**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 80**

**JUNE 2022 – MORE TREATMENT NEWS, CAN AN RC BE A LANDLORD?**

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, & services like people-finding, penpals & mail forwarding.

**LEGAL ROUNDUP**

*Gamble v. Minnesota State-Operated Services*, Case No. 21-2626 (8th Cir 2022): Civil detainees who participate in voluntary Vocational Work Program in the MSOP sued state defendants that they failed to pay minimum wage under the Fair Labor Standards Act. Detainees are paid $10 per hour but the state withholds up to 50% of the wages for the cost of their care. The district court concluded the detainees were not employees and alternatively that defendants were immune under the Portal-to-Portal Act. Sexually dangerous civil detainees are not state employees, there is not bargained-for exchange of labor for mutual economic gain; detainees are under the control and supervision of the detention facility; the purpose of the program is to provide treatment; the program does not generate profits; the detainees have their basic needs met by the state, including medical care and meals. The detainees' arguments that used of their labor creates unfair competition is not convincing, as the program does not provide goods or services to private entities and program must consult with the labor market to ensure the activities are in the best interests of the stakeholders. Because the detainees are not employees, we need not decide if defendants are immune.

*Alvarez v. Annucci*, No. 50 SSM 35 (NY 2022): Petitioner pleaded guilty to sexual abuse of a child, was sentenced to three years’ imprisonment and seven years’ post-release supervision, and was ultimately adjudicated as a level one offender under SORA. As a result, the Board of Parole imposed various conditions on Petitioner including Sexual Assault Reform Act (“SARA”) residency restrictions. Due to these restrictions, after serving a full prison term, Petitioner was not placed in a residence shelter in his city of choice and was instead transferred to two correctional facilities, referred to as “residential treatment facilities.” Petitioner brought a CPLR Article 78 proceeding seeking to compel the Acting Commissioner of New York State Department of Corrections and Community Supervision to release him. Petitioner argued that he cannot lawfully be kept confined for a failure to secure SARA-compliant housing because SARA’s residency restrictions do not apply to him since he is neither on conditional release nor subject to parole. The Court of Appeals affirmed the lower court decisions that Petitioner has not established a clear legal right to relief and held that residency restrictions of SARA applied equally to eligible offenders released on parole, conditionally released, or subject to period of post-release supervision.

*Powers v. Doll*, et al., No. 20-MR-424 (Ill. Ct. App. 2022): The Court affirmed the decision of the circuit court holding that an individual presently committed under the SVP Commitment Act may not file suit for legal malpractice without first alleging that he is not, in fact, a “sexually violent person.” In so holding the Court stated that “just as a criminal defendant cannot state a claim for legal malpractice without asserting actual innocence…an SVP must plead that he is not an SVP in order to assert a claim for damages arising from legal malpractice in the underlying SVP proceedings.”

*Fields v. State of Missouri*, No.WD84506 (Mo. Ct. App. 2022): Appellant testified in an evidentiary hearing that his plea counsel never informed him that, following the completion of his sentence, his conviction could result in a lifetime civil commitment to the MO Dept of Health as an SVP Appellant stated that he would not have accepted the plea offer had he known about the possibility of future civil commitment. The Court of Appeals affirmed the judgment of the motion court, concluding that unlike the risk of deportation assessed in *Padilla v. Kentucky*, 559 U.S. 356 (2010), civil commitment under Missouri’s SVP statute is a collateral consequence of a guilty plea as opposed to a presumptively mandatory consequence. For that reason, the Court declined to conclude that plea counsel was obligated to inform Appellant of this potential consequence. The Court also deferred to the motion court’s determination that Appellant’s testimony about the involuntary nature of his plea was not credible, and held that Appellant failed to establish the prejudice necessary to obtain postconviction relief for ineffective assistance of counsel.

*Cornelio v Connecticut*, No. 20-4106-cv (2nd Cir 2022): Reinstated a lawsuit against CT’s state law requiring disclosure of online identity to registry officials, stating the law likely violates the right to free & anonymous speech. The Court noted, “the disclosure requirement burdens a registrant's ‘ability and willingness to speak on the Internet’… The disclosure requirement targets ‘conduct with a significant expressive element"—the use of communications identifiers—and therefore "has the inevitable effect of singling out those engaged in expressive activity’… the disclosure requirement prevents a registrant from speaking anonymously… The disclosure requirement does not avoid First Amendment scrutiny because the identifiers are disclosed to the government rather than to the general public.”

*Doe v. Wilson et al.,* Civil Action No. 3:21-04108-MGL (USDC SC 4/22/22): SC settles lawsuit allowing removal of consensual adult sodomy cases to be removed from the state’s SOR to conform with the SCOTUS ruling in *Lawrence v. Texas*, 539 U.S. 588 (2003).

*ACSOL joins Pacific Legal Foundation in challenge to SORNA regulations*: The Alliance for Constitutional Sex Offense Laws (ACSOL) today signed a Memorandum of Understanding (MOU) with the Pacific Legal Foundation (PLF) to challenge the federal SORNA regulations that became effective in January 2022. As a signatory to the MOU, ACSOL has agreed to serve as a named plaintiff in the lawsuit which will be filed in the Central district of CA. The remaining plaintiff is an RC who resides in CA and will be known as “John Doe.” The lawsuit will include a request for preliminary injunction which, if granted by the court, would stop enforcement of the SORNA regulations. The lawsuit will also request a final judgment declaring the SORNA regulations to be invalid. PLF is a nonprofit, public interest law foundation established to advance the principles of limited government and individual rights. The organization has won 14 of the 16 cases filed in SCOTUS on a variety of topics. The anticipated lawsuit will argue that the SORNA regulations are an exercise of an unconstitutional delegation of legislative authority, conflicts with relevant statutes and violates both the 1st Amendment as well as the 5th Amdt’s due process clause. It is anticipated that the lawsuit will be filed in May 2022.

*Brown v. Maher*, No. 21-CV-1018 (N.D.N.Y. 2022): District Court granting Plaintiff a preliminary injunction where Plaintiff's right to live with his wife and step-children was prohibited by parole conditions preventing him from contacting any person under the age of eighteen, concluding that Plaintiff's right to live with his wife was fundamental, that he was likely to succeed on the merits of his §1983 due process claim, that he faced a likelihood of irreparable harm, and that the balance of equities and public interest favored issuance of a preliminary injunction.

**TO TREAT OR NOT TO TREAT?**

In response to the article in the April 2022 ICoN (#78), a few prisoners wrote me with dissenting opinions. One concern revolves around typical prison politics; in such treatment programs, some prisoners may try currying favor by targeting others in the group. As one prisoner wrote, the “BOP wants hardened criminals to pyscho-analyze the other hardened criminals in the Group---instead of doing their 'yab', I think and fear!”

The other chief concern regards whether there is truly any benefit to going to treatment before release. That’s up to you. If your motivation is simply to shave time off your sentence or reduce post-release treatment time, then the answer is murky.

One prison posed this question to the PO for the US Dist Ct for the N Dist of AL. This was the response:

“I received correspondence from you requesting information on the SOMP program and how it might impact your conditions of supervised release. Participation in SOMP is highly encouraged and any treatment records could be provided to and reviewed by a SO treatment provider during your term of supervised release. Participation in SOMP will not exclude you from the requirement to participate in SO treatment during your term of supervised release. However, any progress that you make an SOMP would be considered by your treatment provider and may result in you progressing from the primary phase of treatment to the maintenance phase more expeditiously than if you have not participated in SOMP. Participation in SOMP will not necessarily lessen the overall time that you are a treatment, but it may impact the frequency of treatment. Treatment considerations are made through the cooperation of the probation officer, treatment provider, and polygraph examiner. I hope that this assist you in your consideration of participation and any and all programs offered during your custodial sentence.”

The prisoner who sent me the letter added, “BUT, reading between the lines one should receive credit for the time spent in the SOMP in the outside course. As she said, one should move quicker from the Intake phase to the Treatment phase. I think the over-all time required in the outside course may not be affected BUT the amount of attendances in the course should be fewer so instead of going to class for 1.5 years w/ 50 attendances it may be 1.5 years w/ 25 attendances!!”

Please note this applies specifically to the federal system, but some states may have similar programs. As my focus is on post-release issues, I cannot elaborate any deeper on this issue. If you feel you need treatment then do it; if you don’t feel you don’t need treatment, don’t. That’s your choice.

**CAN AN RC BE A LANDLORD?**

QUESTION: What laws are in place that may prevent an RC from investing in real estate, such as an apartment building dedicated to RCs? I have dreamt of building a transitional living center where by RCs have custom amenities. Such amenities would include; an on-site treatment center, a library, a recreational room, and perhaps even a custom ISP that could monitor communications via proxy. Each r/c would have a motel style room or efficiency apartment to live in.

ANSWER: At this time I don't know any specific laws that would prevent us from being a landlord although some other restrictions may cause some difficulties in our ability to act as a landlord.

For example, there are some states that restrict where a registrant can work (in a few states, you can't work too close to a school) but if you rented out a house you own in a restriction zone, then you had to perform maintenance on it, then that may be a problem. Some states have laws that prohibit RCs from performing certain service jobs (such as realtor or home inspector), so it might prevent an RC from fixing up a rental property that is currently occupied. This can be rectified by hiring others to make repairs in the occupied rental property. Some states will prohibit you from working in any place designated as assisted living centers or nursing homes so you would be unable to set up a home for this purpose. You might not be allowed to rent out property if you're placed on supervised release as POs can make discretionary rules.

Now, some of this may be speculation since renting out property is a gray area. It may or may not be considered self-employment depending on a number of factors that vary by state. However, other registrants have worked as landlords so it is possible. One notable example is landlord Randy Young. Young owns six houses near Dade City (and many properties in a handful of counties in FL) that comply with local ordinance and rents individual rooms to RCs. Each house fits three people, Young told the Tampa Bay Times in 2016.