**Informational Corrlinks Newsletter: The Legal Roundups**

Note: This is a dump of the “Legal Roundup” sections from the ICoN since it was introduced in 2015. Some of these cases may have been subsequently overturned on appeal and thus are no longer useful. I’m not updating the cases in this info dump to reflect changes in case numbers or inclusion in law journals. Still, many have requested this information so I’ve created this for those who wish to do further legal research.

The Sex Offense Litigation and Policy Resource Center at Mitchell Hamline School of Law (St. Paul MN) collects and disseminates information about cases on issues of sexual violence policy, and facilitates communication, sharing, and the development of strategies among the lawyers, advocates and academics who seek a more sensible and effective public policy on sexual violence prevention. It has a searchable database for those seeking further research. You can access that database here:

https://mitchellhamline.edu/sex-offense-litigation-policy/

**ICON LEGAL ROUNDUP 2015**

GRADY v. NC, 575 U. S. \_ (2015): US Sup Ct has ruled that lifetime GPS constitutes a 4th Amendment search, but has remanded the case to return to the lower court to determine whether requiring GPS constitutes an unreasonable search. The Court stated “The State’s program is plainly designed to obtain information. And since it does so by physically intruding on a subject’s body, it effects a Fourth Amendment search. That conclusion, however, does not decide the ultimate question of the program’s constitutionality.”

CA: After the CA Sup Ct struck down residency restriction laws against parolees in San Diego Co. as overbroad, the CDCR has announced they are only going to enforce the 2000 foot restrictions against “high-risk” offenders and parolees with victims under age 14, while residency restrictions against other parolees will be determined on a case-by-case basis.

MI (Doe v Snyder et al., Case No. 12-11194 (E. MI 2015)) U.S. Dist. Judge Robert Cleland struck down parts of Michigan’s current SOR law as vague and confusing. Residency restrictions, in-person registration of all phone numbers, emails and internet identifiers “routinely used by the individual,” and the definition of loitering were all considered vague. Not even the police were sure of the requirements of the law. The state is expected to overhaul the existing law.

OH: The OH Sup Ct heard oral arguments for State v. Blankenship (Case# 2014-0363) to determine if the label “sex offender” constitutes “cruel and unusual punishment.” This decision will be the first major court case to determine whether the SO label is a form of punishment.

AL: McGuire v. Strange, Case No. 2:11-CV-1027-WKW(WO), (US Dist. Ct, MD AL, Northern Div, 2 Feb. 2015): The US Dist Ct ruled Alabama’s SOR law is unconstitutional in limited circumstances. Specifically, the rules requiring homeless registrants and traveling registrants to register with two different agencies constitutes punishment and thus cannot be applied retroactively.

Karsjens et al. v. Jesson et al., CASE 0:11-cv-03659-DWF-JJK (US Dist Ct MN 2015): US Dist Ct of MN judge Donovan Frank, in a 76-page ruling, has ruled the MN-MSOP “civil commitment” program has been declared unconstitutional as currently practiced. “The Court concludes that Minnesota’s civil commitment statutes and sex offender program do not pass constitutional scrutiny. The overwhelming evidence at trial established that Minnesota’s civil commitment scheme is a punitive system that segregates and indefinitely detains a class of potentially dangerous individuals without the safeguards of the criminal justice system.”

This decision does not mean that all those committed will be immediately released. The current state facilities "will not be immediately closed," Frank wrote. However, he made it clear he wanted to work quickly, ordering a pre-hearing conference for Aug. 10 "to fashion suitable remedies."

Keep in mind this is not a wholesale condemnation of “civil commitment,” but how MN has used the program. No one has EVER been released from the MN-MSOP in 20 years. U. of Maryland law professor Amanda Pustilnik, in an article at Cato Unbound stated, “The SVP regime is preventative detention, not civil commitment. Calling it ‘civil commitment’ is an affront to medical ethics and damages the public’s understanding of a limited but important way of helping the people with severe and acute mental health issues… genuine civil commitment: (1) is a form of emergency medical treatment; (2) that is strictly limited in duration; and (3) must be for the patient’s benefit. SVP detention turns real civil commitment on its head. Perpetrating a sexual offense is not a mental illness and may not be a sign of mental illness.”

MN-MSOP does not offer the type of treatment a person truly needs. Instead, MN-MSOP has been a front for the indefinite detention of those the state feels MIGHT reoffend, much like Guantanamo Bay was a facility for the indefinite detention of suspected terrorists.

Dan Gustafson, a lawyer for the plaintiffs in the suit, stated in the NY Times, “Minnesota treated those committed essentially as prisoners. He said there was no annual process for determining whether someone had improved to the point where they no longer were dangerous; the treatment itself and the required sequence of steps for moving toward release shifted repeatedly; and some of those being held could well have functioned in less restrictive settings.” The ICoN believes that not every SO poses an equal risk, nor do all SOs benefit from the same treatment.

IL : 14CF1076 People v. Mark Minnis (Circuit Court Order) – The McLean Co Cir Ct judge, citing an earlier federal decision in NE, declared requiring internet identifier registration for SOs violated the 1st Amendment protection on free speech. The IL Atty Gen’s Office plans to ask the state Sup Ct to review the decision.

TN: Mock v. UT-Chattanooga, No. 14-1687-II (Davidson Co. Chancery Ct) –The controversial “Affirmative consent” standards for consenting to sex have taken the nation by storm, but suffered a blow by a recent ruling. The court sided with Corey Mock, expelled from UTC after a college tribunal forced him to disprove a rape accusation against him, shifting the burden of proof from the accuser to the accused to prove innocence, violating due process.

IN: Brian Valenti, et al., v. Indiana Secretary of State, Indiana Election Commission, Indiana State Police and Blackford County Prosecutor, Case 1:15-cv-1304 was filed in the U.S. District Court for the Southern District of Indiana, Indianapolis Division, on August 18, 2015. This lawsuit was filed in response to a recently passed law prohibiting Indiana registrants for voting at polling locations placed in school buildings (IN Code § 35-42-4-14).

NV: A dozen “John Does” are suing the state over Nevada Revised Statute 213.1243, which allows the state to impose lifetime supervision. According to the lawsuit, the Parole Board has relied on an unconstitutional Nevada law to place movement and residency restrictions on convicted sex offenders who are under its supervision. In some cases, those restrictions have prevented the plaintiffs from attending religious services or associating with family.

MO: Orden v. Schafer, 4:09-cv-00971-AGF (US Dist Ct E Mo., E Div. 2015) – In yet another case regarding civil commitment, U.S. District Judge Audrey G. Fleissig ruled that MO’s civil commitment program violated Due Process. It is not a ruling against civil commitment per se, but how it is practiced in MO. “The overwhelming evidence at trial — much of which came from Defendants’ own experts — did establish that the SORTS civil commitment program suffers from systemic failures regarding risk assessment and release that have resulted in the continued confinement of individuals who no longer meet the criteria for commitment, in violation of the Due Process Clause… “The Constitution does not allow (Missouri officials) to impose lifetime detention on individuals who have completed their prison sentences and who no longer pose a danger to the public, no matter how heinous their past conduct.”

MA: JOHN DOE et al. vs. CITY OF LYNN, No. SJC-11822 (MA Sup Jd Ct, Aug. 28, 2015) – MA’s highest court ruled that municipalities cannot write their own residency restriction laws because state law trumps local laws (the state legislature has the “final authority” in deciding the laws governing SOs.) Justice Geraldine S. Hines likened the laws to historical atrocities, stating, “Except for the incarceration of persons under the criminal law and the civil commitment of mentally ill or dangerous persons, the days are long since past when whole communities of persons, such as Native Americans and Japanese-Americans, may be lawfully banished from our midst.” The decision did not, however, address the constitutionality of the residency law. This case is also important as the case was a joint effort from a number of Anti-Registry Movement groups and even a couple of victim advocate groups.

**LEGAL ROUNDUP 2016**

NC: State v. Packingham, No. 366PA13 (NC Sup Ct 2015): Reversed an appellate decision what had declared social media bans for SOs were unconstitutional. The Majority ruled NC’s ban on social networking did not violate Free Speech, but merely “regulated conduct,” which may have merely an “incidental effect” on speech, which therefore receives only the lightest judicial scrutiny, and is thus permitted under the Constitution. This is obviously a bad decision.

CA: A year after Caron City declared “war” on registered citizens and vowed to fight for the right to ban registrants from public places like city parks, Carson City repealed their anti-loitering ordinance. The state appeals court had already declared such laws invalid because state law preempts local ordinances. Earlier this year, members of the CA legislature attempted to pass a law allowing municipalities to make up their own rules for so-called “child safety zones” but was rejected.

FL: Bad news out of Miami, as once again a federal district court has rejected arguments against Miami-Dade Co’s 2500 foot residency restriction law named after Lauren Book, daughter of powerful and corrupt lobbyist Ron Book. Miami was home to the homeless camp under the bridge, which made headlines from 2007-2010; the homeless SOs were simply moved from under the bridge to parking lots and empty warehouses. The ACLU plans to appeal.

MN: The 8th U.S. Circuit Ct of Appeals has granted the state a stay of execution of an order from a US Dist Ct which would force changes to MN’s “civil commitment” program. The MN-MSOP has yet to make any changes to allow the release of inmates in the program.

VA: The legislature is trying for a third time to pass a bill to remove state employer information from the registry. If VA's SB 11 passes, they will become the third state since 2012 (the other two being Kansas and Texas) to remove employer info from the registry. In 2010 it was SB635 which passed the Virginia Senate Committee and then the Full-Chamber 40-0 but was then “killed” by the House Militia, Police and Safety Sub-Committee of 6. Then in 2012 it was HB413 which made it onto a hearing docket for the House Courts of Justice Criminal Sub-committee where the 8 members “Laid it on the table” instead of casting an official vote, to “kill” it. As of December 2015, 2 states (HI, NV) list employer street name & zip code; 10 states (LA, MA, MI, NY, SC, MD, MI, MO, OH, TN) list employer address; 6 states (AK, IN, NM, DE, ME, VA) list employer name and address; 1 state (AL) lists employer city and occupation, 2 states (PA, WV) list employer city, county, and zip; and 29 states do not list employer information.

NC: Doe v. Cooper, No. 1:13CV711 (M.D.N.C. Dec. 7, 2015) The plaintiffs, all subject to G.S. 14-208.18, brought their claims under 42 U.S.C. § 1983, alleging that the law is unconstitutionally overbroad, vague, and violative of their procedural due process rights. The crux of their complaint is that they aren’t sure where they can and can’t go. They have been told by various prosecutors, law enforcement officers, and probation officers that, among other things, they may not attend a G-rated movie, eat at a fast food restaurant that has an attached play area, go to an office supply store that is within 300 feet of a fast food restaurant that has a play area, or go to church. Judge Beaty wrote that the law gives no guidance as to how “regularly” a program must occur or how many minors must gather to trigger the prohibition. Concluding that the provision cannot stand, the court enjoined every prosecutor in the state from enforcing it against the plaintiffs and all other persons similarly situated. The court also ruled the law may be overbroad, not narrowly tailored.

NJ: The NJ Appellate Ct ruled in Jan. the use of polygraphs in the treatment of SOs is legal, but they can’t use them as evidence for punishment hearings. The court called the tests a "therapeutic tool" when used to help treat sex offenders but "incompetent evidence" when used to punish them. In addition to barring New Jersey from using the test results to impose sanctions or increased restrictions on monitored sex offenders, the appeals court ordered the parole board to beef up regulations protecting offenders from incriminating themselves. The parole board's use of the tests to increase restrictions on monitored sex offenders - such as travel bans or restrictions on where a sex offender an live - "clashes with our judiciary's systemic aversion to the evidential use of polygraphs," Judge Jack Sabatino wrote for the court.

MI: An SO suing over the state’s SO registry and residence restrictions will not be able to file as a “John Doe,” despite being harassed and assaulted by vigilantes. The man & his mother, evicted from their apartment after a neighbor apparently noted his registry status, found hot grease on their car while packing up to leave. He was also assaulted, and had "Bitch" written on the windshield, the lawsuit said. U.S. District Judge Robert Jonker rejected the motion, stating litigation is presumed to be a held in public, "especially when matters of public concern are at issue,” and, “the Court cannot guarantee any litigant freedom from expressions of opposing views – even strongly worded expressions of opposition.”

CA: The state Assembly reintroduced AB 201, which would have reinstituted the power of municipalities to pass “presence restrictions” (also known as anti-loitering or “child safety zones”), but the bill died in committee, mostly the result of Anti-Registry activists. During the Committee hearing, a total of 16 people spoke in opposition to AB 201 and only three people spoke in its favor. Those speaking in opposition to the bill included representatives from the CA SO Management Board, the ACLU, and California Attorneys for Criminal Justice. Those speaking in favor of the bill were representatives from the Orange County District Attorney’s office, the Orange County Board of Supervisors and the City of Carson.

Belleau v. Wall, No. 15‐3225 (7th Cir Jan. 29, 2016): Requiring an SO to wear a GPS monitoring anklet 24 hours a day for life does not violate the 4th Amdt, reversing a ruling from WI. The Court claims, “It is because of the need for such balancing that persons convicted of crimes, especially very serious crimes such as sexual offenses against minors, and especially very serious crimes that have high rates of recidivism such as sex crimes, have a diminished reasonable constitutionally protected expectation of privacy.”

BOP: Recently it was reported to me that Otisville was planning a blanket proposal to prevent ALL SOs from accessing Corrlinks. It was now reported to me that thanks to the inmates who reported to me the Corrlinks policies in your institution, Otisville officials backed off the blanket proposal & will only block access on a case-by-case basis. One small victory for us!

Feds: HR515, aka, International Megan’s Law, was passed unanimously into law. Under IML, passports of SOs with a minor victim with have a “unique identifier” (think 1930s Germany) placed on the passports, & failing to disclose full travel details (including flight plan, where you’ll be staying, who you are traveling with) within 21 days is punishable by 10 years in prison.

WI- Gov. Scott Walker has signed a bill that creates uniform restrictions on where SOs can live. Municipalities currently use local ordinances to create zones where SOs can't live. The bill creates statewide regulations barring violent SOs from living within 1,500 feet of any school, day care, youth center, church or public park. SOs who committed crimes against children can't live next door to children. Sex offenders who committed crimes against an elderly or disabled person can't live within 1,500 feet of a nursing home or other assisted living facility. Local ordinances will generally remain enforceable.

IN—The IN Sup Ct ruled that two men had to register as SOs after moving from other states, saying the requirement did not violate the Indiana Constitution’s prohibition against ex post facto laws [Sidney Lamour Tyson v State of Indiana, 45S03-1509-CR-528, and In State of Indiana v Scott Zerbe, 49S05-1509-MI-529]

WA—The State Court of Appeals has determined that Steven Powell doesn't have to disclose his sexual history as part of SO treatment because doing so would violate the 5th Amdt. [State v. Powell, No. 46957-0-II (WA Ct. of Appls, Div II, March 29, 2016)]

AL—A federal judge has ruled that Ricky Martin of Triumph Church in Clanton can proceed with a lawsuit against the state against a Chilton Co. anti-clustering law passed specifically to shut down his ministry, which provided one of the state’s only transitional homes.

CA—California RSOL has filed litigation in US Dist Ct to attempt to stop the enforcement of HR515, “International Megan’s law,” which will put a “unique identifier” on the passports of certain RSOs. This case is in the early stages so no action has been taken at this time.

Fed—Nichols v. US, Docket # 15-5238: SORNA, which makes it a federal crime for certain SOs to “knowingly fai[l] to register or update a registration,” and requires sex offenders who move to another state to, “no later than 3 business days after each change of name, residence, employment, or student status,” inform in person at least one jurisdiction “where the offender resides, . . . is an employee, and . . . is a student,” did not require Lester Nichols to update his registration in KS once he left the state and moved to the Philippines. Note, SCOTUS ruled that “International Megan’s Law” had changed the registration requirements and had rendered this a moot point so this decision won’t impact the requirement to register when moving out of the USA.

US v Von Behren (10th Cir, May 11, 2016): This Ct ruled that requiring one to answer specific questions during a polygraph examination violates the 5th Amdt protection against self-incrimination. “The Fifth Amendment is triggered when a statement would provide a ‘lead’ or ‘a link in the chain of evidence

needed to prosecute the’ speaker, see, e.g., United States v. Powe, 591 F.2d 833, 845 n.36 (D.C. Cir. 1978), and affirmative answers to these questions would do just that. If there were presently an investigation looking into the commission of a sex crime, and if Mr. Von Behren were a suspect, an affirmative answer to these questions would allow the police to focus the investigation on him. Moreover, investigators would certainly look at Mr. Von Behren differently if they were made aware that he had physically forced someone to engage in sexual relations with him.”

AZ: The AZ Court of Appeals ruled that accused SOs could not be automatically denied bail. In a split opinion, the majority said it may very well be appropriate to keep individuals who are charged with having sexual contact with minors behind bars until trial. But Judge Peter Swann said simply being charged with a crime — even if there is evidence of the person’s guilt — is legally insufficient. He said a judge can deny bail only if prosecutors can also show that no conditions of release can be imposed to ensure protection of others… Swann said the U.S. Supreme Court in 1987 ruled that said categorical denial of bail is unconstitutional. Instead, the high court said prosecutors must first prove by clear and convincing evidence that no release conditions will reasonably assure the safety of any other person and the community. By contrast, the judge said, the law and state constitutional provisions here require that defendants must be denied bail “upon nothing more than a sufficient showing that they likely committed the offense, without addressing the availability of release conditions that could assure the safety of victims and the community.” [Source: AZ Capitol Times]

NV: An amended lawsuit was filed in Clark County District Court on behalf of unnamed plaintiffs identified as Does 1-17, arguing AB-579 is vague & overbroad in its application, & that the state is applying the law unequally & has no procedures for people to challenge their inclusion on the registry. The Nevada Legislative passed the law in 2007 to comply with the federal Adam Walsh Child Protection and Safety Act, but it has been on hold for years pending legal challenges. In January, the Nevada Supreme Court said implementation could proceed. [Source: Las Vegas Review Journal]

FL: [Snow v. State, Fla: Dist. Court of Appeals, 1st Dist. 2016] A criminal defendant charged with “traveling to meet a minor” and “solicitation of a minor” will have one of his charges vacated after the state Supreme Court, [see State v. Shelly, 176 So. 3d 914 (Fla. 2015)] ruled double jeopardy applies when someone is convicted of separate charges arising out of the same conduct, and remanded the case back to the 1st Dist Ct of Appeals.

WA: State v. KHH, No. 91934-8 (WA Sup Ct, Jun 23, 2016): The state’s highest court ruled that forcing a teen to write a letter of apology to his alleged victim does not violate the teen’s 1st Amendment rights. The Court stated, “One must face the consequences of a conviction, which often include the loss or lessening of constitutional rights. There is a whole range of constitutional rights that can be affected by a conviction, not the least of which is a loss of liberty. There may be a limitation on the degree to which First Amendment rights may be restricted for those convicted of crimes, but an apology letter condition does not approach that limit.”

NY: Matter of State of New York v. Dennis K., No. 106 Anthony N., No. 107 Richard TT., No. 108 – The NY Court of Appeals, in a 5-1 decision, affirmed in two cases that the presence of a “borderline personality disorder” may be considered as enhancing the risk an offender will commit more SO crimes if treatment is not imposed by courts or, in more extreme cases, offenders are not held in secure mental facilities. Borderline personality disorder, both respondents argued, is not recognized as a condition inherent in sexual disorders and cannot be used as a civil confinement prerequisite. But Judge Eugene Pigott Jr. wrote that Article 10 allows for the recognition that a condition like borderline personality disorder, though not technically a "sexual disorder," may reflect a mental condition that "affects the emotional, cognitive, or volitional capacity of a person that predisposes him or her to the commission of conduct constituting a sex offense."

IN: Richard J. McVey v. State of Indiana, 73A04-1601-CR-12 (IN Ct of Appeals, July 1, 2016) – The court ruled, “Richard J. McVey was convicted of Class C felony child molesting for molesting his half-sister in 2001. After the molestation, the legislature amended the Indiana Sex Offender Registration Act to require lifetime registration for offenders like McVey, as opposed to the previous requirement of ten years. It also enacted the unlawful-entry statute, which makes it a crime for a person who is required to register as a sex offender and who is convicted of child molesting to enter school property. McVey contends that both enactments, as applied to him, violate the Indiana Constitution’s prohibition against ex post facto laws. We agree with McVey as to the lifetime-registration requirement but not as to the unlawful-entry statute.” McVey was attempting to challenge the “unlawful entry” statute because his CDL training school is considered “school grounds” under this law, as well as reduce his lifetime registration to the original sentence of ten years.

NV: McNeill v. State of Nevada, No. 66697 (132 Nev. Advance Op. 54, July 28, 2016): Appellant was a convicted SO on lifetime supervision. When Appellant had been on lifetime supervision for five years, the State Board of Parole Commissioners imposed additional conditions that were not enumerated in Nev. Rev. Stat. 213.1243. The State later filed a complaint charging Appellant with violation of conditions of lifetime supervision and prohibited acts by a SO. The jury found Appellant guilty of violating the conditions of his lifetime supervision. On appeal, Appellant argued that section 213.1243 does not delegate authority to the Board to impose additional supervision conditions not enumerated in the statute, and therefore, he did not violate the statute even if he violated the additional conditions imposed by the Board. The Supreme Court reversed, holding (1) the plain language of section 213.1243 does not grant the Board authority to impose additional conditions, and this omission was intentional; and (2) because the Board-imposed conditions were unlawful and any Board violations cannot be separated from any section 213.1243 violations, the case must be remanded for a new trial. [Summary from Justia.com]

OH: State v. Mole, Slip Opinion No. 2016-Ohio-5124 : The court ruled 4-3 that the law arbitrarily added police to a ban on professionals having sex with minors that includes people with authority over children such as teachers or coaches. The government can't punish a class of professionals like police without making a connection between their job and the crime, Chief Justice Maureen O'Connor said, writing for the majority. The law overturned by the court prohibited police officers from having sex with minors if the offenders were more than two years older than the victim.

IN: Brian Valenti v. Indiana Secretary of State, et al., 1:15-cv-1304 : A registered SO’s lawsuit against the Indiana Secretary of State and other parties will proceed, a federal judge ruled Thursday, denying the defendants’ motion to dismiss. Blackford County resident Brian Valenti filed the federal suit alleging his First and 14th Amendment rights were violated because he cannot vote at the local polling place located in the Blackford County High School auxiliary gym. Valenti’s suit challenges I.C. 35-42-4-14 that prohibits “serious SOs” from entering school property. The law took effect in 2015, and Valenti meets the definition of serious SO under the statute.

PA: The PA Sup Ct has declared unconstitutional a requirement that all SOs who were juveniles at the time of their crimes must stay on the so-called Megans Law Registry for life, adding it was also unnecessary for public safety. In a 5-1 ruling hailed by juvenile justice advocates, the court upheld a 2013 decision by a York County judge striking down portions of the SO Registration and Notification Act, known as SORNA. We conclude that SORNAs registration requirements violate juvenile offenders due process rights, Justice Max Baer wrote in his opinion.

NY: Gallagher v. Sullivan, 9:15-cv-01327-- A judge has declined to ease some restrictions placed on the activities of an SO in a secure psychiatric unit, which the plaintiff said are inhibiting his ability to prepare a suit challenging the terms of his confinement; 14 SOs are involved in a suit arguing their First, Fourth, Fifth and Fourteen Amendment rights are routinely violated through forced confinement in Central New York Psychiatric Center in Marcy, contending their activities are restricted more harshly than they were in state prison, despite their movement into a post-prison setting that theoretically is not supposed to continue or enhance punishment for their sex offenses. One plaintiff was denied the right to buy a computer and printer to use for the lawsuit. Assistant Attorney General Mark Mitchell said courts have long recognized that inmates in prisons and offenders confined in SO treatment program such as New York's give up many of their constitutional rights.

AL: Martin v. Houston, CASE # 2:14-CV-905-WKW [WO] (M.D. Alabama 2016) – The Court has ruled that the plaintiff’s lawsuit can proceed under the “Religious Land Use and Institutionalized Persons Act of 2000” (RLUIPA), 42 U.S.C. §§ 2000cc, et seq., protect individuals, houses of worship, and other religious institutions from discrimination in zoning and landmarking laws (for information on RLUIPA's institutionalized persons provisions, please refer to the Civil Rights Division's Special Litigation Section). The case regards a Chilton Co. ordinance that prohibits SOs from living within 300 feet of each other. Pastor Ricky Martin was forced to shut down a transitional program as a result of this ordinance and has been suing the state since 2014.

MN: State v. Moser, A15-2017 (MN Ct of Appeals, August 8, 2016): By eliminating a mistake-of-age defense and imposing strict liability, MN statutes Sec. 609.352, subdivisions 2 & 3(a) (2014), as applied to solicitation that occurs over the Internet, involves no face-to-face contact between the solicitor and the child, and where the child represents to the solicitor that he or she is 16 or older, violates substantive due process. Defendants charged with violating MN Statutes section 609.352, subdivision 2, solely over the Internet and without any face-to-face contact, must be given an opportunity to raise a mistake-of-age affirmative defense if the child represents to the defendant that he or she is 16 or older.

PA: A.S. v. Pa. State Police, \_\_ A.3d \_\_ (Pa. 2016) and Commonwealth of Pennsylvania vs. Lutz-Morrison, \_ A. 3d \_ (Pa. 2016): In a pair of same-day decisions, the PA Sup Ct ruled offenders who commit some kinds of sex crimes, such as possessing child pornography, cannot be made to register with state police for life unless they commit at least one more sex crime after their initial convictions. In other words, they have to become recidivists to qualify for the lifetime registration. State police have been requiring such first-time offenders to register for life if they have multiple sex crime convictions stemming from just one criminal incident. The dispute before the Supreme Court hinged on the interpretation of the wording of a state law that requires lifetime registration for some sex offenders who receive "two or more convictions." A Supreme Court majority…concluded the wording means sex offenders in some cases must be convicted of such crimes for two separate incidents to trigger the lifetime registration mandate.

MI: Does v. Snyder, No. 15-1536 (6th Cir. Aug. 25, 2016): MI's amendments to its SO Registration Act (SORA) "imposes punishment" and thus the state violates the US Constitution when applying these SORA provisions retroactively. “…[w]hat began in 1994 as a non-public registry maintained solely for law enforcement use . . . has grown into a byzantine code governing in minute detail the lives of the state’s sex offenders… In reaching this conclusion, we are mindful that, as Smith makes clear, states are free to pass retroactive sex-offender registry laws and that those challenging an ostensibly non-punitive civil law must show by the “clearest proof” that the statute in fact inflicts punishment. But difficult is not the same as impossible. Nor should Smith be understood as writing a blank check to states to do whatever they please in this arena.”

AZ- Clark v. Ryan, No. 15-15531 (9th Cir. 2016): Affirming the district court’s denial of a habeas corpus petition, the panel held that the Arizona Court of Appeals’ decision that Arizona’s modern SO registration statute is not an ex post facto law is neither contrary to, nor an unreasonable application of, the Supreme Court’s decision in Smith v. Doe I, 538 U.S. 84 (2003). This case involved a man failing to register. [note: in my opinion, this case doesn’t conflict with the recent 6th circuit case as this case challenged the registry itself, which is upheld by Smith v Doe, whereas the 6th ruled on HOW the registry was administered, not the registry itself.]

NC- A new law takes effect on 9/1 “to offenders whose victims were under the age of 18 and to offenders who have been found to present a danger to minors” banning these SOs from places “children congregate,” like libraries, arcades, amusement parks, recreation areas, swimming pools and county fairs. Two people were already arrested for attending a fair under this law. A similar NC law was voided for vagueness under a previous court decision.

FL- A Palm Beach Co court petition filed Aug. 31 claims a hospice patient with end-stage Alzheimer's disease has been threatened with arrest if he does not move out of Heartland of Boynton Beach, a nursing home near a local preschool. The City of Boynton Beach purportedly issued a notice to the SO and the hospice accusing them of violating an ordinance that prohibits SOs from living within 2,500 feet of a school, daycare center or playground. The pleading insists that a criminal prosecution of the SO would have to show he made a "purposeful decision" to maintain residency within the restricted area. His Alzheimer's disease renders him "completely incapable of having the requisite intent or mens rea necessary" to prove as much, the filing states. He was removed from the MA SO list in 2011, according to the recently filed petition.

MN- State of Minnesota v. Moser, 2016 Minn. App. LEXIS 59 (Aug. 8, 2016): Court ruled that the “strict liability” approach could not be used for internet solicitation cases where there was no face-to-face contact between the solicitor and the child, and where the child had represented to the solicitor that she was 16 or older (i.e., above the age of consent). Mistake of age (a girl lying about her age) has traditionally not been allowed as a defense.

DC, Congress: Rep. Ted Poe of Texas introduced H.R.5970 - To amend title 18, United States Code, to permit sentencing judges in child sex trafficking cases to order the Attorney General to publicize the name and photograph of the convicted defendants, and for other purposes. This is part of the text. SECTION 1. Short title. This Act may be cited as the “Shame Act of 2016”. SEC. 2. Publication of information pertaining to persons convicted in connection with child sex trafficking. Section 1591 of title 18, United States Code, is amended by adding at the end the following: “(f) The court may order the Attorney General to publish publicly the name and photograph of any person convicted under this section.” [Note: No action was taken on this bill]

FL- Smith v FL (No. SC15-782, FL Sup Ct 2016): held that use of a file sharing program DOES constitute “transmission” of CP under Florida Statute 847.0137. Smith argued that because he never directly sent files to an individual, but instead someone took files from his computer through the use of a file sharing program, he should not be convicted of “transmission”. In his argument, he pointed out that the Fifth District Court of Appeals previously ruled that transmission by method of a file sharing program did not constitute “transmission”. Smith’s District (the Fourth) ruled otherwise and the conflict between the two districts brought the case to the Florida Supreme Court. The Florida Supreme Court reasoned that use of a file-sharing program is “the electronic equivalent of placing a locked box filled with pornographic photographs on his front porch, telling a “friend” that there is something on the front porch he might want to see, and sending the friend a spare key to the locked box.”

OR- State of Oregon v Davidson, S063387 (OR Sup Ct 2016): Ruled sentencing a man to life in prison for public masturbation under the 3 strikes rule was disproportionate to his crime.

CA- A lawsuit challenging a law that requires a marker to be placed in the passports of people convicted of SOs against children is premature because the marker provision is not yet in effect, a federal judge said in a ruling dismissing the suit. U.S. District Court Judge Phyllis Hamilton said Friday it was also not clear yet who would be subject to the passport identifier and what form the identifier would take. This just means we have to wait for the mark to be placed before a lawsuit could proceed.

ID- Does v Wasden, (US Dist Ct ID, 1:16-CV-429), Complaint filed Sept. 22, 2016: 104 plaintiffs come from across the state and the country, convicted in the 1980s and 1990s and say amendments since then to Idaho’s SO registry laws amount to retroactive punishment, which is unconstitutional.

AL: The state legislature quietly repealed the 2014 “anti-clustering” ordinance during the special session at the end of summer. The ordinance was created to shut down a halfway house in the area by forcing SOs to live at least 500 feet from each other, but the program sued the state, and after a recent court ruling allowing the suit to continue, the state backed down.

PA: Commonwealth v. Martinez (PA Sup Ct, J-29A-2016), Grace (J-29B-2016), & Shower (J-29A-2016)- The three cases were consolidated into a single PA Sup Ct decision, ruling that registration requirements can’t be increased for people who entered into plea agreements before subsequent versions of the registry schemes were passed. The opinion, which can be found here says that the three plaintiffs who all plead guilty before the enactment of the State’s SORNA (in 2012) could not be held to its more stringent requirements. Two of the plaintiff’s had registration periods of 10 years (which were then changed to life) and one of the plaintiffs plead to an offense that didn’t even require registration (but the offense was added to the list of offenses requiring registration).

IL: People v. Minnis, Case No. 119563 [IL Sup Ct, Oct. 2016]: Ruled a law requiring SOs to register “all e-mail addresses, instant messaging identities, chat room identities and other [i]nternet communications identities that the sex offender uses or plans to use, all Uniform Resource Locators (URLs) registered or used by the SO, all blogs and other [i]nternet sites maintained by the SO or to which the SO has uploaded any content or posted any messages or information” did not violate 1st Amdt right to free & anonymous speech.

FL- Hughes v. State, Case No. 5D14-4516 (5th Dist Ct Appeals FL, Oct. 2016)- defendant was convicted & sentenced for “soliciting” and “traveling” to meet a minor arising from an incident where he received a response from a detective posing as a 14 yr old girl, to a “casual encounters” listing on Craigslist and then subsequently traveling to meet her; the Court found Appellant’s dual convictions for solicitation and traveling after solicitation violate the prohibition against double jeopardy, rejecting the govt’s argument that “solicitation” took place on one day and the “traveling” happened the next day & should therefore be separate events.

TN- State of TN v. Thomas Whited, E2013-02523-SC-R11-CD (TN Sup Ct, Nov. 7, 2016)- Reversed and remanded conviction of a man who secretly videotaped teens undressing because “The language chosen by the General Assembly does not include any reference to the defendant's subjective purpose of sexual arousal or gratification…In other words, TN's Legislature did not make the offense of production of CP pornography turn on whether the maker or viewer of an image was sexually aroused." Thus, they could only judge on whether the images themselves were lascivious in nature, i.e., engaged in sexual activity, which they were not.

UT: Bennett v Bigelow, Case No. 20140680 (UT Sup Ct., Nov. 25, 2016)- A registrant does not have to reveal his complete sexual history as a condition of his parole, the Utah Supreme Court has ruled. B.B. sued the Utah Department of Corrections after his parole was revoked when he was ordered to disclose his sexual history — including any uncharged sex crimes — as a part of sex offender treatment. The Court said in a ruling released Saturday night that it violates his Fifth Amendment constitutional right against self-incrimination. “We hold that a threat to revoke a defendant’s parole constitutes compulsion for purposes of the Fifth Amendment,” Utah Supreme Court Chief Justice Matthew Durrant wrote.

4th Cir.: Doe v. Cooper, Case No. 16-6026 & 16-1596 (4th Cir., Nov. 30, 2016)- A federal appeals court has upheld lower court rulings that found portions of North Carolina law restricting where RSOs can gather are unconstitutional because they're overly broad or vague. A three-judge panel of the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, on Wednesday affirmed the federal lower court decisions, which the state appealed. One provision successfully challenged by several SOs who sued in 2013 prohibited them from going to places where minors gather for educational, recreation or social programs. The other restriction prevented them from being within 300 feet of certain locations where children are cared for or supervised. The legislature last summer approved replacements for the challenged laws while on appeal. The appeals court didn't consider the amended laws.

**LEGAL ROUNDUP 2017**

US v. Brown, No. CR-13-1706 (2nd Cir, Dec 6, 2016): Earlier this year, the same court (with the same judges) ruled a 60 year sentence for 3 counts of producing CP & 2 counts of possession was excessive & remanded the sentence to the lower court; for reasons unknown, the 2nd Cir. Reversed its own June ruling and declared the sentence is “substantively reasonable.”. The majority found that “given the seriousness of the crimes involved here, a 60 year sentence – which was below the Guidelines range – is within the realm of punishments that this Court has upheld as reasonable for production of child pornography, even considering that there may be, as [the defendant] argues, ‘more serious’ crimes such as intentional murder.”

IN- Brian Valenti et al. v. Hartford City, Indiana, 1:15-cv-63 (USDC IN/ND, Dec. 1, 2016): Ruled a 2008 Hartford City ordinance that restricted registered sex offenders from entering or loitering within 300 feet of broadly defined “child safety zones” is unconstitutionally vague as well as violating ex post facto. Hartford City's ordinance defined loitering near a child safety zone as "standing [or] sitting idly, whether or not the person is in a vehicle or remaining in or around an area." In 2015 the city council changed that definition to "remaining in a place or circulating around a place under circumstances that would warrant a reasonable person to believe that the primary purpose or effect of the behavior is to enable a SO to satisfy an unlawful sexual desire, or to locate, lure, or harass a potential victim." U.S. District Judge Theresa Springmann concluded that both definitions violate the 14th Amendment's guarantee of due process, since they fail to give people fair notice of when they are violating the law and invite arbitrary enforcement. Springmann also found that the ordinance's punitive effect outweighed its regulatory purpose, meaning that even if it were crystal clear it could not constitutionally be applied to SOs convicted before it was passed.

IN- State of Indiana v. Douglas Woods Johnston, 49A02-1606-CR-1222 (IN Ct of App, Dec 2016): A man who has been convicted of multiple sex offenses must keep his name on the IN SOR for now after the Indiana Ct of Appeals found he failed to present a proper petition to keep his name off of the registry. Douglas Johnston filed a motion in October 2015 requesting his removal from the IN SOR, writing that he had been found guilty but mentally ill in 2006, when he was convicted for the first time of child molesting as a Class C felony. Johnston further wrote that he was eligible for relief because he was 59 years old and was willing to get continued treatment for his mental illness.

During the hearing in January 2016, Johnston’s counsel told the Marion Superior Ct that Johnston had also been convicted of child molesting in 1997 and had been arrested in 2013, though that charge was dropped. Johnston then testified that he had been getting treatment for his mental illness and told the court that he faced hardships when trying to comply with the IN SORA. The state objected that the petition was inadequate and argued that Johnston had failed to meet his burden of proof. But the trial court ultimately found that Johnston should be required to register only until July 28, 2016, 10 years after his conviction. The IN DoC filed a motion to intervene and motion to correct error, but failed to appear before the Marion Superior Ct, so the motion to correct error was denied.

The state appealed, and in a Tuesday opinion a panel of the IN Ct of Appeals unanimously reversed the decision to deny the motion to correct error. In the majority opinion, Judge Mark Bailey wrote that there were allegations that Johnston’s most recent victim was 6 years old, that Johnston had been classified as a SVP and that state statute in effect in 2006 required that, “A sex or violent offender who is convicted of at least two unrelated offenses … is required to register for life.” “Thus, by all indications, Johnston was subject to life-time reporting requirements when he petitioned for relief,” Bailey wrote.

Johnston’s petition for relief came under IN Code sec. 11-8-8-22, which provides a mechanism for relief forSOs if, among other things, the petition is submitted under penalties of perjury and lists each criminal conviction. But Johnston’s petition was not submitted under penalties of perjury and one of his convictions was omitted, Bailey wrote. Further, Bailey wrote that there was no indication that notice of the hearing was sent to the Department of Corrections or the Attorney General, as required by state statute. Finally, the appellate judge pointed out that Johnston’s counsel had not argued that he had satisfied his statutory burden of proof. Instead, Johnston argued that he had been “implicitly” found to be subjected to an ex post facto punishment, another provision of the statute. But Bailey wrote that Johnston had not presented an ex post facto punishment argument and instead made an appeal for compassionate relief. Thus, the appellate panel found that Johnston had failed to produce a proper statutory-based petition for relief, so the Marion Superior Ct should have granted the state’s request for dismissal. The case was remanded with instructions to dismiss the matter with prejudice, subject to further proceedings if Johnston filed a new petition. [From TheIndianaLawyer.com]

Karsjens v. Piper, Case No. 15-3485 (8th Cir, Jan. 3, 2017): U.S. Court of Appeals panel reversed a ruling that had declared Minnesota's SO “civil commitment” program unconstitutional, putting the matter back in the hands of a lower court and easing pressure on lawmakers to make major changes. The ruling overturned an order by federal Judge Donovan Frank that threatened to upend the program. Frank ripped the program in his June 2015 ruling, saying the "stark reality is that there is something very wrong with this state's method of dealing with SOs." The 8th Circuit panel ruled “We conclude that the class plaintiffs have failed to demonstrate that any of the … arguable shortcomings in the MSOP were egregious, malicious, or sadistic as is necessary to meet the conscience-shocking standard.” The plaintiffs plan to appeal to the full 8th Circuit Panel or even SCOTUS. [Note: SCOTUS denied certiorari in this case in Sept. 2017]

US v Schmidt, No. 16-6567 (4th Cir., Jan. 4, 2017): The case involves prosecuting a man who allegedly involved a sex crime while not even being on American soil. This Court determined Congress intended to give prosecutors more power to pursue U.S. citizens who molest children in foreign countries. “[The PROTECT Act of 2003] was aimed in part at the ‘ugly American,’ whose sexual exploits and visitation to sexual guesthouses abroad have helped to stimulate the sex trade in young children,” wrote Judge J. Harvie Wilkinson III, who was joined by Judges G. Steven Agee and Pamela A. Harris.

State of NC v. Moir, No. 49PA14 (NC Sup Ct, Dec. 21, 2016): This confusing court case ruled that a registrant who was eligible for relief from the registry under state law was actually NOT eligible relief under the federal Adam Walsh Act, even though NC is NOT an AWA compliant state. Section 14-208.12A reads, “The court may grant the relief if… (2) The requested relief complies with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to the termination of a registration requirement or required to be met as a condition for the receipt of federal funds by the State.” “Any other” was apparently interpreted by the Court to include the AWA despite NC not adopting AWA.

Pennsylvania v. A.S, Penn Superior Ct, Case No. 1366 WDA 2015 (Jan. 9, 2017): The Penn Superior Ct questioned whether a veteran Allegheny Co judge is meting out overly harsh sentences in sex assault cases in a strongly worded opinion ordering that a defendant be resentenced. In the 36-page opinion last week, the appellate panel suggested that Common Pleas Judge Donna Jo McDaniel, who presides over SO court, has shown a pattern in those types of cases. “We note our awareness of a possible emerging pattern in this particular sentencing court of routinely sentencing SOs in the aggravated sentencing range and/or outside the guidelines,” wrote Superior Ct President Judge Emeritus John T. Bender. “The appearance of bias, and doubt regarding a court’s commitment to individualized sentencing, both rationally emerge when such a pattern of routine deviation from sentencing norms is demonstrated by adequate evidence.”

Simpson/ Martinez v Arizona, No. CR-16-0227-PR (AZ Sup Ct, Feb. 9, 2017): Applying the United States Supreme Court’s decision in United States v. Salerno, 481 U.S. 739 (1987), we hold that the provisions of Arizona Constitution article 2, section 22(A)(1) and A.R.S. § 13-3961(A)(3), prohibiting bail for defendants accused of sexual conduct with a minor under age fifteen where proof is evident and the presumption great that they committed such crimes, violate the 14th Amendment’s due process guarantee.

People v. Pepitone, 2017 IL App (3d) 140627: Struck down a law banning registered citizens from public parks. “We hold that section 11-9.4-1(b) is facially unconstitutional because it is not reasonably related to its goal of protecting the public, especially children, from individuals fitting the definition of a child sex offender or a sexual predator…Nor is it drafted in such a way as to effect that goal without arbitrarily stripping a wide swath of innocent conduct and rights he has as a citizen and taxpayer from a person who has paid the penalty for his crime… Section 11-9.4-1(b) is an outright ban on all individuals with certain sex offense convictions from public park buildings and public park property without any requirement that anyone—particularly a child—be actually, or even probably, present.” The appeals panel’s majority found that the law “criminalizes substantial amounts of innocent conduct” and “makes no attempt to assess the dangerousness of a particular individual.”

WV- State of West Virginia v. J.E and State of West Virginia v. Z.M., Case Nos. 16-0677 & 16-0723 (WV Sup Ct 2017): juveniles judged delinquents for sex offenses don't have to register as sex offenders when they turn 18. The registration requirement applies to any person convicted of sex offenses. The court says under West Virginia law those delinquency adjudications are not convictions. The Supreme Court also ruled that the names of juveniles convicted of first- or second-degree sex assault can be disclosed publicly. Those crimes are sexual intercourse or intrusion by someone over age 14 with someone younger than 12 and the same act without consent "by forcible compulsion." The ruling concerned two separate cases where a teenager, each identified only by his initials in Tuesday's ruling, abused a younger child.

Rodriguez v. Florida, FL 5th Dist Ct of Appeal, Case No. 5D15-3622: An appeals court has ruled that an Orange County sex crimes prosecutor was so far out of bounds in what he told jurors about a defendant that the trial violated the man’s constitutional rights. It also referred the case to the Florida Bar for possible disciplinary action against Assistant State Attorney David Fear. Fear called Rodriguez a pedophile seven times. “The flood of improper prosecutorial comments in closing argument in this case was deep, wide, and unrelenting; it made a mockery of the constitutional guarantee of a fair trial for the Appellant [Rodriguez],” the court wrote in an opinion released Friday. The appeals court also found fault with the defense attorney and the trial judge.

Does v Coupe, No. 458, 2016 (DE sup Ct, Mar 3, 2017)—The state Supreme Court rejected an ACLU challenge of a law requiring GPS monitoring of some SOs who have been released from prison and are on probation. After hearing arguments Wednesday, the court issued a two-sentence order Friday upholding a Chancery Court decision in favor of the state. The SOs complained that wearing GPS monitors was embarrassing, sometimes painful and an invasion of privacy. The ACLU said the monitoring amounted to an unconstitutional search under the 4th Amendment. The Supreme Court previously ruled that such GPS monitoring was not punitive, meaning the 2007 law could be applied retroactively.

US v. Jay Michaud, Case # 3:15-cr-05351-RJB (US Dist Ct E. WA, March 17, 2017): The government moved to dismiss without prejudice the indictment of a man accussed of accessing a CP site run by the feds; because the gov’t is unwillimg to disclose information related to the FBI’s use of “Network Investigative Technique” (NIT) which allowed them to access IP addresses even on users that utilized anonymous web browser services like Tor, the gov’t moved to dismiss the case rather than give away their secrets.

People vs. Garcia, S218197 (CA Sup Ct, March 20, 2017): Concluded polygraphs as part of treatment under CA law does not violate 5th Amdt because polygraph responses could not be used in a court of law. They also rejected the argument that a limited waiver of therapist-patient privilege violates privacy rights and is overbroad.

J.I. v. New Jersey, Case No. (A-29-15) (076442) [NJ Sup Ct, Mar 21, 2017]: Overturned a blanket ban on internet access as a condition of parole, citing the global computer network's pervasive reach into all aspects of contemporary life. J.I. was admonished for visiting "Godtube," a religious website providing guidance through biblical passages, his therapist's website, and the site for the Parsippany Presbyterian Church, where he attended services. At a March 2014 meeting with a parole supervisor and his parole officer, J.I. was barred from using the internet for any purpose, other than to seek employment. He was specifically barred from using going online to keep in contact with relatives, make purchases or any other benign activity, the court said. But after the meeting, he continued to use the internet, looking at a weight loss website and one containing information about applying for public assistance. In response, a parole office barred him from all internet access, and advised him that he would be arrested if he had any internet-capable device in his possession, including an iPhone.

The People v. Mike H., D069391 (CA Appeals Ct 4th, 3/31/17): Concluded that a ban on the probationer’s use of anonymizing tools to access the Internet, and a requirement that he accurately identify himself when setting up any online communications services, was permissible, but banning the use of any electronic devices that contain any encryption software was too broad.

EFF/ ACLU/NACDL report, “Challenging Gov’t Hacking in Criminal Cases”: This guide may prove valuable to those who were caught up in the online CP stings involving encrypted browsers like Tor. It is 122 pages long, so if you can find an outside resource who can print this report for you, the link to the report is: https://www.aclu.org/report/challenging-government-hacking-criminal-cases?redirect=malware-report

May v. Ryan, Case No. CV-14-00409-PHX-NVW (US Dict Ct AZ, 3/28/17): Overturned an Arizona law that outlaws any contact with the genitals of a minor, which had been interpreted so broadly, even changing a baby’s diaper could be a violation. Unlike laws in every other state, sexual element did not have to be proven by the state in AZ. “Arizona stands alone among all United States jurisdictions in allocating the burden of proof this way. Arizona is the only jurisdiction ever to uphold the constitutionality of putting the burden of disproving sexual intent on the accused.”

Brian Hope et al. v. Commissioner of the Indiana Department of Correction, et al., 1:16-cv-02865 (S Dist IN 2017): Judge Richard Young ruled in favor of plaintiffs holding they are likely to prevail in their federal lawsuit. Young granted a preliminary injunction barring authorities from enforcing the IN SOR Act against the plaintiffs. The suit brought by the ACLU of Indiana argues that SORA’s application to them violates the Equal Protection Clause of the 14th Amendment and implicates the right to travel, and Young found the plaintiffs are likely to prevail on those claims. He did not reach the plaintiffs’ ex post facto argument.

US v. Jenkins, No. 14-4295 (2d Cir. April 17, 2017): Found a 225 mo. sentence for mere CP possession to be “substantively unreasonable.”

Hoffman Et al. v Village of Pleasant Prairie, Case No. 16-CV-697-JPS (E Dist WI 2017): City’s 3000 foot residency restrictions amounted to virtual banishment; In granting summary judgment to the nine plaintiffs, U.S. District Judge J.P. Stadtmueller found the village imposed restrictions on where the offenders could live without considering any studies or data regarding the safety risk that posed to other residents.

In re: Justin B., Case No. 2015-000992 (SC Sup Ct, May 3, 2017): Upheld family court decision that the mandatory, statutory requirement that a juvenile offender register as a SO and wear an electronic monitor for life is not unconstitutional, claiming it is not a punitive measure.

J.B./L.A./B.M./W.M./R.L. v. New Jersey State Parole Board (A-81/82/83-15) (077235) [NJ Sup Ct May 8, 2017]: Ruled that paroled SOs must submit to lie detector tests as part of the conditions of their release but must be made more clearly aware of their 5th Amendment rights against self-incrimination; The court instructed the state Parole Board to revise its regulations to clarify that SOs can invoke their 5th Amendment rights without consequence if the answer to any question during the examination process could form the basis of an independent criminal investigation. The defendants in the case are all on lifetime supervision.

US v. Rittenmaier, Case 8:14-cr-00188-CJC (So. Div. CD Cal. 2017): The Beat Buy/ FBI informant case has taken an interesting turn. The Washington Post reported the court has tossed out nearly all of the evidence in the case. U.S. District Judge Cormac J. Carney “did find fault with the government’s case against Rettenmaier, though, ruling that searches of his home and cellphone were illegal because an FBI affidavit for a search warrant misstated key facts about the case. While only one of the questionable images found on Rettenmaier’s hard drive ended up as part of the criminal case, the search of his home and phone produced thousands of alleged CP pictures, according to federal court records.” However, the actual picture found by the Best Buy technician was NOT tossed because Rittenmaier “had given up his right to privacy by consenting both orally and in writing to the search of his hard drive.” Despite all this, this case has proven a working relationship between the FBI and Best Buy “Geek Squad” computer repair technicians. Hundreds of pages of evidence was presented showing eight Geek Squad City employees (the Best Buy repair facility in KY) were paid by the FBI over a 6 year span. While Best Buy denies any relationship with the FBI, but that statement has done nothing to ease the fears of civil liberties experts, “who feared that the Geek Squad had grown into a proactive arm of the government, snooping on citizens without the requirement of judicial oversight.” “Court records show that in the course of recovering Rettenmaier’s data, a Geek Squad technician found “multiple inappropriate images,” including a photo of a naked girl, believed to be 9 years old, in the “unallocated space” on Rettenmaier’s hard drive. Unallocated space is where deleted data resides on a computer until it is overwritten by other data, but it often does not have metadata such as when it was created, accessed or deleted, and because it lacks that information courts have ruled that photos found in unallocated space cannot be proved to be “possessed” by the computer’s owner without other evidence.” [Quotes from Tom Jackman, “FBI’s conduct in Best Buy computer case prompts judge to throw out child porn evidence,” Wash. Post, 5/17/17)

DG v Missouri DoC/ Board of Probation & Parole, Cause # 17AC-CC00213 (Cole Co MO Cir Ct): A preliminary injunction has halted efforts to retroactively place GPS monitors on hundreds of SOs who completed parole and had not been sentenced to lifetime supervision. The law had been recently changed to remove the stipulation that only repeat offenders are subject to lifetime GPS. Under this temporary injunction, the DOC cannot place GPS on those without repeat offenses and must remove the ones they have already installed.

In the Matter of Mark G. Legato, an Attorney at Law (D-99-15) (077464); In the Matter of Regan C. Kenyon, Jr., an Attorney at Law (D-100-15) (077465); In the Matter of Alexander D. Walter, an Attorney at Law (D-101-15) (077467) [NJ Sup Ct May 2017]: In a 6-1 ruling, the majority declined to mandate the automatic disbarment of lawyers who commit sex offenses involving children, and said matters must be resolved on a case-by-case basis—with particular emphasis on whether the attorney had actual physical contact with the child victim. "We have refrained from establishing a bright-line rule requiring disbarment in all cases involving sexual offenses against children," Justice Walter Timpone wrote for the majority. "The imposition of discipline in cases involving sexual misconduct with a minor requires a fact-sensitive inquiry."

Oliver v. Roquet, No. 14-4824 [3rd Cir. May 2017]: A federal appeals court ruled that a state-employed psychologist can't be sued by her patient, a convicted SO, over claims that she retaliated against him for his paralegal work while committed. In a progress report, Roquet claimed Oliver's intense focus on paralegal services took his attention away from rehabilitation. She also based her decision to hold Oliver back on his hostility toward facility staff and manipulating other inmates by charging for legal work. Reversing a New Jersey federal judge's order allowing Oliver's case to proceed, the U.S. Court of Appeals for the Third Circuit held Oliver failed to show that Roquet's recommendation to not advance him to the next stage of treatment was based on his legally-protected free speech activities alone. The Court concluded Oliver failed to show how his 1st Amendment rights were violated.

Esquivel-Quintana v. Sessions, Docket No. 15-54 (US Sup Ct, May 30, 2017): Unanimous 8-0 decision, the Court held that in the context of statutory rape offenses that criminalize sexual intercourse based solely on the ages of the participants, the generic federal definition of "sexual abuse of a minor" requires the age of the victim to be less than 16. The case involved a 20-year-old legal immigrant who had mutual relations with a girl aged 16, legal in most states, but not in California, where the AOC is 18. The man faced deportation after being convicted of statutory rape but SCOTUS rules in his favor.

People v Gates, 2017 IL App (2d) 150748-U [May 23, 2017]: In this non-precedent decision, the IL Appeals Court remanded the sentence of a convicted SO to be sentenced before a different judge because the judge in the sentencing court improperly considered his own personal opinion about child abusers during sentencing. The judge had referred to the Defendant and his behavior as “ghastly”, “sick”, “abhorrent”, and “perverted”. Defendant was given numerous maximum sentences for a total of 46 years in prison. The court stated, “A trial court may not rely on its own opinion of the crime. People v.Romero, 2015 IL App (1st) 140205…Whereas the trial court in Walker discussed just the evidence in the record, here the trial court directly stated that convictions of child abuse ‘merit the most severe of consequences,’ thereby improperly expressing its personal opinion on a class of offenses/category of offenders.”

People v Ruch, 2012 CO 35, 379 P3d (Colo.2016): Upheld conviction for probation violation for refusing to take polygraphs. “[W]e perceive no Fifth Amendment violation here. In these circumstances, Ruch’s purported invocation of his 5th Amendment rights was premature and amounted to a prohibited blanket assertion of the privilege… [W]e conclude that Ruch’s refusal to attend treatment based on his hypothetical concerns as to what might have been asked of him amounted to a blanket claim of privilege in advance of any questions being propounded, and this blanket claim was both ineffective and premature.”

Note regarding Packingham v NC: Unless you just signed up for my newsletter within the last week or two, you had received the SCOTUS syllabus for this decision which struck down the NC law preventing SOs from signing up for social media websites like Twitter or Facebook.. However, it is not entirely clear how this will affect those on supervision at this time. I believe it will extend to those on supervision, as, in stated in the Majority opinion, “It is unsettling to suggest that only a limited set of websites can be used even by persons who have completed their sentences. Even convicted criminals—and in some instances especially convicted criminals—might receive legitimate benefits from these means for access to the world of ideas, in particular if they seek to reform and to pursue lawful and rewarding lives.” NC is already looking to make a new law in response to their internet ban. Also, SCOTUS has refused to hear a case from IL regarding ANONYMOUS speech rights of registrants. Many states require you to register internet identifiers, and for now, it seems the High Court is letting our right to anonymous speech continue to be compromised.

In the Matter of the Care and Treatment of Jay Nelson a/k/a Jay T. Nelson a/k/a Jay T. Nelson Jr. v. State of Missouri, SC95975; and In the Matter of the Care and Treatment of Carl Kirk v. State of Missouri, SC95752 [MO Sup Ct, 6/27/17]: The MO Sup Ct rejected two arguments against the state’s civil commitment program. In Kirk, “As this Court previously has held, the sexually violent predator act is civil in nature and is not unconstitutional, and there is no reason to overrule those prior decisions. The Court rejects other arguments about certain statutory provisions. The circuit court did not err or abuse its discretion in allowing certain testimony from two psychologists, in refusing to admit evidence of a particular diagnostic test or in instructing the jury.” In Nelson, “The circuit court did not err in allowing use of the phrase ‘sexually violent predator’ at trial or in making certain evidentiary rulings. There was sufficient evidence to support the individual’s commitment to secure confinement as a sexually violent predator.”

The People v Russell Kay Hunt, No. C081377 [3rd Appeals Ct CA June 30, 2017]: In an unpublished (non-precedential) case, the 3rd Appeals Court in California struck down lifetime registration for a man convicted of stalking a woman but did not engage in or threaten any sexual activity. “Indeed, defendant never made any sexual overtures to Lemke, spoke in terms of a sexual relationship, or detailed what he wanted to do to her sexually. Rather, defendant was obsessively in love with her. Moreover, while the court-ordered psychological evaluation described defendant as having ‘difficulties in interpersonal relationships,’ there was no indication defendant suffered from sexual compulsion or disorder…Indeed, whenever a man pursues a woman, the common understanding of human sexuality will lead many to suppose that sex fuels the pursuit. But speculation and ill-informed understandings are not enough. Imagination must be tethered to some evidence in the record that the crime supporting registration was ‘committed . . . as a result of sexual compulsion or for purposes of sexual gratification.’ That evidence is missing in the present case.”

Carpenter v State of Florida, No. SC15-2125 (FL Sup Ct, June 29, 2017): This Court ruled a search warrant was needed even if it is “incident to an arrest.” This court rejected the state’s argument of a good faith exception in searching the phone without first obtaining a warrant. “Holding that the good-faith exception applies when officers rely on developing law that facially demonstrates the status of further review is a slippery slope which essentially abrogates the exclusionary rule in cases concerning unsettled law. The deterrent benefits of exclusion in Carpenter’s case outweigh the societal costs because exclusion reminds law enforcement officers that warrantless searches are the exception to the rule and that this exception should only be used when specifically authorized by law. The rule on searches in questionable areas of law is simple and unequivocal: Get a warrant.”

STATE OF IOWA vs. ALEXANDER CUTSHALL, No. 16-1646 [IA Appeals Ct, July 6, 2017]: Overturned a rule that defendant could not possess "a phone or any device with internet capability" while on probation. Cutshall argued the restriction was unnecessary because he did not use internet to find his victims. The Court ruled limits of probation are only justified if it is reasonably related to the crime; in this case, it was unreasonable as Cutshall did not use a smartphone to commit a crime.

Commonwealth v Hawchar, No. J-S39001-17 (Superior Ct of PA, July 6, 2017): In this non-precedent decision, this court ruled that a 20 to 40 year sentence of a Lebanese national where the trial court ruled that the court “needed to protect the children of Lebanon” was not excessive. The court states under 42 Pa.C.S. § 9721(b), the court in PA can consider the protection of the public, and it is not limited to the state.

Pennsylvania v. Muniz, No. J-121B-2016 (Pa. July 19, 2017): Ruled that SORNA’s registration provisions constitute punishment notwithstanding the General Assembly’s identification of the provisions as nonpunitive; retroactive application of SORNA’s registration provisions violates the federal & state ex post facto clause. This is another blow against the AWA.

United States v. Rock, No. 12-3032 (D.C. Cir. 2017): The DC Circuit affirmed defendant's 172 month sentence after he pleaded guilty to distribution of child pornography. The court held that the government's recidivism comment was only that—a comment—and appeared to have had no influence on the length of imprisonment to which defendant was sentenced. Defendant's sentence was also procedurally reasonable. However, the court vacated two conditions of supervised release: notifying the probation office when he establishes a significant romantic relationship (“We cannot agree with the government’s proposition that people of common intelligence would share a conclusion as to whether the affairs of two people constituted a “significant romantic relationship.” Indeed, we think it likely that in many cases, the two persons involved might not agree as to whether they had such a relationship. In short, we agree with Rock that the vagueness of this condition is problematic… We note that one of our sister circuits has held that such a condition was unconstitutionally vague. See United States v. Reeves, 591 F.3d 77, 81 (2d Cir. 2010).”) & penile plethysmograph testing (“although we vacated this condition (along with all of the other challenged release conditions), we did not specifically address it, other than to hold that the district court did not apply the correct standard for imposing conditions of supervised release.”) Addressing use of internet on supervision, the court stated, “The Supreme Court’s recent decision in Packingham v. North Carolina, 137 S. Ct. 1730 (2017), does not make the error plain because Rock’s condition is imposed as part of his supervised-release sentence, and is not a post-custodial restriction of the sort imposed on Packingham, 137 S. Ct. at 1734, 1736. Cf. United States v. Knights, 534 U.S. 112, 119 (2001) (individuals on probation “‘do not enjoy the absolute liberty to which every citizen is entitled,’” and “a court granting probation may impose reasonable conditions that deprive the offender of some freedoms enjoyed by law-abiding citizens” (quoting Griffin v. Wisconsin, 483 U.S. 868, 874 (1987))).”

A.W. v. Paul Wood, Case No: 16-1898 (8th Cir. July 31, 2017): The registration provisions of NE's SOR Act, Neb. Rev. Stat. Sec. 20-4003(1)(a)(iv), do not apply to a juvenile adjudicated delinquent for conduct constituting first-degree sexual conduct in MN; the term "sex offender" as used in the Act requires a criminal conviction for unlawful sexual conduct, and a juvenile delinquency adjudication does not fall within the meaning of that term, and the juvenile is not subject to the requirements of the Act.

In Re: JC, #C080391 (CA 3rd Appeals, Aug. 4, 2017): “In this case, we hold that mandatory lifetime sex offender registration pursuant to Penal Code section 290.0081 for those adjudicated wards of the court based on the commission of certain sex offenses is not cruel and unusual punishment. We come to this conclusion because appellant has not established on this record that such registration is punishment.”

STATE v. PHILLIPS, 297 Neb. 469 (NE Sup Ct, Aug. 11, 2017): Rejected a claim that a one-year sentence for Failure To Register was not excessive. Also, in regards to appealing conditions of conditional release, the Court found that Phillips did was adequately informed of his release conditions when sentenced and did not file a formal objection to these conditions during the sentencing phase. “At his sentencing hearing, Phillips refused to sign an attestation to the conditions indicating that he agreed to the conditions of his postrelease supervision. Instead, Phillips agreed only to sign an acknowledgment that he had received those conditions. But our review of the record shows that at no point during that hearing did Phillips specify the issues and concerns he had with the conditions imposed upon him. As such, we conclude that Phillips waived those conditions because his objections were insufficient to preserve them.”

US v Jackson, No. 16-3807 (8th Cir., Aug. 10, 2017): Held that a warrantless search of a cell phone of a man serving a term of supervised release and residing at the Fort Des Moines Community Correctional Facility was not unconstitutional, concluding that Jackson had no legitimate expectation of privacy in the cell phone, and the government has substantial interests that justify the intrusion.

In re Det. of Belcher, No. 93900-4 (WA Sup Ct, Aug. 17, 2017): “We have held that juvenile offenses may be predicate offenses when an adult has committed a more recent sexually overt act. However, we have not yet ruled on whether commitment can be continued using juvenile crimes as the sole predicate offenses…We hold that juvenile convictions can be predicate offenses for continued commitment proceedings under RCW 71.09.090. We further find that a diagnosis of antisocial personality disorder is sufficient for a finding of mental abnormality under the statute, and that the use of an actuarial tool grounded in both sexual and nonsexual offenses does not violate due process when applied to” an SVP.

Millard et al. v. Rankin, Case 1:13-cv-02406-RPM (USDC Colo., Aug. 31, 2017): Held CO’s SOR is punitive, violates 8th Amdt & Due Process as applied to the defendants. Judge Matsch held that 6 of the 7 Mendoza-Martinez factors weighed in favor of finding the state’s SORA requirements punitive in their effects and, therefore, in violation of the 8th Amendment’s prohibition against cruel and unusual punishment: “This ongoing imposition of a known and uncontrollable risk of public abuse of information from the [SOR], in the absence of any link to an objective risk to the public posed by each individual [SO], has resulted in and continues to threaten Plaintiffs with punishment disproportionate to the offenses they committed. Where the nature of such punishment is by its nature uncertain and unpredictable, the state cannot assure that it will ever be proportionate to the offense. SORA as applied to these Plaintiffs therefore violates the 8th Amendment… Justice Kennedy’s words [writing the 2003 majority opinion in Smith v. Doe] ring hollow that the state’s website does not provide the public with means to shame the offender when considering the evidence in this case. He and his colleagues did not foresee the development of private, commercial websites exploiting the information made available to them . . . The justices did not foresee the ubiquitous influence of social media . . . Public shaming & banishment are forms of punishment that may be considered cruel and unusual under the 8th Amendment.” The Court held that having no system of early relief from the SOR & offense-based classification without risk assessments, as well as forcing one into a second treatment program after the state destroyed records of Petitioner’s original treatment program, all violate Due Process. The state plans to appeal to the 10th Circuit.

Kirby v. State of Indiana, 34A02-1609-CR-2060 (IN Appeals Ct, Sept. 1, 2017): Ruled the Unlawful Entry Statute (making it a Level 6 felony for individuals convicted of certain crimes to enter onto school property) violated ex post facto as applied to Petitioner. The Court utilized what Indiana courts call an “intent-effects test” (Wallace v. State, 905 N.E.2d 371, 378 (Ind. 2009), which in turn cited MendozaMartinez, 372 U.S. at 168, 83 S.Ct. 554), and determined the law was indeed punitive.

SCOTUS: The US Sup Ct has declined to hear 2 cases involving SO issues—Does v Snyder, which came from the 6th Circuit ruling that MI’s SOR laws, as applied, are punitive, & Karsjens v. Piper, which covers the MN-MSOP civil commitment program, a program that hasn’t had a graduate in 20 years.

CA: SB-384 was signed into law; Cali will now adopt a 3-tiered system but without adopting the AWA; Tier 1s will register a minimum 10 years, Tier 2s for 20 yrs & Tier 3s for life; relief from the registry will require a court petition after the minimum registration period is up; registry still retroactive to 1944; note the standard risk assessment test is SARATSO and not the Static-99; the law will not take full effect until 1/1/2021.

State of Indiana v. Sameer Girish Thakar, 29S02-1705-CR-284 (IN Sup Ct, Oct. 2, 2017): Reversed a lower court decision that held that a man couldn’t be charged with “dissemination” for sending a picture of his genitals to a 16 year old (above the AoC in IN). “But there is no conflict between these two statutes requiring such resolution, because Thakar was capable of complying with both simultaneously: with respect to a 16-year-old, consensual sexual activity in person is permitted, the dissemination of a sexually-explicit photograph (consensually or otherwise) is not.” So, you can have sex with a 16 year old in IN, but you can’t send a naughty picture.

State Of Washington, Respondent V. Derek John Dossantos, Docket No. 47773-4-II (WA App Ct, Div. 2, Sept. 26, 2017): Unpublished opinion held that “the community custody conditions relating to perusing and possessing sexually explicit materials, and using social media websites, Skype, or sexually-oriented 900 phone numbers are not crime-related and are invalid. We hold that the SSOSA and community custody conditions relating to chemical dependency are invalid because the trial court did not make the statutorily required finding. We further hold that the SSOSA condition prohibiting Dossantos from perusing and possessing pornography is statutorily authorized as a precursor activity, but is void for vagueness, and that the SSOSA and community custody conditions preventing him from frequenting places where minor children are likely to be present or congregate are not void for vagueness.”

DALE ALLEN WRIGHT v HON. GATES/STATE, Case # CR-16-0435-PR (AZ Sup Ct, 10/4/17): “We here consider whether enhanced sentences may be imposed under the dangerous crimes against children (“DCAC”) statute inthe absence of an actual child victim. Consistent with the text of A.R.S. § 13-705(P)(1), which defines a DCAC offense as one that is “committed against a minor who is under fifteen years of age,” we hold that enhanced DCAC sentencing does not apply when a defendant commits a crime against a fictitious child.” This should impact “sting” operations in the state.

State v. Burbey, No. CR-16-0390-PR (AZ Sup Ct, Oct. 13, 2017]: “[Registrants] must notify law enforcement officials of their new ‘residence’ or address within 72 hours after they move and must ‘register as a transient not less than every ninety days’ if the person ‘does not have an address or a permanent place of residence.’ A.R.S. § 13-3822(A). Burbey was convicted of a felony for failing to satisfy the first requirement after leaving a halfway house and becoming homeless. We overturn the conviction, holding that only the second requirement applies to transient individuals.”

Doe v. Kentucky ex rel. Tilley (E.D. Kent. Oct. 20, 2017): KY Sup Ct overturns KY law banning SOs from social media allowing anyone under 18 to use the service. It relied on the similar decision from this year’s landmark Packingham v NC case & declared KY’s law to be overbroad.

John Doe 1, et al., v. The Boone County Prosecutor, in his official capacity, et al., 06A01-1612-PL-2741 (IN App Ct, Oct. 24, 2017): determined that churches are not considered “school property,” so state statute cannot prohibit SOs from going to church, even when children are present.

Pennsylvania v. Butler, Case # 1225 WDA 2016 (Superior Ct of PA, Oct. 31, 2017): In light of the PA Sup Ct’s recent ruling that SORNA is punishment, this court declared a moratorium of SVP hearings until the state legislature “enacts a constitutional designation mechanism.” “In sum, we are constrained to hold that section 9799.24(e)(3) of SORNA violates the federal and state constitutions because it increases the criminal penalty to which a defendant is exposed without the chosen factfinder making the necessary factual findings beyond a reasonable doubt.”

State v. T. Harrington, DA 16-0672, 2017 MT 273 (MT Sup Ct., Nov. 7, 2017): Upheld a CP conviction, which was challenged on the grounds the Harrington argued the definition of “possession” is vague. “Harrington argues he could not possess dominion and control over the images because they were stored in unallocated space which could only be accessed using sophisticated forensic software. The State counters that although the images were found in unallocated space, Harrington’s own admissions and conduct would allow a rational jury to find that Harrington knowingly possessed CP... Harrington relies principally on United States v. Kuchinski, 469 F.3d 853 (9th Cir. 2006), and US v. Flyer, 633 F.3d 911 (9th Cir. 2011), to support his argument that he did not knowingly possess child pornography because the images found were in unallocated space. However, these cases are factually distinguishable from Harrington’s case because in Kuchinski and Flyer the US failed to present any evidence to show knowing possession of the CP files by the defendants.”

**LEGAL ROUNDUP 2018**

OK: Carney v. Oklahoma Dep't of Pub. Safety, No. 16-6276 (10th Cir., Nov. 28, 2017): Rejected a claim that stamping driver’s licenses in scarlet letters identifying the holder as a registered person violated the 8th and 14th Amendments. “Indeed, the Supreme Court has upheld a life sentence for three theft-based felonies totaling a loss of about $230, id. at 265–66, a 25- year sentence for stealing golf clubs, Ewing v. California, 538 U.S. 11, 28 (2003), a life sentence for possessing 672 grams of cocaine, Harmelin v. Michigan, 501 U.S. 957, 961 (1991), and a 40-year sentence for possessing nine grams of marijuana, Hutto v. Davis, 454 U.S. 370, 370 (1982). The license requirement is certainly not more disproportionate than these examples. Moreover, there are no risks of incarceration or threats of physical harm. See United States v. Juvenile Male, 670 F.3d 999, 1010 (9th Cir. 2012)… More specifically, this law limits only a very narrow right: the right to a state identification that does not indicate a person is a SO. Thus, it does not “sweep broadly.” Id. at 1108. It also cannot be seen as “unusual,” because the license requirement does not stray from what state governments do each and every day: communicate important information about its citizens on state-issued IDs.”

4th Cir: Trey Sims v. Kenneth Labowitz, No. 162174.P (4th Cir. 12/5/2017): During a police investigation involving teen sexting, a cop (through a warrant) made a forced a teen to have an erection & took a picture of the teen’s genitals. The Court ruled the search violated the 4th Amendment. “At the outset, we observe that a sexually invasive search ‘constitutes an extreme intrusion upon personal privacy, as well as an offense to the dignity of the individual.’ Courts have described such searches, including strip searches, as terrifying, demeaning, and humiliating. When the scope of a search exceeds a visual inspection of an individual’s naked body, the magnitude of the intrusion is even greater.”

CA: Kirk Clymer v. City of Adelanto, et al., EDCV 16-02535 JGB (JCx) (CD CA., Dec. 18, 2017): Ruled municipal or countywide residency restriction laws can only be applied to parolees.

IN: Lacy v. Butts, 1:13-cv-00811-RLY-DML ( S.D. Ind., Sept. 28, 2017): Ruled that Indiana's mandated SO classes for prisoners who oppose them violates the constitutional right to be free from self-incrimination. The ruling in the four-year-old case overrules an Indiana Supreme Court decision from 2014 that found the classes to be constitutional. The dispute hinges on what the classes require. The plaintiffs, all convicted of sex crimes, argued that since they pleaded not guilty to the crimes they were convicted of, they should not be forced to attend the SOMM program. The program, instituted by the Indiana Department of Correction in 1999, forces participants to confess guilt in the crimes for which they are charged, give written consent to disclosure of confession and submit to a polygraph test. Specifically, the program requires participants to disclose the details of the crimes for which they were convicted and confess to any past acts of sexual violence. (Condensed from the Indy Star article from 10/17/17)

RI- The Rhode Island Homeless Advocacy Project and six registered persons filed litigation in the US Dist Ct, arguing that the law passed in Sept limiting the number of SOs that can stay in a homeless shelter to 10% is unconstitutional. It argues, among other things, that the 10-percent rule violates the 14th Amendment’s equal-protection clause and unfairly denies disabled sex offenders benefits provided by the Americans with Disabilities Act, the Rehabilitation Act and the Fair Housing Act.

CA- Coalinga City Council is suing Fresno County to overturn an election because 127 civilly committed SOs (all legal voters) voted against a one-cent sales tax increase; the tax increase was defeated city-wide by 37 votes in total. Sac Bee reported the measure would lead to staff cuts to both local police and firefighters. Because these SOs are not inmates (they’re ‘patients”), they are legally allowed to vote. An advocate for the patients told them reporters they voted no because they pay sales tax on items they use in the hospital.

CA- Judge denies a TRO against state hospital efforts to remove all personal electronic items from the Coalinga civil commitment center. The Center claims there is a “porn epidemic” inside the facility (which does not explain why they would take away MP3 players or video game devices that cannot connect to the internet). Earlier this month, the prisoners at the center held a protest, which led to a lockdown of the facility.

US Sup Ct: Denied a hearing regarding the PA Muniz decision, which means the State Sup Ct decision that ruled against the retroactive application of the Adam Walsh Act stand.

MN – Federal judge orders West St. Paul officials to allow a SO to remain in his home pending the outcome of his lawsuit challenging the constitutionality of a city ordinance restricting where SOs can live; the judge found that Evenstad is likely to succeed in his lawsuit. Despite the fact that federal courts have ruled in favor of SO residency restrictions in the past, West St. Paul’s rule may be overly restrictive, Tunheim said in his order.

IA: State of Iowa v Jose Willfredo Lopez, No. 16–1213 (IA Sup CT, Feb. 2, 2018): Ruled that the state’s laws regarding indecent exposure do not apply to sending still photos of defendant’s penis through electronic communication. The Court found the statute’s definition of “expose” to be ambiguous, and that the court did not specifically state the law applied to electronic communication.

IL: People v. Tetter, 2018 IL App (3d) 150243 (Jan. 31, 2018): Tetter was 21 when he met a girl on an online social media app. Her profile said she was 18. Even though he later learned she was 16, they continued the consensual relationship and eventually she became pregnant and her mother reported him to the police. Tetter was sentenced to 180 days in county jail, 4 years’ sex offender probation, and lifetime on the registry. The Court found “defendant’s lifetime subjection to the SO statutes constitutes grossly disproportionate punishment as applied to him. The facts underlying defendant’s conviction do not suggest that he is a dangerous sexual predator who must be banned from areas near schools or public parks, or who must be monitored by law enforcement authorities and presented to the public as a dangerous sexual predator.” It found IL’s current SO statutes “are akin to probation or supervised release” and “satisfy the traditional definition of punishment.” The Court also found the one-size-fits-all laws disproportionate to the man’s offense.

CA: Alliance for Constitutional Sex Offense Laws v California Dept of Corrections and Rehabilitation, Case No.: 34-2017-80002581 (Sacramento Superior Ct, 8 Feb 2018): Ruled Proposition 57, in stating “Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term of his or her primary offense”, does not automatically disqualify anyone convicted of a sex crime from early release. “The court agrees the challenged regulations are overbroad and must be set aside. But the court does not direct CDCR to adopt any particular replacement regulations. Instead, the court remands this case to CDCR to adopt new regulations defining the term ‘nonviolent felony offense’ consistent with this ruling.”

SCOTUS – Accepted to hear Gundy v. United States, Docket No 17-6086 on appeal from 2nd Cir. Issues: (1) Whether convicted SOs are “required to register” under the federal SORNA while in custody, regardless of how long they have until release; (2) whether all offenders convicted of a qualifying sex offense prior to SORNA’s enactment are “required to register” under SORNA no later than August 1, 2008; (3) whether a defendant travels in interstate commerce for purposes of 18 U.S.C. § 2250(a) when his only movement between states occurs while he is in the custody of the Federal Bureau of Prisons and serving a prison sentence; and (4) whether SORNA’s delegation of authority to the attorney general to issue regulations under 42 U.S.C. § 16913 violates the nondelegation doctrine.

FL: Passed H1301/SB1226, which shortens the registration period for SOs visiting or moving to the state from 5 days to 3 days and imposes mandatory electronic monitoring for FTR cases & certain other offenses.

7th Cir.: Washington v. Boughton, No. 16-3253 (7th Cir., March 8, 2018) Overturned the conviction of a man accused of sexual assault, concluding it was error to deny Washington’s request to proceed pro see at trial. And it was error for the WI Ct of Appeals to uphold that decision, a three-judge panel concluded, noting that the state appeals court unreasonably applied the SCOTUS decision of Faretta v. California, 422 U.S. 806 (1975). In Faretta, SCOTUS ruled that a court “may not force a lawyer upon a defendant based on his perceived lack of education, experience, or legal knowhow,” explained Judge Elaine Bucklo of the No. Dist. of IL, sitting by designation. The panel ruled that the WI trial court’s reasons for denying Washington’s pro se motion did not square with Faretta, and the appeals court did not properly apply Faretta. The trial court had denied Washington’s request to represent himself at trial because he did not know the rules of evidence, lacked the know-how to deal with DNA evidence, and it would have been “problematic” to let him directly cross-examine his accusers. But the 7th Circuit rejected the state’s argument that prior cases, which cut in Washington’s favor, were wrongly decided.

9th Cir: Willing King v. County of Los Angeles, Case No. 14-55320 (9th Cir., March 12, 2018) Plaintiff was incarcerated in a Los Angeles County jail for almost eight years as a civil detainee while awaiting the adjudication of an involuntary commitment petition under Cali’s SVP Act. For more than 6 of his years in the County jail, plaintiff was confined in Ad Seg along with criminal detainees, and was forced to wear red, designating him as an SO, with led to an attack from another inmate. Citing Jones v. Blanas, 393 F.3d 918, 931–35 (9th Cir. 2004), the panel first noted that under Due Process, an individual detained under civil process cannot be subjected to conditions that amount to punishment. Under Jones, conditions are presumptively punitive if (1) they are similar to those that a pre-trial detainee’s criminal counterpart would face, and (2) are more restrictive than conditions faced by individuals following civil commitment. The panel then held that plaintiff’s confinement triggered both of the presumptions set forth in Jones. The Court reversed summary judgment against the county but since the plaintiff died before the case was decided, he never received injunctive relief.

WV: Mutter v. Ross, case # 16-1156 (WV Sup Ct, March 12, 2018): A condition of parole prohibiting Respondent, an RSO, from possessing or having contact with a computer or other device with internet access was unconstitutional under the 1st Amendment. Respondent challenged the West Virginia Parole Board’s decision to revoke his parole. The circuit court vacated the Board’s decision, partly on the ground that Respondent’s special condition of parole prohibiting his possession or contact with a computer with internet access was unconstitutional. The Supreme Court affirmed, holding that because Respondent’s condition of parole was broader than the statute struck down in Packingham v. North Carolina, 137 S.Ct. 1730 (2017), which barred RSOs from accessing social media networking websites, it was an overboard restriction of free speech in violation of the 1st Amendment.

FL: Florida Action Committee reports that the municipal ordinance in the City of Ft. Lauderdale that prohibited registered sex offenders from living within 1400 feet of schools, parks, playgrounds, school bus stops, etc. was found to violate the Ex Post Facto Clause of the Constitution. Florida has a 1,000-foot State Statute, which was passed in 2004. So, to simplify; if your offense was after the Ft. Lauderdale ordinance was passed, you are subject to a 1,400 foot restriction in Ft Lauderdale. If your offense was before the Ft. Lauderdale ordinance, but after the State ordinance, you are subject to a 1,000 foot restriction. And, if your offense pre-dates the Florida State SORR (October 1, 2004), you are not subject to any residency restriction in Ft. Lauderdale. This is a local court ruling and the city will likely appeal it, but it is the first known victory against any SO laws in the state of Florida.

IL - A federal judge in Chicago says a corrections department ban on telephone contact between a mom with a sex-crime conviction and her 17-year-old daughter should be lifted. The Chicago Daily Law Bulletin says Tuesday's ruling is in a lawsuit filed for Robin Frazier and four others. It argues automatic, blanket bans on all contact by SOs with all children sometimes defy common sense. Frazier was convicted of having sex with a 17-year-old girl who wasn't a relative. Frazier was an authority figure as the girl's counselor, making the encounter a crime under Illinois law. Frazier recently began supervised release, when bans on contact kick in. Defense attorney Adele Nicholas says a "generalized fear" SOs will offend again isn't justification enough to ban phone contact in individual cases.

IL - People v. Pepitone, 2018 IL 122034 (IL Sup Ct, 5 Apr 2018): Upheld conviction of RC for entering prohibited park; used “rational basis test,” which merely relies on a “rational” basis for passing a law without the requirement a law is narrowly tailored. The Court found that “The legislature’s judgments in drafting a statute are not subject to judicial fact finding and ‘may be based on rational speculation unsupported by evidence or empirical data’… If there is any conceivable set of facts to justify the statute, it must be upheld… The problem for the defendant is that, regardless of how convincing that social science may be, ‘the legislature is in a better position than the judiciary to gather and evaluate data bearing on complex problems.’” In other words, the Court does not care about the facts. In this case, numerous studies debunking the high recidivism rate was presented, but the courts rejected these studies by referring to the legislature rather than by science. Reason Magazine reports, “The decision, written by Justice Mary Jane Theis, shows how fear overrides logic in dealing with sex offenders and how toothless ‘rational basis’ review can be, allowing legislators not only to draw their own judgments but to invent their own facts…In this case, both the legislature and the judiciary have assumed crucial facts that simply are not true, as far as we can tell based on all of the research that has been done during the last few decades. Theis is saying laws should nevertheless be written and upheld based on those demonstrably false assumptions until legislators decide to gather data. Call that whatever you want, but it surely is not rational.”

VT- State v. Yetha L. Lumumba, 2018 VT 40 (VT Sup Ct., 6 Apr 2018): Ruled the state cannot uniformly declare pornography off-limits to SOs. The decision does allow a SO’s probation to include such restrictions, but only if they are deemed specifically appropriate to the individual offender. (It may be worth noting a number of probation conditions were struck by the courts, but for the sake of brevity, I’m focusing on this particular case

IA- Case No. 16-1732: In re the Detention of Nicholas Wygle, & Case No. 16-2141: In re the Detention of Ronald Tripp (13 Apr 2018): The IA Sup Ct ruled two men could not be civilly committed. The court concluded state law only allows officials to commit sexual predators if they're "presently confined" or if they commit another sex-related crime. Wygle had not committed another crime and the court concluded being in a residential facility is not the same as being presently confined. In the second case, Tripp will be released from civil commitment after the court ruled his case should have been dismissed. The justices concluded the state lacked evidence to show Tripp committed another sex-related crime that justified civil commitment. "Preventive detention is very limited in American law because it is seen as antithetical to fundamental liberty interests and the presumption of innocence," wrote Justice Brent Appel in the Iowa Supreme Court's majority opinion Friday in Wygle's case. He said sexually violent predator statutes "threaten to deprive individuals of what from time immemorial has been the weightiest of interests — the interest in individual liberty." He said the vague and flexible standards of the statutes allows, if not encourages, "a better-safe-than-sorry approach" of locking up sex crime violators indefinitely. Both cases were decided by a split 4-3 decision. Justice Edward Mansfield wrote dissenting opinions in both. In the Wygle case he said a person in a residential facility should be considered to be in custody and the court should have upheld his civil commitment proceeding. In Tripp's case he said there was substantial evidence that Tripp committed another sex-related crime in 2013 by groping a woman and the court should have sent his case back to district court for a trial to prove the groping met the definition of a sex-related crime that qualified him for civil commitment as a sexually violent predator. [Source: AP]

NJ - State of New Jersey in the Interest of C.K. (A-15-16) (077672):Ruling from the unanimous NJ Sup Ct says new studies on SOs, and obvious perceptions about juvenile immaturity and impulsivity, suggest that lifetime punishment for this population does more harm than good. “Indeed, categorical lifetime notification and registration requirements may impede a juvenile’s rehabilitative efforts and stunt his ability to become a healthy and integrated adult member of society,” Justice Barry Albin wrote for the seven-person court.

TX – Ex Parte: Jordan Jones, Docket # 12-17-00346-CR (TX 12th Appeals Ct, 18 Apr 2018): Ruled that a law banning “revenge porn” (posting nude images of ex-lovers on the internet) is unconstitutional because of its broad-based content restrictions that infringe on free speech.

MN – Limmer, a Republican from Maple Grove, proposed SF3673, which would establish a higher standard for SOs and people committed as mentally ill and dangerous who are seeking an unconditional release. The proposal comes in direct response to a court decision earlier this year that permitted the full discharge of a 51-year-old SO, Kirk A. Fugelseth, who has admitted to molesting more than 30 boys and girls and who was confined to the MSOP.

OK – Governor Mary Fallin signed the “Justice for Danyelle Act” on Tuesday, which will keep RCs from living within 2,000 feet of their victim’s home. The bill is named for Danyelle Dyer. The man who allegedly molested her had moved in right next door with his mother in what he said was a temporary arrangement. OK already has a 2000 ft residency restriction law in place.

IN - Douglas Kirby v. State of Indiana, 18S-CR-79 (IN Sup Ct, 27 Apr 2018): Post‐conviction relief is both limited and exclusive. It is available only within the strictures of the post‐conviction rules, and when the rules allow post‐conviction proceedings, relief generally cannot be pursued any other way. Here, the petitioner tried to use post‐conviction proceedings to challenge a statute barring him, as a serious SO, from school property. But that restriction is a collateral consequence of his conviction—and the post‐conviction rules generally allow challenges only to a conviction or sentence. While we thus affirm the denial of post‐conviction relief, we note that the post‐conviction rules do not bar the petitioner from pursuing his claim in a declaratory‐judgment action.

NY – People v Britton, SSM42mem18 (NY App Ct, 18 Apr 2018): The record supports the affirmed finding that defendant engaged in sexual intercourse, deviate sexual intercourse, or aggravated sexual abuse, warranting the imposition of 25 points under risk factor 2 in determining defendant’s risk level under the SO Registration Act. Contrary to defendant’s argument, his acquittal of charges at his criminal trial relating to such conduct, does not foreclose the hearing court from finding, by clear and convincing evidence, that he engaged in such acts. (see Reed v State of New York, 78 NY2d 1, 7-8 [1991]; see e.g. People v Headley, 147 AD3d 988, 988 [2d Dept 2017], lv denied, 29 NY3d 916 [2017]; People v Vasquez, 49 AD3d 1282, 1284 [4th Dept 2008]).

SC - Agents of the S.C. Law Enforcement Division arrested Samantha West Connell, 34, was charged with one count of Embezzlement for collecting registry fees from RSOs and taking the money for herself. The crime was committed between January 2015 and April 2016 while Connell was employed as an administrative assistant at the Kershaw County Sheriff's Office.

NV – After 10 years of legal battles, the NV Supreme Court lifted their stay on the state’s 2008 adoption of the Adam Walsh Act. The state predicts the number of those listed as “Predators” in NV will jump from 300 to 3000 overnight.

IN – Valenti v Lawson et al, No. 17-3207 (7th Cir, 7 May 2018): Ruled there is a rational relationship between an IN statute [I.C. 35-42-4-14(b)] prohibiting SOs from entering school property and the state’s interest in protecting children. The court ruled the state does not violate a convicted SO’s voting rights by prohibiting him from voting at a polling place located in a high school, and instead requiring him to vote via one of three alternatives (absentee ballot, at the county courthouse, or at the local civic center). neighborhood polling location wass in the Blackford County High School gym.

Frederick Gibson v. State of Rhode Island, No. 2015–108–M.P. (P2/12–2199A): Upheld a denial of appeals for 3 FTR charges and denial from relief from the registry. Gibson was convicted under a 1992 registration law, which listed no end of registration date. He was convicted in 2007, 2009, 2011, and 2012. In 2014, Gibson filed an application for postconviction relief seeking to vacate his three failure-to-notify convictions from 2007, 2009, and 2010. In his application, Gibson challenged his convictions on constitutional grounds. His primary contention was that each of those failure-to-notify convictions violated the ex post facto clause, pointing out two grounds as to why those convictions were constitutionally infirm. First, based on Gibson's contention that the duration of his duty to register was not for the remainder of his life, but for only ten years, he argued that the General Assembly unconstitutionally extended his duty to register when it amended the Registration Act in 1997 and 2003. (The law was amended to start registration date from date of conviction to date of release from prison.) The Court ruled, “We depart from the conclusions of the magistrate and the hearing justice that Gibson has a lifetime duty to register. Rather, we hold that, in accordance with the language of Sec. 11–37.1–18 and 11–37.1–4(a), Gibson's duty to register expires “ten (10) years from the expiration of sentence for the offense. Section 11–37.1–4(a). We also hold that Gibson's prior failure-to-notify convictions in 2007, 2009, and 2010 do not run afoul of the ex post facto clause.” The Courts determined that he is eligible for relief from the registry in 2019.

IA -- Iowa v. Michael Kelso-Christy, No. 16–0134 (IA Sup Ct, May 4, 2018): “In this appeal, we must primarily decide if one person’s consent to engage in a sexual encounter with another, obtained through the other actor’s fraudulent misrepresentations that he is someone else, constitutes a valid consent to engage in the sexual encounter. We conclude such deception does not establish consent to engage in a sexual encounter.” The defendant pretended online to be an old school acquaintance of a woman, and convinced her to have sex with him (“catfishing”). He was charged with burglary, i.e., entering a home to commit a felony. The Court found that, “[C]onsent to engage in a sexual act with one person is not consent to engage in the same act with another actor. Deception in this context is not collateral in any way, but goes to the very heart of the act. When a person is deceived as to who is performing the previously consented to act, the person ultimately experiences an entirely separate act than what was originally agreed to.”

State of NC v Grady, No. COA17-12 (NC App Ct, 15 May 2018): Held lifetime GPS for convicted SO is constitutionally unreasonable, violates the 4th Amendment.

WA - STATE v. PADILLA, No. 94605-1 (WA Sup Ct, 10 May 2018): Ruled Padilla's community custody condition prohibiting him from "possess[ing] or access[ing] pornographic materials was unconstitutional as the definition of pornographic materials was vague and overbroad.

WI – State v DeAnthony Muldrow (Case # not known yet): Ruled judge wasn't required to tell a man he would face a lifetime of GPS monitoring upon pleading guilty to child sex crimes because such monitoring is a public safety measure, not a form of punishment; “In light of the 'frightening and high' rate of recidivism for SOs, the relatively minimal intrusion of lifetime GPS tracking ... is not excessive in relation to protecting the public.”

WI – State v Shaun Sanders (Unknown #): State Supreme Court ruled that because there is no statute of limitations on sex crimes, a person can be tried as an adult for a crime committed at 9 years old when it was not reported until the offender became an adult. The court affirmed lower court rulings and stuck with previous decisions in similar cases. It said the defendant's age at the time he was charged, not his age at the time of the alleged criminal conduct, determines whether the case is in adult criminal court.

GA – The State v Davis, S17G1333 (GA Sup Ct, 18 May 2018): Ruled pardons in GA remove registration requirement.

NC – State v Grady, No. COA17-12 (NC Ct of Appeals, 15 May 2018): Grady appeals from the trial court’s order determining that satellite-based monitoring (“SBM”) of defendant is a reasonable search under the 4th Amendment. “After careful review, we conclude that the State failed to prove the reasonableness of imposing SBM for defendant’s lifetime. Accordingly, we reverse… [T]he State failed to present any evidence (in the hearing) concerning its specific interest in monitoring defendant, or of the general procedures used to monitor unsupervised offenders. Instead, the State submitted copies of the two sex offense judgments and defendant’s criminal record, arguing that defendant himself was “Exhibit Number 1” of SBM’s success in deterring recidivists, because “[s]ince he’s been monitored, guess what: He hasn’t recommitted, he hasn’t been charged with another sex offense.” However, Officer Pace, the State’s sole witness, testified that the ET-1 (ankle bracelet) cannot actually prevent an offense from occurring.”

ID – Federal judge rejected a lawsuit challenging Idaho's SOR laws. But the 134 anonymous SOs who brought the lawsuit have the option to refile the case if they can show the current laws caused them actual harm. U.S. District Judge David Nye says that could be difficult. He explains in this month's ruling that common arguments claiming registration requirements are embarrassing, invasive and burdensome have already been rejected in previous cases.

AZ -- STATE OF ARIZONA v HON. WEIN/GOODMAN, Case # CR-17-0221-PR (AZ Sup Ct, 25 May 2018): Applying the SCOTUS decision in United States v. Salerno, 481 U.S. 739 (1987), we hold that the provisions of Arizona Constitution article 2, section 22(A)(1) and A.R.S. § 13-3961(A)(2), categorically prohibiting bail for defendants accused of sexual assault where proof is evident and the presumption great that they committed such crimes, violate the 14th Amendment’s due process guarantee.

NY – People of NY v Ellis, No. 107932 (3rd App Ct, 31 May 2018): Dismissed the indictment of a SO who did not register his Facebook account with the state. New York law requires sex offenders to register any “internet identifiers” that they use, but Justice Stan Pritzker wrote for the Third Judicial Department that “an internet identifier is not the social networking website or application itself. Rather, it is how someone identifies himself or herself when accessing a social networking account, whether it be with an electronic mail address or some other name or title, such as a screen name or user name,” Pritzker added. “Defendant’s failure to disclose his use of Facebook is not a crime, rendering the indictment jurisdictionally defective.”

NJ -- State v. Melvin Hester/Mark Warner/Anthony McKinney/Linwood Roundtree (A-91-16) (079228) (NJ Sup Ct, 30 May 2018): found that 2014 changes to the “community supervision for life” component of registration, which included enhanced punishment, could not be applied retroactively against 4 registrants whose offenses pre-dated the changed law. In finding the laws violate the ex post facto provisions of the NJ and Federal Constitution, the court held: “The Federal and State Ex Post Facto Clauses bar the retroactive application of the 2014 Amendment to defendants’ CSL violations. The 2014 Amendment retroactively increased the punishment for defendants’ earlier committed sex offenses by enhancing the penal ties for violations of the terms of their supervised release. The Amendment, therefore, is an ex post facto law that violates the Federal and State Constitutions as applied to defendants. The Court affirms the judgment of the Appellate Division dismissing defendants’ indictments.”

US v Barcus, No. No. 17-5646 (6th Cir., 8 June 2018): Defendant's classification as a Tier III SO because his Tennessee "sexual contact" offense did not require contact for purposes of sexual gratification, while the comparable Tier III federal offense would. Unfortunately, the court also held that the defendant's lifetime supervision requirement subjected him to a federal sentencing enhancement, and that psychosexual evals, polygraphs, and SO treatment were reasonable conditions of supervised release.

MN -- U.S. District Court Chief Judge John Tunheim entered an order that dismissed without prejudice the lawsuit that Level 1 SO Thomas Wayne Evenstad filed against the city in August over residency restriction laws that essentially made the city off limits to SOs. As part of the settlement, both parties will pay their own costs and attorney fees, and Evenstad gets an $84,000 settlement from the city.

9th Cir -- Gregg v. Department of Public Safety, 870 F.3d 883 (9th Cir. 2017): Alexandria Gregg, who claimed she developed a psychological disorder years after she underwent sexual shame therapy sessions at Hawaii’s Kauai Community Correctional Center (KCCC) between March and November 2011. The complaint alleged Gregg participated in the Life Time Stand (LTS) program, purported to provide “therapy, counseling, and mental health treatment.” According to Gregg’s complaint, LTS sessions involved “public sexual shaming,” such as watching violent movie rape scenes. In dismissing her federal civil rights complaint, the district court found the applicable two-year statute of limitations began when Gregg’s participation in the LTS program ended, and not “until later” when she “was formally diagnosed and/or that she learned the full extent of [her] injury.” The Court of Appeals disagreed, noting that a cause of action accrues even if “the full extent of the injury is not known” until the plaintiff subsequently discovers critical facts. The Court held that Gregg should be allowed to amend her complaint to allege she was unaware of her psychological injuries until well after her May 2012 release.

IA -- IN THE INTEREST OF T.H., No. 16-0158 (IA Sup Ct, 15 June 2018): Denied the argument registration for juveniles is cruel and unusual punishment.

NY -- People v Ellis 2018 NY Slip Op 03873 (NY App Ct, 31 May 2018): Defendant, a convicted SO, was charged by indictment with the crime of failure to register or verify as a SO under the SO Reg. Act ; see Correction Law Sec. 168-f [4]; Correction Law Sec. 168-t). The charges stemmed from allegations that he failed to register a Facebook account. Upon consideration of the foregoing, we conclude that the social media website or application — be it Facebook or any other social networking website or application — does not constitute a "designation used for the purposes of chat, instant messaging, social networking or other similar [I]nternet communication" (Correction Law Sec. 168-a [18]). An Internet identifier is not the social networking website or application itself; rather, it is how someone identifies himself or herself when accessing a social networking account, whether it be with an electronic mail address or some other name or title, such as a screen name or user name. Defendant's failure to disclose his use of Facebook is not a crime, rendering the indictment jurisdictionally defective.

CO - People v. McCulley, No. 16CA1787 (CO Ct Appeals, 28 June 2018): Defendant pleaded guilty to one count of 2nd degree sexual assault and one count of 3rd degree sexual assault and entered into a plea agreement. Among other things, the plea agreement provided that the trial court would dismiss the felony charge once defendant complied with his deferred judgment. A condition of the deferred judgment was that defendant register as an SO. Defendant completed his deferred judgment and the felony charge was dismissed. Years later, defendant filed a petition to discontinue the requirement that he register. The trial court denied the motion. On appeal, defendant argued that the trial court erred by construing the term “conviction” under SORA to include a successfully completed deferred judgment. SORA’s plain language provides that the term “conviction” as used in C.R.S. § 16-22-113(3)(c) includes a successfully completed deferred judgment. The order was affirmed.

Bakran v US, No. 16-3440 (3rd Cir., 5 July 2018): Upheld a lower court’s ruling that an SO does not have the right to sponsor his foreign born wife for citizenship in the US in a decision published on July 5. The court’s decision was based upon its interpretation of language in the AWA which allows the Dept of Homeland Security to approve such citizenship only if the individual can prove he poses “no risk” to his spouse.

People of MI v Christopher John Czarnik, No. 338856 (Unpublished Per Curiam Opinion, MI Ct of Appeals, 3 July 2018): Defendant appeals by leave granted his conviction for the production of child sexually abusive material, MCL 750.145c(2). On March 26, 2016, a correctional officer conducted a pat-down search of defendant. During the search, the officer found a drawing of a young girl “having sex and performing oral sex on an adult male.” The officer also found a hand-written story of a six-year old child having sex with adults. On April 5, 2016, a MI State Police Trooper interviewed defendant, who confessed that he had more drawings and narratives located in his cell and that he views the material as sexual in nature and used it for his own sexual gratification. Defendant argues that “depiction” is not meant to include purely textual writings because the statute’s definition purportedly shows that it is meant to cover only visual or audio representations. But because the pictures and illustrations defendant drew easily qualify as child sexually abusive material, we need not reach the question of whether his written stories qualify as well.

CA – USDC judge dismisses ACSOL lawsuit against Intl Megan’s Law passport marks, which argued the US State Dept exceeded its authority in issuing the marks and “abused its discretion” by denying passport cards.

Vasquez v Foxx, No. 17-1061 (7th Cir, 11 July 2018): IL added child and group day-care homes to the 500-foot buffer zone in 2008. When the men updated their registrations, the Chicago PD told them they had to move because child day-care homes had opened up within 500 feet of their residences and gave them 30 days to comply. The men sued under 42 U.S.C. 1983, claiming that the statutory amendment violated Ex Post Facto; that applying the amended statute to them constituted an unconstitutional taking of their property; and that the statute is enforced without a hearing for an individualized risk assessment and is not rationally related to a legitimate state interest, in violation of their due process rights. The 7th Cir affirmed the USDC rejection of the suit; amended statute is neither impermissibly retroactive nor punitive; Takings Clause claim was unexhausted and the amendment was adopted before they acquired their homes, so it did not alter their property-rights expectations; Procedural due process claim fails because there is no right to a hearing to establish a fact irrelevant to the statute; Law “easily satisfies rational-basis review.” In short, the 7th Cir stated it doesn’t matter if you own your home before a school moves down the street, you have no right to live there.

FL -- Jones v. State, Fla: Dist. Court of Appeals (2nd Dist. 2018): Reversed a lower court’s order that allowed the State to impose special conditions of SO probation on Jones, when those conditions were not part of his sentence, violating double jeopardy.

AL – State v Solomon and Witt, CR-16-1189 (AL App Ct, 12 July 2018): Reversed a local judge's ruling that called AL’s teacher-student sex law unconstitutional. Defense attorneys have argued teachers' 14th Amdt equal protection rights are violated by the law by treating teachers and other school employees differently from other citizens, the attorneys argue in court records. Other adults having consensual sex with 16-year-olds do not face criminal prosecution. Prosecutors have argued AL law also prohibits jailers and probation officers from having sex with people under their care. "...this Court has recently rejected the circuit court's rationale for holding (the statute) unconstitutional -- that students who have reached the age of 16 have the ability to consent to sexual activity; thus, the State may not proscribe sex acts between a teacher and a student without requiring the State to show that the teacher used his or her position to unduly influence the student's decision to consent," the appellate justices wrote.

MA -- Noe, SORB No. 5340 v. SO Registry Bd (SJC 12447) (August 1, 2018): “In Doe v SO Registry Bd. No. 380316 v. SO Registry Bd., 473 Mass. 297, 298 (2015) (Doe No. 380316), we held that the SOR Board (board) is constitutionally required to prove the initial classification of a convicted SO under the sex offender registry law, G. L. c. 6, §§ 178C-178Q, by clear and convincing evidence. We are now asked to consider whether reclassification hearings require the board to meet the same standard and burden of proof as initial classification hearings. We conclude that they do. We also conclude that, given the plain language of G. L. c. 6, § 178L (3), indigent SOs have a right to counsel in such reclassification hearings.

MA -- Doe, SORB No. 76819 v. SO Registry Board (SJC 12462) (August 1, 2018): “…due process requires that the appropriate quantum of proof in termination proceedings, as in reclassification proceedings, is clear and convincing evidence, and that the burden is imposed on the board, not the SO. The SO does, however, retain an initial burden of production to introduce evidence of changed circumstances showing that (s)he "does not pose a risk to reoffend or a danger to the public." See 803 Code MA Regs. § 1.30(1) (2016). We further conclude that such hearings on reclassifications and terminations must take place within a reasonable period of time after the issuance of the rescript in this case.

PA - Common Pleas (trial) Court found that the law that defendant George Torsilieri was required to report to state police as an SO was unconstitutional. SORNA violated the fundamental right to reputation under the state Constitution, as well as federal guarantees of due process…Sarcione’s decision follows another decision in June by a Montgomery Co judge overturning the registration requirements. The state Sup Ct had ruled earlier that the first version of the state’s SORNA law had become so onerous that it was unconstitutional. A new version signed into law by Gov. Tom Wolf is having little success in standing up to judicial scrutiny. (opinion not published)

NC – State v Griffin, No. COA17-386 (NC Ct of App, 7 Aug 2018): “Absent any evidence that satellite-based monitoring (‘SBM’) is effective to protect the public from SOs, the trial court erred in imposing SBM on a SO for 30 yrs. Court relied on Grady v. NC, 575 US \_, 191 L. Ed. 2d 462 (2015) which previously ruled GPS monitoring was a search under 4th Amdt, noting “not all” monitoring was unreasonable. The Grady case had been remanded back to the lower courts, and this Court rejected the state’s claim because the state failed to provide any evidence that SBM was effective in reducing recidivism. The Court had also ruled SBM was more intrusive than registration.

AK - 7270 S-15821/S-16403 State, Dept. of Public Safety v. Doe I & II (AK Sup Ct, 10 Aug 2018): Ruled a strict reading of the 1994 AK SORA does not grant the AK Dept of Public Safety leeway when determining whether an out-of-state sex crime matches an illegal act under state law. DPS cannot be flexible when comparing an out-of-state law and AK law. This can be fixed by legislation.

MN – US Dist Ct judge Donovan Frank dismissed a class action against the state’s civil commitment program after the 8th Cir overturned his 2015 ruling; the suit’s remaining claims dealt mostly with alleged violations of religious freedom, free speech & free association, and protections against unreasonable searches & seizures. The effect of the rulings is that anyone in the program who wishes to pursue such claims must do so as an individual instead of a class action.

IL - People v Kochevar, 2018 IL App (3d) 140660 (IL 3rd App Ct, 20 Aug 2018): found that IL’s SORA & related restrictions, as applied to Kochevar, violated both the 8th Amendment of the U.S. Constitution & the proportionate penalties clause of the IL Constitution. Kochevar & his alleged victim knew each other for several years. They were both on the track team at the same high school. When Kochevar turned 18 the relationship became sexual; her parents called the police when they found out about it.

SCOTUS – The hearing for Gundy v US was Oct 2. It deals with the “nondelegation doctrine,” which limits the power of Congress to delegate authority in making rules of law to the executive branch. Specifically, this case deals with the transfer of authority to decide the retroactive application of the AWA to the US Atty Gen Alberto Gonzalez back in 2006. Gundy is getting more attention than expected because it gives the Court’s right flank a vehicle it could use to radically limit federal power (like EPA rules like the Clean Air Act, for example). Unlike past SCOTUS rulings, it appears that conservatives are in favor of Gundy. Gorsuch had reportedly ruled in a similar case before being appointed to SCOTUS, and it seems Ginsburg also seemed to side with Gorsuch. Breyer also expressed concerns with giving the AG such power “because there we risk vendetta” but also worried ruling in favor of Gundy could put over 300,000 laws on the books in jeopardy, adding, “we could be a very busy court for a while.” It is predicted that the courts will rule in Gundy’s favor based on the hearing and both Ginsburg’s and Gorsuch’s record on this issue.

US v Holena, No. 17-3537 (3rd Cir. 2018): To protect the public, a sentencing judge may restrict a convicted defendant’s use of computers and the internet. But to respect the defendant’s constitutional liberties, the judge must tailor those restrictions to the danger posed by the defendant. A complete ban on computer and internet use “will rarely be sufficiently tailored.” United States v. Albertson, 645 F.3d 191, 197 (3d Cir. 2011)

SCOTUS: Petition filed in case of US v Haymond, appealing ruling from No. 17-1672 (10th Cir). Issue: Whether the U.S. Court of Appeals for the 10th Circuit erred in holding “unconstitutional and unenforceable” the portions of 18 U.S.C. § 3583(k) that required the district court to revoke the respondent’s 10-year term of supervised release, and to impose five years of reimprisonment, following its finding by a preponderance of the evidence that the respondent violated the conditions of his release by knowingly possessing CP.

US v Henderson, No. 17-10230 (9th Cir. 2018): The panel affirmed the district court’s denial of a motion to suppress evidence, including evidence seized in California, pursuant to a Network Investigative Technique (“NIT”) warrant issued by a magistrate judge in the E. Dist. of VA, in a case in which the defendant entered a conditional guilty plea to receipt of CP. The panel held that the NIT warrant violated Fed. R. Crim. P. 41(b) by authorizing a search outside of the issuing magistrate judge’s territorial authority; the panel agreed with the defendant that Rule 41(b) is not merely a technical venue rule, but rather is essential to the magistrate judge’s jurisdiction to act in this case. The panel held that a warrant purportedly authorizing a search beyond the jurisdiction of the issuing magistrate judge is void under the Fourth Amendment, and that the Rule 41 violation was a fundamental, constitutional error. The panel concluded that the good faith exception to the exclusionary rule applied to bar suppression of the evidence obtained against the defendant pursuant to the NIT warrant.

SCOTUS: Prison Legal News has asked the High Court to review the 11th Cir decision of PLN v FL Sec. of Dept of Corrections, #15-14220 (May 17, 2018) regarding censorship of the Prison Legal News & the Criminal Legal News, publications of the Human Rights Defense Center. The 11th Cir ruled that banning PLN on the grounds of “preventing inmates from receiving publications with prominent or prevalent advertisements for prohibited services, such as three-way calling and pen pal solicitation, that threaten other inmates and the public” did not violate the 1st mendment (though the failure to properly notify the HRDC of the bans violated the 14th Amendment). While this is not SO related, this is relevant to everyone. Even the ICoN has been impacted by prison censorship in the past. Earlier in the year, we removed the external resources section from our newsletters in response to past prison censorship. The November 2018 issue of ICoN was censored by at least one prison (Ft Worth FMC), claiming the issue “jeopardizes the safety, security, or orderly operation of the correctional facility, or the protection of the public.”

Please note that a growing number of prisons are increasingly restricting access to legal information in direct violation of the past SCOTUS decisions. Hudson v. Palmer, 468 U.S. 517, 547 (1984). See also Parrish v. Johnson, 800 F.2d 600, 604 (6th Cir. 1986) ("Any ‘arbitrary opening and reading of … mail [with] no justification – other than harassment’ may violate the First Amendment."). Turner v. Safley, 482 U.S. 78, 89-91 (1987) allows some censorship for material if it is rationally related to a legitimate penological interest, & it is this decision that some prisons are abusing to censor us.

**LEGAL ROUNDUP 2019**

NC - Meredith v Stein, No. 5:17-CV-528-BO (E. NC, W Div., Nov. 7, 2018): Ruled in favor of SO who moved from WA to NC & was initially told he did not have to register but was subsequently forced to register in NC. Plaintiff argued the mechanism by which NC places out-os-state SOs on the registry violated due process under the 14th Amdt. The Court found the state has NO clear way of determining who should register when moving to the state & NC’s “current process for determining whether out-of-state offenses are ‘substantially similar’ to reportable convictions in NC violates plaintiff’s procedural due process rights under the 14th Amendment.”

Braylock, Breland and Mathews v City of Dayton, Court File No. 27-CV-18-199 (4th Dist Ct MN, 12/11/18): Issued an order determining that the City of Dayton’s SO residence restriction ordinance was void and preempted by state law (sometimes referred to as “home rule,” where a local law cannot be passed without being granted authorization by the state legislature). MN does not have statewide residency restrictions, and this lower court level decision is similar to a number of court rulings in other states where no statewide residency restriction exists while municipalities pass local level restrictions. Earlier in 2018, a US Dist Ct (First Lutheran Church v The City of St Paul, Case No. 0:18-cv-0954-JRT-KMM (USDC MN, 7/2/18)) also passed an injunction against a local residency restriction ordinance.

NM – The Albuquerque Journal reported that a lawsuit has been filed against Correctional Services Network of America LLC along with Jimmie Rae Gordon (CEO of CSNA) and Gloria Letcher (Gordon’s step-mother and a manager of the company). The lawsuit says the corporation has been mailing postcards to inmates at a New Mexico prison and asking the inmates to get their relatives to enter into contracts with the business, but never perform any work after they are paid. Gordon claims CSNA helps inmates with various tasks, such writing letters to a warden on an inmate’s behalf asking for a change to their living situation or helping inmates with appeals that they plan to file themselves for example. “We’re not attorneys and we can’t give legal advice, but we can assist them at their direction,” Gordon said. I have covered a variety of potential scams in previous newsletters. This is yet another possible example of scammers playing on your desperation & that of your loved ones. If a service seems too good to be true it often a scammer.

FL – Archer v State, Case No. 5D18-665 (FL 5th App Ct, 25 Jan 2019): Archie, who was on sex offender probation, was violated for (among other things) traveling outside his county without the approval of his probation officer. Although he was wearing a GPS monitor that was supposed to alert him when he traveled outside the county, the alerts were not turned on that day. When Archie accompanied a friend to pick up another person who apparently lived in a neighboring county, the GPS detected the activity and ultimately he was violated for it. Case law precedent states that probation can be revoked upon a finding that a violation is willful and substantial. In order for something to be willful, it needs to be done knowingly. The Appellate Court found that, “no evidence was presented indicating that there was signage on the road that would have alerted Appellant that he was traveling into Sumter County. The State could not establish that Appellant willfully violated his probation without introducing evidence that he knowingly left Marion County.” Many probation-related questions are asked by members who have been threatened with violations for petty infractions they may have done unknowingly. When faced with such a scenario, know that in order to be violated, the violation must be willful and substantial and unless there is evidence it was done knowingly, you can’t willfully do something you are unaware of. (Editor’s note: This analysis was extrapolated from the Florida Action Committee website.)

RI – The ACLU of RI settled a lawsuit against the state over a law that prohibits shelters from allowing more than 10% of their beds to be used by SOs. The parties agreed that, in implementing the statute, shelter providers will not be deemed to have exceeded the limitations so long as the shelter operator reports to the local police the names of the individuals being housed overnight and that available alternative shelters or housing for the individuals were explored.

CA - In re GREGORY GADLIN, Case No. B289852 (CA 2nd App Ct, 28 Jan 2019): declared invalid a regulation promulgated by the California Department of Corrections and Rehabilitation which categorically bars inmates who were previously convicted of crimes requiring registration as a sex offender from seeking early parole under a recently-enacted constitutional provision. The opinion only invalidates the department’s rule that registered sex offenders currently serving time for a conviction not requiring registration are prohibited from seeking early parole under a law created in 2016 by Proposition 57. It leaves open the question of whether those currently serving a sentence requiring sex offender registration are similarly barred. Proposition 57 added to the state Constitution article 1, §32(a)(1), which provides: “Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.”

State of NH v. Edward G. Proctor, No. 2018-0031 (NH Sup Ct, 8 Feb 2019): Ruled a SO did not break the law by hiring a 16-year-old boy to work for his landscaping business. Proctor was convicted in 2017 under a law prohibiting certain SOs from undertaking employment or volunteer services involving the care, instruction or guidance of children. Proctor hired the teen in Feb 2016 for snow removal work and again in May 2016, driving him to job sites for weeding, mulching and other landscape work. He was arrested after the boy's mother typed Proctor's name into the SOR. Proctor argued that the law prohibits accepting certain types of employment, not providing employment. The Court did not weigh in on that argument but agreed with his second argument that the law, which specifically mentions jobs such as teacher, coach and camp counselor, only prohibits activity that inherently involves children.

Doe v. Marshall, CASE NO. 2:15-CV-606-WKW [WO] (M.D. Ala. Feb. 11, 2019): Ruled part of AL’s internet reporting requirements & branded identification requirements are unconstitutional under the 1st Amdt (but rejected 14th Amdt arguments, specifically challenges on the vagueness). The specific internet reporting requirements referenced include requirements for SOs to provide law enforcement with a list of any and all internet providers used and a list of any email addresses or instant message address or identifiers used, including any designations or monikers used for self-identification in internet communication or postings other than those used exclusively in a lawful commercial transaction. He also called the internet reporting requirements “overbroad.” Ruling also declared unconstitutional the state’s requirement for SOs to have a valid driver’s license or other identification card that identifies the person as a sex offender.

From IL Voices -- Lawsuit #3: "3 to Life" Mandatory Supervised Release, Paul Murphy et al v. Kwame Raoul et al, U.S. District Court for the Northern District of Illinois Case #: 1:16-cv-11471 -- This lawsuit challenges the constitutionality of a legal scheme whereby individuals who have been convicted of certain sex-related crimes in Illinois end up serving life sentences in prison as the result of the interactions of various state laws and state agency regulations promulgated by three distinct entities—the Illinois legislature, the Prisoner Review Board (“PRB”) and the Illinois Department of Corrections (“IDOC”). In particular, individuals convicted of sex-related crimes who are sentenced to three years to life of mandatory supervised release (“MSR”) find themselves stuck in prison for life as a result of the imposition of unmeetable restrictions on where they can live that must be satisfied in order for such individuals to be released on MSR. Update 3/31/19: Judge Kendall issued an opinion for the Federal Dist Ct today, granting the Plaintiff's motion for summary judgment in part. In the opinion the judge said "At the very heart of liberty secured by the separation of powers is freedom from indefinite imprisonment by executive decree. The AG and Director's current application of the host site requirement results in the continued deprivation of the plaintiffs' fundamental rights and therefore contravenes with the 8th and 14th Amendments to the US Constitution." Page 56 of the order says that "the defendants' application of the host site requirement constitutes cruel and unusual punishment." The court granted the plaintiffs' motion for summary judgment on their equal protection and 8th Amendment claims but denied the substantive and procedural due process claims. The next hearing will be on 4/22/19 to discuss a trial date for the procedural due process claim and the need for a remedial hearing to determine the scope of equitable relief for the plaintiffs. What this means is that the state cannot detain SOs set for release because they do not have a place to go upon release.

GA – Park v The State, S18A1211 (GA Sup Ct, 3 Mar 2019): Ruled lifetime GPS ankle monitors for a “predator” violate the 4th Amdt protection against unreasonable searches and seizures. “The permanent application of a monitoring device and the collection of data by the State about an individual’s whereabouts twenty-four hours a day, seven days a week, through warrantless GPS monitoring for the rest of that individual’s life, even after that person has served the entirety of his or her criminal sentence, constitutes a significant intrusion upon the privacy of the individual being monitored. See, e.g., United States v. Jones, 565 U.S. 400, 407 (132 SCt 945, 181 LE2d 911) (2012)”

1st Cir – Pagan-Gonzalez v Moreno, No. 16-2214 (1st Cir, 22 Mar 2019): “This case requires us to consider the constitutional boundaries for the use of deception by law enforcement officers seeking consent for a warrantless search. We conclude that the search at issue here violated the 4th Amdt because the circumstances -- including a lie that conveyed the need for urgent action to address a pressing threat to person or property -- vitiated the consent given by appellants.” (Following is condensed from Justia.com) “The 1st Circuit vacated in part the district court's grant of Defendants' motion to dismiss Plaintiff's complaint, holding that the warrantless search in this case violated the 4th Amdt because the circumstances, including deception by law enforcement officers, vitiated the consent given by Plaintiff. Plaintiff alleged that he consented to FBI agents' entry into his home and search of his computers only because the officers lied about the true reason of why there were there and what they were looking for. The district court granted Defendants' motion to dismiss for failure to state a claim. The First Circuit vacated in part and affirmed in part, holding (1) because the totality of the circumstances pointed to a situation involving beguilement, the government did not meet its burden to prove voluntariness, and therefore, the warrantless entry into Plaintiff's home and the search and seizure of his computer violated the Fourth Amendment; (2) Defendants were not entitled to qualified immunity on Plaintiff's search-based Fourth Amendment claim because any reasonable officer would have recognized that the circumstances were impermissibly coercive; and (3) even if Plaintiffs' malicious prosecution claim had merit, Defendants would be entitled to qualified immunity.” The case involved the FBI lying to a man that his modem was sending out viruses to DC when in reality, the FBI came to search his computer for CP.

FL – Berben v State, Case No. 5D17-1428 (5th FL App Ct, 12 Apr 2019): Remanded a lower court’s sentence of 100 years for a CP conviction: “When imposing the sentence, the trial court made specific and unsubstantiated comments, concluding that Berben had actually distributed the pornographic images and further equating such conduct to actual, physical or sexual abuse of a minor… Further, the trial court saw “little difference in the culpability between those who actually sexually abuse and exploit children and those who encourage and promote conduct by downloading and sharing videos of such,” neither of which Berben was charged with.” As one of the concurring opinions mentioned, “Make no mistake, those who possess child pornography face lengthy prison sentences. However, they are not generally sentenced to life in prison.”

7th Cir. -- Lacy v Butts, No. 17-3256 (7th Cir, 25 Apr 2019): Ruled IN’s requirement that SO inmates give detailed accounts of their past actions violates the Constitution’s protections against self-incrimination. “Prison rehabilitation programs may offer benefits and incentives by conditioning visitation rights, work opportunities, housing in a lower‐security unit, & other privileges on an offender’s willingness to admit responsibility for the crime of conviction. McKune v. Lile, 536 U.S. 24, 40 (2002). But the 5th Amendment draws one sharp line in the sand: no person ‘shall be compelled in any criminal case to be a witness against himself.’ US 5th Amdt. (emphasis added). This case requires us to decide whether IN’s SO Management & Monitoring (INSOMM) program crosses that line with its system of revoking good time credits and denying the opportunity to earn such credits for convicted sex offenders who refuse to confess their crimes. In an action brought by a class led by D.L., an inmate subject to INSOMM, the district court ruled that Indiana’s system as currently operated impermissibly compels self‐incrimination and must be revised.

FL -- McKenzie v. Florida, Case No. 5D18-2206 (5th DCA, 10 May 2019): Reversed an order designating a man as a “sexual predator” three years AFTER he had completed his sentence. The Appeals court found that the lower court lacked jurisdiction over the individual to enter the order. Once the sentence has been served, the court did not have the authority to belatedly designate him as a sexual predator.

Gundy v US: Upheld 2nd Cir. judgment that 34 USC 20913(d)—which requires the AG to apply the SORNA registration requirements as soon as feasible to SOs convicted before the statute’s enactment—is not an unconstitutional delegation of legislative authority. “This Court has already interpreted §20913(d) to require the AG to apply SORNA to all pre-Act offenders as soon as feasible. In Reynolds v. US, 565 US 432, the Court held that SORNA’s registration requirements did not apply of their own force to pre-Act offenders. But in doing so, it made clear how far SORNA limited the AG’s authority and thereby effectively resolved this case. The Court started from the premise that Congress meant for SORNA’s registration requirements to apply to pre-Act offenders, based on the Act’s statutory purpose, its definition of SO, and its history.”

US v Haymond, No. 17-1672 (US Jun. 26, 2019): Haymond was caught with CP while on supervised release. A district judge, acting without a jury, found by a preponderance of the evidence Haymond violated his release terms. Under 18 USC 3583(e)(3), the judge could have sentenced him to a prison term of 0-2 years. But since CP possession is an enumerated offense under §3583(k), the judge instead imposed that provision’s 5-year mandatory minimum. The justices ruled 5-4 that Haymond’s to return to prison based on a judge's new findings is unconstitutional. Juries, not judges, have the power to determine criminal conduct.

US v. Carson, No. 17-3589 (8th Cir. May 10, 2019): Found defendant’s argument against “plain error” in sentencing was insufficient. “We next turn to Carson’s argument that Special Condition 16 (social media restriction) ‘suffers the same flaws as the NC statute held to be unconstitutional in Packingham’…Carson argues his court-imposed inability to maintain or create a user account on any social media site falls squarely under the holding of Packingham.

We disagree. Several of our sister circuits have rejected a similar argument in challenges to supervised release conditions forbidding access to the internet — and effectively to social media sites — without prior approval or monitoring by a court or probation officer… These courts have noted Packingham invalidated only a post-custodial restriction and expressed concern that the statute applied even to “persons who have already served their sentence.”… Because supervised release is part of a defendant’s sentence, Packingham does not render a district court’s restriction on access to the internet during a term of supervised release plain error... We find this reasoning applies with equal force here. Thus, even assuming the district court’s prohibition on creating or maintaining a social media profile implicates the same 1st Amdt interests as a restriction on accessing social media altogether, the district court did not commit plain error by imposing Special Condition 16.”

AK- Doe v State, #S16748 (AK Sup Ct, 14 June 2019): Held that ASORA’s registration requirements can constitutionally be applied to out-of-state offenders. But currently, ASORA violates due process, though its defect may be cured by providing a procedure for offenders to establish their non-dangerousness.

AL- Passed HB 379, a mandatory chemical castration bill for parolees whose crime involves minors under age 13. Note this applies only to those under state parole.

US v White, No. 19-6181 (4th Cir. 18 June 2019): Upheld that a person declared unfit to stand trial is not exempt from indefinite detention under 18 USC 4248.

People In the Interest of T.B, No. 17SC66, 2019 CO 53 (CO Sup Ct, 17 June 2019): The CO SO Registration Act (CSORA), sections 16-22-101 to -115, C.R.S. 2018, requires that juveniles who are twice adjudicated for unlawful sexual behavior must register for life. In this 8th Amendment challenge to CSORA, a division of the court of appeals, with one judge dissenting, holds that CSORA’s lifetime registration requirement is a punishment as it applies to juveniles.

People v Ellis, 2019 NY Slip Op 05183 (27 June 2019): Ruled NY’s definition of “internet identifier” (Correction Law § 168-f [4]) does not include a Facebook account. "Internet identifiers" are defined as "electronic mail addresses & designations used for the purposes of chat, instant messaging, social networking or other similar internet communication." “The legislature could have easily included among the mandatory disclosure provisions of Correction Law § 168-f (4) the "authorized internet entities" that a SO uses, such as Facebook. Presently, however, that statute does not require SOs to disclose to DCJS the authorized internet entities that they use.”

AK- Signed HB 89 to ensure out-of-state registrants must register with AK

State v Cross, Opinion No. 27903 (SC Sup Ct, 24 July 2019) – Reversed and remanded conviction of man who was convicted of a crime enhancement for having a 1992 conviction because that conviction was used at trial, thus prejudicing jurors against him. (Under SC law, a person charged with a 2nd degree CSC charged can be enhanced t 1st degree w/ prior conviction.)

Logue v Book, No. 4D18-1112 (4th App FL, 14 Aug 2019): Reversed a restraining order by FL State Senator Lauren Book issued against Derek Logue on both 1st Amendment grounds and the fact the conduct did not rise to the legal definition of stalking. (For those unaware, Derek Logue runs OnceFallen.com and this newsletter, among other things.) The Court wrote: “The appellant’s Tallahassee protest was by all accounts peaceful—even if unpleasant in its scope and message. Each party is a vocal advocate for opposite positions on SO laws. This is an issue currently debated within what Justice Oliver Wendell Holmes once described as the ‘free trade in ideas.’ (Cit. omit.). True, one side of this debate has far greater public support than the other, but that does not make the appellant’s advocacy illegitimate… The appellee pleaded and proved that she was in fear of the appellant due to his actions, but her subjective fear cannot be the basis for the injunction’s issuance. “Courts apply a reasonable person standard, not a subjective standard, to determine whether an incident causes substantial emotional distress.” Schack, 192 So. 3d at 628 (citations omitted). However, we need not make this determination because the Tallahassee protest, the appellant’s attendance at the film festival, and the social media posts did not satisfy the statute’s requirements to support the injunction… Florida case law has mandated that threats via social media be directed to the individual—not by content, but by delivery—to fall within the purview of section 784.0485. See Textor, 189 So. 3d at 875. The 1st Amdt guarantees freedom of speech and expression, even if distasteful and vulgar. Although the appellant’s position may be socially abhorrent, he has a 1st Amdt right to express his views. While we understand and appreciate the appellee’s fear, the 1st Amdt protects the appellant’s despicable speech and his right to make it.”

State of NC v Grady, No. 179A14-3 (NC Sup Ct, 16 Aug 2019): Lifetime GPS-monitoring for persons required to register but not on parole/ probation violates 4th Amdt on unreasonable search

Jones v. County of Suffolk and PFML, 7 No. 18‐1602‐cv (2nd Cir, 4 Sept 2019): Upheld lower court ruling that allowing Parents For Megan’s law, a for-profit private agency, to conduct address verification checks does not violate 4th Amdt protections against unreasonable searches; the Court ruled the visits by the private group were ‘brief and unobstrusive,” and cited the “special needs doctrine” to justify the search. “Jones undoubtedly had a diminished expectation of privacy in that information, and by extension lacked a substantial interest in freedom from temporary seizure for the purpose of providing that information to the state.”

Elhady v Kable, Civil Action No. 1:16-cv-375-AJT-JFA (ED Va., 4 Sept 2019): Ruled the Gov’t “Terrorist Screening Database” (the terrorist watchlist or “No Fly List”) was unconstitutional (mostly on vagueness issues); it provided no remedy for those included on the list. While this is not related to SOs, it might be useful for challenges to certain issues.

Holste v Utah, 2019 UT 52 (23 Aug 2019): UT Sup Ct ruled a resident moving to UT from ID who was required to register for a withheld adjudication must still register. “The central issue in this appeal is whether Utah Code 77-41-105 requires individuals to register in UT even though their conviction in another jurisdiction has been set aside.” They determined that Holste “qualifies as an offender” under UT law. They also concluded deferred adjudication was a “conviction” even under Idaho law.

US v Kirby, D.C. Docket No. 3:15-cr-00175-TJC-JRK-1 (11th Cir, 17 Sept 2019): ruled that the district court’s sentence in a CP case was reasonable. Kirby, ex-LEO, was found in possession of 28 videos & 290 images of CP. (Some were of a relative) He was charged with three counts of sexual exploitation of children for the purpose of producing CP, (a violation of 18 USC 2251(a), (e)), and two counts of possessing with intent to view material involving minors engaged in sexually explicit conduct, (a violation of 18 USC 2252(a)(4)(B), (b)(2)). The district court sentenced Kirby to 1440 mos. of imprisonment (120 years), which was tantamount to a life sentence. Kirby argued that the US Sentencing Commission defines a “life sentence” for statistical purposes as 470 mos., “a length consistent with the average life expectancy of federal criminal offenders.” The Appellate Court disagreed and affirmed the sentence.

Corey Lamont Brown v State of Florida, Case No. 2D18-1892 (2nd FL App Ct, 4 Oct 2019): “In his sole issue on appeal, Brown contends that the trial court abused its discretion by revoking his community control when the State's evidence, which consisted solely of testimony that Brown failed to answer his door when his community control officer visited at 6:50 a.m., was legally insufficient to prove a willful and substantial violation of community control. Based on this court's decision in Brown v. State, 813 So. 2d 202 (Fla. 2d DCA 2002), we reverse and remand for reinstatement of Brown to community control…In sum, because the inference that Brown was not home is just one of several reasonable inferences that arise from the evidence of his failure to answer the door, the greater weight of the evidence did not establish a willful and substantial violation of the terms of Brown's community control. (Unsure if Brown was an SO, but may be relevant to FTR cases as well as parole checks.)

LA – 15th Dist Ct judge Patrick Michot dismissed a charge against an RC accused of scratching the words “Sex Offender” off his state ID card. The DA plans to appeal directly to the state Sup Ct since the ruling declared the ID card law unconstitutional, particularly the 1st Amdt (Gov’t cannot enforce compelled speech). Earlier this year, a US Dist Ct in AL made a similar ruling. (There is no published ruling, but was reported in the media.)

Alasaad v. McAleenan, Case 1:17-cv-11730-DJC (MA Dist Ct, Nov. 12, 2019): Not related directly to SOs. Suspicionless searches and seizures of travelers’ electronic devices by federal agents at airports and other US ports of entry are unconstitutional. "The court declares that the CBP and ICE policies for 'basic' and 'advanced' searches, as presently defined, violate the 4th Amdt to the extent that the policies do not require reasonable suspicion that the devices contain contraband."

People v. Morger, 2019 IL 123643 – The IL Sup Ct ruled that parts of IL law banning those on probation from all social media was unconstitutional in a case that did not involve an internet-related offense. It found IL could place more narrowly tailored restrictions that already existed in other legal provision, making this blanket ban overbroad.

**LEGAL ROUNDUP 2020**

US v. Stefanyuk, No. 18-3364 (8th Cir. 2019): Affirmed the district court's denial of defendant's motion to suppress evidence after he was convicted of 3 counts of receipt & distribution of CP and one count of failing to register. The court held that evidence from electronic video surveillance equipment (EVSE) did not sufficiently influence the jury, and any error in admitting the evidence was harmless. In this case, there was significant non-EVSE evidence supporting his conviction. The court also held that the district court did not abuse its discretion by admitting evidence of defendant's prior CP conviction under Federal Rules of Evidence 414 and 404(b).

Boise v Martin, No. 19-247 (US Sup Ct): SCOTUS has denied certiorari to reconsider a 9th Cir. decision that, which upheld a decision that homeless people have a constitutional right to sleep on public property outdoors if no other shelter is available to them. The lower decision is ROBERT MARTIN V. CITY OF BOISE, No. 15-35845 (9th Cir. 2019). While this does not directly involve SOs, many SOs experience homelessness and are banned from shelters.

US v. Mantha, 944 F.3d 352 (1st Cir. Dec. 10, 2019). In a case involving sexual exploitation of a child committed in 2001 and CP offenses committed in 2015 and 2016, the 1st Cir vacated defendant’s 196-month sentence, calculated under the 2016 Guidelines Manual, and remanded for resentencing. The court held that the district court incorrectly applied the 2016 Guidelines Manual, which resulted in a higher total offense level, to calculate the offense level for the defendant’s 2001 ungrouped child sexual exploitation offense. In a case of first impression for the 1st Cir, the court held that application of the one-book rule and the multiple offense rule to ungrouped offenses constituted an ex post facto violation. Stating that its conclusion was consistent with a majority of other circuits, the court noted that its holding was narrow, distinguishing it from the groupable offenses at issue in US v. Pagan-Ferrer, 736 F.3d 573 (1st Cir. 2013).

MI – Does v Snyder II, Case # 2:16-cv-13137-RHC-DRG (Ed. MI, 14 Feb 2020): The original Does v Snyder ruling (which was an ex post facto ruling as well as a condemnation of residency restrictions, in-person reporting, and increased registration periods) that made waves a few years back was NOT a class action suit but opened the state up to a class action suit. In this ruling, the Courts determined that MI cannot force those convicted before 12 April 2011 to live by current MI laws. The “Final Judgment” window is 60 days, so the MI legislature has that period to adjust the registration laws in a way that satisfies the Constitution, the registry laws for all pre-2011 RCs will be invalid. This means the state STILL has time to adjust the laws before the deadline, which they were already granted last May, so don’t get your hopes up just yet.

CA – Alliance for Constitutional Sex Offense Laws v. Ca. Dept. of Corrections & Rehabilitation, C087294 (CA3, 13 Feb 2020): Upheld lower court ruling that the ballot initiative Proposition 57, The Public Safety and Rehabilitation Act of 2016, which grants early parole consideration for nonviolent inmates, includes SOs considered non-violent under state law.

In the Matter of Registrant H.D.; In the Matter of Registrant J.M. (A-73/74-18) (082254) (NJ Sup Ct, 3/17/20): Ruled that a registrant cannot petition for registry relief after 15 years if they have committed any infraction during that time; the “clock does not reset”; registry relief is seen as a one-time offer. “If the statute read ‘within 15 years following any conviction or release,’ the registrants might have a stronger argument,” the 16-page opinion states.

Commonwealth v. Butler, J. - No. 25 WAP 2018 (PA Sup Ct, 3/26/20): Ruled that the state’s guidelines for determining SVP designation does not meet the threshold for being declared punitive and thus is “constitutionally permissible.” RCs tried using the Commonwealth v Muniz case which declared the AWA was punitive. The court concluded SVP designation is not “criminal punishment” and the state had a “legitimate” purpose to protect the public from those deemed “dangerously mentally ill” and a lifelong threat.

People v Diaz 2020 NY Slip Op 01114 (NY App. Ct., 2/18/20): Note, NY’s highest court is called the Court of Appeals, not the Supreme Court, which are the county level courts. It upheld allowing hearsay evidence in risk assessment hearings. “At a SORA hearing conducted as defendant was nearing completion of his prison sentence, he was adjudicated a level two risk of reoffense due, in part, to the assessment of ten points under risk factor one, use of violence. That finding was based on information in the Presentence Investigation (PSI) report prepared in connection with the offense stating that ‘[o]n one or more occasions, he used physical force to coerce the victim into cooperation,’ information also included in the case summary prepared by the Board of Examiners of SOs. Defendant argues that this evidence was insufficient to supply evidence of use of violence because it constituted hearsay and did not more specifically describe his conduct. We disagree. SORA adjudications, by design, are typically based on documentary evidence under the statute's ‘reliable hearsay’ standard.”

Rogers v State of Maryland, Case No. C-02-CV-17-000296 (Md., 3/31/20): “Court of Appeals held that, where petitioner pled guilty to violating Md. Code Ann., Crim. Law Sec. 11-303(a), offense whose elements did not require proof of victim’s age, and where no proof of victim’s age was established at plea proceeding, petitioner was not required to register as Tier II SO pursuant to Md. Code. Ann., Crim. Proc. SubSec. 11-701(p)(2) and 11-704(a)(2). Dept of Public Safety & Correctional Services lacked authority to determine on its own initiative that victim was minor and to order SO registration. No statute or regulation gives Department authority to make factual determination as to victim’s age for purposes of requiring registration as Tier II SO. Court of Appeals concluded that determination of fact necessary for placement on Maryland SOR—such as victim’s age—must be made by trier of fact beyond reasonable doubt during adjudicatory phase of criminal proceeding.” Notably, the registry as currently applied in MD is considered punitive.

Trent Dean McPhearson v. State of Indiana, 19A-MI-3035 (IN Appl. Ct., 4/9/20): Ruled trial court that vacated its prior order removing a man’s name from the Indiana SOR was correct in doing so because the IM AG’s Office had not been notified of the offender’s request to be taken off the registry. Maine ruled in 2015 that offenders such as McPherarson had been subjected to ex post facto laws because the registration requirement became law after the offense for which McPherarson was convicted. After McPhearson was removed from Maine SOR in 2015, he petitioned in 2018 for removal from the IN SOR. He served only the Madison Co. DA and, without objection from the local prosecutor’s office in Anderson, the trial court granted McPhearson’s petition. The Indiana Ct of Appeals affirmed, finding the trial court did not err either in granting the AG’s motion to intervene or in vacating its removal order. It also found that McPhearson committed a crime in another jurisdiction equivalent to sexual battery in Indiana. “In other words, McPhearson is required to register in IN not based on his previous obligation to register in ME — which no longer exists — but rather because he was convicted of a crime in ME that is substantially equivalent to a sexual offense proscribed under IN law. And he was always required to register as a sexual offender in IN on that basis alone, irrespective of his registration status in ME.”

Krebs v. Graveley, No. 19-cv-00634 (E.D. Wis. 2020) - Held that the Plaintiff (transgender SO seeking name change) did not demonstrate that the ability to change one’s name implicated the 1st Amdt, and thus it was without authority to issue a ruling on the matter.

US v. Herndon, No. 18–50541 (5th Cir. 2020) – On a case with a lifetime ban on Internet as condition of release, the Court held that the US Dist Court failed to articulate reasons supporting lifetime bans on conditions restricting possessing computers and internet access. Even without objection, the Court found that these conditions were not reasonable and that even if the Dist Court did articulate reasons for their imposition that such sweeping conditions of supervised release would not be appropriate.

US v Caniff, No. 17-12410 (11th Cir. 2020): Found that private text messages cannot support a conviction for a violation of 18 USC 2251(d)(1). That section provides that it is a crime to knowingly make, print, publish or cause to be made, printed, or published, any notice or advertisement seeking or offering (1) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or (B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct. Caniff was charged with that crime (along with two others) after engaging with a law enforcement officer that reached out to him through the online app Whisper. As is the pattern in most stings, the chat turned sexual and images were exchanged. Caniff was indicted and convicted at trial for three offenses, one of which was making, printing or publishing a “notice or advertisement” seeking the illegal images. The appellate court reversed the conviction on that count (affirming the others) and found that a private text exchange does not constitute making, printing or publishing a notice or advertisement.

Bryan v State of FL, Case No. 2D19-2331 (2nd DCA, 4/8/20): Reversed & remanded the probation violation of a man who was caught with a Penthouse magazine. He was on probation for the underlying offense of possession of CP. One of the conditions of his probation (and a special condition of MOST individuals who are on probation for SO was, “That he shall not view, access, own or possess any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the defendant’s deviant behavior pattern. [F.S. 948.30(1)(g)].” After finding a Penthouse magazine (a legal magazine that you must be over 18 to purchase & only depict images of people over 18) in the trunk of his car, his PO sought to violate his probation for lying to him by not disclosing this in his polygraph and for having the magazine. A trial court violated him and he appealed. The appellate court reversed the violation (consistent with decisions from the 5th DCA) and remanded it back to the trial court. The court focused on the language, “that are relevant to the defendant’s deviant behavior pattern“. A legal adult magazine is not relevant to illegal CP.

SC v. Simmons, Op. # 27959 (SC Sup Ct, 3/25/20): Uphold the constitutionality of SC Code 16-15-405 and the validity of a search warrant for CP, but reverse Simmons' convictions because “Simmons contends the trial court erred in finding defense counsel opened the door to testimony regarding the 8 videos found on the external hard drive. The State asserts the court properly found defense counsel opened the door by implying (forensic examiner) VanHouten did not find anything on the ‘focused’ items, when the 8 videos of suspected CP were recovered on the hard drive. We agree with Simmons.”

US v Chaparro, No. 18-2513 (7th Cir. 2020): The court rejected challenges to CP conviction, which were not raised in the district court, to the sufficiency of the evidence that he was the person using the electronic devices and to allegedly improper remarks made by the prosecutor. The court acknowledged that “the government’s case could have been stronger as to the identity of the devices’ user.” The computer forensics led investigators to a home, not to an individual, and little evidence showed that Chaparro resided at the address before 12/2014. Any improper rebuttal comments did not affect Chaparro’s substantial rights. The admission of Chaparro’s statement to pretrial services that he lived at the address was an error; pretrial services information is “confidential” and its admission is specifically prohibited “on the issue of guilt,” 18 USC 3153(c)(1), (3). Chaparro’s lone witness, his uncle, testified that Chaparro did not live at the address where the crimes were committed until just before his arrest. The court allowed the testimony of the pretrial services officer for impeachment. Assuming an exception exists under section 3153(c)(3) for other forms of impeachment, applying that exception to include specific contradiction by a statement from someone other than the witness is contrary to the protections Congress enacted.

State of NJ v RK, Case No. A-2022-18T2/A-2024-18T2 (NJ Appl Ct, 4/27/20): Concluded blanket social media prohibition is both unconstitutional on its face and as applied to RK individually, RK sentences impede his free speech rights. RK was on parole. the ban "completely denies access to RK's ability to express himself in the protected forum of public debate through social networking…Neither the (Parole) board nor its parole officers should be the gatekeeper to determine whether a persons, even a parolee's constitutional free speech rights via access to social media should be unlocked… a more limiting social networking restriction directed at contacting minors may be more fitting." RK's ban is "more restrictive than it needs to be.”

Doe v Rausch, No. 3:17-cv-00504-PLR-HBG (ED Tn, 5/14/20): Restrictions of SORVTA are much like traditional punishments of shaming, banishment, and probation, particularly when those restrictions are imposed for life, that the registry imposes an affirmative disability or restraint on Plaintiff, that permanence of SORVTA’s restrictions, based solely on his prior offense rather than a present potential of re-offense, weigh in favor of traditional punitive aims, among other things. The effect of lifetime compliance with SORVTA is punitive as it relates to Plaintiff. While the court made clear that this only applies to the plaintiff, the facts and circumstances are likely common to most on the TN SOR prior to 2004.

Hearn v. Castilleja, Case No. 18-CV-504-LY (WD Tx, 5/27/20): From TexasVoices.org, Regarding a case of constitutional breach of a plea, “Today the US Dist Ct in our case ruled against us on two… issues. First… the Court further ruled that a valid breach of contract claim, as well as our constitutional claim based on Santobello, requires an aggrieved person to prove the consequences of the breach resulted in a criminal ‘punishment’ being imposed against him. ... Second, the Court ruled the applicable two-year statute of limitations barred our claims because more than two years elapsed between the point in time that Jack, Donnie and Jimmy ‘knew or should have known’ their rights were violated (some 20 years ago), and the point in time that we filed our lawsuit (in 2018). Our position is, and has been throughout this case, that the ‘continuing violation doctrine’ adopted by the SCOTUS in 2012 overruled the ‘knew or should have known’ doctrine for purposes of determining whether a claim is barred by a statute of limitations. Based on that decision, the 5th Cir likewise overruled the ‘knew or should have known’ doctrine in 2017. Unfortunately, the Dist Ct in our case, we believe, overlooked this fact. Instead, it based its statute of limitations ruling on an unpublished (and therefore non-precedential) case that was decided by the 5th Cir 1998, 19 years before that unpublished case was effectively overruled by the 5th Cir’s subsequent decision in 2017.”

People v Legoo, 2020 IL 124965 (6/18/2020): Under 720 ILCS 5/11-9.3 (a-10), an RC cannot be present in any public park building, a playground or recreation area within any publicly accessible privately owned building, or on real property comprising any public park when minors are present in the building or on the grounds AND to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds. Howeve, 720 ILCS 5/11-9.4 says no child SO or sexual predator may be on park grounds for ANY reason. Legoo entered a park to retrieve his son who was at the park. The rebellious child refused to leave, so Legoo left him. Legoo was in the park less than 5 minutes. He was arrested for violating the park ban, and the IL Sup Court upheld the conviction, denying the exceptions apply because Legoo did not accompany his son into the park. IL Sup Ct rejected the notion that the exceptions in 9.3 apply to the arrest for the violation for 9.4. So, apparently in Illinois you cannot enter a park unless you’re with your child at the moment you enter the park but not if the child is not with you at the moment you enter the park, but if you do enter with your child, you can approach other children. Even the justices mentioned the absurdity of these two laws.

Commonwealth v. Torsilieri, No. 37 MAP 2018 (Pa. 2020): Torsilieri brought a post-conviction challenge alleging that, because PA’s SOR law essentially used an irrebutable presumption of dangerousness that if violated several constitutional provisions related to punishment as well as state constitutional provisions protecting reputation. The trial court agreed, and held that based on expert evidence adducing that re-offense rates were lower, the provisions that the Appellee challenged were unconstitutional. The Commonwealth sought review. The PA Sup Ct vacated the trial court’s opinion on the constitutional question, but did not reverse their opinion. Rather, the PA Sup Ct observed that the Commonwealth did not submit evidence that was contradictory to the Appellee’s evidence related to re-offense rates. The Court remanded the case back to the trial court for further fact-finding on the question of re-offense rates.

Logue v Book, No. 4D18-1112 (4th FL Appeals, 6/24/20): Last year’s ruling in favor of OnceFallen’s Derek Logue over FL State Sen. Lauren Book, who filed a restraining order to stop protests and criticism over her role in forcing RCs in Miami to live under bridges, was before a 3 judge panel. This ruling was an 8-3 decision upholding the 3 judge panel ruling, which stated that this restraining order violated free speech; no actual harassment took place. “Each party in this case is a vocal advocate for opposite positions on sex offender laws. Despite Book’s complaints, Logue’s Tallahassee protest was by all accounts peaceful—even if unpleasant to Petitioner in its scope and message—and non- violent…Like the Tallahassee protest, Logue’s appearance at the film festival also had a legitimate purpose. While (Logue)’s presence may have made Book uncomfortable, he was well within his rights to attend and to express his opinion on the film’s subject matter—even if it was done by posing a snide and uncomfortably worded question to Book. Logue made no threats nor any threatening gestures toward her. As a result, Logue had the same right to express his views in this public forum as if he had held up a poster complaining about a business on a public sidewalk outside of that establishment. As for Logue putting information about Book’s home on his website, in light of the political activities being conducted at this location, his posting of this public information also had a legitimate purpose which was entirely within the bounds of lawful public debate…Logue did not drive by Book’s home, take a picture of her private residence, and then disseminate that information. Book’s home address as an elected official is a matter of public record for the purposes of validating her residency. Additionally, Book chose to use her home for business and politics. While she is certainly free to do so, she cannot then obtain an injunction against someone who elects to further publicize that widely available information… Publicly expressing anger toward an elected official is not a basis for entry of an injunction. In public debate, elected officials must tolerate insulting remarks—even angry, outrageous speech—to provide breathing room for the 1st Amdt.”

Mitchell v Roberts, 2020 UT 34 (UT Sup Ct, 6/11/2020): Struck down a 2016 state law that allowed victims of sexual abuse to sue decades later; the UT Legis. did not have the authority to effectively erase statutes of limitation after they already timed out. Currently, 17 states are allowing alleged victims to sue decades after incidents of alleged abuse, often undoing protections made by statutes of limitation in the process. The Court ruled, “This principle is well-rooted in our precedent, a point meriting respect as a matter of stare decisis. It is also confirmed by the extensive historical material presented to us by the parties in their supplemental briefs, which shows that the founding-era understanding of ‘due process’ and ‘legislative power’ forecloses legislative enactments that vitiate a “vested right” in a statute of limitations defense.”

DeMare v State, Case # 2D19-2959 (2nd App. FL, 6/26/20): Jason DeMare went on an ADULT website and initiated contact with “Amber”, who claimed she was 18. For days, they chatted and flirted while he believed the woman was 18, but on the fourth day she told him she was 14. Each time DeMare tried to steer the conversation away from sex, Amber tried to steer it back. Each time he said he was not interested in a sexual relationship with a minor, Amber kept cajoling him and calling him chicken. DeMare still traveled to meet Amber, and was arrested in a sting. "Government agents may not originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute… law enforcement took the lead in the conversation, initially suggested a relationship between DeMare and a minor, coaxed and cajoled DeMare for more details, and challenged his reluctance by impugning his nerve and suggesting he was scared… law enforcement's persistent urging eventually overcame DeMare's reluctance to commit or even describe sexual activity with a minor.” The court declared this a case of entrapment.

US v Tullie, No. 19-10001, 19-10068 (9th Cir 2020, Unpublished): Invalidated a condition of parole which restricted a registrant from “engaging in any occupation, business, volunteer activity or profession” that had “the potential to be alone with children.” In its ruling, the Court agreed with the registrant that the parole condition at issue was overbroad. The Court noted in its decision that the condition “would leave only professions in industries that rigidly prohibit the presence of minors, such as a bar, casino, or adult-entertainment venue. The Court also noted that there was nothing in the record to suggest that the registrant “had an ongoing propensity to harm children, particularly random children he might ‘potentially’ encounter on the job.”

CA – Lawsuit brought forth by ACSOL to allow Registrants to serve on juries was dismissed; “Here, plaintiffs have failed to carry their burden to demonstrate that the legislature had no rational basis to exclude registrants and others on supervision from jury service,” the judge wrote. “Moreover, the fact that some ex-felons are being categorized differently than other ex-felons does not mean that the law is violating plaintiffs’ equal protection rights.”

US v Kirschner, No. 1:10-cr-00203-JPH-MJD (S.D. Ind. Jul. 15, 2020): Kirschner filed an emergency motion for compassionate release. Kirschner suffers from underlying health conditions that increases his risk of severe illness from COVID-19. He served most of his 124-month sentence and his scheduled release date—as determined by the BOP—is rapidly approaching. Releasing Mr. Kirschner from the BOP 7 months before his scheduled release date does not present a danger to the public, nor would it undermine the goals of federal sentencing law as set forth in 18 USC 3553(a). Due to existence of extraordinary and compelling reasons for compassionate release, the motion is granted. (Note: conviction of a CP offense.)

Note on Compassionate Release/ BOP: I’m not fielding questions about compassionate release. However, I’ve had numerous prisoners from multiple facilities stating a few have gotten out due to the pandemic. There’s no official statement from the BOP on the releases or any news reports. However, enough people have stated they have witnessed some getting out early. The common thread has been that these releases were granted through the courts, not by the BOP (which has stated SOs are not eligible for compassionate release). That means people have filed petitions with the courts to earn a compassionate release. As noted by one prisoner, “Anyone who wants to try to get released this way needs to file a Motion for Compassionate Release Pursuant to 18 U.S.C. 3582(c)(1)(A)(i). Typically, if you have an identifiable victim in a contact offense, you're out of luck. But the court must weigh several factors, including your risk of death or serious complications due to COVID.” Another has stated “send a request to the clerk of court and request appt of counsel for representation on filing a motion for compassionate release due to the Covid-19 pandemic. They will be appointed counsel and sent forms to fill out. While they are waiting they need to write a letter to the judge outlining their release plan, safety -plan and what they have experienced over the last 5 months in prison. I.e.: health medical sanitation, staff not wearing masks and other PPE etc. Be as detailed as possible.” This is still no guarantee but considering these statements come from multiple prisoners against many facilities, there may be some merit to them. Still, do not expect a miracle.

Commonwealth v. Lacombe et al., No. 35 MAP 2018 (Pa. 2020): Held that the new SORNA law was non-punitive and thus could be constitutionally applied retroactively without violating the Ex Post Facto clause (and additionally found that PA’s state Post Conviction Relief Act was not the exclusive means through which the constitutionality of SO registration may be challenged). The Court undertook similar analysis that it did in Muniz, but decided that the changes to the law — primarily the reduction in the number of times a person subject to SORNA must appear in person to register, as well as a reduction in the number of registrable offenses — rendered it non-punitive.

Millard v Rankin, No. 17-1333 (10th Cir. 2020): Overturned a lower court ruling that found CO’s SORNA law violated the 8th Amdt. The 10th Cir denies the registry is punitive, basing the decision on past cases that claimed the registry is not punitive, including the infamous Smith v Doe 2003 decision and other past rulings by the 20th Cir.

People v. Ehlebracht, # 2020COA132 (CO App Ct, 9/3/20): Ruled it is permissible to sentence SOs to both prison and probation as an exception to a 2019 CO Sup Ct ruling (Allman v People, 2019 CO 78) that made this practice illegal for most other offenders in the state. “Under the SO Lifetime Supervision Act (SOLSA), punishment “is tailored specifically to SOs and differs markedly from the general sentencing scheme for non-SOs.”

Jones et al. v Stanford et al., Case 1:20-cv-01332-RJD-SJB (EDNY, 9/9/20): Memo issued determining that blanket restrictions on internet usage by SOs on paper violate the 1st Amdt (individualized bans would still be considered valid if social media was used in the crime.) “While the Court appreciates the State’s compelling interest and laudable efforts to protect children from SOrecidivists on the internet, NY’s attempt to advance this interest via blanket restrictions cannot be squared with the significant freedom of speech rights at stake. For the following reasons, Plaintiffs’ motion for a preliminary injunction is GRANTED. While parole officers remain free to impose individualized restrictions on supervisees based on the Registrant’s specific circumstances and risk of recidivating using social media, e-STOP and Directive 9201 are preliminarily enjoined so far as they apply wholesale to Registrants who have not used the internet to facilitate the commission of their underlying sex offense.”

Willman v US Atty Gen, No. 19-2405 (6th Cir. 2020): "The principal issue in this appeal is whether the registration and notification obligations set forth in the federal SORNA apply to SOs who are convicted under state law but are not subject to that state’s SO registration and notification requirements. Our sister circuits have answered the question in the affirmative and so have we in an unpublished opinion, US v. Paul, 718 F. App’x 360, 363–64 (6th Cir. 2017). Today, based upon the text of the statute, we follow those decisions and hold that a SO’s obligations under SORNA are independent of any duties under state law. Plaintiff M.S. Willman also argues that SORNA is unconstitutional for several reasons. We conclude that none of these arguments have merit and therefore affirm the judgment of the district court dismissing plaintiff’s complaint."

Melnick v Camper, Case 1:18-cv-02885-CMA-KLM (USDC CO, 9/18/20): Melnick argued the registry hindered his ability to find housing and employment and to participate in social media. He deemed the registry an illegal search and seizure of his information in contravention of the 4th Amdt. Court ruled that Melnick had no reasonable expectation of privacy for the information disclosed, and pointed to a 2014 federal circuit court decision establishing that the “degree of intrusion” on SOs is reasonable because it advances public safety goals. “The fact that Plaintiff is still on parole only underscores his lack of a privacy interest in the information he was required to submit pursuant to SORA. A parolee does not enjoy ‘the absolute liberty to which every citizen is entitled. The purpose of these restrictions is to assist with offenders’ rehabilitation while protecting the safety of the community.”

Commonwealth v. Francis X. Harding, SJC-12875 (MA Sup. Ct, 10/5/20): Overturned a District Court conviction for failing to register a work address and for violating his probation (working where a minor was present). Harding was hired as a handyman at a private residence. At issue were (a) whether the requirement to register one’s “work address” means the address of one’s employer or every address at which you will be working; and (b) whether employment at a location where children are present includes a situation where you show for handyman work at a home & the family has a kid. According to the Dist Ct, the registration rules would have required someone to give 10 days’ notice of where they will be working. It would also put all the home addresses of the customers of a level II/ III on the public registry, essentially precluding any jobs that don’t involve a fixed address. The Court held, “Commonwealth’s definition of “work address” is unworkable”. The Court also sided with him on the interpretation of “working with children” and viewed that as a prohibition against employment at a position where he would literally be working with children (ex. teaching at a school or being a camp counsellor) but not something such as performing repair work that did not involve children but that took place at a location where a child happened to be present. In the Court’s words, “he did not “work with children” in replacing a gutter or restoring exterior woodwork, nor could he, where the child was an infant”.

State of Louisiana v Tazin Ardell Hill, #2020-KA-00323 (LA Sup Ct, 10/20/2020): Upheld a lower court ruling that found that marking state ID/DL cards with “S\*x Offender” in orange letters “constitutes compelled speech and does not survive a First Amendment strict scrutiny analysis.” Hill had been initially charged with altering his state ID to hide the offensive statement. The Court primarily relied on the Wooley v Maynard ruling, in which a NH resident covered up the state’s “Live Free or Die” motto on his car tag, and rejected a US Court conclusion that held passport marks were immune to compelled speech challenges. This ruling is similar to the ruling in Doe v. Marshall, Case # 2:15-CV-606-WKW [WO] (MD AL 2/11/2019), which held AL’s ID/DL marks were unconstitutional. However, it does not mean ALL marks are illegal; in both rulings, states can make less conspicuous marks that may pass constitutional muster.

McGroarty v Swearingen, No. 19-10537 (11th Cir. 10/20/2020): Denied a motion to challenge continued inclusion on the state’s registry despite living out of state because he did not file a lawsuit in a timely fashion. The registrant left the state in 2004 and did not bring his lawsuit until 2018, far beyond the 4-year statute of limitations in which he could bring a lawsuit.

Commonwealth of PA v Tanisha Muhammad, 2020 PA Super 256 (PA Superior Ct, 10/23/2020): Intermediate court ruling in an as-applied challenge (only applies to respondent) found SORNA violates an individual’s right to reputation under Article I, Section 1 of the PA Constitution by creating an irrefutable presumption that she poses a high risk of committing additional sexual offenses. Court found there wasn’t a high risk of future sexual offense when there wasn’t a sexual offense to begin with, but some of the comments made by the court in its opinion as to risk and reputation. First, the court recognized that being on the registry causes damage to one’s reputation. Second, the court recognized that there are tools to “distinguish between low-risk and high-risk sex offenders.” Muhammad was convicted of “interference with the custody of children”, a registerable offense even when no sexual element was involved.

US v Fletcher, No. 19-3153 (6th Cir., 10/26/20): This case arises at the intersection of two branches

of 4th Amdt law—one governing the traditional balancing of privacy and governmental interests and the other addressing searches of the digital content of cell phones. In short, the revolution in digital capacity of cell phones has shifted the balance between individual privacy and governmental interests. This case involves the decision of Jason Fletcher’s PO to conduct a phone search because he was carrying 2 cell phones. The search revealed CP. Fletcher appeals the district court’s denial of his motion to suppress evidence found on his phone, as well as the resolution of several sentencing issues. Because the PO did not have reasonable suspicion to search Fletcher’s cell phone & Fletcher’s probation agreement did not authorize the search, we REVERSE the district court’s denial of his motion to suppress, VACATE Fletcher’s conviction and sentence, and REMAND this case for further proceedings.

Goesel v State of FL, Case No. 2D19-2730 (2DCA, 10/30/20): Overturned a CP conviction based on a search warrant executed on bad faith. Sarasota Co Sheriff’s Office began a case against Goesel in Oct 2017 when the NCMEC received an automated transmission from Chatstep, an anonymous online chat room. Chatstep reported that a single image of possible CP had been uploaded to one of its chat rooms, court documents said. A warrant was issued; While the warrant described in detail a nonpornographic photo reported in 2016, it contained no description of the Oct 2017 photo, the 2DCA panelists said. Nor was the photo attached to the application. The Court ruled the cop’s affidavit “contained nothing to support the detective's conclusory assertion that the photo at issue qualified as CP.” “Here, there simply was no information from which the magistrate could independently verify the detective's conclusion that the photo was illegal CP, as opposed to lawful, nonobscene nudity.” The detective also had no training or expertise in ID’ing CP.

**2021 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.

State v. Proctor, 237 A.3d 896 (Me. 2020): Maine Sup Judicial Ct held that SORNA of 1999 was unconstitutionally applied to a defendant in violation of the ME and US Constitutions’ ex post facto provisions. Craig A. Porter moved his camper to a friend’s property in Dresden in May 2018 and did not notify the local sheriff’s office of the change. Proctor had prior sex offenses and was thus indicted in Nov 2018 for failing to register in violation of 34-A MRS § 11222 (1-B) (2020). Proctor was convicted and sentenced to 90 days’ imprisonment. The execution of the sentence was stayed pending resolution of his appeal as to whether SORNA of 1999 was unconstitutional as applied to him. In October 1990, Proctor was convicted of four counts of unlawful sexual contact in violation of 17-A MRSA § 255 (Supp. 1990). He was sentenced to five years of imprisonment, with all but one year suspended and four years of probation. However, he was not then required to register because ME did not pass its first registration law until 1991 (“SORNA of 1991”). In Nov 1992, Proctor was convicted of gross sexual assault in violation of 17-A MRSA § 253 (Supp. 1992). He was sentenced to 10 years of imprisonment, with 5 years suspended & 4 years of probation. SORNA of 1991 required imposition of a duty to register but allowed a court to waive the requirement where it found “good cause” to do so. Proctor was not required to register as part of his criminal sentence. SORNA of 1999 was enacted and created a tiered system where SOs were required to register for 10 years, and SVPs were required to register for life. A 2001 amendment to the law “made the law apply retroactively to all persons sentenced for sex offenses or sexually violent offenses on or after 6/30/1992, and before 9/18/1999.” State v. Letalien, 985 A.2d 4 (Me. 2009). This amendment applied to Proctor’s November 1992 conviction, requiring him to register for life. A 2005 amendment was passed, which retroactively applied “to all SOs sentenced on or after Jan. 1, 1982.” Doe v. Williams, 61 A.3d 718 (Me. 2013). This applied to Proctor’s 1990 convictions. The Court found “the effect of applying SORNA of 1999 to Proctor’s 1992 conviction appears to be a retroactive enhancement of the sentence imposed” and is thus unconstitutional. However, the limited record was vague as to whether Proctor would have still been required to register in 2018 as a result of his 1990 convictions. Accordingly, the Court vacated Proctor’s conviction and remanded for a hearing regarding that registration obligation, a new trial, or both.

Does v Wadsen, No. 19-35391 (9th Cir. 12/9/20): Court panel reversed in part and affirmed in part the

District Court’s dismissal of an action alleging that the retroactive application of ID’s SORN and Community Right-to-Know Act, ID Code § 18-8301, et seq., is unconstitutional. Dist Ct ourt erred in dismissing the ex post facto claim on the basis that SORA was civil in intent and not punitive in effect. Specifically, the panel held that the district court erred by (1) construing appellants’ ex post facto claim as an as-applied challenge; (2) applying the “clearest proof” standard at the motion to dismiss stage; and (3) finding the outcome of the Smith v. Doe, 538 US 84 (2003) factors analysis to be controlled by precedent. Thus, the panel held that to survive a motion to dismiss, appellants only had to plausibly allege that the amended SORA, on its face, was punitive in effect and case law did not foreclose a finding that SORA was punitive. Because the district court’s erroneous ex post facto analysis was incorporated as the sole basis for dismissing appellants’ 8th Amdt & double jeopardy claims, the panel held that the Dist Ct erred by dismissing those claims as well. Dist Ct erred in dismissing the free exercise claim under Idaho’s Free Exercise of Religion Protected Act (“FERPA”). The panel held that by alleging that SORA’s amendments have, in fact, prevented some of the appellants from attending their houses of worship, appellants plausibly alleged that their free exercise of religion was substantially burdened in violation of FERPA. The panel found no error in the Dist Ct’s analysis of appellants’ vagueness, Free Association, Equal Protection, Contracts Clause, Takings, Separation of Powers, and state Police Power challenges, and affirmed the dismissal of those claims.

In re Gadlin, S254599 (CA Sup Ct, 12/28/20): Unanimous decision overturned regulations issued by the CDCR that prohibited all registrants from benefiting from the benefits of Prop 57; CDCR’s current regulations prohibited early parole consideration for all registrants are void because they violate the state constitution.

US v Ellis, No. 19-4159 (4th Cir 1/8/21): Overturned lower court orders barring a NC SO on supervised release from possessing legal pornography or using the internet; restrictions “cannot be sustained as ‘reasonably related’ under 18 USC 3583(d)(1) and are overbroad under 18 USC 3583(d)(2).”

Brian Hope v IN DOC, No. 19-2523 (7th Cir, 1/6/21): Plaintiffs have challenged IN’s SORA as it applies to certain offenders who have relocated to IN from other states after the enactment of SORA (7/1/2006), and who are forced to register under the law, but would not have been required to do so had they committed their crimes as IN residents prior to the enactment of the relevant portions of SORA and maintained citizenship there. The district court found the registration requirements to be unconstitutional, and we uphold the district court’s finding that this application of SORA violates the plaintiffs’ right to travel. This implicates the right to travel, protected by the Privileges or (yes, "or") Immunities Clause of the Fourteenth Amendment, and can't survive strict scrutiny.

State v Benjamin Batson, Docket # 97617-1 (WA Sup Ct, 12/24/20): Ruled that an out-of-state RC must register in the state even if the event causing registration is not a crime in WA. Previously WA did not require registration if the event would not have been a crime in the state, but that law was changed in June 2010. “Batson contends that RCW 9A.44.128(10)(h) is an unconstitutional delegation of legislative power… Batson is incorrect. The legislature has not permitted the State of AZ to define criminal conduct or the elements of a crime in the State of WA… Batson also challenges the constitutionality of his conviction on ex post facto, double jeopardy, and equal protection grounds. The Court of Appeals declined to reach those issues because it resolved the case on delegation grounds. Because we reverse the Court of Appeals on the delegation issue, we remand Batson’s remaining challenges to the Court of Appeals to be decided in the first instance.”

State v. Hakum Brown; State v. Rodney Brown (A-39-19) (083353) (NJ Sup Ct, 1/25/21) – The NJ Sup Ct ruled, “These consolidated appeals present a common legal issue: whether state or federal constitutional ex post facto prohibitions permit defendants to be charged with and convicted of the enhanced third-degree offense of failure to comply with SOR requirements when each defendant’s registration requirement arose from a conviction that occurred before the penalty for noncompliance was raised a degree… Defendants suffered no ex post facto violation as a result of being charged with failure-to-register offenses bearing the increased degree. The Legislature is free to increase the penalty for the offense of failure to comply with the regulatory registration requirement -- which is separate and apart from defendants’ predicate sex offenses -- without violating ex post facto principles as to those predicate offenses.

White v. LaClair, No. 19-cv-1283 (EDNY 2020): Held being subject to NY's SORA does not satisfy the "in custody" requirement for filing a habeas corpus petition.

State v. Brown, No. A-39-19 (NJ 2020): held that because Megan’s Law is administrative and non-penal in nature, and because failing to comply with it was a new crime, the enhanced penalties for failing to register could be applied retroactively without implicating ex post facto concerns.

US v. Hamilton, No. 19-4852 (4th Cir. 2020): Vacated and remanded on the condition of supervision that constituted a ban on employment without prior probation approval, in view of the fact that employment was not connected with the offense. However, the Court disagreed with Appellant regarding two other conditions related to internet use and presence restrictions.

State v. C.G., No. 2018AP2205 (Wis. Ct. App. 2020): Affirmed the trial court’s refusal to stay the registration order, holding that it did not abuse its discretion and that because Appellant was free to use whatever name she chose in her personal life, the First Amendment was not implicated.

Riley v. State Dep’t of Public Safety, No. 79389 (Nev. 2020): The rights of an individual who was required to register were not violated when a state trial court refused to grant his petition to terminate his registration status.

Lauren Book v Derek Logue, CASE # SC20-1063 (FL Sup Ct 2021): Tossed out final attempt to overturn appeals court ruling that upheld OnceFallen’s 1st Amendment right to protest Sen. Book for her role in advancing residency restriction laws.

Prynne v Settle, No. 19-1953 (4th Cir 2021): Plaintiff-Appellant appeals from a district court order dismissing her claim that the VA SO & Crimes Against Minors Registry (“VSOR”) violates the Ex Post Facto & Due Process Clause. Because Prynne’s complaint pleaded a plausible ex post facto claim, we reverse the district court’s dismissal of that claim. However, we affirm the dismissal of Prynne’s substantive due process claims.

US v. Rogers, No. 18-2097 (1st Cir. 2021): Appellant was required to complete a treatment program and complete polygraph examinations. Of note, the polygraph condition specified that a failure of a polygraph or invocation of 5th Amdt rights, standing alone, would not be a basis for revocation of supervision. Court affirmed the judgment, finding that appellant had not attempted to invoke his 5th Amendment rights and, in any event, the polygraph condition to which he was subjected did not violate his rights against self-incrimination, and due process rights were not violated.

Stradford v. Wetzel, No. 16-cv-2064 (ED PA 2021): PA in placing individuals granted parole in halfway houses in the community, considered “community sensitivity” as one concern for placement. This concern meant that SOs granted parole remained incarcerated for longer periods of time than individuals w/o an SO record. Court ruled practice of considering community sensitivity was not rationally related to a legitimate state interest & violated Equal Protection.

Commonwealth v. Daughtery, No. 2019-SC-0201-DG (KY 2021): Held multiple convictions for distribution of CP required lifetime registration under KY state law even though all charges stem from the same case.

Doe v. Lee, No. 16-cv-2862 (MD TN 2021): Granted Plaintiffs’ motion for summary judgment (on a 1983 challenge) insofar as they brought an ‘as-applied’ Ex Post Facto challenge, but denied the same challenge on facial grounds. The Court also granted summary judgment to the Defendants with respect to the 1st Amdt claims that the Plaintiffs brought, but did not reach the other constitutional claims.

United States v. Burgee, No. 19-3034 (8th Cir. 2021): Appellant was convicted of a state sex offense and subsequently stopped registering. He was indicted for FTR in federal court, and sought to dismiss the indictment on three grounds. First, the court used an improper methodology to determine whether his offense was one that required registration. Secondly, even if the court used the proper methodology, it should only look to evidence adduced at the plea hearing. Finally, Appellant argued that the federal definition of what required registration was void for vagueness. The trial court denied Appellant’s motion, and Appellant was convicted after a bench trial. Appellant sought review. 8th Cir. affirmed, holding that the trial court properly employed a circumstance-specific approach in determining whether his offense required registration, that it considered reliable evidence in doing so, and that the federal definition of “conduct that by its nature is a sex offense against a minor” is not void for vagueness.

State of Wisconsin v Jendusa, 2021 WI 24: Jendusa seeks discovery of a WIDOC database in an effort to challenge the sexually violent person commitment proceeding initiated against him over four years ago. Jendusa believes that the DOC's WI-specific data provides a more relevant basis upon which to calculate his risk of engaging in future acts of sexual violence——a calculation that may result in a lower estimate of his risk than that advanced by the State's expert witness…We hold that the court of appeals did not erroneously exercise its discretion in denying that petition. We nevertheless reach the underlying merits of that petition and conclude that the DOC database is discoverable pursuant to Wis. Stat. § 980.036(5). This is important because the state is using Canadian & Danish studies rather than WI recidivism rates; the WI rates are 30% LOWER than the foreign studies.

Harrison v State of Wyoming, 2021 WY 40 (WY Sup Ct, 3/8/21): “Jeffrey Earl Harrison began registering when he learned he was obligated to do so by a change in the statute, 13 years after his conviction; 25 years after his conviction, he petitioned the court to be relieved of the duty to register, and the court granted his petition. The Division of Criminal Investigation intervened and moved for relief from the judgment. The district court then held that Mr. Harrison was eligible to petition for relief from the duty to register only if he had been registered for 25 years. Mr. Harrison appeals, and we affirm.”

Barnes v. Jeffreys, No. 20-cv-02137 (N.D. Ill. 2021): Overturned IL’s the policy of only allowing one registrant to reside at an address on supervision violated the 8th Amdt & the equal protection clause of the 14th Amdt.

In the Matter of the Civil Commitment of W.W., No. 083890 (NJ 2021): State law provided that the state was required to produce psychiatric testimony in support of continued commitment. At the hearing, the state produced testimony of a psychologist who supported continued commitment, and a psychiatrist who did not. The trial court ruled that continued commitment was warranted, and the intermediate appellate court affirmed. NJ Sup Ct reversed, finding that by statute the state was required to produce psychiatric testimony supporting commitment in order to commit an individual. Because they did not do so here, they failed to meet their burden of proof.

People v. Rollins, No. 2021 IL App (2d) 181040 (Ill. Ct. App. 2021): Appellant, an RC, subsequently took a photograph of a child without obtaining parental consent, in violation of state law. IL Ct App affirmed the conviction, finding that the statute was not unconstitutional under the 1st Amdt.

US v. Clemens, No. 20-1180 (8th Cir. 2021): Following CP conviction, court ordered Clemens to pay restitution to one of the children in the images that he was convicted of receiving. Clemens objected to these conditions, was overruled, and appealed. 8th Cir upheld the order, finding that the plain text of the federal restitution statute made Clemens liable for all of the victim’s losses related to the illegal conduct regardless of when those losses were incurred in relation to a defendant’s conduct. The Court also affirmed the condition prohibiting Clemens from possessing adult pornography, rejecting Clemens’s arguments that the condition was void for vagueness, was not reasonably related to his offense conduct, and violated the 1st Amdt.

Doe v. Peterson, No. 18-CV-507 (D. Neb. 2021): Federal district court opinion finding no constitutional violation with regard to NE requiring juveniles adjudicated out of state and registered privately in their respective states to be placed on NE’s public registry upon moving there.

People v. Hoffman (Cal. Ct. App. 2nd 2021): Advanced age, standing alone, does not raise sufficient doubt that would render an SVP commitment infirm.

Harrison v. Wyoming, No. 2021 WY 40 (Wyo. 2021): Held that Harrison was not eligible to petition for removal from state registry on the basis that he had not registered for 25 years under state law, fact that his conviction occurred 25 years ago notwithstanding.

Doe #1 v. Lee, et al., No. 3:16-cv-02862; Doe #2 v. Lee, No. 3:17-cv-00264 (MD TN 2021): The registry law established in 2004 cannot be applied retroactively to the two John Does. This may open up other lawsuits against TN on the same grounds.

Alaska v Wright, 593 US \_ (2021): Wright was indicted for FTR. Appellant pled guilty and subsequently filed a habeas corpus petition challenging his conviction for the underlying sex offense. The district court denied the petition on the grounds that Appellant was not “in custody” on his prior sex offense. Appellant sought review. The 9th Cir reversed, finding that where an individual is in custody on a FTR offense, it is “positively and demonstrably related” to the predicate SO conviction and thus such individuals are in custody for habeas corpus purposes. The government petitioned SCOTUS for certiorari, which was granted. In a Per Curiam opinion, the United States Supreme Court reversed the 9th Cir, reasoning that if an individual was serving a sentence for a federal failure to register offense due to his state sex offense conviction, that did not render him “in custody” for the purposes of collaterally attacking the state conviction.

Thomas v Blocker, No. 4:18-CV-00812 (MDPA 2021): Thomas was convicted in 1994 (before the PA registry existed) and served time until 2008. He fought registration on multiple grounds (1) violations of their due process rights by requiring them to register w/o first providing a hearing; (2) unconstitutional retaliation against Plaintiffs for exercising their 1st& 5th Amdt rights; (3) violations of the Ex Post Facto Clause (4) defamation under state law; and (5) invasion of privacy under state law. The court ruled in favor of the state on all (Thomas had appealed the case to the 3rd Cir but was also denied)

Hearn v McCraw. No. 20-50581 (5th Cir. 2021): Plaintiffs who pled guilty to various offenses and were subsequently required to register in TX brought a civil rights lawsuit, alleging that their subsequent registration was not a part of their original plea agreements, and thus violated their Due Process rights. 5th Cir affirmed the dismissal by a lower court, finding that the Plaintiffs’ claims were time-barred, and that their ongoing registration did not qualify as a continuing violation.

Fortune v State, No. 19–1721 (Ia. 2021): Fortune petitioned to be removed from the registry after meeting Iowa’s statutory criteria for being removed from the registry, and the trial court denied the petition after consideration of non-statutory evidence. The IA Sup Ct reversed and remanded the case, finding that the district court abused its discretion in denying the petition, and clarified the standard for registry modification in IA and evidence that courts are allowed to consider.

State v McCord, No. SC98546 (Mo. 2021): McCord appealed a conviction for violating MO’s 1000 ft residency restrictions, arguing that the Rule of Lenity required his acquittal where the statute did not specify whether the measurement of the distance was to be taken from building to building or property line to property line. MO Court of Appeals affirmed the McCord’s conviction and held that the proper interpretation of the statute was that the distance measurements were to be taken from property line to property line. McCord then requested review from the state Supreme Court but they also upheld the conviction on a finding that the legislature intended the statute to encompass school grounds in addition to school buildings, and that the rule of lenity was not applicable.

In re McHatton, No. 98904-4 (Wash. 2021): McHatton was conditionally released from civil commitment, but release was revoked after violating a rule. WA Sup Ct upheld a lower court order revoking McHatton’s release because the revocation under supervised release was not — under state appellate rules — appealable as a matter of right.

Karsjens v. Lourey, No. 18-3343 (8th Cir. 2021): On appeal for a second time, the Court clarified the legal standard applicable to the conditions of confinement claims brought by the civilly committed individuals in MN. The court concluded that the district court properly dismissed Count 3 of appellants' 3rd Amended Complaint after applying the "shocks the conscience" standard. However, the district court erred as a matter of law when it applied the "shocks the conscience" standard to Counts 5, 6, and 7, which appellants allege that they were subjected to punitive conditions of confinement. The court instructed the district court, on remand, to consider the claim of inadequate medical care under the deliberate indifference standard outlined in Senty-Haugen v. Goodno, 462 F.3d 876, 889-90 (8th Cir. 2006), and to consider the remaining claims under the standard for punitive conditions of confinement outlined in Bell v. Wolfish, 441 U.S. 520, 535 (1979).

Powell v Keel, Opinion No. 28033 (SC 2021): SC Sup Ct held SORA's lifetime registration requirement was unconstitutional absent any opportunity for judicial review to assess the risk of re-offending; those who demonstrate a low risk of re offending may have their names removed through judicial order.

People v Manaois (2021 CO 49): CO sup Ct ruled, “Sex offenses are different. Our General Assembly has historically acknowledged as much, handling sex offenses differently from other offenses for more than half a century. But exactly how different are sex offenses from other offenses? Today we are called upon to explore this question, as we determine whether a particular sentencing restriction governing felony offenses applies to sex offenses. Just last term, we decided in Allman v. People that a district court lacks authority under our general sentencing statutes to sentence a defendant to prison for one offense and to probation for another in a multi-count case. 2019 CO 78, 28, 451 P.3d 826, 833. But Allman received consecutive prison-probation sentences for non-sex offenses (forgery, theft, and related offenses), while the defendant in this case received consecutive prison-probation sentences that included a sentence to SO Intensive Supervision Probation (“SOISP”) for a “sex offense” under the SO Lifetime Supervision Act (“SOLSA”). So, does Allman’s sentencing restriction apply in a case where, as here, the defendant receives a prison sentence for a nonsex offense and a consecutive SOISP sentence for a sex offense? … After revisiting Allman (including the general sentencing statutory provisions to which its holding is largely tethered), examining the General Assembly’s longstanding treatment of sex offenses, studying the significant differences between SOLSA and the general sentencing statutes, and considering the court of appeals’ recent decision in People v. Ehlebracht, 2020 COA 132, 480 P.3d 727, we answer no… SOLSA is fundamentally different from the general sentencing statutes to which the Allman sentencing restriction is anchored. Of particular relevance here, while the general sentencing statutes reflect the legislature’s disapproval of consecutive prison-probation sentences, SOLSA, by contrast, reflects the legislature’s approval of such sentencing in cases including a sentence for a non-sex offense and a sentence for a sex offense. Therefore, we hold that Allman’s sentencing prohibition, while alive and well, does not apply in cases where a defendant receives a prison sentence for a non-sex offense and a consecutive SOISP sentence for a sex offense.”

People v Keen, (2021 CO 50): Companion to the People v Manaois ruling, CO Sup Ct ruled, “The supreme court now holds that Allman does not prohibit courts from sentencing a defendant in a multi-count case to prison for a non-sex offense followed by SOISP for another offense—regardless of whether the latter is a sex offense requiring an indeterminate sentence or a sex-related offense (i.e., an offense that does not qualify as a “sex offense” but that nevertheless falls within SOLSA’s scope and involves participation in SOISP) requiring a determinate sentence. So long as the probation sentence in that scenario falls within the confines of SOLSA (as does every SOISP sentence), Allman’s sentencing restriction is inapplicable. In this case, the defendant received a prison sentence for a non-sex offense and a consecutive determinate sentence to SOISP for a sex-related offense. The Sup Ct concludes that Allman’s sentencing prohibition does not apply and that the consecutive prison-SOISP sentences imposed were legal.” In short, the CO Sup Ct said that a 2019 decision that stated that the state can’t order both prison and probation for the same event does not apply to SOs.

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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.

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.”

State of Kansas v. N.R., No. 119,796 (KS Sup Ct, 9/17/21): Mandatory lifetime post-release registration under the Kansas Offender Registration Act, K.S.A. 2020 Supp. 22-4901 et seq., as applied to the juvenile in this case, does not constitute punishment for purposes of applying provisions of the Ex Post Facto Clause or the Eighth Amendment of the US Constitution and section 9 of the Kansas Constitution Bill of Rights, and does not infringe on the constitutional rights guaranteed under sections 1 and 18 of the Kansas Constitution Bill of Rights (Due Process & Right to Remedy).\*

\*I don’t usually cover dissents, but KA Sup Ct Justice Eric Rosen’s dissent is very scathing, “For more than 15 years I have been a proud member of a court that has historically taken an unyielding stand against the degradation of rights guaranteed by our Constitution… Today, I feel none of that pride. Today, the court eschews the United States Constitution and the citizens it stands to protect for reasons I cannot comprehend. Today, I dissent… I do not suggest that N.R.'s offense was inconsequential or should be overlooked. But I do suggest that we must follow our constitutional imperatives. N.R. is—very clearly—being punished by the Legislature's "civil scheme." The majority's refusal to acknowledge this is inexplicable. To put it plainly, in the words of my recently retired colleague, the majority's holding is "wrong-headed and utterly ridiculous. . . . [I]n the real world where citizens reside, registration is unequivocally punishment." State v. Perez-Medina, 310 Kan. 525, 540-41, 448 P.3d 446 (2019) (Johnson, J., dissenting). Consequently, I would hold that N.R.'s lifetime registration requirement violates the Ex Post Facto Clause because it was enacted and imposed after N.R. committed the actions that led to his adjudication.” (The entire dissent is a worthy read but it is too long to share in this article.)

State of Kansas v. Davidson, No. 119,759 (KS Sup Ct, 9/17/21): Mandatory lifetime post-release registration under the Kansas Offender Registration Act, K.S.A. 22-4901 et seq., does not constitute punishment for purposes of applying provisions of the Ex Post Facto Clause. Justice Rosen dissented, adding, “I opine in N.R, and emphasize it here, that it is time for this court to join the ranks of the many other courts that have rightfully recognized the punitive nature of registration requirements. Slip op. at 38 (citing Does #1-5 v. Snyder, 834 F.3d 696, 705 [6th Cir. 2016]; People v. Betts, No. 148981, 2021 WL 3161828, at \*12 [Mich. 2021]; Starkey v. Oklahoma Dep't of Corr., 305 P.3d 1004 [Okla. 2013]; Doe v. Dep't of Pub. Safety & Corr. Servs., 430 Md. 535, 568, 62 A.3d 123 [2013]; Wallace v. State, 905 N.E.2d 371, 379-84 [Ind. 2009]).”

State of NC v. Hilton, 2021-NCSC-115: In a 4-3 decision, the NC Sup Ct declared lifetime monitoring for “aggravated offenders” (usually people convicted of the rape of an adult or of sexual intercourse with a child) constituted a “reasonable search” under the US Constitution. However, the NC Assembly passed a law that will reduce the GPS program from lifetime to 10 years, which may make this decision a moot point.

Wimberley v. Williams, Case No. 20-1128 (10th Cir 2021): a 3 judge panel in a 2-1 decision upheld an indeterminate sentence for a man who has served 37 years in prison. “More than 24 years have passed. With passage of this time, Mr. Wimberly argues that the Constitution requires his release because he didn’t receive a new hearing at the end of the 24-year determinate term (that the trial court chose not to impose). Without a new hearing, Mr. Wimberly claims that his continued confinement violates his rights to equal protection and due process… The state trial court provided adequate procedural safeguards when imposing the indeterminate term of confinement, and that term could last anywhere from a single day to the rest of Mr. Wimberly’s lifetime. The State thus had no constitutional duty to provide a new round of procedural safeguards 24 years into Mr. Wimberly’s indeterminate term.”

SCOTUS: The US Sup St declined to take the LA appeal on the LA Sup Ct’s ruling striking down the orange “SO” State ID/DL marks as unconstitutionally compelled speech. Earlier this year, the state tried passing a bill to reinstate (replacing the SO term with T1/T2/T3 to designate tiers) but it was defeated in committee by a narrow 6-7 vote.

TN: A new law has just passed that adds employer data onto the PUBLIC portion of the registry.

State v. Hubbard, Slip Opinion No. 2021-Ohio-3710: The OH Sup Ct declared the state’s “Violent Offender” registry, aka “Sierah’s Law,” does not violate ex post facto. In 2010, the OH Sup Ct declared the SOR punitive (State v. Williams, 129 Ohio St.3d 344 (2011)). “The duty to enroll as a violent offender is far less burdensome than the registration duties imposed by Megan’s Law, SB 5, or the AWA. In comparison to SOs, a violent offender has to register less frequently and in fewer places. And in contrast to a SO’s registration duties under the AWA, a violent offender’s duty to enroll annually for 10 yrs under Sierah’s Law is far less burdensome than the requirement to register either once a year for 15 years, every 180 days for 25 years, or every 90 days for life. And unlike the database established under SB 5 and retained in the AWA, the violent-offender database itself is not a public record, cannot be accessed by the public over the Internet, and is available only to federal, state, and local LEOs. Violent offenders are not subject to community notification, and the information about them that is accessible through a public-records request differs little from information that is already available as public records.” This demonstrates the state recognizes the difference between the punitive SOR registry and a less intrusive LEO-only list with a limited registration period, seen as not punitive.

State v. Hilton, No. 292A20 (NC 2021): The NC Sup Ct held that a search effected by the imposition of lifetime SBM upon due to Hilton’s status as an aggravated offender is reasonable under the 4th Amdt and does not constitute a “general warrant.”

US v. Goodpasture, No. 21-1264 (7th Cir. 2021): \*Nonprecedential ruling\* Appellant (a fed case) objected to a number of the imposed special conditions, including computer and internet monitoring and the prohibition of social media use, arguing that they were not warranted by his personal characteristics or criminal history; 7th Cir vacated in part the US Dist Ct’s imposition of special conditions of supervised release concluding that the US Dist Ct did not adequately justify restrictions on computer and internet use.

Howe v. Godinez, No. 14-844 (S.D. Ill. 2021): So. Dist. IL found that the Sexually Dangerous Persons Program suffers from systemic failures which have resulted in Plaintiffs being detained indefinitely with “no real hope” of being released, depriving due process in violation of the 14th Amdt; a permanent injunction was warranted and necessary due to deficiencies in the delivery of mental health services.

In the Matter of the Civil Commitment of Kenney, No. A20-1007 (Minn. 2021): Kenney petitioned for a reduction in custody from MSOP (civil commitment). After conducting a de novo review of the recommendation by the Special Review Board (SRB), the Commitment Appeal Panel (CAP) granted Appellant’s petition for provisional discharge. The court of appeals reversed stating that CAP “substituted its judgment for that of the experts who testified.” Appellant filed a petition for review. MN Sup Ct reversed the decision of the court of appeals and remanded the case, concluding that clear-error review does not permit an appellate court to reweigh the evidence and that the evidence in the record reasonably supports CAP’s decision to grant provisional discharge.

US v. Borum, No. 3:20CV6 (N.D. Miss. 2021): Gave order granting the government’s motion in limine for advance ruling on admissibility, concluding that defendant’s nolo contendere plea, which resulted in Defendant’s SORNA registration, is admissible in a prosecution for FTR

Bomgaars et al., v. State of Iowa, No. 20–0375 (Iowa Sup Ct 2021): Rejected a suit claiming IA DOC has withheld treatment in order to delay parole. Court says it is a numbers problem where there are more SOs in IA’s prison system than spots available for treatment.

**Legal Roundup 2022**

*US v. Hawkins,* No. 18-1330 (DC 2021):Appellee pled guilty in 2018 to one count of misdemeanor sexual abuse of a child. Because Appellee had already been convicted of misdemeanor sexual abuse of another child two years prior, the government argued that the court should subject him to lifetime registration pursuant to the District’s SOR Act, DC Code § 22-4000 et seq. The trial court disagreed with the government’s argument, concluding that the recidivism provisions in the statute required 2 prior adjudications of guilt and sentencing, not including the instant offense. For that reason, the trial court imposed a ten-year registration requirement on Mr. Hawkins. The gov’t appealed. The DC Ct of Appeals reversed the decision of the trial court, concluding that the “two or more” requirement in DC Code § 22-4002(b)(3) and (4) applies to individuals upon their second qualifying disposition, inclusive of the instant disposition.

*State v. Strudwick*, No. 334PA19-2 (NC 2021): NC Sup Ct ruled lifetime GPS is reasonable and permissible under the 4th Amdt because it promotes a legitimate and compelling governmental interest that outweighs the program's "narrow, tailored intrusion" into defendant's expectation of privacy.

*Frank A. v. Donnie Ames*, No. 20-0024 (W.Va. 2021): WV Sup Ct of Appeals concluded that any retroactive application of the supervised release statute ( WV Code §62-12-26) to an individual who committed any of the enumerated sex offenses prior to the effective date of the supervised release statute violates the constitutional prohibition against ex post facto laws.

*Does #1-9 v. Lee*, Nos. 21-00590; 21-00593; 21-00594; 21-00595; 21-00596; 21-00597; 21-00598; 21-00624; 21-00671 (M.D. Tenn. 2021): Opinion granting a preliminary injunction preventing enforcement of TN's registration act against plaintiffs whose respective offenses were committed prior to enactment of the registration scheme, noting that well established 6th Cir. precedent supports the conclusion that ex post facto application of TN's registration statute is unconstitutional.

*In re Commitment of Snapp*, No. 126176 (Ill. 2021): IL Sup Ct ruled that under the amended Sexually Dangerous Persons Act, it is unnecessary to make a separate express finding that the respondent is substantially probable to re-offend after finding the respondent is a “sexually dangerous person.”

*People v. Codinha*, No. D077651 (Cal. Ct. App. 2021): Ruling affirming denial of appellant's motion to dismiss guilty plea based on ineffective assistance, concluding that counsel was not obligated to advise appellant that an SVP commitment was a possible consequence of his plea.

*Federal*: New SORNA regulations will take effect 1/7/2022. “The DOJ received over 700 comments on this rulemaking from individuals and organizations. Most of the comments amounted to general criticisms of SOR or SORNA. Some of the comments proposed specific changes to the provisions of the proposed rule. Having carefully considered all comments, the DOJ has concluded that the regulations in this rulemaking should be promulgated without change from the proposed rule, except for amendment of §72.8(a)(1)(i)-(ii) to specify the circumstances in which SORNA violations may result in Federal criminal liability.”

*US v. Hunt*, No. 20-1009 (1st Cir. 2021): Hunt was civilly committed under the AWA in 2009, discharged from commitment in 2012 under certain conditions, including that he receive mental health treatment & remain under supervised probation. In 2018 Hunt moved for an unconditional discharge, which requires a showing that the committed individual would not be “sexually dangerous to others” if so released. The Dist Ct concluded that Hunt failed to make the required showing despite consistently compliant behavior. Appellant is now 75, partially paralyzed from a medical condition, & confined to a wheelchair. 1st Cir affirmed the Dist Ct’s judgment denying unconditional discharge holding that deference would be given to the Dist Ct’s determinations. Court noted “some concern” that the Dist Ct “gave seemingly little weight to [Appellant’s] physical impairments” but affirmed the ruling noting the difficulty of determining whether the Hunt’s “spotless record” was dependent in part on the conditions of supervision he sought to remove.

*People v. Edwards*, No. 20-01300 (NY App. Div. 2021): Edwards challenges an order determining that he is a Lvl 2 risk pursuant to SORA, arguing the lower court erred in refusing to grant him a reduced risk level where he established that he had not reoffended for 7 years between release from prison & his SORA hearing, despite being unsupervised. The App Ct ruled in favor of Edwards, noting “the fact that defendant was at liberty while unsupervised for an extended period of time without any reoffending conduct is a mitigating factor not adequately taken into account by the guidelines.”

*Commonwealth v. Santana*, No. 23 MAP 2021 (Pa. 2021): Santana was convicted of rape in NY in 1983, prior to the enactment of an SOR in NY or PA. Santana moved to PA & was later arrested for FTR. One day after Santana pleaded guilty for the FTR, the PA Sup Ct ruled retroactive application of SORNA violated the state & federal ex post facto clauses (*Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017)). The lower court tossed out Santana’s FTR, the state appealed. The PA Sup Ct affirmed the holding of the Superior Ct’s en banc panel, & held that (1) retroactive application of SORNA to defendant was punitive, supporting a finding that such application amounted to an unconstitutional ex post facto law, & (2) the federal constitution does not require a defendant asserting a claim of an unconstitutional ex post facto law to prove that he was in fact disadvantaged by the retroactively-applied law.

*Pierre v. Vasquez*, et al., No. 20-51032 (5th Cir. 2022): A TX man was convicted in Fed Ct in AZ of 18 USC § 2421 (knowingly attempting to transport a person across state lines for prostitution); he was not required to register, But the TX SOR Board stated Vasquez would be required to register 15 yrs even though offense was not a registry offense in TX. A US Dist Ct upheld TX’s SOR Board decision. The 5th Cir’s unpublished opinion reversed the decision of the Dist Ct & remanded the case, noting that the Dist Ct erred in evaluating whether Appellant could identify a “liberty interest” where the relevant question is whether Pierre’s alleged injury is “concrete,” “particularized,” & “actual or imminent.” The Court concluded that the damaging reputational consequences of bearing the SO label are a “concrete” form of injury sufficient to support standing, that the harm is “particularized” to Pierre, & that the injury is “imminent” based on TX’s continued efforts to require Pierre to register; Appellant has a sufficient “personal stake” to satisfy the injury-in-fact requirement of standing.

*Koch v. Village of Hartland*, No. 21-cv-00503 (ED WI 2021): Koch challenged a municipal ordinance which prohibited “designated offenders” from living in town until the saturation level for designated offenders reached a factor of 1.1 or lower. The Ct dismissed the case, stating that it was bound to follow 7th Cir precedent, *US v. Leach*, 639 F.3d 769 (7th Cir. 2011) & *Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018) concluding under that precedent the Ordinance did not apply retroactively because it only applied to conduct occurring after enactment, i.e., the Ordinance only applies to Koch because he now desires to move to Hartland.

*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.

*American Law Institute “Modern Penal Code”*: Despite condemnation by 35 State AGs, the ALI approved most revisions to the MPC, including (1) significant reduction in the number of offenses that require registration, (2) maximum registration period of 15 years, (3) elimination of all public registries with LEO only lists, & (4) prohibition against many collateral consequences including residency restrictions, access to schools, & the Internet. While the MPC is only model legislation, many states follow ALI’s recommendations.

*People v. Ramirez*, Case # 18CA2385 (CO App Ct, 2/17/22): Unpublished case; Douglas Co judge mistakenly let an expert witness vouch for the credibility of a child victim, prompting the state's Court of Appeals to reverse the defendant's sexual-assault convictions. “Our appellate courts have long held that when an expert’s testimony breaches the boundary of educating the jury and instead comments on an accuser’s veracity, the testimony is 'plainly inadmissible,'" wrote Judge Timothy J. Schutz. A social worker was allowed to testify in a manner that suggested that some process existed to screen out unfounded allegations from children. Second, by testifying that studies showed between 1.5% and 2.5% of children made false accusations, that meant the jury had a 97.5% to 98.5% chance of convicting Ramirez correctly. Given the lack of physical evidence of an assault, Ramirez's conviction hinged in substantial part on whether the jury believed the alleged victim had told the truth.

*Lindsey v. Swearingen,* No. 21cv465 (N.D. Fla. 2022): Lindsey moved from OK to FL & back to OK after OK removed him from the registry, but FL kept him on their SOR. The Dist Ct ruled that FL may require a new resident to register based on a crime committed in a state where the individual lived previously, even though a court in that state terminated that state’s registration requirement & FL is not required to purge or deny public access to prior registration records where an individual has left the state.

*Atryzek v. State*, No. 2019-215 (R.I. 2022): RI Sup Ct held that date of offense, not conviction, determines timeline for registry violation.

*Gardei v. Conway*, No. S21G0430 (Ga. 2022): A lawsuit against lifetime SOR allowed to proceed over State claims it violates statutes-of-limitation claims (Gardei first registered in 2009) because each period of registration constitutes a new injury. “The correct inquiry as to when the cause of action accrues does not focus on when Gardei became aware of sufficient facts to pursue a constitutional claim, but rather when Gardei suffered the injury that completed the tort. The Registry Act creates a lifetime requirement that Gardei report in person to his local sheriff’s office each year to renew his registration. See OCGA § 42-1-12 (f) (4). Although Gardei incurred the same or similar consequences upon his initial registration and each subsequent renewal, he was subject to a new felony prosecution on each of these occasions – in other words, each year – if he failed to comply. Assuming for purposes of the appeal that application of the Registry Act violated Gardei’s constitutional rights since 2009, or became a violation at some point in the interim, a wrongful act occurred each time Gardei was required to register in violation of his rights. Each such renewal extended the allegedly illegal consequences of registration for another year and resulted in a new wrongful act, a new injury, and the accrual of a new cause of action."

*PA tourist to stay on FL’s SOR* – A Leon Co FL circuit judge has dismissed a PA man’s challenge to a FL law that kept him on a after a 10-day family vacation to Disney World in 2015, in part finding that a statute of limitations had expired (SOL is 4 yrs). John Doe, reported to the Orange Co Sheriff’s Office when he came to FL in 2015 because he was on the PA-SOR at the time as a result of a CP conviction in 2002. Doe was removed from the PA-SOR in 2016. Doe filed suit in 2020 contending FL violated his constitutional privacy and due-process rights. That is because Doe registered in FL in 2015 but didn’t file the lawsuit until 2020.

*US v. Wells*, No. 19-10451 (9th Cir. 2022): Appellant knowingly and voluntarily agreed to the plea agreement and the waiver to appeal his sentence, yet the Court concluded that a waiver of the right to appeal a sentence does not apply if (1) the defendant raises a challenge that the sentence violates the Constitution; (2) the constitutional claim directly challenges the sentence itself; and (3) the constitutional challenge is not based on any underlying constitutional right that was expressly and specifically waived by the appeal waiver as part of a valid plea agreement. In this case, a waiver of the right to appeal a sentence does not apply to certain constitutional claims and concluding that a special condition of supervised release restricting the possession of a computer was unconstitutionally vague where the definition of computer could be interpreted to include common kitchen appliances.

*People v. Magana*, No. B311611 (Cal. Ct. App. 2022): Opinion remanding matter to the trial court for further consideration and noting a likelihood of merit in claim that the trial court's failure to provide Appellant with a full advisement of his right to a jury trial in the context of a civil commitment proceeding pursuant to the Sexually Violent Predator Act violated his right to equal protection under federal and state law.

*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.

*Crowley v State of Indiana,* Case No. 21A-MI-2064 (IN App Ct, 5/16/22): Requiring an individual with an out of state conviction who moves to IN to register, even when the registry didn’t exist in IN or in the state of conviction, does not violate IN’s Ex Post Facto constitutional prohibition.

*Doe v. Frisz*, No. 99310 (Mo. 2022): Petitioner John Doe pleaded guilty to four counts of endangering the welfare of a child for striking his daughters & exposing one daughter to the cold. Several months after pleading guilty, Doe’s PO notified him that he needed to register based on allegations in charges the state abandoned. MO Sup Ct ruled allegations in abandoned charges could not be considered in determining SOR status & that the sheriff lacked authority to determine whether Appellant was required to register. Even so, the court affirmed the lower court’s denial of a permanent writ concluding a writ of prohibition was not appropriate to control the sheriff because his determination was not a judicial or quasi-judicial act.

*Shinn v Ramirez*, No. 20–1009 (SCOTUS 5/23/2022): While not an SO case this will have damning repercussions for any falsely convicted. In a 6-3 ruling penned by Clarence Thomas, the conservative majority barred federal courts from hearing new evidence that was not previously presented in a state court as a result of the defendant’s ineffective legal representation. This means that prisoners will no longer have recourse to federal judges even when they claim they were wrongfully convicted because their lawyers failed to conduct their cases properly. The decision eviscerated the SCOTUS’s own precedent in a move that the 3 liberal justices called “illogical” & “perverse”. In a dissenting opinion, Justice Sonia Sotomayor slammed the decision, warning it would leave “many people … to face incarceration or even execution without any meaningful chance to vindicate their right to counsel.”

*State v. Snider*, No. 99310-6 (Wash. 2022): WA Sup Ct upheld guilty plea for a FTR; was constitutionally valid even though the trial court did not explicitly inform Petitioner that the knowledge element of FTR necessarily includes knowledge of the specific circumstance giving rise to the responsibility to register under the statute.

*Smith v. St. Louis County Police, et al*., No. ED109734 (Mo. Ct. App. 2022): Ruled, contrary to prior MO App Ct decisions, that a Tier I under both MO-SORA and Federal SORNA, who is otherwise eligible for removal from the Registry after satisfying the requirements of relevant MO-SORA provisions, should not be required to remain on the Registry for the remainder of their life due to the purported “interplay” between the requirements of MO-SORA and Federal SORNA.

*People v. Leib*, 2022 IL 126645: IL Sup Ct upheld conviction for “being a child SO in a school zone” (720 ILCS 5/11-9.3(a)). The court was asked to resolve whether the St. Louis Avenue parking lot (connected to a church and parochial school) is properly considered “real property comprising any school and whether the evidence is sufficient to prove that defendant was present on the St. Louis Avenue parking lot knowing that it was real property comprising any school. Lot was separated from school and gym by a public street but the court disagreed it was separate from school grounds as the lot was used by the school & church/school were “synonymous.” Court concluded that a Lieb should’ve known a festival in a lot across from a school and had kid’s rides was “school grounds.” A nosy neighbor had outed the man to the cops then boasted about it.

*Braam v. Carr*, No. 20-1059 (7th Cir. 2022): Reaffirmed lifetime GPS in WI; Applying the 4th Amdt’s reasonableness standard, the government’s interest in deterring recidivism by dangerous offenders outweighs the offenders’ diminished expectation of privacy. Any differences between the 2016 plaintiff and these plaintiffs are too immaterial to make the earlier holding inapplicable.

*State of Wisconsin v. C.G.* (2022 WI 60): WI Sup Ct denies name change for juvy RC who identifies as Transgender (born male but identifies as female), on 1st & 8th Amdt grounds. Court denies registry is punishment & even if they did, they would not consider it cruel or unusual & Ella can take other steps to express her gender identity; she just can’t legally change her name. “For example, nothing prohibits her from dressing in women’s clothing, wearing make-up, growing out her hair, or using a feminine alias. The State has not branded Ella with her legal name, & when Ella presents a government-issued identification card, she is free to say nothing at all or to say, ‘I go by Ella.’” They also noted Ella’s large stature & the nature of the offense in the justification of the ruling.

*US v. Porowicz*, No. 21-2153 (3d Cir 2022): Defendant challenged a condition of his supervised release that allowed probation to conduct “physiological tests” without specifying which ones they would be administering. He argued that there are no limits to what they would be allowed to subject him to. The 3rd Cir concluded that the Dist Ct plainly erred by imposing this condition to submit to unspecified physiological testing without explaining how it satisfies §3583(d)(2).

*State v. Genson*, No. 121,014 (Kansas 2022): RC required to register in KS was convicted of a FTR. He was required to report quarterly, every May, Aug., Nov. & Feb., plus changes. On 9/18, he went in to report a change of phone number. He went in again on 10/9 to report an address change. But he failed to show up for his registration appointment in Nov., instead coming in again on 12/15 to register. He was arrested for missing the Nov. registration. KS Sup Ct ruled the strict liability character of a FTR case bears a rational relationship to the legitimate government interest of protecting the public from SO & violent offenders & is thus not unconstitutionally arbitrary. There is no “intent” or “mens rea” requirement to convict for FTR. Not knowing you have to register something or not having the mental capacity to understand how to register is not a defense to a registration.

*Legg v. Dept. of Justice*, 2022 WL 2904078 (CA 3rd Ct of Appeal 2022): Rejected a challenge to the CA tiered registry. Penal Code Sec. 288(c), committing a lewd act against a 14 or 15-year-old if the defendant was at least 10 years older, is a lifetime offense in CA; but 288(a), committing “any lewd or lascivious (i.e., a sexual) act” with a minor child under 14 years of age, is a Tier 2. Legg tried unsuccessfully to convince the Court the two statutes arose from the same conduct. According to the court, the Legislature “could have reasonably determined that the challenged statutory disparity is warranted to serve the legitimate governmental purpose of protecting the public from considerably older adults who have preyed on young & vulnerable children.”

*Commonwealth v Howard*, 164 MDA 2021 (Pa. Super. Ct. 7/21/2022): The PA superior Court (PA’s appeals court) held SORNA’s registration requirement is a “non-punitive, collateral consequence of his conviction” & not a violation of his constitutional rights. The requirement in Howard’s case does not impact the legality of Howard’s sentence. “Moreover, we presume a legislative act is constitutional, & will only find it unconstitutional if it ‘clearly, palpably & plainly violates the Constitution.’”

*People v. Lymon*, No. 327355 (Mich. Ct. App. 2022): Held MI’s amended SORA is punitive & cruel & unusual as applied to defendant because “the registration requirement was unjustifiably disproportionate to the offense committed, there was nothing to suggest that the danger defendant posed to the public was related to a SO, nor was there anything to suggest that he would have committed a SO in the future.”

*People v. Nunez*, No. 356659 (Mich. Ct. App. 2022): Held that because SORA is a punitive collateral consequence for the conviction of certain crimes, a defendant must be informed of its imposition before entering a guilty plea & the registration requirement must be included in the judgment of sentence.

*State v. Anthony,* No. 18-1118-3 (NC Ct. App. 2022): Lifetime Satellite Based Monitoring ("SBM") of defendant was not an unreasonable search in violation of the 4th Amdt after balancing the state's interest in "preventing & prosecuting future crimes", defendant's "diminished expectation of privacy both during & after any period of post-release supervision," & the "limited intrusion" caused by lifetime SBM.

*Commonwealth v. Corbett*, No. 21-P-646 (Mass. App. Ct. 2022): Overturned an FTR; held that a failing to register “knowingly” goes beyond actual notice. “Rather, to ‘knowingly’ fail to act requires that the defendant have the ability to perceive/remember that he has an obligation to act as of the time of the crime.” Defendant’s expert described sufficiently serious mental disorders that it could not be categorically excluded as irrelevant & that the lower court’s error was not harmless, as it went to the defendant’s principal defense.

*US v. Thayer*, No. 21-2385 (7th Cir. 2022): Held, as a matter of first impression, that courts should employ circumstance-specific approach when determining whether conduct was a sex offense against a minor, as would render a conviction a sex offense under SORNA.

*Koch v. Village of Hartland*, No. 22-1007 (7th Cir. 2022): Overturned the prior rulings US v. Leach, 639 F.3d 769 (7th Cir. 2011) & Vasquez v. Foxx, 895 F.3d 515 (7th Cir. 2018); concluded the critical inquiry in assessing retroactivity is “whether the law changes the legal consequences of acts completed before its effective date.”

*Baughman v Commonwealth of Virginia*, Rec.# 201348 (VA 2022): Baughman was accused of violating probation by having non-sexual communication with a minor. VA moved to have Baughman civilly committed. After VA’s evaluator concluded Baughman was unfit for commitment, VA brought in a second evaluator (Dr. Sjolinder), which claimed Baughman was likely to reoffend w/o interviewing Baughman. Court ruled Sjolinder did not meet the qualifications under VA Code 37.2-904(B), under the plain code language under 37.2-906(E) to testify as an expert witness.

*People v. Krull*, No. 16163 (N.Y. App. Div. 1d 2022): Holding as a matter of first impression that, when a defendant has invoked his 5th Amdt right against self-incrimination, the SORA court should not assess risk level points for a failure to accept responsibility where defendant's trial testimony denied the underlying allegations & defendant has a pending direct appeal.

*Needham v. Superior Court of Orange Co*., No. G060670 (Cal. Ct. App. 2022): Holding as a matter of first impression, that the gov’t was not entitled to call a privately retained expert witness to testify at SVPA trial as to petitioner's mental state.

*Commonwealth v Torsilieri,* No. 15-CR-0001570-2016 (Chester Co PA Super. Ct. 2022): After this case was remanded by the PA Sup Ct to lower court in June 2020, this trial court concluded the dubious claim “SOs pose a high risk of reoffending sexually” under the state’s SORNA law is unconstitutional. Because this is a rare scolding of SORNA laws, many quotes in this 29-page ruling are worth reading:

“An irrebuttable presumption is unconstitutional where (a) it encroaches on an interest protected by the due process clause; (2) the presumption is not universally true; & (3) reasonable alternative means exist for ascertaining the presumed fact… we do not invade the liberties of citizens based on crimes for which there is no proof. Similarly, we do not restrain people's liberties based on future conduct that has not yet occurred. SORNA, as written, does both of these things.”

“In response to the defense experts, the Commonwealth presented the expert report & testimony of Dr. Richard McCleary, Ph.D. Dr. McCleary's report in large part attacked the methodology of all of the research showing a low rate of sexual reoffending by SOs or otherwise showing the inefficacy of SORNA's registration & notification requirements. In other words, Dr. McCleary opined that all research yielding an outcome different from that of the Commonwealth's position has fatally methodologically flawed & unreliable. Dr. McCleary's blanket denunciation of all research contrary to the Commonwealth's position in this case, in our opinion, materially detracts from his credibility.”

“The Commonwealth's main opposition to the defense experts' opinions regarding sexual offenders' low rate of sexual recidivism is the "dark figure" of sexual crimes. The ‘dark figure’ of sexual offending refers to the difference between the number of sexual offenses that occur but are never reported & those that are known to the authorities… The scope of that ‘dark figure’ as it concerns sexual crimes is speculative. There is no hard data demonstrating the rate of unreported sexual offenses. There is no hard data demonstrating that the rate of unreported sexual offenses is significantly higher than that regarding unreported crimes in general. As Dr. Hanson testified, we simply do not know; the data is not there & therefore measurements cannot be made with any certainty… The bottom line, as the defense experts have demonstrated, is that 80% to 95% of all sex offenders will not reoffend. Consequently, we find that SORNA's irrebuttable presumption that all sex offenders pose a high risk of sexual recidivism is not universally true.”

“The Commonwealth has argued that the fact that the amendments to SORNA include an opportunity for some offenders to petition to the court to be removed from SORNA’s registration & notification provisions after twenty-five (25) years means that SORNA’s presumption as to future dangerousness is not irrebuttable. This is illusory.”

“We find that SORNA is unconstitutional as a legislative scheme in both its use of a constitutionally infirm irrebuttable presumption & the punitive effects of its registration & notification provisions, as well as in its application to this Defendant, who has a strong support structure, is educated, is working, is an excellent candidate for rehabilitation, & is highly unlikely to reoffend”

“Based on the evidence of scientific &academic consensus presented, we find that SORN laws do not have the effect on recidivism & public safety anticipated by the Legislature, & that they are not rationally related to the purposes for which they were enacted.”

*Wright v. Alaska,* No. 19-35543 (9th Cir. 2022): Wright unlawfully moved from AK to TN; he pled guilty to an FTR & subsequently filed a habeas corpus petition challenging his conviction for the underlying sex offense. The district court denied the petition on the grounds that Appellant was not “in custody” on his prior sex offense. His initial challenge made it to SCOTUS; they ruled that if Wright was serving a sentence for a FTR due to his state conviction, that did not render him “in custody” for the purposes of collaterally attacking the state conviction. The case was remanded to the 9th Cir, which reaffirmed the holding of the Dist Ct dismissing the habeas petition for lack of subject matter jurisdiction. In so holding, the Court concluded that the connection between Wright’s AK conviction & his registration requirement in TN was “attenuated,” stating “the fact that [Wright’s] duty to register in TN can be linked back to his AK conviction does not render him in custody pursuant to the judgment of a state court under §2254(a).”

*McGuire v. Marshall* *et al*., No. 15-10958 (11th Cir 2022): Denied an ex post facto challenge on grounds such challenge cannot be an as-applied challenge; AL did not intend for registry law to be punitive, & McGuire could noty convince the courts the effects are enough to make SO laws punitive. This ruling relied heavily on *Smith v Doe* 538 US 84 (2003).

*State v. Thompson*, No. S-1-SC-38376 (NM 2022): NM Sup Ct ruled that time SOs serve while on “in-house” parole in prison counts toward eligibility for a hearing to determine whether their parole will continue. The hearing before the state Parole Board does not guarantee that an offender will be released from parole. The board makes the final decision.

*Cao v. Pennsylvania State Police*, No. 512 M.D. 2015 (Pa. Commw. Ct. 2022): In 2017, the PA Sup Ct decision in *Commonwealth v. Muniz*, 640 Pa. 699 (2017), held that SORNA I violated the ex post facto provisions of the US & PA Constitutions when applied retroactively to those convicted of certain crimes before SORNA I’s effective date & who were subject to increased registration obligations under SORNA I. Based on that ruling, Petitioner was informed that the PA State Police had removed Petitioner’s name from the registry. In 2018, however, in response to *Muniz*, the General Assembly enacted SORNA II, which amended certain provisions of SORNA I & added new provisions, effective immediately. Following SORNA II’s enactment, Petitioner was once again informed that he was required to register for life. Petitioner challenged the constitutionality of his lifetime registration requirement, filing an Amended Petition for Review in 2018.

The PA Commonwealth Court decision grants the PA State Police’s Application for Summary Relief & dismisses Petitioner’s Amended Petition for Review. The Court stated that Petitioner “misconstrued” *Santana*, which involved the retroactive application of SORNA I, which was declared an unconstitutional ex post facto violation in *Muniz*. Here, with SORNA II as the relevant statutory framework, the Court concludes that Petitioner’s ex post facto claim is foreclosed by *Commonwealth v. Lacombe,* 234 A.3d 602 (2020) & *T.S. v. Pennsylvania State Police*, 241 A.3d 1091 (2020), which held that Subch. I of SORNA II is nonpunitive & not an ex post facto law, even when applied to individuals whose offenses pre-dated the enactment of any SOR law.

*US v. Bardell*, Case# 6:11-cr-401-RBD-DAB (MD FL 10/04/22): BOP was condemned by US Dist Judge & ordered to pay restitution to family for mistreatment of SO in care. BOP knew Bardell had cancer & refused to treat it until condition became terminal; defying a court order for compassionate release, BOP tried hiding the diagnosis, but then dropped off the dying Bardell at the airport w/o a wheelchair, & the family had to pay for the ticket to get Bardell home. He died 9 days later. In the 14-page order, in unusually agonized & aggrieved language, the judge accused the BOP of being “indifferent to the human dignity of an inmate in its care.” “Frederick Marvin Bardell was a convicted child pornographer,” Judge Dalton wrote. “He was also a human being.”

*Commonwealth vs. Roderick*, No. SJC-13212 (MA 2022): This case requires the MA Sup Jud Ct to determine whether GPS monitoring as a condition of probation is constitutional as applied to the defendant, a first-time offender convicted of rape. MA asserts that GPS monitoring will further its interests in enforcing the court-ordered exclusion zone surrounding the victim's home, deterring the defendant from engaging in criminal activity, & assisting authorities in investigating any future criminal activity by the defendant. Court concluded that MA has not established how the imposition of GPS monitoring in this case would further its interest in enforcing the exclusion zone. Although MA has demonstrated that GPS monitoring might aid in deterring & investigating possible future criminal activity by the defendant, in the circumstances here, those interests alone do not justify the depth of the intrusion into the defendant's privacy that GPS monitoring entails. Accordingly, the imposition of GPS monitoring on the defendant as a condition of probation would constitute an unreasonable search in violation of art. 14.

*Doe, SORB No. 22188 v. Sex Offender Registry Board*, No. AC 21-P-584 (MA App Ct, 10/4/22): John Doe, appeals from a Superior Court judgment affirming his final classification by the SORB as a Lvl2 offender. See GL.c.6, §178K(2)(b). The hearing examiner relied on a regulatory factor (repetitive & compulsive behavior) that SORB agrees is invalid as applied here, & the only questions before us are whether Doe's substantial rights may have been prejudiced by this error & how to make that determination. In considering how to determine whether Doe's substantial rights may have been prejudiced, we conclude that the proper question is whether the error may have affected the classification. As the error here may have affected the classification, we vacate the judgment & remand to SORB for further proceedings.

*In the Matter of the Bar Application of Zachary Leroy Stevens*, No. 201,997-8 (WA Sup Ct, 11/4/22): 5-4 ruling allows Stevens to practice law despite being on the registry. In 2018, this court held that “for purposes of bar admission, a moral character inquiry is determined on an individualized basis,” & that “there is no categorical exclusion of an applicant who has a criminal or substance abuse history.” *In re Bar Application of Simmons*, 190 Wn.2d 374, 378, 414 P.3d 1111 (2018)…“Stevens’ most serious offenses occurred when he was a teenager. As an adult, he has abstained from engaging in any unlawful conduct since 2013. In that time, he has graduated from college & law school, he has been steadily employed, & he has developed a supportive network of friends & family. It is apparent from the record that Stevens has taken responsibility for his prior misconduct & shows remorse. We therefore hold that despite his past wrongdoing, Stevens has met his burden of showing that he is currently a person ‘of good moral character’ who ‘possesses the requisite fitness to practice law.’”

*Lake Naomi Club, Inc. et al v Rosado et al*, No. 1164 C.D. 2021 (PA App. Ct 10/28/2022): PA App Ct ruled a private housing development does not have the right to entirely ban registered RCs from living within their community. Court ruled that a prior ruling that state law (which doesn’t authorize residency restrictions) preempt municipalities & counties laws, & a private community cannot impose more restrictive standards than local authorities.

*Does v Swearingen,* No. 21-10644 (11th Cir 2022): In partially overturning a dismissal for a registration at the Dist Ct level due to FL’s 4 yr statutes of limitation, 11th Cir ruled that ongoing registration is a "continuing violation" doctrine that overrides the statute of limitations.

*State v. McMahon*, No. 54,740-KA (La. Ct. App. 2022): Held La. R.S. 14:91.5, which prohibits the use of social networking sites by select categories of required registrants, is narrowly tailored and does not violate 1st Amdt rights.