

No. 16-768

IN THE
Supreme Court of the United States

RICHARD SNYDER, GOVERNOR OF THE STATE OF MICHIGAN;
COL. KRISTE ETUE, DIRECTOR OF THE MICHIGAN STATE POLICE,
Petitioners,

—v.—

JOHN DOES, #1-5; MARY DOE,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the court of appeals err in holding that the record in this case establishes that the cumulative burdens of Michigan's Sex Offender Registration Act (SORA) constitute punishment under the test set out in *Smith v. Doe*, 538 U.S. 84 (2003), such that its retroactive application to the plaintiffs violates the Ex Post Facto Clause?

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
INTRODUCTION	1
STATEMENT OF THE CASE.....	6
REASONS FOR DENYING THE PETITION	19
I. THERE IS NO CONFLICT AMONG THE LOWER COURTS, WHICH ARE IN COMPLETE AGREEMENT ABOUT THE LEGAL STANDARD THAT APPLIES.	19
A. <i>Smith v. Doe</i> Requires Review of the Entire Statutory Scheme	20
B. Reaching Different Results on a Multi-Factor Test for Different Statutes and Different Records Does Not Constitute a Circuit Split	26
II. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH <i>SMITH V.</i> <i>DOE</i>	29
III. THE COURT OF APPEALS' DECISION DOES NOT PREVENT MICHIGAN FROM SEEKING SORNA-CONTINGENT FUNDING.	32
CONCLUSION.....	37
APPENDIX.....	1a
Michigan Sex Offender Registration Act, Mich. Comp. Laws §§ 28.721 <i>et seq</i>	1a-66a

United States Court of Appeals for the Sixth
Circuit Opinion in 15-1536/2346/2486, Color
Reprint of Map Included in Opinion 67a

TABLE OF AUTHORITIES

CASES

<i>ACLU of Nevada v. Masto</i> , 670 F.3d 1046 (9th Cir. 2012)	25
<i>Ayotte v Planned Parenthood of Northern New England</i> , 546 U.S. 320 (2006)	30
<i>Burgess v. Salmon</i> , 97 U.S. 381 (1878)	2
<i>Calder v. Bull</i> , 3 U.S. (3 Dall.) 386 (1798)	2
<i>Connecticut Dep’t of Public Safety v. Doe</i> , 538 U.S. 1 (2003).....	31
<i>Cutshall v. Sundquist</i> , 193 F.3d 466 (6th Cir. 1999)	27
<i>Doe v. Bredesen</i> , 507 F.3d 998 (6th Cir. 2007).....	27
<i>Doe v. Cuomo</i> , 755 F.3d 105 (2d Cir. 2014).....	23
<i>Doe v. Dept. of Public Safety and Corr. Serv.</i> , 62 A.3d 123 (Md. 2013).....	25
<i>Doe v. Miami-Dade</i> , __ F.3d __; 2017 WL 360510 (11th Cir. 2017).....	29
<i>Doe v. Miller</i> , 405 F.3d 700 (8th Cir. 2005).....	23
<i>Doe v. Pataki</i> , 120 F.3d 1263 (2d Cir. 1997)	23
<i>Doe v. State</i> , 111 A.3d 1077 (N.H. 2015).....	21, 25, 28
<i>Hatton v. Bonner</i> , 356 F.3d 955 (9th Cir. 2003)	25
<i>In re Taylor</i> , 343 P.3d 867 (Cal. 2015)	28
<i>Kammerer v. State</i> , 322 P.3d 827 (Wyo. 2014).....	25
<i>Kansas v. Hendricks</i> , 521 U.S. 346 (1997)	2, 21
<i>Kennedy v. Mendoza-Martinez</i> , 372 U.S. 144 (1963).....	<i>passim</i>

<i>Litmon v. Harris</i> , 768 F.3d 1237 (9th Cir. 2014).....	23
<i>Moore v. Avoyelles Corr. Ctr.</i> , 253 F.3d 870 (5th Cir. 2001)	23
<i>People v. Temelkoski</i> , No. 150643 (Mich. argued Dec. 7, 2016).....	13
<i>RW v. Sanders</i> , 168 S.W.3d 65 (Mo. 2005).....	25
<i>Shaw v. Patton</i> , 823 F.3d 556 (10th Cir. 2016)	23, 24, 28
<i>Smith v. Doe</i> , 538 U.S. 84 (2003).....	<i>passim</i>
<i>Starkey v. Oklahoma Dep't. of Corr.</i> , 305 P.3d 1004 (Okla. 2013)	28
<i>State v. Letalien</i> , 985 A.2d 4 (Me. 2009)	26
<i>State v. Myers</i> , 923 P.2d 1024 (Kan. 1996)	34
<i>State v. Peterson-Beard</i> , 377 P.3d 1127 (Kan. 2016)	23
<i>State v. Seering</i> , 701 N.W.2d 655 (Iowa 2005).....	23
<i>State v. Williams</i> , 952 N.E.2d 1108 (Ohio 2011)	25, 28
<i>State v. Worm</i> , 680 N.W.2d 151 (Neb. 2004).....	23
<i>United States v. Leach</i> , 639 F.3d 769 (7th Cir. 2011)	23
<i>United States v. Parks</i> , 698 F.3d 1 (1st Cir. 2012) ..	23
<i>United States v. Under Seal</i> , 709 F.3d 257 (4th Cir. 2013)	24
<i>United States v. Ward</i> , 448 U.S. 242 (1980)	2
<i>United States v. WBH</i> , 664 F.3d 848 (11th Cir. 2011)	25
<i>Wallace v. State</i> , 905 N.E.2d 371 (Ind. 2009)	26, 28

<i>Weems v. Little Rock Police Dep't</i> , 453 F.3d 1010 (8th Cir. 2006)	23
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STATUTES

U.S. Const. art. I § 10	<i>passim</i>
42 U.S.C. § 16901 <i>et seq.</i>	<i>passim</i>
Ariz. Rev. Stat. Ann. § 13-3825 (2016).....	36
Ark. Code Ann. § 12-12-917 (2016)	36
Cal. Penal Code § 290.04 (West 2017)	36
Ga. Code Ann. § 42-1-14 (2016).....	36
Mass. Gen. Laws ch. 6, §§ 178C-178Q (2015).....	36
Mich. Comp. Laws §§ 28.721 <i>et seq.</i>	<i>passim</i>
Mich. Comp. Laws § 28.722(w)(ii)	8
Mich. Comp. Laws § 28.723(1)(e).....	10
Mich. Comp. Laws § 28.725	6
Mich. Comp. Laws § 28.725a	6
Mich. Comp. Laws § 28.725(1)(e).....	8, 10, 33
Mich. Comp. Laws § 28.725(1)(f)	8, 13, 33
Mich. Comp. Laws § 28.725(1)(g)	12, 33
Mich. Comp. Laws § 28.725a(6).....	33
Mich. Comp. Laws § 28.727	6
Mich. Comp. Laws § 28.727(1)(i)	13
Mich. Comp. Laws § 28.727(1)(h)	12
Mich. Comp. Laws § 28.727(1)(j)	12
Mich. Comp. Laws § 28.729	6
Mich. Comp. Laws § 28.733	12

Mich. Comp. Laws § 28.733(b).....	7
Mich. Comp. Laws § 28.734	6, 12, 33
Mich. Comp. Laws § 28.735	6, 12, 33
Mich. Comp. Laws § 28.736	33
Mich. Comp. Laws § 762.11.....	9
Mich. Comp. Laws § 762.14.....	9, 13
Mich. Pub. Act 295, § 10 (1994).....	6, 7
Minn. Stat. Ann. § 244.052 (2017)	36
Mont. Code Ann. § 46-23-509 (2015).....	36
N.D. Cent. Code § 12.1-32-15 (2015).....	36
N.J. Stat. Ann. § 2C:7-8 (West 2016).....	36
N.Y. Correct. Law § 168-l (McKinney 2017).....	36
Or. Rev. Stat. §§ 163A.100, 163A.105 (2015).....	36
R.I. Gen. Laws § 11-37.1-6 (2016)	36
Tex. Code Crim. Proc. Ann. art. 62.007 (West 2016)	36
Vt. Stat. Ann. tit. 13, § 5411b (2016)	36
Wash. Rev. Code §§ 72.09.345, 4.24.550 (2017).....	36

RULES

Fed. R. Civ. P. 52	12
Sup. Ct. R. 10	1

OTHER AUTHORITIES

Andrew J. Harris, Christopher Lobanov-Rostovsky
& Jill S. Levenson, *Widening the Net: The Effects
of Transitioning to Adam Walsh Act’s Federally*

<i>Mandated Sex Offender Classification Scheme,</i> 37 CRIMINAL JUSTICE AND BEHAVIOR 503 (2010) .	36
Bureau of Justice Statistics, <i>Justice Assistance Grant Program, 2016</i>	35
Catherine L. Carpenter & Amy E. Breverlin, <i>The Evolution of Unconstitutionality in Sex Offender Registration Laws,</i> 63 HASTINGS L. J. 1071 (2012).....	6
Department of Justice Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, <i>SORNA Implementation Status</i>	35
Department of Justice, National Guidelines for Sex Offender Registration and Notification (July 2008)	35
Department of Justice, <i>SORNA Substantial Implementation Review State of Colorado – Revised (Nov. 5, 2013)</i>	34
Department of Justice, <i>SORNA Substantial Implementation Review State of Kansas (July 19, 2011)</i>	34, 35
Department of Justice, <i>SORNA Implementation Review State of Nevada (Feb. 2011)</i>	35
Nat'l Conference of State Legislatures, <i>Cost-Benefit Analyses of SORNA Implementation</i> (Jan. 2010)	36

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents concur with petitioners' statement of the constitutional provision involved. Because the court of appeals considered the cumulative impact of Michigan's Sex Offender Registration Act (SORA), not just isolated sub-sections, in determining that SORA violates the Ex Post Facto Clause, respondents set out the statute in full in their appendix. *See* Mich. Comp. Laws §§ 28.721 *et seq.* (App. 1a—66a.).

INTRODUCTION

The court of appeals faithfully applied the test set out in *Smith v. Doe*, 538 U.S. 84 (2003), to the Michigan statute as a whole, based on the extensive record in this case. The Sixth Circuit's decision is in conflict with no other decision of this Court or the other courts of appeals. The federal courts of appeals as well as the state supreme courts are in complete accord that *Smith* establishes the legal standard that applies when new restrictions imposed retroactively are challenged as violating the Ex Post Facto Clause. In essence, petitioners disagree with how the court of appeals applied an established test to the particular statute on the record before it. But that disagreement does not amount to a conflict, and provides no basis for review. This Court does not typically grant certiorari simply to double-check whether a lower court has correctly applied a multi-factor test to a specific law on a given record. Sup. Ct. R. 10.

The Ex Post Facto Clause prohibits laws “that change[] the punishment, and inflict[] a greater punishment, than the law annexed to the crime, when committed.” *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 390 (1798). “[T]he ex post facto effect of a law cannot be evaded by giving a civil form to that which is essentially criminal.” *Burgess v. Salmon*, 97 U.S. 381, 385 (1878). Thus, when putatively “civil” restraints are imposed retroactively based on past convictions for sex offenses, the dispositive question is whether those restraints constitute punishment.

Courts universally answer that question by applying the “intent-effects” test of *Smith*. That test assesses first whether the legislature intended to impose punishment. If not, the test weighs the factors set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), to determine whether the statutory scheme is “so punitive either in purpose or effect as to negate [the State’s] intention to deem it civil.” *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997) (quoting *United States v. Ward*, 448 U.S. 242, 248-49 (1980)).

Smith made clear that the *Mendoza-Martinez* factors must be applied to the statute as a whole, or as this Court repeatedly said, to “the statutory scheme,” “the regulatory scheme,” or “the Act.” *Smith*, 538 U.S. at 92, 94, 96-97, 99, 104-05. *Smith* held that courts must ask whether “*the regulatory scheme*: has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to

this purpose.” 538 U.S. at 97 (emphasis added). The court of appeals here did precisely that, concluding that the cumulative effects of SORA’s multiple disabilities and obligations made SORA punitive.

Petitioners, by contrast, do not consider SORA’s statutory scheme in its entirety, but instead seek to manufacture a split in the circuits by treating in isolation individual obligations imposed by the Act. They argue that a conflict arises wherever another court has upheld a provision that SORA shares. But that approach misses the forest for the trees, and ignores this Court’s clear direction that the analysis must be directed at the statute as a whole. The fact that a single provision standing alone may not be punitive hardly means that the statute, when considered in its entirety, is not punitive. Based on an extensive record, the court of appeals found that the cumulative effects of SORA on all aspects of plaintiffs’ lives make this statute punitive. Petitioners notably cite no case in which a court of appeals upheld as nonpunitive a statute whose cumulative burdens include: lifetime restrictions on where registrants can live, work, and spend time with their children; advance reporting for travel; criminalization of unreported internet use; ongoing, in-person and immediate reporting requirements for a vast array of personal information; and stigmatization as the most dangerous offenders, without any assessment of actual risk and in some instances without even a conviction for a sexual offense.

The factual record also varies from case to case, and here included substantial evidence that many of SORA’s requirements are counterproductive.

That lower courts have reached different conclusions in applying the *Smith* test to *different* registration laws on *different* records offers no evidence that courts are in conflict. They are not. The court of appeals here, like every other court of appeals and every state supreme court, applied exactly the same *Smith* test to a statute that imposes cumulative burdens unlike those reviewed in any of the cases petitioners cite.

The court of appeals' decision also does not conflict with *Smith* itself. That decision did not suggest that all registration laws—no matter how burdensome they become or how excessive those burdens are in relation to any public safety benefit—are constitutional. *Smith* upheld Alaska's "first-generation" registration statute, one that simply required people convicted of sex offenses to register and made certain conviction and identification information about them public. Michigan's "super-registration" statute, by contrast, imposes burdens that "are greater than those imposed by the Alaska statute by an order of magnitude," as the court of appeals noted. Pet. App. 22a. The court explained:

A regulatory regime that severely restricts where people can live, work, and "loiter," that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose

of keeping Michigan communities safe, is something altogether different from and more troubling than Alaska's first generation registry law [upheld in *Smith*]. SORA brands registrants as moral lepers based solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to the school zone restrictions, they may not even live. It directly regulates where registrants may go in their daily lives and compels them to interrupt those lives with great frequency in order to appear in person before law enforcement to report even minor changes to their information.

Pet. App. 26a.

Smith did not "writ[e] a blank check to states to do whatever they please in this arena." Pet. App. 26a. Rather, *Smith* sets out a test for evaluating retroactive registration laws that some statutes will pass and others will fail. The court of appeals properly applied that test to a statute that is very different from the Alaska law in *Smith*. There is no conflict.

The petition should be denied.

STATEMENT OF THE CASE

A. The Historical Evolution of SORA

Michigan's Sex Offender Registration Act (SORA) restricts where registrants can live, work, or interact with their children. Plaintiffs must report in person every three months for the rest of their lives, provide an exhaustive list of personal information for dissemination to the public, and appear "immediately" in person to report even minor changes in status, such as enrolling in a class or using a different car, or taking any trip of more than a week. Violations carry prison terms of up to 10 years. Mich. Comp. Laws §§ 28.725, 28.725a, 28.727, 28.729, 28.734-35. Michigan's sex offender registry is the country's fourth largest, with 40,000-49,000 registrants. Approximately 2,000 new registrants are added each year. Joint Statement of Facts (JSOF) ¶¶ 213-15, R. 90, Pg.ID# 3769.

Over the last two decades, some states, including Michigan, have adopted increasingly harsh sex offender restrictions, described by some legal scholars as "super-registration" schemes. Catherine L. Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1073 (2012). In Michigan, "what began in 1994 as a non-public registry maintained solely for law enforcement use, see Mich. Pub. Act 295, § 10 (1994), has grown into a byzantine code governing in minute detail the lives of the state's sex offenders." Pet. App. 10a.

When first created in 1994, Michigan's registry was a private, law-enforcement-only database of

convictions. Mich. Pub. Act 295, § 10 (1994). Over the last two decades Michigan's legislature repeatedly amended SORA, transforming the registry from a list of convictions in a non-public police database to a complex system of control that requires ongoing, in-person reporting; labels registrants by categories of dangerousness; and restricts employment, housing, travel, internet use, and even parenting.

In 2004, amendments to SORA created a public website that publishes detailed personal information about registrants. In 2006, geographic exclusion zones were added, retroactively prohibiting registrants from working, living, or even "loitering" within 1,000 feet of a school. "Loitering" is defined as "remain[ing] [in an exclusion zone] for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors," Mich. Comp. Laws § 28.733(b), a definition which precludes plaintiffs from attending their children or grandchildren's school events. JSOF ¶¶ 4-26, R. 90, Pg.ID# 3730-35.

After passage of the federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16901, *et seq.*, which among other things conditions access to some federal funds on "substantial compliance" with its terms, Michigan amended its registry yet again. The 2011 amendments to SORA retroactively classify registrants into three tiers, which determine the frequency of reporting and length of registration. Based solely on their offense and without any individualized risk assessment, all plaintiffs were classified as Tier III, and thereby labeled as the most dangerous offenders.

They were also retroactively subjected to all of the statute's restrictions *for life*. More than 17,000 Michigan residents were classified as Tier III registrants and had their registration periods retroactively extended to life. JSOF ¶¶ 19-29, 288, R. 90, Pg.ID# 3733-36, 3785.

The amended SORA also imposed extensive new reporting obligations, which require registrants to report in person within three days whenever they create an email address, instant message address, or other internet designation; enroll in or drop out of a college class; leave home for more than seven days; or purchase or begin regularly operating (or sell or cease regularly operating) a vehicle. Mich. Comp. Laws §§ 28.725(1)(e)-(g).

B. The Plaintiffs

John Doe #1 has never been convicted of a sex offense. In 1990, he was convicted of attempting to rob a McDonald's. Under SORA he must nonetheless register for life as a Tier III sex offender because he forced the manager and her fourteen-year-old son into the McDonald's during the robbery, resulting in a kidnapping charge to which he pled guilty. Mich. Comp. Laws § 28.722(w)(ii). Due to SORA's exclusion zones, Doe #1 could not live with his family. He has repeatedly been denied jobs, including garbage collection, because he is listed on the sex offender registry. JSOF ¶¶ 35-50, 912, 938-40, R. 90, Pg.ID# 3737-39, 3944, 3949-50.

John Doe #2 has also not been convicted of a sex offense. In 1996, when he was eighteen, he had a sexual and romantic relationship with a fourteen-

year-old girl. Upon completion of probation under the Holmes Youthful Trainee Act (HYTA), Mich. Comp. Laws § 762.11, *et seq.*, a diversionary statute, his charges were dismissed and his record sealed. A dismissal under HYTA is *not a conviction* and does not appear on a background check. Mich. Comp. Laws § 762.14. Since Doe #2 has no criminal record, employers, landlords, and educational programs would not have repeatedly rejected him over the years, but for the fact that he is listed on the registry. A disabled military veteran, Doe #2 would qualify for subsidized housing, but is barred because he is a lifetime registrant. JSOF ¶¶ 60-71, 87-89, 914-17, 942-43, 981-82, R. 90, Pg.ID# 3741-43, 3746, 3944-45, 3950, 3960-61.

In 1998, when John Doe #3 was nineteen, he was convicted of criminal sexual conduct based on a romantic and sexual relationship with a fourteen-year-old girl. Today, he and his wife, a schoolteacher, have three young sons. Under SORA's exclusion zones, Doe #3 can be criminally prosecuted if he watches his children's sporting events, attends their school functions, or goes to their birthday parties. JSOF ¶¶ 98-99, 111-19, 543-561, R. 90, Pg.ID# 3748-52.

In 2005, when John Doe #4 was twenty-three, he had a sexual and romantic relationship with I.G., whom he met at an eighteen-and-over nightclub but who was in fact underage. He pled guilty to criminal sexual conduct. He and I.G. married in June 2015 and now have two children. Because the family could not find SORA-compliant housing, Doe #4 has been homeless, while I.G. and their children lived with her

parents. Doe #4 has been fired repeatedly when employers learned he was on the registry, and has received an anonymous mailed death threat—a printout of his sex offender registry page with his eyes blacked out on the photo, and the handwritten message “You will die.” JSOF ¶¶ 123-34, 562-70, 919-26, 945-50, 997, Pg.ID# 3752-53, 3754, 3862-66, 3945-52, 3964-65; Doe #4 Second Declaration, R. 116, Pg.ID# 6012.

In 1979, when John Doe #5 was twenty-one, he had sex with a seventeen-year-old woman. He said the sex was consensual, but she said it was not. He took the case to trial and lost. For over thirty years, he was not required to comply with SORA, which did not exist in 1979. He was never charged with, much less convicted of, another sex offense. In 2011, however, 32 years after his offense, Doe #5 was retroactively required to register for life as a Tier III offender under SORA’s “recapture” provisions because he was convicted of taking scrap metal from an abandoned building. Mich. Comp. Laws § 28.723(1)(e). He was forced to move because his home was within an exclusion zone. JSOF ¶¶ 145-72, R. 90, Pg.ID# 3756-61.

Mary Doe had a sexual and romantic relationship with a fifteen-year-old boy in 2003, while living in Ohio. She was convicted of unlawful sexual conduct with a minor. As a result of a psychological evaluation, she was assigned the lowest risk level under Ohio’s then-existing risk-based registration statute, which made her subject to annual address verification for ten years. Since moving to Michigan for family reasons, Ms. Doe

has—due to SORA—been terminated from employment, forced to limit her travel and internet use, and prohibited from attending her daughter’s graduation or school plays. *Id.* ¶¶ 177-99, 577, 681, 952, 987, Pg.ID# 3761-66, 3867, 3891, 3952, 3962.

All of the plaintiffs were retroactively subjected to the current SORA statute for life, based solely on prior convictions (and in one case dismissed charges) without any evidence of current dangerousness. As a result, they are unable to reside or work where they choose, or to attend their children’s school events. They must appear in person at the police station every time they want to sign up for a college class, rent a car, or take a trip lasting more than a week. They must keep track of and register the electronic identifiers they use. And they are permanently branded as the most dangerous “Tier III” sex offenders on a website that allows the public to sign up to “track this offender” or “tell a friend.” Absent the relief obtained in this litigation, they will live the rest of their lives under these restrictions, regardless of whether they pose any risk of recidivism. *See* JSOF ¶¶ 1, 27, 528-86, 851-53, 910-1001, R.90, Pg.ID# 3729, 3735, 3854-69, 3929-30, 3943-66; Registry Screenshots, R. 94-8 through 94-14, Pg.ID# 5628-46, 56.

C. The Litigation Below

Plaintiffs filed suit in 2012 seeking declaratory and injunctive relief on multiple constitutional grounds. Plaintiffs subsequently filed an amended

complaint in 2013 to address new amendments to SORA and to add Doe #5 as a plaintiff.¹

The voluminous district court record includes seven expert reports, 21 depositions, and hundreds of pages of documents. Exhibits 1-128, R. 90-2 through 94-18, Pg.ID# 3998-5657. That record is summarized in a 262-page stipulated Joint Statement of Facts, R. 90, Pg.ID# 3723-3990, prepared under Fed. R. Civ. P. 52.

The district court (Cleland, J.), in four separate opinions and orders, ruled in part for plaintiffs and in part for defendants. It concluded that SORA does not violate the Ex Post Facto Clause, Pet. App. 30a, 126a-131a, 148a-158a, but held many aspects of SORA invalid for other reasons.

The court concluded that SORA's geographic exclusion zones, which make it a crime for registrants to live, work, or "loiter" within extensive areas, are unconstitutionally vague, both because the boundaries of the zones cannot be known, and because "loitering" is not clearly defined. Mich. Comp. Laws §§ 28.733-35; Pet. App. 63a-71a. The court also struck down as vague SORA's requirements that registrants report in person within three days after beginning to "regularly operate any vehicle," and to report all telephone numbers "routinely used." Mich. Comp. Laws §§ 28.725(1)(g); 28.727(1)(j) and (h); Pet. App. 71a-79a. Moreover, because "[a]mbiguity in the Act, combined with the

¹ Petitioners incorrectly state that plaintiffs filed two suits. Pet. at 9.

numerosity and length of the Act’s provisions, make it difficult for a well-intentioned registrant to understand all of his or her obligations,” the court held that registrants cannot be held strictly liable for unintentional violations of SORA. Pet. App. 86a-89a.

The district court further held that SORA violates the First Amendment by requiring registrants to report in person within three days of establishing any email address, instant message address, or other internet designation, Mich. Comp. Laws § 28.725(1)(f); by requiring registrants to report all electronic mail or instant message addresses “routinely used,” Mich. Comp. Laws § 28.727(1)(i), Pet. App. 100a-112a; and by requiring registrants to report for life all electronic mail addresses, instant message addresses, login names or other identifiers. Mich. Comp. Laws § 28.727(1)(i), Pet. App. 37a-48a.

Both sides appealed. The court of appeals decided the case solely on Ex Post Facto grounds.² Pet. App. 27a.

In a unanimous opinion by Judge Alice Batchelder, the court of appeals examined Michigan’s

² Because the petition for certiorari presents only the Ex Post Facto question, it is likely that, regardless of any decision by this Court, many of the challenged SORA provisions could not be enforced because they have been declared unconstitutional on other grounds. The question whether SORA violates the Ex Post Facto Clause of the Michigan or United States Constitutions is also currently before the Michigan Supreme Court in the as-yet-undecided case of *People v. Temelkoski*, No. 150643 (Mich. argued Dec. 7, 2016), which concerns retroactive imposition of SORA on a non-convicted youth whose charges, like those of Doe #2, were dismissed under a diversion program.

statutory scheme under *Smith* and held that SORA imposes punishment and therefore cannot be applied retroactively to plaintiffs. The court concluded that although the intent of Michigan’s statutory scheme is regulatory, the record established “by the clearest proof” that ‘what has been denominated a civil remedy’ is, in fact, ‘a criminal penalty,” Pet. App. 15a (quoting *Smith*, 538 at U.S. at 92). In reaching that result, the court of appeals followed this Court’s direction in *Smith* and applied the *Mendoza-Martinez* factors to the specifics of Michigan’s law in light of the comprehensive evidentiary record.

The court found that the first *Mendoza-Martinez* factor—whether the statutory scheme resembles historical or traditional punishments—favors the plaintiffs. Pet. App. 21a. “[W]hile SORA is not identical to any traditional punishments, it meets the general definition of punishment, has much in common with banishment and public shaming, and has a number of similarities to parole/probation.” *Id.*

The court’s comparison of SORA’s exclusion zones (which were not at issue in *Smith*) to banishment was grounded in the record. The court reproduced a map of the exclusion zones in Grand Rapids, Michigan, where almost half the city is off-limits. *Id.* at 20a; JSOF ¶ 381, R. 90, Pg.ID# 3810; Wagner 2nd Expert Report, R. 91-2, Pg.ID# 4725. (App. 67a.) The court explained that registrants “are forced to tailor much of their lives around these school zones,” which restrict where they may live, work, and spend time with their children. Pet. App. 20a. *See also* JSOF ¶¶ 372-388, 509-600, 910-52, R.

90, Pg.ID# 3808-14, 3850-73, 3943-52 (detailing the size of the zones and their impact on plaintiffs' housing, employment, and participation in their children's upbringing).

The court of appeals noted that whereas in *Smith* any stigmatization registrants experienced stemmed from the convictions themselves, not from the state's republication of public conviction information, 538 U.S. at 101, SORA does not simply republish conviction information, but categorizes registrants "into tiers ostensibly corresponding to present dangerousness" *regardless of any actual risk*, and stigmatizes individuals as convicted sex offenders who were *not* convicted or did *not* commit any sexual offenses. Pet. App. 20a, 26a.

The court of appeals also found that SORA resembles probation and parole because, unlike the statute in *Smith*, it requires extensive in-person reporting and strictly limits where registrants can work, live, or "loiter." Pet. App. 26a. In addition, registrants are subjected to law enforcement compliance sweeps and residence checks at their homes, and thousands of Michigan registrants have faced further criminal punishment for violating SORA's often highly technical reporting requirements. JSOF ¶¶ 963-980, R. 90, Pg.ID# 3955-60; *see also* Stapleton Expert Report, R. 91-4, Pg.ID# 4782-93 (report by former legal affairs administrator of Michigan Department of Corrections likening requirements of SORA to supervision of Michigan probationers and parolees).

The court of appeals found that the second *Mendoza-Martinez* factor—whether SORA imposes

an affirmative disability or restraint—also weighs in plaintiffs’ favor. Unlike in *Smith*, the burdens here are not “minor and indirect.” Pet. App. 22a-23a (quoting *Smith*, 538 U.S. at 100). Under the Alaska statute, registrants were “free to move where they wish and to live and work as other citizens, with no supervision,” there was “no evidence that the Act has led to substantial occupational or housing disadvantages,” and “the record contains no indication that an in-person appearance requirement has been imposed.” *Smith*, 538 U.S. at 100-101. By contrast, the court of appeals found that “many of the Plaintiffs have had trouble finding a home in which they can legally live or a job where they can legally work”; that plaintiffs with children or grandchildren have been barred “from watching them participate in school plays or on school sports teams, and ... from visiting public playgrounds with their children for fear of ‘loitering’”; and that plaintiffs face “the frequent inconvenience of reporting to law enforcement in person whenever they change residences, change employment, enroll (or unenroll) as a student, change their name, register a new email address or other ‘internet identifier,’ wish to travel for more than seven days, or buy or begin to use a vehicle (or cease to own or use a vehicle).” Pet. App. 11a-12a. *See also* JSOF ¶¶ 528-695, 910-1004, R. 90, Pg. ID# 3854-94, 3943-67 (chronicling SORA’s impact on plaintiffs’ employment, housing, parenting, internet use, travel, education, etc.); Obligations, Disabilities and Restraints Imposed by SORA 2013, R. 91-10, Pg. ID# 4822-36 (listing restrictions and obligations imposed by SORA).

The court of appeals gave the third *Mendoza-Martinez* factor little weight, noting that while SORA advances all the traditional aims of punishment (incapacitation, retribution and deterrence), many of those goals are also regulatory. Pet. App. 23a.

Turning to the fourth *Mendoza-Martinez* factor, the court of appeals held that SORA is not rationally connected to a nonpunitive purpose. It concluded that the extensive record “provides scant support for the proposition that SORA in fact accomplishes its professed [public safety] goals,” Pet. App. 24a, and casts “significant doubt” on common assumptions about registries and registrants.³ *Id.* The record shows that:

- Public registries are likely to increase rather than decrease recidivism. JSOF ¶¶ 480-96, R. 90, Pg.ID# 3843-46.
- Exclusion zones have no impact on or may even increase recidivism. *Id.* ¶¶ 497-507, Pg.ID# 3846-49. Failure to comply with registration requirements does not predict sexual recidivism; more onerous or more frequent registration requirements do not

³ Petitioners ignore the comprehensive evidence presented below, preferring to rely on a single selectively-chosen report that was *not* in the record to argue that people convicted of sex offenses “are dangerous as a categorical matter.” Pet. 25. That assertion is flatly contradicted by the record. *See* JSOF ¶¶ 301-371, R. 90, Pg.ID# 3787-808; Fay-Dumaine Expert Report, R. 90-25, Pg.ID# 4682-96; Levenson Expert Report, R. 90-24, Pg.ID 4641-81.

lower recidivism. *Id.* ¶¶ 507-08, Pg.ID# 3849-50.

- Recidivism risk varies significantly between registrants. Individuals who do reoffend usually do so within the first three to five years. Recidivism drops off dramatically over time, so that lengthy registration periods serve little or no purpose. *Id.* ¶¶ 305-316, 341-57, Pg.ID# 3789-91, 3799-804.
- Approximately 93% of sex offenses against children are committed by family members or acquaintances, not strangers. *Id.* ¶ 312, Pg.ID# 3790.
- Approximately 95% of sex offenses are committed by individuals who are not registrants. *Id.* ¶ 349, Pg.ID# 3801.
- Individualized actuarial-based risk assessments are far better at predicting recidivism risk than the offense of conviction. *Id.* ¶ 319, Pg.ID# 3792-93.
- Individuals convicted of sex offenses who score as low-risk on actuarial risk assessment instruments have a lower risk level than the baseline general male population (whose risk is about 3%). Over time, even high-risk former offenders drop below the 3% baseline. *Id.* ¶¶ 350-57, Pg.ID# 3801-05.

- Tier classifications do not correspond to the actual risk of recidivism. *Id.* ¶¶ 357-60. Pg.ID# 3804-05.
- Registries that are conviction-based rather than risk-based include many people who are not dangerous, thereby compromising law enforcement’s ability to monitor and the public’s ability to identify those who are truly dangerous. *Id.* ¶¶ 309-10, Pg.ID# 3789-90.

Applying the final *Mendoza-Martinez* factor, the court of appeals again focused on the record evidence, concluding that SORA is excessive in relation to any non-punitive purpose because there is “no evidence in the record that the difficulties the statute imposes on registrants are counterbalanced by any positive effects.” Pet. App. 25a. Some provisions “appear[] to have no relationship to public safety at all” and, in any event, the law’s punitive effects “far exceed even a generous assessment of their salutary effects.” *Id.*

REASONS FOR DENYING THE PETITION

I. THERE IS NO CONFLICT AMONG THE LOWER COURTS, WHICH ARE IN COMPLETE AGREEMENT ABOUT THE LEGAL STANDARD THAT APPLIES.

There is no conflict among the courts of appeals, which universally agree that *Smith* is the controlling legal test. And petitioners cite no case in which a court of appeals has found nonpunitive a set of cumulative obligations comparable to those

imposed here. Instead, in an attempt to manufacture a conflict where there is none, petitioners artificially disaggregate the many obligations imposed by SORA, and argue that if any other court, reviewing a different statute, found a similar provision to be regulatory rather than punitive, the Court should grant review to resolve the disagreement.

That piecemeal approach directly contradicts *Smith*, which requires courts to determine whether a “statutory scheme” is punitive, not whether each individual provision, standing alone, is punishment. 538 U.S. at 92. Moreover, when courts apply the multi-factor *Smith* test, they are likely to reach different results depending on the exact nature of the statutory scheme, which provisions have been challenged, and the strength of the record evidence. That does not show a circuit split, but rather simply shows that courts are applying a universally-accepted test to different statutes and different records.

A. *Smith v. Doe* Requires Review of the Entire Statutory Scheme.

In *Smith*, this Court considered the Alaska statute as a whole, asking whether “the statutory scheme,” the “regulatory scheme,” or “the Act” imposed punishment, in toto. *Smith*, 538 U.S. at 92, 94, 96-97, 99, 104-05. To determine legislative intent the Court looked at “the statute’s text and its structure.” *Id.* at 92. Similarly, this Court applied the *Mendoza-Martinez* factors to the “regulatory scheme.” *Id.* at 97. Thus, the Court considered the entirety of the Alaska statute and “how the effects of the Act are felt by those subject to it.” *Id.* at 99-100

(emphasis added). The Court did not ask whether any one provision was punitive, but whether the statute in its entirety imposed punishment.

Even if an individual obligation, standing alone, might not be punishment, the combined effect of many obligations on an individual may render a statute punitive. Whether a law’s cumulative burdens constitute punishment will depend on how many restrictions it imposes; the duration, magnitude, and interplay of those restraints; the penalties for violations; and the relationship between those restrictions and the state’s public safety goals. For example, whether a court decides that restrictions on employment and housing are punitive may depend on whether those burdens are imposed only on the most dangerous offenders or (as here) on all registrants irrespective of actual risk. Similarly, whether immediate, in-person reporting is punitive may depend on whether registrants must simply verify basic information for a limited time or whether (as here) registrants must comply with highly technical and onerous reporting obligations for life and face lengthy prison sentences for even inadvertent noncompliance. *See, e.g., Doe v. State*, 111 A.3d 1077, 1101 (N.H. 2015) (“Absent the lifetime-registration-without-review provision, we would not find the other effects of the act sufficiently punitive” to constitute punishment).

The importance of a holistic analysis can be seen by comparing *Smith* with this Court’s earlier ex post facto decision in *Kansas v. Hendricks*, 521 U.S. 346 (1997). There, this Court held that civil commitment was not punishment because it “unambiguously

requires a finding of dangerousness,” not just a past conviction, and because the state had “taken great care to confine only a narrow class of particularly dangerous individuals, and then only after meeting the strictest procedural standards.” *Id.* at 357, 364. In *Smith*, this Court held that Alaska’s registration scheme was regulatory, even though it was triggered solely by past convictions without individualized evidence of current risk, because the law imposed only the “minor condition of registration” and simply “allow[ed] the public to assess the risk on the basis of accurate, nonprivate information about the registrants’ convictions.” 538 U.S. at 104.

Thus, whether a statute is punitive or regulatory depends both on the “magnitude of the restraint” and whether any “categorical [conviction-based] judgments” are “reasonable.” *Smith*, 538 U.S. at 103-04. Where, as here, plaintiffs challenge the cumulative effects of an entire statutory scheme on their lives, that determination cannot be made without evaluating the statute in its entirety.

Smith’s focus on the entire “statutory scheme” also makes sense because registrants experience the cumulative effects of the whole statute, not just one provision or another. Plaintiffs do not compartmentalize their lives into the effects of the exclusion zones, the immediate and in-person reporting requirements, and the stigma of being branded as the most dangerous Tier III offenders, and subject to lifetime registration without individualized review. Plaintiffs experience all these effects all at once all the time.

Petitioners disregard *Smith*'s holistic test, and isolate specific subsections of Michigan's law—such as “immediate” and quarterly in-person reporting, exclusion zones, retroactive extension for life, and lack of individualized risk assessments. They claim there is a conflict because other courts have upheld some similar subsections in other laws. All the cases petitioners cite, however, involved either more limited statutes or instances where individuals chose to challenge only certain statutory provisions, rather than the statute as a whole.⁴

⁴ See, e.g., *United States v. Parks*, 698 F.3d 1 (1st Cir. 2012) (challenging only in-person reporting); *Doe v. Cuomo*, 755 F.3d 105 (2d Cir. 2014) (challenging only extension of registration requirements and elimination of ability of certain registrants to petition for relief from registration); *Doe v. Pataki*, 120 F.3d 1263, 1268-69, 1285 (2d Cir. 1997) (challenging only registration requirement and community notification provisions for certain registrants); *Moore v. Avoyelles Corr. Ctr.*, 253 F.3d 870 (5th Cir. 2001) (challenging only community/neighborhood notification); *United States v. Leach*, 639 F.3d 769 (7th Cir. 2011) (challenging only registration requirements); *Weems v. Little Rock Police Dep't*, 453 F.3d 1010, 1013-14 (8th Cir. 2006) (challenging classification procedures and residency restriction based on individualized assessment of high risk); *Doe v. Miller*, 405 F.3d 700 (8th Cir. 2005) (challenging only residency restriction for offenses against minors); *Litmon v. Harris*, 768 F.3d 1237 (9th Cir. 2014) (challenging only in-person reporting); *Shaw v. Patton*, 823 F.3d 556 (10th Cir. 2016) (considering only in-person reporting and residency restrictions); *State v. Worm*, 680 N.W.2d 151 (Neb. 2004) (challenging only registration and community notification); *State v. Peterson-Beard*, 377 P.3d 1127 (Kan. 2016) (challenging only in-person quarterly reporting, lifetime registration and drivers' license marker); *State v. Seering*, 701 N.W.2d 655 (Iowa 2005) (challenging only residency restriction).

None of the cases petitioners cite involves a statute like Michigan’s that combines blanket restrictions on housing and employment, limitations on “loitering” (which encompasses many basic parenting activities), advance notice for travel, life-time in-person and “immediate” reporting of minor status changes, public stigmatization as a “Tier III” most dangerous offender without individualized risk assessments, and labeling individuals as “convicted sex offenders” when they are not.⁵ Indeed, many of the cases petitioners cite emphasize the *absence* of provisions found in Michigan’s law in concluding that the law in question is not punitive.⁶ By contrast,

Only one of the cases petitioners cite, *Shaw v. Patton*, even concerned a challenge to the combined effects of residential exclusion zones and ongoing reporting. But that statute did not limit where registrants can work and the plaintiff failed to preserve a challenge to a loitering prohibition. Nor was there any challenge to offense-based tiering, to the stigmatization of people who did not commit sex offenses (like Doe #1) or to publication of non-conviction information (like Doe #2). Moreover, unlike here, the plaintiff had put forward no evidence to counter the state’s asserted public safety rationales. 823 F.3d at 574.

⁵ Even in discussing particular sub-sections, petitioners conflate statutes with quite different effects. For example, Michigan’s exclusion zones bar not simply living, but also working or “loitering” (including spending time with one’s own children) within 1,000 feet of a school. The exclusion zone cases cited by petitioners involve only residency limitations, not barriers to employment, or “loitering.” Pet. 20.

⁶ See, e.g. *United States v. Under Seal*, 709 F.3d 257, 265 (4th Cir. 2013) (statute “does not restrain activities sex offenders may pursue but leaves them free to change jobs or residences” (quoting *Smith*, 538 U.S. at 100)); *ACLU of Nevada v. Masto*,

courts finding ex post facto violations, like the court of appeals here, have focused on the cumulative impact of statutes that impose multiple, intersecting restrictions.⁷

670 F.3d 1046, 1056 (9th Cir. 2012) (noting that registration law “does not limit the activities that registrants may pursue or limit registrants’ ability to change jobs or residences”); *Hatton v. Bonner*, 356 F.3d 955, 964 (9th Cir. 2003) (in-person registration requirement while “important” was “not enough” to make law punitive “when balanced against” other aspects of statute, such as fact that registration information was not disseminated on the internet); *United States v. WBH*, 664 F.3d 848, 855, 858 (11th Cir. 2011) (in-person reporting alone “not enough” to prove punishment where regulatory regime does not “directly restrict [registrants] mobility, their employment, or how they spend their time”); *Kammerer v. State*, 322 P.3d 827, 837 (Wyo. 2014) (examining “statute in its entirety” and concluding that 21-day-advance notice requirement for international travel was not enough to make entire statute punitive); *RW v. Sanders*, 168 S.W.3d 65, 70 (Mo. 2005) (where statute did not restrict housing, work, or travel, reporting requirement was not punitive).

⁷ See, e.g., *Doe v. State*, 111 A.3d at 1084-1087, 1094 (citing combined effect of publication of registrants’ “victim profiles” and “methods of approach,” as well as extensive reporting requirements including advance reporting of on-line identifiers) (New Hampshire Constitution); *Doe v. Dept. of Public Safety and Corr. Serv.*, 62 A.3d 123, 139-142, 148 (Md. 2013) (combined effects of prohibition on entering specified areas, extensive in-person reporting including advance travel notification, and active email notification of public) (“[T]he cumulative effect of 2009 and 2010 amendments of the State’s sex offender registration law took that law across the line from civil regulation to an element of the punishment of offenders.”) (Maryland Constitution); *State v. Williams*, 952 N.E.2d 1108, 1111-13 (Ohio 2011) (combined effects of residential exclusion zones, designation of some registrants as “sexual predators,” frequent in-person reporting in multiple jurisdictions, and

In sum, petitioners’ proffered “circuit splits” are premised on isolating specific registration provisions, rather than evaluating the different statutory schemes in their totality. There is no circuit split.

B. Reaching Different Results on a Multi-Factor Test for Different Statutes and Different Records Does Not Constitute a Circuit Split.

The flexible nature of the *Mendoza-Martinez* factors shows that there is a sliding scale between remedial and punitive statutes, so that seemingly small differences between otherwise similar laws or even changes to the same law over time can, in the aggregate, tip the balance from remedial to punitive. *Mendoza-Martinez*, 372 U.S. at 168-69. Whether any given law survives under *Smith* depends on the exact

elimination of individualized review) (“When we consider all the changes [to the Act] in aggregate, we conclude that imposing the current registration requirements on a sex offender whose crime was committed prior to the enactment of [the current Act] is punitive.”) (Ohio Constitution); *Wallace v. State*, 905 N.E.2d 371, 375-77, 380 (Ind. 2009) (combined effects of residential exclusion zones, internet designation of some registrants as “sex predators,” ID requirement, expansive reporting requirements, and prior notification of travel) (“Considered as a whole ... [the Act] impose[s] substantial disabilities on registrants.”) (Indiana Constitution); *State v. Letalien*, 985 A.2d 4, 10, 12, 23 (Me. 2009) (finding punitive cumulative effect of 24-hour reporting window, prohibition on contact with children with enhanced penalties in exclusion zones, in-person reporting, and extension of registration from 15 years to life without possibility of waiver) (federal and Maine Constitutions).

nature of the law in question and the record in each case.

As with any multi-factor test, different courts reviewing different statutory schemes on different records are likely to reach different conclusions. This is unsurprising. In weighing the *Mendoza-Martinez* factors, it matters whether the challenged statute is a simple first-generation registry law similar to the Alaska statute in *Smith*, or (as here) is a modern super-registration statute that resembles lifelong probation, labels some registrants as the most dangerous, and severely restricts where registrants can live, work, or spend time with their children. It also matters whether the plaintiffs (as here) have established a record that the challenged statute imposes significant disabilities and restraints while failing to achieve its putative public safety goals. And it matters whether (as here) the plaintiffs challenge the statutory scheme as a whole, or, as in many of the cases petitioners cite, object only to a narrow set of obligations or prohibitions.

Even the same courts can reach different conclusions over time as statutes evolve. Courts that have found modern super-registration laws to be punitive have almost invariably upheld earlier less onerous versions of those same laws as remedial.⁸

⁸ The Sixth Circuit itself has twice upheld simple first-generation registration statutes. *See Doe v. Bredesen*, 507 F.3d 998 (6th Cir. 2007); *Cutshall v. Sundquist*, 193 F.3d 466 (6th Cir. 1999). Petitioners inaccurately state that *Bredesen* upheld lifetime GPS monitoring, Pet. 23, when in fact the law at issue authorized GPS monitoring only “for the duration of [] probation.” 507 F.3d at 1000.

See, e.g. Doe v. State, 111 A.3d at 1100 (“No one amendment or provision is determinative, but the *aggregate effects* of the statute lead us to our decision ... [that] the punitive effects clearly outweigh the regulatory intent of the act.”) (emphasis added); *State v. Williams*, 952 N.E.2d 1108, 1113 (Ohio 2011) (“No one change compels our conclusion that [the statute] is punitive. It is a matter of degree whether a statute is so punitive that its retroactive application is unconstitutional.”); *Wallace*, 905 N.E.2d at 374-77, 384; *Starkey v. Oklahoma Dep’t. of Corr.*, 305 P.3d 1004, 1025 (Okla. 2013).

The most reliable conclusion one can draw from differences in how lower courts have resolved registration cases is that the facts matter. A lot. Compare, for example, three recent cases on residential exclusion zones. The California Supreme Court concluded after an evidentiary hearing that an exclusion zone statute could not survive even rational basis review because the record showed that the law greatly increased homelessness while undermining public safety. *In re Taylor*, 343 P.3d 867, 869 (Cal. 2015). The Tenth Circuit, by contrast, rejected a challenge to a similar residential exclusion zone law in Oklahoma because the plaintiff did “not present any evidence” to counter the state’s assertion that exclusion zones could possibly reduce reoffending. *Shaw v. Patton*, 823 F.3d 556, 574 (10th Cir. 2016). Finally, the Eleventh Circuit—recognizing the central role that facts play in the analysis—recently held that an *ex post facto* challenge to a residential exclusion zone ordinance should proceed to discovery for plaintiffs who had

been left homeless, reversing the district court's dismissal for failure to state a claim. *Doe v. Miami-Dade*, __ F.3d __; 2017 WL 360510 (11th Cir. 2017).

In their brief petitioners do not cite the record even once. The court of appeals, by contrast, emphasized that it was grounding its decision on the evidence before it. And that evidence showed by the "clearest proof" that, weighing the *Mendoza-Martinez* factors, SORA has a punitive effect. Pet. App. 18a-28a; Statement of the Case, *supra*.

In sum, the decisions lower courts reach when applying *Smith* will depend both on the law at issue and on the facts in the record. A range of results should be expected. That is not proof of a circuit split, but merely shows that multi-factor tests do not inevitably lead to the same outcome irrespective of the law and the facts.

II. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH *SMITH V. DOE*.

The court of appeals faithfully applied the legal test set forth in *Smith* to SORA, which imposes substantially more onerous obligations than the Alaska statute upheld there. The statute in *Smith* was a "first generation" registration law that required people convicted of sex offenses to report information and the state to make some of that information available to the public. 538 U.S. at 89-91. The Act did "not restrain activities sex offenders may pursue," and left them "free to change jobs or residences." *Id.* at 100. As detailed above, Michigan's

“super-registration” scheme imposes far more extensive burdens.⁹

In essence, petitioners disagree with how the court of appeals applied the test set forth in *Smith* to the very different statute at issue here. But a lower court’s application of an established test is not a basis for certiorari. So petitioners focus on one minor factor in the court of appeals’ analysis, and argue that the court erred in considering SORA’s lack of individual assessment and publication of non-public information in concluding that SORA resembles the traditional punishment of shaming. Pet. 24-26.

The court of appeals did not rest its determination that SORA is punitive exclusively or even primarily on the absence of individualized consideration and publication of non-public information. The court of appeals’ analogy to shaming was one of three comparisons (alongside comparisons to banishment and probation/parole) that, taken together, led it to conclude that SORA resembles historical and traditional punishments. That finding, in turn, was just one of the five *Mendoza-Martinez* factors this Court identified as relevant in *Smith*. Thus, the “shaming” comparison was, at most, a factor of a factor in the court’s holistic analysis.

⁹ Petitioners argue that the court of appeals should have severed unconstitutional portions of SORA, Pet. 15, but the court could not have done so without engaging in the “quintessentially legislative work” of “rewriting state law,” given that the cumulative effects of SORA are what make it punishment. *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320, 329 (2006).

Even as to the shaming inquiry, there is no inconsistency. The Sixth Circuit asked the same question that this Court asked in *Smith*: is the ostracism registrants experience attributable to the registry statute or to the conviction? In *Smith*, this Court emphasized that “[a]lthough the public availability of the information may have a lasting and painful impact on the convicted sex offender, these consequences flow not from the Act’s registration and dissemination provisions, but from the fact of conviction, *already a matter of public record.*” *Smith*, 538 U.S. at 101 (emphasis added).

SORA, by contrast, does not simply publish accurate conviction information that is “already a matter of public record,” *id.*, but “ascribes and publishes tier classifications corresponding to the state’s estimation of present dangerousness without providing for any individualized assessment.” Pet. App. 20a. Plaintiffs experience stigma not simply because the state is publicizing their convictions, but because the state is *also* identifying them as among the most dangerous Michigan registrants.¹⁰

In addition, the court of appeals noted that SORA, unlike the statute in *Smith*, imposes stigma on plaintiffs that is not attributable to their

¹⁰ Petitioners’ reliance on *Connecticut Dep’t of Public Safety v. Doe*, 538 U.S. 1 (2003), is misplaced. Pet. 25. That case addressed only whether procedural due process requires individualized determinations, and not whether, given “the magnitude of the restraint[s],” *Smith*, 538 U.S. at 104, imposing a law like SORA based solely on past convictions without any individualized proof of dangerousness constitutes punishment under the Ex Post Facto Clause.

convictions. John Doe #1 is stigmatized on the registry as a sex offender even though he did not commit a sex offense. Pet. App. 20a. *See also* JSOF ¶¶ 912-13, 938-39, 994-95, R. 90, Pg.ID# 3944, 3949, 3964 (describing harms based on stigmatization as a sex offender). And John Doe #2 had his charges *dismissed* and record sealed under a diversionary statute for young offenders. But the state’s registry nonetheless falsely lists him as a “convicted” sex offender. Pet. App. 20a. Every consequence he has suffered—losing jobs, housing, and educational opportunities—is solely attributable to SORA. JSOF ¶¶ 914-17, 942, 982, 996, 1003, R. 90, Pg.ID# 3744-45, 3950, 3961, 3964, 3966. Unlike in *Smith*, it is SORA, not any underlying conviction, that inflicts the stigma and its consequences.

In sum, the court of appeals’ determination that SORA resembles shaming is fully consistent with *Smith* because “unlike the statute in *Smith*, the ignominy under SORA flows not only from the past offense, but also from the statute itself.” Pet. App. 20a.

III. THE COURT OF APPEALS’ DECISION DOES NOT PREVENT MICHIGAN FROM SEEKING SORNA-CONTINGENT FUNDING.

Petitioners argue that the court of appeals’ decision will make Michigan ineligible for federal funding under SORNA, which conditions certain federal funding on “substantial compliance” with SORNA. Pet. 26-29. That conclusion is unwarranted.

First, SORA goes beyond what SORNA requires in several respects. SORA's cumulative burdens go beyond SORNA's burdens by imposing onerous limits on living, working, and "loitering" within 1,000 feet of any school, mandating more extensive reporting, levying annual fees, and requiring advance in-person notice for travel of more than a week. Mich. Comp. Laws §§ 28.725(1)(e)-(g), 28.725a(6), 28.734-28.736. The court of appeals' decision addresses only the question of whether SORA's cumulative burdens can be retroactively applied. The constitutionality of SORNA's lesser burdens is simply not at issue here.

Second, Michigan can retain virtually all SORNA-congruent features of its registry, if it so chooses. The court of appeals' decision does not prevent Michigan from having a tiered structure, lifetime registration, in-person reporting, registration of people who are not convicted, registration of people who did not commit sex offenses, or expansive reporting on everything from travel to internet identifiers to borrowed cars. The Sixth Circuit simply held that Michigan cannot apply the cumulative burdens of the current SORA statute *retroactively*.

Petitioners complain that to obtain SORNA-contingent funding Michigan must apply SORNA-congruent registry features retroactively to certain registrants. Pet. 8, 26-27. Of the seventeen states that receive SORNA-contingent funding, however, thirteen deviate from SORNA's retroactivity guide-

lines in some way.¹¹ The federal government has nevertheless deemed them “substantially compliant”¹² and eligible for funding. Moreover, where court injunctions—both federal and state—have barred states from complying with SORNA provisions, the federal government has not withheld funding.¹³

¹¹ The Department of Justice has determined that the following states “substantially implemented SORNA” despite deviating from SORNA’s retroactivity requirements: Alabama, Colorado, Delaware, Florida, Kansas, Louisiana, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee and Wyoming. See Department of Justice Substantial Implementation Reviews, available for each state at smart.gov/sorna-map.htm. The extent of deviation varies based on local factors and, sometimes, court decisions. For example, retroactive application of Kansas’ public notification provisions was enjoined as a violation of the Ex Post Facto Clause in *State v. Myers*, 923 P.2d 1024 (Kan. 1996), and the federal government nevertheless found Kansas eligible for SORNA funding. Department of Justice, SORNA Substantial Implementation Review State of Kansas, at 3 (July 19, 2011), <https://smart.gov/pdfs/sorna/Kansas.pdf>.

¹² Many “substantial implementation” states deviate from SORNA in multiple ways, not just on retroactivity. For example, Colorado was deemed “substantially compliant” despite deviating not just on retroactivity, but also on included offenses, initial registration, reporting requirements, relief from registration, information on public registry, and community notification. See Department of Justice, SORNA Substantial Implementation Review State of Colorado – Revised (Nov. 5, 2013), <https://smart.gov/pdfs/sorna/Colorado.pdf>.

¹³ In determining “substantial compliance” for funding purposes, the Department of Justice has considered not just state court rulings of unconstitutionality (*e.g.*, Kansas), but also federal court rulings (*e.g.*, Nevada) that required states to

Third, SORNA's funding condition merely encourages, and does not compel, states to adopt registration statutes with certain features.¹⁴ 42 U.S.C. § 16925(a); JSOF ¶ 237, R. 90, Pg.ID# 3774. Thirty-three states have decided to forego federal funding rather than implement SORNA,¹⁵ "with many expressing concern over the potential public safety impacts of supplanting established risk-based classification systems with a less discriminating system linked exclusively to conviction offense."¹⁶

deviate from SORNA. See Department of Justice, SORNA Substantial Implementation Review State of Kansas, at 3 (July 19, 2011), <https://smart.gov/pdfs/sorna/Kansas.pdf>; and SORNA Implementation Review State of Nevada, at 1 (Feb. 2011), <https://smart.gov/pdfs/sorna/Nevada%20.pdf>. Under the Department of Justice's National Guidelines for Sex Offender Registration and Notification, 11 (July 2008) the federal government "will consider on a case-by-case basis whether jurisdictions' rules or procedures that do not exactly follow the provisions of SORNA or these Guidelines 'substantially' implement SORNA." See www.smart.gov/guidelines.htm.

¹⁴ For states found not to be "substantially compliant" with SORNA there is a 10% reduction in Byrne Judicial Access Grant funds. In Michigan, the 2016 state Byrne grant allocation was around \$5.2 million. A 10% penalty would be about \$520,000. See Bureau of Justice Statistics, *Justice Assistance Grant Program, 2016*, at 4, <http://www.bjs.gov/content/%20pub/pdf/jagp16.pdf> (last visited Jan. 18, 2017).

¹⁵ See Department of Justice Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking, *SORNA Implementation Status*, www.smart.gov/sorna-map.htm (last visited Jan. 18, 2017).

¹⁶ States using risk-based assessments to classify offenders or to inform the classification process include Arizona, Arkansas, California, Georgia, Massachusetts, Minnesota, Montana, New Jersey, New York, North Dakota, Oregon, Rhode Island, Texas,

Andrew J. Harris, Christopher Lobanov-Rostovsky & Jill S. Levenson, *Widening the Net: The Effects of Transitioning to Adam Walsh Act's Federally Mandated Sex Offender Classification Scheme*, 37 CRIMINAL JUSTICE AND BEHAVIOR 503, 504 (2010). Research shows that risk assessment instruments are far better at predicting recidivism than the offense of conviction, and that risk-based registries may reduce recidivism, while offense-based registries do not. JSOF ¶¶ 319, 496, R. 90, Pg.ID# 3792-93, 3846.

States have also had fiscal concerns about SORNA compliance because “it was determined to be more costly—in every state—to implement SORNA than to lose 10 percent of [affected grant] funding.” Nat'l Conference of State Legislatures, *Cost-Benefit Analyses of SORNA Implementation* (Jan. 2010), R. 92-22, Pg.ID# 5129; see also JSOF ¶¶ 248-50, R. 90, Pg.ID# 3776-77 (discussing state-specific studies showing SORNA implementation costs exceed lost grant funds).

Vermont, and Washington. See e.g., Ariz. Rev. Stat. Ann. § 13-3825 (2016); Ark. Code Ann. § 12-12-917 (2016); Cal. Penal Code § 290.04 (West 2017); Ga. Code Ann. § 42-1-14 (2016); Mass. Gen. Laws ch. 6, §§ 178C-178Q (2015); Minn. Stat. Ann. § 244.052 (2017); Mont. Code Ann. § 46-23-509 (2015); N.J. Stat. Ann. § 2C:7-8 (West 2016); N.Y. Correct. Law § 168-1 (McKinney 2017); N.D. Cent. Code § 12.1-32-15 (2015); Or. Rev. Stat. §§ 163A.100, 163A.105 (2015); R.I. Gen. Laws § 11-37.1-6 (2016); Tex. Code Crim. Proc. Ann. art. 62.007 (West 2016); Vt. Stat. Ann. tit. 13, § 5411b (2016); Wash. Rev. Code §§ 72.09.345, 4.24.550 (2017).

In light of the court of appeals' decision, the Michigan legislature might now decide that it will join the majority of states that have foregone federal funding. Alternatively, Michigan can adopt a non-retroactive, SORNA-congruent registry, and continue to seek SORNA-contingent funding.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

Michigan Sex Offender Registration Act

§ 28.721. Short title

This act shall be known and may be cited as the “Sex Offenders Registration Act”.

§ 28.721a. Legislative declarations; purpose of registration requirements

The legislature declares that the sex offenders registration act was enacted pursuant to the legislature’s exercise of the police power of the state with the intent to better assist law enforcement officers and the people of this state in preventing and protecting against the commission of future criminal sexual acts by convicted sex offenders. The legislature has determined that a person who has been convicted of committing an offense covered by this act poses a potential serious menace and danger to the health, safety, morals, and welfare of the people, and particularly the children, of this state. The registration requirements of this act are intended to provide law enforcement and the people of this state with an appropriate, comprehensive, and effective means to monitor those persons who pose such a potential danger.

§ 28.722. Definitions

As used in this act:

(a) “Aircraft” means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(b) “Convicted” means 1 of the following:

(i) Having a judgment of conviction or a probation order entered in any court having jurisdiction over criminal offenses, including, but not limited to, a tribal court or a military court, and including a conviction subsequently set aside under 1965 PA 213, MCL 780.621 to 780.624.

(ii) Either of the following:

(A) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004. This sub-subparagraph does not apply if a petition was granted under section 8c at any time allowing the individual to discontinue registration under this act, including a reduced registration period that extends to or past July 1, 2011, regardless of the tier designation that would apply on and after that date.

(B) Being assigned to youthful trainee status under sections 11 to 15 of chapter II of the code of criminal procedure, 1927 PA 175, MCL 762.11 to 762.15, before October 1, 2004 if the individual is convicted of any other felony on or after July 1, 2011.

(iii) Having an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28, if both of the following apply:

(A) The individual was 14 years of age or older at the time of the offense.

(B) The order of disposition is for the commission of an offense that would classify the individual as a tier III offender.

(iv) Having an order of disposition or other adjudication in a juvenile matter in another state or country if both of the following apply:

(A) The individual is 14 years of age or older at the time of the offense.

(B) The order of disposition or other adjudication is for the commission of an offense that would classify the individual as a tier III offender.

(c) “Custodial authority” means 1 or more of the following apply:

(i) The actor was a member of the same household as the victim.

(ii) The actor was related to the victim by blood or affinity to the fourth degree.

(iii) The actor was in a position of authority over the victim and used this authority to coerce the victim to submit.

(iv) The actor was a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled.

(v) The actor was an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled, or was a volunteer who was not a student in any public school or nonpublic school, or was an

employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(vi) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, the department of corrections who knew that the other person was under the jurisdiction of the department of corrections and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

(vii) That other person was under the jurisdiction of the department of corrections and the actor was an employee or a contractual employee of, or a volunteer with, a private vendor that operated a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knew that the other person was under the jurisdiction of the department of corrections.

(viii) That other person was a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor was an employee or a contractual employee of, or a volunteer with, the county or the department of corrections who knew that the other person was under the county's jurisdiction and used his or her

position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

(ix) The actor knew or had reason to know that a court had detained the victim in a facility while the victim was awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor was an employee or contractual employee of, or a volunteer with, the facility in which the victim was detained or to which the victim was committed.

(d) “Department” means the department of state police.

(e) “Employee” means an individual who is self-employed or works for any other entity as a full-time or part-time employee, contractual provider, or volunteer, regardless of whether he or she is financially compensated.

(f) “Felony” means that term as defined in section 1 of chapter I of the code of criminal procedure, 1927 PA 174, MCL 761.1.

(g) “Immediately” means within 3 business days.

(h) “Indigent” means an individual to whom 1 or more of the following apply:

(i) He or she has been found by a court to be indigent within the last 6 months.

(ii) He or she qualifies for and receives assistance from the department of human services food assistance program.

- (iii) He or she demonstrates an annual income below the current federal poverty guidelines.
- (i) “Institution of higher education” means 1 or more of the following:
 - (i) A public or private community college, college, or university.
 - (ii) A public or private trade, vocational, or occupational school.
- (j) “Listed offense” means a tier I, tier II, or tier III offense.
- (k) “Local law enforcement agency” means the police department of a municipality.
- (l) “Minor” means a victim of a listed offense who was less than 18 years of age at the time the offense was committed.
- (m) “Municipality” means a city, village, or township of this state.
- (n) “Registering authority” means the local law enforcement agency or sheriff’s office having jurisdiction over the individual’s residence, place of employment, or institution of higher learning, or the nearest department post designated to receive or enter sex offender registration information within a registration jurisdiction.
- (o) “Registration jurisdiction” means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and the Indian tribes within the United States that elect to function as a registration jurisdiction.
- (p) “Residence”, as used in this act, for registration

and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

(q) “Student” means an individual enrolled on a full- or part-time basis in a public or private educational institution, including, but not limited to, a secondary school, trade school, professional institution, or institution of higher education.

(r) “Tier I offender” means an individual convicted of a tier I offense who is not a tier II or tier III offender.

(s) “Tier I offense” means 1 or more of the following:

(i) A violation of section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(ii) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor.

(iii) A violation of section 349b of the Michigan penal code, 1931 PA 328, MCL 750.349b, if the victim is a minor.

(iv) A violation of section 449a(2) of the Michigan

penal code, 1931 PA 328, MCL 750.449a.

(v) A violation of section 520e or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if the victim is 18 years or older.

(vi) A violation of section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

(vii) Any other violation of a law of this state or a local ordinance of a municipality, other than a tier II or tier III offense, that by its nature constitutes a sexual offense against an individual who is a minor.

(viii) An offense committed by a person who was, at the time of the offense, a sexually delinquent person as defined in section 10a of the Michigan penal code, 1931 PA 328, MCL 750.10a.

(ix) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (viii).

(x) An offense substantially similar to an offense described in subparagraphs (i) to (ix) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(t) “Tier II offender” means either of the following:

(i) A tier I offender who is subsequently convicted of another offense that is a tier I offense.

(ii) An individual convicted of a tier II offense who is not a tier III offender.

(u) “Tier II offense” means 1 or more of the following:

(i) A violation of section 145a of the Michigan penal code, 1931 PA 328, MCL 750.145a.

(ii) A violation of section 145b of the Michigan penal code, 1931 PA 328, MCL 750.145b.

(iii) A violation of section 145c(2) or (3) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(iv) A violation of section 145d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.145d, except for a violation arising out of a violation of section 157c of the Michigan penal code, 1931 PA 328, MCL 750.157c.

(v) A violation of section 158 of the Michigan penal code, 1931 PA 328, MCL 750.158, committed against a minor unless either of the following applies:

(A) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation.

(III) The individual is not more than 4 years older than the victim.

(B) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was 16 or 17 years of age at the time of the violation.

(III) The victim was not under the custodial

authority of the individual at the time of the violation.

(vi) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual 13 years of age or older but less than 18 years of age. This subparagraph does not apply if the court determines that either of the following applies:

(A) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was at least 13 years of age but less than 16 years of age at the time of the violation.

(III) The individual is not more than 4 years older than the victim.

(B) All of the following:

(I) The victim consented to the conduct constituting the violation.

(II) The victim was 16 or 17 years of age at the time of the violation.

(III) The victim was not under the custodial authority of the individual at the time of the violation.

(vii) A violation of section 462e(a) of the Michigan penal code, 1931 PA 328, MCL 750.462e.

(viii) A violation of section 448 of the Michigan penal code, 1931 PA 328, MCL 750.448, if the victim is a minor.

- (ix) A violation of section 455 of the Michigan penal code, 1931 PA 328, MCL 750.455.
 - (x) A violation of section 520c, 520e, or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e, and 750.520g, committed against an individual 13 years of age or older but less than 18 years of age.
 - (xi) A violation of section 520c committed against an individual 18 years of age or older.
 - (xii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (xi).
 - (xiii) An offense substantially similar to an offense described in subparagraphs (i) to (xii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.
- (v) “Tier III offender” means either of the following:
- (i) A tier II offender subsequently convicted of a tier I or II offense.
 - (ii) An individual convicted of a tier III offense.
- (w) “Tier III offense” means 1 or more of the following:
- (i) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual less than 13 years of age.
 - (ii) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, committed against a minor.

- (iii) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350.
- (iv) A violation of section 520b, 520d, or 520g(1) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and 750.520g. This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.
- (v) A violation of section 520c or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed against an individual less than 13 years of age.
- (vi) A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age.
- (vii) An attempt or conspiracy to commit an offense described in subparagraphs (i) to (vi).
- (viii) An offense substantially similar to an offense described in subparagraphs (i) to (vii) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.
- (x) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

(y) "Vessel" means that term as defined in section 44501 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.44501.

§ 28.723. Registration requirements, generally; registration of and reporting by nonresidents; photographs

(1) Subject to subsection (2), the following individuals who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act:

(a) An individual who is convicted of a listed offense after October 1, 1995.

(b) An individual convicted of a listed offense on or before October 1, 1995 if on October 1, 1995 he or she is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or under the jurisdiction of the juvenile division of the probate court or the department of human services for that offense or is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, placed under the jurisdiction of the juvenile division of the probate court or family division of circuit court, or committed to the department of human services after October 1, 1995 for that offense.

(c) An individual convicted on or before October 1, 1995 of an offense described in section 2(d)(vi) as added by 1994 PA 295 if on October 1, 1995 he or she is on probation or parole that has been transferred to this state for that offense or his or her probation or parole is transferred to this state

after October 1, 1995 for that offense.

(d) An individual from another state who is required to register or otherwise be identified as a sex or child offender or predator under a comparable statute of that state.

(e) An individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted of any other felony on or after July 1, 2011.

(2) An individual convicted of an offense added on September 1, 1999 to the definition of listed offense is not required to be registered solely because of that listed offense unless 1 of the following applies:

(a) The individual is convicted of that listed offense on or after September 1, 1999.

(b) On September 1, 1999, the individual is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, under the jurisdiction of the family division of circuit court, or committed to the department of human services for that offense or the individual is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, placed under the jurisdiction of the family division of circuit court, or committed to the department of human services on or after September 1, 1999 for that offense.

(c) On September 1, 1999, the individual is on probation or parole for that offense which has been transferred to this state or the individual's probation or parole for that offense is transferred

to this state after September 1, 1999.

(d) On September 1, 1999, in another state or country the individual is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections or a similar type of state agency, under the jurisdiction of a court that handles matters similar to those handled by the family division of circuit court in this state, or committed to an agency with the same authority as the department of human services for that offense.

(3) A nonresident who is convicted in this state on or after July 1, 2011 of committing a listed offense who is not otherwise described in subsection (1) shall nevertheless register under this act. However, the continued reporting requirements of this act do not apply to the individual while he or she remains a nonresident and is not otherwise required to report under this act. The individual shall have his or her photograph taken under section 5a.

§ 28.723a. Registration exemptions; procedure for adjudication

(1) If an individual pleads guilty to or is found guilty of a listed offense or is adjudicated as a juvenile as being responsible for a listed offense but alleges that he or she is not required to register under this act because section 2(u)(v) or (vi) applies or section 2(w)(iv) applies, and the prosecuting attorney disputes that allegation, the court shall conduct a hearing on the matter before sentencing or disposition to determine whether the individual is required to register under this act.

(2) The individual has the burden of proving by a

preponderance of the evidence in a hearing under this section that his or her conduct falls within the exceptions described in subsection (1) and that he or she is therefore not required to register under this act.

(3) The rules of evidence, except for those pertaining to privileges and protections set forth in section 520j of the Michigan penal code, 1931 PA 328, MCL 750.520j, do not apply to a hearing under this section.

(4) The prosecuting attorney shall give the victim notice of the date, time, and place of the hearing.

(5) The victim of the offense has the following rights in a hearing under this section:

(a) To submit a written statement to the court.

(b) To attend the hearing and to make a written or oral statement to the court.

(c) To refuse to attend the hearing.

(d) To attend the hearing but refuse to testify or make a statement at the hearing.

(6) The court's decision excusing or requiring the individual to register is a final order of the court and may be appealed by the prosecuting attorney or the individual as a matter of right.

(7) This section applies to criminal and juvenile cases pending on July 1, 2011 and to criminal and juvenile cases brought on and after that date.

§ 28.724. Registration procedure

(1) Registration of an individual under this act shall proceed as provided in this section.

(2) For an individual convicted of a listed offense on or before October 1, 1995 who on or before October 1, 1995 is sentenced for that offense, has a disposition entered for that offense, or is assigned to youthful trainee status for that offense, the following shall register the individual by December 31, 1995:

(a) If the individual is on probation for the listed offense, the individual's probation agent.

(b) If the individual is committed to jail for the listed offense, the sheriff or his or her designee.

(c) If the individual is under the jurisdiction of the department of corrections for the listed offense, the department of corrections.

(d) If the individual is on parole for the listed offense, the individual's parole agent.

(e) If the individual is within the jurisdiction of the juvenile division of the probate court or the department of social services under an order of disposition for the listed offense, the juvenile division of the probate court or the department of social services.

(3) Except as provided in subsection (4), for an individual convicted of a listed offense on or before October 1, 1995:

(a) If the individual is sentenced for that offense after October 1, 1995 or assigned to youthful trainee status after October 1, 1995, the probation agent shall register the individual before sentencing or assignment.

(b) If the individual's probation or parole is transferred to this state after October 1, 1995, the probation or parole agent shall register the

individual immediately after the transfer.

(c) If the individual is placed within the jurisdiction of the juvenile division of the probate court or family division of circuit court or committed to the department of social services or family independence agency under an order of disposition entered after October 1, 1995, the juvenile division of the probate court or family division of circuit court shall register the individual before the order of disposition is entered.

(4) For an individual convicted on or before September 1, 1999 of an offense that was added on September 1, 1999 to the definition of listed offense, the following shall register the individual:

(a) If the individual is on probation or parole on September 1, 1999 for the listed offense, the individual's probation or parole agent not later than September 12, 1999.

(b) If the individual is committed to jail on September 1, 1999 for the listed offense, the sheriff or his or her designee not later than September 12, 1999.

(c) If the individual is under the jurisdiction of the department of corrections on September 1, 1999 for the listed offense, the department of corrections not later than November 30, 1999.

(d) If the individual is within the jurisdiction of the family division of circuit court or committed to the family independence agency or county juvenile agency on September 1, 1999 under an order of disposition for the listed offense, the family division of circuit court, the family

independence agency, or the county juvenile agency not later than November 30, 1999.

(e) If the individual is sentenced or assigned to youthful trainee status for that offense after September 1, 1999, the probation agent shall register the individual before sentencing or assignment.

(f) If the individual's probation or parole for the listed offense is transferred to this state after September 1, 1999, the probation or parole agent shall register the individual within 14 days after the transfer.

(g) If the individual is placed within the jurisdiction of the family division of circuit court or committed to the family independence agency for the listed offense after September 1, 1999, the family division of circuit court shall register the individual before the order of disposition is entered.

(5) Subject to section 3, an individual convicted of a listed offense in this state after October 1, 1995 and an individual who was previously convicted of a listed offense for which he or she was not required to register under this act, but who is convicted of any other felony on or after July 1, 2011, shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status for that listed offense or that other felony. The probation agent or the family division of circuit court shall give the individual the registration form after the individual is convicted, explain the duty to register and accept the completed registration for processing under section 6. The court shall not impose sentence, enter

the order of disposition, or assign the individual to youthful trainee status, until it determines that the individual's registration was forwarded to the department as required under section 6.

(6) All of the following shall register with the local law enforcement agency, sheriff's department, or the department immediately after becoming domiciled or temporarily residing, working, or being a student in this state:

(a) Subject to section 3(1), an individual convicted in another state or country on or after October 1, 1995 of a listed offense as defined before September 1, 1999.

(b) Subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses.

(c) Subject to section 3(1), an individual convicted in another state or country of a listed offense before October 1, 1995 and, subject to section 3(2), an individual convicted in another state or country of an offense added on September 1, 1999 to the definition of listed offenses, who is convicted of any other felony on or after July 1, 2011.

(d) An individual required to be registered as a sex offender in another state or country regardless of when the conviction was entered.

(7) If a prosecution or juvenile proceeding is pending on July 1, 2011, whether the defendant in a criminal case or the minor in a juvenile proceeding is required to register under this act shall be determined on the basis of the law in effect on July 1, 2011.

§ 28.724a. Reporting by individuals associated with institutions of higher education

(1) An individual required to be registered under this act who is not a resident of this state shall report his or her status in person to the registering authority having jurisdiction over a campus of an institution of higher education if either of the following occurs:

(a) The individual is or enrolls as a student with that institution of higher education or the individual discontinues that enrollment.

(b) As part of his or her course of studies at an institution of higher education in this state, the individual is present at any other location in this state, another state, a territory or possession of the United States, or the individual discontinues his or her studies at that location.

(2) An individual required to be registered under this act who is a resident of this state shall report his or her status in person to the registering authority having jurisdiction where his or her new residence or domicile is located if any of the events described under subsection (1) occur.

(3) The report required under subsections (1) and (2) shall be made as follows:

(a) For an individual registered under this act before October 1, 2002 who is required to make his or her first report under subsections (1) and (2), not later than January 15, 2003.

(b) Immediately after he or she enrolls or discontinues his or her enrollment as a student on that campus including study in this state or another state, a territory or possession of the

United States, or another country.

(4) The additional registration reports required under this section shall be made in the time periods described in section 5a(2)(a) to (c) for reports under that section.

(5) The local law enforcement agency, sheriff's department, or department post to which an individual reports under this section shall require the individual to pay the registration fee required under section 5a or section 7(1) and to present written documentation of employment status, contractual relationship, volunteer status, or student status. Written documentation under this subsection may include, but need not be limited to, any of the following:

(a) A W-2 form, pay stub, or written statement by an employer.

(b) A contract.

(c) A student identification card or student transcript.

(6) This section does not apply to an individual whose enrollment and participation at an institution of higher education is solely through the mail or the internet from a remote location.

§ 28.725. Reporting requirements for persons required to register, generally; notice of transfer or release of incarcerated offender; calculation of registration and reporting periods

(1) An individual required to be registered under this act who is a resident of this state shall report in

person and notify the registering authority having jurisdiction where his or her residence or domicile is located immediately after any of the following occur:

- (a) The individual changes or vacates his or her residence or domicile.
- (b) The individual changes his or her place of employment, or employment is discontinued.
- (c) The individual enrolls as a student with an institution of higher education, or enrollment is discontinued.
- (d) The individual changes his or her name.
- (e) The individual intends to temporarily reside at any place other than his or her residence for more than 7 days.
- (f) The individual establishes any electronic mail or instant message address, or any other designations used in internet communications or postings.
- (g) The individual purchases or begins to regularly operate any vehicle, and when ownership or operation of the vehicle is discontinued.
- (h) Any change required to be reported under section 4a.

(2) An individual required to be registered under this act who is not a resident of this state but has his or her place of employment in this state shall report in person and notify the registering authority having jurisdiction where his or her place of employment is located or the department post of the individual's place of employment immediately after the

individual changes his or her place of employment or employment is discontinued.

(3) If an individual who is incarcerated in a state correctional facility and is required to be registered under this act is granted parole or is due to be released upon completion of his or her maximum sentence, the department of corrections, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(4) If an individual who is incarcerated in a county jail and is required to be registered under this act is due to be released from custody, the sheriff's department, before releasing the individual, shall provide notice of the location of the individual's proposed place of residence or domicile to the department of state police.

(5) Immediately after either of the following occurs, the department of corrections shall notify the local law enforcement agency or sheriff's department having jurisdiction over the area to which the individual is transferred or the department post of the transferred residence or domicile of an individual required to be registered under this act:

(a) The individual is transferred to a community residential program.

(b) The individual is transferred into a level 1 correctional facility of any kind, including a correctional camp or work camp.

(6) An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having

jurisdiction where his or her residence or domicile is located immediately before he or she changes his or her domicile or residence to another state. The individual shall indicate the new state and, if known, the new address. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state.

(7) An individual required to be registered under this act who is a resident of this state shall report in person and notify the registering authority having jurisdiction where his or her residence or domicile is located not later than 21 days before he or she changes his or her domicile or residence to another country or travels to another country [for more than 7 days. The individual shall state the new country of residence or country of travel and the address of his or her new domicile or residence or place of stay, if known. The department shall update the registration and compilation databases and promptly notify the appropriate law enforcement agency and any applicable sex or child offender registration authority.

(8) If the probation or parole of an individual required to be registered under this act is transferred to another state or an individual required to be registered under this act is transferred from a state correctional facility to any correctional facility or probation or parole in another state, the department of corrections shall promptly notify the department and the appropriate law enforcement agency and any applicable sex or child offender registration authority in the new state. The department shall update the

registration and compilation databases.

(9) An individual registered under this act shall comply with the verification procedures and proof of residence procedures prescribed in sections 4a and 5a.

(10) Except as otherwise provided in this section and section 8c, a tier I offender shall comply with this section for 15 years.

(11) Except as otherwise provided in this section and section 8c, a tier II offender shall comply with this section for 25 years.

(12) Except as otherwise provided in this section and section 8c, a tier III offender shall comply with this section for life.

(13) The registration periods under this section exclude any period of incarceration for committing a crime and any period of civil commitment.

(14) For an individual who was previously convicted of a listed offense for which he or she was not required to register under this act but who is convicted of any felony on or after July 1, 2011, any period of time that he or she was not incarcerated for that listed offense or that other felony and was not civilly committed counts toward satisfying the registration period for that listed offense as described in this section. If those periods equal or exceed the registration period described in this section, the individual has satisfied his or her registration period for the listed offense and is not required to register under this act. If those periods are less than the registration period described in this section for that listed offense, the individual shall comply with this section for the period of time remaining.

§ 28.725a. Notice to registered individual; explanation of duties; duties of department; reporting requirements; duties of officer or authorized employee; registration fee; maintenance of license of identification card; photograph; failure to register

(1) The department shall mail a notice to each individual registered under this act who is not in a state correctional facility explaining the individual's duties under this act as amended.

(2) Upon the release of an individual registered under this act who is in a state correctional facility, the department of corrections shall provide written notice to that individual explaining his or her duties under this section and this act as amended and the procedure for registration, notification, and verification and payment of the registration fee prescribed under subsection (6) or section 7(1). The individual shall sign and date the notice. The department of corrections shall maintain a copy of the signed and dated notice in the individual's file. The department of corrections shall forward the original notice to the department immediately, regardless of whether the individual signs it.

(3) Subject to subsection (4), an individual required to be registered under this act who is not incarcerated shall report in person to the registering authority where he or she is domiciled or resides for verification of domicile or residence as follows:

(a) If the individual is a tier I offender, the individual shall report once each year during the individual's month of birth.

(b) If the individual is a tier II offender, the individual shall report twice each year according to the following schedule:

<u>Birth Month</u>	<u>Reporting Months</u>
January	January and July
February	February and August
March	March and September
April	April and October
May	May and November
June	June and December
July	January and July
August	February and August
September	March and September
October	April and October
November	May and November
December	June and December

(c) If the individual is a tier III offender, the individual shall report 4 times each year according to the following schedule:

<u>Birth Month</u>	<u>Reporting Months</u>
January	January, April, July, and October

February	February, May, August, and November
March	March, June, September, and December
April	April, July, October, and January
May	May, August, November, and February
June	June, September, December, and March
July	July, October, January, and April
August	August, November, February, and May
September	September, December, March, and June
October	October, January, April, and July
November	November, February, May, and August
December	December, March, June, and September

(4) A report under subsection (3) shall be made no earlier than the first day or later than the last day of the month in which the individual is required to

report. However, if the registration period for that individual expires during the month in which he or she is required to report under this section, the individual shall report during that month on or before the date his or her registration period expires. When an individual reports under subsection (3), the individual shall review all registration information for accuracy.

(5) When an individual reports under subsection (3), an officer or authorized employee of the registering authority shall verify the individual's residence or domicile and any information required to be reported under section 4a. The officer or authorized employee shall also determine whether the individual's photograph required under this act matches the appearance of the individual sufficiently to properly identify him or her from that photograph. If not, the officer or authorized employee shall require the individual to immediately obtain a current photograph under this section. When all of the verification information has been provided, the officer or authorized employee shall review that information with the individual and make any corrections, additions, or deletions the officer or authorized employee determines are necessary based on the review. The officer or authorized employee shall sign and date a verification receipt. The officer or authorized employee shall give a copy of the signed receipt showing the date of verification to the individual. The officer or authorized employee shall forward verification information to the department in the manner the department prescribes. The department shall revise the law enforcement database and public internet website maintained under section 8 as necessary and shall indicate

verification in the public internet website maintained under section 8(2).

(6) Except as otherwise provided in section 5b, an individual who reports as prescribed under subsection (3) shall pay a \$50.00 registration fee as follows:

(a) Upon initial registration.

(b) Annually following the year of initial registration. The payment of the registration fee under this subdivision shall be made at the time the individual reports in the first reporting month for that individual as set forth in subsection (3) of each year in which the fee applies, unless an individual elects to prepay an annual registration fee for any future year for which an annual registration fee is required. Prepaying any annual registration fee shall not change or alter the requirement of an individual to report as set forth in subsection (3). The payment of the registration fee under this subdivision is not required to be made for any registration year that has expired before January 1, 2014 or to be made by any individual initially required to register under this act after January 1, 2019. The registration fee required to be paid under this subdivision shall not be prorated on grounds that the individual will complete his or her registration period after the month in which the fee is due.

(c) The sum of the amounts required to be paid under subdivisions (a) and (b) shall not exceed \$550.00.

(7) An individual required to be registered under this act shall maintain either a valid operator's or

chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, with the individual's current address. The license or card may be used as proof of domicile or residence under this section. In addition, the officer or authorized employee may require the individual to produce another document bearing his or her name and address, including, but not limited to, voter registration or a utility or other bill. The department may specify other satisfactory proof of domicile or residence.

(8) An individual registered under this act who is incarcerated shall report to the secretary of state under this subsection immediately after he or she is released to have his or her digitalized photograph taken. The individual is not required to report under this subsection if he or she had a digitized photograph taken for an operator's or chauffeur's license or official state personal identification card before January 1, 2000, or within 2 years before he or she is released unless his or her appearance has changed from the date of that photograph. Unless the person is a nonresident, the photograph shall be used on the individual's operator's or chauffeur's license or official state personal identification card. The individual shall have a new photograph taken when he or she renews the license or identification card as provided by law, or as otherwise provided in this act. The secretary of state shall make the digitized photograph available to the department for a registration under this act.

(9) If an individual does not report under this section

or under section 4a, the department shall notify all registering authorities as provided in section 8a⁵ and initiate enforcement action as set forth in that section.

(10) The department shall prescribe the form for the notices and verification procedures required under this section.

§ 28.725b. Disposition of registration fee; sex offenders registration fund; waiver of fee; payment of fee

(1) Of the money collected by a court, local law enforcement agency, sheriff's department, or department post from each registration fee prescribed under this act, \$30.00 shall be forwarded to the department, which shall deposit the money in the sex offenders registration fund created under subsection (2), and \$20.00 shall be retained by the court, local law enforcement agency, sheriff's department, or department post.

(2) The sex offenders registration fund is created as a separate fund in the department of treasury. The state treasurer shall credit the money received from the payment of the registration fee prescribed under this act to the sex offenders registration fund. Money credited to the fund shall only be used by the department for training concerning, and the maintenance and automation of, the law enforcement database, public internet website, information required under section 8, or notification and offender registration duties under section 4a. Money in the sex offenders registration fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(3) If an individual required to pay a registration fee under this act is indigent, the registration fee shall be waived for a period of 90 days. The burden is on the individual claiming indigence to prove the fact of indigence to the satisfaction of the local law enforcement agency, sheriff's department, or department post where the individual is reporting.

(4) Payment of the registration fee prescribed under this act shall be made in the form and by means prescribed by the department. Upon payment of the registration fee prescribed under this act, the officer or employee shall forward verification of the payment to the department in the manner the department prescribes. The department shall revise the law enforcement database and public internet website maintained under section 8 as necessary and shall indicate verification of payment in the law enforcement database under section 8(1).

§ 28.725c. Collection of fees by department of corrections

The department of corrections shall not collect any fee prescribed under this act.

§ 28.726. Furnishing of copy of registration or notice to individual and department

(1) The officer, court, or agency registering an individual or receiving or accepting a registration under section 4 or receiving notice under section 5(1) shall provide the individual with a copy of the registration or notification at the time of registration or notice.

(2) The officer, court, or agency registering an individual or receiving or accepting a registration

under section 4 or notified of an address change under section 5(1) shall forward the registration or notification to the department in a manner prescribed by the department immediately after registration or notification.

§ 28.727. Registration; execution; disposition; fee; contents; form; forwarding or registration, notice, and verification to law enforcement agencies and other jurisdictions

(1) Registration information obtained under this act shall be forwarded to the department in the format the department prescribes. Except as provided in section 5b(3), a \$50.00 registration fee shall accompany each original registration. All of the following information shall be obtained or otherwise provided for registration purposes:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known. An individual who is in a witness protection and relocation program is only required to use the name and identifying information reflecting his or her new identity in a registration under this act. The registration and compilation databases shall not contain any information identifying the individual's prior identity or locale.

(b) The individual's social security number and any social security numbers or alleged social security numbers previously used by the individual.

(c) The individual's date of birth and any alleged dates of birth previously used by the individual.

(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection shall identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the person spends or will spend the majority of his or her time.

(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days. Information under this subdivision shall include the dates the lodging is used or to be used.

(f) The name and address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection shall include the address or location of employment if different from the address of the employer. If the individual lacks a fixed employment location, the information obtained under this subdivision shall include the general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment.

(g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private

postsecondary school or school of higher education, including a trade school.

(h) All telephone numbers registered to the individual or routinely used by the individual.

(i) All electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and all login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.

(j) The license plate number, registration number, and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual and the location at which the motor vehicle, aircraft, or vessel is habitually stored or kept.

(k) The individual's driver license number or state personal identification card number.

(l) A digital copy of the individual's passport and other immigration documents.

(m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.

(n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.

(o) A complete physical description of the individual.

- (p) The photograph required under section 5a.
 - (q) The individual's fingerprints if not already on file with the department and the individual's palm prints. An individual required to be registered under this act shall have his or her fingerprints or palm prints or both taken not later than September 12, 2011 if his or her fingerprints or palm prints are not already on file with the department. The department shall forward a copy of the individual's fingerprints and palm prints to the federal bureau of investigation if not already on file with that bureau.
 - (r) Information that is required to be reported under section 4a.
- (2) A registration shall contain all of the following:
- (a) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the photograph required under this act.
 - (b) The text of the provision of law that defines the criminal offense for which the sex offender is registered.
 - (c) Any outstanding arrest warrant information.
 - (d) The individual's tier classification.
 - (e) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile has been entered into the federal combined DNA index system (CODIS).
 - (f) The individual's complete criminal history record, including the dates of all arrests and convictions.

(g) The individual's Michigan department of corrections number and status of parole, probation, or supervised release.

(h) The individual's federal bureau of investigation number.

(3) The form used for notification of duties under this act shall contain a written statement that explains the duty of the individual being registered to provide notice of changes in his or her registration information, the procedures for providing that notice, and the verification procedures under section 5a.

(4) The individual shall sign a registration and notice. However, the registration and notice shall be forwarded to the department regardless of whether the individual signs it or pays the registration fee required under subsection (1).

(5) The officer, court, or an employee of the agency registering the individual or receiving or accepting a registration under section 4 shall sign the registration form.

(6) An individual shall not knowingly provide false or misleading information concerning a registration, notice, or verification.

(7) The department shall prescribe the form for a notification required under section 5 and the format for forwarding the notification to the department.

(8) The department shall promptly provide registration, notice, and verification information to the federal bureau of investigation and to local law enforcement agencies, sheriff's departments, department posts, and other registering jurisdictions, as provided by law.

§ 28.728. Law enforcement database of registrations and notices; contents; public internet website; availability; removal

(1) The department shall maintain a computerized law enforcement database of registrations and notices required under this act. The law enforcement database shall contain all of the following information for each individual registered under this act:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.

(b) The individual's social security number and any social security numbers or alleged social security numbers previously used by the individual.

(c) The individual's date of birth and any alleged dates of birth previously used by the individual.

(d) The address where the individual resides or will reside. If the individual does not have a residential address, information under this subsection shall identify the location or area used or to be used by the individual in lieu of a residence or, if the individual is homeless, the village, city, or township where the individual spends or will spend the majority of his or her time.

(e) The name and address of any place of temporary lodging used or to be used by the individual during any period in which the individual is away, or is expected to be away, from his or her residence for more than 7 days.

Information under this subdivision shall include the dates the lodging is used or to be used.

(f) The name and address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection shall include the address or location of employment if different from the address of the employer.

(g) The name and address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, "school" means a public or private postsecondary school or school of higher education, including a trade school.

(h) All telephone numbers registered to the individual or routinely used by the individual.

(i) All electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and all login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.

(j) The license plate number or registration number and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual and the location at which the motor vehicle, aircraft, or vessel is habitually stored or kept.

(k) The individual's driver license number or state personal identification card number.

- (l) A digital copy of the individual's passport and other immigration documents.
- (m) The individual's occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.
- (n) A brief summary of the individual's convictions for listed offenses regardless of when the conviction occurred, including where the offense occurred and the original charge if the conviction was for a lesser offense.
- (o) A complete physical description of the individual.
- (p) The photograph required under section 5a.
- (q) The individual's fingerprints and palm prints.
- (r) An electronic copy of the offender's Michigan driver license or Michigan personal identification card, including the photograph required under this act.
- (s) The text of the provision of law that defines the criminal offense for which the sex offender is registered.
- (t) Any outstanding arrest warrant information.
- (u) The individual's tier classification and registration status.
- (v) An identifier that indicates whether a DNA sample has been collected and any resulting DNA profile has been entered into the federal combined DNA index system (CODIS).
- (w) The individual's complete criminal history

record, including the dates of all arrests and convictions.

(x) The individual's Michigan department of corrections number and the status of his or her parole, probation, or release.

(y) The individual's federal bureau of investigation number.

(2) The department shall maintain a public internet website separate from the law enforcement database described in subsection (1) to implement section 10(2) and (3). Except as provided in subsection (4), the public internet website shall contain all of the following information for each individual registered under this act:

(a) The individual's legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.

(b) The individual's date of birth.

(c) The address where the individual resides. If the individual does not have a residential address, information under this subsection shall identify the village, city, or township used by the individual in lieu of a residence.

(d) The address of each of the individual's employers. For purposes of this subdivision, "employer" includes a contractor and any individual who has agreed to hire or contract with the individual for his or her services. Information under this subsection shall include the address or location of employment if different from the address of the employer.

- (e) The address of any school being attended by the individual and any school that has accepted the individual as a student that he or she plans to attend. For purposes of this subdivision, “school” means a public or private postsecondary school or school of higher education, including a trade school.
 - (f) The license plate number or registration number and description of any motor vehicle, aircraft, or vessel owned or regularly operated by the individual.
 - (g) A brief summary of the individual’s convictions for listed offenses regardless of when the conviction occurred.
 - (h) A complete physical description of the individual.
 - (i) The photograph required under this act. If no photograph is available, the department shall use an arrest photograph or Michigan department of corrections photograph until a photograph as prescribed in section 5a becomes available.
 - (j) The text of the provision of law that defines the criminal offense for which the sex offender is registered.
 - (k) The individual’s registration status.
 - (l) The individual’s tier classification.
- (3) The following information shall not be made available on the public internet website described in subsection (2):
- (a) The identity of any victim of the offense.
 - (b) The individual’s social security number.

- (c) Any arrests not resulting in a conviction.
 - (d) Any travel or immigration document numbers.
 - (e) Any electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and any login names or other identifiers used by the individual when using any electronic mail address or instant messaging system.
 - (f) The individual's driver license number or state personal identification card number.
- (4) The public internet website described in subsection (2) shall not include the following individuals:
- (a) An individual registered solely because he or she had 1 or more dispositions for a listed offense entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, in a case that was not designated as a case in which the individual was to be tried in the same manner as an adult under section 2d of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2d.
 - (b) An individual registered solely because he or she was the subject of an order of disposition or other adjudication in a juvenile matter in another state or country.
 - (c) An individual registered solely because he or she was convicted of a single tier I offense, other than an individual who was convicted of a violation of any of the following:
 - (i) Section 145c(4) of the Michigan penal code, 1931 PA 328, MCL 750.145c.

(ii) A violation of section 335a(2)(b) of the Michigan penal code, 1931 PA 328, MCL 750.335a, if a victim is a minor.

(iii) Section 349b of the Michigan penal code, 1931 PA 328, MCL 750. 349b, if the victim is a minor.

(iv) Section 539j of the Michigan penal code, 1931 PA 328, MCL 750.539j, if a victim is a minor.

(v) An offense substantially similar to an offense described in subparagraphs (i) to (v) under a law of the United States that is specifically enumerated in 42 USC 16911, under a law of any state or any country, or under tribal or military law.

(5) The compilation of individuals shall be indexed alphabetically by village, city, township, and county, numerically by zip code area, and geographically as determined appropriate by the department.

(6) The department shall update the public internet website with new registrations, deletions from registrations, and address changes at the same time those changes are made to the law enforcement database described in subsection (1). The department shall make the law enforcement database available to each department post, local law enforcement agency, and sheriff's department by the law enforcement information network. Upon request by a department post, local law enforcement agency, or sheriff's department, the department shall provide to that post, agency, or sheriff's department the information from the law enforcement database in printed form for the designated areas located in

whole or in part within the post's, agency's, or sheriff's department's jurisdiction. The department shall provide the ability to conduct a computerized search of the law enforcement database and the public internet website based upon the name and campus location of an institution of higher education.

(7) The department shall make the law enforcement database available to a department post, local law enforcement agency, or sheriff's department by electronic, computerized, or other similar means accessible to the post, agency, or sheriff's department. The department shall make the public internet website available to the public by electronic, computerized, or other similar means accessible to the public. The electronic, computerized, or other similar means shall provide for a search by name, village, city, township, and county designation, zip code, and geographical area.

(8) If a court determines that the public availability under section 10 of any information concerning individuals registered under this act violates the constitution of the United States or this state, the department shall revise the public internet website described in subsection (2) so that it does not contain that information.

(9) If the department determines that an individual has completed his or her registration period, including a registration period reduced by law under 2011 PA 18, or that he or she otherwise is no longer required to register under this act, the department shall remove the individual's registration information from both the law enforcement database and the public internet website within 7 days after

making that determination.

(10) If the individual provides the department with documentation showing that he or she is required to register under this act for a violation that has been set aside under 1965 PA 213, MCL 780.621 to 780.624, or that has been otherwise expunged, the department shall note on the public internet website that the violation has been set aside or expunged.

§ 28.728a. Proceedings upon failure of individual to register or update registration information

(1) If an individual fails to register or to update his or her registration information as required under this act, the local law enforcement agency, sheriff's office, or department post responsible for registering the individual or for verifying and updating his or her registration information shall do all of the following immediately after the date the individual was required to register or to update his or her registration information:

(a) Determine whether the individual has absconded or is otherwise unlocatable.

(b) If the registering authority was notified by a registration jurisdiction that the individual was to appear in order to register or update his or her registration information in the jurisdiction of the registering authority, notify the department in a manner prescribed by the department that the individual failed to appear as required.

(c) Revise the information in the registry to reflect that the individual has absconded or is otherwise unlocatable.

(d) Seek a warrant for the individual's arrest if the legal requirements for obtaining a warrant are satisfied.

(e) Enter the individual into the national crime information center wanted person file if the requirements for entering information into that file are met.

(2) If an individual fails to register or to update his or her registration information as required under this act, the department shall do all of the following immediately after being notified by the registering authority that the individual failed to appear as required:

(a) Notify that other registration jurisdiction that the individual failed to appear as required.

(b) Notify the United States marshal's service in the manner required by the United States marshal's service of the individual's failure to appear as required.

(c) Update the national sex offender registry to reflect the individual's status as an absconder or as unlocatable.

§ 28.728b. Repealed by P.A.2004, No. 240, § 1, Eff. Oct. 1, 2004

§ 28.728c. Proceedings for discontinuance of registration

(1) An individual classified as a tier I offender who meets the requirements of subsection (12) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act.

(2) An individual classified as a tier III offender who meets the requirements of subsection (13) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act.

(3) An individual classified as a tier I, tier II, or tier III offender who meets the requirements of subsection (14) or (15) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act.

(4) This section is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act. This subsection does not prohibit an appeal of the conviction or sentence as otherwise provided by law or court rule. A petition filed under this section shall be filed in the court in which the individual was convicted of committing the listed offense. However, if the conviction occurred in another state or country and the individual is a resident of this state, the individual may file a petition in the circuit court in the county of his or her residence for an order allowing him or her to discontinue registration under this act only. A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing.

(5) A petition filed under this section shall be made under oath and shall contain all of the following:

- (a) The name and address of the petitioner.
- (b) A statement identifying the offense for which discontinuation from registration is being requested.
- (c) A statement of whether the individual was

previously convicted of a listed offense for which registration is required under this act.

(6) An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under section 423 of the Michigan penal code, 1931 PA 328, MCL 750.423.

(7) A copy of the petition shall be filed with the office of the prosecuting attorney that prosecuted the case against the individual or, for a conviction that occurred in another state or country, the prosecuting attorney for the county of his or her residence, at least 30 days before a hearing is held on the petition. The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition.

(8) If the name of the victim of the offense is known by the prosecuting attorney, the prosecuting attorney shall provide the victim with written notice that a petition has been filed and shall provide the victim with a copy of the petition. The notice shall be sent by first-class mail to the victim's last known address. The petition shall include a statement of the victim's rights under subsection (10).

(9) If an individual properly files a petition with the court under this section, the court shall conduct a hearing on the petition as provided in this section.

(10) The victim has the right to attend all proceedings under this section and to make a written or oral statement to the court before any decision regarding the petition is made. A victim shall not be required to appear at any proceeding under this section against his or her will.

(11) The court shall consider all of the following in determining whether to allow the individual to discontinue registration under subsection (12) or (13) but shall not grant the petition if the court determines that the individual is a continuing threat to the public:

(a) The individual's age and level of maturity at the time of the offense.

(b) The victim's age and level of maturity at the time of the offense.

(c) The nature of the offense.

(d) The severity of the offense.

(e) The individual's prior juvenile or criminal history.

(f) The individual's likelihood to commit further listed offenses.

(g) Any impact statement submitted by the victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.

(h) Any other information considered relevant by the court.

(12) The court may grant a petition properly filed by an individual under subsection (1) if all of the following apply:

(a) Ten or more years have elapsed since the date of his or her conviction for the listed offense or from his or her release from any period of confinement for that offense, whichever occurred last.

(b) The petitioner has not been convicted of any felony since the date described in subdivision (a).

(c) The petitioner has not been convicted of any listed offense since the date described in subdivision (a).

(d) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole.

(e) The petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole.

(13) The court may grant a petition properly filed by an individual under subsection (2) if all of the following apply:

(a) The petitioner is required to register based on an order of disposition entered under section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.28.

(b) Twenty-five or more years have elapsed since the date of his or her adjudication for the listed offense or from his or her release from any period of confinement for that offense, whichever

occurred last.

(c) The petitioner has not been convicted of any felony since the date described in subdivision (b).

(d) The petitioner has not been convicted of any listed offense since the date described in subdivision (b).

(e) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole.

(f) The court determines that the petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole.

(14) The court shall grant a petition properly filed by an individual under subsection (3) if the court determines that the conviction for the listed offense was the result of a consensual sexual act between the petitioner and the victim and any of the following apply:

(a) All of the following:

(i) The victim was 13 years of age or older but less than 16 years of age at the time of the offense.

(ii) The petitioner is not more than 4 years

older than the victim.

(b) All of the following:

(i) The individual was convicted of a violation of section 158, 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, and 750.338b.

(ii) The victim was 13 years of age or older but less than 16 years of age at the time of the violation.

(iii) The individual is not more than 4 years older than the victim.

(c) All of the following:

(i) The individual was convicted of a violation of section 158, 338, 338a, 338b, or 520c(1)(i) of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, 750.338b, and 750.520c.

(ii) The victim was 16 years of age or older at the time of the violation.

(iii) The victim was not under the custodial authority of the individual at the time of the violation.

(15) The court shall grant a petition properly filed by an individual under subsection (3) if either of the following applies:

(a) Both of the following:

(i) The petitioner was adjudicated as a juvenile.

(ii) The petitioner was less than 14 years of age at the time of the offense.

(b) The individual was registered under this act before July 1, 2011 for an offense that required registration but for which registration is not required on or after July 1, 2011.

§ 28.728d. Removal of registration from law enforcement database

If the court grants a petition filed under section 8c, the court shall promptly provide a copy of that order to the department and to the individual. The department shall promptly remove an individual's registration from the database maintained under section 8(1).

§ 28.729. Offenses and penalties

(1) Except as provided in subsections (2), (3), and (4), an individual required to be registered under this act who willfully violates this act is guilty of a felony punishable as follows:

(a) If the individual has no prior convictions for a violation of this act, by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(b) If the individual has 1 prior conviction for a violation of this act, by imprisonment for not more than 7 years or a fine of not more than \$5,000.00, or both.

(c) If the individual has 2 or more prior convictions for violations of this act, by imprisonment for not more than 10 years or a fine of not more than \$10,000.00, or both.

(2) An individual who fails to comply with section 5a, other than payment of the fee required under section

5a(6), is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(3) An individual who willfully fails to sign a registration and notice as provided in section 7(4) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(4) An individual who willfully refuses or fails to pay the registration fee prescribed in section 5a(6) or section 7(1) within 90 days of the date the individual reports under section 4a or 5a is guilty of a misdemeanor punishable by imprisonment for not more than 90 days.

(5) The court shall revoke the probation of an individual placed on probation who willfully violates this act.

(6) The court shall revoke the youthful trainee status of an individual assigned to youthful trainee status who willfully violates this act.

(7) The parole board shall rescind the parole of an individual released on parole who willfully violates this act.

(8) An individual's failure to register as required by this act or a violation of section 5 may be prosecuted in the judicial district of any of the following:

(a) The individual's last registered address or residence.

(b) The individual's actual address or residence.

(c) Where the individual was arrested for the violation.

§ 28.730. Confidentiality of registration or report; public inspection; remedies for improper disclosure

(1) Except as provided in this act, a registration or report is confidential and information from that registration or report shall not be open to inspection except for law enforcement purposes. The registration or report and all included materials and information are exempt from disclosure under section 13 of the freedom of information act, 1976 PA 442, MCL 15.243.

(2) A department post, local law enforcement agency, or sheriff's department shall make information from the public internet website described in section 8(2) for the designated areas located in whole or in part within the post's, agency's, or sheriff's department's jurisdiction available for public inspection during regular business hours. A department post, local law enforcement agency, or sheriff's department is not required to make a copy of the information for a member of the public.

(3) The department may make information from the public internet website described in section 8(2) available to the public through electronic, computerized, or other accessible means. The department shall provide for notification by electronic or computerized means to any member of the public who has subscribed in a manner required by the department when an individual who is the subject of the public internet website described in section 8(2) initially registers under this act, or changes his or her registration under this act, to a location that is in a designated area or geographic radius designated by the subscribing member of the

public.

(4) Except as provided in this act, an individual other than the registrant who knows of a registration or report under this act and who divulges, uses, or publishes nonpublic information concerning the registration or report in violation of this act is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(5) An individual whose registration or report is revealed in violation of this act has a civil cause of action against the responsible party for treble damages.

(6) Subsections (4) and (5) do not apply to the public internet website described in section 8(2) or information from that public internet website that is provided or made available under section 8(2) or under subsection (2) or (3).

§ 28.731. Repealed by P.A.2011, No. 18, § 1, Eff. July 1, 2011

§ 28.732. Repealed by P.A.2011, No. 18, § 1, Eff. July 1, 2011

§ 28.733. Definitions

As used in this article:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) "Loiter" means to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or

contacting minors.

(c) “Minor” means an individual less than 18 years of age.

(d) “School” means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.

(e) “School property” means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:

(i) It is used to impart educational instruction.

(ii) It is for use by students not more than 19 years of age for sports or other recreational activities.

(f) “Student safety zone” means the area that lies 1,000 feet or less from school property.

§ 28.734. Prohibited activities by persons required to be registered under § 28.723 et seq.; penalties; exceptions; prosecution for other offenses committed while violating section

(1) Except as provided in this section and section 36, an individual required to be registered under article II shall not do 1 or more of the following:

(a) Work within a student safety zone.

(b) Loiter within a student safety zone.

(2) An individual who violates this section is guilty of a crime as follows:

(a) For the first violation, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) An individual who violates this section and has 1 or more prior convictions under this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(3) Subsection (1)(a) does not apply to any of the following:

(a) An individual who was working within a student safety zone on January 1, 2006. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(b) An individual whose place of employment is within a student safety zone solely because a school is relocated or is initially established 1,000 feet or less from the individual's place of employment. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(c) An individual who only intermittently or sporadically enters a student safety zone for the purpose of work. However, this exception does not apply to an individual who initiates or maintains contact with a minor within a student safety zone.

(4) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that

individual while violating this section.

(5) Nothing in this section shall be construed to prohibit an individual from exercising his or her right to vote.

§ 28.735. Residence by individuals required to be registered under § 28.723 et seq.; penalties; exceptions; relocation of student safety zone resident after conviction resulting in obligation to register; prosecution for other offenses committed while violating section

(1) Except as otherwise provided in this section and section 36, an individual required to be registered under article II shall not reside within a student safety zone.

(2) An individual who violates subsection (1) is guilty of a crime as follows:

(a) For the first violation, the individual is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) An individual who violates this section and has 1 or more prior convictions under this section is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.

(3) This section does not apply to any of the following:

(a) An individual who is not more than 19 years of age and attends secondary school or postsecondary school, and resides with his or her parent or guardian. However, this exception does

not apply to an individual who initiates or maintains contact with a minor within that student safety zone. However, the individual may initiate or maintain contact with a minor with whom he or she attends secondary school or postsecondary school in conjunction with that school attendance.

(b) An individual who is not more than 26 years of age and attends a special education program, and resides with his or her parent or guardian or resides in a group home or assisted living facility. However, an individual described in this subdivision shall not initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance.

(c) An individual who was residing within that student safety zone on January 1, 2006. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(d) An individual who is a patient in a hospital or hospice that is located within a student safety zone. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(e) An individual who resides within a student safety zone because the individual is an inmate or resident of a prison, jail, juvenile facility, or other correctional facility or is a patient of a mental health facility under an order of commitment.

However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(4) An individual who resides within a student safety zone and who is subsequently required to register under article II shall change his or her residence to a location outside the student safety zone not more than 90 days after he or she is sentenced for the conviction that gives rise to the obligation to register under article II. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone during the 90-day period described in this subsection.

(5) This section does not prohibit an individual from being charged with, convicted of, or punished for any other violation of law that is committed by that individual while violating this section.

§ 28.736. Persons exempted from §§ 28.734 and 28.735

(1) Subject to subsection (2), sections 34 and 35 do not apply to any of the following:

(a) An individual who is convicted as a juvenile under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, of committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, if either of the following applies:

(i) The individual was under 13 years of age

when he or she committed the offense and is not more than 5 years older than the victim.

(ii) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.

(b) An individual who was charged under section 520b, 520c, or 520d of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, with committing, attempting to commit, or conspiring to commit a violation solely described in section 520b(1)(a), 520c(1)(a), or 520d(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, and 750.520d, and is convicted as a juvenile of violating, attempting to violate, or conspiring to violate section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g, if either of the following applies:

(i) The individual was under 13 years of age when he or she committed the offense and is not more than 5 years older than the victim.

(ii) The individual was 13 years of age or older but less than 17 years of age when he or she committed the offense and is not more than 3 years older than the victim.

(c) An individual who has successfully completed his or her probationary period under sections 11 to 15 of chapter II for committing a listed offense and has been discharged from youthful trainee status.

(d) An individual convicted of committing or attempting to commit a violation solely described

in section 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, who at the time of the violation was 17 years of age or older but less than 21 years of age and who is not more than 5 years older than the victim.

(2) An individual who is convicted of more than 1 offense described in subsection (1) is ineligible for exemption under this section.

"School safety zones" in the city of Grand Rapids

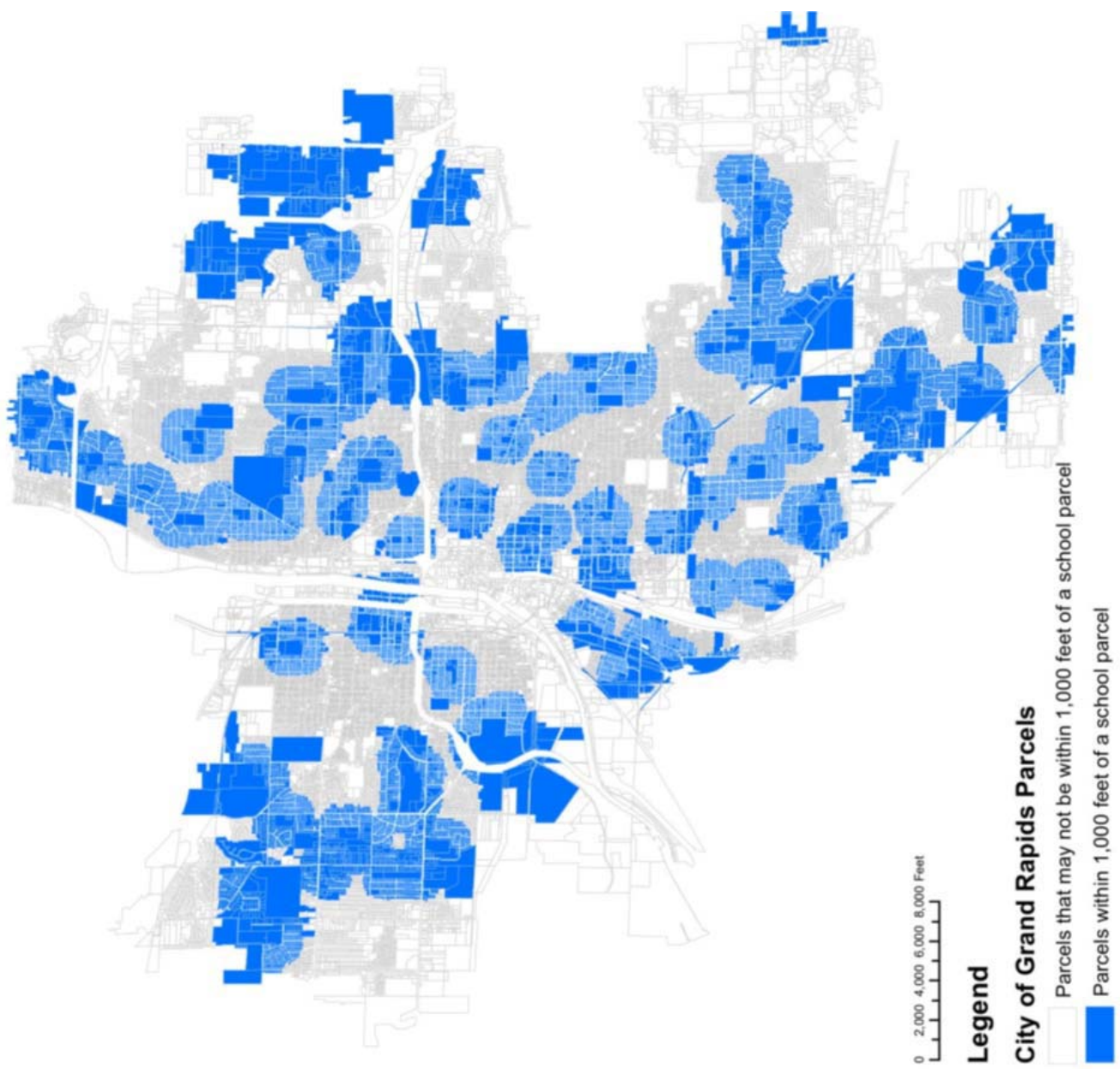


Figure 10.