ICoN Consolidated Newsletter, 2019B (July to Dec. 2019, #45-#50)

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 /30/2023.

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

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.

MODIFYING & REMOVING TERMS OF SUPERVISION

I have gotten quite a few questions related to this issue, so I thought I'd share a brief summary from the USSC 2015 on this subject. The short answer is that there IS a chance a bad rule can be challenged successfully, & it is even possible to get terminated from lifetime supervision. The report is NOT detailed but is merely a brief discussion about federal supervision appeals and termination. I cannot elaborate further as my focus is not on appeals-related issues, so I cannot answer questions related to this post. I am sharing this because some of the info may prove useful.

The link to the full article is at:
https://www.ussc.gov/sites/default/files/pdf/training/primers/2015_Primer_Supervised_Release.pdf

IV. EARLY TERMINATION OF SUPERVISED RELEASE

A court may terminate supervised release "at any time after the expiration of one year of supervised release . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice." (18 USC 3583(e)(1))

The guidelines "encourage . . . [courts] to exercise this authority in appropriate cases," particularly noting that a court may impose a longer term of supervised release on a defendant with a drug, alcohol or other addiction, but may then terminate the supervised release term early when a defendant "successfully completes a treatment program, thereby reducing the risk to the public from further crimes of the defendant." (USSG §5D1.2, cmt. n. 5)

A court may terminate supervised release early even if the statute of conviction originally required a particular term of supervised release. See, e.g., US v. Spinelle, 41 F.3d 1056, 1069 (6th Cir. 1994); US v. Gainer, 936 F.Supp.785, 786 (D. Kan. 1996); US v. Scott, 362 F. Supp. 2d 982, 984 (N.D. Ill. 2005); US v.McClister, 2008 WL 153771, *2 (D. Utah 2008); but see US v. Hernandez-Flores, 2012 WL 119609,*4 (D. NM 2012) (expressing reservations, but declining to reach the issue because the defendant's conduct did not merit early termination even if the court had the authority to grant it).

APPELLATE ISSUES

A term of supervised release will be reviewed for reasonableness in light of the court's stated reasons, as with a sentence of imprisonment. See, e.g., US v. Presto, 498 F.3d 415, 418 (6th Cir. 2007) (discussing procedural & substantive reasonableness of lifetime term of supervised release); US v. Hayes, 445 F.3d 536, 527(2nd Cir. 2006). But see US v. O'Georgia, 569 F.3d. 281, 289 (6th Cir. 2009) (where a district court has articulated § 3553(a) factors in imposing its sentence, a repetition of those factors in support of a term of supervised release would serve no useful purpose in the ordinary case).

A. APPEAL OF CHALLENGED CONDITIONS

Challenges to conditions of supervised release are ordinarily reviewed on appeal for abuse of discretion, (See, e.g., US v. Watson, 582 F.3d 974, 981 (9th Cir. 2009); US v. Stults, 575 F.3d 834 (8th Cir. 2009); US v. Theilemann, 575 F.3d 265 (3d Cir. 2009)) although the issue of "whether a supervised release condition illegally exceeds the [district court's statutory authority] or violates the Constitution is reviewed de novo." (See, e.g., Watson, 582 F.3d at 981)

Unpreserved claims that a district court imposed an invalid condition raised for the first time on appeal are reviewed only for "plain error" under Federal Rule of Criminal Procedure 52(b). (See, e.g., US v. Weatherton, 567 F.3d 149, 152 (5th Cir. 2009).)

B. APPEAL OF REVOCATION DECISIONS

The issue of whether a district court had jurisdiction to revoke supervised release is reviewed de novo. See, e.g., US v. Johnson, 581 F.3d 1310 (11th Cir. 2009).

The district court's factual findings that a defendant violated the conditions of release are reviewed for clear error; legal conclusions are reviewed de novo. See, e.g., US v. Farmer, 567 F.3d 343 (8th Cir. 2009); US v. Kontrol, 554 F.3d 1089 (6th Cir. 2009).

If the government proved by a preponderance of the evidence that the defendant violated a valid condition of supervised release, the district court's decision to revoke supervised release is reviewed for abuse of discretion. See, e.g., US v Black Bear, 542 F.3d 249 (8th Cir. 2008). See also US v Disney, 253 F.3d 1211 (10th Cir. 2001) (district court abused its discretion when it revoked defendant's supervised release for inquiring into address of DEA case agents because inquiry did not violate statute proscribing threats or intimidation of law enforcement officers); US v. Turner, 312 F.3d 1137 (9th Cir. 2002) (district court abused its discretion in revoking defendant's supervised release where record did not support court's finding that defendant had incurred new debt).

With respect to appellate review of the type and length of the sentence imposed upon revocation, the federal courts of appeals are divided over whether sentences are reviewed under a Booker-type "reasonableness" standard or, instead, under the "plainly unreasonable" standard that uniformly was followed in supervised release appeals before Booker. Compare, e.g., US v Bungar, 478 F.3d 540 (3d Cir. 2007) ("reasonableness" standard), with US v Crudup, 461 F.3d 433 (4th Cir. 2006) ("plainly unreasonable" standard). See also US v Sweeting, 437 F.3d 1105 (11th Cir. 2006) (holding that "unreasonable" and "plainly unreasonable" have essentially the same meaning).

C. RIPENESS AND MOOTNESS ISSUES ON APPEAL

On a regular basis, appellate courts must decide whether a defendant's challenge to a condition of supervised release is ripe when raised on direct appeal of the original sentence (as opposed to being raised on appeal of a judgment revoking supervised release for a violation of the challenged condition). The courts of appeals have issued inconsistent decisions regarding ripeness of challenges to conditions raised on direct appeal. Compare, e.g., US v. Lee, 502 F.3d 447 (6th Cir. 2007) (on direct appeal of his original sentence, defendant's challenge to a condition requiring penile plethysmograph testing was deemed not ripe for review; court held that his challenge could not be brought until after he was released from prison because there was no guarantee he would ever be subject to the test; if a probation officer sought to implement that condition, the defendant could move to modify the condition under 18 USC 3583(e)(2) and appeal if he were to lose), with US v Weber, 451 F.3d 552 (9th Cir. 2006) (defendant's challenge to plethysmograph testing as supervised release condition was ripe for review on direct appeal and prior to the defendant's release from prison). See also US v. Myers, 426 F.3d 117 (2d Cir. 2005) (challenge to constitutionality of condition that defendant convicted of possessing CP could not visit with his son unless supervised was ripe prior to release from imprisonment because a motion to modify the condition after release under 18 USC 3583(e)(2) cannot challenge the lawfulness of the condition).

Similarly, the courts are divided as to whether an appeal from a judgment of revocation is the appropriate point at which to challenge a condition when the challenge was not originally made on direct appeal. See, e.g., US v. Brimm, 302 F. App'x 588, 589 (9th Cir. 2008) ("We also reject the government's contention that Brimm waived the right to appeal the conditions of his supervised release because he waited until after he violated the conditions before he challenged them. Compare US v. Jeremiah, 493 F.3d 1042, 1044, 1046 (9th Cir. 2007) (finding jurisdiction to hear the appellant's challenges to the conditions of his

supervised release during an appeal of the revocation of supervised release)"), with US v. Ofchinick, 937 F.2d 892, 897 (3d Cir. 1991) ("We deem an order to be ripe for appeal in the present context when a . . . condition of probation . . . is imposed, and failure to timely appeal will result in a waiver. The imposition of such a condition or sanction, if opposed, creates a controversy worthy of adjudication and is of sufficient immediacy to establish ripeness.").

Finally, courts have held that a defendant's challenge to the district court's revocation of supervised release on appeal is moot if the defendant has been unconditionally released from all types of custody (including any recommenced term of supervised release) at the time that the appellate court hears the appeal. See, e.g., US v. Hardy, 545 F.3d 280, 284 (4th Cir. 2008) ("courts considering challenges to revocations of supervised release have universally concluded that such challenges also become moot when the term of imprisonment for that revocation ends").

SEPARATING THE WHEAT FROM THE CHAFF: BECOMING YOUR OWN MYTHBUSTER

The phrase "Separating the Wheat From the Chaff" is an expression meaning separating the useful or valuable from the worthless. No doubt many of you heard it in Sunday School (or maybe on the farm), but the term remains relevant in today's society.

Part of my own job making this newsletter concerns clarifying rumors and debunking various myths. Even behind bars, many of you hear too-good-to-be-true information through the prison pipeline that turns out to be bogus. I'm flooded with questions about rumors filling people with false hope (or dread).

Admittedly, being a researcher takes time and effort. I have worked hard at myth busting for over a decade. One of the main missions of OnceFallem.com is the debunking of SO Myths. Some of the most common myths about SOs, such as the belief of high re-offense rates and incurability or the belief everyone on the list must be a "pedophile" with hundreds of victims, is propagated in the media, the courts, and in legislative offices today. However, thanks to the efforts of anti-registry activists and the small number of brave and unbiased researchers, legislators, and other professionals, the tide is slowly turning.

Whenever you hear a rumor or even read a news story on this issue, it is important to follow a few guidelines to verify whether you are dealing with fact or fiction (or at times, a mix of both). Below is a summary of guidelines I teach others to follow to think critically about every prison rumor or media article with fantastic claims:

1. Consider the source: Is the source peer reviewed? Where is the report coming from, and where is it published? (In regards to stats, University/ Independent research > Mainstream Media > Victim Advocates & "Independent" media that caters to one group of people. This includes politically slanted media.) Are these hard numbers or estimates? Watch out for "round numbers", "Goldilocks numbers", and small sample sizes.
2. Read the Actual Source: Don't rely on media reports or just read the headline/ summary. What is the premise? How is the study/ article devised? What other studies are they citing? What is their method of research? Are they relying on hard numbers or estimates as the basis of their experiments?
3. Arm yourself and watch out for common deflection tactics: Watch out for common logical fallacies, counter fallacies with sound reasoning and facts, cite authentic sources, compare the research paper with similar research reports and resources sites.
4. Don't rely on stats alone to prove a point: Sometimes, anecdotes are better fought with anecdotes; emotional stories can help illustrate the dangers of bad public policy just as they helped create such policies. If you have your own story to tell, use it!

5. "Know Your Enemy": Should you find yourself accepting a media interview, writing a critical report, or participating in a head-to-head debate, know who—or what—you are facing. Research the TV show, panelist or author of the research paper. What is the motivation of the report? Are they connected to a victim advocacy group?
6. "Accentuate the positive, eliminate the negative": Semantics matters to many people. How we word our arguments is important. Instead of saying "Sex offenders have a 1% recidivism rate" say "Over 99% of registrants never reoffend." the larger number is in OUR favor. Know your sources because you'll be called out on your sources. Better yet, turn the tables on your opponents by asking them to cite their sources.

NOTE: I understand the difficulty in doing research behind bars. OnceFallen.com has research on a number of topics if anyone has connections on the outside, but not everyone does.

A NOTE ON FIRST STEP ACT SEC. 601

Okay, I'd like to remind everyone that I don't cover non-SO issues, so I didn't discuss this in the past. But since I'm fielding questions about this section, I have copied the section. My interpretation of this provision is the BOP is not obligated to follow this rule if it presents a safety issue or there is just a lack of bed space or some other issue. I cannot offer further clarification.

SEC. 601. PLACEMENT OF PRISONERS CLOSE TO FAMILIES.
Section 3621(b) of title 18, United States Code, is amended—

(1) by striking "shall designate the place of the prisoner's imprisonment." and inserting "shall designate the place of the prisoner's imprisonment, and shall, subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, the prisoner's mental and medical health needs, any request made by the prisoner related to faith-based needs, recommendations of the sentencing court, and other security concerns of the Bureau of Prisons, place the prisoner in a facility as close as practicable to the prisoner's primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence. The Bureau shall, subject to consideration of the factors described in the preceding sentence and the prisoner's preference for staying at his or her current facility or being transferred, transfer prisoners to facilities that are closer to the prisoner's primary residence even if the prisoner is already in a facility within 500 driving miles of that residence."; and

(2) by adding at the end the following: "Notwithstanding any other provision of law, a designation of a place of imprisonment under this subsection is not reviewable by any court."

I was asked recently about a Barber Amendment. It is an online petition promoted by the site FedCURE.org, and online petitions are rarely taken into consideration. (Consider the online petition signed by the most people involved deporting Canadian pop singer Justin Bieber.) It reads as follows:

BARBER AMENDMENT: A bill to amend Title 18 U.S.C. Section 3624(b)(1) as follows: by striking the number "54" in the first sentence as it appears and inserting in lieu thereof the number "128"; and in the same sentence, by striking "prisoner's term of imprisonment" and inserting in lieu thereof "sentence imposed." This amendment is retroactive.

If you have family or friends they can go to FedCURE.org and learn more but I don't get your hopes up about online petitions.

MORE GOOD TIME HAIRSPLITTING UNDER FIRST STEP ACT

There is still plenty of Good Time-related confusion from the First Step Act, so I need to clarify a couple of points.

First, there is still some confusion regarding offenses ineligible for certain offenses under the Act. It has been noted that Section 2422(b) related to "coercion and enticement" under Chapter 117 (not listed as ineligible offenses) and not under Chapter 109A (Sec. 2242 is listed as ineligible offenses). Since Chapter 117 offenses aren't listed as ineligible offenses, it is assumed that they qualify for the program benefits listed in Subsection 2632(d).

This leads to the second point of confusion. The list of ineligible offenses only seems to apply to specific program benefits related to completing various treatment programs, which was listed in Section 3632 of the Act. The provisions of 18 USC 3624(b)(1) do not appear to be impacted by the program ineligibility list, since this section adding up to 54 days/yr good time is listed after the list of ineligible offenses. This means that the list of ineligible offenses should not apply to that extra 7 days per year, but I wish to point out that under the language of the Act, that extra good time is etched in stone; the BP is not obligated to guarantee you 54 days a year; they are merely ordered to offer UP TO 54 days/yr. That being said, many ICoN readers have noted they have received an extra 7 days good time.

Hopefully we have now fully covered the First Step Act for now, at least until the final report on the PATTERN (risk assessment program) is published. It may be a while before the final report is published; a preliminary report was published by the National Institute for Justice (division of the US DoJ) but then taken down a few days later.

ACTIVISM NEWS: ANTI-REGISTRY GROUPS ATTEND SMART OFFICE SYMPOSIUM

The SMART Office (the gov't agency promoting the Adam Walsh Act) held a symposium to promote the AWA; a number of organizations, including OnceFallen (which publishes this newsletter) were among the attendees. While our primary focus was info-gathering, we also engaged in a form of silent protest by wearing scarlet-colored shirts containing the slogan "The Registry Fails to Protect Children" and buttons saying No to SORNA (the portion of the AWA addressing registration and notification).

As expected, there were a number of attendees unhappy with our presence and message; but there were others happy to see a dissenting opinion. There are some who work directly with RCs that understand the registry scheme is flawed. As expected, the symposium was slanted in favor of the pro-registry crowd. There were a few subtle (passive-aggressive) statements made during presentations that showed the SMART Office has animus towards us; one presenter used the term "pervert" repeatedly during his presentation; one slide used during a presentation about updating registry info had a deceased registrant as living at "666 Dead Sex Offender Lane." A member of a Montana-based Indian Tribe told me his tribe exiles members accused of sex crimes, but added the Crow Tribe has a reintegration program. One officer from NY bragged he registers dead registrants, but the next officer I spoke to stated he does not believe in the registry but cannot state that publicly out of concerns over losing his job.

Perhaps the creepiest statement was made by John F. Clark, current CEO of NCMEC. His speech covered advancing technology used for tracking people, calling it "George Orwell on Steroids." In a sense, he is right, since people can be tracked through their online activities, but that does not make the statement any less disturbing.

Another important observation came during a presentation about registration in various agencies; the Bernalillo Co NM Deputy giving a talk had to be corrected by a member of the NM Dept. of Public

Safety sitting in the audience. What this implies is many local agencies tasked with registration do not understand the complexities of the law. Unfortunately, when these agencies misinterpret the law, you are the one who suffers. This is why it is important to gather as much info as possible BEFORE you move or travel!

However, there were times when attendees discussed their skepticism of the registry. It should be one small encouragement knowing that a number of people who work directly with registrants understand the struggles faced by those on the list.

As a follow-up to attending this symposium, most of the 14 members of this temporary alliance are writing a letter to those in charge of the event and various dignitaries involved with promoting the AWA. We hope to convince the agency to allow dissenting voices in future events.

CASTRATION LAWS

Alabama's controversial mandatory chemical castration laws takes place on 9/1/19, and many prisoners are concerned about the use of castration. Thankfully, castration has rarely been utilized and is not present at the federal level. A handful of states and one US Territory (AL, CA, FL, IA, LA, MT, TX, WI, plus Guam) have castration laws on the books, and the practice has hardly, if ever, been utilized by the states that have these laws. (OR and GA repealed similar laws in 2001 and 2006, respectively) Until the AL law passed, every state's laws are entirely voluntary for high-risk state-level parolees. Guam's law was a pilot program never utilized but they are also trying to pass a mandatory chemical castration law.

There are many concerns, both ethically and physically, about castration. Ethically, there are coercion concerns about exchanging body-altering chemicals in exchange for early release. From a physical standpoint, Depo-Provera is not approved by the FDA for use in "chemical castration and includes a long list of serious side effects when used by males, including increased appetite, weight gain of fifteen to twenty pounds, fatigue, mental depression, hyperglycemia, impotence, abnormal sperm, lowered ejaculatory volume, insomnia, nightmares, dyspnea (difficulty in breathing), hot and cold flashes, loss of body hair, nausea, leg cramps, irregular gall bladder function, diverticulitis, aggravation of migraine, hypogonadism, elevation of the blood pressure, hypertension, phlebitis, diabetic sequelae, thrombosis (leading to heart attack), and shrinkage of the prostate and seminal vessels. In addition, long term studies of castrated men show high levels of Gynecomastia (enlarged breasts). According to Dr. William Bremner (an endocrinologist at the U. of Washington) the drugs can "make men more like old women," causing them to lose bone and muscle and to suffer premature osteoporosis.

John Q. LaFond argues since the courts had struck down the lesser penalty of forced vasectomies as punitive, the more intrusive act of castration should be struck down as well. Under Skinner v Oklahoma, the practice of sterilizing "only certain types of inmates" was deemed unconstitutional.

Alabama's law only applies to state parolees with victims under age 13, & will most likely be challenged under the 8th Amendment ban on cruel and unusual punishment. AL State Rep. Steve Hurst (R-35th) told WFSA News, "I'd prefer it be surgical, because the way I look at it, if they're going to mark these children for life, they need to be marked for life. My preference would be, if someone does a small infant child like that, they need to die. God's going to deal with them one day." He admits the law is retribution, making claims the law is merely regulatory invalid.

PUBLIC ASSISTANCE CONCERNS

In my 2016 JOBS AND WELFARE SURVEY of 307 Registered Citizens, RCs were found to be roughly 4x more likely to be unemployed, 2/3 less likely to be employed full-time, and more than 2x as likely to live below the poverty line as the average American. RCs reported being currently on public assistance at twice the rate of the average American, and only 1 out of 7 respondents have not accepted any form of public assistance while on the registry.

At this time, registered citizens still qualify for SNAP (food stamps), Medicaid/ Medicare, TANF, the Heating and Energy Assistance Program (HEAP), and assistance offered by various community agencies.

FOOD STAMPS: In recent years, there has been confusion over whether or not people convicted of sex crimes can receive SNAP Benefits (food stamps). There have been two attempts (2014 & 2018) to ban RCs from the SNAP Program, but both efforts did not succeed. Under 7 USC 2015, Eligibility disqualifications, Subsection (r), "Disqualification for Certain Convicted Felons", some sex offenses are disqualifying offenses only if "the individual is not in compliance with the terms of the sentence of the individual or the restrictions under subsection (k)". In other words, you qualify unless you are a "fleeing felon" or are violating probation/ parole. (Obviously, if you fail to register, you'll likely be considered a fleeing felon, as FTR is a felony in most states, and if you cross state lines, may be a federal offense as well.)

SECTION 8 HOUSING: HUD regulations at 24 CFR 5.856, 960.204(a)(4), & 982.553(a)(2) prohibit admission after 6/25/2001, if any member of a household is subject to a State lifetime SO registration requirement. This regulation reflects a statutory prohibition. In addition, states are given the option to banish even non-lifetime registrants from public housing, and oftentimes, they do. If an O/A or PHA erroneously admitted a lifetime SO, the O/A or PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA or O/A must terminate assistance for the household. A lengthy discussion of HUD regulations can be found at https://www.hud.gov/sites/documents/12-28PIHN12-11HSGN.PDF

FEDERAL HOUSING LOAN PROGRAMS (FHA, USDA, and VA Home Loans): There are currently NO RESTRICTIONS based on any criminal background checks, even for sex crimes. There was a failed attempt in 2010 to remove Registered Citizens from FHA Loans (H.R.5072 - FHA Reform Act of 2010, 111th Congress, 2009-2010, sponsored by Rep. Maxine Waters, D-CA-35). While this bill ultimately failed to be enrolled, it had passed the House of Representatives by a vote of 406-4. We must be vigilant to watch future bills in case this provision is added to future bills.

UNEMPLOYMENT COMPENSATION: There are currently NO RESTRICTIONS based upon a sex offense record. There was a failed attempt in 2010 to restrict Registered Persons from Unemployment Compensation (H.R.5618 - Restoration of Emergency Unemployment Compensation Act of 2010, 111th Congress, 2009-2010, sponsored by Jim McDermott, D-MA-7); it passed the House of Representatives by a vote of 270-152, mostly across party lines (Dems largely voted Yes while Repubs largely noted No). This means that Unemployment Compensation could be targeted in the future, so we must remain vigilant.

SMALL BUSINESS LOANS: RCs with crimes against minors and certain pornography offenses are banned from receiving Federal Small Business Loans thanks to the passage of H.R.5297, the Small Business Jobs Act of 2010, 111th Congress (2009-2010), sponsored Rep. Barney Frank [D-MA-4]. It amended 12 USC 5710, Oversight & Audits, to add subsec. (b)(2) which reads, "With respect to funds received by a participating State under the Program, any private entity that receives a loan, a loan guarantee, or other financial assistance using such funds after 9/27/2010, shall certify to the participating

State that the principals of such entity have not been convicted of a sex offense against a minor (as such terms are defined in section 20911 of title 34).” Under subsection (c), “None of the funds made available under this chapter may be used to pay the salary of any individual engaged in activities related to the Program who has been officially disciplined for violations of subpart G of the Standards of Ethical Conduct for Employees of the Executive Branch for viewing, downloading, or exchanging pornography, including CP, on a Federal Government computer or while performing official Federal Government duties.”

SOCIAL SECURITY: Currently NO RESTRICTIONS have passed on receiving any Social Security funds based upon registry status, nor have there been any serious legislative assaults on receiving benefits. So long as you are not currently incarcerated, you should qualify for benefits.

I must note, however, that there have been some misleading claims about registration status being a qualifying disability. The SSA defines a disability as, “You are entitled to receive Social Security disability (SSDI) or Supplemental Security Income (SSI) benefits when you are no longer able to perform a ‘substantial’ amount of work as the result of a physical or mental impairment that is expected to last at least 12 months, or possibly result in death.” “Substantial gainful activity” is usually defined as work that brings in over a certain dollar amount per month; In 2019, that amount is $1,220 for non-blind disabled SSDI or SSI applicants, and $2,040 for blind SSDI applicants (the SGA limit doesn't apply to blind SSI applicants). You can find a more detailed discussion about disability requirements at https://www.disabilitysecrets.com/sga.html

Obviously, SO laws present substantial barriers to employment. This does not mean, however, that you can just walk in the door, claim your registry status alone prevents you from working, and expect a check. However, it can be a mitigating circumstance if you lack a medical history. You might need to consult (and hire) one of the various attorneys that specialize in disability claims.

My personal story is anecdotal here, but I am on SSDI and SSI, and my registry status did play into the discussion about my disability. However, I also had a mental health history going back to my childhood. The disability case manager, however, did note that in his opinion, a registered sex offender status does meet the legal definition of a disability due to the restrictions we face, so registry status could be argued (ONLY in theory) as a disability when told to the right person.

TRAVEL UNDER INTERSTATE COMPACT FOR ADULT OFFENDER SUPERVISION (ICAOS)
By Dustin McMillan

Moving to another state for any offender released on parole or probation must go through the Interstate Compact for Adult Offender Supervision (ICAOS) and can be difficult, by design. Most states entered the ICAOS under the presumption that they could rid themselves of some of their own cases and refuse to accept those from other states, a practice all state compact administrators deny, though they continually find ways to reject transfer applications despite lacking the authorization to do so. [1]

The number of successful SO transfer applications is difficult to find. According to the ICAOS, roughly 102,000 parolees/probationers are under supervision in states other than where they were convicted but generally, the number of SOs transferred into one state from another isn’t disclosed. [2] All states report the overall number of parolees and probationers from out-of-state, but few (if any) report how many are SOs. A sample review of registries nationwide showed stats on whether a registrant was convicted in another state, but none distinguish if the registrant is under community supervision.

Accordingly, one can presume that the number of successful transfers of RCs under ICAOS is very low. There could be several reasons why, but most likely is to avoid political backlash for state and local governments. No politician wants the public perception of importing SOs from other states while clamoring for even more laws arguably written to get rid of the ones already living in their communities.

What is generally not known is that parole/probation supervision transfers to the receiving state are mandatory if the following ICAOS requirements (3) are met by the applicant:

(a) has more than 90 calendar days or an indefinite period of supervision remaining at the time the sending state transmits the transfer request; and
(b) has a valid plan of supervision; and
(c) is in substantial compliance [4] with the terms of supervision in the sending state; and
(d) is a resident of the receiving state [5]; or
(e) 1. Has resident family in the receiving state who have indicated a willingness and ability to assist as specified in the plan of supervision; and 2. Can obtain employment in the receiving state or has means of support.

Only when one of the above criteria are not met does the receiving state have discretion to refuse a transfer request. While requirements (a) through (d) are out of the receiving state's control, it's not very difficult for the receiving state to determine that the applicant cannot meet requirement (e).

Of course, the receiving state must determine if an applicant's proposed residence meets local residence restriction requirements. Even if the proposed residence meets local statutory requirements, courts (for probationers) or the state's Department of Corrections (parolees) have few limits on further restrictions they can place on those they supervise or are very adept at circumventing them, as shown in the case of J.D. Lindenmeier in Illinois. [6]

Investigators of compact cases will often tell the applicant's family members why they recommend rejecting transfer (a near certainty for SOs). Recommendations, when made, are frequently not feasible or practical. For example, an investigator will often suggest renting an apartment or room for the applicant somewhere else, knowing that:

1) most applicants cannot sign a minimum 6-month lease and pay deposits on housing that may stay empty,
2) most applicants may even be forced to move shortly (if not immediately) after arrival due to new restrictions, or
3) few landlords will keep housing empty without at least a large deposit for an extended period for an SO tenant who may not even arrive.

Another claim often but falsely or ignorantly made by both sending and receiving states is that the applicant must have a job in the receiving state. That is not a requirement - "can obtain…" does not mean "have." The ICAOS recognizes that such a requirement is not reasonable; an applicant cannot even look for a job where he is trying to relocate until he arrives, much less get one. Plus, even if an applicant was hired over the phone or Internet, few employers will hold a vacancy open for a new hire that may or may not be able to assume work for 45 days (the time a receiving state has to complete a compact investigation) or more. That having a job in the receiving state may "look better" is irrelevant.

Usually, the ultimate result for the RC attempting to transfer is a determination that the applicant's family is unwilling or unable to "assist as specified in the plan of supervision" as required above. Unfortunately, there's not much recourse for the RC compact applicant whose transfer is rejected, fairly or not. Direct complaints against receiving state's investigators to their supervisors fall on deaf ears. Complaints to the

ICAOS can only come from the state compact coordinators, who can only raise a complaint if made by the applicant's parole/probation officer, many of whom are willing to raise such issues. Subsequent applications are often, if not always, met with the same or new frustrations, also evidenced by J.D. Lindemeier.

While prospects for transferring to another state look rather bleak for an RC on probation/ parole, it's not entirely hopeless. Many states and communities are rethinking their SO registries and associated restrictions in light of the difficulties in community supervision, costs, inclusion of minors and those who pose no real threat, overall ineffectiveness, and general unruliness. (7) Actual or perceived public outrage seems to be the most significant barrier to repealing at least the majority of residence restrictions. How it all translates into the ICAOS remains to be seen.

Footnotes:
(1) https://www.interstatecompact.org/sites/interstatecompact.org/files/AdvisoryOpinion_7-2004_WI.pdf
(2) https://www.interstatecompact.org/what-is-icots
(3) https://www.interstatecompact.org/step-by-step/chapter/3/rule-3-101
(4) Substantial compliance - defined by ICAOS as having no warrants or action taken on outstanding warrants in the sending state - is determined by the sending state. https://www.interstatecompact.org/sites/interstatecompact.org/files/AdvisoryOpinion_8-2005_IL.pdf
(5) A "resident of the receiving state" is defined by ICAOS as an applicant who has lived continuously in the receiving state for at least one year and has not been out of that state for a continuous 6 months prior to committing the offense that resulted in supervision. https://www.interstatecompact.org/step-by-step/chapter/3/rule-3-101
(6) https://www.wbez.org/shows/wbez-news/for-illinois-sex-offenders-six-years-can-turn-into-life-in-prison/7ee28d46-959a-4661-8870-20b07d850d9c
(7) http://www.dailycamera.com/news/boulder/ci_31455117/boulder-city-council-decides-not-restrict-housing-options

FBI EMAIL SEARCHES STRIKEN BY JUDGE IN SECRET RULING

The NY Times report, "FBI Practices for Intercepted Emails Violated 4th Amendment, Judge Ruled" (10/8/19, https://www.nytimes.com/2019/10/08/us/politics/fbi-fisa-court.html) published a declassified report, stating:

"A federal judge secretly ruled last year that the FBI's procedures for searching for Americans' emails within a repository of intercepted messages that were gathered without a warrant violated Fourth Amendment privacy rights, newly declassified files showed. The files show that the FBI resisted a new congressional mandate that required it to keep closer track of when it searched for Americans' information gathered by the government's warrantless surveillance program. The FBI's defiance set off a secret court fight that ultimately prompted the bureau to relent, the files showed…

Moreover, they show, the FBI improperly searched the repository for information involving large numbers of Americans who fit within general categories but against whom there was no individualized basis for suspicion. In a twist, one March 2017 search used more than 70,000 identifiers, like email addresses, linked to the F.B.I.'s own work force…

In October 2018, the FISA court judge, James E. Boasberg, approved the procedures submitted by other agencies, like the CIA and the NSA. But he rejected the FBI's, saying the bureau's rules were "not consistent with the requirements of the Fourth Amendment," which protects Americans' privacy from unreasonable searches. Rather than comply with his ruling and adjust the FBI rules, the Justice Dept made

a rare appeal to a three-judge panel that can review FISA court decisions. In July, the review court affirmed a central part of Judge Boasberg's original ruling…

The Sec. 702 program permits the government to collect communications from American companies like Google or AT&T w/o a warrant, so long as the target of the surveillance is a noncitizen abroad. The government can collect the data even when that person is talking to an American. A particular controversy has arisen over the FBI's ability to use it to find information about Americans.

Complicating that debate, the FBI for years has not kept records of how often its agents searched the repository for information about Americans…

The idea of requiring agents to document their rationales for searching for an American's information emerged from several recent episodes in which the Justice Department reported to the court that the FBI had conducted improperly sweeping searches of the repository. Those events formed the backdrop to the fight over the new rules for querying the surveillance repository.

Specifically, FBI agents had carried out several large-scale searches for Americans who generically fit into broad categories — like they were FBI employees or contractors — so long as agents had a reason to believe that someone within that category might have relevant information. But there has to be an individualized reason to search for any particular American's information…

Judge Boasberg wrote that the searches involving large numbers of queries using Americans' identifiers raised a 'serious concern' that agents either did not understand the standard or were indifferent to it."

A copy of the court documents can be found on the NY Times page posted above; the document is 199 pages long. This case is not directly related to SOs but may be useful in cases involving the FBI.

ACTIVIST NEWS: 28 Anti-Registry activists flood Nebraska Special Legislative Hearing

On 9/27/19, the NE legislature held a special hearing on the public registry. (Note: NE is the only state in the US with a unicameral legislature) NE ranks 38th in terms of population, at 1.9 million people; there are roughly 6000 registrants. But the Cornhusker state has a strong activist presence. Among them is a group known as Nebraskans Unafraid.

The Lincoln Journal Star reported, "Twenty-eight people who were RSOs, or the wife, mother, father, brother or counselor of SOs, lined up to give testimony to the Legislature's Judiciary Committee on Friday, asking for changes to the Nebraska registry law. The Judiciary Committee embarked on a study of the SOR law over the interim to determine if changes are needed and, if so, what they should be. The RCs told the committee about how the registry created life-altering situations in which they couldn't get jobs, or only the lowest-paying jobs, or were denied housing. Spouses and children were punished along with them, and in some cases their inclusion on the registry led to divorce because of the limitations it placed on their lives. One man said he had been shot in the back because of his presence on the registry. 'Almost 6,000 NE families live under discrimination and paranoia created by the registry,' said Deborah Whitt…"

"A number of those who testified were members of Nebraskans Unafraid, which offers support and education on 'how to survive and thrive despite the public-shaming registry,' according to its website…"

"Committee Chairman Steve Lathrop said senators will work with Atty Gen Doug Peterson to develop changes that could range from having a private registry, rather than a public one as NE has now, one that's completely risk-based or having some kind of appeal process. 'Safety is important,' Lathrop said. 'We

want to make sure the original purpose of the registry is achieved, without causing all the collateral damage to people who can't actually get on with life. ... The issue is whether they are at risk to reoffend.' It shouldn't be designed to be an additional form of punishment, he said."

A report from Nebraskans Unafraid added, "Two years ago we had eight people who testified in a hearing on LB 60. We were blown away by eight. Imagine how proud we all should be that 30 stood up today to be heard. Three other people testified: Dr. Ryan Spohn, director of the Nebraska Center for Justice Research at UNO, who did a recidivism study for the Legislature several years ago; Ryan Post, assistant attorney general; and Spike Eickholt, lobbyist for the Nebraska Criminal Defense Attorneys Association. We would not have been surprised to hear Mr. Post argue against reforming the registry but he didn't. He said the AG's office would work with the Judiciary Committee to write legislation…"

"Today was important. I know we all wonder whether good legislation will come out of this, whether the registry will change enough. We don't know and we will have to wait and see. When we see the legislation that is proposed, we will all be able to contact our state senators with our opinions on it. What I do know is that today was important because the registrant community had so many people willing to stand up and be heard. Think what we can do next time. In Nebraska, six thousand plus family members and friends is a large number and there really is strength in numbers."

GOING TO CHURCH AS AN RC

The registry impacts our lives in more ways than you can probably imagine; unfortunately, this applies even to practicing your religious faith. According to a 2010 Christianity Today survey, 99% of respondents believed people should be aware a church attendee is on the registry (though only 18% responded everyone should know), but on the upside, only 2% of respondents stated their churches outright ban RCs. That means most churches will welcome you into their congregation; interestingly, just over twice as many churches stated they would place no restrictions on an RC than would ban RCs from attending.

However, many churches that welcome you may set guidelines for attendance. You must understand we live in a liability culture, and churches are not exempt from public fear and misinformation. Church insurance companies are behind the times and still believe outdated myths from the 1980s Satanic Panics.

What this means for you is ultimately, nearly all churches will accept you but you might still be treated differently due to liability concerns. The most common method churches may employ is a chaperone or "buddy" system, meaning you'll have an accountability partner at all time, possibly even for bathroom breaks. While it may be off-putting to most, some of you might like this because it would minimize your chances of being falsely accused of wrongdoing. Other things you may experience are signing some form of accountability statement agreeing to stay away from areas and/or functions designated for children. A few churches have even held a different service for RCs or other sensitive needs folks.

Many people do continue their desire for religious leadership outside prison; among respondents to the 2010 survey, there was a near even split on whether an RC should have the opportunity to have a leadership role (36% in favor, 40% opposed). About 3% of respondents stated a church leader had a prior record. It is possible to find a church that will accept your desire to lead but be prepared for some negative publicity.

On the legal front, there have not been many rulings related to our right to attend church services. In State of NH v Perfetto, No. 2009-647 (NH Sup Ct, 17 Sept 2010), the NH high court let stand a supervision rule banning registrants from church, adding, "He may still practice his religion in ways that do not violate the condition of his sentences, including the use of books and video and audio recordings. He may

also arrange bible study with elders from his congregation and attend meetings at a congregation where minors are not present." In Doe v. Cooper, 842 F.3d 833 (4th Cir. 2016), the 4th Circuit held NC's proximity law statute, banning RCs from even being within 300 feet of areas frequented by children, was unconstitutionally vague; it included an arrest for attending a church having a daycare area on campus. In Doe v. Boone Co Prosecutor, No. 06A01-1612-PL-2741, _ NE3d _ (Ind. Ct. App., Oct. 24, 2017), the IN appeals court determined that a church does not meet the legal definition of "school property."

The bottom line is you should have little problem exercising your faith. Honesty is the best policy; talk to the church about their stance on allowing an RC to attend. To paraphrase Matthew 10:14, if you aren't welcome, kick the dust from your feet as you leave. There are plenty of churches willing to accept you.

HALLOWEEN/ HOLIDAY LAWS

It may seem a bit odd to talk about Halloween a full month after it is over, but last month's slate was full. Besides, Halloween is my birthday and is special for me. The holidays in general are special to many of you for various reasons, but in recent years, the myth of the Halloween SO has become an annual tradition. This means the news media floods the market with "safety maps" and fearmongering stories. There was a murder of a trick-or-treater once upon a time, albeit in 1973 and the killer had no prior record. A 2009 study also found no increase in sex crimes around Halloween, even proclaiming it "the safest day of the year" in terms of CSA, but that has not stopped victim advocates and mass media proclaiming Halloween as "Xmas for SOs," as one victim advocate claimed in 2018.

I have discussed Halloween panic way back in ICoN #13, but for 2019, I conducted a survey of official state statutes. The good news is, only 5 states have legal statutes regulating registrant participation in Halloween activities—AR, FL, IL, LA, & MO. Of these 5 states, only LA & MO apply the restrictions to all registered persons. IL applies restrictions to both those on supervised release, parolees/ probationers, and those convicted of sexual offenses involving anyone under age 18. AR applies restrictions to those on Level 3 or 4. FL state law applies only to those on probation or parole.

The statutes of the five states with Halloween restrictions are listed below:

AR – (Enacted 24 July 2019) Ark. Code § 5-14-135 prohibits all SOs classified as Tier 3 or 4 from distributing candy or wearing masks where a minor is present UNLESS every minor at the event is a relative of the registrant, or the costumes/ candy distribution is related to legitimate employment.

FL – (Enacted 2010) Fla. Stat. § 947.1405 and Fla. Stat. § 948.30 both contain, among other conditions of supervision, "A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court."

IL – Enacted in 2005, 730 ILCS 5/3-3-7 (a)(16), 730 ILCS 5/5-6-3.1 (c) (18), and 730 ILCS 5/5-6-3 (a) (10) all have the same statement that "if convicted of a sx offense as defined in subsection (a-5) of Sec. 3-1-2 of this Code, unless the offender is a parent or guardian of the person under 18 years of age present in the home and no non-familial minors are present, not participate in a holiday event involving children under 18 years of age, such as distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, being employed as a department store Santa Claus, or wearing an Easter Bunny costume on or preceding Easter;" Under 720 ILCS 5/11-9.3 (c-2), enacted in 2013, "It is unlawful for a child SO to participate in a holiday event involving children under 18 years of age, including but not limited to distributing candy or other items to children on Halloween, wearing a Santa Claus costume on or preceding Christmas, being employed as a department store Santa Claus, or

wearing an Easter Bunny costume on or preceding Easter. For the purposes of this subsection, child sex offender has the meaning as defined in this Section, but does not include as a sx offense under paragraph (2) of subsection (d) of this Section, the offense under subsection (c) of Section 11-1.50 of this Code. This subsection does not apply to a child SO who is a parent or guardian of children under 18 years of age that are present in the home and other non-familial minors are not present." Thus, it seems Halloween restrictions apply to all parolees and all registrants with offenses against anyone under age 18.

LA – (Both were enacted in 2008) Under RS §313.1, no gifts to any child during a holiday in which gifts or candy is given. Under RS 14:313(E), RCs are prohibited from wearing masks, hoods or disguise of any kind with the intent to cover one's identity.

MO – (Enacted 28 Aug. 2008) Under CSR 859.426, all SOs in the state are banned from contact with children on Halloween; they must remain at home except for good cause (work, emergencies), post a sign stating "No Candy at this residence," and leave outdoor lights off from 5pm-10:30pm.

Note: West Virginia tried unsuccessfully to pass Halloween Restrictions in 2019 (HB 2502).

HOWEVER, if you are on probation/ parole/ supervised release, many states have adopted statewide regulations. At least 14 states have been noted to have some form of statewide restrictions on Halloween activities (CA, CO, GA, ID, IN, MD, NV, NY, OH, SC, TN, TX, VA, WI). This does not include Halloween restrictions on a city or county level. You could be restricted in various ways by a local level law EVEN IF you aren't "on paper," like adhering to curfews, attending mandatory meetings, keeping your porch lights off, bans from wearing costumes, or handing out candy/ gifts.

There aren't many legal decisions, either. In State of Missouri v. Charles A. Raynor, SC90164 (Jan. 12, 2010), Halloween restrictions were recognized as punishment and could not be applied to those convicted before the law took effect. More recently, and perhaps more useful to you, is the case of Reed et al v. Long et al. Case 5:19-cv-00385-MTT (M. Dist. GA 2019); in this case, a judge ruled forcing SOs to place signs in the yards stating "No Candy At This Residence" was compelled speech and therefore unconstitutional under the 1st Amdt.

IS THERE A "BEST STATE" FOR REGISTRANTS?

I've discussed this notion in previous newsletters but it is worth repeating again -- This question of "what's the best/ most lenient state for SOs" makes me cringe, because it gives people the impression that registered citizens frequently "state shop", which is a misleading and fear-mongering notion. There is no US State, territory, or Native American reservation in which one can move and NOT have to register upon release. Yes, no matter where in America you move, you WILL have to register for at least a few years, if not for life.

There honestly isn't a "best state" because laws vary in each state and even by municipality, and some people thrive in one state while others do not. It is far easier to name the worst states—AL, OK, FL, NC, and IL—because these states frequently make headlines for worst laws.

States that lack residency restrictions are more desirable than those that have restrictions, but that relief may be offset by registry fees or other kinds of restrictions. Some states may mark state IDs while others do not. Below are some of the most common restrictions faced by registrants that may influence your decision to move to another state. (Please note that not every restriction applies evenly across states and some of the restrictions below may apply only to parolees or to those classified on higher tier levels in certain states.) As of Nov. 2019:

Mandatory Lifetime Registration Requirements for ALL Registrants: AL, CA, CO, FL, GA, HI, OR, SC, and WY, though California (2021) and Oregon (est. 2021) are currently converting to a tier system.

Registry Fees: AL, CO, GA, ID, IL, KS, LA, ME, MA, MI, MS, OH, OR, TN, UT

Residence Restrictions (Living Restrictions): AL, AZ, AR, CA, FL, GA, ID, IL, IN, IA, KY, LA, ME, MI, MS, MO, NE*, NY, NC, OH, OK, OR, RI, SC, SD, TN, TX*, UT, VA, WA, WI*, WV, WY (Those marked with an asterisk denotes no statewide law but have allowed local ordinances to restrict where a registrant can live)

Presence Restrictions (Also called anti-loitering or proximity laws; Defined as various restrictions on where registrants can go, such as schools, parks, libraries, malls, recreation areas, or other places one might expect to find children; the laws are too varied to discuss here, but each state listed has some kind of restriction): AL, AR, CA, DE, FL, GA, ID, IL, IA, KY, LA, MD, MI, MS, MO, NC, ND, OK, OR, SD, TN, UT, VA, WI, WY

States that place humiliating marks on your state ID Cards: AL, DE, FL, LA, OK, TN; In addition, passports of those with offenses against minors have marks placed on their federally-issued passports (Note: In 2/2019, a US Dist Ct in AL determined the state's ID Card marks were unconstitutional.)

These restrictions can expand or be altered at any time. Changes could be applied retroactively, so even if you move into a community before a law passes, a new law could negatively impact your residence. In addition, there are too many prohibitions across the USA to be listed here like emergency shelter access, or even on the wearing of costumes. We must remain vigilant for any newly proposed or expanding restrictions at the state and federal level. That is why I suggest you get involved with various activist groups upon your release.

END OF THE YEAR NOTE: STAND UP FOR YOURSELF

It has been a long year, so I feel it is important to end this year on a high note. As an Anti-Registry Movement activist, I feel it is important that we all fight back against these laws, but my fight comes at times with a heavy price. I won an important case against victim advocate turned Florida State Senator Lauren Book this year, and now another case where a registrant beat a bully in court was just published.

As noted by Florida Action Committee, In Frederickson v. Landeros, No. 18-1605 (7th Cir., 26 Nov 2019), "Frederickson, was a homeless registrant living in Joliet, Illinois. As a homeless registrant, he was required to report WEEKLY, IN PERSON. One of the registration officers developed a dislike of Frederickson because he questioned the constitutionality of the registry. He went out of his way to make the registration process difficult for Frederickson and when Frederickson decided to move to a neighboring county, Landeros went out of his way to make it impossible. He went as far as refusing to transfer his file so that he could not register! Frederickson sued Landeros, arguing he was not being treated equally. He won. But the reason we are sharing it is: for those who have dealt with law enforcement officers or registration personnel who feel their jobs are to punish you, let this case remind you that right often prevails!"

Fight back isn't easy—it can be stressful at times. However, if we stand up for our rights while doing what is right, ultimately justice prevails.

A NOTE ON PUBLISHING ESSAYS

I receive a lot of inmate mail, and many of you write in hopes of getting stories published. I do no offer such a service at this time; running even one blog on behalf of a single prisoner has taken a lot of my time. Thankfully, the "American Prison Writing Archive" is publishing prisoner essays, having published over 2000 essays to date. Since I have neither the time nor the resources to engage in a similar project, I encourage you to send your essays to:

The American Prison Writing Archive, c/o Hamilton College, 198 College Hill Road, Clinton, NY 13323-1218 or have someone download the form from https://www.dhinitiative.org/projects/apwa