ICoN Consolidated Newsletter, 2020A (Jan. to June 2020, #51-#56)

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

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

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

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

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

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

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

Commonwealth v. Butler, J. - No. 25 WAP 2018 (PA Sup Ct, 3/26/20): Ruled that the state’s guidelines for determining SVP designation does not meet the threshold for being declared punitive and thus is “constitutionally permissible.” RCs tried using the Commonwealth v Muniz case which declared the

AWA was punitive. The court concluded SVP designation is not "criminal punishment" and the state had a "legitimate" purpose to protect the public from those deemed "dangerously mentally ill" and a lifelong threat.

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

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

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

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

US v. Herndon, No. 18–50541 (5th Cir. 2020) – On a case with a lifetime ban on Internet as condition of release, the Court held that the US Dist Court failed to articulate reasons supporting lifetime bans on conditions restricting possessing computers and internet access. Even without objection, the Court found

that these conditions were not reasonable and that even if the Dist Court did articulate reasons for their imposition that such sweeping conditions of supervised release would not be appropriate.

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

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

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

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

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

DEALING WITH CHILD PROTECTIVE SERVICES (CPS) AT YOUR DOOR

Let's say you meet a nice gal who just happens to have a kid, or someone from your past who has a kid finds out you are on the registry and wants you investigated. A call is made to CPS and one of their agents shows up at your door. What are your rights?

The most important thing to remember is a CPS agent is a government agent (i.e, an "officer of the court") which means they have investigation and decision-making powers but are limited by the Constitution just like a cop. CPS does have the obligation to investigate all complaints of child abuse and neglect no matter how frivolous, and they can make your life miserable. However, they don't have full police capabilities. CPS agents aren't cops, and have no direct power of arrest; they must call a cop to have you arrested or a court order to have your children removed. Still, being investigated is stressful and they can have your children removed from your house or even get you arrested under the right circumstances. Worse, since they aren't traditional LEOs, they have less investigative training and more prone to mistakes or personal biases.

Many tips related to dealing with police at your doorstep apply to CPS. Below are various tips I have seen from online lists I feel are important to remember:

1. DO NOT LET THEM IN THE HOUSE WITHOUT A WARRANT: Even if a police officer is present, they can only enter your home if you consent, if they have a warrant OR if they hear an emergency situation going on ("exigent circumstances"). Do NOT consent to let them into home even if you feel you have nothing to hide. And even if you do consent, you can force them to leave at any time. No Court Order, no entry, simple as that.
2. ASK QUESTIONS (AND RECORD THE ANSWERS): It is suggested you buy a recording device and let them know they are being recorded if your state allows recording of government agents. (See the article on Under federal law, CPS agents are obligated to tell you the exact nature of the allegations against you. Ask questions like – "Can I see your ID? What is the name and phone number of your supervisor? What are the exact allegations that have been made against me? Do you have a warrant to search my home or speak to my children?" Document everything about your interactions with these agents.
3. BE POLITE BUT DON'T ANSWER QUESTIONS WITHOUT REPRESENTATION: Your words can easily be twisted around. Don't speak to them without a lawyer or representative. Say nothing to them. The word NO is a complete answer. The more you speak, the more evidence you give them. But be polite in rejecting them, as anger can be used against you. Even if you are poor, you can get help from legal aid.

DEALING WITH COMPLIANCE CHECKS

Nearly every registrant will endure a compliance check at some point in their lives, even if you aren't on supervision. Based on a 2016 survey of 195 registered persons, over half of respondents had experienced

a compliance check within three months prior to taking the survey, with just over a fourth subject to a compliance check within a month prior to taking the survey. Nearly three out of five respondents have endured multiple compliance checks within the past year, and three out of five respondents have endured at least 10 compliance checks during their registration period. Only a fourth were on supervision/ parole/ probation. If the agent at your door is a federal agent (like a US Marshal), you are more likely to encounter rude and threatening behavior.

They will try to scare you into allowing warrantless searches of your property, including your personal effects and your own body. However, if you are NOT on probation/ parole, you have the right to refuse them entry. Below are a few tips posted on a forum that you should keep in mind if the Gestapo comes to YOUR door:

1. Some have suggested not even answering the door in the first place if you are not on supervision. That may a feasible solution so long as you aren't on paper in some cases.
2. DO NOT sign anything, ever, at your door! No matter how "innocent" it seems. Politely refuse, unless you can speak to your lawyer first. (NOTE: If you do not have an attorney, be sure to read anything you sign if you feel compelled to do so. Standing up to a cop is scary, indeed, but they know you have to give up your rights willingly in order for them to proceed)
3. DO NOT answer any questions beyond confirming that you are you, and required registration info. Anything else could be used (or twisted) to incriminate you.
4. DO invoke the 5th amendment if necessary. But be prepared to be peppered with more questions (What are you hiding? Eh?), and reply only that you want your lawyer present first.
5. DO NOT let anyone into your home without a warrant, unless you are still "on paper" (i.e., probation/ parole) and it is required. "Uncle LEO" has no right whatsoever to enter a person's home without a warrant, UNLESS you give them permission to enter. Don't fall for the old "can we come inside to confirm you live there" trick. Once inside they are looking for any reason to lock you up. Depending on the state, having toys or other items they consider "paraphernalia" may subject you to arrest or investigation.
6. DO NOT leave your home while LE is still at your door. You have strong protections in your home, but practically none once you are out on the street.
7. IF you have easy access to a camera (cell phone in pocket), take a picture of the group on your porch, or better yet record the whole thing. Many cell phones have a "record" feature for you to talk into. Turn it on and keep it aimed at everyone speaking. The last one is highly important, in my opinion. HOWEVER, it may It may be illegal depending on the circumstances and where you live. According to a 2012 guide by The Reporters Committee for Freedom of the Press (found at https://www.rcfp.org/wp-content/uploads/imported/RECORDING.pdf), the following states require BOTH parties to consent to the recording of conversations: CA, CT, FL, IL, MA, MD, MI, MT, NH, NV, PA, and WA, so you would have to ask permission to record the conversation in these states.

Something to keep in mind: The US Marshals were granted jurisdiction in "investigating and apprehending" Failure to Register violators who cross state lines. The US Marshals DO NOT have the authority to handle compliance checks. They simply tag along. The local authorities are the main individuals in charge.

COMPLIANCE CHECKS WHEN LIVING WITH OTHERS

Preserving your privacy rights is more complicated if you are living with another person. The following article is from an online resource that deals with police searches in general, but the info here can apply to searches. Based on the inmate below, my suggestion is to make agreements with roommates that they refuse to allow searches w/o your consent and to lock up your private areas.

Can the Police Search Your Place If Your Roommate Consents?
Learn how your roommate's agreement to a police search affects your privacy rights.
By Alexis Kelly

Web link: https://www.nolo.com/legal-encyclopedia/where-the-police-can-look-when-your-roommate-consents-search.html

Police need a warrant before they can search a home, unless an exception applies. One exception is consent: If someone with control over the property agrees to a police search request, the subsequent search is probably legal. Someone with “control” over the property includes a resident of the home, but not someone who is clearly a momentary visitor.

Even when it’s clear that someone has authority to consent to a police search, that person doesn’t necessarily have authority to allow the police to search all parts of the home. This issue frequently arises with roommates, who might share certain areas of the home but not others, like their bedrooms. And that's where the only roommate who's home agrees to the police search—if another roommate is also home and refuses to give consent, the police might not be able to conduct any kind of search at all.

(Keep in mind that, even though rules tend to be pretty consistent throughout the country, the law in the jurisdiction will control in any case.)

<u>When Only One Roommate Consents:</u> The police can enter a home when only one occupant of several is present and consents—the agreement of any other occupant typically isn’t needed. For example, if college students Alex and Brian share an apartment and the police ask to enter when only Alex is home, his consent is all that’s needed to make their entry legal.

But the outcome is different if another occupant is home and objects to the search. If two occupants are present, one consents, and the other objects, the police usually can't search the residence. Physical presence is key, however: The Supreme Court confirmed in 2014 that the objecting occupant must be present in order to prevent the search. (GA v. Randolph, 547 U. S. 103 (2006); Fernandez v. CA, 571 U.S. __ (2014).)

Example 1: Wallace and Bodie share an apartment as roommates. The police, responding to a neighbor’s noise complaint, knock on the apartment door. Only Wallace is home. When he answers the door, the officers ask him whether they can come in and look around. He says yes. Even though Bodie isn’t around and hasn’t consented, the police are authorized to come in and have a look.

Example 2: The police knock on the door, and Wallace answers. This time, however, Bodie is home. He hears Wallace, who agrees to let the officers in, talking to them. He rushes to the door and tells the officers, “You can’t come in. I don’t consent to you entering my home.” The officers aren’t allowed to come into the apartment.

Example 3: After speaking with Wallace and Bodie and determining that they can’t search the apartment, the officers leave. Two hours later, they come back and knock again. Bodie has stepped out from the apartment since they were last there, so Wallace is the only one home. He consents to the officers coming in and taking a look. Even though Bodie had been present and recently objected to a police search, the officers are now entitled to look around.

<u>Where May the Police Search?</u> Assuming they have the consent of the only roommate who is present, the police may normally inspect all parts of the home that he or she uses. So, they can search any part of the premises the consenting party occupies (such as that person’s private room) and any areas of the home

where all roommates or tenants have access. Shared areas generally include places like the living room and kitchen.

Importantly, though, the police generally cannot search the private room or belongings of a person who, either present or not, did not grant consent. To determine whether the police may search a specific part of a home, courts evaluate whether the person who granted consent has access to and authority over it. To return to our example of Alex and Brian, the police would not have authority to search Brian's bedroom if that room were his alone and not one Alex had use of.

Private Belongings: The considerations that dictate whether the police may search areas of a home also apply to items within the residence. Even if a roommate consents, the police cannot search a closed bag or suitcase of another occupant unless the consenting roommate has access to that item as well.

When only one roommate is around and grants consent for the police to perform a search, courts often look at the relationship and understanding between the roommates to decide how much of the home the police were authorized to examine. For example, searching an entire residence would be justified if the roommates were romantic partners—the assumption is that no areas of the home were off-limits to either partner. But if the occupants are simply roommates or cotenants and the one talking to the police doesn't have permission to use or access another's bedroom, then that bedroom is off-limits. On the other hand, if Alex and Brian, starving students that they are, can afford only a one-bedroom apartment, then the bedroom and closet that they share means that the consent of one will probably permit the police to search the shared space.

With almost all search issues, the issue is as much how the circumstances reasonably appeared to the police as it is who actually has access to and uses what in the home.

PARENTAL RIGHTS FOR REGISTERED PERSONS

I had recently fielded some questions regarding the parental rights of folks on the registry, so in December 2019, I conducted a survey of the Parental Rights laws as they relate to Registered Persons (RP).

ALABAMA (Ala. Code, Secs. 12-15-312, 12-16-319, 15-20A-11): AL's laws are complex and rather confusing, with diminished rights for people convicted of specific charges. AL passed HB 48 (2019), known as "Jessi's Law," (Amended by Act 2019-512,§ 2, eff. 9/1/2019) which amended Ala. Code § 12-15-312, 12-15-319 to bar anyone convicted of 1st Degree rape, 1st Degree Sodomy, or Incest from obtaining parental custody of their children, regardless of whether the crime involved their children. In addition, any felony can be considered as grounds for termination of parental rights. AL also prohibits RPs who are adults from living with anyone under age 18 or allowing minors to have overnight visits unless that registrant is the parent, grandparent, stepparent, sibling, or stepsibling of the minor. However, this exception does not apply if the case involved anyone under age 12, if it involved anyone under age 18 if the minor victim lived in the residence with the offender, if the minor was a relative, if there was force involved, or if there is an attempted or completed termination of parental rights in the courts.

ALASKA (A.S., Secs. 25.23.180; 47.10.086): AK only terminates parental rights of an RP when the child is conceived through rape. However, the state is not required to make reasonable efforts to reunite the child with a family member who abused the child or is listed on the SOR.

ARIZONA (Ariz. Rev. Stat. 25-403.5; 25-416): RPs must prove they are not a danger to the child before they can be awarded parental rights; if you are a parent dating a registrant or allowing an RP to live with

you or visit, you must let the other parent know about the RP's status; a registrant has no parental rights if the child is conceived through rape.

ARKANSAS (AR Code, Secs. 9-13-101; 9-10-121; 9-13-105): RPs are resumed dangerous to children; the burden of proof falls on the RP to prove he is not a danger to children before custody can be granted or be allowed to live in a household with children present. Children born through rape are entitled to inheritance money and child support while the RP has no legal visitation/ custodial rights.

CALIFORNIA (Cal. Fam. Code, Secs. 3030; 3030.5; Cal. Welf. and Inst. Code, Section 355.1): RPs with offenses involving minors cannot be awarded parental rights; court can override this rule but must prove a written statement listing the reasons for the exception. It is assumed allowing an RP with a minor victim around your children is "prima facie evidence" the child is at risk of abuse or neglect. Parents of children conceived by rape have no parental rights but can be compelled to pay child support.

COLORADO (See Colo. Rev. Stat. 14-10-129; 19-5-105.5; 19-5-105.7) : A sex offense conviction can be used as the basis for terminating parental rights, and the RP has the burden of proof for showing the RP is not a danger to the child. The court can order an RP to take a psychological evaluation at the RP's expense. The parent of a child conceived through rape can petition the court to terminate the rights of the offender, but termination of rights does not terminate child support obligations.

CONNECTICUT (Conn. Gen. Stat. 17a-111b): The court can move to terminate the rights of a RP if the child was conceived by rape.

DELAWARE (Del. Code Tit. 13, Secs. 722A, 724A, 725A, 726A, 728, 728A): All RPs are assumed dangerous and cannot have custody, unsupervised visits, or reside with a child. This restriction can be waived by the court if there are no subsequent convictions for sex/ violent crimes, completed a treatment program, and determined to be in the child's best interests. This exception does not apply if there is a court order prohibiting these exemptions, the minor is the victim, or was a child conceived by rape.

DISTRICT OF COLUMBIA (DC Code Sec. 16-914): RPs whose children were conceived by rape have no parental rights but can be compelled to pay child support.

FLORIDA (Fla. Stat. Secs. 39.806): Parental rights can be terminated under the following conditions: children conceived through rape, incarceration of certain sex crimes, sexual abuse of a child, or classification as a "sexual predator," and there is no obligation of child welfare services to engage in any activity related to family reunification.

GEORGIA (Ga. Code, Secs. 15-11-2, 19-7-2, 19-8-10): Considers child conceived by rape or when the mother is below age 10 as "aggravated circumstances" in determining termination of parental rights; children born of rape are entitled to inheritance.

HAWAII (Haw. Rev. Stat, Sec. 571-46; 571-61; 587A-4): RP has no parental right to child conceived by rape but can be ordered to pay child support; Registry status is considered an "aggravated circumstance" when deciding parental rights in court.

IDAHO (Idaho Code, Sec. 16-2005): It is assumed that terminating the parental rights of an RP when the child was conceived by rape or the RP committed an offense against the child is in the child's best interests but can be challenged.

INDIANA (Ind. Code Sec. 31-35-3-4, 31-35-3.5-1 to 31-35-3.5-12): Parental rights can be terminated if the victim is a child of the RP or was conceived by rape.

ILLINOIS (720 ILCS 5/12-21.6-5; 750 ILCS 46/622): RPs classified as a “Child SO” (i.e., an offense against anyone under age 18) cannot live in a household with minors unless the minor is a child or stepchild; parental rights are terminated if the child was conceived by rape but can be compelled to pay child support.

IOWA (Iowa Code, Secs. 232.68; 232.116; 598.41; 600A.8; 726.6): Parental rights can be terminated if that parent is a RP with a minor victim, the parent was convicted of a sex crime requiring 5+ years in prison, if the RP is divorced from or never married to the other parent of the child, or if the child was conceived by rape. A parent’s registry status can be considered during child custody inquiries. Furthermore, it is considered child abuse and a parent can be arrested for child endangerment for allowing a RP unsupervised time with the child unless the parent is a RP or married to the RP. Exposing the child to obscene material is also considered child abuse.

KANSAS (KS Stat. Secs. 23-3203; 38-2269): A RP’s status can be considered in custody rights hearings, regardless of whether or not the offense involved the child in question, or any child. It is also assumed that an RC is unfit to care for a child if the child is a victim or conceived by rape by the RC, or the RC has been convicted of trafficking offenses.

KENTUCKY (Ky. Stat., Sec. 403.322; 405.028): RPs are denied parental rights for children conceived through rape but may be compelled to pay child support. The mother has the right to waive denial of visitation and collection of child support.

LOUISIANA (La. Civ. Code 137; La,. Child Code Secs. 1004; 1015; 1015.1): RPs have no custody rights when a child is conceived by rape or if the RP abused the child, but the child maintains inheritance rights; the RP may be compelled to pay court costs and child/ victim support for these cases.

MAINE (Me. Stat. 19-A-1653; 19-A-1658; 22-4055): Courts can consider the registry status of the parent or anyone living in the household of the parent in parental rights cases; rights of RPs are denied when a child was conceived by rape unless the victim objects and can show the activity was consensual. It is presumed an RP is a danger to a child if that child is a prior victim of the RP.

MARYLAND (Md. Fam. Law Code 5-1402): No parental rights for RP if child was conceived by rape but may be compelled to pay child support.

MASSACHUSETTS (Mass. Gen. Laws Ann. ch. 209C, Sec. 3): RPs have no parental rights for a child conceived by rape, but visitation rights may be granted if the child is old enough and agrees to visitation.

MICHIGAN (Mich. Comp. Laws, Secs. 712A.13a’ 712A.18f; 712A.19a; 722.25; 722.1445): Courts are not required (but may) make reasonable efforts to reunite a child with a parent who is an RP, and can impose visitation restrictions. RPs have no parental rights if the child was conceived by rape.

MINNESOTA: (2019 Minn. Stat. 631.52; 260C.503) Parental rights can be terminated if RP committed an offense against any child in the household (even if that child was not the victim) or if RP is classified as a “predatory offender.” Suspension of parenting time rights and/or transfer of custody to the non-custodial parent shall be granted by family court if person is convicted of a variety of serious offenses including many sex offenses.

MISSISSIPPI (Miss. Code, Secs. 93-15-119; 97-5-42): RPs have no parental rights if the child was conceived by rape. If the child is a victim of the RP, the RP may win some parental rights back only after

treatment for both RP and victim is completed, and the courts determine the RP poses no danger to the child.

MISSOURI (Mo. Rev. Stat, Sec. 211.038; 211.447): RPs have no parental rights if the child was conceived by rape or if the RP abused a child under the RP's care. If the RP is a child and a sibling of the victim or a child living in the same household at the time of the offense, the prohibition on living in close proximity of the victim does not apply.

MONTANA (Mont. Code Ann. 2019, Secs. 40-6-1001; 41-3-609; 45-5-503): RPs have no parental rights if child was conceived by rape, but may be compelled to pay child support and offer inheritance.

NEBRASKA (Neb. Rev. Stat., Secs. 43-292; 43-292.02; 43-2933): RPs are assumed threats and custody can only be won if there is a determination that the registrant is not a danger to the child. In custody matters, allowing a RP unsupervised time with your children is considered "prima facie evidence" for determining risk. No parental rights are granted if the child was conceived by rape.

NEVADA (NRS 125C.210; 128.105; 432B.393): No parental rights if the child is conceived by rape. No reasonable reunification efforts by child services will be made to a RP.

NEW HAMPSHIRE (NH Rev. Stat. Ann., Sec. 170-C:5-a) No parental rights if the child was conceived by rape.

NEW JERSEY (NJS 9:2-4.1) RPs convicted of NJS 2C:14-2 (Sexual Assault), NJS 2C:14-3 (Criminal Sexual Contact) or 2C:14-4 (Lewdness) can only be awarded custody or visitation if proven by clear and convincing evidence it is in the child's best interest to stay with the RP. (This also covers child conceived by rape). The courts can keep child's location confidential and victim is not required to go to court in person.

NEW MEXICO (NM Stat., Sec. 32A-5-19) Consent for relinquishing parental rights is not required if the child was conceived by rape.

NEW YORK (N.Y. Dom. Rel. 240; NY Fam. Ct. Act 651): Registry records are used in family court to determine if it is appropriate to place a child in the home. It is assumed it is not in the best interests of the child to be placed in the home of an RP if the child was conceived by rape but can be challenged.

NORTH CAROLINA (NC Gen Stat., Secs. 7B-1111; 14-27.21; 14-27.22; 14-27.23; 50-13.1): The court may terminate parental rights if the child is conceived by rape.

NORTH DAKOTA (N.D. Cent. Code, Secs. 27-20-17; 27-20-44) Parental rights can be terminated if the child was conceived by rape or if probable cause exists that the RP committed an offense against the child and presents a danger to the child.

OHIO (ORC 3109.04; 3109.042; 3109.501 to 3109.507): No parental rights if the child was conceived by rape; Ohio notes that mothers can also be convicted of rape and extends this prohibition to females convicted of rape. Sex offense convictions are considered in child custody hearings if the child was the victim.

OKLAHOMA (Okla. Stat., Secs. 10A-1-4-705; 10A-1-4-904; 30-2-117; 43-112.2; 43-112.5; 43-150.8; 10-7505-6.3; 57-584; 57-590): PRs have no parental rights if the child was conceived by rape or if the child is the victim; Households with an RP residing cannot foster or adopt; parental guardianship

affidavits contain provisions barring leaving children alone with RPs; It is assumed allowing child to live in the household of an RP or convicted of failing to report abuse is not in the
best interests of the child; children cannot be placed in households where RPs reside without a court order. RPs cannot live in households where minors are present unless the RP is the parent, grandparent, or stepparent of the minor, the minor must not be the victim, and RPs must report to the statewide centralized hotline of the Department of Human Services the name and date of birth of any and all minor children residing in the same household and the offenses for which the person is required to register pursuant to the Sex Offenders Registration Act within three (3) days of intent to reside with a minor child.

OREGON (2017 ORS Secs. 107.137; 419B.510): No parental rights if child was conceived by rape but may be compelled to pay child support; past pattern of sexual abuse is considered during custody hearings.

PENNSYLVANIA (Pa. C.S.A.; 23-2511; 23-4321; 23-5329): Court considers many offenses during custody hearings; No parental rights if child was conceived by rape but may be compelled to pay child support; parental rights of RPs could be terminated based on inclusion on registry, including for out-of-state offenses.

RHODE ISLAND (RI Gen. Laws 15-5-16): No parental rights if child was conceived by rape; if the child is the victim, visitation rights can be regained only if RP engages in counseling and the court determines visitation is in the best interest of the child.

SOUTH CAROLINA (SC Code, Secs. 63-7-1640; 63-7-2350; 63-7-2570): Parental rights can be terminated if the child was conceived by rape or any child in the household was abused by the RP; no adoption or foster considerations for households with RPs over age 18, except if the offense is pardoned and the court decides there is no danger to the child.

SOUTH DAKOTA (SDLRC Secs. 25-4A-20; 25-4A-24; 26-8A-21): Assumed parental rights for child conceived by rape is not in best interest of the child but allows for challenge; allowing a RP to spend unsupervised time with a child can affect custody rights; Courts are not compelled to reunify child with parent on the registry.

TENNESSEE (Tenn. Code Ann., 36-1-113; 36-6-102; 36-6-406; 40-39-211): No parental rights if child conceived by rape; RPs with minor victims cannot live with any child that is not their biological child, or any child if the victim was their own child, under age 12, or considered a violent offense; if a parent is trying to receive temporary or permanent custody of a child, an RP cannot be around the child or be in the household; any criminal conviction can be used to determine whether there is a risk to the child.

TEXAS (Tex. Fam. Code 161.001; 161.007): Parental rights may be terminated if the offense was an offense where injury was caused to the child, or if the child was conceived by rape. If the other parent marries or cohabits the RP whose child together was conceived by rape within 2 years after the birth of the child, the parental rights can be terminated.

UTAH (Utah Code, Secs.76-5-414; 78A-6-312): No parental rights if the child was conceived by rape without agreement by both the victim and court agree or both parents cohabitate and create a home together with the child; Child support can still be required; Reunification services are denied to RPs.

VERMONT (15 VSA 665): Courts can terminate parental rights if the child was conceived by rape or if the RP was convicted for sex trafficking with the non-RP parent as the victim, but child support can be compelled.

VIRGINIA (Va. Code 16.1-228; 20-124.1; 63.2-100): Leaving the child in the presence of a RP who is not the parent ofthe child is considered an act of child abuse/ neglect; it is not considered to be in the best interest of the child to giveparental rights to RP if the child was conceived by rape.

WASHINGTON STATE (RCW, Secs. 9A.42.110; 9.94A.6551; 13.34.132; 26.10.160, set for repeal on 1/1/2021; 26.26.760): Washington's laws are long, repetitive, and confusing. It is a misdemeanor to leave a child in the care of an RP convicted for an offense involving a child unless it is part of a court reunification plan; RPs are ineligible for house arrest under parenting programs; courts may terminate parental rights if the child was conceived by rape, the RP was convicted for sex trafficking, or was classified as a sexual predator; while all RPs are considered a danger to children, this assumption can be challenged, and parental rights may be awarded to an RP under limited circumstances if offense did not involve the child, treatment has been completed, a psychosexual evaluation has been completed, and courts rule the RP is not a danger to the child, but the implication is these rulings are difficult to obtain.

WEST VIRGINIA (W. Va Code, Secs. 48-9-209; 48-9-209a; 49-4-602): Parental rights can be terminated if a child was conceived by rape, but may be compelled to pay child support; court is not obligated to preserve the family if one parent is a RP.

WISCONSIN (Wis. Stat. 48-415): Parental rights can be terminated if child was received by rape.

WYOMING (Wyo. Stat. 14-2-309): Parental rights of RP can be terminated if child was conceived by rape unless the parent seeking termination was married to or cohabiting with the offender resulting in the birth of the child for 2+ years immediately after the birth of the child; courts are not required to make reasonable efforts to reunify child to a parent who is an RP.

USING THE INTERNET TO MAKE YOUR VOICE HEARD

Many people have contacted over the years about getting your voice heard online in one way or another. For the sake of those who don't fully understand how the internet works, the first thing to understand about the Internet is that it is, in many ways, the easiest way to spread messages to other people. (For those already familiar with the Internet, excuse the discussion as this is geared towards many readers who may have little to no Internet experience at all.) The Internet is used more often to find information than any other form of communication nowadays, particularly through "smartphones" (Cellular phones able to connect to the Internet).

The bad news is there is no simple way to making your voice heard online. Nearly everyone who has contacted me requesting help in getting their stories out seem to believe the Internet guarantees someone will hear their messages. But there are millions of other Americans trying to share their stories as well. There are many ways to spread your message, including creating your own website, writing to another website that will publish your work, creating a "blog" (a sort of online diary), creating videos (YouTube and TikTok are among the most widely used), a "podcast" (an online talk radio show), and/or starting social media accounts (there are many, but the most widely used are Facebook, Twitter, Instagram, and Snapchat).

I created OnceFallen.com in 2007, and it has an average of about 20,000 readers per month. My experience with social media has had mixed results. I had a Twitter account for 10 years before it was deleted, and while it had over 600 followers, many accounts were inactive not long after they were created. With help, OnceFallen.com has maintained a business page on FaceBook since 2014, but only has about 275 followers. However, the Internet landscape has evolved rapidly. When I first started promoting registry reforms online, MySpace was the top social media platform, YouTube was a new platform with strict 10 minute limits on videos, and Facebook was just starting up. Now, MySpace is

gone, Youtube has no video restrictions and has become the #1 video sharing website (as it is owned by internet company Google) but is starting to face competition from TikTok, and Facebook has gone from being a small startup to being #1 to going into decline as Instagram and Snapchat are taking over as the most used social media outlets. Twitter did not exist when I started but has grown considerably in popularity at least in part because Trump is obsessed with it.

There are a few things you must know about social media, however. First, while social media allows people to make their voices heard, chances are your voice will get drowned out by competing voices. Hundreds of people have written me over the years believing they have the one story that is going to change how the world views an SO. But there is a general apathy towards the plight of prisoners, especially SOs. Even if you are wrongly accused, many will still believe you guilty.

Second, the Internet, especially social media, is a haven for "cyberbullies" and "haters." (I have experienced plenty of both as an activist for registered persons.) Since the Internet allows for a fair degree of anonymity, people can say the nastiest things to you without fear of repercussions. Last year, FaceBook received some heat for having an official documented policy in their Terms of Service (ToS) that allowed people to make death threats (normally a violation of their ToS) if their targets were accused or convicted of sexual offenses. FaceBook has removed that policy officially but never punishes those who threaten RCs online. There are numerous vigilante groups promoting violence against registrants, and most online companies rarely, if ever, protect RCs and their loved ones. (Google, who owns YouTube, and Facebook have been the most frequently used platforms by online vigilante groups.)

Third, some social media sites won't even allow you to use their services. Facebook, Instagram, NextDoor, and paid dating sites like Match.com and eHarmony have written denial of services for RCs into their terms of service. Facebook even has a "Report an SO" page. Accounts are routinely deleted if pictures and names match listings on public registries. However, most social media accounts have not formally excluded registered persons, and to my knowledge, website servers don't ban creating your own website as long as it is not used for illegal activity.

The most important advice I can give is to make sure your message is as clear and concise as possible. Most internet consumers have short attention spans. You must also learn the value of paragraph breaks. Reading long paragraphs can be exhausting to Internet readers. If possible, have a trusted friend proofread your work. Read the work aloud to yourself; even I find typos that way. Word processing software does not catch words you spell right but used the wrong way (for example, if you meant to type "through" but miss the R, you'll spell "though" and spellcheck won't tell you that's the wrong word).

Semantics is important because words can influence reactions. A few years ago, someone wanted me to promote a survival guide for "SOs", but he named his book "Sickos?" I can't imagine anyone wanting to read a book based on that title alone. I using terms like Registered Citizen, Registered Person, or Registrant to describe those of us on the registry. I suggest avoiding the term "SO" when possible. I say people convicted of sexual offenses if I must use a descriptive term; I never use the "P" words (pervert, predator, pedophile) or similar degrading terms. In the event I must use these terms, I place them in quotes.

Finally, you must show the public that you are a human being. I realize this is kind of vague; what I mean is you must show you are more than your story. Many people who have written me with their stories in which excuses are made or lengthy diatribes that go off on many tangents. This isn't a problem for me but if your goal is to elicit attention and sympathy to your plight, people will accuse you of whining at best and minimizing your actions at worst.

Your time behind bars is a time to educate yourself to become a more effective communicator. There are plenty of books about the art of public speaking and effective writing. In ICoN #40, I covered tips on writing legislators; the tips are just as valid on speaking to the public as well as speaking to legislators. These tips included knowing your audience (who are you reaching out to?), doing your research (knowing exactly what you need to say with the evidence to back it up), and Keeping is Short and Simple (the ol' KISS principle). Most OpEds or letters to the editor have strict word limits and people working with legislators suggest limiting letters to these legislators to a single page if possible. Brevity is very important when sending direct messages to people of importance.

These are only some general tips, primarily based off years of personal experiences as an activist. Your mileage may vary. Don't let that discourage you from trying to get your voice heard; but hopefully, the tips I provided may help improve your message. I just want my readers to be realistic and know that while the Internet is a good way to get your message heard, there is plenty of competition out there.

MN COURT REJECTS CIVILLY COMMITTED SO'S NAME CHANGE TO "BETTER OFF DEAD"

Edited from following source: Rochelle Olson. "Court rejects sex offender's attempted name change to 'Better Off Dead'." Minneapolis Star-Tribune. 30 Dec. 2019.

A man indefinitely committed as a sexual predator can't rename himself "Better Off Dead" even when he claims he's doing it for religious reasons, the state Court of Appeals ruled Monday.

Hollis John Larson has been committed since 2008 under the MN SO Program (MSOP) that allows for indefinite confinement for predators. Larson "professes a religious belief involving Hinduism, Taoism, Buddhism, and Agnosticism," the court said. His desired name change is "in accordance with that religious belief and to express his freedom of speech."

A three-judge panel of the state Court of Appeals agreed with a lower-court ruling denying the name change in part because "Better Off Dead" is an idiomatic expression, contains no pronouns and is "inherently misleading."

Larson, who represented himself, said the only way for him to "achieve reconciliation with the divine is to escape the cycle of birth, life, death, and rebirth by being and remaining dead," according to the ruling. The District Court didn't buy it, saying that the name Better Off Dead "has no known connection to any particular religious faith or belief."

Anoka Co. objected to the name change on the grounds that it would be confusing to law enforcement. The District Court, and now the Court of Appeals, agreed with that argument. The courts also said that denying the change wouldn't impinge on Larson's constitutional rights. Larson failed to convince the court that he did not intend to "defraud or mislead," the ruling said. The inmate stated that every document "created by his current captors" with his new name Better Off Dead would also refer to his old name and wouldn't cause confusion or harm public safety. Anoka Co. countered that the name change would compromise the public's ability to maintain and access his records.

The Court of Appeals also rejected the name change on freedom of speech grounds. Larson claimed that renaming himself Better Off Dead was a "peaceful form of protest against [the government], all these entities that caused me this pain and suffering and leading to my philosophy in life." He argued that the name change would allow him to "officially communicate his life philosophy to society," the ruling said.

The case is an "unpublished opinion." In the Matter of the Application of: Hollis John Larson for a Change of Name, A18-2153 (MN Ct of App. 30 Dec. 2019)

INMATE SUBMISSION: Statute 2252A: The wrongful conviction? By Alan Thompson

[Editor's Note: This is an inmate submission on a particular subject related to personal appeals issues, which is not my area of expertise. Thus, I cannot answer any questions regarding this topic. Please don't flood my inbox with questions about it.]

Anyone who follows the law can tell you Johnson v US, 135 S. Ct. 2251(2015) has been successful at overturning convictions. The issues presented here, if taken to that level, would surely have an equivalent effect.

As a fellow offender, I feel obligated to bring to your attention, something that I stumbled across when arguing my case, namely, that prosecutors and courts across the country have been misinterpreting Statute 2252A(a)(2)(B). Since the inception of this statute, which governs receipt and distribution of material that contains CP, our rights have been violated. Nearly every person to have been indicted under 2252A(a)(2)(B), may be eligible to have their conviction overturned. Before starting, I'll tell you that just as what happened in the Johnson case, my case was ignored (appeal pending). So, we need more people to accurately file on this issue. All you need is to be informed. Below are a majority of relevant cases and basic explanations, forming the basis of your argument. Do your research, read carefully, and present your argument. Good Luck!

18 USC 2252A has multiple subparts; each of these statutes govern separate conduct, as proscribed by Congress. Two of which, are used interchangeably by courts and prosecutors: Subparts 2252A(a)(2)(A) and 2252A(a)(2)(B). PLEASE NOTE: The only difference between each statute is the addition of the phrase "material that contains" of Subsection B.

Statute 2252A, in relevant part, punishes:
(a) Any person who— (2) knowingly receives or distributes— (A) any CP... or (B)Any material that contains CP....

Definitions under Chap. 110, which governs definitions relating to CP offenses, defines CP as "any visual depiction", and carries on to describe other items that might possibly form a depiction, such as: any physical picture; digital photo; data from a computer, capable of conversion into an image; or any other visual depiction.

Although closely related, each subsection governs a separate offense:

--The first: Subpart A, governs the receipt or distribution of actual CP. This includes by definition any digital files and computer generated images, of which, most offenders are convicted. Receipt or distribution of a polaroid picture; computer photograph, and the data that makes the picture viewable; etc., would fall into this subsection.

--Subpart B, however, governs the receipt or distribution of any other "material" that might possibly "contain" those pictures, or files. For example: receipt or distribution of a laptop (a.k.a., a computer); storage device or USB; camera; etc., would fall into this section.

Significantly, there are literally thousands of currently incarcerated and previously released offenders, that were indicted with and stand convicted of statute 2252A(a)(2)(B), for conduct that violates subpart A. They stand convicted under subpart (B), for the act of receiving or distributing a computer or storage

device, when in reality, they merely received or distributed an actual computer image over the internet. The latter of which, is governed by a separate statute, under subpart (A). This is of GREAT importance! Because, this means they may be ACTUALLY innocent of the charged offense. It also means, their plea agreement may be fraudulent, and/or that the elements of the crime have NOT and indeed, COULD NOT have been found beyond a reasonable doubt. Most importantly, this anomaly also falls under a jurisdictional violation, which voids the court's judgment.

Because the courts have not previously been presented with this argument, there is little "case law" about the issue. Support for argument, thus, comes from (1) close examination of each statute; (2) use of multiple "canons" of statutory construction; (3) and bits of law, taken from several closely related arguments, in cases strung across the circuits.

Argumentative support of the above, comes from questionable language, as announced in Dauray v. US, 215 F.3d 252 (2nd Cir. 2002), which creates such confusion and allows questionable amendments to a statute's elements. In Dauray, the court expressly found the relevant term "material", to be irretrievably ambiguous and thus, subject to varied interpretation. In law, ambiguous terms are ruled leniently, in favor of the person whose freedom is in jeopardy. A touch of clarity to this ambiguousness comes from US v. Lacy, 119 F.3d 742 (9th Cir. 1997) where the court, after utilizing several rules of statutory construction, explains that the phrase "matter", or in this case "material", is the actual "computer" or "computer disk" and NOT a computer file.

This analogy, is further solidified in Justice Seymour's dissent, in US v Thompson, 281 F. 3d 1088 (10th Cir 2002), which also explains, in depth, the analysis used to determine statutory interpretation and emphasizes, that subpart B specifically requires a person MUST receive or distribute "material", NOT the CP itself. When Congress drafted Statute 2252A, Legislature most likely meant "material" in the form of computer disks, because the framers of 2252A specifically chose the term "computer disks" containing CP, rather than computer files.

Therefore concluding, that although both computer disks and computer files could be viewed as "containing" the visual depiction, it is safe to state that "material" is the physical media "that contains" CP, and that computer files of CP, in of themselves, do NOT rank as "material" for the purposes of criminal liability under 2252A(a)(2)(B). See Lacy, 119 F.3d at 748; and Thompson, 281 F.3d at 1094-96.
In light of the above, one case studied heavily, 301 F3d 709 (11 Cir 2002) fully explains the gravity of indicting a person for a crime that is NOT governed by that particular statute, an error that goes to the power of the court, i.e., subject matter jurisdiction. For example, where a person is federally indicted for robbing a bank under hypothetical Statute 1234 for the act of stealing a bicycle from a bank's parking lot, the result is a jurisdictional violation. The person did NOT rob the bank but merely stole a bike, and NO AMOUNT of proof that a bicycle was stolen can prove bank robbery. Further, because statutes are FACT specific and the hypothetical Statute 1234, governs bank robbery, stealing a bike does NOT violate a federal crime under THIS statute. Stealing a bicycle is not a crime; it is just not a crime under this statute. In this situation, a court has no power to enter judgement, accept a plea, or otherwise convict a person of the charged crime.

In another case, US v. Edmond, 780 F.3d 1126(11th Cir. 2015), the court explains the grave mistake of modifying statutory elements of the charged offense, in order to find someone guilty of an unindicted crime, violating the 5th Amendment. The view of actual innocence focuses on the ELEMENTS of conviction. Since the Act alleged is NOT within the scope of the charged statute, neither can the FACTS support the elements unless the elements are altered to appear as though the correct offense had been charged. In other words, as emphasized in Edmond, the court could not accept a plea to an offense not contained in the indictment.

This is not to say, that receiving or distributing CP is not a crime, nor does it mean that receiving or distributing CP is not punishable under federal law. Indeed, receiving and distributing CP is punishable under 2252A, but this must occur under an indictment charging 2252A(a)(2)(A). See subpart A, for "receipt or distribution of any CP", written above. My recommendation, is that if someone was indicted under statute 2252A(a)(2)(B) for sending or receiving actual CP, & that person did not receive or distribute a computer, storage device, camera, etc., that they have someone look into this matter, rather urgently. Because, although possibly guilty of a crime, they may very well be innocent of the statute with which they are charged, 2252A(a)(2)(B). Use caution, however, and review the language with precise accuracy. When filing on this topic, be clear with phrases used to present the matter, as it can be very complicating to argue without confusing the terms, as they are all so similar. Clear and concise briefs are important, as to not clutter the system with faulty arguments, which only muddy the water the rest of us are fighting through.