**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 70**

**August 2021 – State-Level Pardons, On Privacy, #EndMSOP Review**

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; I don’t advise or assist on appeals, sentencing issues, non-SO news, & services like people-finding, penpals & mail forwarding. DO NOT reply to this email; use separate email when asking me questions.

**LEGAL ROUNDUP**

*People in the Interest of TB* (2021 CO 59): CO Sup Ct ruled that lifetime registration for juvenile offenders with multiple adjudications violated the 8th Amdt ban on cruel & unusual punishment. Justice Monica Márquez wrote in her opinion, “Mandatory lifetime sex offender registration brands juveniles as irredeemably depraved based on acts committed before reaching adulthood. But a wealth of social science and jurisprudence confirms what common sense suggests: Juveniles are different. Minors have a tremendous capacity to change and reform.” On 6/24/21, Gov. Jared Polis signed HB21-1064, which automatically removes juvenile offenders from the SOR when they turn 25 or 7 years after their second offense, as long as they haven’t gone on to reoffend as an adult.

*Commonwealth v. Alexander* (2021 PA Super 134): Alexander appeals conviction on of 1 count of obscenity based on sexually explicit text messages he sent to an unidentified recipient. Alexander contends the evidence of obscenity was legally insufficient & that his text messages are statutorily and constitutionally protected communications. Because his texts do not fit the statutory definition of obscene material, we reverse the conviction and vacate the judgment of sentence. “Here, even assuming that Alexander’s texts were obscene under the Miller test, private and consensual text messages between two adults are not ‘material’ within the meaning of 18 Pa.CS 5903(b). For the purposes of the statute, ‘obscene material’ unambiguously refers to content made for public dissemination. This is clear from the definition of ‘material,’ which encompasses ‘any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing.’”

*People v Landis* (2021 COA 92): CO Ct of Appeals upheld an internet ban on an RC on SO Intensive Supervision Probation (SOISP), claiming the Packingham ruling does not apply to someone “still serving” a sentence.

*People v Betts*, Docket No. 148981 (MI Sup Ct, 7/27/21): Held MI’s SOR Act, MCL 28.721 et seq., as amended by 2011 PA 17 and 18, when applied to registrants whose criminal acts predated the enactment of the 2011 amendments, violates the constitutional prohibition on ex post facto laws, US Const, art I, § 10; Const 1963, art 1, § 10. “In conclusion, the 2011 SORA bears significant resemblance to the traditional punishments of banishment, shaming, and parole because of its limitations on residency and employment, publication of information and encouragement of social ostracism, and imposition of significant state supervision.”

*Doe v. SORB*, No. SJC-13032 (Mass. 2021): MA Sup Ct finds Due Process interests require that SOR classifications be performed at or near time of release even for individuals who waive classification hearings.

*Jones v. Cuomo*, No. 20-2174 (2nd Cir. 2021): Granted a motion for restoration of fees, finding a civilly committed person did not qualify as a “prisoner” under the PLRA and thus it was error to deduct the filing fees from his institutional account.

*Desper v. Clarke*, No. 19-7346 (4th Cir. 2021): Upheld lower court ruling that denied argument that state DOC regulations barring in-person visitation with SO’s minor daughter violated Equal Protection and Due Process.

*Powell v. Keel*, No. 28033 (SC 2021): SC Sup Ct held lifetime registration requirement, absent any opportunity for review of one’s likelihood of re-offense, violated Due Process; also held state law did permit the internet dissemination of registry information.

*Davidson v. State,* No. 2020-C-00976 (La. 2021): Davidson, a FL resident, had previously been convicted of sex offenses under Louisiana law & was given a diversionary disposition which resulted in his convictions being dismissed on successful completion of probation. Appellant sought to return to LA & filed an action for declaratory relief arguing he did not have to register under the law that existed at the time of his offense. LA Sup Ct held Davidson would be required to register if and when he decided to return to LA and that Ex Post Facto concerns were not implicated.

*State v. Johnson*, No. 98493-0 (Wash. 2021): WA Sup Ct held condition of supervision requiring pre-approval of all internet access by a supervision officer did violate the 1st Amdt.

**ON STATE PARDONS**

I’m sure after last month’s discussion on Presidential pardons (which only applies to federal cases), there are many hoping a particular state may grant a pardon. A pardon is not an expungement; your record will still show a criminal conviction. Pardons might provide registry relief but is not guarantee. This article covers pardons only; some states offer other forms of relief but that is not the focus of this piece.

First, for those who are hoping to “state shop” to find a state open to pardoning or offering an avenue of restoration of rights, few states extend the right of receiving pardons to those convicted in the federal or another state’s court. Leaning heavily on data provided by the Collateral Consequences Resource Center (CCRC), only AL, AR, & TX explicitly offer pardons to convictions from outside jurisdictions; ME, MA, NY, RI, VI, VT, WV, & WY do not explicitly exclude federal and other state convictions by state law or in the pardon application. Additionally, FL, GA, IA, KY, NM, WA, & WY offer some various degrees of “Restoration of Rights” (ROR, or sometimes referred to as a “partial pardon”) to those convicted of outside jurisdictions, which may restore specific rights like voting or firearms ownership.

ME specifically states, “Petitioners seeking a pardon for the sole purpose of having the Petitioner’s name removed from the state’s SO Registry will not be heard.” (ME does not explicitly state out-of-state or federal convictions are ineligible & does not state it on the pardon application.) Based on the pardon applications, TX & VT apparently only grant pardons for convictions from other jurisdictions as a last resort, specifically if necessary for the applicant to achieve the pardon in three jurisdiction of conviction.

Out of the 50 states, only AL, CT, GA, ID, SC, & UT relies solely on a parole board; the governor is the final authority in the remaining states, although most are assisted by a review board. Only DC, ME, OR, & WI (in addition to the federal system) lacks a statutory advisory board process. According to the CCRC, the states that offer the most frequent pardons in general (30%+ of those who apply are AL, AR, CA, CT, DE, GA, DE, GA, ID, IL, LA, NE, NV, OK, PA, SC, SD, UT, & VA. States where pardons have been rare or non-existent in the past 20 years include AK, AZ, DC, KS, MA, MI, MS, MT, NH, NJ, NC, ND, OR, RI, VT, WV.

This does not necessarily mean moving to a state that may provide a pardon to an out-of-state or federal RC is the best path to registry relief. In fact, the one state that offers pardons to those convicted on another jurisdiction, has an independent pardon board, AND is noted as frequently offering pardons was my pick for the worst state in the nation for a Registered Person to reside—Alabama! And while pardons in AL are common for many offenses (according to the CCRC, over 800 pardons a year are granted), the AL Dept of Pardons and Parole claimed a few years ago that only 2% of people convicted of sex offenses are pardoned. (Despite claims they cannot restore voting rights to RCs, I received a restoration of voting rights back in 2007 so that claim was inaccurate.) But a pardon for a federal case I AL is only good for AL. Your mileage may vary. Based on what I’ve written here, it seems that a pardon board is superior to schemes where the Governor has more power to decide fates. Governors are elected; pardon board members are not.

**PRISONER SUBMISSION: THOUGHTS ON PRIVACY & THE RC BY DAVID MCDANIEL**

I strongly believe the controversial issues of registration, supervised release, & the utilization of invasive pseudo-sciences (polygraphs, voice-stress analysis, & PPGs) & the surveillance of America’s Registered Citizens through GPS & Internet Monitoring can be summed up as a single word – PRIVACY.

In regards to our personal standing & the 14th Amdt, nowhere in the text of the US Constitution of the Constitutions of the individual states within its borders, is it implacably stated (or even remotely suggested or implied) that an individual convicted of any criminal offense, regardless of category, is to be relegated to the status of “second class citizen” with a reduced expectation of privacy. Any courts which concedes otherwise stands in error and commits a most grievous act of injustice upon the citizens of the US. See the application of “reasonable expectation of privacy” in Roe v. Wade, for example. If one has the right to an abortion under the 14th Amdt premise of “reasonable expectation of privacy,” surely the sanctions placed upon Registered Persons are more contrary to an individual’s 14th Amdt right to privacy and clearly unconstitutional.

Any local, state, or federal policy, rule, ordinance, law, statute, or code that strips, limits, reduces, or revokes an individual’s right to privacy in any, manner, shape , or form, is unconstitutional and must be repealed. An individual cannot be stripped of, lose, relinquish, or otherwise be subjected to a reduction of their individual rights and personal liberties; doing so reduces one’s constitutional rights to mere social privileges subject to the whims of governmental authority, subject to regulation, restriction, and revocation at any time (like a Driver’s License).

This is not what the framers of our beloved Bill of Rights had in mind for the citizens of our nation, but unfortunately, this is what “We the People” have allowed to happen. If we truly believe in “Liberty & Justice for All”, we must DEMAND Liberty & Justice for ALL – including the Registered Citizen. Think about it, then do something about it; write your state & federal Representatives today, because tomorrow, you may no longer have that right.

**REPORT FROM OCEAN COMMUNITY RALLY, 7/18/21, ST PAUL MN**

Members of OCEAN, a coalition of civilly committed persons and their loved ones, hosted a rally against the MSOP (Minn. SO Program), the state’s civil commitment program. About 75 people gathered first at the steps of the MN State Capitol, then at the Governor’s Residence on 7/18/2021 to demand an end to the MSOP. Speakers included family members of those incarcerated by the MSOP, activists including Derek Logue from OnceFallen.com and Vicki from Women Against Registry (WAR), and state Supreme Court candidate Michelle McDonald (who lost a close race in 2020).

This is part on an ongoing effort by OCEAN and the #EndMSOP campaign to compel the state to provide a pathway for release from civil commitment. From 1994-2012, no one had been released from the MSOP; since a lawsuit led to releases, only 14 have been fully released from MSOP, while 88 have “graduated” by death. In recent years, MSOP has faced costly litigation, and MSOP inmates and their loved ones have tried a variety of awareness campaigns including filing name changes, hunger strikes, and a “honk-in” (an event where loves ones gathered in front of the MSOP facility and honked their car horns as a show of support to the hunger strike). These actions have led to the legislature reviewing the program, but we can only wait and continue to devise public awareness campaigns to keep the conversation going.

The latter part is difficult. Although the hunger strikes led to an agreement for a series of meetings between MSOP inmates and officials, MSOP does not take the actions seriously, largely dismissing them as mere publicity stunts. And, despite every local media outlet coming to the event, none posted any stories about the event online. It seems the media has little interest in the educational part of our efforts, just the events that cause shock and outrage.