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

**Sept. 2021 – Registry Requirements when Moving to New State**

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**

*Does v Whitmer*, Case 2:16-cv-13137-RHC-DRG (ED MI, 8/4/21): There is a lot to unpack with this decision. First, a summary of the ruling from FAC, “Ex post facto application of the 2006 and 2011 amendments is DECLARED unconstitutional, the 2011 amendments are DECLARED not severable from the pre-2021 SORA, and the pre-2021 SORA is therefore DECLARED NULL AND VOID as applied to conduct that occurred before 3/24/21 to members of the ex post facto subclasses (defined as all people who are or will be subject to registration under SORA, who committed their offense or offenses requiring registration prior to 4/11/11, and who have committed no registrable offense since). The caveat to this order is, “As this litigation did not address the constitutionality of the new SORA, this injunction does not enjoin enforcement of any provision in the new SORA.” Specific provisions that cannot be prosecuted include violations of residency/proximity restrictions (which were repealed by legislation earlier this year) and registration of Internet IDs, email, phone #s, and vehicle data; the court stated those could still be prosecuted due for infractions committed before this ruling. This is NOT a repeal of the registry itself, but merely certain parts of the law that were passed after the law was created.

*Arthur v. US*, No. 19-CF-5 (DC Ct. App. 2021): Ruled that requiring registration for pre-SORNA conviction did not violate ex post facto.

*Doe v. SOMB*, No. SJC-12908 (Mass. 2021): MA Sup Ct upheld registration for non-sexual kidnapping conviction

*US v. Comer*, No. 19-4466 (4th Cir. 2021): Upheld a supervision condition of requiring permission to open a social media account, finding that as applied to Appellant’s case the condition prohibiting her from social network use without prior approval was not void for vagueness, that it did not constitute a greater deprivation of liberty than is necessary and that it was not an impermissible delegation of judicial authority. (Note: Comer was convicted of using social media to lure women into prostitution & violated probation by using social media to broker a drug deal.)

*In re Griffin*, No. 2018-001975 (SC Ct. App. 2021): Upheld a civil commitment order, finding that given the existence of other due process protections in the statutory scheme, a finding of mental competence is not a requirement for commitment.

*Gamble v. Minnesota State-Operated Services*, No. 16-cv-2720 (D. Minn. 2021): Civil committees in MSOP are not employees as defined by the Fair Labor Standards Act and thus their claims for violations for that act were to be dismissed. Furthermore, the state defendants were entitled to immunity under the Portal-to-Portal act.

*State v. Johnson*, No. 98493-0 (Wash. 2021): WA Sup Ct held requiring PO’s permission before opening social media acct was not overbroad and did not infringe on Appellant’s 1st Amdt rights when considered against the facts of his conviction (i.e., an online police entrapment operation)

*US v Cordero*, Case# 18-10837 (11th Cir 2021): Upheld a supervision condition requiring Cordero to disclose his registry status to clients of his home security installation business; lower court claims “the need to protect the public outweighs the Defendant’s potential business loss.”

*In the Matter of Registrant J.D-F*. (A-24-20) (084397): Court considered whether NJSA 2C:7-2(g), a Megan’s Law provision that bars certain RCs from applying under NJSA 2C:7-2(f) to terminate their registration, applies to a registrant who committed Megan’s Law offenses before the date on which subsection (g) became effective but was convicted and sentenced after its effective date. HELD: The relevant date for purposes of determining whether subsection (g) is effective as to a particular registrant is the date on which that registrant committed the offenses that would otherwise bar termination of registration under subsection (f). Thus, subsection (g) does not apply to registrant. The court noted, “[i]t is a fundamental principle of jurisprudence that retroactive application of new laws involves a high risk of being unfair. There is general consensus among all people that notice or warning of the rules that are to be applied to determine their affairs should be given in advance of the actions whose effects are to be judged by them. The hackneyed maxim that everyone is held to know the law, itself a principle of dubious wisdom, nevertheless presupposes that the law is at least susceptible of being known. But this is not possible as to law which has not been made.”

*Hope v. Commissioner of Indiana Department of Corrections*, No. 19-2523 (7th Cir. 2021): This is a challenge to registration requirements when convicted in a different jurisdiction for an offense that would not have been a registerable offense if convicted in IN. “SORA does not violate the right to travel because it does not expressly discriminate based on residency, as consistently required by the Supreme Court. Plaintiffs’ ex post facto claim is likewise precluded by precedent. Applying Smith v. Doe, 538 US 84 (2003), we hold that SORA is not ‘so punitive either in purpose or effect’ as to surmount IN’s nonpunitive intent for the law. But because the district court did not address whether SORA passes rational basis scrutiny under an equal protection analysis, we remand for consideration of the equal protection claim.”

**REGISTRATION WHEN MOVING FROM OTHER STATES OR FEDERAL JURISDICTIONS**

Many of my readers have federal or military convictions, so there is confusion over what registration laws they may face. The Federal system uses the Adam Walsh Act (AWA), an offense-based registry scheme, but only 18 states and 4 territories use the AWA scheme, and even among AWA states, the laws vary greatly. The feds don’t have their own registry offices or their own registry (the NSOPW is just a search engine that scans public registry info for all states at once). So as a federal prisoner, you will register by the same laws as any state registrant in the state you’ll reside in upon release.

If you are newly released or if you are planning to move to another state in the future, you must recognize that every state has different rules for registration, including whether your offense requires registration or how long you register if they have a different registry scheme than your state of conviction. What is listed below applies if you are moving to a state but were not convicted by that state’s court. In my upcoming second edition of “Your Life on The List”, this will be added to Appendix 2 as “out-of-state convictions”, meaning convictions from federal or military courts, another state, or even another country.

Please note that some states are unclear on the rules. Many do not explicitly address out-of-state offenses in terms of length and frequency of registration, so the implication is often that RCs moving to a particular state abide by the same rules as RCs convicted in that state. The information below only applies to registration duration; each state has other rules you may abide by, like differing registration information, or residency/proximity laws. This also does not potential registration relief (which I have covered in recent ICoNs):

States where every RC registers for life by default, regardless of the requirements of the state of conviction (although some may offer relief from the registry): AL, AR, CO, FL, HI, GA, IL, MT, NJ, SC, TN, WI, WY

States that honor the registration requirements from the state of conviction (example: if your state of conviction requires only 10 year registration, this state only requires 10 year registration even if their laws are different for state convictions): CT, PA, TX, UT

States that require registration for the longer of the two registration periods when there is a conflict between the states (example, if state of conviction requires 10 year registration but offense in moving state requires 25 years, you’ll register 25 years): IN, KS, LA, MN, NM

States that will classify you according to their rules (or by Federal AWA guidelines even in non-AWA compliant states), regardless of registration status from jurisdiction conviction: Am. Samoa, CA, CO, DE, DC, HI, Guam, IL, KY, ME, MS, MO, NE, NV, NH, NC, ND, No. Mariana Is., OH, OK, OR, Puerto Rico, RI, SD, USVI, VT, WI

States with unclear rules (difficult to determine guidelines, but assume you must register according to these state guidelines): AK, Amer. Samoa, AZ, MD, MI, WV

In regards to certain low level offenses, some states/territories only require registration if the offense is similar to registerable offenses in that state/territory, while some require registration for out-of-state convictions if required to register in convicting jurisdiction, even if the offense would not be registerable in the state you are moving to. Below is the breakdown:

States/territories that require registration if offense in another jurisdiction is comparable, similar, or equivalent to registerable offenses in the state/territory: AZ, AK, Am. Samoa, CO, DC, DE, FL, Guam, IL, KS, ME, MA, MN, MT, NE, NV, NJ, NM, NC, OH, OK, RI, SD, TN, TX, USVI

States/territories that will also require registration if the jurisdiction of conviction requires registration regardless of whether offense would require registration if convicted within the state: AL, AR, CT, GA, HI, ID, MD, MS, MO, NH, No. Mariana Is., OR, SC, UT, VT, VA, WA

States/territories that explicitly states in a statute require a review before determining registration status: CA, KY, NY, ND, OR, WY\* (if offense is not otherwise registrable under WY law)

States that do not mention how extra-jurisdictional registration is determined (I can only assume all are required to register): AK, IN, Puerto Rico

**QUESTION: CAN RCs POSSESS BODY ARMOR?**

Answer: For those of us worried about protection against vigilantes, the law is not entirely clear; many body armor businesses simply state that felons cannot own or use body armor. Under 18 USC § 931, anyone convicted of a “crime of violence” (as defined by 18 USC §16) in any US court cannot use or possess body armor unless the person wearing the vest is an employee who is doing so in order to perform a lawful business activity and who has obtained prior written certification from the employer. Nearly every state simply enforces the federal laws on body armor.

So far, unsuccessful court challenges to this rule include 2nd Amdt., vagueness, & interstate commerce (the latter because it can be successfully argued parts were imported from out of the state). This brings up two possible arguments, the “necessity” defense and the argument that not all SOs committed violent acts. (Neither has been tried in court from what I can gather.) More research is being conducted on this issue. Background checks are not required for purchase, so while you can easily buy one online, do so at your own risk.

**SECOND EDITION OF “YOUR LIFE ON THE LIST” COMING SOON**

I’ve been working hard on adding new info and updating current info for the second edition of “Your Life on The List.” After all the feedback I received, I have made a handful of changes, including two new chapters covering parole/supervised release and relief from the registry (it was covered in the 1st edition in other chapters but has been expanded and made into standalone chapters). Some sections were clarified as there was still some confusion on a few subjects, so new information has been added. Perhaps most importantly, as seen in this issue of the ICoN, I have summarized what happens when you move to a different state; this will be covered in the state/territory summary in the book. A few sections were moved around as well. There will be a full summary of changes sent out in a different email when the second edition is ready for sale, since there may be a few more last minute changes.