**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 77**

**MAR. 2022 – LABELS & PUNISHMENT**

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

**LEGAL ROUNDUP**

*State of Arkansas v. Darrell Lamont Scott*, 2022 Ark. 8: AR Sup Ct ruled Scott must register for non-sexually motivated offense even if person is found not guilty by reason of mental defect. Scott stole a truck that was left running & abandoned it when he discovered kids were inside, & was not accused of harming the kids in any way, but was still charged with kidnapping & false imprisonment of minors, “sex offenses when the victim is a minor & the accused is not a parent.”

*McClendon et al. v. Long et al*., No. 21-10092 (11th Cir. 2022): Ruled Butts Co Gary Long violated 1st Amdt protections against compelled gov’t speech, & was not narrowly tailored, by placing signs on the yards of RCs declaring “No Trick-or-Treat At This Residence.” Long also falsely claimed GA RCs were prohibited from participating in Halloween activities. None of the three plaintiffs have been classified as posing an increased risk of recidivism under GA law. It is important to note that two of the Plaintiffs lived with others &in those instances (both lived with their parents), the court noted the property owners can decide to keep the signs or not (of course, both Plaintiff’s parents decided not to allow the signs on their property).

*Jones et al. v. Stanford*, Case 1:20-cv-01332-RJD-JRC (ED NY 2022): The parties settled on a suit over a total internet ban on all registrants on supervision; under the agreement, NY can now ban RCs on paper if the victim of the offense was under the age of 18 at the time, was classified a Tier 3, & the internet was used to facilitate the commission of the crime.

*Doe v. Settle*, No. 20-1951 (4th Cir. Jan 28, 2022): Upheld lifetime registration even as the court acknowledges the law is stupid. “Two months after he turned 18, John Doe was caught having sex with his 14-yr-old GF. Given the facts of his arrest, Doe may well have been charged with “carnal knowledge of a child,” a Class 4 felony that prohibits sex with 13- & 14-yr-old children. But instead he was charged with & pleaded to a lower-class felony, “taking indecent liberties with children,” which only prohibits behavior like propositioning a child for sex. Doe’s plea may have gotten him a shorter prison sentence, but due to a quirk in VA law, it also led to worse treatment by VA’s SOR. Both crimes generally put an offender on the highest tier of the registry for life, but there is a narrow exception to that rule. When an offender is less than 5 years older than his victim, he may be removed from the registry in time. But that mitigating exception only applies to carnal knowledge, the crime with the higher sentencing range, & not to indecent liberties. So while Doe may have felt lucky to only be charged with indecent liberties, given the potential for a lower prison sentence, that plea ended up condemning him to worse treatment on the registry. Because of that oddity, Doe will spend the rest of his life on VA’s SOR with no hope for relief… The judiciary is not meant to revise laws because they are clumsy, unwise, or — even in some cosmic sense — unfair. In cases like this, courts are asked to make judgments about what is inside & what is outside the precise lines drawn by the Constitution. And whatever else they may be, VA’s SOR & its narrow Romeo-and-Juliet provision are constitutional.”

*US v. Englehart*, No. 21-8007 (10th Cir. 2022): 10th Cir vacated the lower court order imposing conditions of supervision prohibiting Englehart from viewing sexually explicit materials, concluding that the lower court failed to make particularized findings of compelling circumstances to justify the revised Sexual Material Prohibition & failed to give even a generalized statement of reasons to justify the Mental Health Condition, emphasizing that even where Sexual Material Prohibitions serve a rehabilitative, deterrent or penological purpose that purpose needs to be balanced against the serious 1st Amdt concerns of such a restriction.

*Ortiz v Breslin*, 595 US \_\_ (2022): Certiorari denied in NY case involving NY’s practice of detaining Lvl 3s in prison after granted conditional release, & sending those who completed sentences to a “residential treatment facility” that looks & acts like prison. (In NY, only Lvl 3s on supervision are subject to residency restrictions). It is rare, however, for SCOTUS justices to write a reprimand, but Justice Sotomayor wrote a scathing rebuke of the law, recognizing ample research that residency restrictions are counterproductive to public safety, adding, “Because of the grave importance of these issues & the frequency with which they arise, it seems only a matter of time until this Court will come to address the question presented in this case. NY should not wait for this Court to resolve the question whether a State can jail someone beyond their parole eligibility date, or even beyond their mandatory release date, solely because they cannot comply with a restrictive residency requirement. I hope that NY will choose to reevaluate its policy in a manner that gives due regard to the constitutional liberty interests of people like Ortiz.

**THE BATTLE OVER LABELS & PUNISHMENT**

The stereotypes used to denigrate those convicted of sex offenses have existed long before any of us were born. The 1931 German film “M” depicted a child killer in a trenchcoat whistling menacingly. A Nazi propaganda poster later depicted a Jew in a trenchcoat luring children with candy. In the 1950s & 1960s, the FBI distributed a poster of a man with his hat pulled down, lurking behind a tree with a bag of candy in his hands, waiting to lure a young girl. At the top it read, “Boys & Girls, color the page, memorize the rules.” The now-infamous 2003 Smith v Doe SCOTUS ruling was the result of the myth of “frightening & high” recidivism rates.

During my 16+ years of anti-registry activism, the debate over labeling those of us who have committed actions that require public inclusion on the SOR has been an ongoing debate. Within this anti-registry movement, we’ve evolved from the SO label by adding ex- or former- to that term to using terms like “Registered Person/Citizen” or “Registrant.” Some used terms like “Persons Forced to Register,” & those who find themselves attracted to minors use “Minor Attracted Persons” (MAPs) instead of the term “pedophile,” which has become a term used as among the worst insults used in American society today.

In recent months, efforts to alter this blanket “SO” label have been met with great resistance.

Last November, the Colorado SO Management Board (SOMB) initially voted to replace language only within the treatment language used within the program. (Removing the SO label in the name requires legislation.) When I testified during the SOMB hearing, I stated, “Referring to me by a label for something I did half my life ago is inappropriate & downright offensive.”

At least a third of the 22 active members of the CO SOMB are victim advocates & reps from prisons, community corrections, polygraphers, & prosecutors; only about half of the SOMB are treatment providers or have any experience in the mental health field. These victim advocates & criminal justice “stakeholders” (as they were called) vehemently opposed the changed & ultimately used their influence (& public outrage) to indefinitely table the proposed language change. These stakeholders referred to the label as part of the punishment. Ironically, openly gay CO Gov. Jared Polis also pressured the SOMB despite the fact that the LGBTQ+ community had often been the target of past legislation.

. The right-wing focused Denver Gazette wrote a vile editorial entitled, “Say it out loud — sex offender,” bashing the proposal as left-wing “woke-ism.” (In current culture, “woke” means “alert to injustice in society, especially racism” but is often used derogatorily by conservative pundits along with “cancel culture,” a conservative buzzword mocking organized efforts to change language to become less demeaning & hateful.) The OpEd ended with, “They don’t need to be coddled with kinder, gentler labels. They urgently need help — & they should be getting it behind bars, preferably while serving out their full sentences. Meanwhile, the SOMB could use a little therapy, too. Members who voted for the change should be required to repeat the words, “sex offender” aloud 100 times. Acknowledging who they truly are is the first step toward helping them. I was also personally attacked by right wing media & pundits because of my statement to the SOMB.

UT State Sen. Michael Kennedy had also proposed SB0052 last fall, which would have potentially allowed RCs to go to places like schools & parks, if they are with another adult. The bill would also have replaced the term SO with Registrant. The bill was tabled by Kennedy, who said in a statement, “I will always listen to my constituents & ensure their voices are heard while standing for law & order to ensure criminals are held accountable & victims are protected. This legislation was brought to me by concerned constituents & I allowed the bill to be made public well before the legislative session… this bill is already dead in my eyes.”

ACSOL has reported the American Law Institute (ALI) delayed the final vote over the proposed changes to the Modern Penal Code, presumably as a response to opposition by 37 AGs & USDOJ.

Victim advocates & criminal justice stakeholders have made their intentions clear—keep the label alive at all costs because it justifies continued punishment after release from a government-sanctioned sentence. These agents do NOT care about rehabilitation or about second chances. These groups have stated on many occasions the label is a part of the punishment. That is why changing “sex offender” is important.

Change is not going to come easily (I have to remind myself to use certain terms) but it begins with you. These terms are used by subscribers. But “sex offender” implies a current danger. A very small minority of those placed on registries will commit a subsequent offense, but most of you will not. But many are too willing to use a term that implies you’ll never be cured, will always be doomed to reoffend, & society needs a public shaming tool to keep you in check forever. My readers need to discuss the importance of language & labels. Only when we change ourselves can we think about changing the minds of others.

Years ago, I received a strange attempt at a compliment from someone I didn’t know very well. That woman said, “You don’t act like an SO.” What does that even mean? I know the stereotypes, so perhaps that’s what she meant. But even if the compliment fell flat, I hope this means she reconsidered what it means to be a person forced to register. We are not a homogeneous group; we are diverse in backgrounds, ideas, & education level. Unfortunately, it will take a long time to change societal views but consider the fact that other disenfranchised communities spent decades fighting to become recognized as persons deserving of rights & dignity.

**RED LIGHT CAMERAS TARGET RCs**

Raymond Schultz left the Albuquerque PD in 2013 under multiple scandals (excessive force, police-led shootings, & no-bid contracts with a taser company) & scrutiny by the media & the USDOJ. Schultz is now the chief for Memorial Villages (a suburb of Houston TX) & is hawking red light cameras, as told by KHOU:

“In addition to stolen vehicles & missing persons, the Memorial Villages Police Department is alerted each time a RSO drives past their cameras. ‘For the month of December, I had 5 SOs come through the Villages,’ Schultz said. Because the chief said there are no RSOs living in the villages – he took a closer look. ‘I was getting hits, but only on Sundays,’ he said. ‘It was someone coming here to go to church.’ The chief said he doesn’t have a problem with that, but he said if there’s ever an issue at a school or a daycare, the plate numbers collected by the cameras could be useful.”

FAC readers reported many have been pulled over for Driving While Registered, so this may be a big problem as red-light cameras proliferate.