**THE INFORMATIONAL CORRLINKS NEWSLETTER (ICON) # 75**

**JAN 2022 – ABOUT THE MODEL PENAL CODE, ACTIVISM FIRST STEP**

ICoN provides legal, treatment, activism news & practical info for incarcerated SOs. Send inquiries by CorrLinks email (iamthefallen1@yahoo.com) or to Derek Logue, 2211 Co. Rd. 400, Tobias NE 68453. Our focus is SO laws; I don’t advise or assist on appeals, sentencing issues, non-SO news, & services like people-finding, penpals & mail forwarding. DO NOT reply to this email; use separate email when asking me questions.

**LEGAL ROUNDUP**

*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.” The rule is long and complex so a detailed breakdown will be available in ICoN #76.

**ABOUT THE AMERICAN LAW INSTITUTE (ALI) AND THEIR PROPOSED CHANGES TO MODEL PENAL CODE (MPC)**

Why is there an attack on the ALI and their proposed changes to their MPC by the AGs of 37 States & NCMEC? The MPC is a model act designed to stimulate and assist state legislatures to update and standardize the penal law in the US. The MPC is a project of the ALI, and was originally published in 1962 after a 10-year drafting period. The MPC itself is not legally-binding law, but since its publication in 1962 more than half of all states have enacted criminal codes that borrow heavily from it. It has greatly influenced criminal courts even in states that have not directly drawn from it, and judges increasingly use the MPC as a source of the doctrines and principles underlying criminal liability. Suffice to say, changes to the MPC can lead to massive changes in both criminal cases and the SOR. This is NOT law, but a model of law. Still, it will influence public policy in many states. A description of the significance of this law is below:

ALI Adopts Revisions to MPC That Include Major Changes to SORs

By Ira Ellman, 6/9/21

On 6/8/21 the membership of the American Law Institute gave its final approval to a revision of the Model Penal Code’s chapter on Sexual Assault & Related Offenses. This project was initially authorized by the ALI Council in 2012. The appointed Reporters, Professors Stephen Schulhofer and Erin Murphy of the NYU School of Law, began work immediately, preparing drafts for discussion with the appointed project Advisors and the Members’ Consultative Group. As is normal with ALI projects, these groups included practicing attorneys, judges, and scholars who are experts in the subject. Portions of the project were presented to the full membership at the annual meetings in 2014, 2015, 2016, and 2017. The ALI Council agreed on 1/22 to recommend the membership’s final approval of the completed project. Tentative Draft #5 was then considered and approved by the Membership at the 2021 annual meeting held on 6/8. The Reporters will now prepare the final published version reflecting the discussion at the Annual Meeting as well as editorial improvements.

The complete Tentative Draft, 600 pgs. long, addresses the substance of the full range of sexual assault crimes. It contains the Blackletter provisions setting forth the code’s statutory language for each section, official Comments interpreting and explaining each section, and Reporter’s Notes providing background and citations to sources relied upon by the Reporters in the draft. The original version of the Model Penal Code was published by the ALI in 1962. It was and remains highly influential. According to Wikipedia more than half the states enacted criminal codes that borrowed heavily from the MPC, and even courts in non-adopting states have been influenced by its provisions. It was a forward looking document. One important and influential contribution of the 1962 MPC was the removal of noncommercial sexual acts between consenting adults, such as sodomy, adultery and fornication, from the criminal law. In 2001, however, the Institute concluded that revision of some portions of the 50-year-old MPC had become necessary. This project, revising the portions of the MPC addressing sexual assault, is one of three separate revision projects on different portions of the code. The original MPC contained no provisions on a sexual offense registry; the inclusion of that topic in the MPC is among the most significant revisions to it now approved by the Institute.

The MPC’s registry provisions are contained in 11 sections. Including an official comment providing an Executive Summary, they are set forth in the final 120 pages of Tentative Draft #5. While the MPC adopts something called a registry, its substance departs significantly from existing registry laws, federal and state, as the Comments acknowledge. Key differences are:

1. Many sexual offenses that are registrable in the federal and most state laws are not registerable under the MPC provisions, which provide that no offense is subject to registration other than those it specifies as registerable. Only these five offenses (as defined by other sections of the MPC) trigger a registration obligation:

a. Sexual Assault by Aggravated Physical Force or Restraint

b. Sexual Assault by Physical Force, but only when committed after the offender had previously been convicted of a felony sex offense.

c. Sexual Assault of an Incapacitated Person, but only when committed after the offender had previously been convicted of a felony sex offense.

d. Sexual Assault of a Minor, but only when the minor is younger than 12 and the actor is 21 years old or older.

e. Incestuous Sexual Assault of a Minor, but 1 only when the minor is younger than 16.

2. There is no public notification that individuals are on the registry, whether through a public website or any other means. Access to the registry is limited to law enforcement personnel. The knowing or reckless disclosure of registry information to others is a felony.

3. The maximum registration period for the small group who remain on the registry is 15 years, but those who do not re-offend, and comply with parole, probation, or supervised release conditions, are removed after ten years. Failure to register cannot be the basis of parole or probation revocation; it is punishable only as a misdemeanor offense.

4. General rules that required location monitoring of persons convicted of a sexual offense are barred, as are most restrictions on residency, access to schools or the internet. Judges could impose such restrictions in particular cases, but only on persons currently required to register, and only upon an evidentiary showing that there are special circumstances in that particular case that justify it, and only for a limited period of time. In no case may a judge require public notification. Mandatory restrictions on employment applicable primarily to persons convicted of a sexual offense that are created by other state laws are not repealed by the MPC, but anyone subject to them may petition a court for relief from the employment bar

The American Law Institute, established in 1923, is the leading independent organization in the United States producing scholarly work to clarify, modernize, and otherwise improve the law. The current Council of the ALI includes 7 members of the United States Courts of Appeal as well as Justices on the highest courts of California, Arizona, Texas, and New Jersey. The recommendations of the ALI Council become the official position of the Institute when (as with these revisions to the MPC contained in T.D. 5) they are adopted by the members, which consists of leading attorneys, law professors, and judges who have been nominated and elected to membership.

**THE FIRST STEP IN BECOMING AN ACTIVIST IS EDUCATION**

The Anti-Registry Movement (ARM) is currently working on an “activist handbook” to help those considering activism upon release. I am also planning to release a book on SO Myths. But in the meantime, there are things you can do right now to prepare yourself.

How do you normally get a job? You must be qualified for that job. A mechanic doesn’t work in a lab, and a scientist doesn’t work on your car. If you go to college to prepare for a career, you are required to take a variety of courses. In anti-registry activism, understanding how law, the media, public speaking, and legislation works will help. You must also study arguments for and against SO laws and the myths that promote these laws. These are all things you can do either by taking classes on law, government, writing, and public speaking if you have access to such classes, or by reading books on the subject if you must self-study. You can also obtain information about SO myths through anti-registry groups. If you are incarcerated with other SOs, you can form groups to discuss these laws and how best to challenge them.

If you have family on the outside willing to print materials for you or if you have some degree of Internet access, the website oncefallen.com is a treasure trove of knowledge to help educate those desiring to be activists. The website is free of ads and paywalls and any material from the website (even my book) can be printed for free. Feel free to write and ask questions!

Note: In case you missed the memo, my 2nd edition of “Your Life on The List” is available on Amazon.com, below is the link to the book ($14.95+ tax/shipping)

https://www.amazon.com/YOUR-LIFE-LIST-Derek-Logue/dp/B09NRC54XL/