STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee/
Cross-Appellant,

Supreme Court No. 164685
Court of Appeals No. 327355
Wayne Cir. Ct. No. 14-010811-FC

v

CORA LADANE LYMON,

Defendant-Appellant/
Cross-Appellee.
_____/

EXHIBITS TO AMICUS CURIAE BRIEF OF THE AMERICAN CIVIL LIBERTIES UNION OF MICHIGAN

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5. Expert Report of Dr. Sarah Lageson (*Does III*)

6. *Doe v Curran*, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued Jan 10, 2020 (Case No. 18-11935)

7. *Yunus v Robinson*, unpublished opinion of the United States District Court for the Southern District of New York, issued Jan 11, 2019 (Case No. 17-cv-5839)

8. *State v Reine*, unpublished opinion of the Court of Appeals of Ohio, issued Jan 10, 2003 (Case No. 19157)

Exhibit 1:

SORA 2021 with Highlighted Changes Showing 2011 and 2021 Amendments

Amendments or alterations to SORA added in 2011 are highlighted in purple. Amendments or alterations added in 2021 are highlighted in blue.

SEX OFFENDERS REGISTRATION ACT
Act 295 of 1994

28.721 Short title.

Sec. 1. This act shall be known and may be cited as the "sex offenders registration act".

History: 1994, Act 295, Eff. Oct. 1, 1995.

28.721a Legislative declarations; determination; intent.

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.

History: Add. 2002, Act 542, Eff. Oct. 1, 2002.

28.722 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 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.

(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.

(*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.

(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.

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

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

(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.

(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.

(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.

(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.

(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.

(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.

(*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.

(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) "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*).

(*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.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2005, Act 301, Eff. Feb. 1, 2006;—Am. 2011, Act 17, Eff. July 1, 2011;—Am. 2014, Act 328, Eff. Jan. 14, 2015;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

28.723 Individuals required to be registered.

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.

(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.

(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.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1995, Act 10, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2011, Act 17, Eff. July 1, 2011.

28.723a Hearing to determine if individual exempt from registration.

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*) 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.

History: Add. 2011, Act 17, Imd. Eff. Apr. 12, 2011;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

28.724 Registration; procedures.

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.

(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 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 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.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 17, Eff. July 1, 2011;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

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) 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.

(b) 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 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 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.

History: Add. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2011, Act 17, Eff. July 1, 2011;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

28.725 Conditions requiring individual to report in person and provide notice to registering authority; release of incarcerated individual; notice; compliance; removal upon expungement.

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:

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

(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) 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) 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:

(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.

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

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

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

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

(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.

(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.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2005, Act 123, Eff. Jan. 1, 2006;—Am. 2005, Act 132, Eff. Jan. 1, 2006;—Am. 2006, Act 402, Eff. Dec. 1, 2006;—Am. 2011, Act 17, Eff. July 1, 2011;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

28.725a Notice to registered individual; explanation of duties; reporting requirements; homeless exception.

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). 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.

(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:

(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
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 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.

(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 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.

History: Add. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2005, Act 322, Eff. Jan. 1, 2006;—Am. 2011, Act 17, Imd. Eff. Apr. 12, 2011;—Am. 2013, Act 149, Eff. Apr. 1, 2014;—Am. 2019, Act 82, Imd. Eff. Sept. 30, 2019;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

28.725b Sex offenders registration fund; creation; disposition of money; use; lapse; claim of indigence; waiver of fee; payments.

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, 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.

History: Add. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2011, Act 17, Eff. July 1, 2011;—Am. 2020, Act 202, Imd. Eff. Oct. 15, 2020.

28.725c Fee collected by department of corrections; prohibition.

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

History: Add. 2004, Act 237, Eff. Oct. 16, 2004.

28.726 Providing or forwarding copy of registration or notification.

Sec. 6. (1) The officer, court, or agency registering an individual or receiving or accepting a registration under section 4 or receiving notice under section 5(1) 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.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 2011, Act 18, Eff. July 1, 2011.

28.727 Registration information; format; fee; requirements; forwarding registration, notice, and verification information to Federal Bureau of Investigation, local agencies, and other registering jurisdictions.

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), 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) 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.

(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 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.

(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.

(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 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.

(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 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 and to local law enforcement agencies, sheriff's departments, department posts, and other registering jurisdictions, as provided by law.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2011, Act 18, Eff. July 1, 2011;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

28.728 Law enforcement database; information to be contained for each registered individual; public internet website; compilation; 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.

(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 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 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 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.

(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.

(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) 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.

(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.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 238, Eff. May 1, 2005;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 18, Eff. July 1, 2011;—Am. 2013, Act 2, Eff. June 1, 2013;—Am. 2020, Act 295, Eff. Mar. 24, 2021.

28.728a Failure to register or update registration information; duties registering authority; duties of 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.

History: Add. 2011, Act 18, Eff. July 1, 2011.

Compiler's note: Former MCL 28.728a, which pertained to feasibility studies for providing search by alias and mapping to show address was repealed by Act 240 of 2004, Eff. Oct. 1, 2004.

28.728b Repealed. 2004, Act 240, Eff. Oct. 1, 2004.

Compiler's note: The repealed section pertained to compilation of individuals not requiring registration.

28.728c Petition to discontinue registration; jurisdiction; limitations; oath; contents; false statement; filing copy with office of prosecuting attorney; notice; hearing; rights of victim; factors in court determination; granting of petition.

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.

(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.

(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).

(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.

(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.

History: Add. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 18, Eff. July 1, 2011.

28.728d Providing copy of court order granting petition to department and individual.

Sec. 8d. If the court grants a petition filed under section 8c, 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).

History: Add. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2011, Act 18, Eff. July 1, 2011.

28.729 Registration required; 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, 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 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.

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 237, Eff. Oct. 16, 2004;—Am. 2005, Act 132, Eff. Jan. 1, 2006;—Am. 2011, Act 18, Eff. July 1, 2011;—Am. 2020, Act 295,

Eff. Mar. 24, 2021.

Compiler's note: For transfer of powers and duties of Michigan parole and commutation board to Michigan parole board within department of corrections, and abolishment of Michigan parole and commutation board, see E.R.O. No. 2011-3, compiled at MCL 791.305.

28.730 Confidentiality; exemption from disclosure; availability of information on public internet website; violation as misdemeanor; penalty; civil cause of action; applicability of subsections (4) and (5) to public internet website.

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) 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).

History: 1994, Act 295, Eff. Oct. 1, 1995;—Am. 1996, Act 494, Eff. Apr. 1, 1997;—Am. 1999, Act 85, Eff. Sept. 1, 1999;—Am. 2002, Act 542, Eff. Oct. 1, 2002;—Am. 2004, Act 240, Eff. Oct. 1, 2004;—Am. 2006, Act 46, Eff. Jan. 1, 2007;—Am. 2011, Act 18, Eff. July 1, 2011.

28.731, 28.732 Repealed. 2011, Act 18, Eff. July 1, 2011

Compiler's note: The repealed sections pertained to effective date and conditional effective date of act.

28.733-28.736 Repealed. 2020, Act 295, Eff. Mar. 24, 2021.

Compiler's note: MCL 28.733 was added by 2005 PA 121 and 2005 PA 127. 2005 PA 127, being substantively the same as the 2005 PA 121, supersedes and becomes the only version on its effective date.

The repealed sections pertained to student safety zones.

Exhibit 2:

Expert Report on Class Data
(*Does III*)

Amended Report of

German Marquez Alcala, James J. Prescott and R. Karl Hanson

Re: Class Data in *Does III v. Whitmer*

TABLE OF CONTENTS

EXECUTIVE SUMMARY

1. As of January 24, 2023, there were **45,145 people subject to Michigan's Sex Offenders Registration Act (SORA)**, of whom about **98% (44,154 people)** live, work or go to school in Michigan, or are incarcerated in Michigan. The other **991 (2%)** have moved out of state but remain subject to SORA.[1]

2. Of the **44,154** registrants in Michigan**, 80% (35,235 people)** are living in the community, and **20% (8,919 people)** are incarcerated.

3. 98% of registrants (44,076 people) are male and 2% (1,063 people) are female. 72% (32,582 people) are white, 25% (11,119 people) are Black/African-American, and 3% (1,444 people) are other races.

4. Sexual recidivism risk declines with age. Of registrants living in the community, **8% (2,896 people)** are over 70; **19% (6,737 people)** are 60-69; **24% (8,554 people)** are 50-59; and **25% (8,956 people)** are 40-49. Only 23% of registrants living in the community (8,092 people) are under age 40.

5. **73%** of registrants **(32,937 people)** are **Tier III** registrants who are subject to SORA for life. **20%** of registrants **(8,887 people)** are **Tier II** registrants who are subject to SORA for 25 years. **7%** of registrants **(3,191 people)** are **Tier I** registrants, subject to SORA for 15 years.

6. 90% of registrants living in the community (31,632 people) in Michigan are on the online registry.

7. 10% of registrants currently subject to SORA have been convicted of a subsequent registrable offense (4,000/41,133, based on current registrants ever released to the community). Conversely, 90% of the registrants have not been convicted of a new sexual offense after their initial registration. **Of registrants**

[1] This report has been revised from an earlier report, issued on June 21, 2023, in response to Defendants' concern that the original report included all people who had left Michigan as part of the total class. As explained in Plaintiffs' Reply to Defendants' Response to Class Data Report, ¶¶2-7, SORA specifically provides that non-residents who were convicted in Michigan on or after July 1, 2011, must register, although SORA exempts them from ongoing reporting requirements. M.C.L. § 28.723(3). In addition, because past registration obligations in Michigan can trigger registration obligations in other states, prior Michigan registrants may be impacted by this Court's decision. It is not completely clear, however, given the class definition, whether the Left Michigan Group and Primary Class totals should exclude people who are not currently subject to SORA, but will be if they return to Michigan. In order to be as conservative as possible in our report, we have re-run the data and edited the report using the narrower description of the Left Michigan Group (limited to departed registrants with a registrable Michigan conviction on or after July 1, 2011).

living in the community in Michigan, 93% (32,609) have never been convicted of a subsequent registrable offense.

8. The overall recidivism rates fail to account for the fact that different registrants have been in the community for varying amounts of time. **Using a fixed five-year follow-up period, the observed recidivism rates varied between 2.9% and 4.9%. Using a fixed 10-year follow-up period, the observed recidivism rates varied between 5.7% and 7.2%.** (To be clear, these numbers refer to individuals who are re-convicted at least once after their initial registrable convictions.) These recidivism rates are on the low end of the range observed for contemporary sexual recidivism studies in the U.S.

9. Statistics from the most recent cohorts provide the best estimate of the likelihood of recidivism. The recidivism rates in the more recent cohorts (2010 – 2014) were lower than for older cohorts (1995 – 1999). **The more recent rates indicate that the vast majority of people being put on the registry today—93% to 95%—would not be convicted of another registrable offense over a 10-year follow-up period**.

10. The amount of time that a person has spent recidivism-free in the community is strongly correlated with reductions in risk. Of registrants living in the community, **31%** have been living in the community without a new sex offense conviction for more than 20 years, **15%** for 15-20 years, **18%** for 10-15 years, **18%** for 5-10 years, **12%** for 2-5 years, and **7%** for 0-2 years.

11. The number of registrants who have been in the community without incurring a new registrable offense allows for the estimation of the overall number who would present very low risk of sexual offending. Very low risk of sexual offending is defined here as the expected lifetime rate of a first-time sexual offense conviction for males in the general population, **approximately 2%**.

12. Applying normed research on the recidivism rates for people who have been living in the community without a new sex offense conviction, **it is reasonable to conclude that there are between 17,000 and 19,000 people on Michigan's registry who are no more likely to be convicted of a sexual offense than males in the general population.**

13. In addition, **there are thousands more whose projected risk level is only somewhat above the 2% rate for males in the general population.** The rate for those registrants is comparable to that of first-time detected sexual offending by individuals who have a nonsexual criminal conviction but no history of detected sexual offending (3-4% lifetime rate), and who—like males in the general population, are not on the registry. For example, 25% of registrants (11,330 people) are

60 years of age or older. The recidivism rates of registrants who are over 60 is in that same 3-4% range.

14. The Michigan Department of Corrections does an average of 143 Static-99/R risk assessments for class members per month. On the previous version of the Static-99 (which used different risk categories), 36% scored low risk; 34% scored low-moderate risk; 22% scored moderate-high risk; and 8% scored high risk. Using the current version of the Static-99R risk levels, 7% scored very low risk; 19% scored below average risk; 43% scored average risk; 22% scored above average risk; and 9% scored well above average risk. In both scoring systems roughly 70% of registrants scored at average or below-average risk. These risk distribution scores are comparable to those in national samples.

15. Of registrants living in the community who had Michigan convictions, **84% had offenses other than criminal sexual conduct in the first degree.** These data belie the common assumption that people on the registry have almost all committed the most serious offenses.

16. 94% of registrants (42,294 people) have Michigan convictions, while 7% (3,100 people) have convictions from other jurisdictions.

17. Women make up only a tiny fraction of registrants. They have very low recidivism rates. **Of women registrants in the community, 98% have never been convicted of a second registrable offense.**

18. **5% of registrants (2,037 people)** are subject to SORA **for a juvenile adjudication (as a child).** Of those for whom it was possible to calculate the age at the time of offense, 3% (52 people) were under 14 at the time of the offense; 19% (312 people) were 14 years old; 35% (569 people) were 15 years old; 30% (480 people) were 16 years old; and 13% (215 people) were 17 years old. **99% have never been convicted of a second registrable offense.** Many of these children committed their offense years ago. 76% are now 30 years of age or older.

19. **SORA's tier levels are inversely correlated to risk**: people in Tier I have the highest risk scores on the Static-99R, Tier II the next highest, and Tier III the lowest. Specifically, 63% of the people in Tier I were above average risk on Static-99R, compared to 44% of the people in Tier II, and 28% of the individuals in Tier III. Tier III registrants have also spent more time recidivism free in the community than Tier II registrants, who have spent more time recidivism free in the community than Tier I registrants.

20. **45% of class members living in the community (16,005 people) reported no current employment**. The unemployment rate in Michigan in January 2023 (when the Michigan State Police ran the class member data) was 4.3%.

21. **12% of class members living in the community who have reported addresses for at least ten years have reported being without housing at some time.**

22. Among class members living in the community who are required to report email and internet identifiers (i.e., those with an offense date after July 1, 2011), **only 62% (5,061 people) reported any email address or internet identifier. Only 60% (4,909 people) reported using email, and only 24% (1,968 people) reported using some other non-email internet identifier** (e.g., Facebook, Instagram). By contrast, 93% of adult Americans use the internet.

23. Among registrants in the community, 10% (3,582 people) are listed as non-compliant. 87% of these instances of non-compliance relate to issues with identification (maintaining an ID) or paying fees required under SORA.

24. There are approximately **45,145 people** in the **Primary Class** (as of January 24, 2023). Determining membership of the subclasses was relatively simple for some of the subclasses, and quite complicated for others. While work to confirm the composition of the subclasses is continuing, the best estimates at this time are:

a. There are approximately **31,249 people (69% of the class)** in the **Pre-2011 Ex Post Facto Subclass**.

b. There are approximately **16,723 people (37% of the class)** in the **Retroactive Extension of Registration Subclass**, although this number is a very rough estimate, subject to revision.

c. The composition of the **Barred from Petitioning Subclass** has not yet been ascertained.

d. There are an approximately 276 people with Michigan convictions in the **Non-Sex Offense Subclass**, and an estimated 22 people with convictions from other jurisdictions in this subclass, for a **total subclass size of about 298**.

e. The composition of the **Plea Bargain Subclass** has not yet been ascertained.

f. There are approximately **13,848 people (31% of the class)** in the **Post-2011 Subclass**.

g. There are approximately **3,100 people (7% of the class)** in the **Non-Michigan Offense Subclass**.

I. QUALIFICATIONS

25. This report was a collaborative project between German Marquez Alcala, James J. Prescott, and R. Karl Hanson. Dr. Prescott is Henry King Ransom Professor of Law at the University of Michigan Law School in Ann Arbor, Michigan, where he also holds an appointment in the Economics Department and co-directs the Law and Economics Program and the Empirical Legal Studies Center. Dr. Hanson is a psychologist and Adjunct Research Professor in the Psychology Department of Carleton University, Ottawa, Ontario, Canada. Dr. Prescott and Dr. Hanson have both provided other expert reports in this litigation, and their qualifications are set out in those reports, which are incorporated herein by reference. *See* ECF 1-4, 1-6. German Marquez Alcala is the Research Associate for Empirical Legal Studies at the University of Michigan Law School in Ann Arbor, Michigan, where he has provided full-time empirical research support for law faculty since 2019. Mr. Marquez Alcala received an M.A. in Economics from the University of Michigan in 2018, an M.S. from Purdue University in 2016, and a B.S. with honors from California State University, Fresno in 2014. Mr. Marquez Alcala's curriculum vitae is attached as Exhibit A.

II. METHODOLOGY

26. We were asked to analyze data obtained by Plaintiffs' counsel through discovery related to Michigan's Sex Offender Registry. The data were obtained from the Michigan State Police Sex Offender Registration Unit ("MSP") and from the Michigan Department of Corrections ("MDOC").

27. The largest data sets—which were from MSP—were provided on January 24, 2023. The MDOC data were provided between March 8, 2023, and April 19, 2023.

28. The MSP data set contained information from Michigan's sex offender registry database for 53,605 registrants. After obtaining the MSP data, we provided a class member list to the MDOC. Pursuant to subpoena, the MDOC then provided data from MDOC databases regarding class members.

29. In order to conduct the data analysis discussed in this report, we imported the different data sets into Stata, which is a statistical software program. We cleaned the data, matched the MSP and MDOC data, and used tools within Stata to analyze the data, as further discussed below.

III. CLASSIFICATION OF REGISTRANTS FOR ANALYTICAL PURPOSES

30. In order to conduct the analysis in this report, we first had to classify registrants into different groups. When analyzing the data, we used certain subgroups within the full data set to answer particular research questions. We needed to account for limitations in the data (e.g., data about people with non-Michigan convictions and people who have left Michigan are less robust), and we needed to match the available data to the questions we were trying to answer. Accordingly, at the outset, we explain the different categories of registrants that we created for data analysis purposes. A chart with more information about how each group was identified is attached as Exhibit B. Information about the subclasses is set out in Section XV.

31. **Total Registrants:** As of January 24, 2023, there were **45,145** people who are subject to Michigan's Sex Offenders Registration Act. We will use the terms "Primary Class" or "total registrants" to describe the full group. This includes people living, working, or going to school in Michigan; people who are incarcerated in Michigan; people who are and who are not on the public registry; and people with Michigan convictions on or after July 1, 2011 who were required to register in Michigan in the past but have moved out of state (*see* M.C.L. § 28.723(3)).[2]

32. **In Michigan Group:** Of the 45,145 people on Michigan's registry, **44,154** people (**98%**) are registrants who live, work, or go to school in Michigan, or who are incarcerated in Michigan.[3] For purposes of this report, we call this set of class members the "In Michigan Group."

33. **In Community Group:** Of the 44,154 people in the In Michigan Group, **35,235** people (**80%**) are not incarcerated. These are people who live, work or go to school in Michigan, and are subject to SORA's verification and ongoing reporting requirements. **The registry focuses on these people because they are the ones who are present in Michigan communities.** We call this set of class members the "In Community Group."

34. **Incarcerated Group:** Of the 44,154 people in the In Michigan Group, **8,919** people (**20%**) are incarcerated. These individuals do not need to report to law enforcement while incarcerated, but will need to report upon release. If they are

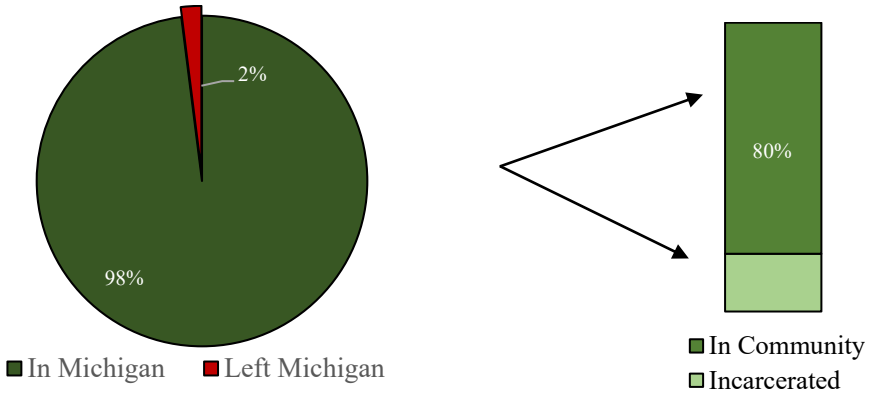
[2] In the initial version of this report, we had included all 53,605 people for whom the MSP provided data. As explained in footnote 1, this amended report adopts a more conservative approach.

[3] The In Michigan Group also includes a very small number of people whose cases are "pending review" or "pending out of state," or whose whereabouts are uncertain. *See* Exhibit B for more details.

subject to public registration, they appear in the online registry while incarcerated. We call this set of class members the "Incarcerated Group."

35. **Left Michigan Group:** There are **991** people, about **2%** of the primary class (total registrants), who were previously registered in Michigan and have Michigan convictions on or after July 1, 2011, but have moved out of state. They also do not work or attend school in Michigan. These people do not have ongoing reporting obligations in Michigan and are not listed on the online registry. They remain subject to SORA, however, and may have registration obligations in other states as a result of their Michigan registration requirement. M.C.L. § 28.723(3). We call this set of class members the "Left Michigan Group."[4]

Figure 1: Class Profile



36. **Michigan Conviction Group:** There are **42,294** people, about **94%** of the primary class (total registrants), who have one or more registrable convictions[5] from Michigan. In part because the data we received from the MDOC relates only to people with Michigan convictions, there are a number of research questions where we restricted our analysis to people with Michigan convictions. We call this set of class members the "Michigan Conviction Group."

[4] The differences between the initial report and this amended report almost entirely reflect the fact that we had previously identified 9,451 people as being in the Left Michigan Group. Because we have adopted a more conservative approach (removing people who do not have Michigan convictions from on or after July 1, 2011, even though their past registration in Michigan could trigger registration requirements in other states), the number in the Left Michigan Group shrunk to 991.

[5] For simplicity, throughout this report, the term "conviction" is used to include both adult convictions and juvenile adjudications.

IV. DEMOGRAPHICS OF PEOPLE ON MICHIGAN'S REGISTRY

37. **Gender Demographics:** Of the total registry population of 45,145, about **44,076 (98%)** are male, and about **1,063 (2%)** are female.[6] The percentages are similar for the In Community Group, where, of **35,235**, about **34,285 (97%)** are male, and about **945 (3%)** are female.

38. **Racial Demographics:** Based on the information in the "race" field, of the total registry population:

- about **32,582 (72%)** are white;
- about **11,119 (25%)** are Black/African-American;
- about **653 (1%)** are Latino/Hispanic;
- about **791 (2%)** are other groups.

For the **In Community Group**, the percentages are similar:

- about **26,416 (75%)** are white;
- about **7,962 (23%)** are Black/African-American;
- about **315 (1%)** are Latino/Hispanic;
- about **542 (2%)** are other groups.

39. The data indicates that Black people are over-represented on the sex offender registry. Black people make up **14.1%** of the Michigan population,[7] but make up **25%** of the registry population.

40. **Age Demographics:** For the **total registry** population, the average age is 49.4 years.[8] The **current** age distribution is:

- only 1 person (0.002%) is under 16 years old;
- about **71 (0.2%)** are 16 – 19 years old;
- about **3,139 (7%)** are 20 – 29 years old;
- about **8,607 (19%)** are 30 – 39 years old;

[6] The data lists virtually all registrants as either male or female; 6 people (0.01%) are listed as of unknown gender.

[7] QuickFacts Michigan, United States Census Bureau, https://www.census.gov/quickfacts/MI.

[8] This figure reflects the fact that most registrants are on the registry for 25 years or for life, and that the registry has existed since Michigan's registry law first came into effect in 1995.

- about **11,409 (25%)** are 40 – 49 years old;
- about **10,588 (23%)** are 50 – 59 years old;
- about **7,954 (18%)** are 60 – 69 years old;
- about **3,376 (7%)** are over 70 years old.

For the **In Community Group**, the average age is 50.5 years, and the **current** age distribution is:

- only 1 person (0.003%) is under 16 years old;
- about **65 (0.2%)** are 16 – 19 years old;
- about **1,923 (5%)** are 20 – 29 years old;
- about **6,103 (17%)** are 30 – 39 years old;
- about **8,956 (25%)** are 40 – 49 years old;
- about **8,554 (24%)** are 50 – 59 years old;
- about **6,737 (19%)** are 60 – 69 years old;
- about **2,896 (8%)** are over 70 years old.

41. The age distribution is important because, as set out in the expert report of R. Karl Hanson, ECF 1-4, ¶¶ 3.c, 26, sexual recidivism risk declines with age. For individuals over age 60, recidivism rates are particularly low. Previous research has found that the five-year sexual recidivism rate of individuals released over the age of 60 to be in the range of 3% to 4%.[9,10] This rate is only slightly higher than the base rate of first-time sexual offending among individuals with a criminal history but no current or prior sexual offense convictions (2% after five years). Although people over the age of 60 are rare in sexual recidivism studies, they are not rare among registrants in Michigan. Of the **total registry** population, **11,330 (25%)** are

[9] Helmus, L, Thornton, D, Hanson, RK, & Babchishin, KM. (2011). Improving the predictive accuracy of Static-99 and Static-2002 with older sex offenders: Revised age weights. *Sexual Abuse, 24*(1), 64-101. Out of 598 men released after the age of 60, 21 (3.5%) were known to have committed another sexual offense after five years of follow-up.

[10] Skelton, A, & Vess, J. (2008). Risk of sexual recidivism as a function of age and actuarial risk. *Journal of Sexual Aggression, 14*(3), 199-209. Out of 562 individuals over the age of 60, 19 (3.4%) were reconvicted for another sexual offence after an average 10-year follow-up period.

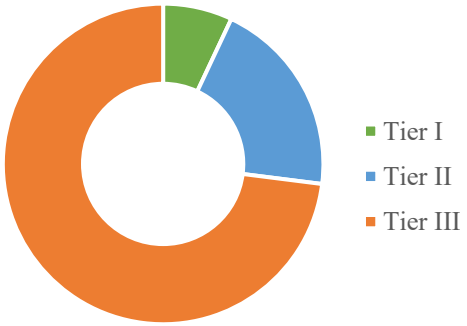
60 or older. Among this group, there are 3,376 over the age of 70 (7% of the total).

V. TIER CLASSIFICATIONS AND PUBLICATION OF INFORMATION

42. **Tier Classifications:** Of Michigan's **total registry** population:

- about **3,191 (7%)** are 15-year Tier I registrants;
- about **8,887 (20%)** are 25-year Tier II registrants; and
- about **32,937 (73%)** are lifetime Tier III registrants.[11]

Figure 2: Tier Distribution



43. The percentages are similar for the **In Michigan Group**:

- about **3,035 (7%)** are 15-year Tier I registrants;
- about **8,635 (20%)** are 25-year Tier II registrants; and
- about **32,354 (73%)** are lifetime Tier III registrants.

44. For the **In Community Group**, the percentages are:

- about **2,692 (8%)** are 15-year Tier I registrants;
- about **7,861 (22%)** are 25-year Tier II registrants; and
- about **24,557 (70%)** are lifetime Tier III registrants.

[11] 130 people (0.3%) are not classified in one of the tiers, which appears to reflect that they have a special status due to court decisions, special conditions related to an out-of-state offense, or some other exception.

45. **Online vs. Offline Registry:** Of the 35,235 people in the **In Community Group**, about:

- **31,632 (90%)** are on the online public sex offender registry.
- **3,603 (10%)** are on the offline registry that is available to law enforcement.[12]

46. In addition, of the **Incarcerated Group**, there are **8,520 (96%)** who are listed on the online registry. These individuals are not living in the community, but under SORA, information about them is still posted on the public online registry.

47. Of the members of the **In Community Group** who are not on the public registry,

- **1,395 (39%)** are Tier I.
- **1,859 (52%)** have juvenile adjudications.
- **353 (10%)** are non-public for some other reason (e.g., a court order).[13]

VI. RECIDIVISM RATES FOR PEOPLE ON MICHIGAN'S REGISTRY

48. We sought to determine how many registrants were convicted of a subsequent registrable offense after they were registered for the first time. Recidivism here thus means being convicted of a new sexual offense after being caught (convicted/registered[14]) for a previous sexual offense. It is not uncommon for individuals to be convicted of more than one sexual offense at the same sentencing occasion, or for victims of historical offenses to come forward after the publicity associated with an initial conviction. New convictions for historical offenses are not recidivism, but may look like it in criminal justice data (pseudo-recidivism) if the new conviction post-dates a previous conviction but the *offense* predates the previous conviction.

49. In order to separate recidivism from pseudo-recidivism, we first have to define the "index offense"—meaning the offense or offense cluster from which one measures whether there has been a subsequent registrable offense. For the index

[12] In addition, registrants who are no longer in Michigan (the Left Michigan Group) are not on the public online registry.

[13] Four people of the In Community Group who are not on the public registry are Tier I and also have juvenile adjudications.

[14] The most common outcome criteria in sexual recidivism studies are either arrest/charges or convictions. Our analyses used convictions because that was the data provided to us. Although somewhat higher rates would be observed if police arrest/charge data were used, the current analyses are comparable to the sexual recidivism studies routinely conducted by other researchers.

offense, we used the first offense responsible for the individual being placed on the registry. If there were multiple counts or convictions on the same date, those were counted as part of the index offense. Sexual offense convictions that occurred after the index sexual offense conviction that were based on crimes committed prior to the index sexual offense conviction were included as part of the index sexual offense (i.e., pseudo-recidivism). This rule applied even when the conviction date for the additional offenses was long after the date of registration. In addition, convictions that occurred within 30 days of one another were counted as a cluster of offenses comprising the index offense. The most likely reason for closely associated sentencing occasions is that multiple historical charges were dealt with in separate court appearances, and do not constitute new offending. The length of time between the sexual offense commission and conviction for such behavior is almost always more than 30 days: it can take years to complete the process of police investigation, charge, conviction, and sentencing. In contrast, it is common that when individuals have more than one sexual offense charge, these charges come before the courts on separate dates.

50. We define a "subsequent registrable offense" to be any conviction requiring registration under SORA that occurred after their first registrable offense (i.e., after their index offense).

51. Of the 41,133 registrants currently subject to SORA who have ever returned to the community following their initial registrable offense conviction,[15] about **90% (37,133)** have never been convicted of a subsequent registrable offense. About **10% (4,000)** have been convicted of at least one subsequent registrable offense.

52. If one looks at the **In Community Group**—that is, those non-incarcerated registrants who are present in Michigan communities—the percentage of registrants who have never been convicted of a subsequent sexual offense was slightly higher. We found that, of the 35,199 in that group who have ever returned to the community following their initial registrable offense conviction, about **93% (32,609)** have never been convicted of a subsequent registrable offense, while **2,590 (7%)** have been

[15] Of the 45,145 total registrants, about 9% (3,898) are currently incarcerated for their first registrable offense and, therefore, have not had the opportunity to commit a subsequent registrable offense in the community. Another 78 from the Left Michigan Group and 36 from the In Community Group are not officially classified as incarcerated, but only have incarceration-related addresses without respective end dates (i.e., the date at which the respective address is no longer current) in the MSP data, so we cannot determine whether these individuals have ever been released into the community following their first registrable offense conviction. For the purpose of our recidivism analysis, we exclude all 4,012 of these individuals (9% of total registrants) from our calculations.

convicted of a subsequent registrable offense.

53. The above figures **overestimate the rate at which registrants have recidivated** because they fail to account for registrants who have successfully completed their registration term without reconviction and are no longer on the registry. The data set only includes people subject to registration as of January 24, 2023.

54. The above figures also **overestimate the future recidivism rate** for individuals currently on the registry and living recidivism free in the community because these statistics are backward looking. The vast majority of registrants currently on the registry have already lived in the community, sometimes for decades, without reoffending, whereas the 7% and 10% figures are an average re-offense rate across all at-risk years for all registrants. These statistics are driven entirely by those registrants who recidivated in the past and who are therefore less likely to be in the community. Thus, the 7% and 10% figures presented above cannot be interpreted as the likelihood of *future* recidivism for individuals *currently on the registry*. Instead, those numbers only describe the proportion of registrants known to have offended in the past during their time on the registry, and who are potentially very different from registrants who have lived offense free. It is important not to conflate prior offenses committed by a small fraction of registrants with the possibility of future offenses by other registrants.

55. The above figures also **overestimate the future recidivism rate** for individuals currently on the registry and living recidivism free in the community because the figures draw from an unrepresentative sample of registrants. Because recidivism declines with age and the amount of time lived offense free, the forward-looking recidivism risk of those who have been in the community for years is much lower than the average re-offense rate for all registrants. The average age for registrants in the community (50.5 years old) is higher than the average age for registrants at the time they join the registry. Thus, the individuals currently on the registry and in the community are older and, by definition, have been offense-free for much longer than an individual newly placed on the registry. The recidivism risk of those who are currently on the registry and in the community is necessarily much lower than the average re-conviction rate for all past registrants.

56. The above figures are also hard to interpret because the 7% and 10% figures do not consider the length of time that individuals were at risk in the community. Individuals released decades ago will have many more years at risk than people released more recently. Recidivism rates are only informative when the follow-up period is specified.

57. To address these problems, we divided the data into 5-year cohorts based on

release dates[16] (namely, 1995–1999, 2000–2004, 2005–2009, and 2010–2014[17]). For each 5-year cohort, we calculate the recidivism rate at four follow-up intervals: 5, 10, 15, and 20 years after registrants' first release date (i.e., the release date after their first conviction for a registrable offense). The recidivism rates at each of those intervals for each respective 5-year cohort are the following:

Table 1

Cumulative Recidivism Rates by 5-year Cohorts, Based on Release Date[18]

Cohort	Pop.	5-year	10-year	15-year	20-year
1995–1999	8,210	4.9%	7.2%	8.9%	10.3%
2000–2004	7,681	4.5%	6.6%	8.5%	N/A
2005–2009	6,458	3.7%	5.7%	N/A	N/A
2010–2014	5,227	2.9%	N/A	N/A	N/A

58. The 5-year sexual recidivism rate varied between 4.9% for the 1995-1999 cohort to 2.9% for the 2010-2014 cohort. The 10-year rates were between 5.7% and 7.2%. These values are on the low end of the range observed in contemporary sexual recidivism studies. For example, the average 5-year sexual recidivism in the 2021 Static-99R norms is 6.7%.[19] The average 10-year sexual recidivism rate in the Static-99R norms was 11.6%. Although the rates in this analysis of Michigan's registry were relatively low, other jurisdictions have observed very similar rates. For example, the five-year sexual recidivism rate for the 2005-2009 cohort in this analysis of Michigan registrants (3.7%) is very similar to the five-year sexual recidivism rate

[16] We group individuals into 5-year cohorts for the benefit of larger sample sizes, but we calculate recidivism on individual timelines. For example, if an individual is released from their first post-registrable-offense-conviction incarceration period on January 31, 1995, the 5-year follow-up interval for that individual runs through January 31, 2000, not year-end 2000.

[17] We excluded people with an index offense release date from 2015–2023 because there was not a five-year follow-up period for anybody with an initial release date after January 24, 2018.

[18] The recidivism rates in this table are cumulative, meaning that each rate describes the proportion of individuals in each 5-year cohort that have been convicted of any registrable offenses that occurred after their initial release date and before the respective follow-up interval. For example, the 20-year rate captures all cohort members who have ever recidivated during the preceding 20 years, not merely those who have recidivated after the 15-year follow-up. This rate thus describes the total proportion of individuals who have been known to recidivate.

[19] Lee, SC, & Hanson, RK. (2021). Updated 5-year and new 10-year sexual recidivism rate norms for Static-99R with routine/complete samples. *Law and Human Behavior. 45*(1), 24-38. https://doi.org/10.1037/lhb0000436.

for a cohort from Connecticut released in 2005 (3.6% charged or convicted; 27/746).[20]

59. Consistent with previous research, the recidivism rates of the more recent cohorts were significantly lower than for older cohorts.[21,22] The reasons for the declining recidivism rates are not fully known. The U.S. and many other countries have become safer over recent decades, not only because the rate of violent crime has declined,[23] but also because there are fewer car accidents, fires, and drownings.[24] American society is more cautious and risk adverse than it was in 1995. Another possible explanation is that more recent cohorts include a greater proportion of individuals at low risk to reoffend. Cultural changes in attitudes toward sexual crime may have motivated victims in more recent years to report offenses committed by lower risk individuals that previously would not have been reported. Also, because the analysis was based on archival data, it is possible that the change is more apparent than real; even when policies dictate complete record retention, it is not uncommon for inactive cases to go missing from criminal history records, thereby increasing the perceived recidivism rates of older cohorts.[25] The physical and electronic mediums holding the names of registrants would likely have changed multiple times since Michigan's registry was created in 1995. Each transition increases the possibility that individuals would drop off the list; however, individuals are likely to still be on the list if they have returned for a new registerable offense. The selective attribution of inactive records would increase the proportion of recidivists in older cohorts (by decreasing the number of non-recidivists).

60. Regardless of the reasons for the change in recidivism rates over time, the statistics from the most recent cohorts provide the best estimates of the likelihood of recidivism for individuals who have been recently added to the registry. These

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[20] State of Connecticut. (2012). Recidivism among sex offenders in Connecticut. Office of Policy and Management, Criminal Justice Policy & Planning Division. www.ct.gov/opm/cjppd.

[21] Tatar, JR, & Streveler, A. (2015). Sex offender recidivism after release from prison. State of Wisconsin Department of Corrections.

[22] Lussier, P., McCuish, E., Proulx, J., Chouinard Thivierge, S., & Frechette, J. (2023). The sexual recidivism drop in Canada: A meta-analysis of sex offender recidivism rates over an 80-year period. *Criminology & Public Policy*, *22*(1), 125-160.

[23] Pinker, S. (2011). *The better angels of our nature: Why violence has declined.* Viking.

[24] Pinker, S. (2018). *Enlightenment now: The case for reason, science, humanism, and progress.* Penguin.

[25] Hanson, RK, & Nicholaichuk, T. (2000). A cautionary note regarding Nicholaichuk et al. (2000). *Sexual Abuse: A Journal of Research and Treatment, 12*(4), 289-293.

numbers indicate that out of 100 individuals added to the registry this year, 3 or 4 would be convicted of a new sexual offense within 5 years, and that 1 or 2 more would be convicted if the follow-up period was extended to 10 years (10-year rates of 5%-7%). **In other words, the vast majority (93% to 95%) would not be convicted of another registerable offense over a 10-year follow-up period.**

61. The recidivism risk of the individuals currently on the registry would be lower because most of them have been recidivism-free for many years (see discussion in Section VII, below). As documented in the report of R. Karl Hanson (ECF 1-4, ¶¶ 3.f., 55-72), the longer individuals remain recidivism-free in the community, the lower their risk of subsequent recidivism. The same patterns were evident in the Michigan registry data, as displayed by Tables 3 and 4 below. Whereas the observed sexual recidivism rates were between 3% and 5% during the first five years in the community, the recidivism rates dropped to around 2% for the next five years (years 5 to 10) for individuals who had remained sexual recidivism free during their first five years in the community. For people who remained sexual recidivism free for 15 years, their observed sexual recidivism rate was 1.4% for the next 5 years. This rate is similar to the rate of first-time sexual offending for males in the general population.[26]

Table 2

Rates of New Recidivism of People by 5-year Cohorts, Based on Release Date[27]

Cohort	Pop.	5-year	10-year	15-year	20-year
1995–1999	8,210	4.9%	2.2%	1.8%	1.4%
2000–2004	7,681	4.5%	2.1%	1.9%	N/A
2005–2009	6,458	3.7%	2.0%	N/A	N/A
2010–2014	5,227	2.9%	N/A	N/A	N/A

VII. TIME OFFENSE-FREE IN THE COMMUNITY AND DESISTANCE

62. The predictable decline in risk for individuals who remain sexual offense-free while in the community allows us to estimate the proportion of individuals

[26] Lee, SC, Brankley, AE, & Hanson, RK. (2023-05, in press). There is no such thing as zero risk for sexual offending. *Canadian Journal of Criminology and Criminal Justice.*

[27] The recidivism rates in this table are not cumulative; rather, they describe the proportion of individuals in each 5-year cohort that have been convicted of a subsequent registrable offense for the first time at each follow-up interval. For example, the 20-year rate captures the proportion of cohort members who have recidivated for the first time between the 15-year and the 20-year follow-up intervals.

currently on Michigan's registry who present a very low risk of sexual recidivism. We use the term "offense-free" to refer to whether a person has recidivated (i.e., has been caught again by the criminal justice system). Although registrants may commit undetected offenses, that is also true of the public in general. As set out in Dr. Hanson's Rebuttal Report, ¶¶ 32-42, rates of undetected offending do not affect when people reach desistance (meaning the point at which they are no more likely than males in the general population to be convicted of a new sex offense). Because the detection rates for people with past convictions are, if anything, higher than for people who have not previously been convicted of a sex offense, the fact that some offending—for both people with past convictions and those without—is undetected, does not change the length of time it takes for individuals to reach the desistance threshold (i.e., the rate of detected sexual offending of males in the general population). *Id.*

63. To determine time offense-free, we counted time in the community based on street time, not calendar time (i.e., we excluded periods of incarceration). Registrants, depending on the seriousness of their initial offense, may spend a considerable amount of time in prison or jail. Therefore, we cannot simply look at how long it has been since class members had been convicted. Rather, we had to calculate the amount of time that class members have spent in the community since their last conviction for a sex offense.

64. In order to determine how long class members have spent offense-free in the community, we used address and date data to determine how long registrants had been living in the community without a subsequent registrable conviction. This analysis was done on the **In Community Group**, as those who are incarcerated are not living in the community, and the address data for those who have left Michigan is less robust and a subsequent non-Michigan conviction would not necessarily appear in the data.

65. We define time offense-free as any period of time following a registrant's conviction for their final registrable offense in which they are free in their community—i.e., not incarcerated. To calculate "in community" time, we excluded any period of incarceration for a non-registrable offense conviction that occurred after a registrant was either 1) released from incarceration resulting from their last registrable offense conviction or 2) convicted of their last registrable offense without receiving an incarceration sentence.

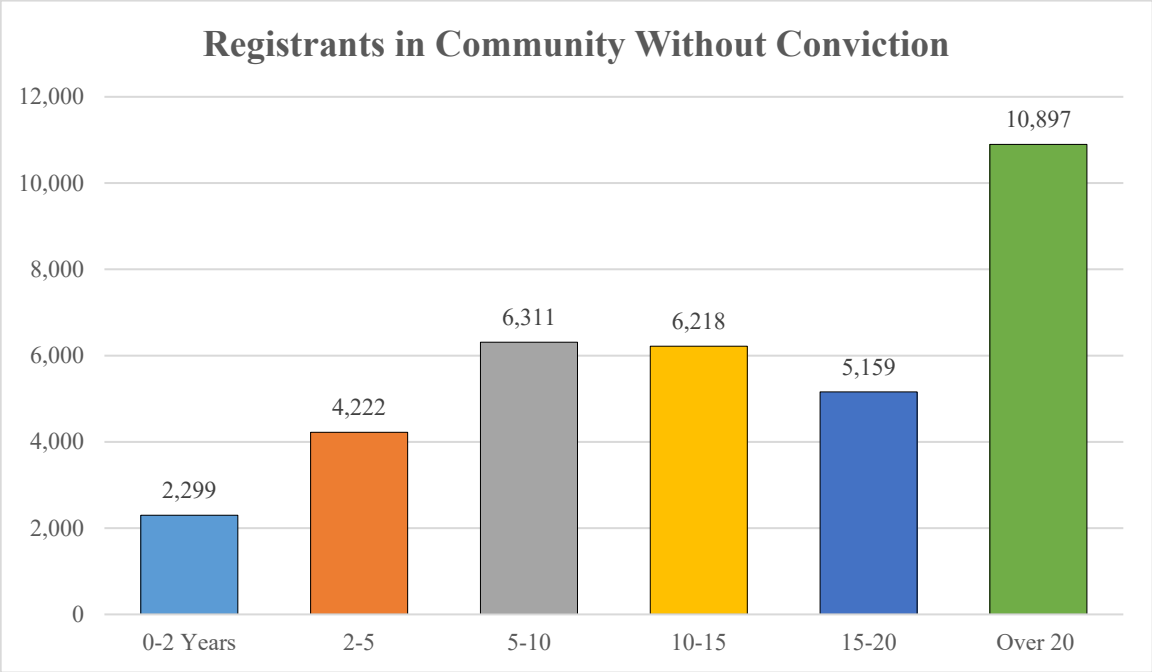
66. Of the 35,235 people in the In Community Group, we had sufficient information to calculate "in community" time for 35,106 people (99.6%). Of those, the data show:

- 7% or 2,299 people have been living in the community for 0–2 years without

being convicted of another registrable offense.

- 12% or 4,222 people have been living in the community for 2–5 years without being convicted of another registrable offense.
- 18% or 6,311 people have been living in the community for 5–10 years without being convicted of another registrable offense.
- 18% or 6,218 people have been living in the community for 10–15 years without being convicted of another registrable offense.
- 15% or 5,159 people have been living in the community for 15–20 years without being convicted of another registrable offense.
- 31% or 10,897 people have been living in the community for more than 20 years without being convicted of another registrable offense.

Figure 3



67. The number of registrants who have been in the community without incurring a new registrable offense allows for the estimation of the overall number who would present a very low risk of sexual offending. Very low risk of sexual offending is defined here as the expected lifetime rate of first-time sexual offending for males in

the general population, approximately 2%.[28] The risk of sexual recidivism predictably declines the longer that individuals are in the community without being convicted of a new sex offense. Because we did not know the proportion of registrants who incurred convictions for nonsexual offenses, the estimates are presented in two ways: a) assuming no new nonsexual convictions, and b) assuming that all registrants incurred at least one conviction for a nonsexual offense since their last registrable sexual offense. Consequently, these estimates would represent upper and lower bounds of the proportion of very low risk individuals in the **In Community Group**.

68. The recidivism rate estimates were drawn from previously published tables; specifically, Table S4 from Lee and Hanson (2021)[29] for individuals with no new nonsexual convictions, and Table 5 from Thornton et al. (2021)[30] for individuals with at least one conviction for a nonsexual offense. The 20-year calculations are based on the recidivism-rate estimates for 19 years because the 20-year rates are artificially set to zero in Table S4 and Table 5. The estimation method is conservative in that we use only the minimum follow-up times for the grouped data (e.g., 5 years, for the group of individuals who had been offense-free for 5 to 10 years). We assume that the distribution of initial risk levels (as measured by Static-99R scores) is equivalent to the distribution in the Static-99R normative samples,[31] which appears to be a reasonable assumption (see discussion in Section VIII below).

69. As can be seen from Table 3 and Table 4, approximately half of the 35,106 registrants in the community are very low risk for sexual recidivism. Assuming that those registrants did not incur a subsequent conviction for a new nonsexual offense, the number of very low risk individuals would be 19,994 (57.0%); assuming everyone has incurred at least one nonsexual conviction, the number of very low risk individuals would be 16,574 (47.2%). Consequently, it is reasonable to conclude that there are between 17,000 and 19,000 individuals in the **In Community Group** who

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[28] Lee et al. (2023) *supra* note 26.

[29] Lee, SC, & Hanson, RK. (2021). Updated 5-year and new 10-year sexual recidivism rate norms for Static-99R with routine/complete samples. *Law and Human Behavior. 45*(1), 24-38. https://doi.org/10.1037/lhb0000436.

[30] Thornton, D, Hanson, RK, Kelley, SM, & Mundt, JC. (2021). Estimating lifetime and residual risk for individuals who remain sexual offense free in the community: Practical applications. *Sexual Abuse. 33*(1), 3-33. doi:10.1177/1079063219871573.

[31] Hanson, RK, Lloyd, CD, Helmus, L, & Thornton, D. (2012). Developing non-arbitrary metrics for risk communication: Percentile ranks for the Static-99/R and Static-2002/R sexual offender risk scales. *International Journal of Forensic Mental Health, 11*(1), 9-23. doi:10.1080/14999013.2012.667511.

present no more risk for sexual offending than do males in the general population.

Table 3

The number of individuals in the In Community Group (35,106) who are very low risk for sexual recidivism (lifetime rate of < 2%) assuming no new non-sexual convictions.

		Minimum Time in Community						
Risk Level Static-99R	Frequency	At release	2 years	5 years	10 years	15 years	20 years	
-3	0.027	62	114	170	168	139	294	
-2	0.03	0	127	189	187	155	327	
-1	0.079	0	0	499	491	408	861	
0	0.103	0	0	0	640	531	1122	
1	0.157	0	0	0	976	810	1711	
2	0.175	0	0	0	1088	903	1907	
3	0.172	0	0	0	0	887	1874	
4	0.107	0	0	0	0	552	1166	
5	0.074	0	0	0	0	0	806	
6	0.036	0	0	0	0	0	392	
7	0.025	0	0	0	0	0	272	
8	0.012	0	0	0	0	0	131	
9	0.0028	0	0	0	0	0	31	
10+	0.0002	0	0	0	0	0	2	Total
Number very low risk		62	241	858	3550	4385	10897	19,994
Total		2299	4222	6311	6218	5159	10897	35,106

Table 4

The number of individuals in the In Community Group (35,106) who are very low risk for sexual recidivism (lifetime rate of < 2%) assuming all registrants have at least one new nonsexual conviction.

		Minimum Time in Community						
Risk Level Static-99R	Frequency	Within 1 year	2 years	5 years	10 years	15 years	20 years	
-3	0.027	0	0	170	168	139	294	
-2	0.03	0	0	189	187	155	327	
-1	0.079	0	0	0	491	408	861	
0	0.103	0	0	0	640	531	1122	
1	0.157	0	0	0	0	810	1711	
2	0.175	0	0	0	0	903	1907	
3	0.172	0	0	0	0	887	1874	
4	0.107	0	0	0	0	0	1166	
5	0.074	0	0	0	0	0	806	
6	0.036	0	0	0	0	0	392	
7	0.025	0	0	0	0	0	272	
8	0.012	0	0	0	0	0	131	
9	0.0028	0	0	0	0	0	31	
10+	0.0002	0	0	0	0	0	0	Total
Number very low risk		0	0	360	1486	3833	10895	16,574
Total		2299	4222	6311	6218	5159	10897	35,106

70. Because the 991 people in the **Left Michigan Group**, which only includes people who have Michigan convictions on or after July 1, 2011, would have spent less time in the community than the **In Community Group**, the risk profile of the Left Michigan Group does not resemble the risk profile of the In Community Group. Therefore, we cannot take the proportion of registrants in the In Community Group who are very low risk individuals and assume that a similar proportion of registrants in the Left Michigan Group would also be very low risk individuals. Additionally, we are unable to calculate the time offense-free in the community for the Left Michigan Group; consequently, we are unable to estimate the proportion of people in the Left Michigan Group who would belong to the very low risk threshold. Although there would be some individuals in the Left Michigan Group who would

be very low risk, the number of such people would be very small (in the low hundreds) compared to the number of very low risk individuals in the In Community Group (17,000 to 19,000). Consequently, including or excluding the Left Michigan Group in the overall estimate of very low risk individuals in the Primary Class would not materially change the total.

71. **In sum, it is reasonable to conclude that there are between 17,000 and 19,000 people in the Primary Class (almost all from the In Community Group) who are no more likely to be convicted of a sexual offense than males in the general population.**

72. Finally, it is important to recognize that there are many more people on Michigan's registry whose risk level is only slightly higher than that of males in the general population. For example, people who have a Static-99 score of 2 (a common score) reach desistance around year 10. At year 5, their lifetime recidivism risk is 4.3%, which is higher than the 2% rates for males in the general population, but not that much higher. In fact, it is similar to the rate of first-time sexual offending among individuals with a nonsexual criminal conviction but no history of sexual offending (3% to 4% lifetime rate) who are not required to register. *See* Hanson Report, ECF 1-4, ¶¶ ¶¶ 3.f., 55-72. Moreover, as noted above, people age 60 or older (25% of Michigan's total registry population), have recidivism rates of 3-4%. In other words, **although there are 17,000 to 19,000 people whose projected risk is no greater than the 2% lifetime rate of first-time sex offense conviction for males in the general population, there are thousands more whose risk levels are only somewhat above that level and are comparable to many others who are not required to register.**

VIII. USE OF RISK ASSESSMENTS AND RISK ASSESSMENT SCORES

73. The MDOC data included Static-99 and Static-99R results for assessments done by the MDOC since June 2016. The Static-99R is an updated version of Static-99, which was first developed in 2009; the risk levels for Static-99R were later updated in 2017. It is our understanding that Static-99/Rs have been routinely conducted by the MDOC since 2011, but that the MDOC could not easily provide Plaintiffs with data for the period from 2011-2016 due to a change in the database housing that data.

74. Of the 45,145 total registrants in the MSP data, we have MDOC records for 40,061 individuals (89%).

75. The MDOC data show that over a six year and nine month period between June 3, 2016, and March 1, 2023, at least 10,031 class members received a Static-

99/R risk assessment at MDOC. At least 1,376 of those members received multiple Static-99/R risk assessments at MDOC. **MDOC did a total of 11,553 assessments on class members for an average of roughly 143 Static-99/R risk assessments on class members per month.**

76. Because we did not have data on how many class members had a Static-99/R done before June 2016 or how many had a Static-99/R done by an entity other than the MDOC (e.g., court system, another state's department of corrections), we could not determine what percentage of the class has already had a Static-99 or Static-99R conducted. We also did not receive data regarding how many class members received risk assessments using an instrument or test other than the Static-99/R.

77. Of the 9,543 people with any Static-99/R result,[32] 4,890 cases had results reported using only the original Static-99 risk levels, 4,028 cases had results reported using only the revised Static-99R risk levels, and 625 cases had results reported using both risk levels. Some proportion of cases would have their results reported using the original Static-99 risk levels even though they were scored on Static-99R because there was a gap of 8 years between the development of Static-99R (2009) and the updated risk level (2017).

78. For the 5,515 people who received the earlier version of the assessment, including those who received both the earlier and current versions of the assessment, the distribution of assigned risk levels is as follows:[33]

- 1,975 (36%) scored as Low Risk
- 1,865 (34%) scored as Low-Moderate Risk
- 1,224 (22%) scored as Moderate-High Risk
- 451 (8%) scored as High Risk

79. This distribution of scores is similar to the distribution of scores in the Static-99 normative sample (31%, 42%, 18% and 9% for Low, Low-Moderate, Moderate-High, and High risk groups respectively). The Michigan data included relatively more individuals in the Low risk than the norms, probably because the original Static-99 risk levels were being applied to the updated Static-99R (which was common practice at that time).

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[32] A total of 773 Static-99 risk assessments with no reported risk classification were done on 639 class members. The data show 488 people who had at least one Static-99 done, but for whom no risk classification corresponding to any assessment is reported.

[33] For individuals with multiple Static-99 risk assessment scores, we report only the score associated with the last assessment.

80. For the 4,653 people whose results were reported using the updated (2017) risk levels, including those whose results were reported using both the original and updated levels, the distribution of assigned risk levels is as follows:

- 329 (7%) scored as Level I – Very Low Risk
- 897 (19%) scored as Level II – Below Average Risk
- 1,992 (43%) scored as Level III – Average Risk
- 1,032 (22%) scored as Level IVa – Above Average Risk
- 403 (9%) scored as Level IVb – Well Above Average Risk

81. Again, the distribution of Static-99R risk levels is similar to the distribution in the Static-99R norms (6%, 18%, 50%, 18%, 8% for Level I, Level II, Level III, Level IVa, and Level IVb, respectively). The Michigan distribution has slightly more individuals in the above average categories (Level IVa and IVb, 31% in Michigan versus 26% in the norms); however, the Michigan sample was restricted to individuals under the jurisdiction of the Michigan Department of Corrections whereas the norms were based on the full range of individuals convicted of sexual offenses (stratified into short prison sentences [less than 2 years], long prison sentences [more than 2 years], and community sentences only). Consequently, the estimates based on the Static-99R norms should reasonably approximate the distribution of risk levels for individuals on Michigan's registry.

IX. OFFENSE HISTORY OF PEOPLE ON MICHIGAN'S REGISTRY

82. **Offense Type:** 94% of the total class (42,294 people) have a registrable offense from Michigan. A wide range of Michigan offenses result in sex offender registration, ranging from very serious crimes, like criminal sexual conduct in the first degree (M.C.L. § 750.520b, which includes forcible rape and child sexual assault), to lower-level offenses, like criminal sexual conduct in the third degree (M.C.L. § 750.520d, which includes sexual intercourse with an underage teen), and criminal sexual conduct in the fourth degree (M.C.L. § 750.520e, which includes sexual contact with an underage teen).

83. For people with Michigan registrable offenses (the **Michigan Conviction Group**), we analyzed how many people were convicted of which offenses. To avoid double counting a person, if the person was convicted of more than one offense, we assigned the highest-level offense (e.g., CSC 1 for a person convicted of both CSC 1 and CSC 2).[34]

[34] There are a number of different offenses in the "other sex crimes category" with varying

Table 5

Offenses of Registrants Who Have Michigan Convictions

Registrable Offense	Total	Percent
CSC First Degree	9,575	23%
CSC Second Degree	10,545	25%
CSC Third Degree	8,909	21%
CSC Fourth Degree	5,893	14%
Other Registrable Offenses	7,372	17%

84. These data show that **77% of registrants with Michigan convictions (32,719 of 42,294) were convicted of offenses other than CSC 1.**

85. Once we further broke down the data to look at the 32,484 people who have Michigan registrable offense convictions in the **In Community Group**—those registrants who are not incarcerated and who are living in Michigan communities—the percentage of registrants convicted of the most serious offenses decreases further:

Table 6

Offenses of Registrants In the Community Who Have Michigan Convictions

Registrable Offense[35]	Total	Percent
CSC First Degree	5,331	16%
CSC Second Degree	8,734	27%
CSC Third Degree	7,043	22%
CSC Fourth Degree	5,270	16%
Other Registrable Offenses	6,106	19%

gradations of severity. For purposes of avoiding double counting, we assigned a person to CSC 1, CSC 2, CSC 3 or CSC 4 before assigning them to "other registrable offenses" category.

[35] While the Michigan Conviction Group includes only people with Michigan convictions, the In Community Group includes people living in Michigan who have non-Michigan convictions. The severity of those offenses could not be determined, and they are therefore excluded from the analysis.

Thus, 84% of people in the In Community Group who have Michigan registrable offense convictions were convicted of offenses other than CSC 1. These data are important because they belie the common assumption that people on the registry have almost all committed the most serious offenses.

86. **Out of State Offenses:** SORA requires registration not just for convictions in Michigan, but also if the individual has a "substantially similar" offense from another jurisdiction, M.C.L. §§ 28.722(r)(x), (t)(xiii), (v)(viii), or is required to register in another jurisdiction, M.C.L. § 28.723(d). Of people on Michigan's registry:

- about **42,294 (94%)** have registrable convictions for violations of Michigan law;
- about **3,100 (7%)** have registrable convictions for violations of the law of another jurisdiction; and
- about **296 (1%)** have registrable convictions for both Michigan and non-Michigan offenses.[36]

87. **Victim Age:** We also attempted to determine the age distribution of victims, but were unable to do so as the underlying data does not appear to be reliable.

88. Although the MSP data contain ages for 65,785 victims of registrable offenses committed by registrants in the total class, the entries in the victim age field are so far off from what is statistically probable that we could not use these data. The table below shows how many victims were coded as having the following ages:

[36] The percentages here add up to more than 100% because the individuals in the third bullet are also included in the first two bullets.

Table 7

Distribution of Victim Ages between Age 0 and Age 49

Age	Total	Age	Total	Age	Total	Age	Total	Age	Total
0	34,458	**10**	48	**20**	15	**30**	10	**40**	0
1	0	**11**	136	**21**	9	**31**	6	**41**	0
2	2	**12**	548	**22**	4	**32**	169	**42**	0
3	8	**13**	3,519	**23**	16	**33**	29	**43**	0
4	40	**14**	5,985	**24**	11	**34**	216	**44**	0
5	33	**15**	1,189	**25**	6,238	**35**	66	**45**	2
6	81	**16**	4,610	**26**	0	**36**	10	**46**	0
7	1,456	**17**	391	**27**	30	**37**	0	**47**	3
8	41	**18**	1,224	**28**	3	**38**	1	**48**	0
9	190	**19**	31	**29**	9	**39**	4,802	**49**	0

89. Beyond age 49, there is 1 victim aged 62, and there are 145 victims aged 99. Certain ages in the distribution, particularly ages 0, 25, and 39, each represent thousands of victims in the data while the immediately surrounding ages (i.e., ages 1, 24, 26, 38, and 40) are completely or nearly unrepresented. Given that odd distribution of ages, and the fact that 52% of victims in these data are age 0, it is clear to us that the victim age data are not reliable.

90. We also considered whether it would be possible to determine victim age by looking at the offense of conviction and counting offenses where the age of the victim is an element of the offense. However, this method too is inaccurate. First, the age categories in SORA do not always line up with the age categories in Michigan's criminal code.[37] Second, a person may be convicted of an offense where the victim was a minor, but the age of the victim is not an element of the offense (e.g., M.C.L. § 750.338b, gross indecency). Third, because of data limitations, it is not possible to determine if one conviction might involve multiple victims, or conversely whether there may be one victim who is the subject of multiple convictions. Finally, the data did not link victim ages to offenses.

[37] While the age of consent in Michigan is 16 (M.C.L. § 750.520d(1)(a); § 750.520e(1)(a)), various SORA provisions require registration, or assign higher tier classifications based on the victim being under 18. *See, e.g.* M.C.L. § 28.722(a)-(v). For example, M.C.L. § 750.520e—criminal sexual conduct in the fourth degree—has a specific subsection that bars sexual contact with a person aged 13-16. *See* M.C.L. § 750.520d(1)(a). However, SORA requires individuals convicted of CSC-3 to register if the victim was 13-18. *See* M.C.L. § 28.722(t)(x).

X. WOMEN ON MICHIGAN'S REGISTRY

91. As noted above, women make up only 2% of Michigan's total registry population and 3% of the **In Community Group**.

92. Of the 1,063 women on the registry, about 92% (975 women) have never been convicted of a second registrable offense after their initial conviction. **Of the 945 women in the In Community Group, 98% (922 women) have never been convicted of a second registrable offense.**

XI. CHILDREN ON MICHIGAN'S REGISTRY

93. There are **2,037** people **(5%)** who are on Michigan's registry for a juvenile adjudication as a child. We were not able to determine from the data how many additional individuals committed their registrable offenses as children, but were charged and convicted as adults.

94. The number of children required to register is important because, as set out in the expert report of Elizabeth Letourneau, ECF 1-5, ¶ 10, the recidivism rates for people who commit sexual offenses as children are very low. **Of the 2,037 child registrants, 99% (2,012 child registrants) have never been convicted of a second registrable offense.**

95. **Demographics of Those Registered as Children: 98%** of child registrants **(1,991** children**)** are male and **2%** of child registrants **(46** children) are female.

96. The racial demographics of this group are:

- about **1,504 (74%)** are white;
- about **476 (23%)** are Black/African-American;
- about **25 (1%)** are Latino/Hispanic;
- about **32 (2%)** are other groups.

97. Although the data did not include the age of child registrants at the time of the offense, we attempted to calculate this by comparing the child's birth date and offense date. Because of missing or unreliable data (e.g., missing offense dates), we were able to calculate the age at the time of offense for 1,665 children (82%). The breakdown for the age of the 1,628 registrants who were children (i.e., under 18 years old[38]) at the time of the offense is:

[38] These data showed that 37 of these registrants with juvenile adjudications were age 18 or over on the offense date of their first registrable offense. Because it is unclear how a person would be adjudicated as a juvenile if over 18, we excluded these data.

- About **52 (3%)** were under 14 years old;
- about **312 (19%)** were 14 years old;
- about **569 (35%)** were 15 years old;
- about **480 (30%)** were 16 years old;
- about **215 (13%)** were 17 years old.

98. The breakdown of all 2,037 child registrants' **current** ages is:

- none are under 16 years old;
- about **57 (3%)** are 16 – 19 years old;
- about **439 (22%)** are 20 – 29 years old;
- about **859 (42%)** are 30 – 39 years old;
- about **679 (33%)** are 40 – 49 years old;
- about **3 (0.1%)** are 50 – 59 years old;
- none are 60 years old or over.

XII. COMPARING PEOPLE IN DIFFERENT TIER LEVELS

99. As discussed above, Michigan's registry categorizes people into three tiers, which determine how many years people are subject to SORA and how frequently they must report. Those tiers are based solely on the offense of conviction, without any individualized determination of risk. *See* M.C.L. §§ 28.722(q)-(v). Tier III requires lifetime registration and quarterly reporting; Tier II requires 25-year registration and biannual reporting; and Tier I requires 15-year registration and yearly reporting. M.C.L. §§ 28.725(11)-(13); 28.725a(3). 73% of registrants are Tier III, 20% are Tier II, and 7% are Tier I. *See* Section V.

100. Tier II and Tier III registrants (other than those with juvenile adjudications) are on the online public registry. M.C.L. §§ 28.728(2), (4). Some Tier I registrants are on the offline law enforcement registry, while other Tier I offenses require public registration. M.C.L. § 28.728(4)(c).

101. We compared the Static 99/R risk scores, discussed in Section VIII, for people in different tier levels. The data show:

Table 8

Static-99 Scores, Earlier Version of Assessment, by Tier Level

Risk Level	Tier I	Tier II	Tier III	Whole Class
Low Risk	15%	24%	38%	36%
Low-Moderate Risk	35%	35%	34%	34%
Moderate-High Risk	33%	32%	21%	22%
High Risk	17%	10%	8%	8%

Table 9

Static-99R Scores, Current Version of Assessment, by Tier Level

Risk Level	Tier I	Tier II	Tier III	Whole Class
Level I – Very Low Risk	1%	2%	8%	7%
Level II – Below Average Risk	9%	8%	21%	19%
Level III – Average Risk	27%	46%	43%	43%
Level IVa – Above Average Risk	40%	30%	21%	22%
Level IVb – Well Above Average Risk	23%	14%	7%	9%

102. What these data show is that a higher tier level does not correspond to a higher risk level. **In fact, tier levels are inversely correlated to risk: people in Tier I have the highest risk scores, Tier II the next highest, and Tier III the lowest. Specifically, 63% of the people in Tier I were above average risk on Static-99R, compared to 44% of the people in Tier II, and 28% of the individuals in Tier III.** Such a pattern should not be surprising given that Michigan's tier placement is based on the offense of conviction, which is not empirically related to the likelihood of sexual recidivism. Placing individuals in the wrong tiers would have little effect on public safety because there is no evidence that any form of registration reduces sexual victimization or reduces sexual recidivism; however, placing lower risk individuals in the highest tier misleads the public who would (falsely) assume that higher tier placement communicates a greater risk of sexual recidivism.

103. These Michigan data are consistent with the broad consensus in the scientific literature that the likelihood of recidivism is unrelated to the names of offense convictions. In other words, using the offense of conviction to create tiers of ostensible future dangerousness does not work.

104. As discussed above in Section VII, time offense-free in the community is strongly correlated with reductions in recidivism. We therefore analyzed how much time people in different tiers have spent offense free in the community.

Table 10

Time Offense-Free in the Community by Tier Level

Time Period	Tier I	Tier II	Tier III	Whole Class
0 – 2 years	14%	7%	6%	7%
2 – 5 years	25%	12%	11%	12%
5 – 10 years	36%	19%	16%	18%
10 – 15 years	26%	20%	16%	18%
15 – 20 years	0%	21%	14%	15%
> 20 years	0%	20%	38%	31%

105. These data show that Tier III registrants have spent more time offense free in the community than Tier II registrants, who have spent more time offense free in the community than Tier I registrants. This is unsurprising, given that Tier III requires lifetime registration, Tier II requires 25-year registration, and Tier I requires 15 years registration. It also provides strong evidence that Tier III does not represent a high-risk group. **Two-thirds (68%) of the people in Tier III have spent more than 10 years in the community without incurring another sexual offense conviction, and 38% have spent more than 20 years without a new sexual offense conviction.** It does not take complicated statistical analyses to recognize that most of these people did not present an imminent risk for sexual recidivism when they were required to register. If you accept the strong evidence that time in the community without a new sex offense conviction reduces the likelihood of future recidivism, these data also indicate that the higher tiers are populated by many people who present no more risk of reoffending than males in the general population.

XIII. REGISTRANTS' EMPLOYMENT, HOUSING, AND INTERNET USE

106. Registrants are required to regularly verify as well as report changes to information about their employment, housing, internet use, etc. M.C.L. §§ 28.725; 28.727. The MSP data contained information about employment, housing, and internet identifiers.

107. In analyzing this data, we restricted our analysis to the **In Community Group**—those subject to SORA's reporting requirements, as they live, work or go

to school in Michigan—and excluded those who are incarcerated. We also excluded registrants listed as "absconders," as they will have had periods of non-reporting.

A. Employment

108. We leveraged the address and date data in the MSP data to estimate the total number of registrants with current employment. We count any work address without an end date (i.e., the date after which the work address is no longer current for the registrant) as current employment.

109. Of the 35,235 registrants in the In Community Group, 55% (19,230 people) reported current employment of some kind.[39] Of these, 14% of all currently employed registrants in the In Community Group (2,603 people) reported current employment at two or more business addresses. The data do not show if they were employed full or part time. **Of the registrants in the In Community Group, 45% (16,005 people) did not report current employment**.

110. The unemployment rate in Michigan in January 2023 when the MSP data was provided was 4.3%.[40]

B. Housing

111. The MSP data also contains residential addresses, as well as a notation for whether a person is homeless. It is our understanding that historically, unhoused people have been required to report a general location (e.g., city, but not street address). The residential address data for some registrants shows such general locations.

112. Of the 35,235 registrants in the **In Community Group**, 1,037 people (3%) were officially designated as "homeless" as of January 24, 2023. There are an additional 45 people who are not currently officially designated as "homeless" but whose current street address fields are blank or otherwise denote unhoused status (for example, some street address fields describe the intersection of two streets, some explicitly say "Homeless," and some describe registrants' vehicles). We assume that between 1,037 and 1,082 registrants in the In Community Group are currently unhoused.

113. Using the officially designated "homeless" label, of the 35,235 registrants in the **In Community Group**, 9% (3,139 people) reported being unhoused at some point since they began registering. Limiting the analysis to the 25,763 people in the

[39] Employment addresses include those related to self-employment and rental property, along with traditional employment.

[40] Michigan Labor Market Statistics 1970-2023, https://www.senate.michigan.gov/sfa/Economics/MichiganLaborForce.PDF.

In Community Group who have reported their addresses for at least ten years (i.e., their initial release date is on or prior to January 24, 2013), we find 10% (2,518 people) have reported being unhoused at some point.

114. Using expanded criteria for identifying unhoused registrants (also including instances where the street address field is blank or otherwise denotes unhoused status), of the 35,235 registrants in the **In Community Group**, we identify 11% (3,764 people) who have reported being unhoused at some point since they began registering. **Limiting the analysis to the 25,763 people in the In Community Group who have reported their addresses for at least ten years, we find 12% (3,049 people) have reported being unhoused at some point since they began registering.**

115. These numbers may understate the percentage of registrants who have been unhoused, as we were unable to account for individuals who report shelter addresses. In addition, due to time and data constraints, we were unable to analyze housing instability. However, even a cursory review of the data shows that many registrants report frequent address changes.

C. Internet Use

116. SORA requires post-2011 registrants to report "all electronic mail addresses and internet identifiers registered to or used by the individual." M.C.L. § 28.727 (1)(i).

117. For this analysis, we restricted our query to the 8,153 members of the **In Community Group** who are required to report such information (i.e., with an offense date on or after July 1, 2011). In that group, **62% (5,061 people) reported at least one email address or electronic identifier. 38% (3,092 people) did not report any email addresses or electronic identifiers. Only 60% (4,909 people) reported using email, and only 24% (1,968 people) reported using some other non-email internet identifier** (e.g., Facebook, Instagram).

118. By contrast, 93% of adult Americans use the internet.[41]

XIV. DATA ON ENFORCEMENT

A. Absconders, Compliance and Non-Compliance

119. Only **33** registrants **(0.1%)** in the **In Community Group** are listed as "absconders," presumably individuals who are not reporting.

[41] Pew Research, "Internet/Broadband Fact Sheet." Accessed 27 September 2021. https://www.pewresearch.org/internet/fact-sheet/internet-broadband/.

120. However, many more registrants are listed as "non-compliant." For the **In Community Group**, the data shows whether they are "compliant" or "non-compliant," and if non-compliant, the type of non-compliance.

121. In this group **90% (31,648 people)** were compliant, and **10% (3,582 people)** were non-compliant.

122. The breakdown for types of non-compliance is:

Table 11
Reasons for Noncompliance

Reasons for current non-compliance	Total	Percent[42]
Identification violation	2,218	62%
Fee violation	881	25%
Verification violation	648	18%
Palm print violation	448	13%
Address violation	33	1%
Failed to register violation	22	1%
False information violation	12	0.3%
Form violation	7	0.2%
Employment violation	6	0.2%
Phone violation	4	0.1%
Vehicle violation	3	0.1%
Internet violation	3	0.1%
Professional license violation	1	0.03%

123. In 87% of cases there were issues with the fees required under SORA or with identification.

[42] These numbers at up to more than 100%, as some registrants had more than one reason for non-compliance.

B. Residence Checks

124. For the **In Community Group**, the data shows that there were 61,905 residence checks done during the period from January 1, 2011, to March 1, 2020.[43]

XV. CLASS AND SUBCLASS INFORMATION

125. We were asked to determine the size and composition of the primary class and subclasses, to the extent possible. For some of the subclasses this determination was relatively straightforward. For others, it was extremely complex. The numbers provided should be understood as best estimates, subject to revision, given the complexity of the analysis involved. We were not able to complete this analysis for all the subclasses in the available time, but will continue to work on doing so.

126. The chart in Exhibit B provides more details about the analysis for each subclass. As noted above, the MSP provided the class data on January 24, 2023. Given that additional people have likely been added to the registry since then, the numbers here may slightly understate the current class and subclass sizes.

A. Primary Class

127. The primary class is defined as: "people who are or will be subject to registration under Michigan's Sex Offenders Registration Act (SORA)." Stipulated Class Certification Order, ECF 35, ¶ 2.

128. **The primary class is composed of approximately 45,145 people.** This includes registrants who are living, working, or studying in the state, incarcerated people, and registrants who were convicted of a Michigan registrable offense on or after July 1, 2011 and who are now living out of state.[44]

B. Pre-2011 Ex Post Facto Subclass

129. This sub class is defined as members of the primary class who committed the offense(s) requiring registration before July 1, 2011. ECF 35, ¶ 3.

130. **There are approximately 31,249 registrants (69% of the class) in this subclass.** In identifying this subclass, we used the offense date for the final registrable offense on record where available. For 3,481 people, the offense date for

[43] We excluded data from after March 2020 because residence checks were likely impacted by the COVID-19 pandemic.

[44] We also included people whose registration status is pending review (186 people; 0.4%) as they most likely "will be subject to registration," although that group is so small that it is not statistically significant; people whose status pending-out-of-state, and people whose whereabouts were unknown.

their last registrable offense was not available, and we used the conviction date for their last registrable offense instead. For 48 people, neither the offense date nor the conviction date for their last registrable offense were available, so we assume those individuals are not part of this subclass.

C. Retroactive Extension of Registration Subclass

131. This subclass is defined as members of the primary class who were retroactively required to register for life as a result of amendments to SORA. ECF 35, ¶ 4.

132. **Our best estimate at this time is that there are approximately 16,723 registrants (37% of the Primary Class) in this subclass.**

133. The data we received did not indicate whether a person's registration term has been extended. Therefore, in order to determine membership in this subclass, we had to run a series of queries that identified people who are currently required to register for life, but whose registrable offenses, at the time committed, did not result in lifetime registration. Class counsel, based on their analysis of the legislative history of SORA, provided us with the parameters for those queries, which are attached as Exhibit B.1.

134. The analysis for this subclass is very complicated due to the number of statutory changes over time, the complexity of the relevant data, and the programming required. The estimate provided is just that, an estimate, and does not account for every variable involved.

D. Barred From Petitioning Subclass

135. The barred from petitioning subclass is defined as:

> members of the primary class who are ineligible to petition for removal from the registry and for whom ten or more years will have elapsed since the date of their conviction for the registrable offense(s) or from their release from any period of confinement for that offense(s), whichever occurred last, and who (a) have not been convicted of any felony or any registrable offense since; (b) have successfully completed their assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole; and (c) have successfully completed an appropriate sex offender treatment program, if successful completion of a sex offender treatment program was a condition of the registrant's confinement, release, probation, or parole.

ECF 35, ¶ 5.

136. Due to the complexity of the analysis, limitations in the data sets, the need

to match various data sets, and time constraints, we have not yet been able to estimate the number of people in this subclass. We are continuing to work on estimating the size of this subclass.

E. Non-Sex Offense Subclass

137. SORA requires individuals convicted of certain offenses that do not have a sexual component to register as sex offenders, namely kidnapping (M.C.L. § 750.349)[45], unlawful imprisonment (§ 750.349b), and child enticement (§750.350). *See* M.C.L. § 28.722(r)(iii), (v)(ii)-(iii).

138. The non-sex offense subclass is defined as:

> members of the primary class who are or will be subject to registration for an offense without a sexual component including convictions for violating M.C.L. § 750.349 (other than convictions for violating M.C.L. § 750.349(1)(c) or M.C.L. § 750.349(1)(f)), § 750.349b, § 750.350, or a substantially similar offense in another jurisdiction.

ECF 35, ¶ 6. The subclass thus includes both individuals with Michigan convictions for the specified offenses, as well as people with "a substantially similar offense in another jurisdiction."

139. **We estimate that 298 people (0.7% of the class) are members of this subclass.**

140. There are 276 people with Michigan convictions that are members of this subclass. To identify this group, we ran queries to identify all class members convicted of violating M.C.L. § 750.349 (other than convictions for violating M.C.L. § 750.349(1)(c) or M.C.L. § 750.349(1)(f)), § 750.349b, and § 750.350.

141. In addition, individuals who have non-Michigan convictions that are "substantially similar" to such offenses must register. M.C.L. § 28.722(r)(x), (t)(xiii), (v)(viii). The data we received does not show which non-Michigan offenses are considered "substantially similar" to the specified Michigan offenses. Plaintiffs' counsel informed us that they sought, but were unable to obtain, documents from Defendants showing which non-Michigan offenses the MSP deems to be "substantially similar" to the specified Michigan offenses.

142. In order to estimate the number of people who are subject to registration for "substantially similar" non-sex-offense convictions in other jurisdictions, we first calculated that 276 people convicted of non-sex offenses in Michigan represent 0.7%

[45] Subsections (1)(c) or (1)(f) of the kidnapping statute, M.C.L. § 750.349 require a sexual component to the crime.

of the total 42,294 people with Michigan convictions. If a similar percentage applies to the 3,100 people with non-Michigan convictions, then there would be approximately 22 people subject to registration for non-sex offenses from jurisdictions other than Michigan.

143. Adding the 276 people with Michigan non-sex offenses to the estimated 22 people with "substantially similar" non-sex-offense convictions from other jurisdictions, led to our estimate that 298 people are members of this subclass.

F. Plea Bargain Subclass

144. This subclass is defined as:

> members of the primary class who gave up their right to trial and pled guilty to a registrable offense in Michigan and who, as a result of retroactive amendments to SORA, (a) were retroactively subjected to SORA even though there was no registration requirement at the time of their plea; or (b) had their registration terms retroactively extended beyond that in effect at the time of their plea.

ECF 35, ¶ 7.

145. Due to the complexity of the analysis, limitations in the data sets, the need to match various data sets, and time constraints, we have not yet been able to estimate the number of people in this subclass. We are continuing to work on estimating the size of this subclass.

G. Post-2011 Subclass

146. This subclass is defined as "members of the primary class who committed the offense(s) requiring registration on or after July 1, 2011."

147. **There are approximately 13,848 registrants (31% of the class) in this subclass.** In identifying this subclass, we used the offense date where available, and the conviction date for the 55 people for whom the offense date was not available. There are 48 people for whom neither the offense date nor the conviction date for any registrable offenses were available; we assume these individuals are not part of this subclass.

H. Non-Michigan Offense Subclass

148. This subclass is defined as members of the primary class who, according to Defendants, are or will be subject to sex offender registration under SORA 2021 for a conviction or adjudication from a jurisdiction other than Michigan.

149. **There are approximately 3,100 registrants (7% of the class) who have a conviction or adjudication from a jurisdiction other than Michigan and are**

in this subclass.

XVI. ADDITIONAL DATA ANALYSIS

150. Due to time and resource constraints, it was not possible to complete all of the data analysis that we had hoped to accomplish before the deadline for this report. Accordingly, we anticipate continuing to refine our data analysis in advance of any evidentiary hearing or trial in this case.

151. We also recognize that, if the Court grants relief to the Plaintiffs in this case, additional data analysis may be required for purposes of determining remedies, and we may conduct further analysis to inform the Court's potential decisions on remedy. We can develop more precise determinations of subclass composition with additional time.

152. Finally, should the Court identify particular questions where further data analysis may be useful, we can attempt, depending on data, resource and time constraints, to respond to those questions.

XVII. STATEMENT OF COMPENSATION

153. German Marquez Alcala and James J. Prescott have worked on this report pro bono. Karl Hanson has charged his customary rate of $250/hour for his contributions to this report.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

German Marquez Alcala	James J. Prescott	R. Karl Hanson

Dated: August 7, 2023

EXHIBIT A

CURRICULUM VITAE OF
GERMAN A. MARQUEZ ALCALA

German A. Marquez Alcala

University of Michigan Law School | Ann Arbor, MI | gmarquez@umich.edu | Office: (734) 763-1760

EDUCATION

UNIVERSITY OF MICHIGAN | ANN ARBOR, MI | 2016–2018
M.A., Economics

PURDUE UNIVERSITY | WEST LAFAYETTE, IN | 2014–2016
M.S., Agricultural Economics
Thesis: "*The Labor Market Consequences of Endogenous Low-Skill Migration with a Market-Based Immigration Policy*," selected for a presentation at the Annual Meeting of the Agricultural & Applied Economics Association

CALIFORNIA STATE UNIVERSITY, FRESNO | FRESNO, CA | 2010–2014
B.S., *summa cum laude*, Agricultural Business, Minor in Philosophy
with University Honors *via* Smittcamp Family Honors College
with College Honors *via* College of Arts and Humanities Honors Program
Undergraduate Honors Thesis: "*An Ethical Analysis of American Immigration Policy: A Kantian Approach*," selected for a presentation at the California State University Honors Consortium Conference

RESEARCH INTERESTS

How disadvantaged populations in the U.S. engage with legal and economic systems of power; courts and procedural law; the role of technology in legal and government decision-making.

RESEARCH EXPERIENCE

UNIVERSITY OF MICHIGAN LAW SCHOOL

Research Associate for Empirical Legal Studies Jan. 2019–Present

I use quantitative research skills to help law faculty shepherd their empirical research projects from concept to publication. I acquire and manage data, brainstorm research questions and provide methodology consultations, perform rigorous statistical analyses, and help draft and edit manuscripts for publication. Notable work from this experience includes:

- Studying criminal record expungements and their labor market and public safety consequences (for Profs. J.J. Prescott & Sonja Starr; published in *Harvard Law Review*)
- Comparing pro se litigant discrimination in online and face-to-face courts (for Profs. J.J. Prescott, Orna Rabinovich-Einy & Avital Mentovich; published in *Alabama Law Review*)
- Studying litigant perceptions of online courts' legitimacy (for Profs. J.J. Prescott, Orna Rabinovich-Einy & Avital Mentovich; published in *Law & Society Review*)
- Using difference-in-difference and survival analysis methods to study the impact of online dispute resolution in small claims court (for Prof. J.J. Prescott; published in a research volume)
- Compiling and visualizing complex datasets on jails, prisons, and court filings to study the civil rights of incarcerated people, resulting in rich data appendices for an incarceration-focused legal casebook and an article for *Prison Policy Institute* (for Prof. Margo Schlanger)
- Analyzing data from the National Registry of Exonerations for a report on the prevalence of misconduct by police officers, prosecutors, and other officials and its connection to wrongful convictions (for Prof. Samuel Gross)
- Providing editorial assistance for a volume summarizing empirical legal research of sex offender registration and notification laws (Wayne A. Logan & J.J. Prescott, eds., SEX OFFENDER REGISTRATION AND NOTIFICATION LAWS: AN EMPIRICAL ASSESSMENT, Cambridge University Press, 2021)

- Using natural language processing methods to understand the role of unrepresented litigants' informal written language in online courts (for Profs. J.J. Prescott, Orna Rabinovich-Einy, David Jurgens, Rob Voigt & Avital Mentovich; *ongoing*)
- Studying homeowners' ability to understand consumer insurance contracts (for Profs. Kyle Logue, Daniel Schwarcz & Brenda Cude; *ongoing*)
- Editing questionnaires, performing database maintenance, and creating annual response reports for the U-M Law School Alumni Survey Project

PURDUE UNIVERSITY DEPARTMENT OF AGRICULTURAL ECONOMICS

Graduate Research Assistant for Professor Thomas Hertel June–Dec. 2015
Compiled data and created visualizations for an analysis of global land use, poverty in the developing world, and the effects of climate change; published in *Nature Climate Change*.

Graduate Research Assistant for Interdisciplinary Climate Research Team Jan.–Sep. 2015
Synthesized scholarship from development economics, ecology, psychology, and cultural anthropology and helped write a comprehensive literature review on conditional cash transfers for an interdisciplinary NSF grant; published in *World Development*.

Graduate Research Assistant for Professor Joseph Balagtas Aug.–Dec. 2014
Wrote a literature review on rice production, poverty impacts of price volatility of staple crops, and existing government interventions for price volatility in the Philippines.

TEACHING EXPERIENCE

UNIVERSITY OF MICHIGAN DEPARTMENT OF ECONOMICS

Graduate Student Instructor Sep. 2017–Apr. 2018
Taught four sections of Principles of Economics I; supervised by Dr. Ronald Caldwell.

CONFERENCE PRESENTATIONS

NLP@Michigan Conference, Ann Arbor, MI, 2022
Annual Meeting of Agricultural and Applied Economics Association (AAEA), Boston, MA, 2016
California State University Honors Consortium Conference, Fullerton, CA, 2014
Voicing Ideas Philosophy Conference, Fresno, CA, 2013

HONORS & AWARDS

Rackham Merit Fellowship, University of Michigan, 2016–2018
Purdue Doctoral Fellowship, Purdue University, 2014–2016
President's Medalist, California State University, Fresno, 2014
Dean's Medalist, Jordan College of Agricultural Sciences & Technology, California State University, Fresno, 2014
President's Honors Scholarship, Smittcamp Family Honors College, California State University, Fresno, 2010–2014
Newman Civic Fellowship, 2013
President's Volunteer Service Award, 2013

EXHIBIT B

REGISTRANT GROUPS

This chart summarizes how we identified the registrants in various groups that were used for purposes of data analysis, as well as how we identified the subclasses.

Group	Who Is Included	How the Group Was Identified in the Data	Estimated Number of Registrants
Primary Class/Total Registrants	People who are or will be subject to registration under SORA.	We began with all registrants for whom we received data, and identified a total of 53,605 people with unique registration numbers. We then removed registrants who no longer live, work or attend school in Michigan, and who do not have a Michigan registrable conviction on or after July 1, 2011.	45,145
In Michigan Group	Registrants who live, work, or attend school in Michigan, including people who are incarcerated.	The "status" fields included here are: absconder, active, employment only, homeless, incarcerated, pending out of state, pending review, school only, and whereabouts unknown.	44,154 (98% of Primary Class)
In Community Group	Registrants who live, work or attend school in Michigan, and are not incarcerated.	The "status" fields included here are: absconder, active, employment only, homeless, pending out of state, pending review, school only, and whereabouts unknown.	35,235 (80% of In Michigan Group)

Incarcerated Group	Registrants who are incarcerated.	The status field here is: incarcerated.	8,919 (20% of In Michigan Group)
Left Michigan Group	Registrants who no longer live, work or attend school in Michigan, but who are required to register because they have a Michigan registrable conviction on or after July 1, 2011. *See* M.C.L. § 28.723(3). These registrants are not subject to ongoing reporting requirements or public registration.	The status field here is: out of state. In addition, we excluded individuals who do not have a Michigan registrable conviction on or after July 1, 2011.	991 (2% of Primary Class)
Michigan Conviction Group	Registrants with Michigan convictions.	We identified all people who had at least one registrable offense where the entry in the field for "conviction state" was Michigan.	42,294 (94% of Primary Class)
Pre-2011 Ex Post Facto Subclass	Members of the primary class who committed offenses requiring registration before July 1, 2011.	We identified all people where the "committed" date field (or fields if there are multiple offenses) was before July 1, 2011, and who did not have any registrable offenses committed on or after July 1, 2011. If the committed date field was blank, the "convicted" date field was used.	31,249 (69% of Primary Class)

Retroactive Extension of Registration Subclass	Members of the primary class who were retroactively required to register for life as a result of amendments to SORA.	To determine membership in this sub-class, we had to run a series of queries that identify people who are currently required to register for life, but whose registrable offenses, at the time commit-ted, did not result in lifetime registration. *See* Exhibit 1 for a detailed explanation. Because of the complexity of the statu-tory changes, as well as the complexity of the data, these numbers are not exact, but rather are the best estimates we could make within the available time.	People with Michigan convictions: 15,582 (35% of Primary Class) Total counting Michigan and non-Michigan convictions: 16,723 (37% of Primary Class)
Barred from Petitioning Subclass	Members of the primary class who are ineligible to petition for removal from the registry and for whom ten or more years will have elapsed since the date of their conviction for the registrable offense(s) or from their release from any period of confinement for that offense(s), whichever occurred last, and who (a) have not been convicted of any felony or any registrable offense since; (b) have successfully completed their assigned periods of supervised release, probation,	Due to the complexity of the analysis, limitations in the data sets, the need to match various data sets, and time con-straints, we have not yet been able to estimate the number of people in this subclass.	Unknown at this time.

	or parole without revocation at any time of that supervised release, probation, or parole; and (c) have successfully completed an appropriate sex offender treatment program, if successful completion of a sex offender treatment program was a condition of the registrant's confinement, release, probation, or parole.		
Non-Sex Offense Subclass	Members of the primary class who are or will be subject to registration for an offense without a sexual component including convictions for violating M.C.L. § 750.349 [other than convictions for violating M.C.L. § 750.349(1)(c) or M.C.L. § 750.349(1)(f)], § 750.349b, § 750.350, or a substantially similar offense in another jurisdiction	We first identified all members of the primary class with convictions for violating: • M.C.L. § 750.349 [other than convictions for violating M.C.L. § 750.349(1)(c) or M.C.L. § 750.349(1)(f)], • M.C.L. § 750.349b, and • M.C.L. § 750.350. Then, to estimate the number of people with "substantially similar" non-sex offenses in other jurisdictions, we calculated what percent of the Michigan Conviction Group had convictions for non-sex offenses (0.7%). We then applied	People with Michigan convictions: 276 People with substantially similar offenses in another jurisdiction: Estimated to be 22. Total: 298

		that percentage to the total number of people with non-Michigan convictions to estimate the number of people subject to registration for non-sex offenses from other jurisdictions.	
Plea Bargain Subclass	Members of the primary class who gave up their right to trial and pled guilty to a registrable offense in Michigan and who, as a result of retroactive amendments to SORA, (a) were retroactively subjected to SORA even though there was no registration requirement at the time of their plea; or (b) had their registration terms retroactively extended beyond that in effect at the time of their plea.	Due to the complexity of the analysis, limitations in the data sets, the need to match various data sets, and time constraints, we have not yet been able to estimate the number of people in this subclass.	Unknown at this time.
Post-2011 Subclass	Members of the primary class who committed the offense(s) requiring registration on or after July 1, 2011.	We identified all members of the primary class, where the "committed date" field had a date on or after 7/1/2011. If the committed date field was blank, the "conviction date" field was used.	13,848 (31% of Primary Class)
Non-Michigan Offense Subclass	Members of the primary class who are or will be subject to sex offender registration under Mich. Comp. Laws 28.722(r)(x);	We identified all primary class members who have a conviction or adjudication from a jurisdiction other than Michigan.	3,100 (7% of Primary Class)

	(t)(xiii); (v)(viii); or 28.723(1)(d), for a conviction or adjudication from a jurisdiction other than Michigan.		

EXHIBIT 1:

IDENTIFICATION OF

RETROACTIVE EXTENSION OF REGISTRATION SUBCLASS

This class is defined as members of the primary class who were retroactively required to register for life as a result of amendments to SORA. To determine membership in this subclass, we had to run a series of queries to identify people who are currently required to register for life, but whose registrable offenses, at the time committed, did not result in lifetime registration.

Because we did not receive data about prior registration terms or about which class members had their registration terms extended, we tried to identify the subclass by looking to alterations in SORA over time. In other words, we needed to identify all individuals who were convicted of registrable offenses within a particular date range (when specific prior versions of SORA were in effect) and who are now required to register for life. We then excluded those whose offenses required them to register as lifetime registrants under the statute in effect at the time of their offense. Because offense commission data was incomplete, we used conviction date data.

The date and offense parameters were provided to us by class counsel based on their review of the legislative history of SORA. Due the complexity of the statutory changes over time, these parameters are approximations, and do not account for every instance in which a person may have been retroactively required to register. Citations to the relevant statutes are provided below.

Analysis for Michigan Conviction Group

1. We first identified all people within the Michigan Conviction Group who are subject to lifetime registration.

2. Within that group, we then identified those who were convicted for their only registrable offense(s) prior to October 1, 1995. Because the initial version of SORA did not come into effect until that date, people with offenses before that date were not subject to registration at all at the time of their offense.

3. For the remaining people who were convicted of a registrable offense on or after October 1, 1995, we excluded the following individuals whose offenses were already subject to lifetime registration at the time they were committed:

a. People who were convicted of their first registrable offense on or after October 1, 1995, and before September 1, 1999, and who were convicted of a second or subsequent registrable offense after October 1, 1995. *See* Mich. Pub. Act 295, §5(4) (1994).

b. People who were convicted of a registrable offense(s) on or after September 1, 1999, and before October 1, 2002, and whose registrable offense was for any of the following offenses.
   i. Mich. Comp. Laws § 750.520b (criminal sexual conduct in the first degree) (including all subsections).
   ii. Mich. Comp. Laws § 750.520c (criminal sexual conduct in the second degree) (including all subsections).
   iii. Mich. Comp. Laws § 750.349, if the victim was less than 18 years of age (kidnapping) (including all subsections).
   iv. Mich. Comp. Laws § 750.350 (leading away of a child) (including all subsections).
   v. Mich. Comp. Laws § 750.145c(2) or (3) (production or distribution of child sexually abusive material).
   vi. An attempt or conspiracy to commit an offense described in (i) to (v) above. (The way the data was provided, the searches above included attempts or conspiracy.)
   vii. A second or subsequent offense after October 1, 1995 (meaning having been convicted of more than one registrable offense, at least one of which involved a conviction after October 1, 1995).[1]

   See Mich. Pub. Act 85, § 5(7) (1999).

c. People who were convicted for a registrable offense or offenses on or after October 1, 2002, and before July 1, 2011, and whose registrable offense was for any of the following offenses.
   i. Mich. Comp. Laws § 750.520b (criminal sexual conduct in the first degree) (including all subsections).
   ii. Mich. Comp. Laws § 750.520c(1)(a) (criminal sexual conduct in the second degree, person under 13) (only this subsection)

[1] The statute here has further parameters, which were too complex to include.

iii. Mich. Comp. Laws § 750.349, if the victim was less than 18 years of age (kidnapping) (including all subsections).
iv. Mich. Comp. Laws § 750.350 (leading away of a child) (including any subsections).
v. Mich. Comp. Laws § 750.145c(2) or (3) (production or distribution of child sexually abusive material).
vi. An attempt or conspiracy to commit an offense described in (i) to (v) above. (The way the data was provided, the searches above included attempts or conspiracy.)
vii. A second or subsequent offense after October 1, 1995 (meaning having been convicted of more than one registrable offense, at least one of which involved a conviction after October 1, 1995).[2]

See Mich. Pub. Act 542, § 5(7) (2002).

d. People who were convicted of a registrable offense of offenses on or after July 1, 2011, are subject to lifetime registration, and:
   i. Who have more than one conviction for a registrable offense.[3]
   ii. Whose only registrable offense(s) are on or after July 1, 2011.

See Mich. Pub. Act 17 § 2(v) (2011).

4. After excluding the individuals in No. 3, we were left with people whose offenses were committed on or after October 1, 1995, and who were not subject to lifetime registration at the time their offense was committed.

5. We added No. 2 and No. 4 to identify people with Michigan convictions who likely had their registration terms retroactively extended to life.

Analysis for People with Convictions From Other Jurisdictions

Because the Michigan State Police has not recorded what out-of-state offenses it considers "substantially similar" to in-state offenses, we could not determine

[2] The statute here has further parameters, which were too complex to include.
[3] The statutory provision itself requires lifetime registration for people in Tier II who are subsequently convicted of a Tier I or Tier II offense. Mich. Comp. Laws § 28.722(u)(i). A person in Tier I who is subsequently convicted of Tier I or Tier II offense is not automatically subject to lifetime registration. The criteria used here thus may exclude some individuals who were retroactively extended to life, thereby reducing the number of individuals in the subclass. However, due to the complexity of the data, we used this approximation.

precisely which people with out-of-state convictions would no longer be subject to registration or would have shorter registration terms if amendments to SORA had not retroactively extended their registration terms to life. However, we were able to estimate the number of individuals impacted as follows:

We calculated that 15,582 people, or 36.8% of the 42,294 people in the Michigan Conviction Group, have had their registration term retroactively extended to life. Applying that same percentage to the 3,100 people with non-Michigan convictions (the Non Michigan Offense Subclass), we estimate that 1,141 people with non-Michigan convictions are members of the Retroactive Extension of Registration Subclass.

Totals

We estimate that there are 16,723 people in the Retroactive Extension of Registration Subclass (15,582 people in the Michigan Conviction Group and 1,141 people with non-Michigan offenses). Thus, approximately 37% of the total class are members of the Retroactive Extension of Registration Subclass. This is a rough estimate, subject to revision.

Exhibit 3:

Summary of SORA 2021's Obligations, Disabilities, and Restraints

Obligations, Disabilities, and Restraints Imposed by Michigan's 2021 Sex Offender Registration Act[1]

Table of Contents

[1] This document lists only affirmative obligations, disabilities and restraints imposed directly by Michigan's Sex Offender Registration and Notification Act, M.C.L. § 28.721 *et.seq*. It does not include other affirmative obligations, disabilities and restraints that are triggered by an individual's status as a registrant, but that are contained in other Michigan laws and regulations, or in the laws and regulations of the federal government, other states, or local governments. Those restrictions are too extensive to be compiled here.

1. Requirement to Provide Personal Information

Registrants Must Provide:

a. Legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.[2]
b. Social Security number and any Social Security numbers or alleged Social Security numbers previously used.[3]
c. Date of birth and any alleged dates of birth previously used.[4]
d. The address where the individual resides or will reside.[5]
e. The name and address of any place of temporary lodging used or to be used 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, including the dates when the temporary lodging is used or to be used.[6]
f. The name and address of each employer, including any individual who has agreed to hire or contract for the individual's services.[7]
g. The name and address of any person who has agreed to hire or contract with the individual for his or her services.[8]
h. The general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment if the individual lacks a fixed employment location.[9]
i. The name and address of any school being attended.[10]
j. The name and address of any school that has accepted the individual as a student that he or she plans to attend.[11]
k. All telephone numbers, including but not limited to residential, work and mobile phone numbers, registered to the individual.[12]
l. All telephone numbers, including but not limited to residential, work and mobile phone numbers, used by the individual.[13]

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[2] M.C.L. § 28.727(1)(a).
[3] M.C.L. § 28.727(1)(b).
[4] M.C.L. § 28.727(1)(c).
[5] M.C.L. § 28.727(1)(d).
[6] M.C.L. § 28.727(1)(e).
[7] M.C.L. § 28.727(1)(f).
[8] M.C.L. § 28.727(1)(f).
[9] M.C.L. § 28.727(1)(f).
[10] M.C.L. § 28.727(1)(g).
[11] M.C.L. § 28.727(1)(g).
[12] M.C.L. § 28.727(1)(h).
[13] M.C.L. § 28.727(1)(h).

m. All electronic email addresses assigned to the individual, if the individual was required to be registered after July 1, 2011.[14]
n. All electronic email addresses used by the individual, if the individual was required to be registered after July 1, 2011.[15]
o. All internet identifiers, meaning all designations used for self-identification or routing in internet communications or posting, registered to the individual, if the individual was required to be registered after July 1, 2011.[16]
p. All internet identifiers, meaning all designations used for self-identification or routing in internet communications or posting, used by the individual, if the individual was required to be registered after July 1, 2011.[17]
q. The license plate number and description of any vehicle owned by the individual.[18]
r. The license plate number and description of any vehicle operated by the individual.[19]
s. Driver's license number or state personal identification card number.[20]
t. A digital copy of the individual's passport and other immigration documents.[21]
u. Occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.[22]
v. Written documentation of employment status, contractual relationship, volunteer status, or student status when individual enrolls or discontinues enrollment at an institution of higher education.[23]
w. A summary of convictions for listed offenses recorded by the registering authority. That summary includes all 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.[24]

[14] M.C.L. § 28.727(1)(i).
[15] M.C.L. § 28.727(1)(i).
[16] M.C.L. §§ 28.722(g); 28.727(1)(i).
[17] M.C.L. §§ 28.722(g); 28.727(1)(i).
[18] M.C.L. § 28.727(1)(j).
[19] M.C.L. § 28.727(1)(j).
[20] M.C.L. § 28.727(1)(k).
[21] M.C.L. § 28.727(1)(l).
[22] M.C.L. § 28.727(1)(m).
[23] M.C.L. §§ 28.727(1)(r), 28.724a(5).
[24] M.C.L. § 28.727(1)(n).

x. A complete physical description of the individual recorded by the registering authority.[25]

2. Public Disclosure of Personal Information

a. Information that must be made available on a public internet website, searchable by name, village, city, township, county, zip code, and geographical area, includes:[26]
   i. Legal name.[27]
   ii. Aliases.[28]
   iii. Nicknames.[29]
   iv. Ethnic or tribal names.[30]
   v. Other names by which the individual is or has been known.[31]
   vi. Date of birth.[32]
   vii. Address of residence.[33]
   viii. Address of employment, including the address of any individual who has agreed to hire or contract with the registrant for services.[34]
   ix. Address of any school being attended.[35]
   x. Address of any school that has accepted individual as a student that he or she plans to attend.[36]
   xi. License plate number and description of any vehicle owned by the individual.[37]
   xii. License plate number and description of any vehicle operated by the individual.[38]
   xiii. Brief summary of convictions for listed offenses.[39]

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[25] M.C.L. § 28.727(1)(o).
[26] M.C.L. § 28.728(7).
[27] M.C.L. § 28.728(2)(a).
[28] M.C.L. § 28.728(2)(a).
[29] M.C.L. § 28.728(2)(a).
[30] M.C.L. § 28.728(2)(a).
[31] M.C.L. § 28.728(2)(a).
[32] M.C.L. § 28.728(2)(b).
[33] M.C.L. § 28.728(2)(c).
[34] M.C.L. § 28.728(2)(d).
[35] M.C.L. § 28.728(2)(e).
[36] M.C.L. § 28.728(2)(e).
[37] M.C.L. § 28.728(2)(f).
[38] M.C.L. § 28.728(2)(f).
[39] M.C.L. § 28.728(2)(g).

xiv. Complete physical description of the individual.[40]
xv. Photograph of the individual.[41]
xvi. The text of the provision of the law that defines the criminal offense for which the individual is registered.[42]
xvii. Registration status.[43]

c. The old SORA prohibited publication of a person's email addresses and electronic identifiers. The new SORA permits such information to be posted on the public website.[44]
d. Any member of the public may subscribe to electronic notifications for any initial registrations and changes in registration within a designated area or geographic radius designated by the subscribing member of the public.[45]
e. In addition to the public website, access to the above information is also available for inspection by any member of the public during regular business hours at a department post, local law enforcement agency, or sheriff's department.[46]

3. Restrictions on Residency

Registrants Must:

a. Register the address where the individual resides or will reside.[47]
b. If the individual does not have a residential address, the individual 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.[48]
c. The address where the individual resides is made available on the public internet website for adult Tier II and III registrants.[49]

[40] M.C.L. § 28.728(2)(h).
[41] M.C.L. § 28.728(2)(i).
[42] M.C.L. § 28.728(2)(j).
[43] M.C.L. § 28.728(2)(k).
[44] *Compare* M.C.L. 28.728(3)(e) (2020), *with* Public Act 295 (2020).
[45] M.C.L. § 28.730(3).
[46] M.C.L. § 28.730(2).
[47] M.C.L. § 28.727(1)(d).
[48] M.C.L. § 28.727(1)(d).
[49] M.C.L. § 28.728(2)(c); (4).

d. Report in person or in a manner prescribed by the Michigan State Police (MSP) within three business days when the individual changes or vacates his or her residence or domicile.[50] The MSP requires in-person reporting.[51]
e. Report within three business days when the individual intends to temporarily reside at any place other than his or her residence for more than 7 days.[52]
f. Report within three business days before the individual changes his or her domicile or residence to another state.[53] The new state and the new address, if known, must be provided at the time of reporting.[54]

4. Restrictions on Employment

Registrants Must:

a. Register the name and address of each employer or any person who has agreed to hire or contract with the individual for his or her services.[55]
b. Register the general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment if the individual lacks a fixed employment location.[56]
c. The address where the individual works is made available on the public internet website for adult Tier II and III registrants.[57]
d. Report in person in person or in a manner prescribed by the MSP within three business days when the individual changes his or her place of employment.[58] The MSP requires in-person reporting.[59]
e. Report in person in person or in a manner prescribed by the MSP within three business days when the individual discontinues employment.[60] The MSP requires in-person reporting.[61]

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[50] M.C.L. § 28.725(1)(a).
[51] *See* MSP Registrant Notice, https://www.michigan.gov/documents/msp/SORA_Notification_720161_7.pdf.
[52] M.C.L. § 28.725(2)(b).
[53] M.C.L. § 28.725(7).
[54] M.C.L. § 28.725(7).
[55] M.C.L. § 28.727(1)(f).
[56] M.C.L. § 28.727(1)(f).
[57] M.C.L. § 28.728(2)(d), (4).
[58] M.C.L. § 28.725(1)(b).
[59] *See* MSP Registrant Notice, available at https://www.michigan.gov/documents/msp/SORA_Notification_720161_7.pdf.
[60] M.C.L. § 28.725(1)(b).
[61] *See* Explanation of Duties

f. Although it is not apparent from the text of the statute, the MSP-created Explanation of Duties form provided to registrants states that the requirements for reporting employment include volunteer work.[62]

5. Requirement to Create Biometric and Appearance Information

Registrants Must:

a. Provide fingerprints to the registering authority.[63]
b. Provide palm prints to the registering authority.[64]
c. Have a photograph taken by the Secretary of State, which shall make the photograph available to the Michigan State Police.[65]
d. Have a new photograph taken whenever the license or identification card is renewed.[66]
e. Have another photograph taken within 7 days if, according to the registering authority, the photograph on file does not match the individual's appearance sufficiently to properly identify him or her from the photograph.[67]

6. Restrictions on Travel

Registrants Must:

a. Organize any travel so that the individual is still able to comply with requirements for regular in-person reporting (*e.g.*, Tier III registrants with a birthdate in January must not travel over periods that would take them away from their home for all of January, or all of April, or all of July, or all of October).[68]
b. Report within three business days when the individual intends to temporarily reside at any place other than his or her residence for more than 7 days, and provide the name and address of any place of temporary lodging used or to be used during any period in which the individual is away, or is expected to

[62] *See* Form RI-004, Michigan Sex Offender Registration/Verification Update, §§ VII, 6.b, https://www.michigan.gov/msp/0,1607,7-123-1645_3500---,00.html.
[63] M.C.L. § 28.727(1)(q).
[64] M.C.L. § 28.727(1)(q).
[65] M.C.L. §§ 28.725a(8), 28.727(1)(p).
[66] M.C.L. §§ 28.725a(8), 28.727(1)(p).
[67] M.C.L. § 28.725a(5).
[68] M.C.L. § 28.725a(3).

be away, from his or her residence, including the dates when the temporary lodging is used or to be used.[69]

c. Report in person to the local registering authority at least 21 days before he or she travels to another country for more than 7 days.[70]
d. Report in person to the local registering authority at least 21 days before he or she changes his or her domicile to another country.[71]
e. The new country and, if known, the new address must be reported at the time of reporting.[72]

7. Restrictions on Education

a. Michigan resident registrants must:
    i. Report in person within three business days where his or her new residence or domicile is located if the individual enrolls as a student.[73] The MSP requires in-person reporting.[74]
    ii. Report in person within three business days where his or her new residence or domicile is located if the individual discontinues enrollment as a student.[75] The MSP requires in-person reporting.[76]
    iii. Pay the $50.00 registration fee upon reporting.[77]
    iv. Present to the local registering authority written documentation of employment status, contractual relationship, volunteer status, or student status. Documentation may include, a W-2 form, pay stub, written statement by an employer, a contract, or a student identification card or transcript.[78]
b. Michigan non-resident registrants must:
    i. Report within three business days in person to the campus registering authority if the individual enrolls as a student.[79]

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[69] M.C.L. §§ 28.725(2)(b); 28.727(1)(e).
[70] M.C.L. § 28.725(8).
[71] M.C.L. § 28.725(8).
[72] M.C.L. § 28.725(8).
[73] M.C.L. §§ 28.724a(2), 28.725(1)(c), 28.724a(3)(b).
[74] *See* MSP Registrant Notice, available at https://www.michigan.gov/documents/msp/SORA_Notification_720161_7.pdf.
[75] M.C.L. §§ 28.724a(2), 28.725(1)(c), 28.724a(3)(b).
[76] *See* MSP Registrant Notice, available at https://www.michigan.gov/documents/msp/SORA_Notification_720161_7.pdf.
[77] M.C.L. §§ 28.724a(5), 28.725a(6), 28.727(1).
[78] M.C.L. § 28.724a(5).
[79] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b).

ii. Report within three business days in person to the campus registering authority if the individual discontinues enrollment as a student.[80]
iii. Pay the $50.00 registration fee upon reporting.[81]
iv. Present to the local registering authority written documentation of employment status, contractual relationship, volunteer status, or student status. Documentation may include, a W-2 form, pay stub, written statement by an employer, a contract, or a student identification card or transcript.[82]

c. School information is made available to the public on the public internet website for Tier II and III registrants.[83]

8. Restrictions on Vehicle Use or Ownership

a. A registrant must report any change in vehicle information within three business days.[84]
b. Vehicle information is made available to the public on the public internet website.[85]

9. Restrictions on Internet Usage

Registrants whose underlying offense occurred after July 1, 2011, must:

a. Register all electronic email addresses assigned to the individual.[86]
b. Register all electronic email addresses used by the individual.[87]
c. Register all internet identifiers, meaning all designations used for self-identification or routing in internet communications or posting, registered to the individual.[88]

[80] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b).
[81] M.C.L. §§ 28.724a(5), 28.725a(6), 28.727(1).
[82] M.C.L. § 28.724a(5).
[83] M.C.L. § 28.728(2)(e); (4).
[84] M.C.L. § 28.725(2)(a).
[85] M.C.L. § 28.728(2)(f).
[86] M.C.L. § 28.727(1)(i).
[87] M.C.L. § 28.727(1)(i).
[88] M.C.L. §§ 28.722(g); 28.727(1)(i).

d. Register all internet identifiers, meaning all designations used for self-identification or routing in internet communications or posting, used by the individual.[89]
e. Within three business days, report any change in electronic mail address information.[90]
f. Within three business days, report any change in internet identifiers, meaning all designations used for self-identification or routing in internet communications or posting, used by the individual.[91]
g. The old SORA prohibited publication of a person's email addresses and electronic identifiers. The new SORA permits such information to be posted on the public website.[92]

10. Requirements for Supervision by Law Enforcement

a. Registrants must, in addition to other reporting requirements, report in person to the local registering authority:
   i. Tier I: Once per year during the month of one's birth for 15 years.[93]
   ii. Tier II: Twice per year on the schedule below for 25 years.[94]

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

[89] M.C.L. §§ 28.722(g); 28.727(1)(i).
[90] M.C.L. § 28.725(2)(a).
[91] M.C.L. § 28.725(2)(a).
[92] *Compare* M.C.L. 28.728(3)(e) (2020), *with* Public Act 295 (2020).
[93] M.C.L. §§ 28.725a(3)(a), 28.725(11).
[94] M.C.L. §§ 28.725a(3)(b), 28.725(12).

November	May and November
December	June and December

iii. Tier III: Four times per year on the schedule below life.[95]

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

b. Registrants must, at the above regularly scheduled visits:
   i. Verify domicile or residence.[96]
   ii. Verify all registration information.[97]
   iii. Provide whatever documentation is required by the registering authority to prove residency or domicile, including, but not limited to driver's license, state personal identification card, voter registry card, utility bill, or other bill.[98]
   iv. Provide whatever documentation is required by the registering authority to prove employment status, contractual relationship, volunteer status, or student status, including but not limited to a W-2 form, pay stub or written statement by an employer, a contract, or a student identification card or student transcript.[99]

[95] M.C.L. §§ 28.725a(3)(c), 28.725(13).
[96] M.C.L. § 28.725a(3).
[97] M.C.L. § 28.725a(4).
[98] M.C.L. § 28.725a(7).
[99] M.C.L. § 28.724a(5).

v. Have another photograph taken within 7 days if, according to the registering authority, the photograph on file does not match the individual's appearance sufficiently to properly identify him or her from the photograph.[100]

11. Requirements for Reporting to Law Enforcement Within Three Days

Individuals must report within three business days in person[101] to their registering authority when the individual:

a. Changes or vacates his or her residence or domicile.[102]
b. Changes his or her place of employment.[103]
c. Discontinues employment.[104] Although not apparent from the text of the statute, the Explanation of Duties form provided to registrants states that the requirement to report in person within three days of obtaining, changing, or discontinuing employment includes volunteer work.[105]
d. Changes his or her name.[106]
e. Enrolls as a student (to campus registering authority).[107]
f. Discontinues enrollment as a student (to campus registering authority).[108]
g. If, as part of his or her course of studies, the individual is present at any other location in Michigan or throughout the United States (to campus registering authority).[109]
h. If the individual discontinues his or her studies at any other location in Michigan or throughout the United States (to campus registering authority).[110]

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[100] M.C.L. § 28.725a(5).
[101] In some cases the statute provides that the registrant "shall report in person, or in another manner as prescribed by the department." M.C.L. § 28.725(1). Although no rules have been promulgated, the notice sent by the MSP to registrants indicates that the changes listed here must be reported in person. *See* MSP Registrant Notice, available at https://www.michigan.gov/documents/msp/SORA_Notification_720161_7.pdf.
[102] M.C.L. § 28.725(1)(a).
[103] M.C.L. § 28.725(1)(b).
[104] M.C.L. § 28.725(1)(b).
[105] *See* Form RI-004, Michigan Sex Offender Registration/Verification Update, §§ VII, 6.b, https://www.michigan.gov/msp/0,1607,7-123-1645_3500---,00.html.
[106] M.C.L. § 28.725(1)(d).
[107] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b).
[108] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b).
[109] M.C.L. §§ 28.724a(1)(b), 28.724a(3)(b).
[110] M.C.L. §§ 28.724a(1)(b), 28.724a(3)(b).

i. Before the individual changes his or her domicile or residence to another state. The new state and, if known, the new address must be reported at the time of reporting.[111]

Individuals must report within three business days in a manner prescribed by the MSP when:

a. Any vehicle information changes.[112]
b. Any electronic mail address changes (for individuals required to be registered after July 1, 2011).[113]
c. Any changes to internet identifiers, meaning all designations used for self-identification or routing in internet communications or posting (for individuals required to be registered after July 1, 2011).[114]
d. Any changes to telephone numbers registered to or used by the individual.[115]
e. The individual intends to temporarily reside at any place other than his or her residence for more than 7 days.[116]

12. Financial Obligations

a. Must pay an initial $50.00 registration fee, and an annual $50 fee thereafter.[117]

13. Affirmative Obligations to the Secretary of State

Registrants Must:

a. Maintain a valid Michigan driver's license, or an official state issued personal identification card with the individual's current address, unless the individual is homeless.[118]
b. Report to the Secretary of State within seven days from incarceration to have his or her digitized photograph taken if the photograph taken for his or her driver's license is more than two years old or his or her appearance has

[111] M.C.L. § 28.725(7).
[112] M.C.L. § 28.725(2)(a).
[113] M.C.L. § 28.725(2)(a).
[114] M.C.L. § 28.725(2)(a).
[115] M.C.L. § 28.725(2)(a).
[116] M.C.L. § 28.725(2)(b).
[117] M.C.L. §§ 28.725a(6), 28.727(1).
[118] M.C.L. § 28.725a(7).

changed; have a new photograph taken whenever the registrant renews his or her license or state ID if his or her appearance has changed.[119]

14.Penalties for Failure to Comply

a. Willful violation of the Act is a felony punishable by:[120]
   i. Up to 4 years imprisonment and/or a maximum fine of $2,000.00 for the first conviction of a violation of the registration act.[121]
   ii. Up to 7 years imprisonment and/or a maximum fine of $5,000.00 for the second conviction of a violation of the registration act.[122]
   iii. Up to 10 years imprisonment and/or a maximum fine of $10,000.00 for the third or greater conviction of a violation of the registration act.[123]
   iv. Mandatory revocation of probation for any individual on probation.[124]
   v. Mandatory revocation of youthful trainee status for any individual assigned to youthful trainee status.[125]
   vi. Mandatory rescission of parole for any individual released on parole.[126]

b. Willful failure to comply with any of the following is a misdemeanor punishable by imprisonment for up to 2 years and/or a maximum fine of $2,000.00:[127]
   i. Maintain a valid Michigan driver's license, or an official state issued personal identification card with the individual's current address.[128]
   ii. Report within seven days to the Secretary of State upon release from incarceration to have his or her digitized photograph taken if the photograph taken for his or her driver's license is more than two years old or his or her appearance has changed; have a new photograph taken whenever the registrant renews his or her license or state ID.[129]

[119] M.C.L. § 28.725a(8).
[120] M.C.L. § 28.729(1).
[121] M.C.L. § 28.729(1)(a).
[122] M.C.L. § 28.729(1)(b).
[123] M.C.L. § 28.729(1)(c).
[124] M.C.L. § 28.729(5).
[125] M.C.L. § 28.729(6).
[126] M.C.L. § 28.729(7).
[127] M.C.L. § 28.729(2).
[128] M.C.L. §§ 28.729(2), 28.725a(7).
[129] M.C.L. §§ 28.729(2), 28.725a(8).

iii. Tier I Individuals: Report once per year during birth month for fifteen years, and:[130]
   1. Verify domicile or residence.[131]
   2. Verify all registration information.[132]
   3. Verify written documentation of employment status, contractual relationship, volunteer status, or student status.[133]
   4. Have another photograph taken within seven days if the photograph on file does not match the appearance sufficiently to properly identify him or her from the photograph.[134]

iv. Tier II Individuals: Report twice per year on a schedule set by birth month for 25 years, and:[135]
   1. Verify domicile or residence.[136]
   2. Verify all registration information.[137]
   3. Verify written documentation of employment status, contractual relationship, volunteer status, or student status.[138]
   4. Have another photograph taken within seven days if the photograph on file does not match the appearance sufficiently to properly identify him or her from the photograph.[139]

v. Tier III Individuals: Report four times per year on a schedule set by birth month for life, and:[140]
   1. Verify domicile or residence.[141]
   2. Verify all registration information,[142]
   3. Verify written documentation of employment status, contractual relationship, volunteer status, or student status,[143] and

[130] M.C.L. §§ 28.729(2), 28.725a(3)(a), 28.725(11).
[131] M.C.L. §§ 28.729(2), 28.725a(3).
[132] M.C.L. §§ 28.729(2), 28.725a(4).
[133] M.C.L. §§ 28.729(2), 28.725a(5), 28.724a.
[134] M.C.L. §§ 28.729(2), 28.725a(5).
[135] M.C.L. §§ 28.729(2), 28.725a(3)(b), 28.725(12).
[136] M.C.L. §§ 28.729(2), 28.725a(3).
[137] M.C.L. §§ 28.729(2), 28.725a(4).
[138] M.C.L. §§ 28.729(2), 28.725a(5), 28.724a.
[139] M.C.L. §§ 28.729(2), 28.725a(5).
[140] M.C.L. §§ 28.729(2), 28.725a(3)(c), 28.725(13).
[141] M.C.L. §§ 28.729(2), 28.725a(3).
[142] M.C.L. §§ 28.729(2), 28.725a(4).
[143] M.C.L. §§ 28.729(2), 28.725a(5), 28.724a.

4. Have another photograph taken within seven days if the photograph on file does not match the appearance sufficiently to properly identify him or her from the photograph.[144]

c. Willful failure to sign a registration and notice is a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of $1,000.00.[145]

d. Willful refusal or failure to pay the $50.00 registration fee within 90 days is a misdemeanor punishable by imprisonment for up to 90 days.[146]

e. The court shall revoke the probation of a probationer who willfully violates the act.[147]

f. The court shall revoke the youthful trainee status of a trainee who willfully violates the act.[148]

g. The parole board shall rescind the parole of a parolee who willfully violates the act.[149]

[144] M.C.L. §§ 28.729(2), 28.725a(5).
[145] M.C.L. § 28.729(3).
[146] M.C.L. § 28.729(4).
[147] M.C.L. § 28.729(5).
[148] M.C.L. § 28.729(6).
[149] M.C.L. § 28.729(7).

Exhibit 4:

Michigan State Police Verification and Explanation of Duties Form

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

MICHIGAN SEX OFFENDER REGISTRATION/VERIFICATION/UPDATE

☐ **Initial Registration** ☐ **Verification** ☐ **In-Person Update**

Agency	Administrator	Phone Number	Date

Your next verification month is:

Registration Tier	Verification Frequency	Registration Status	Estimated End Date

I. Offender Information

Last Name	First Name	Middle Name	Suffix	Date of Birth

Race	Sex	Hair	Eye Color	Height	Weight	Last Verification Date (only for Verifications)

Registration Number	Social Security Number	Driver's License/Personal ID Number	FBI Number

MI/SID Number	Michigan Department of Corrections Number	Immigration Number
Fingerprints on File ☐ Yes ☐ No	Palm Prints on File ☐ Yes ☐ No	DNA on File ☐ Yes ☐ No
Passport Number	Professional License Number	Professional License Type

II. Residence Information

Address	City	State	ZIP Code	Start Date

III. Incarceration(s)

Facility Name	Incarceration Start Date	Incarceration End Date	Total Days Incarcerated

Address	City	State	ZIP Code

IV. 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

V. Alias(es)

List All Aliases

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

VI. Scars/Marks/Tattoos (SMT)

SMT Type #1	SMT Location	SMT Description	SMT Type #2	SMT Location	SMT Description
SMT Type #3	SMT Location	SMT Description	SMT Type #4	SMT Location	SMT Description

VII. Employment Information

Employer Name	Employer Address	County	Volunteer ☐ Yes ☐ No	Start Date
Employer Name	Employer Address	County	Volunteer ☐ Yes ☐ No	Start Date

VIII. Campus

Campus Name	Campus Address	County	Start Date

IX. Vehicle(s) (as defined under MCL 257.79)

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

X. Mobile Home (s)

Make	Model	Style	Color	Year	License	State VIN

XI. Offense Information

Offense Date #1	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						
Offense Date #2	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						
Offense Date #3	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						
Offense Date #4	Crime Code and Description	Counts	Victim Age	Conviction State	Conviction Date	Case Number
Offense Details						

XII. Registration Fee

Balance Owed	Fee Paid*	Collecting Agency	Indigent ☐ Yes ☐ No	Date Paid

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

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. If I am required to register because of a conviction in another state, my registration, verification requirements and/or duration may differ from what is listed on this form or that of the convicting state. If the "Next verification month" listed on page 1 of this form is blank, please contact the MSP SOR Unit at (517) 241-1806 four weeks after receipt of this form for additional information.

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))

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

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)

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). Additionally, I am required by federal law to report in-person to a local law enforcement agency, sheriff's office, or Michigan State Police post having jurisdiction over my residence 21 days before any international travel to provide anticipated travel dates, places of departure, arrival, or return, method of travel, the destination country and address. Failure to report this information is a crime and may result in prosecution. 34 USC 20914(A)(7); 28 CFR 72.6(d)

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)

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

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.

Your next verification month is: **Registration Number:**

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 above requirements and/or had them read to me and I understand my registration duties.

SIGNATURES

Signature of Offender	Signature of Notifying Official
Signature of Parent, Legal Guardian, or Power of Attorney, if applicable	Printed Name of Notifying Official
Date	Notifying Agency

SUBMIT COMPLETED FORM VIA MAIL TO:

Michigan State Police
Sex Offender Registry Unit
P.O. Box 30634
Lansing, MI 48909-0634

OR

FAX To: 517-241-1868

Exhibit 5:

Expert Report of Dr. Sarah Lageson
(*Does III*)

EXPERT DECLARATION OF DR. SARAH ESTHER LAGESON

BACKGROUND AND QUALIFICATIONS

1. I am an Associate Professor with tenure at Rutgers University-Newark School of Criminal Justice in New Jersey. I have worked at Rutgers since August 2015.

2. I received an MA in Sociology (2012) and a PhD in Sociology (2015) at the University of Minnesota-Twin Cities.

3. In my current position at Rutgers, I teach undergraduate and graduate courses, and research the impact of digital technologies on legal systems and criminal punishment.

4. I conduct qualitative and quantitative research, including experimental studies, analyses of criminal record data, interviews with people who have criminal records, fieldwork at expungement seminars and legal aid offices, and assessments of administrative data and public policy. I also serve as a peer reviewer for scientific journals, textbooks, and funding agencies.

5. My research has been reviewed and validated through the peer review process and has been published in academic journals in criminology, sociology, and public policy. In the past five years, my peer-reviewed publications have been cited over 900 times by other researchers.[1] In 2020, I published a peer reviewed book with Oxford University Press, *Digital Punishment: Privacy, Stigma, and the Harms of Data Driven Criminal Justice.* I am the recipient of external funding and research grants, including from the United States Department of Justice and the American Bar Foundation.

6. My research has been covered by major media outlets, including the *New York Times*, the *Guardian*, the *LA Times*, CNN, and National Public Radio.

7. My curriculum vitae is attached as Exhibit A and details all my publications from the last ten years.

[1] Google Scholar profile for Dr. Sarah Esther Lageson, showing 949 citations to research. Retrieved October 1, 2021, from https://scholar.google.com/citations?user=ElyL7y0AAAAJ&hl=en.

8. Prior to this case, I have provided expert testimony for *Taha v. Bucks County Pennsylvania et al*, No. 12-CIV-06867 (E. D. Pa.), *A.N. v. Alamogordo Police Department*, No 2:18-CV-00173 (D.N.M.), and *Doe v. Barr*, No. 2:20-CV-03434-CJC-AGR (C.D. Cal).[2]

9. I was approached by counsel for the plaintiffs in this matter and asked to state my professional opinion concerning the relationship between technology and sex offender registries, as well as the existence of and types of harms resulting from the public dissemination of information about a person's registry status in the state of Michigan.

10. The purpose of this report is to provide a synopsis of the scientific literature documenting the impacts of internet-based criminal information disclosure, including my own research in this area, and externally validated, peer-reviewed research conducted by other social scientists.

SUMMARY OF OPINION

11. Technology has dramatically changed the form, function, and reach of registry information in the nearly two decades since the U.S. Supreme Court in *Smith v. Doe*, 538 U.S. 84 (2003), held that sex offender registration is analogous to a visit to an official archive of criminal records.

12. The architecture and user functions available on the Michigan registry encourage browsing, mapping, and tracking registrants, rather than accessing targeted archival information.

13. The design, language, and functionality of Michigan's registry website represent each person listed as a current danger to society, regardless of whether the person presents such a risk and even though the registry lacks individualized review.

14. The online disclosure of registry information has both increased and expanded the economic, social, and psychological harms of being listed on a registry. I use the term "digital punishment" to describe how online information, spread to innumerable sites and sources, damages registrants far beyond the type and extent of harm the Supreme Court considered in 2003 when it decided *Smith*.

[2] Of these cases, only *Taha* went to trial, where I testified in court.

15. Registry information is routinely scraped, copied, aggregated, and re-posted to private websites. In a departure from the earlier schemes that required users to conduct a targeted search for particular registrants on a government-run website, registrants' personal information is now routinely harvested to drive web traffic to specific websites and to increase "clicks" through posting registrant information on, for example, real estate and other public records websites.

16. These changes in how the internet organizes and disseminates registry data means that websites "push" registrant data on internet users who are not even looking for such information.

17. The ubiquity of registry information on the internet leads registrants to purposefully avoid digital and institutional spaces that rely on the internet, which, in today's world, constitute the vast majority of public and private life.

18. Registrants' opting out of institutional and social life through "digital avoidance" has consequences for recidivism and public safety, because it makes it more difficult for registrants to access the basic necessities shown to prevent crime, such as safe and stable housing, employment, and community relationships.

19. The consequences of digital labeling through the format of the Michigan registry and the attendant dissemination of registry information on private websites ultimately undermines public safety by making pariahs of registrants, effectively cutting them out of social, institutional, and technological life.

OPINION

Changes in the internet and data sharing technologies have fundamentally changed the nature of registries and dramatically increased the intensity and effects of their attendant stigmatization

Digital Punishment

20. My research shows that the unprecedented rise of the information age has fundamentally changed the function, scope, and permanence of state-operated registry websites. I call this change "digital punishment" because that is the most accurate way to describe the effects of the digital criminal label.

21. Digital punishment occurs when state criminal justice agencies publish personally identifying information about registrants on the internet and implement

technological tools that encourage digital tracking, monitoring, and public shaming of people on registries.[3]

22. These state disclosures of data that allow for the ongoing monitoring of registrants – by not only the state, but by private actors – are then re-disseminated across the internet, as they are cataloged, indexed, sold, and shared by third parties. A person's registry status becomes digitally linked to their name and is continuously retrievable via basic internet searches – indeed, it is often the first thing that will show up on a search of the person's name on Google.[4]

23. The digital punishment of registrants is a special case of technologically-driven "collateral consequences,"[5] a term typically used to describe "civil" sanctions and restrictions that are imposed based on a criminal conviction[6] and that limit or prohibit opportunities across social, economic, and political domains.[7] Due to the highly stigmatizing nature of a sexual conviction, as well as the advanced internet tracking capabilities made possible by the Michigan registry, collateral harms are greater for registrants than for people with other types of criminal convictions or records.[8]

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[3] Lageson, Sarah Esther. "Digital punishment's tangled web." *Contexts* 15, no. 1 (2016): 22-27; Corda, Alessandro, and Sarah Esther Lageson. "Disordered punishment: Workaround technologies of criminal records disclosure and the rise of a new penal entrepreneurialism." *The British Journal of Criminology* 60, no. 2 (2020): 245-264.

[4] Lageson, Sarah Esther. *Digital Punishment: Privacy, Stigma, and the Harms of Data Driven Criminal Justice.* Oxford University Press, 2020.

[5] National Inventory of Collateral Consequences of Conviction. https://niccc.csgjusticecenter.org/.

[6] Uggen, Christopher and Robert Stewart, "Piling On: Collateral Consequences and Community Supervision," *Minnesota Law Review* 99, no. 5 (January 2015): 1871, 1875.

[7] Hagan, John and Ronit Dinovitzer, "Collateral Consequences of Imprisonment for Children, Communities, and Prisoners," *Crime and justice* 26 (1999): 121; Michael Pinard, "Collateral Consequences of Criminal Convictions: Confronting Issues of Race and Dignity." *NYU Law Review* 85 (2010): 457; see also this online database: "National Inventory of the Collateral Consequences of Conviction." Justice Center, The Council of State Governments. Accessed February 19, 2020. https://niccc.csgjusticecenter.org/.

[8] Tewksbury, Richard. "Collateral consequences of sex offender registration." *Journal of Contemporary Criminal Justice* 21, no. 1 (2005): 67-81.

24. Unlike an archive of static criminal record information, the Michigan registry provides a constantly updated set of personal information about registrants, conveying that registrants pose a current serious public safety risk. The Michigan registry therefore disrupts rehabilitative and desistance processes that, as established by decades of research on the cognitive and social elements of crime prevention, are essential to successful reentry.[9]

25. Federal courts have recognized that the digital transformation has changed the practical realities of governmental records and individual privacy interests. In 2016, the Sixth Circuit noted that while the disclosure of booking photos twenty years ago was thought to do no harm, "the internet and social media have worked unpredictable changes in the way photographs are stored and shared."[10] Overruling a 1996 decision, this decision pointed to how changes in technology have reshaped an individual's privacy interests in materials related to their criminal proceedings, precisely because of the internet's permanent archive of such materials, with instant access by anyone from anywhere in the world.

Advanced digital tracking, monitoring, and public labeling of risk in the Michigan registry

26. The format, presentation, and user options for the Michigan registry website allow for advanced information gathering and tracking of registrants. The website also provides personal information that is more detailed than information about people with criminal convictions posted to public court websites and criminal history websites run by the state of Michigan.

27. The Michigan registry website posts the following information: current photograph, name, registration number, MDOC number, status, age and date of birth, last verification date, compliance status, sex, race, hair color, height, weight, eye color, home address, work address, aliases, offenses, scars/marks/tattoos, and vehicle identification information. (Michigan law also requires many registrants to report to the state all of their internet identifiers, *e.g.*, social media usernames; while the registry does not currently post this information, Michigan law authorizes it to do so.)

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[9] Lageson, Sarah Esther, and Shadd Maruna. "Digital degradation: Stigma management in the internet age." *Punishment & Society* 20, no. 1 (2018): 113-133.

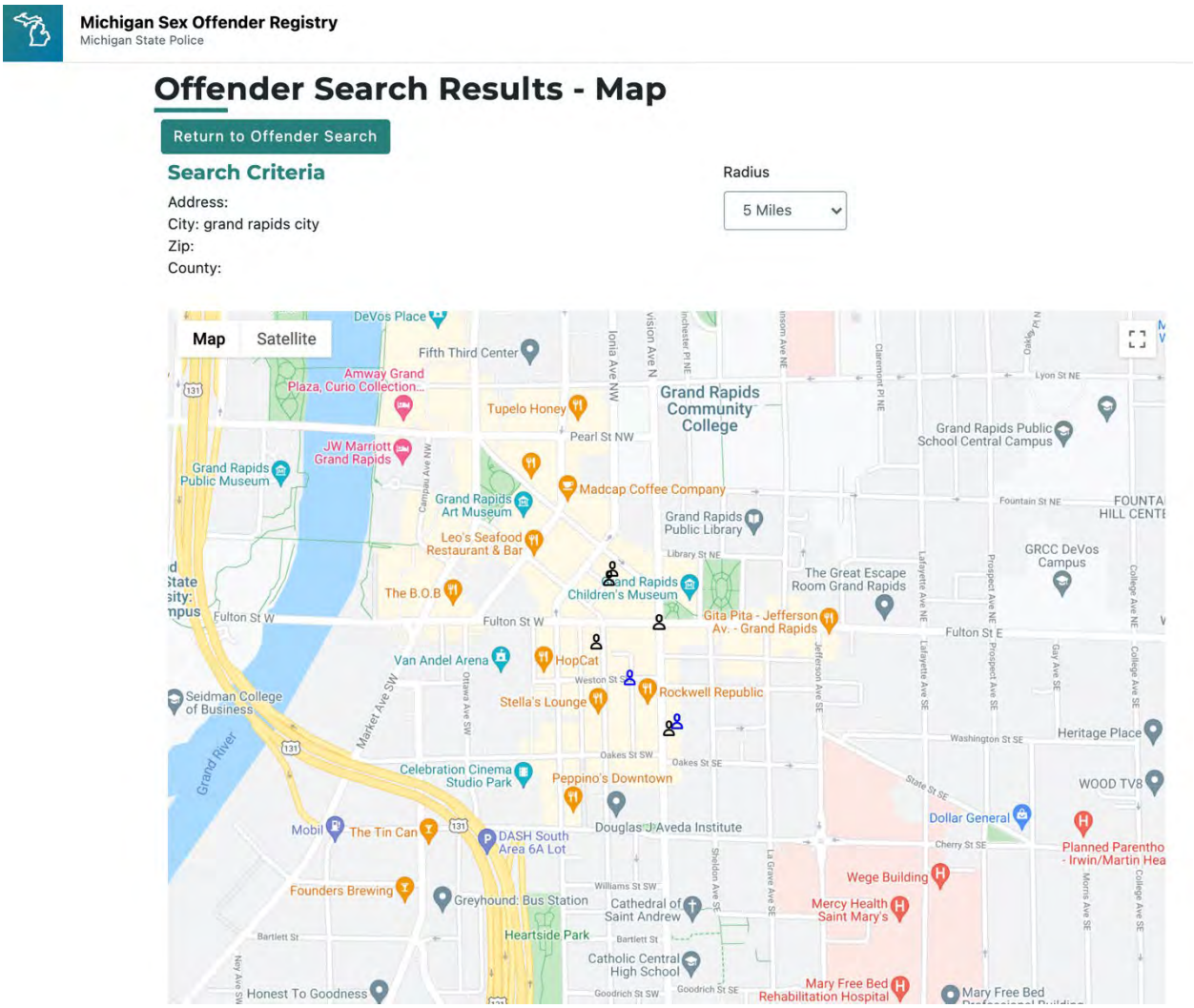
[10] *Detroit Free Press Inc. v. United States Dep't of Justice*, 829 F.3d 478, 486 (6th Cir. 2016).

28. Because registrants are required to actively report their personal information, the website contains not just historical conviction records, but continuously updated information about exactly where a person lives and works, what they currently look like, and what vehicles they drive.

29. The public registry allows users to "browse" lists of registrants, rather than requiring a targeted name or address search like most sources of public state criminal record data. Users can enter a city, town, or neighborhood name or simply access the entire list of all registrants through the registry website.

Screenshot of Michigan registry home page, which notes that the purpose of the registry is to protect the public from the risks posed by registrants and that labels the button to enter the registry database as an option to search for offenders in one's broad geographic area. Source: Accessed 6 October 2021, https://mspsor.com/.

30. An internet user who searches a specific address, city, county, or zip code will pull up an interactive map of the location of all registrants within a specified radius, and need only click on the small black registrant icons to pull up the photo and all the registry details on each individual in the area.

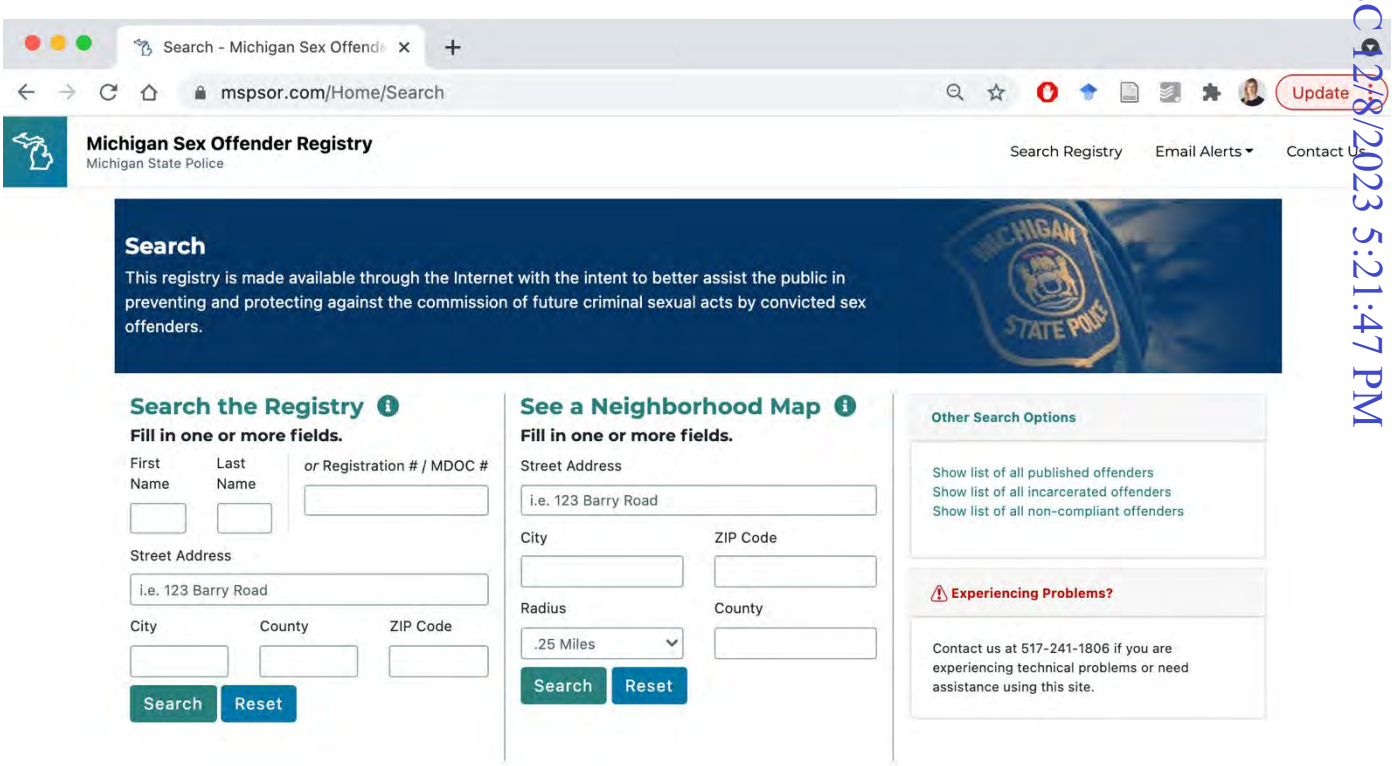


Michigan registry mapping and browsing capabilities, here showing registrants in the City of Grand Rapids on a Google map integrated into the registry website. Source: Accessed 6 October 2021, https://mspsor.com/Home/MultiOffenderMap?RadiusStreetAddress=&RadiusCity=grand+rapids+city&RadiusZip=&RadiusMiles=5&RadiusCounty=.

31. The Michigan registry's browse function is thus unlike the process outlined in *Smith*, where "an individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information."[11] Unlike the Alaska registry two decades ago in that case, the way Michigan's registry functions today is much more akin to forcing a person to appear in public on the internet: the new public forum. And within that public sphere, the individual is labeled by the state as a dangerous sex offender.

[11] *Smith v. Doe*, 538 U.S. 84, 99 (2003).

32. The active publicization of the stigmatizing label is even more pronounced through the web architecture of the Michigan registry, as internet users need not search for information about specific individuals or locations to have information provided to them showing that a neighbor or colleague is on the registry.



Screenshot of broad search and browse options available on the Michigan registry website. Source: Accessed 7 October 2021 at 5:58 PM, https://mspsor.com/Home/Search.

33. The Michigan registry also allows a user to actively "track" an offender through an email signup and notification system. This option is not available for other types of criminal history information made publicly available through the state.

34. In contrast to the registry, other forms of state public criminal record information require a targeted search of a specific person, do not allow for the browsing of lists of convicted persons, and do not include mapping, tracking, or alert capabilities.

35. For example, Michigan criminal court records internet portals provide a summary of a person's legal history accessible only through a targeted search for that particular person. To conduct a search of court records, a user is typically required to submit both the first and last name of the person under inquiry and to

complete a captcha (an internet tool that requires a user to click an image to prove that the user is a person and not a machine).

36. Michigan criminal court records websites typically post the following personal information: name, attorney name, criminal charges, court events, and hearings.[12] This information is entirely historical, *i.e.*, it does not include rolling updates of personal information like the ones on the Michigan registry.

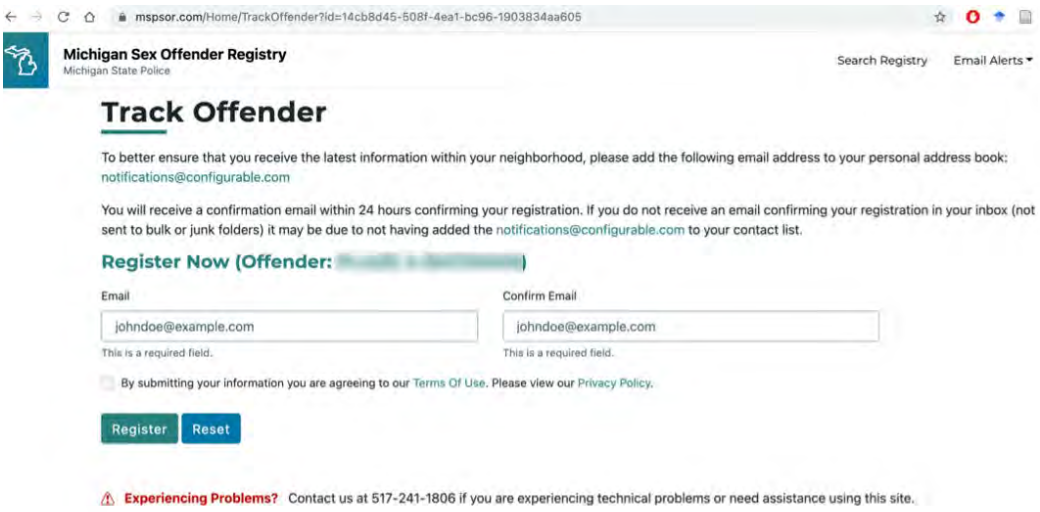
37. Criminal history reports are also available for purchase from vendors, including both private background check companies and state repositories, and the Internet Criminal History Access Tool (ICHAT) in Michigan.[13]

38. ICHAT users must submit the first name, last name, date of birth, race, gender, and reason for search to obtain a criminal history report for a fee.

39. The Michigan registry, in contrast, allows a user to actively "track" an offender through an email signup and notification system. This option is not available for other types of criminal history information made public by state or local governments in Michigan. Thus, the tracking functions of the registry select out these types of convictions as particularly dangerous (and therefore in need of such ongoing monitoring by law enforcement and the public), as compared to convictions for other crimes outside the sexual arena.

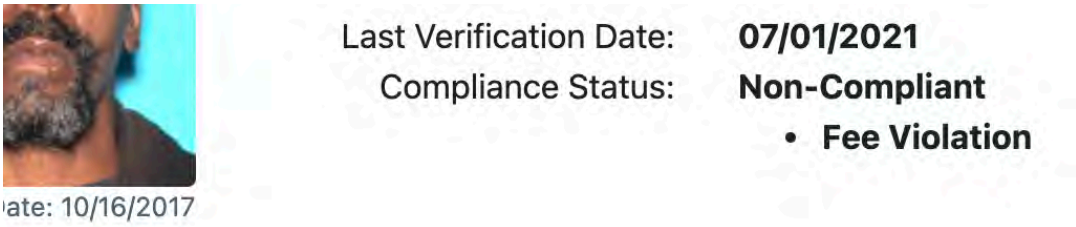
[12] Sample internet court records were obtained from Odyssey Public Access (OPA) for the Third Judicial District of Michigan at: https://www.3rdcc.org/odyssey-public-access-(opa).

[13] Sample criminal history records were sourced through the Michigan Internet Criminal History Access Tool (ICHAT) at https://apps.michigan.gov/.



Options for users to track registrants and receive updates. The registrant's name has been blurred to protect their identity. Source: Accessed 1 October 2021 at 9:55 AM.[14]

40. The Michigan registry also reports whether or not a registrant is "compliant." This suggests that the registrant is being continuously supervised because the registrant remains currently dangerous to the public.



Registry compliance status as reported on state website. Source: Accessed 30 September 2021 at 9:13 AM.[15]

41. Unlike other forms of public criminal records available through the State of Michigan's websites, the registry also allows internet users to "map" the registrant and "submit a tip" directly to authorities.

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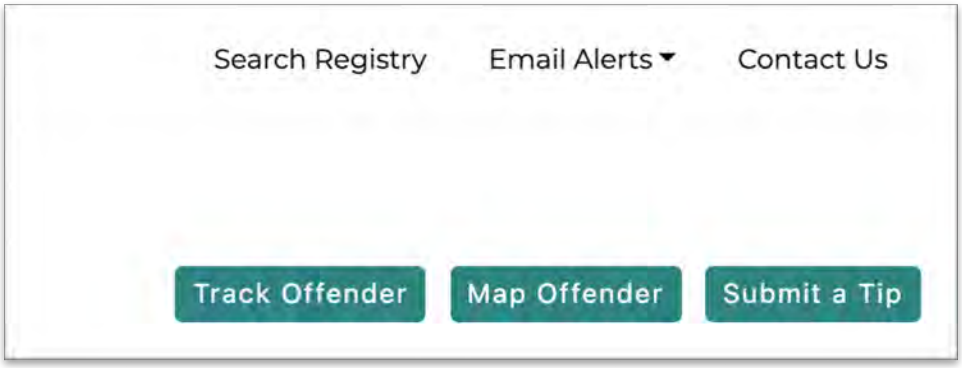
[14] The links searched have not been included because doing so would disclose the identity of the registrants pictured. Those links are on file with the author and can be provided to the Court upon request.

[15] *https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=644836.*



User options to track, map, or report a registrant on the registry website
Source: Accessed 30 September 2021 at 9:15 AM.

42. The registry thus allows for a highly interactive user experience that (a) communicates that registrants are an especially dangerous class of people with convictions and (b) encourages and enables much more serious — and more pervasive — intrusions on registrants' privacy than those inflicted on individuals with other types of criminal histories.

43. Unlike the static, archival posting of court and criminal history records made available to the public only through targeted searches, the registry website states: "This registry is made available through the Internet with the intent to better assist the public in preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders." This messaging signals a highly dangerous type of criminal who requires constant public monitoring and scrutiny, while also assigning elevated stigma and leading the public to believe that all registrants are dangerous.

44. Another key difference is that registries consist of regularly updated, registrant-provided data, rather than the archival nature of other forms of criminal record information. For example, the presentation of updated photographs and addresses may create the public perception that a person with a sexual offense conviction is a current public safety threat or that their offense was recent. This may pose particularly harmful perceptions for a long-ago offense that involved consensual sex between an of-age teen and an underage teen that resulted in registration but is now associated with the identification of a grown adult. For example, an internet user viewing a photograph of a 55-year-old registrant who is listed for "criminal sexual conduct III (person 13-15)" will likely assume that there was a 40-year age gap, when in fact, given the age of the offense, the registrant may be listed for having had a teenage relationship.

45. In sum, the interface, text, and tracking options included in the registry website do not simply provide historical conviction information, but present registrants as presently dangerous.

The changing internet context and "pushes" of registrant data to users

46. *Smith v. Doe* was argued in 2002, when the internet was a vastly different tool. Wikipedia was one year old.[16] In 2001, only 3% of Americans said they got most of their information about the 9/11 attacks from the internet.[17] The average internet user spent 83 minutes online per day. In 2002, only 44% of people who had internet access at work said the internet helped them do their jobs.[18]

47. In November 2002, the month *Smith* was argued, only 15% of Americans had access to broadband internet in their homes. Today, that number is 77%,[19] with an additional 15% of Americans using smartphones only to access the internet at home.[20] While only 59% of American adults used the internet at all in 2002, today 93% of American adults use the internet.[21] In 2002, only 6% of Americans said they would have a hard time giving up their Blackberry or other wireless email device.[22] By 2021, 85% of Americans own a smartphone.[23]

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[16] Wikipedia, "History of Wikipedia." Accessed 27 September 2021. https://en.wikipedia.org/wiki/History_of_Wikipedia.

[17] Pew Research. "World Wide Web Timeline." Accessed 27 September 2021. https://www.pewresearch.org/internet/2014/03/11/world-wide-web-timeline/.

[18] Ibid.

[19] Ibid.

[20] Pew Research, "Mobile Technology and Home Broadband 2021." 3 June 2021. Accessed 27 September 2021. https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.

[21] Pew Research, "Internet/Broadband Fact Sheet." Accessed 27 September 2021. https://www.pewresearch.org/internet/fact-sheet/internet-broadband/.

[22] Pew Research, "Mobile internet moves into the mainstream." 25 March 2008. Accessed 27 September 2021. https://www.pewresearch.org/internet/2008/03/25/mobile-internet-moves-into-the-mainstream/.

[23] Pew Research, "Mobile Technology and Home Broadband 2021." 3 June 2021. Accessed 27 September 2021. https://www.pewresearch.org/internet/2021/06/03/mobile-technology-and-home-broadband-2021/.

48. Internet use has been especially crucial during the COVID-19 pandemic lockdowns. 90% of Americans reported that the internet has been "essential or important" to them and 40% used technology in new ways because of the pandemic.[24]

49. As noted above, in *Smith*, the majority opinion described the process of accessing registrant information as follows: "An individual seeking the information must take the initial step of going to the Department of Public Safety's Web site, proceed to the sex offender registry, and then look up the desired information. The process is more analogous to a visit to an official archive of criminal records than it is to a scheme forcing an offender to appear in public with some visible badge of past criminality."[25] This characterization not only does not reflect how Michigan's registry operates today, but also does not reflect how registrant information that is originally posted on a state registry like Michigan's is reproduced on the internet. Rather than requiring an internet user to seek out registrant information by accessing a governmental database or criminal record archive, this information is now routinely pushed or provided to web users even without their intent to access such records.

50. Public records, including registrant information, have become a valuable data commodity.[26] In particular, registrant information has become a valuable data source for websites that aggregate public records to create reports about people and places. In these largely unregulated web services, companies supply and display geo-specific registry information without a user ever making a specific request. Registry information is scraped from governmental sources and repackaged into a web product that is pushed to internet users.

51. For instance, Homefacts.com, a site that provides neighborhood information, supplies registrant information along with information about property prices and school ratings. The image below shows a free Homefacts report about Detroit that uses registry data as a key indicator of an area overview.

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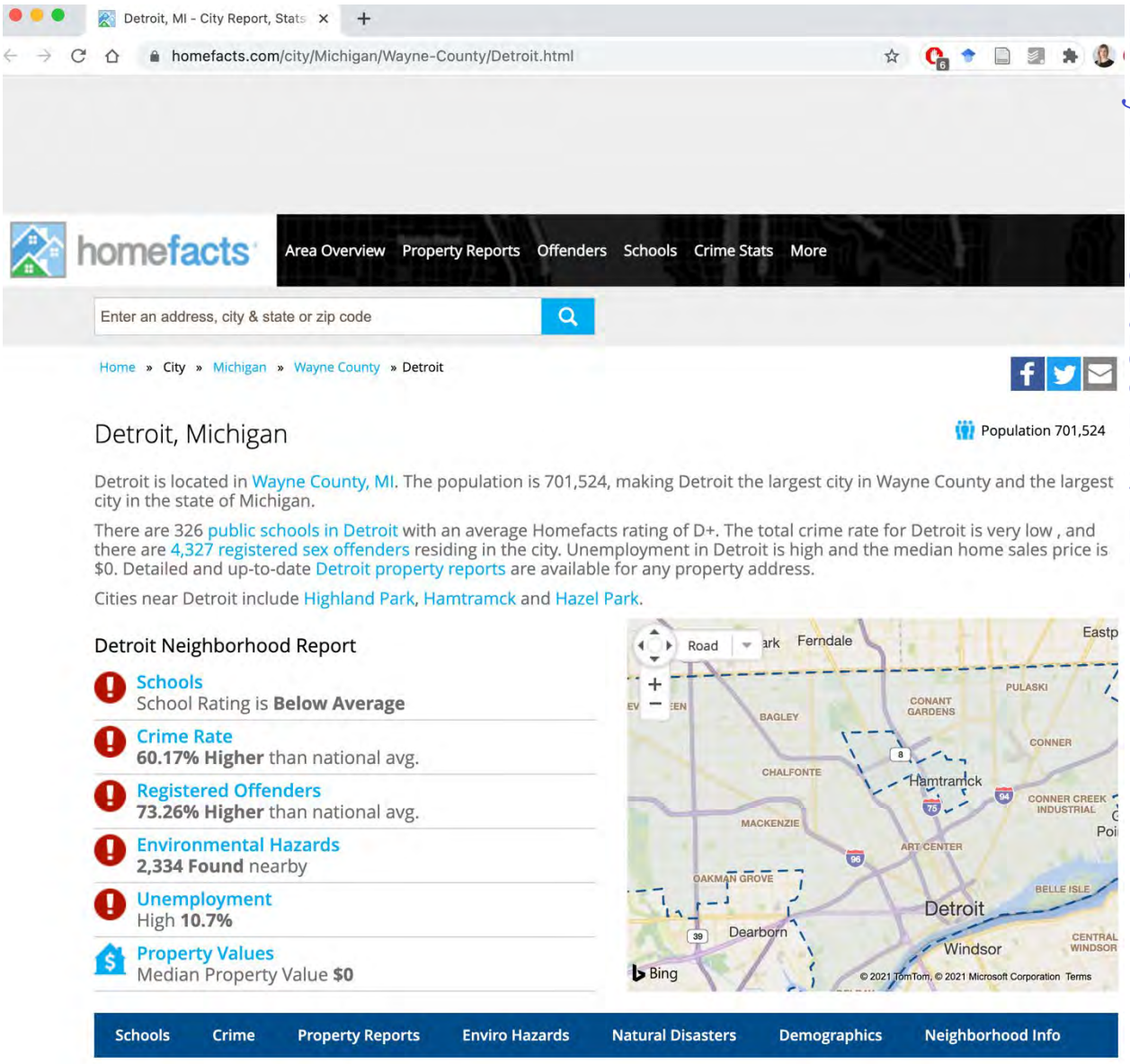
[24] Pew Research, "The Internet and the Pandemic." Accessed 27 September 2021. https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/

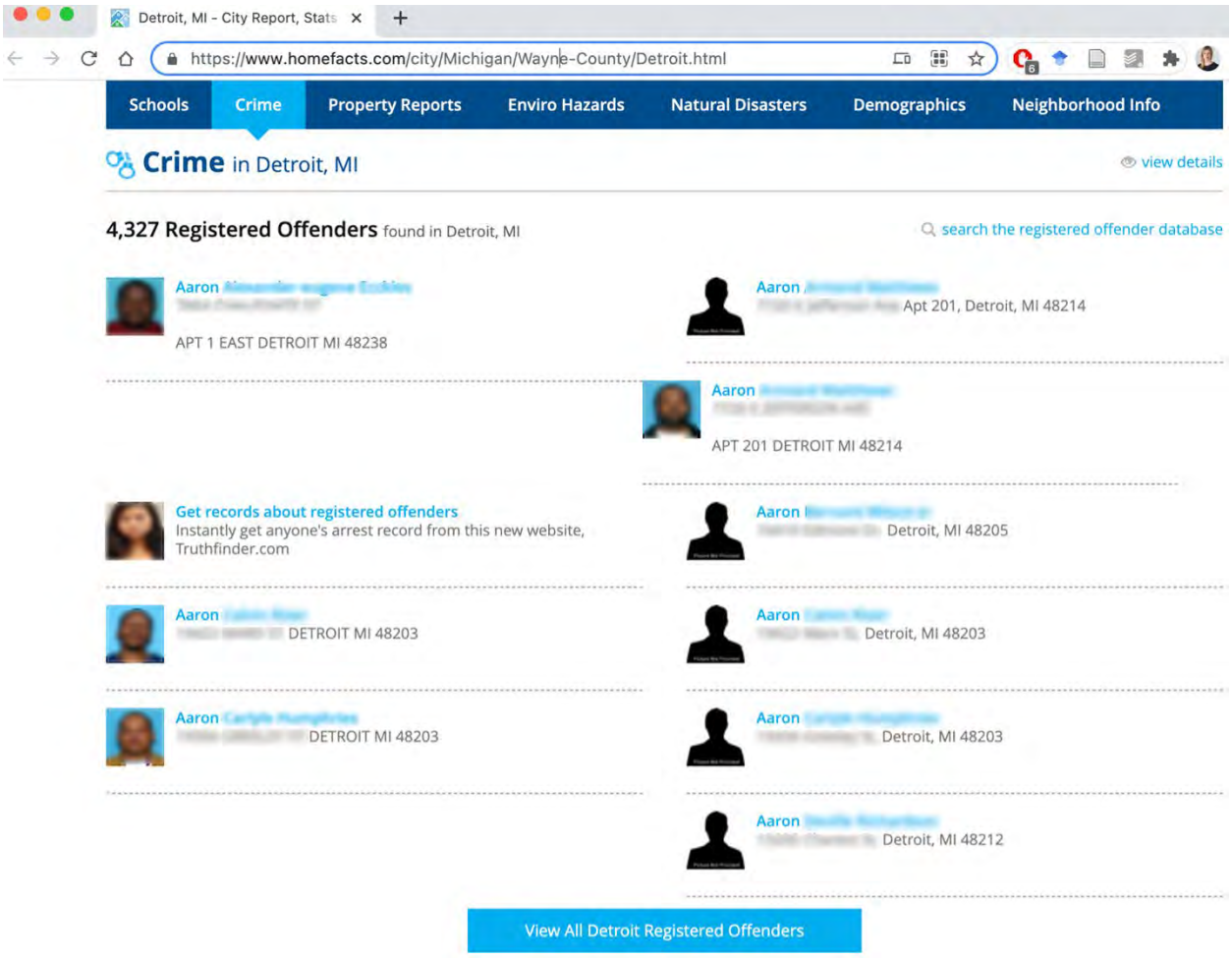
[25] *Smith v. Doe*, 538 U.S. 84, 99 (2003).

[26] Lageson, *Digital Punishment.*



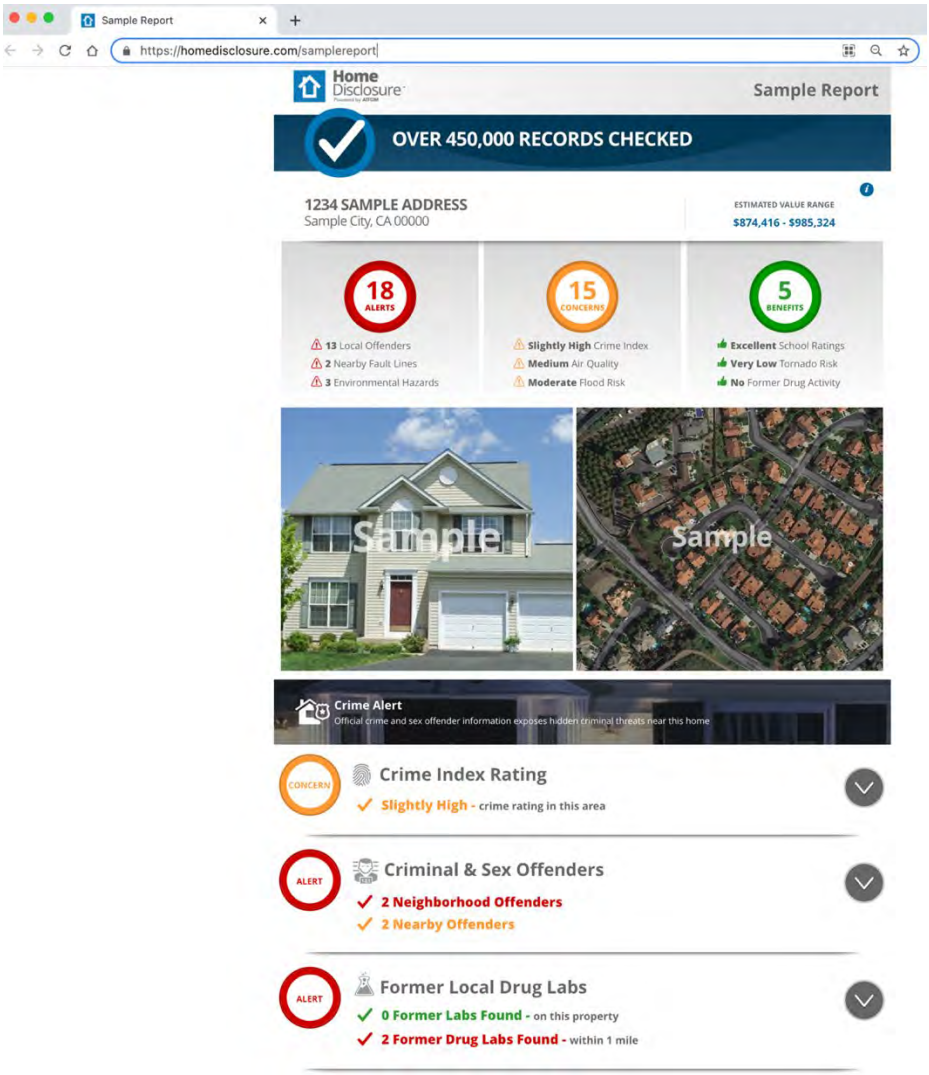
Homefacts.com use of registry information to create city assessment reports. Source: Accessed 7 October 2021 at 2:19 PM.

52. Scrolling down the Homefacts webpage, a user is provided with a set of registrants, including their photographs and home addresses.



Homefacts.com dissemination of registrant photographs and personal information. Photos and home addresses have been blurred to protect the identities of registrants featured on this website. Source: Accessed 7 October 2021 at 2:21 PM.

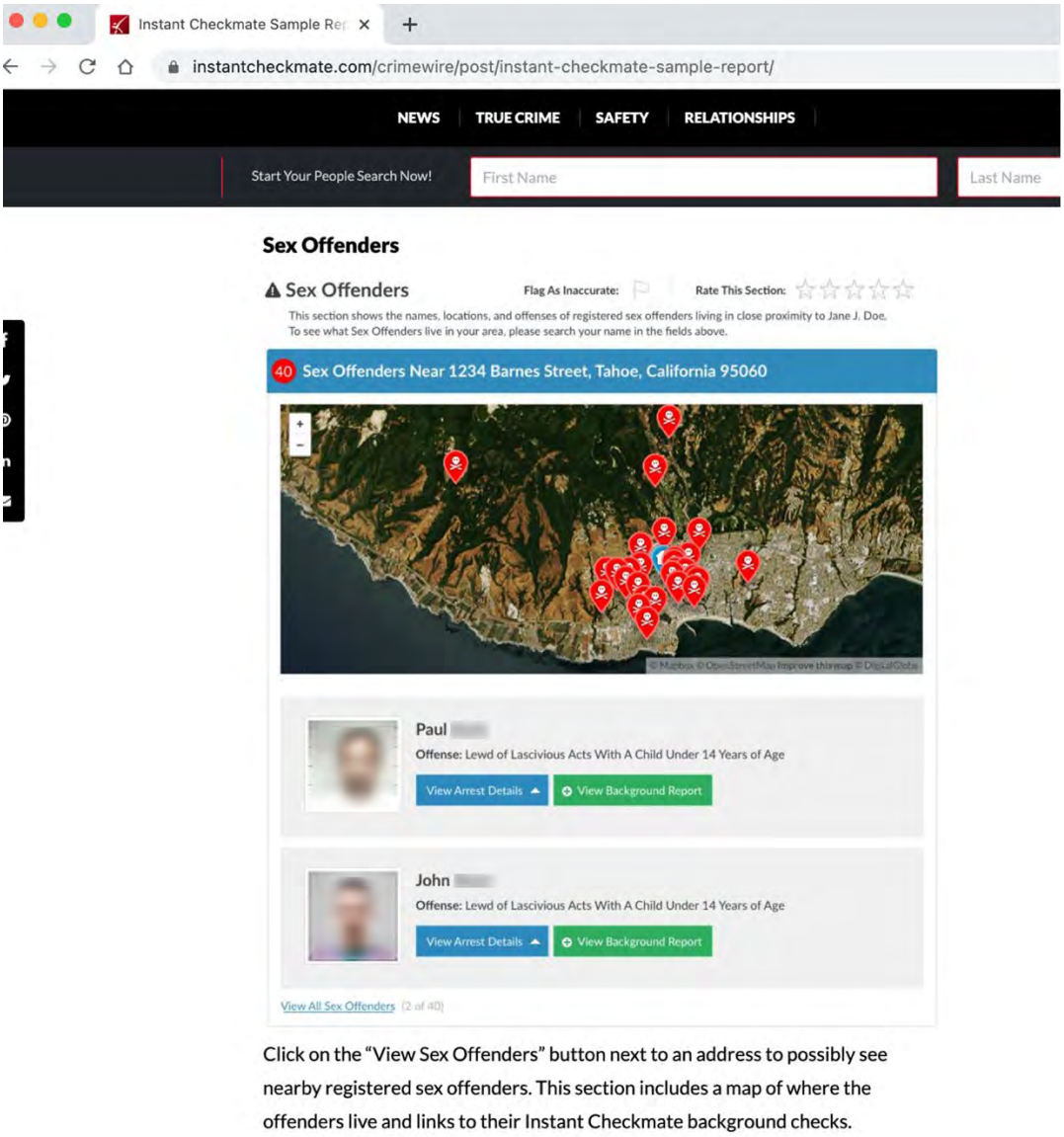
53. Companies like Homedisclosure.com similarly aggregate public records to create customized reports based on an address for prospective home-buyers, using registry records to flag "concerns" and "alerts" for a specific location based on the number of registrants nearby. A sample report from Homedisclosure.com shows the prevalence of registry data in crafting their address scores. Here again, an internet user is provided local registrant information without requesting such information in the first place.



Homedisclosure.com report that highlights registrants in the targeted area. Source: Accessed 27 September 2021 at 10:33 AM at https://homedisclosure.com/samplereport.

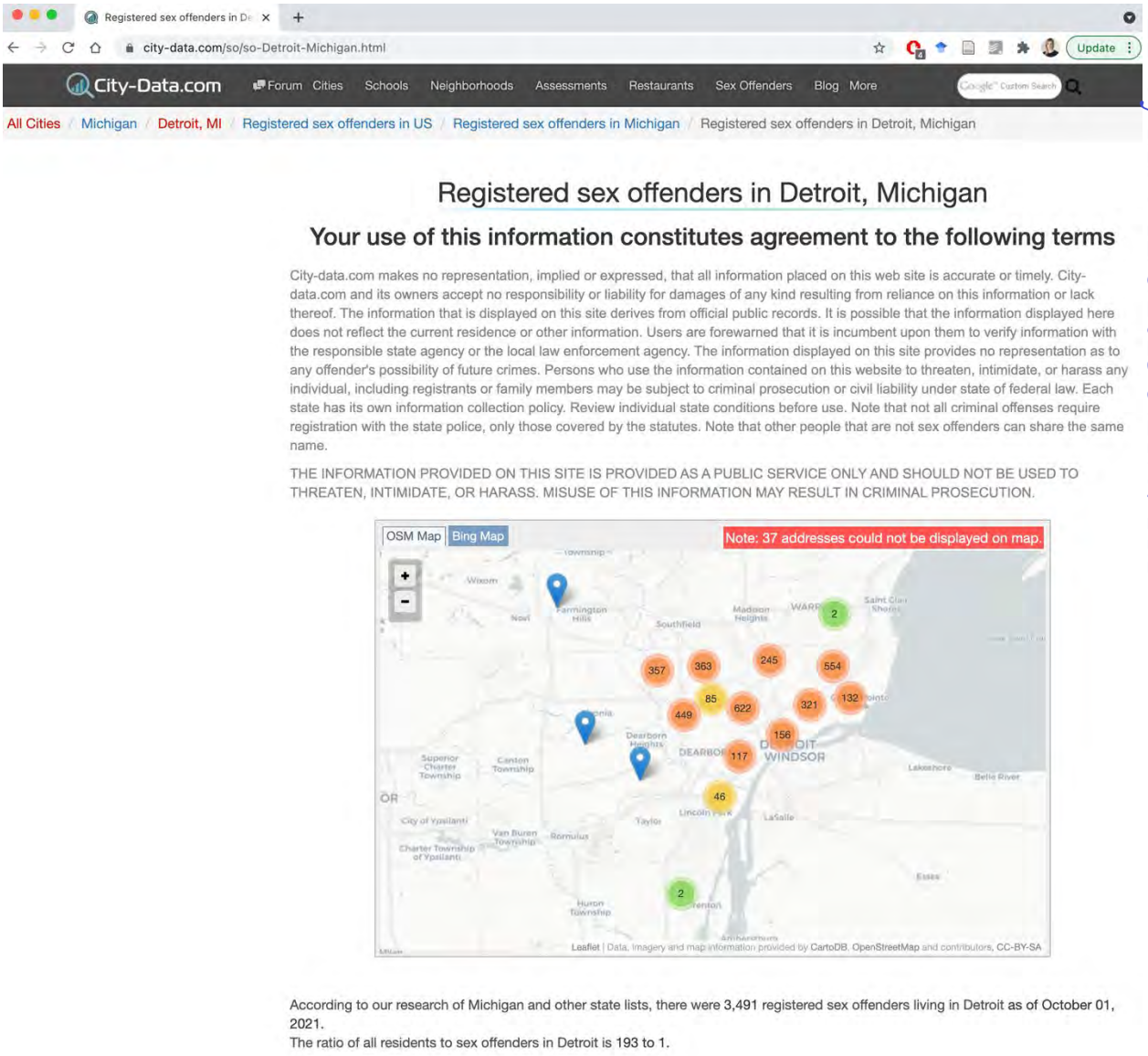
54. Other companies aggregate public records to sell "people search" reports to consumers. In these reports, companies now proactively include registrant information for people who live nearby the target of the search, pushing registrant data to internet users who are seeking information on a different person altogether.

55. For instance, the web service Instant Checkmate provides background reports that draw upon public records databases and report addresses, criminal histories, and social media accounts for the search target. However, Instant Checkmate also affirmatively posts registrant information for people who live in proximity to the search target. A sample Instant Checkmate report provided by the company displays the registrant data included on background check reports for non-registrants.



Sample Instant Checkmate report advertising integration of registrant photographs, offense, and link to purchase a background report. Source: Accessed 27 September 2021 at 1:53PM, https://www.instantcheckmate.com/crimewire/post/instant-checkmate-sample-report/.

56. Similarly, city-data.com offers a broad set of information about cities, towns, and zip codes, including population demographics, weather patterns, real estate taxes, tourist attractions, industries and occupations, and education. The site also offers its own sex offender locator, built directly into the website. Clicking on a search result reveals the name, home address, sex, age, eye color, hair color, height, weight, scars/marks/tattoos, and race of the registrant.



City-data.com registered sex offender tool integrated into its website. Source: Accessed 1 October 2021 at 9:45 AM.

57. Importantly, none of these private companies push or proactively provide criminal conviction information for any other type of criminal record, including violent crime or homicide. Nor do these third-party websites report any personal information about people with other criminal convictions, such as their home address or photograph. Instead, these websites elect only to provide registry information, something which state-run websites like the Michigan registry made especially easy, by allowing for other users to access their continually-updated data on registrants. This allows third parties to easily copy and repost the registry to other sources and websites.

58. Private entities have also aggregated registrant information posted to state websites and created new, private databases of such information to generate income through reposting information contained in state registries. Family-watchdog.us, for instance, is owned by an Indiana-based for-profit company called FWD Holdings[27] that aggregates registry information from states and repackages it for internet users to their site.

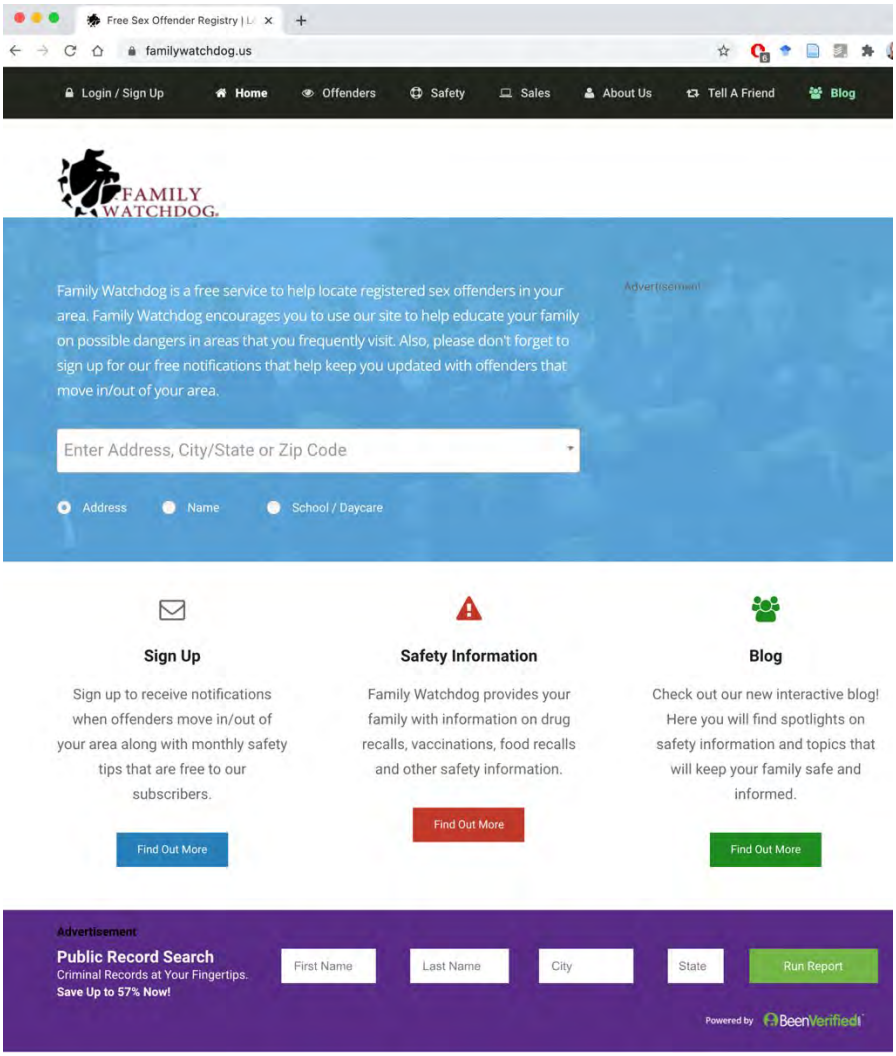
59. The website hosts advertisements and links to other for-profit records aggregators, such as BeenVerified.com. For instance, a search result for an address reveals a map of registrants and also includes an advertisement to the registrant's BeenVerified background check, a non-Fair Credit Reporting Act compliant private background check available for sale to consumers.[28] Thus, various for-profit websites work in concert to monetize registrant data across web services.

60. Familywatchdog.us provides sales packages to media entities, law enforcement agencies, and other private companies seeking to mine registry data or host maps or mobile applications showing the locations of registrants, effectively using public registrant information as a for-profit data commodity.[29]

[27] FWD Holdings Incorporated is a domestic, for-profit corporation located at 2230 Stafford Road, Suite 115, Plainfield IN 46168 and operating under Indiana Business ID 2009081300027. See https://bsd.sos.in.gov/PublicBusinessSearch/.

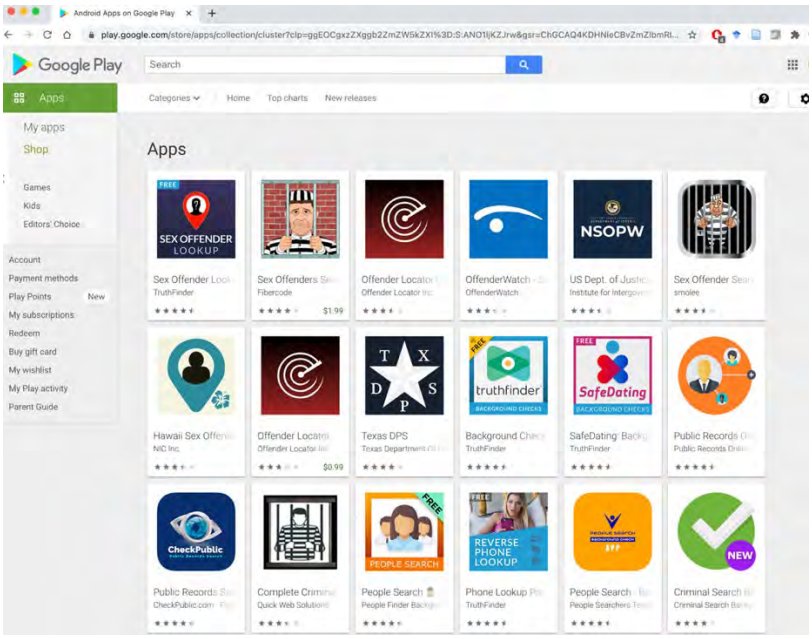
[28] "People search" websites like Instant Checkmate and BeenVerified do not consider their businesses Consumer Reporting Agencies and thus do not comply with the requirements of the Federal Fair Credit Reporting Act. Users are warned that the background checks they purchase are not checked for accuracy and are not to be used for hiring or housing decisions.

[29] FamilyWatchdog, "Business," Accessed 27 September 2021. https://www.familywatchdog.us/servicetext/Business.asp.



Familywatchdog.us options for registrant tracking and links to advertisers selling background reports on registrants revealed through searches. Source: Accessed 27 September 2021 at 1:38 PM at [https://www.familywatchdog.us/.](https://www.familywatchdog.us/)

61. Mobile apps also collect and aggregate registrant data into new formats that allow "push notifications" that affirmatively alert users when they are in proximity to a registrant's address.



Mobile apps that source registrant information and aggregate onto private platforms. Source: Accessed 27 September 2021 at 1:50 PM, https://play.google.com/store/apps/collection/cluster?clp=ggEOCgxzZXggb2ZmZW5kZXI%3D:S:ANO1ljKZJrw&gsr=ChGCAQ4KDHNleCBvZmZlbmRlcg%3D%3D:S:ANO1ljK0TBw&hl=en_US&gl=US.

62. In sum, changes in internet infrastructure and database technology over the nearly two decades since *Smith v. Doe* have transformed registry information from a government-run source that a user had to intentionally access into a large scale, private-sector data commodity that is duplicated, aggregated, and pushed to innumerable internet users who passively receive registrant information without even intending to access it. The fact that the internet "pushes" registrant data, even where registrant information is not actively sought by a member of the public, illustrates how internet technology has fundamentally altered the scope, reach, and function of registries.

63. The unusually detailed and continually updated nature of the information provided in the Michigan registry in turn enables a growing ecosystem of private sector uses of registry data for surveillance, stigmatization and shaming purposes. These new functions and the broad reach of registry information make today's registries completely unlike those considered by the Supreme Court in *Smith*.

Search Engine Optimization and Registry Records

64. Search engine optimization has increased public access to registrants' personal information because the nature of such information is prioritized by internet search engine algorithms, frequently causing the registrant's status on the

registry and personal information, such as home address, to end up among the top search results for a registrant's name in a basic internet search.

65. The use of internet-based registries and the aggregation and re-posting of registrant information has allowed search engines, like Google, to "index" information posted to governmental websites and incorporate text into search results. As "search engine spiders" continuously "crawl" public webpages,[30] a basic Google search for that person's name will often return a link to a governmental sex offender registry website.[31]

66. Search results are ranked by how often an internet user clicks a link. Due to the "shock value" of sex offender information in the search results for a person's name, links to websites that post registry information often maintain dominance as top results for an individual.[32]

67. The high ranking of registry-related websites is further compounded by search engine optimization factors that purposefully increase the visibility of governmental websites when users run a basic query. Governmental sites are considered by Google algorithms to be more "trustworthy" and thus more likely to hold a dominant position in search results.[33]

68. Analytics provided by Google Trends shows that people have increasingly turned to search engines to seek out registrant information, potentially making it unnecessary to conduct targeted searches of a government-run registry, the original intent of publishing such official websites in the first place. Put different, a user used to directly seek out the state registry website to look for an individual person's registry status. That information is now readily available via a routine Google search. This means that users no longer have to seek out registry information; instead they can inadvertently learn a person is on a registry through a

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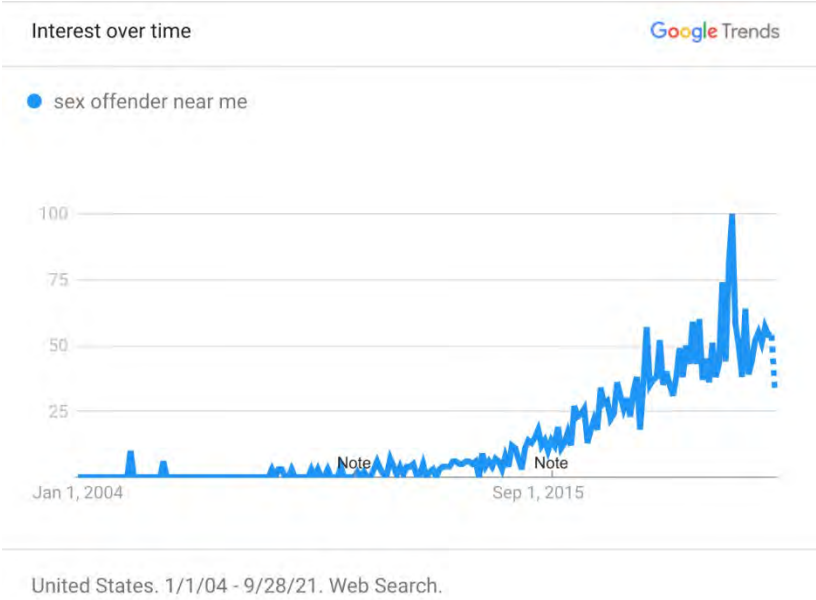
[30] "Search Engine Optimization (SEO) Starter Guide," Google, accessed September 11, 2020: https://support.google.com/webmasters/answer/7451184?hl=en.

[31] Pierce, Doug. "The SEO Behind Mugshot Websites," *Cogney*, October 7, 2013, https://www.cogney.com.hk/blog/mugshot-seo/.

[32] Pierce, Doug, "The SEO Behind Mugshot Websites," *Cogney*, October 7, 2013, https://www.cogney.com.hk/blog/mugshot-seo/.

[33] Digital.gov. "Why government websites need SEO." May 2, 2013: https://digital.gov/2013/05/02/why-government-websites-need-seo/.

basic, generic search for an individual. Search engine algorithms boost this type of information, multiplying access to a variety of sources that post registry data. [34]



Google Trends analysis of internet search term "sex offender near me" from 2004-2021. Source: Accessed 28 September 2021, https://trends.google.com/trends/explore?date=all&geo=US&q=sex%20offender%20near%20me.

69. Accessing registry data used to involve an active exchange of information between the registry websites and an internet user. Today, registry information is disseminated broadly across the internet due to the which, as noted above, is unlike *Smith v. Doe*'s analogy to visiting a criminal records archive.[35] The Michigan registry and the attendant private websites have duplicated and disseminated these data into the public sphere – the internet – in a manner far beyond how the internet operated nearly twenty years ago.

[34] Google Trends, "Sex Offender Near Me." Accessed 28 September 2021, https://trends.google.com/trends/explore?date=all&geo=US&q=sex%20offender%20near%20me.

[35] Schuler, Rus. "How Does the Internet Work?" Stanford White Paper (2002). Retrieved from: https://web.stanford.edu/class/msande91si/www-spr04/readings/week1/InternetWhitepaper.htm.

The Michigan registry creates discriminatory harms and leads to institutional and digital avoidance

70. It is generally accepted by social scientists that being labeled a criminal sexual offender is strongly correlated with a broad set of stigmatization and harms, including discrimination in employment, housing, education, and civic and community organizations, as well as social, psychological, and personal stigmatization, alienation, and public humiliation. These correlations have been tested, peer reviewed, and validated across multiple disciplines, including economics, sociology, criminology, psychology, and empirical legal studies.

71. Social scientists have detailed the specific collateral consequences for registrants, which show social stigmatization, loss of relationships, barriers to employment and housing, and verbal and physical assaults.[36]

72. In the case of the Michigan registry, the requirement to publish (and update) the address of a registrant's employer may contribute to employment-based discrimination, because employers are likely to be reticent about being publicly associated with a registrant.

73. Numerous studies have detailed the difficulties in obtaining housing for people on the registry.[37] Quasi-experimental research has demonstrated that convictions for sex-related offenses are more stigmatized than other convictions and lead to more discrimination within the housing market.[38]

74. In the case of the Michigan registry, the requirement to publish one's current home address may contribute to housing discrimination, as landlords are likely to be reticent about having their property address associated with the Michigan registry and posted to third party websites that push registrant data to users.

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[36] Tewksbury, Richard. "Collateral consequences of sex offender registration." *Journal of Contemporary Criminal Justice* 21, no. 1 (2005): 67-81.

[37] Tewksbury, Richard, Elizabeth Ehrhardt Mustaine, and Shawn Rolfe. "Sex offender residential mobility and relegation: The collateral consequences continue." *American Journal of Criminal Justice* 41.4 (2016): 852-866; Williams, Monica. *The Sex Offender Housing Dilemma*. New York University Press, 2018.

[38] Evans, Douglas N., and Jeremy R. Porter. "Criminal history and landlord rental decisions: A New York quasi-experimental study." *Journal of Experimental Criminology* 11.1 (2015): 21-42.

Institutional Avoidance

75. When a person's sex offender status "pops up" on the internet, the social consequences can be devastating for individuals, especially in public social environments like schools, workplaces, civic organizations, and religious institutions.[39]

76. Evidence shows that this personal and social stigmatization leads people to purposefully "opt out" of formal institutional arrangements and relationships that might trigger a Google search, also referred to as institutional and systems avoidance.[40]

77. This avoidance has professional, economic, personal and familial consequences,[41] and has been linked to decreases in civic and political engagement,[42] such as volunteering (which in turn has been linked to a lower likelihood of future arrest).[43]

Digital Avoidance

78. People who are publicly stigmatized on the internet also exhibit "digital avoidance" – a purposeful opting out of digital spaces that may trigger an internet

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[39] Lageson, Sarah Esther. "Found out and opting out: The consequences of online criminal records for families," *The ANNALS of the American Academy of Political and Social Science* 665, no. 1 (2016): 127. While most of the research in this area has been about the consequences of being identified on the internet as a person with a criminal record, being identified as a sex offender is even more stigmatizing. In addition, as discussed, registry information is more likely to be "pushed" out on the internet unlike other criminal history information.

[40] Brayne, Sarah. "Surveillance and System Avoidance: Criminal Justice Contact and Institutional Attachment," *American Sociological Review* 79, no. 3 (June 2014): 367.

[41] Lageson, Sarah and Christopher Uggen, "How Work Affects Crime—And Crime Affects Work—Over the Life Course;" Goffman, Alice. *On The Run: Fugitive Life in an American City* (Chicago: University of Chicago Press, 2014)

[42] Lerman, Amy E., and Vesla M. Weaver. *Arresting citizenship: The democratic consequences of American crime control*. University of Chicago Press, 2014.

[43] Uggen, Christopher, and Jennifer Janikula. "Volunteerism and arrest in the transition to adulthood." *Social forces* 78, no. 1 (1999): 331-362.

search for their name.[44] This means choosing not to use routine technologies. Such digital avoidance further reduces the ability of registrants to engage in pro-social behaviors known to reduce crime, such as securing safe and stable employment and housing.[45]

79. Research shows that people stigmatized on public registries resort to self-policing their behavior and avoid using the internet to avoid further publicizing their stigmatizing label.[46]

80. Registry requirements exacerbate these effects when laws require registrants to publicly disclose all internet identities they have created, generating another powerful incentive not to use the internet.

81. The impact of digital avoidance is especially harmful in light of the ubiquity of the internet in daily life, particularly during the pandemic, where 90% of Americans say the internet has been essential or important.[47] In general, 3 in 10 American adults report that they are almost "constantly" online.[48] Only 7% of Americans report that they do not use the internet regularly.[49]

82. Not having an online identity can be harmful to employment prospects. The Society of Human Resources Management, for example, reports that a lack of social media presence can hurt job seekers, citing a CareerBuilder study that 35% of employers are less likely to interview applicants they can't find online.[50]

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[44] Lageson, *Digital Punishment* at 118-122.

[45] Ibid.

[46] Ibid.

[47] Pew Research, "The Internet and the Pandemic," 1 September 2021. Accessed 1 October 2021, https://www.pewresearch.org/internet/2021/09/01/the-internet-and-the-pandemic/.

[48] Pew Research, "About three-in-ten U.S. adults say they are 'almost constantly' online," 26 March 2021. Accessed 1 October 2021, https://www.pewresearch.org/fact-tank/2021/03/26/about-three-in-ten-u-s-adults-say-they-are-almost-constantly-online/.

[49] Pew Research, "7% of Americans don't use the internet. Who are they?" 2 April 2021, Accessed 1 October 2021, https://www.pewresearch.org/fact-tank/2021/04/02/7-of-americans-dont-use-the-internet-who-are-they/.

[50] Society of Human Resources Management, "Lack of Social Media Presence Can Hurt Job Seekers." 18 May 2015. Accessed 1 October 2021,

83. The internet is also a primary way people connect socially. The percentage of U.S. adults who use at least one social media site has steadily grown since the early 2000's, with 72% of adults now reporting they access social media.[51] Registrants who are reticent to report social media accounts are effectively shut out of this central social platform.

84. Social media is also increasingly used as a communications tool between people and government and other institutions. For example, experts report that social media is increasingly used by local governments to post essential information to constituents.[52] Requiring registrants to publicly disclose their social media credentials may lead them off platforms that deliver important public information or are fora for public debate. Similarly, many news websites require usernames or social media logins to read or comment on articles. Relatedly, this means that a registrant's use of any site with these credentialing requirements would become known to the state and, if the registrant's identifiers are posted online as Michigan's law allows, also become known to the public.

85. The integration of social media and email accounts directly into other websites also poses obstacles for registrants. Internet sites now routinely allow users to log in using social media credentials, such as a Facebook account. At times, these logins happen automatically, allowing social media to track a person's activity on other websites through their account.[53] This means that for registrants, entire categories of routine websites may be impacted by the requirement under Michigan law to register any website account with the state. Not knowing whether or not their social media or email accounts have been linked to other websites will likely contribute to digital avoidance to avoid risking an inadvertent registration

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https://www.shrm.org/resourcesandtools/hr-topics/technology/pages/lack-of-social-media-presence-can-hurt-job-seekers.aspx.

[51] Pew Research, "Social Media Fact Sheet." Accessed 1 October 2021, https://www.pewresearch.org/internet/fact-sheet/social-media/.

[52] Husing, Chris, "How Social Media is Elevating Engagement for Local Government," *Governing* 24 February 2020. Accessed 7 October 2021, https://www.governing.com/now/how-social-media-is-elevating-engagement-for-local-government.html.

[53] Experian, "Is it safe to use Facebook to login to other sites?" 29 April 2018. Accessed 7 October 2021, https://www.experian.com/blogs/ask-experian/is-it-safe-to-use-facebook-to-login-on-other-sites/.

violation. Registrants may also entirely avoid any website that requires registration at all, as their use of the site may be publicly linked to their registry status.

86. Despite the ubiquity of social media, some platforms, including Facebook[54] and Instagram[55], ban people convicted of sex offenses from their sites altogether, and even encourage other users to report such individuals so they can be removed from the platform.[56] Such blanket bans by social media platforms simply adopt the false assumption that all such individuals pose a lifelong public safety risk – an assumption that is reinforced by state registries. People with past sex offenses convictions are thus excluded from many of the major digital fora that are used today for economic, social, political and commercial exchanges.

Public safety and recidivism consequences

87. Research shows that public labeling can also lead to increased crime and be detrimental to public safety. As described by one scholar: "A stigmatized individual may work to supersede the stigma through excelling at something else; he may seek to capitalize on the stigma for some sense of gain (although this does not seem probable for registered sex offenders). On the other hand, an offender may feel that his case is helpless and he will always be seen in a negative light, and thus reoffending would make little difference… In this last case, the chances for recidivism would be greatest."[57]

88. Empirical research on labeling theory has documented the so-called self-fulling prophecy that can lead to future offending and harm public safety. Research involving 95,919 men and women found that those people who were formally,

[54] Facebook Terms of Service, Accessed 10 October 2021, https://www.facebook.com/terms.php.

[55] Instagram Terms of Use, Accessed 10 October 2021, https://help.instagram.com/581066165581870.

[56] Facebook Help Center, "How can I report a convicted sex offender on Facebook?" Accessed 7 October 2021, https://www.facebook.com/help/210081519032737.

[57] Tewksbury, Richard. "Collateral consequences of sex offender registration." *Journal of Contemporary Criminal Justice* 21, no. 1 (2005): 67-81 at 69.

publicly labeled as a criminal were significantly more likely to recidivate within two years than those who were not.[58]

89. Researchers have identified several mechanisms to explain why labeling leads to disengagement with society and a higher potential for reoffending. "Desistance" theories argue that public labels undercut an individual's ability to overcome stigmatization. In his study of British ex-convicts, Shadd Maruna argues that to maintain "abstinence from crime, ex-offenders need to *make sense* of their lives"[59] by developing a coherent identity for themselves. He terms this "willful, cognitive distortion" as "making good."[60] The highly-influential Maruna studies[61] thus demonstrated that personal agency—though difficult to measure or operationalize—was key in successful desistance.

90. I collaborated with Dr. Maruna to examine his theory in light of the digital transformation and online disclosures of criminal records. Our study found that internet-based stigma, in particular, limits the personal agency inherent in desistance, hindering the necessary cognitive and personal transformations for desistance from crime.[62]

Vigilantism & Digilantism

91. Researchers have documented vigilantism against registrants, including stalking, threats, harassment, and violence.[63]

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[58] Chiricos, Ted, Kelle Barrick, William Bales, and Stephanie Bontrager, "The Labeling of Convicted Felons and its Consequences of Recidivism," *Criminology* 45, no. 3 (August 2007): 547.

[59] Maruna, Shadd. *Making Good* (Washington, DC: American Psychological Association, 2001), 7.

[60] Maruna, *Making Good*, 9.

[61] The researcher's entire body work on this topic has been cited 20,019 times as of October 7, 2021: https://scholar.google.com/citations?user=e0qdrFUAAAAJ&hl=en&oi=sra

[62] Lageson, Sarah Esther, and Shadd Maruna. "Digital degradation: Stigma management in the internet age." *Punishment & Society* 20, no. 1 (2018): 113-133.

[63] Tewksbury, Richard. "Collateral consequences of sex offender registration." *Journal of Contemporary Criminal Justice* 21, no. 1 (2005): 67-81 at 76; Williams, Monica. *The Sex Offender Housing Dilemma*. New York University Press, 2018 at 1.

92. In my research, I use the term "digilantism" to describe how vigilante activities targeted toward people with criminal records increasingly occur online as information becomes more easily accessible or inadvertently discovered by internet users.[64]

93. In the case of the Michigan registry, the risk of vigilantism may be increased by the interface of the registry website, which allows for browsing and address searching, including for places of employment. This may also lead to other consequences, such as when landlords and human resources officials are tipped off by neighbors or fellow employees about the registration and internet publication of a rental property or workplace address.

94. People who appear in registries are also vulnerable to "pedophile hunting" groups, which are often organized on social media platforms. [65] For instance, the hashtag #shootyourlocalpedophile on Twitter and TikTok reveal substantial social media activity around using public registry information to identify, shame, and threaten real life harm to registrants. [66]

95. Digilantism concerns have caused some criminal justice agencies to change policies regarding the availability of personally identifying information in online records. For example, the Arizona Department of Corrections has removed dates of birth from inmate rosters after noting that "some ADC inmates have recently been victims of identity theft and fraud."[67] Several police departments have ended the practice of posting pre-arraignment information to social media and websites.[68]

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[64] Lageson, *Digital Punishment* at 91.

[65] Purshouse, Joe. "'Paedophile Hunters', Criminal Procedure, and Fundamental Human Rights." *Journal of Law and Society* 47, no. 3 (2020): 384-411; Kozlowska, Hannah. "There's a global movement of Facebook vigilantes who hunt pedophiles." *Quartz* July 24, 2019. https://qz.com/1671916/the-global-movement-of-facebook-vigilantes-who-hunt-pedophiles/

[66] See, for instance, on Twitter https://twitter.com/hashtag/shootyourlocalpedophile

[67] Arizona Department of Corrections. "Using Inmate Search." https://corrections.az.gov/public-resources/inmate-datasearch/using-inmate-datasearch.

[68] Bidgood, Jess. "After Arrests, Quandary for Police on Posting Booking Photos." *New York Times* June 26, 2015. https://www.nytimes.com/2015/06/27/us/after-arrests-quandary-for-police-on-posting-booking-photos.html.

The San Francisco Police Department recently banned the release of mugshots to prevent a "potentially negative outcome for justice-involved persons" before their conviction, even though California law deems arrestee information as public record.[69] Criminal courts have installed software to block search engine indexing and have extensive strategies for redaction and privacy policies.[70]

The Sixth Circuit Has Noted the Vastly Increased Harms of State-Sponsored Internet Disclosures.

96. Federal courts are beginning to recognize the harms of internet-based disclosures of state records of many types. The case of mugshots is illustrative. Although Courts have long recognized the stigmatization of mugshots, they have recently begun to address their significance in a digital media context. Most notable was the Sixth Circuit's decision in *Detroit Free Press, Inc. v. Department of Justice* (*Free Press II*), 829 F.3d 478 (6th Cir. 2016) (en banc), to reverse its earlier decision in *Detroit Free Press, Inc. v. Department of Justice* (*Free Press I*), 73 F.3d 93 (6th Cir. 1996).

97. In 1996, the *Free Press I* court ruled that the Freedom of Information Act (FOIA) requires the release of booking photos because defendants lack any privacy interest in their photos.

98. Twenty years later, the en banc court overruled this decision, finding instead that individuals do enjoy a non-trivial privacy interest. Technology played a key role in the majority's argument, with the judges explaining that potential employers and other acquaintances may easily access booking photos on these websites, "hampering the depicted individual's professional and personal prospects."[71]

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[69] San Francisco Police Department. Department Notice 20-112. 07/01/20. https://www.sanfranciscopolice.org/sites/default/files/2020-07/SFPDDN20.112.20200701.pdf.

[70] Robertson, Jordan. "AP Impact: When Your Criminal Record Isn't Yours," *Associated Press*, December 16, 2011; Clarke, Thomas M. "Privacy and Public Access Policies: Slides to accompany 2017 NACM Annual Conference presentation 'New Guidelines for Public Access to Court Records: What has Changed?'" *National Center for State Courts* (2017). https://ncsc.contentdm.oclc.org/digital/collection/tech/id/879.

[71] *Free Press II*, 829 F.3d at 482.

99. In a concurring opinion, Chief Judge Cole observed that: "Twenty years ago, we thought that the disclosure of booking photographs, in ongoing criminal proceedings, would do no harm. But time has taught us otherwise. The internet and social media have worked unpredictable changes in the way photographs are stored and shared. Photographs no longer have a shelf life, and they can be instantaneously disseminated for malevolent purposes. Mugshots now present an acute problem in the digital age: these images preserve the indignity of a deprivation of liberty, often at the (literal) expense of the most vulnerable among us. Look no further than the online mugshot-extortion business."[72]

Conclusion: Given the realities of our modern digital age and how the Michigan registry is configured, the registry promotes extreme public shaming, severely impacts registrants' ability to participate in on-line economic, social, and political life, and damages registrants' ability to obtain housing, employment and social supports.

100. In sum, the internet as it exists today has dramatically changed the form, function, and reach of registries. The manner in which registry information is posted and re-posted through the Michigan portal creates a disproportionate level of public shaming, particularly when imposed on people who present no public safety risk.

101. Because inclusion on a registry lacks individualized review, registries present all registrants as equally risky and in need of continued monitoring and public oversight.

102. From a public safety standpoint, digitally accessible records also paint an inaccurate picture of an individual by inferring a likelihood to recidivate, regardless of individual risk factors or the amount of time that has passed since the registrable offense.

103. Because of how the internet and data-sharing capabilities have evolved, as well as the manner in which registries present registrants as posing significant public safety risk, the harms of being branded a sex offender in the digital age are extreme.

[72] Ibid.

Compensation

I have provided this expert declaration pro bono.

Dated: December 5, 2021

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Dr. Sarah Lageson, PhD
Associate Professor
School of Criminal Justice
Rutgers University-Newark
Center for Law & Justice #556
123 Washington Street
Newark, NJ 07102

Sarah Esther Lageson
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Academic Positions

Rutgers University-Newark, School of Criminal Justice
Associate Professor 2021-
Assistant Professor 2015-2021

American Bar Foundation
Affiliated Scholar 2021-
JPB Foundation Access to Justice Faculty Scholar 2020-2021

Universitat Pompeu Fabra School of Law, Barcelona, Spain
Visiting Researcher 2019

Education

Rutgers Law School 2022 (expected)
JD; Certificate in Criminal Law & Criminal Procedure

University of Minnesota, Twin Cities, Department of Sociology 2015
PhD in Sociology

University of Minnesota, Twin Cities, Department of Sociology 2012
MA in Sociology

Washington University in St. Louis, School of Arts & Sciences 2007
BA in Anthropology, BA in History

Books

2020 Sarah Lageson. 2020. **Digital Punishment: Privacy, Stigma, and the Harms of Data-Driven Criminal Justice.** Oxford University Press.
Media: Slate, The Markup, The Crime Report, Team Human, Digital Privacy News, Collateral Consequences Resource Center, ApexArt
Reviews: Punishment & Society, Criminal Justice Review, Journal of Constitutional History, Security Dialogue, Drexel Magazine, Journal of Sociology & Social Welfare, Surveillance & Society, Law Library Journal
Awards: 2021 Michael J. Hindelang Outstanding Book Award for most outstanding contribution to criminology; 2021 Law and Society Association Jacob Prize Honorable Mention; Privacy Law Scholars Conference Junior Scholar Award (for Chapter 5)

2018 Kyle Green and Sarah Lageson. 2018. **Give Methods a Chance**. New York: W.W. Norton.
Reviews: Teaching Sociology. 2019. 47(2): 161–163.

Peer Reviewed Publications

Forthcoming Sarah Lageson. "Digital Criminal Record Surveillance and Stigma." *Annual Review of Criminology* Vol 5.

Forthcoming Leslie Schneider, Mike Vuolo, Sarah Lageson, and Chris Uggen. "Before and After Ban the Box: Who Complies with Anti-Discrimination Law?" *Law & Social Inquiry.*

2021 Sarah Lageson, Elizabeth Webster and Juan Sandoval. "Digitizing and Disclosing Personal Data: The Proliferation of State Criminal Records on the Internet." *Law & Social Inquiry* 46(3): 635-665.
Media: *Vice, The Crime Report, Digital Privacy News, This Week in Sociological Perspectives Podcast, Criminal Legal News*

2020 Alessandro Corda and Sarah Lageson. "Disordered Punishment: Workaround Technologies of Criminal Records Disclosure and the Rise of a New Penal Entrepreneurialism." *British Journal of Criminology* 60(2):245-264.
Featured in the *Collateral Consequences Resource Center* blog

2020 Valerio Baćak, Sarah Lageson, and Kathleen Powell. "Fighting the Good Fight: Why Do Public Defenders Remain on the Job?" *Criminal Justice Policy Review* 31:939–961.

2020 Sarah Lageson. "Privacy Loss as Collateral Consequence." *The Annual Review of Interdisciplinary Justice Research* 9:16-31.

2019 Sarah Lageson, Megan Denver, and Justin Pickett. "Privatizing Criminal Stigma: Experience, Intergroup Contact, and Public Views about Publicizing Arrest Records." *Punishment & Society* 21(3): 315–341.

2019 Sarah Lageson, Suzy Maves McElrath, and Krissinda Palmer. "Gendered Public Support for Criminalizing 'Revenge Porn.'" *Feminist Criminology* 14(5):560-583.

2019 Sarah Lageson. "Digital Legal Subjects and the Use of Online Criminal Court Records for Research." *The Elgar Research Handbook on Law and Courts*.

2018 Sarah Lageson and Shadd Maruna. "Digital Degradation: Stigma Management in the Internet Age." *Punishment & Society* 20(1):113-133.

2018 Mike Vuolo, Chris Uggen, and Sarah Lageson. "To Match or Not to Match? Statistical and Substantive Considerations in Audit Design and Analysis." in S. Michael Gaddis, editor, *Audit Studies: Behind the Scenes with Theory, Method & Nuance.* New York: Springer.

2017 Sarah Lageson. "Crime Data, the Internet, and Free Speech: An Evolving Legal Consciousness." *Law & Society Review* 51(1):8-41.

2017 Mike Vuolo, Sarah Lageson, and Chris Uggen. "Criminal Record Questions in the Era of 'Ban the Box.'" *Criminology & Public Policy* 16(1):139-165.

2017 Mike Vuolo, Chris Uggen, and Sarah Lageson. "Race, Recession, and Social Closure in the Low Wage Labor Market: Experimental and Observational Evidence." *Research in the Sociology of Work* 30:141-183.

2016 Sarah Lageson. "Found Out and Opting Out: The Consequences of Online Criminal Records for Families." *The ANNALS of the American Academy of Political and Social Science* 665(1):127-141.

2016 Sarah Lageson. "Digital Punishment's Tangled Web." *Contexts* 15(1):22-27. Available online. Reprinted in *Contexts Reader* 3rd Edition, 2018. Syed Ali & Philip N. Cohen, eds. New York: W.W. Norton.

2016 Mike Vuolo, Chris Uggen, and Sarah Lageson. "Statistical Power in Experimental Audit Studies: Cautions and Calculations for Paired Tests with Dichotomous Outcomes." *Sociological Methods & Research* 45(2):260-303.

2015 Sarah Lageson, Mike Vuolo, and Chris Uggen. "Legal Ambiguity in Managerial Assessments of Criminal Records." *Law and Social Inquiry* 40(1):175-204.

2014 Chris Uggen, Mike Vuolo, Sarah Lageson, Ebony Ruhland, Hilary Whitham. "The Edge of Stigma: An Experimental Audit of the Effects of Low-level Criminal Records on Employment." *Criminology* 52(4):627-654.

2014 Mike Vuolo, Chris Uggen, and Sarah Lageson. "Taste Clusters of Music and Drugs: Evidence from Three Analytical Levels." *British Journal of Sociology* 65(3):520-54.

Grants

2021-2023 Clean Slate Initiative & New Venture Fund, $441,093
The Impact of Automated Record Clearance on Individuals, Families, and Communities
Co-Principal Investigator with Elsa Chen and Ericka Adams

2020-2021 American Bar Foundation/JPB Foundation Access to Justice Scholar Award, $74,000
Realizing a Clean Slate: Expanding Access and Improving Outcomes for Automated Criminal Record Expungement
Principal Investigator

2018-2020 National Institute of Justice, New Investigator/Early Career Award, $190,909
Multi-level Analyses of Accuracy and Error in Digital Criminal Record Data
Principal Investigator

2017-2019 Chancellor's Office Award, Rutgers University, $94,500
The Nebulous Nature of Criminal Records
Co-PI with Rob Stewart

2017 Big Data Analytics Grant Program, Rutgers University, $40,000
Understanding Systems and Outcomes of Indigent Defense using Big Data
Co-PI with Valerio Bacak and Lee Dicker

2017 Chancellor's Seed Grant, Rutgers University, $31,500
Social and Administrative Networks in Prison-Based Higher Education
Co-PI with Sara Wakefield

2016 Chancellor's Seed Grant, Rutgers University, $75,000.
Community Court Mental Health Initiative
Co-PI with Andres Rengifo

2016 Chancellor's Seed Grant, Rutgers University, $25,000
Criminal Justice Data Practices in Newark
Principal Investigator

2015 Social Cohesion and Technology Grant, Univ. of MN, $2,500
'Give Methods a Chance' Podcast Development
Co-PI with Kyle Green

2014-2015 Doctoral Dissertation Fellowship, University of Minnesota, $22,500

2013-2014 Bilinski Educational Foundation Dissertation Fellowship, $25,500

2011-2013 Graduate Digital Media Fellowship, University of Minnesota, $45,000

Journal Editing

2022 *Journal of Contemporary Criminal Justice, Special Issue: Violence, Voice, and Incarceration* (special issue of submissions written by people who are incarcerated).
Co-editor with Todd R. Clear and Jennifer Yang.

Manuscripts Under Review and In Preparation

"Satan's Minions" and "True Believers": How Criminal Defense Attorneys' Employ Quasi-Religious Rhetoric," with Elizabeth Webster, Kathleen Powell, and Valerio Baćak. Conditionally accepted at *Justice System Journal*

"Criminal Records, Clean Slates, and the Role of Data Privacy," with Alessandro Corda. Under review at *Law and Society Review*

"Patchwork Disclosure: Divergent Public Access and Personal Privacy Across Criminal Record Disclosure policy in the United States," with Juan Sandoval. Under review at *Law & Policy*

"The Stress of Injustice: Public Defenders and the Frontline of American Inequality," with Kathleen Powell and Valerio Baćak. Under review at *American Sociological Review*

"Digital Accusation, Virtual Punishment, and Due Process." Invited submission to *Illinois Law Review*

"Accusation, Supervision, and Surveillance Before a Conviction," with Lorena Avila Jaimes. Invited book chapter in *Punishment, Probation, and Parole: Mapping Out Mass Supervision*

"Criminal Record Data Commodities, Self-Discipline, and Techno-Administrative Injustice in Criminal Record Expungement." In preparation for submission.

"The Problem with Criminal Records," with Robert Stewart. In preparation for submission.

"Surveillance Deputies," with Sarah Brayne, Karen Levy, and Lauren Kilgour. In preparation for submission.

Public Writing & Reports

2021 How the Criminal Justice System Deploys Mass Surveillance on Innocent People. *Vice.*

2020 Companies accused of crimes get more digital privacy rights than people under new Trump policy (with Liz Chiarello). *The Conversation.*

2020 The Perils of Zoom Justice. *The Crime Report.*

2020 How criminal background checks lead to discrimination against millions of Americans. *Washington Post.*

2020 Mugshots don't belong on search engines. *San Francisco Chronicle.*

2020 The Purgatory of Digital Punishment. *Slate.*

2020 The Chan-Zuckerberg Initiative funds Clean Slate policy. So why won't Facebook take down mugshots? *The Appeal.*

2020 Small businesses just got a $300B bailout but many who need a second chance won't get a dime (with Colleen Chien). *New Jersey Star Ledger.*

2020 The Problem with 'Clean Slate' policies: Could broader sealing of criminal records hurt more people than it helps (with Jen Doleac). *Niskanen Center.*

2020 The Criminal Justice System's Big Data Problem. *Oxford University Press Blog.*

2019 Model Law on Non-Conviction Records (advisor). *Collateral Consequences Resource Center.*

2019 It's Time for the Digital Mug Shot Industry to Die. *Slate.*

2019 Privacy Concerns Don't Stop People from Putting Their DNA on the Internet to Help Solve Crimes. *The Conversation.*

2019 There's No Such Thing as Expunging a Criminal Record Anymore. *Slate.*

2019 It's Time to Address the Damage of a 'Criminal' Digital Reputation (with Jordan Hyatt). *Collateral Consequences Resource Center.*

2019 Can a Criminal Record Ever Be Fully Expunged? *Pacific Standard.*

2019 Policy Proposals for the 2019 Legislative Session. *Scholars Strategy Network.*
- Provide Individual Access to Personal Criminal Records
- Enforce Private Sector Compliance with Criminal Record Expungement Orders"
- Reclassify Mugshots as Closed, Private Records

2019 Criminal Background Checks for Employment Screening. *New Jersey State Office of Innovation, Future of Work Task Force.*

2017 Online Criminal Records & Legal Consciousness Theory. *Law & Society Review Blog.*

2016 Op-Ed: The Downside of Highlighting Crime on Social Media. *Minneapolis Star-Tribune*.

2016 Briefing: The Harmful Effects of Online Criminal Records. *Scholars Strategy Network.*

2014 The Enduring Effects of Online Mug Shots. *The Society Pages.*

2014 Health, Science, and Shared Disparities. *The Society Pages*

2012 Correcting American Corrections. *The Society Pages.*

2012 Love, Family and Incarceration: A Conversation with Megan Comfort. *The Society Pages.*

2012 Social Scientists Studying Social Movements. With Kyle Green and Sinan Erensu. *The Society Pages.*

Book Chapters & Reviews

2021 "Digital Punishment." In *Fundamental Rights and Criminal Procedure in the Digital Age*. Sao Paolo, Brazil: InternetLab.

2021 "Public Accusation on the Internet." With Kateryna Kaplun. In *Media and Law: Between Free Speech and Censorship, Sociology of Crime, Law, and Deviance, Volume 26.* Deflem, Mathieu and Derek M.D. Silva, eds. Bingley, UK: Emerald Publishing.

2021 "Book Review: Captivating Technology: Race, Carceral Technoscience, and Liberatory Imagination in Everyday Life edited by Ruha Benjamin." *Contemporary Sociology* 50(1): 28-29.

2021 "Studying Surveillance and Tech Through 'Digital Punishment'" in *Society, Ethics & The Law: A Reader,* David A. Mackey and Kathryn M. Elvey, eds. Burlington, MA: Jones & Bartlett.

2020 "Book Review: *The Digital Street* by Jeff Lane." *American Journal of Sociology* 125(4):1156-1158.

2018 "The Politics of Public Punishment." *Criminology & Public Policy* 17(3): 635-642.

2018 "Book Review: Policing and Social Media: Social Control in an Era of New Media by Christopher J. Schneider." *Contemporary Sociology* 47(2):217-219.

2017 "Criminal Records," with Christiane Schwarz. *Oxford Bibliographies in Criminology*. Ed. Beth M. Huebner. New York: Oxford University Press.

2015 "Book Review: The Eternal Criminal Record by James B. Jacobs." *The Canadian Journal of Crime and Criminal Justice.* Available online.

2015 "Music and the Quest for a Tribe." *Getting Culture.* New York: W.W. Norton

2014 "Correcting American Corrections, with Francis Cullen, David Garland, David Jacobs, and Jeremy Travis." *Crime and the Punished.* New York: W.W. Norton.

2014 "Discovering Desistance," with Sarah Shannon. *Crime and the Punished.* New York: W.W. Norton.

2013 "How Work Affects Crime – and Crime Affects Work – Over the Life Course," with Chris Uggen. *Handbook of Life Course Criminology*, edited by Marvin Krohn and Chris Gibson. New York: Springer.

2013 "Laughter and the Political Landscape," with Sinan Erensu and Kyle Green. *The Social Side of Politics*. New York: W.W. Norton.

2011 "The Wire Goes to College," with Kyle Green and Sinan Erensu. *Contexts* (10)3:12-15.

Awards

2021 Michael J. Hindelang Outstanding Book Award, American Society of Criminology

2021 Herbert Jacob Book Prize, Honorable Mention, Law & Society Association

2019 New Jersey State Office of Innovation Research Award, $2,500

2018 Privacy Law Scholars Conference Junior Scholar Paper Award, $2,500

2017 University of Minnesota Best Dissertation Award, $1,000

2012 Ron Anderson Technology and Social Cohesion Award, $2,500

2011-2013 Professional Development Award, University of Minnesota, $3,000

2010 Public Sociology Award, University of Minnesota

2010 Graduate Research Partnership Program Award, University of Minnesota, $4,000

2010 Academic Technology Award, Univ. of Minn., Office of Information Technology, $3,000

2008 Segal Americorps Education Award, $5,000

2007 Helen & Isaac Izenberg History Writing Award, Washington University in St. Louis

Expert Testimony

2021	ACLU Michigan and United States District Court, Eastern District of Michigan
2021	California State Assembly Committee on Privacy and Consumer Protection, AB-1475 Law Enforcement-Social Media Assembly Bill
2020	United States District Court, Central District of California, *Doe v. Barr et al.*
2020	United States District Court, District of New Mexico, *N. et al v. Alamogordo Police Department et al*
2019	United States District Court, Eastern District of Pennsylvania, *Taha v. Bucks County Correctional Facility*
2018	New Jersey State Assembly Judiciary Committee, A-3620 Expedited Expungement Assembly Bill

Invited Presentations

2022	UC-Berkeley Law, Center for the Study of Law and Society
2022	Columbia University Sociology
2021	Detroit Science Gallery
2021	County of Santa Barbara Public Defender
2021	Poynter Institute
2021	SEARCH: National Consortium for Justice Information and Statistics
2021	Massachusetts Committee for Public Counsel Services
2021	Society for the Study of Social Problems Book Panel
2021	RAND Corporation and the Arnold Foundation
2021	Privacy Law Scholars Conference
2021	Texas A&M Law School
2021	Department of Criminal Justice, Temple University
2021	The Young Women's Leadership School of Astoria, NYC
2021	Department of Sociology, University of Hong Kong
2021	New York State Youth Justice Institute
2021	Zicklin Center for Corporate Responsibility at Baruch College, CUNY
2020	Philadelphia District Attorney's Office
2020	Department of Criminology and Criminal Justice, University of Maryland
2020	Baruch College, the City University of New York
2020	InternetLab perquisa em direito e tecnologia Internation (Brazil) Conference on Fundamental Rights and Criminal Procedure in the Digital Age (Keynote)
2020	McCourt School of Public Policy, Georgetown University
2020	Cleveland Legal Aid Society
2020	Data Science for Public Service Meetup, Atlanta Regional Commission
2020	Department of Criminology, Georgia State University
2020	Crime, Law & Deviance Working Group, Dept of Sociology, UT-Austin
2020	American Bar Foundation Seminar Series
2020	School of Criminal Justice, University of Cincinnati (postponed)
2019	Student-Invited Speaker, University of California-Irvine
2019	Sociology Workshop, University of Minnesota
2019	International Seminar, Universitat Pompeo Fabra, Barcelona, Spain
2019	Digitizing Justice Conference (Keynote), University of Winnipeg
2019	Drug Policy Alliance, New York City
2018	Tech/Law Colloquium, Cornell University
2018	Amsterdam Privacy Conference
2018	Department of Public Policy, Rochester Institute of Technology

2018 Department of Sociology, SUNY-Brockport
2018 Measures for Justice, Rochester NY
2018 Sociology Colloquium, Washington University in Saint Louis
2018 Media Studies Colloquium, Queens College New York
2018 Technology, Law and Society Institute, University of California-Irvine
2018 Privacy Law Scholars Conference, Washington DC
2018 Automated Justice Workshop, Collegium Helveticum, Zurich
2018 LSA Punishment & Society Digital Speaker Series
2018 The University of Manchester Centre for Criminology and Criminal Justice
2018 Queens University Belfast School of Law
2017 Law, Crime & Deviance Workshop, New York University Sociology
2015 Robina Institute, University of Minnesota Law School, Minneapolis, MN.

Courses Designed & Taught

Rutgers University
CJ 653 Criminal Justice Policy PhD Program Seminar
CJ 652 Law & Society PhD Program Seminar
CJ 653 Mixed Methods PhD Seminar (co-I with Sara Wakefield)
CJ 529 Research & Evaluation MA Program Seminar
CJ 202 Constitutional Issues in Criminal Justice
CJ 102 Introduction to Criminal Justice

University of Minnesota
SOC 4108 Current Issues in Crime Control
SOC 4161 Criminal Law in American Society
SOC 3101 Introduction to American Criminal Justice

Student Advising

Dissertation Advising
Lorena Ávila Jaimes
Kateryna Kaplun
Katherine Bright

Dissertation Committees
Brandan Turchan
Chris Chukwedo
Christiane Schwarz
Vijay Chillar
Amanda D'Souza
Lauren Kilgour *(Cornell PhD 2021, current Postdoctoral Research Associate at Princeton)*
Elizabeth Webster *(Rutgers PhD 2018, current Assistant Professor at Loyola University Chicago)*

Empirical Paper Committees
Christiane Schwarz (chair)
Kateryna Kaplun (chair)
Katherine Bright
Brandan Turchan
Sofia Flores

Undergraduate Honors Theses
Maram Tai-Elkarim

Service

University and Academic Service

2021-	Rutgers University Research & Professional Development Committee Chair
2021-	Rutgers University Undergraduate Bridge Program Committee Chair
2020-	Rutgers Law School Criminal Law Society, Evening Student Representative
2019-2021	Rutgers Program on Learning & Teaching Faculty Governance Committee
2018-2021	Rutgers University Research & Professional Development Committee
2018-	Law & Society Association, CRN #37 Tech/Law/Society Research Network Chair
2015-2020	Rutgers University M.A. Program Committee
2017-2018	American Society of Criminology (ASC) Program Committee
2017-2018	Rutgers University Faculty Hiring Committee
2016-2018	National Science Foundation Research Experience for Undergraduates Mentor
2016-2017	New Jersey Scholarship and Transformative Education in Prisons Committee
2015-2016	Rutgers Engaged Scholarship & New Professoriate Committee (chair)
2013-2014	University of Minnesota Promotion, Tenure & Salary Committee
2010-2011	University of Minnesota Sociology Research Institute Committee

Legal & Non-Profit Service

2021	New York Legal Assistance Group SDNY Federal Pro Se Clinic, Legal Intern
2021	New Jersey Conviction Review Unit, Actual Innocence Project, Legal Volunteer
2021	New York Office of the Appellate Defender, Legal Intern
2021-	Justice Catalyst, Consultant
2020-	Good Call NYC Emergency Arrest Hotline, Consultant
2018-	Center for Advancing Correctional Excellence Board Member, George Mason Univ.
2018-	Crime & Justice Research Alliance (CJRA) Expert
2018-	National Incarceration Association (NIA) Expert Advisor
2015	Minneapolis Police Officer Interview Project
2014	Crime Victim Service Access Project
2012	"Mind the Gap" Prisoner Reentry Project
2012	Seward Towers Housing Complex Community Survey
2010-2012	'Families in Focus' Prison Program, Minnesota Department of Corrections
2010	Domestic Violence Research Initiative Report for United Way
2007-2011	Prisoner Re-Entry Family Strengthening Project, Council on Crime and Justice
2008-2010	Healthy Educational Lifestyles Project, Minnesota Department of Corrections
2009	Minnesota FATHER Project Program Analysis
2008	The State of Fatherhood Programming, Minnesota Fathers & Families Network

Review

American Journal of Sociology, American Sociological Review, Criminology, Criminal Justice Policy Review, European Journal of Criminology, Feminist Criminology, Humanities and Social Sciences, The Information Society, Journal of Black Studies, Journal of Computer Mediated Communication, Journal of Research in Crime and Delinquency, Justice Quarterly, Law & Policy, Law & Social Inquiry, Law & Society Review, Punishment & Society, RAND, SAGE Open, Springer, Qualitative Sociology, Social Forces, Social Problems, Sociological Theory

National Science Foundation, Dutch Research Council (NWO), Independent Social Research Foundation

Editorial

2016-2019	Editorial Board, Contexts Magazine
2014-2015	Graduate Editorial Board, Law & Society Review
2010-2015	Graduate Editorial Board, The Society Pages
2009-2011	Graduate Editorial Board, Contexts Magazine

Media/Production

2015-2018	Creator, Producer and Host, Give Methods a Chance Social Science Podcast
2014-2015	Creator, Producer and Host, Office Hours Social Science Podcast
2007-2015	Documentary Producer, On Air Host. KFAI Community Radio, Minneapolis MN

Community

2017-2018	Prison-based Tutor, Petey Greene Foundation Prison Education Program
2008-2009	McNair Scholars Program Research Mentor, University of Minnesota
2008	Instructor, C-Dreams Photography Class for Children of Incarcerated Parents
2007	Mentor, Youth News Initiative. Minneapolis, MN
2007	Mentor, International Women's Day Radio Programming. Minneapolis, MN

Conference Presentations

2021	Administrative and Technological Injustice in the Expungement Process. American Sociological Association Annual Meeting, Chicago
2021	Criminal History Information, Automated Clean Slates and the American Way of Data Privacy. With Alessandro Corda. Privacy Law Scholars Conference (virtual)
2021	Author Meets Reviewer: *Predict & Surveil* and *Digital Punishment*. With Sarah Brayne, Mona Lynch, Matthew Clair, and Keith Guzik. Law and Society Association Annual Meeting (virtual)
2019	Technology, Privacy, and Criminal Records: Innovations and Challenges in Clean Slate and Expungement Policy, American Society of Criminology Annual Meeting, San Francisco
2019	Tools for Communicating Sociology Outside the Discipline: What Works, What Doesn't Work, and What's Promising, American Sociological Association Annual Meeting, New York City
2018	Criminal Records as Big Data Commodity. American Society of Criminology Annual Meeting, Atlanta
2018	Error in Criminal Justice Data Across Public & Private Platforms. American Society of Criminology Annual Meeting, Atlanta
2018	The Weight of Public Service: Occupational Stress and Wellbeing Among Public Defenders. American Society of Criminology Annual Meeting, Atlanta. With Valerio Bacak and Kathleen Powell
2018	Surveillance and Social Control Through the Collection and Distribution of Mug Shots in the U.S. American Society of Criminology Annual Meeting, Atlanta. With Sarah Muskovitz
2018	Mugshot Distribution in the U.S.: A Sociolegal Approach. Law & Society Association Annual Meeting, Toronto. With Anna Banchik and Sarah Muskovitz
2018	Satan's Minions & True Believers. Law & Society Association Annual Meeting, Toronto. With Liz Webster and Kathleen Powell
2017	Intersecting Roles of Gender, Race and Skin Tone in Sentencing: Findings from Two Million Records. American Society of Criminology Annual Meeting, Philadelphia. With Valerio Bacak
2017	Assessments of Public Defender Attrition." American Society of Criminology Annual Meeting, Philadelphia. With Valerio Bacak and Kathleen Powell
2017	Digital Cultures of Control & The Field of Online Crime Reporting. American Sociological Association Annual Meeting, Montreal
2017	Banning the Box, Keeping the Stigma? Sustaining Attitudes Post Ban-the-Box. American Sociological Association Annual Meeting, Montreal. With Lesley Schneider, Mike Vuolo, and Chris Uggen.
2017	From Handshakes to Mouse Clicks: The Technological Transformation of Commercial Bail. Law and Society Association Annual Meeting, Mexico City. With Josh Page
2017	Attrition in Public Defenders Offices. Law and Society Association Annual Meeting, Mexico City. With Valerio Bacak
2016	Uses, Abuses, and Error in Criminal History Data Across Platforms. American Society of Criminology Annual Meeting, New Orleans
2016	Before and After Ban the Box: Employer Responses in Minnesota. American Society of Criminology Annual Meeting, New Orleans. With Lesley Schneider, Mike Vuolo, and Chris Uggen

2016	Digital Punishment in Online American Media. International Sociology Association Conference, Vienna, Austria
2016	Criminalizing Revenge Porn. Internet Law Works in Progress Conference, New York Law School.
2015	Tough on Crime, Tough on Families? Criminal Justice and Family Life in America. American Society of Criminology Annual Meeting, Washington, DC
2015	Legislating Revenge Porn: Protecting Victims and Preserving Civil Liberties. American Society of Criminology Annual Meeting, Washington, DC
2015	The Consequences of Online Criminal Records for Children and Families. Tough on Crime, Tough on Families? Criminal Justice & Family Life Conference, Ithaca, NY
2014	Digital Punishment: The Production and Consequences of Online Crime Reporting. Sociology Workshop Talk, University of Minnesota, Minneapolis, MN
2014	The Effects of Online Reader Comments on Crime News. American Society of Criminology Annual Meeting, San Francisco, CA
2014	How Do Employers Ask about Criminal Records on Entry-Level Job Applications? American Society of Criminology Annual Meeting, San Francisco, CA. with Mike Vuolo and Chris Uggen
2014	Mass Media and the Public Sphere, Invited Discussant. Midwest Sociological Society Annual Meeting, Omaha, NE
2014	Conceptions of the First Amendment and Online Crime Reporting. Law and Society Association Annual Meeting, Minneapolis, MN
2013	The Construction of Crime through News and Blogging. American Society of Criminology Annual Meeting, Atlanta, GA
2013	Statistical Power in Experimental Audit Studies: Cautions and Calculations for Paired Tests with Dichotomous Outcomes. American Society of Criminology Annual Meeting, Atlanta, GA
2013	Punishment, Society and Journalism: Interviews with Bloggers and Journalists. Law and Society Association Annual Meeting, Boston, MA
2013	Critical Dialogue: New Media and Sociology. Society for the Study of Social Problems Annual Meeting, New York, NY
2013	Public Sociology Online. Media Sociology Pre-Conference to ASA Annual Meeting, New York, NY
2013	The Construction of Crime through News and Blogging. American Society of Criminology Annual Meeting, Atlanta, GA
2013	The Effect of the Great Recession on Entry-Level Job Applicants by Race: A Happenstance Field Experiment. American Sociological Association Annual Meeting, New York, NY, with Mike Vuolo and Chris Uggen
2013	Statistical Power in Experimental Audit Studies: Cautions and Calculations for Paired Tests with Dichotomous Outcomes. American Criminological Society Annual Meeting, Atlanta, GA
2012	Evaluation of a Federally-Funded Prisoner Reentry Program. American Society of Criminology Annual Meeting Chicago, IL, with Ebony Ruhland
2012	Employer Perspectives on Criminal Records. Midwest Sociological Society Annual Meeting, Minneapolis, MN, with Mike Vuolo and Chris Uggen
2011	Music and Drugs: Evidence from Three Analytical Levels. American Sociological Association Annual Meeting, Las Vegas, NV
2011	Qualitative Evidence for Employer Decision-Making for Applicants with Criminal Records. Sociology Research Institute, University of Minnesota: Minneapolis, MN
2010	Employer Decisions Regarding Criminal Records: A Comparison of Self-Reported and Observed Behavior. American Society of Criminology Annual Meeting, San Francisco, CA., with Mike Vuolo and Chris Uggen

Media

2021
Deseret News, "Neighborhood, watched." 8/31/21
LA Times, "Police take 'wanted' posters onto social media, nabbing suspects and ruining lives." 6/29/21
Legal Talk Today, "Citizen Sleuths: What happens when amateur crime investigators go too far?" 6/11/21
USA Today, "Death threats to vitriol: New England families pay a price in public fights for justice" 6/10/21
CNN, "Helicopters, a patrol car and virtual bodyguards: Inside Citizen's scattered push to upend public safety." 6/3/21
Milford Daily News, "Public pressure is influencing Mikayla Miller's death investigation. Should it have to?" 6/3/21
The Sunday Times, "US Confidential: Live crime apps fuel fear and vigilantism in New York City." 5/28/21
The Marshall Project, "Does Banning People with Felonies on Dating Apps Really Make Anyone Safer?" 5/20/21
The Guardian, "Citizen: crime app falsely accused a homeless man of starting a wildfire." 5/19/21
The Crime Report, "False Accusation by Citizen Crime App Highlights Dangers." 5/19/21
Criminal Legal News, "Online Records Impose Digital Punishment for Millions." 5/15/21
Pew Stateline, "Online, mug shots are forever. Some states want to change that." 5/10/21
Digital Privacy News, "Disclosing criminal records on the internet creates 'digital punishment.'" 4/26/21
NJ.com "Why it's still so hard to wipe away a criminal record despite promise of a law Murphy signed." 4/26/21
The Guardian, "Tinder's plan for criminal record checks raises fears of 'lifelong punishment.'" 4/13/21
Tech Policy Press, "Recommendations to End Virtual Stop and Frisk Policing on Social Media." 4/13/21
Vice, "The Viral Story About an Amy Poehler Lookalike Is Fake and Harmful." 4/7/21
The Crime Report, "Online Criminal Records Impose 'Digital Punishment' on Millions of Americans: Study." 2/9/21
Law360, "Virtual Courts Lead to Tension Between Access and Privacy." 1/28/21
The Crime Report, "Public Defenders Suffer from the 'Stress of Injustice': Study." 1/26/21
The Appeal, "Basically Cyberbullying: How cops abuse social media to publicly humiliate." 12/21/20

2020
The Markup, "Locked Out: When zombie data costs you a home." 10/6/20
Street Sense Media, "From parole to pride: DC agency empowers individuals vulnerable to crime." 9/9/20
Minneapolis Star-Tribune, "Troubled south Minneapolis neighborhood renews calls for help from police, City Hall." 7/13/20
WNYC The Takeaway, "Local news rethinks its use of mugshots."2/26/20
CBS News, "'Citizen' App provides real-time crime alerts in your neighborhood." 2/24/20

2019
Ipse Dixit Legal Scholarship Podcast, 11/5/19
Quartz, "Are neighborhood watch apps making us safer?" 10/29/19
American Bar Association Legal Rebels Podcast, "Expunging Records with New Technology." 10/16/19
Center for American Progress, "NeighborhoodStat: Strengthening public safety through community empowerment." 10/2/19
Springfield News-Leader, "Facebook groups work to expose child predators in the Ozarks. Are they doing harm or good?" 10/2/19
The John Howard Society of Canada Blog, "Internet info on people and crime is damaging and often inaccurate: Lageson." 9/21/19
tbs eFM radio, Seoul, South Korea. "News Focus 2 with Sarah Lageson: Impact of mug shots criminal justice system." 9/9/19
Apex Art Gallery, "Digital Punishment and the Modern Mugshot." 9/7/19

The Appeal, "Pennsylvania county owes $67 million after man finds arrest records on mugshots.com." 8/27/19
Quartz, "There's a global movement of Facebook vigilantes who hunt pedophiles." 7/24/19
O Estadão de S. Paolo, "EUA usam árvore genealógica para solucionar crimes." 7/7/19
Albuquerque Journal, "Like diamonds, mugshots are forever - even for the innocent." 3/23/19
Noozhawk Santa Barbara, "Mugshots live on - even for the not guilty." 3/23/19
Massachusetts Daily Collegian, "Expunge all marijuana crimes automatically." 3/21/19
Sirius XM Radio. "Top of Mind with Julie Rose: Mugshots for Profit." 3/14/19
Politico, "Green Light for Legal Weed?" 2/19/19
New Jersey Star Ledger. "N.J.'s governor promised to clear weed convictions. Here's just how hard that will be." 2/17/19
Law360, "Clean Slate: How ditching a criminal record is no easy task." 2/10/19

2018 National Public Radio's Planet Money, "Mugshots for sale." 11/23/18
Tampa Bay Times, "Weighing access and fairness, Hillsboro Sheriff's Office limits online jail records." 11/5/18
Team Human Podcast, "Giving Each Other Some Slack." 9/29/18
The Guardian, "Haunted by a mugshot: how predatory websites exploit the shame of arrest." 6/12/18
NJ Spotlight, "Can NJ's effort to legalize pot make it through the expungement maze?" 6/5/18
NJTV News, "As legalization looms, how will NJ address marijuana convictions?" 6/4/18
San Francisco Examiner, "SFPD blasts alleged drug dealers online as critics decry 'public shaming.'" 4/29/18
American Bar Association, ABA Journal Blog "Use copyright law to battle mugshot extortion." 3/27/18
LawPod Podcast, "Digital Punishment Through Online Criminal Records." 3/1/18

2017 Austin American-Statesman, "Former RideAustin Driver's Rape Case Reignites Debate over Ride-hailing Background Checks." 11/10/17
NJ Spotlight, "Governor's Race 2017: Candidates Sharply Divided on Crime, Social Justice." 11/3/17
New York Times, "Innocent Until Your Mug Shot is on the Internet." 6/3/17
The Marshall Project, "Mugged!" 6/3/17
Salon, "Murder on Facebook raises big censorship questions." 4/21/17

2016 New York Times, "Have You Ever Been Arrested? Check here." 5/24/16

2014 Examiner.com, "Using the Internet for Social Control." 9/11/14
Law Professor Blogs Network, "How Managers Consider Job-Applicant Criminal History." 10/29/14

Affiliations

American Society of Criminology, American Sociological Association, Eastern Sociological Society, Indigent Defense Research Association, Law and Society Association, Midwest Sociological Society, Racial Democracy Crime and Justice Network, Rutgers Law Criminal Law Society

Exhibit 6:

Doe v Curran, unpublished opinion of the United States District Court for the Eastern District of Michigan, issued Jan 10, 2020 (Case No. 18-11935)

2020 WL 127951
Only the Westlaw citation is currently available.
United States District Court, E.D. Michigan, Southern Division.

John DOE, Plaintiff,
v.
Brendan P. CURRAN, et al., Defendants.

Case No. 18-11935
|
Signed 01/10/2020

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OPINION AND ORDER RESOLVING MOTIONS FOR SUMMARY JUDGMENT AND CONTINUING PRELIMINARY INJUNCTION

ROBERT H. CLELAND, UNITED STATES DISTRICT JUDGE

***1** Plaintiffs John Doe 1 and John Doe 2 filed a one-count civil rights complaint alleging that Defendants, who are various Michigan state and county government and law enforcement officials, violated their rights under the Fourteenth Amendment by enforcing against them unconstitutional portions of Michigan's Sex Offender Registration Act ("SORA"). Mich. Comp. Laws § 28.721 *et seq.* Plaintiffs seek declaratory and injunctive relief related to certain allegedly unconstitutional provisions of SORA, monetary damages, and attorney fees. On November 26, 2019, the case was reassigned to the undersigned judge as a companion to certified class action *Does v. Snyder*, No. 16-13137 (E.D. Mich.) ("*Does II*").

Pending before the court are four motions for summary judgment. Each Defendant moves for summary judgment *in toto*, and Plaintiffs move for summary judgment in part, *i.e.*, as to their prayer for injunctive and declaratory relief on their Fourteenth Amendment vagueness and strict liability claims. The motions have been fully briefed, and the court determines that a hearing is not necessary. E.D. Mich. LR 7.1(f)(2). For the reasons explained below, the court will grant Defendants' motions for summary judgment on the individual capacity claims. The court will deny without prejudice Plaintiffs' and Defendants' motions as they relate to the official capacity claims. Finally, the court will stay the case until the resolution of *Does II* and will continue the preliminary injunction currently in place for Doe 1.

I. BACKGROUND

A. Factual Background

Plaintiffs are both Michigan residents who are required to comply with SORA. Plaintiff John Doe 1 lives in Otsego County and is subject to SORA based on a 2008 juvenile criminal conviction. Plaintiff John Doe 2 lives in Genesee County and is subject to SORA based on a 2010 criminal conviction.

Plaintiffs sue Defendants Richard Snyder, formerly Governor of Michigan, and Kristine Etue, formerly director of the Michigan State Police, in their official capacities for their roles in enforcing SORA. They sue the remaining Defendants—a county prosecutor (Curran), a county sheriff (Nowicki), a county deputy (Puzon) and a probation officer (Schriner)—in both their official and individual capacities.

1. SORA and *Does I*

Under SORA's student safety zone restriction, anyone subject to the Act may not reside, "loiter," or work "within 1,000 feet" of school property. Mich. Comp.

Laws §§ 28.734(1)(a)–(b), 28.735(1). SORA defines "school property" as:

> [A] building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies: (i) [i]t is used to impart educational instruction[, or] (ii) [i]t is for use by students not more than 19 years of age for sports or other recreational activities.

Mich. Comp. Laws § 28.733(e). The statute also defines "loiter" as "to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors." Mich. Comp. Laws § 28.733(b).

***2** Violating SORA is a strict liability offense. For the first violation, "the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than $1,000.00, or both." Mich. Comp. Laws § 28.735(2)(a). Individuals who violate SORA more than once are "guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both." Mich. Comp. Laws § 28.735(2)(b).

In *Does v. Snyder*, No. 12-11194 (E.D. Mich.) ("*Does I*"), this court declared that SORA's student safety zone provision and strict liability regime violated the Due Process Clause. *Does I* (E.D. Mich. Mar. 31, 2015) (ECF No. 103, PageID. 5890–95, 5909.) On appeal, the Sixth Circuit declined to address these rulings—thereby leaving them intact—but instead reversed for reasons related to the plaintiffs' claim under the Ex Post Facto Clause. *Does #1-5 v. Snyder*, 834 F.3d 696, 706 (6th Cir. 2016).

2. John Doe 1

In July 2008, Doe 1 was convicted in Florida of lewd and lascivious molestation by a minor under 17 on a minor under 12. (ECF No. 68-1, PageID.644.) After his release from jail in 2012, he was required to register as a sex offender in Florida; however, he failed to do so and was sentenced to two additional years in jail. (*Id.* at PageID.649–50.) Doe 1 moved to Michigan after his release in 2014. (*Id.* at 50.) Thereafter, Doe 1 moved to Michigan where he was required to comply with SORA. (*Id.* at 652.) He oscillated between living in Otsego and Monroe Counties, and in 2016 he was charged with failing to report an address change. (*Id.* at 652–53.) He was convicted and sentenced to four months in county jail, which he served on work release. (*Id.* at 653–54.)

In September 2017, Doe 1 reported to the Otsego County Sheriff's Office and met with then-deputy Defendant Ron Puzon. (*Id.* at 654–55.) Defendant Mathew Nowicki served as the Otsego County Sheriff at the time of these events. Doe 1 contends that Puzon told him that he did not need to comply with SORA's student safety zone provision because the provision had been ruled unconstitutionally vague in *Does I*. (*Id.* at 656–57.) Puzon denies ever telling Doe 1 that he did not need to comply with SORA. (ECF No. 68-2, PageID.717.) After speaking with Puzon, Doe 1 alleges that he researched online and confirmed on the National Association for Rational Sex Offense Legislation's website that SORA's student safety zone requirements had been declared unconstitutional. (ECF No. 68-1, PageID.657.)

Believing that he did not need to comply with SORA's safety zone restrictions, Doe 1 purchased a home in December 2017 in which he lived with his fiancé and three children. (*Id.* at 631, 658.) He admitted that his house was close to the Gaylord Intermediate Schools campus that the close proximity motivated him to select the home because his fiancé's daughter attended the school. (*Id.* at 631–32.)

The parties used online tools to measure the distance from Doe 1's home to student safety zones. Puzon explained that generally, the student safety zone is measured from property line to property line. (ECF No. 68-2, PageID.698.) However, Puzon acknowledged that there was no official standard for measuring the student safety zones and that he "tried to do the best [he] could with ... what information [he] had." (*Id.*) Puzon used a publicly available Otsego County Equalization mapping tool[1] similar to Google Maps to determine whether Doe 1's home fell within a student safety zone. (*Id.* at 702.) The tool allowed Puzon to measure the distance from a given address to the nearest school. (*Id.* at 703–04.) According to Doe 1, his home is 528 feet away from the nearest school when measured using Google Maps and 1056 feet away from the nearest school when measured using MapQuest. (ECF No. 70-2, PageID.777.) Defendants assert that Doe 1's home is 454 feet away from the nearest school when measured using Google Maps. (*Id.*)

***3** In January 2018, Defendant Brendan Curran, the Otsego County Prosecutor, sent Doe 1 a letter explaining that he was living in a student safety zone and, as such, could be prosecuted for violating SORA. (ECF No. 68-3, PageID.726.) The Curran letter stated that because Doe 1 claimed to have received inaccurate guidance about the student safety zone, Curran would allow Doe 1 until July

2018 to find a new house and move or face prosecution. (*Id.*) Curran also stated in the letter that he believed that Doe 1 thought his actions were legal because there existed "some measure of confusion" regarding SORA's student safety zones. (*Id.*) Instead of moving, Doe 1 filed this action.

3. John Doe 2

In 2010, John Doe 2 was convicted in Louisiana for possession of child pornography, an offense that subjected him to SORA when he moved to Michigan. (ECF No. 32, PageID.207.) As an Army veteran, Doe 2 relied on the Veteran's Administration's Supportive Services of Veteran Families program to rent a home. (ECF No. 70-2, PageID.777.) In 2017, Doe 2 was convicted of failing to register as a sex offender, and the Genesee County Circuit Court ordered him to a term of probation under the supervision of the Michigan Department of Corrections. (ECF No. 66-3, PageID.535–36.) One condition of Doe 2's probation mirrors SORA's student safety zone prohibition—he "must not reside, work or loiter within a student safety zone defined as [sic] 1,000 feet of school property (developmental kindergarten through 12th grade school) unless [he met] a statutory exception." (*Id.* at 535.)

When the probation order was entered, Doe 2 lived in Shiawassee County, Michigan. Defendant Kevin Schriner initially supervised Doe 2's probation. (*Id.*) After completing the probation orientation process with Schriner, Doe 2's supervision was transferred to a probation agent in Shiawassee County. (ECF No. 66-2, PageID.524.) But in August 2018, Doe 2 moved to Genesee County, and Schriner was re-assigned to supervise his probation. (*Id.* at 525.)

When Schriner resumed supervising Doe 2's probation, he arranged to visit Doe 2 at his home to verify his residence. (*Id.*) As part of the residency verification, Schriner investigated whether Doe 2 lived within a student safety zone. (*Id.* at 526–27, 529–30.) Schriner used Google Maps to measure Doe 2's home from its property line to the nearest student safety zone and concluded that Doe 2 lived within 950 feet of a student safety zone, in violation of SORA and his probation terms. (*Id.* at 527–28.) Doe 2 claims that when *he* measured the distance from his home to the nearest student safety zone using Google Maps, his home was 2112 feet away from the nearest school and that when he measured the distance using MapQuest, his home was 1056 feet away from the nearest school. (ECF No. 70-2, PageID.778.)

Schriner requested a measurement from the Michigan State Police to corroborate his findings. (ECF No. 66-4, PageID.538.) A Michigan State Police trooper confirmed that Schriner lived within the student safety zone but determined that he lived 917 feet from the school. (*Id.*) Thereafter, Schriner met with Doe 2 in-person to explain that he needed to move to remedy the violations and comply with SORA, and he offered to help Doe 2 find new housing. (ECF No. 66-2, PageID.529–30.) Schriner also sent Doe 2 a letter notifying him of the violation and warning him that probation violation proceedings would occur if he did not vacate his current residence. (ECF No. 65-5, PageID.540.)

Shortly after receiving the warning letter, Doe 2 obtained counsel, who contacted Schriner and informed him that Doe 2 planned to sue for an injunction precluding the enforcement of SORA's student safety zone provision. (ECF No. 66, PageID.468.) Schriner then submitted to the judge who ordered Doe 2's probation a report requesting an extension for Doe 2's compliance. The judge extended Doe 2's time to comply with SORA and his probation order, pending the outcome of Doe 2's threatened litigation. (ECF No. 66-2, PageID.530–31.) On September 27, 2018, after the filing of the instant lawsuit, the Genesee County Circuit Court discharged Doe 2 from probation. (ECF No. 66-7, PageID.544.)

B. Procedural History

***4** In July 2018, Doe 1 filed a motion for preliminary injunction to prevent Curran from prosecuting him for living within a student safety zone. (ECF No. 6.) The judge assigned to this case at that time granted the motion. (ECF No. 27.) Since the case was reassigned to the undersigned judge, the court entered a stipulated order to extend the preliminary injunction until the resolution of the *Does II* case. (ECF No. 90.)

II. STANDARD

Summary judgment is appropriate when there exists no dispute of material fact and the moving party demonstrates entitlement to judgment as a matter of law. Fed. R. Civ. P. 56(a). In evaluating a motion for summary judgment, the court considers all evidence, and all reasonable inferences flowing therefrom, in the light most

favorable to the nonmoving party. *Moran v. Al Basit LLC*, 788 F.3d 201, 204 (6th Cir. 2015). The court may not make credibility determinations or weigh the evidence presented in support or opposition to a motion for summary judgment, only the finder of fact can make such determinations. *Laster v. City of Kalamazoo*, 746 F.3d 714, 726 (6th Cir. 2014).

The movant has the initial burden of showing—pointing out—the absence of a genuine dispute as to any material fact; i.e., "an absence of evidence to support the nonmoving party's case." *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 325 (1986). The burden then shifts to the nonmoving party to set forth enough admissible evidence to raise a genuine issue of material fact for trial. *Laster*, 746 F.3d at 726 (citing *Celotex Corp.*, 477 U.S. at 324). A genuine issue exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Liberty Lobby*, 477 U.S. at 248; *Williams v. AT&T Mobility Servs. LLC*, 847 F.3d 384, 391 (6th Cir. 2017). Not all factual disputes are material. A fact is "material" for purposes of summary judgment when proof of that fact would establish or refute an essential element of the claim "and would affect the application of the governing law to the rights of the parties." *Rachells v. Cingular Wireless Employee Servs., LLC*, 732 F.3d 652, 660 (6th Cir. 2013).

III. DISCUSSION

All Defendants move for summary judgment. The Defendants sued in their individual capacities argue that they are entitled to some form of immunity. Defendants also argue that Plaintiffs' official capacity claims for injunctive relief are subsumed by the *Does II* certified class action. Plaintiffs move for summary judgment and injunctive relief on their strict liability and due process challenges to SORA (their official capacity claims). The court begins by addressing the individual capacity claims against Defendants Curran, Schriner, Nowicki, and Puzon.

A. Individual Capacity Claims

1. Prosecutorial Immunity (Curran)

Plaintiffs sue Curran in his individual capacity for a letter he sent to Doe 1 in which he "threatened" to prosecute Doe 1 if he failed to move to a new home outside of a student safety zone. Curran argues that he is entitled to absolute prosecutorial immunity for this action. (ECF No. 68, PageID.588.) Plaintiffs assert that Curran is not entitled to prosecutorial immunity because he was acting in a pre-charge, quasi-investigator capacity when he sent the letter to Doe 1. (ECF No. 78, PageID.1048.)

"[A] prosecutor enjoys absolute immunity from § 1983 suits for damages when he acts within the scope of his prosecutorial duties." *Imbler v. Pachtman*, 424 U.S. 409, 420 (1976). Prosecutorial immunity is appropriate when the prosecutor's "challenged activities [were] an integral part of the judicial process." *Id.* at 430 (internal quotation omitted). Absolute immunity protects prosecutors from exposure to suits, not just liability. *See McSurely v. McClellan*, 697 F.2d 309, 315 (D.C. Cir. 1982). "[T]he official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question." *Burns v. Reed*, 500 U.S. 478, 486 (1991).

***5** Courts use a "functional approach" to determine whether a prosecutor's actions entitle him to absolute immunity. *Buckley v. Fitzsimmons*, 509 U.S. 259, 269 (1993). Protected acts include those "undertaken by a prosecutor in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the state." *Id.* at 273. "The analytical key to prosecutorial immunity ... is advocacy—whether the actions in question are those of an advocate." *Skinner v. Govorchin*, 463 F.3d 518, 525 (6th Cir. 2006) (internal quotation marks omitted). The Sixth Circuit has held that a prosecutor's pre-charge actions are not the kind of advocacy protected by absolute immunity. *Spurlock v. Thompson*, 330 F.3d 791, 799 (6th Cir. 2003) ("[W]here the role as advocate has not yet begun, namely prior to indictment, or where it has concluded, absolute immunity does not apply.").

Here, Curran is not entitled to prosecutorial immunity for his pre-charge conduct. When Curran sent the letter to Doe 1, no charges had been filed against Doe 1 for violating SORA. Thus, Curran's "role as advocate ha[d] not yet begun." *Spurlock*, 330 F.3d. at 799. However, for reasons explained later in this opinion, he is entitled to qualified immunity. *See infra* Part III.A.3.

2. Absolute Quasi-Judicial Immunity (Schriner)

Defendant Schriner served as the probation officer for Doe 2. He is sued in his individual capacity for informing Doe 2 that he must move from his home by September 21,

2018, or that Schriner would issue a probation violation. (ECF No. 32, PageID.202–04.) Schriner argues that he is entitled to absolute quasi-judicial immunity for this action, which he claims was taken to ensure that Doe 2 complied with the terms of his probation. (ECF No. 66, PageID.501.) In the alternative, he argues that he is entitled to qualified immunity. (*Id.* at 504.)

"Quasi-judicial immunity extends to those persons performing tasks so integral or intertwined with the judicial process that these persons are considered an arm of the judicial offer who is immune." *Bush v. Rauch*, 38 F.3d 842, 847 (6th Cir. 1994). The Supreme Court expressly left open the question of which immunity defense applies to probation officers. *See Martinez v. California*, 444 U.S. 277, 285 n.11 (1980). However, persuasive Sixth Circuit precedent recognizes that "[a] probation officer is entitled to absolute quasi-judicial immunity from suit on claims that arise out of his activities to ensure that the plaintiff complies with the terms of court supervision." *Faber v. Smith*, No. 17-2523, 2018 WL 6918704, at *2 (6th Cir. June 6, 2018), *reh'g denied* (June 28, 2018) (citing *Timson v. Wright*, 532 F.2d 552, 553 (6th Cir. 1976) (per curiam); *Huffer v. Bogen*, 503 F. App'x 455, 461 (6th Cir. 2012); *Loggins v. Franklin County*, 218 F. App'x 466, 476 (6th Cir. 2007)).

For example, in *Balas v. Leishman-Donaldson*, 976 F.2d 733 (6th Cir. 1992) (table), the Sixth Circuit held that a bailiff who ensured a probationer complied with his probation terms could be entitled to absolute quasi-judicial immunity. The court explained that:

> When a judge seeks to determine whether a defendant is complying with the terms of probation, the judge is performing a judicial function. To the extent court personnel were investigating whether [the plaintiff] was complying with the terms of his probation, they were performing a quasi-judicial function. To the extent defendants were performing that function at the direction of the judge, they are entitled to quasi-judicial immunity. All of the same considerations that would apply to the judge apply to the probation officer. "The prospect of damage liability under section 1983 would seriously erode the officer's ability to carry out his independent fact-finding function and thereby impair the sentencing judge's ability to carry out his judicial duties." *Demoran v. Witt*, 781 F.2d 155, 157 (9th Cir. 1986) (finding absolute immunity for probation officers).

***6** *Id.* at *5.

Similarly, in *Loggins v. Franklin County, Ohio*, 218 F. App'x 466, 476 (6th Cir. 2007), the Sixth Circuit, relying on *Balas*, held that a probation officer was entitled to quasi-judicial immunity where the officer allegedly "falsely advised" the judge that an arrest warrant had been issued when it was actually forthcoming. The court emphasized that "[a]t all relevant times, [the probation officer] was working for [the judge] in the context of a judicial proceeding, unlike, for example, ... an investigating officer." *Id.* at 476.

Plaintiffs urge the court not to rely on the unpublished cases of *Balas* and *Loggins* and argue that Schriner's "act of attempting to force Doe 2 from his home was not a judicial function." (ECF No. 77, PageID. 1017.) The court disagrees and is persuaded by the Sixth Circuit's reasoning in *Balas*, *Loggins*, and *Faber* that Schriner is entitled to quasi-judicial immunity based on the facts of this case.

Schriner contacted Doe 2 for the express purpose of ensuring that Doe 2 complied with the terms of his probation—established by court order—which prevented him from residing within a student safety zone. (ECF No. 66-3, PageID.535.) That Schriner directly contacted Doe 2 rather than first informing the presiding judge of Doe 2's violation is not material to his entitlement to immunity. The court order establishing the terms of Doe 2's probation served as the explicit "direction of the judge" for Schriner to ensure that Doe 2 complied with SORA's student safety zone provision because Schriner would have no authority to act but for that order. Accordingly, the court will grant Schriner's motion for summary judgment on the individual capacity claim because he is entitled to quasi-judicial immunity.

3. Qualified Immunity (Curran, Nowicki, and Puzon)

Plaintiffs argue that Defendants Nowicki and Puzon violated Doe 1's due process rights by failing to advise Doe 1 about the appropriate registration requirements in light of the *Does I r*uling. (ECF No. 78, PageID.1056.) Plaintiffs also argue that Curran violated Doe 1's rights by threatening to prosecute him for living in a student safety zone. (*Id.* at 1047.) Defendants respond that they are entitled to qualified immunity because Doe 1's rights were not clearly established at the time of the alleged violation. (ECF No. 83, PageID.1157.)

"[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar 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). In analyzing a

party's entitlement to qualified immunity, the Supreme Court has noted that "[i]f no constitutional right would have been violated were the allegations established, there is no necessity for further inquiries concerning qualified immunity. On the other hand, if a violation could be made out on a favorable view of the parties' submissions, the next, sequential step is to ask whether the right was clearly established." *Saucier v. Katz*, 533 U.S. 194, 201 (2001).

***7** To defeat Defendants' claim of qualified immunity, then, Plaintiffs must show that Defendants violated a clearly established constitutional right at the time of the incident in question. *Godawa v. Byrd*, 798 F.3d 457, 467 (6th Cir. 2015) (citing *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). Courts must "examine the asserted right at a relatively high level of specificity." *Bletz v. Gribble*, 641 F.3d 743, 750 (6th Cir. 2011) (internal citation omitted). That is, the court must determine that " 'the right's contours were sufficiently definite that any reasonable official in [the defendants'] shoes would have understood that he was violating it,' meaning that 'existing precedent ... placed the statutory or constitutional question beyond debate.' " *City of S.F. v. Sheehan*, 135 S. Ct. 1765, 1774 (2015) (quoting *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2023 (2014)); *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2015). The requirement that a right is clearly established "is not to say that an official action is protected by qualified immunity unless the very action in question has previously been held unlawful, but it is to say that in the light of pre-existing law the unlawfulness must be apparent." *Hope v. Pelzer*, 536 U.S. 730, 739 (2002). " '[O]fficials can still be on notice that their conduct violates established law even in novel factual circumstances.' " *Jackson v. City of Cleveland*, 925 F.3d 793, 823 (6th Cir. 2019) (quoting *Hope*, 536 U.S. at 739). Put another way, a constitutional right is clearly established when the unlawfulness of an officer's conduct would be "readily apparent to the officer, notwithstanding the lack of fact-specific case law." *United States v. Morris*, 494 F. App'x 574, 579 (6th Cir. 2012) (quoting *Fils v. City of Aventura*, 647 F.3d 1272, 1291 (11th Cir. 2011)).

In *Does I*, this court held that the provisions of SORA which established student safety zones and strict liability for violations were unconditionally vague in violation of the Due Process Clause of the Fourteenth Amendment. On appeal, the Sixth Circuit did not address these rulings but rather reversed for reasons related to the plaintiffs' *ex post facto* claim. This court's earlier ruling on the vagueness challenges to SORA—which are the same challenges lodged by Plaintiffs in this case—were not disturbed by the Sixth Circuit's rulings in *Does I*. However, this court's rulings in *Does I* does not mean that Plaintiffs' rights were clearly established because:

> A single district court opinion is not enough to pronounce a right is clearly established for purposes of qualified immunity. While a district court opinion may be *persuasive* in showing there is a clearly established right—perhaps by exposing a trend in non-precedential case law—it is not *controlling* on its own.

Hall v. Sweet, 666 F. App'x 469, 481 (6th Cir. 2016). The Second, Seventh, Ninth, Tenth, and Eleventh Circuits have adopted a similar standard regarding when a right becomes "clearly established." *Id.* at 481 n.9 (citing *Estate of Escobedo v. Bender*, 600 F.3d 770, 781 (7th Cir. 2010); *Cortez v. McCauley*, 478 F.3d 1108, 1114–15 (10th Cir. 2007); *Moore v. Pederson*, 806 F.3d 1036, 1047 (11th Cir. 2015); *Pabon v. Wright*, 459 F.3d 241, 255 (2d Cir. 2006); *Tarabochia v. Adkins*, 766 F.3d 1115, 1125 (9th Cir. 2014)).

Until this court's ruling in *Does I*, SORA was a validly enacted and constitutional statute that Defendants were charged with enforcing. The *Does I* ruling alone does not make Plaintiffs' rights "clearly established." *Hall*, 666 F. App'x at 481. Moreover, Plaintiffs' own brief acknowledges the ensuing confusion regarding the constitutionality of SORA in light of the Sixth Circuit's decision. (ECF No. 78, PageID.1058.) In fact, this case, as well as the *Does II* certified class action, demonstrate that the contours of Plaintiffs' asserted rights are anything but clear. Even assuming the truth of Plaintiffs' version of events, Defendants are entitled to qualified immunity because Plaintiffs' rights were not clearly established based on the single ruling of this court in *Does I*. The court will grant Defendants' motion for summary judgment on the individual capacity claims.[2]

B. Official Capacity Claims

***8** In response to Defendants' motions for summary judgment, Plaintiffs clarify that they seek only injunctive and declaratory relief for their claims against Defendants in their official capacities and do not seek money damages in the official capacity claims. (ECF No. 77, PageID.1025; ECF No. 78, PageID.1060.) Plaintiffs articulate the parameters of their requested injunctive and declaratory relief in the amended complaint:

> [J]udgment, pursuant to 28 U.S.C. §§ 2201-2202, declaring that SORA 2011 is void under the Due Process Clause of the Fourteenth Amendment due to vagueness, impossibility, and wrongful imposition of

> strict liability ... [and the issuance of] a preliminary and permanent injunction restraining Defendants from enforcing against Plaintiffs those provisions of SORA 2011 that are unconstitutional, including but not limited to an injunction prohibiting any Defendants or other law enforcement officials from instituting criminal prosecution against Plaintiffs under SORA.

(ECF No. 32, PageID.217.) Plaintiffs move to receive this relief in their partial motion for summary judgment. (ECF No. 70.)

Plaintiffs' requested relief is the precise remedy sought by the certified class in *Does II*. *See* Second Am. Compl. at 43–45, *Does II*, No. 16-13137 (June 28, 2018) (ECF No. 34, PageID.387–89.) Plaintiffs do not dispute their membership in the mandatory *Does II* class nor do they argue that their claims for declaratory or injunctive relief differ from those of the certified class. (ECF No. 79, PageID.1081–82.) As members of the certified Rule 23(b)(2) class in *Does II*, Plaintiffs' claims for declaratory and injunctive relief are subsumed in the class action claims. Plaintiffs have no right to separately litigate their claims for injunctive relief because doing so would create the potential for inconsistent judgments. *See Walmart-Stores, Inc. v. Dukes*, 564 U.S. 338, 361 (2011). Plaintiffs do not contest this fact either but ask the court to deny Defendants' motions for summary judgment motion in order to preserve the preliminary injunction currently in place as to Doe 1, which the court entered prior to the *Does II* class certification.

On December 17, 2019, the court held a joint status conference with the parties of this case and the *Does II* case. During the conference, the court explained that it intended to preserve the preliminary injunction until the resolution of *Does II*. The court has since entered a joint, stipulated order to preserve the injunction. (ECF No. 90.) Because Plaintiffs cannot obtain additional or different relief on their claims from the *Does II* class, the court will deny without prejudice Plaintiffs' motion for summary judgment. The court will also deny without prejudice Defendants' motions on the official capacity claims because the court will reach the merits of Plaintiffs' requested injunctive relief in *Does II*. The preliminary injunction, however, will remain in effect until the conclusion of *Does II* and separate order of this court.

IV. CONCLUSION

For the reasons explained above, Defendants Curran, Schriner, Puzon, and Nowicki are entitled to immunity on Plaintiffs' individual liability claims. Plaintiffs seek declaratory and injunctive relief, not money damages, in their official capacity claims against all Defendants. This is the precise remedy sought by the certified *Does II* class. The court cannot enter separate injunctive relief for Plaintiffs because their claim for injunctive relief is subsumed by the *Does II* class. Therefore, the court will deny without prejudice Defendants' motions for summary judgment as they relate to the official capacity claim and will also deny without prejudice Plaintiffs' motion for summary judgment. This ruling disposes of all the claims for money damages and leaves the sole issue in this case the claim for injunctive and declaratory relief brought against Defendants in their official capacity.[3]

***9** The court will decide the issue of injunctive relief on the merits in *Does II*, and the instant proceedings will be stayed until the court issues that decision in *Does II*. The preliminary injunctive currently in place—which enjoins Defendants from prosecuting Doe 1 for living within a student safety zone—will remain in full force and effect until the resolution of *Does II* and separate order of this court. Accordingly,

IT IS ORDERED that Defendant Snyder and Etue's motion for summary judgment (ECF No. 65) is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Defendant Schriner's motion for summary judgment (ECF No. 66) is GRANTED IN PART as to the individual capacity claim. It is DENIED WITHOUT PREJUDICE as to the official capacity claim.

IT IS FURTHER ORDERED that Defendants Curran, Nowicki, and Puzon's motion for summary judgment (ECF No. 68) is GRANTED IN PART as to the individual capacity claim. It is DENIED WITHOUT PREJUDICE as to the official capacity claim.

IT IS FURTHER ORDERED that Plaintiffs' motion for partial summary judgment (ECF No. 70) is DENIED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that this case is STAYED pending the resolution of *Does II*.

FINALLY, IT IS ORDERED that the preliminary injunction as to Doe 1 (ECF No. 27) REMAINS IN EFFECT until the conclusion of the *Does II* and separate order of the court.

All Citations

Not Reported in Fed. Supp., 2020 WL 127951

Footnotes

1 Property Search, *Otsego County Michigan*, https://www.otsegocountymi.gov/county-government-2/equalization/property-search/ (last visited Jan. 6, 2020).

2 This same analysis applies to Schriner. In the alternative to quasi-judicial immunity, Schriner is also entitled to qualified immunity because Plaintiffs suffered no violation of any "clearly established" right.

3 It appears to the court that Defendants Curran, Nowicki, Puzon, and Schriner may not be proper defendants for Plaintiffs' official capacity claims. *See Essex v. Cty. of Livingston*, 518 F. App'x 351, 354 (6th Cir. 2013) (citing *Cady v. Arenac Cnty.*, 574 F.3d 334, 342 (6th Cir. 2009)) ("[A]n official-capacity claim is merely another name for a claim against the municipality."). The court invites, but does not require, the parties to submit a proposed stipulated order addressing the advisability of Defendants' continued involvement in this case in light of the court's denial of Plaintiffs' individual capacity claims.

End of Document

Exhibit 7:

Yunus v Robinson, unpublished opinion of the United States District Court for the Southern District of New York, issued Jan 11, 2019 (Case No. 17-cv-5839)

2019 WL 168544
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

Equan YUNUS, Sr., Plaintiff,
v.
J. Lewis ROBINSON et al., Defendants.

17-cv-5839 (AJN)
|
Signed 01/11/2019

Attorneys and Law Firms

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OPINION & ORDER

ALISON J. NATHAN, United States District Judge

***1** Since 2016, Plaintiff has been required to register as a sex offender and has been subject to parole conditions designed to control the threat posed by sex offenders, including limitations on where he can live and travel, what websites he can access and what technology he can possess, and whether he can own a pet or rent a post office box. Plaintiff was even re-incarcerated for several months for possessing a smartphone and laptop. Report & Recommendation ("R & R"), Dkt. No. 79, at 61. Yet the record before the Court does not indicate that Plaintiff has ever committed any sexual misconduct. Instead, Plaintiff pled guilty to a crime—kidnapping of an unrelated minor under the age of 17—that automatically rendered him a sex offender under New York's Sex Offender Registration Act ("SORA"), N.Y. Correct. Law (CL) § 168-a. No evidence before the Court suggests that there was anything sexual about Plaintiff's crime, but rather that it was carried out to ransom the victim in exchange for money and drugs. At the state court hearing to determine his risk level classification as a sex offender, the judge found that there was "virtually no likelihood that [Plaintiff] will commit a sex crime ever." R & R at 10. Indeed, for the purposes of these two motions, Defendants have conceded that there was no sexual element to Plaintiff's offense.

Plaintiff brought this action under 42 U.S.C. § 1983, alleging that this situation violates several of his constitutional rights. Plaintiff argues that being forced to register as a sex offender violates his substantive and procedural due process rights, while a number of his specific conditions of parole violate his rights under the Due Process Clause and the First Amendment. Plaintiff sought a preliminary injunction on some of his claims, while Defendants moved to dismiss his complaint in its entirety. These motions were referred to Magistrate Judge Moses for a Report and Recommendation. Judge Moses recommended that the Court grant a preliminary injunction on Plaintiff's claim that SORA, as applied to him, violates his right to substantive due process. Judge Moses also recommended granting Defendants' motion to dismiss in part and denying it in part.

For the reasons given below, the Court adopts Judge Moses' recommendation and grants Plaintiff a preliminary injunction on his substantive due process claim. The Court also grants Defendants' motion to dismiss as to several of Plaintiff's claims, including all of his claims for damages, while denying it as to his substantive due process claim, his challenges to his conditions of parole limiting where he can travel, his ability to seek alternate residences, his access to social media, what technology he can own and use, and his ability to interact with minor members of his family.

I. Background

The Court assumes the parties' familiarity with the facts of this case and will rely on Judge Moses's thorough discussion of the factual and procedural history of this case in her Report and Recommendation to the Court. *See* R & R at 8-18. In short, Plaintiff pleaded guilty in 2002 to two counts of kidnapping for ransom under New York law. R & R at 9. One of the victims was a boy under seventeen years old who was not Plaintiff's child. R & R at 9. Under SORA, a conviction for kidnapping a minor who is not the kidnapper's child is designated as a "sex offense." N.Y. Correct. Law § 168-a(2)(a)(i). Plaintiff was classified a level one sex offender—the lowest possible level—at a SORA hearing following his term of

incarceration. R & R at 10-11. However, there was no allegation of a sexual component to Plaintiff's crime and he has never been accused of committing any form of sexual misconduct. R & R at 9. Furthermore, at his SORA hearing, the presiding judge—Justice Obus, who had also presided over Plaintiff's sentencing in his underlying criminal case—found that there was virtually no likelihood that Plaintiff would ever commit a sex crime. R & R at 10. Plaintiff was released to parole on July 14, 2016, and numerous parole conditions were imposed, some mandatory and some discretionary. *See* R & R at 11-18 (outlining relevant parole conditions and modifications that have been made over time to those conditions).

***2** On August 1, 2017, Plaintiff commenced this action by filing a pro se complaint. Dkt. No. 2. Following the appearance of pro bono counsel for Plaintiff, he filed a motion for a preliminary injunction on March 26, 2018 and a Second Amended Complaint on March 29, 2018. *See* Mot. for PI, Dkt. No. 43; SAC, Dkt. No. 54. In his Second Amended Complaint, Plaintiff challenges his designation as a sex offender on procedural due process and substantive due process grounds. SAC ¶¶ 139-51. He also challenges numerous specific conditions of his parole, arguing that they are void for vagueness, SAC ¶¶ 152-58, violate his First Amendment rights, SAC ¶¶ 159-63, violate his due process right by interfering with his family relations, SAC ¶¶ 164-69, and impose conditions that are arbitrary and capricious, SAC ¶¶ 170-75. The Court referred the motion for a preliminary injunction to Magistrate Judge Barbara Moses for a Report and Recommendation. Dkt. No. 51.

On April 17, 2018, the Defendants in this action filed a motion to dismiss the Second Amended Complaint. Def. Mot. to Dismiss, Dkt. No. 59. The Court referred consideration of this motion to Judge Moses as well. Dkt. No. 62. On June 29, 2018, Judge Moses filed her Report recommending resolution of Plaintiff's motion for a preliminary injunction and Defendants' motion to dismiss. *See* R & R at 84-86. On July 20, 2018, both parties timely filed their objections to the Report, Pl. R & R Obj., Dkt. No. 85; Def. R & R Obj., Dkt. No. 86, and responded to one another's objections, Def. R & R Obj. Resp., Dkt. No. 93, Pl. R & R Obj. Resp., Dkt. No. 94. After having reviewed Judge Moses's Report and the parties' objections, the Court requested supplemental briefing on (1) whether preclusion doctrines barred some of Plaintiff's claims and (2) whether Defendants had waived any preclusion arguments by failing to raise them in the first instance before Judge Moses. Dkt. No. 98. The parties provided briefing, Def. Supp. Br., Dkt. No. 101; Pl. Supp. Br., Dkt. No. 102, and the Court held oral argument on October 3, 2018.

II. Legal Standards

A. Review of Objections to a Magistrate Judge's Report

A court may "designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition" of certain motions, including motions for injunctive relief and motions to dismiss. 28 U.S.C. § 636(b)(1)(B). A party to the action may file objections to the proposed findings and recommendations. *Id.* § 636(b)(1)(C). Specific objections to a magistrate judge's recommendation are reviewed *de novo*. *See, e.g.*, *Amadasu v. Ngai*, No. 05-CV-2585(RRM), 2012 WL 3930386, at *3 (E.D.N.Y. Sept. 9, 2012). Where a party does not object, or simply makes "conclusory or general objections," the district court will review for clear error. *Id.* (citing cases). Under this standard, portions of the report to which no objections were made will be accepted unless they are "facially erroneous." *Bryant v. New York State Dep't of Corr. Servs.*, 146 F.Supp.2d 422, 424–25 (S.D.N.Y. 2001); *see also DiPilato v. 7-Eleven, Inc.*, 662 F. Supp. 2d 333, 339–40 (S.D.N.Y. 2009) ("A decision is 'clearly erroneous' when the Court is, 'upon review of the entire record, [ ] left with the definite and firm conviction that a mistake has been committed.' ") (alteration in original) (quoting *United States v. Snow*, 462 F.3d 55, 72 (2d Cir. 2006)).

B. Preliminary Injunction Standard

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). A court may issue a preliminary injunction only "upon a clear showing that the plaintiff is entitled to such relief." *Id.* at 22. Ordinarily, a party seeking a preliminary injunction must make one of two showings: First, he may "show that he is likely to succeed on the merits; that he is likely to suffer irreparable harm in the absence of preliminary relief; that the balance of equities tips in his favor; and that an injunction is in the public interest." *ACLU v. Clapper*, 785 F.3d 787, 825 (2d Cir. 2015). Alternatively, he "may

show irreparable harm and either a likelihood of success on the merits or 'sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward the party requesting the preliminary relief.' " *Id.* (quoting *Christian Louboutin S.A. v. Yves Saint Laurent Am. Holdings, Inc.*, 696 F.3d 206, 215 (2d Cir. 2012)). However, if "the moving party seeks to stay government action taken in the public interest pursuant to a statutory or regulatory scheme, the district court should not apply the less rigorous fair-ground-for-litigation standard and should not grant the injunction unless the moving party establishes, along with irreparable injury, a likelihood that he will succeed on the merits of his claim." *Able v. United States*, 44 F.3d 128, 131 (2d Cir. 1995) (quoting *Plaza Health Labs., Inc. v. Perales*, 878 F.2d 577, 580 (2d Cir. 1989)). When the moving party seeks a mandatory injunction, " '[t]he moving party must make a clear or substantial showing of a likelihood of success' on the merits, a standard especially appropriate when a preliminary injunction is sought against government." *D.D. ex rel. V.D. v. N.Y. Bd. Of Educ.*, 465 F.3d 503, 510 (2d Cir. 2006) (alteration in original) (quoting *Jolly v. Coughlin*, 76 F.3d 468, 473 (2d Cir. 1996)).

C. Motion to Dismiss

***3** A case is properly dismissed for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) "when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). "In resolving a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b) (1), a district court ... may refer to evidence outside the pleadings." *Id.* The party asserting subject matter jurisdiction "has the burden of proving by a preponderance of the evidence that it exists." *Id.* Jurisdiction "must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *Shipping Fin. Servs. Corp. v. Drakos*, 140 F.3d 129, 131 (2d Cir. 1998).

To survive a motion to dismiss for failure to state a claim under Rule 12(b) (6), the complaint must "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim achieves "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." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plausibility is "not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully," *id.*, and if plaintiffs cannot "nudge[ ] their claims across the line from conceivable to plausible, their complaint must be dismissed," *Twombly*, 550 U.S. at 570. "Plausibility ... depends on a host of considerations: the full factual picture presented by the complaint, the particular cause of action and its elements, and the existence of alternative explanations so obvious that they render plaintiff's inferences unreasonable." *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 430 (2d Cir. 2011). When considering a motion to dismiss under Rule 12(b)(6), "a court must accept as true all of the [factual] allegations contained in [the] complaint." *Iqbal*, 556 U.S. at 678. However, the court should not accept legal conclusions as true: "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.*

D. Qualified Immunity

Several of Plaintiff's claims seek money damages, all of which Defendants contend should be dismissed on the grounds of qualified immunity. Def. Mot. to Dismiss, Dkt. No. 60, at 17-20. Because this issue arises at a number of points in the opinion, the Court provides a summary of the standard here.

Qualified immunity may be raised on a motion to dismiss under Rule 12(b)(6). However, "a defendant presenting an immunity defense on a Rule 12(b)(6) motion instead of a motion for summary judgment must accept the more stringent standard applicable to this procedural route." *McKenna v. Wright*, 386 F.3d 432, 436 (2d Cir. 2004). In such cases, the facts supporting the immunity defense must be plain on the face of the complaint and "the plaintiff is entitled to all reasonable inferences from the facts alleged, not only those that support his claim, but also those that defeat the immunity defense." *Id.*

The defense of qualified immunity "protects government officials from suit if 'their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.' " *Gonzalez v. City of Schenectady*, 728 F.3d 149, 154 (2d Cir. 2013) (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)). The qualified immunity analysis asks whether (1) a plaintiff has sufficiently pled the violation of a constitutional or statutory right, (2) whether that right was "clearly established," and (3) whether it was "objectively reasonable" for the official to believe their conduct was lawful. *Id.* at 154-55 (citing *Taravella v. Town of Wolcott*, 599 F.3d 129, 133–34 (2d Cir. 2010)).

A right may be clearly established by either controlling authority or "a robust consensus of cases of persuasive authority." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741–42 (2011) (internal quotation marks omitted) (quoting *Wilson v. Layne*, 526 U.S. 603, 617 (1999)). The applicable legal rule at issue should not be defined "at a high level of generality," but rather must be "particularized to the facts of the case." *White v. Pauly*, 137 S. Ct. 548, 551–52 (2017) (internal quotation marks omitted). It is not necessary that "the very action in question" have been previously held unlawful, as "an officer might lose qualified immunity even if there is no reported case 'directly on point.' " *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1866–67 (2017). On the other hand, "in the light of pre-existing law, the unlawfulness of the officer's conduct must be apparent." *Id.* at 1867 (internal quotation marks omitted).

***4** As to the reasonableness inquiry, this turns on whether the official could have reasonably believed that their actions were legal given the law at the time of the actions in question. *Berg v. Kelly*, 897 F.3d 99, 109 (2d Cir. 2018). Objective reasonableness is a mixed question of law and fact, which "requires examination of the information possessed by the officials at that time (without consideration of subjective intent)." *Id.* at 109-10. The operative question is "whether a reasonable official would reasonably believe that his conduct did not violate a clearly established right[.]" *Id.*

III. Judge Moses's Report and Recommendation

As a threshold matter, Judge Moses's Report addresses Defendants' arguments that Plaintiff's due process challenges are barred by the *Rooker-Feldman* doctrine, recommending that this case did not meet the narrow conditions for the doctrine to apply. Turning to the merits of the motion to dismiss, the Report recommends granting the motion to dismiss with respect to the following claims:

> The First Claim, in its entirety;
>
> The Third Claim, to the extent it alleges that Special Condition No. 24 (the "consenting adult" rule) is void for vagueness;
>
> The Third Claim, to the extent it seeks damages against any of the Parole Officer Defendants[1] for their past enforcement of any of the parole conditions challenged as void for vagueness;
>
> The Fourth Claim, to the extent it seeks damages against the Parole Officer Defendants other than PO Lewis-Robinson for their past enforcement of the cellphone, computer, and social media restrictions contained in Special Conditions No. 12, 22, 35, 39, and 48;
>
> The Fourth Claim, to the extent it seeks damages against PO Lewis-Robinson arising from her conduct prior to the decision in *Packingham*;
>
> The Fifth Claim, to the extent it seeks damages against the Parole Officer Defendants other than PO Lewis-Robinson for their past enforcement of Special Condition No. 15 (no contact with minors);
>
> The Sixth Claim, to the extent it seeks damages against any of the Parole Officer Defendants for their past conduct in denying plaintiffs' requests to move in with his fiancée and his uncle;
>
> The Sixth Claim, to the extent it seeks damages against the Parole Officer Defendants other than PO Lewis-Robinson in connection with the denial of Plaintiff's request to move in with Ms. Blake;
>
> The Sixth Claim, to the extent it seeks damages against any of the Parole Officer Defendants for their past enforcement of Special Condition No. 24;
>
> The Sixth Claim, to the extent it seeks either damages or injunctive relief in connection with Special Conditions No. 31 and 32 (motor vehicles), No. 14 (sexually explicit materials), No. 19 (pets) or No. 37 (Post Office boxes).

R & R at 84. The Report recommends denying Defendants' motion to dismiss as to the remaining claims. The Report also recommends that the Court grant Plaintiff's request for a preliminary injunction in part. R & R at 85. It concludes that Plaintiff's designation as a sex offender violates his substantive due process rights and therefore recommends that the Court enjoin Defendants from "enforcing, as against plaintiff, the registration and notification provisions made applicable to designated sex offenders by SORA (CL §§ 168a-168w), or the mandatory conditions prescribed by EL §§ 259-c(14) and (15) for parolees sentenced for an offense for which registration as a sex offender is required," and directing Defendants "to rescind the discretionary provisions of the Sex Offender Conditions (Yunus Decl. Ex. C, at ECF pages 4-10) except to the extent they deem those conditions appropriate for plaintiff in light of his *non-sexual* criminal history and characteristics." R & R at 85. Alternatively, Judge Moses recommends that if the Court does not grant a preliminary injunction on

Plaintiff's substantive due process claim, it should grant a preliminary injunction as to several of his parole conditions. R & R at 85-86.

IV. Discussion

***5** The Court first addresses Defendants' claims that the *Rooker-Feldman* doctrine deprives it of subject-matter jurisdiction. The Court will then examine the issue of preclusion, which was only raised by Defendants after Judge Moses's Report, and the related question of waiver. The Court will then turn to the merits of Defendants' motion to dismiss and Plaintiff's motion for a preliminary injunction, addressing each in turn.

A. Plaintiff's First and Second Claims Are Not Barred by the *Rooker-Feldman* Doctrine

Defendants argue that Plaintiff's first and second claims, which challenge his designation as a sex offender on procedural due process and substantive due process grounds, are barred by the *Rooker-Feldman* doctrine. The *Rooker-Feldman* doctrine bars "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). This doctrine deprives federal courts of subject-matter jurisdiction to hear cases "that are, in substance, appeals from state court judgments[.]" *Hoblock v. Albany Cty. Bd. of Elections*, 422 F.3d 77, 84 (2d Cir. 2005). For the *Rooker-Feldman* doctrine to apply, four conditions must be met:

> First, the federal-court plaintiff must have lost in state court. Second, the plaintiff must "complain[ ] of injuries caused by [a] state-court judgment[.]" Third, the plaintiff must "invit[e] district court review and rejection of [that] judgment[ ]." Fourth, the state-court judgment must have been "rendered before the district court proceedings commenced" – i.e., *Rooker-Feldman* has no application to federal court suits proceeding in parallel with ongoing state-court litigation.

Id. at 85 (alterations in original) (footnote omitted) (quoting *Exxon-Mobil*, 544 U.S. at 284).

The Report recommends that the *Rooker-Feldman* doctrine does not deprive the Court of subject-matter jurisdiction here, both because Plaintiff did not lose in state court and because the injuries he complains of resulted from the SORA statute rather than a state court judgment. R & R at 22-25. Defendants raise several objections, which the Court reviews *de novo*.

First, Defendants object that Plaintiff's SORA hearing *did* address whether it was constitutional to require Plaintiff to register as a sex offender. Def. R & R Obj. at 6-7. Yet it is clear from the surrounding context that the section of the hearing transcript they cite to only addresses what level of classification should apply to Plaintiff and does not challenge that SORA as applied to him is unconstitutional. SORA Tr. 5:12-22. The Court agrees with the Report that SORA's constitutionality was neither challenged nor decided at the hearing.

Defendants next object that *Rooker-Feldman* bars any claim asserting injury based on a state judgment even if the injury was not actually contested in state-court proceedings. Def. R & R Obj. at 7-8. Yet the relevant inquiry for the purpose of *Rooker-Feldman* is whether the judicial decision at Plaintiff's SORA hearing itself *caused* Plaintiff's injury; if an injury was caused prior to the state judicial action, *Rooker-Feldman* is inapplicable. *See Sung Cho v. City of New York*, 910 F.3d 639, 649 (2d Cir. 2018). Indeed, it is settled law that *Rooker-Feldman* does not apply if the judicial determination in question "simply ratified, acquiesced in, or left unpunished" Plaintiff's injury. *McKithen v. Brown*, 481 F.3d 89, 97-98 (2d Cir. 2007) (quoting *Hoblock*, 422 F.3d at 88). Here, Plaintiff's injury did not result from his SORA hearing, but rather from the statute itself. *See Spiteri v. Russo*, No. 12-cv-2780 (MKB) (RLM), 2013 WL 4806960, at *13 (E.D.N.Y. Sept. 7, 2013) (holding *Rooker-Feldman* inapplicable to a claim challenging the plaintiff's designation as a sex offender because "[t]he issue before [the presiding judge] was Plaintiff's risk level classification, not whether he was required to register as a sex offender"). Defendants' argument that Plaintiff's injuries were caused by the hearing because SORA does not make a convicted individual's sex-offender status automatic is belied by the plain text of the statute. *See* N.Y. Correct. Law § 168-a(1) (defining "sex offender" as "any person who is convicted of any of the offenses" listed in the statute), *id.* § 168-d(1)(a) (requiring that "upon conviction of any of the offenses set forth" in SORA, "the court shall certify that the person is a sex offender" and failure to certify "shall not relieve a sex offender of the obligations imposed by this article"); *id.* § 168-*l*(8) ("A failure by a state or local agency or the board to act or by a court to render a determination within the time period specified in this article shall not affect the obligation of the sex offender to register ...."); *id.* §

168-n(2) (providing that the SORA hearing will determine the risk level of the offender); *see also* R & R at 4-5 & 5 n.5, 23 (discussing SORA's statutory requirements in greater depth). Defendants accuse Judge Moses of "misread[ing]" New York Corrections Law section 168-*l*(8). Def. R & R Obj. at 8. In their view, that section only "provides ... that a failure of the SORA hearing court to render a decision 'within the time periods specified in this article' does not preclude a later determination by the court that registration is required." Def. R & R Obj. at 8. Defendants have apparently overlooked that section 168-*l*(8) includes both the provision identified by Judge Moses and quoted by the Court above and a *separate* clause allowing a court to later impose a risk level to an offender outside of the prescribed time period.[2] The Court therefore concludes that Plaintiff's sex offender status was automatic under SORA as a function of his conviction.

***6** Seeking to undermine this conclusion, Defendants also point to the fact that New York courts have been willing to entertain constitutional challenges to SORA that were initially raised in SORA hearings. Def. R & R Obj. at 8 (citing *People v. Knox*, 12 N.Y.3d 60, 65 (N.Y. 2009)). But this does not alter the *Rooker-Feldman* analysis. Even if a state court may have been willing to consider a constitutional challenge to Plaintiff's designation as a sex offender on appeal from his SORA hearing, it does not change the fact that Plaintiff's sex offender status was already imposed by statute. At most then, the judicial determination in his SORA hearing "simply ratified," *McKithen*, 481 F.3d at 97-98, what SORA dictated—that Plaintiff be designated a sex offender because of his conviction for kidnapping a minor not related to him. As a result, Plaintiff challenges New York's SORA legislation rather than an adjudication, and in such circumstances, *Rooker-Feldman* has no application. *Hachamovitch v. DeBuono*, 159 F.3d 687, 694 (2d Cir. 1998).

Finally, Defendants argue that if Plaintiff is not challenging injury caused by his SORA hearing, he must be challenging his underlying conviction, which would also be barred by the *Rooker-Feldman* doctrine. Def. R & R Obj. at 9. However, the Court agrees with the Report that Plaintiff is neither challenging his underlying conviction nor asking the Court to relieve him of it—he only seeks review of a statutorily-imposed collateral consequence that even Defendants do not contend could have been raised on direct appeal from that conviction. R & R at 25 n.19.

For the forgoing reasons, the Defendants' objections to the Report are denied as to subject-matter jurisdiction, and the Report is ADOPTED in full on this issue.

B. Defendants Waived Their *Res Judicata* and Collateral Estoppel Arguments for the Purposes of These Motions

Moving from *Rooker-Feldman* to preclusion, Defendants argue that Plaintiff's first and second claims are precluded by the prior decision in the SORA hearing under theories of both collateral estoppel and *res judicata*. Defendants did not raise either argument in their briefings before Judge Moses. Judge Moses, in her Report, addressed the distinction between *Rooker-Feldman* and preclusion doctrine in a footnote, without making a recommendation either way as to the applicability of preclusion doctrine to Plaintiff's claims. R & R at 24 n. 18. Defendants, in their objections to the Report, mentioned *res judicata* only in passing, stating that Plaintiff's claims "should still be dismissed on the alternative grounds of res judicata suggested in the R & R." Def. R & R Obj. at 9. Subsequently, the Court requested supplemental briefing on preclusion and whether Defendants had waived these arguments by failing to raise them before Judge Moses.

Defendants do not dispute that they failed to raise their collateral estoppel or *res judicata* arguments before Judge Moses. Instead, they argue that despite this failure—and their conclusory treatment of preclusion in their objections to Judge Moses' Report—these arguments have not been waived. Plaintiff, on the other hand, argues that Defendants waived these arguments by not raising them earlier and failing to object to Judge Moses' mention of preclusion with sufficient particularity. For the purposes of the instant motions alone, the Court agrees with Plaintiff. However, this decision does not bar Defendants from raising preclusion in an answer.

Courts in this circuit have taken different positions as to whether failure to raise an argument before a magistrate judge waives those arguments. The Second Circuit has yet to decide this question. *Levy v. Young Adult Inst., Inc.*, 103 F. Supp. 3d 426, 433 (S.D.N.Y. 2015) ("The question 'whether a party may raise a new legal argument for the first time in objections to a magistrate judge's Report has not yet been decided in this Circuit.' ") (internal brackets and ellipses omitted) (quoting *Amadasu*, 2012 WL 3930386, at *5).

***7** For reasons it continues to find persuasive, this Court has previously found that, as a general matter, arguments made for the first time in objection are waived. *See Tarafa v. Artus*, No. 10 CIV. 3870 (AJN), 2013 WL 3789089, at *2 (S.D.N.Y. July 18, 2013) ("[N]ew

arguments and factual assertions cannot properly be raised for the first time in objections to the R & R, and indeed may not be deemed objections at all." (citing cases)); *Watson v. Geithner*, No. 11 CIV. 9527 (AJN), 2013 WL 5441748, at *2 (S.D.N.Y. Sept. 27, 2013) (noting that "a party waives any arguments not presented to the magistrate judge"). Other courts in this circuit have taken a similar approach, noting that "[i]f the Court were to consider formally these untimely contentions, it would unduly undermine the authority of the Magistrate Judge by allowing litigants the option of waiting until a Report is issued to advance additional arguments." *Abu-Nassar v. Elders Futures, Inc.*, No. 88 CIV. 7906 (PKL), 1994 WL 445638, at *4 n.2 (S.D.N.Y. Aug. 17, 1994); *see also Smith v. Hulihan*, No. 11 CV 2948 (HB), 2012 WL 4928904, at *1 (S.D.N.Y. Oct. 17, 2012); *Rosello v. Barnhart*, No. 02 CIV. 4629 (RMB), 2004 WL 2366177, at *3 (S.D.N.Y. Oct. 20, 2004); *Lewyckyj v. Colvin*, No. 3:13-CV-126 (MAD), 2014 WL 3534551, at *2 (N.D.N.Y. July 17, 2014). This is consistent with the history and purposes of the Magistrate Act. *See Anna Ready Mix, Inc. v. N.E. Pierson Const. Co.*, 747 F. Supp. 1299, 1303 (S.D. Ill. 1990) (reviewing "the legislative history of the 1976 amendments to the United States Magistrate Act, applicable precedent, and the views of commentators" and concluding that "arguments raised for the first time in objections to a magistrate's report ought to be disregarded absent compelling reasons"). This position is also consistent with the majority of circuit courts to have examined this issue—though some have indicated that district courts have discretion in the matter.[3] In a case like this, it would undermine the efficiencies offered by the Magistrate Act to permit parties to raise arguments after a full briefing on both a motion for a preliminary injunction and a motion to dismiss, after which Judge Moses issued a detailed and thorough 86-page Report.

However, the Court need not rely on that reasoning to reach its conclusion here today, since an application of the balancing test adopted by other courts in this circuit would result in the same outcome. *See Wells Fargo Bank N.A. v. Sinnot*, 2010 WL 297830, at *3-4 (D. Vt. Jan. 19, 2010); *Levy*, 103 F. Supp. 3d at 433-34. Defendants have not given any reason for their failure to raise these issues before Judge Moses and no intervening change in law has occurred. Unanswered questions remain that received little to no briefing. *See Wells Fargo*, 2010 WL 297830, at *4. Allowing Defendants to raise this new defense after several rounds of briefing in which they neglected to raise it except for a passing mention would, for the reasons given above, be an inefficient deviation from the purpose of the Magistrate Act. And given the ongoing harm to Plaintiff, fairness favors providing a prompt determination of his motion for a preliminary injunction without allowing Defendants to interpose new arguments that would result in further delay. Finally, no manifest injustice would result from deeming Defendants' arguments waived for the purposes of these motions. Considering and balancing these factors, the Court concludes that Defendants have waived preclusion. *See Amadasu*, 2012 WL 3930386, at *5-7. However, the Court only finds that Defendants have waived these arguments for the purposes of these motions and are free to raise them in an answer as affirmative defenses. *See Blonder-Tongue Labs., Inc. v. Univ. of Illinois Found.*, 402 U.S. 313, 350 (1971) (*res judicata* and collateral estoppel are affirmative defenses) (citing Fed. Rules Civ. Pro. 8(c)).

C. Defendants' Motion to Dismiss is Granted in Part and Denied in Part

***8** Having addressed these threshold matters, the Court turns first to Defendants' motion to dismiss.

1. Defendants' Motion to Dismiss is Granted as to Plaintiff's Procedural Due Process Claim (Claim 1)

Plaintiff alleges that he was deprived of constitutionally-required procedural due process because he had no opportunity to challenge his designation as a "sex offender" in an adversarial proceeding. SAC ¶¶ 139-45. Judge Moses agreed with Plaintiff that he had a cognizable liberty interest in not being labelled as a sex offender. R & R at 29-35. However, Judge Moses found that under governing Supreme Court and Second Circuit precedent, a person who has been convicted of an offense requiring registration under SORA is not entitled to any additional hearing, either *ex ante* or *ex post*, to adjudicate his obligation to register. R & R at 35-38 (citing *Connecticut Dep't of Pub. Safety v. Doe*, 538 U.S. 1 (2003) and *Doe v. Cuomo*, 755 F.3d 105 (2d Cir. 2014)). Plaintiff objects only to Judge Moses's recommendation on this claim as an "alternative basis for relief" and notes that if the Court agrees with the Report that SORA as applied to Plaintiff is a substantive due process violation, "no additional process or injunctive relief is necessary." Pl. R & R Op. at 3. Nonetheless, as Plaintiff does state various specific legal objections to Judge Moses's reasoning, the Court will review it *de novo*. Defendants, for their part, challenge Judge Moses' determination that Plaintiff had a procedural liberty interest in not being

labeled a sex offender. Def. R & R Obj. at 9-10. However, since that issue is unnecessary to the Court's resolution of this claim, the Court neither adopts nor rejects Judge Moses' Report on that particular question.

The Court agrees with Judge Moses' reading of the governing precedent. Under *Connecticut v. Doe*, "[p]laintiffs 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.*" 538 U.S. at 8 (emphasis added); *see also Doe v. Cuomo*, 755 F.3d at 112. Plaintiff sought to distinguish these two cases on the grounds that in both the plaintiffs had been convicted of *sexual* misconduct. Pl. R & R Obj. at 7-8. However, as Judge Moses determined in her Report, this argument fails to go to the *procedural* sufficiency of process afforded, as that fact is not relevant under SORA. Instead, it implicates a *substantive* challenge to Plaintiff's designation under the law as a sex offender. R & R at 37-38. As a result, Plaintiff's claim "must ultimately be analyzed in terms of substantive, not procedural, due process." *Connecticut v. Doe*, 538 U.S. at 8 (internal quotation marks omitted). The Court therefore ADOPTS Judge Moses' Report as to the second prong of the procedural Due Process analysis and GRANTS Defendants' motion to dismiss this claim. As it is unnecessary for resolution, the Court makes no finding with respect to the Report's analysis of Plaintiff's procedural liberty interest.

2. Defendants' Motion to Dismiss is Denied as to Plaintiff's Substantive Due Process Claim (Claim 2)

***9** Plaintiff's second claim asserts that requiring him to register as a sex offender is a violation of his right to substantive due process. "To establish a substantive due process violation, a plaintiff must show both (1) that she has an interest protected by the Fourteenth Amendment, and (2) that the statute, ordinance, or regulation in question is not rationally related to a legitimate government interest." *Winston v. City of Syracuse*, 887 F.3d 553, 566 (2d Cir. 2018). Rational basis review "is highly deferential," but "it is not meant to be toothless." *Id.* at 560 (quoting *Windsor v. United States*, 699 F.3d 169, 180 (2d Cir. 2012), *aff'd*, 570 U.S. 744 (2013)). Even under the rational basis test, a state may not "rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985).[4] When considering whether a state had a rational basis to impose a statute, the reviewing court may properly consider the "countervailing costs" to the targets of the challenged statute. *Plyler v. Doe*, 457 U.S. 202, 223-24 (1982).

In her Report, Judge Moses concludes that designating Plaintiff as a sex offender bears no rational relationship to the purposes of SORA. Reviewing the enabling legislation, Judge Moses identifies the purpose of SORA as "to combat 'the danger of recidivism posed by *sex offenders*, especially those *sexually violent* offenders who commit predatory acts characterized by repetitive and compulsive behavior,' and to assist the criminal justice system 'to identify, investigate, apprehend and prosecute *sex offenders.*' " R & R at 40 (emphasis added in Report) (quoting 1995 N.Y. Sess. Laws ch. 192, § 1). As a result, Judge Moses concludes that applying the label of sex offender to the narrow class of individuals like Plaintiff who "has received a judicial finding that he never has and near certainly never will commit a sexual offense" bears no rational relationship to that purpose. R & R at 42-46.

Defendants object to the Report on several grounds. They argue that designating Plaintiff as a sex offender could be rationally based on: (i) preventing dangerous sex offenders from slipping through the cracks, (ii) avoiding administrative costs, and (iii) protecting minors from harm more generally, not just sexual abuse. None of these arguments are persuasive.

As an initial matter, Defendants do not argue in their objections that Plaintiff has no *substantive* liberty interest. Def. R & R Obj. at 10-12. To the contrary, Defendants emphasize that Judge Moses erred by finding a procedural liberty interest, rather than a substantive one. *Id.* at 10. The Court finds no clear error in the conclusion that Plaintiff has a substantive liberty interest in not being labeled a sex offender when he has committed no sexual offense. *See Vega v. Lantz*, 596 F.3d 77, 81–82 (2d Cir. 2010) ("[W]rongly classifying an inmate as a sex offender may have a stigmatizing effect which implicates a constitutional liberty interest.").

Defendants first object that the Legislature could have rationally concluded that the sex offender label should be applied in a blanket manner to various crimes involving minors, even when a sexual element is not evident, to avoid any dangerous sex offenders "slipping through the cracks." Def. R & R Obj. at 11-12; Def. Mot. to Dismiss at 9-10; *see also People v. Knox*, 12 N.Y.3d 60, 69 (2009) (finding that, along with administrative burden, "the risk that some dangerous sex offenders would escape registration" provided a rational basis for "a hard and fast rule, with no exceptions"). It is true that there may be cases, such as when the victim cannot or will not testify, when it will be administratively difficult in practice to

prove that an offense was sexual in nature. As a result, it would not necessarily be irrational for the Legislature to conclude that for certain high-risk crimes toward minors, individuals should be designated as sex offenders even when it is ambiguous whether their specific offense was sexual.

***10** Yet even assuming it would be rational for the Legislature to designate individuals as sex offenders when there is uncertainty about whether their offense was sexual in nature, this does not satisfactorily answer Plaintiff's as-applied challenge. Plaintiff does not challenge that SORA is facially unconstitutional, nor even that it is unconstitutional as applied to all individuals who kidnapped unrelated minors. R & R at 42. Instead, the exceptionally narrow question before the Court for the purposes of these motions is whether there is a rational basis for designating someone as a sex offender solely in virtue of an offense that was undisputedly non-sexual. A case involving any suggestion or allegation of sexual misconduct—or even just ambiguity—would present a different question that need not be resolved here.

At this stage in the litigation, the lack of a sexual element to Plaintiff's offense can safely be termed conclusive. Based partly on the absence of any allegation of sexual abuse in this case, Justice Obus concluded at Plaintiff's SORA hearing that "I am satisfied that there is virtually no likelihood that [Plaintiff] will commit a sex crime ever." R & R at 10. Justice Obus' conclusion is particularly persuasive, as he was "very familiar" with Plaintiff, having conducted the trial of Plaintiff's co-defendant and accepted Plaintiff's plea in the underlying criminal case. SORA Tr., Dkt. No. 45-1, 20:8-12. Defendants do not contest Justice Obus' conclusion. Even more importantly, Defendants conceded for the purposes of these combined motions that there was no sexual component to Plaintiff's offenses. 10/03/18 Hearing Tr. 25:22-25, 26:1-18 (Plaintiff's counsel presenting as undisputed that Plaintiff's offenses had nothing to do with sex); 32:5-11, 14-17 (Defendants' counsel conceding this for the purposes of this motion). It is on the basis of this factual record and these representations that Plaintiff's claim must be evaluated. The Court is careful to note, however, that Defendants only conceded the absence of a sexual element for the purposes of these motions. Further argument, allegations, or evidence could present a meaningfully different issue. As a result, the risk that Plaintiff is a dangerous sex offender who might slip through the cracks is not just low, it is, at this stage, non-existent.

The slipping-through-the-cracks argument is therefore insufficient to provide a rational basis for imposing extensive civil and stigmatizing burdens on Plaintiff. R & R at 42-45. To reach this conclusion, the Court need not declare it irrational for the Legislature to weigh the harms and conclude that for individuals who committed high-risk crimes that *may* have had a sexual component, the public good is better served by a blanket rule. But extending the sex offender designation to individuals for whom the absence of a sexual element is undisputed and who have been adjudicated by a state court to pose essentially no sexual risk cannot be justified as a means of protecting against *sex offenders* falling through the cracks. *See City of Cleburne*, 473 U.S. at 446 (even under rational basis review, a court will strike down "a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational."). Indeed, as various state courts have concluded when the lack of a sexual element to the underlying offense was stipulated, "[a]lthough the Legislature's concern for protecting our children from sexual predators may be reasonable ... the application of this statute to a defendant *whom the State concedes* did not commit a sexual offense is not." *State v. Robinson*, 873 So. 2d 1205, 1215 (Fla. 2004) (emphasis added); *see also State v. Reine*, 2003-Ohio-50, ¶ 28, *cause dismissed*, 795 N.E.2d 686 (designating an individual as a sex offender "in a case in which *it has been stipulated that* his offenses were committed without any sexual motivation or purpose" lacks rational basis (emphasis added)). There is no more reason to classify Plaintiff as a *sex* offender at this stage than if he had been convicted of shoplifting, drug dealing, or any other crime that has no sexual element at all—indeed the label is less apt for Plaintiff, given Defendants' concession. Therefore, casting a wide net to include all grey area cases bears no rational relationship to this case, which, at this stage, presents no uncertainty at all.

***11** Defendants further object that the Legislature could have rationally concluded that it needed to include *all* individuals who had committed certain high-risk crimes, to avoid the administrative costs of determining in each case whether someone's crime was sexual. *See Knox*, 12 N.Y.3d at 69. Even assuming this would be rational, in cases in which the absence of a sexual element is undisputed, no further administrative effort is required. This Court's opinion today reaches no further than the situation at hand, in which the non-sexual nature of Plaintiff's offense has been conceded. *See Robinson*, 873 So. 2d at 1215; *Reine*, 2003-Ohio-50, ¶ 28. An ambiguous case that would require the expenditure of administrative resources to decide could well present a distinct question. For example, if an individual contended that an evidentiary hearing was required to show that there was no sexual element to their offense, the issue of administrative resources might require a different

analysis.

Defendants next argue that the Legislature "could have rationally determined that individuals convicted of kidnapping a minor constitute a potential risk to other minors, whether that risk is characterized as sexual or not, and that this risk justifies all the restrictions set forth at length in the R & R." Def. R & R Obj. at 12. However, this argument ignores that both the stated purpose of SORA and the way it is designed are focused on preventing *sexual offenses* rather than all crimes that are dangerous to minors. *See* R & R at 40 (quoting from SORA's legislative history as to SORA's purpose). The list of offenses that require designation as a sex offender do not include all crimes that involve harm to a minor, even serious, violent crimes. *See* CL § 168-a(2)(a)(i); *People v. Bell*, 3 Misc. 3d 773, 788 (Sup. Ct. 2003) (noting that "the conviction of Bruno Hauptman for the Lindbergh infant's murder would *not* have subjected him to classification and registration under SORA" (emphasis in original)). And even beyond the Legislature's own statements about its purpose and SORA's design, the Court finds that Defendants' proffered explanation is inconsistent with labeling Plaintiff (and requiring him to register) as specifically a *sex* offender. There is no rational reason for applying this intensely stigmatizing designation to an individual in Plaintiff's position. Nor do Defendants give any explanation for why the sexual element of the designation is related to protecting against non-sexual harms—indeed, nothing about the Court's decision would prevent Defendants from imposing a designation on Plaintiff that was rationally related to any non-sexual risk that he might pose to children. What it does prohibit is applying a specifically sexual stigmatizing designation and restrictions designed to prevent sexual abuse to an individual who has not committed any and who poses virtually no risk of doing so. Such an action cannot be viewed as rationally related to SORA's purpose.

Finally, the heavy costs imposed by Plaintiff's designation as a sex offender further support the conclusion that there is no rational basis for so classifying him. In conducting a rational basis analysis, a court may appropriately take into account the costs imposed by the law. *Plyler*, 457 U.S. at 223-24. SORA imposes significant civil burdens, as Plaintiff's case well illustrates. His life and liberty have been drastically limited in many ways, from where he can live to what speech he can engage in. SORA has also branded Plaintiff with one of the most stigmatizing labels that exists in our society, in this case doing so without a factual basis. *See, e.g.*, *ACLU of NM v. City of Albuquerque*, 2006-NMCA-078, ¶ 25, 139 N.M. 761, 772 ("[T]he hardship imposed on an offender convicted of kidnaping or false imprisonment to be labeled a sex offender, absent any evidence of a sexual motivation for the crime, is great."); *Vega*, 596 F.3d at 81-82. And labeling individuals as sex offenders when their crimes are not sexual actually risks undermining the usefulness of the registry created to effectuate SORA's purpose. *See People v. Diaz*, 150 A.D.3d 60, 66 (N.Y. App. Div.), *aff'd on other grounds*, No. 134, 2018 WL 6492716 (N.Y. Dec. 11, 2018). These significant harms to Plaintiff and the risk that labeling him as a sex offender actually undercuts public safety further support the conclusion that SORA as applied to Plaintiff lacks rational basis.

***12** For all of the above stated reasons, the Court ADOPTS Judge Moses's recommendation—albeit on the additional grounds given above, which include Defendants' concession at oral argument—and Defendants' motion to dismiss this claim is DENIED.

3. Defendants' Motion to Dismiss is Granted in Part and Denied in Part as to Plaintiff's Vagueness Claims (Claim 3)

Plaintiff's third claim alleges that three of his parole conditions are unconstitutionally vague: Special Condition No. 4, "which excludes plaintiff from 'school grounds' – defined to include public areas within 1,000 feet of the school"; Special Condition No. 17, "which prohibits him from being 'within 300 yards of places where children congregate' "; and Special Condition No. 24, "which directs him to notify his parole officer and make certain disclosures when he 'establish[es] a relationship with a consenting adult.' " R & R at 46 (alteration in Report). Judge Moses recommends that the Court deny the motion to dismiss as to Conditions Nos. 4 and 7 and grant it as to Condition No. 24. Defendants object to the former, while Plaintiff does not object to the latter.

Under the Due Process Clause, "[a] statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill v. Colorado*, 530 U.S. 703, 732 (2000) (citing *Chicago v. Morales*, 527 U.S. 41, 56-57 (1999)). And parole conditions are subject to review as void for vagueness. *LoFranco v. U.S. Parole Comm'n*, 986 F. Supp. 796, 808 (S.D.N.Y. 1997), *aff'd*, 175 F.3d 1008 (2d Cir. 1999). Applying this standard, the Court will address

each of the challenged conditions in turn.

a. Defendants' Motion to Dismiss Plaintiff's Claim that Special Condition No. 4 is Unconstitutionally Vague is Denied in Part and Granted in Part

Plaintiff seeks injunctive relief, but not damages, on his vagueness challenge to Special Parole Condition No. 4. This condition, which is a statutorily mandated parole condition for parolees convicted of offenses that include Plaintiff's, R & R at 6, excludes Plaintiff from "school grounds," defined to include public areas within 1,000 feet of a school, while minors are present. EL § 259-c(14); PL § 220.00(14). Judge Moses recommended that: (i) Special Condition No. 4 is not unconstitutionally vague as applied to where Plaintiff may reside, since preclearance of residences by a parole office means there is no risk of an inadvertent violation; and (ii) this condition is unconstitutionally vague as to where Plaintiff is allowed to travel, both because it fails to provide sufficient notice *and* because it authorizes or encourages arbitrary enforcement. R & R at 49. Plaintiff did not object to the first part of Judge Moses' recommendation with sufficient specificity, Pl. R & R Obj. Resp. at 16, so it will be reviewed for clear error. *Kirk v. Burge*, 646 F. Supp. 2d 534, 537 (S.D.N.Y. 2009). Defendants raise two principal objections to the second part of Judge Moses' recommendation: first, because the condition has a knowledge requirement, there is no risk of an inadvertent violation; and second, Judge Moses improperly considered hypotheticals in an as-applied vagueness challenge, which must be confined to a plaintiff's actual conduct. These will be reviewed *de novo.*

***13** The Court agrees with Judge Moses that because Special Condition No. 4 requires that a proposed residence be precleared by Plaintiff's parole officer, it is not void for vagueness. This is particularly true since both the applicable statute and New York state court decisions interpreting it provide precise definitions to determine how the 1,000 feet in question are calculated. R & R at 48. Finding no error, clear or otherwise, in this portion of Judge Moses' Report, the Court adopts it in full.

Defendants object that Condition No. 4 cannot be unconstitutionally vague, because its requirement that violations be knowing precludes inadvertent violations. Yet this does not address the separate conclusion that Condition No. 4, as applied to Plaintiff, is void on the separate and independent grounds that "it authorizes or even encourages arbitrary and discriminatory enforcement." *Hill*, 530 U.S. at 732. Indeed, the Supreme Court has indicated that "the more important aspect of vagueness doctrine 'is not actual notice, but the other principal element of the doctrine—the requirement that a legislature establish minimal guidelines to govern law enforcement.' " *Kolender v. Lawson*, 461 U.S. 352, 358 (1983) (quoting *Smith v. Goguen*, 415 U.S. 566, 574 (1974)). In the absence of such guidelines, a "criminal statute may permit 'a standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.' " *Id.* (alteration in original) (quoting *Goguen*, 415 U.S. at 575). The 1,000-foot rule encompasses vast swaths of New York City. R & R at 50. It would also cover innocent conduct, since, as Judge Moses noted, this prohibition includes the courthouse where Plaintiff has been required to appear. R & R at 50. The knowledge requirement does not provide sufficient standards to govern the conduct that may be penalized as it is reasonable to presume that "the fact that there are schools and childcare facilities throughout New York City is something everyone ... knows." *State v. Floyd Y.*, 56 Misc. 3d 271, 273 (N.Y. Sup. Ct. N.Y. Co. 2017). Therefore, unless Plaintiff remains in his shelter for much if not all of the day, he will necessarily knowingly violate the law on countless occasions. While in practice, this condition may only be enforced as to residency, Def. R & R Obj. at 14, these informal enforcement practices cannot rescue the condition from vagueness where they "would not provide a defense" to Plaintiff if he were to be arrested. *See City of Chicago*, 527 U.S. at 63-64. Nor is a saving construction available, given the explicit language of the statute. R & R at 51-52 (citing EL § 259-c(14)). This mandatory condition therefore places almost limitless discretion in the hands of Plaintiff's parole officers to arrest him for traveling almost anywhere in the city that he lives, raising precisely the concerns that void-for-vagueness doctrine seeks to prevent. *See Kolender*, 461 U.S. at 357-58.

As the Court finds that Plaintiff has sufficiently stated a claim that the condition is void for authorizing arbitrary enforcement, it need not reach whether it is void for lack of notice.

Defendants' other objection, that Plaintiff's claim is not a proper as-applied challenge, fares no better. Defendants contend that Judge Moses erred by permitting Plaintiff to challenge Condition No. 4 on vagueness grounds based on hypothetical future enforcement when, with the exception of residency requirements, it has not been enforced again him. Defendants cite *Copeland v. Vance* for the proposition that Plaintiff may not "seek to show that the ... law is vague by positing hypothetical unfair enforcement actions in which the statute could not be constitutionally applied." 893 F.3d 101, 113 (2d Cir.

2018). Yet *Copeland* made clear that prospective, as-applied challenges are possible. *Id.* at 111-13 (noting also that "a party asserting a pre-enforcement challenge obviously cannot be required to show that a prior action was invalid"). What *Copeland* required is that: "A party asserting a prospective as-applied challenge must tailor the proof to the specific conduct that she would pursue but for fear of future enforcement" and show that enforcement as to this conduct would raise vagueness concerns. *Id.* at 112-13. In *Copeland*, Plaintiffs did not offer evidence of specific conduct they wished to engage in that would trigger vagueness concerns, instead positing hypothetical scenarios in an attempt to have the entire statute struck down. *Id.* at 113. Here, however, Plaintiff *himself* has sufficiently alleged that he would engage in specific conduct that would violate the 1,000-feet provision and in so doing raise vagueness concerns about arbitrary enforcement. SAC ¶ 61. Therefore, Plaintiff's challenge is properly framed as an as-applied challenge.

***14** In light of the analysis above, the Court ADOPTS Judge Moses' reasoning with respect to arbitrary enforcement, but not to lack of notice. Defendants' motion to dismiss this claim is hereby DENIED.

b. Defendants' Motion to Dismiss Plaintiff's Claim that Special Condition No. 17 is Unconstitutionally Vague is Denied in Part and Granted in Part

Plaintiff seeks injunctive relief and damages on his vagueness challenge to Special Condition No. 17. This condition expressly prohibits Plaintiff from "enter[ing]" or "be[ing]" within 300 yards of "places where children congregate" without prior approval from his parole officer. R & R at 52-53 (alterations in Report). Judge Moses recommended that: (i) this condition is void for vagueness for both lack of notice and for allowing arbitrary enforcement; and (ii) because Plaintiff has not alleged this was enforced against him in the past, his claim for damages should be dismissed. R & R at 52-55. Defendants object on similar grounds as they did for the 1,000-foot rule: first, that there is no possibility of inadvertent violations because a knowledge requirement should be read into the condition and because the condition provides a list of examples illustrating the kinds of areas in question; and second, that Judge Moses improperly relied on hypotheticals in evaluating an as-applied challenge.

As with Condition No. 4, however, even aside from the question of whether a person of ordinary intelligence would have a reasonable opportunity to determine what conduct Condition No. 17 prohibits, the condition would still be unconstitutionally vague because it "authorizes or even encourages discriminatory enforcement." *Hill*, 530 U.S. at 732. If anything, this provision applies to a broader swath of territory than Special Condition No. 4, as it not only includes schools but also a number of other places as well, such as parks, bike trails, and pool halls. SAC Ex. C ¶ 17. Nor does it actually require the presence of a minor. Judge Moses noted that, once again, the courthouse was within 300 yards of Columbus Park, R & R at 54 n.40, while Plaintiff noted that the Willow Avenue shelter, where he is currently housed, is directly across the street from a family shelter at which young children congregate. *See* SAC ¶ 80. Once again, this exceptionally broad scope places essentially total enforcement discretion in the hands of Plaintiff's parole officers, allowing them to arrest Plaintiff for a host of legitimate activity, such as stepping out of the shelter where his parole restrictions have effectively required him to remain. *See United States v. Malenya*, 736 F.3d 554, 561 (D.C. Cir. 2013) (noting how a similar restriction gave "the probation office the power to prevent [the registered sex offender] from living almost anywhere and going to almost any place"). As applied to Plaintiff, this provision is therefore unconstitutionally vague.

As above, since the Court finds that Plaintiff has sufficiently stated a claim that the condition is void for authorizing arbitrary enforcement, it need not reach whether it is void for lack of notice.

Turning to Plaintiff's claim for damages, the Court finds no error, clear or otherwise, in Judge Moses' recommendation that this claim should be dismissed because Plaintiff failed to allege that this condition had been enforced against him in the past.

***15** The Court ADOPTS the Report as to the finding that this condition authorizes arbitrary enforcement and as to damages, but not as to lack of notice. Defendants' motion to dismiss this claim is DENIED as to injunctive relief and GRANTED as to money damages.

c. Defendants' Motion to Dismiss Plaintiff's Claim that Special Condition No. 24 is Unconstitutionally Vague is Granted

Plaintiff seeks both injunctive relief and damages on his claim that Special Condition No. 24 is void for vagueness. Condition No. 24 requires Plaintiff to notify his parole officer "when I establish a relationship with a consenting adult and then shall inform the party of my prior criminal

history concerning sexual abuse, in the presence of my parole officer." SAC Ex. C ¶ 24 (emphasis in original). Judge Moses found that this was not void for vagueness and recommended dismissal. R & R at 55-56. Plaintiff did not object to this ruling and therefore the Court reviews it for clear error.

Judge Moses found that a reasonable individual in Plaintiff's position would understand that this condition referred not to all relationships, but only consensual sexual relationships. R & R at 55-56. Judge Moses also noted that since Plaintiff had already disclosed his relationship to his fiancée, he "clearly understood the type of relationship the special condition targeted." R & R at 56. The Court does not find the Report to be clearly erroneous. The Court ADOPTS the Report in full on this claim, and GRANTS Defendants' motion to dismiss.

4. Defendants' Motion to Dismiss is Denied as to Plaintiff's Claim that Special Parole Condition No. 48 and Other Technology Restrictions Violate His First Amendment Rights (Claim 4)

Plaintiff's parole conditions place a variety of de jure and de facto limitations on his ability to access the internet, particularly social media. Under Special Condition No. 12, Plaintiff cannot "engage or participate in any online computer service that involves the exchange of electronic messages"; No. 35 states that he may not "own or possess a beeper, scanner or cell phone without permission of [his] parole officer" and that if he is given permission to possess a cell phone, it cannot be video or photo-capable; No. 39 prevents him from possessing a computer or computer-related materials without approval by his parole officer; and No. 48 which, *inter alia*, prohibits him categorically from accessing "a commercial social networking website." SAC, Ex. C at 5-10. In addition to the specific restrictions on internet use itself, Plaintiff alleges that the limitations on his access to technology have the de facto effect of barring him from accessing the internet for nearly all purposes. SAC ¶ 81-92, 162. Plaintiff argues that these conditions violate his First Amendment rights and seeks injunctive relief and damages.

Judge Moses recommended that Condition No. 48, operating in conjunction with the limitations on Plaintiff's access to technological devices, violated Plaintiff's First Amendment rights under the Supreme Court's recent decision in *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017). As to Plaintiff's request for damages, Judge Moses recommended dismissal on qualified immunity grounds except as to officer Lewis-Robinson for the period after the Supreme Court's decision in *Packingham*. R & R at 63-64. Defendants object to the Report's recommendation on the merits of Plaintiff's First Amendment claim and as to whether qualified immunity precludes money damages even post-*Packingham*. Plaintiff does not object to the recommended denial of damages pre-*Packingham*. The Court will address the merits of Plaintiff's claim and the question of qualified immunity in turn.

a. The Motion to Dismiss is Denied as to Plaintiff's First Amendment Claim

***16** Defendants' primary objection is that *Packingham* does not apply to parole conditions and Judge Moses erred in imposing intermediate scrutiny. Def. R & R Obj. at 17-19. The Court disagrees.

Under *Packingham*, blanket limitations on an individual's ability to access social media will receive intermediate scrutiny, even when imposed as conditions of parole. There is no indication in *Packingham* that parolees are exempted from the Court's decision. The North Carolina law challenged in *Packingham* applied to registered sex offenders generally, without distinguishing between those who had finished any period of supervised release. *Packingham*, 137 S. Ct. at 1733-34; N.C. Gen. Stat. Ann. § 14-202.5(a) (applying the prohibition to registered sex offenders).[5] In fact, the Court was clear that the distinction between those who were presently under the supervision of the criminal justice system and those who no longer were was not a basis for its holding: "the troubling fact that the law imposes severe restrictions on persons who already have served their sentence and are no longer subject to the supervision of the criminal justice system is also *not* an issue before the Court." *Id.* at 1737 (emphasis added); *see also United States v. Browder*, 866 F.3d 504, 511 n.26 (2d Cir. 2017), *cert. denied*, 138 S. Ct. 693 (2018) (noting that the Court in *Packingham* did not seem to rely on the fact that the ban extended beyond the supervision of the criminal justice system). More generally, after describing the myriad ways in which the internet and social networks are part of an ongoing revolution in human communication, the Court cautioned that it would "exercise extreme caution before suggesting that the First Amendment provides scant protection for access to vast networks in that medium." *Packingham*, 137 S. Ct. at 1736. Indeed, the Supreme Court's decision to apply intermediate scrutiny was based on the sheer breadth of legitimate speech burdened, a concern that applies with equal force here. *Packingham*, 137 S. Ct. at

1735-37. While the Court stated that "it can be assumed that the First Amendment permits a State to enact specific, narrowly tailored laws that prohibit a sex offender from engaging in conduct that often presages a sexual crime, like contacting a minor or using a website to gather information about a minor" it then made clear "[s]pecific laws of that type *must be* the State's first resort to ward off the serious harm that sexual crimes inflict." *Id.* at 1737 (emphasis added). Therefore, while in some contexts parolees receive a lesser degree of constitutional protection, it would be inconsistent with *Packingham* to categorically exempt parole conditions from its reach.

Nor is the Court persuaded by Defendants' objection that *Packingham* is distinguishable because Plaintiff's parole conditions are not absolute. Def. R & R Obj. at 18-19. Condition No. 48, prohibiting access to commercial social networking websites, is not written to allow parole officers to grant individualized exceptions. And Plaintiff alleges that in practice these conditions have functioned as an almost absolute bar, with the exception of using a school computer and "only for academic purposes and for purposes related to this lawsuit." SAC ¶¶ 81-92. These limited exceptions do not satisfy the concerns about access to the "vast democratic forums of the internet" for a multiplicity of purposes that was the basis for the Supreme Court's decision. *Packingham*, 137 S. Ct. at 1735-37 (internal quotation marks omitted). Furthermore, the possibility of certain case-by-case exceptions was insufficient to save other overly broad conditions of supervised release limiting internet or technology access, even when analyzed under a less demanding standard. *See United States v. Sofsky*, 287 F.3d 122, 126 (2d Cir. 2002); *United States v. Peterson*, 248 F.3d 79, 81, 82-84 (2d Cir. 2001). Therefore, the possibility of case-by-case exceptions from some of these conditions does not exempt them from *Packingham*, a conclusion reinforced by the nearly blanket manner they have allegedly been applied.

***17** Defendants do not argue that these conditions can withstand intermediate scrutiny and the Court agrees with Judge Moses that they cannot. Under intermediate scrutiny, a law must not "burden substantially more speech than is necessary to further the government's legitimate interests." *McCullen v. Coakley*, 134 S.Ct. 2518, 2535 (2014) (internal quotation marks omitted). Plaintiff's crime did not involve the internet, social media, the exchange of electronic messages, cell phones, or computers. R & R at 62. As applied to Plaintiff, these restrictions therefore plainly burden substantially more speech than necessary and therefore fail intermediate scrutiny.

b. Defendants Are Entitled to Qualified Immunity on Plaintiff's First Amendment Claims

While Plaintiff has sufficiently pled a First Amendment claim on the merits, the Court must still address whether the doctrine of qualified immunity warrants dismissing Plaintiff's claim for money damages. If a defendant can show that qualified immunity applies, a claim for money damages should be dismissed as a matter of law. *McKenna v. Wright*, 386 F.3d 432, 436 (2d Cir. 2004). Qualified immunity would not, however, bar Plaintiff's request for injunctive relief. *See, e.g.*, *Horne v. Coughlin*, 191 F.3d 244, 250 (2d Cir. 1999) (qualified immunity is not a defense to injunctive relief).

The Court finds that Plaintiff's rights were not clearly established under *Packingham* and that Defendants are therefore entitled to qualified immunity. For a right to be clearly established, "existing precedent must have placed the statutory or constitutional question beyond debate." *White v. Pauly*, 137 S. Ct. 548, 551 (2017) (internal quotes omitted). Though for the reasons above the Court ultimately agrees with Plaintiff's reading of *Packingham*, it has not been established in this jurisdiction that it applies to conditions of supervised release and a number of other federal courts have indicated that it might not. *See, e.g.*, *United States v. Rock*, 863 F.3d 827, 831 (D.C. Cir. 2017). Therefore, the constitutional question of *Packingham*'s application in this context was not beyond debate.

As to the period before *Packingham*, Plaintiff did not object to Judge Moses's conclusion that his rights before the Supreme Court's decision were not clearly established. Reviewed under the deferential clear error standard, it was not clearly erroneous for Judge Moses to conclude that—in part because Plaintiff had implicitly conceded this argument, R & R at 64—the unlawfulness of Defendants' conduct under the First Amendment was not clearly established prior to *Packingham*. Therefore, qualified immunity bars Plaintiff's request for money damages on his First Amendment claim both before and after *Packingham*.

For these reasons, the Court ADOPTS the Report's reasoning as to the merits of Plaintiff's First Amendment claim but not as to damages. Defendants' motion to dismiss Plaintiff's First Amendment claim on the merits is DENIED, but Defendants' motion to dismiss Plaintiff's claim for money damages is GRANTED.

5. Defendants' Motion to Dismiss is Denied in Part as to Plaintiff's Claim of Interference with his Family Relationships (Claim 5)

Plaintiff contends that he has a fundamental right to contact with his extended family and that his parole conditions prohibiting contact with minors in his family violates his due process rights. Plaintiff seeks both injunctive relief and money damages on this claim. Under Special Condition No. 15, Plaintiff is prohibited from having any contact with children under the age of 18 without the prior approval of his parole officer. SAC, Ex. C at 6. Judge Moses agreed with Defendants that Plaintiff had no fundamental right to contact extended family members who are not his own children and with whom he never had a close or custodial relationship. R & R at 65-67. However, even though no fundamental right was at stake, Judge Moses found that the Due Process Clause still requires that parole conditions be "reasonably related to [the parolee's] prior conduct or the government's interest in his rehabilitation." R & R at 67 (alteration in Report) (quoting *Singleton v. Doe*, 210 F. Supp. 3d 359, 374 (E.D.N.Y. 2016)). Judge Moses found that viewed on the motion to dismiss standard, Plaintiff had sufficiently alleged a claim for injunctive relief and damages as against Defendant Lewis-Robinson. Defendants object on several grounds, Plaintiff does not.

***18** The Court does not find any error—clear or otherwise—in Judge Moses's conclusion that Plaintiff's fundamental rights were not implicated here and adopts this portion of the Report.

Defendants object that Plaintiff only pled a violation of his fundamental rights, and therefore Judge Moses erred by proceeding to apply the lower standard of review. Def. R & R Obj. at 19-21. It is true that Plaintiff did not include Special Condition No. 15 among the conditions that he challenged in a separate section as arbitrary and capricious. SAC ¶¶ 171-73. Nonetheless, Plaintiff did plead that the way the condition is applied to him violates the Due Process Clause, *id.* ¶¶ 93-105, 164-69, which provides the level of review that Judge Moses applied, *Singleton*, 210 F. Supp. 3d at 372-74. Therefore, the Court finds that Plaintiff stated a claim that the way Condition No. 15 is being applied to him violates his rights under the Due Process Clause.

As to the merits of Plaintiff's claim, Defendants object that because Plaintiff's crime involved harm to a minor, there is a rational relationship between this condition and the threat Plaintiff poses to children. Def. R & R Obj. at 19-20. Drawing all reasonable inferences in Plaintiff's favor, Plaintiff has alleged that Condition No. 15 is being applied as an absolute ban on his ever coming into contact with a minor member of his family. The Court agrees with Judge Moses that Plaintiff's kidnapping for ransom of an unrelated minor has no rational relationship to an absolute bar on his ever seeing minors to whom he is related, even in the presence of other adult family members. R & R at 68-69. Therefore, the Court rejects Defendants' objection.

Defendants also specifically object that neither form of relief sought by Plaintiff, injunctive relief and money damages, are available on this claim, warranting dismissal. Def. R & R Obj. at 20 n.3. The Court addresses each objection in turn.

Separate from their arguments about the preliminary injunction, Defendants object that Plaintiff's request for injunctive relief should be dismissed entirely, since the only relief he could ultimately receive would be an impermissibly vague injunction ordering Defendants to "follow the law." *Id.* at 20 n.3. Defendants are correct that "[u]nder Rule 65(d), an injunction must be more specific than a simple command that the defendant obey the law." *S. C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 240 (2d Cir. 2001) (quoting *Peregrine Myanmar Ltd. v. Segal*, 89 F.3d 41, 51 (2d Cir. 1996)). Under this standard, "an injunction must 'be specific and definite enough to apprise those within its scope of the conduct that is being proscribed.' " *Id.* at 240-41 (quoting *N.Y. State Nat'l Org. for Women v. Terry*, 886 F.2d 1339, 1352 (2d Cir. 1989)). The purpose of this rule is "to prevent uncertainty and confusion on the part of those to whom the injunction is directed, and to be sure that the appellate court knows precisely what it is reviewing." *Id.* at 241 (internal quotation marks omitted) (quoting *Rosen v. Siegel*, 106 F.3d 28, 32 (2d Cir. 1997)). The Court does not find that, as a matter of law, it would be impossible to tailor sufficiently specific injunctive relief to this claim. For example, an injunction requiring Plaintiff's parole officers to consider his requests on a case-by-case basis and provide an explanation based on legitimate interests such as public safety and rehabilitation would provide sufficient notice to Defendants as to what is prohibited, and be definite enough in scope for further review.

***19** As to damages, the Court concludes that it was not clearly established that Defendant Lewis-Robinson's conduct was unlawful and she is therefore entitled to qualified immunity. While it is established that parole conditions may not be applied in an arbitrary and capricious manner, the qualified immunity analysis requires greater particularity. *See White v. Pauly*, 137 S. Ct. 548, 551-52 (2017). The only factually similar case to which Plaintiff points, *Doe v. Lima*, involved an individual's relationship with his son, and therefore

implicated a fundamental liberty interest. 270 F. Supp. 3d 684, 704 (S.D.N.Y. 2017); *see also Doe v. Annucci*, No. 14 CIV. 2953 (PAE), 2015 WL 4393012, at *12-13 (S.D.N.Y. July 15, 2015) (same). Absent other authority, the Court agrees with *Singleton*, which found that qualified immunity applies to due process challenges to parole conditions as "[a]lthough parolees are entitled to certain limited due process rights in the conditions of their parole, those due process rights are not clearly defined." 210 F. Supp. 3d at 374. Therefore, the Court concludes that all Defendants are entitled to qualified immunity on this claim.

For the reasons given above, the Court ADOPTS the Report as to the merits of Plaintiff's claim, but not as to qualified immunity. Defendants' motion to dismiss is DENIED as to the merits of Plaintiff's claim, but GRANTED as to Plaintiff's claim for damages.

6. Defendants' Motion to Dismiss is Denied in Part on Plaintiff's Claim that Nine of His Parole Conditions Are Arbitrary and Capricious (Claim 6)

In Plaintiff's sixth and final claim, he alleges that a number of his parole conditions are arbitrary and capricious and that his parole officers acted arbitrarily and capriciously, in violation of the Due Process Clause. This includes officer Lewis-Robinson's alleged refusal to consider alternate proposed residences besides the shelter to which he has been assigned, the restrictions on his internet and technology use, as well as "Special Condition No. 24, governing his relationships with consenting adults; Nos. 31 and 32, which prohibit him from owning, operating, or being a passenger in a motor vehicle without the permission of his PO; No. 14, which prohibits him from purchasing or possessing sexually explicit materials; No. 19, which prevents him from owning a pet; and No. 37, which prohibits him from renting a post office box without his PO's prior approval." R & R at 70. Plaintiff seeks injunctive relief and damages on these claims. The Court will address each of these restrictions in turn.

***20** As an initial matter, the parties and Judge Moses agree as to the legal standard for evaluating such claims.[6] "[P]arolees are entitled to some form of due process in the imposition of special conditions of parole." *Pollard v. United States Parole Comm'n*, No. 15-CV-9131 (KBF), 2016 WL 3167229, at *4 (S.D.N.Y. June 6, 2016) (citing cases). "In the Second Circuit, special restrictions on a parolee's rights are upheld where they 'are reasonably and necessarily related to the interests that the Government retains after his conditional release.' " *Muhammad v. Evans*, No. 11 CV 2113 (CM), 2014 WL 4232496, at *9 (S.D.N.Y. Aug. 15, 2014) (quoting *Birzon v. King*, 469 F.2d 1241, 1243 (2d Cir. 1972)). Conditions will be upheld if there is a reasonable relationship to the parolee's prior conduct or to a legitimate government interest such as rehabilitation, the prevention of recidivism and future offenses, and protection of the public. *Singleton*, 210 F. Supp. 3d at 372–74 (citing cases). On the other hand, if conditions are arbitrary and capricious, they will be invalidated. *See, e.g.*, *Boddie*, 2011 WL 1697965, at *2 (citing cases). Defendants argue that there is effectively a heightened pleading standard for such claims, Def. Mot. to Dismiss, Dkt. No. 60, at 17, but the Court agrees with Judge Moses that the sole case on which Defendants purport to base this principle, *Trisvan v. Annucci*, 284 F. Supp. 3d 288, 304 (E.D.N.Y. 2018), is properly understood as reflecting the unusual circumstances surrounding that case, not announcing a general heightened pleading standard. R & R at 76-77, 77 n.5. The Court will apply the standard pleading requirements and the arbitrary and capricious standard to Plaintiff's various challenges.

a. Defendants' Motion to Dismiss is Denied in Part as to Special Condition No. 4

Plaintiff challenges that Defendants are arbitrarily and capriciously requiring him to stay in the shelter to which he has been assigned. Judge Moses recommended that Defendants' motion to dismiss be denied as to the merits of Plaintiff's claim, but granted as to money damages except with respect to Defendant Lewis-Robinson. R & R at 70-71. Defendants object as to both.

Defendants object that Judge Moses erred by finding that Plaintiff has stated a claim on the basis of a single incident alone. Def. R & R Obj. at 21-22. The Court relies on Judge Moses's thorough description of Plaintiff's allegations surrounding his request to move out of the Willow Avenue Men's Shelter and in with his fiancée's sister, Ms. Blake. R & R 70-71. The Court agrees with Judge Moses that Plaintiff has alleged facts giving rise to a plausible claim on the merits that his residency requirements are being arbitrarily and capriciously applied in a manner that de facto confines him to the shelter for the convenience of his parole officer. R & R at 71. This objection is therefore rejected.

Here again, Defendants specifically object that neither injunctive relief nor money damages are available on this claim, warranting dismissal. The Court addresses each in turn.

Independently of their arguments about a preliminary injunction, Defendants object that any injunctive relief on this claim would be so vague as to be unenforceable and so the claim for injunctive relief should be dismissed entirely. Def. R & R Obj. at 22. As above, the Court cannot conclude that, as a matter of law, it would be impossible to tailor sufficiently specific injunctive relief on this claim. For example, Plaintiff offers that if he could establish in discovery "that Ms. Blake would be willing to house him and there is no non-arbitrary reason to deny his request to move" the Court could require Defendants to allow Plaintiff to live with Ms. Blake. Pl. R & R Obj. Resp. at 27. Therefore, the Court cannot conclude that, as a matter of law, no appropriate injunctive relief could be granted on this claim.

As to damages, the Court finds that while it is established that in general parole conditions cannot be arbitrary and capricious, neither Judge Moses nor Plaintiff identified any sufficiently similar cases to clearly establish that Defendant Lewis-Robinson's conduct with respect to alternate residences was unconstitutionally arbitrary. *See Pauly*, 137 S. Ct. at 551-52; *Singleton*, 210 F. Supp. 3d at 374. Therefore, the parole officer defendants are entitled to qualified immunity on this claim.

***21** For the reasons above, the Court therefore ADOPTS the Report as to the merits of Plaintiff's claim, but not as to qualified immunity. Defendants' motion to dismiss Plaintiff's claim on the merits is DENIED, but Defendants' motion to dismiss Plaintiff's claim for money damages is GRANTED.

b. Defendants' Motion to Dismiss is Granted as to Special Condition No. 24

Special Condition No. 24 requires Plaintiff to disclose his sexual relationships to his parole officer and disclose his supposed prior history of sexual abuse to his partners. SAC, Ex. C ¶ 24. Judge Moses recommended that since this was not "reasonably related to his prior conduct or to the government's interest in his rehabilitation[,]" the motion to dismiss should be denied as to the merits of Plaintiff's claim. R & R at 74-75. However, Judge Moses recommended granting the motion to dismiss with respect to money damages, as Plaintiff had failed to sufficiently allege harm and Defendants were entitled to qualified immunity. *Id.* at 75. For the reasons given below, the Courts finds it unnecessary to address the merits of this claim, as Plaintiff has failed to show standing on his claim for injunctive relief, *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-06 (1983), and qualified immunity bars his claim for damages, *Mesa v. City of New York*, No. 09 CIV. 10464 JPO, 2013 WL 31002, at *7 (S.D.N.Y. Jan. 3, 2013) (a court is not required to address the merits of a claim before deciding that qualified immunity applies).

Though this was not raised as an objection, the Court finds that Plaintiff has failed to sufficiently allege a risk of future harm sufficient for standing to bring a claim for injunctive relief. A federal court has an obligation to confirm whether a plaintiff has standing, including raising the issue *sua sponte*. *Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 433 F.3d 181, 198 (2d Cir. 2005). "[A] plaintiff seeking injunctive relief must demonstrate *both* a likelihood of future harm *and* the existence of an official policy or its equivalent." *Shain v. Ellison*, 356 F.3d 211, 216 (2d Cir. 2004) (emphasis in original) (citing *Lyons*, 461 U.S. at 105-06). To satisfy the first prong, a Plaintiff must establish that "he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct." *Lyons*, 461 U.S. at 101-02 (internal quotation marks omitted). Past injury alone is insufficient to satisfy this requirement, unless it is causing continuing, present harm. *See Deshawn E. by Charlotte E. v. Safir*, 156 F.3d 340, 344 (2d Cir. 1998). In this case, Plaintiff has only alleged the past harm of being required to tell his fiancée about his status and that "he was forced to disclose the sexual nature of his relationship to PO Lewis-Robinson in detail." SAC ¶¶ 121-22. Plaintiff has not alleged that either of these requirements is ongoing, nor that he plans to enter into a new relationship such that this disclosure would be triggered again. Therefore, the Court will dismiss, without prejudice, Plaintiff's request for injunctive relief on this claim for lack of standing.[7]

***22** As to damages, for similar reasons as those given in the qualified immunity analyses above, there are no sufficiently similar cases to establish with sufficient particularity that Defendant Lewis-Robinson's conduct with respect to this claim was unconstitutionally arbitrary. *See Pauly*, 137 S. Ct. at 551-52; *Singleton*, 210 F. Supp. 3d at 374. Defendant parole officers are therefore entitled to qualified immunity on this claim. For this reason, the Court does not reach the question of whether Plaintiff sufficiently alleged past harm.

For the forgoing reasons, neither injunctive relief nor money damages are available on this claim, which must therefore be dismissed. The Report is ADOPTED as to qualified immunity, but not as to the merits of Plaintiff's claim or whether Plaintiff sufficiently alleged harm. Defendants' motion to dismiss this claim is hereby GRANTED in full.

c. Defendants' Motion to Dismiss is Granted as to Special Conditions Nos. 31 and 32

Plaintiff challenges Special Conditions Nos. 31 and 32, which *inter alia*, prohibit him from obtaining a driver's license, as well as from owning, operating, or being a passenger in a motor vehicle, without permission of his Parole Officer. SAC, Ex. C ¶¶ 31-32. Judge Moses found that because Plaintiff had used a car in the commission of his crime and the conditions imposed on him were not absolute, these limitations were not arbitrary and capricious and recommended dismissal of these claims. R & R at 75-76. Plaintiff did not object to this recommendation, which will therefore be reviewed for clear error. The Court finds that Judge Moses' recommendation is not clearly erroneous. Where an individual used a vehicle in the commission of their crime, a parole condition limiting their access to such vehicles without approval is not unreasonable. *See Gerena v. Rodriguez*, 192 A.D.2d 606, 606-07 (1993). Therefore, the Court ADOPTS the Report in full as to this claim and Defendants' motion to dismiss this claim is hereby GRANTED.

d. Defendants' Motion to Dismiss is Granted as to Special Conditions Nos. 14, 19, and 37

Plaintiff challenges that prohibitions on his viewing pornography (Special Condition No. 14), owning a pet (Special Condition No. 19), or owning a post office box (Special Condition No. 37), are arbitrary and capricious. R & R at 76-78. However, Judge Moses recommended that because Plaintiff had failed to allege that any of these prohibitions were having any impact on his life, his claims should be dismissed. R & R at 78. Plaintiff did not object to this recommendation, which will therefore be reviewed for clear error.

This Court finds no clear error in Judge Moses's recommendation. Plaintiff has not pled standing sufficient for either injunctive relief or money damages. As to injunctive relief, even drawing all reasonable inferences in his favor, Plaintiff has failed to allege "he has sustained or is immediately in danger of sustaining some direct injury as the result of the challenged official conduct." *Lyons*, 461 U.S. at 101-02. Nor has Plaintiff pled past harm that would warrant money damages. Indeed, Plaintiff has pled no injury at all resulting from these conditions, but rather simply lists them off in his complaint. SAC ¶¶ 128-29, 173. Because Plaintiff lacks standing, these claims must be dismissed. Therefore, the Court ADOPTS the Report on this claim and Defendants' motion to dismiss Plaintiff's claims with respect to Special Conditions Nos. 14, 19, and 37 is therefore GRANTED without prejudice.

e. Defendants Are Entitled to Qualified Immunity on Plaintiff's Claim that the Internet and Technology Restrictions Are Arbitrary and Capricious

***23** In addition to his First Amendment challenge, Plaintiff also challenges that the parole conditions restricting his access to the internet and technology are arbitrary and capricious. SAC ¶ 173(i)-(ii). The Report does not address this claim separately, as it considered the same issues in its First Amendment analysis. R & R at 70 n.50. Neither party objected. The Court agrees that it is not necessary to determine the merits of this claim separately. However, whether Defendants are entitled to qualified immunity on Plaintiff's claim for damages under the Due Process Clause requires a separate analysis from the First Amendment claim.

The Court finds that Plaintiff's due process rights here were not clearly established for the purposes of qualified immunity. A right may be clearly established by either controlling authority or "a robust consensus of cases of persuasive authority." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741–42 (2011) (internal quotation marks omitted). Here, neither condition is met. Second Circuit decisions interpreting the somewhat more stringent statutory standard imposed on federal conditions of supervised release under 18 U.S.C. § 3553(a) and § 3563(b) have invalidated conditions restricting internet or computer access if they were not reasonably related to the purposes of sentencing or inflicted a greater deprivation of liberty than necessary. *See United States v. Sofsky*, 287 F.3d 122, 126 (2d Cir. 2002); *United States v. Peterson*, 248 F.3d 79, 82-84 (2d Cir. 2001). Yet given the different legal standard, these are not controlling authority as to the constitutional analysis of state parole conditions. A recent case in the Eastern District of New York drew on these decisions—while noting the different standards—to sustain on summary judgment a challenge to a parole condition limiting a parolee's ability to own a phone with a camera where there was no evidence that it was related to prior conduct. *Singleton*, 210 F. Supp. 3d at 375-76. However, the court in that case also found that Defendants were entitled to qualified immunity given that due process rights in this context are "not clearly

defined." *Id.* at 374. Therefore, while a consensus is emerging that it is arbitrary and capricious under the Due Process Clause to impose these kinds of technology and internet restrictions without an individualized link to prior conduct or another legitimate government interest, it has not yet been sufficiently clearly established for the purposes of the qualified immunity analysis. Defendants' motion to dismiss Plaintiff's claim for damages on this claim is therefore GRANTED.

For the reasons given above, Defendants' motion to dismiss is hereby GRANTED in full as to Claim 1, Claim 3 as to residences and the consensual relationships rule, Claim 6 as to the consensual relationships rule, motor vehicles rule, pornography, pets, and P.O. boxes. Defendants' motion is also GRANTED as to money damages on all claims. Otherwise, Defendants' motion is hereby DENIED.

D. Plaintiff is Entitled to a Preliminary Injunction on his Substantive Due Process Claim

The Court now turns to Plaintiff's motion for a preliminary injunction. Judge Moses's Report recommended that Plaintiff is entitled to a preliminary injunction on his substantive due process claim. Defendants object on several grounds, which the Court addresses in turn.

As an initial matter, Defendants argue that even if Plaintiff has sufficiently pled a claim to survive their motion to dismiss, Plaintiff has not demonstrated a substantial likelihood of success on the merits. Def. R & R Obj. at 12. For the reasons given above in the section denying Defendants' motion to dismiss this claim, the Court disagrees and concludes that Plaintiff has established a clear likelihood of success on the merits justifying the imposition of a preliminary injunction. Defendants do not object to Judge Moses' recommendation that Plaintiff has shown irreparable harm, and the Court finds no error—clear or otherwise—in Judge Moses' thorough discussion of the question. R & R at 79-82.

***24** Defendants object to the Report's recommendation that the preliminary injunction would be in the public interest. The Court disagrees. Judge Moses is correct that it is in the public interest to grant Plaintiff's motion for preliminary injunction because he presents no "*sexual* risks that sex offender registration, and the Sex Offender Conditions, are designed to combat." R & R at 82 (emphasis in original); Pl. R & R Obj. Resp. at 28. As a result, lifting Plaintiff's designation would not just ensure compliance with the Constitution, *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (citing cases), it would remedy ongoing harm to Plaintiff and increase the accuracy of SORA's designation of individuals as sex offenders, *see People v. Diaz*, 150 A.D.3d 60, 66 (N.Y. App. Div.), *aff'd on other grounds*, No. 134, 2018 WL 6492716 (N.Y. Dec. 11, 2018). And even if remedying a constitutional violation were not, standing alone, always enough to outweigh countervailing public interests, Def. R & R Obj. at 24, Defendants offer no concrete or persuasive examples of how the public interest would be harmed by the injunction. Defendants cursorily argue that the Report "(1) improperly placed the burden of proof on this issue upon defendants rather than plaintiff; (2) was not based on any evidence placed before the Court; (3) failed to offer sufficient deference to the state officials' determinations to the contrary; and (4) was factually incorrect given plaintiff's crimes of conviction." Def. R & R Obj. at 24. As noted above, Defendants at this stage have conceded that there was no sexual element to Plaintiff's offense. And the record offers no indication or allegation of a sexual element to Plaintiff's crime or of any risk of sexual misconduct, but rather a judicial determination by Justice Obus to the contrary. R & R at 10-11. Moreover, a significant number of parole conditions will remain even if Plaintiff is no longer designated as a sex offender, Pl. R & R Obj. Resp. at 28, and Defendants retain their discretion to impose conditions of parole that are reasonably related to a legitimate government interest and any non-sexual risk Plaintiff may pose. Therefore, the Court finds that Plaintiff has shown, based on the record, that it is in the public interest to grant a preliminary injunction.

Defendants also argue that the Court should only consider whether "the parole conditions imposed by the state officials ... were so arbitrary and irrational that they could not protect the public from Plaintiff in any manner, sexual or not." Def. R & R Obj. at 23. Even if this were true for Plaintiff's challenges to his specific conditions of parole, Plaintiff's Claim 2 objects to being designated as a "sex offender," and the question before the Court is thus whether that designation is rational and whether enjoining Defendants from labeling Plaintiff as such, and imposing parole conditions solely on that basis, would serve the public interest. Given that, as noted above, the injunction will allow Defendants to impose conditions based on any legitimate interests unrelated to Plaintiff's designation as a sex offender, this objection is unavailing.

Defendants also argue that the issue of parole conditions should be remanded to the Defendants to reconsider before any preliminary injunction issues. Def. R & R Obj.

at 25-26. Specifically, the Defendants argue that they should have a chance to determine "whether any of the statutory parole conditions ... should still be imposed here to protect the public." *Id.* The Court concludes that no such remand is necessary. Defendants cite the Second Circuit's decision in *Schwartz v. Dolan*, 86 F.3d 315 (2d Cir. 1996), to support their argument, but that decision is importantly different from the instant case in two ways.

First, unlike in *Schwartz*, the preliminary injunction here would provide Defendants with significant flexibility to design and tailor the manner in which they will comply. In *Schwartz*, the district court "gave detailed instructions" on how a state agency was required to provide notice to public assistance recipients, which would have involved "extensive modifications to the computer systems that create the notices." *Schwartz*, 86 F.3d at 319. By mandating a specific restructuring of the agency's operations, the district court had foreclosed the remedy the agency would have selected. *Id.* The Second Circuit held that because there were "different possible ways to remedy the violation," the agency should have had an opportunity to present its own plan for remedying the constitutional deficiencies. *Id.* Here, however, the preliminary injunction language, as crafted by Judge Moses, provides Defendants with precisely the opportunity they seek to consider whether any parole conditions are still necessary to protect the public; Defendants have ample flexibility and discretion to impose parole conditions "to the extent they deem those conditions appropriate for plaintiff in light of his *non-sexual* criminal history and characteristics." R & R at 85. And, contrary to Defendants' contentions, they are not categorically prohibited from imposing discretionary conditions that may be similar in content to the mandatory conditions so long as they are not otherwise inconsistent with the injunction. Def. R & R Obj. at 25. As a result, this injunction does not involve the kind of systemic management by a federal court of the operation of state institutions that was problematic in *Schwartz*. Nor does it foreclose Defendants' ability to select the manner to remedy the violation identified. Since this injunction already provides Defendants with the flexibility they seek, remand is unnecessary to permit Defendants to choose how they wish to comply with the Court's ruling.

***25** Second, *Schwartz* involved a permanent injunction, rather than the preliminary injunctive relief sought here. As is true in this case, preliminary injunctive relief is time-sensitive, which weighs against adopting procedures that will entail delays resulting in further ongoing irreparable harm. This consideration is particularly weighty here, as Plaintiff first filed his motion for a preliminary injunction over nine months ago and represents that remanding to Defendants for subsequent approval by this Court might result in the mooting of several of his claims. Pl. R & R Obj. Resp. at 29 n.11. Furthermore, with a preliminary injunction, a party will be given "an opportunity to present [their] own plan" for complying with a court's ruling, *Schwartz*, 86 F.3d at 319, before permanent injunctive relief, if any, is entered. Because Plaintiff is suffering ongoing, irreparable harm, the Court declines to require another series of submissions to the Court before entering preliminary relief.

For all of the above-stated reasons, the Court concludes that Plaintiff has satisfied his burden of demonstrating that a preliminary injunction is warranted. The Court will ADOPT Judge Moses' recommended preliminary injunction on Claim 2. In addition, the Court agrees with the Report—and Plaintiff, Pl. R & R Obj. at 3—that the injunction recommended by Judge Moses on Claim 2 is sufficient to address Plaintiff's request for injunctive relief. R & R at 2, 85-86. Therefore, the Court finds it unnecessary to address whether Plaintiff has made a sufficient showing to warrant injunctive relief on his other surviving claims.

V. Conclusion

For the reasons given above, the Court GRANTS Defendants' motion to dismiss as to Claim 1 in full; Claim 3 in full as to the consensual relationships rule, the residency requirement of Condition No. 4, and all claims for damages; Claim 4 as to damages; Claim 5 as to damages; Claim 6 as to damages on all claims, and for both injunctive relief and damages as to the claims regarding conditions regulating consensual relationships, motor vehicles, pornography, pets, and P.O. boxes.

The Court DENIES the motion to dismiss as to all other claims. The Court also clarifies that Defendant Acting Commissioner Annucci remains in this case in his official capacity as the Defendant for the purposes of any injunctive relief on Claims 2, 3, and 4. Pl. R & R Obj. at 9.

Finally, the Court GRANTS Plaintiff's request for a preliminary injunction on Claim 2, and hereby ADOPTS Judge Moses's well-crafted language: Defendants, together with their agents, employees, and all persons acting in concert with them, are preliminarily enjoined, pending the final resolution of this action, from enforcing, as against Plaintiff, the registration and notification provisions made applicable to designated sex offenders by SORA (CL §§ 168a-168w), or the mandatory conditions

prescribed by EL §§ 259-c(14) and (15) for parolees sentenced for an offense for which registration as a sex offender is required; and are directed to rescind the discretionary provisions of the Sex Offender Conditions (Yunus Decl. Ex. C, at ECF pages 4-10) except to the extent they deem those conditions appropriate for plaintiff in light of his non-sexual criminal history and characteristics.

This resolves docket numbers 43 and 59. As this matter has been referred to Magistrate Judge Moses for general pretrial, Dkt. 15, by separate order Judge Moses may schedule a case management conference.

SO ORDERED.

All Citations

Not Reported in Fed. Supp., 2019 WL 168544

Footnotes

1 The Court adopts the term "Parole Officer Defendants" employed by Judge Moses' Report. R & R at 8.

2 Section 168-*l*(8) states in relevant part: "A failure by a state or local agency or the board to act or by a court to render a determination within the time period specified in this article shall not affect the obligation of the sex offender to register or verify under this article *nor shall such failure prevent a court from making a determination regarding the sex offender's level* of notification and whether such offender is required by law to be registered for a period of twenty years or for life." N.Y. Correct. Law § 168-*l*(8) (emphasis added).

3 *See, e.g.*, *Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) ("Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived."); *Cupit v. Whitley*, 28 F.3d 532, 535 & n. 5 (5th Cir. 1994) (holding that a party had waived arguments that were only raised after the magistrate judge had issued their Report); *Paterson–Leitch Co. v. Massachusetts Municipal Wholesale Electric Co.*, 840 F.2d 985, 990–91 (1st Cir. 1988) ("[A]n unsuccessful party is not entitled as of right to *de novo* review by the judge of an argument never seasonably raised before the magistrate."); *Greenhow v. Sec'y of Health & Human Servs.*, 863 F.2d 633, 638 (9th Cir. 1988) ("[A]llowing parties to litigate fully their case before the magistrate and, if unsuccessful, to change their strategy and present a different theory to the district court would frustrate the purpose of the Magistrates Act. We do not believe that the Magistrates Act was intended to give litigants an opportunity to run one version of their case past the magistrate, then another past the district court."), *overruled on other grounds by United States v. Hardesty*, 977 F.2d 1347, 1348 (9th Cir. 1992) (en banc).

4 While *Cleburne* and *Plyler* involved Equal Protection Clause challenges, the Second Circuit has analogized between rational basis review in the equal protection and substantive due process contexts. *See Winston*, 887 F.3d at 562-67 (relying on its determination that a law lacked a rational basis in its analysis of an equal protection claim to find that the law also failed substantive due process review); *Sensational Smiles, LLC v. Mullen*, 793 F.3d 281, 284 (2d Cir. 2015) (analyzing equal protection and substantive due process claims jointly under rational basis review).

5 *See also* Brief for Amici Curiae the Cato Institute, the American Civil Liberties Union, and the American Civil Liberties Union of North Carolina in Support of Petitioner, *Packingham v. North Carolina*, 2016 WL 8136359 (U.S.), 7 (U.S., 2016) ("North Carolina's registry law in turn applies whether or not a former offender is on parole or probation.").

6 Defendants had initially argued that state court was the only proper venue for such claims, but appear to no longer press that argument after Judge Moses correctly rejected it. R & R at 68 n.48.

7 *See Katz v. Donna Karan Co., L.L.C.*, 872 F.3d 114, 121 (2d Cir. 2017) ("[W]here a case is dismissed for lack of Article III standing, as here, that disposition cannot be entered with prejudice, and instead must be dismissed *without prejudice*.") (emphasis in original).

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Exhibit 8:

State v Reine, unpublished opinion of the United States District Court of Appeals of Ohio, issued Jan 10, 2003 (Case No. 19157)

2003 WL 77174

CHECK OHIO SUPREME COURT RULES FOR REPORTING OF OPINIONS AND WEIGHT OF LEGAL AUTHORITY.

Court of Appeals of Ohio,
Second District, Montgomery County.

STATE of Ohio, Plaintiff–Appellee,
v.
Andre Pierre REINE,
Defendant–Appellant.

No. 19157.
|
Decided Jan. 10, 2003.

Synopsis
After defendant pled guilty to four counts of kidnapping the Common Pleas Court classified defendant as a sexually oriented offender. Defendant appealed. The Court of Appeals, Montgomery County, Fain, J., held that automatic classification of defendant as a sexually oriented offender, based on his convictions for four counts of kidnapping involving minors where there was no sexual motivation for the crimes, violated due process.

Reversed and vacated.

Frederick N. Young, J., filed a dissenting opinion.

West Codenotes

Unconstitutional as Applied
R.C. §2950.01(D)(1)(b)(i).

Criminal Appeal from Common Pleas Court.

Attorneys and Law Firms

Mathias H. Heck, Jr., Prosecuting Attorney, by: Johnna M. Shia, Assistant Prosecuting Attorney, Atty. Reg. # 0067685, Dayton, OH, for plaintiff-appellee.

Matthew Ryan Arntz, Atty. Reg. No. 0024084, Dayton, OH, for defendant-appellant.

Opinion

FAIN, J.

***1** { ¶ 1} Defendant-appellant Andre Reine appeals from an order of the trial court classifying him as a sexually oriented offender, as defined in R.C. 2950.01, and requiring him, pursuant to R.C. 2950 .04, to register with the sheriff of the county of his residence and to report regularly thereafter. Reine contends that the order violates the Due Process clauses of the United States and Ohio constitutions.

{ ¶ 2} Reine pled guilty to four counts of Kidnapping. The victim in each count was a minor. The parties have stipulated that the offenses were committed without any sexual motivation or purpose. Nevertheless, pursuant to the plain wording of R.C. 2950.01(D)(1)(b)(i), the Kidnapping offenses are defined as sexually oriented offenses, because they each involved a minor victim, and the trial court was required, pursuant to R.C. 2950.09, to classify Reine as a sexually oriented offender.

{ ¶ 3} Because we agree with Reine that the requirement that he be classified as a sexually oriented offender, and that he comply with the registration and reporting requirements pertaining to sexually oriented offenders, bears no rational relationship to the purpose of the statute, and is arbitrary and unreasonable, we agree with him that the requirement violates the Due Process clauses of the Ohio Constitution and of the Fourteenth Amendment to the United States Constitution. Accordingly, the order classifying Reine as a sexually oriented offender, and requiring him to comply with the registration and reporting requirements of the statute, is Reversed and Vacated.

I

{ ¶ 4} In 2001, Reine was indicted upon one count of Aggravated Burglary involving physical harm, one count of Aggravated Robbery involving a deadly weapon, and four counts of Kidnapping, all with attached three-year firearm specifications. In early 2002, Reine pled guilty to all counts, in exchange for which the State dismissed all the firearm specifications. At a sentencing hearing, the trial court imposed an appropriate sentence. Also at the sentencing hearing, the trial court designated Reine a sexually oriented offender, subject to the registration and

reporting requirements provided for sexually oriented offenders in R.C. 2950.04. This designation is required by R.C. 2950.01(D)(1)(b)(i), the four Kidnapping victims having been minors. The parties had stipulated that the offenses were committed without any sexual motivation or purpose. State's Brief, at 2.

{ ¶ 5} Reine appeals from the order classifying him as a sexually oriented offender.

II

{ ¶ 6} Reine's sole Assignment of Error is as follows:

{ ¶ 7} "THE DESIGNATION OF A DEFENDANT AS A 'SEXUALLY ORIENTED OFFENDER' IS VOID AND UNCONSTITUTIONAL AS APPLIED WHERE DEFENDANT WAS CONVICTED OF VIOLATING O.R.C. § 2950.01(A)(2) AND WHERE THERE WAS NO SEXUAL MOTIVATION AND NO SEXUAL OFFENSE COMMITTED ."

{ ¶ 8} Reine argues that the strict scrutiny test for a Due Process violation must be used, because a fundamental right is involved. He cites Art. I, § 16 of the Ohio Constitution for the proposition that he has a fundamental right to his reputation. Art. I, § 16 provides, in pertinent part, as follows:

***2** { ¶ 9} "All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

{ ¶ 10} We find it unnecessary to determine whether the strict scrutiny test applies in this case, because we conclude that the application of the sexual offender classification provision in this case does not satisfy the looser, rational basis test.

{ ¶ 11} In a case in which the Ohio Supreme Court found that strict scrutiny did not apply, because no fundamental right was involved, the court held that an enactment comports with the Ohio Due Process clause "if it bears a real and substantial relation to the public health, safety, morals or general welfare of the public and if it is not unreasonable or arbitrary." *Fabrey v. McDonald Police Dept.* (1994), 70 Ohio St.3d 351, at 354, 639 N.E.2d 31. The court went on to opine that "Federal due process is satisfied if there is a rational relationship between a statute and its purpose." *Id.*, citing *Martinez v. California* (1980), 444 U.S. 277, 283, 100 S.Ct. 553, 558, 62 L.Ed.2d 481, 488.

{ ¶ 12} Pursuant to R.C. 2950.01, et seq., Ohio's version of "Megan's Law," persons who commit certain offenses are subject to classification as a sexual predator, an habitual sex offender, or a sexually oriented offender. Certain offenses are defined in R.C. 2950.01(D) as "sexually oriented offenses." For these offenses, classification of the offender as a sexually oriented offender is automatic, if the offender is not classified in the more serious classifications. The offenses defined to be "sexually oriented offenses" by the statute include certain offenses committed by a person eighteen years of age or older, if the victim is under the age of eighteen years. One of these offenses is Kidnapping, in violation of R.C. 2905.01. R.C. 2950.01(B)(1)(b)(i). Thus, because Reine's Kidnapping victims were under the age of eighteen, he is automatically deemed to be a sexually oriented offender, pursuant to the statute, regardless of the circumstances of the offense, or his purpose or purposes in committing the offense.

{ ¶ 13} The trial court noted the incongruity of determining Reine to be a sexually oriented offender, in view of the stipulation that his offenses were committed without any sexual motivation, but concluded, properly, that the statute nevertheless required that Reine be classified as a sexually oriented offender. As a sexually oriented offender, Reine is required to register with the sheriff of the county of his residence, and periodically to report concerning his residence. R.C. 2950.04, 2950.06.

{ ¶ 14} We do not need to guess concerning the Ohio General Assembly's purposes in enacting the sexual offender classification statute. As these pertain to sexually oriented offenders, they are set forth in R.C. 2950.02, as follows:

***3** { ¶ 15} "(A) The general assembly hereby determines and declares that it recognizes and finds all of the following:

{ ¶ 16} "(1) If the public is provided adequate notice and information about sexual predators, habitual sex offenders, and certain other offenders and delinquent children who commit sexually oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the sexual predator's, habitual sex offender's, or other offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and

communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.

{ ¶ 17} " * * *

{ ¶ 18} "(B) The general assembly hereby declares that, in providing in this chapter for registration regarding sexual predators, habitual sex offenders, and offenders and certain delinquent children who have committed sexually oriented offenses and for community notification regarding sexual predators and habitual sex offenders who are about to be or have been released from imprisonment, a prison term, or other confinement or detention and who will live in or near a particular neighborhood or who otherwise will live in or near a particular neighborhood, it is the general assembly's intent to protect the safety and general welfare of the people of this state. The general assembly further declares that it is the policy of this state to require the exchange in accordance with this chapter of relevant information about sexual predators and habitual sex offenders among public agencies and officials and to authorize the release in accordance with this chapter of necessary and relevant information about sexual predators and habitual sex offenders to members of the general public as a means of assuring public protection and that the exchange or release of that information is not punitive."

{ ¶ 19} In short, the classification, registration and reporting requirements are designed to make it possible for members of the public to alert themselves to the proximity and whereabouts of certain offenders who may pose a particular risk to themselves and their children. The question is whether the requirement that an offender who has committed an offense under circumstances involving no sexual motivation or purpose nevertheless be classified as a "sexually oriented offender", to register and to be reported to the public as a "sexually oriented offender," bears any rational relationship to the purposes of the statute, or whether that requirement is unreasonable or arbitrary as applied to an offender who has committed an offense without any sexual motivation or purpose.

{ ¶ 20} In our view, there is no rational relationship between the requirement that a person in Reine's position be denominated a "sexually oriented offender" and the purposes of the statute. If anything, the public is likely to be misled into believing that Reine is a sex offender, rather than a common criminal, who, in the course of committing a burglary, happened upon four minors, and deprived them of their liberty for the purpose of completing his criminal object, but without any sexual motivation or purpose. The statute is intended to alert the public to the presence of sex offenders in their midst. To the extent that the provisions of the statute sweep within their provisions other offenders, who are clearly not sex offenders, and indiscriminately require that these other offenders also be presented to the public as "sexually oriented offenders," the purposes of the statute are not served, and are arguably dis-served.

***4** { ¶ 21} In reaching this conclusion, we have little doubt that the legislature could, if it wished, impose registration and reporting requirements for all convicted felons; or, the General Assembly could provide for registration and reporting requirements for felons who have committed offenses against children, upon the theory that children require additional measures to protect them; but it would be unreasonable and arbitrary to denominate these felons as "sexually oriented offenders" when their offenses involve no sexual motivation or purpose. The General Assembly might logically designate convicted felons whose offenses have been committed against minor victims as "child predators," and impose registration and reporting requirements upon them. This would be neither unreasonable nor arbitrary. Alternatively, the General Assembly, in its desire to provide additional protection for child victims of crime, might impose harsher sentences for offenses committed against children.

{ ¶ 22} Our problem with the application of the automatic, per se designation of certain offenses, which do not involve any inherent sexual motivation or purpose, as "sexually oriented offenses," in the absence of any sexual motivation or purpose, is that the labeling of these offenses as "sexually oriented offenses" is unreasonable and arbitrary.

{ ¶ 23} Imagine that the General Assembly, desiring to enable the public to protect itself from the risks represented by convicted felons living within their midst, were to enact a statute designating all persons convicted of felonies as "murderers," with registration and reporting requirements, so that neighbors would wind up being advised that John Jones, a "murderer," is now living on their block. John Jones is, in fact, a person who has been convicted of an esoteric election-law felony. It is the misnaming, or mis-characterization, of the offense, that is unreasonable and arbitrary.

{ ¶ 24} In the case before us, the phrase "sexually oriented offense" is one that the average person can be expected to understand as referring to an offense that is committed with a sexual motivation or purpose. The labeling of certain offenses having no sexual motivation

or purpose as "sexually oriented offenses" confounds this ordinary understanding of the words used, and is therefore unreasonable and arbitrary.

{ ¶ 25} We note hat the Court of Appeals for the Eleventh Appellate District has come to the same conclusion. *State v. Washington* (November 14, 2001), Lake App. No. 99–L–015. The State cites *State v. Hayden*, 96 Ohio St.3d 211, 773 N.E.2d 502, 2002–Ohio–4169, for the proposition that the Due Process clauses of the United States and Ohio constitutions do not require a trial court to conduct a hearing to determine whether an offender is a sexually oriented offender. The State seems to be arguing that *State v. Hayden, supra,* stands for the proposition that the automatic sexually oriented offender classification does not violate the Due Process clauses of the United States and Ohio constitutions.

***5** { ¶ 26} In our view, *State v. Hayden, supra,* dealt with the issue of whether the failure to hold a hearing before determining that an offender is a sexually oriented offender violated procedural due process. The court held that procedural due process was not violated, despite the fact that no hearing was required, because there were no facts to be adjudicated beyond the fact that a particular offense had been committed. In that case, significantly, the offense committed was Attempted Rape, which necessarily involves a sexual motivation and purpose. We find nothing in *State. v. Hayden, supra,* to indicate that there was a substantive due process issue in that case. We find nothing to indicate that the defendant in that case had argued that the application of the sexually oriented offender classification to him violated the United States or Ohio constitutional Due Process clauses because the automatic classification bore no rational relationship to the purposes of the statute, or was arbitrary and unreasonable.

{ ¶ 27} The significance of *State v. Hayden, supra,* is that unless an offender is making an argument that the automatic sexually oriented offender classification is unconstitutional as applied to him, no hearing is required, because there are no facts to adjudicate. In the case before us, there are no factual disputes requiring adjudication, because the parties have stipulated that Reine's offenses were committed without any sexual motivation or purpose. In another case, however, there might be a genuine issue of fact whether one of the offenses listed in the statute has been committed with a sexual motivation or purpose. In that case, an evidentiary hearing might be required. Constitutional issues of law sometimes involve disputed facts, which will require an evidentiary hearing for their adjudication.

{ ¶ 28} Because we conclude that the application of the statutory requirement that Reine be classified as a sexually oriented offender, in a case in which it has been stipulated that his offenses were committed without any sexual motivation or purpose, is unreasonable and arbitrary, and bears no rational relationship to the purposes of the statute, we conclude that it offends the Due Process clauses of both the Ohio and United States constitutions.

{ ¶ 29} Reine's sole Assignment of Error is sustained.

III

{ ¶ 30} Reine's sole Assignment of Error having been sustained, the order of the trial court designating Reine to be a sexually oriented offender, and imposing upon him the registration and reporting requirements appropriate to that designation, is Reversed and Vacated.

BROGAN, J., concurs.

FREDERICK N. YOUNG, J., dissenting.

***5** { ¶ 31} I respectfully dissent. The logic of the majority's decision is unassailable, but out of a due regard (perhaps, in this case, undue regard) for the prerogatives of the Ohio General Assembly, I believe we should respect the legislative determination that the kidnapping of a child by an adult carries with it such a high risk of sexual assault against the child that it justifies classifying the perpetrator a sexual offender, even though on the facts of the case before us such classification appears unjustified.

***6** { ¶ 32} Perhaps the dissent here will assist in the Supreme Court of Ohio addressing the issue, which is where it should be resolved.

All Citations

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