID.186-188.) (*e.g.,* Doe A was required to register for life because the crime he committed in 1990, included a plea of no contest for

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kidnapping, which became a registerable offense in 2011.) (ECF No. 1, PageID.13, 14.)

Plaintiffs explain that the 2011 amendments to SORA required some registrants to become lifetime registrants, changed the frequency of reporting, and maintained the requirements to provide personal information. (ECF No. 1, PageID.156-159.) According to Plaintiffs, these requirements were unmodified in the new SORA. (*Id.*) In other words, many of the provisions being challenged in this lawsuit have remained unchanged for over a decade.

The time for challenging the change for registration periods has long since passed. This exact issue was looked as recently, and the court found that for purposes of Due Process, the original extension of the registration period was the operative date for the statute of limitations, rather than any ongoing effects of the registration requirement. Ex. E, *Doe v. Rausch,* No. 3:20-CV-00728, 2022 WL 481240, at *3 (M.D. Tenn. Feb. 16, 2022).

In *Rausch*, the plaintiff plead guilty to two counts of aggravated sexual battery in 1999. *Id*. at 1. At the time, the law required him to register as a sex offender, but he could seek removal ten years after

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completing his sentence, which was completed in 2006. *Id*. In 2004, Tennessee changed its law, which reclassified the Rausch as a violent sex offender, and subjected him to lifetime registration. *Id*. The last amendment to the Tennessee law was in 2015, which maintained the same lifetime registration requirement. *Id*. at 1.

Rausch filed suit in 2020 alleging violations of Due Process because of the change in law that required him to register for life, amongst other claims. *Id*. The court dismissed the Due Process claim and reasoned that any deprivation of Due Process occurred at the time the law was originally imposed. *Id*. at 3.

The new SORA contains the exact same language as the 2011 amendments regarding registration requirements. (ECF No. 39-3, PageID.1239-1299.) As a result, any claims regarding changes that occurred in 2011 that extended registration terms are time barred. Moreover, the analysis in *Rausch* with respect to Due Process is equally appliable here.

Any claims regarding registration requirements that were amended in 2006 or 2011 (*e.g.,* length of registration periods) and remain unchanged in the 2020 amendments, are time barred.

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VII. Plaintiffs' claims must be dismissed for lack of jurisdiction because their claims are moot in light of SORNA reporting requirements.

Article III of the Constitution limits the federal courts to adjudicating actual cases or controversies. U.S. Const. Art. III, § 2. A plaintiff's personal interest in the litigation must exist at the beginning of the suit and continue throughout the course of litigation. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 170 (2000). The Supreme Court has described mootness as "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* (quoting *Arizonans v. Arizona*, 520 U.S. 43, 68 n.22 (1997)). Thus, cases that "do not involve actual, on-going controversies are moot and must be dismissed for lack of jurisdiction." *Campbell v. PMI Food Equip. Grp. Inc.*, 509 F.3d 776, 782 (6th Cir. 2007).

A case becomes moot when it no longer presents a live controversy, or the parties lack a cognizable interest in the outcome. *Laidlaw*, 528 U.S. at 212 (Scalia, J., dissenting). "Past exposure to illegal conduct does not in itself show a present case or controversy

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regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects." *O'Shea v. Littleton*, 414 U.S. 488, 495-96 (1974).

Plaintiff seeks injunctive and declaratory relief to prevent the Defendants from enforcing the registration requirements of the new SORA. However, even if their relief is granted by this Court, it does not end their obligation to register as a sex offender.

"Although 'a sex offender's SORNA obligations are coextensive with corresponding state registration requirements, SORNA imposes duties on all sex offenders, irrespective of what they may be obligated to do under state law.'" *Willman v. United States Off. of Atty. Gen.*, Case No.: 19-10360, 2019 WL 4809592, *2 (E.D. Mich. October 10, 2019) (citing *U.S. v. Paul*, 718 F. Appx 360, 363-364 (6th Cir. 2017)); *see also United States v. Billiot*, 785 F.3d 1266, 1269 (8th Cir. 2015) ("SORNA imposes an independent federal obligation for sex offenders to register that does not depend on, or incorporate, a state-law registration requirement."); *United States v. Pendleton*, 636 F.3d 78, 86 (3d Cir. 2011) (holding that "Pendleton's federal duty to register under SORNA was not dependent upon his duty to register under Delaware law");

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Kennedy v. Allera, 612 F.3d 261, 262 (4th Cir. 2010) (affirming that "SORNA's clear and unequivocal requirement that individuals convicted of sex offenses must register as sex offenders under federal law applie[s] . . . even though Maryland had not fully implemented SORNA.").

Plaintiffs' continuing duty to comply with federal SORNA registration requirements, which are practically identical to the requirements of the new SORA make the requested relief moot. A general interest in changing the law is not enough to maintain a live case or controversy; Plaintiffs must continue to have a personal stake in the outcome. *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 478 (1990) (citing *Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983).

Plaintiffs' continuing reporting requirements under SORNA, even if granted relief in the instant case, remove their personal stake in the outcome. Therefore, Plaintiff's claims must be dismissed for lack of jurisdiction.

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CONCLUSION AND RELIEF REQUESTED

For the reasons stated above, the complaint should be dismissed in its entirety - The new SORA does not impose punishment so there is no Ex Post Facto violation. Likewise, the Due Process claim should be dismissed because the SORA is a regulatory scheme for tracking registrants. Courts have consistently found that SORA does not violate the First Amendment. Ordinary registrants can understand their obligations, so the new SORA is not vague. Since registrants are treated differently based on the underlying crime and those that committed the same crimes are treated equally, there is no Equal Protection violation. The statute of limitations has lapsed on many of the claims because the registration requirements have been in place for more than a decade. Finally, the claims are moot – even if this Court grants relief, registrants still have the same, or similar, registration requirements under SORNA. The Court should dismiss the complaint and grant other relief as appropriate.

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Respectfully submitted,

/s/ *Eric M. Jamison*
Assistant Attorney General
Attorney for Whitmer and Gasper
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
jamisone@michigan.gov
P75721

Dated: May 31, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on May 31, 2022, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Eric M. Jamison
Assistant Attorney General
Attorney for Defendants
Whitmer and Gasper
Michigan Department of
Attorney General
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
jamisone@michigan.gov
P75721

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LOCAL RULE CERTIFICATION

I, Eric M. Jamison, certify that this document complies with Local Rule5.1(a), including: double-spaced (except for quoted material and footnotes): at least one-inch margin on top, sides, and bottoms; consecutive page numbering; and type size of all test and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 points (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

/s/ *Eric M. Jamison*
Assistant Attorney General
Attorney for Whitmer and Gasper
State Operations Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7573
jamisone@michigan.gov
P75721

Exhibit G to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES A, B, C, D, E, F, G, H, MARY DOE and MARY ROE, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPER, Director of the Michigan State Police, in their official capacities,

Defendants.

No. 2:22-cv-10209

Hon. Mark A. Goldsmith

Mag. J. Curtis Ivy, Jr.

PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

If ever there was a complaint with plausible allegations, it is this one. In a 192-page filing accompanied by ten incorporated expert reports, Plaintiffs paint a picture of the all-encompassing, life-altering regime that Michigan's Sex Offenders Registration Act (SORA 2021) imposes. The complaint describes the devastating impact of one-size-fits-all registration—the repeated loss of employment and housing, the continual harassment, the unannounced police visits, and the constant threat of incarceration for any failure to comply with "a byzantine code governing in minute detail the lives of the state's sex offenders." *Does v. Snyder* (*Does I*), 834 F.3d 696, 697 (6th Cir. 2016). The complaint details how the registry dictates virtually every choice a person makes—whether to comment on a news story, shovel a neighbor's walk, borrow a car, or visit family out of town. And the complaint explains that these burdens are imposed without any public safety benefit. Plaintiffs' allegations more than meet the plausibility threshold. Indeed, the record is so strong and the harm so irreparable that the Court should grant preliminary injunctive relief. *See* ECF No. 7.

Defendants do not argue that "even accepting the allegations as true" the complaint must be dismissed. Instead, their "statement of facts" points the Court to their response to the motion for preliminary injunction, which of course is judged under a completely different standard. ECF No. 41, PageID.1330. Defendants also lump together different claims that turn on different facts and different legal theories,

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hoping perhaps that the Court, too, will not engage with the merits of each count. General propositions of law cannot substitute for an analysis of the facts and law.

Finally, Defendants argue that cases rejecting ex post facto challenges in criminal appeals under the federal Sex Offender Registration and Notification Act (SORNA) foreclose not just the ex post facto claim (which they do not, *see* Section I.E), but every other claim. Those other claims have scarcely, if ever, been brought against SORNA. Defendants make this mistake because they do not address each count individually. Plaintiffs, after summarizing the facts, take each count in turn.

STANDARD OF REVIEW

"The defendant has the burden of showing that the plaintiff has failed to state a claim for relief." *Directv, Inc. v. Treesh*, 487 F.3d 471, 476 (6th Cir. 2007). The Court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Id*. The plaintiff must allege "facts to state a claim to relief that is plausible on its face" and that, if accepted as true, are sufficient to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). Plaintiffs need only allege enough facts to suggest that discovery may reveal evidence of illegality, regardless of the likelihood of finding that evidence. *Id*. at 556.

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FACTS

Briefly summarized, the allegations in Plaintiffs' complaint are:

SORA 2021 Does Not Promote Public Safety: Sex offender registration and notification laws do not make the public safer. To the contrary, SORA 2021 is likely to increase rather than decrease sexual offending. Sex offense rates in Michigan are up to 5% higher than they would be without the registry. SORA 2021 also misidentifies the source of the risk: 90 to 95% of sex offenses are committed by first-time offenders who are not on registries, and few offenses are committed by strangers. Because SORA 2021 undermines housing, employment, and pro-social relationships—which are the most important factors for reentry—the law increases the likelihood of recidivism. There is no evidence that the onerous registration requirements, such as reporting of a vast array of information, often in person and within three business days, serve any public safety purpose. *See* ECF No. 1, PageID.53–59.

No Individualized Review Fills the Registry with Low-Risk People: The average recidivism risk of people with past sex offenses is low; most people are never convicted of a second such offense. The recidivism rate for sex offenses is much lower than the rate for virtually any other type of crime. One reason that SORA 2021 is so ineffective is that it does not differentiate the few people at high risk of reoffending from the many who are at low risk. The likelihood of sexual reoffending varies based on well-known risk factors, and drops off dramatically over time. After

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ten years, most people with a past sex offense present no more risk than the general male population, and after twenty years, all will be classified that way.

Conviction-based tier assignments do not correspond to risk. In fact, tier levels are backwards, as higher tier offenders are even less likely to reoffend than those in lower tiers. Empirical tools are much more effective than convictions in assessing the risk of reoffending. Not only are the named plaintiffs very unlikely to reoffend, but the vast majority of class members will never reoffend. Due to SORA 2021's lack of individualized review and lengthy registration terms, there are thousands or tens of thousands of people on the registry who are no more likely to commit a sex offense than people who are not subject to registration. *Id.*, PageID.59–81.

The Digital Age Has Changed the Consequences of Registration: In the two decades since the Supreme Court said that an early version of an internet registry was no different than a criminal records archive, technology has changed the form, function, and reach of registry information. Unlike an archive, Michigan's registry presents each individual as a *current danger*, and encourages browsing, mapping, and tracking registrants. Unlike other criminal records, which require a targeted search of a specific person and do not present up-to-date personal information, the registry is not just a portal for conviction information. Today, registry information is "harvested" and re-posted on other websites. Changes in database technology have transformed registry information from government data that a user had to access

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intentionally, into a commodity that is pushed to internet users who passively receive it without ever asking for it. Digital labeling on registries undermines public safety by making pariahs of registrants, cutting them out of society. *Id.*, PageID.81–93.

SORA 2021 Imposes Devastating Burdens: SORA 2021 imposes a vast array of obligations, disabilities, and restraints that govern every aspect of Plaintiffs' lives. SORA 2021 compels Plaintiffs continually to provide detailed information to law enforcement, much of which must be reported in person and/or within three days—a burden that for most registrants lasts for life. SORA 2021 subjects Plaintiffs to continuous surveillance and supervision and stigmatizes them as dangerous without any individualized assessment. SORA 2021 also severely limits their ability to find housing and employment; to get an education; to travel; to engage in free speech, including internet use; and to be free from harassment and stigma. SORA has been aggressively enforced, with about 1,000 prosecutions a year and penalties of up to ten years' imprisonment. SORA 2021's requirements are complex and vague, leaving registrants unsure of their obligations and forcing them to overcorrect for fear of inadvertent wrongdoing. Registration also triggers a staggering and labyrinthine array of regulations that impose further disabilities beyond SORA. Countless private and public entities use the state's "sex offender" designation as a proxy for *current dangerousness*, and exclude registrants from jobs, housing, and other opportunities to which they would otherwise have access. *Id.*, PageID.83–150.

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SORA 2021 Is Very Expensive: In addition to $1 million annually for the Michigan State Police Sex Offender Registration unit and an estimated $11 million in incarceration costs, likely several million dollars more in costs are associated with local SORA administration/registration, as well as compliance enforcement (investigation, prosecution, court operations, probation), and litigation. These costs far exceed federal SORNA-contingent funding, to no public benefit. *Id.*, PageID.151–155.

SORA 2021 Applies the 2011 Amendments Retroactively: SORA 2021 retains virtually all of the 2011 amendments and continues to apply them retroactively, including tier classifications without individualized review, and the countless reporting requirements. Before 2011, only about a quarter of Michigan's registrants were required to register for life; after 2011, almost three-quarters of all registrants must register and report for life. *Id.*, PageID.156–159.

Registration Is Central to Plea Negotiations: Judges cannot sentence defendants who are not registered, and registration is recorded on the judgment of sentence. Because of its harsh consequences, registration is central to plea negotiations, and major changes to registration, like extension of registration terms, fundamentally alter the consequences of pleas. *Id.*, PageID.160–161.

SORA 2021 Is Based on Animus Towards People with Sex Offenses: The fact that Michigan adopted SORA 2021—even though it undermines the goal of reducing sexual offending and protecting public safety—can only be explained by

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animus towards people convicted of sexual offenses, coupled with the barriers such people face in the political process. SORA 2021, like its predecessor, is based on myths, fears, and misconceptions about a demonized group. *Id.*, PageID.161–164.

ARGUMENT

Plaintiffs' extensive allegations far exceed the low threshold to survive a motion to dismiss (and indeed support issuance of preliminary injunctive relief).[1]

I. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT SORA 2021 IMPOSES RETROACTIVE PUNISHMENT IN VIOLATION OF THE EX POST FACTO CLAUSE.

Defendants do not even attempt to apply the factors of *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963), to the facts of the complaint. ECF No. 41, PageID.1337. At least five circuits have held it inappropriate to dismiss ex post facto challenges where the allegations of punitiveness are plausible. *See Daniel v. Fulwood*, 766 F.3d 57, 61–62 (D.C. Cir. 2014) ("At the motion to dismiss stage . . . a plaintiff need only show that his ex post facto claim…is plausible." (cleaned up)); *Holmes v. Christie*, 14 F.4th 250, 260 (3d Cir. 2021) (same); *Does v. Wasden*, 982 F.3d 784, 791 (9th Cir. 2020) (plaintiff "only had to plausibly allege that the amended SORA, on its face, is punitive in effect"); *Doe v. Miami-Dade County*, 846 F.3d 1180, 1185–86 (11th Cir. 2017) (allegations that residency restriction had no

[1] Evidence for a preliminary injunction motion can reinforce the plausibility of a plaintiff's claims. *Jimenez v. Nielsen*, 334 F. Supp. 3d 370, 390 n.2 (D. Mass. 2018).

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impact on recidivism but imposed severe harm plausibly stated claim); *Prynne v. Settle*, 848 F. App'x 93, 100, 103 (4th Cir. 2021) (plaintiff plausibly alleged registry was excessively punitive; court "shall not attempt to forecast what further investigation may demonstrate" (cleaned up)). Moreover, at the motion-to-dismiss stage, Plaintiffs need not demonstrate by the "clearest proof" that a law is punitive. That standard "refers to a plaintiff's ultimate burden to sustain an ex post facto challenge" after discovery. *Wasden*, 982 F.3d at 791; *cf. Does I*, 834 F.3d at 705 (finding punitiveness in part based on evidence obtained in discovery).

Defendants' argument that this Court should nevertheless dismiss the claim is wrong for five reasons. First, *Does I* explicitly held that the 2011 amendments, which remain in SORA 2021, cannot be retroactively applied. Second, the Ex Post Facto Clause was designed precisely to protect unpopular groups from being targeted. Third, the ex post facto inquiry depends on the factual record of each case. Fourth, Plaintiffs plausibly allege facts establishing punitiveness. Fifth, the SORNA cases, virtually all of which are criminal appeals with no record, are inapposite because they present different legal issues and different factual circumstances, and because SORA and SORNA are different.

A. *Does I* Held that Retroactive Application of the 2011 Amendments, Which Remain Part of SORA 2021, Violates the Ex Post Facto Clause.

The central issue—whether the 2011 amendments can be retroactively

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applied—has already been decided. *Does I* held that "[t]he retroactive application of SORA's 2006 and 2011 amendments to Plaintiffs is unconstitutional, and it therefore must cease." 834 F.3d at 706. Retroactive application of the 2011 amendments has not ceased. *See* ECF No. 1, PageID.156–159, ECF No. 1-15. That violates *Does I*.

Defendants have no response. Tellingly, they do not include *Does I* on their list of controlling authority. Defendants do not dispute that SORA 2021 applies the 2011 amendments retroactively. Indeed, their statute of limitations argument is premised on the fact that SORA 2021 retains those amendments virtually unchanged. ECF No. 41, PageID.1373–76. Rather, Defendants skirt *Does I* by suggesting that excising the 2006 amendments (geographic exclusion zones) makes the new law constitutional. But the Sixth Circuit said retroactive application of the "2006 ***and 2011 amendments*** . . . must cease." *Does I*, 834 F.3d at 706 (emphasis added). Defendants point to other tweaks in the law, but those changes are minor.[2] ECF No. 39, PageID.1166.

SORA 2021, because it retains virtually all of the 2011 amendments, continues the very provisions that the *Does I* court concluded were punitive and could not

[2] Defendants incorrectly state that SORA 2021 removed retrospective reporting requirements for vehicles and phone numbers. ECF No. 39, PageID.1166. It did not. *See* M.C.L. § 28.725(2)(a). Defendants also assert that most juveniles need no longer register. ECF No. 39, PageID.1191 & n.20. Defense counsel who represent such youth, however, report that juveniles remain on the registry because prosecutors disagree with Defendants' interpretation of the law. The Court should therefore permit discovery to ensure that such youth are actually removed.

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be retroactively applied. Like its predecessor, SORA 2021 requires "time-consuming and cumbersome" reporting similar to probation/parole, compelling registrants to interrupt their lives "with great frequency in order to appear in person before law enforcement to report even minor changes to their information," in most cases for life. *Does I*, 834 F.3d at 703, 705. SORA 2021 "makes no provision for individualized assessments of proclivities or dangerousness." *Id.* at 705. It categorizes people into tiers without any individual review. *Id.* It "discloses otherwise non-public information." *Id.* at 703. It imposes heavy criminal penalties for non-compliance. *Id.* at 703. It "marks registrants as ones who cannot be fully admitted into the community," branding them "as moral lepers solely on the basis of a prior conviction" and "consign[ing] them to years, if not a lifetime, of existence on the margins," all despite "scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe." *Id.* at 704–05. Like its predecessor, SORA 2021 resembles both traditional shaming punishments and probation/parole, *id.* at 702–03; imposes "significant restraints on how registrants may live their lives," *id.* at 703; advances all traditional aims of punishment, *id.* at 704; lacks a rational relationship to a non-punitive purpose, *id.* at 704-05; and imposes blanket restrictions whose punitive effects "far exceed even a generous assessment" of possible benefits, *id.* at 705. None of that has changed.

The Michigan Supreme Court, in holding that the old SORA was punishment,

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similarly emphasized parts of the law that remain unchanged. *People v. Betts*, 968 N.W.2d 497 (Mich. 2021). The Court found that SORA resembled traditional shaming because of the breadth of information made public, the subscription-based notification option, the lack of active effort needed to receive registry information, and the encouragement of social ostracism. *Id.* at 509–10. SORA resembled the traditional punishment of parole because registrants had to report in person to law enforcement, pay fees, face prison for failure to comply, and be subject to investigation and supervision. *Id.* at 510. The requirement to report in person to verify and update information imposed an affirmative disability. *Id.* at 511. The fact that SORA "made no individualized determination of the dangerousness of each registrant, indicat[es] that SORA's restrictions were retribution for past offenses rather than regulations to prevent future offenses." *Id.* at 512. Such "demanding and intrusive requirements"—imposed on tens of thousands of people long after they complete their sentence, regardless of individual risk and without evidence of SORA's efficacy—were excessive. *Id.* at 514–15. Again, none of that has changed.

The Michigan Court of Appeals very recently recognized that SORA 2021, like its predecessor, imposes punishment. *People v. Lymon*, -- N.W.2d --; 2022 WL 2182165 (June 16, 2022). The Court reviewed the *Betts* analysis of the *Mendoza-Martinez* factors, found that the differences between the old and new SORA did not

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significantly alter the analysis, and concluded that "2021 SORA's aggregate punitive effect negates the Legislature's intention to deem it a civil regulation." *Id.* at *14.

Defendants assert that this Court can ignore the clear command of *Does I* and ignore *Betts* (and now *Lymon* as well), because courts have upheld a different law—SORNA. As discussed below, SORA 2021 and SORNA differ. *See* Section I.E.3. Regardless, *Does I* is directly on point because it addresses the 2011 amendments and is based on a similar record to the record here, unlike the SORNA cases.

B. The Ex Post Facto Clause Is Designed to Guard Against Retroactive Legislation Targeting Unpopular Groups.

Defendants' mantra is: everything should be left to the legislature. But the Framers included the Ex Post Facto Clause in the Constitution to reflect their profound concern for the threat to liberty posed by retroactive criminal laws that target disfavored groups. *See* Wayne A. Logan, *The Ex Post Facto Clause and the Jurisprudence of Punishment*, 35 Am. Crim. L. Rev. 1261, 1267 (1998). As Chief Justice Marshall observed in *Fletcher v. Peck*, a core reason to prohibit ex post facto laws is to bar legislatures from enacting retroactive punishments when they are caught up in the "feelings of the moment" and subject to "sudden and strong passions" toward a particular population. 10 U.S. 87, 137–38 (1810). *See also Cummings v. Missouri*, 71 U.S. 277, 322 (1866) ("fierce passions" aroused by the Civil War could not justify retroactive abridgement of civil rights). *See also Weaver v. Graham*, 450 U.S. 24, 28-29 (1981) (Ex Post Facto Clause protects disfavored groups "by restraining

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arbitrary and potentially vindictive legislation"); *Does I*, 834 F.3d at 705–06 ("the fact that sex offenders are so widely feared and disdained . . . implicates the core counter-majoritarian principle embodied in the Ex Post Facto clause").

Retroactive laws are different, and courts do not simply defer to legislative choices attaching new consequences to past conduct. A law's rational relationship to a non-punitive purpose is only **one** of the *Mendoza-Martinez* factors, which are themselves only "useful guideposts." *Smith v. Doe*, 538 U.S. 84, 97 (2003) (*Mendoza-Martinez* factors are "neither exhaustive nor dispositive"). Because the Ex Post Facto Clause is, in James Madison's words, a "constitutional bulwark" against impassioned legislative overreach, legislatures cannot do retroactively what they can do prospectively. *The Federalist No. 44* (James Madison) (Library of Congress), https://guides.loc.gov/federalist-papers/text-41-50.

Defendants do not dispute that registrants are an intensely hated group, nor can they dispute that the legislature ignored the expert evidence and overwhelming opposition testimony presented during legislative hearings on SORA 2021. ECF No. 1, PageID.163. But Defendants express optimism that the legislature will someday "consider the science and make amendments as appropriate." ECF No. 39, PageID.1204. We all know that is wishful thinking because when dealing with the emotionally charged issue of sexual offending, the legislature acts with precisely the sort of irrational passion that the Ex Post Facto Clause was meant to curb.

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C. The Court Must Base Its Rulings on the Actual Effects of SORA 2021 Based on the Facts in This Case.

To determine whether a law is punitive under the *Mendoza-Martinez* factors, the court must analyze the factual record presented. *Smith v. Doe* itself focused on the record in 2003, asking how the effects of Alaska's statute were "felt by those subject to it." 538 U.S. at 100. The Court emphasized that "[t]he record in this case contains no evidence that the Act has led to substantial occupational or housing disadvantages," and that "the record contains no indication that an in-person appearance requirement has been imposed." *Id*. at 100–01.

Records can differ and facts can change over time. Indeed, the Supreme Court has long recognized that "the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist." *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938). New facts matter when real-world conditions change, as commonly occurs when new technologies emerge. In *Carpenter v. United States*, for example, the Court held that a warrant was necessary to obtain cell-site location information even though prior precedent established that information disclosed to a third party was not protected from warrantless searches. 138 S. Ct. 2206, 2211–12 (2018). The Court reasoned that when the third-party doctrine was established, "few could have imagined a society in which a phone goes wherever its owner goes, conveying to the wireless carrier not just dialed digits, but a detailed and comprehensive record of the

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person's movements." *Id*. at 2217. *See also*, *e.g.*, *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018) (holding physical-presence tax rule outdated in increasingly virtual economy); *Nat'l Fed'n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565 (D. Vt. 2015) (holding Americans with Disability Act definition of public accommodations was no longer limited to physical spaces in an increasingly internet-focused world).

New scientific understandings matter too. In *Dias v. City & County of Denver*, for example, the Tenth Circuit held that a constitutional challenge to a pit bull ban should not have been dismissed, rejecting the argument that the ban was constitutional simply because there were past cases upholding similar bans. 567 F.3d 1169 (10th Cir. 2009). Plaintiffs had plausibly alleged that "although pit bull bans sustained twenty years ago may have been justified by the then-existing body of knowledge, the state of science [today] is such that the bans are no longer rational." *Id.* at 1183. *See also Henderson v. Thomas*, 891 F. Supp. 2d 1296, 1305 (M.D. Ala. 2012) (prior decision upholding policy of segregating HIV+ prisoners did not bar new suit where plaintiffs alleged that the factual premises about HIV infection informing the earlier decision was no longer true); *Caruso v. Aluminum Co. of Am.*, 473 N.E.2d 818, 821 (Ohio 1984) (invalidating eight-year statute of limitations for silicosis-related deaths based on new evidence that silicosis effects take longer to manifest).

In the 20 years since *Smith*, law, technology, and science have changed. First, registries have become more punitive as laws have evolved. Registry laws have

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added restrictions, imposing obligations not contemplated in *Smith* and growing into a "byzantine code governing in minute detail the lives" of registrants. *Does I*, 834 F.3d at 697. Moreover, when the state labels someone as a "sex offender," that triggers countless other laws and policies. ECF No. 1, PageID.148–150; ECF No. 1-6, PageID.472–475, 478–486. Second, the evolution of the internet has transformed the consequences of registries. ECF No. 1, PageID.81–93. Real-world impacts matter when one looks at the "actual effects" under the *Mendoza-Martinez* factors, and the modern science is critical to analyzing rationality and excessiveness. Third, the scientific understanding of registries has dramatically changed. We now know that registries are ineffective or counterproductive, and that assumptions about high recidivism rates are wrong. ECF No. 1, PageID.53–81. The factual underpinnings of *Smith* have been debunked. *See* ECF No. 1-7, PageID.513–517 (describing how *Smith* relied on junk science); Ira Mark Ellman & Tara Ellman, *Frightening and High: The Supreme Court's Crucial Mistake About Sex Crime Statistics*, 30 Const. Comment. 495 (2015) (same).

In short, this Court must apply the *Mendoza-Martinez* factors, but it must do so based on *this record* in the *world that exists today*. The facts alleged here—even before discovery—are unlike any considered in the cases on which Defendants rely, and are much more akin to the record in *Does I*. Whether the *effects* of SORA 2021 are punitive depends on how the law operates in the real world. That is why

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improved scientific understanding of what the law does (or doesn't do) is relevant to the "rationality" and "excessiveness" factors, and why the evolution of the internet and the design of the state's website inform the "traditional-forms-of-punishment" and "affirmative-restraints" factors of the *Mendoza-Martinez* analysis.

Because ex post facto analysis requires an assessment of the specific statute and the record, courts—particularly when provided a solid factual record—have increasingly reached the conclusion that "super-registration" statutes are punishment after applying the *Mendoza-Martinez* factors to facts different from those in *Smith*. *See Does I*, 834 F.3d at 705 (collecting cases). The Sixth Circuit found that SORA is "altogether different from and more troubling than Alaska's first-generation registry law." *Id.* The court "consider[ed] whether SORA's actual effects are punitive," and weighed the *Mendoza-Martinez* factors in light of "[t]he record below." *Id.* at 701, 704. The court repeatedly emphasized the record, noting that it cast "significant doubt" on the factual conclusions underpinning *Smith*, that "offense-based public registration has, at best, no impact on recidivism," and that the "record in this case makes painfully evident" that SORA imposes devastating burdens. *Id.* at 702–05. This evidence of harm, coupled with the "scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe," led the court to conclude SORA was punishment. *Id*. at 704–05. The Sixth Circuit did not mechanically apply *Smith*, but looked at the *actual effects of the law* under the *Mendoza-*

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Martinez factors *based on the record before it*. This Court must do the same here.

The Ninth Circuit likewise applied the *Mendoza-Martinez* factors to facts that differed from *Smith* to find that the retroactive application of SORNA to a juvenile violated the Ex Post Facto Clause. *United States v. Juv. Male*, 590 F.3d 924 (9th Cir. 2010), *judgment vacated as moot*, 564 U.S. 932 (2011). Recognizing that "[i]t would be tempting to conclude" based on *Smith* that registration is not punishment, the court explained that *Smith* "does not, however, mandate that result, and the case before us presents substantially different facts and issues that significantly affect our analysis." *Id.* The court highlighted the factual differences from *Smith*, e.g., that the harms imposed flowed from SORNA rather than from the underlying conviction, that juvenile recidivism rates are low, and that SORNA requires in-person reporting for decades. *Id.* at 933–42. So too here.

Other courts finding registry statutes punitive have likewise focused on the specific facts before them. *See, e.g.*, *Doe v. State*, 111 A.3d 1077, 1095 (N.H. 2015) (distinguishing *Smith* because there was evidence of substantial housing disadvantages); *Hoffman v. Vill. of Pleasant Prairie*, 249 F. Supp. 3d 951, 960 (E.D. Wis. 2017) (finding ex post facto violation because the balance of the *Mendoza-Martinez* factors depends on "objective evidence," and "conjecture about the dangers posed" by people with past sex offenses is insufficient); *Starkey v. Oklahoma Dep't of Corr.*, 305 P.3d 1004, 1030 (Okla. 2013) (distinguishing *Smith* because there was more

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substantial evidence of excessiveness); *Doe v. Dep't of Pub. Safety & Corr. Servs.*, 62 A.3d 123, 142 (Md. 2013) (distinguishing *Smith* because there was more evidence of cumulative harms); *Doe v. State*, 189 P.3d 999, 1010 (Alaska 2008) (same).

Courts have also looked at whether modern registry statutes have different consequences than in "an earlier technological environment." *Commonwealth v. Muniz*, 164 A.3d 1189, 1212 (Pa. 2017), *abrogated on other grounds by Commonwealth v. Santana*, 266 A.3d 528 (Pa. 2021). *See also Detroit Free Press, Inc. v. Dep't of Just.*, 829 F.3d 478, 485 (6th Cir. 2016) (en banc) (overruling decision that there is no privacy interest in criminal history information, because 20 years later it became clear that release of a booking photo could haunt an individual for decades); *cf. Riley v. California*, 573 U.S. 373, 385 (2014) (emphasizing the need to account for evolving technology); *Kyllo v. United States*, 533 U.S. 27, 35–36 (2001) (same).

Facts matter. The Court's task is to apply the *Mendoza-Martinez* factors to determine if, on the facts alleged, Plaintiffs have stated a plausible claim that the actual effects of SORA 2021 are punitive. Plaintiffs have.

D. Taking Plaintiffs' Allegations as True, SORA 2021 Is Punitive.

Defendants argue that "'[t]he Ex Post Fact Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences.'" ECF No. 39, PageID.1201 (quot-

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ing *Smith*, 538 U.S. at 103). But that does not mean the state may make **unreasonable** categorical judgments and impose **punitive** consequences—which is what the state has done here. Defendants' argument is premised on the idea that *Smith* immunized registry laws from scrutiny under the Ex Post Facto Clause. *Id.*, PageID.1163. But *Does I* made clear that *Smith* cannot "be understood as writing a blank check to states to do whatever they please in this arena." *Does I*, 834 F.3d at 705. The record compelled a different conclusion in *Does I*. 834 F.3d at 701–06. It should here as well, because, as shown by the chart below, the facts alleged stand in stark contrast to what the Court relied on in *Smith*:

Facts of *Smith*	**Facts in *Does III***
Registrants have high recidivism rates. 538 U.S. at 103.	Most registrants never reoffend. Thousands are less likely to commit a sex offense than unregistered people. ECF No. 1, PageID.59–62, 79–81.
Registrants are dangerous as a class and likely to reoffend for long after conviction. *Id.* at 103–104.	The likelihood of reoffending varies based on risk factors. Reoffending risk drops dramatically over time; after ten years, most registrants present no more risk than the average male. *Id.*, PageID.62–70.
Conviction-based registration requirements are reasonably related to the danger of recidivism. *Id.* at 102.	Conviction-based registration requirements do not correspond to risk. The tier levels are backwards, with higher tier registrants being even less likely to reoffend. *Id.*, PageID.70–75.
There is no evidence that registration causes substantial occupational or housing disadvantages; registrants are free to live/work like anyone else. *Id*. at 100–01.	SORA 2021 severely limits housing and employment. Registrants are also barred from housing and employment opportunities by laws/policies that turn on their registrant status. *Id.*, PageID.93–150.

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Registrants are not required to report in-person and are not subject to supervision. *Id.* at 101.	SORA 2021 requires extensive in-person reporting, often within three-days, and in most cases for life. Registrants are also subject to police sweeps. Supervision is similar to or more restrictive than probation/parole. *Id.*, PageID.94–105.
Registrants "are free to move where they wish." *Id.* at 101.	Travel is restricted by reporting requirements and by the complexity of inter-jurisdictional obligations. *Id.*, PageID.120–125, 148–150.
The harms registrants experience flow from the fact of conviction. *Id.* at 101.	The harms registrants experience result from being on the registry, and vastly exceed the consequences of a conviction. *Id.*, PageID.81–150.
The registry simply disseminates accurate criminal record information. *Id.* at 98.	The registry's design, language, and functionality convey the message that every person listed is a current danger to society. *Id.*, PageID.81–90.
The registry is like visiting a records archive because the public must look up information. *Id.* at 99.	The digital age has fundamentally changed the consequences of registration, and information about registrants is pushed out to internet users who are not looking for it. *Id.*

Defendants also misapply the *Mendoza-Martinez* factors, ignoring not just the record, but *Does I* and *Betts*. Those errors are briefly summarized:

Resemblance to Traditional Forms of Punishment: *Does I*, 834 F.3d at 703, already held that SORA's in-person reporting requirements resemble probation/parole. The court noted that the plaintiffs averred that SORA's requirements are more intrusive than those for probation/parole. *Id.* The same is true here. ECF No. 1, PageID.101–105. *See also Betts*, 968 N.W.2d at 552–53. *Does I* and *Betts* also found that SORA resembles shaming. *Does I*, 834 F.3d at 702–03; *Betts*, 968 N.W. 2d at 551–52. Defendants argue that SORA 2021 no longer resembles shaming

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because tier designations are no longer public. ECF No. 39, PageID.1190. But branding *all* registrants as equally dangerous, rather than some registrants as more dangerous or less dangerous (even if falsely), makes the stigma worse. Defendants also ignore the transformation of the internet in the two decades since *Smith*, and the way shaming is integral to the website's design. ECF No. 1-10, PageID.627–652. As *Lymon* held, SORA 2021 continues to bear a significant resemblance to the traditional punishments of shaming and parole because of its "publication of information and encouragement of social ostracism" and its "imposition of significant state supervision." 2022 WL 2182165 at * 10 (citing *Betts*, 507 Mich. at 553).

Affirmative Disability or Restraint: Defendants cite out-of-circuit cases for the remarkable proposition that requiring people to report in person for the rest of their lives, often within three days, is not an affirmative restraint. ECF No. 39, PageID.1194–98. The Sixth Circuit held the opposite: SORA's in-person reporting requirements "are direct restraints on personal conduct" which exceed those in *Smith* "by an order of magnitude." *Does I*, 834 F.3d at 703. Defendants' reliance on occupational disbarment cases is also unavailing; the Sixth Circuit held that SORA's "sweeping conditions" are far more onerous. *Id.* at 704. *See also Lymon*, 2022 WL 2182165, at *11 (SORA 2021 imposes significant affirmative obligations).

Traditional Aims of Punishment: Defendants concede that SORA 2021 serves traditional deterrence goals and that, because its obligations all stem from the

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underlying offense, it appears punitive. ECF No. 39, PageID.1199. *See also Lymon*, 2022 WL 2182165, at *12 (SORA 2021 supports traditional aims of punishment).

Rational Connection to Non-Punitive Purpose: As Defendants concede, the "Sixth Circuit found this factor favored the plaintiffs." ECF No. 39, PageID.1163. The record there, like the record here, "provides scant support for the proposition that SORA in fact accomplishes its professed goals." *Does I*, 834 F.3d at 704.

Excessiveness: Just as in *Does I*, "while the statute's efficacy is at best unclear, its negative effects are plain" and Defendants "point to no evidence in the record that the difficulties the statute imposes on registrants are counterbalanced by any positive effects." *Id.* at 705. *See also Lymon*, 2022 WL 2182165, at *13 (surveying research on ineffectiveness of registries, and finding SORA 2021 is excessive).

E. SORNA Does Not Insulate SORA From Constitutional Scrutiny.

Defendants argue that, regardless of the facts alleged, because SORA 2021 is similar to SORNA, Michigan's law is necessarily constitutional. Before turning to why that is wrong, we briefly explain the relationship between SORA and SORNA.

1. The Absence of a Federal Registry and SORNA's Dual Character

"[F]ederal sex-offender registration laws have, from their inception, expressly relied on state-level enforcement." *Carr v. United States*, 560 U.S. 438, 452 (2010). The federal government does not maintain its own registry; there is no way to register directly with the federal government. Nor does the federal government provide

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any notice about any federal obligations. State registration schemes are the only way for registrants to report and to be notified. *See* Sex Offense Litigation and Policy Resource Center, *SORNA 2022: A Guide for Practitioners to New Federal SORNA Regulations Effective January 7, 2022* (May 2, 2022), https://bit.ly/3GiQQbI.

"In enacting SORNA, Congress preserved this basic allocation of enforcement responsibilities" focused on state laws, *Carr*, 560 U.S. at 453, but used "Spending Clause grants to encourage States to adopt . . . uniform definitions and requirements" for state registries. *United States v. Kebodeaux*, 570 U.S. 387, 398 (2013). SORNA sets out the federal government's preferred registration provisions and seeks to incentivize states to adopt those provisions in their laws. But it is a state's "sovereign prerogative" to "choose[] not to comply with SORNA." *United States v. Felts*, 674 F.3d 599, 604 (6th Cir. 2012). Congress "did not"—and could not—"insist that the States" adopt SORNA-congruent laws. *Kebodeaux*, 570 U.S. at 398.

In addition, Congress was concerned in passing SORNA to ensure that registrants would not "fall through the cracks of a state registration system." *Kebodeaux*, 570 U.S. at 405 (Alito, J., concurring). Thus SORNA, in addition to incentivizing *states* to adopt certain provisions in their registries, also established a new federal offense making it a crime for *individuals* to fail to register or update their registration if they (a) have a federal or tribal conviction or (b) travel in interstate commerce. 18 U.S.C. § 2250(a). The goal of the federal penalty provision was not to supplant the

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states' primary role, but to provide for federal enforcement where the federal government "has a direct supervisory interest" or where individuals "threaten the efficacy of the statutory scheme by traveling in interstate commerce." *Carr*, 560 U.S. at 453.

In sum, "SORNA has a dual character." 86 Fed. Reg. 69856 (Dec. 8, 2021). It incentivizes states to adopt certain features in their state registration schemes and it provides for individual criminal liability where there is federal jurisdiction.

2. The SORNA Cases Are Inapposite.

The SORNA cases on which Defendants rely are inapposite. First, almost all are criminal appeals. This case involves a prospective civil challenge to Michigan's requirements, not a criminal defense to convictions for SORNA violations. Criminal prosecutions in SORNA cases involve convictions for failure to *register*. Because the constitutionality of such a requirement was upheld in *Smith*, it is unsurprising that courts affirm these convictions. These appeals did not necessarily give courts reason to consider whether the burdens imposed by the statutory scheme as a whole, rather than basic registration itself, are punitive. Plaintiffs here have to comply with every single part of the scheme, not just with a simple registration requirement. It is the cumulative weight of those many burdens that makes SORA 2021 punitive.

Second, some of the cases, including those in the Sixth Circuit, focused their analysis not on whether SORNA is **punishment**, but on whether it is **retroactive**. In *Felts*, 674 F.3d 599, the defendant argued that his two-year sentence (which was

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clearly punishment) retroactively punished his *original* sex offense. The court viewed his failure to register as "entirely separate" from the earlier crime and held that the new term of incarceration punished his current failure to register, not his past offense. *Id.* at 606. *Felts* never discussed the *Mendoza-Martinez* factors. It only considered whether the custodial term punished a new or old offense.

Many of the other cases Defendants cite similarly address whether SORNA is **retroactively** punishing the original offense or prospectively punishing the new compliance violation. They do not address whether SORNA's burdens are themselves **punishment**. *See, e.g.*, *United States v. Guzman*, 591 F.3d 83, 94 (2d Cir. 2010); *United States v. Shenandoah*, 595 F.3d 151, 158 (3d Cir. 2010), *abrogated on other grounds by Reynolds v. United States*, 565 U.S. 432 (2012); *United States v. May*, 535 F.3d 912, 920 (8th Cir. 2008), *abrogated on other grounds by Reynolds*, 565 U.S. 432; *United States v. Lawrance*, 548 F.3d 1329, 1336 (10th Cir. 2008); *cf. United States v. Young*, 585 F.3d 199, 203 (5th Cir. 2009) (explaining two different types of ex post facto challenges). Those cases are not relevant here, where the question is not whether SORA 2021 is retroactive, but whether its effects are punitive.

Defendants rely heavily on *Willman v. Attorney General*, 972 F.3d 819 (6th Cir. 2020), which rejected an ex post facto challenge to SORNA. Because *Willman* merely cited *Felts* without analysis, it is unclear whether the decision was based on SORNA not being retroactive or not being punishment. No record was developed,

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much less considered, and the court did not discuss the *Mendoza-Martinez* factors. Nor did *Willman*'s cursory treatment of the ex post facto question distinguish *Does I,* which, by contrast, was a thorough opinion canvassing a full record and specifically held that the 2011 amendments are punitive. The apparent tension between *Willman* and *Does I* reflects the fact that SORNA includes many aspects of the 2011 amendments that *Does I* found punitive. Indeed, those amendments were adopted in part because Michigan wanted to have a SORNA-based registry. *See* House Fiscal Agency Legislative Analysis, Senate Bills 188, 189, 206 (2011). Although there are important differences between the laws, the SORNA-congruent features that were added to SORA in 2011 were the same features identified in *Does I* as punitive (e.g., extensive in-person lifetime reporting, tiering without individual review, etc.).

As Defendants concede, in reconciling *Does I* and *Willman* this Court "should follow the case which directly controls." ECF No. 41, PageID.1333 (quoting *United States v. White*, 920 F.3d 1109, 1115 (6th Cir. 2019)). To the extent there is tension between them, *Does I* controls: based on a full review it forbade retroactive application of the 2011 amendments, which remain virtually unchanged in SORA 2021. Moreover, when published Sixth Circuit opinions conflict, "the earliest opinion normally controls because one panel can't overturn another's decision." *Miller v. Caudill*, 936 F.3d 442, 447 (6th Cir. 2019).

Third, and most importantly, the SORNA cases lacked the factual record here,

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which also means the tension between *Does I* and *Willman* is more apparent than real. *See, e.g.*, *Young*, 585 F.3d at 206 (no ex post facto violation because defendant "ma[de] no effort to prove that the effect of SORNA" was punitive). In the absence of facts to the contrary, these decisions repeat unsupported (and untrue) assumptions, e.g., that recidivism rates are high, that registrants would suffer the same consequences simply by having convictions, or that in-person reporting is just a minor inconvenience.[3] Although courts cannot be faulted for failing to consider facts never presented, here there are detailed factual allegations. And those allegations set out the opposite of what courts have assumed to be true in the SORNA cases.

In sum, the SORNA cases are inapposite because they either are criminal appeals focused on the failure to register, address a different legal question, or are based on factual assumptions that are the opposite of the facts alleged here.

3. SORA 2021 Is More Punitive than SORNA.

As *Betts* noted, the old SORA "included several additional provisions" beyond those in SORNA, and when the legislature enacted the new law, "it again created a statutory scheme containing several deviations from its federal counterpart." 968 N.W.2d at 519 & n.27. Those deviations matter to the actual effect of the law.

First, SORA 2021 has more reporting requirements than SORNA. SORA

[3] *See, e.g.*, *United States v. Parks*, 698 F.3d 1, 5–6 (1st Cir. 2012); *United States v. W.B.H.*, 664 F.3d 848, 855–60 (11th Cir. 2011); *Young*, 585 F.3d at 206; *United States v. Under Seal*, 709 F.3d 257, 265–66 (4th Cir. 2013).

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2021 requires a registrant who "*intends* to temporarily reside at any place other than his or her residence for more than 7 days" to report in advance of such travel, M.C.L. § 28.725(2)(b) (emphasis added); SORNA only requires reporting about temporary lodging where a person "is staying." 28 C.F.R. § 72.6(c)(2). Similarly, SORA 2021 requires in-person "notification of a new residence in another state *before* moving," whereas SORNA only requires notification after the move. *Betts*, 968 N.W.2d at 519 n.27; M.C.L. § 28.725(7); 34 U.S.C. § 20913(c). SORA requires registrants to report all "telephone numbers registered to or used by the individual," without apparent time limitation, M.C.L. §§ 28.725(2)(a); 28.727(1)(h); SORNA requires only current numbers. 28 C.F.R. § 72.6(b). Unlike SORNA, SORA 2021 requires registrants to "maintain a driver's license or identification card with an accurate, updated address." *Betts*, 968 N.W.2d at 519 n.27; M.C.L § 28.725a(7). SORA 2021 also has additional verification requirements. *See*, *e.g.*, M.C.L. § 28.724a(5) (registrants must "present written documentation of employment status, contractual relationship, volunteer status, or student status"). The intrusiveness of the reporting provisions contributes to the excessiveness of the statute. *See Does I*, 834 F.3d at 705; *Betts*, 968 N.W.2d at 514–15. SORA 2021 is more intrusive than SORNA.

Second, in terms of published information about registrants, SORA 2021 goes beyond, and even conflicts, with SORNA. Unlike SORNA, SORA 2021 requires the posting of nicknames (not just names and aliases). *Compare* M.C.L. § 28.728(2)(a)

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with 28 C.F.R. § 72.6 (a). Under SORA 2021, the public registry can include a person's email and other internet IDs, increasing the likelihood of online harassment. *See* Senate Substitute for H.B. 5679, 100th Leg., Reg. Sess. (Mich. 2020) (striking § 8(3)(e)). SORNA bars disclosure of such information. *See* 34 U.S.C. § 20916(c). More importantly, Michigan's public registry fosters browsing, mapping, and tracking registrants. ECF No. 1, PageID.81–90; ECF No. 1-10, PageID.627–636. While SORNA merely encourages states to have a public registry, 34 U.S.C. § 20920, Michigan has chosen to build a website whose "design, language, and functionality . . . represent each person listed as a current danger to society," rather than simply posting accurate public record information. ECF No. 1, PageID.81–82. This matters because "[t]he breadth of information available to the public" increases "the likelihood of social ostracism based on registration." *Betts*, 968 N.W.2d at 509.

Third, SORNA allows for judicial discretion in deciding if juveniles must register. 81 Fed. Reg. 50552. SORA 2021 does not. M.C.L. § 28.722(a)(iii)(iv).

Finally, SORA 2021 imposes "a $50 registration fee not included in SORNA," which registrants pay annually. *Betts*, 968 N.W.2d at 519 n.27; M.C.L. § 28.725a(6). Failure to pay is a crime punishable by imprisonment. M.C.L. § 28.729(4). Retroactive fees can be punitive. *See Moyer v. Alameida*, 184 F. App'x 633, 638 (9th Cir. 2006); *People v. Batman*, 71 Cal. Rptr. 3d 591, 593 (Cal. Ct. App. 2008); *People v. High*, 15 Cal. Rptr. 3d 148, 152 (Cal. Ct. App. 2004).

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In sum, Plaintiffs more than meet the plausibility standard for their ex post facto claim. The new statute continues to retroactively apply the 2011 amendments despite the Sixth Circuit's clear contrary holding. On the facts alleged here, the actual effect of the statute is punitive. Defendants' motion to dismiss should be denied.

II. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT RETROACTIVE EXTENSION OF REGISTRATION TERMS VIOLATES THE EX POST FACTO AND DUE PROCESS CLAUSES.

Plaintiffs' challenge to retroactive extension of registration terms is grounded in both the Ex Post Facto and Due Process Clauses. Perhaps recognizing that retroactively extending registration to life is among the most irrational, most damaging, and most excessive aspects of SORA 2021, Defendants do not separately discuss this claim, subsuming it into a generic discussion of ex post facto and due process law. Plaintiffs address those broader arguments in Sections I and III of this brief. Only a few points will be added here.

Ex Post Facto: The *Mendoza-Martinez* factors tip even further towards punishment when registration is retroactively imposed for life, as many courts have found. *See* ECF No. 7, PageID.903–04. Lifetime registration serves no public safety purpose and is even more irrational and excessive than a finite registration period, because risk drops dramatically with both age and time. ECF No. 1, PageID.64–70.

Defendants do not justify retroactive lifetime registration under the *Mendoza-Martinez* factors. All Defendants say is that the statute in *Smith* required some people

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to register for life. ECF No. 39, PageID.1186. But *Smith* assumed high recidivism rates and minimal burdens, including no in-person reporting. 538 U.S. at 101, 103.

Due Process: Defendants argue that Plaintiffs' due process challenge is foreclosed by *Conn. Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003), ignoring that *Connecticut* was a procedural due process case, whereas Plaintiffs' challenge sounds in substantive due process. ECF No. 41, PageID.1337–38. As to substantive due process, because lifetime registration was imposed retroactively, it must meet not just exacting rational basis review for the reasons set out in Section III. It must also meet "a rationality requirement beyond that applied to other legislation." *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 223 (1988) (Scalia, J., concurring). Defendants do not engage at all with the law establishing that "harsh and oppressive" retroactive legislation violates due process. *Welch v. Henry*, 305 U.S. 134, 147 (1938). Plaintiffs have plausibly alleged that retroactive lifetime registration is harsh or oppressive; violates principles of notice, foreseeability, and fair warning; and reaches far back in time. ECF No. 7, PageID.904–11.

III. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT FAILING TO PROVIDE FOR INDIVIDUALIZED REVIEW VIOLATES EQUAL PROTECTION AND DUE PROCESS.

A. The Two Types of Rational Basis Review

Both the Equal Protection and Due Process Clauses permit challenges to statutes that impose substantive restrictions on individual liberty. *Tiwari v. Friedlander*,

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26 F.4th 355, 360 (6th Cir. 2022). The Supreme Court has flagged but not decided whether registry regimes can violate equal protection and substantive due process. *Conn. Dep't of Pub. Safety*, 538 U.S. at 8; *id.* at 10 (Souter, J., concurring). Plaintiffs allege such a claim: SORA 2021's lack of individualized review results in extensive burdens on thousands of people who pose no appreciable risk with no public benefit.

Defendants argue that SORA 2021 does not implicate a suspect characteristic or fundamental right, but even assuming that is true,[4] it does not end the inquiry. "All laws, whether the challenge arises under the Due Process or Equal Protection Clause, must satisfy rational-basis review." *Tiwari*, 26 F.4th at 361; *Pearson v. City of Grand Blanc*, 961 F.2d 1211 (6th Cir. 1992).

There are two types of rational basis review: conventional review and an "exacting rational relationship standard" when laws reflect animus. *Bannum, Inc. v. City of Louisville*, 958 F.2d 1354, 1360–61 (6th Cir. 1992). Conventional rational basis review requires that the legislation "bear some rational relation to a legitimate state interest." *Craigmiles v. Giles*, 312 F.3d 220, 223 (6th Cir. 2002). Although legislative enactments are entitled to deference, the rational basis standard "is not a toothless one," *Mathews v. Lucas*, 427 U.S. 495, 510 (1976), and does not function

[4] Plaintiffs do not concede that rational basis applies. *See* ECF No. 7, PageID.934 n.23 (collecting cases where registration implicates fundamental rights and heightened review was applied). But because Plaintiffs have plausibly alleged that SORA 2021 does not survive even rational basis review, the Court need not reach the issue.

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as "a rubber stamp of all legislative action," *Hadix v. Johnson*, 230 F.3d 840, 843 (6th Cir. 2000). The Supreme Court has found government action constitutionally irrational in a variety of cases. *Tiwari*, 26 F.4th at 362 (collecting cases).

Courts "have applied a more searching form of rational basis review" when a statute exhibits "a desire to harm a politically unpopular group." *Lawrence v. Texas*, 539 U.S. 558, 580 (2003) (O'Connor, J., concurring). "For if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare . . . desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973); *see also Romer v. Evans*, 517 U.S. 620, 633–36 (1996), *United States v. Windsor*, 570 U.S. 744, 770–74 (2013); *Eisenstadt v. Baird*, 405 U.S. 438, 447–55 (1972); *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446–50 (1985). The Sixth Circuit has likewise explained that plaintiffs may demonstrate that a government action lacks a rational basis "by demonstrating that the challenged government action was motivated by animus or ill-will." *Warren v. City of Athens*, 411 F.3d 697, 711 (6th Cir. 2005); *see also Scarbrough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 260 (6th Cir. 2006) (invidious discrimination based on animus violates equal protection).

Disadvantaging an unpopular group cannot constitute a legitimate legislative end, *Romer*, 517 U.S. at 633, and so courts should review whether "the disadvantage

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imposed is born of animosity toward the class of persons affected." *Id.* at 634. "Negative attitudes" and unsubstantiated fears cannot supply a rational basis; rather, "some data reflecting the extent of the danger must exist." *Bannum*, 958 F.2d at 1360–61 (cleaned up). Thus, "courts must look behind the stated justifications to see whether they actually relate to a legitimate governmental purpose." *Bassett v. Snyder*, 59 F. Supp. 3d 837, 849 (E.D. Mich. 2014); *see also Weaver v. Nebo Sch. Dist.*, 29 F. Supp. 2d 1279, 1289 (D. Utah 1998) ("If the community's perception is based on nothing more than unsupported assumptions, outdated stereotypes, and animosity, it is necessarily irrational . . . under *Romer* . . . .").

B. At the Motion-to-Dismiss Stage, Plaintiffs Need Make Only Plausible Allegations of Animus and Irrationality.

Under either conventional or exacting rational basis review, deference to the legislature "cannot defeat the plaintiff's benefit of the broad Rule 12(b)(6) standard." *Wroblewski v. City of Washburn*, 965 F.2d 452, 459 (7th Cir. 1992). A plaintiff need only "allege facts sufficient to overcome the presumption of rationality." *In re City of Detroit*, 841 F.3d 684, 701 (6th Cir. 2016) (quoting *Wroblewski*, 965 F.2d at 460). Summary judgment is typically the "apt vehicle for resolving rational-basis claims." *Tiwari*, 26 F.4th at 369 (proper to allow discovery on law's rationality); *Stratta v. Roe*, 961 F.3d 340, 361 (5th Cir. 2020) ("test[ing] in discovery and further proceedings" is often the most appropriate way to resolve rational basis claims); *cf. Craig-*

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miles, 312 F.3d at 224 (relying on trial evidence to find law irrational). When plaintiffs invoke exacting rational basis review, all they need at the motion-to-dismiss stage are allegations raising the inference that dislike of a particular group motivated the law. *See Davis v. Prison Health Servs.*, 679 F.3d 433, 438 (6th Cir. 2012).

C. Because Plaintiffs Plausibly Allege that SORA 2021 Was Motivated by Animus, More Exacting Scrutiny Applies.

In determining whether a statute was motivated by animus, courts look to several factors. *First*, the legislative history and historical background often sheds light on the government's motivation. *See Moreno*, 413 U.S. at 536 (consulting the congressional record); *Windsor*, 570 U.S. at 770 (same); *Bassett v. Snyder*, 951 F. Supp. 2d 939, 968 (E.D. Mich. 2013) (analyzing "[t]he historical background and legislative history"). *Second*, courts consider the severity of the burdens placed on the targeted group. In *Lawrence*, the Supreme Court noted that "Texas' sodomy law brands all [gay people] as criminal, thereby making it more difficult for [them] to be treated in the same manner as everyone else." 539 U.S. at 581. Similarly, in *Windsor*, the Court explained how the "principal effect" of the Defense of Marriage Act was for "same-sex married couples [to] have their lives burdened, by reason of government decree, in visible and public ways." 570 U.S. at 772–74. *Third*, courts have found evidence of animus where a law is "structurally aberrational" because it imposes "wide-ranging and novel deprivations upon a disfavored group" or departs from normal governmental processes. *Bassett v. Snyder*, 59 F. Supp. 3d 837, 847

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(E.D. Mich. 2014) (citing *Moore v. Detroit Sch. Reform Bd.*, 293 F.3d 352, 369 (6th Cir. 2002)). Under these factors, Plaintiffs have plausibly alleged that SORA 2021 is grounded in animus.

Historical and Statutory Background: In 1994 Michigan passed its first registry law, which operated as a non-public law enforcement database. ECF No. 1, PageID.36–37. Highly publicized (though very rare) stranger child-abduction cases then prompted amendments to such registry statutes nationwide. Ira Ellman, *When Animus Matters*, 7 U. Pa. J. L. & Pub. Affs. 1, 14–15 (2021). In Michigan, legislators required the reporting of more information, for more offenses, and made the registry publicly available. ECF No. 1, PageID.37–39. Around the country, legislators demonized registrants, describing them as "beast[s]," "monsters," "animals," and "the human equivalent of toxic waste." Wayne Logan, *Knowledge as Power: Criminal Registration and Community Notification Laws in America* 95 (2009).

Discussions about Michigan's registry have taken place against this backdrop of loathing. Legislators have simply ignored concerns about the reach of the registry to avoid looking "soft on crime." ECF No. 1, PageID.162. When Michigan enacted SORA 2021, it did not investigate the law's consequences. *Id.* And as shown in prior litigation, MSP does not track the recidivism rates of registrants, despite being able to do so, nor does the state analyze SORA data to determine if the law works. *Id.*, PageID.162–163 (citing *Does I*, 2:12-cv-11194 ECF No. 90, PageID.3758-3769).

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During the legislative hearings on SORA 2021, virtually all the 170 commenters opposed the bill, and experts explained why registry laws are ineffective. Despite that testimony and the multiple rulings that SORA is unconstitutional, the legislature barely changed the law. *Id.*, PageID.37–40. *See also* ECF No. 1–7, PageID.520–522 (registrants are the most stigmatized group in society, citing research that people do not change their views on registries even when provided with scientific evidence).

The Burdens: Plaintiffs allege that SORA 2021 places immense burdens on registrants. It limits access to housing, employment, and education, discourages travel and internet use, and encourages harassment. *See supra*, Facts, pp. 3–7.

Structural Aberration: Registry laws,[5] including SORA 2021, are unlike any other laws, imposing extensive obligations and ongoing supervision for decades or life without any individual consideration. Probation and parole—which are the closest analogs—are components of a criminal sentence and are individually determined. Non-punitive systems that impose significant restrictions on liberty, such as supervision of parenting through child protective services, monitoring of medication compliance for people with serious mental health issues, or guardianships for the incapacitated, all turn on individualized assessments and periodic review to ensure

[5] It is immaterial that many other states have registries. Other states had anti-gay laws like the one enjoined in *Bassett, supra*, but the court found animus by comparing the Michigan statute to other states' laws aimed at politically unpopular groups. 59 F. Supp. 3d at 848, 855.

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that such restrictions are warranted. SORA 2021 is aberrational.

In sum, Plaintiffs have plausibly alleged animus, which is all they need to do at the motion-to-dismiss stage. *Davis*, 679 F.3d at 438.

D. Imposing Extensive Burdens that Have No Public Safety Benefit on Thousands of People Who Present No Appreciable Risk Is Irrational.

A plaintiff can also overcome the presumption of rationality for legislative enactments by alleging facts that negate the purported justifications for the law. *Andrews v. City of Mentor*, 11 F.4th 462, 475–77 (6th Cir. 2021) (citation omitted).

Defendants opine that SORA 2021 promotes public safety (although they do not even attempt to explain how features like lifetime registration or constant reporting are rational). *See* ECF No. 41, PageID.1370. Taking the complaint's allegations as true, however, registry laws undermine public safety and are rooted in myths and fears that have been demolished by modern social science research. *See* Facts, pp. 3–7, *supra*; and Complaint, ECF No. 1, PageID.53–81. SORA 2021 wastes millions of dollars on a system that does nothing to reduce sexual offending. *Id.*, PageID.151–155; *see Plyler v. Doe*, 457 U.S. 202, 224 (1982) (weighing statute's costs against any purported benefits under rational basis review).

Courts have increasingly questioned the rationality of automatically imposing registry restrictions based solely on past convictions. *See*, *e.g.*, *Does I*, 834 F.3d at 704–05 (highlighting evidence that offense-based registration has, at best, no impact on recidivism and may *increase* sexual offending); *Cornelio v. Connecticut*, 32 F.4th

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160, 173 & n.7 (2d Cir. 2022) (same and collecting cases); *Betts*, 968 N.W.2d at 514 (noting "growing body of research" questioning efficacy of these restrictions); *Hoffman*, 249 F. Supp. 3d at 960, 962 n.10 (ordinance banning people with past sex offenses from living in village, which was adopted out of animus and despite evidence it could be counterproductive, was irrational); *In re T.B.*, 489 P.3d 752, 768 (Colo. 2021) (citing research that registration does not reduce recidivism); *Ortiz v. Breslin*, 142 S. Ct. 914, 916 (2022) (Sotomayor, J., respecting denial of certiorari) (citing research that residency restrictions "may actually increase the risk of reoffending").

Plaintiffs need make only plausible allegations of animus or irrationality, and they have done both. Whether SORA 2021 was motivated by animus and whether it is rationally related to the government's public safety interests are questions of fact.

IV. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT DENYING SIMILARLY SITUATED REGISTRANTS THE OPPORTUNITY TO PETITION FOR REMOVAL VIOLATES EQUAL PROTECTION.

A. The Barred-From-Petitioning Subclass Is Similarly Situated to Petition-Eligible Registrants in All Material Respects.

After ten years, Tier I registrants who meet strict criteria (successful completion of probation/parole, no subsequent felony, etc.) can petition to come off the registry. Relief is discretionary: a court **may** grant the petition if it determines that the person is rehabilitated. M.C.L. § 28.728c(1), (11), (12). Juveniles who meet the criteria must wait a staggering 25 years to petition. M.C.L. § 28.728c(2), (11), (13). Other registrants who meet the same criteria cannot petition at all. *Id.*

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Plaintiffs maintain that denying the opportunity to seek discretionary relief to Tier II and III registrants who meet the same criteria (e.g., have also successfully completed probation/parole, have no subsequent felony, etc.) violates equal protection because the only way in which they are different from petition-eligible Tier I registrants—their offense of conviction—is not *material* to the purpose of the petitioning procedure. Plaintiffs also maintain that it is irrational to require juveniles who meet the criteria to wait 15 years longer than adults before they can petition.

The parties agree that an equal protection violation occurs when people (1) are "treated differently than other[s] . . . who [are] similarly situated in *all material respects*," and (2) the state has no rational basis for the different treatment. *Loesel v. City of Frankenmuth*, 692 F.3d 452, 462, 465 (6th Cir. 2012); *Andrews*, 11 F.4th at 474 ("courts should not demand exact correlation, but should instead seek relevant similarity" (cleaned up)). *See* ECF No. 39, PageID.1213 (rational basis classification "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation").

Defendants barely address *material* similarity. The purpose of the review process under M.C.L. § 28.728c(1), (2), (11), (12) & (13) is to allow rehabilitated people to be removed from the registry. With respect to that purpose, there are no *material* differences between petition-eligible Tier I registrants and the barred-from-petitioning subclass (people who meet the same criteria but are juveniles, Tier II, or

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Tier III registrants). All have successfully completed probation or parole and any required treatment, and have lived in the community for at least ten years without reoffending (which corresponds with the period after which most registrants are no more likely to offend than the average male). *Compare* M.C.L. § 28.728c(12) *with* ECF No. 35, PageID.1117–1118; ECF No. 1, PageID.65–70. All have the same interest in being able to ask a court to consider them for removal from the registry.

Defendants defend this disparate treatment by arguing that the state can punish more serious convictions more severely. *See* ECF No. 39, PageID.1215 (analogizing disparate treatment here to offense-based differences in parole eligibility). But the purpose of the discretionary-review provision is not to punish. Where "the State has provided for a judicial proceeding to determine the dangerous propensities" of individuals, it cannot solely rely on "past criminal records" to justify disparate eligibility for discretionary relief. *Baxstrom v. Herold*, 383 U.S. 107, 114 (1966). Defendants do not address *Baxstrom* or the other cases in which courts have applied this principle. *See* ECF No. 7, PageID.916 n.17 (collecting cases).

The complaint alleges that the conviction offense has no bearing on recidivism (if anything, those in higher tiers are less likely to reoffend). *Id.*, PageID.916–918. There is thus no rational relationship between tier designation and the possibility of rehabilitation. And, for juveniles, there is no evidence to support harsher treatment of children. *Id.*, PageID.918.

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B. Plaintiffs' Challenge Is to the Classification of Who Is Eligible to Seek Discretionary Relief.

Defendants also confuse the statute's discretionary and mandatory removal provisions. As a result of various amendments, "Romeo and Juliet" offenses and offenses by children under 14 no longer require registration. M.C.L. §§ 28.722(a)(iii)–(iv), (t)(v)–(vi), (v)(iv); 28.723. An individual who commits such an offense today would not be registered, and the procedures Defendants point to are designed to remove previously registered individuals who are now no longer subject to registration. Because there is no statutory authority to subject such individuals to registration, their removal is mandatory. *See* M.C.L. § 28.728c(3), (14) ("court shall grant a petition" for individuals who are not subject to registration), (15) (same). The legislature's decision to end registration for younger children and for consensual teen sex is appropriate. Plaintiffs challenge (a) the fact that older children must wait 15 years longer than adults before being eligible for discretionary review, and (b) the complete denial of discretionary review to Tier II and III registrants who meet the same substantive criteria as petition-eligible registrants.

V. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT SORA 2021'S EXTENSIVE COMPELLED DISCLOSURE REQUIREMENTS VIOLATE THE FIRST AMENDMENT.

Defendants do not dispute that SORA 2021 compels Plaintiffs to speak or that strict scrutiny applies. ECF No. 41, PageID.1347. Defendants must therefore prove that the state has a compelling interest in forcing registrants to support its message

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that they are dangerous, that the reporting requirements are narrowly tailored to that end, and that these requirements are the least restrictive means to achieve the state's objectives. *Reed v. Town of Gilbert*, 576 U.S. 155, 171 (2015). Strict scrutiny requires "a justification far stronger than mere speculation about serious harms," including proof that "the recited harms are real . . . and that the regulation will in fact alleviate these harms in a direct and material way." *United States v. Nat'l Treasury Emps. Union*, 513 U.S. 454, 475 (1995); *Cornelio*, 32 F.4th at 171 (collecting cases on government's burden). Requiring people to report a vast array of information, often in person and within three days, and in most cases for life, without any risk determination, cannot survive strict scrutiny.

First, Defendants misdescribe Plaintiffs' claim as one about privacy. Plaintiffs' challenge here is not based on a claim that their information is private. Rather, they challenge the requirement that they *contribute* to the state's depiction of them as dangerous, a message with which they vehemently disagree. Defendants protest that registrants are required only to state facts, but the Supreme Court has made clear that compelled statements of fact, like compelled statements of opinion, burden protected speech. *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 797–98 (1988).[6]

[6] Defendants compare SORA 2021 to a procedure *Riley* discussed in dicta, which would have published financial disclosure forms that charities file. 487 U.S. at 800. SORA's intrusion on individual liberty is very different from public disclosure of forms that must be filed by a regulated sector of the economy. Nor did *Riley* suggest

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Moreover, while Defendants assert that the harms registrants experience flow not from registration, but the conviction, Plaintiffs plausibly allege otherwise. ECF No. 1, PageID.81–150.

Second, Defendants do not explain how SORA's compelled speech requirements pass strict scrutiny. Although preventing sex crimes is important, Defendants have not shown that Michigan's registry promotes that goal, much less that forcing registrants to report minor changes in information reduces sexual offending. Rather, the complaint alleges, and the evidence shows, that if anything, SORA 2021 increases the number of sex offenses in Michigan. ECF No. 1, PageID.56; ECF No. 1-6, PageID.461–462. Moreover, the Sixth Circuit has held that "[t]he requirement that registrants make frequent, in-person appearances before law enforcement . . . appears to have no relationship to public safety at all." *Does I*, 834 F.3d at 705; *see Cornelio*, 32 F.4th at 173 & n.7 (same and collecting cases).

Third, Defendants have also failed to prove narrow tailoring. "There is a dramatic mismatch . . . between the interest that the [state] seeks to promote and the disclosure regime that [it] has implemented in service of that end." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2386 (2021). A regime that forces a person

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that the state could, e.g., selectively pull information and repackage it on a website of "Rip-Off Charities" designed to make the public believe the charities are frauds.

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who has not offended in decades to report just because he's volunteering, that compels reporting of every new on-line account, and that demands disclosure of every car ever used—including for people who present no more risk than the average male—is not narrowly tailored. *See Cornelio*, 32 F.4th at 173–74 (state failed to establish narrow tailoring of internet reporting provision).

Fourth, the state cannot show that such requirements are the least restrictive means of achieving its goals. The state concedes that "the information that is posted on the registry is easily discoverable through various other means." ECF No. 39, PageID.1192. If so, the state need not compel registrants to provide it.

Finally, Defendants do not distinguish the Supreme Court's compelled speech cases, nor the cases holding that forcing registrants to speak does not survive strict scrutiny. ECF No. 7, PageID.920–32. Defendants rely on *United States v. Arnold*, 740 F.3d 1032 (5th Cir. 2014)—which was litigated pro se—and three district court cases. These cases lack the record or legal argument made here. *See*, *e.g.*, *id.* at 1035 (noting Arnold did not claim he was required to support a message with which he disagreed). Instead of using strict scrutiny, *Arnold*—citing a tax case—employed an amorphous "essential operations of government" test that neither the Supreme Court nor the Sixth Circuit have endorsed, and which would allow the government to

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compel or restrict speech whenever there is a compelling state interest.[7] *See id.* at 1034. But strict scrutiny requires that there be narrow tailoring and no less restrictive way to achieve the government's objectives. And even if one uses an "essential operations" test, Defendants fail to explain why registration is a core government function. The Greeks and Romans collected taxes, but states have managed without registries for centuries. Nor can Defendants establish that SORA 2021 is an "essential operation" unless they establish that it serves its purported purpose, which they have not. Accordingly, Plaintiffs have plausibly pled this compelled speech claim.

VI. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT RETROACTIVELY IMPOSING LIFETIME REGISTRATION VIOLATES PLAINTIFFS' PLEA AGREEMENTS.

Plaintiffs have plausibly alleged that sex offender registration is central to plea negotiations, and that it violates due process to retroactively impose lifetime registration on people who pled guilty without notice that they would be subject to lifetime registration or whose pleas were predicated on an understanding that they would not be subject to registration, or be subject for a term of years. Compl., ECF

[7] The district court cases applied strict scrutiny but found that standard satisfied based on assumptions that recidivism rates are high, reporting burdens minimal, and registries do not portray people as dangerous. *See United States v. Fox*, 286 F. Supp. 3d 1219, 1222–24 (D. Kan. 2018); *United States v. Doby*, No. 18-CR-40057-HLT, 2019 WL 5825064, at *3–5 (D. Kan. Nov. 7, 2019); *Prater v. Linderman*, No. 18-cv-992, 2019 WL 6711561 (W.D. Mich. Dec. 10, 2019) (adopting *Fox*). Here the record shows the opposite. ECF No. 1, PageID.53–101; ECF No. 1-3; ECF No. 1-4; ECF No. 1-5; ECF No. 1-6; ECF No. 1-7; ECF No. 1-8; ECF No. 1-9.

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No.1, PageID.160–61; 184–186; ECF No. 1-12. The plea-bargain subclass entered into plea agreements that SORA 2021 changes by retroactively imposing lifetime registration, a severe penalty. Registrants received no fair notice and may not have pled had they known they would be subject to registration for life. Defendants do not argue that this count fails to state a claim. Their challenge is limited to a statute-of-limitations argument which, as explained in Section XI below, is baseless.

VII. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT REQUIRING PEOPLE WHO DID NOT COMMIT A SEX OFFENSE TO REGISTER AS SEX OFFENDERS VIOLATES DUE PROCESS AND EQUAL PROTECTION.

The Michigan Court of Appeals very recently decided that registration for a non-sex offense is cruel or unusual punishment, emphasizing SORA 2021's extensive burdens, the absence of anything to suggest future sexual offending, the stigma of sex crimes which "surpasses almost all other crimes," and the fact that registration for non-sex crimes undermines the law's ostensible purpose. *Lymon*, 2022 WL 2182165, at *14–17, 16 nn.10–11. Those factors make such registration irrational.

Defendants do not address the cases holding that requiring people who never committed a sex crime to register as sex offenders, and branding them as sexually dangerous when they are not, violates equal protection and due process. ECF No. 7, PageID.932–41. They only argue that the legislature could conclude that people convicted of certain non-sex crimes might pose a risk. ECF No. 39, PageID.1214–1215. But it is still irrational to stigmatize them as "sex offenders" when they did

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not commit sexual crimes. *Cf. Does I*, 834 F.3d at 703 (expressing such a concern).

VIII. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT SORA 2021 IS UNCONSTITUTIONALLY VAGUE.

A. Due Process Requires a High Standard of Clarity to Provide Notice of What Conduct Is Forbidden and Guidance to Law Enforcement.

A statute is unconstitutionally vague if it does not provide a person of ordinary intelligence notice of what conduct is prohibited, and does not provide clear guidance for those who enforce its prohibitions. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). These requirements "ensure fair notice to the citizenry," and "provide standards for enforcement by the police, judges, and juries." *Columbia Nat. Res., Inc. v. Tatum*, 58 F.3d 1101, 1104 (6th Cir. 1995).

With respect to notice, "a statute which either forbids or requires the doing of an act in terms so vague that [people] of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law." *Connally v. Gen. Constr. Co.*, 269 U.S. 385, 391 (1926). "No one may be required at peril of life, liberty, or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." *Cramp v. Bd. of Pub. Instruction*, 368 U.S. 278, 287 (1961) (cleaned up).

With respect to guidance for law enforcement, unclear laws give "law enforcement officers, courts and jurors unfettered freedom to act on nothing but their own preferences and beliefs." *United States v. Salisbury*, 983 F.2d 1369, 1378 (6th Cir.

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1993). Absent "explicit standards," those who enforce the law may decide basic policy matters on a subjective basis "with the attendant dangers of arbitrary and discriminatory application." *Grayned v. City of Rockford*, 408 U.S. 104, 108–09 (1972).

A law "imposing criminal sanctions or reaching a substantial amount of constitutionally protected conduct may withstand facial constitutional scrutiny only if it incorporates a high level of definiteness." *Belle Maer Harbor v. Charter Twp. of Harrison*, 170 F.3d 553, 557 (6th Cir. 1999); *see also Vill. of Hoffman Estates v. Flipside*, 455 U.S. 489, 499 (1982) ("because the consequences of imprecision are qualitatively less severe" for civil than criminal statutes, laws imposing criminal liability require heightened review). Vague criminal laws are facially invalid. *See Johnson v. United States*, 576 U.S. 591, 602–03 (2015).

A high level of definiteness is required here because SORA 2021 imposes criminal sanctions and reaches a substantial amount of constitutionally protected conduct. Registrants face up to ten years imprisonment for non-compliance. M.C.L. § 28.729. Criminal liability attaches simply for the failure to report common everyday *legal* activities like using a phone, taking college classes, or renting a car. *See Lambert v. California*, 355 U.S. 225, 229 (1957) (invalidating registry law that "punished conduct which would not be blameworthy in the average member of the community" (cleaned up)). SORA 2021's vagueness also implicates constitutional rights because when registrants face uncertainty about what they must do, they err

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on the side of caution—for example, by limiting their internet use and travel—so as not to risk arrest and imprisonment. *See* ECF No. 1, PageID.135–147.

B. SORA 2021's Reporting Requirements Are Unconstitutionally Vague.

Plaintiffs plausibly allege that SORA 2021 is unconstitutionally vague. *See* ECF No. 1, PageID.10, 49, 126–132, 135–147. Defendants respond that no one is confused by the requirements, but if they are, "some vagueness around the edges" is fine. ECF No. 41, PageID.1366. That is wrong both because Plaintiffs' allegations must be taken as true and because a high level of definiteness is required. Discovery could also be instructive. In *Does I*, plaintiffs surveyed police and prosecutors about how they understood SORA. *See, e.g.*, Exhibit 1 – Poxson Report. Judge Cleland relied on those surveys to find that law enforcement's "disparate views" about the meaning of particular provisions "exemplify the lack of . . . standardized guidelines for the enforcement of SORA's reporting provisions." *Does I*, 101 F. Supp. 3d 672, 689; *id.* at 688 (record showed that both "Plaintiffs and law enforcement are unsure" what SORA requires). That is enough to deny Defendants' motion.

Defendants also argue that SORA 2021 cannot be vague because SORNA uses similar language. ECF No. 41, PageID.1357. But the existence of other laws with similar features does not immunize a statute from constitutional scrutiny. *See Smith v. Goguen*, 415 U.S. 566, 582 & n.31 (1974) (flag desecration statute unconstitutionally vague despite "the universal adoption" of similar laws in all 50 states).

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Next, Defendants turn the rule of lenity—which provides a shield from unjust prosecutions by requiring "ambiguous criminal laws to be interpreted in favor of the defendants," *United States v. Santos*, 553 U.S. 507, 514 (2008)—into a sword. Implicitly admitting the law is vague, Defendants suggest that the remedy is to ignore vagueness until prosecutions occur. ECF No. 41, PageID.1353. But "[t]he Constitution does not permit a legislature to set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained, and who should be set at large." *City of Chicago v. Morales*, 527 U.S. 41, 60 (1999) (cleaned up). Nor can vagueness be ignored because a law only criminalizes *knowing* failures to register: "notwithstanding the State's assurances that it will not prosecute 'honest mistakes,' we cannot assume that, in its subsequent enforcement, ambiguities will be resolved in favor of adequate protection" of constitutional rights. *Doe v. Harris*, 772 F.3d 563, 579 (9th Cir. 2014) (cleaned up).

Most striking is how Defendants' insistence that the law is not vague undercuts their argument that the law is not punishment. If Plaintiffs have to report every car they drive, ECF No. 41, PageID.1361, Doe F could be reporting all 30 cars in his employer's fleet, would not drive for a friend who has been drinking, and should not borrow a car when his breaks down. ECF No. 1, PageID.139–40. Are registrants really supposed to report whenever someone gives them a new nickname? ECF No. 41, PageID.1364. Must a registrant, when borrowing a phone, say: "Thanks, and by

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the way, your number will be added to the sex offender registry.”?

Defendants fare no better when addressing specific provisions of SORA 2021:

Internet identifiers and phone numbers: Registrants must report all electronic mail addresses, internet identifiers, and phone numbers “registered to or used by the individual,” and “any change” to such information. M.C.L. §§ 28.725(2)(a), 28.727(1)(h)–(i). These requirements impact free speech and their vagueness is concerning since the “severity of criminal sanctions may well cause speakers to remain silent rather than” risk prosecution for “arguably unlawful” activity. *Reno v. ACLU*, 521 U.S. 844, 872 (1997). That is what Plaintiffs allege is occurring, and what they anticipate proving. ECF No. 1, PageID.125–131, 136–138; *Does I*, 2:12-cv-11194, ECF No. 90, PageID.3898, 3903–3905, 3915–3919, 3933 (recounting evidence neither police nor registrants knew which internet activities must be registered).

SORA 2021’s internet reporting obligations are even vaguer than the old SORA, which required reporting of designations “used in internet communications or postings.” M.C.L. § 28.725(1)(f) (repealed 2021). SORA 2021 requires reporting of all internet identifiers, expansively defined as “all designations used for self-identification *or routing* in internet communications or postings.” M.C.L. § 28.722(g) (emphasis added). The change is substantive, but no one knows what it means. “Routing” refers to technical aspects of internet access, but does that mean registrants must report the IP address of any device they use? Moreover, the text

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requires registration of all internet IDs and phone numbers "registered or used" with no apparent time limit. The legislature could have used the present tense but did not. *See Carr*, 560 U.S. at 448 ("Consistent with normal usage, we have frequently looked to [the] choice of verb tense to ascertain a statute's temporal reach.")

Courts have found constitutional problems with similar provisions. The Ninth Circuit struck down a law requiring registrants to report "Internet identifiers established or used by the person." *Harris*, 772 F.3d at 567–68. The court held that the "district court's valiant effort at applying narrowing constructions" did not resolve vagueness because the statute was not susceptible to such constructions and because narrowing constructions "would not necessarily alleviate the chilling effect caused by the ambiguities in the Act," particularly given that a federal court's interpretation does not bind state courts where registrants face prosecution. *Id.* at 579. "[W]hether narrowly construed or not, ambiguities in the statute may lead registered sex offenders either to overreport . . . or underuse the Internet to avoid the difficult questions in understanding what, precisely, they must report." *Id. See also Doe v. Jindal*, 853 F. Supp. 2d 596 (M.D. La. 2012); *Doe v. Kentucky ex rel. Tilley*, 283 F. Supp. 3d 608, 613–15 (E.D. Ky. 2017); *White v. Baker*, 696 F. Supp. 2d 1289, 1311–12 (N.D. Ga. 2010). *State v. Aschbrenner*, 926 N.W.2d 240 (Iowa 2019), on which Defendants rely, fails to recognize that narrowing constructions do not solve the problem. Def-

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endants also cite *Delgado v. Swearingen*, but Florida's law had a far clearer definition of what must be reported. 375 F. Supp. 3d 1251, 1255–56 (N.D. Fla. 2018).

In *Does I*, Judge Cleland read the old SORA to apply only to designations "*primarily* used in Internet communications and posting" so as to make commercial transactions non-reportable. *Does I*, 101 F. Supp. 2d at 692. But the legislature did not adopt this reading in SORA 2021, instead requiring reporting of "*all* . . . internet identifiers registered to *or used* by the individual." M.C.L. § 28.727(1)(i) (emphasis added). Defendants offer up yet another reading, saying reporting is required for "accounts used to send messages, post, and other *user-generated* communications or postings that implicate public safety concerns at issue with the sex offender registry." ECF No. 41, PageID.1358. Narrowing constructions are of little use if there are multiple versions, none of which the legislature adopted when it had the chance.

Employment: SORA 2021 requires in-person, three-day reporting of changes to one's "place of employment" or discontinuation of employment, with a bewildering array of provisions about reporting volunteer work, contract work, travel routes, and work without a fixed location. M.C.L. §§ 28.722(d), 28.725(1)(b), 28.727(1)(f). Plaintiffs' complaint sets out the confusion. ECF No. 1, PageID.140–42. Defendants, citing SORNA, argue that one should just report "with whatever definiteness is possible under the circumstances." ECF No. 41, Page.ID 1363 (citing 28 C.F.R. § 72.6(c)(3)). But SORA 2021 does not have comparable language (and that language

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is itself unclear). Defendants cannot answer whether one must report shoveling a neighbor's sidewalk, and admit that "[t]here may be hundreds of nuanced situations" about what is reportable. *Id.* That is vagueness.

Substantially Similar Offenses: Whether a person with a non-Michigan conviction must register depends on whether the offense is "substantially similar" to a Michigan offense that triggers registration, with the tier of the "substantially similar" Michigan offense determining how long and how often the person must report. M.C.L. § 28.722(r)(x), (t)(xiii), (v)(viii). Mapping offenses from one jurisdiction on to those of another is difficult, because the offense elements in other jurisdictions do not necessarily track those of Michigan offenses.

SORA 2021's Complexity Makes It Vague: Page limits prevent Plaintiffs from addressing every vague provision raised. *See* Complaint. ECF No. 1, PageID.135–150. But a statute can be vague if it is "written in a language foreign to persons of ordinary intelligence" and is so "technical or obscure that it threatens to ensnare individuals engaged in apparently innocent conduct." *United States v. Caseer*, 399 F.3d 828, 836–37 (6th Cir. 2005). That describes SORA 2021: with its complex structure, dense provisions, and endless requirements, SORA 2021 creates a language foreign to law enforcement and obscure to registrants. Not only does the reporting regime put a colossal burden on registrants with no countervailing public safety value, but the lack of clarity about what registrants must do leaves them in

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constant fear of prosecution. Vagueness is a key reason the law is so onerous.

IX. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT COMPELLING REGISTRANTS TO SAY THAT THEY UNDERSTAND SORA 2021 VIOLATES THE FIRST AMENDMENT.

Defendants offer a smorgasbord of arguments for why registrants can be compelled to attest they understand SORA 2021, and incarcerated if they decline to sign. First, Defendants make a comparison to forms where one acknowledges having received a document or verifies facts one has provided. Registrants are not just being asked to acknowledge receipt or verify facts; they must attest to *understanding*.

Second, Defendants say that if registrants read the form, they will understand the law. That assumes an extraordinary level of legal sophistication, as even attorneys in this case can't agree on what the law means. Moreover, the form gives only an overview of a very complex law. *Compare* ECF No. 1-17 *with* ECF No. 1-3.

Third, Defendants interpret M.C.L. §§ 28.727(4) and 28.729(3) as requiring an attestation of understanding only at initial registration and not for ongoing verifications. Whether Michigan prosecutors and judges will read it that way is anyone's guess. After all, registrants who miss a verification are prosecuted for "failure to register," and the Explanation of Duties form, which is used both for initial registration and ongoing reporting, requires a signature each time. ECF No. 1, PageID.147; ECF No. 1-17, PageID.764. But it scarcely matters. An unconstitutional compulsion to speak does not become constitutional if you only have to do it once.

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Next, Defendants argue that SORNA and some state laws have similar provisions. But many of these statutes are inapposite, because they only require the registrant to verify that they were informed of their duties, not that they understand them.[8] Of the remaining laws, Defendants acknowledge that SORNA and several state statutes have no penalty provisions.[9] For those states that purportedly attach criminal sanctions, Defendants point only to the general penalties applicable to the failure to register, with no indication that they apply to the signature requirement.[10] Alabama, for example, contemplates that registrants may not sign and makes alternate arrangements. *See* Ala. Code § 15-20A-10(g) (if a registrant refuses to sign, "the designee of the registering agency shall sign the form stating that the requirements have been explained to the adult sex offender and that the adult sex offender refused to sign."). Michigan, by contrast, provides no alternative for those who refuse to do so; failure to sign is a crime. M.C.L. § 28.729(3). Regardless of the similarity of these statutes, Defendants can point to no cases upholding such compelled speech. There is no "other states do it" defense to violating the Constitution.

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[8] *See* Kan. Stat. Ann. § 22-4904; La. Rev. Stat § 15:543(7); Mass. Gen. Laws ch. 6, § 178E; Me. Rev. Stat. tit. 34-A, § 11222; N.C. Gen. Stat. § 14-208.8(a)(1); 11 R.I. Gen. Laws § 11-37.1-5(b)(6).

[9] *See* 34 U.S.C. § 20919(a)(2); Ohio Rev. Code Ann. § 2950.03(B); 42 Pa. Stat. and Cons. Stat. §§ 9799.20(2), 9799.23(a)(5); W. Va. Code § 15-12-2(g).

[10] *See* Ala. Code § 15-20A-10(g), (j); 730 Ill. Comp. Stat. 150/4, 150/5; Nev. Rev. Stat. §§ 179D.450(3)(a)(2), 179D.550(1); Okla. Stat. tit. 57, §§ 585(A)(2), 587(A); Vt. Stat. tit. 13, §§ 5406(3), 5409(a).

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Finally, Defendants argue that compelled statements of understanding survive strict scrutiny because of the state's interest in obtaining truthful information. That interest could at best justify a requirement to verify facts, not a requirement to say one *understands* the law. Moreover, Michigan began compelling registrants to attest that they understand the law only *after* the law changed to eliminate strict liability; Michigan never needed it before. Defendants also claim that forcing registrants to say they understand the law might encourage them to ask questions. That is not enough to solve problems with the statute's ambiguity. *See Harris*, 772 F.3d at 579 (rejecting Defendants' argument). Moreover, Plaintiffs allege that law enforcement often does not know the answer or provides conflicting information. *See, e.g.*, ECF No. 1, PageID.130–131, 144, 147.

X. PLAINTIFFS HAVE PLAUSIBLY ALLEGED THAT THE INTERNET REPORTING REQUIREMENTS UNCONSTITUTIONALLY RESTRICT SPEECH AND ASSOCIATION IN VIOLATION OF THE FIRST AMENDMENT.

The internet provides "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017) (law barring registrants from social media violated First Amendment). Numerous courts have therefore struck down the very type of law at issue here, finding that requiring reporting of internet information burdens protected speech by chilling use of the internet and anonymous speech. *See, e.g.*, *Cornelio,* 32 F.4th at 166; *Harris*, 772 F.3d at 572; *Doe 1 v. Marshall,* 367 F. Supp. 3d 1310, 1329

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(M.D. Ala. 2019); *White v. Baker,* 696 F. Supp. 2d 1289, 1310–11 (N.D. Ga. 2010).

For example, earlier this year, the Second Circuit found that requiring registrants to disclose internet identifiers burdened their ability to speak on the internet, singled out those engaged in expressive activity, and prevented registrants from speaking online anonymously—all forbidden by the First Amendment. *Cornelio*, 32 F.4th at 166–69. At issue was a Connecticut law which—like SORA 2021—required registrants to disclose email addresses, instant messenger addresses, and other internet identifiers. *Id.* at 166. The Second Circuit found that Connecticut's law burdens speech by requiring reporting "precisely when a registrant decides to engage in online speech using a communication identifier," and thus "plausibly deters registrants from engaging in protected online speech." *Id.* at 169 (citing *Zieper v. Metzinger*, 474 F.3d 60, 65 (2d Cir. 2007) (government action that falls short of prohibiting speech may still have chilling effect)); *accord Harris*, 772 F.3d at 573 (conditioning speech on written reporting of internet identifier imposes substantial burden on speech). The *Cornelio* court was further troubled by the law's chilling effect on anonymous speech, which is as protected online as in other fora. 32 F.4th at 169–170; *accord Harris*, 772 F.3d at 574 (same). The court found that Connecticut had failed to show that the purported government interests behind the disclosure requirement satisfied even intermediate scrutiny, and therefore declined to decide whether a higher standard applied. *Id.* at 170–71. (Because the internet-reporting requirement

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is a speaker-based burden on speech, as well as for the reasons set out in Plaintiffs' preliminary injunction brief, ECF No. 7, PageID.922–29, strict scrutiny applies here. Defendants concede as much. ECF No. 41, PageID.1343, 1347–49.)

Defendants do not address this caselaw, nor do Defendants identify a compelling government interest, let alone one sufficient to justify the heavy burden imposed. And Defendants do not attempt to show that the law is narrowly tailored. Moreover, nothing here demonstrates "that the disclosure requirement materially provides deterrence" against sexual offending, and "[a] developed record may undermine" any assertion by Defendants to the contrary. *Cornelio*, 32 F.4th at 174.

Instead, Defendants focus on overbreadth, apparently hoping that the Court—instead of requiring the government to justify its restrictions—will shift the burden to the Plaintiffs. ECF No. 41, PageID.1351. Overbreadth is the wrong doctrinal framework. This is not a case where a speech-restricting law has a plainly legitimate sweep, or one where someone whose own speech may validly be proscribed is challenging a law based on its unconstitutional effects on others. *See Connection Distrib. Co. v. Holder*, 557 F.3d 321, 335 (6th Cir. 2009) (purpose of overbreadth challenge is "to permit the claimant to strike the law in its entirety based on its application to other individuals not before the court"). Rather, the gravamen of Plaintiffs' claim is that SORA 2021's reporting requirements unconstitutionally burden *their* protected speech. ECF No. 1, PageID.125–132, 182–184. It is Defendants' burden to show

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those burdens are constitutional. *Cornelio*, 32 F.4th at 171.

But even if one uses an overbreadth analysis, Plaintiffs have plausibly alleged that SORA 2021's internet reporting requirements are overbroad and chill a substantial amount of protected speech. *See Cornelio*, 32 F.4th at 175 (internet reporting requirement overbroad because it applied to registrants who had never engaged in illicit online activity and required reporting of all internet identifiers); *Harris*, 772 F.3d at 578 (internet reporting requirement overbroad). In other words, Plaintiffs have plausibly alleged that "the risk exists that, if left on the books, the statute would chill a substantial amount of activity protected by the First Amendment." *Speet v. Schuette*, 726 F.3d 867, 878 (6th Cir. 2013).

Factually, Defendants dispute that registrants' e-mail addresses and internet identifiers could become publicly available (an argument that goes only to anonymity, but not to the burden of reporting). Defendants overlook not only that factual disputes must be resolved in Plaintiffs' favor, but also that SORA 2021 permits what the old SORA had prohibited—registrants' email and instant message addresses *can* now be publicly posted on the online registry. *Compare* 2020 Mich. Pub. Act 295, § 8(3), *with* 2011 Mich. Pub. Act 18, § 8(3)(e). Defendants offer no explanation for this change, and nothing prevents Michigan from posting internet information at any time. This fact alone distinguishes SORA 2021 from the Utah statute upheld in *Doe v. Shurtleff*, 628 F.3d 1217 (10th Cir. 2010). *See Cornelio*, 32 F.4th at 176 & n.11

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(finding the Tenth Circuit's decision "inapposite," because the Utah statute, which was challenged as chilling anonymous speech, permitted sharing only among law-enforcement agencies and only for law-enforcement purposes). The caselaw rejects Defendants' argument that because disclosure is made to the government, not directly to the public, there is no impact on speech. *Id.* at 169–70 ("disclosure requirement . . . risks chilling online speech, anonymous and otherwise").

Defendants also incorrectly claim that federal regulations bar states from posting such information. They do not. The federal regulations either govern what the federal government itself can post or are non-binding guidelines for states seeking federal funding. *See* Sections I.E.1, XII.B (explaining relationship between federal and state registry laws). Registrants thus reasonably fear that their identifiers will become publicly available and they will not be able to speak anonymously. That fear produces an impermissible chilling effect. *See*, *e.g.*, *Harris*, 772 F.3d at 581 ("fear of disclosure in and of itself chills [registrants'] speech").

Finally, Defendants' suggestion that Plaintiffs have not adequately pled any chilling effects is hard to square with the complaint. The complaint contains paragraph after paragraph alleging particular instances in which class members were either afraid to use the internet to speak or associate with others, or had to stop using the internet, both because the reporting requirement imposes a significant burden (three-day reporting) whenever they create a new identifier, and because of the fear

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of intimidation and harassment that would result if they are unable to speak anonymously. ECF No. 1, PageID.125–132 (alleging multiple, detailed examples of registrants who avoid the internet or must use it with fear).

At most, Defendants' arguments raise factual disputes that cannot be resolved at the pleadings stage. Dismissal of a First Amendment claim "will rarely, if ever, be appropriate at the pleading stage. Instead, factual development will likely be indispensable to the assessment of whether [such a law] is constitutionally permissible." *Cornelio*, 32 F.4th at 172.

XI. THE STATUTE OF LIMITATIONS DOES NOT INSULATE SORA 2021 FROM CONSTITUTIONAL SCRUTINY.

Plaintiffs' claims are timely. Defendants' arguments to the contrary cannot be seriously entertained, both because the harms caused by SORA are ongoing and because Plaintiffs filed suit less than a year after SORA 2021 was enacted.

A. Statutes of Limitations Do Not Bar Claims Challenging Ongoing Violations of Constitutional Rights.

A statute-of-limitations period runs from "the last asserted occurrence" of a challenged practice. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 381 (1982). Each wrongful act "starts a new clock," even if related wrongful acts also occurred outside the limitations period. *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113 (2002); *see also Wallace v. Kato*, 549 U.S. 384, 391 (2007) (limitations period for wrongful imprisonment claim began when detention ended); *Klehr v. A.O. Smith*

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Corp., 521 U.S. 179, 189 (1997) (each sale in price-fixing conspiracy "starts the statutory period running again, regardless of the plaintiff's knowledge of the alleged illegality at much earlier times" (cleaned up)).

Thus, "[a] law that works an ongoing violation of constitutional rights does not become immunized from legal challenge for all time merely because no one challenges it within" the first few years of its enactment. *Kuhnle Bros. v. Cnty. of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997); *see also Va. Hosp. Ass'n v. Baliles*, 868 F.2d 653, 663 (4th Cir. 1989); *Palmer v. Bd. of Educ. of Cmty. Unit Sch. Dist. 201-U*, 46 F.3d 682, 686 (7th Cir. 1995); *Maldonado v. Harris*, 370 F.3d 945, 955–56 (9th Cir. 2004). "When the continued enforcement of a statute inflicts a continuing or repeated harm, a new claim arises (and a new limitations period commences) with each new injury." *Flynt v. Shimazu*, 940 F.3d 457, 462 (9th Cir. 2019).

In *Kuhnle*, the Sixth Circuit held that a plaintiff who challenged an ordinance banning truck travel "suffered a new deprivation of constitutional rights every day that [the ordinance] remained in effect," and therefore "'a new limitations period began to run each day. . . .'" 103 F.3d at 522–23. Here, too, Plaintiffs suffer a new deprivation each day they are subjected to punishment or are compelled—under threat of prosecution—to register for life or are held out as sex offenders even if they never committed a sex offense. *See* ECF No. 1, PageID.171–193. It is the enforce-

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ment, or threat thereof, of an allegedly unconstitutional law *in the present* that creates the injury. *See Flynt*, 940 F.3d at 462–63 & n.4.

Statutes of limitations are much more relevant to damages cases than to cases seeking prospective relief. Thus, in *Kuhnle*, the plaintiff had a claim because the government's ongoing enforcement reset the limitations period anew each day, but damages were limited to the two-year limitations period. 103 F.3d at 522–23. By contrast, where—as here—Plaintiffs seek only prospective relief based on the "realistic threat of future enforcement" of an unconstitutional statute, there is no statute-of-limitations issue. *Flynt*, 940 F.3d at 464; *see also Leal v. Azar*, 2020 WL 7672177, at *7 (N.D. Tex. Dec. 23, 2020) (statutes of limitations "are simply inapplicable" to suits for prospective relief against ongoing harm).

The Georgia Supreme Court's decision in *Gardei v. Conway*, 868 S.E.2d 775, 782 (Ga. 2022), holding that a constitutional challenge to an annual sex offender registration requirement was timely, is directly on point. The court explained that "each time [the registrant] was required to register in violation of his rights"—subjecting him to a new felony prosecution if he failed to comply—"extended the allegedly illegal consequences of registration for another year and resulted in a new wrongful act, a new injury, and the accrual of a new cause of action." *Id.* at 781. Because the plaintiff sought "a determination only as to whether he is required to comply with the [statute] in the future," there was no statute-of-limitations issue. *Id.*

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Gardei is more persuasive than the unpublished *Doe v. Rausch* decision on which Defendants rely. 2022 WL 481240 (M.D. Tenn. Feb. 16, 2022). *Rausch* correctly acknowledged that several claims, including an ex post facto claim, were timely because they sought prospective relief against punishment and challenged aspects of the law that exposed the plaintiff to ongoing criminal liability for future conduct. *Id.* at *3. *Rausch* only found untimely a due process claim "directed at the original imposition of SORA's requirements." *Id.* Defendants here try to frame Plaintiffs' retroactive imposition of lifetime registration claim, violation of plea agreements claim, and non-sex-offense claim as directed at the original imposition of registration, and therefore time-barred. *See* ECF No. 41, PageID.1374–1375. These claims, however, are all directed "at the ongoing effects of the statutory scheme." *Rausch*, 2022 WL 481240, *3. The retroactive imposition of lifetime registration claim attacks the ongoing "extensive burdens" and harsh consequences imposed by SORA 2021 today and every day in the future until death. ECF No. 1, PageID.173–174. Similarly, the violation of plea agreements claim focuses on "the burdens that SORA 2021 imposes" on an ongoing basis for the rest of one's life. *Id.*, PageID.185–186. And the core injury for the non-sex-offense claim is the ongoing public branding as sex offenders of people who never committed a sexual offense. *Id.*, PageID.186. Because the harm for these claims accrues anew each day and inheres in the ongoing enforcement of SORA 2021, these claims are not time-barred.

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On Defendants' theory, the courthouse doors are closed to people who are subject to prosecution unless they comply with a longstanding but unconstitutional criminal law. Rosa Parks would have been foreclosed from challenging the bus ordinance because she had endured it for years. And any challenge to Michigan's 1931 law criminalizing abortion would have had to been brought within the first few years of its enactment. *See* M.C.L. § 750.14. That is nonsense. Courts routinely hear challenges to criminal laws that were adopted long ago, *see, e.g.*, *Craig v. Boren*, 429 U.S. 190 (1976); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014); *Wooley v. Maynard*, 430 U.S. 705 (1977), and "[i]t is not necessary that [a person] first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights," *Steffel v. Thompson*, 415 U.S. 452, 459 (1974). Plaintiffs' claims are therefore timely.

B. Plaintiffs Brought This Action Within Three Years of the Effective Date of SORA 2021.

Even if a statute of limitations could bar claims for prospective relief against continued enforcement of an unconstitutional law, Plaintiffs' claims would be timely. The new SORA went into effect on March 24, 2021. *See* 2020 Mich. Pub. Act 295. Plaintiffs filed this action less than a year later, on February 2, 2022. Compl., R. 1. The *earliest date* the limitations period begins to run is from the effective date of a challenged law or policy. *See*, *e.g.*, *Kuhnle*, 103 F.3d at 521; *Waltower v. Kaiser*, 17 F. App'x 738, 740 (10th Cir. 2001); *Catawba Indian Tribe of S.C. v. United*

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States, 982 F.2d 1564, 1569–71 (Fed. Cir. 1993); *cf. Hill v. Snyder*, 821 F.3d 763, 771 (6th Cir. 2016) (vacating order dismissing some plaintiffs' claims as untimely, because statute had since been amended and challenge would be to the new law).

Here that rule is apt because the old SORA has been permanently enjoined. If SORA 2021 had not gone into effect, pre-2011 registrants would have **no** obligation to register and post-2011 registrants would only have to comply with part of the old SORA. *Does II*, 16-cv-13137, ECF No. 126. Moreover, SORA's many amendments over the last two decades have repeatedly changed registrants' obligations. ECF No. 1, PageID.36–40. Although the 2021 statute incorporates the 2011 amendments, it also imposes additional burdens, such as an annual fee added in 2013, and more extensive reporting requirements added in 2021. *See* 2013 Mich. Pub. Act 149; ECF No. 1, PageID.52, 135–150. Plaintiffs' challenge is based on the burdens imposed by *this* statute, not those imposed by an earlier statute that was enjoined.

Take John Doe A, for example. When he pled guilty to his non-sex-offense in 1991, there was no registry. *Id.*, PageID.161. While he was in custody, Michigan passed its first registry statute. 1994 Mich. Pub. Act 295. The requirement that he register for his kidnapping offense was added in 1999—a time when the registry was very different. 1999 Mich. Pub. Act 85, § 2(d)(v). When John Doe A was released from custody in 2009, he had to comply with the statute in effect then, which had been amended several more times. *See* ECF No. 1, PageID.38–39. Under the 2011

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amendments, he was classified as a tier III registrant and subjected to extensive, in-person reporting requirements, and in 2013 he was required to pay an annual fee. *Id.*, PageID.14, 39; 2013 Mich. Pub. Act 149. Under the final *Does I* judgment he was removed from the public registry and subject to only basic reporting requirements for 25 years. ECF No. 1, PageID.14–15, 39. With SORA 2021, his obligations have changed once again. He must register for life, comply with the more extensive reporting requirements, and is branded as a sex offender at a time when the consequences of having that designation on the internet have increased exponentially. *Id.*, PageID.15, 82–89; ECF No. 1-10. On Defendants' theory, Doe A should have brought his claim within three years of the 1999 law. But the harms he suffers today are different from those in 1999. Because Plaintiffs' claims focus on the registry's cumulative burdens, one cannot tie the limitations period to the initial effective date of any particular provision. One must look to the effective date of SORA 2021.

XII. DEFENDANTS' MOOTNESS ARGUMENT IS MERITLESS AND REFLECTS A MISUNDERSTANDING OF THE RELATIONSHIP BETWEEN FEDERAL AND STATE REGISTRY LAWS.

To demonstrate that a live controversy exists, Plaintiffs need only identify an actual injury that can be redressed by the relief sought. *Harmon v. Holder*, 758 F.3d 728, 733 (6th Cir. 2014); *see United States v. Juv. Male*, 560 U.S. 558, 560 (2010) (per curiam) (to defeat mootness, all registrant needed to show was that a favorable decision would reduce his registration obligations). Defendants argue that this case

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is moot because even if Plaintiffs prevail in challenging SORA, they still must comply with SORNA. This argument is wrong because (1) SORNA's federal jurisdiction requirement means that SORA applies to more people than SORNA; (2) state registry schemes determine what a registrant is required to do under SORNA; and (3) SORA and SORNA have different requirements, *see* Section I.E.3.

A. SORNA's Federal Jurisdiction Requirement Means SORA Applies to More People Than SORNA.

SORNA requires a federal nexus because

> Persons convicted . . . under state law who fail to register in their State of conviction would otherwise be subject to federal prosecution under § 2250 even if they had not left the State after being convicted—an illogical result given the absence of any obvious federal interest in punishing such state offenders.

Carr, 560 U.S. at 446. There is "federal criminal liability only when . . . [registrants] use the channels of interstate commerce in evading a State's reach," *id.* at 452, or have a federal/tribal conviction, 18 U.S.C. § 2250(a)(2)(A). Thus, registrants who simply live in Michigan and have Michigan convictions cannot be prosecuted under SORNA. *See* 18 U.S.C. § 2250.

Ignoring the federal jurisdictional requirement, Defendants argue that under *Willman*, 972 F.3d 819, SORNA applies to all registrants. The question in *Willman* was whether a person can have SORNA obligations even if he did not have to register under state law. *Id.* at 824. The court rejected Willman's argument that because he did not have to register in Michigan, SORNA could not apply to him at all.

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Instead, the court read SORNA as applicable to persons who meet SORNA's definition of a "sex offender," regardless of whether they are required to register in their state. *Id.* at 823. But *Willman* in no way suggested that SORNA can apply absent federal jurisdiction. Indeed, *Willman* cited both the provision predicating liability on traveling in interstate commerce and cases holding the same. *Id.* at 823. What *Willman* means is that if Mr. Willman moves in interstate commerce, SORNA requires him to register even though he need not register in Michigan. But if he stays here, he cannot be prosecuted because there would be no federal jurisdiction.

B. State Registry Schemes Determine What a Registrant Is Required to Do Under SORNA.

Because there is no federal system, it is Michigan's scheme that determines what Michigan registrants must do under both SORA and SORNA. Whether a registrant can be prosecuted under SORNA turns on what Michigan requires.

1. States Can Decide Whether to Have SORNA-Congruent Registries.

Most state registries diverge dramatically from SORNA, and registrants have no way to comply with any SORNA requirements that are not mirrored in state law. Congress' effort to incentivize states to adopt SORNA-based laws has largely failed. Thirty-two states have rejected SORNA, even though they lose some federal funds. ECF No. 1, PageID.153–154.[11] Although all states have registries, they vary greatly

[11] Only 18 states are "substantially compliant"—which is the floor for federal

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in terms of who must register, for how long, how often registrants must report, what information they must report, whether registration is public, and whether risk assessments are used. Because states are free to adopt their own registration schemes, the "requirements of SORNA may or may not overlap" with state law. *Felts*, 674 F.3d at 604. While Michigan is among the minority of states that are "substantially compliant" with SORNA, SORA still differs from SORNA. *See* Section I.E.3. If the Court grants the requested relief, SORA would simply differ more, and would also be more like registries in the many non-SORNA-congruent states.

2. The Lack of a Federal Registration System Means that Criminal Liability Under SORNA Turns on the Extent to Which State Law Overlaps with Federal Law.

As the Supreme Court has noted, "as far as we can tell, while SORNA punishes violations of its requirements (instead of violations of state law), the Federal Government has prosecuted a sex offender for violating SORNA only when that offender also violated state-registration requirements." *Kebodeaux*, 570 U.S. at 398. Registrants are not liable under SORNA if they cannot comply with SORNA requirements that differ from state requirements and state registration is pursuant to state law. 86 Fed. Reg. 69868 (citing 18 U.S.C. § 2250(c)); *id.* at 69887 (providing example that registrant would have defense where he cannot register because state

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funding. ECF No. 1, PageID.153–154. At least 13 of those 18 states deviate from SORNA's retroactivity guidelines. *See* Department of Justice Substantial Implementation Reviews, SMART, https://www.smart.gov/sorna-map.htm.

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does not register people with his offense); *cf. Willman*, 972 F.3d at 823.

People who need not register under SORA but are theoretically required to register under SORNA have no way to register. In *Felts*, 674 F.3d 599, the Sixth Circuit specifically recognized that registrants can register only pursuant to state schemes and that there could be "circumstances where an inconsistency between federal and non-[SORNA-congruent] state regimes would render it impractical, or even impossible, for an offender to register under federal law." *Id.* at 605. For example, SORNA requires people convicted of gay sex with a person under 18 to register for life, whereas SORA requires them to register for 25 years. *See* Department of Justice, *SORNA Substantial Implementation Review State of Michigan*, at 2 (May 9, 2011), smart.ojp.gov/sites/g/files/xyckuh231/files/media/document/michigan.pdf. After year 25, there is no way for such a person to register in Michigan.

Defendants' mootness argument makes no sense because Michigan already has a registration scheme that differs significantly from SORNA, and could, like the majority of states, have a registration scheme that differs radically from SORNA. That could happen through legislative reform or judicial decision. For example, if the Court prohibits retroactive enforcement against pre-2011 registrants absent individual review, then Michigan would diverge from SORNA in that way, just like other states that already have individual review. Far from being moot, this is a case where the Court can not only redress injuries, but can grant transformative relief.

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CONCLUSION

Defendants' motion to dismiss should be denied.

Respectfully submitted,

s/ Miriam J. Aukerman (P63165)
Rohit Rajan (AZ 035023)
American Civil Liberties Union Fund of Michigan
1514 Wealthy SE, Suite 260
Grand Rapids, MI 49506
(616) 301-0930
maukerman@aclumich.org
rrajan@aclumich.org

s/ Paul D. Reingold (P27594)
Cooperating Counsel, American Civil Liberties Union Fund of Michigan
Univ. of Michigan Law School
802 Legal Research Building
801 Monroe Street
Ann Arbor, MI 48109-1215
(734) 355-0319
pdr@umich.edu

s/ Daniel S. Korobkin (P72842)
American Civil Liberties Union Fund of Michigan
2966 Woodward Avenue
Detroit, MI 48201
(313) 578-6824
dkorobkin@aclumich.org

s/ Roshna Bala Keen (Ill. 6284469)
Loevy & Loevy
Cooperating Counsel, American Civil Liberties Union Fund of Michigan
311 North Aberdeen, 3rd Floor
Chicago, Illinois 60607
(312) 243-5900
roshna@loevy.com

Counsel for Plaintiffs

Dated: July 18, 2022

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LOCAL RULE CERTIFICATION

I, Rohit Rajan, certify that this document complies with Local Rule 5.1(a), including: double-spaced (except for quoted material and footnotes); at least one-inch margins on the top, sides, and bottom; consecutive page numbering; and type size of all text and footnotes that is no smaller than 10-1/2 characters per inch (for non-proportional fonts) or 14 points (for proportional fonts). I also certify that it is the appropriate length. Local Rule 7.1(d)(3).

s/ Rohit Rajan (AZ 035023)
American Civil Liberties Union
Fund of Michigan
1514 Wealthy SE, Suite 260
Grand Rapids, MI 49506
(616) 301-0930
rrajan@aclumich.org

Exhibit H to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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AFFIDAVIT OF SHARON JEGLA

I, Sharon Jegla, ("Affiant"), being first duly sworn, deposes and states as follows:

1. I am employed by the Michigan State Police as a Department Analyst in the Sex Offender Registration Unit. I have held this position since January 20, 2013.

2. This Affidavit is based upon Affiant's personal knowledge.

3. Affiant, if sworn as a witness, can testify competently as to the facts stated herein.

4. As of January 25, 2023, the following data is available in the Michigan Sex Offender Registry regarding the registrants and the underlying crimes that led to their registration obligations:

Field	Results
Public and private registrants	43,995
Public and private registrants with a subsequent registrable offense	5,268
Gross indecency with a victim under 13	76
Gross indecency with a victim between 13-17	131
Criminal Sexual Conduct 1st Degree with a victim under 13	4,903
Criminal Sexual Conduct 1st Degree with a victim between 13-17	990
Criminal Sexual Conduct 1st Degree with an adult victim	761
Criminal Sexual Conduct 2nd Degree with a victim under 13	8,960
Criminal Sexual Conduct 2nd Degree with a victim between 13-17	2,388
Criminal Sexual Conduct 2nd Degree with an adult victim	737
Criminal Sexual Conduct 3rd Degree with a victim under 13	801
Criminal Sexual Conduct 3rd Degree with a victim between 13-17	6,039
Criminal Sexual Conduct 3rd Degree with an adult victim	853
Criminal Sexual Conduct 4th Degree with a victim under 13	1,222
Criminal Sexual Conduct 4th Degree with a victim between 13-17	4,088
Criminal Sexual Conduct 4th Degree with an adult victim	1,658
Criminal Sexual Conduct Assault with Intent to Commit Penetration with a victim under 13	407
Criminal Sexual Conduct Assault with Intent to Commit Penetration with a victim between 13-17	719
Criminal Sexual Conduct Assault with Intent to Commit Penetration with an adult victim	453
Criminal Sexual Conduct 2nd Degree Assault with a victim under 13	424

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Criminal Sexual Conduct 2nd Degree Assault with a victim between 13-17	390
Criminal Sexual Conduct 2nd Degree Assault with an adult victim	195
Accosting a child (victims under 18)	1,600
Child pornography or using a computer to commit a crime	2,822
Sodomy (victims under 18)	23
Aggravated indecent exposure (victims under 18)	284
Surveilling or capturing image of unclothed person (victims under 18)	185
Prostitution/Human Trafficking (victims under 18)	93
Crimes of CSC 1st Degree, 2nd Degree, 3rd Degree, 4th Degree, CSC Assault with intent to commit penetration, or CSC 2nd Degree Assault, where the age of the victim is unknown	9,030

5. The majority of the crimes listed above where the age of the victim is known are committed against children or victims under the age of 18.

Age Range of Victims	Results
Victims under the age of 13	16,793
Victims between 13-17	14,745
Total victims under 18 (including those immediately above)	36,545
Adult victims	4,657

Affiant says nothing further.

Sharon Fryle

Date: 2-7-2023

Subscribed and sworn to before me this
7th day of FEBRUARY, 2023.

Jeremy Jones
Notary Public

My Commission Expires: 01/23/2027

Exhibit I to AMICUS BRIEF OF THE MSP IN SUPPORT OF WAYNE CO PO
People v Lymon, Mi S Ct No. 164685

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SECOND AFFIDAVIT OF SHARON JEGLA

I, Sharon Jegla, ("Affiant"), being first duly sworn, deposes and states as follows:

1. I am employed by the Michigan State Police as a Department Analyst in the Sex Offender Registration Unit. I have held this position since January 20, 2013.

2. This Affidavit is based upon Affiant's personal knowledge.

3. Affiant, if sworn as a witness, can testify competently as to the facts stated herein.

4. As of As of March 10, 2023, there are:

44,110 Registrants on the public and non-public registry.

3,041 Tier I Registrants,[1] of which 2,710 are not incarcerated.

8,622 Tier II Registrants,[2] of which 7,834 are not incarcerated.

32,309 Tier III Registrants,[3] of which 24,533 are not incarcerated.

The total number of Tier I, Tier II, and Tier III do not equal the total number of registrants because we have some registrants registered with no tier or their tier has not yet been determined. This accounts for a difference of 138 offenders.

8,237 Registrants with email/internet identifiers reporting requirements (i.e., only those that have a registration obligation after July 1, 2011, and no subsequent registrable offense). This includes registrants who have an offense committed date after July 1, 2011, but does not include incarcerated registrants. The total would be 13,174 if incarcerated registrants are included.

5. According to information provided to me by our vendor, who has access to more robust search tools in the MSOR database, for the period of March 24, 2021-March 23, 2022:

---

[1] Tier I registrants must verify their address in-person once per year. MCL 28.725a(3)(a).
[2] Tier II registrants must verify their address in-person twice per year. MCL 28.725a(3)(b).
[3] Tier III registrants must verify their address in-person four times per year. MCL 28.725a(3)(c).

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1,892 Tier I Registrants reported in-person one time during the year.

4,837 Tier II Registrants reported in-person two times during the year.

11,630 Tier III Registrants reported in-person four times during the year.

11,588 Registrants updated address, employer/volunteer information, or higher learning information, which is required to be done in person.

7,682 Registrants updated temporary addresses and dates of travel, email and internet identifiers, vehicle information, or telephone numbers, which may be done by mail.

> The updates from the 7,682 Registrants consisted of: 400 addresses; 968 email/internet identifiers; 4,391 vehicles; and 3,652 phone numbers.

609 Registrants notified law enforcement that they are moving out of the state.

37 Registrants reported international travel.

6. According to information provided to me by our vendor, who has access to more robust search tools in the MSOR database, for the period of March 24, 2022-March 10, 2023:

1,907 Tier I Registrants reported in-person one time during the year.

4,964 Tier II Registrants reported in-person two times during the year.

12,636 Tier III Registrants reported in-person four times during the year.

17,783 Registrants updated address, employer/volunteer information, or higher learning information, which is required to be done in person.

11,303 Registrants updated temporary addresses and dates of travel, email and internet identifiers, vehicle information, or telephone numbers, which may be done by mail.

> The updates from the 11,303 Registrants consisted of: 871 addresses; 1,339 email/internet identifiers; 7,006 vehicles; and 5,778 phone numbers.

948 Registrants notified law enforcement that they are moving out of the state.

67 Registrants reported international travel.

Affiant says nothing further.

Date: 3/16/2023

Subscribed and sworn to before me this
15th day of March, 2023.

Notary Public
Aja Washington
Notary Public, State of Michigan, County of Ingham
Acting in the County of Eaton

My Commission Expires: 07/14/2028

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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN
Plaintiff - Appellee

v.

ANGEL PETERSON
Defendant - Appellant

Supreme Court #

Court of Appeals #364405

Lower Court #19-005547-01-FC

Angel Peterson, In Pro Per
Women Huron Valley
3201 Bemis Road
Ypsilanti, MI 48197
(734)

Kym Worthy
Wayne County Prosecutor
441 St. Antoine
Detroit, MI 48226
(313)

MOTION TO EXPAND THE RECORD

NOW COMES, defendant-appellant, Angel Peterson, in accordance with MCR7.311EA Matters outside te record will not be considered by the Supreme Court except and if this Honorable Court issues an Order granting this defendant's motion to expand the record. The defendant will not be able to successfully make a claim of ineffective assistance of counsel if the Court does not expand the record to include the defendant's booking slip, arrest warrant and exculpatory witness statements. The defendant's claim of ineffective assistance of counsel is dependent on consing considering what trial counsel did not do. Also, according to Washington v. Texas 388 U.S. 14(1967) a defendant has the right to present evidence during trial. ("The right to offer the testimony of witnesses, and to compel their attendance, if necessary is in plain terms the right to present a defense, the right to present the defendants version of the facts as well as the prosecutors to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecutors witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.") The defendant would like to offer a defense for herself which ws noty afforded to her in her trial nor at appeal. The defendant state the following,

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1. On 5-4-94 the defendant voluntarily turned herself into poloice custody and was issued the attached booking slip. please see exhibit A

2. At some point before her admission, defendant was interrogated by Officer Miles and Officer Marvell. Officer Marvell stouch the defendant several times in the face, head and chest during one of the interrogation sessions. As a resulttoof this abuse, the index finger was injuedd.

3. Officer Miles also interrogated the defendant prior to her admission. Miles sexually harassed the defendant during this interrogation. He touched and fondled the breast and vagina areas. In addition to this physical contact Officer Miles used suggestive language of a sexual nature.

4. The defendant did not receive a probable cause hearing within 48 hours of her warrantless arrest. But was instead interrogated aggressivly until 5-7-94 and when exhausted and afraid just signed the statement written by Sgt. Lovier, and then the defendantywas arraigned.

5. The defendant relayed the above facts to her trial attorney. He did file a motion to suppress her coerced confession.

6. On 10-13-94 at the Walker hearing defense counsel did move orally for a continuance in order to subpoena Officer harvel and Officer Miles because they wer "important and necessary."

7. Yet on 11-1-94 on page 23 defense counsel decides, "Your Honor, I would waive my additional witnesses. That would be Lieutenant Marvel and Officer Miles."

8. Also, without the defendants consent defense counsel informed the defendant that he was not going to talk about being coerced into making a confession at trial.

9..The defendant filed a request for appointment of appellate counsel and was provided with an attorney.

10. Again against the request of the defendant appellate counsel refused to to address the issue of heig coerced into making a confession.

11. The defendant then made the choice to sue member of the Detroit Police

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Department for assault and battery in the united States District Court for the Eastern District of Michigan.

12. The Defendant was assigned case (96-CV-71570-DT

13. The ensuing testimony was summarized in the District Court findings:

> "Officer Miles allegedly fondled defendant's breast and vagina area and used "suggestive language of a sexual nature" during his interrogation of her. There is nothing to suggest any immediate threat to him or other or that defendant intended to escape. escape. Even if there were, such acts would certainly not constitute an "objectively reasonable response.
>
> Officer Miles suggest, however, that defendant cannot make out an element of her claim because she failed to tell someone at the police department about the alleged acts. Yet this is not dispositive. There are several rational reasons why a woman sexually assaulted by [illegible] officer yet still in police custody would not tell another officer or file a formal complaint. For example, she may fear a reoccurrence of the events or reprisal from his fellow police officers. Further,m in her deposition defendant maintained that she did in fact tell someone.
>
> As to her claim against Officer Harvell, there also exists su sufficient questions of material fact to deny summary judgment. Defendant asserts that he struck herseveral times in the face, head and chest. She maintains that as a result of this force she injuced her finger which required surgery seveeal days later. Officer Harvell specificallyi denied these allegations in his answer to the complaint. Answer at par 9. In his motion for summary judgment Officer harvell maintains that there is "no evidence that Plaintiff complained of injucy to her index finger, let alone, had any surgery perfoomed on her [illegible]." Defendants' Brief in Support at 8. Further, he asserts that defendant was "not injured, did not complain of injury and signed her name to that effect." Id. In her response, defendant directs the Court's attention to several medical documents. In a request for medical care submitted on or around May 10, 1994, [defendant] stated that her right index finer was swollen and she had difficulty bending it. She noted that her injury occurred "some time last week." She was diagnosed with an abscess onher right index finger requiring an incision and drainage. This apparently took place at Mercy Hospital on May 13, 1994.
>
> In his replyt [the Officer] acknowledges that [defendnat] sought such treatment. He maintains, however,that there is no evidence associating [defendant's] infection on her right index finger to any action taken by him during her three day stay in lock-up and that "[m]oreover, it is simply incredible that [def[illegible]'s] index finger would be struck, causing it to "snap", and the only injurywould be an infection under the nail." Reply Brief at 2. Yet, there is "some evidence" that this is in fact what happened. [Defendant's] complaint, signed and dated under the penalty of perjury, alleges this. She submitts documentation showing that she had a problem

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associated with her right index finger requiring medical treatment at a nearby hospital. It is conceivable that in an attempt to protect herself, [defendant's] fingernail could have been partially torn and that an infectioncould have set in over the next few days. Because of this, and given that Officer Harvell has not offered any specific justification for the use of such force during his questionig of [defendant] other than to claim she was "attempting to resist arrest," there remains a question of a material fact as to whether Officer Harvell violated [defendant's] Fourth Amendment rights. Report and Recommendation by Steven D. Pepe, U.S. Magistrate Judge 7-22-99 19.8,9

14. Yet when Officer Rice when asked had the defendant been physically harmed in custody swore,

"Q Did you ever see Miss Peterson threatened in ay wayt by anyone?

A No, sir.

Q Did yo see any kind of physical force used against her by any of the other officers under your supervision?

A No, sir.

15. This Court in People v. Johnson, 451 Mich. 15 (1996) before addresssing the merits remanded the case for anevidentiary hearing with regard to the proposed witnesses. Following those proceeding on remand the Court explained that the failure to call these known exculpatory witnesses was a denial of effective assistance.

16. The defendat acknowledges that the aforementioned hearings were not held in State courtybut in Federal court. But I could not get a hearing in State Court. Justice would not be served if these Officers were allowed to deny any wrong doing in State Court but say the defendant was resisting arrest in Federal Court.

WHEREFORE, the reasons staed above the defendant respectfully asks that this Court expand the record to include the defendant's booking slip, arrest warrant, and Officer Harvell and Miles answer to interrogatories in case #96-CV-71670-DT. The defendant is innocent and was never given a chance to present a defense as guaranteed by the Michigan Constitution

Dated : JUNE 20, 2023

Signed: Cargol Peterson

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PETER on ANGEL After 6 PM NO PHONE
10 50 NO VISITS
Rec'd Murder 1st/Alt Term Home Det. CAN MAKE A CALL

LAST NAME	FIRST NAME	M.I.	CHARGE	CB NO	CLASS	CELL
PETERSON	ANGEL	LADONNA	MURDER	134920	MIN	98

D.O.B.	AGE	RACE	SEX	COMPLX	HEIGHT	WEIGHT
5-9-74	19	B	F	MED	5-6	175

WARNING

ADDRESS 19553 WEXFORD

RESTRICTIONS

NEXT OF KIN (RELATIONSHIP & NAME) HENRIETTA CARTER FRIEND

HOLD CHARGE — CB NO — HOLD CHARGE — CB NO

ADDRESS 19653 WEXFORD PHONE NO. 369918

HOLD CHARGE — CB NO — HOLD CHARGE — CB NO

CONVEYED BY OFFICER Mallin Fire UNIT Hom DATE 5-4-94 TIME PROPERTY? ☑ YES ☐ NO PROPERTY RETURNED BY

TRUSTY STATUS ?? ☐ YES ☒ NO STATUS GIVEN BY BROOKS

STATUS CANCELLED	DATE	PLAT	REASON	CANCELLED BY

DISPOSITION 36th Dist Ct DATE 5/7/94

ADVISED OF RULES? ☑ YES ☐ NO-REASON

T.O.T. (NAME) James UNIT TIME 10:50 AM

ADVISED BY M. Taylor

ADMITTED TO CELL BY M. Taylor

DISCHARGED FROM CELL BY J. Higgins

DETAINED AT PCT UNIT

PRISONER ADMISSION

DPD 127 (6-87-MA) C of D—97-PO

DO YOU HAVE ANY MEDICAL PROBLEMS?

YES

NO Angel Peterson

C of D—97-PO

TEMPORARY ABSENCES

OUT DATE	OUT TIME	RELEASED TO (RANK, NAME, UNIT)	IN DATE	IN TIME	RETURNED BY (RANK, NAME, UNIT)
5-5-94	9:30 AM	Lt Kevin Hoyt	5-5-94	4:30 PM	Lt Kevin Hoyt
5-5-94	7:20	P.O. Mallin Fire	5-6-94		P.O. M. Childs Hom
5-6-94	5:20	P.O. R. Lewis	5-6-90	4:15	Sgt Davis

ADDITIONAL INFORMATION

DEPOSITION EXHIBIT 18/97 PLS

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DETROIT DEPARTMENT POLICE

INFORMATION FOR ARRAIGNMENT ON WARRANT

(MAKE A SEPARATE SHEET FOR EACH DEFENDANT)

DEFENDANT'S NAME	RACE	AGE	OFFENSE	WARRANT NUMBER
ANGEL PETERSON	B	19	3CTS MURDER	36 94-6029

DEFENDANT'S ADDRESS [redacted]

LENGTH OF TIME LIVED IN DETROIT: LIFE

MARITAL STATUS: ☐ MARRIED ☒ SINGLE ☐ OTHER (SPECIFY)

NUMBER OF CHILDREN: 0

SUPPORTING FAMILY? ☐ YES ☒ NO

EMPLOYED? ☒ YES ☐ NO

IF YES, WHERE? Apollo Plating

HOW LONG? 6 mos.

RECORD OF CONVICTIONS

FELONIES	MISDEMEANORS
NONE	

OTHER CASES PENDING	BOND ON OTHER CASES

ON PAROLE? ☐ YES ☒ NO

ON PROBATION? ☐ YES ☒ NO

OFFICERS REQUEST EXAMINATION? ☒ YES ☐ NO

FURLOUGH OR TIME OFF DATES WHICH MIGHT INTERFERE WITH EXAMINATION:

ADDITIONAL INFORMATION: DEF. THREW FIRE BOMBS AT PREMISES resulting in the death of 3 people.

NAME OF OFFICER IN CHARGE OF CASE: Inv. Lowe — RANK: SGT. — UNIT: Hmd.

DATE ARRAIGNED: 5-7-94 — JUDGE: Costello

PLEA	BOND	EXAMINATION DATE	DEFENSE ATTORNEY
	RE-MAN	5-17-94	

NAME OF ARRAIGNMENT OFFICER: Tucker — RANK: SGT — UNIT:

D.P.D. 576

C of D-3-AR (Rev. 12-72)

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Attachment
___ # of Pgs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGEL PETERSON,

Plaintiff,

vs.

CHIEF OFFICER HARVELL
and OFFICER STEVE MILES,

Defendants.
_____/

Case No. 96-CV-71670-DT

HONORABLE PATRICK DUGGAN
HONORABLE STEVEN D. PEPE

REPORT AND RECOMMENDATION

Plaintiff Angel Peterson is an inmate in the custody of the Michigan Department of Corrections. She filed this action under 42 U.S.C. § 1983, alleging that defendants violated her constitutional rights. Chief Officer Harvell and Officer Steve Miles filed their first motion to dismiss or for summary judgment in December 1997. This Court denied their motion in August 1998. Defendants filed their second motion for summary judgment under Fed. R. Civ. P. 56 on April 28, 1999. Plaintiff filed a "motion in opposition" on May 14, 1999, which is treated here as her response to defendants' motion. Defendants filed a reply on May 21, 1999. These matters were referred for report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). Because there exists disputed issues of material fact, defendants' motion for summary judgment should be denied.

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I. BACKGROUND

On May 4, 1994, members of the Detroit Fire Department responded to a fire. As a result of a subsequent investigation, plaintiff Peterson became a suspect in the arson case. She was arrested and brought in for questioning later that day. On May 6, 1994, plaintiff offered an admission statement.

At some point before her admission, plaintiff was interrogated by defendants Officer Miles and Officer Harvell. She asserts that Officer Harvell struck her several times in the face, head and chest during one of the interrogation sessions. She states that as a result of this abuse, she injured her index finger. In support of her claim she offers documentation that surgery was performed on her finger by a doctor at Mercy Hospital on May 13, 1994.

Officer Miles also interrogated plaintiff prior to her admission. Plaintiff maintains that Miles sexually harassed her during this interrogation. She alleges that he "touched and fondled my breasts and vagina areas. In addition to this physical contact Officer Miles used suggestive language of a sexual nature." Complaint at ¶ 4.

In their first motion to dismiss or for summary judgment, defendants contended that plaintiff failed to assert relief that this Court could grant because she only sought unspecified "punishment". This Court denied defendants' motion and allowed plaintiff to amend her complaint to add a claim for money damages. Defendants then filed answers to plaintiff's complaint denying plaintiff's factual allegations. In their second dispositive

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motion defendants' assert that plaintiff's claims cannot be supported with sufficient proofs and that they are entitled to qualified immunity.

II. ANALYSIS

A. Summary Judgment Under Rule 56

Under Fed. R. Civ. P. 56, summary judgment is to be entered if the moving party demonstrates there is no genuine issue as to any material fact. The Supreme Court has interpreted this to mean that summary judgment should be entered if the evidence is such that a reasonable jury could find only for the moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). The moving party has "the burden of showing the absence of a genuine issue as to any material fact." *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 157 (1970). *See also Lenz v. Erdmann Corp.*, 773 F.2d 62 (6th Cir. 1985). In resolving a summary judgment motion, the Court must view the evidence in the light most favorable to the non-moving party. *See Duchon v. Cajon Co.*, 791 F.2d 43, 46 (6th Cir. 1986); *Bouldis v. United States Suzuki Motor Corp.*, 711 F.2d 1319 (6th Cir. 1983). But as the Supreme Court wrote in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986):

> [T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on

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> an essential element of her case with respect to which she has the burden of proof.

B. The Fourth Amendment

Plaintiff does not cite in her complaint the specific constitutional provision or federal statutory right she relies upon in support of her claims. This is not, however, fatal to her suit. It is well settled that *pro se* complaints are to be construed liberally. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Judge Charles Clark,[1] joined by Judges Learned and Augustus Hand, noted the minimum notice pleading requirements of the federal rules and the obligations of the courts to apply the correct law to a case:

> A simple statement in sequence of the events which have transpired, coupled with a direct claim by way of demand for judgment of what the plaintiff expects and hopes to recover, is a measure of clarity and safety; and even the demand for judgment loses its restrictive nature when the parties are at issue, for particular legal theories of counsel yield to the court's duty to grant the relief to which the prevailing party is entitled, whether demanded or not.

Gins v. Mauser Plumbing Supply Co., 148 F.2d 974, 976 (2d Cir. 1945).

This case does present, however, a question as to *which* provision of the federal constitution should apply here. If the alleged acts had arisen before or during her arrest,

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[1] Charles E. Clark, Dean of the Yale Law School and later Chief Judge of the Second Circuit, was one of the moving forces in the 1938 adoption of the Federal Rules of Civil Procedure. He was Reporter for the Supreme Court's Advisory Committee to draft the federal rules, and was a frequent author on the subject. *See, e.g.*, Charles E. Clark & James W. Moore, *A New Federal Civil Procedure: I, the Background*, 44 YALE L.J. 387 (1935); Charles E. Clark, *Two Decades of the Federal Civil Rules*, 58 COLUM. L. REV. 435 (1958); and Michael E. Smith, *Judge Charles E. Clark and the Federal Rules of Civil Procedure*, 85 YALE L.J. 914 (1976).

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the Fourth Amendment would clearly apply. If these acts had instead occurred after her arraignment before a judicial officer, either the Fourteenth Amendment's due process clause (pretrial detainee) or the Eighth Amendment's "cruel and unusual punishment" provision (convicted inmate) would be the appropriate standard. Plaintiff's complaint, however, involves alleged acts occurring after she was arrested but before she offered her admission statement and her subsequent arraignment on murder charges.[2]

In *Graham v. Connor*, 490 U.S. 386, 395 n.10 (1989), the Supreme Court left open the question "whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive physical force beyond the point at which arrest ends and pretrial detention begins." While a majority of the federal circuits have found that the Fourth Amendment applies in such situations,[3] the Sixth Circuit has not yet

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[2] Based on the current record, it is somewhat unclear when exactly plaintiff was formally arrested. In their motion for summary judgment defendants state that plaintiff was arrested, ¶ 2, and interrogated, ¶ 3. This suggests that plaintiff was arrested before her interrogation. Later in the brief, however, defendants claim plaintiff "attempted to resist arrest and was subdued," Defendants' Brief in Support at 12, suggesting that any force employed by them was used during arrest. In the latter case, the Fourth Amendment clearly applies. As explained *infra*, the Fourth Amendment is also the proper standard in analyzing the former situation.

[3] *See, e.g.*, *Pride v. Does*, 997 F.2d 712, 716 (10th Cir.1993) (applying Fourth Amendment standard to claim of excessive force brought by arrestee who was handcuffed, taken to the highway patrol office and restrained by the officer's application of force to his neck); *United States v. Myers*, 972 F.2d 1566, 1571-72 (11th Cir.1992), *cert. denied*, 507 U.S. 1017 (1993) (upholding a Fourth Amendment jury instruction in a post-arrest, pre-charge excessive force case); *Austin v. Hamilton*, 945 F.2d 1155, 1159-60, 1162 (10th Cir.1991) (Fourth Amendment reasonableness standard applies to claims of excessive force during "post- arrest," "second custodial stage," or "prehearing" context), *abrogated on other grounds*, *Johnson v. Jones*, 115 S. Ct. 2151 (1995) (on issue of collateral appeal); *Powell v. Gardner*, 891 F.2d 1039, 1044 (2d Cir.1989) (Fourth Amendment standard should be applied at least to the period prior to arraignment or formal charge and while suspect remains in custody (sole or joint) of the arresting officer); *Hammer v. Gross*, 884 F.2d 1200, 1204 (9th Cir. 1989) (where DUI arrestee forced to submit to blood test, court held that Fourth Amendment standard applies

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addressed this issue.[4] In a Report and Recommendation submitted in a different case and adopted by the District Court, the undersigned stated that in such situations, "other courts and strong policy arguments would extend Fourth Amendment protections after arrest until a judicial officer has made a determination on probable cause and the issue of pre-trial release or detention." *Guzinski v. Hasselbach*, 920 F. Supp. 762, 765 (E.D. Mich. 1996) (citing *Austin v. Hamilton*, 945 F.2d 1155, 1162 (10th Cir. 1991) (holding that the Fourth Amendment's objective reasonableness standard applies after an arrest up to the arrested suspect's first judicial hearing); *Hammer v. Gross*, 884 F.2d 1200, 1204 (9th Cir. 1989), *vacated on other grounds*, 932 F.2d 842 (9th Cir. 1991) (en banc) (Fourth Amendment applies to force used to compel drunk driving arrestee to consent to chemical tests because the force constituted a search incident to arrest)). Further, the defendants' themselves characterize plaintiff's claim as one arising under the Fourth Amendment. *See* Defendants' Brief in Support at 6. (Note: although the defendants' brief cites the "Fourth Fourteenth

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to use of force during course of arrest and includes acts immediately after the moment of the initial seizure; court questioned whether Fourth Amendment controls when seizure or arrest ripens into detention), *vacated en banc on other grounds*, 932 F.2d 842, 845 n.1 (9th Cir. 1991) (noting agreement with application of Fourth Amendment), *cert. denied*, 502 U.S. 980 (1991). *But see Brown v. Doe*, 2 F.3d 1236, 1240 (2d Cir.) (finding that pretrial detainee beaten while in custody was protected by Fourteenth Amendment Due Process Clause without considering issue of Fourth Amendment protection or distinguishing and reversing *Powell*), *cert. denied*, 510 U.S. 1125 (1993).

[4] In *Cox v. Treadway*, 75 F.3d 230, 241 (6th Cir.), *cert. denied*, 519 U.S. 821 (1996), Judge Ryan, speaking for the court on the issue of the precise point at which an arrest ends and pretrial detention begins, notes that the "determination of when an arrest ends and 'custody' begins is a question that must be answered by looking at the totality of the circumstances in each case." In a subsequent case, the Sixth Circuit left open the question of whether a claim brought by a pretrial detainee can be analyzed under the Fourth Amendment. *Holmes v. City of Massillon*, 78 F.3d 1041, 1049 n.6 (6th Cir.), *cert. denied*, 117 S. Ct. 312 (1996).

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Amendment", their following discussion makes it clear that they believe this to be a Fourth Amendment claim only.)

> Under the Fourth Amendment, the issue is whether
>
> > the defendants' actions were "objectively reasonable" in light of the facts and circumstances confronting them, without regard to underlying intent or motivation. [*Graham*, 490 U.S.] at 397 . . . . Reasonableness must be viewed from the perspective of the defendants on the scene rather than with the "20/20 vision of hindsight." *Id.* at 396, ...

Frohmader v. Wayne, 958 F.2d 1024, 1026 (10th Cir. 1992). The Supreme Court recognized in *Graham* that

> [b]ecause "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," . . . however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.

Graham, 490 U.S. at 396 (citations omitted).

Applying these principles to this case and considering the parties' differing accounts in the light most favorable to plaintiff, there exists enough evidence of governmental conduct "sufficiently reprehensible" to constitute a violation of plaintiff's Fourth Amendment rights. Officer Miles allegedly fondled plaintiff's breasts and vagina areas and used "suggestive language of a sexual nature" during his interrogation of her. There is nothing to suggest any immediate threat to him or others or that plaintiff intended to escape. Even if there were, such acts would certainly not constitute an "objectively reasonable" response.

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Defendant Miles suggests, however, that plaintiff cannot make out an element of her claim because she failed to tell someone at the police department about the alleged acts. Yet, this is not dispositive. There are several rational reasons why a woman sexually assaulted by a police officer yet still in police custody would not tell another officer or file a formal complaint. For example, she may fear a reoccurrence of the events or reprisal from his fellow police officers. Further, in her deposition plaintiff maintained that she did in fact tell someone. *See* Defendants' Brief in Support at Exh. D.

As to her claim against Officer Harvell, there also exists sufficient questions of material fact to deny summary judgment. Plaintiff asserts that he struck her several times in the face, head and chest. She maintains that as a result of this force she injured her finger which required surgery several days later. Officer Harvell specifically denied these allegations in his answer to the complaint. Answer at ¶ 9. In his motion for summary judgment Officer Harvell maintains that there is "no evidence that Plaintiff complained of injury to her index finger, let alone, had any surgery performed on her finger." Defendants' Brief in Support at 8. Further, he asserts that plaintiff was "not injured, did not complain of injury and signed her name to that effect." *Id.* In her response, plaintiff directs the Court's attention to several medical documents. In a request for medical care submitted on or around May 10, 1994, plaintiff stated that her right index finger was swollen and she had difficulty bending it. She noted that her injury occurred "some time last week." She was diagnosed with an abscess on her right index finger requiring an incision and drainage. This apparently took place at Mercy Hospital on May 13, 1994.

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In his reply defendant acknowledges that plaintiff sought such treatment. He maintains, however, that there is no evidence associating plaintiff's infection on her right index finger to any actions taken by him during her three day stay in lock-up and that "[m]oreover, it is simply incredible that Plaintiff's index finger would be struck, causing it to 'snap', and the only injury would be an infection under the nail." Reply Brief at 2. Yet, there is "some evidence" that this is in fact what happened. Plaintiff's complaint, signed and dated under the penalty of perjury, alleges this. She submits documentation showing that she had a problem associated with her right index finger requiring medical treatment at a nearby hospital. It is conceivable that in an attempt to protect herself, plaintiff's fingernail could have been partially torn and that an infection could have set in over the next few days. Because of this, and given that Officer Harvell has not offered any specific justification for the use of such force during his questioning of plaintiff other than to claim she was "attempting to resist arrest," there remains a question of a material fact as to whether Officer Harvell violated plaintiff's Fourth Amendment rights.

Of course the Court recognizes that plaintiff's account is disputed and that defendants have countervailing evidence. Further, there are reasons that a jury may find plaintiff's version of events to be exaggerated and/or fictional and that defendants acted within the parameters of objective reasonableness. Plaintiff may be outnumbered at trial by defense witnesses. Defendants and their witnesses will have better pedigrees that will be considered by the jurors on credibility determinations. Plaintiff's physical injuries were limited to a finger nail that required minor surgery. While the lack of a serious injury is

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not dispositive, it is a legitimate factor that can be considered by the fact finder in evaluating whether the use of force was clearly excessive.

Yet, if a jury – who will have the important additional demeanor evidence so critical to a credibility determination – decides that plaintiff's version is more credible than the self-serving denials of the defendants, then the jury could determine that the defendants were objectively unreasonable in their alleged treatment of plaintiff during interrogation. Thus, a jury could make the necessary factual findings that would legally support a verdict against these defendants that they violated plaintiff's constitutional rights concerning the use of excessive and inappropriate force.

Only if this Court determines that a jury could not legally reach such a finding can this case be terminated on summary judgment. While it may be convenient and a substantial conservation of judicial resources and defense costs to so rule when an inmate with modest injuries and resources is outnumbered by defendants represented by the City of Detroit's legal department, this is an act beyond the Court's competence in a summary judgment motion. Were courts to dismiss such cases routinely, without live testimony and credibility determinations, all arrestees and inmates in the United States would face greater risk of experiencing unconstitutional abuse by governmental actors, who would then have a degree of confidence that their behavior will not be subject to scrutiny and evaluation by neutral decision makers.

While defendants' motion for summary judgment on the merits should be denied, defendants also assert a defense of qualified immunity. Government officials who perform

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discretionary functions are generally entitled to qualified immunity from individual liability for civil damages so long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982); *see also Christophel v. Kukulinsky*, 61 F.3d 479, 484 (6th Cir. 1995); *Thomas v. Whalen*, 51 F.3d 1285, 1289 (6th Cir. 1995), *cert. denied*, 116 S. Ct. 518 (1995); *Pray v. Sandusky*, 49 F.3d 1154, 1157-58 (6th Cir. 1995). The Sixth Circuit has held that if a defendant raises a qualified immunity defense, the plaintiff bears the burden of showing that the constitutional right alleged to have been violated was clearly established at the time of the alleged violation. *Ohio Civil Serv. Employees Ass'n v. Seiter*, 858 F.2d 1171, 1174 (6th Cir. 1988); *Dominique v. Telb*, 831 F.2d 673, 676 (6th Cir. 1987).

As noted above, there has been considerable confusion as to whether the Fourth Amendment's objectively reasonable standard or the Fourteenth Amendment's substantive due process standard protects individuals after their arrest but before booking before a magistrate or judge.[5] The Sixth Circuit has not come down one way or the other, and the decisions of this District Court are not sufficient for qualified immunity purposes. *See Robinson v. Bibb*, 840 F.2d 349, 352 (6th Cir. 1988) ("In order to be clearly established, a question must be decided either by the highest state court in the state where the case arose, by a United States Court of Appeals, or by the Supreme Court."). It is clear, however,

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[5] *See supra* note 2.

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that either the Fourth or the Fourteenth Amendment applies here. *See supra* note 3. If, therefore, defendants' alleged acts would clearly be recognized by reasonable law enforcement officers to violate both of these federal standards, then a qualified immunity defense must fail.

It has already been shown that the alleged acts of defendants, if supported by sufficient proofs at trial, would constitute objectively unreasonable behavior and thereby violate plaintiff's Fourth Amendment rights against unreasonable search and seizure. If "the use of force has been found excessive, a qualified immunity defense normally will be unavailable." *Lanigan v. Village of East Hazel Crest*, 110 F.3d 467, 477 (7th Cir. 1997). "This is because the substantive inquiry under the Fourth Amendment – whether the police officer reasonably could have believed that the force was necessary – is the same inquiry that determines the availability of qualified immunity." *Smith v. Delamaid*, 842 F. Supp. 453, 459 n.1 (D. Kan. 1994).

Under the Fourteenth Amendment's substantive due process standard, the relevant factors to whether the use of force is excessive are: "(1) the relationship between the amount of force used and the need presented; (2) the extent of the injury inflicted; and (3) the motives of the state officer." *Hewitt v. City of Truth or Consequences*, 758 F.2d 1375, 1379 (10th Cir.), *cert. denied*, 474 U.S. 844 (1985). In their motion defendants assert that they "were performing their duties as police officers questioning Ms. Peterson about an egregious crime. Plaintiff attempted to resist arrest and was subdued." Defendants' Brief in Support at 12. If defendant Harvell did indeed strike plaintiff several times in the face,

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head and chest, there is at least a reasonable question as to whether this was in excess of that necessary to subdue her during interrogation. Further, while plaintiff's injury was not extensive, it was enough to require medical treatment at a nearby hospital. Plaintiff does not explicitly allege any improper motive by Officer Harvell, but given the liberal treatment afforded to *pro se* plaintiffs, such motive could be inferred from her choice of words describing the alleged assault: "struck", "blows", and "beating". Viewing the allegations and proffered evidence in the light most favorable to plaintiff, Officer Harvell's alleged acts would clearly be recognized as a violation of the substantive due process standard.

The analysis is simpler as to the allegations against Officer Miles. Without some sort of overwhelming justification, it is clear that no objective and reasonable officer would touch and fondle a female arrestee's breasts and vaginal area. Further, this is the type of activity that often times would not result in any type of lasting injury, but that is not fatal here given the repugnant nature to the alleged acts. Finally, without the type of overwhelming justification that would require a strip and body cavity search, it appears inconceivable that there could be any type of "proper" motive in such situations. Such alleged actions would clearly be recognized by a reasonable officer as a violation of the Fourteenth Amendment.

Again, defendants' strongly contest the accuracy and characterization of plaintiff's allegations and there are reasons for believing that their version of events would be accepted by a jury. If the key facts for resolving the issue of qualified immunity are

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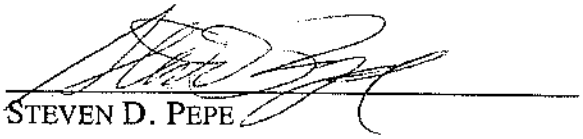
unknown or disputed, however, the Court cannot grant summary judgment. *See Clash v. Beatty*, 77 F.3d 1045, 1048 (7th Cir. 1996).

III. RECOMMENDATION

For the reasons stated above, IT IS RECOMMENDED that defendants' motion for summary judgment be DENIED.

Any objections to this Report and Recommendation must be filed within ten (10) days of its service. 28 U.S.C. § 636(b)(1); E.D. Mich. LR 72.1(d)(2). Failure to file objections within the specified time constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985); *Ivey v. Wilson*, 832 F.2d 950, 957-58 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.



STEVEN D. PEPE
UNITED STATES MAGISTRATE JUDGE

Dated: JUL 22 1999
Ann Arbor, Michigan

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CITY OF DETROIT
LAW DEPARTMENT

660 WOODWARD
1650 FIRST NATIONAL BUILDING
DETROIT, MICHIGAN 48226-3535
PHONE 313•224•4550
FAX 313•224•5505

October 30, 1998

ANGEL PETERSON, #240544
In Pro Per
SCOTT CORRECTIONAL FACILITY
47500 Five Mile Road
Plymouth, Michigan 48170

RE: Peterson v City of Detroit Police Department et al.,
Case No. 96-CV-71670-DT

Dear Ms. Peterson:

Enclosed, please find a copy of **Answer To Complaint Deemed Admitted On Behalf Of Police Officer Harvell, Answer To Complaint Deemed Admitted On Behalf Of Officer Steve Miles, Demand For Compulsory Joinder of Claims,** and **Affidavit of Mailing** regarding the above-captioned matter.

Sincerely,

Barrie L. Merkerson
Assistant Corporation Counsel

BLM/rm

Enclosure(s)

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CITY OF DETROIT LAW DEPARTMENT 1650 FIRST NATIONAL BUILDING DETROIT MI 48226

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGEL PETERSON,

Plaintiff, **HONORABLE PATRICK DUGGAN**

vs **Case No. 96-CV-71670-DT**

CITY OF DETROIT POLICE DEPARTMENT, IKE McKINNON, CHIEF OFFICER HARVELL and OFFICER STEVE MILES,

Defendants.
_____/

ANGEL PETERSON, #240544
In Pro Per
SCOTT CORRECTIONAL FACILITY
47500 Five Mile Road
Plymouth, Michigan 48170

BARRIE L. MERKERSON (P-41904)
Attorney for Defendants
CITY OF DETROIT-LAW DEPARTMENT
1650 First National Building
Detroit, Michigan 48226
(313) 237-3044
_____/

ANSWER TO COMPLAINT DEEMED ADMITTED
ON BEHALF OF POLICE OFFICER HARVELL

Defendant, **P. O. HARVELL**, by and through he undersigned Assistant Corporation Counsel, who reserves the right to withdraw from representation in the event Detroit City Council does not approve this Defendant's Request for Representation files this Answer to the Plaintiff's Complaint and says as follows:

FIRST DEFENSE

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The plaintiff has not stated against this Defendant a claim upon which relief can be granted.

SECOND DEFENSE

So far as this defendant can determine, any injuries suffered by the plaintiff was proximately caused by her own negligence and/or wrongdoing.

THIRD DEFENSE

The arrest, if any, of the plaintiff was supported by probable or reasonable cause.

FOURTH DEFENSE

The named Defendant is protected from liability on the plaintiff's state law claims by governmental of official immunity. The City of Detroit was engaged in a governmental function; namely law enforcement. This Defendant did not act so recklessly as to demonstrate a substantial lack of concern for whether an injury would result; and this Defendant's conduct was not the proximate cause of the injury or damage, if any. MCL 691.1401 et seq.

FIFTH DEFENSE

At all relevant times the individual defendant acted with objective good faith and is, therefore, immune from liability on the plaintiffs federal claims.

SIXTH DEFENSE

This Defendant enjoys qualified immunity and is therefore immune from liability on Plaintiff's Federal Law Claims.

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CITY OF DETROIT LAW DEPARTMENT 1650 FIRST NATIONAL BUILDING DETROIT MI 48226

SEVENTH DEFENSE

This Defendant acted in self-defense.

EIGHTH DEFENSE

The force, if any used by this Defendant was reasonable and necessary in effecting a lawful arrest, for self-defense and/or any other lawful purpose.

NINTH DEFENSE

This Defendant denies the allegations as set forth in the STATEMENT OF CLAIM of Plaintiff's Complaint. As to the remainder of the paragraphs, Defendant lacks information or knowledge sufficient to form a belief as to the truth of the allegations contained therein.

RESERVATION OF ADDITIONAL DEFENSES

These Defendants reserve the right to plead such additional defenses as may become known through research, investigation, discovery or otherwise.

WHEREFORE, these Defendants respectfully demand dismissal of the plaintiff's claims or a judgment of on cause of action on these claims, as well as an award of attorney fees and costs against plaintiff.

DEMAND FOR COMPULSORY JOINDER OF CLAIMS

These Defendants demand that the plaintiff join in this action every claim that she might have against any defendant arising out of the subject matter of this action and not requiring for

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its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

Respectfully submitted,

BARRIE L. MERKERSON (P-41904)
Assistant Corporation Counsel
CITY OF DETROIT-LAW DEPARTMENT
1650 First National Building
Detroit, Michigan 48226
(313) 237-3044

DATED: October 30, 1998

CITY OF DETROIT LAW DEPARTMENT 1650 FIRST NATIONAL BUILDING DETROIT MI 48226

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGEL PETERSON,

Plaintiff, **HONORABLE PATRICK DUGGAN**

vs **Case No. 96-CV-71670-DT**

CITY OF DETROIT POLICE DEPARTMENT, IKE McKINNON, CHIEF OFFICER HARVELL and OFFICER STEVE MILES,

Defendants.
_____/

ANGEL PETERSON, #240544
In Pro Per
SCOTT CORRECTIONAL FACILITY
47500 Five Mile Road
Plymouth, Michigan 48170

BARRIE L. MERKERSON (P-41904)
Attorney for Defendants
CITY OF DETROIT-LAW DEPARTMENT
1650 First National Building
Detroit, Michigan 48226
(313) 237-3044
_____/

CITY OF DETROIT LAW DEPARTMENT 1650 FIRST NATIONAL BUILDING DETROIT MI 48226

ANSWER TO COMPLAINT DEEMED ADMITTED
ON BEHALF OF POLICE OFFICER STEVE MILES

Defendant, **P. O. STEVE MILES**, by and through he undersigned Assistant Corporation Counsel, who reserves the right to withdraw from representation in the event Detroit City Council does not approve this Defendant's Request for Representation files this Answer to the Plaintiff's Complaint and says as follows:

FIRST DEFENSE

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CITY OF DETROIT LAW DEPARTMENT 1650 FIRST NATIONAL BUILDING DETROIT MI 48226

The plaintiff has not stated against this Defendant a claim upon which relief can be granted.

SECOND DEFENSE

So far as this defendant can determine, any injuries suffered by the plaintiff was proximately caused by her own negligence and/or wrongdoing.

THIRD DEFENSE

The arrest, if any, of the plaintiff was supported by probable or reasonable cause.

FOURTH DEFENSE

The named Defendant is protected from liability on the plaintiff's state law claims by governmental of official immunity. The City of Detroit was engaged in a governmental function; namely law enforcement. This Defendant did not act so recklessly as to demonstrate a substantial lack of concern for whether an injury would result; and this Defendant's conduct was not the proximate cause of the injury or damage, if any. MCL 691.1401 et seq.

FIFTH DEFENSE

At all relevant times the individual defendant acted with objective good faith and is, therefore, immune from liability on the plaintiffs federal claims.

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This Defendant enjoys qualified immunity and is therefore immune from liability on Plaintiff's Federal Law Claims.

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CITY OF DETROIT LAW DEPARTMENT 1650 FIRST NATIONAL BUILDING DETROIT MI 48226

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RESERVATION OF ADDITIONAL DEFENSES

These Defendants reserve the right to plead such additional defenses as may become known through research, investigation, discovery or otherwise.

WHEREFORE, these Defendants respectfully demand dismissal of the plaintiff's claims or a judgment of on cause of action on these claims, as well as an award of attorney fees and costs against plaintiff.

DEMAND FOR COMPULSORY JOINDER OF CLAIMS

These Defendants demand that the plaintiff join in this action every claim that she might have against any defendant arising out of the subject matter of this action and not requiring for

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its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

Respectfully submitted,



BARRIE L. MERKERSON (P-41904)
Assistant Corporation Counsel
CITY OF DETROIT-LAW DEPARTMENT
1650 First National Building
Detroit, Michigan 48226
(313) 237-3044

DATED: October 30, 1998

CITY OF DETROIT LAW DEPARTMENT 1650 FIRST NATIONAL BUILDING DETROIT MI 48226

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ANGEL PETERSON,

Plaintiff, **HONORABLE PATRICK DUGGAN**

vs **Case No. 96-CV-71670-DT**

CITY OF DETROIT POLICE DEPARTMENT, IKE McKINNON, CHIEF OFFICER HARVELL and OFFICER STEVE MILES,

Defendants.
_____/

ANGEL PETERSON, #240544
In Pro Per
SCOTT CORRECTIONAL FACILITY
47500 Five Mile Road
Plymouth, Michigan 48170

BARRIE L. MERKERSON (P-41904)
Attorney for Defendants
CITY OF DETROIT-LAW DEPARTMENT
1650 First National Building
Detroit, Michigan 48226
(313) 237-3044
_____/

AFFIDAVIT OF MAILING

TO: **ANGEL PETERSON, #240544**
In Pro Per
SCOTT CORRECTIONAL FACILITY
47500 Five Mile Road
Plymouth, Michigan 48170

STATE OF MICHIGAN)
) SS
COUNTY OF WAYNE)

Rose McElrath, being first duly sworn, deposes and says that on November 2, 1998, she

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placed a copy of **Answer To Complaint Deemed Admitted On Behalf Of Police Officer Harvell, Answer To Complaint Deemed Admitted On Behalf Of Police Officer Steve Miles, Demand For Compulsory Joinder of Claims**, and **Affidavit of Mailing** in an envelope and after securely sealing, deposited same in the City of Detroit Law Department Mail Room for Transmission to the above-named Plaintiff In Pro Per, by a clerk who affixes sufficient first-class postage and deposits said envelope in the United States Mail.

Rose McElrath

Subscribed and sworn to before me this
2nd day of November, 1998.

Notary Public, Wayne County, Michigan
My Commission Expires: 11/30/00