**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 63:**

**JAN. 2021 – NEW PREZ & SOS**

ICoN provides legal, treatment, activism news & practical info for incarcerated SOs. Send inquiries by CorrLinks email (iamthefallen1@yahoo.com) or to Derek Logue, 2211 Co. Rd. 400, Tobias NE 68453. Our focus is SO laws; we don’t advise or assist on appeals, sentencing issues, non-SO news, & services like people-finding, penpals & mail forwarding.

**LEGAL ROUNDUP**

Gasca v Precythe, Case # 17-cv-04149-SRB (WDMO 11/12/20): Judge passes order MO’s DOC implement over two dozen reforms related to the agency’s unconstitutional handling of parole revocation proceedings. Court found the MODOC has been intentionally failing to provide state-funded counsel to eligible parolees. The court ordered the department to ensure all eligible parolees have an atty appointed for any proceeding to move forward.

Bilal v GEO Care, No. 16-11722 (11th Cir., 11/9/20): Held depriving civilly committed man of bathroom break for 1200 mile round trip to attend a continued commitment hearing deprived Bilal of substantive due process rights under the 14th Andt.

The People ex rel. Johnson v. Superintendent, Adirondack Correctional Facility, Nos. 74 & 75 (NY Ct of Apps, 11/13/20): NY Court of Appeals (state’s highest court) upheld the practice of temporarily confining level 3s in correctional facilities, after the time they would otherwise be released to parole or post-release supervision (PRS), while they remain on a waiting list for accommodation at a shelter compliant with Executive Law § 259-c (14).

The People ex rel. McCurdy v. Warden, Westchester Co. Corr. Facility, No. 73 (NY Ct of Apps, 11/23/20) “This appeal presents us with a question of statutory interpretation. Penal Law §70.45(3) provides that, “notwithstanding any other provision of law, the board of parole may impose as a condition of post-release supervision (PRS) that for a period not exceeding 6 Mo immediately following release from the underlying term of imprisonment the person be transferred to and participate in the programs of a residential treatment facility (RTF).” Correction Law § 73 (10), in turn, authorizes the DOCCS “to use any RTF as a residence for persons who are on community supervision,” which includes those on PRS (see Correction Law § 2 [31]). The question before us is whether Correction Law § 73 (10) authorizes DOCCS to provide temporary housing in an RTF to SOs subject to the mandatory condition set forth

in the Sexual Assault Reform Act (SARA), Executive Law § 259–c (14), after the 6 Mo period specified in Penal Law § 70.45(3) has expired but before the offender on PRS has located compliant housing. We conclude that it does.”

US v Bobal, No. 19-10678 (11th Cir. 11/30/20): Upheld a computer ban for a FL registrant on lifetime supervision. “Bobal argues that the prosecutor misled the jury in her closing argument and that his computer restriction is unconstitutional in the light of Packingham v NC, 137 S. Ct. 1730 (2017). We conclude that the prosecutor’s closing argument was not improper. We also conclude that Packingham is distinguishable because Bobal’s computer restriction does not extend beyond his term of supervised release, it is tailored to his offense, and he can obtain the district court’s approval to use a computer for permissible reasons.”

Does v Swearingen, Case 1:18-cv-24145-KMW (USDC So. FL, 11/23/20): “Plaintiffs claim that application of the FL SO Statute violates 1) the federal guarantee against ex post facto laws; 2) the cruel and unusual punishment clause of the 8th Amdt; 3) procedural due process under the 14th Amdt; 4) substantive due process under the 14th Amdt; and 5) the right to privacy under the FL constitution.” However, the case was dismissed because of FL’s statute of limitations law. “Plaintiffs have sought to distinguish their claims from existing authority by arguing that this is not a ‘one-time act’ case because Plaintiffs ‘do not challenge their designation’ but rather the ‘constitutionality of 2nd-generation registration burdens and the continuing threat of imprisonment for failing to meet them.’ However, Plaintiffs’ distinction between their designation as SOs and the ensuing registration burdens does not pass muster in a statute of limitations analysis…And, even if the Court accepted Plaintiffs’ argument, it is not enough for Plaintiffs to merely state that they challenge ‘second-generation burdens and the continuing threat of imprisonment for failing to meet them.’ The FL SO Statute has been repeatedly amended, creating the alleged second-generation burdens as early as 1998. Plaintiffs have not pled—neither in their briefing, nor during the oral arguments held on Defendant’s motion to dismiss—that despite “decades of amendments” they, or ‘a reasonably prudent plaintiff, would have been unable to determine that a violation had occurred.’”

McCulley v People, 463 P.3d 254 (Colo. 2020): The en banc CO Sup Ct held that the successful completion of a deferred judgment for a sex offense, which resulted in the dismissal of that charge, does not count as a conviction for purposes of the bar to petitioning a court to discontinue requiring registration for a person who “is convicted” of more than 1 sex offense set forth in CRS § 16-22-113(3)(c) of the CO SORA.

MI: Passes new legislation in response to Does v Snyder, which invalidated the state’s SORA. The MI House passed the Senate by a 21-17 vote and the Senate by a 80-24 vote. The proposed amendments to SORA in HB 5679 are:

* Giving RCs no more than 3 days to register or report status changes in person with local law enforcement.
* Requiring RCs convicted after 7/1/2011 to report all email addresses, social media names or other forms of “internet identifiers.”
* Requiring all telephone numbers & vehicles used by the RC to be reported. Previously, they didn’t need to report those used on a less regular basis.
* Allowing email addresses, social media usernames and other identifiers to be published on a public SOR.
* Removing prohibitions for offenders from living, working or loitering near school property or “student safety zones.”
* No longer requiring an offender’s tier classification to be included on the public website. Law enforcement personnel who willfully fail to periodically report on offenders would face a penalty.

People v Bott, 2020 CO 86 (CO Sup Ct, 12/14/20): Clarified that no matter how many CP images an individual possesses, large amounts of CP merits a single charge. At issue was whether prosecutors may charge a defendant per image of a child or, in the case of Joshua Christian Bott, group images together in batches of at least 20 to pursue the longer sentence for possession of more than 20 items. El Paso County prosecutors charged Bott with 12 counts of possessing more than 20 items, covering nearly 300 images in total. Bott appealed his conviction, arguing he should have only received a single charge for possessing more than 20 images. The CO Ct of Appeals agreed with him and reversed 11 of his 12 convictions. The three-judge panel decided Bott’s multiple convictions violated the constitutional protection against double jeopardy for imposing more than one punishment for a single act. The CO Sup Ct upholds the lower Ct decision.

US v. Kokinda, 2:19-cr-00033 (NDWV 12/17/20): Released SO representing self on pre-trial bail after Court determined he was denied access to law library and his legal papers went missing since July.

**WHAT A BIDEN/ HARRIS PRESIDENCY MEANS FOR RCs**

These past four years have truly brought out the worst in American politics, and in many ways, that nightmare is over. However, a transition of power in the White House has meant little to us in the past and will likely not matter this time, either.

First, consider the fact passing tough-on-crime laws have been a bipartisan effort. Democrat President Clinton signed Megan’s Law in 1996. Republican President Bush signed the Adam Walsh Act (AWA) in 2006. Democrat President Obama signed International Megan’s Law (IML) in 2016. While Republican President Trump never got the chance to sign such sweeping legislation tied to registration laws, he signed FOSTA-SESTA — the Allow States and Victims to Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers Act. Both these laws have led to massive internet censorship and helped exacerbate the existing wave of human trafficking panic. (Of course, the 2010s were a decade of various sexual panics from campus assault scares to the #MeToo movement to the PizzaGate/ QAnon conspiracy theories.) And while people were touting Trump’s passage of the First Step Act, very few provisions benefited anyone convicted of anything but petty drug-offenses, as violent/ sex offenses were excluded from most beneficial provisions of the Act.

This brings us to Democrat President-Elect Joe Biden. In Joe Biden’s first Presidential campaign in the 1980s, he ran on a tough-on-crime campaign and had been on the Senate Judiciary Committee since 1981, helping to pass tougher sanctions on drug offenses during Republican President Reagan’s “War on Drugs.”

Biden has been instrumental in the creation of SO legislation on the federal level. Joe Biden helped create the controversial Omnibus Crime Bill of 1994, which he largely wrote and shepherded through the legislative process as chairman of the Senate Judiciary Committee. The 1994 “Biden Crime Bill” as (Biden himself has called it as recently as spring 2020) created the Jacob Wetterling Act, mandatory minimums, and mass incarceration. Biden defended his passage of the bill during his campaign, claiming it decreased crime (a claim disputed by many criminologists.)

Biden has referred to the controversial AWA as the “Biden-Hatch Bill.” (Orrin Hatch, R-UT, also was a supporter of the defunct Dateline TV series “To Catch a Predator” and the vigilante group Perverted-Justice.) During the passage of the AWA, Biden stated, “Plain and simple: This legislation will help save children's lives. Sexual predators must be tracked and parents have a right to know when these criminals are in their neighborhoods. We've done a lot to protect our kids against SOs - creating the NCMEC in 1984, enacting the Biden Crime Bill in 1994, and enacting the Amber Alert system in 2003 - but it is not enough. We must do more. The AWA will help prevent these low-life sexual predators from slipping through the cracks.”

Vice-President-Elect Kamala Harris is a former sex crimes prosecutor in CA. As DA, Harris co-sponsored a state law that would have banned SOs from social media sites. And as AG, she presided over “Operation Boo,” a mandatory curfew for all homeless SOs on Halloween. Conservative media attacked her for deciding against enforcing a 2000 foot residency restriction law for SOs on parole, which passed by popular vote as part of the state’s “Jessica’s Law. However, the AG office only decided against further enforcement of the restrictions due to In re Taylor, Docket # S206143 (CA Sup Ct, 3/2/2015), which ruled that San Diego Co’s restrictions were unconstitutional as applied. Harris knew that any further enforcement would lead to more lawsuits and decided to no longer enforce the law.

On the one hand, the powers of the President and Vice-President to pass any laws by Executive Order. (An executive order is a type of written instruction that presidents use to work their will through the executive branch of government.) But SO laws have been passed by legislation, not by Executive Orders. But if a federal SO bill is placed on a President’s desk, be it Trump’s, Biden’s, or whoever is elected in 2024 and beyond, I doubt it will get vetoed.

Part of the problem is SO laws have the support of both sides of the political aisle. Conservatives fulfil their moralistic, tough-on-crime agendas, while liberal receive their “justice” for alleged and real crime victims and the belief they are protecting the vulnerable. On a related note, Senate Majority leader Mitch McConnell has a long record of rejecting criminal justice reforms, and had to be pressured by both parties just to get the First Step Act on the floor. This is why registry reform is a hard sell. It is not impossible, since some harsh laws have been scaled back, although most reforms were merely responses to lawsuits. Still, the leader of this country has great influence over public policy, so two tough-on-crime candidates leading this nation could be bad news for registry reformists.