

IN THE SUPREME COURT
APPEAL FROM THE COURT OF APPEALS

Kirsten Frank Kelly, P.J., Cynthia Diane Stephens and Michael J. Riordan, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-v-

PAUL J. BETTS,

Defendant-Appellant.
_____ /

Supreme Court No. 148981

Court of Appeals No. 319642

Circuit Court No. 12-62665 FH

DEFENDANT-APPELLANT'S APPENDIX

STATE APPELLATE DEFENDER OFFICE

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STATE OF MICHIGAN

IN THE 14TH CIRCUIT COURT
FOR THE COUNTY OF MUSKEGON

* * *

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff

File #12-62665-FH

V

PAUL J. BETTS, JR.

COPY

Defendant.

MOTION HEARING

BEFORE THE HONORABLE WILLIAM C. MARIETTI

Muskegon, Michigan, March 4, 2013

APPEARANCES:

For the People: RACHAEL R. MCENHILL

For the Defendant: IN PRO PER, PAULA BIER

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	None.	
EXHIBITS:	identified	received
	None.	

1 THE COURT: - dismiss the, ah, information
2 on allegation that article 2 of the sex offender
3 registration act is an unconstitutional piece of
4 legislature in violation in the prohibition against expos
5 factor legislation. The Court has reviewed the brief that
6 was submitted by the, ah, defendant and I've also had the
7 opportunity to review a brief submitted on behalf of the
8 People. It's your motion, Mr. Betts, ah, you have counsel
9 here with you, Ms. Baker, and you wanna represent yourself
10 so you may proceed.

11 MR. BETTS: Yes, sir. My challenge here is
12 to refute what they have in their brief. The first case
13 that they brought up is People versus Pennington 2000,
14 which was 14 years ago in the underlying facts. That case
15 was fundamentally decided and held because of
16 (undistinguishable) errors which was the case on page 5 of
17 the Pennington thing that states that it held a juvenile
18 registration requirements did not constitute cruel and
19 unusual punishment. The best part of that case is the
20 last paragraph where the court itself says we invite the
21 legislature to reconsider whether the implied purpose of
22 the act, public safety, is served by requiring an
23 otherwise law abiding adult to forever be branded as a sex
24 offender because of a juvenile transgression. Because of
25 that, or maybe just on its own the legislature went

1 through and had some changes. In that it left a window
2 where other people were prosecuted and they would at in
3 People versus Deposia. The prosecutor claims that it has
4 no question on, doesn't apply to the question of
5 punishment, however, the next thing says it is a violation
6 of Michigan's cruel and unusual punishment so I don't
7 understand how they can say it's not addressing punishment
8 when clearly that's exactly the reason why it was there.
9 And they said it had no involvement with the ex post facto
10 law. They question here under the ex post facto law is
11 whether it is punishment or not. When you go back into
12 the, ah, Deposia case, ah, it says that it argued on in re
13 errors. Everything in there was refuting the Pennington
14 case and it completely overturned that case in their
15 decision. And the other thing that he, that they have
16 here that I take a little bit of umbrage to, without
17 belaboring the point -

18 THE COURT: Hold on just a minute, I'll ask
19 a question. Who overturned the Pennington case?

20 MR. BETTS: The Court of Appeals overturned
21 the Pennington and the Errors case in Deposia specifically
22 stating errors in their language in it.

23 THE COURT: Where did it, where did it even
24 mention Pennington in -

25 MR. BETTS: They mentioned it in, in the

1 Errors case, which was the, the controlling law that they
2 used in Pennington.

3 THE COURT: No, what I'm saying is where
4 did they mention the Pennington case in the Deposia case.

5 MR. BETTS: They mentioned Errors.

6 THE COURT: Yeah, but how do you conclude
7 that Deposia overruled the Pennington decision then if
8 they didn't even mention the case? I'm not following
9 your-

10 MR. BETTS: OK. I'll, I'll -

11 THE COURT: -argument.

12 MR. BETTS: In, in the Pennington case the
13 opinion relies on Error that page, at page 5 of the
14 Pennington decision where it says in Errors, and they use
15 this to make their decision in Pennington, In re: Errors
16 that in, and this is stating out of the Pennington case,
17 quoting, In re: Errors we held up the juvenile
18 registration requirement (undistinguishable) constitute
19 cruel and unusual punishment and then it goes on to state
20 farther into Pennington that that is the conclusion that
21 they have reached consistent with In re: Errors because
22 they used that as their precedent.

23 THE COURT: OK.

24 MR. BETTS: OK. So that when the
25 underlying rational for Pennington, you go into, ah,

(Videotape, 3-4-13, 3:50:23)

1 Deposia, Deposia says, under their analysis in number 3,
2 they argue every, all of the exact same constellation
3 factors quoting In re: Errors and they said that they come
4 to a completely different conclusion because what was, in
5 fact, happening in 2000 is not, in fact, what it is now.
6 The, ah, factors of which there were, as will come out,
7 there are 12 factors that they put on page 5, this is the
8 Michigan Sex Offender Registration form that has 43
9 factors, which is the 2013, as opposed to the
10 constellation of factors that were present in actually
11 1999 is when they had the In re: Errors. And 2000 was the
12 Pennington case so there is nothing that even resembles
13 that in the 12 factors that they argued under there there
14 is nothing that creates a prohibition or anything that is,
15 ah, a restraint. I will agree that at the time of 2000 it
16 was regulatory. As it evolved it is no longer regulatory.
17 Going, going from that into, I need the clearest proof,
18 purpose and effect -

19 THE COURT: Well, the re, let me just be
20 clear.

21 MR. BETTS: Yes, sir.

22 THE COURT: My understanding is the reason
23 that the Court of Appeals in Deposia did not find Errors
24 reasoning necessarily applicable to their case before them
25 at that time was because it involved a HYTA conviction, or

1 a HYTA defendant in the, ah, Deposia case. And the Errors
2 case noted that the public disclosure requirement
3 (indistinguishable) didn't apply to juveniles but they do,
4 they did at the time that the Deposia case was decided
5 applied to HYTAs. So I don't see how that overrules
6 Pennington.

7 MR. BETTS: Well, the, the -

8 THE COURT: You still haven't, you still
9 haven't explained to me how that overrules Pennington.

10 MR. BETTS: In the Pennington case it was
11 also a juvenile. Pennington was a juvenile also.

12 THE COURT: OK. So how did the HYTA case
13 of Deposia overrule Errors is what I'm saying. Or
14 Pennington.

15 MR. BETTS: Because the, the statement in
16 Pennington says it is not cruel and unusual punishment in
17 juvenile. What they looked at in Deposia they were
18 looking at whether it was cruel and unusual for a juvenile
19 and they determined that it was. They came completely
20 around.

21 THE COURT: No. No.

22 MR. BETTS: The argument -

23 THE COURT: No.

24 MR. BETTS: OK.

25 THE COURT: Deposia, I disagree with ya. I

1 just wanna make -

2 MR. BETTS: OK.

3 THE COURT: - the record's clear. Deposia
4 did not involve a juvenile. You're wrong. The opening
5 statement in 2004 when the defendant was 18 he had a
6 consensual sexual relationship. Eighteen is age of
7 majority. It was the HYTA case.

8 MR. BETTS: Got it.

9 THE COURT: There's a big difference.

10 MR. BETTS: No, I, I agree -

11 THE COURT: OK. All right. I'll let you
12 go on then.

13 MR. BETTS: The point, yeah, well, I was, I
14 was on the Romeo and Juliet aspect of that because it was
15 a juvenile offender under the HYTA, being that he was,
16 they were trying to give him deference because of his age.

17 THE COURT: It was not a juvenile offender.

18 MR. BETTS: OK. All right.

19 THE COURT: But I'm just gonna tell you I
20 do not read Deposia to say it's a juvenile offender. He
21 was an adult.

22 MR. BETTS: Offender.

23 THE COURT: That's correct.

24 MR. BETTS: And the Romeo and Juliet -

25 THE COURT: And the Errors case did not

1 involve an adult offender and neither did Pennington.

2 MR. BETTS: OK. I'll, I'll go on and, and
3 follow on that. I wanna get to the point on page 5 of
4 their thing where they have the 12 issues cited in the
5 Smith case and the majority of their argument is based on
6 the 2003 Smith case out of Alaska that went to the U.S.
7 Supreme Court. That case came back to Alaska court
8 several years later, the exact same characters and actors
9 in that case and the court in Alaska determined that it
10 had evolved to the point where it was now an ex post facto
11 violation because the law had evolved into punishment.
12 So, that was, that was in, that was in In re: Doe, I mean,
13 Doe versus Alaska. Now, you get back into where it is in
14 here all of their stuff. The other thing I have to go
15 into and, and I'm, I apologize for skipping around here a
16 minute because it's taken me off what I had hoped to do,
17 but the issues in here are such as manners and
18 (undistinguishable) of enforcement procedures on it and I
19 have to get personal here on this. The way in which this
20 is being implemented is punishing. When I was at
21 Verdoni's restaurant, at a bar, where people are 21 years
22 old and over they came in, the second ranking officer in
23 the City of Norton Shores and two uniformed officers with
24 guns, I asked that I could go outside to talk about them
25 with them. They said no and they proceeded to go on,

1 you're a sex offender this and that. It was humiliating
2 and that is how it is being enforced at this point. When
3 I was arrested for that, after I went out they, ah, they
4 left my truck there. They told me that I'd probably be
5 able to go back that night. When I was arraigned I was
6 given \$25,000 bond, five times the bond of the underlying
7 offense originally and it was a cash bond so when I went
8 back in front of Judge Cloz he realized I wasn't a threat
9 to go anywhere. I've never, er, failed to show up for any
10 of this. He reduced it down and then I came back in.

11 The other thing that Norton Shores is
12 doing, which is punishment to me, my truck, which had bad
13 brakes, I left at my mother's house in Norton Shores and
14 was driving another vehicle, they came to her house a
15 number of times saying they were going to take it because
16 it was unregistered in the City of Norton Shores and they
17 scared my mother to death. So that, that goes on to that
18 one. Now, the, since then the truck was towed to Robinson
19 and all the brakes were repaired on it. The Michigan SORA
20 is under criminal law. They claim that under criminal law
21 it still is under other areas.

22 THE COURT: Wait a minute. What do you
23 mean it's under criminal law? I don't know what you mean
24 by that statement.

25 MR. BETTS: All right. Procedures for

1 registering under MCL, Michigan criminal law 28.7 -

2 THE COURT: MCL doesn't stand for Michigan
3 Criminal Law.

4 MR. BETTS: Combined -

5 THE COURT: It stands for Michigan Compiled
6 Laws.

7 MR. BETTS: I apologize to ya. I'm not
8 trying to make a circus out of this. I truly am not but I
9 haven't had -

10 THE COURT: I'm not saying you are. I just
11 wanna make sure the record's correct.

12 MR. BETTS: I, I do and I tried for two
13 weeks to try and get a, ah, court rules book that I can't
14 get at Barnes and Noble, I can't get it anywhere, tried
15 but I can't so I apologize if I'm sounding really silly
16 but I'm doing the best I can.

17 THE COURT: Well, I -

18 MR. BETTS: It -

19 MS. BAKER: If you want one it's right
20 here.

21 THE COURT: I, I just wanna make sure the
22 record is clear. And by the way I wanna revise something
23 I said earlier, I said Pennington involved a juvenile.
24 Pennington did not involve a juvenile either. Pennington
25 involved an adult. Errors is the case that involved the

1 juvenile and Deposia didn't involve a juvenile. It
2 involved a HYTA adult. Go ahead.

3 MR. BETTS: Yes, thank you. And because
4 the, ah, courts deferred to legislative intent, ah, they
5 go back into it and use the clearest proof. Plain
6 language is pretty important to me. Number 12 on the sex
7 offender registry it says, I am prohibited, it doesn't say
8 regulatory, it say I am prohibited from residing within a
9 thousand feet of a school or a building. 13, I am
10 prohibited from being in a thousand, working or loitering
11 within a 1000 feet of a building. I have to, ah, up in 10
12 I'm required to pay a fee. All of these are traditional
13 aspects of what punishment is and all of, none of these
14 were there when I was originally booked on it.

15 THE COURT: OK. But hold on. You're not
16 charged with violating article 3 here are you? I didn't
17 understand that to be the case.

18 MR. BETTS: I'm -

19 THE COURT: My understanding is you were
20 charged with violating article 2 by not keeping your
21 registration up to date. You're not being charged with
22 being in a public, in a school zone.

23 MR. BETTS: I'm charged with not
24 registering.

25 THE COURT: Right. You're not charged with

1 being in a public safety zone.

2 MR. BETTS: My understanding is the
3 registration is what I'm being charged with.

4 THE COURT: Right.

5 MR. BETTS: And I apologize for sounding
6 dumb again but -

7 THE COURT: I'm saying -

8 MR. BETTS: - the totality of it is what
9 I'm being charged with.

10 THE COURT: Well, no. That's not true.
11 Not, I see I just wanna make sure the record is correct.
12 It's my understanding you're charged under article 2 of
13 the SORA Act, which requires you to register and they say
14 you didn't. Isn't that what you're charged with? Let me
15 ask the prosecutor, is that what you're charging him with?

16 MS. MCENHILL: Yes.

17 THE COURT: OK. You're not charging him
18 with violating article 3, which involves school safety
19 zones?

20 MS. MCENHILL: No.

21 THE COURT: OK. I just wanna be clear
22 about what we're talking about here 'cause there's a lot
23 of things that this case is about and there's a lot of
24 things this case is not about. And when we're talking
25 about declaring something unconstitutional we have to be

1 very precise -
2 MR. BETTS: Absolutely.
3 THE COURT: - and very correct. OK?
4 MR. BETTS: It is my position that the sex
5 offender registry has evolved into a, a, ah, cruel and
6 unusual punishment based upon the legislatures new
7 enactments over the last 12 years and that's what my whole
8 point is on this, is that the evolution of what I'm
9 responsible to be, ah, for in this is clearly different.
10 The 12 points they, they show on here from a case in 2003
11 that took three years to get to the supreme court in no
12 way, in no way looks like the law as it exists now. That
13 law is clearly an imposition in every way. The fact that
14 I'm disallowed from doing what traditionally be freedoms
15 of, ah, there's a house in Lakeside that I'd love to buy
16 because coming on the market as a foreclosed house but
17 it's 987 feet, 'cause I measured, from a school. I can't
18 buy it even though it's a great deal for me and would
19 solve a lot of problems in my life because I'm on the
20 registration. And if I do I'll be in this court again
21 because I'm living within a 1000 feet but that's, it
22 infringes upon my rights. 20 years, ah, of doing this and
23 I, more than that, and the fact that the same things, the
24 vigilantism and everything that comes with this, I
25 apologize to do it, here's an affidavit, I'm, I, I going

(Videotape, 3-4-13, 3:50:23)

1 through a situation where people owe me money and they say
2 we aren't gonna pay you because you're a sex offender. He
3 went out and recruited woman to say that I did things or
4 signing saying that he went out and did that. I gave that
5 to the prosecutor, or to the, ah, detective, he says
6 that's a civil case. Right there. I have my house broke
7 into when I was the end, in here. They took \$16,000 worth
8 of my stuff and to the credit of the prosecutor, and I
9 sincerely thank them for this, they picked up the woman
10 that broke into my house and stole all my stuff but her
11 justification was it doesn't matter because of him. It
12 doesn't. I go, it, it's brutal. I truly believe, and I'm
13 not doing a particular job and I apologize. This is 20
14 years of my life and I'm scared to death. Everyday I go
15 out there it's a nightmare to me. I went to get copies
16 made and because they read that I'm appealing a sex
17 offender case at Staples they only have male people copy
18 my stuff. The woman have to go stand in the back. That's
19 insane and that's directly a result of the sex offender
20 law. It is. I, I need to, one, one really quick thing
21 that I have here that I put up and hopefully I didn't
22 loose it. I'm gonna leave this with you because just by
23 the nature of this it's very disparaging in a pejorative
24 of being in here. I've been doing this for 20 years.
25 It's gonna take one minute. I promise you, one minute.

(Videotape, 3-4-13, 3:50:23)

1 To try and give some sense of why I believe I have value
2 and this is, this is crushing me from making the
3 contribution value that I have. Since I have been
4 released I did with Michigan State University, the
5 Brightmore Gardens planted a 100,000 pounds of potatoes
6 and fed a 100, a 1000 homeless. All the
7 (undistinguishable) is on here to verify as I buried as
8 18,000 abandoned dead, the gunned down people in Detroit
9 for the last five years. The third Wednesday of every
10 month I go there and make sure there's a proper and
11 fitting memorial service for everyone of 'em. That was
12 carried on 300 TV stations worldwide and the URL is on
13 that for that. I saved hundreds and hundreds of thousands
14 of dollars for the people of the city Lafayette Indiana
15 through that ditch the dumpster program that was on there
16 but people took my sex offender registration, after I
17 bought a \$600,000 (undistinguishable) and passed it out to
18 everybody and destroyed my business and I lost every
19 single thing I own because that registration was
20 distributed to, and, and I ultimately won in Indiana
21 that's I'm not required to register there but it had
22 already destroyed everything I have.

23 Ah, Pen America is put out by Arthur
24 Miller. It was the internal, like the Pulitzer Prize, the
25 Soloman Roosty, I won that. The international writing

(Videotape, 3-4-13, 3:50:23)

1 award at, when I got out for work that I had done while I
2 was in prison and was on national public radio, it was
3 broadcast live on Broadway, all of that's on there, and
4 then I wrote the cookbook for the Cancer Society and
5 raised thousands and thousands of dollars. I was on the
6 West Nile Virus board for the mosquito, or I'm on the
7 board, the executive board for Michigan prison reentry
8 initiative, I'm on their executive counsel and on the
9 campaign for justice to analyze and prove public defender
10 deliver of service. Roger Spoelman, in his courageousness
11 and belief in me as a human being had me be the speaker at
12 his group where ten of my programs that I was working to
13 come back to Muskegon because I still believe in this
14 town. I do. Really good things that would be very
15 helpful here and I told him from the start don't let the
16 messenger kill the message. I don't need any credit. I
17 don't want it. I just believe that these things are good
18 and need to be done.

19 OK. I got that cathartic purge out.
20 Thank you for, for putting up with me on that. The
21 projects that I have are there. This is the lady that
22 robbed my house because she said I was a sex offender, or
23 whatever it was and all those things.

24 Now, as I truly believe this, as I
25 have lived this, when I, when I was working in Paw Paw

(Videotape, 3-4-13, 3:50:23)

1 Michigan I was the head inspector for a large paving
2 company and ran two of their labs. That year I made
3 \$63,000 after I got out of prison but there was a local
4 officer who knew I was on the sex offender registry and
5 the road beside Paw Paw High School is Highway 94 and he
6 told me that if I see you get out of your truck on that
7 road testing the thing I'm going to pick you up for being
8 to close to a school. I lost that job.

9 I know what's punishment. They can
10 say whatever they want with a wink and a nod. Everything,
11 there isn't a man in here that has that on him that would
12 not feel the absolute burden and overbearing every day,
13 the punishment factor of it. I do my best. I truly do to
14 rehabilitate and do, ah, a sense of dignity and worth.
15 When I was in prison for six years I was, sex offenders
16 not really well appreciated there. I was elected twice
17 chairman of the warden's forum at some pretty rough spots.
18 I wrote for the legal writers program, as you know, for a
19 number of years. I had six death threats on me, six that
20 are written in my, my DOC record. Two times there were
21 attempts on my life. One time they brought 350 barbel on
22 my chest, broke three of my ribs, they took me to Jackson
23 Hospital and I signed out because if I missed a day of
24 work I would've lost my job as a legal writer. I didn't
25 do it. I still believe in this. I don't believe that

(Videotape, 3-4-13, 3:50:23)

1 this law was ever intended to do what it is now. The
2 reason I pointed out all the good things that I had done,
3 if you go on the internet today and Google Paul Betts the
4 first six things you're gonna find, sex offender, sex
5 offender, ah, mug shots and all this and they're not
6 necessarily by the state police, which is interesting.
7 There is a cottage industry emerging of mug shot profile
8 people because they know it's punishing to have your name
9 on there and then they charge you \$1100 to get your name
10 off of their site. \$1100 because the freedom of, of
11 speech allows them to punish me and they know they are.
12 That's why they can charge people to get their name off
13 there. The first six, if you Google it up, it's there.
14 All of these other things were there but no one cares. I
15 still do. I do. I still care about what I can do in this
16 do. I will have to keep an incredibly low profile. I
17 will. But I have a very unique set of skills in my life.
18 I see things in a very unusual way in terms of
19 possibilities with the luge track, with the showcase show.
20 I don't, they don't need me anymore and God bless 'em it
21 is an incredible and gratifying, the greatest thing that I
22 feel is my drive into the State of Michigan, and I see a
23 big billboard that says luge Muskegon. I am so proud. I
24 am. My name's not out there. It's OK. I still am proud
25 and there are a number of things I will still do if I'm

(Videotape, 3-4-13, 3:50:23)

1 allowed to but this is killing me. I'm not asking to hide
2 so I can pray on something. The idea that this officer
3 wrote in his report that says that he wants someone with a
4 daddy figure, ah, a father problem, whatever, so he can,
5 little girls. How ridiculous that is. I'm in a bar where
6 everyone's over 21 and what I said was -

7 THE COURT: OK. Well, you're getting
8 beyond the scope of -

9 MR. BETTS: I apologize.

10 THE COURT: Well, well, just let me finish.

11 MR. BETTS: Yeah.

12 THE COURT: You're getting beyond the scope
13 of the constitutionality of this statute.

14 MR. BETTS: Yeah. Yeah. I apologize. I
15 apologize. It's -

16 THE COURT: You're getting into the facts
17 involving the offense.

18 MR. BETTS: I apologize. Yeah.

19 THE COURT: All right.

20 MR. BETTS: It is punishment. It has
21 evolved when it strictly says, you have to look at the
22 intent of what it says when it says you are prohibited
23 from doing things that is not regulatory. When it says is
24 charges you money to do things that is not regulatory. If
25 go through the, hopefully, that you went through and read

(Videotape, 3-4-13, 3:50:23)

1 the Wallace case because Deposia adopted Wallace in their
2 argument and therefore they opened the door to the logic
3 I've, because they talk about the Mendoza seven criterias.
4 It cannot get more clearly stated than it is in Wallace as
5 adopted by Deposia stating that they felt the relief
6 should be granted because we looked for, for guidance to
7 Wallace. There isn't anything in there of the seven
8 points that they did not find punishing and the exact
9 same, although there are more, and it will evolve into
10 even more as they go into, ah, internet restrictions and
11 all of those types of things. This is not the last time
12 me or anybody is going to be in front of a court with
13 these same issues. You know, I'm asking for the, the
14 (undistinguishable) therapy of judicial logic to the
15 runaway malignance of legislative desire to get reelected
16 and that's what it is. They are, are looking, they don't
17 care, if you want, the arbitrary and capricious, 'cause
18 they opened the question of arbitrary and capricious.
19 63,000 sex offenders the department of justice tracked.
20 639 re-offenses for sex offense but in that same article,
21 which I have on my flashdrive right here that's available
22 to ya, there were more teachers per populace, more
23 religious people per populace and surprisingly the largest
24 group random police officers had 17,085 sex offenders,
25 including the last two chiefs of police in Detroit. So it

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(Videotape, 3-4-13, 3:50:23)

1 is arbitrary and capricious because when you have that 600
2 that I'm talking about over half of those were not to
3 protect children. Those were adult rapist type people
4 well so it even used to be a much smaller, a statistical
5 nonexistent number but it's a feel good law. When that
6 man stood there in Verdonis and looked at me he had
7 pleasure broadcasting to the room my humiliation. I swear
8 to God it's no different than a man in a white uniform
9 with a while pointed (undistinguishable) in front of him
10 hanging black man in the south 50 years ago with the sense
11 that he had done something right. He didn't. He hurt me.
12 He wanted to. He enjoyed it. And we let him because
13 that's the law. Application of how it is determines
14 whether it's punishment or not.

15 When they go and tell me my truck,
16 which is waiting to get brakes fixed, is going to be towed
17 simply because it's registered to a sex offender and scare
18 my mother to death that's punishment. There's just, the
19 application of it is ridiculous. The latitude that they
20 have, the lack of restraint that they have and the
21 pleasure they get out of it, it, it's the case du jour for
22 officers self righteousness. I got a sex offender today.
23 It doesn't matter he's collateral damage. The studies
24 that are there from, from virtually all the things show
25 that, in fact, it doesn't even lower the recidivism. It

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1 doesn't do anything. It is a absolutely neutral thing
2 other than the fact that it makes it so that a whole class
3 of people are unemployable. A whole class of people are
4 ostracized. A whole class of people have to live in
5 hovels. I don't wanna live in a single wide trailer three
6 miles outside of town because that's the only place people
7 are gonna let me live. The more you poke a man the more
8 likely he's gonna do something and, and I'm not. I swear
9 I'm working really, really hard to do this. I've done it
10 for almost 14 years now regardless of the outcome, truly.
11 I'm still gonna stand up and do the best that I can but
12 this is punishment. There is no question.
13 Constitutionally, the evolution from the 12 points that
14 they have to the 43 points that are listed on the sex
15 offender registration and with serious impositions to my
16 freedom. With serious reductions into what I can do as a
17 person. That's punishment. There is no purpose and, and
18 I, I could read you the Wallace case but I hope that you
19 do because I would, I am saying those things exactly word
20 for word. It is what it is. These people who are really
21 good people would not be able to survive where I'm going
22 through on a daily basis without feeling huge punishment.
23 I, and, and, I had a great things all lined up and I
24 didn't do it as well as I wanted. I am sorry. I am
25 sorry. It's important to me and it's important to the

(Videotape, 3-4-13, 3:50:23)

1 State of Michigan. Somewhere, someone will soon enough
2 say, you know what, this deals the people that are old, by
3 the way. That happened 20-some years ago. The
4 statistical thing on all the probabilities are if you're
5 over this, if you're older you're less likely but there's
6 no benefit. The due process thing in here, there is no
7 way that the State of Michigan allows me to have a hearing
8 on my dangerousness. They don't. I should. I should be
9 allowed that under a due process clause. The United
10 States Supreme Court, and they didn't respond to the
11 Reynolds case. At this point in time preregistration
12 offenders are not required to register because the
13 attorney general didn't promulgate it. The truth is they
14 didn't wanna deal with the expost factos issues but
15 because it wasn't include they're not included so the idea
16 that, that it's going to loose money or do something like
17 that because we won't get federal funding has nothing to
18 do with that. It's not even under the federal law at this
19 point. Ohio overturned it. Indiana overturned. Alaska
20 overturned it on the exact same set of reasons, albeit
21 less egregious than what I'm presenting to you. I know
22 punishment.

23 THE COURT: OK. Thank you. Do you have
24 anything you wanna say mister, I don't know who's
25 speaking, Ms. McEnhill. Go ahead.

(Videotape, 3-4-13, 3:50:23)

1 MS. MCENHILL: Well, your honor, obviously
2 the people have responded in brief. I don't know that
3 there's a lot to add to that. The law is what the law is
4 at this point. Therein, and Deposia in no way overruled
5 Pennington and the Court already correctly stated that
6 fact. I can't find anywhere where Pennington has been
7 overruled. I believe it's the controlling law at this
8 point. From the defendant's brief, initially, I thought
9 that his argument was focused solely on the ex post facto
10 issue, um, and, but did make some reference to the
11 Deposia case. At some point in his argument today he did
12 liken his set of circumstances to the Deposia case thus
13 lending us maybe to an argument that this is cruel and
14 unusual punishment but the Court has also pointed out that
15 the Deposia case is a very different case than what we're
16 dealing with here today. The defendant was an adult, he
17 was not treated under the whole youthful trainee status.
18 None of the specific factors that were addressed in
19 Deposia are applicable to the defendant's case. And also,
20 in that case the Court was very specific in saying that
21 their ruling applied to the circumstances as outlined in
22 that case and this case can be in now way likened to the
23 Deposia case in regard to the issue of cruel and unusual
24 punishment. In regard to the issue of whether or not the
25 ex post facto clause has been violated, obviously, it's

(Videotape, 3-4-13, 3:50:23)

1 our position that Pennington is the controlling law and
2 I'd ask the Court to deny the motion.

3 THE COURT: OK. Well, it's very
4 interesting, um, argument that's being made here on behalf
5 of the defendant and I have an opportunity, as I said to
6 read the briefs submitted by both sides and, ah, I've had
7 an opportunity to examine the authority they've cited in
8 their brief and I think it's important, as I indicated
9 earlier in my comments, because we are talking about the
10 constitutionality of the statute that we talk about what
11 is pertinent to this case and what is not. This case is
12 not about a juvenile convicted. This is not about someone
13 who was granted Holmes Youthful Trainee status or about a
14 violation of article three of the Sex Offender
15 Registration Act. This case that I have before me is
16 about a defendant who was convicted as an adult in 1994
17 for a criminal sexual conduct in the second degree and the
18 application of article 2 to him, which is the foundation
19 for this prosecution. The requirement that he register is
20 the subject of the motion here and it's the defendant's
21 contention that is a violation of the constitutional
22 prohibitions against ex post facto legislation.

23 Now, in order to make a finding that
24 this registration requirement constitutes an ex post facto
25 law I have to determine that the law itself inflicts a

1 punishment on the defendant and the defendant has
2 contended, ah, both in his brief as well as his oral
3 submission here today that it does inflict a punishment.

4 Now, to determine if there is a
5 punishment involved the Court looks to legislative intent,
6 the design of the legislation, the historical and
7 traditional treatment of analogist laws and the effect
8 that the requirement of the registration has upon the
9 defendant. The legislative intent behind SORA is to
10 enable law enforcement and the public to monitor sex
11 offenders. And that legislative intent is set forth in
12 the preamble to the legislation itself and it's also been
13 recognized as the intent of the legislature, most recently
14 in a 2011 case before the Michigan Supreme Court People
15 versus Dowdy. So the intent, ah, would indicate that it
16 is not punishable. The design of the, of the regulation
17 for non HYTA adult offenders is strictly remedial its, and
18 regulatory. It's not placed in the penal code. It's not
19 in the criminal code of procedure. There really are no
20 historical analogies for SORA.

21 Now, the effect of the law on HYTA and
22 juvenile offenders, certainly prior to the most recent
23 amendments may have been to create a disability which
24 would argue in favor of this being considered a punishment
25 because information that would be disclosed through the

(Videotape, 3-4-13, 3:50:23)

1 sex offender act to the public would not otherwise be
2 available to the public under, under the provision of the
3 Holmes Youthful Trainee Act or under the Juvenile Code,
4 juvenile chapter of the Probate Code because those matters
5 are considered not available to the public. That's not
6 what we have here anyway. We've got an adult offender who
7 has been convicted of CSC2. The conviction of this
8 defendant, as well as anyone in his position, is a matter
9 of public record whether there's a compliance with SORA or
10 not there's a file on record with the circuit court
11 records office that contains the fact of the conviction
12 and it's there and it's available for the public at any
13 time.

14 Now, if we extend the scope of our
15 inquiry to include all of the factors involved in what is
16 called the Mendoza Martinez test, um, we still find that
17 article 2 doesn't oppose - article 2 doesn't impose any
18 affirmative disability or restraint on this defendant. It
19 doesn't do anything to support the traditional punishment
20 objections, which are deterrents and retribution. Doesn't
21 have anything to do with that and certainly requiring
22 registration is logically and reasonably and rationally
23 connected to the objective of allowing the public, as well
24 as law enforcement, but most importantly in this context,
25 the public to monitor sex offenders. I don't find the

(Videotape, 3-4-13, 3:50:23)

1 scope of this legislation to be excessive. It carves out
2 exceptions for juveniles. It carves out exceptions
3 depending on the offense that was committed for different
4 periods of registration. It also has a provision in it
5 for allowing certain types of offenders to become de-
6 listed so to speak. So all of this leads the Court to
7 conclude, as the court of appeals did in Pennington, ah,
8 that the registration requirements under article 2 of SORA
9 for adult sex offenders is not a punishment and therefore
10 it does not constitute a violation of the prohibition
11 against ex post facto legislation. That leads the Court to
12 the conclusion that the motion is denied. Court's in
13 recess.

14 MR. BETTS: Your honor -

15 (Court in recess at 4:28:49)

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STATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT
FOR THE COUNTY OF MUSKEGON

* * *

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff

File #12-62665-FH

V

PAUL J. BETTS, JR.

Defendant.

COPY

PLEA HEARING

BEFORE THE HONORABLE WILLIAM C. MARIETTI

Muskegon, Michigan, May 30, 2013

APPEARANCES:

For the People: JAMES CORBETT

For the Defendant: MATTHEW KACEL

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APPELLATE DEFENDER OFFICE

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	None.		
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Court exh.	Police report	10	10

(Videotape, 5-30-13, 3:35:59)

1 THE COURT: - 03060, People versus Betts.

2 THE CLERK: Please rise and raise your
3 right hand. Do you swear the testimony you're about to
4 give will be the truth, the whole truth and nothing but
5 the truth so help you God?

6 MR. BETTS: I do.

7 THE CLERK: Please have a seat. Please
8 state your name for the record.

9 MR. BETTS: Paul Jay Betts, Jr.

10 THE COURT: OK. Let the record reflect
11 that I, in a Cobbs agreement committed to a minimum
12 sentence of not more than 13 months. I also indicated
13 that I would grant the defendant an appeal bond. The
14 conditions of the appeal bond is that he, ah, perfect his
15 appeal within in the time requirements of the Court Rules
16 and comply with all the other terms of the existing bond.
17 I've also indicated that this, and the Court, ah, would
18 state on the record that this is a conditional plea in
19 that the, ah, defendant is preserving the right to appeal,
20 notwithstanding his plea, the legal issues that he's
21 raised in motions in advance of this hearing and the
22 prosecutors consented to that. And, ah, it's gonna be a
23 no contest plea based on potential civil liability.

24 MR. KACEL: That's correct, your honor.

25 THE COURT: Based on your theory that there

1 could be a tortious, ah, pardon me, pardon me, a potential
2 infliction of emotional distress -

3 MR. KACEL: That's correct, your honor.

4 THE COURT: - theory against him and I
5 think that states the entire sum and substance of the
6 Cobbs hearing and agreement. Is that correct, Mr.
7 Corbett?

8 MR. CORBETT: I believe that's correct,
9 your honor.

10 THE COURT: Is that your understanding Mr.
11 Kacel?

12 MR. KACEL: That's my understanding, your
13 honor. I, I've told Mr. Betts, just to make the record
14 clear, that this Court has not made a determination
15 regarding our previous request for the appeal bond to
16 allow him go back to Indiana. So I wanna make sure that's
17 on the record, that this Court has not committed to that
18 but it certainly will hear an argument for that -

19 THE COURT: OK.

20 MR. KACEL: - when the time comes so I just
21 wanna make that clear.

22 THE COURT: Right.

23 MR. KACEL: Thank you.

24 THE COURT: OK. You've heard my statement.
25 Mr. Betts, do you understand it?

(Videotape, 5-30-13, 3:35:59)

1 MR. BETTS: I do.

2 THE COURT: All right. And has anything
3 else been promised to you to get you to plead no contest
4 here?

5 MR. BETTS: It has not.

6 THE COURT: Anybody forcing you to?

7 MR. BETTS: No, sir.

8 THE COURT: All right. Now, I also, my
9 understanding is the prosecutor's gonna dismiss one of
10 these charges.

11 MR. CORBETT: Correct. We're gonna dismiss
12 the other file. That was what the agreement was.

13 THE COURT: Right. So, he's gonna be
14 pleading guilty to file 65, failure to comply with the
15 registration act?

16 MR. KACEL: No contest, your honor.

17 THE COURT: Yeah, and you're gonna dismiss
18 failure to comply with reporting in file number -

19 MR. CORBETT: Correct.

20 THE COURT: - 060?

21 MR. CORBETT: Correct.

22 THE COURT: All right.

23 MR. KACEL: That's correct.

24 THE COURT: And that's also part of the
25 deal. You understand that, Mr. Betts?

(Videotape, 5-30-13, 3:35:59)

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MR. BETTS: I do.

THE COURT: All right. Now, let's go back again. Anything else been promised to you?

MR. KACEL: Judge, I don't know if this Court would wanna do this or not. They had made a statement that based on the issues that Mr. Betts had raised previously -

THE COURT: You what?

MR. KACEL: You had made a statement based on that Mr. Betts would be allowed to appeal the issues that he had made.

THE COURT: Yeah.

MR. KACEL: I just wanna amend to say that any appealable issue, obviously, he has made a list of what those issues are that -

THE COURT: OK. Yeah, you have a right to appeal any issues that are relevant to this case.

MR. BETTS: Thank you.

MR. KACEL: Thank you, your honor.

THE COURT: That's a condition, agreed?

MR. CORBETT: Correct.

THE COURT: All right. Now -

MR. KACEL: That's my understanding.

THE COURT: - you've heard the whole agreement?

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(Videotape, 5-30-13, 3:35:59)

1 MR. BETTS: Yes, sir.

2 THE COURT: Is it, anything else been
3 promised to you?

4 MR. BETTS: No, sir.

5 THE COURT: Anybody forcing you to plead no
6 contest?

7 MR. BETTS: No, sir.

8 THE COURT: This is your own choice?

9 MR. BETTS: Yes, sir.

10 THE COURT: All right. If your plea is
11 accepted then you'll be giving up any claim it was a
12 result of a promise or a threat you haven't told us about
13 or that it wasn't your choice to enter the plea. And you
14 can read the charge, Mr. Corbett.

15 MR. CORBETT: Thank you, your honor. Paul
16 Jay Betts, Jr., on or about October 3rd, 2012, in the City
17 of Muskegon, at 766 W. Larch, Apartment number 2 did
18 willfully violate the Sex Offender Registration Act by
19 failed to register his address, vehicle and email address
20 contrary to MCL 28.7291A, that is known as sex offender
21 failure to comply with registration act. It is a felony
22 normally carrying a penalty of four years and/or \$2000.

23 People gave habitual offender third
24 offense notice which reads: Take notice that the
25 defendant was twice previously convicted of a felony or

(Videotape, 5-30-13, 3:35:59)

1 attempt to commit a felony and that on or about January
2 26th, 1994 he or she was convicted of the offense of
3 criminal sexual conduct second degree in violation of MCL
4 750520C in the 14th Circuit Court in Muskegon, State of
5 Michigan and that on or about July 6th, 2010 he or she was
6 convicted of the offense of larceny \$100, I'm sorry, \$1000
7 to less than \$20,000 in violation of MCL 3623A in the 3rd
8 Circuit Court for Wayne, State of Michigan. Therefore,
9 the defendant is subject to the penalties provided MCL
10 769.11, the penalty being twice the maximum sentence on
11 the primary offense or lesser charge. So that would make
12 the penalty eight years and/or \$4000.

13 THE COURT: OK. You've heard the charge
14 read. Do you understand the charge or failure to comply
15 with the registration act?

16 MR. BETTS: I do.

17 THE COURT: And, ah, is it true you were
18 convicted of CSC second in '94 and larceny over a \$1000 in
19 2010?

20 MR. BETTS: Yes.

21 THE COURT: All right. This being your
22 third felony then the maximum penalty is up to eight years
23 in prison and a \$2000 fine. There is no mandatory minimum
24 term. Do you understand the penalty?

25 MR. BETTS: I do.

1 THE COURT: If you're presently on
2 probation or parole this plea could be charged as a
3 violation. If you've previously been convicted of a
4 felony you can and have been charged as an habitual
5 offender and the maximum term has been increased. If your
6 plea is accepted, before I sentence you, I'll give you and
7 Mr. Kacel and Mr. Corbett and opportunity speak to me and
8 I'll also review a presentence investigation and report.
9 Any appeal of your plea and sentence is by an application
10 for leave to appeal, not by right. Has Mr. Kacel advised
11 you of your rights, the elements of this charge and any
12 possible defenses?

13 MR. BETTS: He did.

14 THE COURT: There are four possible pleas.
15 They are guilty, not guilty, remain silent and that's
16 considered not guilty or nolo contendere, that's sometimes
17 called no contest. That's a plea in which you elect not
18 to contest the charge and if I accept that plea it's
19 treated the same as a guilty plea. Do you understand the
20 four pleas?

21 MR. BETTS: Yes, sir.

22 THE COURT: Did you read and understand the
23 advice or rights form here that you signed?

24 MR. BETTS: I did.

25 THE COURT: Do you understand that if you

1 plead not contest you give those rights up?

2 MR. BETTS: I do.

3 THE COURT: All right. And how to you
4 plea?

5 MR. BETTS: I plead no contest.

6 THE COURT: All right. I think I already
7 have the report but that's all right. We'll receive to
8 corroborate the, ah, plea a police report indicating these
9 events occurred on or about October 3rd in Muskegon County
10 of 2012. They'll be received as court's exhibit 1.

11 (Court's exhibit 1 received at 3:42:32)

12 THE COURT: The defendant was found to be
13 in the county at that time. He was not registered, um, in
14 Michigan as a sex offender as a CSC2 conviction he was
15 required to register. I mean, the date he was found in a
16 truck registered to him at 453 Martin Luther King
17 Boulevard in Detroit, Michigan.

18 MR. BETTS: I'm sorry?

19 MR. KACEL: Oh, he's just. He's just
20 reading.

21 MR. BETTS: Oh, sorry.

22 THE COURT: Admitted that he had not been
23 living in Indiana for two months and had been in an
24 apartment here for two months at 767 W. Larch, Apartment 2
25 in Muskegon. So, he has failed to comply with the sex

1 offender registration act by failing to register his
2 address, his vehicle, um, and email address. That
3 comports with the charge here and substantiates the
4 charge. Have I complied?

5 MR. CORBETT: Yes, you have.

6 MR. KACEL: The Court has, your honor.

7 THE COURT: Any promises or threats not
8 disclosed?

9 MR. KACEL: None that I'm aware of.

10 THE COURT: I've agreed to dismiss file
11 number 3060, which I'm doing at this time. That'll be
12 dismissed. I've agreed to grant the defendant a
13 continuation of his bond on appeal. I've also agreed that
14 any sentence in this case would not exceed 13 months in
15 the Michigan Department of Corrections, ah, on the
16 minimum. I've agreed to consider his request to go to
17 Indiana pending the appeal. I think that's everything.

18 (Undistinguishable) with regard to
19 plea or sentence. Mr. Betts has offered to me a plea of
20 nolo contendere to failure to comply with the sex - with
21 SORA and I find these events occurred in Muskegon County
22 on the day alleged. The plea is understanding, voluntary
23 and accurate. I accept the plea, refer it for a pre.
24 This did happen in Norton Shores, by the way. Continue
25 bond and schedule sentence for July -

(Videotape, 5-30-13, 3:35:59)

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THE CLERK: Second.

THE COURT: - 2nd at 1:15. OK.

MR. KACEL: Judge, am I to assume that the Court will hear the argument regarding the, the, whether or not he can go to Indiana on that date in July?

THE COURT: Yeah.

MR. KACEL: Or, or certainly we can set it for hearing or, or -

THE COURT: Yeah, well -

MR. KACEL: I know that, that the issue is this, Mr. Betts is close to be, actually being evicted from his apartment.

THE COURT: He's close to being evicted?

MR. KACEL: Correct. And -

THE COURT: OK.

MR. KACEL: - so it's obviously, it's very important that he, he has a house in Indiana he can move back to so it's, we're getting to a point where -

THE CLERK: Put a note on the file?

THE COURT: Well, let's, that day, let's not start his sentence 'til 2:30. We'll do his sentence at 2:30 on that day, OK? Same date, July 2nd, 2:30. We'll separate it from the other cases. All right.

(Court in recess at 3:45:40)

(Court resumes at 3:46:03)

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(Videotape, 5-30-13, 3:35:59)

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THE COURT: All right. We're back on the record in people versus Betts. File #12-6267, er, 62760 and 61. Go ahead, Mr. Kacel.

MR. KACEL: My understanding of Mr. Betts bond previously had allowed him to go to Indiana for medical appointments. I'm assuming that, because the conditions of that bond are now part of his appeal bond and he's allowed to do those as well.

THE COURT: Correct.

MR. KACEL: All right. Thank you.

THE COURT: Same conditions as he had before.

MR. KACEL: Thank you.

THE COURT: Yeah.

MR. CORBETT: Thank you, your honor.

(Court in recess at 3:46:20)

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STATE OF MICHIGAN
IN THE 14TH CIRCUIT COURT
FOR THE COUNTY OF MUSKEGON

* * *

PEOPLE OF THE
STATE OF MICHIGAN,

Plaintiff

File #12-62665-FH

V

PAUL J. BETTS, JR.

Defendant.

COPY

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SENTENCE HEARING

BEFORE THE HONORABLE WILLIAM C. MARIETTI

Muskegon, Michigan, July 2, 2013

APPEARANCES:

For the People: ROBERT HEDGES

For the Defendant: MATTHEW KACEL

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APPELLATE DEFENDER OFFICE

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	None.	
EXHIBITS:	identified	received
	None.	

1 MR. KACEL: Judge, I think I have a couple
2 of questions and actually additions to the report if I
3 could.

4 THE COURT: All right.

5 THE COURT: First correction on the face
6 sheet is says Mr. Betts education is 12th grade. That's
7 incorrect. He actually -

8 THE COURT: Yeah, he's got a bachelors -

9 MR. KACEL: He has a bachelors.

10 THE COURT: - from Spring Arbor I see.

11 MR. KACEL: He does.

12 THE COURT: OK. Change that, please.

13 MR. KACEL: (Undistinguishable) updated.

14 THE COURT: All right.

15 MR. KACEL: Ah, second is on page, ah, 2 of
16 the report. It's under agent's description of the
17 defense. There's two allegations in here. We would just
18 like something added regarding the defendant denies this.
19 The third full paragraph -

20 THE COURT: Yes.

21 MR. KACEL: - um, indicates that some,
22 there was a report that some waitresses had made some
23 comments.

24 THE COURT: Oh, wait a minute. Where are
25 you now? I was on page 1. What page?

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Page 46a

(Videotape, 7-2-13, 2:09:16)

1 MR. KACEL: Page 2.

2 THE COURT: Page 2 of the agents -

3 MR. KACEL: Of the agents description of
4 the offense.

5 THE COURT: - description. All right. Go
6 ahead, yes. Uh huh.

7 MR. KACEL: There was indication that
8 these, this comments, Mr. Betts made some comments to the
9 waitresses -

10 THE COURT: Yes.

11 MR. KACEL: - and we would like to add a
12 paragraph indicating that Mr. Betts firmly denies that.
13 Other than that -

14 THE COURT: OK. Add that, please, that the
15 defendant denies making those statements.

16 MR. KACEL: In addition, the last paragraph
17 indicates, um, that the individual indicated he had fired
18 Mr. Betts after he was sexually harassing his female
19 employees.

20 THE COURT: Right.

21 MR. KACEL: Mr. Betts is actually involved
22 with a lawsuit with that, at this time that individual is
23 suing him for some back payments and he's also suing him
24 for those statements. He has affidavits from some of
25 these workers indicating that sexually harassing comments

1 were never made so maybe just adding a paragraph
2 indicating that we would firmly deny this is as well and
3 there's a pending lawsuit -

4 THE COURT: OK.

5 MR. KACEL: - regarding these allegations.

6 THE COURT: That'd be fine. Put that in
7 there.

8 MR. KACEL: That's the only additions or
9 corrections I have for the report, your honor.

10 THE COURT: OK.

11 MR. KACEL: I'm obviously, ah, the Court is
12 well aware of Mr. Betts history in this case. I think
13 we've been up here a few times.

14 MR. KACEL: Uh huh.

15 THE COURT: I certainly think there is a
16 reason and a argument that could've been made that Mr.
17 Betts' violation of this particular statute was not a
18 willful violation based on the confusion and what happened
19 in Indiana to him that he didn't have to register.
20 There's also an argument that could, is going to be
21 appealed and I think this Court is well aware of that.
22 I'm asking the Court, given his history, he doesn't have a
23 significant criminal history, ah, his last felony offense
24 was, I believe, back in 2007 and his last offense at all
25 was, I believe, in 2009. He's not a danger to the

(Videotape, 7-2-13, 2:09:16)

1 community. I'm asking the Court to sentence him to 12
2 months or less. I would actually ask the Court to
3 sentence him to five months, which is the lowest end of
4 the guidelines but I know the recommendation is for 12
5 months. I think that's appropriate. I think a jail term
6 is appropriate in this case. I know the Cobbs is 13
7 months but I'm gonna argue, again, that I think a prison
8 sentence is, is, ah, not appropriate in this case. I hope
9 the Court takes into consideration. In addition, if the
10 Court feels need to impose a probationary period or at
11 least, um, while he's on appeal bond in, ah, while he's on
12 the appeal bond, essentially, I would ask the Court to
13 allow him to return to Indiana. I indicated to the Court
14 beforehand that he was up here to basically work on a
15 boat. He lived continuously in Indiana for two years.
16 He, he basically was determined to be a lawful resident of
17 Indiana in court proceedings. He's involved in a medical
18 malpractice suit in Indiana at this time, Michigan City.
19 He has a house in Indiana, he almost owns, at this time,
20 he's got more connections to Indiana than he ever had to
21 Michigan and I certainly think that it's not a danger for
22 this Court to allow him to return to Indiana while he's
23 exhausting his appellate options as we've previously
24 discussed in court. I think that, certainly, this Court
25 could fashion a bond whereby he checks in in person every

1 month. That would certainly be possible but I would ask
2 the Court to allow him to leave the State of Michigan to
3 live in Indiana while he's exhausting his appellate
4 options.

5 THE COURT: OK.

6 MR. KACEL: And that's all I have to say.
7 Thank you.

8 THE COURT: Thank you. Mr. Betts, have you
9 had a chance to review the report?

10 MR. BETTS: I did.

11 THE COURT: Do you have any additions or
12 corrections to make to it or anything you'd like to say?

13 MR. BETTS: I attended every hearing I've
14 ever been asked to be at. Never been late. I really
15 think, in my opinion, there is a difference in opinion on
16 whether I have, ah, lawful obligation whatsoever to do
17 this. The work that I have and everything I'm doing is in
18 Indiana but I will absolutely be here at any time. My
19 equipment is Indiana. All of my tools are in Indiana.
20 Everything I need to do is there but what I would also
21 like to say is I'd like to be at the very lowest end
22 whatever guidelines there are per the agreement that we
23 made because I don't think there's any question that this
24 is an issue that is evolving greater controversy on a
25 progressive basis. From the 13 issues that were on it to

(Videotape, 7-2-13, 2:09:16)

1 the 43 issues that are on the registration now and they
2 are changing on a daily basis. The one thing that I
3 really wanna be clear on is when we had discussed a number
4 of times before about this, when they said that we're not
5 charging with living next to a school or that but, but my
6 thought was after I gave much consideration to it was, I'm
7 asked to sign that I'm giving up my rights to do any of
8 those things by signing this registration. Things that I
9 feel that are absolutely ex post facto, not specifically
10 to the event in which they charged me with but then I, by,
11 by signing the registration form I give up all of the
12 rights that I feel that I'm entitled to as a human being
13 in this situation. The other thing that he went on with
14 the deal up there, harassment by the person that owes me
15 money. They owe me \$25,000 for work I had done for them
16 in Ohio but they own a house in Michigan that I was
17 storing my equipment at. The woman that he said I
18 harassed, already you have a copy, a signed notarized
19 copy, by Crystal Germancy in my original pleading with you
20 where she said that absolutely was not true and, in fact,
21 he tried to coerce her to do it and get, and pay her money
22 and do all kinds of stuff in there and that's on the
23 record that you already have signed and notarized by her
24 so that those allegations that he gave to the police to
25 get me arrested were just scurrilous. They just weren't

(Videotape, 7-2-13, 2:09:16)

1 true.

2 THE COURT: OK. Thank you. Mr. Hedges,
3 anything you'd like to say?

4 MR. HEDGES: Well, a couple, the
5 defendant's just said, made reference in his statement
6 about something that the Court agreed to. I think the
7 full agreement of the Court was two things, the Cobbs that
8 the minimum sentence will not be more than 13 months to
9 the department of corrections and that you also agree that
10 you would give him an appeal bond while his appeal is
11 pending. Other than that I don't think there's any
12 promises at all and I think the record should, if there's
13 anything more than that I think the record should reflect
14 it.

15 THE COURT: Not that I'm aware of.

16 MR. HEDGES: So, I'm not sure what the
17 (undistinguishable).

18 MR. BETTS: (Undistinguishable).

19 MR. HEDGES: It's, well he mentioned asking
20 for a lesser sentence as we discussed before. I, I don't-

21 THE COURT: Well, I mean, he can ask, well,
22 that is part of a Cobbs. It can be less than 13 months.

23 MR. HEDGES: Now, in terms of what the
24 sentence should be I, I would ask the Court to follow the
25 Cobbs and make this a sentence of, ah, 13 months minimum

(Videotape, 7-2-13, 2:09:16)

1 to the Department of Corrections. I would note that the
2 defendant has two relatively recent felonies in 2007 and
3 2009 and the 2009 felony was also for failing to register
4 as a sex offender. So, so he has not learned the lesson
5 so, um, so I would the Court to follow the Cobbs, sentence
6 him to a Department of Corrections sentence. As to his
7 request to be able to go to Indiana I'll just leave that
8 to the discretion of the Court.

9 MR. KACEL: Judge, I'd just like -

10 THE COURT: I think the, I think the
11 probation department has called this accurately. I do not
12 think this is a prison case. I realize he had a previous
13 conviction for failure to register. According to my
14 record though that was a misdemeanor, not a felony and he
15 received fines and costs. To go from that for a similar
16 offense to prison I think is too big a leap. I think the
17 probation department has called this accurately. I think
18 they made a proper assessment.

19 It'll be the sentence of the Court he
20 be placed on probation for a period of three years with
21 the first year in the Muskegon County Jail with credit for
22 15 days. He'll pay a \$450 circuit court cost fee, \$450
23 public defender fee, 60, no public defender fee, I'm
24 sorry, \$68 state cost fee, \$130 victim fee. What would
25 the probation fees be for this, gentlemen?

1 MS. BURNS: Your honor, I'll have to figure
2 them out. It's based on his salary, his income.

3 THE COURT: All right. All right. Well,
4 probation fees will be determined by the probation
5 department. Special conditions of your probation are that
6 you are, well, let's see here. OK. As far as returning
7 to the State of Indiana, as long as we can get courtesy
8 supervision there I don't care. That's fine with me. And
9 I think we can with Indiana. That's not a problem so you
10 can reside in Indiana as long as you're under supervision
11 there. And, the Court will require that you complete any
12 counseling programs recommended by your agent and the
13 Court has also indicated that we would allow you to post a
14 bond and I will allow you to post a bond in the amount of
15 \$5,000 cash or surety to guarantee your appearance here in
16 Court while you proceed with your appeal.

17 And, in addition, the record should
18 reflect that, as I recall, this was a, ah, conditional
19 plea in terms of being allowed to appeal the issues that
20 were raised in limine in this matter on the appeal
21 notwithstanding the fact that it was a plea.

22 So, you have a right to file an
23 application for leave to appeal this plea and sentence.
24 If you're financially -

25 MR. KACEL: Judge -

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(Videotape, 7-2-13, 2:09:16)

1 THE COURT: - unable to retain an attorney
2 you may request one on a form you're being provided at
3 this time within 42 days.

4 MR. KACEL: Judge, it's my understanding at
5 the time of the plea that it was in understanding my
6 client that essentially the appeal bond would be a PR
7 bond, it would be consistent with his bond that was, had
8 already been posted.

9 THE COURT: Oh, if I agreed to a PR bond -

10 MR. KACEL: (Undistinguishable) PR bond -

11 THE COURT: - that's fine.

12 MR. BETTS: You did.

13 THE COURT: If that's what I did then
14 that's fine, \$5000 PR.

15 MR. KACEL: Thank you, your honor.

16 THE COURT: Now, you'll have to report to
17 the probation department here until they make arrangements
18 to have your probation transferred there.

19 MR. BETTS: OK.

20 MR. KACEL: Thank you, your honor.

21 THE COURT: Uh huh.

22 (Court in recess at 2:19:37)

23 -o0o-

Judgment of Sentence 7/2/13

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Original - Court 3rd copy - Defendant
 1st co Jail 4th co Prosecutor
 2nd co Michigan State Police CJIC 5th co Gun board (if needed) PAGE 1

Approved, SCAO
 STATE OF MICHIGAN
 14TH JUDICIAL CIRCUIT
 MUSKEGON COUNTY

JUDGMENT OF SENTENCE
 COMMITMENT TO JAIL

CASE NO.
 12-062665-FH-F

ORI MI-610015J Court Address 990 TERRACE STREET Court Telephone no. 231-724-6251
 MUSKEGON, MI 49442

Police Report No. NSPD126902

The State of Michigan
 THE PEOPLE OF _____

v

Defendant name, address, and telephone no.
 PAUL J BETTS JR
 766 W. LARCH APT. 2
 MUSKEGON, MI 49441
 CTN/TCN SID DOB
 611200651501 1651381T 8/27/48

THE COURT FINDS:

1. Defendant was found guilty on 5/30/13 of the crime(s) as stated below:
 Date

Count	CONVICTED BY			DISMISSED BY*	CRIME	CHARGE CODE(S) MCL citation/PACC code
	Plea*	Court	Jury			
1	NC				VIOL. SEX OFFENDER REG.	28.729
		X			HABITUAL OFFENDER 3RD CON	769.11

*For plea: insert "G" for guilty plea, "NC" for nolo contendere, or "MI" for guilty but mentally ill. For dismissal: insert "D" for dismissed by court or "NP" for dismissed by prosecutor/plaintiff.

2. Defendant represented by an attorney: KACEL, MATTHEW RYAN,
 advised of right to counsel and appointed counsel and knowingly, intelligently, and voluntarily waived that right.
3. Conviction reportable to Secretary of State.
 Defendant's driver's license number is _____.
4. Sanctions reportable to State Police. Revoked. Suspended _____ days. Restricted _____ days.
5. HIV testing and sex offender registration is completed.
6. Defendant has been fingerprinted according to MCL 28.243.

FILED
 HANNOY A. WALKER
 MUSKEGON COUNTY CLERK
 2013 JUL - 5 P

IT IS ORDERED:

7. Probation is revoked.
 8. Deferred status is revoked. HYTA status is revoked.
 9. Defendant is sentenced to jail as follows: Report at _____ m.

Count	Date Sentence Begins	Sentenced		Credited		To Be Served		Release Authorized for the Following Purpose	*Release Period		
		Mos.	Days	Mos.	Days	Mos.	Days		From	To	
1	7/02/13	12			15		350	<input type="checkbox"/> Upon payment of fine/costs <input type="checkbox"/> To work or seek work..... <input type="checkbox"/> For attendance at school.. <input type="checkbox"/> For medical treatment.... <input type="checkbox"/> Other _____			

10. Defendant shall pay: \$450.00 CIRCUIT COURT COSTS \$68.00 STATE MINIMUM COSTS \$130.00 CRIME VICTIM RIGHTS
 \$648.00 TOTAL \$648.00 BALANCE

The due date for payment is 7/02/13. Fine, costs, and fees not paid within 56 days of the due date are subject to a 20% late penalty on the amount owed. Only the fine and some costs may be satisfied by serving time in jail. Defendant shall serve _____ days in jail beginning _____ for failure to pay on time.

11. Defendant shall be placed on probation for 36 months and abide by the terms of probation. (See separate order.)
12. Defendant shall complete the following rehabilitative services.
 Alcohol Highway Safety Education
 Treatment (outpatient, inpatient, residential, mental health).
 Specify: _____
13. The vehicle used in the offense shall be immobilized or forfeited. (See separate order.)

Judgment of Sentence 7/2/13

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Approved, SCAO	Original - Court 1st co Jail 2nd co Michigan State Police CJIC	3rd co - Defendant 4th co Prosecutor 5th co Gun board (if needed)	PAGE 2
STATE OF MICHIGAN 14TH JUDICIAL CIRCUIT MUSKEGON COUNTY	JUDGMENT OF SENTENCE <input checked="" type="checkbox"/> COMMITMENT TO JAIL	CASE NO. 12-062665-FH-F	

14. The concealed weapon board shall suspend for ____ days permanently revoke the concealed weapon license, permit number _____, issued by _____ County.
15. Other: JAIL TERM DEFERRED WHILE DEFENDANT PERFECTS HIS APPEAL IN A TIMELY MANNER. PROBATIONARY OVERSIGHT FEES TO BE DETERMINED. DEFENDANT RELEASED ON A 5000 PERSONAL RECONIZANCE BOND.

Date

7/2/13

(SEAL)

Judge/Magistrate WILLIAM C. MARIETTI

17085
Bar no.

MCL 765.15(2), MCL 769.1k, MCL 769.16a, MCL 775.22, MCL 780.766, MCL 780.826, MCR 6.427

Muskegon County Circuit Court Docket Entries
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12-062665-FH JUDGE MARIETTI
MUSKEGON COUNTY

CASE REGISTER OF ACTIONS
FILE 11/01/12 ADJ DT 05/30/13

No. 4364-19 P. 2 AGE 1
CLOSE 07/02/13
SCAO:SEC B LINE 03

D 001 BETTS, PAUL, J, JR

150 E SEAWAY DR EB
MUSKEGON, MI 49444

ATY:

DOB: 08/27/48 SEX: M RACE: W
SSN: XXXXXXXXX
CTN:611200651501 TCN:Y712012862H
SID:1651381T PIN:NSPD126902
DLN:XXXXXXXXXXXXXX ST:XX
PROSECUTOR: HILSON, DALE J.,
P-57726

LOWER DISTRICT: 6000 CTY# 61 CASE# 12144999FY PRELIM: HELD 10/31/12
INCARCERATION DATE: 10/03/12 DISTRICT ARRAIGNMENT: 10/04/12

IP001 BETTS, PAUL, JR

GENERAL DELIVERY
MUSKEGON, MI 49440

Bond History

Num	Amount	Type	Posted Date	Status
1	\$25,000.00	Personal Recognizance	11/01/12	Cancelled
2	\$3,000.00	Personal Recognizance		

Charges

Num	Type	Charge (Pacc)	Asc/Trf	Charge Description	Offense Dt	Dsp	Evt
01	ORG	28.729		VIOL. SEX OFFENDER REG.	10/03/12	NOC	PLE
	HAB	769.11		HABITUAL OFFENDER 3RD CON ENHANCED SENTENCE			

Assessments

Account	Ordered	Paid	Balance
STATE MINIMUM COSTS	\$68.00	\$68.00	\$.00
CRIME VICTIM RIGHTS	\$130.00	\$130.00	\$.00
CIRCUIT COURT COSTS	\$450.00	\$450.00	\$.00
20% LATE FEE	\$109.60	\$109.60	\$.00
TOTAL:	\$757.60	\$757.60	\$.00
PAYMENT DUE: 6/08/15	LATE FEE DATE: 8/04/15		

Actions, Judgments, Case Notes

Num	Date	Judge	Chg/Pty	Event Description/Comments	
1	11/01/12	GRAVES		RETURN TO CIRCUIT COURT *NO CONTACT W/ANY MINOR CHILD NO ALCOHOL, NO DRUGS, NO NEW CHARGES, MAY LEAVE STATE ON 11/1/12 TO GO TO INDIANA	CLK RJP CLK CLK CLK
2			D 001	BOND POSTED (01)	CLK RJP
3	11/02/12			INFORMATION	CLK RJP
4				WITNESS LIST FILED	CLK RJP
5	11/05/12			ARRAIGNMENT	CRT RJP

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Muskegon County Circuit Court Docket Entries

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CASE REGISTER OF ACTIONS

No. 436419P. 3 PAGE 2

12-062665-FH JUDGE MARIETTI

FILE 11/01/12 ADJ DT 05/30/13 CLOSE 07/02/13

Line	Date	Case No.	Description	Time	Officer
6			WAIVED PROOF OF SERVICE FILED RE; FELONY INFO AND NTC OF ENHANCEMENT		CLK RJP
7	11/16/12	D 001	FROM: FISHER, JOSEPH A., TO: WILSON, J. CHRISTOPHER,		CLK KPB
8			NOTICE SENT FOR; 11/30/12 1:30 PM PRE-TRIAL HEARING HON. JAMES M. GRAVES JR.		CLK KPB
9			PROOF OF SERVICE FILED		CLK KPB
10	12/04/12		NOTICE SENT FOR: 01/29/13 9:00 AM JURY TRIAL		CLK KPB
			Two day jury trial scheduled January 29 and 30, 2013		CLK
11			PROOF OF SERVICE FILED		CLK KPB
12	12/05/12		WITNESS LIST FILED PRETRIAL SUMMARY CRIMINAL CALENDAR		CLK MLW
13	12/07/12		STIP/ORD RE: BOND		CLK RJP
14	01/04/13	MARIETTI	CASE REASSIGNMENT FROM: GRAVES, JAMES M., JR. TO: MARIETTI, WILLIAM C.,		CLK OSM
20	01/25/13		FILINGS BY DEFENDANT ** Motion to Allow Pro Per Representation w/standby Counsel ** Mo/Dismiss ** Mo/certification of Interlocutory Appeal ** Attachments ** Proof of Service		CLK LAL
15	01/29/13		MOTION HEARING CD1/29/13 1000 HRS., MCENHILL /BAKER. DEFENDENT IS TO REPRESENT HIMSELF BUT KEEP BAKER AS ADVISORY COUNSEL ON HIS CASE. TO BE SET FOR A MOTION HEARING.		CRT TJK
16	01/30/13	D 001	FROM: WILSON, J. CHRISTOPHER, TO: PRO-PER		CLK LAL
17			NOTICE SENT FOR: 03/04/13 3:30 PM MOTION HEARING		CLK LAL
18			NOTICE SENT FOR: 04/02/13 9:00 AM JURY TRIAL 2-DAY TRIAL, TO BE CONTINUED APRIL 3, 2013		CLK LAL
19			PROOF OF SERVICE FILED		CLK LAL
21	02/20/13		*PLAINTIFF'S BRIEF RE DEF'S MOTION TO DISMISS *PROOF OF SERVICE		CLK TMW
22	03/04/13		MOTION HEARING MCENHILL/IPP MOTION BY DEF. TO DISMISS DENIED BY JUDGE.		CRT TJK
23	03/13/13		*NOTICE OF INTENT TO RELY ON EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS PURSUANT TO MRE 404(b) & MCL 768.27		CLK TMW

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CASE REGISTER OF ACTIONS
FILE 11/01/12 ADJ DT 05/30/13 CLOSE 07/02/13

No. 4364'19P. 4AGE 3

26	03/27/13		*PROOF OF SERVICE	CLK	
			*STIP/ORDER TO ADJOURN JURY TRIAL	CLK	TMW
24	03/28/13		MOTION FILED	CLK	TMW
			*PLAINTIFF'S MOTIONS AND BRIEF IN LIMINE	CLK	
25			*PROOF OF SERVICE	CLK	
			*MEMORANDUM TO ADD WITNESSES	CLK	TMW
30	04/15/13		*CERT OF MAILING	CLK	
31	04/19/13		*STIP/ORD TO ADJOURN MOTION(S)	CLK	TMW
			SET NEXT DATE FOR: 05/06/13 3:30 PM	CLK	RJP
			MOTION HEARING IN LIMINE	CLK	
			RE-NTC OF HEARING	CLK	
			PRF/SVC	CLK	
27	04/22/13	D 001	FROM: PRO-PER	CLK	LAL
			TO: KACEL, MATTHEW RYAN,	CLK	
28			NOTICE SENT FOR: 06/04/13 9:00 AM	CLK	LAL
			JURY TRIAL		
			2-DAY TRIAL, TO BE CONTINUED	CLK	
			JUNE 5, 2013	CLK	
29			PROOF OF SERVICE FILED	CLK	LAL
32	05/03/13		*DEFT'S RESPONSE TO PLAINTIFF'S MOTION IN LIMINE	CLK	TMW
			*PROOF OF SERVICE	CLK	
33	05/06/13		MOTION HEARING	CRT	TJK
			CORBETT/KACEL MOTION IN LIMINE DENIED.	CRT	
34	05/21/13		NOTICE SENT FOR: 05/28/13 3:30 PM	CLK	LAL
			MISCELLANEOUS HEARING		
			Cobbs hearing. Scheduled at request of defense counsel.	CLK	
35			PROOF OF SERVICE FILED	CLK	LAL
36	05/28/13		MISCELLANEOUS HEARING	CRT	TJK
			CORBETT/KACEL HEARING ON WHAT THE CONDITIONS OF A PLEA WOULD BE.	CRT	
37	05/30/13	00001	PLEA	CRT	TJK
			NOLO CONTENDRE	CRT	
			CORBETT/KACEL COBBS: 13 MONTHS MDOC MINIMUM. WILL BE ALLOWED BOND UNTIL APPEAL PROCESS IS COMPLETED. PSI, ADVICE OF RIGHTS, BOND CONTINUED.	CRT	
38		00001	SET NEXT DATE FOR: 07/02/13 1:15 PM	CLK	TJK
			SENTENCING		
39	07/02/13	00001	SENTENCING	CRT	TJK
			HEDGES/KACEL F&C, SIR, RIGHT OF APPEAL, MITTIMUS, JUDGEMENT PER COBBS DEFENDANT WILL FREE ON 5000 RECOGNIZANCE BOND WHILE HE PERFECTS HIS APPEAL.	CRT	

SENTENCE JAIL:	MINIMUM	MAXIMUM	CREDIT
CONCURRENT	YYY- 12-DDD	YYY-MMM-DDD	YYY-MMM- 15
BEGIN 07/02/13			

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12-062665-FH JUDGE MARIETTI

CASE REGISTER OF ACTIONS
FILE 11/01/12 ADJ DT 05/30/13 CLOSE 07/02/13

No. 4364-19P. PAGE 4

PROBATION:	36 MONTHS	TERMS:	RESERVED	
\$68.00	STATE MINIMUM COSTS	130.00	CRIME VICTIM RIGHTS	
\$450.00	CIRCUIT COURT COSTS			

40		D 001	BOND CANCELED (01)	CLK RJP
41			FINAL ORDER OR JUDGMENT FILED	CLK RJP
			JUDGMENT OF SENTENCE	CLK
42	07/08/13		ORDER OF PROBATION	CLK TMW
43	07/10/13	D 001	MOTION FILED	CLK TMW
			*MOTION TO ALLOW PRO SE	CLK
			REPRESENTATION W/ADVISORY	CLK
			COUNSEL	CLK
			*MOTION TO PROCEED AS A JOHN	CLK
			DOE	CLK
			*MOTION TO CERTIFY LEAVE TO	CLK
			APPEAL	CLK
			*MOTION FOR IMMEDIATE CONSID-	CLK
			ERATION	CLK
44	07/15/13		PROOF OF SERVICE FILED	CLK LAL
			OPN/ORDER re: Post-trial	CLK
			mos. mailed to Pros/Def.	CLK
45		D 001	FROM: KACEL, MATTHEW RYAN,	CLK LAL
			TO: PRO-PER	CLK
46	07/17/13		*OPINION AND ORDER RE; POST-	CLK MLW
			TRIAL MOTIONS	CLK
47	08/06/13		SHOW CAUSE HEARING	CRT TJK
			P.O.FREY/KACEL DEF PLED NOT	CRT
			GUILTY TO PROBATION VIOLATION	CRT
			AND REQUESTED A HEARING.	CRT
			WAS RELEASED ON A 3000 PR	CRT
			BOND. ALSO FILED PAPERWORK	CRT
			FOR APPEAL ON HIS CRIMINAL	CRT
			CASE IN THIS MATTER.	CRT
48			SET NEXT DATE FOR: 08/19/13 11:00 AM	CLK TJK
			PROBATION HEARING	
53	08/14/13		ORDER REGARDIGN APPOINTMENT OF	CLK TMW
			APPELLATE COUNSEL AND TRAN-	CLK
			SCRIPT	CLK
			CERT OF MAILING	CLK
49	08/19/13		REPORTER/RECORDER CERT OF	CLK TMW
			ORDERING OF TRANSCRIPT ON	CLK
			APPEAL	CLK
50			PROBATION VIOLATION HEARING	CRT TJK
			CORBETT/KACEL PLEAD GUILTY	CRT
			TO PV.	CRT
51			SENTENCING	CRT TJK
			CORBETT/KACEL PROBATION	CRT
			CONTINUED, COMMUNITY SERVICE	CRT
			40 HOURS. MUST ALLOW PROBATION	CRT
			ACCESS TO HIS INTERNET	CRT
			RECORDS	CRT

SENTENCE JAIL:	MINIMUM	MAXIMUM	CREDIT
	YYY-MMM-DDD	YYY-MMM-DDD	YYY-MMM-DDD

BEGIN 08/19/13			
PROBATION:	MONTHS	TERMS:	CONTINUED
52	08/22/13		JUDGMENT OF SENTENCE
55	08/28/13		PETITION AND ORDER FOR AMNDMNT
			OF ORDER OF PROBATION

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12-062665-FH JUDGE MARIETTI

CASE REGISTER OF ACTIONS
FILE 11/01/12 ADJ DT 05/30/13 CLOSE 07/02/13

No. 436419P. 6 PAGE 5

54	08/30/13	REQUEST FROM STATE APPELLATE DEFENDER OFC FOR COPY OF COMPLETE CASE RECORD. MAILED OUT ON 9/6/13.	CLK TMW CLK CLK CLK
56	09/03/13	ORDER FOR PRODUCTION OF TRANSCRIPTS	CLK TMW CLK
57	09/09/13	NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILING	CLK TMW CLK
58		***** TRANSCRIPTS FILED *1/29/13 MOTION HEARING *3/4/13 MOTION HEARING *5/6/13 MOTION HEARING *5/28/13 MOTION HEARING *5/30/13 PLEA HEARING *7/2/13 SENTENCE HEARING *8/6/13 SHOW-CAUSE HEARING *8/19/13 PV HEARING	CLK TMW CLK CLK CLK CLK CLK CLK CLK CLK CLK CLK
60	09/18/13	REPORTER/RECORDER CERT OF ORDERING TRANSCRIPT ON APPEAL	CLK TMW CLK
59	09/19/13	COURT ORDERED PAID	CLK SAV
61	10/03/13	RECEIPT# 00080776 AMT \$100.00 * NOTICE OF FILING OF TRANSCRIPT AND AFFIDAVIT OF MAILING	CLK JB CLK CLK
74		***** TRANSCRIPT FILED PRELIMINARY EXAM 10/31/12 *****	CLK JB CLK CLK CLK
62	10/11/13	MOTION FILED SET NEXT DATE FOR: 10/25/13 10:30 AM MOTION HEARING PLAINTIFF'S MOTION TO IMMEDIATELY ENFORCE JUDGMENT OF SENTENCE * PLAINTIFF'S MOTION TO IMMEDIATELY ENFORCE JUDGMENT OF SENTENC * NOTICE OF HEARING * PROOF OF SERVICE	CLK JB CLK CLK CLK CLK CLK CLK CLK CLK CLK CLK
75	10/18/13	CORRESPONDENCE TO JUDGE RE DEF COMMUNITY SERVICE;	CLK JB CLK
63	10/28/13	SET NEXT DATE FOR: 11/12/13 2:30 PM MOTION HEARING PLAINTIFF'S MOTION TO IMMEDIATELY ENFORCE JUDGMENT OF SENTENCE NOTICE OF HEARING; PROOF OF SERVICE	CLK JB CLK CLK CLK CLK CLK CLK
64	11/13/13	ORDER MODIFYING COURT'S JULY 7 2013 ORDER ON THE ISSUE OF ALLOWING DEFENDANT TO PROCEED PRO SE WITH ADVISORY COUNSEL;	CLK JB CLK CLK CLK
65	11/15/13	MONEY ORDERED AUTOMATIC LATE FEE ASSESSMENT	CRT *** CRT
66	01/30/14	\$109.60 20% LATE FEE MICH COA ORDER	CLK JB

Muskegon County Circuit Court Docket Entries
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12-062665-FH JUDGE MARIETTI

CASE REGISTER OF ACTIONS
FILE 11/01/12 ADJ DT 05/30/13 CLOSE 07/02/13

No. 4364'19P. 7AGE 6

	--DELAYED APPLICATION FOR LEAVE TO APPEAL IS HELD IN ABEYANCE PENDING APPELLEE RESPONSE WITHIN 14 DAYS; CERTIFIED MAIL RECEIPT CONFIRMING MAILING OF FILE AND TRANSCRIPTS TO MICH SUP CT	CLK CLK CLK CLK CLK CLK	
77 02/16/14	--ADDITIONAL LTR AND TRANSCRIPTS; MICH COA ORDER	CLK CLK	JB
67 02/27/14	--DENYING DELAYED APPLICATION FOR LEAVE TO APPEAL; PREV. 766 W. LARCH APT. 2 ADDR. MUSKEGON MI 49441	CLK CLK CLK	
68 03/27/14	APPLICATION FOR LEAVE TO APPEAL (TO MICH SUP CT) WITH APPENDIX A; NOTICE OF HEARING; CERT OF SERVICE;	CLK CLK CLK CLK	MM JB
69 03/28/14	MICH SUP CT AMENDED APPLICATION FOR LEAVE TO APPEAL;	CLK CLK	JB
70 04/02/14	MICH SUP CT NOTICE OF HEARING; MICH SUP CT CERT OF SERVICE; APPENDICES A-E;	CLK CLK CLK	JB
71 04/08/14	MEMO FROM MICH SUP CT REQUESTING TRANSMITTAL OF FILE AND TRANSCRIPTS	CLK CLK CLK	JB
72 04/10/14	--MAILED 04/09/14; CERTIFIED MAIL RECEIPT CONFIRMING MAILING OF FILE AND TRANSCRIPTS TO MICH SUP CT;	CLK CLK CLK	JB
73 04/11/14	DOMESTIC RETURN RECEIPT CONFIRMING DELIVERY OF FILE AND TRANSCRIPTS TO MICH SUP CT	CLK CLK CLK	JB
76 04/15/14	MAILED DOCUMENTS TO MICH SUP CT THAT WERE OMITTED FROM PREVIOUS FILE TRANSMITTAL: 75. CORRESPONDENCE TO JUDGE 74. TRANSCRIPTS;	CLK CLK CLK CLK	JB
78 04/17/14	DOMESTIC RETURN RECEIPT CONFIRMING RECEIPT OF LETTER AND TRANSCRIPT BY MICH SUP CT;	CLK CLK CLK	JB
80 05/02/14	OPINION AND ORD RE DEF'S MOTS; PARTY NOTIFICATION;	CLK CLK	JB
79 05/05/14	PROOF OF SERVICE FILED	CLK	LAL
81 12/30/14	Writ of Garnishment filed	CLK	JAO
82 01/29/15	Writ of Garnishment filed	CLK	JAO
83 02/27/15	COURT ORDERED PAID RECEIPT# 00093849 AMT \$100.00	CLK	SAV
84 05/11/15	COURT ORDERED PAID RECEIPT# 00095771 AMT \$25.00	CLK	SAV
85 06/08/15	COURT ORDERED PAID RECEIPT# 00096514 AMT \$532.60	CLK	SAV
86 06/12/15	*MOT/ORDER FOR DISCHARGE FROM PROBATION *ORDER OF PROBATION DISCHARGE	CLK CLK CLK	ALH

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12-062665-FH JUDGE MARIETTI

CASE REGISTER OF ACTIONS

FILE 11/01/12 ADJ DT 05/30/13 CLOSE 07/02/13

No. 4364-19 P. 8 AGE 7

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END OF SUMMARY
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STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

PAUL J. BETTS,

Defendant-Appellant.

Court of Appeals No.

Circuit Court No. 12-62665FH

MUSKEGON COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee

JEANICE DAGHER-MARGOSIAN (P35933)
Attorney for Defendant-Appellant

DEFENDANT-APPELLANT'S DELAYED APPLICATION FOR LEAVE TO APPEAL

STATE APPELLATE DEFENDER OFFICE

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STATE OF MICHIGAN

IN THE COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

-vs-

PAUL J. BETTS,

Defendant-Appellant.

Court of Appeals No.

Circuit Court No. 12-62665FH

STATEMENT EXPLAINING REASONS FOR DELAY

JEANICE DAGHER-MARGOSIAN says that the following is correct to her belief and knowledge:

1. Defendant-Appellant was sentenced on July 2, 2013. The Judgment of Sentence was signed on July 2, 2013.
2. Defendant-Appellant requested the appointment of appellate counsel on August 8, 2013.
3. The State Appellate Defender Office was appointed on August 14, 2013; the transcripts were filed on September 9, 2013.
4. Counsel could not file a timely application for leave to appeal because more than 21 days from the original Judgment had passed before the transcripts were filed.
5. The delay in filing this application for leave to appeal since that time is not due to Defendant-Appellant's culpable negligence, but due to counsel's responsibility relative to other indigent felony appeals.

/s/ Jeanice Dagher-Margosian

JEANICE DAGHER-MARGOSIAN

December 20, 2013

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STATEMENT OF JURISDICTION

Defendant-Appellant was convicted in the Muskegon County Circuit Court by plea of nolo contendere and was sentenced on July 2, 2013. Defendant-Appellant requested the appointment of appellate counsel on August 8, 2013. The offenses occurred after the effective date of the November, 1994 ballot Proposal B that eliminated the right to file a claim of appeal from plea-based convictions. This Court has jurisdiction to consider the Defendant-Appellant's application for leave to appeal as it is being filed within six months of judgment. MCR 7.203(B); MCR 7.205.

STATEMENT OF QUESTIONS PRESENTED

- I. DID APPLICATION OF THE SEX OFFENDER LAWS, AND AMENDMENTS TO THE LAWS, TO AN OFFENSE OCCURRING BEFORE JANUARY 1, 2006 VIOLATE BOTH THE STATE AND FEDERAL EX POST FACTO CLAUSES?

Trial Court answers, "No".

Defendant-Appellant answers, "Yes".

STATEMENT OF FACTS

Defendant pled no contest to failure to register as sex offender, MCL 28.729 on 5-30-13 before the Honorable William C. Marietti in the Muskegon County Circuit Court. He was supplemented as a third felony offender, also. MCL 769.11.

On July 2, 2013, Defendant was sentenced to 36 months on probation with 12 months in jail, credit for 15 days, suspended for pendency of the appeal. See Judgment of Sentence, attached. The sentence was based on a *Cobbs* evaluation for a sentence of 13 months or less. ST 9-10. The plea was conditional in that the trial court allowed Defendant to raise issues which were raised prior to trial in the trial court which might otherwise have been forfeited by a plea. ST at 11.

The State Appellate Defender Office was appointed to perfect an appeal on August 14, 2013.

Appellant's Delayed Application for Leave to Appeal 12-20-13
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- I. APPLICATION OF THE SEX OFFENDER LAWS, AND AMENDMENTS TO THE LAWS, TO AN OFFENSE OCCURRING BEFORE JANUARY 1, 2006 VIOLATE BOTH THE STATE AND FEDERAL EX POST FACTO CLAUSES.

Standard of Review. The proper standard of review is de novo, because this claim involves an error of law. Questions of law, including the proper interpretation and application of statutes and constitutions, are reviewed de novo. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 141 (2010).

Discussion. Defendant Paul Betts was plea-convicted of CSC 2d, MCL 750.520c on 12-16-93. He was sentenced to 5-15 years in prison, and was paroled on 11-30-1999. See PSIR at 4.¹ As noted above, he was most recently plea-convicted of violating the sex offender registration laws after leaving Michigan and moving back for a temporary period. See Statement of Facts, above. He challenges the sex offender registration act, under which he was convicted, as being constitutionally infirm.

A. History and Development of the Sex Offenders Registration Act

The Michigan Sex Offenders Registration Act (SORA), MCL 28.721 et seq, took effect October 1, 2004. When it was first enacted, the registry information was confidential and not open to public inspection except by law enforcement. *People v Dipiazza*, 286 Mich App 137, 142-143 (2009). In September 1999, the statute was amended to make the registry accessible to anyone. Access was by way of the Internet, and any person could see the name, alias, address, physical description, birth date, and specific offenses of anyone convicted of a sex offense in Michigan. *Id*, citing MCL 28.728(4)(a). The legislative intent is stated within the statute [MCL 28.721a]:

¹ The victim was a 10-year old child.

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.

Numerous additional changes have taken place in the statute since its original enactment. They have been promulgated, ostensibly, toward the above objective. However, these changes have enormously increased the onerous nature of the law. Registrants are barred from "loitering" or working within 1000 feet of a school, as well as having a residence near a school. These are known as the "school safety zone" provisions, which took effect on 1-1-06. MCL 28.734; MCL 28.735.

For example, in order to comply with the federal Adam Walsh Child Protection and Safety Act,² the federal sex offender law, Michigan's statute underwent a drastic overhaul to avoid losing federal funding. There are no provisions for petitioning for removal from the registry. Beginning 7-1-11, many on the registry had to register for life, rather than 25 years. This includes the Tier II and Tier III offenses, CSC 2d, depending on the circumstances, such as the age of the victim. MCL 28.722. There are now regular reporting requirements to verify residence: once a year for Tier I (registration period-15 years), twice a year for Tier II (registration period-25 years)

² 42 USC § 16901 et seq (includes the Sex Offender Registration and Notification Act, or SORNA). The law was enacted on 7-27-06.

and four times a year for Tier III (registration period-life).³ MCL 28.725 and MCL 28.725c. See also, Cheryl Carpenter (Carpenter), *One Step Forward, Two Steps back for Reform: The 2011 Michigan Sex Offender Registry Amendments, Part One; Criminal Defense Newsletter*, May 2011, Volume 34, No. 8 at 1-4. Most recently, registrants will be required to pay not a one-time registration fee of \$50, but an annual fee of \$50 for the entire time they are on the list. Public Act 149 of 2013. Of these cumulative changes, experienced together for someone on the SOR, Ms. Carpenter observes:

Being a listed offender entails much more than verifying an address and having a photograph on the registry/ SOR impacts every area of a registrant's life - personal relationships, employment, housing, travel and mental health. Parents who are registered sex offenders cannot participate in their child's school activities because the student safety zone does not allow them to "loiter" within a 1000 feet of an elementary middle or high school. School districts and law enforcement liberally construe loiter (sic) to include parent/teacher conferences, sporting activities and the like. SOR is not a collateral consequence of a sexual conviction. It is a direct, punitive consequence that has major implications on a person's life. *Id. at 2.*

B. Michigan's sex offender registration statutory scheme is punishment, not regulation, for ex post facto purposes.

Instant claim. U.S.C.A. Const. Art. 1, § 10, cl. 1. *Id.* Ex post facto laws are prohibited by both the Michigan and federal constitutions. *People v Callon*, 256 Mich App 312, 316 (2003). An ex post facto law is one that affects the prosecution or disposition of cases involving crimes committed before the law's effective date by (1) criminalizing conduct that was innocent, (2) making an act a more serious offense, (3)

³ Mr. Betts is a Tier III offender, as the victim in his case was a 10-year old child. MCL 28.722. See *Carpenter, supra*, at 4.

inflicting greater punishment for a crime, or (4) allowing conviction on lesser evidence. *Id.* at 317; *People v Haynes*, 256 Mich App 341, 350 (2003). The Michigan Ex Post Facto Clause does not afford broader protections than its federal counterpart. *Callon, supra* at 317. Both clauses are designed to protect citizens against arbitrary and oppressive legislation and to ensure fair notice of conduct that is criminal. *Id.*

The claim here is that application of the Michigan Sex Offender Registration Act violates protections against ex post facto laws under both the Michigan Constitution and the United States Constitution.⁴ Mich Const 1963, art 1, § 17; US Const, Ams V, XIV. See also, *Foster v Booker*, 595 F3d 353 (CA 6, Mich 2010).

Defendant's experience under SORA. Carpenter's observations are consistent with what Mr. Betts tried to tell the court during the pendency of this case. During a

⁴ The US Constitution provides:

§ 10, Clause 1. Treaties, Letters of Marque and Reprisal; Coinage of Money; Bills of Credit; Gold and Silver as Legal Tender; Bills of Attainder; Ex Post Facto:

"No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility."

The Michigan Constitution provides:

art 1, § 10. Attainder; ex post facto laws; impairment of contracts

Currentness:

Sec. 10. No bill of attainder, ex post facto law or law impairing the obligation of contract shall be enacted.

hearing on 3-4-13, he told the court that he was precluded from buying a house he wanted because it was within 1,000 feet of a school. He related that when he goes to Staples to make copies relative to this case, only male employees provide service to him, while women "have to go stand in the back." He had his house broken into, and the perpetrators stated that it was somehow less culpable because he was a sex offender. He also had his business destroyed in Indiana after his sex offender registration information was distributed to the public. Motion Hearing Transcript (MHT) at 15-17.

Why Michigan's SORA requirements constitute punishment. As noted above, the Ex Post Facto Clause is "aimed at laws that 'retroactively alter the definition of crimes or increase the punishment for criminal acts.' *Cal. Dep't of Corr. v. Morales*, 514 U.S. 499, 504, 115 S.Ct. 1597, 131 L.Ed.2d 588 (1995) (citations omitted). When an inmate challenges an allegedly ex post facto parole law, this court "must examine the relevant law in effect at the time [the inmate's] offense was committed and compare it with the retroactively-applied version of the law." *Shabazz*, 123 F3d at 912 [*Shabazz v Gabry*, 123 F3d 909 (CA 6, 1997)].

The "focus of the ex post facto inquiry is not on whether a legislative change produces some ambiguous sort of 'disadvantage,' ... but on whether [the] change ... increases the penalty by which a crime is punishable." *Morales*, 514 U.S. at 506 n. 3, 115 S.Ct. 1597.

See *Foster v Booker*, *supra*, at 360-361.

The Michigan Ex Post Facto Clause does not afford broader protections than its federal counterpart, but it provides the same protection. *Callon*, *supra* at 317. Both

clauses are designed to protect citizens against arbitrary and oppressive legislation and to ensure fair notice of conduct that is criminal. *Id.*

Previous decisions. In many past cases which examine the Michigan scheme and other state registry schemes, courts have held that sex offender registries are not punitive in nature. Thus, the reasoning goes, they do not violate ex post facto protections. See e.g., *Doe v Kelley*, 961 F Supp 1105, 1109 (WD Mich, 1997); *Lanni v Engler*, 994 F Supp 849 (ED Mich, 1998); *Smith v Doe*, 538 US 84, 92; 123 S Ct 1140; 155 L Ed 2d 164 (2003). In *Smith v Doe*, the US Supreme Court held that Alaska's sex offender registration law was not punitive in nature, and, thus, did not violate ex post facto prohibitions. This is because the law did not meet the standard of "clearest proof" that the law is punitive based on substantial factors. Only this "clearest proof" can overcome a legislative intention to establish a civil regulatory scheme, the Court decided. 123 S Ct 1140 at 1144.

The Mendoza Martinez factors. To reach its decision, the Supreme Court relied on seven factors laid out in *Kennedy v Mendoza-Martinez*, 372 US 144, 168-169; 83 S Ct 554; 9 L Ed 2d 644 (1963). They are: 1) affirmative disability or restraint, 2) sanctions historically considered as punishment, 3) finding of scienter, 4) traditional aims of punishment-retribution and deterrence, 5) the behavior is already a crime, 6) rational connection to a non-punitive purpose, 7) excessiveness.

When these factors are applied to Michigan's law as it stands today, not as it was originally written, these factors, on balance, indicate that the law is punitive in nature.

1) *Affirmative disability or restraint*. This factor considers how the effects of the Acts are felt by those subject to it. "If the disability or restraint is minor and indirect, its effects are unlikely to be punitive." *Smith v Doe, supra*, 538 US 84 at 99-100. Ms. Carpenter's comments encompass the experience of many sex offenders. The Court should consider, also, the defendant's experience in *Dipiazza, supra*. In holding that the sex offender registry laws in Michigan, as applied, were not only punishment, but cruel and unusual, the Court considered the following in finding that placement on the registry was punishment in that case: [at 152-153]:

Defendant argues that he has been unable to find work as a result of being listed on the sex offender registry. He asserts that when he applies for work, he correctly states that he does not have a criminal record [defendant completed a HYTA sentence]. However, because information about him is publicly available through the sex offender registry, which can be accessed through the Internet, employers still discover the information. . . .He was able to get hired at Burger King and Meijer, but in both cases was let go after the results of the record check were returned, which indicated that he was a registered sex offender. . . .He further asserts that because of his inability to work he must rely on food stamps. He was also diagnosed with depression and believes that this was the direct result of the emotional and financial consequences of having to register as a sex offender. . .

Similarly, here, Mr. Betts told the court at length about the devastating effects of the registry. As noted above, his house was broken into and his business was destroyed. He was also approached by officers in a public eating establishment, and the officer "stood there stood there in Verdonis and looked at me he had pleasure broadcasting to the room my humiliation." MHT at 22-23. He continued [*Id.*]:

The studies that are there from virtually all the things show that, in fact, it [registration] doesn't even lower recidivism. It doesn't do anything. It is an absolutely neutral thing other than the fact that it makes it so that a whole class of people are unemployable. A whole class of people are ostracized. A whole class of people have to live in

hovels. I don't wanna live in a single wide trailer three miles outside of town because that's the only place people are gonna let me live. The more you poke a man the more likely he's gonna do something and, and I'm not. I swear I'm working really, really hard to do this. I've done it for almost 14 years now regardless of the outcome, truly. I'm still gonna stand up and do the best that I can but this is punishment. There is no question.

Constitutionally, the evolution from the 12 point that they have to the 43 points that are listed on the sex offender registration and with serious impositions (sic) to my freedom With serious reductions into what I can do as a person. That's punishment . . .

Further, a person must "report in person" and immediately notify the registering authority of a change in address, even if it is temporary. MCL 28.725(1). This personal reporting requirement was not present in the Alaska scheme considered by the United States Supreme Court. Some courts, especially in recent years, have looked this distinction in finding its own state scheme punitive and ex post facto. See, e.g. *Starkey v Oklahoma Department of Corrections*, 305 P3d 1104, 1021-1022 (2013). On this first factor, Michigan's SORA is clearly punishment.

2) *Sanctions historically considered as punishment*-Courts have noted, and Defendant articulately told the trial court, that being placed on a sex offender registry is chillingly close to old historical punishments such "shunning", "shaming" or "banishment." While the Supreme Court in *Smith v Doe* dismissed this as a punishment factor, both *Starkey, supra*, at 1025-1026, and a later Alaska case, *Doe v State*, 189 P 3d 999, 1012 (2008) instruct that the registries are punitive. Particularly because there is no limitation on access by the public for Tiers II and III, this banishment is very real. Further, the "school safety zone" provisions which were not part of the original Michigan scheme, are also punitive in nature. MCL 28.734; MCL 28.735.

3) *Scienter finding*. This would weigh toward a punitive characterization if the triggering crime did not require scienter, such as statutory rape. *Id.* at 1026-1027.

4) *Traditional aims of punishment-retribution and deterrence*. As in *Starkey*, the three-tier system of the 2011 amendments increase the reporting period for many individuals. These extended periods are not related to negative conduct or a triggering event caused by the offender. Further, tier designations are not related to anything other than the underlying offense, with no opportunity to show, at any point, that the offender is no longer a danger. This constitutes punishment, as well: "(I)n our view, the retroactive extensions of SORA registration clearly appear in the nature of retribution imposed against sex offenders for their past crimes. For all intents and purposes, the extensions are solely based on the statute the offender was convicted without regard to mitigating factors. No hearing is allowed when making a level designation. Further, there is essentially no mechanism to reduce or end registration based upon a showing the offender is no longer a threat to the community." *Starkey* at 1027. For these reasons, as well, Michigan's sex offender registry is punitive in nature.

5) *The behavior is already a crime*. Again, placement on the SOR is based solely on the crime of conviction. There is no petition process for removal, mitigation is not considered, and there is no assessment of recidivism at any point in the registration period. "Therefore, the fact that SORA applies only to behavior that is already a crime supports the conclusion this *Mendoza-Martinez* factor has a punitive effect." *Id.* at 1028.

6) *Rational connection to a non-punitive purpose.* The purpose of the statute, as noted *supra*, is to assist law enforcement in monitoring sex offenders and, thus, curtail the danger that certain sex offenders post to the public. This is non-punitive in nature.

7) *Excessiveness.* The question here is whether the SORA requirements are excessive in light of the above legitimate objective of protecting the public. Defendant asserts that they certainly are. First, any person convicted of CSC 2d is required to register for a period of either 25 years or life. There is no mitigation or individualized assessment. There is no mechanism for rebutting the registration requirements or for petitioning for removal, ever. There is the in-person presentation requirement immediately after changing an address. There is now the semi-yearly or quarterly reporting and verification requirement. *See supra.*

And, payment will be owed in an amount of \$50 per month, into perpetuity, as opposed to the \$50 one time payment offenders previously had to pay. See Public Act 149 of 2013. This is punitive in nature and contributes to the inevitable conclusion that the sex offender registry in Michigan is punishment, not regulation.

Many factors were not part of the law when it was scrutinized earlier. It is important to note that many of these requirements, including the tier system, the increased period of reporting for many individuals, the multiple dates on which that many, if not most, offenders must verify their addresses in person, and the increase in fees, were not part of the original law. Thus, when the courts in *Lanni v Engler* and *Smith v Doe, supra*, considered the question of punishment for ex post facto purposes, the statutes were far less onerous.

Several jurisdictions have looked hard at this question, and have considered it in the current context of statutory changes. After looking at the seven relevant factors, the *Starkey* court noted that the retroactive application of numerous changes to the statute "transformed the registry into a system of punishment." *Id.* at 1031. The court also noted that reliance on *Smith v Doe, supra*, to uphold the scheme is "misplaced because the Alaska registration system reviewed in that case did not have the constitutional infirmities present in this case." *Id.*

Similarly, in *Doe v State, supra*, the Supreme Court of Alaska declared the registration scheme unconstitutional on state constitutional grounds, based on the punitive factors contained in the law. This followed the US Supreme Court's rejection of the *ex post facto* claim in *Smith v Doe*, which was based on federal constitutional grounds alone.

In *State v Williams*, 952 NE2d 1108 (2011), the Supreme Court of Ohio, the court considered the changes to the registration scheme which made it far more onerous. The stigma, which attaches to all sex offenders, is significant to begin with. *Id.* at 1112. The increasingly punitive changes further push the law into the realm of penal statute rather than regulatory scheme.

A major change in the Ohio scheme was comparable to Michigan's school safety zone provision. The court noted, for example, that all sex offenders, not just those convicted of sex crimes involving minors, were prohibited from living within 1,000 feet of a school. As in Michigan, registration duties have become far more difficult and cumbersome in Ohio. *Id.*, at 1111-1112. Most importantly, while offenders could initially petition to be removed from the list and, thus, no longer be referred to as a

"sexual predator", that possibility was removed in later versions of the statute. *Id.*, at 1111-1112. There is no analysis as to future dangerousness; all registration consequences flow solely from the crime of conviction, as it also true in Michigan. The court concluded that there was no way to *not* characterize these effects as punishment [*Id.* at 1113]:

Sex offenders are no longer allowed to challenge their classifications as sex offenders because classification is automatic depending on the offense. Judges no longer review the sex-offender classification. In general, sex offenders are required to register more often and for a longer period of time. They are required to register in person and in several different places. R.C. 2950.06(B) and 2950.07(B). Furthermore, all the registration requirements apply without regard to the future dangerousness of the sex offender. Instead, registration requirements and other requirements are based solely on the fact of a conviction. Based on these significant changes to the statutory scheme governing sex offenders, we are no longer convinced that R.C. Chapter 2950 is remedial, even though some elements of it remain remedial. We conclude that as to a sex offender whose crime was committed prior to the enactment of S.B. 10, the act "imposes new or additional burdens, duties, obligations, or liabilities as to a past transaction," *Pratte*, [*Pratte v Stewart*, 125 Ohio St.3d 473, 2010-Ohio-1860, 929 N.E.2d 415 (2010)], ¶ 37, 125 Ohio St.3d 473, 2010-Ohio-1860, 929 N.E.2d 415, at ¶ 37, and "create[s] new burdens, new duties, new obligations, or new liabilities not existing at the time."

No one change compels our conclusion that S.B. 10 is punitive. It is a matter of degree whether a statute is so punitive that its retroactive application is unconstitutional. *Cook* [*State v. Cook*, 83 Ohio St.3d 404, 409, 700 N.E.2d 570 (1998)] 83 Ohio St.3d at 418, 700 N.E.2d 570.

In Maine, in *State v Letalien*, 985 A 2d 4 (2009), the state courts analyzed a challenge which concerned provisions in the state registration and notification act which closely resemble those in the Michigan SORA overhaul. The changes were retroactively applied, as in the instant case, as well. The defendant challenged, among other things, the state registration and notification legislation, referred to as

"SORNA". The SORNA provision which increased registration for some offenders from 15 years to an entire lifetime. The challenged changes also encompassed a quarterly verification requirement, imposed retroactively.

The defendant was convicted 8-19-96, and, so, was subject to an existing registration requirement which applied to sex offenders sentenced from 6-30-92 to 8-31-96. However, the statute was amended more than once. The latest version which applied to the defendant was SORNA of 1999. It did not provide possible waiver for good cause short of pardon or complete reversal of the conviction (the earlier versions of the law did allow waiver for good cause). It also increased the defendant's reporting period from fifteen years to life. And additional changes were made in 2003, 2005, and 2007 which made notification within 24 hours mandatory with a job or school change, or a residence change, increasing criminal penalties for non-compliance, and incorporating "sex offender restricted zones" such as a school or playground (similar to Michigan's school safety zone laws). *Id.* at 8-11.

The appellate court cited *Collins v Youngblood*, 497 US 37, 41; 110 S Ct 2715; 111 L Ed 2d 30 (1990) for the proposition that the prohibition on ex post facto laws applies only to penal statutes which cause a disadvantage for the person that they affect. *Id.* at 12. It noted that *Collins v Youngblood* characterized such a law as one which makes punishment for a crime more onerous after its commission, when compared to the punishment for those before the change in the law. *Id.* The state constitution offered the same protections as the federal constitution. *Id.* at 15-16. After applying the *Mendoza-Martinez* factors, see above, the Court determined that the later amendments, applied retroactively, made the reporting requirements more

burdensome than at the time of the offense. The increased lifetime reporting period, quarterly in-person verification requirements, and no opportunity for waiver with good cause, are punitive "by clearest proof." *Id.* at 26. The Court held the amendments, on their face, to violate ex post facto prohibitions under both the state and federal constitutions. *Id.*

A trio of cases out of Indiana contains a similar analysis. In the leading case, *Wallace v State of Indiana*, 905 NE 2d 371 (2009), the Supreme Court of Indiana held the sex offender registry to be violative of ex post facto protections under the Indiana Constitution. Mr. Wallace succinctly asserted, as does Mr. Betts, that the state scheme for sex offender registration did not apply to him because he "committed his crime, was sentenced, and served his sentence before any registration or notification was required." *Id.* at 377. Using the same *Mendoza-Martinez* factors used in *Smith v Doe*, *supra*, and *Starkey*, *supra*, the Court concluded that, as applied, the registration statutes were unconstitutional as violations of the Indiana Constitution's ex post facto clause. Of interest is the Court's note that of all the factors, the excessiveness factor was the most compelling. *Id.* at 383. *See also*, *State v Hough*, 978 NE 2d 505 (2012) [Defendant moved to Indiana after being convicted of a sex offense in Pennsylvania, but before Indiana enacted the sex offender registry statutes; Indiana law controls, as that is where he was living, and under Indiana law, the statutes violate state constitutional ex post facto protections]; *Andrews v State*, 978 NE2d 494 (2012) [sex offense committed and sentence served, discharged off probation in 1989, before INSORA (Indiana sex offender registration statutes) was enacted in 1994; Court

ordered that Defendant's name be removed from the registry on ex post facto grounds].

And, in March of 2013, the Court of Appeals of Maryland declared requiring the offender to register violated the state constitution's prohibition against ex post facto laws. In *Doe v Department of Public Safety and Correctional Services*, 430 Md 535 (2013), the petitioner, a junior high school teacher, was plea-convicted of having "inappropriate contact" with a 13-year old student during the 1983-1984 school year. At that time, the sex offender registry in Maryland did not exist. *Id.* at 537. When the petitioner was released from prison in 2008, the state sex offender was in existence. It mandated that those who were convicted before it was in effect register as sex offenders. Further, in 2010, it was made more onerous. At that time, it was amended to include tiers much like Michigan's; he was a Tier III offender. *Id.* at 540-541.

The Court determined that retroactively imposing a retroactive sex offender registration on the petitioner "changes the consequences of Petitioner's crime to his disadvantage." It further noted that the " 'fact that a particular proceeding or matter is labeled 'civil' rather than 'criminal' does not necessarily remove it from the ambit of the ex post facto prohibition.' " *Id.* at 560-561. Of great interest is the court's observation that being on the registry is much like being on probation, the effect is the same; there has never been a question that probation is punishment, citing *United States v Knights*, 534 US 112, 119; 122 S Ct 587, 591; 151 L Ed 2d 497, 505 (2001). *Id.* at 561-563; 568. It also noted, as have other court, see e.g., *Starkey*, *supra*, that the dissemination of information about sex offender registrants is

"tantamount to the historical punishment of 'shaming.' *Id.* at 564. It further observed that it is well-established that sex offenders suffer discrimination in housing, eviction (expulsion from the community,⁵ see *Smith v Doe*, 123 S Ct at 1150). They are regularly forced out of jobs and homes, their children are bullied, and are barred from employment even where employers hire felons who have been convicted of non-sex crimes. *Id.* at 565-568.

Whether a law is labeled "punitive" or "regulatory", "civil" or "criminal" makes no difference. It is the effect of the law that is determinative for ex post facto purposes. If the effect is to effectively impose an "additional sanction for a crime committed in the 1980's", it is punishment, not regulation, and it is an ex post facto violation. *Id.* at 563-564. The Court held that the statute was in violation of the state's ex post facto protections. *Id.* at 568-569.

Federal case law. At least one federal court, as well, has found that registration requirements are, indeed, punishment, in an ex post facto analysis. It looked hard at the excessiveness of the statutory schemes. The appellate court also considered the genuinely harsh impact of these laws, and the fact that there is an inadequate relationship between the extreme demands of these laws with providing any true protection for communities, a non-punitive objective. In *US v Juvenile Male*, 590 F 3d 924 (CA 9, 2009), the Ninth Circuit considered whether the provision of

⁵ A powerful reference to such 'shaming' was raised by Mr. Betts in the instant proceedings, when he told the court he could not find reasonable housing and said, "I don't wanna live in a single wide trailer three miles outside of town because that's the only place people are gonna let me live." This is exactly the kind of expulsion that is "tantamount to shaming" and classic expulsion from the community." MHT 22-23.

SORNA which required registration for those convicted of juvenile offenses before enactment of the law. The court noted that the intent of the statute is non-punitive, but held that the effect of the statute was punitive. Applying the "clearest proof" test of *Smith v Doe, supra*, and using the same *Mendoza-Martinez* factors, the Court wrote: "(W)e interpret the "clearest proof" requirement in the only way that is sensible: that the terms of the statute , the legal obligations it imposes, the practical and predictable consequences of those obligations, our societal experience in general, and the application of our own reason and logic, *establish conclusively that the statute has a punitive effect.*" (Emphasis added). *Id.* at 931. The Court held that SORNA's juvenile registration and reporting requirement, applied retroactively, violated the federal ex post facto clause. It further ordered that the offender be relieved of the registration obligation. *Id.* at 941-942.

C. Relief is appropriate under both, the state and federal constitutions, or either one standing alone.

Mr. Betts urges this Court to adopt the analysis in *Letalien, supra*, and find that among other things, the increased burden in Michigan of increased in-person reporting requirements, longer registration periods, greatly increased fees, and no mechanism to petition for removal from the registry meet the "clearest proof" test of *Smith v Doe, supra*. This is punishment, not regulation. It allows for relief under the federal constitution, since Michigan's law has become so much more onerous and punitive than may originally have been the case.

However, Mr. Betts also argues that if this Court does not find that it can base relief on the federal constitution, that the Michigan constitution alone affords relief.

Const 1963, art 1, §10. See e.g., *Doe v Department of Public Safety and Correctional Services*, 430 Md 535 (2013); *Doe v State*, 189 P3d 999 (2008).

Whether the face of the law, or as applied, Mr. Betts is subject to an invalid conviction. Relief, further, may be found on the face of the law, as in *Letalien*. Alternatively, it may be found on the basis of the application to Mr. Betts, himself. See *supra*. As was discussed in *Doe v Department of Public Safety and Correctional Services*, 430 Md 535 (2013), at the time he pled guilty, he could not possibly have known the extreme punitive effect that the sex offender registry would have on his life, because it was not enacted. In addition, ever-increasing changes to the law have made his in-person reporting for Tier III quarterly, the fees have dramatically increased, and access to his personal information has been broadened. These are just a few of the punitive changes. In addition, there is no avenue for him to petition to be removed for good cause.

D. Conclusion and remedy.

Today, with the far-reaching changes in Michigan's statutory scheme, it is the same situation. The questions posed in analyzing the punitive nature of SORA are very different. It is settled that the authority of an older case may be as effectively dissipated by a later trend of decision as by a statement expressly overruling it. See, e.g., *Olsen v State of Nebraska*, 313 US 236, 244-246; 61 S Ct 862, 864-65; 85 L Ed 1305 (1941). This takes Defendant's claim out of the category of "immutably decided," and into the category of "appropriate for judicial review." Although the federal precedent above does not strictly govern the questions presented here, see *infra*, the precedent carries weight in this analysis. However, "(W)hen the reason for

a rule of law fails, the rule should fail." In re *Estate of Beisdorter*, 297 Mich 592 (1941).

Further, the context for the analysis has changed dramatically. Further, it is Mr. Betts's position that the sex offender registry has always been unnecessarily oppressive. Even so, it has gotten far more oppressive. A court does not need to perpetuate error simply because it reached further, the context for the analysis has changed dramatically. Further, it is Mr. Betts's position that the sex offender registry has always been unnecessarily oppressive. A court does not need to perpetuate error simply because it reached wrong result in an earlier decision. Petrie v Curtis, 387 Mich 436 (1972).

Based on the above case law and constitutional precedent, Defendant Paul Betts should be relieved of the punitive sanctions of SORA. The statutory scheme itself is violative of ex post facto protections for reasons discussed above. Further, Mr. Betts has been out of prison for many years, and he completed his sentence well before SORA was enacted. He requests relief in the form of a) this Court finding SORA to be unconstitutional on its face, on state or federal ex post facto grounds, or both or, b) a finding that SORA is inapplicable to him based on state or federal ex post facto grounds, or both.

SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court grant the relief requested.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

/s/ Jeanice Dagher-Margosian

BY: _____

Jeanice Dagher-Margosian (P35933)
Assistant Defender
101 North Washington
14th Floor
Lansing, MI 48913
(517) 334-6069

Dated: December 20, 2013

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Court of Appeals, State of Michigan

ORDER

People of MI v Paul J Betts Jr

Docket No. 319642

LC No. 12-062665 FH

Kirsten Frank Kelly
Presiding Judge

Cynthia Diane Stephens

Michael J. Riordan
Judges

The Court orders that the delayed application for leave to appeal is DENIED for lack of merit in the grounds presented.

Stephens, J., would grant the delayed application for leave to appeal.

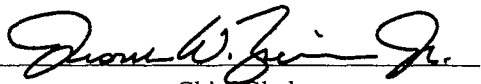
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A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

FEB 27 2014

Date


Chief Clerk

Home Cases, Opinions & Orders

Case Search

Case Docket Number Search Results - 319642

Appellate Docket Sheet

COA Case Number: 319642

MSC Case Number: 148981

PEOPLE OF MI V PAUL J BETTS JR

1	PEOPLE OF MI	PL-AE	PRS	(35428) JUSTIAN CHARLES F
2	BETTS PAUL J JR	DF-AT	SAD	(68478) MITTLESTAT MICHAEL L

COA Status: Case Concluded; File Open **MSC Status:** Pending on Application

Case Flags: Guilty Plea; Proposal B Appeal

- 12/20/2013 1 Delayed App for Leave - Criminal
Proof of Service Date: 12/20/2013
Register of Actions: Y
Answer Due: 01/10/2014
Fee Code: PI
Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
- 08/22/2013 2 Order Appealed From
From: MUSKEGON CIRCUIT COURT
Case Number: 12-062665-FH
Trial Court Judge: 17085 MARIETTI WILLIAM C
Nature of Case:
Criminal Miscellaneous
Habitual Offender 3rd, 769.11
- 12/20/2013 6 Transcript Filed By Party
Date: 12/20/2013
Filed By Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
Hearings:
05/30/2013 Plea
07/02/2013 Sentence
03/04/2013 Mot Hrg
08/19/2013 Probation Violation
Comments: linked to evt #1
- 12/20/2013 7 Presentence Investigation Report - Confidential
Date: 12/20/2013
For Party: 2 BETTS PAUL J JR DF-AT
Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
- 12/26/2013 4 Defective Holding File Letter
Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
Comments: Letter sent to all parties.
- 01/03/2014 5 Other
For Party: 2 BETTS PAUL J JR DF-AT
Attorney: 35933 - DAGHER-MARGOSIAN JEANICE

Court of Appeals Docket Entries
Page 94a

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- Comments: Defects cured.
- 01/21/2014 8 Submitted on Motion Docket
Event: 1 Delayed App for Leave - Criminal
District: D
Item #: 9
- 01/30/2014 9 Order: Abeyance - Administrative
View document in PDF format
Event: 1 Delayed App for Leave - Criminal
Panel: KFK,CDS,MJR
Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
Comments: AE is directed to file resp to AT delayed app w/i 14 days of order, court retains jurd
- 02/10/2014 10 Answer - Application
Proof of Service Date: 02/10/2014
Event No: 1 Delayed App for Leave - Criminal
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 35428 - JUSTIAN CHARLES F
Comments: AE filed answer per 1/30/14 order
- 02/27/2014 11 Order: Application - Deny - Delayed App for Leave
View document in PDF format
Event: 1 Delayed App for Leave - Criminal
Panel: KFK,CDS,MJR
Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
Comments: Judge Stephens would grant the delayed application for leave to appeal
- 03/26/2014 12 SCT: Application for Leave to SCT
Supreme Court No: 148981
Notice Date: 04/22/2014
Fee: State
For Party: 2
Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
- 03/31/2014 13 SCT: Miscellaneous Filing
Filing Date: 03/31/2014
For Party: 2 BETTS PAUL J JR DF-AT
Filed By Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
Comments: supplement: amended application
- 04/07/2014 14 Supreme Court - File Sent To
File Location: Z
Comments: sc#148981
- 04/14/2014 15 SCT: COA File - Received
1 files
- 04/14/2014 16 SCT: Trial Court Record Received
8 tr; 1 files
- 07/28/2015 17 SCT: Answer - SCT Application/Complaint
Filing Date: 07/28/2015
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 35428 - JUSTIAN CHARLES F
- 02/02/2016 18 SCT Order: Abeyance - Grant
View document in PDF format
Comments: Hold in abeyance for decision in MSC No. 150643, People v Temelkoski.
- 09/01/2016 19 SCT: Supplemental Authority
Filing Date: 09/01/2016
For Party: 2 BETTS PAUL J JR DF-AT

Court of Appeals Docket Entries
Page 95a

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- Filed By Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
- 05/25/2018 20 SCt Order: Abeyance - Grant
View document in PDF format
Comments: Hold in abeyance pending decisions in MSC No. 152798, People v Tucker, and No. 153696, People v Snyder.
- 06/27/2018 21 SCt Order: MOAA -Oral Argument on Lv Appl
View document in PDF format
Comments: Invited AC=CDAM, PAAM. To be argued at same session as MSC No. 152798, People v Tucker, and MSC No. 153696, People v Snyder.
- 08/08/2018 22 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 72042 - ZIMBELMAN JESSICA L
Comments: Motion to extend time to 09-25-2018 to file AT supplemental brief
- 08/20/2018 23 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant motion to extend time for DFAT supp brf to 9-25-18.
- 09/11/2018 24 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 72042 - ZIMBELMAN JESSICA L
Comments: Motion to extend time to 10-23-2018 to file AT supplemental brief
- 09/11/2018 25 SCt Motion: Immediate Consideration
Party: 2
Filed by Attorney: 72042 - ZIMBELMAN JESSICA L
Comments: Immediate consideration of motion to extend time
- 09/14/2018 26 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant DFAT's motions for IC and to extend the time for filing his supp brf to 10-23-18.
- 10/23/2018 27 SCt: MOAA - AT supp'l brf
Filing Date: 10/23/2018
For Party: 2 BETTS PAUL J JR DF-AT
Filed By Attorney: 72042 - ZIMBELMAN JESSICA L
- 01/15/2019 28 SCt Motion: Housekeeping
Party: 1
Filed by Attorney: 35428 - JUSTIAN CHARLES F
Comments: Motion to extend time to 1-15-2019 to file AE Supp Brf
- 01/15/2019 29 SCt: MOAA - AE supp'l brf
Filing Date: 01/15/2019
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 35428 - JUSTIAN CHARLES F
- 01/16/2019 30 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant PLAE motion to extend time for filing supp brf.
- 01/22/2019 31 Oral Arguments Scheduled
Proof Of Service Date: 01/22/2019
Comments: MOAA March 2019.
- 01/29/2019 32 SCt: MOAA - AT supp'l brf
Filing Date: 01/29/2019
For Party: 2 BETTS PAUL J JR DF-AT
Filed By Attorney: 72042 - ZIMBELMAN JESSICA L
Timely: Y
Comments: DFAT Supplement REPLY.

Court of Appeals Docket Entries
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- 01/29/2019 33 SCt Motion: Strike
Party: 2
Filed by Attorney: 72042 - ZIMBELMAN JESSICA L
Comments: Motion to strike 1992 police report from PLAE appendix.
- 01/29/2019 34 SCt Motion: Amicus - Leave Application
Party: 5
Filed by Attorney: 63165 - AUKERMAN MIRIAM
Comments: Motion of American Civil Liberties Union of MI to file AC brf.
- 01/29/2019 35 SCt: Amicus Curiae Brf - SCt Application/Complaint
Filing Date: 01/29/2019
Filed By Attorney: 63165 - AUKERMAN MIRIAM
Comments: AC brf of ACLU of MI. Same brf as filed in #153696, People v Snyder.
- 02/01/2019 36 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant motion of ACLU of MI to file AC brf.
- 02/08/2019 37 SCt: Amicus Curiae Brf - SCt Application/Complaint
Filing Date: 02/08/2019
For Party: 6
Filed By Attorney: 67762 - SHERMAN ANN M
Comments: AC brf of MI Atty General.
- 02/12/2019 38 SCt: Answer to SCt Motion
Filing Date: 02/12/2019
For Party: 1 PEOPLE OF MI PL-AE
Filed By Attorney: 35428 - JUSTIAN CHARLES F
Comments: Answer to motion to strike (event 33)
- 02/12/2019 39 SCt Motion: Miscellaneous
Party: 1
Filed by Attorney: 35428 - JUSTIAN CHARLES F
Comments: Motion to take judicial notice of 1993 trial record.
- 02/15/2019 40 SCt Motion: Housekeeping
Party: 3
Filed by Attorney: 68718 - GERVILLE-REACHE GAETAN
Comments: Motion to extend time to 2-15-2019 to file CDAM AC brf
- 02/15/2019 41 SCt: Amicus Curiae Brf - SCt Application/Complaint
Filing Date: 02/15/2019
For Party: 3
Filed By Attorney: 68718 - GERVILLE-REACHE GAETAN
Comments: CDAM
- 02/22/2019 42 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant CDAM motion to file untimely AC brf.
- 03/06/2019 43 Oral Arguments Held
Proof Of Service Date: 03/06/2019
Comments: MOAA - March case call.
- 05/24/2019 44 SCt: Supplemental Authority
Filing Date: 05/24/2019
For Party: 2 BETTS PAUL J JR DF-AT
Filed By Attorney: 35933 - DAGHER-MARGOSIAN JEANICE
- 06/19/2019 45 SCt Order: Application - Grant
View document in PDF format
Comments: Invited AC=AG, CDAM, PAAM, ACLU of MI.

Court of Appeals Docket Entries
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- 06/19/2019 46 SCt Order: Miscellaneous Order - See Comments
View document in PDF format
Comments: Grant motion to strike; deny motion to take judicial notice.
- 07/10/2019 47 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 72042 - ZIMBELMAN JESSICA L
Comments: Motion to extend time for filing DFAT brf to 9-25-19.
- 07/16/2019 48 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant DFAT motion to extend the time for filing his brf to 9-25-19.
- 09/11/2019 49 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 72042 - ZIMBELMAN JESSICA L
Comments: Motion to extend time to 12-12-2019 to file DFAT brief on appeal
- 09/18/2019 50 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant DFAT motion to extend the time for filing his brf to 12-12-19.
- 11/13/2019 51 SCt: Miscellaneous Filing
Filing Date: 11/13/2019
For Party: 3
Filed By Attorney: 68718 - GERVILLE-REACHE GAETAN
Comments: Address change
- 12/06/2019 52 SCt Motion: Housekeeping
Party: 2
Filed by Attorney: 72042 - ZIMBELMAN JESSICA L
Comments: Motion to extend time to 12-20-2019 to file DFAT brief on appeal
- 12/09/2019 53 SCt Order: Chief Justice - Grant
View document in PDF format
Comments: Grant 3rd motion of DFAT to extend the time for filing his brief to 12-20-19.
- 12/10/2019 54 Email Contact
For Party: 2 BETTS PAUL J JR DF-AT
Attorney: 68478 - MITTLESTAT MICHAEL L
Comments: SADO Advised M Mittlestat Will Sub For J Dagher-Margosian

Case Listing Complete

Order

June 27, 2018

148981

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

PAUL J. BETTS, JR.,
Defendant-Appellant.

SC: 148981
COA: 319642
Muskegon CC: 12-062665-FH

Stephen J. Markman,
Chief Justice

Brian K. Zahra
Bridget M. McCormack
David F. Viviano
Richard H. Bernstein
Kurtis T. Wilder
Elizabeth T. Clement,
Justices

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By order of May 25, 2018, this case was held in abeyance for *People v Tucker* (Docket No. 152798) and *People v Snyder* (Docket No. 153696). On the Court's own motion, we VACATE our abeyance order of May 25, 2018. The application for leave to appeal the February 27, 2014 order of the Court of Appeals is again considered. We direct the Clerk to schedule oral argument on whether to grant the application or take other action. MCR 7.305(H)(1).

The appellant shall file a supplemental brief within 42 days of the date of this order, addressing: (1) whether the requirements of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, amount to "punishment," see *People v Earl*, 495 Mich 33 (2014), see also *Does # 1-5 v Snyder*, 834 F3d 696, 703-706 (CA 6, 2016), cert den sub nom *Snyder v John Does # 1-5*, 138 S Ct 55 (Oct 2, 2017); and (2) whether the defendant's conviction pursuant to MCL 28.729 for failure to register under SORA is an ex post facto punishment, where the registry has been made public, and other requirements enacted, only after the defendant committed the listed offense that required him to register, US Const, art I, § 10; Const 1963, art 1, § 10. In addition to the brief, the appellant shall electronically file an appendix conforming to MCR 7.312(D)(2). In the brief, citations to the record must provide the appendix page numbers as required by MCR 7.312(B)(1). The appellee shall file a supplemental brief within 21 days of being served with the appellant's brief. The appellee shall also electronically file an appendix, or in the alternative, stipulate to the use of the appendix filed by the appellant. A reply, if any, must be filed by the appellant within 14 days of being served with the appellee's brief. The parties should not submit mere restatements of their application papers.

We direct the Clerk to schedule the oral argument in this case for the same future session of the Court when it will hear oral argument in *People v Tucker* (Docket No. 152798) and *People v Snyder* (Docket No. 153696).

The Criminal Defense Attorneys of Michigan and the Prosecuting Attorneys Association of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

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I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 27, 2018

A handwritten signature in black ink, appearing to read "Larry S. Royster", written over a horizontal line.

Clerk

June 19, 2019

148981

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

SC: 148981
COA: 319642
Muskegon CC: 12-062665-FH

PAUL J. BETTS, JR.,
Defendant-Appellant.

On March 6, 2019, the Court heard oral argument on the application for leave to appeal the February 27, 2014 order of the Court of Appeals. On order of the Court, the application is again considered, and it is GRANTED. The parties shall include among the issues to be briefed: (1) whether the requirements of the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq.*, taken as a whole, amount to “punishment” for purposes of the Ex Post Facto Clauses of the Michigan and United States Constitutions, US Const, art I, § 10; Const 1963, art 1, § 10; see *People v Earl*, 495 Mich 33 (2014), see also *Does #1-5 v Snyder*, 834 F3d 696, 703-706 (CA 6, 2016), cert den sub nom *Snyder v John Does #1-5*, 138 S Ct 55 (Oct 2, 2017); (2) if SORA, as a whole, constitutes punishment, whether it became punitive only upon the enactment of a certain provision or group of provisions added after the initial version of SORA was enacted; (3) if SORA only became punitive after a particular enactment, whether a resulting ex post facto violation would be remedied by applying the version of SORA in effect before it transformed into a punishment or whether a different remedy applies, see *Weaver v Graham*, 450 US 24, 36 n 22 (1981) (“the proper relief . . . is to remand to permit the state court to apply, if possible, the law in place when his crime occurred.”); (4) if one or more discrete provisions of SORA, or groups of provisions, are found to be ex post facto punishments, whether the remaining provisions can be given effect retroactively without applying the ex post facto provisions, see MCL 8.5; (5) what consequences would arise if the remaining provisions could not be given retroactive effect; and (6) whether the

answers to these questions require the reversal of the defendant's conviction pursuant to MCL 28.729 for failure to register under SORA.

The Attorney General, the Criminal Defense Attorneys of Michigan, the Prosecuting Attorneys Association of Michigan, and the American Civil Liberties Union of Michigan are invited to file briefs amicus curiae. Other persons or groups interested in the determination of the issues presented in this case may move the Court for permission to file briefs amicus curiae.

Department of Corrections, depending on the type and length of disposition. (The bill also would increase costs for the Department of Corrections for parole violators who could be returned to prison for failing to register.) There is no reliable way to predict how many individuals would fail to register.

Courts: The costs to the local courts would be determined by the number of individuals who violated the proposed Act. The courts would have to revoke youthful trainee status of those with that status.

The local courts that are combined with probation offices would have minimal costs associated with probation officers' registering individuals required to participate under this Act.

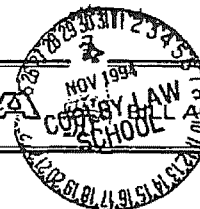
Fiscal Analyst: B. Baker
M. Hansen
L. Nacionales-Tafuya

AN 9/18/94
This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

S.B. 193, 194, 397, & 400:
ENROLLED ANALYSIS

Senate Fiscal Agency
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SFA



SEX OFFENDERS REGISTRY

C.2

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ANALYSIS

Senate Bill 193 (as enrolled)
Senate Bill 194 (as enrolled)
Senate Bill 397 (as enrolled)
Senate Bill 400 (as enrolled)
Sponsor: Senator Michel J. Bouchard (Senate Bills 193 and 194)
Senator Lana Pollack (Senate Bills 397 and 400)
Senate Committee: Judiciary
House Committee: Judiciary

Data Completed: 8-8-94

RATIONALE

In recent years, the problem and prevalence of sex-related crimes have gained greater public visibility as these offenses have been reported in greater numbers. State legislatures have examined sexual conduct laws to find ways to enhance community protection efforts and improve investigative techniques. In an attempt to strengthen their laws, at least 16 states have adopted measures requiring sex offenders to register with law enforcement or state agencies. Supporters of sex offender registries claim that these requirements contribute to public safety by assisting police investigations and deterring sex offenders from committing new offenses. Some people believe that Michigan also should adopt registration requirements for convicted sex offenders.

CONTENT

Senate Bills 193, 194, and 400 would amend various acts and Senate Bill 397 would create the "Sex Offenders Registration Act" to require the registration of persons convicted of, or placed on youthful trainee status for, certain specified sex offenses and juveniles for whom the juvenile division of probate court (juvenile court) had entered an order of disposition for certain sex offenses. Offenders would have to be registered and provide notice of a change of address for at least 25 years. Registrations and notifications would have to be forwarded to the Department of State Police.

PUBLIC ACT 286 of 1994
PUBLIC ACT 287 of 1994
PUBLIC ACT 296 of 1994
PUBLIC ACT 294 of 1995

The bills are tie-barred to each other and to House Bill 4601, and would take effect on October 1, 1995. House Bill 4601 (H-1), which has passed the House, would amend the juvenile code to require the juvenile court or the Department of Social Services (DSS) to register, or accept the registration of, a juvenile for whom the juvenile court had entered an order of disposition for a "listed offense" under the proposed Sex Offenders Registration Act.

Senate Bill 193

The bill would amend the Code of Criminal Procedure to provide that an individual assigned to youthful trainee status for a "listed offense" pursuant to the proposed Sex Offenders Registration Act would be required to comply with that Act. If an individual were assigned to youthful trainee status for a listed offense the Department of Corrections (DOC), the person's probation officer, or a county sheriff or sheriff's designee would have to register the person or accept his or her registration as provided under the Sex Offenders Registration Act. If a youthful trainee who was required to be registered under the proposed Act willfully violated that Act, the court would have to revoke the individual's status as a youthful trainee.

The bill provides that, if a person were placed on probation for a listed offense, the person's probation officer would have to register the person or accept his or her registration as provided under the Sex Offenders Registration

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Act. If a probationer were required to be registered under the Sex Offenders Registration Act, the probationer would have to comply with that Act. The court would have to revoke a person's probation if he or she willfully violated the Sex Offenders Registration Act.

The bill also would reduce the amount of probation oversight fees imposed on youthful trainees to \$30 multiplied by a maximum of 36, rather than 60, months. (The fee is multiplied by the number of months of probation ordered, and the maximum length of probation for a youthful trainee is three years.)

Senate Bill 194

The bill would amend the Department of Corrections law to require a parole officer to register a parolee pursuant to the proposed Sex Offenders Registration Act if the parolee were required to be registered under that Act. If a parolee were required to be registered, the parole order would have to contain a condition requiring the parolee to comply with that Act. The parole board would have to rescind the parole of a person who was required to be registered under the proposed Act and who willfully violated that Act.

Senate Bill 387

Registration

The bill would create the "Sex Offenders Registration Act" to require a juvenile for whom the juvenile court had ordered a disposition for, a person placed on youthful trainee status for, or a person convicted of a "listed offense" to register information about his or her identity, address, and conviction. A person required to be registered would have to comply with the Act for 25 years after the date of initial registration. If the individual were convicted of a second or subsequent listed offense committed after October 1, 1995, however, he or she would have to comply with the registration requirement for life, regardless of when the first listed offense was committed. The registration requirement would apply to all of the following:

- A person who was convicted of a listed offense after October 1, 1995.
- A person convicted of a listed offense on or before October 1, 1995, who, on or

after that date, was on probation or parole, was committed to jail, was committed to the DOC's jurisdiction, or was under the jurisdiction of the juvenile court or the DSS for that offense.

- A person convicted of an attempt or conspiracy to commit a listed offense whose probation or parole was transferred to Michigan after October 1, 1995.

A registration under the bill would be confidential and would not be open to inspection, except for law enforcement purposes. The registration and all included material would be exempt from disclosure under the Freedom of Information Act. An individual whose registration was revealed in violation of the bill would have a civil cause of action against the responsible party for treble damages.

"Listed offense" would mean any of the following:

- Accounting, enticing, or soliciting a child for immoral purposes (MCL 750.145a and 750.145b).
- Involvement in child sexually abusive activity or material (MCL 750.145c).
- A third or subsequent violation of any combination of the following: engaging in indecent or obscene conduct in a public place (MCL 750.167(f)), indecent exposure (MCL 750.335a), or a local ordinance substantially corresponding to either of those offenses.
- Criminal sexual conduct (CSC) in the first, second, third, or fourth degree (MCL 750.520b, 750.520c, 750.520d, and 750.520e).
- Assault with intent to commit CSC (MCL 750.520g).
- An attempt or conspiracy to commit an offense enumerated above.
- An offense substantially similar to a listed offense under the laws of the United States, any other state, or any country.

For an individual who, on or before October 1, 1995, was convicted of a listed offense and was sentenced, had a juvenile court disposition entered, or was assigned to youthful trainee status for that offense, the following would apply:

- If the person were on probation for the listed offense, the person's probation officer would have to register him or her.
- If the person were committed to jail for the listed offense, the sheriff or sheriff's designee would have to register the person.
- If the person were under the DOC's jurisdiction for the listed offense, the Department would have to register him or her.
- If the person were on parole for the listed offense, the person's parole officer would have to register the parolee.
- If the person were within the jurisdiction of the juvenile court or the DSS for the listed offense, the court or Department would have to register him or her.

An individual who was convicted of a listed offense on or before October 1, 1995, and who was sentenced or assigned youthful trainee status for that offense after that date, would have to be registered by the probation officer before sentencing or assignment. An individual who was convicted of a listed offense outside of Michigan on or before October 1, 1995, and whose probation or parole was transferred to Michigan after that date would have to be registered by the probation or parole officer within 14 days after the transfer. An individual for whom the juvenile court entered an order of disposition for a listed offense on or before October 1, 1995, and who was placed under the jurisdiction of the court or the DSS, would have to be registered by the court before the order was entered.

An individual convicted of a listed offense in Michigan after October 1, 1995, would have to register before sentencing, entry of a juvenile court order of disposition, or assignment to youthful trainee status. The probation officer or juvenile court would have to give the person the registration form after conviction, explain the person's duty to register, and accept the completed registration. An individual convicted of a listed offense in another state or country after October 1, 1995, would have to register with the local law enforcement agency, the State Police, or the sheriff's department within 14 days after becoming domiciled or temporarily residing in Michigan.

The officer, court, or agency that registered a person or received or accepted a registration or

change-of-address notice would have to provide the registered individual with a copy of the registration or notification.

A registration would have to include a recent photograph of the registered person, and be made on a form provided by the Department of State Police. A registration would have to contain all of the following:

- The person's name, Social Security number, and address or expected address.
- A brief summary of the individual's convictions for listed offenses, including where the offenses occurred and the original charge, if the conviction were for a lesser offense.
- A complete physical description of the person.
- The individual's blood type and whether a DNA identification profile of the person was available.

A form used for registration would have to contain a written statement that explained the person's duty to provide notice of a change-of-address and the procedures for providing that notice. The registering individual would have to sign the registration or notice. The officer, court, or agency employee who registered the person or received or accepted a registration also would have to sign it.

Change-of-Address Notification

Within 10 days after changing address, being paroled, or receiving final release from the DOC's jurisdiction, a person required to register would have to notify the local law enforcement agency in which his or her address was located, or the State Police or sheriff's department of his or her new address. Within 10 days after a person required to register was transferred to a community residential program or was transferred into a minimum custody correctional facility of any kind, including a correctional or work camp, the DOC would have to notify the local law enforcement agency for the area to which the person was transferred, or the State Police or sheriff's department.

The bill specifies that an individual could not knowingly provide false or misleading information concerning a registration or change-of-address notification.

The Department of State Police would have to prescribe the form for a change-of-address notification.

State Police Notification

The entity that registered an individual or received or accepted a registration or notice of an address change would have to forward the registration or notification, within seven days, to the Department of State Police. If a person registered at a State Police post, the Department of State Police would have to forward a copy of the registration, within seven days, to the local law enforcement agency or to the sheriff's department, if the municipality did not have a local law enforcement agency.

The Department of State Police would have to maintain a computerized data base of registrations and change-of-address notices.

Penalties

A willful violation of the proposed Act by a person who was required to register would be a felony, punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both. The court would have to revoke the probation of a probationer who willfully violated the Act and would have to revoke the status of a youthful trainee who willfully violated the Act. The parole board would have to rescind the parole of a parolee who willfully violated the Act.

A person, other than a registrant, who knew of a registration under the proposed Act and divulged, used, or published information about the registration in violation of the Act would be guilty of a misdemeanor, punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both.

Senate Bill 400

The bill would amend Public Act 219 of 1965, which provides for the setting aside of certain criminal convictions, to provide that, if an expunged conviction were for a "listed offense" as defined in the proposed Sex Offenders Registration Act, the person whose conviction was set aside would be considered to have been convicted for purposes of that Act. The bill also would allow a nonpublic record of an expunction order and other information relating to the case to be made available for consideration by a

court, law enforcement agency, prosecuting attorney, or the Attorney General in determining whether an individual who was required to be registered under the Sex Offenders Registration Act had violated that Act, or for use in a prosecution for violating that Act.

In addition, it is a misdemeanor for a person, other than the applicant, who knows or should have known that a conviction was set aside, to divulge, use, or publish information concerning the conviction. The bill specifies that the misdemeanor would be punishable by up to 90 days' imprisonment, a maximum fine of \$500, or both.

MCL 762.12 et al. (S.B. 493)
791.236 (S.B. 194)
780.622 & 780.623 (S.B. 400)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Requiring convicted sex offenders to be registered with law enforcement officials would assist investigations of these types of crimes because law enforcement agencies would have a resource for determining the identity and residence of known sex offenders in the general area. Once created, the registry would become a tool that law enforcement agencies could use to solve, or even prevent, crimes. If a sex offense were committed, the registry could be used to identify potential suspects who lived in the area or who had a pattern of similar crimes.

It is widely believed that sex offenders are not responsive to therapy programs and may have a particular deviant orientation that cannot be easily changed or suppressed. Indeed, according to a review of sex offender registration laws conducted in 1992 by the Washington State Institute for Public Policy (WSIPP), in California, which was the first state to require registration of sex offenders, a 15-year follow-up study of sex offenders first arrested in 1973 revealed that nearly half of the group was rearrested for some type of offense and 20% was rearrested for a subsequent sex-related offense, and that those whose first offense was rape by force or threat had the highest recidivism rate. The California study also reportedly found that

a large proportion of criminal justice investigators believe that the registration system was effective in locating sex offenders and apprehending suspects.

In addition to aiding law enforcement investigations, requiring sex offenders to register could have an effect on the offenders' behavior. Once registered, an offender would know that he or she was being monitored and this knowledge could discourage the offender from committing further crimes. A long-term registration requirement, along with other criminal penalties specified in law, could even discourage a potential offender from committing an initial assault. The California study reportedly found that about one-half of the 420 criminal justice agencies responding believed that registration deterred offenders from committing new sex crimes.

Response: The bills do not go far enough. If sex offenders truly are predisposed to committing these types of crimes, registration should be required for life, not just some term of years. Also, in some states the requirement applies to persons found to have committed a sex offense rather than those convicted, which extends registration requirements to persons found not guilty by reason of insanity. In addition, other types of offenders also may be predisposed to repeating their criminal activity, and perhaps registration requirements should be extended to cover those crime categories. For instance, according to the WSIPP review, California and Montana register arsonists and California registers narcotics offenders.

Opposing Argument

The bills would constitute an infringement upon civil liberties. Requiring registration would impose additional sanctions on those who had already served the penalties for their crimes. Sex offenders who have been discharged from prison or who have successfully completed a term of probation or parole have paid their debt to society and should not be subject to additional punishment.

Response: According to the WSIPP review of state sex offender registration laws, these requirements have been subject to legal challenges in at least four states. In most of these cases, courts have found that registration is not a form of punishment. (When registration has been examined as a form of punishment, moreover, it has been found not to be cruel and

unusual.) In addition, challenges on the basis of due process and equal protection have failed and registration requirements have been found not to infringe unreasonably on a person's right to travel or right to privacy.

Opposing Argument

The bills' restrictions on access to the registry would be too tight. Information in the registries should be available, at least, to school districts and employers. School administrators should be aware of known sex offenders in their community so that administrators and teachers can provide better safety and security in and around schools. Employers, particularly those whose workers interact with children, should be given access in order to check the background of employees or potential hires. In addition, in some states law enforcement authorities are permitted to release "relevant information", upon request. A victim, for instance, might want to know the whereabouts of his or her attacker upon that person's release into the community. Some states even classify their registry as public information subject to freedom of information provisions. Widespread access to the registry could be used for the general protection of the citizenry; parents, for instance, may want to know whether anyone with a history of sex offenses resides in their neighborhood so that children could be warned to avoid that person.

Response: A sex offender registry should be used as a law enforcement tool, not as a mechanism to brand or ostracize particular members of the community.

Opposing Argument

Although juveniles tried as adults should be required to register, a juvenile offender who remained under the jurisdiction of the juvenile court should not be subject to adult sanctions such as a 25-year registration requirement. Requiring juvenile offenders to register would conflict with a basic premise of the juvenile justice system: that a reformed adult should not have to carry the burden of a continuing stigma for youthful offenses. Moreover, there is evidence that treatment of juvenile sex offenders can be successful in preventing further similar crimes. A 1991 WSIPP follow-up study of 197 male juvenile sex offenders who participated in offense-specific treatment since 1984 found that sexual recidivism was rare. Only 10.2% of the study's subjects were convicted of new sex offenses during the follow-up period.

Response: Requiring the registration of all juvenile sex offenders is a reasonable measure. A Michigan State Police detective sergeant testified before the Senate Judiciary Committee that reports indicate increasingly more and younger juvenile sex offenders.

Opposing Argument

Rather than spending limited public funds to create and maintain a list of sex offenders, the State should direct resources toward other criminal justice activities. Funds could be more efficiently used in areas such as treatment and counseling of incarcerated sex offenders, or intensive supervision of the most serious offenders, in order to ensure their successful reintegration into communities.

Legislative Analyst: P. Affholter

FISCAL IMPACT

State Police: The bills would cost the Department of State Police a minimum of \$170,000 the first full year following the bills' effective date and somewhat less in subsequent years, depending upon the level of registration activity generated. Under the bills, the Department would require the following: a detective sergeant position, costing \$75,300, to design and oversee registration operations; a clerical position, costing \$42,300, to provide clerical services and make data entries; approximately \$3,000 in one-time costs to upgrade existing computer memory; and approximately \$50,000 to develop and produce required registration forms.

Corrections: Senate Bill 397 has the potential to increase costs for both State and local government. The term of imprisonment imposed for individuals who failed to register would increase costs for certain local jails or the Department of Corrections, depending on the type and length of disposition. (The bill also would increase costs for the Department of Corrections for parole violators who could be returned to prison for failing to register.) There is no reliable way to predict how many individuals would fail to register.

Courts: The costs to the local courts would be determined by the number of individuals who violated the proposed Act. The courts would have to revoke youthful trainee status of those with that status.

The local courts that are combined with probation offices would have minimal costs associated with probation officers' registering individuals required to participate under this Act.

Fiscal Analyst: B. Baker
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A9394/S193EA

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



**House
Legislative
Analysis
Section**

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Lansing, Michigan 48909
Phone: 517/373-6466

**SEX OFFENDER REGISTRATION
REVISIONS**

**Senate Bill 566 with House committee
amendments**

Sponsor: Sen. Bev Hammerstrom

**Senate Bill 567 as passed by the Senate
Sponsor: Sen. Mike Rogers**

**Senate Bill 568 as passed by the Senate
Sponsor: Sen. Mike Goschka**

**Senate Bill 569 as passed by the Senate
Sponsor: Sen. Shirley Johnson**

**Senate Bill 570 as passed by the Senate
Sponsor: Sen. Joel D. Gougeon**

**Senate Bill 571 as passed by the Senate
Sponsor: Sen. David Jaye**

Revised First Analysis (5-27-99)

**House Committee: Criminal Law and
Corrections**

**Senate Committee: Families, Mental
Health and Human Services**

THE APPARENT PROBLEM:

The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act) (42 U.S.C. 14071), enacted as part of President Clinton's 1994 Crime Act, provides a financial incentive for states to establish specific requirements for registration systems for convicted child molesters and other sexually violent offenders. States that fail to comply with the act's provisions within the specified time period will be subject to a mandatory 10 percent reduction of Byrne Formula Grant funding, and any funds that are not allocated to noncomplying states will be reallocated to states that are in compliance. The reallocated funds will be distributed among complying states in proportion to their populations.

Each state will be required to submit certification to the Bureau of Justice Assistance (BJA) to demonstrate that the state's has met the requirements of the Wetterling Act. In order to comply with the act, states will also be required to submit information in subsequent program years concerning any changes in sex offender registration systems that may affect compliance with the act. In order to continue to receive its full share of the federal grant money distributed under the Byrne Formula Grant, the state of Michigan must submit information showing that the state has complied with the requirements of the federal guidelines by July 12, 1999. Legislation has been introduced to bring Michigan's laws regarding sex offender registration into compliance with the federal guidelines.

THE CONTENT OF THE BILLS:

Senate Bill 566 would amend the Sex Offenders Registration Act (MCL 28.722 et al.) to do the following:

- Expand the act's listed offenses to include: any offense committed by a person who was defined as sexually delinquent under the Michigan Penal Code and any of the following crimes, if the victim was less than 18 years old: violation of the "crime against nature or sodomy" statute; gross indecency between males, between females, and between males and females; kidnaping and kidnaping a person under the age of 14; soliciting or accosting to commit prostitution or any other lewd or immoral act; and any other violation of a law or local ordinance that by its nature constitutes a sexual offense.
- Include students and people working in this state in the registration requirements.
- Require the Department of State Police, by September 1, 1999, to notify each person registered under the act who was not in a state correctional facility of his or her registration, notification, and verification duties under the act.
- Require the Department of Corrections (DOC) to give a registered person who was in a state correctional facility a written notice explaining the procedure for registration, notification, and verification.
- Exempt persons from registration for an offense that was added on September 1, 1999 to the definition of "listed offense" unless one of the following applied:
 - The individual was convicted of the offense on or after September 1, 1999.
 - On September 1, 1999, the person was on probation or parole, committed to jail, placed under or committed to the jurisdiction of the Department of Corrections, the family division of the circuit court or the Family Independence Agency (FIA) for such an offense, or was placed in any of the above situations for such an offense on or after September 1, 1999.
 - On September 1, 1999 the person was on probation or parole for that offense which had been transferred to the this state or the individual's probation or parole for that offense in transferred to this state after September 1, 1999.
- Require a person to comply for life with the act's reporting requirements if he or she had been convicted of certain criminal sexual conduct offenses or kidnaping.
- Require a registered person who was not incarcerated to report in person to a law enforcement agency for registration and verification by January 15, 2000; and then to report yearly if he or she had been convicted of a misdemeanor listed offense, or quarterly if convicted of a felony.
- Require a registered person to maintain a valid driver's license or official state personal identification card.
- Require, between January 1, 2000, and January 15, 2000, a registered person who was not incarcerated to have a digitized photograph taken by the secretary of state.
- Require, rather than allow, the Department of State Police to make the compilations of the sex offender registry available by electronic, computerized, or other similar means and to make that system available to the public. The system also would have to provide for searches by both name and zip code.
- Require the Department of State Police to conduct a study to determine the feasibility of providing for a search by alias, and of providing mapping technology to show an address, on the electronic, computerized, or other similar compilation. The study would have to consider costs, programming issues, or other similar issues, and would have to be forwarded to the legislature by September 1, 2000.
- Require the Department of State Police to conduct a study of the feasibility of compiling a list of living people who were convicted of a listed offense before September 1, 1999, but who were not required to be registered, and the feasibility of including that list, known addresses, and summary information in the publicly available compilation of the sex offender registry. The study would have to include available records, costs, required employee hours, programming issues, time frame, and other similar issues, and would have to be forwarded to the legislature by September 1, 2000.
- Provide that the exclusion from publicly available compilation for those who must register because of a

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juvenile disposition would not apply to a disposition for first- or second-degree CSC, after the juvenile became 18 years of age.

The bill also would establish new felony penalties for persons who were required to be registered and who willfully violated the act. Currently, a violation of the registration requirement is a felony, punishable by up to four years' imprisonment and/or a maximum fine of \$2,000. Under the bill, a first offense would be punishable by from one to four years imprisonment; a second offense would be punishable by from two to seven years imprisonment; and a third or subsequent offense would be punishable by from five to ten years imprisonment. Offenders would not be eligible for probation or a suspended sentence.

In addition, the bill would establish misdemeanor penalties for persons who failed to comply with the bill's reporting and verification requirements.

The bill would take effect on September 1, 1999.

Senate Bill 567 would amend the juvenile code (MCL 712A.18) to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

The bill would include reference to fingerprinting requirements of the Sex Offenders Registration Act in a provision of the juvenile code that prohibits the family division of circuit court (family court) from ordering a juvenile disposition or issuing a judgment of sentence for a conviction of a juvenile tried as an adult, until the court has determined that the juvenile's fingerprints have been taken and forwarded to the Department of State Police. The bill also provides that, if a juvenile were under the jurisdiction of the family court for an offense other than one specifically listed in the Sex Offenders Registration Act, the court would have to determine if the offense was a violation that, by its nature, constituted a sexual offense against a person under 18 years of age. If so, the order of disposition would be considered to be for a listed offense under the Sex Offenders Registration Act. The court would have to include the basis for that determination on the record and include the determination in the order of disposition.

Senate Bill 568 would amend the Code of Criminal Procedure (MCL 769.1 and 769.16a) to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

The bill provides that, if a defendant were sentenced for an offense other than one specifically listed in the Sex Offenders Registration Act, the court would have to determine if the offense was a violation that, by its nature, constituted a sexual offense against a person under 18 years of age. If so, the conviction would be considered to be for a listed offense under the Sex Offenders Registration Act. The court would have to include the basis for that determination on the record and include the determination in the judgment of sentence.

As part of the sentence for a conviction of a listed offense under the Sex Offenders Registration Act, the court would have to order that the person's fingerprints be taken and forwarded to the Department of State Police, as provided in that act, if that had not already been done.

Senate Bill 569 would amend the Michigan Vehicle Code (MCL 257.307) to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

The bill would require that an applicant for a driver's license have his or her image captured or reproduced when an application for a driver's license was made, if the applicant were required to maintain a valid driver's license or official state personal identification card under the Sex Offenders Registration Act.

The Department of State Police would have to provide to the secretary of state updated lists of persons required to be registered under the Sex Offenders Registration Act, and required to maintain a valid driver's license or official state personal identification card. The secretary of state would have to make the images of those persons available to the Department of State Police as provided in the Sex Offenders Registration Act.

The bill also would prohibit driver's license renewal by mail if the renewing licensee were a person required to maintain a valid driver's license or official state personal identification card under the Sex Offenders Registration Act.

Senate Bill 570 would amend Public Act 222 of 1972 (MCL 28.292), which provides for an official state personal identification card, to make revisions consistent with Senate Bill 566. The bill would take effect on September 1, 1999, and is tie-barred to Senate Bill 566.

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The bill would require that the Department of State Police provide to the secretary of state updated lists of persons required, under the Sex Offenders Registration Act, to maintain a valid driver's license or an official state personal identification card. The secretary of state would have to make images of those people available to the Department of State Police as provided in Senate Bill 566.

The bill also specifies that the secretary of state would have to require in-person renewal by a person required, under Senate Bill 566, to maintain a valid driver's license or official state personal identification card.

Senate Bill 571 would include the felonies proposed by Senate Bill 566 for a second, third, or subsequent offense of failure to register as a sex offender in the Code of Criminal Procedure's sentencing guidelines provisions (MCL 771.11), and revise the sentencing guidelines provision for a first offense. Currently, failure to register as a sex offender is categorized as a Class G felony against the public order, with a statutory maximum sentence of four years imprisonment. Under the bill, a first offense of failure to register would be reclassified as a Class F felony against the public order, with a statutory maximum of four years. A second offense of failure to register would be a Class D felony against the public order, with a statutory maximum sentence of seven years imprisonment as proposed by Senate Bill 566. A third or subsequent offense of failure to register would be a Class D felony against the public order, with a statutory maximum sentence of 10 years imprisonment, as proposed by Senate Bill 566.

HOUSE COMMITTEE ACTION:

The House Committee on Criminal Law and Corrections amended Senate Bill 566 to do all of the following:

- Provide that a juvenile disposition or adjudication for gross indecency would not be considered a "listed offense".
- Include orders of disposition or other adjudications in a juvenile matter in another state or country in the definition of "convicted".
- Include a definition of "residence" for the purpose of registration and voting purposes, meaning the place where the individual habitually sleeps, keeps his or her

personal effects, and has a regular place of lodging. If an individual has more than one residence, or two spouses have separate residences, the place where the person resides the greater part of the time would be considered his or her residence for the purposes of the act. However, the bill specifies that the definition is not intended to affect existing judicial interpretation of the term residence.

-- Add to the list of exceptions under which a person would be required to be register for having committed a crime that becomes a listed offense on September 1, 1999. If, as of that date, the individual was on parole or probation, committed to jail, placed under or committed to the jurisdiction of the Department of Corrections or similar state agency, or a court that handles matters similar to those handled by the family division of the circuit court or an agency with the same authority as the FIA in another state or country for such an offense, he or she would be required to register.

-- Clarify and ensure that individuals who have registered under the current provisions of the act will continue to be registered and those convicted of newly added offenses will be registered, after the bills take effect, through the registration process.

BACKGROUND INFORMATION:

The Sex Offenders Registration Act applies to individuals convicted of a listed offense, persons placed on youthful trainee status for a listed offense and juveniles for whom the a court has entered a disposition for a listed offense for which the record is open to the general public. Offenders must comply with the registration requirement for 25 years after the initial registration, and someone convicted of a second or subsequent offense must register for the remainder of his or her life.

Within ten days after moving to a new residence, being paroled, or being released from the jurisdiction of the DOC, a person who is required to register under the act must notify local law enforcement, the state police, or the sheriff's department of his or her new address. The entity that registers an individual or receives a change-of-address notice must forward the registration or notice to the Department of State Police.

"Listed offense" means any of the following:

- Accosting, enticing or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of engaging in obscene or indecent conduct in public, indecent exposure, or a local ordinance substantially corresponding to either offense.
- First, second, third, fourth degree Criminal Sexual Conduct (CSC)
- Assault with intent to commit CSC.
- An attempt or conspiracy to commit one of the offenses listed above.
- Any offense under the laws of the United States, any other state, or any other country, that is substantially similar to a listed offense.

The Department of State Police is required to maintain a computerized data base of registered offenders, and the information compiled from the data base is to be made available to the public. The data base is indexed by zip code area and contains the name, aliases, address, physical description, birth date, and listed offenses for each offender residing in the zip code area.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, Senate Bill 566 would have an indeterminate fiscal impact on state and local government for the costs of incarceration. In 1997, there were 16 dispositions involving failure to register as a sex offender with nine offenders given a prison sentence. There are no data available to indicate how many more people could be convicted of this offense as a result of the proposed changes. To the extent that conviction for this crime would not prohibit conviction for another crime from the same transaction, length of sentence for certain offenders could increase. As a result of the inclusion of graduated sanctions for failing to register and a new misdemeanor for other violations of conditions of registration, costs or fine revenues for the state or local units of government would increase.

The Department of State Police would incur additional costs to provide feasibility studies and reports required under the bill.

Senate Bills 567 through 570 would have a minimal fiscal impact on state departments and local law enforcement agencies. The bills would require some minor additional costs for departments and agencies that already assume similar duties under the Sex Offenders Registration Act. These costs would include clerical and information programming costs.

Senate Bills 566 through 570 also feature requirements that are mandated by the federal Jacob Wetterling Act, that, if not placed in state law, could result in a 10 percent reduction to the state of federal grant funding under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program. Failure to enact the federal mandates in the bill could result in a loss of \$1.6 million in federal funds to state and local agencies. (5-17-98)

ARGUMENTS:

For:

Registration systems, like Michigan's Sex Offenders Registration Act, help law enforcement investigate sex crimes by informing the authorities of the identities and whereabouts of convicted sex offenders. In addition, these systems also may inhibit offenders -- who know that the authorities know who they are and where they are -- from committing additional crimes. Community notification enables communities to take common sense measures to protect themselves and their families, such as ensuring that their children do not associate or visit with known child molesters. For these reasons alone, it makes sense to make certain that Michigan's sex offender registry is as complete as possible. However, Michigan also stands to lose approximately 1.6 million dollars in Byrne Grant funding if it is not in compliance with the federal guidelines by July 12, 1999. Last year the funds from this grant were used to pay for community policing and school liaison officer programs; drug abuse resistance education (DARE); zero tolerance drug offender testing; and criminal justice record improvement. Additionally, money went towards fully or partially funding positions and vehicles for 18 multi-jurisdictional drug teams, one money laundering team, the statewide information system (STATIS) and training and coordinating effort for the narcotics schools (TRACE). Finally, some of the money was awarded to prosecutors and was likely used to pay for training, equipment, and full- or part-time personnel reimbursement.

Obviously, the loss of part of this money would impact the state's ability to fully fund these very

important projects and it is a loss that can easily be avoided by bringing the state's laws into compliance.

Against:

While bringing the laws into compliance makes sense, some of the amendments in the package of bills go way beyond what is necessary to comply with the federal requirements. The original intent of sex offender registration was to provide a means of warning the public about certain sex offenders -- basically those who had engaged in violent crimes or crimes against children. It seems that the law is rapidly increasing in its coverage and no longer includes just those offenders who, because of recidivism rates, pose a potential threat to the public.

Some of the crimes that are included by Senate Bill 566 are potentially consensual -- gross indecency and sodomy, for example. In fact, in cases where elements of gross indecency or sodomy crimes have been met and the actions were non-consensual, the crime would most likely be charged under the CSC statute. It is traveling a bit far afield from the intent of the Wetterling Act to attempt to use its requirements to include individuals who have engaged in consensual behavior between persons over the age of consent in this state (16 years of age) as sex offenders in the registry.

In fact, according to the Department of Justice, the Attorney General's Order No. 2095-97 -- Final Guidelines for Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, dated July 17, 1997 -- "The Act's definitions of covered offense categories are tailored to its general purpose of protecting the public from persons who molest or sexually exploit children and from other sexually violent offenders. Hence, these definitions do not include all offenses that involve a sexual element. For example, offenses consisting of consensual acts between adults are not among the offenses for which registration is required under the Act."

Response:

People convicted of the crimes of sodomy and gross indecency are only required to be listed on the sex offender registry when the victim of the crime was under the age of 18. This is the age limit that the Wetterling Act uses to define minors -- and the provisions of the act, although they do not recommend listing offenses between consenting adults, generally require that sexual offenses involving victims under the age of 18 be included in the registry.

Against:

It is bad enough to make the sex offender registry information available to the public, but to expand it to include photos of offenders is frightening. There are already flaws in the registry; for example, sometimes victims have been listed instead of, or along with, the offender. The sex offender registry should be used as a law enforcement tool, not as a mechanism to brand or ostracize particular members of the community. The more details about the persons included in the registry, the more the act becomes a modern form of the stocks -- more about harassing and continuing to punish the offender even after he or she has successfully completed a term of probation or parole and paid his or her debt to society.

Further, the provisions that could potentially lead to the inclusion of photos and maps on websites listing sex offenders could have tragic consequences. Vigilante attacks on the homes of registered offenders are not unlikely under the current system -- adding photos and maps to their homes will simply make it easier for those who would engage in such behavior. This is particularly problematic given the consensual nature of some of the crimes that could lead to inclusion in the registry. In addition, it should be noted that the place where some offenders reside is often not only the offender's home but may also be the home of the offenders parents, spouse, siblings, or other family members. The more information that is provided to the public in the registry, the more vulnerable those listed, and their families, will be to attack from those who feel that a prison term isn't sufficient punishment and desire to take justice into their own hands.

POSITIONS:

The Department of State Police supports the bills. (5-25-99)

The Triangle Foundation opposes the provisions of the bills allowing for the use of photo identifications and the inclusion of the crimes of gross indecency and sodomy in the registry. (5-25-99)

The American Civil Liberties Union opposes the bills. (5-25-99)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Legislative Analysis



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SEX OFFENDER REGISTRY: PHOTOS

House Bill 5195 as enrolled
Public Act 238 of 2004
Sponsor: Rep. Matt Milosch
House Committee: Criminal Justice
Senate Committee: Families and Human Services

Second Analysis (4-5-05)

BRIEF SUMMARY: The bill would include photographs on the public sex offenders registry.

FISCAL IMPACT: The bill is not expected to have a fiscal impact.

THE APPARENT PROBLEM:

The Department of State Police is required under the Sex Offenders Registration Act to maintain a computerized database of registrations of sex offenders. This database is accessible only by law enforcement officers and officials. The department also has to maintain a separate computerized database accessible by the general public. This database consists of a compilation of individuals registered under the act but excludes some juvenile dispositions. The compilation has to be indexed numerically by zip code area. Within each zip code area, the compilation has to include the name and aliases, address, physical description, and birth date of each registered individual in that zip code along with any listed offense the individual had been convicted of. The compilation must also include the name and campus location of each institution of higher education to which the individual is required to report.

Several states include photographs on the public sex offender registry. Proponents of the use of photographs in Michigan believe that it would increase public safety by enabling residents to identify a potentially dangerous sex offender in situations where a name may not come up, such as when striking up a conversation in a park or other public place. Also, it is argued, including a photograph may also ensure that an innocent person with the same or similar name will not be confused with a registered sex offender.

THE CONTENT OF THE BILL:

The bill would amend the Sex Offenders Registration Act to require that the public compilation of registrations of convicted sex offenders also include the photograph of each individual registered under the act. The Department of State Police would have to obtain driver license or state identification card photographs from the secretary of state for the purpose of implementing the bill. The bill would take effect May 1, 2005.

MCL 28.728

BACKGROUND INFORMATION:

The Sex Offenders Registration Act, created by Public Act 295 of 1994, applies to individuals convicted of a listed offense, persons placed on youthful trainee status for a listed offense, and juveniles for whom a court has entered a disposition for a listed offense for which the record is open to the general public. Offenders must comply with the registration and subsequent reporting requirement for 25 years after the initial registration or, if an individual is in a state correctional facility, for 10 years after release – whichever is longer. (For example, if a person were imprisoned for 20 years, then released, he or she would still have to report for 10 years longer, for a total of 30 years.)

Persons convicted of certain felony listed offenses, such as first-degree criminal sexual conduct, or a second or subsequent conviction of any of the listed offenses committed after October 1, 1995, must register for the remainder of their lives.

If the violation of a listed offense is categorized as a misdemeanor listed offense, the person must register at the time of conviction, prior to sentencing, and report to verify his or her address at least each January. If the person is registered for committing one or more felony listed offenses, he or she must report to verify his or her address at least four times a year. (Offenders also must report within 10 days of moving or if visiting in an area longer than a specified number of days.) Depending upon the person's status, he or she must register or report with a parole officer, probation officer, sheriff, local law enforcement agency, or juvenile court, the state police, the Department of Corrections, or the Family Independence Agency. The registration must then be forwarded to the Department of State Police. Only those persons convicted of a listed offense on or after October 1, 1995, or those convicted prior to that date but still incarcerated or on parole or probation on that date must be registered.

"Listed offense" means any of the following:

- Accosting, enticing or soliciting a child for immoral purposes.
- Involvement in child sexually abusive activity or material.
- A third or subsequent violation of any combination of engaging in obscene or indecent conduct in public, indecent exposure, or a local ordinance substantially corresponding to either offense.
- First, second, third, or fourth degree Criminal Sexual Conduct (CSC).
- Assault with intent to commit CSC.
- If the victim is less than 18 years of age, the crime of gross indecency (except for a juvenile disposition or adjudication), kidnapping, sodomy, or soliciting another for prostitution.
- Leading, enticing, or carrying away a child under 14 years of age.
- Pandering.
- Any other violation of a state law or local ordinance constituting a sexual offense against an individual less than 18 years of age.
- An offense committed by a sexually delinquent person.
- An attempt or conspiracy to commit one of the offenses listed above.

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- Any offense under the laws of the United States, any other state, or any other country, that is substantially similar to a listed offense.

The Department of State Police is required to maintain a computerized database of registered offenders. In 1996, Public Act 494 was enacted to require the DSP to compile the information from the database and create a second database indexed by zip code area and containing the name, aliases, address, physical description, birth date, and listed offenses for each offender residing in the zip code area. The information in each of these zip code blocks is provided to the appropriate local law enforcement agency for access by the public. The DSP also maintains the complete public sex offenders registry (PSOR) on its web site.

Currently, the public database does not include any individual registered solely because he or she had one or more dispositions for a listed offense entered under provisions of the Probate Code (MCL 712A.18) for a case that was not designated as a case in which the individual was to be tried as an adult. This exclusion for juvenile dispositions does not apply to a disposition for first- or second-degree criminal sexual conduct (CSC).

ARGUMENTS:

For:

The main impetus behind House Bill 5195 is to make it easier to identify people in the community that pose a risk to others. Even though the public sex offenders registry (PSOR) can be accessible by zip code, and though the sex offender's address and general description is included in the registry, there are situations where it may not be easy to make the connection between a name on the registry and the person chatting with you or your child at the park, on a bus, or while strolling through the neighborhood. Most people remember faces more easily than names, and will therefore know when to exercise caution.

Also, since there may be more than one person in the community with the same name, a photograph could absolve an innocent neighbor of perceived guilt. Since sex crimes are often crimes of repetition, the bill would be an important addition to the public registry and would enable people to protect themselves and their families from possible harm. Further, since sex offenders are required to keep current driver's licenses and state identification cards, the secretary of state will always have fairly recent pictures to supply to the DSP at a minimal cost.

Against:

House Bill 5195 would do little in reality to increase public safety but much to increase vigilantism and harassment against registrants, which could cause some dangerous offenders to go underground (and thus increase the chances of reoffending) and subject many non-predators to undue hostility and discrimination. The bill as introduced targeted pedophiles, but the bill as enrolled would apply to every registered sex offender, many of whom pose no further risk of reoffending and probably shouldn't be on the list to begin

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with. Adding their pictures would do little more than subject them to increased humiliation and punishment.

In addition, many people on the PSOR have a difficult time arranging appropriate housing and obtaining employment. Placing their pictures on the Internet may do little more than doom them to homelessness and unemployment – two factors known to greatly increase the likelihood of reoffending. Even if an employer felt that a registrant posed little to no threat to customers or other employees, he or she may be forced to fire the registrant if customers who recognized the person from the Internet site boycotted the business or employees threatened to quit.

Further, the registry contains over 33,000 names, most of which do not represent sexual predators. However, even though Public Acts 240 and 239 (enrolled House Bills 4920 and 5240, respectively) will remove some juveniles and youthful trainee offenders, the process will take time. This is unlikely to occur before the May 1, 2005 effective date. Once the registry is cleaned up, this proposal may make sense. Until then, it could do more harm than good.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Hannah Lee

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Legislative Analysis



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SEX OFFENDER REGISTRATION REVISIONS

Senate Bill 188 with House committee amendments
Senate Bill 189 with House committee amendments
Senate Bill 206 as introduced
Sponsor: Sen. Phil Pavlov
House Committee: Judiciary
Senate Committee: Judiciary

First Analysis (3-22-11)

BRIEF SUMMARY: Together, Senate Bills 188 and 189 would revise the Sex Offenders Registration Act to conform to mandates under the federal Sex Offenders Registration and Notification Act, part of the Adam Walsh Act. Senate Bill 189 would also repeal two obsolete sections of the act. Senate Bill 206 would incorporate in the sentencing guidelines a change in the maximum sentence for failing to update registration information or report as scheduled.

FISCAL IMPACT: Senate Bills 188 and 189 would have an indeterminate fiscal impact on state and local governments, and Senate Bill 206 would have no fiscal impact on either as discussed later in the analysis. As noted later, in *Fiscal Information*, if these bills do not become law, the state may lose up to 10% in Federal Byrne Grant funds.

THE APPARENT PROBLEM:

The federal Adam Walsh Child Protection and Safety Act (AWA) was enacted in 2006. One provision of the AWA created the Sex Offender Registration and Notification Act (SORNA), which mandates a national sex offender registry and establishes a set of minimum standards for sex offender registration and notification with which each state must comply. Failure to comply with SORNA will result in a state losing 10 percent of Byrne Justice Grant funding used to support law enforcement efforts. Numerous provisions of the federal act (SORNA) are different from those in the state Sex Offenders Registration Act; therefore, legislation is needed to revise the statute to conform to the requirements of SORNA. Though SORNA allows states some latitude, the legislation must conform substantially to SORNA in order to continue to receive the full grant amount.

THE CONTENT OF THE BILLS:

Currently, a person who is convicted or found responsible for certain listed offenses is required to register with law enforcement and is placed on the sex offenders registry for a minimum of 25 years; serious offenses require registration for life. Recent amendments allowed for certain juvenile offenders to petition to shorten the time they are required to register. The Michigan State Police (MSP) maintains one database for law enforcement purposes and another less comprehensive one that is accessible to the public. Individuals

who fail to comply with the registration and reporting requirements of the act are subject to criminal penalties.

Senate Bills 188, 189, and 206

With the exception of one provision in Senate Bill 188, the legislation would take effect July 1, 2011. (That exception is a provision that would require the Michigan State Police to mail a notice to each individual registered under the current act who is not currently incarcerated in a prison explaining the individual's duties under the act as amended, and it would take effect immediately). Senate Bills 188 and 189 are tie-barred to each other and Senate Bill 206 is tie-barred to Senate Bill 189.

The bills are intended to apply to currently registered sex offenders, offenses for which the prosecution is pending or has not yet begun as of the legislation's effective date, and offenses committed after the effective date. However, as currently worded, the bills would be prospective in nature, applying only to offenses committed after the effective date or committed before that date but for which the prosecution is pending or has not yet begun.

Significant changes to the Sex Offenders Registration Act (SORA) by Senate Bills 188 and 189 include the following:

Offenses requiring registration

- Revise the definition of "convicted" to include offenders assigned to youthful trainee status before October 1, 2004, if they are convicted of any other felonies after July 1, 2011; exclude offenders assigned to youthful trainee status whose petition under current law to reduce the time required to register as a sex offender has been granted; and include offenders adjudicated as juveniles only if they were at least 14 years of age at the time of the offense and the order of disposition was for a Tier III offense.
- Redefine "listed offense" to instead mean a Tier I, Tier II, or Tier III offense, with Tier I being the least serious, and define those terms. (See *Background Information*)
- Require a registration period of 15 years for a Tier I offense, 25 years for a Tier II offense, and life for a Tier III offense.
- Require Tier I offenders to report annually, Tier II offenders to report twice a year, and Tier III offenders to report quarterly.
- Exclude from certain Tier II offenses consensual incidents involving a minor victim who was at least 13 years of age but less than 16 if the actor was not more than 4 years older, and also certain offenses involving a minor victim who was 16 or 17 years of age and who was not under the custodial authority of the actor at the time of the violation. Define "custodial authority."
- Exclude from certain Tier III offenses consensual incidents involving a minor victim who was at least 13 years of age but less than 16 if the actor was not more than 4 years older.
- Define "minor" as a victim of a listed offense who was less than 18 years at the time of the offense.

- Exclude from registration those offenses that involve a consensual relationship between parolees or probationers with Department of Corrections' employees or employees of a county sheriff's office if no position of authority over the victim was used to coerce or otherwise encourage the victim to engage in sexual conduct.

Registration requirements

- Extend the jurisdictions in which registration is required so as to include federally recognized Indian tribes that elect to function as a registration jurisdiction.
- Redefine "residence" to mean the village, city, or township where a homeless person spends the majority of time to make it easier for the homeless or individuals without a permanent residence to comply with reporting requirements.
- Extend the registration and reporting requirements to an individual who was previously convicted of a listed offense but who, at that time, was not required to register under the SORA but who is convicted of any other felony on or after July 1, 2011.
- Shorten the time period required for registering or reporting status changes for various scenarios from 14 days or 10 days to "immediately" and define that term to mean 3 business days.
- Require a nonresident convicted of a listed offense in Michigan on or after July 1, 2011, to register under the act; the reporting requirements would not apply as long as the person remains a nonresident. The nonresident would have to have a photograph taken as required under the act.
- Require notification of at least 21 days before changing a domicile or residence to another country or travels to another country for more than seven days.
- Specify that the reporting requirements would not apply to enrollment in an online or correspondence program at an institution of higher learning.
- If the photograph submitted for the SORA did not resemble the offender in appearance, require the officer or authorized employee of the registering authority to require the individual to obtain a current photograph.
- Increase the original registration fee from \$35 to \$50 and allocate \$30 (instead of \$20) to the MSP for deposit in the Sex Offenders Registration Fund and \$20 (instead of \$10) to be retained by the court, local law enforcement agency, sheriff's department or department post. The fee could be waived for 90 days for an individual who was indigent.
- Require additional information and palm prints to be provided when a person registers. This includes aliases, nicknames, and ethnic or Tribal names; name and address of each employer; name and address of any school attended; all telephone numbers registered or routinely used; all electronic mail addresses, instant message addresses, and login names or other identifiers used by the individual when signing in to those systems; vehicle information, including license plate, registration number, and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual, as well as locations where the vehicles or vessels are habitually kept or stored; driver license number; digital copy of passport or immigration documents, and occupational and professional licensing information.

- Require a registration to also include an electronic copy of the offender's driver license or state ID, including the photograph required under the act; the text of the provision of law defining the criminal offense for which the offender is registered; any outstanding arrest warrant information; the individual's tier classification; an identifier indicating whether a DNA sample had been collected and any DNA profile entered into the federal Combined DNA Index System (CODIS); the complete criminal history record; the DOC number and status of parole, probation, or supervised release; and the FBI number.
- If an individual did not register or update registration information when required, require the law enforcement agency responsible for registering the individual to, among other things, determine whether the individual has absconded or is otherwise unlocatable, notify the MSP, revise the information in the registry to reflect that the person has absconded, seek an arrest warrant, and enter the individual into the National Crime Information Center Wanted Person File if appropriate.
- Require MSP, when notified of a failure to register or report, to notify the U.S. Marshall's Service and update the National Sex Offender Registry that the individual absconded or is unlocatable.

Reporting requirements

A resident who is required to be registered under the act must report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately (defined to mean three business days) after any of the following occur:

- Changes or vacates his or her residence or domicile.
- Changes his or her place of employment, or employment is discontinued.
- Enrolls as a student with an institution of higher learning, or enrollment is discontinued.
- Changes his or her name.
- Intends to temporarily reside at any place other than his or her residence for more than seven days.
- Establishes any electronic mail or instant message address, or any other designations used in Internet communications or postings.
- Purchases or begins to regularly operate any vehicle, and when ownership or operation of the vehicle is discontinued.

A nonresident required to register under the act who works in Michigan must report in person and notify the registering authority immediately of a change in place of employment or if employment is discontinued.

A sheriff's department must notify the MSP and provide notice of the location of the individual's proposed place of residence or domicile before releasing an individual from a county jail who is required to register. A similar provision for individuals facing release from prison already is in the act.

Law enforcement and public databases

- Require all the revised registration information to be included in the law enforcement database.
- Specify additional information that would have to be included in the public database and specify information that could not be on the public database; for instance, the victim's name or offender's Social Security number.
- Exclude from inclusion on the public database certain registered juvenile offenders, an individual registered solely for being the subject of an order of disposition or other adjudication in a juvenile matter in another state or country, or an individual registered solely because he or she had been convicted of a single Tier I offense.
- Delete a provision under which a person who committed criminal sexual conduct in the first- or third-degree as a juvenile is kept off the public database until he or she turns 18.
- Index the compilation of individuals on the public database alphabetically by village, city, township, and county and geographically as appropriate in addition to zip code.
- If MSP determines that a person completes his or her registration period or is no longer required to register under the act, require MSP to remove the person's registration information from both databases within 7 days of the determination.

Petition to discontinue registration

- Allow an individual to petition, and a court to grant the petition, to discontinue registration under the act if certain criteria have been met, such as completing an approved sex offender treatment program and not being convicted of any felony or listed offense since conviction or release from incarceration. A Tier I offender could petition 10 years or more after conviction or release from prison, whichever was later. Certain Tier III juvenile offenders could petition after 25 or more years from the date of adjudication or release from confinement, which ever occurred last.
- Allow certain juvenile Tier I, II, or III offenders ("Romeo and Juliet" cases) to petition, and a court to grant the petition, with no waiting period.
- Require a court to deny a petition if the petitioner was determined to be a continuing threat to the public and specify criteria for making that determination.
- Allow a presentence hearing for certain Tier II and III juvenile offenders who pled guilty or were found to be guilty to determine if they are eligible for exclusion from the registry. The court's decision would be appealable as a matter of right by either the prosecuting attorney or defendant. Except for what is known as the "rape shield," the rules of evidence would not apply. The victim would have to be given notice of the hearing and could, among other things, submit a written statement to the court.

Penalties

- Delete two misdemeanor offenses and a felony offense pertaining to violations of Section 5a of the act (reporting requirements) and replace them with a

misdemeanor offense punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000, or both.

MCL 28.722 et al. (Senate Bill 188)

MCL 28.726 et al. (Senate Bill 189)

Senate Bill 206

The bill would amend the Code of Criminal Procedure (MCL 777.11b) to revise the sentencing guidelines so as to incorporate the change to the felony penalty for a violation of Section 5a of the act proposed by Senate Bill 189. The bill would delete the current reference to a third or subsequent offense and instead indicate a statutory maximum of two years for failing to update a sex offender registration.

HOUSE COMMITTEE ACTION:

The House Committee adopted a series of amendments to Senate Bill 188 that were primarily technical in nature; the more substantive amendments would do the following:

- Revise the definition of the term "custodial authority" to exclude as an offense requiring registration, incidents involving consensual relationships between a corrections officer or county sheriff's deputy with a person who was under the jurisdiction of the Department of Corrections or a county, respectively, if the officer did not use his or her position of authority to coerce the sexual conduct.
- Allow a presentence hearing for certain Tier II and III juvenile offenders tried as adults to determine if they are eligible for exclusion from the registry. The court's decision would be appealable as a matter of right by either the prosecuting attorney or defendant. Except for what is known as the "rape shield," the rules of evidence would not apply. The victim would have to be given notice of the hearing and could, among other things, submit a written statement to the court.

Amendments to Senate Bill 189 were largely technical in nature.

In addition, amendments were adopted to both Senate Bills 188 and 189 to apply the provisions to "pipeline" cases – meaning cases in which the offense was committed before the bills' effective date but for which the prosecution was still pending or had not yet been commenced by the bills' effective date. However, as worded, the amendments instead apply the bills' provisions only to pipeline cases and to offenses committed after the bills' effective date of July 1, 2011. (It is anticipated that this will be corrected.)

BACKGROUND INFORMATION:

Tier I Offense

A Tier I offense would mean one or more of the following:

- Knowingly possessing child sexually abusive activity or material.
- Indecent exposure with fondling of self, if victim is a minor.

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- Unlawful imprisonment (restraining the person), if victim is a minor.
- Criminal sexual conduct (CSC) IV (contact) or assault with intent to commit CSC II (contact) if victim is 18 years or older.
- Surveillance of or distribution of recording, photograph, or visual image of individual with reasonable expectation of privacy if victim is a minor.
- Any other violation of a state law or local ordinance, other than a Tier II or Tier III offense, that by its nature constitutes a sexual offense against a minor.
- An offense committed by a person who was, at the time of the offense, a sexually delinquent person (defined in Section 10a of the penal code as any person whose sexual behavior is characterized by repetitive or compulsive acts which indicate a disregard of consequences or the recognized rights of others, or by the use of force upon another person in attempting sex relations, or by the commission of sexual aggressions against children under the age of 16.
- An attempt or conspiracy to commit an offense described above.
- An offense substantially similar to an offense described above under a law of the U.S., any other state or country, or under Tribal or military law.

Tier II Offender and Tier II Offenses

A Tier II offender would mean either a Tier I offender who is subsequently convicted of another Tier I offense or an individual convicted of a Tier II offense who is not a Tier III offender.

A Tier II offense would mean one or more of the following:

- Accosting, enticing or soliciting a child less than 16 years of age for immoral purpose.
- Persuading, inducing, enticing, coercing, causing, or knowingly allowing a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or distributing or financing the distribution of child sexually abusive material.
- Using the Internet or a computer to commit child sexually abusive activity or CSC offenses.
- Sodomy against a minor unless: (1) the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim; or, (2) the victim consented, the victim was 16 or 17 years of age at the time of the violation, and the victim was not under the custodial authority of the individual at the time of the violation.
- Gross indecency between males, females, or males and females if victim was 13 years of age or older but less than 18 unless: (1) the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim; or, (2) the victim consented, the victim was 16 or 17 years of age at the time of the violation, and the victim was not under the custodial authority of the individual at the time of the violation.
- Soliciting to commit prostitution if victim is a minor.
- Pandering.

- CSC II, CSC IV, or assault with intent to commit CSC II unless the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim.
- CSC II if the victim is 18 years of age or older.
- An attempt or conspiracy to commit any of the above.
- An offense substantially similar to an offense described above under a law of the U.S., any other state or country, or under Tribal or military law.

Tier III Offender and Tier III Offense

A Tier III offender would mean a Tier II offender subsequently convicted of a Tier I or Tier II offense or an individual convicted of a Tier III offense. A Tier III offense would mean one or more of the following:

- Gross indecency with victim less than 13 years of age.
- Kidnapping if victim a minor.
- Taking or enticing child less than 14 years of age with intent to conceal child from parents.
- CSC I, CSC III, or assault with intent to commit CSC with sexual penetration unless the victim consented, the victim was at least 13 years of age but less than 16 at the time of the violation, and the individual was not more than four years older than the victim.
- CSC II or attempt to commit CSC II if victim less than 13 years of age.
- An attempt or conspiracy to commit any of the above.
- An offense substantially similar to an offense described above under a law of the U.S., any other state or country, or under Tribal or military law.

FISCAL INFORMATION:

Senate Bills 188 and 189 would have an indeterminate fiscal impact on state and local government and SB 206 would have no fiscal impact on state and local government.

Senate Bills 188 and 189 are required in order for the state to be in compliance with changes to the Federal Sex Offender Registration and Notification Act (SORNA). If these bills do not become law, the state may lose up to 10% in Federal Byrne Grant funds. These funds are primarily used for multijurisdictional drug enforcement teams made up of troopers and local law enforcement officers. Additionally, the State Police budget contains \$1.8 million in Byrne funds as an interdepartmental grant to the Judiciary for the drug treatment court program.

Under SB 188, the sex offender registration fee would increase from \$35 to \$50, where the State Police would receive an additional \$5 and local law enforcement agencies would receive an additional \$10. The \$5 increase for the State Police would be used for information systems upgrades and program enhancements to be in compliance with the federal laws. The \$10 received by local agencies would likely cover some administrative costs incurred by these agencies.

ARGUMENTS:

For:

Critics of the Michigan Sex Offenders Registry have long maintained that the registry includes so many names of people that do not pose any danger of reoffending or pose any risk of predatory behaviors as to weaken the registry to the point of being useless. Under the SORNA amendments, some offenses that currently require registration will no longer be counted as a listed offense. In addition, many juvenile offenders will no longer have to register as sex offenders and many adults and juveniles who still have to register will no longer be on the public website. Only the most serious crimes, such as forcible rapes, will require lifetime registration and reporting.

To comply with SORNA, more stringent registration and reporting requirements must be adopted. In addition to palm prints, much more information will be collected when a person registers. Some of this information will be posted on the public website. The public website will also enable people to search by city or township rather than just by zip code. Registered offenders will be required to report in person whenever important changes occur, such as buying or selling a car (important since the commission of many sex crimes involve vehicles) or changing employment.

A House committee amendment would resolve an issue addressed in legislation in previous sessions that failed to be enacted. Specifically, the bills would exempt corrections officers and county law enforcement officials from registering as sex offenders when in dating relationships with parolees or probations when the relationship did not involve the abuse of custodial authority. These amendments address situations such as the sheriff's deputy who ended up on the registry because of having sex with his live-in girlfriend after she was arrested for a misdemeanor offense, and the corrections officer who was placed on the registry after having a consensual affair with a man she had first met when he was incarcerated and then later ran into after he was paroled.

The bills are not perfect and do not address or resolve all inequities in registering or reporting, but they represent a vast improvement over the current registry. The bills remove many persons who pose little risk of reoffending or who are not predators, provide better tracking of registered offenders through increased reporting requirements – all of which should improve the usefulness of the registry and increase public safety.

Against:

When consent is disputed in certain cases, despite a conviction, Senate Bill 188 would require a trial court to conduct a hearing before sentencing to determine whether the defendant meets exemption criteria. However, the bill puts the burden of proof on the defendant to prove the sex or sexual contact was consensual rather than on the prosecutor to prove force or coercion. According to defense attorneys, proving a "negative" (meaning no coercion) is nearly impossible. Instead, the bill should require the prosecutor to prove coercion if he or she believes the facts support such a contention.

The bills still require persons whose convictions were set aside or dismissed to register. This creates a situation where persons lawfully put "no prior convictions" on job applications only to be fired later or needlessly scrutinized when employers realize that they are on the public registry. Other states have exempted from the public registry offenses that have been expunged, set aside, or dismissed and Michigan should follow their example.

The elements of an offense for which juveniles would still have to register, even if adjudicated as a juvenile, would still leave many juveniles on the registry. This is unnecessary as the focus of juvenile court is rehabilitation, and juveniles are very receptive to rehabilitation as evidenced by a recidivism rate for juvenile sex offenders of just 5 percent. The legislation is much harsher than what SORNA requires and should be amended to fit the facts of juvenile sex offenses.

The bills require much more personal information to be included on the public website. Some offenders fear that the bills will therefore increase their risks for identity theft. It is hard enough for these people to obtain housing and employment with good credit; if jobs or housing are lost due to being targeted by information posted on the public registry, it could increase the risk that those individuals would reoffend as housing and employment are proven as playing a major role in reducing recidivism rates.

Response:

Unfortunately, the state is up against a federally-imposed deadline that is fast approaching. In addition, it is not clear at this time what types of variations can be adopted by a state and still be considered to be in "substantial compliance" with SORNA. It is better to enact the legislation in time to continue to receive the full Byrne Grant and then to tackle some of the issues raised by defense attorneys, court personnel, advocates, and those on the registry. Once the framework is approved by federal regulators, it may be easier to determine where the registry can be tweaked to address the concerns raised.

POSITIONS:

The Michigan State Police supports the bills. (3-17-11)

The Michigan Probate Judges Association testified in support of the bills. (3-17-11)

The Prosecuting Attorneys Association of Michigan indicated support for the bills. (3-17-11)

The 17th Judicial Circuit Court-Family Division indicated support for the bill if amendments were adopted to, among other things, not mandate registration for juveniles aged 14–17 for CSC crimes or gross indecency when the victim was younger than 13; eliminate gross indecency from the list of offenses for which juveniles must register; eliminate CSC 2nd and CSC 4th as offenses for which juveniles must register; eliminate the requirement that a juvenile be required to be placed back on the registry following a non-sexual offense adjudication or conviction; and allow Tier III juvenile offenders to petition sooner and more frequently than adults for removal from the registry.

Legislative History
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The Michigan Coalition Against Domestic and Sexual Violence indicated a position of neutrality on the bills. (3-17-11)

The Coalition for a Useful Registry testified that it is neutral on the bills. (3-17-11)

The ACLU of Michigan indicated a position of neutrality on the bills. (3-17-11)

The Criminal Defense Attorneys of Michigan indicated opposition to the Senate-passed version of the bill. Amendments adopted in committee did not fully address their concerns. (3-17-11)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Article

High-Risk Sex Offenders May Not Be High Risk Forever

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Abstract

This study examined the extent to which sexual offenders present an enduring risk for sexual recidivism over a 20-year follow-up period. Using an aggregated sample of 7,740 sexual offenders from 21 samples, the yearly recidivism rates were calculated using survival analysis. Overall, the risk of sexual recidivism was highest during the first few years after release, and decreased substantially the longer individuals remained sex offense-free in the community. This pattern was particularly strong for the high-risk sexual offenders (defined by Static-99R scores). Whereas the 5-year sexual recidivism rate for high-risk sex offenders was 22% from the time of release, this rate decreased to 4.2% for the offenders in the same static risk category who remained offense-free in the community for 10 years. The recidivism rates of the low-risk offenders were consistently low (1%-5%) for all time periods. The results suggest that offense history is a valid, but time-dependent, indicator of the propensity to sexually reoffend. Further research is needed to explain the substantial rate of desistance by high-risk sexual offenders.

Keywords

sex offenders, risk assessment, desistance, recidivism

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Of all people who commit serious transgressions, sexual offenders are perceived as the least likely to change. The widespread implementation of long-term social controls that uniquely apply to sexual offenders (e.g., lifetime community supervision, registration) indicates that policy makers, and the public that they represent, expect the risk posed by this population to persist almost indefinitely. The reasons that sexual offenders are treated differently from other offenders are not fully known. Contributing factors could include the particularly serious harm caused by sexual victimization (Browne & Finkelhor, 1986; Resick, 1993), and the belief that there is “no cure” for deviant sexual interests (e.g., Colorado Sex Offender Management Board, 2011). In certain public discussions, the special status of sexual offenders is sometimes justified by reference to a perceived high recidivism rate (see Ewing, 2011, p. 78).

Our belief that sexual offenders are intractable is in contrast to our openness to accept change among other offenders. Although certain restrictions and prejudices apply to all persons with a criminal record, the criminal justice systems of most Western democracies are predicated on the assumption that virtually all offenders could and should be reintegrated into society as law-abiding citizens. As articulated by Maruna and Roy (2007), the notion of personal reinvention by “knifing off” an old self is deeply rooted in the American psyche, and, quite likely, many other societies. It is an option, however, that is elusive to sexual offenders.

Sexual offenders vary in their risk for sexual recidivism. Previous meta-analyses have found that the average sexual recidivism rates of identified sexual offenders are in the 7% to 15% range after 5 to 6 years follow-up (Hanson & Morton-Bourgon, 2005; Helmus, Hanson, Thornton, Babchishin, & Harris, 2012). In contrast, sex offenders defined as high risk by the Violence Risk Scale–Sexual Offender Version (VRS-SO) have 10-year sexual recidivism rates between 56% and 70% (Beggs & Grace, 2010; Olver, Wong, Nicholaichuk, & Gordon, 2007).

Even if certain subgroups of sexual offenders can be identified as high risk, they need not be high risk forever. Risk-relevant propensities could change based on fortunate life circumstances, life choices, aging, or deliberate interventions (such as attending treatment). It is not necessary, however, to prove that an offender has changed to revise a risk assessment. New information could also be used to downgrade (or upgrade) an individual’s risk, even when the reasons for the change are uncertain. Some of this information could be potentially available at the time of the index sex offense (e.g., psychopathy scores), whereas other information is only available later. In this article, we focus on one objective indicator of post-index behavior that could be used to revise risk assessments: the length of time that individuals do not reoffend when given the opportunity to do so.

General offenders are at greatest risk for new criminal behavior immediately after release (Blumstein & Nakamura, 2009; Bushway, Nieuwebeerta, & Blokland, 2011; Howard, 2011). The longer they remain offense-free in the community, the lower their likelihood of ever again coming in contact with the criminal justice system. Blumstein and Nakamura (2009) introduced the concept of a redemption period, defined as the time at which an offender's risk has declined sufficiently that it is indistinguishable from the risk posed by men with no prior criminal record. Similarly, G. T. Harris and Rice (2007) found that for most forensic psychiatric patients, the risk for violent recidivism declined the longer they remained offense-free in the community. The reduction in risk, however, was relatively modest, and did not apply to the highest risk offenders (defined by Violence Risk Appraisal Guide [VRAG] bins of 7, 8, or 9).

Preliminary studies suggest that the overall time offense-free also applies to the risk of sexual recidivism among sexual offenders. A. J. R. Harris and Hanson (2004) compared the recidivism rates of a large sample of sexual offenders from the United States, United Kingdom, and Canada ($n = 4,724$) beginning at 4 start dates: time of release, and after 5, 10, and 15 years offense-free in the community. In their study, offense-free was defined as no new sexual or violent offenses. They found that the 5-year recidivism rates were 14.0% from time of release, compared with 7.0% after 5 years, 5.4% after 10 years, and 3.7% after 15 years offense-free. Similarly, Howard (2011) observed that the risk of sexual recidivism declined over the 4-year follow-up period in his study. Neither Howard nor A. J. R. Harris and Hanson (2004) examined whether the time-free effect applied equally to sexual offenders at different initial risk levels.

Time-free adjustments for different risk levels (Static-99 risk categories) were presented by A. J. R. Harris, Phenix, Hanson, and Thornton (2003; Appendix I). For each category of risk, the longer they remained offense-free in the community (2-10 years), the lower their recidivism rates. For example, the 5-year sexual recidivism for the Static-99 high-risk group (scores of 6+) was 38.8% from time of release but only 13.1% after 4 years offense-free. The decline, however, was not completely consistent. For certain groups, the risk after 10 years offense-free was greater than the risk after 6 years. Given the modest sample size ($n < 30$ for some cells), it was difficult to know whether the observed variation was meaningful. Apart from A. J. R. Harris et al.'s (2003) preliminary analyses by risk level, none of the previous studies have examined potential moderators of the time-free effect, such as age and victim type (rapist/child molester).

The purpose of the current study was to examine the effects of time offense-free in the community on the recidivism risk of sexual offenders. The study used an aggregate sample of 7,740 sexual offenders drawn from

21 different samples. Sexual recidivism rates were estimated from time of release, and then after 5 years and 10 years sexual offense-free in the community. Based on Static-99R scores (Helmus, Thornton, Hanson, & Babchishin, 2012), the sample was divided into three risk categories: low, moderate (or typical), and high. As well, we examined a number of other potential moderators of the time-free effect, including age at release, country of origin, victim type (rapist/child molester), and exposure to treatment.

Method

Measures

Static-99R. Static-99R is a 10-item actuarial scale that assesses the recidivism risk of adult male sex offenders. The items and scoring rules are identical to Static-99 (Hanson & Thornton, 2000; see also www.static99.org) with the exception of updated age weights (Helmus, Thornton, et al., 2012). The 10 items cover demographics, sexual criminal history (e.g., prior sex offense), and general criminal history (e.g., prior nonsexual violence).

Static-99/R are the most widely used sexual offender risk tools in mental health and corrections (Archer, Buffington-Vollum, Stredny, & Handel, 2006; Interstate Commission for Adult Offender Supervision, 2007; McGrath, Cumming, Burchard, Zeoli, & Ellerby, 2010). Static-99R has high rater reliability (interclass correlation coefficient [ICC] = .89; McGrath, Lasher, & Cumming, 2012) and a moderate ability to discriminate between sexual recidivists and non-recidivists (area under the receiver operating characteristic curve [AUC] = .69, 95% CI [.66, .72], $k = 22$, $n = 8,033$; Helmus, Hanson, et al., 2012).

Rather than use the standard four risk categories (see A. J. R. Harris et al., 2003), only three risk categories were used to maximize the sample size in each group (and increase the stability of the results). The three risk categories were created based on percentile ranks (Hanson, Lloyd, Helmus, & Thornton, 2012): Specifically, scores one standard deviation below the population mean were considered “low” (−3, −2, −1), scores one standard deviation above the mean were considered “high” (5 and higher), and the remaining scores were considered “moderate” (0, 1, 2, 3, 4).

Samples

Twenty-one samples were selected from those used by Helmus and colleagues to re-norm the Static-99/R (Helmus, 2009; Helmus, Hanson, et al.,

2012; Helmus, Thornton, et al., 2012); of the 23 samples with Static-99R data available, one was excluded because it did not have the information needed to compute survival analyses, and one was excluded because it was identified as a statistical outlier in previous research (Helmus, Hanson, et al., 2012). The data retained for analysis contained 7,740 offenders from 21 samples. A brief description of the included studies can be found in Table 1.

Overview of Analyses

The recidivism rates were estimated using life table survival analysis (Singer & Willet, 2003; Soothill & Gibbens, 1978). In this approach, the follow-up time is divided into discrete time intervals (12 months), and the proportion failing (reoffending) in each time interval is calculated. This quantity is referred to as a hazard rate, or the probability of reoffending in a specific time interval given that the individual has survived (not reoffended) up to that time.

The only type of recidivism examined in the current study was sexual recidivism. Consequently, statements concerning the length of time that individuals were “offense-free” should be interpreted as meaning that no new sexual offenses were detected during that time period.

The 95% confidence interval for the observed proportions were calculated using Wald’s method: $CI \pm 1.96 (p(1 - p)/n)^{1/2}$ (Agresti & Coull, 1998). Proportions were interpreted as different when their 95% confidence intervals did not overlap, which corresponds to a difference test of approximately $p < .01$ (Cumming & Finch, 2005).

Results

Without controlling for time at risk, the observed sexual recidivism rate for all cases was 11.9% ($n = 7,740$), 2.9% for the low-risk cases ($n = 890$), 8.5% for the moderate cases ($n = 4,858$), and 24.2% for the high-risk cases ($n = 1,992$). The average follow-up period was 8.2 years ($SD = 5.2$, range of 0.01 to 31.5).

Figure 1 plots the cumulative survival rates over time for the three risk categories. The survival curves were truncated when there were fewer than 50 offenders at the end of the at-risk period (between 20 & 25 years). As can be seen from Figure 1, the risk of reoffending was highest in the first few years following release, and declined thereafter. This pattern was particularly strong for the high-risk offenders. During the first year after release, 7% reoffended, and during the first five years after release, a total of 22% reoffended. In contrast, during the next 5 years (between 5 & 10 years), the survival curve

Table 1. Descriptive Information.

Study	n	Age M (SD)	Country	5-Year Recidivism (%)	Recidivism Criteria	Type of Sample	Mostly Treated	Release Period	Median Year of Release
Allan, Grace, Rutherford, and Hudson (2007)	492	42 (12)	New Zealand	9.8	Charges	Prison treatment	Yes	1990-2000	1994
Bartosh, Garby, Lewis, and Gray (2003)	186	38 (12)	United States	11.8	Charges	Routine correctional	—	1996	1996
Bengtson (2008)	311	33 (10)	Denmark	19.6	Charges	Forensic psychiatric	—	1978-1995	1986
Bigras (2007)	483	43 (12)	Canada	7.4	Charges	Correctional Service of Canada	Mixed	1995-2004	1999
Boer (2003)	299	41 (12)	Canada	3.7	Conviction	Correctional Service of Canada	—	1976-1994	1990
Bonta and Yessine (2005)	133	40 (10)	Canada	17.3	Conviction	Preselected high risk	Mixed	1992-2004	1999
Brouillette-Alarie and Proulx (2008)	228	36 (10)	Canada	14.2	Conviction	Prison and community treatment	—	1979-2006	1996
Cortoni and Nunes (2007)	73	42 (12)	Canada	0.0	Charges	Prison treatment	Yes	2001-2004	2003
Craissati, Bierer, and South (2008)	209	38 (12)	United Kingdom	6.7	Conviction	Community supervision	Mixed	1992-2005	1998
Eher, Rettenberger, Schilling, and Pfafflin (2009)	706	41 (12)	Austria	4.9	Conviction	European prison	—	2000-2005	2003
Epperson (2003)	177	37 (13)	United States	11.3	Charges	Routine correctional	—	1989-1998	1995
Haag (2005)	198	37 (10)	Canada	19.7	Conviction	Preselected high risk	Mixed	1995	1995

(continued)

Table 1. (continued)

Study	n	Age M (SD)	Country	5-Year Recidivism (%)	Recidivism Criteria	Type of Sample	Mostly Treated	Release Period	Median Year of Release
Hanson, Harris, Scott, and Helmus (2007)	702	42 (13)	Canada	8.7	Charges	Community supervision	—	2001-2005	2002
Hill, Habermann, Klusmann, Berner, and Briken (2008)	86	39 (11)	Germany	9.6	Conviction	Sexual homicide perpetrators	—	1971-2002	1989
Johansen (2007)	273	38 (11)	United States	5.5	Charges	Prison treatment	Yes	1994-2000	1996
Knight and Thornton (2007)	466	36 (11)	United States	23.3	Charges	Civil commitment evaluation	—	1957-1986	1970
Långström (2004)	1,278	41 (12)	Sweden	5.4	Conviction	Routine European prison	No	1993-1997	1995
Nicholaichuk (2001)	281	35 (9)	Canada	26.3	Conviction	High-intensity treatment	Yes	1983-1998	1992
Swinburne Romine, Dwyer, Mathiowetz, and Thomas (2008)	680	38 (12)	United States	8.8	Conviction	Community treatment	Mixed	1977-2007	1988
Ternowski (2004)	247	44 (13)	Canada	6.5	Charges	Prison treatment	Yes	1994-1998	1996
Wilson, Cortoni, and Vermani (2007) and Wilson, Picheca, and Prinzo (2007)	232	42 (11)	Canada	12.4	Charges	Preselected high risk	—	1994-2007	2002
Total	7,740	40 (12)		10.1				1957-2007	1996

Note. Five-year sexual recidivism rates were obtained from survival analysis. All samples had >50 cases at the beginning of the 5-year interval.

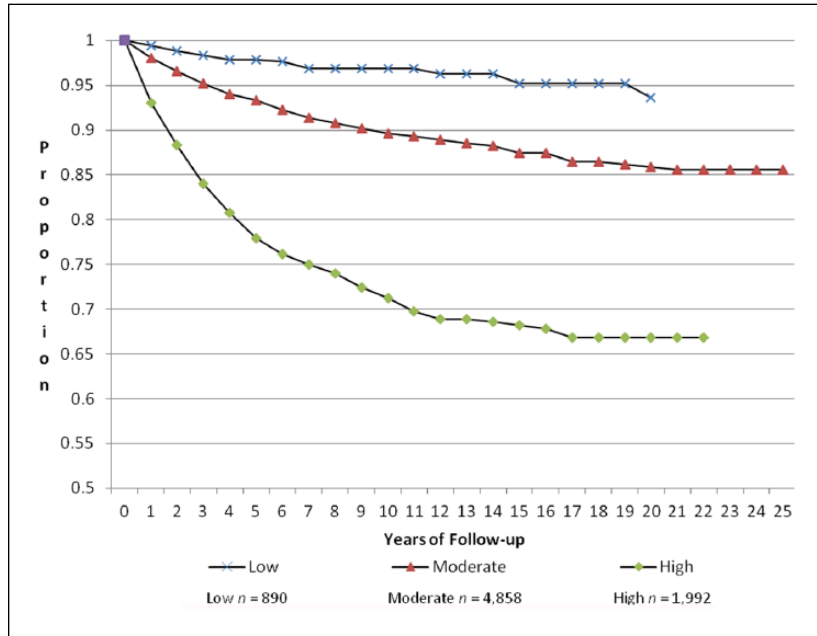


Figure 1. Time to sexual recidivism by risk level.

descended only 7% (from 78% to 71%) representing yearly rates in the 1% to 2% range. No high-risk sexual offender in this sample reoffended after 16 years offense-free (126 high-risk cases started year 17, of which 61 were followed for 5 years or more). The cumulative survival function indicated that the long-term recidivism rate for the high-risk offenders was approximately 32% starting from time of release.

Figures 2 and 3 plot the cumulative survival rates for offenders who remained sexual offense-free for 5 or 10 years, respectively. Summaries of the data from Figures 1 through 3 are presented in Table 2. The high-risk offenders still reoffended more quickly than the other groups, but the recidivism rates for all groups were substantially lower than for offenders at time of release. Whereas the 10-year sexual recidivism rate of the high-risk offenders from time of release was 28.8%, the rate declined to 12.5% for those who remained offense-free for 5 years, then 6.2% for those who remained offense-free for 10 years (see Table 2). A 10-year sexual recidivism rate of 6.2% for the high-risk group (10 years offense-free) was less than the expected rate of moderate risk offenders from time-at-release (10.4%).

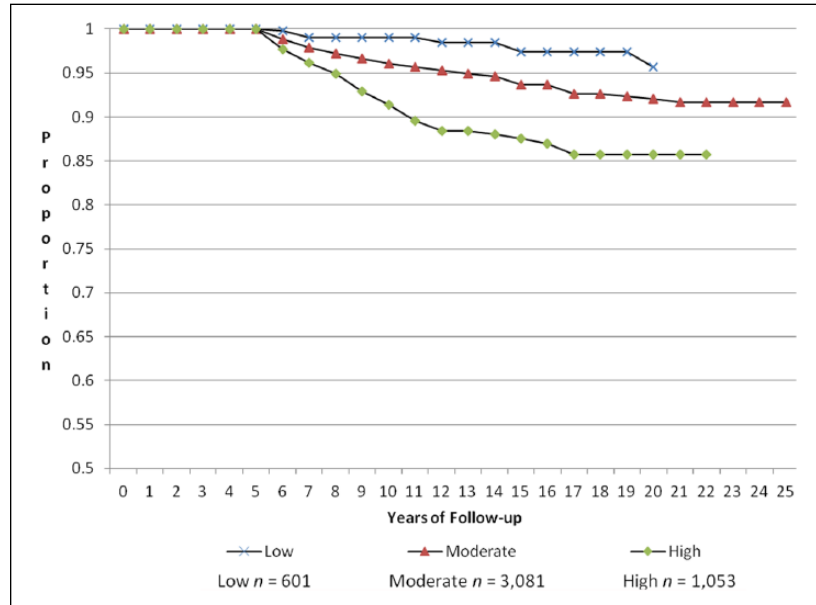


Figure 2. Time to sexual recidivism after 5 years sex offense-free in the community by risk level.

Inspection of Table 2 indicates that the expected recidivism rates were approximately cut in half for each 5 years that the offender was sexual offense-free in the community. For example, the 5-year sexual recidivism rate of the high-risk groups was 22.0% at release, 8.6% after 5 years, and 4.2% after 10 years offense-free. The same pattern applied to the moderate-risk offenders (and the full sample). In contrast, the recidivism rates for the low-risk offenders were consistently low (1%-5%), and did not change meaningfully based on years offense-free. For example, the 10-year sexual recidivism rate for the low-risk offenders was 3.1% from time of release and 3.4% for those who remained offense-free in the community for 10 years.

Table 3 compares the observed recidivism rate for the first five years with the recidivism rates for years 6 to 10 and years 11 to 15. These comparisons are reported as risk ratios, with the rates for subsequent 5-year periods divided by the rate for the first five years after release. For example, a risk ratio of 0.50 would indicate that the recidivism rate was cut in half, and a rate of 0.25 would indicate that the recidivism rate was ¼ the initial rate. All rate estimates were created from life table survival analysis.

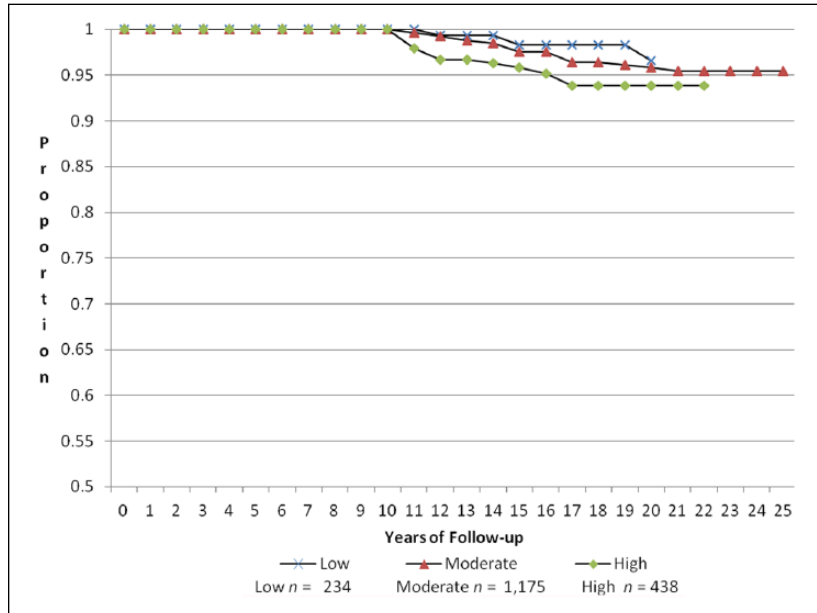


Figure 3. Time to sexual recidivism after 10 years sex offense-free in the community by risk level.

As can be seen in Table 3, the time-free effect was similar across the various subgroups examined, including those defined by age at release, treatment involvement, preselected high risk/high need, country, year of release, and victim type (adults, children, related children). As expected, there were meaningful differences in the initial recidivism rates; however, the relative risk reductions were similar across all subgroups. The risk ratios comparing the rates for years 6 to 10 with years 1 to 5 were tightly clustered between 0.33 and 0.59 (median of 0.46). The risk ratios comparing years 11 to 15 with years 1 to 5 varied between 0.07 and 0.36, with the exception of the low-risk group, which had a risk ratio of 0.78 (median of 0.28).

Discussion

The purpose of this study was to examine the extent to which high-risk sexual offenders remain high risk over time. As has been found for general offenders and violent offenders, the risk of sexual recidivism was highest in the first few years after release, and then decreased the longer they remained

Table 2. Sexual Recidivism Rates From Survival Analyses (Including Confidence Intervals).

	5-Years Follow-up			10-Years Follow-up			15-Years Follow-up			
	n at Start of Follow-up	%	95% CI	(n)	%	95% CI	(n)	%	95% CI	(n)
Complete sample										
From release	7,740	10.1	[9.4, 10.8]	(4,735)	14.2	[13.3, 15.2]	(1,847)	16.6	[15.4, 17.9]	(755)
5 Years offense-free	4,735	4.6	[3.9, 5.4]	(1,847)	7.3	[6.1, 8.5]	(755)	9.0	[7.5, 10.5]	(420)
10 Years offense-free	1,847	2.8	[1.8, 3.8]	(755)	4.6	[3.1, 6.0]	(420)	4.8	[3.3, 6.3]	(102)
Low (scores of -3 to -1)										
From release	890	2.2	[1.2, 3.2]	(601)	3.1	[1.8, 4.4]	(234)	4.7	[2.1, 7.4]	(88)
5 Years offense-free	601	0.95	[0.12, 1.8]	(234)	2.6	[0.12, 5.1]	(88)	4.3	[0.23, 8.4]	(53)
10 Years offense-free	234	1.7	[0.0, 4.1]	(88)	3.4	[0.0, 7.4]	(53)	—	—	—
Moderate (scores of 0 to 4)										
From release	4,858	6.7	[5.9, 7.4]	(3,081)	10.4	[9.3, 11.4]	(1,175)	12.6	[11.1, 14.0]	(496)
5 Years offense-free	3,081	4.0	[3.1, 4.8]	(1,175)	6.3	[4.9, 7.7]	(496)	8.0	[6.1, 9.8]	(280)
10 Years offense-free	1,175	2.4	[1.2, 3.6]	(496)	4.2	[2.4, 5.9]	(280)	4.5	[2.7, 6.4]	(69)
High (scores of 5+)										
From release	1,992	22.0	[20.1, 24.0]	(1,053)	28.8	[26.4, 31.1]	(438)	31.8	[29.0, 34.5]	(171)
5 Years offense-free	1,053	8.6	[6.6, 10.6]	(438)	12.5	[9.6, 15.3]	(171)	14.3	[10.8, 17.7]	(87)
10 Years offense-free	438	4.2	[2.0, 6.4]	(171)	6.2	[3.1, 9.3]	(87)	—	—	—

Note. "—" Indicates insufficient numbers to make useful estimates (< 50 cases per cell). Each column presents information for a specified follow-up period (i.e., 5, 10, or 15 years). The rows denote when the follow-up period starts. For example, the second row of data is for offenders in the overall sample who did not commit a sex offense in the first five years. The 5-year follow-up data for these offenders starts after their 5 years of offense-free survival in the community (i.e., it reflects recidivism rates 10 years from their initial release date).

Table 3. Relative Reductions in Sexual Recidivism Based on Comparing the Rate During the First Five Years in the Community With the 5-Year Rates Starting After 5 and 10 Offense-Free Years in the Community.

	Initial 5-Year Recidivism Rate (Years 1-5)		Relative Rate After 5 Years Offense-Free (Years 6-10)		Relative Rate After 10 Years Offense-Free (Years 11-15)	
	Sample Size at Start of Follow-up	% (n)	Risk Ratio	(n)	Risk Ratio	(n)
Complete sample	7,740	10.1 (4,735)	0.46	(1,847)	0.28	(755)
Risk level (Static-99R scores)						
Low (scores of -3 to -1)	890	2.2 (601)	0.44	(234)	0.78	(88)
Moderate (scores of 0 to 4)	4,858	6.7 (3,081)	0.59	(1,175)	0.36	(496)
High (scores of 5+)	1,992	22.0 (1,053)	0.39	(438)	0.19	(171)
Age at release						
Immature (18 to 30 years)	1,818	13.74 (1,130)	0.46	(524)	0.31	(260)
Young (30 to 50 years)	4,434	10.07 (2,719)	0.44	(1,051)	0.21	(411)
Prime of life (50+ years)	1,488	5.44 (866)	0.52	(272)	0.31	(84)
Sample type						
Routine correctional	4,040	6.73 (2,248)	0.55	(671)	—	—
Preselected treatment	1,920	8.85 (1,442)	0.46	(642)	0.32	(420)
Preselected high risk/needs	1,621	20.42 (963)	0.37	(491)	0.16	(294)
Country						
United States	1,782	12.70 (1,318)	0.33	(810)	0.15	(552)
Canada	2,875	11.10 (1,298)	0.48	(379)	0.16	(55)
Other	3,082	7.63 (2,118)	0.60	(658)	—	—

(continued)

Table 3. (continued)

Year of release (sample median)	Initial 5-Year Recidivism Rate (Years 1-5)		Relative Rate After 5 Years Offense-Free (Years 6-10)		Relative Rate After 10 Years Offense-Free (Years 11-15)		
	Sample Size at Start of Follow-up	%	(n)	Risk Ratio	(n)	Risk Ratio	(n)
1970-1995	4,268	11.38	(3,278)	0.42	(1,628)	0.24	(734)
1996-2003	3,472	8.40	(1,457)	0.47	(219)	—	
Victim type							
Adults (rape)	2,182	9.95	(1,262)	0.45	(443)	0.24	(102)
Children (all child molesters)	3,188	8.59	(1,887)	0.42	(807)	0.19	(351)
Related children (incest)	1,539	4.17	(985)	0.50	(418)	0.07	(179)

Note. In the two right-hand columns, the "rate" represents the 5-year recidivism percentage observed in either the "after 5 years" or "after 10 years" offense-free in the community (as seen in Table 2) divided by the observed recidivism rate in the first five years in the community. Using the "Moderate" Static-99R row as an example, the expected 5-year recidivism rate for the initial sample ($n = 4,858$) is 6.68%. For those who did not reoffend in the first five years ($n = 3,081$), between the 6th and 10th year of follow-up the recidivism rate for this group is 3.96%. The 5-year recidivism rate for those who survived the first five years (3.96%) is then divided by the initial 5-year recidivism rate (6.68%; $3.96/6.68 = 0.59$) which is the risk ratio included in the table. This finding indicates that the recidivism rate for men with "Moderate" Static-99R scores during the period between years 6 and 10 of follow-up has reduced to about 60% of what it was during the first five years of release. This method of calculation is used throughout Table 3.

offense-free in the community. The decline in hazard rates was greatest for sexual offenders who had been identified as high risk at time of release. For low-risk offenders, time free had little influence: their risk was consistently low (1%-5%). The same relative risk reductions were observed for subgroups categorized by age at release, treatment involvement, country, and victim type.

The current findings indicate static risk factors (e.g., prior offenses, victim characteristics) are valid, but time-dependent, markers for risk-relevant propensities. If high-risk sexual offenders do not reoffend when given the opportunity to do so, then there is clear evidence that they are not as high risk as initially perceived. The current study found that, on average, their recidivism risk was cut in half for each 5 years that they remained offense-free in the community.

Risk predictions describe lives that have yet to be fully lived; consequently, the more we know of an offender's life, the easier it is to predict the remainder. At the time of release, the best estimate of the likelihood of recidivism is the base rate for the group that the offender most closely resembles (i.e., offenders with the same risk score). Once given the opportunity to reoffend, the individuals who reoffend should be sorted into higher risk groups, and those who do not reoffend should be sorted into lower risk groups. This sorting process can result in drastic changes from the initial risk estimates. Based on the current results, for example, 22 out of 100 high-risk offenders would be expected to be charged or convicted of a new sexual offense during the 10 years following release. In contrast, the rate would be 4 out of 100 for those who survive sexual offense-free for 10 years. This low recidivism rate among the survivors suggests that their initial designation as "high-risk" sexual offenders was either incorrect, or that something has changed.

The current study did not address the reasons for the strong empirical association between years crime-free and desistance. There are several different mechanisms that could lead to this effect. The study did not directly address whether the offenders remaining offense-free were different individuals from the recidivists. Consequently, any apparent "effect" of time offense-free could be attributed to pre-existing differences between offenders. Given that criminal history variables (including Static-99R scores) are fallible indicators of risk-relevant propensities, some individuals who have a conviction for a sexual offense (or even a high Static-99R score) may never have had an enduring propensity toward sexual crime in the first place.

It is also possible that certain high-risk offenders genuinely changed. All the offenders in the current study had been convicted of at least one sexual offense, which would indicate a non-negligible risk at one time. Furthermore, it would be difficult to get a high score (5+) on Static-99R without an extended

period of engaging in sexual and general crime. Nevertheless, a substantial portion of the high-risk offenders survived throughout the complete follow-up period without any new crimes being detected. Given that it is likely that at least some of the offenders changed in a prosocial direction, further research is needed to increase our capacity to distinguish between desisters and future recidivists.

The only type of recidivism examined in the current study was sexual recidivism (as measured by charges and convictions). Consequently, it is quite likely that evaluators would have increased capacity to discriminate recidivists from non-recidivists by monitoring ongoing involvement in non-sexual crime, and by measuring indicators of commitment to prosocial goals. In particular, structured methods for evaluating sexual offenders' criminogenic needs have been demonstrated to be incremental to Static-99/R in the prediction of sexual recidivism for prison samples (Beggs & Grace, 2010; Knight & Thornton, 2007; Olver et al., 2007) and community samples (McGrath et al., 2012).

Even if the reasons for the reduced risk over time are not fully known, the current results have clear implications for the community supervision of sexual offenders. Following Andrews and Bonta's (2010) risk principle, high-risk sexual offenders should receive the most intensive service and monitoring during the early part of their community sentence. Subsequently, the intensity of interventions could decline to the level normally applied to moderate-risk individuals when offenders who were initially high risk remain offense-free for several years.

The current findings also suggest that certain long-term supervision and monitoring policies (e.g., lifetime registration) may be being applied to a substantial number of individuals with a low risk for sexual offending. Although the moral consequences of sexual offending may last forever, the current results suggest that sexual offenders who remain offense-free could eventually cross a "redemption" threshold in terms of recidivism risk, such that their current risk for a sexual crime becomes indistinguishable from the risk presented by nonsexual offenders.

Previous large sample studies have found that the likelihood of an "out of the blue" sexual offense committed by offenders with no history of sexual crime is 1% to 3%: 1.1% after 4 years (Duwe, 2012); 1.3% after 3 years (Langan, Schmitt, & Durose, 2003); 3.2% after 4.5 years (Wormith, Hogg, & Guzzo, 2012). In comparison, only 2 of 100 moderate-risk sexual offenders in the current study committed a new sexual offense during a 5-year follow-up period if they were able to remain 10 years offense-free in the community. The high-risk offenders in the current sample, however, never fully resembled nonsexual offenders. Although their recidivism rates declined

substantially when they were 10 years offense-free, the 5-year recidivism rate of the initially high-risk offenders (4.2%) was still higher than the expected rate for nonsexual offenders (1%-3%).

Limitations

The current results were predicated on the assumption that release to the community provided opportunities for offending. However, it is possible that certain forms of conditional release are sufficiently confining as to meaningfully limit opportunities (e.g., house arrest). The nature of the supervision conditions of the offenders in the current study were not fully known; however, given the typical practices in the jurisdictions for these time periods, it would be likely that the offenders had real opportunities to reoffend once released to the community.

Some evidence that supervision practices may moderate the time-free effect is provided in a recent study by Zgoba et al. (2012). This follow-up study of 1,789 adult sex offenders from four states (Minnesota, New Jersey, Florida, and South Carolina), did not find that risk declined with time in the community. Overall, there was a constant hazard rate of 1% per year for first ten years (e.g., 5% after 5 years; 10% after 10 years). The reasons for the constant hazard rate is not known, but could be related to strict supervision practices and high rates of technical breaches observed in these samples.

Another limitation is that recidivism was measured by officially recorded charges or convictions. It is well known that official records as an indicator of recidivism have high specificity (those identified are most likely guilty) but low sensitivity (many offenses are undetected). Even if the detection rate per offense is low, however, the detection rate per offender could be high if offenders commit multiple offenses. As well, the most serious offenses are those most likely to be reported to the police (Fisher, Daigle, Cullen, & Turner, 2003).

Conclusions

This study found that sexual offenders' risk of serious and persistent sexual crime decreased the longer they had been sex offense-free in the community. This pattern was particularly evident for high-risk sexual offenders, whose yearly recidivism rates declined from approximately 7% during the first calendar year, to less than 1% per year when they have been offense-free for 10 years or more. Consequently, intervention and monitoring resources should be concentrated in the first few years after release, with diminishing attention

and concern for individuals who remain offense-free for substantial periods of time.

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David Thornton obtained his PhD in psychology in the United Kingdom. About a third of his career has been in research designed to inform clinical practice, about a third of it in clinical practice (which he has tried to base on research), and about a third of it has been as an administrator trying to make systems support both research and clinical practice. Between 1990 and 2001 he led the team in Her Majesty's Prison Service responsible for developing and implementing national treatment programs for offenders. From 2001 until 2013, he was the treatment director for Wisconsin's SVP treatment program. He is currently the research director for this program and also a professor in the department of clinical psychology at the University of Bergen in Norway. He has been involved in the creation of widely used static risk assessment tools (Static-99, Risk Matrix 2000, etc.) and in the development of frameworks for evaluating psychological risk factors (the Structured Risk Assessment framework). Recent work has included research into the effects of eating salmon on executive functioning, an fMRI study of sexual sadists, and a review of the role of protective factors in sexual recidivism.