

ICoN Consolidated Newsletter, 2017B (July-Dec. 2017, #21-#26)

The Informational Corrlinks Newsletter (ICoN) provides a variety of legal, treatment, activism news & practical info for incarcerated SOs via CorrLinks. This consolidated version covers all legal cases and articles covered in the ICoN newsletters for the first half of 2022 and are offered as a space-saving measure. To better make use of Corrlink's 13k character limit, abbreviations will be used, so ICoN readers need to familiarize themselves with the following acronyms: SCOTUS (Supreme Court of the United States, an acronym in current Internet use), RC (registered citizen, an "SO" currently forced to register), ARM (Anti-Registry Movement, a term sometimes used to describe our reform movement), SOR (SO Registry), AWA (Adam Walsh Act), SORNA (the part of the AWA covering Registration & Notification), Admt (Amendment) & the many abbreviations for states & court jurisdictions. Time dated announcements & resources are not included in this consolidated newsletter. – Compiled Dec. 4, 2022.

ORDERING BACK ISSUES OF THE ICoN & DONATING TO THE CAUSE

Due to a limited budget and manpower, **I do NOT have a regular physical mailing list for these newsletters.** Those with Internet access can print past issues from my site and the other resources I offer at <https://oncefallen.com/icon/>

Consolidated ICoN newsletters are sent out upon request and a payment of two stamps to help offset costs. Please note that some prisons place limitations on mail which may require a higher cost (example: some prisons limit printouts to five single-sided pages per envelope, so a printout taking up 22 pages would require 5 stamps.) Please note your facility's limitations before making a request. Checks/ MOs must be made out to Derek Logue. You can contact me for further info and a list of what I offer at:

Mail - Derek Logue, 2211 CR 400, Tobias NE 68453

Email – iamthefallen1@yahoo.com (this is also the email I use for signing up for the ICoN)

Phone – (513) 238-2873 (No collect calls)

YOUR LIFE ON THE LIST: Edition 3 (A registry survival guide) by Derek Logue

“Your Life on The List: Edition 3” is a registry survival guide, covering a variety of common concerns like housing, employment, compliance checks, travel, and other common questions. It also contains a housing list and a comprehensive overview of the registry, residency/ proximity laws, and other post-conviction laws you may experience as a Registered Person.

To download a free PDF Copy of the guide, visit the front page at oncefallen.com

To order a printed copy from Amazon.com (\$14.95 plus tax & shipping):

<https://www.amazon.com/Your-Life-List-Derek-Logue/dp/B0BSZWQCWV/>

If you are thinking of becoming an activist, consider ordering a copy of “The Anti-Registry Activist Manual: A Guide to Effective Advocacy” by Jonathan Grund. It is available for \$13.50 on Amazon.com:

<https://www.amazon.com/Anti-Registry-Activist-Manual-Effective-Advocacy/dp/B09T893TNR/>

LEGAL ROUNDUP July-Dec. 2017

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 Majorit 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.

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 in the 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 I, 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.”

PUERTO RICO: LEGAL SUMMARY

Puerto Rico is not compliant with the Adam Walsh Act. Legal Statute Begins: P.R. LAWS ANN. tit. 4, § 536 (2010).

P.R. Laws Ann. tit. 4, § 536b (2010). Duties before the Registry: (f) The sexual offenders in other states shall be evaluated before entering Puerto Rico.

P.R. Laws Ann. tit. 4, § 536c (2010). Obligations of the persons subject to registration: The person registered as provided in §§ 536-536h of this title, shall notify the Police Headquarters of the jurisdiction in which he/she resides of any change in his/her temporary or permanent address at least ten (10) days before moving or in the case of a person from another country who has been convicted for a sexual crime

or child abuse by a federal, military or state court of his/her country who establishes his/her residence in Puerto Rico or that because of work or study is located in Puerto Rico, although his/her intention is not that of establishing residence, and has the obligation to register, shall complete the registration within ten (10) days of his/her arrival to Puerto Rico.

Every person registered for having been convicted of any of the crimes listed in subsection (a) of § 536a of this title shall update the Registry each year, even when there has been no change in the residential address initially furnished...It shall be a condition to enjoy the benefits of probation or parole or to participate in a diversion, treatment or rehabilitation program established by the Corrections Administration, to have met the registration requirements established by §§ 536-536h of this title. Failure to meet any requirement shall be cause to revoke these benefits.

The information of the person convicted for the crimes listed in subsection (a) of § 536a of this title shall be kept in the Registry for a minimum period of ten (10) years counting from the date the sentence imposed was served. Said information can only be eliminated from the Registry after a minimum period of ten (10) years has elapsed, if the conviction that entails the application of §§ 536-536h of this title is revoked by a court or the convict is granted executive pardon or full pardon. The System shall adopt the regulations needed to comply with these provisions.

P.R. Laws Ann. tit. 4, § 536d (2010). Declaration of dangerous sexual offender; obligations: The person declared a dangerous sexual offender shall be registered for life, as provided in §§ 536-536h of this title.

P.R. Laws Ann. tit. 4, § 536h (2010). Penalties: Any person who violates the provisions of §§ 536--536h of this title shall incur a misdemeanor and upon conviction shall be sanctioned with the penalty of a fine that shall not exceed five thousand (5,000) dollars or the penalty of imprisonment that shall not exceed six (6) months, or both penalties, at the discretion of the court.

Puerto Rico apparently does not have residency restriction laws. SMART Office claims you must register within 3 days while the 2013 statute appears to say 10 days. SMART also claims their 3 tier system is similar to AWA with a minimum 15 year registration, where the 2013 state says 10 years. [<https://www.smart.gov/pdfs/sorna/puerto-rico-hny.pdf>]

GUAM: LEGAL SUMMARY

Guam is one of three US Territories considered “substantially compliant” with the AWA. The most recent online statutes are from 2013, so there may be some minor changes in the law since that time.

Guam Code Ann. tit. 9, § 89.03 (2013). Registration; Duty to Register: Includes those convicted in Guam and any person who is a non-resident who is on Guam for the purpose of being employed or as a student and has been or is hereafter convicted of a sex offense. Will submit a DNA sample. Must register within 3 working days of entering Guam or changing addresses. Unlike the states, it appears Tier one is the high-level tier and Tier 3 is the low level; Level 3s register once a year for 15 years, Level 2s register twice a year for life & Level 1s register every 90 days for life.

Guam Code Ann. tit. 9, § 89.04 (2009). Duration of Registration: © Guam apparently honors pardons from other jurisdictions that allow for removal from the registry. (d) Tolling of Registration Requirement. If a registrant is re-incarcerated for violations of release conditions imposed in the same crime, or for the commission of another crime, or the registrant is civilly committed, or if the registrant leaves to a foreign country and informs the Judiciary of Guam, Probation Division, then the period of registration is tolled and remains tolled until the registrant's subsequent release or arrival in another jurisdiction. Thereafter,

the registrant shall recommence and continue registering for the remaining period of time the registrant is required to register.

GUAM CODE ANN. tit. 9, § 89.05 (2013). Penalties: FTR (Failure to Register) is a 3rd Degree felony for first offense & 2nd Degree felony for subsequent FTRs. Anyone who adds a minor as a “friend” or contact on social media networks, or fails to submit DNA is guilty of a misdemeanor. Anyone who misrepresents himself to obtain friend requests on social media (example: Lying about age) is guilty of a felony.

Guam Code Ann. tit. 9, § 89.11 (2009). Notification: Vehicle, Employer & school info is listed publicly in addition to the description of the RC. Has community notification.

Guam Code Ann. tit. 9, § 89.13 (2013). Electronic Monitoring of SOs; allows electronic monitoring of RCs on supervision.

Guam Code Ann. tit. 9, § 89.14 (2013). Limitations on the Use of Electronic Mail (e-mail) by RSOs: Registrants must add their full names (first, middle, last names) in any email communications

Guam Code Ann. tit. 4, § 4203.3 (2013), tit. 5, § 5253 (2013): RCs are prohibited from working for the government or work on any property owned by the government except for roadways.

NORTHERN MARIANA ISLANDS: LEGAL SUMMARY

The statutes can be found under the Commonwealth Code, Title 6, Div. 1, Part 1, Ch. 3, Article 4, “CNMI-SORA” [See <https://www.cnmilaw.org/frames/CommonwealthCode.html>]. Note that the Mariana Islands are AWA compliant:

Sec. 1362: As with the Federal law, registrants are divided into 3 tiers based on offense.

Sec. 1365: Must register if away from home from more than 72 hours; must submit to DNA sample; registration frequency aligned with AWA (T1: Once a year/15 yrs; T2: Twice a year/ 25 yrs.; T3: Every 90 days/ life).

Sec. 1367: must appear in person at the Department of Public Safety within 3 business days of establishing a residence, commencing employment or becoming a student in the Commonwealth. (Sec. 1360 defines residence as, “with respect to an individual, location of the individual's home or other place where the sex offender habitually lives or sleeps.”)

Sec. 1368: “Recapture”: This gives the gov’t power to add people with a sex offense not required to register onto the registry if reincarcerated for any offense.

Sec. 1369 (b): Natural disaster. The occurrence of a natural disaster or other event requiring evacuation of residences shall not relieve a SO of the duty to register or any other duty imposed by this article.

Sec. 1371: Tier 1s can get a registration reduction after 10 years with a clean record; Tier 3s can get a reduction to 25 years with a clean record.

Sec. 1375: Community notification: Email notice is available to the general public to notify them when a SO commences residence, employment, or school attendance with the Commonwealth, within a specified zip code, or within a certain geographic radius.

AMERICAN SAMOA: LEGAL SUMMARY

Only recently has American Samoa (not to be confused with the nation of Samoa) published an online registry; it was recently reported American Samoa signed into law the provisions for the federal AWA/SORNA law, and received federal funds to set up a registry. [<http://samoanews.com/local-news/american-samoa-now-has-sex-offender-registry-website>]. Below is a summary of the law as written in the Code of American Samoa:

Am. Samoa Code Ann. § 46.2801: Requires registration for crimes against anyone under 18 years of age for a 10 year period. (b) Initial registration or changes in employment, home address, school status, or being out of the territory for 6 months must be reported within 10 days. (c) FTR is a Class A Misdemeanor. (d)(8) Mentions the Dept. of Public Safety will maintain records of non-resident offenders who “reside in American Samoa for school or employment for more than 14 days or for an aggregate period exceeding 30 days in a calendar year.”

Am. Samoa Code Ann. § 46.2802: Considers anyone who committed an offense against a minor under 12, caused physical injury, or repeat offenses a “sexually violent predator” and must register for life. FTR for SVPs is a class C felony.

Am. Samoa Code Ann. § 46.2804: Allows the information to be shared publicly.

Am. Samoa Code Ann. § 46.2805: The laws apply equally to out-of-territory offenders.

There is not any mention of community notification, residency or proximity restrictions, or registry fees at this time.

US VIRGIN ISLANDS: LEGAL SUMMARY

Guam & the Mariana Islands, the Virgin Islands are recognized as being “substantially compliant” with the Adam Walsh Act. Laws can be found beginning in 14 V.I.C. Sec. 1721 (2017)

14 V.I.C., Sec. 1721B (2017): SOs are classified into 3 tiers based on offense type (As with federal guidelines, Tier 1s register for 15 yrs; Tier 2s, 25 yrs; Tier 3s, life) & provide 21 day notice for foreign travel.

14 V.I.C., Sec. 1724 (2017): You must register within 3 business days if you move, attend school or are employed in the V.I.

14 V.I.C. 1730 (2017): FTR carries up to a 2 yr sentence & \$5000 fine.

No information on fees or residency restrictions exists, so it is safe to say the territory has neither.

TRAVEL & PASSPORT ISSUES

The US State Dept. has finally unveiled the passport identifier for certain SOs. The following is from the US State Dept. press release from 10/30/17:

Newsroom: Passports and International Megan's Law
OCTOBER 30, 2017

“On February 8, 2016, Congress enacted the International Megan's Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders (IML) (Public Law 114-119).

The IML prohibits the Department of State from issuing a passport to a covered sex offender without a unique identifier, and it allows for the revocation of passports previously issued to these individuals that do not contain the identifier (22 USC 212b).

The identifier is a passport endorsement, currently printed inside the back cover of the passport book, which reads: ‘The bearer was convicted of a sex offense against a minor, and is a covered sex offender pursuant to 22 United States Code Section 212b(c)(1).’ Since endorsements cannot be printed on passport cards, covered SOs cannot be issued passport cards.

Only the DHS/ICE Angel Watch Center (AWC) can certify an individual as a ‘covered SO.’ Therefore, any questions by the applicant about such status must be directed to and resolved by AWC.

Applicants who have questions for AWC regarding their status or believe they have been wrongly identified as a covered SO as defined in Title 22 US Code 212b(c)(1) should contact AWC at DHSintermeganslaw@ice.dhs.gov.”

Due to the recent news and the popularity of this topic, it is necessary to revisit this issue in order to clarify how International Megan’s Law” (IML) works.

IML was signed into law in Feb. 2016. IML requires registrants looking to travel internationally to give the registry office 21 days advance notice of international travel; the feds gather the info & send advance notice to other nations of your intent to travel. IML also added a provision requiring certain “covered SOs” (i.e., any offense that included a minor) to carry a US passport that reads, “The bearer was convicted of a sex offense against a minor, and is a covered sex offender pursuant to 22 United States Code Section 212b(c)(1).” Since these endorsements cannot be printed on passport cards, “covered SOs” cannot be issued passport cards, which are often used at ports of entry. This was all created under the guise of “preventing human trafficking,” so the assumption is every SO with an offense against a minor is only traveling for the purpose of trafficking. Below is the IML definition of a “covered SO,” so that there is no further confusion:

(A) IN GENERAL. The term "child-sex offense" means a specified offense against a minor, as defined in paragraph (7) of section 111 of the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16911), including (i) an offense (unless committed by a parent or guardian) involving kidnapping; (ii) an offense (unless committed by a parent or guardian) involving false imprisonment; (iii) solicitation to engage in sexual conduct; (iv) use in a sexual performance; (v) solicitation to practice prostitution; (vi) video voyeurism as described in section 1801 of title 18, US Code; (vii) possession, production, or distribution of CP; (viii) criminal sexual conduct involving a minor, or the use of the Internet to facilitate or attempt such conduct; and (ix) any conduct that by its nature is a sex offense against a minor.

If you currently own a passport without the mark, it will likely be confiscated upon attempt to leave the USA, and you will be issued a new passport with the mark of infamy. However, it is unsure how long it will take for those passports to be confiscated.

I recently covered the Real ID law, which requires states to change their state ID cards to a universal standard; flights to states that do not pass Real ID as early as January 22, 2018 may require an “alternate” ID, such as a passport, to fly domestically. (As of Nov. 2017, Only MO & MN are not real ID compliant or filed for an extension; 27 states/ territories are fully compliant while the others have filed for an

extension). This is obviously going to be potentially problematic for traveling SOs, but until the deadline actually passes and some people are forced to use a passport for a domestic flight, I can only speculate there will be problems for the non-compliant states.

In regards to the NARSOL project Registrant Travel Action Group (RTAG), the list of nations reportedly turning away SOs increased by two between Jan. and Sept. of 2017. But because I'm getting so many requests for this, I'm adding the current list as of this reading. Please note that there is no timeline for updates, they get updated whenever there is new info to share; also, note that many of the entries are reliant on self-reports from traveling SOs. There's no guarantee of denial of entry for everyone on the registry or that a country not on this list will grant you entry.

SOs turned away: Mexico, Canada, Costa Rica, Panama, Dominican Republic, Jamaica, Argentina, Brazil, Colombia, Russia, UK, Australia, Cambodia, China, Laos, New Zealand, Vietnam, Dubai, Philippines, Indonesia, Singapore, South Korea, Taiwan, Thailand, Ireland, Nicaragua, Chile, Peru, Jamaica, India

Laws specifically banning SOs from entry: Mexico, Canada, Panama, Argentina, Brazil, Russia, UK, Australia, Cambodia, New Zealand, Philippines, Japan, Ireland

Laws banning felons in general from entry: Canada, Panama, UK, Australia, New Zealand, Japan, Costa Rica, Ireland, Mexico

You now have the most complete picture on the issue of international travel possible at this time.

OSU PLAYER SLAMMED FOR JUVY SO RECORD

As the Oregon State University baseball team stood at the cusp of a historic run to the College World Series, one young man was credited as having led the team through his own historic performance—ace pitcher Luke Heimlich. Unfortunately, Heimlich also committed an offense as a juvenile and is forced to register as a low-level registrant. On the day OSU reached Omaha for the Super Regionals series against Vanderbilt, the Oregonian newspaper engaged in a targeted campaign to humiliate both Heimlich and the University. Initially, the paper released FOUR articles targeting Heimlich, including an article defending their actions. One reporter stated, “Our society decided long ago that sex offenders should carry the burden of their conviction well after their sentences end - and that juvenile sex crimes should follow offenders into adulthood.” Another stated, ““Can we start with the premise that human life matters? ... The victim matters. She matters more than Heimlich...Some people, myself included, don't believe a registered sex offender has a place on a major college athletics team. I don't believe an athlete who has committed a violent offense, including domestic violence, belongs there either.”

And, of course, the biggest bomb of all—“ For those who say Heimlich has, "Paid his debt to society" or "Been punished for his crime," and should be left alone -- huh? An important part of his punishment is that he has to register as a sex offender. There's a reason a felony crime is a felony crime. The punishment is supposed to act as a deterrent.” I have to thank him for admitting the registry is punishment, despite the absurd claim in *Smith v Doe* (2003).

I believe this to be an act of vigilantism, NOT journalism, but it poses some questions—at what point can a RC ever be redeemed and allowed to become a productive member of society? And just what kind of jobs should we be allowed to have? Consider the fact Iron Mike Tyson had a successful career despite being forced to register. What about Ben Roethlisberger? He was suspended for 8 games (reduced to 6) on a sex crime allegation that was eventually dropped, but still plays football and the arrest jokes have all been played out. But both of these men were current players. Heimlich, on the other hand, was convicted

at 15, years before going to college. He served his sentence and completed treatment. Even the original article stated juveniles are very amenable to treatment and less likely to reoffend than adult offenders. Yet, this paper made every effort to derail this kid's career, and they appear to be successful.

Sadly, this brings me to a sad realization—As registrants, we will have to prepare for our lives to be derailed at any time, for any reason, by people who don't believe we deserve second chances. They feel we don't deserve any successes, or even a voice. We have to fight for our successes. It is up to you to find that strength, but you don't have to fight alone. If you stand up and fight, I'll stand with you, and hopefully, we will encourage others to take a stand as well.

SOs & HURRICANES

Hurricane Harvey has flooded much of the land surrounding Houston TX. The US has been fortunate in recent years with few destructive storms making landfall. However, this brings up yet another depressing aspect of life on the list—what to do in case of a natural disaster. Louisiana passed a law (Louisiana RS §15:543.2, still on the books) banning SOs from shelters; SOs were forced to separate from loved ones during 2008's Hurricane Gustav. Shelters in the process of being built for the purpose of housing SOs were destroyed by Gustav. In 2005, Sheriff David Gee (Hillsborough Co FL) warned SOs to make their own plans during a hurricane, because none would be allowed into a shelter. Texas instituted "Operation Safe Shelter" around 2008 to help ID SOs seeking shelter, which would have presumably prevented SOs from obtaining shelter. However, I have found no recent info on this program, and it is no longer listed on TX's AG website.

It is important to consider your OWN contingency plan in the event of a natural disaster. Don't assume you'll receive sufficient aid from the government. Hurricanes are slow enough to plan accordingly. Think about any relatives or friends farther inland with whom you can stay & not be in violation of any restrictive laws. Be sure to ask your local office if they have procedures in place to avoid any FTR charges due to disaster. (Sadly, we're somehow expected to report changes in living arrangements even in emergency situations.) Be sure to maintain a reasonable stockpile of emergency provisions that can be taken with you in the event of a disaster- food, first aid, and other basic necessities. Remember that it is up to you to prep for any emergency.

HURRICANES AND OTHER ISSUES PART 2

In last month's ICoN, I briefly discussed policies on SOs in hurricane shelters. Stories have emerged about the conditions at prisons hit by Harvey and Irma—flooding, water filling up lower cells and floating raw sewage back into the cells, not being able to eat because of the stench, and so forth. Despite prison suffering these problems in every major storm from Katrina and Rita in 2005 to Harvey and Irma in 2017, states like Florida and Louisiana continue to leave many prisoners in prisons in hurricane shelters. Maybe some of my readers can relate. After all, Corrlinks users told the media about conditions.

On September 17, I visited the homeless registrant camp in Hialeah. Those on supervision were rounded up and taken to a local correctional center and held in the visitor's area with no shower facilities for over a week before they were given the "all clear" and allowed to return to the camp. One guy was scheduled to be released on 9/8, so he was released and sent straight to the visitor's area to ride out the storm.

I can imagine you have had enough of prison, so why would anyone take shelter there? Sadly, FL, TX, and LA have all instituted policies sending at least those "on paper" or house arrest to seek shelter in jail. Controversial Polk Co FL Sheriff Grady Judd sent a message on Twitter telling SOs they weren't welcome in any shelter but jail. Many people applauded this man. That is why it is important that you make a disaster plan.

If you are “on paper,” you likely won’t have a choice, but if you are free from supervision, you should be able to travel elsewhere so long as you register beforehand. If you have family or friends who will shelter you during a storm, do so, but be aware of that area’s residency restriction laws, which may differ from those at your house. Be sure to always keep an emergency kit handy—first aid, medicines, food, batteries/chargers, and most of all, water. It is better to be safe than spending a week sitting at a prison waiting out a storm.

SPLITTING HAIRS IN THE PA COURT SYSTEM

You might be aware PA recently declared the Adam Walsh Act was declared punishment in PA and can’t be applied to those convicted before 2012. But before those of you convicted in 2011 plan to move to PA, keep in mind that the registry fight is far from over. It is important to understand that the act of registration in itself is considered “constitutional” thanks to *Smith v Doe*; it was the application of the current registry scheme under AWA that was declared punishment. As expected, a simple reinstatement of the pre-AWA law for those convicted in 2011 or before would be passed; see below for a recent article in which this measure is already being introduced in the PA legislature.

The AWA was already beaten on ex post facto in OH in 2011, but the fact AWA was declared a punishment doesn’t guarantee other constitutional challenges will succeed. In 2015, the Ohio Sup Ct ruled in *State v. Blankenship*, 145 Ohio St.3d 221, 2015-Ohio-4624 that, “Because we hold that the Tier II registration requirements imposed upon [Blankenship] are not so extreme as to be grossly disproportionate to the crime or shocking to a reasonable person and to the community’s sense of justice, we affirm the judgment of the court of appeals.”

Updates to SO Registration Law in Pa. Proposed: By Victoria Hudgins, Law.com 11/9/17

“A member of the PA House of Representatives said his proposed legislation will adapt the AWA to prevent retroactive application of the law and still require sex offenders to continue registration as SOs to the PA State Police. According to state Rep. Ron Marsico, R-Dauphin’s memo, the PA Sup. Ct’s decision in *Commonwealth v. Muniz* found the state’s SO registration act, known as the Adam Walsh Act of 2012, can’t be applied to defendants who committed their crimes before 2012 based on the US and PA constitutions. Marsico said that could lead to removal of 10,000 SOs from the state sexual SO registry. Marsico said his proposed legislation would conform the AWA to the *Muniz* case by preventing retroactive application of the law. His legislation would also place Megan’s Law III’s “safety net” that requires SOs—who haven’t currently finished their registration as a SO—to continue to register with the PA State Police.”

“BEST BUY SNITCH” CASE DISMISSED

The following is an edited version from an article from the WaPost entitled “Man investigated after Best Buy technicians tipped off FBI has child pornography case dismissed” By Tom Jackman, Nov. 23, 2017.

“The CP case against a California doctor whose computer was searched after he submitted it to Best Buy’s Geek Squad for repair was dismissed after a judge ruled that an FBI agent made ‘several false or misleading statements or omissions... with reckless disregard for the truth’ in a search warrant affidavit...”

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. Riddet argued that when the Geek Squad delved into the unallocated space, it was searching beyond standard data recovery to try to help the FBI. But US District Judge Cormac J. Carney rejected that argument. The Geek Squad technician testified that he was simply trying to recover all the customer's photos, wherever they were. The judge noted that Best Buy warns customers that it will notify the authorities if illicit material is found. He said 'Rettenmaier's expectation of privacy' after he gave the computer to Best Buy 'and repeatedly consented to data recovery services is not one that society is prepared to recognize as legitimate or reasonable.'

But the FBI used the discovery of that photo to obtain a search warrant for Rettenmaier's home and other computers... (Which led to seizing a tablet w/ CP images.) Carney said that search was illegal because it wouldn't have been authorized if FBI agents had accurately described what was originally found on Rettenmaier's computer in Kentucky. Special Agent Cynthia Kayle 'falsely stated in the affidavit' for the search warrant 'that the [child] image was CP,' Carney said in a May hearing in federal court in Santa Ana, Calif. "It was child erotica, the possession and viewing of which is not unlawful."

Kayle also failed to state that the image was found in the unallocated space of Rettenmaier's computer & that three separate searches of the hard drive were done to find the image. 'This one image of child erotica,' Carney said, 'is simply not sufficient to search Rettenmaier's entire home, the place where the protective force of the 4th Amendment is the most powerful.' The judge then suppressed all the evidence seized from Rettenmaier's house, including the photos on his phone." The state moved to have the case dismissed.

TREATMENT CORNER: We're All Criminals Together"

This article was published in "Inside Time," an inmate news service in the UK. [<http://www.insidetime.org/were-all-criminals-together/>]. I stumbled upon it after reading a letter to the paper from an inmate who complained that SOs manufactured the blankets used by the prison & he was offended by having to use the blankets. "How can the prison system distribute these SO blankets throughout the prison population? I feel so angry that I cannot even sleep knowing that SO's hands have been all over my blanket.... Can't somebody do something to stop this happening?" It is hard to believe this inmate letter hit the mainstream media, but it did. It never ceases to amaze me how judgmental some inmates can be, especially considering many of them victimized people to land in prison as well.

The following OpEd wasn't a response to the aforementioned letter, but to another complaining about the early release of some SOs in the UK. I felt this short letter was worth sharing because I'm sure some of you can relate to what this anonymous inmate wrote. [Note: I did make minor edits to the article.]

"I am a little disconcerted regarding the comments from L Holmes and Ryan McLaughlin in the last issue, concerning their stance on the early-release of SOs. These comments are typical amongst the prison population and the general public alike, who, unfortunately are easily manipulated by an unscrupulous media. "

The term "S.O." is a poor choice of words. The term implies that the person who committed a sex-offense is, and always will, continue to do so." Most people who have committed a sex-offense have made a stupid and isolated mistake. I have yet to meet a prolific offender with only sexual depravity, perversion and 'victim targeting' on his agenda; however, I am not so naïve that I don't believe these types of offenders do not exist.

Holmes talks about 'SOs who destroy people's lives, but I would like to ask Mr Holmes what crime he committed? I am sure there will have been a victim of some sort who was affected either directly or indirectly by his crime. Perhaps the family home that he burgled has had an impact on the occupants who

now feel violated in their own home? Or perhaps the elderly lady that he mugged can no longer venture outside on her own? Or perhaps the unfortunate person who was misled by his fraudulent endeavours may never trust again? You see, the psychological consequences affect many victims of crime.

The point that I am trying to make here is that we are all in prison because of a crime. People who commit sex-offences are less likely to commit another offence... Along with robust license conditions, a possible Sexual Harm Prevention Order, unannounced police visits, internet restrictions, mobile-phone and camera restrictions, exclusion zones, curfews, polygraph test sessions and adult/child barring by the Disclosure and Barring Service. They also have to endure signing the Sex Offenders Register for indefinite lengths of time, which in most cases is longer than their whole sentence. So, do you really think that people who committed sex-offences are being 'rewarded'? I think not."

PRISONER SOUNDOFF: Give Me A Chance To Change by Daniel K.

(Dedicated to those who condemn SOs) Prison should offer me a chance to change my life for the better. Yes, I've done some terrible things. I broke the law; I crossed the line; I'm a child SO. And yes, you're correct, no moral society can tolerate law-breaking without punishment. But those in society should never define me by my worst moments; I know I really screwed up. None of you -NONE OF YOU- would want your identity and your future determined by your worst moments. And you should not compel those like myself who have made mistakes, to live life forever defined by those mistakes. Committing an offense should not mean that society always sees me as an offender. Because that means you deny me that chance to improve my life, provide for my family and to give back to my community.