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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-6, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GRETCHEN WHITMER, Governor of the State of Michigan, and COL. JOSEPH GASPAR, Director of the Michigan State Police, in their official capacities,

Defendants.

File No. 2:16-cv-13137

Hon. Robert H. Cleland

Mag. J. David R. Grand

Statement on Concurrence

Pursuant to Local Rule 7.1, on December 12, 2019, plaintiffs informed defendants of this motion, which was thereafter also discussed at the status conference held on December 17, 2019. On December 22, 2019, plaintiffs formally sought concurrence from defendants in the relief sought. No response was received by the time this motion was filed.

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT ON BEHALF OF THE PRIMARY CLASS

1. Plaintiffs' Second Amended Verified Class Action Complaint, R.34, sets out four claims: I. Vagueness (Due Process Clause); II. Strict Liability (Due Process Clause); III. First Amendment; and IV. Ex Post Facto Clause. Each of these claims seeks class-wide relief on an issue where either this Court or the Sixth Circuit Court of Appeals found Michigan's Sex Offenders Registration Act (SORA), M.C.L. §

28.721, *et seq.*, to be unconstitutional. *See Does #1-5 v. Snyder* (*Does I*), 101 F. Supp. 3d 672 and 101 F. Supp. 3d 722 (2015) and 834 F.3d 696 (6th Cir. 2016).

2. In September 2018, defendants stipulated to class certification, and this Court certified a primary class, defined as all people who are or will be subject to registration under SORA, and two ex post facto subclasses composed of registrants whose offenses predate the 2006 and 2011 SORA amendments. *See* Stipulated Class Certification Order, R.46. Counts I, II, and III are brought by the primary class. Only the ex post facto subclasses are bringing Count IV.

3. In July 2018, the ex post facto subclasses moved for partial summary judgment on their ex post facto claim, seeking declaratory and injunctive relief. Motion, R.40. Briefing was initially held in abeyance to allow for legislative action. In May 2019, defendants stipulated to entry of an order granting declaratory relief as to that claim. *See* Decl. Judgment and Order for 90-Day Deferral, R.55. The parties deferred injunctive relief for 90 days, however, to enable the legislature to bring the statute into compliance with the constitutional requirements set out in *Does I*. *Id*. The legislature failed to do so. In September 2019, more than a year after the ex post facto classes first sought relief on the ex post facto claim, they again moved for injunctive relief, as well as further declaratory relief. *See* Motion, R.62. The parties have now briefed the issues of severability, certification, and the scope of injunctive relief as to the ex post facto claim. *See* Motion, R.62; Response, R.66, and Reply, R.69.

4. To date, no relief has been granted to the primary class on Counts I, II, and III. Plaintiffs previously believed, based on stakeholder conversations, that the legislature, when passing a new statute to bring SORA into compliance with the Sixth Circuit's decision in *Does I*, 834 F.3d 696, would address the constitutional defects in the statute identified by this Court in *Does I*, 101 F. Supp. 3d 672 and 101 F. Supp. 3d 722, at the same time. In other words, comprehensive legislative reform would address not just the claims of the ex post facto subclasses, but also those of the primary class.

5. In light of the fact that defendants have withdrawn from, or at least have stalled, what had been productive legislative negotiations, plaintiffs feel they now have no choice but to seek partial summary judgment on the claims of the primary class. Indeed, state prosecutors continue to bring or threaten prosecutions under SORA provisions that this Court held unconstitutional in *Does I. See, e.g. Roe v. Snyder*, 240 F. Supp. 3d 697 (E.D. Mich. 2017); *Does v. Curran, et al.*, File No. 3:18-cv-11935 (E.D. Mich.); Farkas Decl., R.62-6; Van Gelderen Decl., R.62-7.

6. With respect to the vagueness claim (Count I), this Court held in *Does I* that SORA's geographic exclusion zones, SORA's ban on loitering within exclusion zones, and certain SORA reporting requirements, are unconstitutionally vague. *Does I*, 101 F. Supp. 3d at 684-90. With respect to the strict liability claim (Count II), this Court held that violations of SORA cannot be enforced as matter of strict liability,

but instead the law must be read to punish only knowing or willful violations of SORA, to avoid making it unconstitutional under the Due Process Clause. *Id.* at 693-94. Finally, with respect to the First Amendment claim (Count III), this Court held that SORA's immediate, in-person reporting requirements for internet identifiers are not narrowly tailored and therefore fail under the First Amendment; that vagueness in the term "routinely used" makes the internet and telephone reporting requirements overbroad; and that extending SORA's internet reporting requirements from 25 years to life violates the First Amendment as applied retroactively because the provision is not narrowly tailored. *Does I*, 101 F. Supp. 3d 672, 686-90, 704, 713 and 101 F. Supp. 3d 722, at 728-30.

7. In *Does I*, this Court issued declaratory and injunctive relief consistent with the rulings described above. *See Does I*, 101 F. Supp. 3d at 713-714, and 101 F. Supp. 3d. at 730.

8. The legislature has failed to pass a new statute that cures the constitutional defects, despite the passage of more than four-and-a-half years since the first of this Court's two decisions was issued, and more than four years since the second opinion was issued.

9. Throughout that time plaintiffs and the primary class have continued to be subject to the provisions of SORA that this Court held to be unconstitutional under the Due Process Clause and the First Amendment.

10. Notice to the primary class members, prosecutors and law enforcement is necessary to prevent the ongoing constitutional violations and to correct misinformation provided by defendants to class members about their obligations under SORA.

WHEREFORE, pursuant to Fed. R. Civ. P. 23, 56, and 65, and 28 U.S.C. §§ 2201 and 2202, plaintiffs John Does #1-6, on behalf of themselves and the primary class, now ask this Court to:

A. Declare, consistent with *Does I*, 101 F. Supp. 3d 672, that the following provisions of SORA are unconstitutionally vague, and permanently enjoin defendants, their officers, agents, servants, employees and attorneys, and all other persons who are in active concert or participation with them, from enforcing them against plaintiffs and members of the primary class:

1. the prohibition on working within a student safety zone, M.C.L. §§ 28.733-734;

2. the prohibition on loitering within a student safety zone, M.C.L. §§ 28.733-734;

3. the prohibition on residing within a student safety zone, M.C.L. § 28.733 and § 28.735;

4. the requirement to report "[a]ll telephone numbers ... routinely used by the individual, M.C.L. § 28.727(1)(h);

5. the requirement to report "[a]ll electronic mail addresses and instant message addresses ... routinely used by the individual, M.C.L. § 28.727(1)(l); and

6. the requirement to report "[t]he license plate number, registration number, and description of any motor vehicle, aircraft, or vessel ... regularly

operated by the individual," M.C.L. § 28.727(1)(j).

B. Declare, consistent with *Does I*, 101 F. Supp. 3d 672, that under the Due Process Clause of the U.S. Constitution, SORA must be interpreted as incorporating a knowledge requirement, and permanently enjoin defendants their officers, agents, servants, employees and attorneys, and all other persons who are in active concert or participation with them, from holding plaintiffs or members of the primary class strictly liable for SORA violations.

C. Declare, consistent with *Does I,* 101 F. Supp. 3d 672, and 101 F. Supp. 3d 722, that the following provisions of SORA violate the First Amendment of the U.S. Constitution, and permanently enjoin defendants, their officers, agents, servants, employees and attorneys, and all other persons who are in active concert or participation with them, from enforcing these provisions against plaintiffs and members of the primary class:

1. the requirement "to report in person and notify the registering authority ... immediately after … [t]he individual ... establishes any electronic mail or instant message address, or any other designations used in internet communications or postings," M.C.L. § 28.725(1)(f);

2. the requirement to report "[a]ll telephone numbers ... routinely used by the individual, M.C.L. § 28.727(1)(h);

3. the requirement to report "[a]ll electronic mail addresses and instant message addresses ... routinely used by the individual, M.C.L. § 28.727(1)(l);

4. the retroactive incorporation of the lifetime registration requirement's incorporation of the requirement to report "[a]ll electronic mail addresses and instant message addresses assigned to the individual ... and all login names or

other identifiers used by the individual when using any electronic mail address or instant messaging system," M.C.L. § 28.727(1)(i).

D. In the alternative, grant the declaratory relief and the corresponding injunctive relief requested in paragraphs A-C above, but delay the effective date of the injunctive relief for 60 days, to give the legislature one last chance to pass a new SORA;

E. Pursuant to Fed. R. Civ. Proc. 23(c)(2) and 23(d)(1), order the parties to draft a mutually agreeable notice or notices regarding any relief granted here, with any disputes about the content to be resolved by the Court;

F. Order prompt notice of any relief granted here to all plaintiffs and members of the primary class, and to all prosecutors and law enforcement personnel in this state who have responsibility for enforcing SORA; require the Michigan State Police to handle providing notice; and set prompt deadlines for the parties to present for the Court's approval a proposed plan and schedule for distribution of the notice or notices to class members, prosecutors, and law enforcement.

G. Order the Michigan State Police to correct the Explanation of Duties form, which is provided to registrants whenever they report, so that it accurately reflects registrants' obligations under SORA.

H. Grant such further declaratory and injunctive relief as appropriate.

Respectfully submitted,

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Dated: December 23, 2019

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-6, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

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PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT ON BEHALF OF THE PRIMARY CLASS

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INTRODUCTION

In 2015, this Court found numerous aspects of Michigan's Sex Offenders Registration Act (SORA), M.C.L. § 28.721 *et seq.*, to violate due process and the First Amendment. *Does #1-5 v. Snyder* (*Does I*), 101 F. Supp. 3d 672 (E.D. Mich. 2015); 101 F. Supp. 3d 722 (E.D. Mich. 2015). More than four years later, defendants continue to apply those same unconstitutional provisions to tens of thousands of registrants as if this Court had never ruled.

Because Michigan's legislature has failed to bring SORA into compliance with the Constitution, plaintiffs ask this Court to apply its *Does I* decisions class-wide. Specifically, the Court should declare unconstitutional the same provisions it found to be unconstitutional in *Does I*, permanently enjoin their enforcement, and require notice to class members, prosecutors, and law enforcement.

PROCEEDINGS TO DATE

This case was filed in August 2016, to ensure that the *Does I* decisions were applied to all Michigan registrants. The second amended complaint, filed in June 2018, and which is verified, R.34, seeks class-wide relief on four issues on which the *Does I* plaintiffs had prevailed, either before this Court or the Sixth Circuit: (1) vagueness; (2) strict liability; (3) First Amendment; (4) Ex Post Facto Clause. *Id.*

In June 2018, plaintiffs moved for class certification. R.35. In September 2018, the Court certified a primary class of all people who are or will be subject to

registration under SORA, and two ex post facto subclasses (one for pre-2006 registrants and one for pre-2011 registrants). Stip. Class Cert. Order, R.46.

In the meantime, plaintiffs moved for partial summary judgment as to the ex post facto subclasses, seeking declaratory and injunctive relief. Motion, R.40. Plaintiffs then invited defendants to work together to develop legislation that the parties could jointly send to the legislature—legislation which the parties believed would address not only the ex post facto issues, but also the other constitutional infirmities in SORA identified by this Court. The Court postponed briefing repeatedly to permit legislative negotiations. Sched. Orders, R.41, 44, 45, 47, 51, 54.

In May 2019, the Court entered a stipulated order declaring the 2006 and 2011 amendments to be unconstitutional as to the ex post facto subclasses. The Court deferred rulings on injunctive relief "to avoid interfering with the Michigan legislature's efforts to address the *Does I* decisions." Decl. Judgment and Order for 90-Day Deferral. R.55, Pg.ID#783. But the state again failed to take advantage of the opportunity provided by this Court to address SORA's constitutional problems through legislation, and in August 2019 this Court set a new briefing schedule. Stipulated Order, R.60, Pg.ID#795. The parties have now briefed the issues that relate to the ex post facto subclasses, and the Court has set argument on that motion for February 5, 2020. Briefs and Scheduling Notice, R.62, 66, 69, and 71.

What remains to be decided are the three claims (vagueness, strict liability, and First Amendment) that relate to the primary class (comprising all registrants).

LEGAL STANDARD

Summary judgment is proper if "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A statute's constitutionality is a question of law. *See United States v. Suarez*, 263 F.3d 468, 476 (6th Cir. 2001).

Summary judgment is proper because plaintiffs' complaint is verified and there are no facts in dispute. Defendants continue to enforce SORA against plaintiffs and primary class members even though the challenged provisions violate the Due Process Clause and the First Amendment under this Court's holdings in *Does I*. Accordingly, plaintiffs ask the Court to declare those provisions to be unconstitutional and enjoin their enforcement against plaintiffs and the primary class.

ARGUMENT

This Court has already found all of the challenged provisions to be unconstitutional in *Does I*. Those provisions are unconstitutional here for the same reasons. This Court should extend its *Does I* rulings to apply class-wide. The parties have stipulated that "the claims … of the representative parties are typical of the claims … of the classes and subclasses." Class Cert Order, R.46, Pg.ID#694. And defendants have argued in the numerous actions brought by individual registrants that any injunctive relief must come through this class action. *See, e.g., Does #1-2 v.*

Curran, 1:18-cv-11935 (E.D. Mich.), R.76, Pg.ID#883 (arguing that registrants' vagueness and strict liability challenges should be decided in the class action).

The relevant facts are set out in plaintiffs' Verified Second Amended Complaint and accompanying exhibits, R.34 to 34-9; the exhibits to plaintiffs' prior motion on the ex post facto issues, R.62-1 to 62-8, 65, and the stipulated Joint Statement of Facts (JSOF) in *Does I*. (Exhibit A.[1]) As this Court is fully familiar with the legal issues from *Does I*, plaintiffs will not reiterate all of those arguments, but instead point the Court to its own analysis in its two prior opinions. That analysis applies with equal force to the plaintiffs in this case.

I. SORA Violates Plaintiffs' Due Process and First Amendment Rights.

A. SORA Is Unconstitutionally Vague.

In *Does I*, this Court began by setting out the primary goals of the vagueness doctrine: "'to ensure fair notice to the citizenry' and … 'to provide standards for enforcement by the police, judges, and juries.' *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1104 (6th Cir. 1995)." *Does I*, 101 F. Supp. 3d at 681. The Court explained that there is a two-part test to determine vagueness:

[1] The JSOF summarizes a voluminous record. Because those facts were stipulated to by defendants—who, as here, were the governor and state police director—plaintiffs are not resubmitting the entire underlying record, but rather incorporate it by reference. Plaintiffs do resubmit the expert reports and declarations regarding the results of surveys of law enforcement agencies and prosecutors' offices, so that they are easily available to the Court in their entirety. *See* Exh. B-J. Plaintiffs are prepared to refile the entire *Does I* record should the Court find it necessary.

> First, the court must determine whether the law gives a person "of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." . . . Second, the court must evaluate whether the statute provides sufficiently "explicit standards for those who apply them" or whether, due to a statute's vagueness, it impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis.

Id. (quoting *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972)).

The Court next discussed three factors that affect the degree of vagueness that the Constitution tolerates.[2] First, "'[t]he [Supreme] Court has expressed greater tolerance of enactments with civil rather than criminal penalties.'" *Id.* (quoting *Vill. of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498 (1982)). *See id.* ("consequences of imprecision" more severe for criminal laws); *Springfield Armory, Inc. v. City of Columbus*, 29 F.3d 250, 252 (6th Cir. 1994) ("When criminal penalties are at stake…a relatively strict test is warranted."). Second, laws based on strict liability must meet a higher threshold for clarity. *Does I*, 101 F. Supp. 3d at 681. *See also Peoples Rights Org. v. City of Columbus*, 152 F.3d 522, 534 (6th Cir. 1998) ("in the absence of a scienter requirement…a statute is little more than a trap for those who act in good faith"). Finally, "'perhaps the most important factor affecting the clarity that the Constitution demands of a law is

[2] Plaintiffs note that an additional factor pointing towards exacting review of their claim is that a statute which is unclear in multiple respects must be reviewed more stringently than one with a single defect: "Each of the uncertainties in the [statute] may be tolerable in isolation, but their sum makes a task for us which at best could be only guesswork." *Johnson v. United States*, 135 S.Ct. 2551, 2560 (2015).

whether it threatens to inhibit the exercise of constitutionally protected rights.'" *Does I*, 101 F. Supp. 3d at 681 (quoting *Hoffman Estates*, 455 U.S. at 498-99).

This Court found all three factors present under SORA. The challenged provisions impose criminal sanctions for non-compliance, M.C.L. §§ 28.729, 734(2), 735(2); make plaintiffs strictly liable for failure to comply with certain requirements and prohibitions, M.C.L. §§ 28.725a, 729(2), 734–.735; and implicate plaintiffs' fundamental rights. *Does I*, 101 F. Supp. 3d at 681. The Court concluded that it would therefore use an "exacting" standard for vagueness, but tempered by the rule of lenity, which requires "strict construction" of criminal laws so that if there is any "ambiguity," courts will interpret the law to apply "only to conduct clearly covered." *Does I*, 101 F. Supp. 3d at 681-82 (citing *United States v. Lanier*, 520 U.S. 259, 266 (1997)). The Court then concluded that SORA's exclusion zones, loitering provisions, and certain reporting requirements were unconstitutionally vague. *Id.* at 682-90. Plaintiffs here challenge the exact same provisions that this Court found to be unconstitutionally vague in *Does I.*

1. SORA Does Not Provide Clear Notice to Registrants or Adequate Guidance to Law Enforcement About How to Determine the Location of Exclusion Zones.

SORA criminalizes a wide range of otherwise innocent conduct (*e.g.*, working, living, watching one's children) if registrants engage in that activity within the exclusion zones. M.C.L. §§ 28.734-28.735. Because such conduct is entirely legal

outside the zones, both registrants and law enforcement must know where the zones are to know if the conduct is a crime.

In *Does I*, this Court held that SORA's exclusion zones are unconstitutionally vague in multiple ways: (1) "SORA does not provide sufficiently definite guidelines for registrants and law enforcement to determine from where to measure the 1,000 feet distance used to determine the exclusion zones"; (2) "neither the registrants nor law enforcement have the necessary data to determine the zones even if there were a consensus about how they should be measured"; and (3) "[i]t is unclear whether SORA's exclusion zone should be measured only from the real property on which educational instruction, sports or other recreational activities take place" or whether the zones include school properties "not used for one of the stated purposes." *Does I*, 101 F. Supp. 3d at 683-84. In other words, registrants do not know what school properties trigger exclusion zones, do not know from which boundaries the 1,000-foot distance is measured, and cannot discern those boundaries in real space. This Court concluded that "due to SORA's vagueness, registrants are forced to choose between limiting where they reside, work, and loiter to a greater extent than is required by law or risk violating SORA." *Id.* at 684-85.

In the instant case, the named plaintiffs and primary class they represent, must comply with the same unconstitutionally vague SORA provisions as the *Does I* plaintiffs. As in *Does I*, plaintiffs here have found it impossible to determine

where they may legally live, work, and spend time. In order to comply with SORA, they must continuously know where the zones are as they move about their daily lives: every time they apply for a job, get sent to a new job site, search for an apartment, or take their children to a playground, they must first determine if their activities will potentially take place in an exclusion zone. For example, when Doe #3's employer assigns him to different job locations, he does not know whether those locations are in exclusion zones. 2d Am. Verified Compl., R.34, ¶118. Similarly, Doe #4, who works construction, will often travel several hours to a job site, only to find that the job is close to a school; he cannot learn in advance whether these sites are within exclusion zones. *Id.*, ¶121. Moreover, when he was looking for a home, he was unable to determine, despite internet research, whether he would be committing a crime if he moved into a home that was within 1,000 feet of a school bus yard. *Id.*, ¶122. *See also id.* ¶¶105-126; JSOF ¶¶372-478, 497-507; Exhs. E, F, H, I, J, 1st and 2d Wagner Rep., Stapleton Rep; Poxson Decl.; Granzotto Decl.

In accord with *Does I*, this Court should declare that the exclusion zone restrictions, which prohibit residing, working, or loitering within a zone, M.C.L. §§ 28.733-28.735, are unconstitutionally vague, and should permanently enjoin their enforcement against plaintiffs and the primary class.

2. SORA Does Not Provide Clear Notice to Registrants or Adequate Guidance to Law Enforcement About What Constitutes "Loitering."

SORA defines "loiter" as "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." M.C.L. §28.733(b). In *Does I*, this Court found that the first phrase ("remain for a period of time") was sufficiently clear, but that the second phrase ("under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors") is not.[3] *Does I*, 101 F. Supp. 3d at 685-86 (citing *City of Chicago v. Morales*, 527 U.S. 41, 56-67 (1999) (holding that an anti-gang ordinance prohibiting "loitering" was unconstitutionally vague, where that term was defined as remaining in a place "with no apparent purpose")). One cannot know, this Court said, "whether a registrant may attend a school movie night where he intends only to watch the screen, or a parent-teacher conference where students may be present." *Id.* at 686. The law's ambiguity had led the *Does I* plaintiffs to extensively curtail their conduct, even avoiding activities like waiting for their children, or talking to a niece or nephew, at school. *Id.* at 685. Indeed, because it is so unclear what the "loitering" ban prohibits, this

[3] This Court's decision is supported by the Supreme Court's subsequent decision in *Elonis v. United States*, 135 S.Ct. 2001, 2011 (2015), which emphasized that criminal liability cannot be defined under a "reasonable person" standard: "Such a 'reasonable person' standard is a familiar feature of civil liability in tort law, but is inconsistent with the conventional requirement for criminal conduct – *awareness* of some wrongdoing." *Id.* (original emphasis).

Court found that it was "unable to determine to what extent SORA infringes on Plaintiffs' right to participate in the upbringing and education of their children." *Id.* at 698. This Court concluded that the definition of "loiter" "is sufficiently vague as to prevent ordinary people using common sense from being able to determine whether Plaintiffs are, in fact, prohibited from engaging in the conduct from which Plaintiffs have refrained." *Id.* at 686.

Plaintiffs and primary class members here are in the exact same position as the *Does I* plaintiffs. For example, Doe #1 does not attend his son's sporting events because he does not know if that is a crime; he contacted both his local prosecutor and the Michigan State Police for clarification, and both refused to provide an answer about whether such conduct is illegal. 2d Am. Verified Compl. ¶132. Doe #4 would like to attend church, but does not for fear that, because the church has a Sunday school, attendance might constitute loitering. *Id.* at ¶135. Doe #5 refrains from walking in unfamiliar neighborhoods because he fears that he might inadvertently enter an exclusion zone. *Id.* at ¶139. Doe #6 cannot stay with his wife and children, as they live in an apartment above the family restaurant, which may be in an exclusion zone. *Id.* at ¶124-26. He is uncertain how much time he can spend with his family in their home without violating SORA. *Id.* He also does not attend his children's parent-teacher conferences or band concerts for fear that this would be considered "loitering." *Id.* at ¶140. *See also* JSOF ¶¶509-600.

3. SORA Does Not Provide Clear Notice to Registrants or Adequate Guidance to Law Enforcement About Reporting Requirements.

In *Does I*, this Court enjoined reporting and "immediate" reporting requirements triggered by:

- "regularly" operating a vehicle, M.C.L. §§28.725(1)(g), 28.727(1)(j);
- "routinely" using a telephone, M.C.L. §28.727(1)(h); and
- "routinely" using or establishing electronic accounts or designations, M.C.L. §§28.727(1)(f), (i).

Does I, 101 F. Supp. 3d at 686-90; 704. This Court found that neither the MSP nor local police know what "regularly" and "routinely" mean, and these provisions are "not sufficiently concrete (1) 'to ensure fair notice to the citizenry' or (2) 'to provide standards for enforcement by the police, judges, and juries.'" *Id.* at 688 (quoting *Columbia Natural Res., Inc. v. Tatum*, 58 F.3d 1101, 1104 (6th Cir. 1995)).

Here too, plaintiffs and class members face the same problems as the *Does I* plaintiffs. For example, Doe #4 drives many company vehicles and construction equipment, and does not know whether he must report them. 2d Am. Verified Compl. ¶¶151-52. He also does not serve as a designated driver or drive friends in bad weather, fearing that driving others' cars could be a crime. *Id.* ¶153. Doe #6 limits his use of the internet because he does not know what he must report. *Id.* ¶165. *See also id.* ¶¶141-65; JSOF, ¶¶851-83. Thus, just as in *Does I*:

> Here, SORA subjects registrants to criminal sanctions if they do not comply with the registration requirements, but SORA's vagueness leaves law enforcement without adequate guidance to enforce the law and leaves registrants of ordinary intelligence unable to determine when the reporting requirements are triggered.

Does I, 101 F.Supp.3d at 689-90.

B. SORA's Strict Liability Provisions Violate Due Process Because They Impose Harsh Penalties for Innocent Conduct.

"While strict-liability offenses are not unknown to the criminal law and do not invariably offend constitutional requirements…, [t]he existence of a *mens rea* is the rule [], rather than the exception." *United States v. U.S. Gypsum Co.*, 438 U.S. 422, 435, 437 (1978) (citations omitted). Without a scienter requirement, laws —particularly vague laws—may be "little more than a trap for those who act in good faith." *Colautti v. Franklin*, 439 U.S. 379, 395 (1979). Strict liability is least permissible where it affects constitutionally-protected rights. *See United States v. X-Citement Video, Inc.*, 513 U.S. 64, 71 (1994) (scienter required because of law's impact on constitutionally protected rights); *Smith v. California*, 361 U.S. 147 (1959) (strict liability unconstitutional where "timidity in the face of [] absolute criminal liability" keeps people from exercising constitutionally protected rights).

To determine whether strict liability violates due process, courts should first consider whether "the offense involves conduct for which one would not ordinarily be blamed." *Stanley v. Turner*, 6 F.3d 399, 404 (6th Cir. 1993). While "strict liability" is sometimes permissible when regulating conduct that inherently presents a serious risk to public safety, the state cannot dispense with *mens rea* when criminalizing otherwise innocent behavior. *Compare, e.g.*, *United States v. Freed*, 401

U.S. 601, 609 (1971), *with Liparota v. United States*, 471 U.S. 419, 426, 431 (1985).[4] Thus in *Lambert v. California*, 355 U.S. 225 (1957), the Court held that a law requiring felons to register violated due process. Strict liability was unconstitutional because the law "punished conduct which would not be blameworthy in the average member of the community." *Id*. at 229. Because the defendant received no notice, she could not and did not know that the otherwise innocent act of being in Los Angeles was a crime, and she was given no opportunity to comply upon learning of the registration requirement. *Id.* at 227-29.

Second, courts ask whether the penalty is "relatively small." *United States v. Wulff*, 758 F.2d 1121, 1124 (6th Cir. 1985).[5] "'Crimes punishable with prison sentences...ordinarily require proof of guilty intent.'" *Staples*, 511 U.S. at 616-17 (quoting Sayre, *Public Welfare Offenses*, 33 Colum. L. Rev. 55, 70 (1933)).

In *Does I*, this Court accordingly found strict liability impermissible and

[4] *See Stanley*, 6 F.3d at 404 ("[W]here a criminal statute prohibits and punishes seemingly innocent and innocuous conduct that does not in itself furnish grounds to allow the presumption that the defendant knew his actions must be wrongful, conviction without some other, extraneous proof of blameworthiness or culpable mental state is forbidden by the Due Process Clause"); *United States v. Apollo Energies, Inc.*, 611 F.3d 679, 687 (10th Cir. 2010) (strict liability "constitutionally suspect" when applied to conduct that is "commonly and ordinarily not criminal").

[5] In *Wulff*, the Sixth Circuit held that the defendant could not be strictly liable for selling bird parts because the penalty—two years' imprisonment or $2,000—"is not, in this Court's mind, a relatively small penalty." 758 F.2d at 1125. SORA imposes the very same penalty. *See* M.C.L. § 28.729(2) (two years or $2,000); §§ 28.734(2), 735(2) (second offense is felony, two years or $2,000).

read a "knowledge requirement" into SORA: activities like "taking one's children to a park … or failing to report a new e-mail account, are … not inherently blameworthy," nor are they "'so obviously against the public interest that a reasonable person should be expected to know'" they are regulated. 101 F. Supp. 3d at 693 (*quoting Liparota*, 471 U.S. at 433). This Court explained:

> SORA imposes myriad restrictions and reporting requirements that affect many aspects of registrants' lives. Ambiguity in the Act, combined with the 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 frequency with which SORA is amended, as well as today's highly mobile population, make a knowledge requirement even more important to ensure due process of law.

Does I, 101 F. Supp. 3d at 693.

Here, just as in *Does I*, plaintiffs "fear that despite their best efforts to understand and comply with the law, they will be held liable for unintentional violations of SORA." 2d Am. Verified Compl., R.34, ¶168. *See id.* ¶¶166-174; Exh. A, JSOF, ¶¶884-909. Their fear is well-justified because SORA imposes lengthy prison sentences for even inadvertent violations. M.C.L. §§ 28.729(1); 28.734(2); 28.735(2). SORA continues to criminalizes entirely innocent activities through provisions that are extraordinarily vague.[6] And that is just as unconstitutional today

[6] For example, registrants are strictly liable for being employed, living with their families, or attending a child's graduation in an exclusion zone. M.C.L. §§ 28.734, 28.735. Registrants are also strictly liable if they fail to report (often immediately and in person) an enormous range of ordinary activities—borrowing a phone, joining a fantasy football league, establishing an on-line account for a child's

as it was four years ago.

C. SORA's Provisions on Internet Reporting Violate the First Amendment, Both Directly and by Incorporating Lifetime Reporting.

In *Does I*, this Court held that SORA's requirement "to report in person and notify the registering authority ... immediately after … [t]he individual ... establishes any electronic mail or instant message address, or any other designations used in internet communications or postings," M.C.L. § 28.725(1)(f), facially violates the First Amendment. The Court said the "in person" reporting requirement was "not narrowly tailored, and, therefore, unconstitutional," and the Court issued a blanket injunction against its enforcement. *Does I*, 101 F. Supp. 3d 672, 701-02, 704, 713.

This Court also held that "[a]mbiguity as to the meaning of 'routinely used' would likely result in both overreporting and under use of permissible speech activities." *Does I*, 101 F. Supp. 3d 672, 704. On both First Amendment and vagueness grounds, the Court facially enjoined SORA's requirements to report "[a]ll electronic mail addresses and instant message addresses … routinely used by the individual," and "[a]ll telephone numbers … routinely used by the individual." M.C.L. § 28.725(1)(h)-(i). *See Does I*, 101 F. Supp. 3d 672, 686-90, 704, 713.

Finally, to the extent that reporting requirements incorporate SORA's

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homework, or traveling for more than seven days. M.C.L. §§ 28.724a, 28.725, 28.725a, 28.727, 28.729(2); *see* Obligations, Disabilities, and Restraints Imposed by SORA, Exh. K.

retroactive lifelong registration, this Court found that lifetime reporting of internet identifiers "was not narrowly tailored" because "sex offenders who have not re-offended in twenty-five years" do not "pose an enhanced risk of committing sex offenses." *Does I*, 101 F. Supp. 3d 722, 730. The Court issued a similar blanket injunction against retroactive lifetime enforcement of M.C.L. § 28.727(1)(i). *Id.*

When this Court granted relief on the First Amendment claims in *Does I*, it found the above provisions facially invalid, and its injunctions were not limited to the *Does I* plaintiffs. *Id.* at 713. For the past four years, defendants have ignored those existing injunctions. This Court should make clear that the *Does I* injunctions prohibit enforcement of these provisions and enter identical injunctions in *Does II*.

II. A Permanent Injunction Is Warranted.

A. The Court Should Grant a Permanent Injunction Barring Enforcement of the SORA Provisions that Violate Due Process and the First Amendment.

Plaintiffs seek a permanent injunction barring enforcement of the vague provisions, strict liability enforcement, and enforcement of the challenged internet reporting requirements. "A party is entitled to a permanent injunction if it can establish that it suffered a constitutional violation and will suffer continuing irreparable injury for which there is no adequate remedy at law." *Lee v. City of Columbus*, 636 F.3d 245, 249 (6th Cir. 2011). That standard is easily met here.

First, as set out above, plaintiffs and primary class members have suffered a

violation of their constitutional rights under the Due Process Clause and First Amendment. And that violation is ongoing. Despite this Court's holding that the zones are unconstitutionally vague, defendants continue to inform all registrants that they cannot live, work, or loiter in the undefined zones. 2d Am. Verified Compl., ¶107; Explanation of Duties, R. 62-4, ¶¶12-13. And registrants who cannot determine where the zones are continue to face criminal prosecution and incarceration. *See e.g. Roe v. Snyder*, 240 F. Supp. 3d 697, 711-12 (E.D. Mich. 2017) (enjoining prosecution of registrant after police informed her she would face criminal charges if she did not quit the job she had held for eight years); *Curran*, 3:18-cv-11935, R.27 (granting injunction against prosecution of plaintiff who relied on advice of local police before purchasing home, but was then threatened with prosecution); Farkas Decl., R.62-6 (describing strict liability prosecutions of registrants under vague SORA reporting provisions); Van Gelderen Decl., R.62-7 (describing prosecution and conviction for "loitering" of grandfather who attended child's soccer game, despite counsel's reliance on *Does I*'s vagueness ruling).

Moreover, defendants' "Explanation of Duties" form continues to tell registrants that they must comply with the reporting requirements that were enjoined by this Court in *Does I*. Explanation of Duties, R.62-4, ¶¶4(h)-(i), 6(f), 12. In short, defendants continue to require all registrants—under threat of felony prosecution—to comply with the very provisions of SORA that this Court has already found to

be unconstitutional, and defendants continue to operate the registry as if *Does I* had never been decided.

Second, plaintiffs and primary class members will continue to suffer irreparable harm unless injunctive relief is granted. Indeed, "if it is found that a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated." *ACLU of Kentucky v. McCreary County*, 354 F.3d 438, 445 (6th Cir. 2003). Since this Court has already held that the challenged provisions are unconstitutional, this Court must find that such enforcement constitutes irreparable harm. *See Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 578 (6th Cir. 2002) (explaining that "a denial of an injunction will cause irreparable harm if the claim is based upon a violation of the plaintiff's constitutional rights"); *Preston v. Thompson*, 589 F.2d 300, 303 n.3 (7th Cir. 1978) ("the existence of a continuing constitutional violation constitutes proof of an irreparable harm").

Nor are there adequate remedies at law. In order for a legal remedy to suffice, it "must not only be plain, speedy and adequate, but as adequate to meet the ends of justice as that which the restraining power of equity is competent to grant." *Harris Stanley Coal & Land Co. v. Chesapeake and O. Ry. Co.*, 154 F.2d 450, 453 (6th Cir. 1946). There are simply no such adequate legal remedies where plaintiffs continue to face prosecution and incarceration based on SORA's unconstitutional provisions. A permanent injunction is warranted.

B. In the Alternative, the Court Should Grant a Preliminary Injunction.

Partial summary judgment is proper because no facts are in dispute and this Court need only apply its prior decisions in *Does I*. If, however, the Court were to identify issues that make summary judgment premature at this time, then plaintiffs ask the Court to issue a preliminary injunction instead.

In ruling on a motion for a preliminary injunction, courts must consider whether: (1) the movant is likely to prevail on the merits; (2) the movant would suffer an irreparable injury absent the injunction; (3) an injunction would cause substantial harm to others; and (4) an injunction would be in the public interest. *G & V Lounge, Inc. v. Mich. Liquor Control, Comm'n*, 23 F.3d 1071, 1076 (6th Cir. 1994). A preliminary injunction is warranted for the same reasons as a permanent one.

With respect to the likelihood of success—which is the most important factor, *see McCreary County*, 354 F.3d at 445—plaintiffs have already prevailed on exactly the same questions in *Does I*.

On the second factor, plaintiffs will continue to suffer irreparable injury, as set out above.

Third, the balance of hardship tips strongly in plaintiffs' favor. Approximately 44,000 people are suffering grave harm under SORA provisions this Court held to be unconstitutional more than four years ago. In contrast, defendants have

no legitimate interest in enforcing unconstitutional laws. As a matter of law, a party cannot claim that it will be harmed by an injunction if the conduct to be enjoined violates the Constitution. *See Tyson Foods v. McReynolds*, 865 F.2d 99, 103 (6th Cir. 1989) (holding defendant "has suffered no injury … [from injunction because it] has no right to the unconstitutional application of state laws"); *Connection Distrib. Co. v. Reno*, 154 F.3d 281, 288 (6th Cir. 1998) (same).

Fourth, it is well established that the vindication of constitutional rights serves the public interest. *See, e.g.*, *G & V Lounge*, 23 F.3d at 1079 ("it is always in the public interest to prevent violation of a party's constitutional rights"); *Preston*, 589 F.2d at 303 n.3 (remedying a constitutional violation "certainly would serve the public interest"); *Caspar v. Snyder*, 77 F. Supp. 3d 616, 644 (E.D. Mich. 2015) ("the public interest is always served by robust protection of constitutional guarantees"). The fourth factor, too, therefore weighs in favor of granting injunctive relief.

C. Questions Involving Relief for the Ex Post Facto Subclasses Should Not Stall Relief for the Primary Class.

This Court plans to hear the instant motion concurrently with plaintiffs' pending motion on behalf of the ex post facto subclasses. Order, R.74. This Court has already decided liability on the ex post facto claims, *see* Decl. Judgment and Order for 90-Day Deferral, R.55, leaving only the question of what injunctive relief is proper if the 2011 amendments cannot be severed because they are so

deeply embedded in the statute. Defendants have asked this Court to certify the severability issue to the Michigan Supreme Court. *See* Response, R.66. But the Court can only do so if certification "will not cause undue delay or prejudice." L.R. 83.40 (a)(3). Certification absent interim ex post facto relief would be impermissible because it would severely prejudice the ex post facto subclasses. *See* Plaintiffs' Reply Brf., R.69, Pg.ID#1069-72.

In the instant motion plaintiffs seek relief for the primary class on the vagueness, strict liability, and First Amendment claims—claims that are entirely separate from the ex post facto claim of the ex post facto subclasses. But the interplay of the Court's decisions on the two motions is important. Certification of the severability question prior to a decision on the instant motion would be highly prejudicial to the primary class *if* this Court were to interpret L.R. 83.40(b) as requiring a complete stay of federal proceedings. (As explained in plaintiffs' Reply, R.69, Pg.ID#1071, the best reading of L.R. 83.40(a)(2) is that it requires a stay only as to the claim on which an issue is certified.) Absent a class-wide injunction, primary class members face prosecution under provisions of SORA that this Court has already found unconstitutional. *See Roe*, 240 F. Supp. 3d at 711-12; *Curran*, 3:18-cv-11935; Farkas Decl., R.62-6; Van Gelderen Decl., R.62-7. Yet class members are severely constrained in protecting their rights individually, because defendants have insisted that relief must come in the class action. Staying the

entire case would thus severely prejudice primary class members, and therefore make certification of the severability question impermissible under L.R. 83.40.

As set out in plaintiffs' Joint Status Conference Request, R.73, if this Court broadly enjoins the application of SORA for pre-2011 registrants because the 2011 amendments are not severable, that could at long last lead to legislative reform because it will effectively force the parties back to the bargaining table. It has become clear that the legislature will not act to remedy the aspects of SORA that the Sixth Circuit and this Court have held unconstitutional absent an express judicial requirement to do so. Indeed, Lt. Christopher Hawkins, the Commander for the MSP Legislative and Legal Resources Section, has testified as much.[7] This Court cannot rewrite the statute—that is a legislative task—but it can and should make clear through its injunctions what the scope of that legislative task is. And that task includes not just addressing the unconstitutionality of retroactive application of the 2006 and 2011 amendments, but also SORA's infirmities with respect

[7] Lt. Hawkins testified at a deposition in *Compaan v. Snyder*, 15-cv-01140 (W.D. Mich.) at 42 (Exh. L) as follows:

> Q. Did anyone in the meeting suggest it might be more politically expedient to wait until the court essentially required changes to SORA before attempting to make those changes in the legislature?
> A. I suppose that was part of my argument as to why to wait, yeah.
> Q. It might be more palatable to an individual member of the Senate or House's constituents to make changes to the Sex Offender Registry because the court is requiring the state to do so?
> A. Yes.

to vagueness, strict liability, and the First Amendment.

Accordingly, the Court should set forth that legislative task by enjoining both the enforcement of SORA entirely for pre-2011 registrants (for the reasons set out in plaintiffs' prior motion, R.62) and the enforcement of the provisions challenged here for all registrants. Deciding both issues simultaneously will also allow the legislature to remedy the constitutional defects in a single, unified statute.

As the Supreme Court has said, courts should be "wary of legislatures who would rely on our intervention." *Ayotte v. Planned Parenthood of Northern New England*, 546 U.S. 320, 330 (2006). Courts' "mandate and institutional competence are limited," and they cannot "rewrit[e] state law to conform it to constitutional requirements." *Id.* at 329. Moreover, "where line-drawing is inherently complex," efforts to craft a judicial remedy for an unconstitutional statute "may call for a far more serious invasion of the legislative domain than [courts] ought to undertake." *Id.* at 330 (citation omitted). Here there is simply no way for this Court to divine exactly what the legislature wants. And even if this Court could, there is no way to judicially rewrite the statute to achieve that goal.[8]

[8] For example, legislative negotiations to date have made clear that all stakeholders prefer a single statute for all registrants, rather than a regime that is even more confusing than the current law because different offense dates would trigger different SORA requirements. Adopting a single registration regime effectively means that certain requirements that are unconstitutional for pe-2006 and pre-2011 registrants would also not be imposed on post-2011 registrants.

There is little doubt that the legislature will want some form of registration statute. But the requested injunctions do not prevent that. If this Court grants the relief requested but makes the injunctions effective 60 days out, that will put the task of rewriting the statute to make it constitutional back where it belongs—with the legislature. The requested injunctions are not designed to nullify the work of the legislature. They are designed to make the legislature get to work.

III. The Court Should Order Notice.

The Court should order notice of any relief granted here to all registrants, and to all prosecutors and law enforcement personnel who have responsibility for enforcing SORA, with the Michigan State Police to provide the notice. Rules 23(c)(2)(A) and 23(d)(1)(B) give the Court broad discretion to ensure that class members get appropriate notice. Moreover, the state has a statutory responsibility to inform registrants of their SORA obligations. M.C.L. § 28.725a. And, as this Court has held, notice is essential so that registrants can understand and comply with the law—a problem made all the more acute by the byzantine nature of the statute. *Does I*, 834 F.3d at 698. The Court should also order defendants to provide notice to prosecutors and law enforcement who are responsible for SORA enforcement, to ensure that they are fully aware of any relief that this Court orders.

The Michigan State Police SOR Unit is best placed to handle notice, as it maintains the records for all registrants and has prior experience with notice to

both registrants and law enforcement. For example, after implementation of the 2011 amendments, the MSP mailed notice regarding the statutory changes to all registrants. *See* Exh. A, JSOF, ¶¶ 783-86. Similarly, after the Sixth Circuit's decision in *Does I* in 2016, the MSP sent out a notice to law enforcement about the decision. *See* Exh. M, MSP Bulletin Re *Does I*. Finally, the Court should order the parties jointly to develop a notice or notices, with any disputes to be resolved by the Court. The Court should also set a deadline for the parties to present for the Court's approval a proposed plan and schedule for distribution of the notices.

Defendants should, in addition, be required to update the Explanation of Duties form to accurately reflect the law. The form is provided to registrants each time they report, and summarizes registrants' obligations under SORA. Despite the Sixth Circuit's and this Court's rulings in *Does I*, the MSP has continued to inform registrants that they must comply with SORA as written. *See* Form, ECF 62-4, 62-5. Given that registrants face prison time if they misunderstand their SORA obligations, they should be given accurate information about what their obligations are. Note, however, that updating the Explanation of Duties is not a substitute for class notice because it is only provided when registrants report. Thus, registrants who only report annually might not get notice for another year. M.C.L. § 28.725a(3)(a).

CONCLUSION

For the reasons set out above, the Court should grant the relief requested.

Respectfully submitted,

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Dated: December 23, 2019

Certificate of Service

On December 23, 2019, plaintiffs filed the above motion and brief for partial summary judgment using the Court's ECF system, which will send same-day email service to all counsel of record.

s/ Miriam J. Aukerman
Attorney for Plaintiffs

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D. Expert Report of Dr. Janet Fay-Dumaine, Psy. D.

E. First Expert Report of Peter Wagner, J.D.

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L. Deposition of Lieutenant Christopher Hawkins, *Compaan v. Snyder*, 15-cv-01140 (W.D. Mich.) (Excepts)

M. Michigan State Police Sex Offender Registration Unit Bulletin To Law Enforcement Regarding *Does I*.[1]

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[11] This document was originally filed by the state defendants in *Roe v. Snyder*, 16-cv-13353, R.25-1 (E.D. Mich), who represented that it was a bulletin issued by the Michigan State Police to law enforcement agencies on October 15, 2016. R.25, Pg.ID#247.

Exhibit A

Does I Joint Statement of Facts

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-5 and MARY DOE,

Plaintiffs,

v.

RICHARD SNYDER, Governor of the State of Michigan, and COL. KRISTE ETUE, Director of the Michigan State Police, in their official capacities,

Defendants.

File No. 2:12-cv-11194

HON. ROBERT H. CLELAND

Mag. Judge DAVID R. GRAND

JOINT STATEMENT OF FACTS

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I. INTRODUCTION AND TERMINOLOGY

1. Plaintiffs John Does #1-5 and Mary Doe are Michigan residents and registered sex offenders whose Sex Offender Registration Act (SORA) requirements have been retroactively extended for life. *See* M.C.L. § 28.721 *et. seq.*; Verified Complaint[1] ¶ 1.

2. As used here, the term "SORA" refers to Michigan's Sex Offender Registration Act in general. The term "SORA 2011" refers to the cumulative amendments in effect in 2011, including the 2006 amendments imposing geographic zones and the 2011 amendments creating a tier structure, requiring lifetime registration for Tier III registrants, and adding new verification and immediate reporting requirements. The term "SORA 2013" refers to the 2013 iteration of the statute, which was amended to impose an annual fee. Mich. Pub. Acts 121, 127 (2005); Mich. Pub. Act. 17-18 (2011); Mich. Pub. Act 149 (2013).

3. The parties vary on the terminology used to describe various aspects of SORA. Defendants describe the 1000-foot zones around school as "student safety zones," since that is the term used in the statute. Plaintiffs describe those areas as "geographic exclusion zones," since they have the effect of excluding registrants from living or working in those zones. For the purposes of this joint statement, the parties stipulate to describe the 1000-foot area with the term "geographic zones."

[1] All references to the Verified Complaint refer to the First Amended Complaint, Dkt 46.

II. STATEMENTS OF LAW

A. The Historical Evolution of SORA

Defendants make a continuing objection to the relevance of this section of the facts because the history of prior amendments to SORA has no bearing on the constitutionality of the current form of the statute.

4. Michigan first passed a sex offender registration law in 1994. Mich. Pub. Act 295 (1994).

5. Under the 1994 statute, registration information was available only to law enforcement, and was exempt from public disclosure. A person who divulged registry information to the public was guilty of a misdemeanor, and a registrant whose information was revealed had a civil cause of action for treble damages. Mich. Pub. Act 295, Sec. 10 (1994).

6. Plaintiffs contend the statute did not require regular verification or reporting. After the initial registration was completed, the only additional obligation was to notify local law enforcement within 10 days of a change of address. The registrant did not need to notify law enforcement in person. Mich. Pub. Act 295, Sec. 5(1) (1994).

7. The non-public law enforcement registry information was maintained for 25 years for people convicted of one offense, and for life for people convicted of multiple offenses. Mich. Pub. Act 295, Sec. 5(3)-(4) (1994).

8. Plaintiffs contend the statute applied retroactively to people whose convic-

tions occurred before October 1, 1995, but only if they were still incarcerated, on probation or parole, or under the jurisdiction of the juvenile division of the probate court or Department of Social Services on that date. Mich. Pub. Act 295, Sec. 3(b)-(c) (1994).

9. The legislature has amended SORA over the last two decades. Mich. Pub. Act 494 (1996); Mich. Pub. Act 85 (1999); Mich. Pub. Act 542 (2002); Mich. Pub. Acts 238, 239, 240 (2004); Mich. Pub. Acts 121, 127, 132 (2005); Mich. Pub. Act 46 (2006); Mich. Pub. Acts 17, 18 (2011); Mich. Pub. Act 149 (2013).

10. Effective April 1, 1997, law enforcement agencies were required to make registry information available to the public (for zip codes within the agency's jurisdiction) during business hours. The public could view a paper copy of the registry by visiting their local law enforcement agency. Mich. Pub. Act 494, Sec. 10(2) (1996).

11. In 1999, registry information became available to the public on the Internet. Mich. Pub. Act 85, Sec. 8(2), 10(2)(3) (1999).

12. The 1999 amendments to SORA added in-person reporting requirements that required registrants to report quarterly or yearly, depending on their offense. Mich. Pub. Act 85, Sec. 5a(4) (1999).

13. Plaintiffs contend the 1999 amendments also expanded the list of offenses for which registration was required and the categories of individuals required to

register for life; lengthened the penalties for some SORA offenses; required registrants to maintain a driver's license or personal identification card; made registry information on certain juveniles public; required fingerprinting and digitized photographs for registrants; and required registration for out-of-state students attending Michigan schools, out-of-state employees working in Michigan, and anyone who was convicted of a listed offense or required to register in another state or country. Mich. Pub. Act 85 (1999).

14. In 2002, amendments to SORA required both resident and non-resident registrants to report in person when they enrolled, dis-enrolled, worked, or volunteered at institutions of higher learning. Mich. Pub. Act 542, Sec. 4a (2002).

15. Amendments in 2004 required registrants' photographs to be posted on the Internet-based public registry, created a one-time registration fee for registrants, and made failure to pay the fee a misdemeanor. Mich. Pub. Acts 237, 238 (2004).

16. The 2004 amendments removed the registration requirement for youthful (HYTA) offenders after October 1, 2004, unless they had lost their HYTA status. Youth assigned to HYTA before that date were still required to register, but could petition to reduce or eliminate their registration requirements depending on the circumstances of their offense—such as the age difference with the victim and the charge. This was commonly referred to as the "Romeo and Juliet" exception. Mich. Pub. Acts 239, 240 (2004).

17. Further amendments, effective January 1, 2006, prohibited registrants (with some exceptions, *see* MCL 28.734-736) from working, residing, or "loitering" within 1000 feet of school property, and imposed criminal penalties for non-compliance. Mich. Pub. Acts 121, 127 (2005). In addition, the penalties for some SORA offenses were increased. Mich. Pub. Act 132 (2005).

18. In 2006, SORA was amended to allow subscribing members of the public to be notified by email when a person registers or moves into a specified zip code. Mich. Pub. Act 46 (2006).

19. In 2011, SORA was amended to comply with the federal Sex Offender Registration and Notification Act (SORNA), 42 U.S.C. § 16901 *et seq.*, (Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248)). Mich. Pub. Act. 17-18 (2011).

20. In comformity with SORNA, the 2011 amendments placed registrants into three tiers based on the offense of conviction. Mich. Pub. Act 17-18 (2011). A registrant's tier-classification determines the length of time that a person must register and the frequency of reporting. M.C.L. §§ 28.722(r)-(w); 28.725(10)-(13). Tier I registrants must register and comply with all obligations imposed by SORA for 15 years; Tier II registrants must register and comply for 25 years; and Tier III registrants must register and comply for life. M.C.L. §§ 28.722 (r)-(w); 28.725(10)-(13).

21. Under SORA 2011, plaintiffs were classified as Tier III offenders who must register and comply with SORA for life. Mich. Pub. Act. 17-18 (2011).

22. In conformity with SORNA, the 2011 amendments also provided that persons whose offenses predated creation of the registry would be required to register if convicted of any new felony. Mich. Pub. Act 17-18 (2011).

23. In conformity with SORNA, the 2011 amendments require registrants to provide additional information (*e.g.*, internet identifiers, telephone numbers, vehicle information, *etc*.) during verification periods, and to immediately report in person when certain information changes. Mich. Pub. Act 17-18 (2011).

24. SORA 2011 also made several changes that reduced or eliminated registration requirements for certain offenders, including the following:

- Required 15-year registration for Tier I offenders. Previously the shortest registration period was 25 years.
- Eliminated registration for juvenile offenders adjudicated of Tier I and Tier II offenses. Juveniles convicted of Tier III offenses must still register.
- Eliminated registration for all juvenile offenders (regardless of tier) who were under 14 at the time of their offense.
- Eliminated certain offenses, including indecent exposure, from the list of offenses requiring registration.
- Removed juvenile and most Tier I offenders from the public website.
- Provided that offenders are not required to register if the age difference between the offender and the victim is not greater than four years and the victim consented to the sexual conduct ("Romeo and Juliet exception"), regardless of whether they were adjudicated under HYTA.

Mich. Pub. Act 17-18 (2011). Plaintiffs contend that none of these changes apply to them.

25. In 2013, while this case was pending, Michigan enacted new legislation requiring registrants to pay a $50 annual fee, and linking registrants' reporting dates to registrants' birthdays, with the result that all registrants are no longer going to police agencies to register in the same time period. Mich. Pub. Act 149 (2013).

26. The 2006 geographic zone amendments and the 2011 amendments were applied retroactively. Mich. Pub. Act 46 (2006); Mich. Pub. Act 17-18 (2011).

B. SORA Requires Offense-Based Registration

27. All individuals convicted of a listed offense under SORA are required to register. The tier assignment and length of registration are determined by the particular criminal offense charged and—in some cases—the age difference between the offender and the victim. Registration requirements are not based on clinical or actuarial risk assessments. M.C.L. §§ 28.722(r)-(w); 28.722-28.723.

28. SORA does include a process that allows certain juvenile sex offenders whose adjudications occurred at least 25 years ago, and some Tier I offenders who have been on the registry at least 10 years, to file a petition with the circuit court to have their registration requirements discontinued. Youthful offenders whose offenses no longer qualify as listed offenses may also petition for removal. None of these procedures apply to the plaintiffs. Plaintiffs contend that SORA contains no mechanism that would allow the plaintiffs to have their registration obligations

eliminated or reduced, or their tier level changed, based on a showing that they are not dangerous. M.C.L. § 28.721 *et seq.*; M.C.L. § 28.728c.

29. SORA 2013 requires in-person reporting irrespective of how long the person has served offense-free in the community. M.C.L. §§ 28.725(1); 28.727(1).

C. Summaries of the SORA Statute

30. SORA 2013 contains 23 sections, many of which contain multiple subsections, and cross-references. M.C.L. § 28.721 *et seq.*

31. Plaintiffs prepared a summary of SORA 2013's requirements, organized by type of restriction (e.g. employment restrictions, housing restrictions, reporting obligations, etc.). That summary is contained in Exhibit 34.

Defendants do not stipulate to the accuracy, completeness, or relevance of Plaintiffs' Exhibit 34. Defendants contend that the summary represents plaintiffs' own interpretation of the statute and is thus legal argument, not fact.

32. Plaintiffs also prepared a summary of language in SORA 2013 that they contend is unconstitutionally vague. That summary is contained in Plaintiffs' Responses to Defendants' Interrogatories, No. 11, attached as Exhibit 35.

Defendants do not stipulate to the accuracy, completeness, or relevance of Plaintiffs' Exhibit 35. Defendants contend that the summary represents only plaintiffs' own self-serving arguments about the language of statute and are thus legal argument, not fact.

III. THE PLAINTIFFS

A. John Doe #1

34. John Doe #1 resides in the Eastern District of Michigan. Verified Compl, ¶ 15.

35. Mr. Doe #1 graduated high school. As a teenager he sold drugs. Doe #1 Dep 5 ln 21-25, Exh 1.

36. In 1990, when Mr. Doe #1 was 20 years old, he was fired from his job at McDonalds. He believed he was fired unjustly. He states that, out of anger and revenge, he attempted to rob his former employer. Verified Compl, ¶ 16.

37. As the manager of the McDonalds and her son were leaving, Mr. Doe #1 approached them with the intent of robbing the restaurant. He forced them back inside the McDonalds from the parking lot and compelled them to open the safe at gunpoint. When the manager did not comply, he struck her and kicked her 14-year-old son. Mr. Doe #1 also threatened to lock the son in the walk-in freezer if the manager did not open the restaurant's safe. Doe #1 Dep 11-12, Exh 1.

38. The manager and her son escaped, and Mr. Doe #1 was apprehended by police. *Id*. at 21-23.

39. Mr. Doe #1 was charged with 11 felony counts, including kidnapping. He pled no contest to kidnapping (for forcing the manager's son into the McDonald's and holding him against his will). He also pled guilty to the other charges, including armed robbery and weapons charges. Verified Compl, ¶ 18; Doe #1 Dep 12-23,

Exh 1.

40. Mr. Doe #1 never engaged in any sexual conduct during the attempted robbery, nor has he ever otherwise been accused of sexual misconduct. Verified Compl, ¶ 19; Doe #1 Dep 84, Exh 1.

41. Mr. Doe #1 was sentenced in 1991 to 22 to 40 years in prison for armed robbery. Verified Compl, ¶ 20; Doe #1 Dep 7 ln 2—8 ln 9, 26, Exh 1.

42. Mr. Doe #1 testified that after a conversation with his mother, where he realized that by being incarcerated he had hurt his family, he decided to turn his life around. Doe #1 Dep 28-29, Exh 1.

43. Mr. Doe #1 helped run Chance for Life, a program that trains prisoners how to handle conflict peacefully. He was an elected officer for a prisoner organization that helps inmates litigate cases *pro per* and collects funds from inmates to support churches and shelters. He was involved in the Warden's Forum, a program where older prisoners mentored younger ones. He earned the support of his warden for parole. Doe #1 Dep 28, 30-32, 87, 106, Exh 1; Verified Compl, ¶ 21.

44. While in prison, John Doe #1 tutored other prisoners, helping them with reading and writing. He spent a great deal of time in the law library. Doe #1 Dep, 28 ln 3-5, Exh 1.

45. Mr. Doe #1 served 20 years in prison. He has taken full responsibility for his crime, including writing the victims to apologize. Doe #1 Dep 23, 35-36, Exh 1.

46. In November 2009, Mr. Doe #1 was paroled. He successfully completed his parole in November 2011. Verified Compl, ¶ 22.

47. Mr. Doe #1 first learned that he would be required to register as a sex offender when he was paroled. He testified that he did not understand why he was required to register as a sex offender when he had not committed a sex offense. Doe #1 Dep 40, 43, Exh 1.

48. Mr. Doe #1 has been employed for nearly five years as a vocational services coach, where he assists adults with mental and physical disabilities in the workplace. He has been promoted to a management/supervisor position. Doe #1 Dep 10 ln 4-18; 94 ln 18-19, Exh 1; Verified Compl, ¶ 23.

49. Mr. Doe #1 has two adult children and one toddler, and also co-parents his fiancé's teenaged daughter. He currently lives with his fiancée and his two youngest children. Doe #1 Dep 64-65, 68, Exh 1.

50. Mr. Doe #1 has not been charged with or convicted of any crime since his convictions following the 1990 McDonalds robbery. Verified Compl, ¶ 24.

51. Under SORA 2013, people convicted of kidnapping a minor are required to register as sex offenders for life, even if the circumstances of the offense lack any sexual component. M.C.L. § 28.722(w)(ii). Although Mr. Doe #1's offense did not include a sexual component, he was required to register because he was convicted of kidnapping a minor. Doe #1 Dep 40 ln 11— 41 ln 9, Exh 1.

52. At the time Mr. Doe #1 was convicted, Michigan did not have a sex offender registry. He therefore did not receive any notice that his conviction for a non-sex offense would subject him to registration as a sex offender. Verified Compl, ¶ 26; Doe #1 Dep 84-85, Exh 1.

53. Mr. Doe #1 testified that had he had reason to believe that a kidnapping conviction would result in lifetime sex offender registration, he would have gone to trial or tried to bargain for an alternate disposition that would not have resulted in registration. Verified Compl, ¶ 27; Doe #1 Dep 84-85, Exh 1.

Defendants object to this statement as speculation, conclusory, and based upon a hypothetical that cannot be proved or disproved. What Mr. Doe #1 would or would not have done is unknowable.

54. When Mr. Doe #1 was released from prison in 2009 he was required to register for 10 years. Mich. Pub. Act 132 Sec. 5(6) (2005) (requiring registration for 25 years, or 10 years after release from imprisonment, whichever is longer).

55. As a result of the 2011 amendments, Mr. Doe #1 was classified as a Tier III offender who must register and comply with SORA for life. Verified Compl, ¶ 28; Mich. Pub. Act 17, §5(12) (2011).

56. Mr. Doe #1 has previously contacted his U.S. congressman regarding the registry. He has not contacted any state legislators. Doe #1 Dep 82 ln 2-14, Exh 1.

57. Mr. Doe #1 has drafted, but not yet sent, letters to state legislators regarding the sex offender law. He has put his efforts on hold pending the outcome of this

case. Doe #1 Dep 81 ln 12—82 ln 1, Exh 1.

58. Mr. Doe #1 reads and understands English, and does not have any learning disabilities. Doe #1 Dep 11 ln 12-14, Exh 1.

B. John Doe #2

59. John Doe #2 resides in the Eastern District of Michigan. Verified Compl, ¶ 29.

60. In the summer of 1996, when Mr. Doe #2 was 18 years old, he had a sexual and romantic relationship with a 14-year-old girl. Doe #2 Dep 52-53, Exh 2.

61. Eventually, the mother of Mr. Doe #2's under-age girlfriend became aware of their relationship. One day, the girl's mother called him and informed him that the girl was a minor. Doe #2 Dep 56-57, Exh 2.

62. Mr. Doe #2 was prosecuted after three boys, including him, engaged in sexual acts with the girl. Mr. Doe #2 knew the girl's age when this occurred. Doe #2 Dep, 51-601, Exh 2.

63. After she became an adult, the girl signed an affidavit stating that she willingly engaged in that sexual contact. Aff of Victim in Case of Doe #2, Exh 66; Doe #2 Dep 59-60, Exh 2.

64. Mr. Doe #2 pled guilty under the Holmes Youthful Trainee Act (HYTA) to criminal sexual conduct III, which prohibits sex with person under the age of 16. Verified Compl, ¶ 31; Doe #2 Dep 60, Exh 2; M.C.L. § 750.520d(1)(a).

65. HYTA provides that if a youth aged 17 to 21 pleads guilty, the court "with-

out entering a judgment of conviction" may "assign that individual to the status of youthful trainee." M.C.L. § 762.11(1). If the youth completes the trainee period, then "the court shall discharge the individual and dismiss the proceedings." M.C.L. § 762.14(1).

66. Under HYTA, an assignment to youthful trainee status "is not a conviction for a crime." M.C.L. § 762.14(2). Under SORA, assignment to youthful trainee status is included in the definition of "convicted." M.C.L. § 28.722(b).

67. Court records in HYTA cases are sealed from the public and do not appear on the person's criminal history, as "all proceedings regarding the disposition of the criminal charge and the individual's assignment as youthful trainee shall be closed to public inspection." M.C.L. § 762.14(4).

68. At the time of Mr. Doe #2's offense, Michigan had just created its sex offender registry. Although the statutory scheme required registration of HYTA trainees, the registry was private and was available only to law enforcement. Registry information was exempt from Freedom of Information Act requests. Verified Compl, ¶ 37; Mich. Pub. Act 295 (1994) (eff. Oct. 1, 1995).

69. HYTA was amended in 2004 to specify that certain HYTA trainees are subject to sex offender registration. Those amendments were not in effect at the time Mr. Doe #2 pled. Mich. Pub. Act 239 (2004), codified as M.C.L. §§ 762.13(6); 762.14(3).

70. Mr. Doe #2 knew at the time he pled that he would have to register as a sex offender under the then-existing registry, which was accessible only to law enforcement. Doe # 2 Dep 58 ln 24—60 ln 19, Exh 2.

71. Mr. Doe #2's plea was based on prosecutor's promise that his case would be dismissed under HYTA and his records sealed. At no time before his plea was Mr. Doe #2 ever told that information about his case could be posted on a public Internet-based sex offender registry, which at that time did not exist. Doe #2 Dep 60, 66, 136-138, Exh 2.

72. Pursuant to his plea, Mr. Doe #2 received no jail time. He was sentenced to two years of probation. His name was placed on the non-public law enforcement sex offender registry for 25 years, making him eligible for removal at age 44. Verified Compl, ¶ 35; Doe #2 Dep 61, 66, 76, Exh 2.

73. Mr. Doe #2 successfully completed his HYTA probation, and was discharged early (after 18 months) for good behavior. He also completed sex offender therapy. His case was dismissed without a conviction being entered and his records were sealed. Verified Compl, ¶ 35; Doe #2 Dep 61, 66, 76, Exh 2.

74. Mr. Doe #2 registered for the first time when he completed probation. Doe #2 Dep 61 ln 6-12, Exh 2.

75. After Mr. Doe #2 initially registered and his name was placed on the non-public registry, it was his understanding that nothing further was required of him.

Plaintiffs assert that the statute did not require reporting at regular intervals at that time. Doe #2 Dep 61-62, 67, Exh 2; Mich Pub. Act 295, Sec. 10 (1994).

76. Mr. Doe #2 did not register again during the next 15 years. Doe #2 Dep 62 ln 19-24, Exh 2.

77. Had Mr. Doe #2 known that changes in Michigan law would result in him being subjected to life-time public registration as a sex offender, he would have taken his case to trial. Doe #2 Dep 137, Exh 2.

Defendants object to this statement as speculation, conclusory, and based upon a hypothetical that cannot be proved or disproved. What Mr. Doe #2 would or would not have done is unknowable.

78. Mr. Doe #2 left high school but completed his GED. He briefly studied business at the University of Detroit-Mercy. Doe #2 Dep 5 ln 1-4, ln 13-25, Exh 2.

79. Mr. Doe #2 left college to join the army. He served in active-duty military service twice, earning an honorable discharge both times. He stated that he received training as a combat engineer and in military intelligence. Verified Compl, ¶ 39; Doe #2 Dep 6, 8, 11-14, 63, 89, Exh 2; Certificate of Release from Active Duty (Doe #2 DD-214), Exh 65.

80. While on inactive status with the army, Mr. Doe #2 went back to college and obtained a certification to be a medical assistant, and also obtained training on subjects like OSHA and hazardous materials. Doe #2 Dep 9 ln 13-22, Exh 2.

81. While in the service, Mr. Doe #2 was injured in an accidental grenade

explosion, suffering a traumatic brain injury. He now receives disability benefits through the Veterans Administration. Verified Compl, ¶ 39; Doe #2 Dep 11-14, 63, Exh 2; Certificate of Release from Active Duty (Doe #2 DD-214), Exh 65.

82. Around 2010, after Mr. Doe #2 was discharged from the military, he got a call from a Michigan state trooper. The officer told him that he was now subject to supervision as a sex offender and that he needed to comply with his registration requirements. Mr. Doe #2 had not previously known that as a result of amendments to SORA, he had retroactively become subject to Michigan's requirements for ongoing reporting. Doe #2 Dep 20, 63, 67-68, Exh 2.

83. Although he had not registered for 15 years, Mr. Doe #2 was not arrested. The trooper explained to Mr. Doe #2 that he needed to register, and Mr. Doe #2 explained "how regular life has been," that he had not been in trouble since his HYTA case, and that he had no idea he was supposed to register. He felt that the trooper understood his situation. Doe #2 Dep 63 ln 3–64 ln 22, Exh 2.

84. For nearly 15 years before being notified that he was subject to supervision and reporting as a sex offender, Mr. Doe #2 had lived without the restrictions associated with sex offender registration. Doe #2 Dep, 62, Exh 2.

85. In 2011, Mr. Doe #2 was retroactively re-classified as a Tier III offender, and he must now register for life. *Id.*at 68.

86. Mr. Doe #2 was four years and one month older than the girl with whom he

had a sexual relationship. Doe #2 Dep 82, Exh 2. Plaintiffs contend that under SORA, had the age difference between them been less than four years, Mr. Doe #2 would not be subject to sex offender registration under the "Romeo and Juliet" exceptions. M.C.L. § 28. 722(w)(iv), 28.728c(14); Doe #2 Dep 82, Exh 2.

87. Mr. Doe #2's adjudication is not a conviction under HYTA and does not appear on a criminal background check. He has no other criminal history. He does have a military disciplinary action for marijuana use. Doe #2 Dep 137-138, Exh 2.

88. The Michigan State Police criminal history print-out for Mr. Doe #2 indicates that he does not have any conviction history. However, he is listed as a convicted sex offender on Michigan's sex offender registry. *Compare* Doe #2 MSP Criminal History Print-out, Exh 63, *with* Doe #2 Michigan Sex Offender Registry Print-out, Exh 64.

89. But for the fact that Mr. Doe #2 is publicly listed on the sex offender registry, schools, employers, landlords, and the public would be unaware of his sealed HYTA case or the facts underlying it. Verified Compl, ¶ 44; Doe # 2 Dep 76, 138, Exh 2.

Defendants object to this statement on the grounds of speculation. There is no way to determine what the public would or would not know or what the victim or her mother might choose to reveal.

90. Mr. Doe #2 testified that the requirement of public, life-time registration "grossly contradict[s]" the terms of the plea agreement he had made, whereby his

record would be sealed under HYTA. Doe #2 Dep 68 ln 14—69 ln 1, Exh 2.

91. Mr. Doe #2 has not had any encounter with law enforcement in which he was threatened with arrest or imprisonment for anything to do with his sex offender registration. Doe #2 Dep 72 ln 1-21, Exh 2.

92. Mr. Doe #2 has not contacted any state legislators to seek a change to SORA, but he testified that he plans to do so in the future. Doe #2 Dep 78 ln 20—79 ln 1, Exh 2.

93. Mr. Doe #2 has one teenage daughter who also resides in the Eastern District of Michigan, living with her mother. The girl's mother has full custody and Mr. Doe #2 has visitation on weekends. Doe #2 Dep 22-24, Dep 33 ln 7-17, Exh 2.

94. Mr. Doe #2 currently has a girlfriend, and she knows about his past. He explained his history to her and she chose to continue dating him. Doe #2 Dep146 ln 21—147 ln 16, Exh 2.

C. John Doe #3

95. John Doe #3 resides in the Eastern District of Michigan. Verified Compl, ¶ 46.

96. Mr. Doe #3 left high school in his senior year, but obtained his GED. Doe #3 Dep 6 ln 12-15, Exh 3.

97. After getting his GED, Mr. Doe #3 worked at the local fruit market and a few other odd jobs. He then worked at his family's auto service station. Doe #3 Dep 10 ln 12—11 ln 2, Exh 3.

98. Mr. Doe #3 stated that in January 1998, when he was 19 years old, he had a romantic and sexual relationship with a 14-year-old girl. Verified Compl, ¶ 47.

99. Mr. Doe #3 met the girl at a hair salon in his neighborhood, where she was working. As he was paying for his haircut she slipped him her phone number. Doe #3 Dep 24, Exh 3.

100. Mr. Doe #3 called the number she had given him, and they met for coffee and began dating. On the third or fourth date—but within the first week—they had sex. Doe # 3 Dep 25, Exh 3.

101. At the time, Mr. Doe #3 did not know how old she was. John Doe #3 stopped having intercourse with the girl after her father informed him of her age. Doe #3 Dep 26-29, Exh 3.

102. Both Mr. Doe #3 and his girlfriend were from immigrant Muslim families. Doe #3 Dep 35-36, 40, Exh 3.

103. It is Mr. Doe #3's understanding that when the girl's father learned of their relationship he flew into a rage and threatened to kill his daughter for disgracing the family. To protect herself from her father, the girl told her father she had been raped. Her father then took her to the police, where she gave a written statement. Doe #3 Dep 30-31, 43-45, Exh 3.

Defendants object to the description of the father's reaction and the victim's motives are hearsay, speculation, and also irrelevant.

104. After the police were contacted, the girl's family and Mr. Doe's family met to discuss the matter. The girl's father demanded that Mr. Doe #3 marry his daughter. Doe #3 Dep 31, 37-38, Exh 3.

105. Mr. Doe #3 agreed to the family's demands that he marry his girlfriend in an Islamic ceremony, though no date was set. (They could not marry in a civil ceremony because she was underage.) After this agreement, Mr. Doe #3 and his girlfriend had her father's permission to continue seeing each other. Doe #3 Dep 37-41, Exh 3.

106. As a result of the agreement between the families, Mr. Doe #3's girlfriend and her father went back to the police and changed her statement – admitting that the sexual relationship had, in fact, been consensual. Doe #3 Dep 46-47, Exh 3.

Defendants object to this statement on the grounds that the victim's motives and the statement concerning consent are hearsay and also irrelevant.

107. Mr. Doe #3 testified that, about a month later, his girlfriend's father suddenly decided the marriage must happen immediately. Mr. Doe #3 testified that the father demanded a $50,000 dowry and $50,000 more if they ever divorced. Doe #3 Dep 41-42, 47-48, Exh 3.

Defendants object to this statement on the grounds that the father's alleged demands are hearsay and irrelevant.

108. Mr. Doe #3 and the girl had sex again between the time that the girl's

father gave his permission to date his daughter and the time that the father demanded money. At that time, Mr. John Doe #3 knew her age. Doe #3 Dep 49 ln 9-21, Exh 3.

109. Mr. Doe #3 testified that he and his family refused the father's demand for money. Doe #3 Dep 41-42, 47-48, Exh 3.

110. The next day Mr. Doe #3 was arrested for having sex with a minor. Doe #3 Dep 40-42, 50-52, Exh 3.

111. Mr. Doe #3 eventually entered into a plea agreement, pleading guilty to attempted criminal sexual conduct III, which prohibits sex with a person under the age of 16. He was sentenced in 1998 under the Holmes Youthful Trainee Act to four years of probation. Doe #3 Dep 56, Exh 3; M.C.L. § 750.520d(1)(a).

112. At the time of Mr. Doe #3's offense, Michigan did not yet have a public, Internet-based registry. Mr. Doe #3 was required to register for 25 years on the non-public law enforcement registry, making him eligible for removal at age 45. Mich. Pub. Act 494, Sec. 10(2) (1996).

113. The requirements for quarterly in-person reporting were introduced after Mr. Doe #3's plea was accepted, and they were applied retroactively to him. Verified Compl ¶ 51; Doe #3 Dep 61-62, Exh 3.

114. During his last year of HYTA probation in 2001, Mr. Doe #3 came back from a vacation near the end of the 15-day registration period. The police station

was closed from Friday, Saturday, and Sunday for a long weekend, and he was unable to report until it reopened on Monday. As a result, he reported one day late. Defendants contend that it is not clear why Mr. Doe #3 chose to return from vacation at that time, or if he made any effort to check the police station's availability before going on vacation, or if he attempted to go to any other police agency to report once he learned that his local police station was closed. Doe #3 Dep 22, 56-60, Exh 3.

115. John Doe #3 testified that after he noticed his registration paperwork was date-stamped for the day after his registration period ended, he went straight to the probation office to tell his agent that he had reported late. Based on his failure to report timely, he was found to have violated his probation. The court gave him the choice of either serving one year in prison and keeping his HYTA status, or giving up HYTA. Mr. Doe #3 chose to give up his HTYA status. His HYTA status was revoked, and a conviction was entered. Doe #3 Dep 22, 56-60, Exh 3.

116. When Mr. Doe #3 met his wife, he was a registered sex offender. He explained why he was on the registry to her and her father right away. Doe #3 Dep 17-18, Exh 3; S.F. Dep16 ln 7—17 ln 21, Exh 8.

117. Mr. Doe #3 and his wife S.F. [2] have three sons, aged nine, six, and six months. S.F. Dep 9, Exh 8.

[2] S.F.'s initials have been changed to protect the privacy of their family.

118. Mr. Doe #3 works at the family business, an auto repair shop and gas station. Doe #3 Dep 11, Exh 3.

119. Mr. Doe #3's wife is a public school teacher and has a master's degree in education. Doe #3 Dep 119, Exh 3; S.F. Dep 9-10, Exh 8.

120. In 2011, Mr. Doe #3 was retroactively classified as a Tier III offender. His registration period was extended from 25 years to life. Doe #3 Dep 65, Exh 3.

121. Mr. Doe #3 was four years and ten months older than the girl with whom he had sex. Verified Compl ¶ 54. Plaintiffs contend that had the age difference been less than four years, Mr. Doe #3 would not be subject to registration under the "Romeo and Juliet" provisions of SORA. M.C.L. §§ 28.728c(14); 28.722(w)(iv).

122. Mr. Doe #3 attested that he has no other criminal convictions. Verified Compl ¶ 55.

D. John Doe #4

123. John Doe #4 resides in the Western District of Michigan. He is homeless. Verified Compl ¶ 56; Doe #4 Dep 35, Exh 4.

124. In the summer of 2005, when Mr. Doe #4 was 23 years old, he had a sexual and romantic relationship with I.G., a girl he met at a nightclub. Doe #4 Dep 10, Exh 4; Decl of I.G., Exh 31.

125. The club where they met was restricted to those aged 18 and older. Doe #4 Dep 10, Exh 4; I.G. Dep 18, Exh 7.

126. Mr. Doe #4 testified that he did not know that I.G. had managed to slip into the nightclub without having her ID checked because she was with a group of older friends. He testified that he assumed she was of age because she had entered the club. At the time I.G. was actually 15. Doe #4 Dep 20, Exh 4; I.G. Dep 18, Exh 7.

127. I.G. became pregnant as a result of their relationship. After her parents learned she was pregnant they went to the police and Mr. Doe #4 was later arrested. Verified Compl ¶ 58; I.G. Dep 32-34, Exh 7; Doe #4 Dep 23, Exh 4.

128. After Mr. Doe #4 was questioned by the police, he learned I.G.'s actual age. Doe #4 Dep 20-21, Exh 4.

129. In 2006, Mr. Doe #4 pled guilty to attempted criminal sexual conduct III, which prohibits sex with person under the age of sixteen. Doe #4 Dep 25, Exh 4; M.C.L. § 750.520d(1)(a).

130. Under the terms of the plea agreement, the case was to be dismissed if I.G.'s baby's DNA did not match that of Mr. Doe #4. I.G. had had other sexual partners, and it was unclear with whom she had become pregnant. It turned out that Mr. Doe #4 was the father of the child, and thus the case was not dismissed. Verified Compl ¶ 60; I.G. Dep 32, 40-41, Exh 7.

131. Mr. Doe #4 was sentenced to five years probation, which he successfully completed. He also completed sex offender counseling. Doe #4 Dep 25, Exh 4.

132. At the time of his conviction, Mr. Doe #4 was required to register for 25

years, making him eligible for removal at age 49. Verified Compl ¶ 62; Doe #4 Dep 48, Exh 4.

133. In 2011, Mr. Doe #4 was retroactively classified as a Tier III offender, and his registration period was extended from 25 years to life. Verified Compl ¶ 63; Doe #4 Dep 48, Exh 4.

134. Some years after his conviction, I.G. (who is now over 18) and Mr. Doe #4 renewed their romantic relationship. They remain involved and now have two children together: a daughter whose conception resulted in the criminal case (now 7) and a new baby. Doe #4 Dep 59-64, Exh 4; I.G. Dep 46-47, Exh 7.

135. I.G. testified that while sex offender registration laws are intended to protect victims like her, "I feel like the overall effect of it was completely opposite and I don't feel like there was an actual crime." I.G. testified that she "couldn't have a relationship with [John Doe #4] for years." Rather than feeling like a victim of a crime, she feels like a "victim of the criminal justice system" because of the impact the registry has had on her ability to have a normal family life with Mr. Doe #4 and their children. I.G. Dep 88-90, Exh 7.

Defendants object to these statements as the product of leading questions from Plaintiffs' counsel and questions that called for legal conclusions. Further, Defendants object to the relevance and foundation of I.G.'s opinion on the purpose of SORA.

136. Mr. Doe #4 also has two children with his ex-wife. Doe #4 Dep 63, Exh 4.

137. Mr. Doe #4 testified that he has repeatedly lost jobs when employers learned he is on the registry. He currently works for a cell phone company. Doe #4 Dep 29-31, Exh 4.

138. Mr. Doe #4's only other criminal convictions are for driving on a suspended license. Verified Compl ¶ 64.

139. Mr. Doe #4 completed his GED. He does not have any learning disabilities, and can read and understand English. Doe #4 Dep 5 ln 11-13; 9 ln 12-15, Exh 4.

E. John Doe #5

140. Mr. Doe #5 resides in the Eastern District of Michigan. Verified Compl ¶ 335.

141. Mr. Doe #5 is a high school graduate. After high school, he enlisted in the navy and served as a fire control technician for missiles and radar. Doe #5 Dep 5 ln 8-21, Exh 5.

142. Mr. Doe #5 was given an administrative discharge from the navy after ten and a half months. Doe #5 Dep 5 ln 22—6 ln 5, Exh 5.

143. Mr. Doe #5 completed his apprenticeship for cement masonry. Doe #5 Dep 6 ln 9-18, Exh 5.

144. After leaving his masonry job, Mr. Doe #5 obtained a service-related disability pension. Doe #5 Dep 8 ln 7-14, Exh 5.

145. In 1979, when Mr. Doe #5 was 21 years old, he ran into his sister and a young woman from the neighborhood at a local party store. Doe #5 Dep 15, Exh 5.

146. Mr. Doe #5 and the young woman had known each other since they were children, and she was also a friend of his sister. At that time the young woman was 17 years old. Doe #5 Dep 15, Exh 5.

147. The three of them decided to go back to Mr. Doe #5's apartment. At some point the girl and Mr. Doe #5 went into Mr. Doe #5's bedroom and had sex. Doe #5 Dep 16, Exh 5.

148. Mr. Doe #5 testified that when the young woman's family learned she had had sex, her father, who was a preacher, insisted that charges be filed. Doe #5 Dep 18-19, 22, Exh 5.

Defendants object to this statement on the grounds of lack of foundation and hearsay.

149. Mr. Doe #5 was charged with criminal sexual conduct III. Verified Compl, ¶ 341; Doe #5 Dep 19, Exh 5.

150. Mr. Doe #5 testified that he was offered a plea to criminal sexual conduct IV with six months jail time, but he rejected the plea because the sex was consensual. He did not want to plead guilty to a crime he felt he did not commit, so he chose to take the case to trial. Verified Compl, ¶¶ 342-43; Doe #5 Dep 30, Exh 5.

151. At the trial Mr. Doe #5's sister, who had been present in the apartment when Mr. Doe #5 and the young woman had sex, testified in support of his account that the sex was consensual. The alleged victim testified against Mr. Doe #5, saying that she did not consent. Mr. Doe #5 believes she testified that way to stay in the good graces of her father. Doe #5 Dep 19-22, 33-34, Exh 5.

Defendants object to the statement concerning the victim's motives for her testimony on the grounds of hearsay and lack of foundation.

152. Mr. Doe #5 chose to testify. He believes he came across as arrogant, which in retrospect is how he would describe himself at 21 years old. Verified Compl ¶ 346; Doe #5 Dep 30-31, Exh 5.

153. A jury convicted Mr. Doe #5 of CSC III in 1980. The court sentenced him to 2-15 years in prison. That was his first criminal conviction. Verified Compl ¶ 347; Doe #5 Dep 23, 37-38, Exh 5.

154. In 1980, at the time of Mr. Doe #5's conviction, there was no sex offender registry in Michigan, and therefore, no one mentioned the possibility of registration to Mr. Doe #5. Verified Compl, ¶ 347; Doe #5 Dep 41, 44, Exh 5.

155. Mr. Doe #5 served about 21 months of his sentence. Doe #5 Dep 38, Exh 5.

156. In subsequent years, Mr. Doe #5 was convicted of several property crimes. He was incarcerated in 1988, 1990, and 1995 for breaking and entering convictions. Verified Compl, ¶¶ 349-50; Doe #5 Dep 10-12, 43-45, Exh 5.

157. Up until 2011, Mr. Doe #5 was not required to register as a sex offender. Verified Compl, ¶¶ 349-50; Doe #5 Dep 43-45, Exh 5.

158. In November 2011, Mr. Doe #5 was arrested for illegally removing aluminum sheeting from an abandoned building, and pled guilty to larceny (M.C.L. § 750.3563A). Verified Compl, ¶ 351; Doe #5 Dep 43, 45, Exh 5.

159. Mr. Doe #5 testified that he was not informed during the plea bargaining process that a felony conviction for larceny would result in lifetime sex offender registration. He acknowledges that at sentencing he was informed by the judge that it was possible that he would have to register. Doe #5 Dep 41-42, 45, Exh 5.

160. Had Mr. Doe #5 known during plea negotiations that his plea would lead to registration, he would have attempted to negotiate a different plea. Doe #5 Dep 42-43, Exh 5.

Defendants object to this statement as speculation, conclusory, and based upon a hypothetical that cannot be proved or disproved. What Mr. Doe #5 would or would not have done is unknowable.

161. Mr. Doe #5 was sentenced to probation. Doe #5 Dep 45, Exh 5.

162. Although he was convicted and released before SORA took effect, pursuant to the "recapture" provisions that were added to SORA in 2011, John Doe #5 is now required to register as a sex offender for the 1980 offense because he was convicted of a new offense (larceny) after the 2011 amendments took effect. Doe #5 Dep 41 ln 6— 43 ln 2, Exh 5.

163. While serving probation, Mr. Doe #5 was informed by the probation department that he was now required to register for life. During sentencing, the judge gave him until November 2012 to register. Verified Compl, ¶ 356; Doe #5 Dep 46, Exh 5.

164. Mr. Doe #5 testified that did not register after being informed that he had to register because he did not believe he should have to register for something that happened over 30 years ago. Verified Compl, ¶ 358; Doe #5 Dep 43, 46-47, 52-54, Exh 5.

165. After being cited for a probation violation for not reporting to his probation officer, Mr. Doe #5 was jailed for 90 days for not registering. Verified Compl, ¶ 358; Doe #5 Dep 52-54, Exh 5.

166. Mr. Doe #5 testified that since being jailed for failing to register, he has tried to comply with SORA. Verified Compl, ¶ 359; Doe #5 Dep 52, Exh 5.

167. Mr. Doe #5's sole source of income is disability benefits from the Veterans Administration and Social Security Administration, totaling about $710 a month. Verified Compl, ¶ 362; Doe #5 Dep 8, Exh 5.

168. Prior to being ordered to register in 2012, Mr. Doe #5 had lived from 1980 to 2012 without being required to register or comply with SORA. Doe #5 Dep 77, Exh 5.

169. Mr. Doe #5 testified:

Q: So for approximately 33 years you did not have to report your address to the police?
A. No.
Q. You didn't have to report any employment to the police?
A. No.
Q. Your email?
A. No.
Q. For 32 to 33 years you could live wherever you wanted?
A. Yes.
Q. You could live within 1000 feet of a school?
A. Yes.
Q. You could work within 1000 feet of a school?
A. Yes.
Q. And for 32 to 33 years no one could look you up on a registry with your picture and your address?
A. Yes.
…
Q. And in that [32-33 year] period of time were you ever accused of, charged, with, or convicted of a sex offense…?
A. No.

Mr. Doe #5 is now 56 years old and will remain on the registry for the rest of his life for a crime he committed in 1979. Doe #5 Dep 77-78, Exh 5; Verified Compl, ¶¶ 336-47.

Defendants object to the last sentence as an inadmissible conclusory and argumentative statement from the Verified Complaint.

170. Since his 1980 conviction, Mr. Doe #5 was never charged with nor convicted of a new sex offense. Doe #5 Dep 77-78, Exh 5.

171. Since he began registering, Mr. Doe #5 has not been threatened with arrest by any police officer for non-compliance with SORA. Doe #5 Dep, 64 ln 11-15, Exh 5.

172. After Mr. Doe #5 was required to register, his probation officer ordered him to move because his apartment was within 1000 feet of a school, and Mr. Doe #5 was forced to relocate. He would have been arrested for a residency violation had he failed to comply. Verified Compl, ¶360; Doe #5 Dep 67, Exh 5.

173. John Doe #5 currently lives in a house that is not within 1000 feet of a school. Doe #5 Dep 68 ln 4-16, Exh 5.

174. Mr. Doe #5 has a girlfriend, children, and grandchildren, whom he visits regularly. Verified Compl, ¶ 365, Doe #5 Dep 78, Exh 5.

F. Mary Doe

175. Mary Doe resides in the Eastern District of Michigan. Verified Compl, ¶ 65.

176. Ms. Doe completed high school, attended college to study psychology and education, and recently completed a certification in medical billing. Mary Doe Dep 7 ln 15—10 ln 10, Exh 6.

177. In 2003, while living in Ohio, she was convicted of one count of unlawful sexual conduct with a minor for having a sexual relationship with a 15-year-old male. Mary Doe Dep 11-12, Exh 6.

178. A teenage boy was spending weekends with Ms. Doe and her husband because the boy was trying to convert to their religion. Since his family did not share that religion, it was convenient for him to stay with Ms. Doe and her then-

husband. Ms. Doe had previously had other children who were converting to her religion stay at her home. Mary Doe Dep 12 ln 3—13 ln 10, Exh 6.

179. Ms. Doe cannot remember the "specific details," but she admits that "intercourse did happen" between her and the teenage boy. Ms. Doe had intercourse with the boy multiple times, but she is uncertain of exactly how many times. Mary Doe Dep 12 ln 11-12; 14 ln 20-24, Exh 6.

180. Ms. Doe cannot point to any particular factor that led her to engage in a sexual relationship with a 15-year-old. She denies that alcohol or drugs were a factor. She testified that she cannot remember the details of how the affair began because it has been ten years and she has moved on. Mary Doe Dep 14 ln 3-14; 16 ln 3-6, Exh 6.

181. The boy's mother learned of the intercourse through her son's instant messages. She reported what she learned to their religious leader. Mary Doe Dep 12 ln 13-17, Exh 6.

182. Mary Doe confessed to her then-husband, who made an appointment for them with his therapist. The therapist reported to Child Protective Services. Mary Doe Dep 12 ln 18-25, Exh 6.

183. At the time they had intercourse, Mary Doe was 29 and the boy was 15. Mary Doe Dep 13 ln 23—14 ln 2, Exh 6.

184. Ms. Doe testified that the judge presiding over her case decided that

because of Ms. Doe's "position in the community," he was going to make an example out of her. The judge sentenced her to three years in prison. Mary Doe Dep 13 ln 8-14, Exh 6.

185. Mary Doe considered herself a friend of the boy's mother. Mary Doe Dep 15 ln 5-12, Exh 6.

186. Ms. Doe attested that this was her only arrest or conviction for sexual misconduct, and that she has no other criminal history. Verified Compl, ¶ 77.

187. Plaintiffs contend that at the time of Ms. Doe's conviction, Ohio's sex offender registration statute was risk-based rather than offense-based. A person's registration requirements, including the length and frequency of reporting, were determined through an individualized adjudication of risk. Verified Compl, ¶ 68; Former Ohio R.C. 2950.07; 2950.09(B); 2950.09(D) (providing for classification hearings, listing factors court should weigh to determine classifications, and specifying duties based on classification level); *State v. Bodyke*, 933 N.E.2d 753 (Ohio 2010).

Defendants object to this statement on the grounds of relevance and, to the extent it depends upon interpretation of case law, it is legal argument, not fact.

188. Ms. Doe attests that, based on a psychological evaluation, the Ohio court concluded that Ms. Doe was neither a "sexual predator" nor a "habitual offender." She was assigned to the lowest risk level of the registry, which required address

verification once a year for ten years. Verified Compl, ¶ 69; Former Ohio R.C. 2950.07.

189. Although Ohio has since moved to an offense-based registration scheme similar to Michigan's SORA 2013 (in order to comply with the same federal requirements that led to Michigan's SORA amendments in 2011), the Ohio Supreme Court has held that people like Ms. Doe (who received individualized risk-based hearings) cannot be retroactively reclassified under an offense-based scheme. The court held that such legislative reclassification of individuals who have been adjudicated by the judiciary violates the separation of powers. *See* Ohio Rev. Code § 2950.01, *et. seq.*, enacted June 30, 2007; *State v. Bodyke*, 933 N.E.2d 753 (Ohio 2010).

Defendants object to this statement on the grounds of relevance and, because it depends upon interpretation of case law, it is legal argument, not fact.

190. Based on court decisions in Ohio, Ms. Doe could not be required to register there for more than ten years, nor could she be subjected to restrictions beyond those imposed under the terms of her initial Ohio registration order. Verified Compl, ¶ 72; *State v. Bodyke*, 933 N.E.2d 753 (Ohio 2010).

Defendants object to this statement on the grounds of relevance and, because it depends upon interpretation of case law, it is legal argument, not fact.

191. In May 2004, after serving less than eight months in prison, Ms. Doe was granted judicial release. Her sentence was modified to four years of probation and 200 hours of community service. She successfully completed probation, community service, and sex offender therapy, and was discharged from probation in April 2008. Mary Doe Dep 13, 16, Exh 6; Verified Compl, ¶ 73.

192. Ms. Doe testified that she acknowledges that what she did was wrong, and has worked to change her life. She testified that she now does everything to put her family first. Mary Doe Dep 16-17, Exh 6.

193. When Ms. Doe received judicial release in 2004, she moved to Michigan to live with her parents. Under Michigan law at the time, she was required to register quarterly for 25 years, becoming eligible for removal at age 54. Verified Compl, ¶ 74.

194. Ms. Doe married her current husband in 2010. Her husband is aware that she is a registered sex offender. Mary Doe Dep 18, Exh 6.

195. Ms. Doe has one child from her first marriage, a teenage daughter who is now approximately 15 years old. Ms. Doe has been awarded sole custody of that child. Ms. Doe lives with her husband and daughter. Mary Doe Decl, Exh 30.

196. Ms. Doe also has step-children and step-grandchildren through her new marriage. Her step-grandchildren are ages seven, five, and three, with another grandchild expected soon. Mary Doe Dep 18-19, Exh 6.

197. Ms. Doe's family, including her elderly parents, her extended family and

step-children and step-grandchildren all live in Michigan. For these reasons, Ms. Doe wishes to live in Michigan. Verified Compl, ¶ 75; Mary Doe Dep 23, Exh 6.

198. Ms. Doe is gainfully employed. Mary Doe Dep 113, Exh 6.

199. In 2011, Ms. Doe was retroactively re-classified as a Tier III offender, and her registration period was extended from 25 years to life. Mary Doe Dep 28-29, Exh 6.

200. Ms. Doe has no learning disabilities and can read and understand English very well. Mary Doe Dep 11 ln 10-15, Exh 6.

201. Ms. Doe believes that there should be a sex offender registry, but that it should be a risk-based: individuals who rehabilitate themselves, own up to their pasts, and rebuild their lives should not remain on the registry forever. The registry should be limited to "the ones that are the molesters, the ones that are actively pursuing the children." Mary Doe Dep 99 ln 24–102 ln 23, Exh 6.

202. Ms. Doe has complied with her quarterly registration requirements for the past ten years. She has not been arrested or investigated for violating any registration requirements. Mary Doe Dep 95 ln 21–96 ln 9, 98 ln 23–99 ln 18, Exh 6.

203. Ms. Doe has never asked any legislators to address her concerns with the sex offender registration statute. Mary Doe Dep 45 ln 23–46 ln 3, Exh 6.

IV. THE DEFENDANTS

A. Governor Richard Snyder

204. Defendant Richard Snyder is the Governor of Michigan. He is sued in his official capacity. Verified Compl, ¶ 78; Answer ¶ 78.

B. Colonel Kriste Etue

205. Defendant Colonel Kriste Etue is the director of the Michigan State Police (MSP). She is sued in her official capacity. Verified Compl, ¶ 81; Answer ¶ 82.

V. THE PURPOSE OF SORA

206. Michigan has a compelling interest in protecting children from violence and sexual abuse. Doe #1 Dep 83 ln 10-14, Exh 1; Doe #1-5 Requests to Admit #10, Exhs 101-106.

207. SORA 2013 reflects the belief that people convicted of sex offenses pose such a high risk to public safety that monitoring, reporting, supervision, geographic zones and other restrictions should be imposed. For Tier III offenders, that risk is deemed to be so great that these restrictions are imposed for life. M.C.L. §§ 28.721a; 28.725(12); SMART National Guidelines, 3-4, Exh 111.

208. Specifically, the statute's statement of intent is:

> 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.

M.C.L. § 28.721a.

209. This statement of intent was added to the statute in 2002. Plaintiffs contend that the legislative history does not show that the Michigan legislature, before enacting this statement of intent in 2002, held hearings or engaged in fact-finding regarding the recidivism rates of people convicted of sex offenses. Mich. Pub. Act 542 (2002).

210. The MSP does not track the recidivism rate of registrants, the impact of registration on recidivism, nor data on the effectiveness of the registry. Payne Dep 68, 110, Exh 17; L. Wagner Dep 41, Exh 18; Defs' Resp to First Interrog, No. 10, Exh 42.

211. Leslie Wagner, the MSP sex offender registry coordinator, testified that the technical capacity exists to run reports showing recidivism rates, but the state has never run a report to determine whether or not individuals on the registry are committing additional sex crimes because "it's not our purpose." Rather, the purpose is "registering sex offenders." L. Wagner Dep 46, Exh 18.

212. Karen Johnson, manager of the MSP Sex Offender Registration Unit, testified:

Q. If you don't track recidivism rates how do you know whether you're impacting recidivism?
A. We don't.

Q. You don't know if you're impacting recidivism?
A. No.

Johnson Dep 257, Exh 15.

VI. THE MICHIGAN REGISTRY AND THE SOR DATABASE

A. The Size of Michigan's Registry

213. Over the last several years, Michigan's registry has had between 40,000-49,000 registrants. The registry includes individuals who are incarcerated, although those registrants do not need to report until released. There are between 27,000 and 28,000 active registrants who have not left the state and who are not incarcerated. Total Number on SOR By Year, Exh 53; Johnson Dep 298-299, Exh 15.

214. Approximately 2,000 new registrants are added to Michigan's registry each year. Total Number on SOR By Year, Exh 53.

215. Based on her research, plantiffs' expert Dr. Jill Levenson, a psychology professor who studies sex offender registries, concluded that Michigan's registry was the fourth largest state registry in the United States with 47,329 registrants, as of June 2011. Levenson Expert Report, 1, Exh 23.

B. The SOR Data Management System

216. Over the years the Michigan State Police's Sex Offender Registration (SOR) Unit has developed a computer system to record, maintain, and publicize information on registrants. The data management system can be accessed by MSP staff and other Michigan law enforcement agencies, including prosecuting

attorneys, Native American tribes, and correctional staff. Johnson Dep 92-93, Exh 15; L. Wagner Dep 67 ln 22–68 ln 1; 68 ln 23–69 ln 2, Exh 18.

217. A subset of the information maintained on registrants is made available to the public via the Public Sex Offender Registry (PSOR). M.C.L. § 28.728(2).

218. The SOR database creates the PSOR by coding some information as for law enforcement purposes only. Queries to the PSOR will produce results showing any information that is not restricted. Johnson Dep 82-88, Exh 15.

219. The SOR software can issue alerts if registrants fail to meet SORA's address verification requirements. Johnson Dep 31-34, 82-88, Exh 15.

220. The database has an interface to share information with the Law Enforcement Information Network (LEIN), the National Criminal Information Center (NCIC), the National Public Sex Offender Registry, and the Michigan Secretary of State. Johnson Dep 31-34, 82-88, Exh 15.

221. Information is also shared with the Michigan Department of Human Services due to a requirement that registrants cannot be foster parents or daycare providers. In addition, the SOR Unit provides a data file annually to the federal Department of Housing and Urban Development to "assist them in ensuring that they don't have those offenders in public housing." Federal law prohibits certain registrants from living in subsidized housing. Johnson Dep 85 ln 9—89 ln 1, Exh 15.

222. The SOR database is audited for completeness and accuracy of the data. L.

Wagner Dep 20 ln 2-6, Exh 18.

C. OffenderWatch

223. In February 2014, after the close of discovery, the MSP implemented a new software system called "OffenderWatch" to replace the prior SOR data management system. Letter Announcing OffenderWatch, Exh 99; Johnson Dep 197-98, 200-03, Exh 15.

224. There were several reasons that the MSP switched to OffenderWatch. First, SORA 2011 required a great deal more registrant information to be maintained in the SOR data management system. The first day the new law took effect the SOR Unit's servers crashed, and they continued to crash periodically for months. Due in part to these technological issues, the MSP SOR unit determined that its current database had limitations that could not be easily overcome with the computer resources available to the state. After visiting other states and researching the matter, the SOR unit decided to lease OffenderWatch, which is a dedicated software program designed for sex offender registration. Johnson Dep 197-98, 200-03, Exh 15.

225. Second, the OffenderWatch data management system provides both law enforcement and the general public with new features that the previous data management system lacked. At the same time, OffenderWatch allows the SOR unit to do everything it did previously, but with a more user-friendly interface and with a

private vendor providing technical assistance. Johnson Dep 202-03, Exh 15; OffenderWatch Contract 34-35, Exh 52; OffenderWatch PSOR Home Screen, Exh 118.

226. OffenderWatch is different from the old system in that every data field for a registrant is searchable. OffenderWatch will allow law enforcement to search for alias names, internet identifiers, or vehicles. Burchell Dep 30 ln 8—31 ln 11; 84 ln 4-14, Exh 16; L. Wagner Dep 24 ln 2-16, Exh 18.

227. The OffenderWatch system, as distributed by its developer, has the capability to track other information about registrants, including sexual orientation, religion, nationality, marital status, and medical history. Michigan does not track this information. Johnson Dep 248-50, Exh 15; OffenderWatch Manual 67-68, 98-99, Exh 50

228. The public will continue to be able to access the same information on the OffenderWatch website as on the prior website. L. Wagner Dep 75 ln 21—76 ln 5, Exh 18.

229. In addition, the public can now search for registrants by name, by address (home, work, or school), or by city. OffenderWatch Search Screen, Exh 119.

230. Both the OffenderWatch home screen and each registrant's individual page contain a feature, labeled "Tell a Friend," that allows the public to share information about registrants. The public can enter an email address and have that

registrant's SOR profile sent to others. Doe #2 OffenderWatch Page, Exh 120; Michigan Public Sex Offender Registry Home Screen, Exh 118.

231. The public can now sign up to track any individual registrant, and receive email alerts regarding that registrant. OffenderWatch Registration for Email Alerts on Individuals, Exh 124; Doe #2 OffenderWatch Page, Exh 120; OffenderWatch Search Screen, Exh 119.

232. The public can also sign up to receive email alerts regarding all registrants who live, work or attend school within a specified distance (e.g. 2 miles) from a given address (e.g. the searcher's home). OffenderWatch Registration for Email Alerts on Locations, Exh 125.

233. The public can now click on a map icon on each registrant's page, and pull up a map showing the location of the registrant's address. Doe #2 Offender Watch Page, Exh 120; OffenderWatch Individual Registrant Map, Exh 123.

234. The public can also enter a specific location and get a map of all registrants who work, live, or study within specified distances from that location. This OffenderWatch feature shows all registrants within .25 mile, .5 mile, 1 mile, or 2 miles of the specified location. One can then click on the name of a registrant within the selected radius and pull up information on that registrant. OffenderWatch Search Results from Specified Point, Exh 122.

235. The public can now access a list of all non-compliant registrants. Offen-

derWatch Non-Compliant Offender Search Results, Exh 121.

236. The cost of implementing OffenderWatch is $2 million, payable over the 5-year life of the initial contract. The annual maintenance and support costs are $360,000. (The first five years of maintenance and support are included in the initial $2 million.) Johnson Dep 202-03, Exh 15; OffenderWatch Contract 34-35, Exh 52.

VII. THE FEDERAL SEX OFFENDER REGISTRATION AND NOTIFICATION ACT

A. SORNA and Federal Funding

237. The federal SORNA statute provides that states that do not adopt laws that substantially comply with SORNA will lose 10 percent of their Byrne Judicial Access Grant funds. States could either implement SORNA or forego the federal funds. 42 U.S.C. § 16901 *et seq.*; Hawkins Dep 17-18, Exh 19.

238. Michigan previously received federal Byrne grant funding for the State Police, all local police departments, prosecuting attorneys' offices, corrections, county sheriffs, and the judiciary. Hawkins Dep 17 ln 3-20, Exh 19.

239. If Michigan had elected not to become SORNA-compliant, it would have lost 10 percent of its Byrne funds. Byrne grant funding varies from year to year, ranging between $10 and $20 million a year. Byrne Fund Reports 2011, Exh 96; Hawkins Dep 18 ln 1-12, Exh 19

240. Accordingly, if Michigan had not substantially complied with SORNA, it

would have lost about $1 to $2 million a year in Byrne grant funding. Hawkins Dep 18 ln 1-12, Exh 19.

241. The Prosecuting Attorneys Association of Michigan (PAAM) wanted Michigan's law to meet SORNA requirements so that Byrne grant funding would continue. Tanner Dep 19 ln 1-8, Exh 21.

242. Lt. Chris Hawkins, who at the time was responsible for the Michigan State Police's legislative work, testified that in his opinion Byrne grant funding was absolutely essential to Michigan. There had been an eight-year downturn in which there had been repeated decreases in the state budget, with similar decreases at the local government level. As a result, he found the prospect of losing more funding very concerning. Hawkins Dep 68 ln 21—69 ln 5, Exh 19.

243. Lt. Hawkins testified that Michigan never attempted to determine whether the 10 percent reduction in Byrne funds would be more or less costly to the state than the cost of becoming SORNA compliant and administering a SORNA-compliant registry in perpetuity at both the state and local levels. Hawkins Dep 18-19, Exh 19.

244. Lt Hawkins testified that the MSP's Sex Offender Registration Unit believed there would be very little cost to implementing SORNA because Michigan had already received federal grants to build a SORNA-compliant system, and that they just needed to "push the button and turn it on." Hawkins Dep 19 ln 16—

20 ln 3, Exh 19.

245. After Michigan sought and obtained two one-year extensions to comply with SORNA, it was notified by the Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART) office that if Michigan did not comply by the final statutory deadline, it would lose 10% of its Byrne funding for each year thereafter that the state did not comply. Feb. 1, 2011 SMART Letter, Exh 107.

246. States were required to comply with SORNA by July 27, 2011. To date 17 states, three territories, and 61 tribes have substantially complied with SORNA. SMART SORNA Substantial Compliance Jurisdictions, Exh 91.

247. A January 2010 report from the National Conference of State Legislatures noted that some states were concerned with the implementation costs of SORNA, and that "[i]n 2006, it was determined to be more costly – in every state – to implement SORNA than to lose 10 percent of [Byrne grant] funding." Nat'l Conference of State Legislatures, *Cost-Benefit Analyses of SORNA Implementation*, Exh 72.

Defendants do not agree with the conclusions of that report.

248. Texas studied the projected cost of SORNA compliance, focusing on the cost to local law enforcement. Texas estimated that the costs of implementing SORNA there would range from $14 million to $25.9 million a year. Texas determined that the loss of 10 percent of its Byrne funds (about $2 million in 2011)

would be far less than the cost of complying with SORNA. Texas Association of Counties Study 10, Exh 75; Byrne Fund Reports 2011, Exh 96.

249. A report by the California Sex Offender Management Board described SORNA as an "unfunded mandate," and advised that: "[i]nstead of incurring the substantial and un-reimbursed costs associated with [SORNA], California should absorb the comparatively small loss of federal funds that would result from not accepting the very costly and ill-advised changes to state law and policy required by the Act." California AWA Position Statement 3-4, Exh 73.

250. A white paper by the Colorado Sex Offender Management Board concluded that the cost of implementing SORNA in Colorado "far exceeds" the 10% non-compliance penalty for Byrne grant funding, and estimated that "the cost of implementation to one individual mid-size law enforcement agency may be comparable to the [] annual penalty." Colorado AWA White Paper 4, 17, Exh 74.

251. Defendants do not agree with the conclusions of Texas, California, or Colorado studies. Defendants contend that Michigan was not similarly situated with these other states.

252. Although the federal SMART Office provided grants to help Michigan transition to a SORNA-compliant law, those grants will cease now that Michigan has attained substantial compliance. Johnson Dep 338-39, 349, Exh 15; SMART Confirmation of Michigan's Substantial Compliance, Exh 95.

253. Michigan no longer receives federal grant money to implement SORNA. At present the costs of SORA are being borne within Michigan. Hawkins Dep 21 ln 22—23 ln 10, Exh 19; Johnson Dep 285 ln 3-12, Exh 15.

254. The federal SMART office developed National Guidelines for Sex Offender Registration and Notification that provide narrative descriptions of what is required for substantial compliance. Hawkins Dep 26 ln 19-24, Exh 19; SMART National Guidelines, Exh 111.

255. The SMART national guidelines state that the notification requirements are intended to be non-punitive regulatory measures adopted for public safety purposes. SMART National Guidelines 7, Exh 111.

256. The SMART National Guidelines state that in a federal union such as the United States with a mobile population, the effectiveness of sex offender registration depends upon "having effective arrangements for tracking registrants as they move among jurisdictions." SMART National Guidelines, 4, Exh 111.

257. According to the SMART National Guidelines, SORNA's goal is an effective and comprehensive national system of registration and notification programs, with the ultimate objective of protecting the public against sex offenders. SMART National Guidelines 7, Exh 111.

258. The SMART National Guidelines state that Congress determined that "patchwork" standards that had resulted from piecemeal amendments should be

replaced with comprehensive new standards that would close potential gaps and loopholes under prior law and strengthen the nationwide network of sex offender registration programs. SMART National Guidelines, 4, Exh 111.

B. SORNA and Substantial Compliance

259. To attain substantial compliance under SORNA, states must substantially meet the requirements set out by the SMART office. *See* SMART National Guidelines, Exh 111; SMART Checklist, Exh 110.

260. Karen Johnson's understanding is that SORNA requires "substantial compliance," not "exact compliance." Johnson Dep 339-340, Exh 15.

261. Lt. Hawkins testified there was a "certain amount of leeway" and that Michigan did not need to comply with all SORNA guidelines in order to be "substantially compliant." Hawkins Dep 29, 34-35, 37,102, Exh 19.

262. In response to a question from Plaintiffs' counsel, Lt. Hawkins agreed that for things like reporting there may be less restrictive alternatives that would not be out of compliance with SORNA. Hawkins Dep 37, Exh 19.

Defendants object to this question on the grounds that it called for a legal conclusion and further object to the relevance of Lt. Hawkins' personal opinion on one of the ultimate legal issues that is in dispute in this lawsuit.

263. Michigan was determined to be substantially compliant with SORNA on May 9, 2011. Hawkins Dep 26 ln 25—27 ln 9, Exh 19; SMART Annual Implementation Review Letter, Exh 100.

264. Each year, the SMART office performs an annual implementation assurance review to verify that those jurisdictions that have substantially complied with SORNA remain substantially compliant. SMART Annual Implementation Review Letter, Exh 100.

265. SORA 2013 includes requirements – such as the geographic zones, some immediate reporting requirements, and annual fees – that are not part of the SORNA standards. 42 U.S.C. § 16901 *et seq.*; Johnson Dep 340, Exh 15; Tanner Dep 21, Exh 21; Hawkins Dep 34-35, Exh 19.

C. The Legislative Process of Drafting the SORA 2011 Amendments

266. Prior to the passage of SORNA, the MSP created a Sex Offender Advisory Committee. Johnson Dep 346 ln 13—348 ln 19, Exh 15.

267. Beginning in the fall of 2010, Lt. Chris Hawkins led the Michigan State Police's efforts to implement SORNA by advocating changes to Michigan's SORA. At that time, Lt. Hawkins was a sergeant serving as the MSP's legislative liaison. Hawkins Dep 12 ln 10-19; 63 ln 14-20, Exh 19.

268. Lt. Hawkins' job was to find a legislative sponsor, work with committees to get the draft legislation, and shepherd the bill through the legislative process. Hawkins Dep 24 ln 20-25; 63 ln 23—64 ln 10, Exh 19.

269. In the fall of 2010, Lt. Hawkins and others in the MSP approached Michigan State Senator Wayne Kuipers and asked him to sponsor legislation that would

bring the state into substantial compliance with SORNA. There was limited time in that legislative session and Sen. Kuipers was not successful in moving the bill. In the next legislative session, Senator Rick Jones sponsored new legislation to amend SORA to be SORNA complaint. Hawkins Dep 24 ln 18—25 ln 10, Exh 19.

270. Lt. Hawkins worked with Senator Rick Jones, who was the chair of the senate judiciary committee and a former sheriff, and provided Sen. Jones with proposed legislation. Hawkins Dep 65 ln 16-22, Exh 19.

271. Once there was draft bill, meetings were arranged with stakeholders in the legislation. There were dozens if not hundreds of stakeholder meetings over a four-month process. Hawkins 66 ln 2-5, Exh 19.

272. The stakeholder meetings on the proposed changes to SORA included representatives of the American Civil Liberties Union of Michigan (ACLU). Hawkins Dep 66 ln 2-16, Exh 19.

Plaintiffs object (continuing) to all discussion of the ACLU. The ACLU is not a party and its position on the legislation is irrelevant.

273. Lt. Hawkins was personally involved in those stakeholder meetings, although he was not at every meeting. Hawkins Dep 66 ln 21—67 ln 4, Exh 19.

274. Lt. Hawkins worked closely with Sen. Jones' office as well as with other stakeholders and lobbyists to draft the bill and shepherd it through the legislative process. Hawkins Dep 25 ln 3-10, Exh 19.

275. Lt. Hawkins testified that his overarching strategy during the process of drafting the amendments to SORA was to bring Michigan into compliance with SORNA and do no more, no less. Hawkins Dep 89 ln 12-16, Exh 19.

276. The House Fiscal Agency analysis for the SORA bills states that critics of Michigan's registry had long maintained that it included people who pose no risk of reoffending. The analysis noted that one argument supporters of the 2011 amendments made was that some offenses would no longer require registration, some juveniles would be removed from the registry, and some registrants would be on the non-public registry. House Fiscal Agency Analysis, 9, Exh 112; Hawkins Dep 72 ln 25—73 ln 17, Exh 19.

277. The ACLU indicated a position of neutrality on the 2011 SORA amendments (SB 188, 189, and 206). House Fiscal Agency Analysis, 10-11, Exh 112.

Plaintiffs object (same); also misleading: legislation involves compromises, none of which are binding or limit legal claims.

278. Lt. Hawkins testified that he worked closely with the ACLU throughout the drafting process to address the ACLU's concerns, and he was proud that the ACLU took a neutral position. Hawkins Dep 75 ln 6-15, Exh 19. During the legislative drafting process, Karen Johnson prepared a written statement outlining the SOR Unit's responses to concerns raised by the ACLU. Hawkins Dep 75 ln 21—76 ln 3, Exh 19; SOR Unit Responses to ACLU, Exh 115.

279. The framework for stakeholder meetings was amending SORA to become substantially compliant with SORNA. The ACLU articulated its concerns about the draft legislation within the negotiating framework of substantial SORNA compliance. ACLU Dissection of Draft, Exh 116; Hawkins Dep 66-68, Exh 19.

280. In commenting on the draft legislation, the ACLU advocated for a wide range of changes, which included (1) automatic removal of juveniles under the age of 14, and a reduction in the number of juvenile offense resulting in registration (both changes permissible under SORNA); (2) limiting the public registry so that it did not include all registrants (a change permissible under SORNA); and (3) not retroactively extending the registration terms of current registrants to life (a provision that the ACLU noted was subject to constitutional challenge). ACLU Dissection of Draft, 1, 3, 8, Exh 116; SMART National Guidelines for Sex Offender Registration and Notification, Exh 111.

281. Ultimately, juveniles under the age of fourteen were removed from the registry, Tier I registrants were not included on the public registry, and some other changes promoted by the ACLU were included in the legislation. *Compare* ACLU Dissection of Draft, Exh 116, *with* Mich. Pub. Acts 17, 18 (2011).

282. Other changes advocated by the ACLU were not adopted. For example, the law was retroactively applied. *Compare* ACLU Dissection of Draft, Exh 116, *with* Mich. Pub. Acts 17, 18 (2011).

283. Earlier drafts of the 2011 SORA amendments required that every time a registrant operated a different vehicle (e.g. borrowed or rented a car), the registrant would need to report in person within three days. ACLU Dissection of Draft, 5, 7, Exh 116.

284. The ACLU proposed a change that would require registration only for vehicles "regularly operated" by the registrant, language that was consistent with the SORNA Guidelines. The SOR Unit did not oppose that change. The language in SORA 2011 concerning "regularly used" vehicles was introduced at the request of the ACLU. Hawkins Dep 76 ln 20—80 ln 5, Exh 19; SOR Unit Responses to ACLU, 5 (Bates #30), Exh 115; ACLU Dissection of Draft, 7, Exh 116.

Plaintiffs object (same); also misleading, since the alternative of requiring registrants to report every single vehicle ever used would have been enormously burdensome.

VIII. RETROACTIVITY

A. Retroactivity and Tier Structure

285. Before the 2011 SORA amendments, almost three-quarters of those on the registry were 25-year registrants. Registration Length June/August 2011, Exh 61; M.C.L. § 28.725(6) (2009).

286. Under the 2011 amendments, the registration periods for 25-year registrants who were retroactively assigned to Tier III were retroactively extended to life. M.C.L. § 28.725(12).

287. The tier classifications took effect July 1, 2011. Mich. Pub. Act 18, Enacting Sec. 2 (2011).

288. MSP data show that on June 1, 2011, there were 11,313 registrants subject to lifetime registration. On August 1, 2011 (after implementation of the tier classifications), there were 28,680 registrants – 17,367 more – subject to lifetime registration. Registration Length June/August 2011, Exh 61.

289. About 27 percent of active registrants were subject to lifetime registration before the 2011 amendments. At that time there were 41,815 active registrants, of whom 11,313 were lifetime registrants. Registration Length June/August 2011, Exh 61.

290. About 72 percent of active registrants were subject to lifetime registration after the 2011 amendments. At that time, there were 39,611 active registrants, of whom 28,680 were lifetime registrants. Registration Length June/August 2011, Exh 61; Total Number of Offenders by Tier, Exh 54; L.Wagner Dep 57 ln 12-20, Exh 18.

291. The percentage of lifetime registrants increased from 72 percent in August 2011 to about 73 percent in May 2013. Total Number of Offenders by Tier, Exh 54 (showing 2,362 Tier I registrants; 8,754 Tier II registrants; and Tier III 29,420 as of 5/24/13).

292. No formal process exists for registrants to challenge their tier assignment.

After the statute changed in 2011, the MSP SOR Unit received over 100 letters from individuals objecting to their tier classification. The MSP agreed that some people were incorrectly classified, and their tier levels were changed. Johnson Dep 121-24, Exh 15.

293. SORA 2013 does not contain specific tier classifications for out-of-state offenses. Karen Johnson, manager of the MSP's SOR Unit, testified that a student or legal intern (under the supervision of a lawyer) identified comparable Michigan offenses in order to assigns tier classifications to individuals with out-of-state convictions. Johnson Dep 114-17, Exh 15.

B. Retroactivity and Substantial Compliance with SORNA

294. The DOJ's SMART office provided a Sex Offender Registration and Notification checklist for substantial compliance. Hawkins Dep 25 ln 20—26 ln 3, Exh 19; SMART Checklist, Exh 110.

295. The SMART checklist includes retroactive application to previously registered sex offenders. SMART Checklist 14, Exh 110.

296. The SMART national guidelines state that SORNA requirements for substantial compliance are not limited to offenders convicted after implementation of SORNA, and include those who were convicted before SORNA. SMART National Guidelines 7, 45-47, Exh 111.

297. The Department of Justice noted in its Summary of Comments on the then-proposed guidelines for sex offender registration that retroactivity was required for substantial compliance. Federal Register, Vol. 73, No. 128 (July 2, 2008) 38035-38036; 38046-38047, Exh 108.

298. The MSP's Sex Offender Advisory Committee determined that retroactive extension of registration periods was a requirement for substantial compliance, and produced legislative recommendations in 2008 stating that SORNA requires retroactive application. Michigan Sex Offender Registration Legislative Recommendations (Bates 322), Exh 109; Johnson Dep 346 ln 13—348 ln 19, Exh 15.

299. Chris Hawkins testified that Michigan's SORA, as amended, includes retroactive application because it was a requirement under SORNA to avoid a reduction in Byrne grant funding. Hawkins Dep 58 ln 2-25, Exh 19.

300. The Substantial Implementation Review conducted by SMART indicated that Michigan's retroactivity provisions substantially complied with SORNA. SMART Annual Implementation Review Letter, 3, Exh 100.

IX. RESEARCH ON LIFETIME REGISTRATION AND RECIDIVISM RISK

301. Plaintiffs submitted expert reports addressing risk and recidivism issues from Dr. Janet Fay-Dumaine, a psychologist at the State of Michigan's Center for Forensic Psychiatry, and Dr. Jill Levenson, an associate professor at Lynn Univer-

sity who studies sex offender registries. Fay-Dumaine Expert Rep, Exh 24; Levenson Expert Rep, Exh 23.

302. The treatment of sex offenders generally involves an assessment of an offender's strengths and weaknesses. A psychologist will take in account all available information to determine whether treatment is effective, including behavioral factors like inappropriate masturbation or aggression towards women, and whether or not the individual is complying with their mental health treatment including medication. Treatment also relies on what the offender is reporting in therapy. A psychologist treating sex offenders interprets behavioral factors and the individual's self-reporting according to the available research. Fay-Dumaine Dep 14 ln 2—16 ln 9, Exh 12.

303. In the field of psychology there are manualized treatments for certain types of interventions and certain types of disorders, but there will always be some individual variability and some standard error of measure. "So nothing is a hundred percent, not working with people. It just, you know, it's just not possible." Fay-Dumaine Dep 36 ln 9-19, Exh 12.

304. To the knowledge of Dr. Fay-Dumaine, there is no current research establishing risk of recidivism based only on the convicted offense. Fay-Dumaine Dep 120 ln 22—121 ln 2, Exh 12.

A. Variations in Recidivism Risk

305. Dr. Levenson concludes that among people with prior sex offenses, recidivism rates vary based on certain actuarial risk factors. Levenson Expert Rep 8, Exh 23.

306. According to Dr. Fay-Dumaine, while some individuals convicted of sex offenses pose a significant risk to public safety, most do not. Fay-Dumaine Dep 82, 129-130, Exh 12.

307. In the opinion of Dr. Levenson and Dr. Fay-Dumaine, most sex offenders do not re-offend sexually. They testified that first-time sex offenders are significantly less likely to re-offend than those with multiple sexual convictions, and older offenders are much less likely to re-offend than younger offenders. They also conclude that recidivism rates differ significantly depending on the nature of the offense (*e.g.*, rape, incest, child victim, *etc*.). Levenson Expert Rep 7-10, Exh 23; Fay-Dumaine Dep 82, 114, Exh 12.

308. Dr. Fay-Dumaine testified: "It's extremely contrary to our cultural assumptions about sex offenders. It's hard for people to get their head around. Yes, there is a group of sex offenders that are at high risk of recidivating, but that's a very small number of sex offenders. Most sex offenders do not recidivate. And this is a pretty robust finding in the literature." Fay-Dumaine Dep 129-130, Exh 12.

309. Dr. Levenson stated that it was her opinion that because Michigan's registration is based on the offense of conviction, rather than on risk assessments,

the public's ability to identify sexually dangerous persons is significantly reduced. Levenson Expert Rep 2, Exh 23; Levenson Dep 11-15, Exh 9. "When registries have so many people on them and there's such a wide range of risk, it becomes hard for the public to know who's most likely to pose a threat to them or their children, who's most likely to commit a new sex crime in the future." Levenson Dep 11-15, 68, Exh 9.

310. Dr. Levenson also testified that she thinks law enforcement cannot focus its resources on those who pose the greatest risk: "[T]he more work involved for law enforcement to track them and monitor [all registrants].…they have less resources to really devote to those people who are higher risk … or severely high risk." Levenson Dep 70, Exh 9.

311. Dr. Levenson stated that her pilot study for the National Institute of Justice confirmed what other research had found: that law enforcement agents feel "unable to really target high-risk individuals because they have so many [other registrants] to track and monitor." Levenson Dep 71, Exh 9.

312. Dr. Levenson stated her opinion that SORA, by focusing on the danger posed by strangers, misidentifies the source of risk. She noted that in 93% of cases of child sexual abuse, the offender was a family member or acquaintance. About 7% of child sex abuse cases involve strangers. Levenson Dep 108 ln 6-13, Exh 9;Levenson Expert Rep 9, Exh 23.

313. According to Dr. Fay-Dumaine, "[m]ost sex offending happens within the family. Most sex offending happens in stressful difficult situations, or it's young adult males not making a good judgment about having sex with somebody who's a few years younger than they are. But that's the lump sum of most sex offenses. The number of pedophiles in the world is extremely small, but the perception in the public is … everybody is going to re-offend, but there's no data to support that." Fay-Dumaine Dep 83, Exh 12.

314. Dr. Fay-Dumaine testified, "[as to] serial rapists, I can tell you in my [20-year] career how many I have seen on one hand." Fay-Dumaine Dep 130, Exh 12.

315. Dr. Levenson testified that, in her opinion, public sex offender registration and residency restrictions, which focus on "stranger danger," give parents a false sense of security by implying that knowing where registrants live or banishing them from the community reduces the risk of sex offenses being committed, when, according to the research she cited, such measures do not have this effect. Levenson Dep 71, Exh 9.

316. According to Dr. Levenson, sex offenders who abuse children are most likely to meet those children through some prior social relationship with the victim that they have built through their families. Levenson Dep 89 ln 7-25, Exh 9.

317. In Herbert Tanner's experience as a prosecutor, the age of the offender or their level of maturity is not significant to their risk of re-offense and he believes

that there are very few sex offenders who make a "youthful mistake" and commit a sexual offense. But he thinks that the age of the victim or the victim's level of maturity is significant because it indicates the perpetrator's exploitation of that vulnerability. Tanner Dep 50 ln 2—51 ln 8, Exh 21.

Plaintiffs Object: Inadmissible opinion testimony from a witness who is not listed as an expert and admits he is not an expert. Foundation; Competence. His opinions about sex offender risk are contradicted by the psychological literature and demographic studies. Tanner Dep 72 ln 12—73 ln 5, Exh 21.

Defendants respond that this is Mr. Tanner's lay opinion that is rationally based on his perceptions through his years of experience prosecuting sex offenses.

318. Based on Herbert Tanner's experience prosecuting, his personal opinion on the nature of sex offenders is that, "not only are they serial sex offenders, they tend to be polymorphous serial offenders, that is that they do other acts of violence, interpersonal, inter-partner violence, child abuse, child sexual abuse. That research is out there as well, so yeah, I'm very comfortable in saying that sex offenders, the majority are serial offenders and that if we can catch one we've stopped a one-person crime spree." Tanner Dep 73 ln 2—74 ln 13, Exh 21.

Plaintiffs Object: same.

Defendants offer the same response.

B. Risk Prediction Based on Clinical Risk Assessments Versus the Offense of Conviction

319. Plaintiffs' experts testified that actuarial risk assessment instruments –

which are used to determine the statistical likelihood that offenders will re-offend based on known indicators – are far better at predicting recidivism risk than the offense of conviction. Levenson Expert Rep 8, Exh 23; Levenson Dep 41-44, Exh 9; Fay-Dumaine Dep 112-113, Exh 12.

320. Dr. Janet Fay-Dumaine testified that she is unaware of any actuarial risk assessment tools specific to sex offenders existing prior to the 1990's. Fay-Dumaine Dep 29 ln 15-18, Exh 12.

321. According to Plaintiffs' experts, the most commonly used and best-researched risk instrument is called the Static-99. The Static-99 is an actuarial-based tool designed to assist in the prediction of sexual recidivism for male sex offenders. According to Dr. Levenson and Dr. Fay-Dumaine, the Static-99 has demonstrated good predictive accuracy in multiple validation studies and offers a firm scientific basis for assessing the likelihood that offenders convicted of a sex offense will re-offend. Levenson Expert Rep 8, Exh 23; Fay-Dumaine Dep 44-46, Exh 12.

322. Dr. Faye- Dumaine testified that there have been multiple studies in Canada, the United States, and Europe validating the Static-99. Studies of the Static-99 have been done with general correctional populations, as well with high risk populations and other populations. Fay-Dumaine Dep 72 ln 23—74 ln 11, Exh 12.

323. When asked about sample size, Dr. Fay-Dumaine stated that there have been "so many studies." She stated that one of the studies cited in her report was based was 4,040 convicted sex offenders from Canada, the United States, England, Austria, and Sweden. It is possible, although unlikely as the data sample was collected before most states had registration schemes, that a portion of the sample set of sex offenders from the United States were registered sex offenders. For that study, it is possible that registered sex offenders were included in that portion of the sample set that was taken from the United States. There is no data set available for undiscovered sex offenders. Fay-Dumaine Dep 72 ln 23—74 ln 11; 95 ln 19-22, Exh 12.

324. Acturial tools like the Static-99 are not designed to predict whether any particular individual will or will not reoffend, but are designed to screen people into relative risk categories, "in a similar way as our car insurance companies do." Levenson Dep 63 ln 12-24, Exh 9.

325. Plaintiffs' experts describe the Static-99 as being easily administered by anyone trained to do so. Levenson Expert Rep 8, Exh 23; Fay-Dumaine Dep 68-69, Exh 12.

326. Administration of a Static-99 often relies on information in the offender's record including pre-sentencing investigation reports, case managers' reports,

medical records, *etc.* Administration of the Static-99 does not require an interview of the offender. Fay-Dumaine Dep. 53 ln 1-24, Exh 12.

327. For some factors (such as whether the victim is known to the offender), the scoring of the Static-99 test relies heavily on the original criminal investigation and the details of the investigative report. Fay-Dumaine Dep. 67 ln 16—68 ln 2, Exh 12.

328. A Static-99 test can only be performed on people who have been convicted of certain listed sex offenses. For example, the Static-99 cannot be performed on offenses such as the possession of child pornography. Fay-Dumaine Dep. 56 ln 19—57 ln 14, Exh 12.

329. The Static-99 test cannot be performed on female offenders because they are relatively rare and their "recidivism rate is incredibly low." There is also no comparable tool to the Static-99 for female sex offenders. Fay-Dumaine Dep 89 ln 21—90 ln 1, Exh 12.

330. The Static-99 cannot be applied to juveniles and may be inaccurate for offenders not native to North American culture. Levenson Dep 64 ln 4—65 ln 13, Exh 9.

331. A person must be trained in order to score the Static-99. Dr. Fay-Dumaine testified that most correctional departments and other agencies that use the Static-99 are "pretty stringent" about training. Static-99 scores are not required to be

verified by another person besides the original scorer unless the agency where the scorer works has an internal policy requiring it, which many do. Scores are not submitted to any central body for confirmation. Ultimately, the accuracy of a Static-99 depends on the reputation of the individual or agency scoring it. Fay-Dumaine Dep 68 ln 17--69 ln 25; 70 ln 23—71 ln 7, Exh 12.

332. Dr. Fay-Dumaine conducted actuarial risk assessments of plaintiffs John Does #2-4 using the most recent version of the Static-99. Fay-Dumaine Expert Rep 1, Exh 24; Fay-Dumaine Dep 44, Exh 12.

333. Dr. Fay-Dumaine could not score John Doe #1 because his offense did not have a sexual component, and the Static-99 is specific to sex offenses. She also could not score Mary Doe because the Static-99 has not been validated for female offenders. (John Doe #5 was not scored because he intervened in the litigation after Dr. Fay-Dumaine's report was completed.) Fay-Dumaine Expert Rep 1, 4, Exh 24.

334. John Does #2-4 all received a Static-99 score of "2". Offenders from routine correctional samples with a score of "2" have been found to sexually reoffend at a rate of five percent (or one in 20) over five years. Fay-Dumaine Expert Rep 1, Exh 24.

335. The Static-99 is based on statistical probability, not a clinical judgment of a particular offender. Individuals can sometimes defy probability. The overall predicative accuracy of the Static-99 on any given offender's likelihood of reoffend-

ing is about 70 percent. Fay-Dumaine Dep 79 ln 15—81 ln 17, Exh 12.

336. Plaintiffs' experts testified that sexual offending decreases with age, and age is one of the factors that the Static-99 considers. John Does #2-4 are all currently under age 35. At the age of 35, their Static-99 scores will drop to a "1". Offenders with a score of 1 have a recidivism risk of about 3.8%. As plaintiffs grow older, their actuarial risk of recidivism will continue to decrease. Fay-Dumaine Expert Rep 1, 3, Exh 24; Fay-Dumaine Dep 52, 114, Exh 12.

337. The age of the offender does not cause offending, but age is correlated with risk of offending. As age increases, risk of offending decreases. Nothing specific occurs on an offender's 35th birthday that reduces their risk of offending, but they will then belong to an actuarial group with a lower risk level. Fay-Dumaine Dep 52 ln 9-25, Exh 12.

338. Although the Static-99 could not be scored for Mary Doe, Plaintiffs' experts testified that research on female sexual offenders has found female offenders to have "an 'extremely low' rate of sexual recidivism" (between 1-3%)". Fay-Dumaine Expert Rep 4, Exh 24; Fay-Dumaine Dep 89-90, Exh 12; Levenson Dep 65, Exh 9.

339. According to Dr. Fay-Dumaine, although the plaintiffs are classified as Tier III offenders and are required to register for life, actuarial risk assessments indicate that they score in the range that is extremely low risk. Moreover, in Dr.

Fay-Dumaine's opinion, the nature of their offenses and the length of time that they have lived offense-free in the community also indicate that they are extremely unlikely to re-offend. Fay-Dumaine Expert Rep 1, 4, Exh 24; Fay-Dumaine Dep 96-97, 82, 104, 110-114, Exh 12.

340. In Herbert Tanner's opinion, there is a difficulty in anyone determining the risk of an offender committing a future offense:

> I think it has to do with a number of factors, not the least of which, something that [counsel] already mentioned about correlation and causation. Generally the problem is that we don't really know. We're not good at judging this stuff. We can take clinical judgment, say have a psychiatrist or psychologist give some kind of test to someone and in their clinical judgment they're going to say it is -- this person isn't a risk or is this level of risk. And that kind of clinical judgment stuff is a coin flip at best I think. There are instruments out there that various states have used or various organizations have suggested, but the reality is that without knowing who that sex offender is and without knowing who the cohort of people that that risk assessment was normed against, it's very difficult to say that this person is going to offend -- to put a risk.
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> * * *
>
> And, you know, we study, and these risk assessments are studying the people that got caught. What do we know that the vast majority of rapes are not reported, that those reported are not necessarily investigated, that when investigated they're not necessarily charged, and when they're charged they don't always result in a conviction or even frequently result in a conviction. We're studying the wrong group -- we studied the wrong group to develop these risk assessments.
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> * * *

> [A]lso -- it is and it's also not only that, it's the what does it mean to reoffend, what does recidivism mean. And there has to be an acknowledgment of the underestimation. If you say recidivism is measured by the number of people that are rearrested that's going to -- that's an underestimation of the actual re-offense rate. If you say recidivism is the number of people who were convicted of a subsequent offense that's going to even more grossly underestimate the number – the recidivism. And, you know, taking say like the Department of Corrections likes to do and they put their little Compass thing out there and they say only 5 percent have been returned to prison, okay, now I know what their definition of recidivism is. Tell me how many of those people rape their kids. They can't do that unless they were returned to prison for that, so what are we measuring with all of these instruments, what are we asking the court to measure?

Tanner Dep 93 ln 6—96 ln 1, Exh 21.

Pls Object: Inadmissible opinion testimony from a witness who is not listed as an expert and admits he is not an expert. Foundation, Competence. His opinions are contradicted by the psychological literature and demographic studies. Tanner Dep 72 ln 12—73 ln 5, Exh 21.

Defendants respond that this is Mr. Tanner's lay opinion that is rationally based on his perceptions through his years of experience prosecuting sex offenses.

C. Research on the Comparative Risk of Non-Sex Offenders and Sex Offenders

341. According to plaintifs' experts, requiring registration for 25 years to life is both inefficient and unnecessary because after the passage of time reoffending is "very unlikely to occur." Fay-Dumaine Dep 92-94, 115-116, Exh 12; Levenson Expert Report 10, Exh 23.

342. Risk for sexual recidivism declines with age. Recidivism risk also

declines the more time a person spends offense-free in the community. Levenson Expert Rep 10, Exh 23; Fay-Dumaine Dep 104, Exh 12; Levenson Dep 129-138, Exh 9.

343. Dr. Fay-Dumaine testified that it is possible that a small subset of high risk sex offenders get better at concealing their crimes over time. However, studies show that the majority of sex offenders offend only once. Fay-Dumaine Dep 119 ln 19—120 ln 15, Exh 12.

344. Dr. Fay-Dumaine testified that the research shows that most sex offenders, including high risk offenders, do not reoffend after their first conviction. Fay-Dumaine Dep 82, Exh 12.

345. The part of the Static-99 test that evaluates whether the offender has prior offenses does not factor in arrests, investigations, accusations, or complaints—only criminal charges or institutional misconducts. Charges and misconducts, in turn, depend upon a victim coming forward or the authorities becoming aware of the incident through other avenues. Fay-Dumaine Dep 59 ln 1—61 ln 12, Exh 12.

346. Sex crimes are under-reported. Levenson Dep 62 ln 21—63 ln 7, Exh 9.

347. According to Dr. Fay-Dumaine, sex offenders who do reoffend usually do so within three to five years. For individuals who do not reoffend during that period “there’s a precipitous drop” in recidivism risk. Fay-Dumaine Dep 82, Exh 12.

348. According to Dr. Fay-Dumaine, when individuals remain offense free in the community, their risk drops 50% after five years, and another 50% for every five-year interval after that. She reports that this is true even for high-risk offenders. Fay-Dumaine Dep 82, 104, 129-139, Exh 12.

349. Dr. Levenson stated that persons who have never been convicted of a sex offense also present a risk of committing sex offenses. Dr. Levenson reported that while some individuals convicted of sex offenses will re-offend, she testified that the vast majority of new sex offenses are committed not by registered offenders, but by individuals without prior sex offenses. Dr. Levenson cited a study in New York found that 95% of all arrests for sexual offenses were for individuals who did not have a prior sexual offense conviction and who were not on a sex offender registry. Levenson Expert Rep 8, Exh 23

350. Dr. Fay-Dumaine testified that the risk of sexual offending is about 3% in the general male population. Fay-Dumaine Dep 93, Exh 12.

351. In the opinion of Drs. Levenson and Fay-Dumaine, research that distinguishes between low, medium, and high-risk offenders shows that low-risk offenders actually have a lower risk for sexual offending than the general male population by about one percentage point. Fay-Dumaine Dep 82, 93, Exh 12; Levenson Dep 130-137, Exh 9.

352. Specifically, Drs. Levenson and Fay-Dumaine reported on research that

shows that the baseline population of individuals who have never been arrested for a sex-related offense, but have been arrested for some other crime, had a 3% chance of committing an "out-of-the blue" sex offense. From the outset, low-risk sex offenders have a lower risk of committing a sex offense (2.2%) than that baseline. Levenson Dep 130-137, Exh 9; Fay-Dumaine Dep 93, Exh 12; Hanson Study 9-11, Exh 78; Hanson Decl 1, 9, Exh 79.

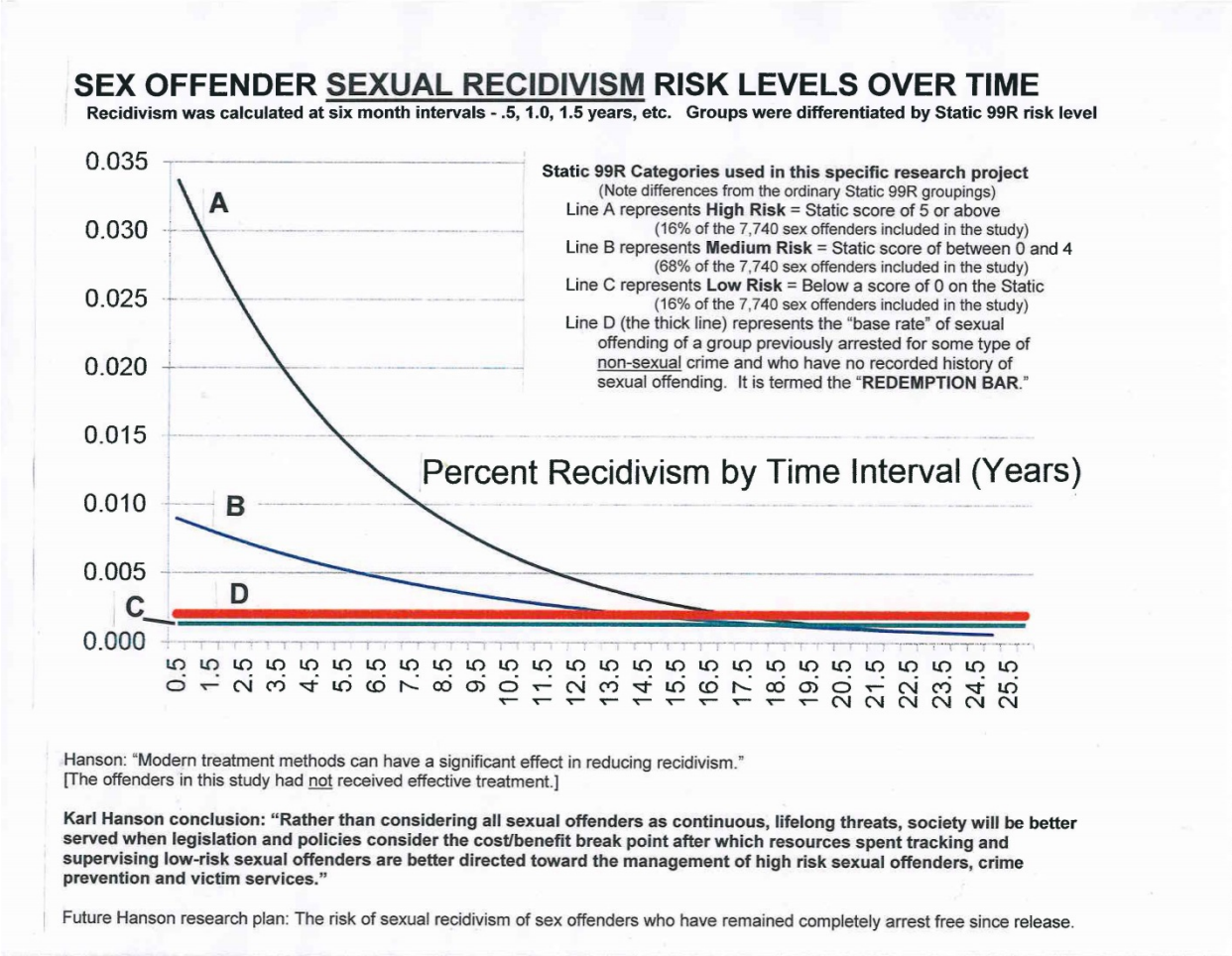
Defendants make a continuing objection to the introduction of the Hanson Study as an exhibit on the grounds that Dr. Hanson was not listed as a witness, was not subject to examination, and the paper was not identified as an exhibit or produced by Plaintiffs during discovery as a document upon which they sought to rely.

Plaintiffs state that the Hanson Study was in fact provided to opposing counsel in advance of Dr. Levenson's deposition as a document she relied on in forming her opinion. It was also discussed at her deposition. *See* Levenson Dep 127—137, Exh 9, and deposition exhibit F. The article is also available in the *Journal of Interpersonal Violence*.

353. Drs. Levenson and Fay-Dumaine conclude that for medium-risk sex offenders, the risk of committing a sex offense drops off over time so that after 10-14 years offense-free in the community, it is below the baseline for non-sex offenders. They conclude that high-risk sex offenders pose no more risk than the base-line group after 17 years offense-free in the community. Fay-Dumaine Dep 93, Exh 12; Levenson Dep 130-137, Exh 9; Hanson Study 11, Exh 78; Hanson Decl 2, Exh 79.

354. The graph below, which reflects the research of Karl Hanson and was

explained by Dr. Levenson at her deposition, shows how recidivism rates of different risk categories drop off over time, and how they compare to the baseline population. Levenson Dep 130-137, Exh 9.



Sex Offender Sexual Recidivism Risk Levels Over Time Graph, Exh 80.

355. According to Drs. Levenson and Fay-Dumaine, the current research in the field shows that low-risk offenders pose less risk of committing a sex offense than the baseline for "out of the blue" offenses, and that the recidivism risk of medium and high-risk offenders drops off dramatically over time, so that after 17 years

even high-risk offenders present a statistical risk equivalent to the baseline. Fay-Dumaine Dep 92-93, 111-112, Exh 12; Levenson Dep 130-138, Exh 9; Hanson Decl 1, Exh 79; Hanson Study 9-11, Exh 78.

356. Dr. Fay-Dumaine reported that low and medium-risk offenders comprise upwards of 90 percent of all sex offenders. Fay-Dumaine Dep 113, Exh 12.

357. Dr. Levenson testified that even high risk sex offenders are "no more likely" than the baseline population to commit a sex offense after 17 years offense-free in the community. She stated that from a

> cost-effectiveness point of view any benefit that a registry might serve, and, again, there's really no consensus in the research to support benefits of the registry in terms of recidivism, but any benefits that might exist after 17 years are sort of washed out by the – you know, the low likelihood of committing a new sex crime.

Levenson Dep 137-138, Exh 9.

Defendants object to Dr. Levenson's opinion regarding the cost-effectiveness of registries for lack of foundation and because it is outside the scope of her proffered expertise as a psychologist.

D. Research on Whether Tier Classifications Correspond to Risk

357. According to Dr. Levenson, research shows that many individuals classified as Tier III have a lower risk of re-offending than individuals in lower tier levels. Dr. Levenson's report discusses research showing that tier structures based on the offense of conviction, "fail to distinguish between registered offenders who present significant threat to public safety and those who present lower risk." For

example, research in Florida showed that Tier III offenders have lower recidivism rates and lower actuarial risk scores than Tier II offenders. Levenson Expert Rep 2, Exh 23; Levenson Dep 127, 140-41, Exh 9.

358. Dr. Levenson's report states that some jurisdictions "classify risk" based strictly on the conviction. At her deposition she clarified that it is more accurate to say that some states structure their registry on the conviction rather than the actuarial risk any given individual poses. Levenson Dep 38 ln 16—41 ln 9, Exh 9.

359. Dr. Fay-Dumaine testified that "[t]he offense alone doesn't really denote any particular risk," and that other factors, like those captured on the Static-99, are more relevant to risk determinations. Fay-Dumaine Dep 112, Exh 12.

360. Dr. Fay-Dumaine testified that having a list of over forty-thousand convicted offenders that could be tracked over time for recidivism may "possibly" be valuable resource for further scientific research. Fay-Dumaine Dep 133 ln 9—134 ln 11, Exh 12. Dr. Levenson stated that a pool of data on sex offenders registering for a period of 25 years to life would be useful for further research on sex offenders and recidivism. Levenson Dep 113 ln 6-12, Exh 9.

Plaintiffs object: irrelevant to any issue in this case.

E. Use of Risk Assessments to Design Supervision Strategies at the Michigan Department of Corrections

361. Plaintiffs' expert Richard Stapleton, the former chief legal counsel for the Michigan Department of Corrections, testified that because evidence-based

correctional research has shown that supervision strategies must be tailored to an individual's risk level, and because individuals with serious offenses may have lower risk levels than individuals with lesser offenses especially over time, the MDOC uses empirically-based risk assessment instruments to determine each offender's actuarial risk. Supervision for parolees and probationers can then be tailored to each offender's actual risks and needs. Stapleton Expert Rep 3-4, Exh 28; Stapleton Dep 36-37, Exh 13.

362. The Michigan Parole Board and MDOC probation agents strive to narrowly tailor conditions of supervision to the individual circumstances of each individual. The Parole Board uses risk assessment tools to tailor conditions, and "the more accurate the risk assessment is the more narrowly tailored the conditions can be." Stapleton Expert Rep 1, 5, Exh 28; Stapleton Dep 92, Exh 13.

363. Current MDOC case management standards no longer require in-person monthly reports for all offenders, regardless of risk. Rather, the frequency and nature of reporting (*e.g.*, in person, by phone, by mail) are determined by the offender's assigned level of supervision. Depending on the supervision level, some parolees and probationers can use the phone, mail, or email to contact their agents or report changes. Stapleton Expert Rep 4, Exh 28; Stapleton Dep 73-75, Exh 13.

364. According to Mr. Stapleton, the MDOC not only targets interventions to high-risk offenders, but also minimizes interventions with low-risk offenders,

because evidence-based research shows that intensive supervision of low-risk offenders is counter-productive. Targeting MDOC resources to high-risk offenders is the best way to protect the public. Stapleton Expert Rep 1, 3-4, 5-7, Exh 28.

365. During his deposition, Mr. Stapleton was unable to recall offhand the research upon which he based his conclusion that the greater burden you place on offenders, the more likely they are to engage in negative behavior. He stated that this was a general line of thought over the years in his field and that there have been articles in *Corrections Today Magazine* discussing this, as well as other studies and articles. Stapleton Dep 48 ln 7—50 ln 3, Exh 13.

366. Mr. Stapleton reported that SORA 2013's requirements are applied to all registrants, regardless of risk level. Stapleton Expert Rep 1, Exh 28.

367. According to Mr. Stapleton, the fact that parolees and probationers with sex offenses are subject to SORA undermines the MDOC's use of evidence-based correctional practices because the statute imposes virtually identical requirements on all registrants regardless of risk level. Stapleton Expert Rep 1, 5-7, Exh 28.

368. In preparing his expert report, Mr. Stapleton did not perform any case studies of particular parolees or probationers, nor analyze any of the Does. Rather, he based his conclusions on his experience at the MDOC and research performed over the last 20 years establishing that evidence-based practices work in reducing criminal behavior. Stapleton Dep 50 ln 51 ln 4-12, Exh 13.

369. Mr. Stapleton's conclusions are based in part upon a 2004 article entitled "Implementing Evidence-Based Practice in Community Corrections." That article did not include specific analysis of sex-offender registration requirements, but did include discussion of sex offenders. Stapleton Dep 52 ln 14—53 ln 15, Exh 13.

370. Mr. Stapleton testified that while the purposes of sex offender registration and probation or parole are not identical, both registration and parole/probation have the purpose of protecting the public. But the purpose of supervision under the MDOC is also to rehabilitate and reintegrate, while the sex offender registry has the purpose of notifying the public. Stapleton Dep 41 ln 21—42 ln 13; 45 ln 11-15; 94 ln 14—95 ln 10, Exh 13.

371. Mr. Stapleton admits that each convicted sex offender poses some risk of reoffending in the future since they are human beings and "we all pose some level of risk." Stapleton Dep p 42 ln 14-17, Exh 13.

X. GEOGRAPHIC ZONES

372. Under SORA 2013, the plaintiffs are barred from residing, working, or "loitering" within a "student safety zone," defined as "the area that lies 1000 feet or less from school property." M.C.L. §§ 28.733(e)-(f), 28.734, 28.735.

373. School property is defined as, "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 contin-

uous basis" and is either "used to impart educational instruction" or "is for use by students not more than 19 years of age for sports or other recreational activities." M.C.L. §§ 28.733(e).

374. SORA 2013's geographic zones are not limited to only those registrants convicted of offenses against children. M.C.L. §§28.733-736; Johnson Dep 303, Exh 15.

375. Plaintiffs submitted two expert reports regarding the geographic zones from Peter Wagner, the director of the Prison Policy Initiative who has for the last decade regularly created maps that analyze demographic data in relation to statutory restrictions that impose geographic limits for criminal justice purposes. Wagner 1st Expert Rep, Exh 25; Wagner 2nd Expert Rep, Exh 26; Wagner Supp Decl 1, Exh 128.

376. Mr. Wagner stated that his methodology has never been challenged, including by opposing experts in other litigation where Mr. Wagner has served as an expert witness. P. Wagner Dep 58 ln 19—59 ln 8, Exh 11; Supplemental Wagner Decl ¶4, Exh 128.

377. Mr. Wagner has never been retained as an expert by a government seeking to defend a sex offender geographic zone. P. Wagner Dep 36 ln 5-8, Exh 11.

378. No one has ever verified one of Mr. Wagner's maps on a parcel-by-parcel basis to confirm that the map is accurate and actually represents what it purports to

show. P. Wagner Dep 58 ln 19—59 ln 8, Exh 11.

379. Mr. Wagner stated that in Michigan, the size, shape, and boundaries of "student safety zones" are effectively unknowable, even for experts with specialized software and relevant training. Accordingly, the plaintiffs often cannot know if they are working, residing, or "loitering" within 1000 feet of school property. Wagner 2nd Expert Rep i, Exh 26. Mr. Wagner stated that it is possible, provided one has parcel data, to work backwards from a given address and determine if it is in compliance with the sex offender geographic zones. P. Wagner Dep 95 ln 18-20, Exh 11.

A. The Size of Geographic Zones

380. According to Mr. Wagner, the geographic zones can cover vast areas, especially in urban and suburban regions. They thereby severely restrict access to employment and housing, and limit registrants' ability to engage in normal human activity. Wagner 1st Expert Rep 6-10, Exh 25.

381. Mr. Wagner produced an under-inclusive map (erring on the conservative side) for the City of Grand Rapids, showing that at least 46% of the city's property parcels lie within geographic zones. Wagner 2nd Report ii, 27-28, Figure 10, Exh 26.

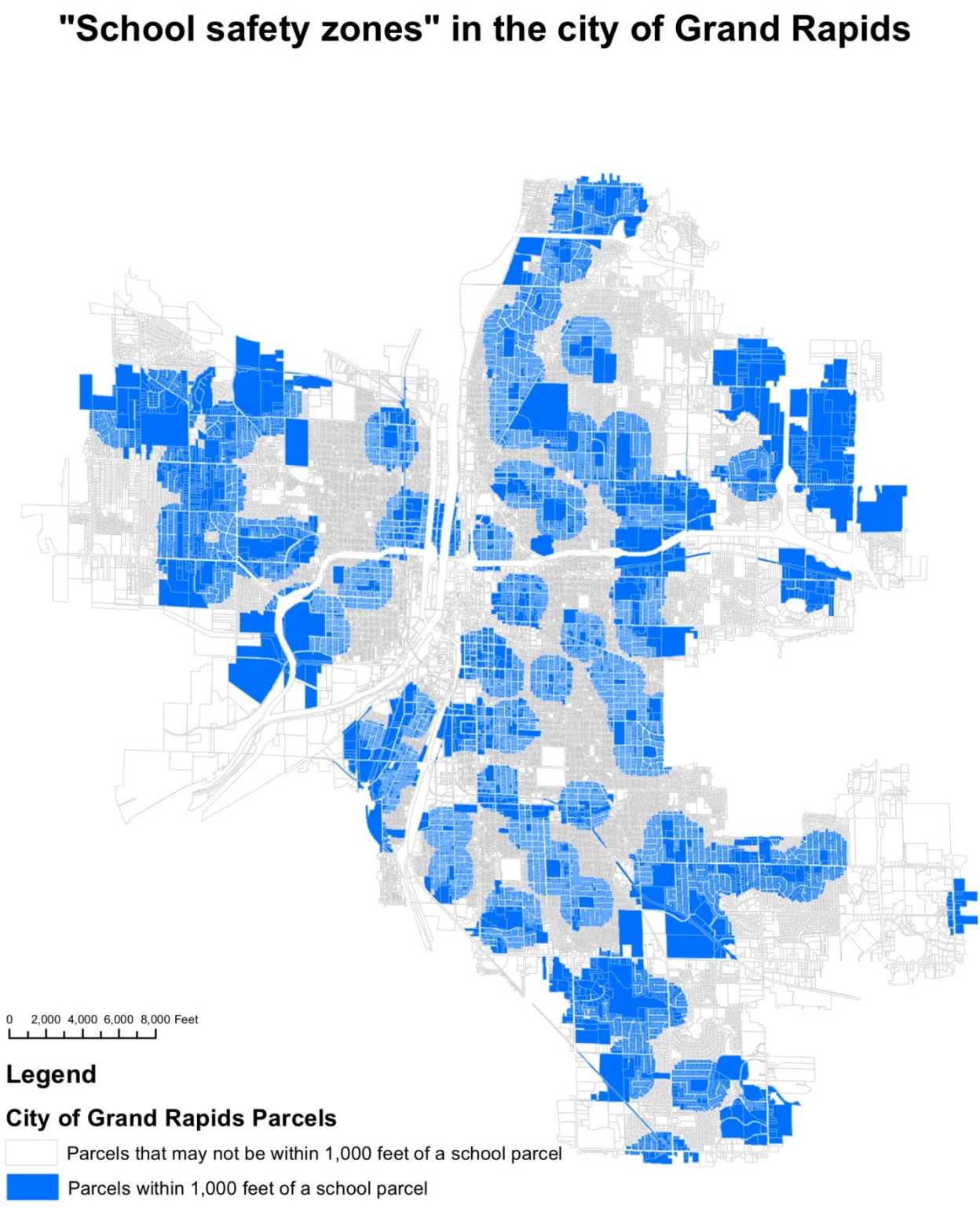


Figure 10.

382. Mr. Wagner stated that towns smaller than Grand Rapids may have

substantially fewer schools. P. Wagner Dep 63 ln 4-6, Exh 11.

383. In making his map of Grand Rapids, Mr. Wagner included adjoining parcels owned by a school without knowing whether that adjoining parcel was being used to impart education or by students younger than 19 for purposes of sports. He did not include adjoining parcels under separate ownership that may have been rented or used by the school to impart education or for the purposes of sports. P. Wagner Dep 55 ln 1-16, Exh 11.

384. Some of the shaded areas in figure 10 of Mr. Wagner's report may not be residential. P. Wagner Dep 103 ln 18—105 ln 19, Exh 11.

385. According to Mr. Wagner, many of the "permissible" areas on that map are likely not appropriate for living, working, or spending time because they are in industrial areas. *Id.*

386. Expanding the number of "protected places" can dramatically increase the total area covered by exclusion zones. For example, during the 2011-12 legislative session, the Michigan Senate (but not the House) passed S.B.76 and 77, which would have criminalized "loitering" within 1000 feet of daycare centers. Based on a list of the approximately 10,729 daycare providers in Michigan, Mr. Wagner created a map showing what 1000 foot circles around just two dozen daycare providers in Lansing would look like. This map significantly understates the size of the potential geographic zones, because it is not based on parcel data. Wagner 2nd

Expert Rep 28-32, Figure 11, Exh 26; S.B. 76 and 77 (2012), Exh 97.

387. Mr. Wagner acknowledges that Michigan has not passed any legislation adding day cares to the areas restricted by geographic zones. P. Wagner Dep 110 ln 5-11, Exh 11.

Figure 11.

388. Mr. Wagner also found that if daycares are added to the list of protected places, 75% of Grand Rapids would be off-limits. Wagner 2nd Expert Rep, Figure 12, Exh 26.

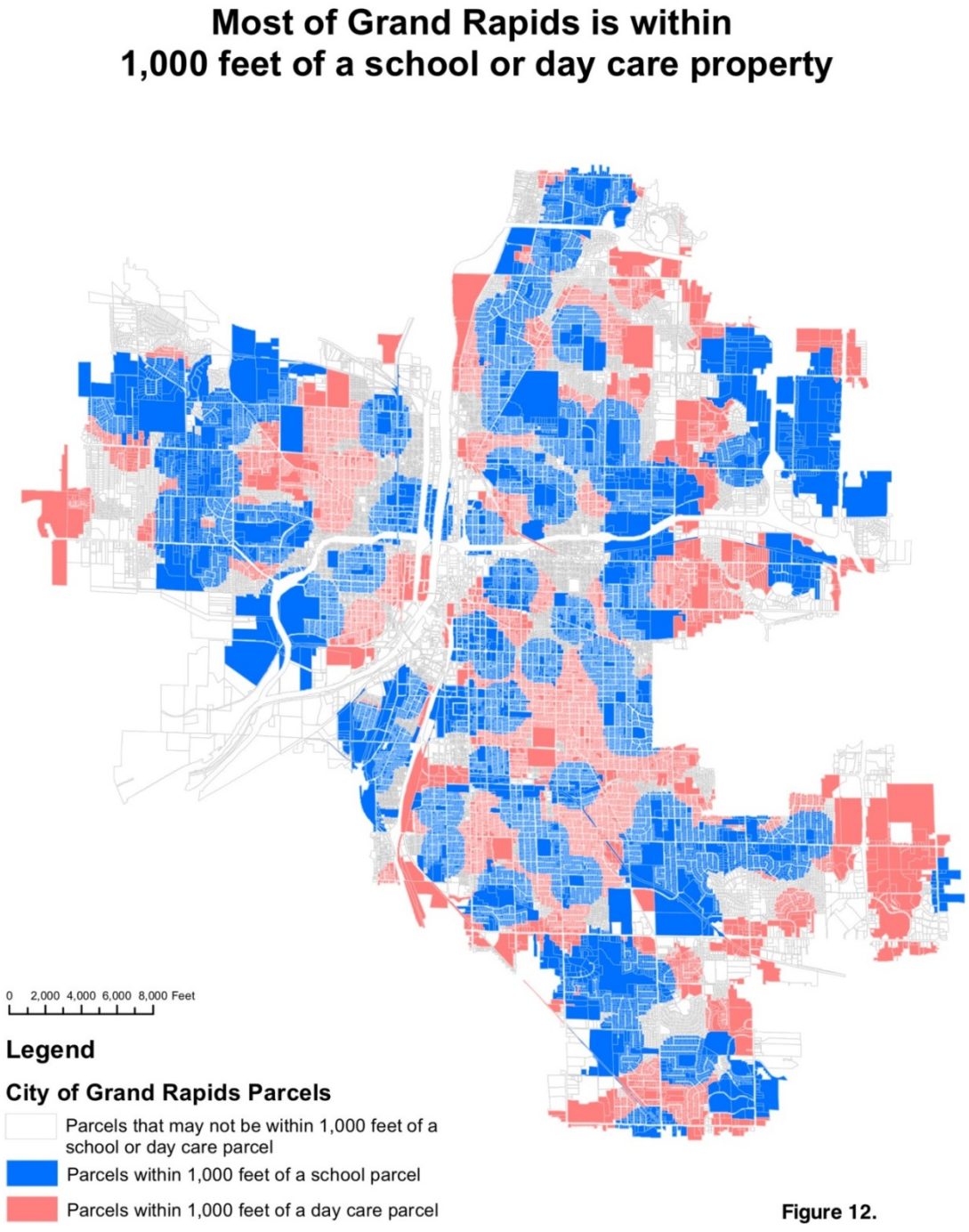


Figure 12.

B. The Impact of Different Measurement Methods on the Shape and Size of Geographic Zones

389. According to Mr. Wagner, there are four significant variables that affect the measurement of geographic zones.

a. The activity (reside, work, or loiter, as defined in M.C.L. § 28.733(b));
b. The measurement of the distance (as the crow flies or along the road);
c. What point the distance is measured from (building, property line, etc.);
d. What point the distance is measured to (person, building, property line).

Variations in those factors lead to different results in the size, shape, and boundaries of exclusion zones, and therefore determine whether or not a registrant is engaging in lawful behavior. Wagner 2nd Expert Rep 3, Exh 26.

390. Mr. Wagner stated that if the statute was changed or interpreted in such a way so that there was a consistent method of measuring zones that was both knowable and possible for an offender to do, that would eliminate ambiguity regarding exclusion zones, though it would not eliminate the burden of complying with the zones. P. Wagner Dep 112 ln 22—114 ln 8, Exh 11.

391. Mr. Wagner stated that the nature of the prohibited activity can affect how one measures distance. Loitering and working are not necessarily stationary activities, meaning that determining whether a registrant is within a protected zone can involve real-time mapping of the distance between a fixed protected area and an ambulatory person moving about. *Id.*

392. Ms. Johnson, the SOR Unit manager, testified that proximity mapping "doesn't work for loitering," when a person is moving around.

> Q. So your testimony is you don't know how it's measured, loitering is measured, whether it's measured from the person or from the parcel or from some other thing?
> A. Correct.

Johnson Dep 228-29, Exh 15.

393. Mr. Wagner's expert report includes figures showing that if one measures in a straight line between two points, regardless of obstructions or normal travel routes, then a geographic zone may include areas that are not at all close to schools in terms of actual/practical travel distance. Wagner 2nd Expert Report 5-6, 13-14, Figures 1, 2, Exh 26.

Figure 1 (person in marked house, which is less than 1000 feet from school, would need to travel 4,200 feet to get to the closest part of school property)

Figure 2 (home within 1000 feet of school has driving distance of 4.4 miles)

394. While 1000 feet is an objective distance, the size, shape, and boundaries of a geographic zone are affected by the two points between which one measures. In Wagner's opinion, taking the example of the prohibition on residing within 1000 feet of a school, geographic zones could be measured: (a) from the school building to the home building; (b) from the school property line to the home property line; (c) from the school property line to the home building; or (d) from the school building to the home property line. Wagner 2nd Expert Rep 4, 7, Exh 26.

395. Variations in the methodology used to measure the protected distance impact the size, shape, and boundaries of geographice zones, and hence control whether or not registrants are in fact residing, working, or visiting a place unlawfully. Wagner 2nd Expert Report 7-15, Figures 3-5, Exh 26.

Figure 3 (view of school)

Figure 4 (showing, in successively darker colors, a school symbol for the front entrance, the school's outline in orange, and the school's property line in brown)

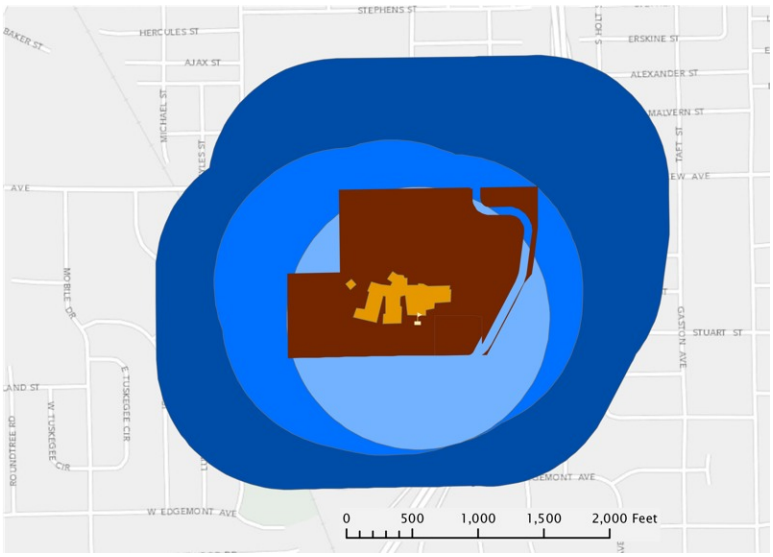


Figure 5 (showing 1000-foot geographic zones drawn around each of three nested protected areas: the school's entrance, the school building and the school property)

396. Mr. Wagner's reports use these images to demonstrate that the area covered by a 1000-foot distance around a school property perimeter is more extensive than the area covered by a 1000-foot distance from a single point at the school. The differential was 3.5 times larger for the example used in Mr. Wagner's report.

Wagner 2nd Expert Rep 9-10, Figures 4, 5, Exh 26.

397. Mr. Wagner explained in his deposition:

A. …The general problem here … is that as the distance gets bigger the area that's affected grows much faster, so as you double the distance, as you double the radius, the area that's affected goes up four times. So 500 feet sounds like it's half the size of 1,000 feet but the affected area is actually a quarter of the size.
Q. And why is that?
A. Geometry. . . . It's because the area of a circle is pi r2, so when you double r you're actually making the area four times larger.

P. Wagner Dep 65-66, Exh 11.

398. According to Mr. Wagner, geographic zones are not necessarily shaped like simple circles around a fixed point. He stated that while measuring 1000 feet from a single point will produce a circle, measuring 1000 feet from a parcel boundary will produce an irregular shape. Moreover, as shown in figures 6a, 6b, and 6c, measuring to the home property line will create oddly shaped exclusion zones, since the entire parcel of a home becomes off limits if any part of the parcel is within 1000 feet of a school. The size of the intersecting parcels affects the total size of the geographic zones. Wagner 1st Expert Rep 4, Exh 25; Wagner 2nd Expert Rep 11-13, Figures 6a-6c, Exh 26.

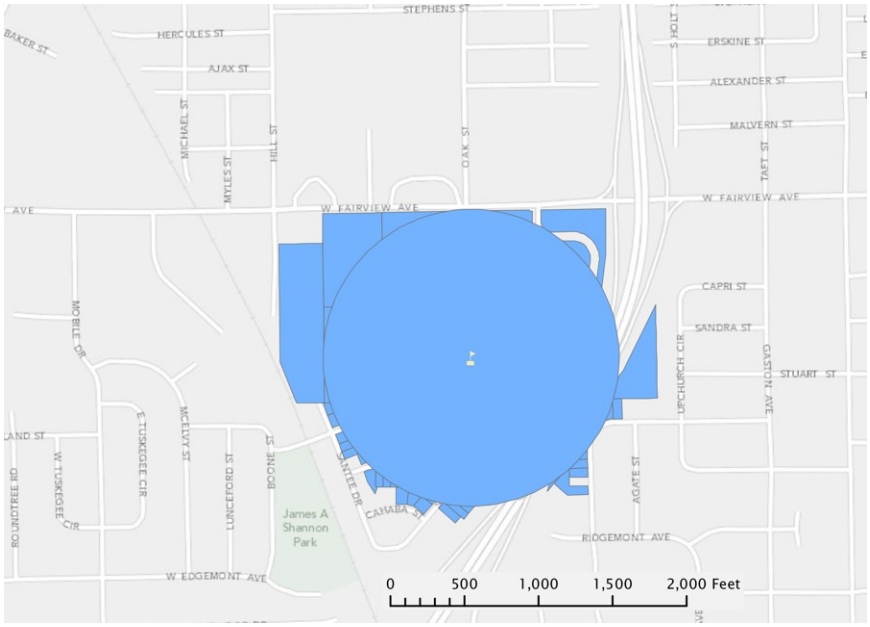


Figure 6a (geographic zone measured from school entrance to home property line)

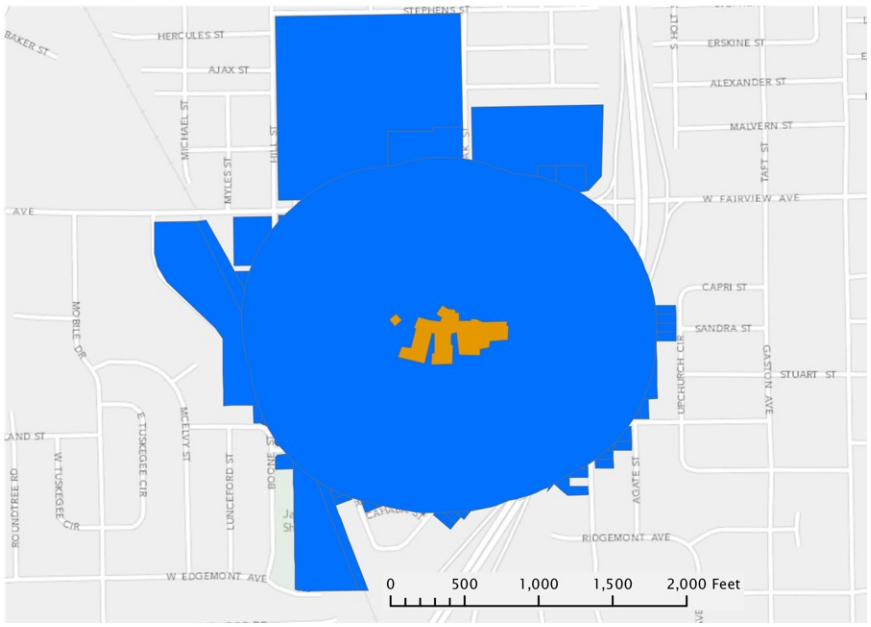


Figure 6b (geographic zone measured from school building perimeter to home property line)

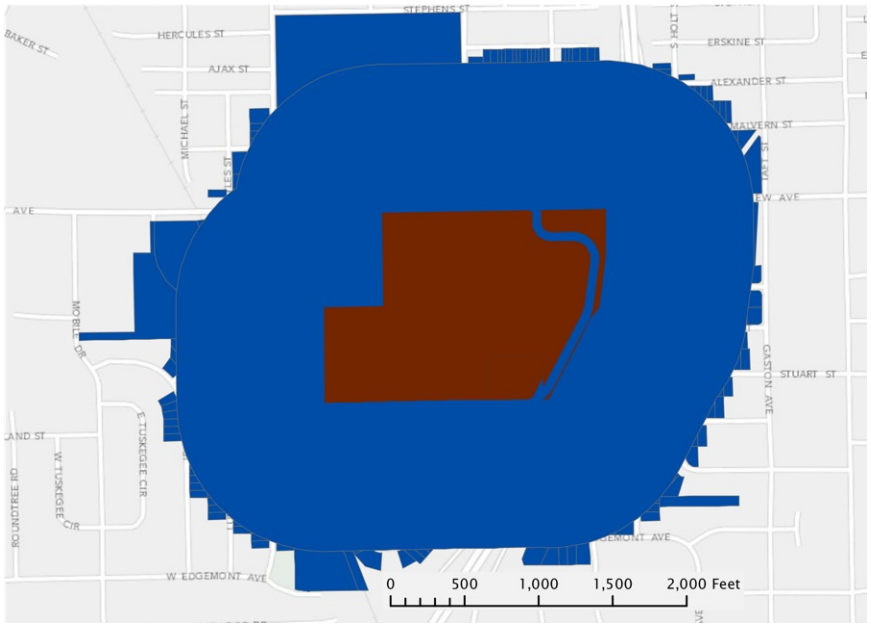


Figure 6c (geographic zone measured from school property line to home property line)

399. The size, shape and boundaries of exclusion zones are also affected by

whether distances are measured “as the crow flies” or as a person could actually travel. Wagner 2nd Expert Rep 4-5, figure 7a, 7b, Exh 26.

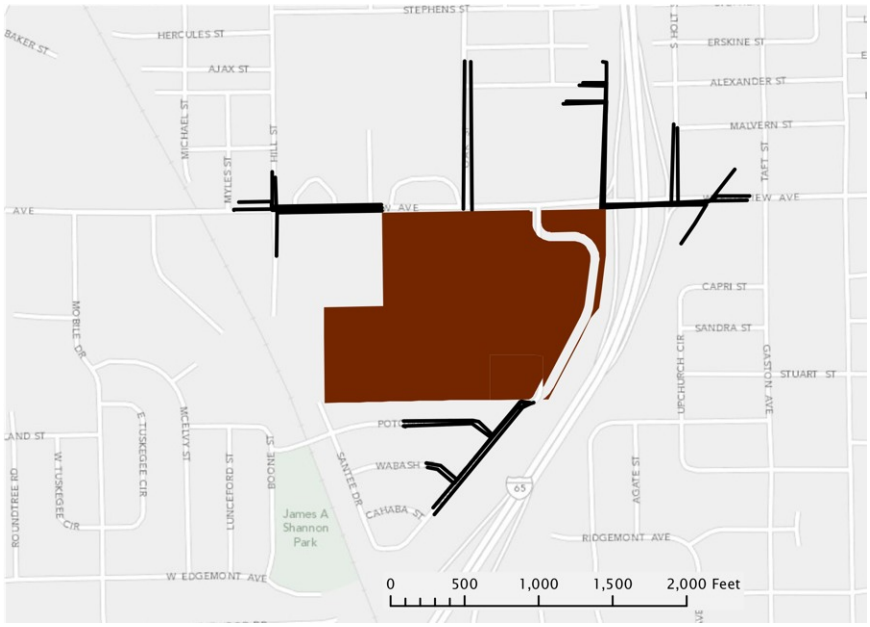


Figure 7a (1000 foot distance measured along streets that connect to school property)

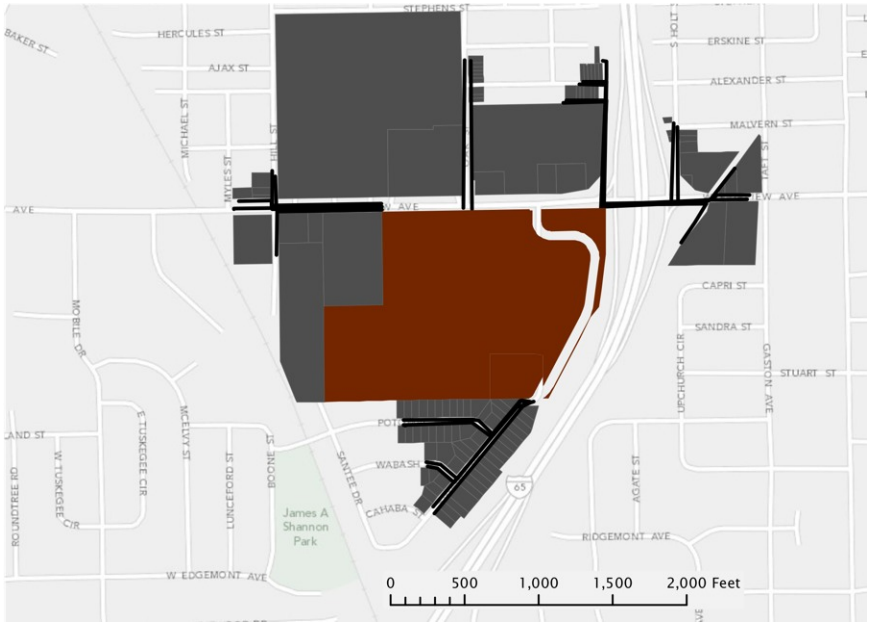


Figure 7b (showing properties that are adjacent to the 1000 foot distances as

measured along roads)

400. Finally, Mr. Wagner reported that exclusion zones in densely populated areas frequently intersect and overlap, creating oddly shaped zones that blanket communities. Wagner 1st Expert Rep 4-5, Exh 25; Wagner 2nd Expert Rep 34, Figure 13, Exh 26.

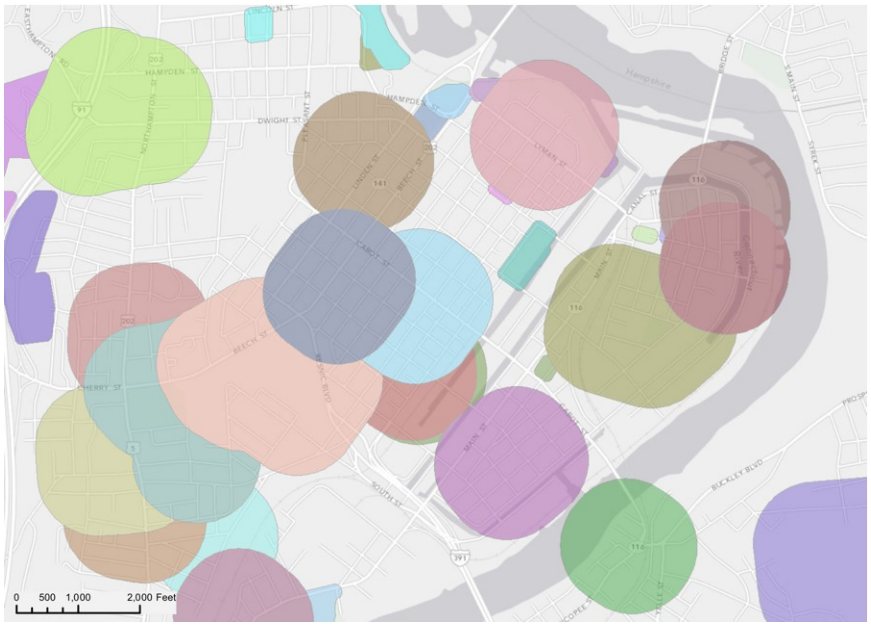


Figure 13 (map showing how different 1000–foot geographic zones overlap)

401. In Mr. Wagner's opinion, if parcel-to-parcel measurement is used for all prohibited conduct, registrants must be able to identify these oddly-shaped exclusion zones and structure their lives accordingly. Wagner 2nd Expert Rep 13, Exh 26.

402. According to Mr. Wagner, whether or not a person is violating SORA by residing, working, or loitering in a particular place will depend on what measure-

ment method is used. Wagner 2nd Expert Rep 15, Exh 26.

C. Defendants' Understanding of the Geographic Zones

403. The MSP's SOR Manual does not define how geographic zones should be measured. MSP SOR Manual § 4.1, Exh 83.

404. When asked about her understanding of how geographic zones should be measured, Karen Johnson, the manager of the MSP Sex Offender Registration Unit, testified: "We get the telephone calls asking us the questions, so I know what the questions are but I don't know what the answers are." Johnson Dep 58 ln 16-18, Exh 15.

405. Ms. Johnson testified that she did not know how to determine whether a residential or employment address is within a geographic zone, and that she did not know whether the 1000-foot distance is measured property-line to property-line or point to point. Johnson Dep 58, 61, 225-26, Exh 15.

406. Leslie Wagner, the MSP Registry Coordinator who is a civilian employee responsible for overseeing the SOR database system, testified:

> A. We don't know and I don't know if the registry is supposed to be from one parcel to a point or a parcel to a parcel or point to point . . .
> Q. You yourself are not sure whether it should be measured parcel to parcel or point to point?
> A. Correct.

L. Wagner Dep 27-29; 15 ln 11-15; 16 ln 12-25; 58 ln 12-18, Exh 18.

407. It is not the practice of the SOR Unit to make a determination over the phone whether an area is in a geographic zone. The SOR Unit usually refers questions about geographic zones or measurement to local law enforcement, the local state police post, or the local prosecutor. Payne Dep 34, 118 ln 25—119 ln 5, Exh 17; Johnson Dep 97 ln 17—98 ln 8; 99 ln 21—101 ln 9; 242 ln 21—243 ln 5; 315-16, Exh 15; Burchell Dep 45, Exh 16.

408. When geographic zones were created in 2006, the MSP SOR Unit created a "cheat-sheet" for internal use of frequently asked questions about the zones to help SOR unit staff understand the law. The SOR Unit uses the FAQ internally, and questions about the zones are usually referred to prosecutors. Johnson Dep 97 ln 17—98 ln 8; 314-315 ln 23, Exh 15; Student Safety Zone Cheat-sheet, Exh 49.

409. The cheat-sheet contains answers to approximately 15 questions. One entry is crossed out as incorrect. One other entry states that homeless registrants cannot use shelters. Student Safety Zone Cheat-sheet, Exh 49. Subsequent to the creation of the "cheat sheet", a federal court held that SORA does not prohibit registrants from using emergency shelters within 1000 feet of a school. *Poe v. Snyder*, 834 F. Supp. 2d 721, 733 (W.D. Mich. 2011).

410. The cheat-sheet does not state how the 1000 feet is measured. Student Safety Zone Cheat-sheet, Exh 49.

411. Ms. Johnson testified that the MSP does not share the cheat-sheet with

other agencies "because other agencies are not bound by our attorneys' interpretation" and "other agencies might come to different conclusions" about how to interpret the law. Johnson Dep 314-315, Exh 15.

412. Trooper Burchell, SOR Unit State Coordinator, was asked whether a farmer is in violation if he drives his tractor across two fields, each of which is a separate parcel but only one parcel of which is within a geographic zone. Trooper Burchell did not know. He did not know whether a particular Grand Rapids area school, which is located within a zoo, would qualify as a school, and he did not know "how a registrant could figure out if it's a school." Burchell Dep 56, 58-60, Exh 16.

Defendants objected to these questions and answers on the grounds that they call for a legal conclusion and lack of foundation.

D. Local Law Enforcement Agencies Make Decisions About How to Measure Geographic Zones

413. Ms. Johnson testified that each "[law enforcement] agency should know their jurisdictional areas, but each agency may have their own policies and procedure on how they determine whether or not a sex offender can live at a residence or not. I don't know what those are and we don't provide any guidance how they should do that." Johnson Dep 56 ln 6-19, Exh 15.

414. Ms. Johnson testified that, to her knowledge, the prosecuting attorneys association has not trained prosecutors on how to handle geographic zone issues. Johnson Dep 59-60, Exh 15.

415. If registrants call with questions about geographic zones, the MSP refers them to local law enforcement. If local law enforcement calls the MSP, they are referred to the local prosecutor. Johnson further testified that it is possible that one prosecutor could measure 1000 feet from the door of a school while another prosecutor could measure 1000 feet from the edge of the school's football field. She did not know how prosecutors advise local law police to measure, saying that "[w]e really don't deal with student safety zones." Johnson Dep 56-60, Exh 15.

416. Johnson testified that the plaintiffs, who are from different parts of the state, would need to contact their respective local police departments, local prosecutors and local sheriffs to determine how measurement is handled in their jurisdiction. Johnson Dep 100-01, Exh 15.

417. Johnson testified that she was "aware of a couple instances" where law enforcement agencies measured distances by going to the offender's home and measuring the distance, or by using internet mapping software. Johnson Dep 225 ln 4-24, Exh 15.

418. SOR Unit Enforcement Coordinator Bruce Payne testified that the MSP does not provide any guidance to local law enforcement agencies on how to meas-

ure geographic zones. The local law enforcement agency itself decides whether to measure 1000 feet from property line to property line or from building to building, as well as whether to measure as the crow flies or as a person would actually travel. Payne Dep 31-35, 42-43, Exh 17.

Q: But it would be the local law enforcement decision whether to measure from the building to the property line or whether to measure from the property line to property line?
A. Absolutely, yes.

Payne Dep 35, Exh 17.

419. Sergeant Payne testified that he did not know what measurement techniques local agencies use, and that "there's so many law enforcement agencies in the state of Michigan you would have to individually contact every one to see what they are specifically doing." Payne Dep 36, Exh 17.

420. Sgt. Payne has suggested offenders use Google maps. He has also suggested that they should contact their local law enforcement agency or prosecutor. Payne Dep 33 ln 5-18, Exh 17.

421. SOR Unit Coordinator Burchell testified that whether to measure property line to property line or point to point would be up to the local prosecutor:

Q: So you get a question regarding how to measure loitering, and the person says the registrant is standing 2,000 feet away from the school, but the parcel, the property on which the registrant is standing, is 900 feet away from the school. Is that a violation?
A. I would ask them to check with their local prosecutor whether or not it's a violation.

Burchell Dep 45-47, 54, Exh 16.

422. Trooper Burchell encourages officers to check whether an offender's address is in a geographic zone when an offender registers an address and suggests they use Google Maps. He is not aware of any legal requirement to check whether an offender is residing in a zone. Burchell Dep 49 ln 11-24, Exh 16.

423. Trooper Burchell testified that he knew of two county websites that include a map with a measuring tool to check distances. Those websites are available to the public, but are "not easy to find." Burchell Dep 49 ln 25—51 ln 4, Exh 16.

424. According to Mr. Wagner, plaintiffs' expert, because local law enforcement in one place may use point to point measurement and local law enforcement in another place may use property line to property line measurement,

> there's no uniformity state-wide . . . [P]eople can't know without knowing how law enforcement at that moment is enforcing the law where they can live or work. And then once they know how law enforcement is currently enforcing the law there's no guarantee if there's no uniformity that the law will continue to be enforced in that area, so before I buy a home or get a job there's no notice that the next police officer in the same town will agree with that interpretation . . . . [T]here's this massive discrepancy on how the law is enforced and understood which greatly affects what areas are subject to special treatment, so the amount of uncertainty that it gives to people on the registry is quite large.

P. Wagner Dep 123-125, Exh 11.

E. Property Line to Property Line as the Most Common Method of Measurement

425. Herb Tanner, an attorney with the Prosecuting Attorneys' Association of Michigan, testified that among prosecutors there is "a pretty strong consensus that [the 1000 foot distance] is measured property line to property line." Tanner Dep 17, 79 ln 1-5, Exh 21.

F. OffenderWatch's Use of Point-to-Point Measurement

426. Unlike the prior SOR data management system, the new OffenderWatch system has tools allowing law enforcement to determine whether a residence, work, or volunteer address is within 1000 feet of a school building and/or school property line, depending on how the system is programmed. The software is still being developed for use in Michigan, and it is therefore is not yet clear what features can or will be programmed into the Michigan system. Johnson Dep 219 ln 19—223 ln 17, Exh 15; OffenderWatch Manual 28-29, 44, 138, Exh 50; OffenderWatch Contract 26, Exh 52.

427. The system will have the capability of providing a pop-up alerts when a registrant reports an address within a geographic zone. Johnson Dep 219 ln 19-223 ln 17, Exh 15; OffenderWatch Manual 28-29, 44, 138, Exh 50; OffenderWatch Contract 26, Exh 52.

428. OffenderWatch will input a list of schools that the MSP obtained from the Michigan Department of Education. That list does not include all school properties

as defined in SORA, but does include all active schools according to the Michigan Department of Education. Johnson Dep 233-36, Exh 15.

429. Ms. Wagner testified that whether OffenderWatch's mapping tool will use point to point or parcel to parcel measurement depends on whether the SOR unit can obtain parcel data. L. Wagner Dep 27-29, Exh 18.

430. Ms. Johnson testified that although uncertainties remain because OffenderWatch is still being developed, she believed OffenderWatch will be programmed to measure proximity violations from point to point. Ms. Johnson was uncertain, but thought that the point will be the center of the parcel, rather than the center of any building located on that parcel. Johnson Dep 226-28, Exh 15.

431. The MSP SOR Unit has tried but been unable to obtain parcel data, despite working with the State of Michigan's Geographic Information Systems Office. Wagner 2nd Expert Report 23, Exh. 26; L. Wagner Dep 59, Exh 18.

432. If the SOR Unit could obtain parcel data, OffenderWatch could be used to map parcel to parcel. L. Wagner Dep 29 ln 11-22, Exh 18.

433. Because of the unavailability of parcel data, the OffenderWatch mapping tool can only measure point to point, and will only be able to give approximate distances. The proximity measurements in OffenderWatch are "not a definitive interpretation of where schools are or how to measure or what's within 1000 feet of a school." Johnson Dep 226 ln 6-19, 354, Exh 15.

434. The new mapping feature is a "tool" to help law enforcement to determine if a registrant is within a prohibited zone. The new mapping feature is "not going to tell [law enforcement] exactly if [a specific location] [i]s within a school safety zone." It will still be "up to each agency" to determine how to measure. L. Wagner Dep 26 ln 13—29, Exh 18.

435. The final decision on whether a residence or work location is within a geographic zone will be made by the prosecutor. According to Ms. Johnson, a prosecutor could prosecute for a proximity violation even if no violation shows in OffenderWatch. Johnson Dep 239 ln 17-3; 354, Exh 15.

Defendants objected on the grounds of speculation to the hypothetical question concerning what a prosecutor could choose prosecute.

436. Ms. Johnson testified that she expects that law enforcement agencies will make use of the mapping tool in OffenderWatch to determine whether or not an offender is in a prohibited zone. Johnson Dep 344 ln 18–345 ln 2, Exh 15

437. Ms. Johnson believes use of the new mapping tool will lead to "some uniformity" in the application of the statute. Johnson Dep 344 ln 18—345 ln 5, Exh 15.

438. Every law enforcement agency in Michigan will have access to the mapping tool in OffenderWatch. Johnson Dep 230 ln 18-19, Exh 15.

439. Registrants will not have access to the OffenderWatch mapping tool.

Johnson Dep 230-31, Exh 15.

G. Identifying the Boundaries of Geographic Zones

440. The boundaries of SORA's geographic zones are not marked in the physical environment. Wagner 1st Expert Rep 4, Exh 25.

441. Similarly, the property lines of schools or other property parcels are un-marked in the physical environment. Sgt. Payne noted:

> Q. So how would a registrant know where the property line is?
> A. I don't know. I don't have that answer.
> Q. But it's not like – I mean, you can see a corner of a building, right? You can see where that is, right?
> A. Right.
> Q. But you can't necessarily see where a property line is; is that accurate?
> A. That could be accurate, yes.
> Q. Do you know if there's any publicly available maps showing parcel data that are available to registrants?
> A. Personally I do not, no.

Payne Dep 57, Exh 17.

442. Sgt. Payne testified that if he saw a registrant who was close to a school, he would tell the registrant to move along, even without measuring whether the registrant was actually within 1000 feet. Payne Dep 62, Exh 17.

443. Trooper Burchell testified:

> Q. Assuming that student safety zones are measured from the parcel boundaries rather than the building, how would a registrant know what parcel a school's located on?
> A. I don't know …. I don't know how they'd know.

Burchell Dep 60, Exh 16.

Defendants objected to this question on the grounds of speculation and lack of foundation.

H. Access to Parcel Data

444. According to plaintiffs' expert, Peter Wager, in jurisdictions where geographic zones are measured property line to property line, it is necessary to obtain parcel data in order to accurately map the zones. Mr. Wagner explained that obtaining parcel data is the first step for determining the boundaries of the geographic zone:

> Because assuming, and in Michigan this is a big assumption, assuming that … the statute is to be measured on a property line to property line basis, you have to know where the property lines actually are.

P. Wagner Dep 48, Exh 11; Wagner 2nd Expert Rep, 15, 19, 21-22, Exh 26.

445. Part of Mr. Wagner's expert report quotes Leslie Wagner of the Michigan State Police for her understanding of how to measure the geographic zones, but he does not know details regarding her specific job responsibilities beyond that she is "responsible for the sex offender system." P. Wagner Dep 98 ln 1-25, Exh 11.

446. As detailed in Mr. Wagner's report, he made repeated, unsuccessful attempts to to obtain parcel data. Some jurisdictions indicated that they did not have such data. Others indicated they did have the data, but the cost of acquiring it ran as high as six figures for just one county. After "several years and many pages [of correspondence]," Mr. Wagner was "eventually able to find parcel data for parts of just one county in Michigan," which he used to make some of the maps

included in his second expert report. Wagner 1st Expert Rep, 11, Exh 25; Wagner 2nd Expert Rep, 23, Exh 26; P. Wagner Dep 48, Exh 11.

I. "School Properties" under SORA

447. SORA's geographic zones prohibit employment, housing, and "loitering" around "school property," defined as "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."

M.C.L. § 28.733(e).

448. Peter Wagner stated in his expert report that it is not always obvious whether a particular property qualifies as school property, triggering a geographic zone. Wagner 2nd Expert Rep, 19, Exh 26.

449. MSP SOR Unit staff members were unable to answer hypothetical deposition questions about whether certain types of properties or educational activities would be considered "school properties" that trigger a geographic zone. Payne Dep 46-55, Exh 17; Johnson Dep 241-42, Exh 15.

Defendants objected to these questions on the grounds of lack of foundation and that they called for legal conclusions.

450. SOR Unit staff have "tried but [] could not find" a list of properties that

qualified as "school properties," as defined by SORA. L. Wagner Dep 36, Exh 18.

451. The SOR Unit is attempting to obtain such a list from the Michigan Department of Education or the state Geographical Information Service. Johnson Dep 233 ln 21—234 ln 6, Exh 15.

452. SOR Unit staff contacted the Geographical Information Service, and that Service did not know of parcel data for schools. L. Wagner Dep 27 ln 13 – 28 ln 7, Exh 18.

453. The SOR Unit does have a list from the Michigan Department of Education of 4,253 schools. This list includes the addresses of school buildings. It does not include other school properties or parcel data. Defs' Resp to Pls' First Interrog, No. 6, Exh 42; Johnson Dep 234 ln 10—15, Exh 15.

454. Ms. Johnson testified that she relies on the Michigan Department of Education to determine whether a particular property qualifies as a "school property" within the meaning of SORA. Johnson Dep 244, Exh 15.

J. Information Available to Plaintiffs About Geographic Zones

455. The State of Michigan does not make maps available to the public showing where the geographic zones are located. "No information is created, maintained, updated, and/or publicized [by the defendants] regarding which geographic areas are located within student safety zones." Defs' Resp to First Interrog, No. 4, Exh 42.

456. The Explanation of Duties Form which is provided to registrants when

they first register (*see* Section XVI.A) does not identify the geographic zones, explain how to determine the boundaries of such zones, or explain how the 1000 feet are measured. Explanation of Duties Form, Exh 62.

457. Leslie Wagner testified:

Q. So looking at [the Explanation of Duties Form] the registrant wouldn't know whether it's measured parcel to parcel or point to point?
[Objection omitted.]
A. I would assume they would not know.
Q. Is there anywhere else – any other written material that's provided to registrants to tell them where the student safety zones are or how they are measured?
A. I don't know, nothing has been produced since I've been there.
Q. Do you – you don't provide any maps to registrants?
A. No.
Q. Do you know if local law enforcement provides maps?
A. I don't know.
Q. But you don't instruct local law enforcement to develop maps for their jurisdiction?
A. No.

L. Wagner Dep 80-81, Exh 18; Explanation of Duties Form, Exh 62.

Defendants objected to these questions on the grounds that it called for speculation, called for a legal conclusion.

458. Ms. Johnson testified that "I try to encourage my staff not to answer questions about geographic zones." Johnson Dep 315, Exh 15.

459. To determine if different law enforcement agencies apply the requirements of SORA differently – with respect to exclusion zones and other issues – plaintiffs asked two volunteers, Timothy Poxson and Joseph Granzotto, to make calls to

local law enforcement agencies and to prosecutor's offices and ask a series of questions about SORA requirements. Poxson Decl 2, 6, Exh 32; Granzotto Decl 1-2, 8, Exh 33.

460. Mr. Poxson called 23 police departments and 19 prosecutor's offices. Mr. Granzotto called 29 police departments and 10 prosecutor's offices. *Id*.

461. None of the police departments Mr. Granzotto contacted as part of his survey were able to provide him with maps of the geographic zones. Mr. Granzotto also reviewed the results of Freedom of Information Act requests sent by plaintiffs' counsel to police departments seeking such maps. Of the eight departments that responded to such requests, only one provided a map. Granzotto Decl 6-7, 12, Exh 33.

Defendants object to Mr. Poxson and Mr. Granzotto's testimony about the survey on the grounds of hearsay, as stated more fully in Defendants' motion in limine.

462. Mr. Wagner and his staff have specialized software and experience making maps. After obtaining the relevant parcel data, they spent 16 hours creating a geographic zone map for one city. Wagner 2nd Expert Rep 24-26, Exh 26.

463. According to Mr. Wagner,"[i]t is reasonable to assume that generating a map such as this one…would be impossible for a lay person on the registry who has no mapmaking experience or tools whatsoever." Specialized mapping software is expensive and requires considerable training. Wagner 2nd Expert Rep 15-16, 26,

Exh 26.

464. Accurate measurement and mapping requires parcel data. Such data is not readily available, and is not available for Michigan in Google Earth. Wagner 2nd Expert Report 15-16, 23, Exh 26.

465. Mr. Wagner also reported that it is impossible to measure 1000 feet with ordinary consumer tools, such as a tape measure. In his opinion, using a car odometer results in "a lot of error" since one must follow the road to measure "because you really can't drive through people's houses or across rivers with your car." P. Wagner Dep 101, Exh 11; Wagner 2nd Expert Rep 15-16, Exh 26.

466. Mr. Wagner testified that Google Maps has certain features, such a scale of distance and the ability to put a visual "pin" at the approximate location of an address, which could tell someone, with the possibility of error, whether a location was close enough to 1,000 feet to warrant further investigation. Google Maps can also provide the approximate walking or driving distance between two street addresses. P. Wagner Dep 77 ln 4—79 ln 13; 91 ln 18-20, Exh 11.

467. Mr. Wagner testified that programs like Google Maps can provide a "rough estimate" of what areas are in geographic zones, but "[w]hat that rough estimate does is gives you a huge list – a very small list of yeses, a very small list of noes, and a huge list of maybes." P. Wagner Dep 101, Exh 11.

468. Mr. Wagner testified that, using the Yellow Pages, a person can identify

the names of schools, phone numbers for the school, and to some degree the address associated with that school. Mr. Wagner notes, however, that such a source will include false positives and miss "a lot of stuff." Furthermore, parcel data is unavailable in the Yellow Pages or on the Internet. Wagner Dep 90 ln 9-20; 94 ln 16-20, Exh 11.

469. Mr. Wagner concluded:

> Exclusion zones in Michigan are not only unknowable for the average person on the street. They are also unknowable to trained geographers with special software, access to specialized data and expertise in criminal justice mapping…. In sum, there is simply no good way in Michigan for experts, much less registrants, to determine exactly what areas are subject to SORA's "student safety zone" provisions.

Wagner 2nd Expert Rep 34, Exh 26.

K. Plaintiffs' Experiences Measuring Geographic Zones

470. Peter Wagner testified that plaintiffs' experience is quite different from that of law enforcement officials, who need only prove a violation at one moment in time:

> [L]aw enforcement can just work backwards from a given address to determine if it's in compliance. It's a very different process that someone has to go through in order to determine where they can reside, work, or loiter.

P. Wagner Dep 95, Exh 11.

471. According to Mr. Wagner, methods a registrant might use to determine whether a fixed location is within 1000 feet of a school are not available to them as they move about during the course of their daily lives, which can include working

in multiple locations or traveling across town with their children in tow:

> Realistically the only way to do that [move about town without violating an exclusion zone] would be to map the entire city or county before you left the house and consult it constantly, or make your own smart phone app, but you really have to map everything in advance. This is not something you can do one at a time. For enforcement purposes the police can measure back from that one point and it's very easy for them. For a person who's going about their daily life without having a map in advance it's impossible.

P. Wagner Dep 130, Exh 11.

472. Mr. Doe #1 stated that when he was looking for an apartment, he could not determine whether or not residences were within a geographic zone. He stated he did not know from where the 1000 feet was measured or where school property lines were located. Verified Compl, ¶ 223.

473. When Mr. Doe #3 and his wife were searching for a new home, they saw homes they wanted to buy that were clearly too close to a school, but also homes where they did not know if the house was too close to a school. Mr. Doe #3 used his odometer to estimate distances based on the driving distance:

> Honestly, I drove my car and I reset my tach [*sic*] and I drove the neighborhood to see how far it was. You know, I figured, you know, a quarter mile was more than a thousand feet, so if I was anything over a quarter mile I was pretty much safe.

Doe #3 Dep 125, 130-31, Exh 3.

474. Mr. Doe #3's wife looked up addresses on internet sites like Mapquest or Google Maps to try to determine if they were 1000 feet from a school. S.F. Dep 13

ln 16—14 ln 11, Exh 8.

475. Mr. Doe #4 testified that he does not know how to find out if a place is 1000 feet from a school. Doe #4 Dep 95, Exh 4.

476. When Mary Doe and her husband were looking for a home, the police did not give her a map or tell her how to figure out what housing was permissible. She testified that she knows that in order to measure the distance that a particular address is from a school one can go on Google Maps and search for schools near an address: "[T]hen it gives you point two miles, point one miles, and then you've got to figure out how many feet are in point one of a mile and then figure out from there if you're in violation or not." Mary Doe Dep 109 ln 9-18, Exh 6.

477. Because Mary Doe was unsure what areas were restricted, she looked at properties that were further from the 1000 foot mark "so that I know that I'm okay." Mary Doe Dep 109-110, Exh 6.

478. The difficulty of determining where exclusion zones are has affected Ms. Doe's job searches: "If you're out of work and you're just applying wherever and you get that job and then you have to say, oh, I can't take it, you know, because you didn't know at the time it was within a thousand feet." Mary Doe Dep 77, Exh 6.

XI. RESEARCH ON WHETHER PUBLIC REGISTRATION, GEOGRAPHIC ZONES AND REPORTING REQUIREMENTS ARE EFFECTIVE

479. Plaintiffs submitted two expert reports that address whether sex offender

registries and geographic zones are effective in reducing recidivism, one from Dr. James J. Prescott, an economist and law professor at the University of Michigan law School, and one from Dr. Jill Levenson, an associate professor at Lynn University. Prescott Expert Rep, Exh 22; Levenson Expert Rep, Exh 23.

A. Research on Recidivism and Public Registration

480. According to plaintiffs' experts, research shows that public registries are likely to increase, rather than decrease, recidivism, and are therefore are counterproductive to their avowed public safety goal. According to Dr. Prescott, research shows that the more people a state subjects to public sex offender registration, the higher the relative frequency of sex offenses in that state. He concludes that public registries (based on the offense of conviction) correlate with an increase in frequency of sex offenses against all types of victims (family members, neighbors, acquaintances, and strangers). Prescott Expert Rep 3-4, Exh 22.

481. Dr. Prescott testified that the public notification laws have some deterrent effect on potential sex offenders who are not registered. At the same time, such laws have a recidivism enhancing effect, meaning "the inclusion of somebody's name on a public registry … rather than actually making them less likely to return to crime makes them more likely to return to crime." Prescott Dep 7, Exh 10.

482. Dr. Prescott's study found that with respect to sex offenses committed against strangers, there is no evidence that "registration is going to be effective

against stranger sex offenses" in terms of reducing recidivism. The study did find that public notification had some deterrent effect on stranger offenses committed by first time sex offenders. Prescott Dep 102, Exh 10.

483. The data used in Dr. Prescott's study terminates at 2005, and has not been updated with published crime reports for the intervening years. Prescott Dep 82; 104, Exh 10.

484. Active notification did not begin in Michigan until 2006, which is outside of Dr. Prescott's study period. Public access to Michigan's registry began in 1997. Prescott Dep 101, Exh 10; Mich. Pub. Act 494, Sec. 10(2) (1996).

485. Dr. Prescott's study did not differentiate between first-time and repeat offenders. Prescott Dep 73-74, Exh 10.

486. Dr. Prescott reported that, applied to Michigan, this research suggests that SORA contributes to sex offense rates in Michigan that are 10% higher than they would be without SORA. Prescott Expert Rep 3, Exh 22.

487. Dr. Prescott's study observed an "uptick" in sexual offenses after notification systems came on line. He does not know if that trend has reversed itself in the years following his study. Prescott Dep 83, Exh 10.

488. Drs. Prescott and Levenson stated that although it may seem counter-intuitive that public registration increases rather than decreases recidivism, these results reflect the fact that sex offender registration and the attendant consequences

exacerbate risk factors for recidivism, such as lack of employment and housing, and prevent healthy reintegration into the community. Prescott Expert Rep 7-8, Exh 22; Levenson Dep 77-78, Exh 9.

489. A study by Amanda Agan regarding public registration—conducted using data for the same time period as Dr. Prescott's study and looking at the overall effects on crime rates—did not reach precisely the same conclusions as Dr. Prescott's study, namely that notification increases recidivism. Prescott Dep 42, Exh 10.

490. Comparing Agan's study to his own work Dr. Prescott stated, "it's really tough to compare….But by and large…I would say they are largely consistent with each other….She does not make that conclusion [that public notification increases recidivism] but she also doesn't ask that question." Prescott Dep 42, Exh 10.

491. Other studies are consistent with Dr. Prescott's work, but no other study has reached all the same conclusions as Dr. Prescott. He stated, "our study is the only one that looks at registration [and] notification separately and also has a strategy for separating out the deterrent and recidivism effects of the law." Prescott Dep 40, Exh 10.

492. Dr. Prescott's study was based on data from fifteen states. Prescott Dep 25, Exh 10.

493. Dr. Prescott's study does not separate out the "vagueness" of the laws as an independent factor. Rather, his study measures the consequences of sex offender registration and notification laws as a whole. The study did not include procedural differences in SORA requirements between the states. Prescott Dep 30; 111-112, Exh 10.

494. Dr. Prescott stated that the effect of "less burdensome" registration laws than those that have been studied is unknown. Prescott Dep 222, Exh 10.

495. Drs. Prescott and Levenson stated that most studies reveal no significant reduction in sex crime rates that can be attributed to sex offender laws. Rather, the empirical research shows that, at best, public registration makes no difference to recidivism rates, and at worst is counter-productive. Levenson Expert Rep 3, Exh 23; Prescott Expert Rep 12, Exh 22; Levenson Dep 75, 88, 123-24, 168-69, Exh 9.

496. According to Dr. Levenson, the two studies that detected reductions in sex crime recidivism after the passage of registration laws were both in states that have risk-based, rather than offense-based, classification, and that limit public notification to those offenders who have been individually determined to pose the greatest threat to community safety. Levenson Expert Rep 3, Exh 23; Levenson Dep 42, Exh 9.

B. Research on Recidivism and Geographic Zones

497. According to Dr. Levenson, there is no research showing that registrants

who live closer to child-oriented settings are more likely to reoffend. She stated that the research shows that where registrants live is not a significant contributing factor to recidivism. Levenson Expert Rep 4, Exh 9; Levenson Dep 81-83, Exh 23.

498. Dr. Levenson's report stated that, "The best current research finds no support for the hypothesis that sex offenders who live closer to child-oriented settings are more likely to reoffend." Levenson Expert Report, 4, Exh 23.

499. But at her deposition Dr. Levenson explained that statement as summarizing the research, stating "there's really no consensus to support the idea that living closer to a school is a risk factor." Levenson Dep 81 ln 1-13, Exh 9.

500. Dr. Levenson testified that on a case-by-case basis, there "certainly are some case-management decisions that could be made that would pertain uniquely to specific individuals so there may be some people who shouldn't live near schools or go to schools or be able to interact with children." However, in her opinion a broad restriction on a group of people that keeps them from living within a certain proximity of a school is not associated with the risk of re-offense. Levenson Dep 86 ln 11—87 ln 4, Exh 9.

501. A 2013 Department of Justice study evaluating sex offender residency restrictions in Michigan and Missouri found that these restrictions did not decrease recidivism. In Michigan, the geographic restrictions may have slightly increased recidivism. The study further found that many registrants had to relocate or could

not live with family due to the restrictions, and that these laws also made it more difficult for registrants to find employment. DOJ Evaluation of Sex Offender Residency Restrictions 9-10, Exh 82; Levenson Dep 154-157, Exh 23.

502. According to Dr. Levenson, the research shows that sex offenders do not appear to abuse children because these offenders live near schools. She cites to a Florida study that showed that proximity measures were not significant predictors of recidivism. She also cites to an Iowa study finding that residency restrictions did "not seem to have led to fewer charges or convictions" for sex offenses. She also cites to a Minnesota study that concluded that residency restrictions would not have prevented even one re-offense. Levenson Expert Rep 4-5, Exh 23.

503. The study of Orlando, Florida included in Dr. Levenson's report dealt with a residential restriction of 2500 feet from school, parks, daycares, and school bus stops. Levenson Dep 94 ln 24—95 ln 5, Exh 9.

504. In the opinion of Drs. Prescott and Levenson, residency restrictions reduce housing options, leading to housing instability. Housing instability is consistently correlated with higher criminal recidivism in general. Some research also links unstable housing to higher rates of sexual recidivism. In the opinions of Drs. Prescott and Levenson, residency restrictions are likely to increase rather than decrease sexual offending. Prescott Expert Rep 7-8, Exh 22; Levenson Expert Rep 5-6, Exh 23; Levenson Dep 95-100, Exh 9.

505. In her expert report, where Dr. Levenson talks about housing instability being associated with recidivism, she is referring to the likelihood of committing crime generally, not necessarily committing new sex crimes. Levenson Dep 96 ln 18—97 ln 1, Exh 9.

506. Dr. Prescott's study concluded that sex offender registration and public notification is associated with increases in sexual offending. His study did not find evidence of an increase in other types of crimes. Prescott Dep 78-80, Exh 10.

507. Dr. Levenson reported that SORA requirements that interfere with employment, social support, and engagement in pro-social activities undermine the avowed public safety goals of sex offender registration laws. In her opinion, policies that ostracize and disrupt the stability of registrants are counterproductive to increasing public safety. Levenson Expert Rep 7, 10, Exh 23; Levenson Dep 97-99, Exh 9.

C. Research on Recidivism and Failure to Comply with Reporting Requirements

507. Dr. Levenson cited research showing that failure to comply with registration requirements does not predict sexual recidivism. Levenson Expert Rep 11-12, Exh 23.

508. In Dr. Levenson's opinion, there is no empirical evidence to support the notion that more frequent registration check-ins lower recidivism, nor is there evidence that reporting additional information (*e.g.*, email addresses, employment

information) reduces recidivism. Levenson Expert Rep 10, Exh 9.

XII. SORA'S "LOITERING" PROVISION

509. SORA 2013 prohibits registrants, with some exceptions not applicable here, from "loitering" within 1000 feet of school property. M.C.L. § 28.734.

510. The statute defines "to loiter" as meaning "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." M.C.L. § 28.733(b).

A. The SOR Unit's Understanding of What Constitutes "Loitering"

511. The MSP SOR Unit's internal cheatsheet regarding the geographic zones does not define loitering other than to cite the statutory definition. SOR Unit Student Safety Zone Cheatsheet, Exh 49.

512. MSP Enforcement Coordinator Payne testified that if a registrant did not understand the term "loitering," he would put it in simple terms. He would tell the registrant that "loitering" means "you can't hang around a school or student safety zone." Payne Dep 24 ln 21—25 ln 1; 26 ln 9-14, Exh 17.

513. According to Sgt. Payne, the loitering provision would (a) prohibit a registrant from being present on school property even when there are no children there; (b) prohibit a registrant from taking her/his own children to a school playground, even if there are no other children present; and (c) prohibit a registrant from taking his/her child to a park within 1000 feet of a school because they are

"hanging around" a place that is too close to a school. Payne Dep 26, 60-61, 81-82, Exh 17.

Defendants objected to these questions on the grounds that they were vague and confusing and called for legal conclusions.

514. Trooper Burchell testified that callers with questions on "loitering" are referred to the specific statute provision that defines "loitering". Burchell Dep 48 ln 13—21, Exh 16.

515. Ms. Johnson testified that she was unsure whether going to a school playground on a weekend would be prohibited as "loitering." Johnson Dep 326, Exh 15.

B. Plaintiffs' Understanding of What Constitutes "Loitering"

516. Mr. Doe #1 testified that he does not know what "loitering" means. Doe #1 Dep 88, Exh 1.

517. Mr. Doe #1 believes that because he is on the registry he cannot speak to his niece's class at the University of Michigan. Doe #1 Dep 15-22, Exh 1.

518. Mr. Doe #3 testified that he not know what "loitering" means. Doe #3 Dep 100-01, 123-24, Exh 3.

519. John Doe #3 has not looked up the definition of the word "loitering" either in the SORA statute or the dictionary. Doe #3 Dep 100 ln 19-25, Exh 3.

Pls object: dictionary definition is not relevant as differs from statutory definition.

520. Mr. Doe #3's wife, who is a schoolteacher with a master's degree in education, has not read the SORA statute, and does not remember if she had seen the specific definition of "loitering" contained within it. When asked by defendants' counsel what the term "observing minors" in that definition means, she testified:

> I – honestly I don't know. Could it mean – it could mean many different things. That's one of those words that could have many – several different definitions. He could be watching my own children, his own children, walk down the street.

S.F. Dep 37; 40 ln 10—41 ln 2; 71; 91, Exh 8.

521. Mr. Doe #3's wife explained that if "loitering" means "he can't hang around the school for purposes of observing minors" then "that would mean my own children I guess also." Based on their understanding of what is meant by "loitering," her husband does not attend parent-teacher conferences, where children may be present. S.F. Dep 844, 1-83, Exh 8.

522. Mr. Doe #3's wife believes that her husband cannot be near children because she assumes that is the purpose of the law. S.F. Dep 41 ln 7—42 ln 6, Exh 8.

523. S.F. explained that her family cannot risk misinterpreting the statute:

> Q: What is your understanding of what [the term "loitering"] means?
> A. For a period of time…. But how long would a period of time be? ... There's a gray area….
> …
> Q. For a period of time that a reasonable person would determine is for the primary purpose of observing minors.

A. Observing minors but to what extent? Like, I have cousins that go to that school and my husband has nieces and nephews that attend that school and my children attend that school, he can't be standing there waiting for my children? I mean, I don't know what a period of time is. I don't know. Like, I don't know what that means. Can he be standing there waiting for my children to come out of school and talk to his niece or nephew or observe his own children walking down from school? I don't know what that means. I don't know what he could get into trouble for…. So do we avoid things? Yes, just so he doesn't get in trouble.

S.F. Dep 87-88, Exh 8.

524. Mr. Doe #4's girlfriend I.G. testified, with respect to a family movie night at her child's school, some families might be there for the purpose of observing the movie, while others would be there for the purpose of seeing other families and children, and so she does not know whether Mr. Doe # 4 would be "loitering" if he went to such an event. I.G. Dep 72, Exh 7.

525. John Doe #5 understands the word "loiter" to mean "[h]ang around somewhere." Doe #5 Dep 64 ln 7-10, Exh 5.

526. Mary Doe understands the meaning of the words "primary purpose" and "observing or contacting minors." Mary Doe Dep 81 ln 2-15, Exh 6.

527. Mary Doe testified the she did not understand the meaning of the word "loitering": "I mean, are you loitering if you're – if you walk to the school to pick her up and you're waiting outside, is that considered loitering?" Mary Doe Dep 78 ln 16-18, Exh 6.

XIII. SORA AND PLAINTIFFS' ABILITY TO PARENT

A. SORA and Plaintiffs' Parenting and Involvement in Their Children's Education and Upbringing

528. Mr. Doe #1 would like to take his two-year old son to parks or playgrounds, but he does not because he fears it would make him non-compliant: "I don't understand my responsibility, and more importantly I'm just in fear of the consequences of … not doing what's right… so I just don't." Doe #1 Dep 65-67, Exh 1.

529. Mr. Doe #1 has not asked his parole agent, any law enforcement officer, or the prosecutor about visiting parks with his children. Doe #1 Dep 65 ln 23—66 ln 5, Exh 1.

530. Although Mr. Doe #1 hopes to go to his son's sporting events and parent teacher conferences as the child grows up, Mr. Doe #1 must weigh this desire to be an involved parent against the risk of being a totally absent parent if he violates SORA: "[B]ut that fear of going back to prison, which one weighs more heavy, me not being involved in their life while I'm out here or me going back to prison." Doe #1 Dep 104-05, Exh 1.

531. Mr. Doe #1 testified that so long as he is on the registry, he would follow his child's education by going through his child's mother, rather than by emailing or contacting the teacher directly. When asked whether he "[w]ould have any interest in discussing his [child's] education with his teachers," he said he would

just "go through [the child's] mom." Doe #1 Dep 70 ln 23–71 ln 21, Exh 1.

532. Mr. Doe #1 cannot attend his future step-daughter's school and extra-curricular events. He does not contact her teachers due to fear of violating his registry requirements and thereby "subjecting my family [to] losing me again." Doe #1 Dep 91, 105-06, Exh 1; Verified Compl, ¶ 128.

533. According to Mr. Doe #2, his ability to participate in the upbringing of his daughter is limited because he cannot participate in her school and extra-curricular events. Verified Compl, ¶ 129.

534. According to Mr. Doe #2, his daughter wants him to go to her basketball games and field trips, but he cannot. Doe #2 Dep 41, 131, Exh 2.

535. Mr. Doe #2 has explained the reason he cannot attend to his daughter, including why he was on the registry. He told her that it was not something to be ashamed to talk about. Doe #2 Dep 41 ln 12-24, Exh 2.

536. Mr. Doe #2 has limited his involvement in his daughter's education:

> After I found out that schools were – I mean, it's so cloudy to what I can and can't do that once I read schools were off limits in some sort of way or another I left it alone altogether because I did not want to risk my freedom…

Doe #2 Dep 50, Exh 2.

537. Mr. Doe #2 has not attempted to contact his daughter's school since he started registering as a sex offender, and has not attempted to telephone or e-mail his daughter's principal or teachers. He has not attempted to meet with his

daughter's teachers outside of school. Doe #2 Dep 47 ln 24—48 ln 20; 48 ln 8-20; 50 ln 9-23, Exh 2.

538. The mother of Mr. Doe #2's daughter had a legal service write a letter to the school regarding his sex offender status, telling them that he is not allowed contact with his daughter. The school then refused to give him information about his daughter's education, such as report cards or progress reports. Doe #2 Dep 24 ln 17—25 ln 11, Exh 2.

539. Mr. Doe #2 has never seen and does not know the exact content of his daughter's mother letter to the school. Doe #2 Dep 42 ln 14—43 ln 10, Exh 2.

540. Prior to the time of the letter, John Doe #2 used to go to the school to discuss his daughter's education. Doe #2 Dep 43 ln 11-22, Exh 2.

541. After his daughter's mother was ordered by a court to withdraw the letter she wrote to the school, the school cooperated with John Doe #2 and provided copies of his daughter's report card. Doe #2 Dep 44 ln 19—45 ln 22, Exh 2.

542. Mr. Doe #2 has a difficult relationship with the mother of his daughter. She once threatened to call the police after they got into an argument over how to discipline their daughter. Doe #2 Dep 37 ln 16—38 ln 17, Exh 2.

543. Mr. Doe #3's testified that it was important for him to get off the registry so he could give his children (a fourth grader, a first grader, and an infant) a normal life: "Most important thing is my children. I feel like my children are

getting tried with me. I feel like they're the victims." Doe #3 Dep 128, Exh 3; S.F. Dep 9, Exh 8; Doe #3 Interrog No. 8, Exh 38.

544. Mr. Doe #3's wife testified regarding how she understands the SORA requirements:

> We have a lot of family oriented nights [at the school] and … I'd love for my husband and children to come, but he can't…. If my son forgets his backpack at home he can't take it to him. He can't drop off my children nor pick them up, and I have to be at work 15 minutes before and stay 15 minutes after. I can never drop off my kids nor be there for their first day of kindergarten. Neither can my husband…. I can't attend parent-teacher conferences because my parent-teacher conferences for my students are the same days as my children.… And neither can he…. [H]e can never attend functions at my kids' schools, and especially when they're during the day I can't either, first days, last days of school, school parties, classroom parties. I'd love to be a homeroom mom but I'd love even more for my husband to be there with his children.… I feel like this is depriving him of his right of being a father.

S.F. Dep 20-21, Exh 8.

545. Mr. Doe #3 admits that he can contact his children's teachers through telephone or e-mail, or meet with the teachers off of school property. Doe #3 Requests to Admit #2-4, Exh 103.

546. Mr. Doe #3 is unaware of the Attorney General's letter opinion concerning an offender picking up his/her own children from school. Doe #3 Dep 129 ln 14-18, Exh 3.

547. As a teacher, Mr. Doe #3's wife admits that parents can e-mail her with questions and that she has spoken with parents on the phone, although she prefers

not to. She testified that discussing student progress over the phone is "not impossible; it's just very hard." S.F. Dep, 63 ln 19—64 ln 20, Exh 8.

548. Mr. Doe #3's wife explained that teachers do not necessarily have time to talk with parents over the phone given the teachers' work load. "[I]f I actually would sit there and talk to [the parents] on the phone I couldn't eat my lunch. There's no time. We really don't have any time." It is difficult to do parent teacher conferences over the phone:

> [D]uring the conference we're usually handing out report cards, and parents want to know why their child received this grade. And that's where I pull out my grade book and I pull out all my assessments and I say, okay, this is where it happened here and this is what they need to work on and this is why they received this grade, and it has to be like – honestly it has to be in person.

S.F. Dep 61-64, Exh 8.

549. S.F. admits that she does not think the primary purpose of a parent-teacher conference is to observe children, but rather to "observe your own child's educational behavior." S.F. Dep103 ln 9—104 ln 11, Exh 8.

550. As a teacher, Mr. Doe #3's wife conducts parent-teacher conferences after school hours. Children are sometimes present and sometimes not present during these conferences. S.F. Dep 43 ln 18—44 ln 1; 82 ln 10-21, Exh 8.

551. At S.F.'s deposition, defendants' counsel suggested that Mr. Doe #3 could attend parent-teacher conferences because he would not be there for the purpose of observing minors, provided he did not take his own children along. S.F. testified

that in her opinion the family cannot take that risk:

Q. If we're going to go for the idea that –let's just, you know, assume they were, you know, reasonable people and they're not, you know, trying to play games with the language. If the idea is he's going to go to a parent-teacher conference, sit in the classroom with the teacher and talk about your child's education, do you think that that type of activity, its primary purpose is observing children?
A. Not other children besides my own obviously.
Q. And by observing you mean – are you using observing as –
A. Oh, okay, watching, are we talking about the word watching?
Q. Watching children.
A. Okay. Do I think parent-teacher conferences are to go to watch other children? No, that's not what the purpose is for.
Q. The purpose is to talk about your child's education?
A. Yes.
Q. So unless you mean observing – unless you – unless, you know, talking about your child's education, you know, it falls in the category of observing, you don't think that's observing?
A. No.
Q. Okay.
A. But can he be arrested for that? I don't know. Can I tell an officer, hey, officer he was there to speak to the teacher solely, only to speak to the teacher for my kid's education, I don't know what he can and can't be arrested for.… I don't, but can you promise me that he won't be arrested if he goes to parent-teacher conferences?
Q. I can't answer questions for you.
…
A. Can anyone answer that question for me? Is it part of the law that states if you're going for your own child's educational purpose it's okay to go? No, there's the gray area that I'm talking about… so, yeah, do we avoid it? Absolutely. If it's not stated specifically that he can go he can't go.

S.F. Dep 104-05, Exh 8.

552. Mr. Doe #3's understanding is that he cannot pick up his children at school. Doe # 3 Dep 119-20, Exh 3; S.F. Dep 26, Exh 8.

553. Mr. Doe #3's children play sports through non-profit community (non-school) programs. The play occurs both at community parks and at schools. Doe #3 Dep 112 ln 24—114 ln 7, Exh 3; S.F. Dep 79 ln 20-23, Exh 8.

554. Mr. Doe #3 fears prosecution if he attends his sons' events, and is uncertain "as a parent what can I do with my kids, where can I go with my kids? … My kids' sporting event, can I be there, can I not be there? Where am I – where am I prohibited? You know, as a parent why do I have to have limits with my kids? My kids didn't commit this crime." Doe #3 Dep 107, Exh 3; Verified Compl, ¶ 133

555. Mr. Doe #3's wife testified:

> If the games are held at school he can't come. I mean, part of fatherhood is wanting to watch your children play their sports. He can't attend and I do it all. I mean, sometimes I'm exhausted. I have a newborn baby, you know, it's hard, but I mean, we manage to do it because I'm not going to deprive my kids of joining sports because their dad can't be at the games that are held at schools… But he can't be there for his children's sports and I have to do it all, so at times I feel like I'm a single parent because he can't help me even if he wanted to, which he does. He'd love more than anything to coach his son's team. Can't.
>
> * * * * * *
>
> Like you can't go back in time and make up this time because he's missed my first son in all of his soccer games, and now he's in football and I know how much my husband loves football. And my son, he sees like, you know, the glow in his dad's eyes when he wears his uniform or whatever, and he can't go so, you know. And my second child plays soccer and he's really good at it, and my oldest son that plays football, he starts in all the games, and he sees dads there and he always asks me, and he gets emotional and he cries and he thinks his dad doesn't care. Then I have to see my husband crying. I do. This is what I have to do. I have to see them cry and I have to see them go through this and it hurts me, so that's what I mean by normal… And I have three boys. They're all boys. I know nothing about football, but I'm learning because I

have to live with this for the rest of my life…

S.F. Dep 24-25, 76-77, Exh 8. *See* Doe # 3 Dep 112-14, 120, Exh 3.

556. Mr. Doe #3 has not attempted to determine whether the parks where his children play are within 1000 feet of a school because from what he "understood parks were included, that sex offenders were not allowed in parks." Mr. Doe #3 has not asked an attorney about whether he is allowed in parks, and he has not read the statute. Doe #3 Dep 113 ln 21—115 ln 13, Exh 3.

557. It is not clear from the record whether or not the parks where Mr. Doe #3's children play are or are not within 1000 feet of a school or school property line, and whether or not Mr. Doe #3 would be in violation of SORA if he watches those games. Doe #3 Dep 112 ln 24—114 ln 17, Exh 3.

558. Mr. Doe #3 buys DVDs of his sons' games from another parent who tapes them. S.F. Dep 80-81, Exh 8.

559. Because he does not know exactly what is and is not permitted, Mr. Doe #3 misses out on activities with his children such as field trips. When they ask why he cannot go he tells them he has to work and "[i]t's always a lie." He cannot attend school activities like movie nights, math nights, bingo nights, open house/meet the teacher, talent shows, musicals, concerts or plays. Doe #3 Dep 118-19, Exh 3; S.F. Dep 85-86, Exh 8.

560. Mr. Doe #3 has also missed his son's birthdays because he believes he

cannot go to child-centered locations. (Whether he is allowed to go under SORA depends on whether the location is within 1000 feet of a school.)

Q. Have you ever missed a birthday?
A. Yes.
Q. What happened?
A. That was one of the things that we talked about, Jungle Java [an indoor playground]… I had to tell them I had to work, and it was a Sunday and I don't work on Sundays.
Q. How did your son react?
A. He knew I was lying, but I left the house the whole day in my work clothes. He was upset.

Doe #3 Dep 118-19, Exh 3.

561. Mr. Doe #3's wife is concerned about what will happen when their son goes to middle school, where the sex ed curriculum includes teaching about the sex offender registry:

> I mean, my husband's nephew came home one day because they allowed them to [search the registry in sex ed class] and told his parents, you know, my uncle's on the registry and my friends were asking isn't that your uncle? And he said no because he was embarrassed…[I]f I don't want my son in this class – I mean, in this sex ed and I can sign him out of it it doesn't stop his friends from being in that class and learning about it, getting on there and telling him, hey, isn't that your dad.

S.F. Dep 28-30, Exh 8.

562. Mr. Doe #4, his girlfriend I.G., and their two children have been unable to live together because he is on the registry. Although I.G. has worked as a leasing agent for four years and manages approximate 1,800 apartments, although she has looked into dozens of properties in different neighborhoods, and although she has

access to leasing-agent property lists, the only places she can find where the family could live together are in dangerous neighborhoods or high-rent areas. Quite a few properties are in prohibited zones, while others will not accept registrants. I.G. could get a 15% rent discount at her employer's complex, but as a registrant Mr. Doe #4 is unable to live there. I.G. Dep 8-13, 77-84, Exh 7; Doe #4 Dep 96, Exh 4.

563. I.G. and the couple's children are currently living with her parents in order to save money so the family can buy a home together. Because the family has been unable to determine how far I.G.'s parents' house is from a school, Mr. Doe #4 cannot live there:

> Q. Is [Mr. Doe #4] able to live with you at your parents' home?
> A: I don't think he would be able to. I mean I don't know the exact distance. The school is right down the street so I'm not sure if it's like 1,001, I don't know. It's like really close when I try to look it up but…
> Q. So you're not able to figure out whether it's within 1000 feet?
> A. Right.
> Q. Would your parents let [Mr. Doe #4] live there if it were not within 1000 feet?
> A. Until we found a place, yes.
> Q. But because you're not sure whether it's within 1000 feet he's not living there now?
> A. Yes.
> …
> Q. Is it fair to say that he could be living with you today if he were not on the registry?
> A. Yup.

I.G. Dep 86-87, Exh 7.

564. I.G. testified that she feels like "[w]e can't really be a family," "we cannot

live together," and "I still feel like a single parent." She testified that the fact that Mr. Doe #4 is on the registry affects "everyday activities," and the family lives with "constant uncertainty about how his registry status can affect [them]." She also testified that because the family cannot live together, it means "we're not together in the sense where we can, you know, always have dinner together or help with my daughter's homework, things like that." I.G. Dep 55-60, 75-76, Exh 7.

565. Mr. Doe #4's testified that he believes his status as a registrant limits his parenting: "I want to be involved in my kids' stuff but it's impossible." Doe #4 Dep 59-60, Exh 4. Mr. Doe #4 does not take his daughter to the park or other places where children might be, because he is not sure whether this is allowed. I.G. Dep 58-59, Exh 7.

566. I.G. testified that Mr. Doe #4 "cannot participate in everyday activities as far as school goes," such as evening programs, and holiday parties. Because I.G.'s work schedule can prevent her from taking their daughter to school activities, the fact that Mr. Doe #4 cannot attend means that their daughter does not participate in these opportunities. I.G. Dep 55-68, 74, Exh 7.

567. Because the I.G. is unsure what parenting activities are allowed, she is afraid for Mr. Doe #4 to step foot on school property. Once when I.G. went to get her daughter at school, the police were there checking everyone's identification due to an incident at the school unrelated to Mr. Doe #4. Thereafter she became

even more concerned about Mr. Doe #4 ever going to the school. She believes that if he had been there that day, he might have been arrested for being a sex offender on school property. She decided that "safest course of action" for Mr. Doe #4 is not to go near the school. I.G. Dep 69-72, Exh 7.

568. Mr. Doe #4 admits that he is not legally prevented from contacting his children's teachers by telephone or e-mail. Doe #4 Requests to Admit #2-3, Exh 102. Mr. Doe #4 has not attempted to contact his children's teachers by telephone or e-mail, or attempted to meet with them off of school grounds. Doe #4 Dep 78 ln 15—80 ln 4, Exh 4.

569. Mr. Doe #4 and his girlfriend testified that he does not contact his children's teachers or attempt to meet with them off of school grounds because he does not understand if that is allowed. The school does not provide phone numbers or email addresses for teachers, and parent/teacher communication occurs at conferences or at pick-up/drop-off. Mr. Doe #4 is homeless and does not have a phone. Doe #4 Dep 63-65, 71 ln 13, Exh 4; I.G. Dep 73-74, Exh 7.

570. I.G. testified that Mr. Doe #4's registry status has also affected the family with respect to the birth of their second child: "Now with the baby…I have to do it all on my own, whether – well, when he could be there but he can't at the moment." She testified that a newborn takes a lot of care, and that because the family does not live together, Mr. Doe #4 would be unable to help with nighttime

feedings, diaper changing, and other day-to-day baby care. I.G. Dep 75-76, Exh 7.

571. Mr. Doe #4 believes that the registry has affected his ability to be involved in the upbringing of his two children with his ex-wife. Prior to being placed on the sex offender registry, Mr. Doe #4 described himself as an involved parent. "Anything – any activities she had in school I went. Any activities in general I was there." Verified Compl, ¶ 135; Doe #4 Dep 59-64, Exh 4.

572. Due to his status as a registered sex offender, Mr. Doe #4 now cannot attend his 11-year-old daughter's volleyball games, basketball games, and other school or extra-curricular functions. Mr. Doe #4's daughter asks him why he never comes to her events. Verified Compl, ¶ 138.

573. Mr. Doe #5 has no children of school age. Doe #5 Dep 63 ln 11-13, Exh 5; Doe #5 Requests to Admit #2-4, Exh 105.

574. Mr. Doe #5 wants to be able to participate in the lives of his grandchildren, who are currently toddlers. He would like to be able to attend their sporting events, school plays, and similar events as they grow up, but he cannot do so because he is on the registry. Doe #5 Dep 78-79, Exh 5.

575. Ms. Doe discusses homework with her daughter and offers advice on how to succeed with her studies. She discusses schoolwork with her daughter approximately four times a week. Mary Doe Dep 72 ln 11—73 ln 1, Exh 6.

576. Ms. Doe testified that when her daughter was attending school in Ohio,

she:

> went to every parent-teacher conference. I went to every school program, everything, and it was all on campus because Ohio laws I want to say weren't the same as Michigan that I was able to do it all. Her teachers all knew me. I was in constant communication with them at all times. I was even at her fifth grade graduation.

Mary Doe Dep 107-08, Exh 6; Verified Compl, ¶ 140-41.

577. Now that Ms. Doe's daughter attends school in Michigan, Ms. Doe is barred from extra-curricular events. She missed her daughter's eighth grade graduation because it was on school grounds, and she cannot attend her daughter's school plays. Mary Doe Dep 66-70, 108, Exh 6; Verified Compl, ¶ 140-41.

578. Ms. Doe admits that she is able to speak with her child's teachers by telephone. Mary Doe Requests to Admit #2, Exh 106.

579. Ms. Doe has tried to communicate with her daughter's teachers by phone, and her experience is that the teachers either do not return her calls or take days to do so. She did receive return phone calls after several days from her daughter's English studies teacher. No teacher had ever met with her off school grounds. Mary Doe Dep 66-71 ln 7, 108, Exh 6.

580. Ms. Doe admits that she is "theoretically able to" communicate with her child's teachers by e-mail. In practice the teachers have not done so. Mary Doe Requests to Admit #3, Exh 106.

581. Ms. Doe's ex-husband contacts their daughter's teachers at parent-teacher

conference, by telephone and by e-mail. Ms. Doe does not know whether teachers respond to his emails. Mary Doe Dep 71 ln 21—72 ln 10, Exh 6.

582. Mary Doe asked local police whether she would be able to attend a school play that was being performed off school grounds. The first time she asked, she was told that she could attend if it was off school property. She asked again after she moved, and was told by the sergeant that he wanted to say she could, but he would have to get back to her. Mary Doe Dep 31 ln 9-23, Exh 6.

583. On the question of whether Ms. Doe can drop off and pick up her child at school, Ms. Doe testified that there "has never been a clear answer." Mary Doe Dep 31 ln 25-32 ln 2, Exh 6.

584. Ms. Doe contacted multiple police and government agencies in an effort to get an answer to that question. When Ms. Doe first asked local police, she was directed to contact a government agency in Lansing, but she cannot remember which one. In response to her question, the Lansing agency sent a letter with legal information to her ex-husband, but not to her. The information included a copy of an Attorney General letter opinion. The letter states that it is the opinion of the Attorney General's office that picking up and dropping off one's own child at school is not a violation of the student safety zone law. Mary Doe Dep 32, 36-42, Exh 6; Michigan Attorney General Letter Re Student Safety Zones, 2, Exh 94.

585. Mary Doe has only glanced at the definition of loitering as it was

contained in the Attorney General letter. Mary Doe Dep 79 ln 17—80 ln 11, Exh 6.

586. When Ms. Doe contacted her Ohio attorney for an explanation of the Attorney General letter "because the letter made no sense," the attorney said he did not know Michigan law. When she contacted her local police agency, she was told she could drop off her child if she stayed in the car pool lane. After Mary Doe moved to a new town, she asked the police there whether she could pick up or drop her off her child at school, and was told she was not in violation. Mary Doe Dep 32, 36-42, Exh 6.

B. Defendants' Understanding of Whether Registrant-Parents Can Observe or Contact Their Own Children Inside Geographic Zones

587. When asked to admit that SORA's ban on loitering (observing or contacting children) within geographic zones contains no exception for registrant-parents who are observing or contacting their *own* children, defendants stated:

> Admit that SORA does not contain [the] express language described in the request. Denied in part because Defendants neither admit nor deny that plaintiffs' contacting or observing their own children constitutes "loitering" within the meaning of the statute.

Defs' Answers to First Req for Admis, No. 93, Exh 44; M.C.L. §§ 28.733(b), 28.734(1)(b).

588. Defendants admit that SORA is interpreted in the same manner regardless of whether a registrant does or does not have children. A person's status as a parent does not change the way the statute is enforced. Defs' Answers to First Req for

Admis, No. 136, Exh 44; Payne Dep 80, Exh 17; Burchell Dep 65, Exh 16.

589. The MSP does not keep track of whether a registrant is a parent. Payne Dep 80, Exh 17; Burchell Dep 65, Exh 16.

590. Under the new OffenderWatch data management system, it would be possible to track whether or not a particular registrant has children. Johnson Dep 251-53, 256-57, Exh 15; OffenderWatch User Manual 45, 73, 79-80, Exh 50.

591. Several SOR Unit staff, including manager Karen Johnson, Trooper Burchell and Leslie Wagner, testified that they did not know whether observing one's own child in a school zone – for example, taking a walk with one's child that crosses a school zone, or taking one's child to a playground on the weekend or when no other children are present – would be loitering. Burchell Dep 54, 64-66, Exh 16; L. Wagner Dep 39, Exh 18; Johnson Dep 326, Exh 15.

592. Sgt. Payne testified that the definition of loitering does apply to observing one's own children. Thus, local law enforcement would need to decide the question of whether, for example, a grandparent/registrant could attend Thanksgiving dinner at a home within 1000 feet of a school for the purpose of observing his grandchildren. If a parent wants to take his or her child to a park located within 1000 feet of a school, the parent should first confirm with local law enforcement whether this is permitted. Payne Dep 20, 94-96, Exh 17.

C. Law Enforcement's Understanding of What Parenting Activities Are Permitted under SORA

Defendants have a continuing hearsay objection to the testimony of Mr. Granzotto and Mr. Poxson, particularly as it relates to the surveys they conducted under the direction and supervision of Plaintiffs' counsel.

593. In his survey of law enforcement agencies, Mr. Granzotto asked whether registrants may pick up or drop off their children at school. Four police department respondents said it would not violate SORA, two were unsure, and two said it was a violation. Of the three responding prosecutor's offices, two said it was not a violation, and one said it was technically a violation. Granzotto Decl 5-6, 10, Exh 33.

594. With respect to parent-teacher conferences, three police department respondents indicated that whether a registrant would be allowed to attend would vary from school to school, which did not address whether such attendance is a violation. One police department respondent said registrants cannot attend; two were unsure. Granzotto Decl 2, 6, Exh 33.

595. With respect to parents attending their children's sports events, school plays, or similar events, most law enforcement respondents stated that this was not permitted, although several were unsure, and one said that the local prosecutor allowed this while the state did not. For prosecutor's offices, one respondent said this was a violation, and their office has successfully prosecuted registrant parents for attending their children's sports events. Another prosecutor's office stated that

there was no comprehensive law on the issue. Granzotto Decl 8, 11, Exh 33.

596. With respect to whether parent-registrants can take their own children to a school playground on the weekend, five police department respondents said this would not be allowed, one said it would be allowed, and two were unsure. Among prosecutor's offices, one respondent said it would be allowed, one said it would not, and one said it would be close to a violation. Granzotto Decl 8, 11-12, Exh 33.

597. During their depositions, SOR Unit staff answered similar questions as follows. Sgt. Payne testified that a parent could not attend his/her child's football game at a school. Payne Dep 80, Exh 17. Leslie Wagner, who had received that very question from a caller on the day of her deposition, said she told the caller this would be loitering, but that the caller should follow up with local law enforcement or the local prosecutor to see how it would be handled in his jurisdiction. L. Wagner Dep 40-41, Exh 18. Trooper Burchell testified that he did not know whether a registrant could attend his/her child's football game, that he would need to check with the local prosecutor, and that "some prosecutors might say that's fine and others might say it's a violation." Burchell Dep 65-66, Exh 16.

Defendants objected to these questions on the grounds that they call for speculation and legal conclusions, and lack of foundation.

598. In Herb Tanner's experience, there is fairly universal agreement among prosecutors that attending a parent-teacher conference is *not* loitering, and that

watching a school football game *is* loitering under SORA. Tanner Dep 29 ln 23—30 ln 15, Exh 21.

599. Karen Johnson is aware of prosecutors who have determined that attending a parent-teacher conference is not a violation of SORA. Johnson Dep 325 ln 17-23, Exh 15.

600. Neither the statute itself nor the Explanation of Duties Form provided to registrants specifies whether attending parent-teacher conferences or school events is permitted. M.C.L. §28.734; Explanation of Duties Form, Exh 62.

D. The Impact on Children of Having Parents on the Registry

601. Dr. Levenson's report summarizes research, including a study co-authored by Dr. Levenson assessing the impact of registration on registrants' children. This research shows that children of registrants are affected by the housing and employment consequences that stem from registration and geographic zones. That study found that 33% of registrants surveyed could not live with family members due to residency restrictions. Levenson Expert Rep 7, 17, Exh 23; Levenson Dep 149 ln 1-7, Exh 9.

602. Dr. Levenson stated at her deposition that her study also found that 74% of registrants could not attend school events, sports events, or children's birthday parties. Levenson Dep 151 ln 5-15, Exh 9; Collateral Damage: Family Members of Registered Sex Offenders 11, Exh 81.

Defendants object to the admission of this article by Dr. Levenson because it was not identified as a possible exhibit or document Plaintiffs intended to rely upon, or alternatively is cumulative and already incorporated into Levenson's report as a reference for her opinion.

Plaintiffs state that this article was in fact provided to opposing counsel in advance of Dr. Levenson's deposition as a document she relied on in forming her opinion. It was also discussed at her deposition. *See* Levenson Dep 145 ln 16—151 ln10, Exh 9, and deposition exhibit G. The article is also available in the *American Journal of Criminal Justice*.

603. Dr. Levenson's research on children of registrants has demonstrated that they are treated differently by other children at school, that their friendships are affected by public notification, and that they experience ridicule, teasing, and depression. Collateral Damage: Family Members of Registered Sex Offenders 11, Exh 81; Levenson Expert Report 7, Exh 23.

XIV. SORA AND PLAINTIFFS' USE OF THE INTERNET

A. SORA 2013's Requirements Involving the Internet

604. Approximately 2,770 registrants (out of a total of between 40,000-49,000) were convicted of Internet or computer-related offenses. Johnson Dep 296-298, Exh 15; Total Number on SOR by Year, Exh 53; Defs' 2nd Supp Resp to First Interrog, No. 14, Exh 98.

605. All registrants must report "all electronic mail addresses and instant message addresses assigned to the individual or routinely used by the individual and all log-in names or other identifiers used by the individual when using any electronic mail address or instant messaging system." M.C.L. § 28.727(1)(i).

606. SORA 2013 also requires that registrants report in person within three days whenever they establish "any electronic mail or instant message address, or any other designations used in internet communications or postings." M.C.L. § 28.725(1)(f).

607. SORA 2013 does not contain definitions of the terms "electronic mail address," "instant message address," "log-in names or identifiers," or "other designations used in internet communications and postings." M.C.L. §§ 28.725 (1)(f), 28.727(1)(i).

608. SORA 2013 does not limit what e-mail address or internet identifier a registrant can use, nor prohibit registrants from using social media or web services, so long as it does not conflict with a probation or parole condition. Johnson Dep 297 ln 25— 298 ln 3, Exh 15; Payne Dep, 119 ln 13-22, Exh 17.

609. Some websites and web-based services prohibit individuals who are required to register as sex offenders from using their websites or their services. SORA 2013 itself does not limit what websites or services a registered offender can use. Payne Dep 120 ln 2-4, Exh 17; Mary Doe Dep 48, Exh 6.

610. Under SORA 2013, registrants' internet identifiers are not made available to the general public. Johnson Dep 84 ln 5-7, Exh 15; PSOR Public Website Example, Exh 64.

611. As passed by Congress, the federal SORNA statute does not contain a

provision requiring registration of Internet or electronic information, or any definitions of those terms. 42 U.S.C. § 16914.

612. SORNA does contain a provision providing for the collection of "any other information required by the Attorney General." 42 U.S.C. § 16914(a)(7). The SMART office used that authority of SORNA to require reporting of Internet identifiers for states seeking substantial compliance. Federal Register, Vol. 73, No. 128, July 2, 2008, at 38055, Exh 108.

613. The SMART National Guidelines state that sex offenders are required to provide all designations used, "for purposes of routing or self-identification in Internet communications or postings." The Guidelines further state that there "may be no clear line" between identifiers used on the Internet and "aliases" that are required to be registered as names. SMART National Guidelines, 27, Exh 111; Tanner Dep 81 ln 14—82 ln 3, Exh 21.

Plaintiffs object: misleading, irrelevant. Michigan's SORA did not incorporate any definitions that may exist in the National Guidelines regarding reportable internet information.

B. Law Enforcement Use or Non-Use of Registrants' Internet Information

614. Ms. Johnson testified that, to her knowledge, no police department has ever asked the MSP to look up an internet identifier to identify a registered sex offender contacting a minor online. Johnson Dep 177 ln 20–178 ln 19, Exh 15.

615. In theory, internet information collected from sex offenders could be used

for investigative law enforcement purposes, such as determining if an Internet identifier used to contact a minor was registered by a sex offender. Johnson 176 ln 22—177 ln 12, Exh 15; SMART National Guidelines, 27, Exh 111.

616. Under the prior SOR data management system, it was not possible to search the database to determine whether a particular Internet identifier was linked to a registrant. Such a search would have required the MSP to request that the Michigan Department of Technology, Management and Budget write a computer program to generate such a report. Johnson Dep 177 ln 20–178 ln 19, Exh 15.

617. The new OffenderWatch system will allow law enforcement to search the database for a particular e-mail address. L. Wagner Dep 71 ln 20-25, Exh 18.

618. The SMART National Guidelines suggest that knowledge that their Internet identifiers are known to the authorities may deter registered sex offenders from engaging in criminal behavior on the Internet. SMART National Guidelines 27, Exh 111.

619. Plaintiffs contend that the Guidelines do not cite any research that supports this statement.

C. Law Enforcement's Understanding of Internet Reporting Requirements

620. Defendants admit that they do "not provide training specific to determining what information is specifically reportable under 'other identifier' or other designations used in internet communications and posting, nor as to how it is

specifically determined whether an address/name/identifier is reportable as 'established,' 'used,' or 'routinely used' by the registrant. [The MSP SOR unit] would refer the [inquiring] law enforcement agency to their local prosecuting attorney's office for guidance." Defs' Resp to Pls' First Interrog, No. 11, Exh 42.

621. The SOR Unit manual repeats the language of the statute with respect to reporting of electronic information, stating that registrants are required to register e-mail and instant message addresses and, "any other designations used in Internet communications or postings." Plaintiffs contend that the manual does not provide additional information about what types of designations are reportable. SOR Unit Manual §2.5.6, Exh 83.

622. The SOR training powerpoint used to train law enforcement agencies states that an individual must report in person if they establish any e-mail address, instant message address, or other designations used in Internet communications or postings. The powerpoint refers to the language of the statute about what types of internet identifiers are reportable. No other information is included. MSP Training PowerPoint 5, Exh 58.

623. Plaintiffs contend that the Explanation of Duties Form provided to registrants does not specify what kinds of accounts must be reported. Explanation of Duties Form, Exh 62.

624. Karen Johnson testified that Explanation of Duties Form does not state

that the reporting requirement is limited to identifiers involving "social communication." Johnson Dep 336, Exh 15; Explanation of Duties Form, Exh 62.

625. When Mr. Poxson surveyed local law enforcement agencies regarding whether an on-line bank account, newspaper account, Amazon account, or X-Box account needs to be reported, he received varying responses. Different respondents stated that all accounts, or all accounts with usernames, or all accounts with email addresses would need to be reported. One respondent said only email addresses need to be registered, while another respondent stated that Internet bank account information would not need to be registered, but newspaper, Amazon, or X-box accounts would. Repondents from prosecutor's offices stated either that they did not know the answer, or that none of these types of accounts were reportable. Poxson Decl 3-4, 8-9, Exh 32.

Defendants object to these statements as hearsay.

626. Ms. Johnson testified that the MSP's position is that the electronic reporting requirement applies only to e-mail addresses and screen names "in which social communication exists." Johnson Dep 332 ln 3, Exh 15.

627. According to Ms. Johnson, the MSP interprets this "Internet communications or posting" provision, M.C.L. § 28.275(1)(f), as excluding bank or bill paying transactions. Johnson Dep 332 ln 11—333 ln 10, Exh 15.

628. Ms. Johnson admitted that Internet banking involves communicating with

the bank, but said that it would not need to be registered. Johnson Dep 333 ln 8-10, Exh 15

629. According to Ms. Johnson, whether or not a gaming account would need to be registered would depend on whether there are other players in the game. Johnson Dep 333 ln 17-334 ln 18, Exh 15.

630. Ms. Johnson testified that the SOR Unit trains law enforcement agencies to register e-mail addresses and screen names in which social communication exists. That includes things like Facebook, Myspace, Yahoo! e-mail—but not their bank account login. Johnson Dep p 331 ln 24—332 ln 10, Exh 15.

631. It is Ms. Johnson's opinion that local law enforcement agencies know what types of Internet identifiers have to be reported and which do not. Johnson Dep 335 ln 19-25, Exh 15.

632. Ms. Johnson testified that the SOR Unit trains agencies that when they notify registrants of their responsibilities, they should "give [registrants] an understanding of what their requirements are" for reporting Internet identifiers. Johnson 334 ln 19—335 ln 8, Exh 15.

633. Prosecutor Herb Tanner testified that on-line bank identifiers would not need to be registered because the law is directed at social media. He was asked:

Q. Can you show me where in the law it says it's directed at social media?
A. It's not in the law.

Tanner Dep 81, Exh 21.

634. Sgt. Payne testified that he did not know what "other designations used in Internet communications or postings means." He did not know whether a registrant would need to report creation of an account in order to comment on a news website or use a gaming website. Payne Dep 100-101, Exh 17.

Defendants objected to these questions on the grounds that they call for legal conclusions, and on grounds of vagueness.

635. Trooper Burchell's understands the "internet identifier" registration requirement to mean that if the offender communicates with another person on the internet using an identifier, that identifier must be registered. Burchell Dep 75 ln 15—76 ln 5, Exh 16.

636. Trooper Burchell testified that identifiers used to play at gaming sites or comment on news articles would need to be reported. His belief was that all identifiers used to communicate with other people are reportable. While he admitted that an on-line bank account identifier is used to communicate with a bank, he believed such identifiers need not be reported because "you can't stalk your bank." He was uncertain whether accounts for on-line purchases, such as Amazon, are reportable. Burchell Dep 75-79, Exh 16.

637. Ms. Wagner testified that she has difficulty understanding what is meant by a "designation used in Internet communications or postings." She did not know

whether registrants must report email addresses used at work or accounts created to comment on news articles. She first thought online banking would not be reportable because "it's not communicating with others." But when asked whether registrants are communicating with their bank, she was unsure and said that "it would be up to the prosecutor to decide what that means." L. Wagner Dep 63-66, Exh 18.

Defendants objected to these questions on the grounds that they called for speculation, called for legal conclusions, and lack of foundation.

D. The Impact of SORA on Registrants' Internet Use

638. National research shows that 92% of adult Americans use email. Pew Research Center, *Search and email still top the list of most popular on-line activities* (May 2011), Exh 77.

639. MSP data show that less than half of all non-incarcerated Michigan registrants report having an email address or other Internet identifier. Of the approximately 28,000 active registrants on the SOR database, 13,232 reported some kind of Internet identifier. Defs' 2nd Supp. Resp to First Interrog, No. 15c, Exh 98; Johnson Dep 298-300, Exh 15.

640. Plaintiffs are concerned about using the Internet because they are unclear about when they must report immediately and in person. They do not know, for example, if they must report immediately in person if they set up an on-line account to pay their taxes, register with Netflix, purchase or review products on Amazon, or comment on on-line bulletin board. Verified Compl, ¶ 203.

641. Mr. Doe #1 limits his Internet use both because he has "a hard time knowing what exactly I have to report" and because if he creates a new account, he has to go report it in person, which is time-consuming. Doe #1 Dep 52-59, Exh 1; Doe # 1 Interrog Resp No. 2, 5, Exh 36.

642. Mr. Doe #1 would like to establish a business and has tried to do so. However, he gave up because the SORA restrictions made it difficult to market his business on the Internet (*e.g.*, advertise on Craig's List or Angie's List, or do other sorts of on-line marketing). He specifically did not create a Facebook or Kickstarter account for his business because he feared becoming non-compliant. Even ordering business cards or registering his business on-line would likely involve creating new electronic accounts, and he is unsure what he then needs to do to be in compliance with his registration requirements. Doe #1 Dep 52-59, 85, Exh 1; Doe #1 Interrog Resp No. 4, Exh 36.

643. Mr. Doe #1 also testified that because he had been incarcerated for a long time, "the internet and iPhones and this technology doesn't interest me—I don't have no desire to do those things." Mr. Doe #1 also noted the time necessary to register Internet information: "And in so being its time consuming for me to have say, well, I want to go and get on the internet for this, however, before I do let me call you or go to the police station and say, hey, you guys, I need to register this information." Doe #1 Dep 50 ln 9-17, Exh 1.

644. Doe #1 never asked his former parole agent specifically about what he can or cannot do on the internet. Mr. Doe #1 did ask his parole agent about attending a computer class at a library and the agent told him "what I can and cannot do." Mr. Doe #1 was not allowed by his agent to attend the computer class. Doe #1 Dep 59 ln 17—61 ln 15, Exh 1.

645. Doe #2 stated:

> Before I had to register I used the Internet a lot. Once I was told I had to register, I closed down a quite a number of accounts because I did not want to have to report them. I try not to do anything that would cause me to create a new account on the Internet, since I would then have to register that account. I am also very confused about what I have to report, such as whether I have to report accounts that are not social media accounts.
>
> * * * * *
>
> I used to have accounts with MySpace and other social sites. When I was told I had to report those, I closed my accounts.
>
> I would like to have a Facebook account, Twitter account, or other accounts that people with free lives can open up. I can't even open an account on a recipe site without having to register that. I would like to do on-line shopping at sites like East-Bay [*sic*] where you can save money, but I don't open accounts because of the registration requirements.

Doe #2 Interrog Resp No. 2, 4, Exh 37.

646. Mr. Doe #2 testified that he is also reluctant to use the Internet because he is concerned that his internet screen names might one day be placed on the public registry website. Doe #2 Dep 107 ln 3—108 ln 11, Exh 2.

647. When Mr. Doe #2 originally registered in 1996, SORA was a private law enforcement database, and the information he provided was not available to the

public. That previously confidential information has since become public. *Compare* Mich Pub. Act 295 (1994) (eff. Oct. 1, 1995), and M.C.L. § 28.721 *et. seq.*.

Defendants object to this statement as argument, not fact.

648. Mr. Doe #2 further testified that he is reluctant to use the internet out of concern that individuals may try to learn his identity and track him down because of prejudice against sex offenders. Doe #2 Dep 100 ln 18—101 ln 8, Exh 2.

649. Although Mr. Doe #2's actual residential address is listed on his registry page, no one has approached him about his registration. Doe #2 Dep 101 ln 9-15, Exh 2.

650. Mr. Doe #2 stated that he understands email to be "basically electronically getting in touch with someone." He thinks that "e-mail" is a vague term:

> E-mail, just the phrase e-mail is – makes it so cloudy because you can have an e-mail account on Amazon, you can have an e-mail account on Craig's List, you can have an e-mail account on things that aren't necessarily social media, and you wonder why would I have to register any of that. I mean, it's vague. It's very vague.

Doe #2 Dep 88 ln 9-16, 90 ln 1-2, Exh 2.

651. Mr. Doe #2 stated that hisconfusion about what is reportable causes him to restrict his Internet use: "I don't know what brings me into conflict with the registration requirements, so to feel safe I cut out as much Internet activity as I can." Doe #2 Interrog Resp No. 5, Exh 37; Doe #2 Dep 97-98, Exh 2.

652. Mr. Doe #2 does use the internet to shop on Amazon, to play chess, and to read news. He testified that when looks at news sites, he does not comment on such sites because he would have to report doing so. Doe #2 Dep 93 ln 7—23, 94, Exh 2.

653. The officer with whom Mr. Doe #2 registered told him that he does not need to register his Amazon.com account, but that he does need to report social media, instant messaging IDs and things of that nature. Doe #2 Dep 89 ln 14-23, 97 ln 2-7, Exh 2.

654. Mr. Doe #2 understands instant messaging as being social media in which a person chats back and forth with another person. He understands that a social media account like MySpace or Facebook is something that he would have to register. Doe #2 Dep 90 ln 14—91 ln 7, Exh 2.

655. Mr. Doe #2 does not register his on-line banking ID. Doe #2 Dep 98 ln 9-14, Exh 2.

656. Mr. Doe #2 does not maintain a Netflix account, but that is because he is too busy to have time for television, and it is not because of his sex offender registration. Doe #2 Dep 102 ln 19—103 ln 2, Exh 2.

657. Mr. Doe #2 understands that SORA does not prohibit him from having e-mail or Facebook accounts, but requires him to register his account information. He described this as “definitely a deterrent.” Doe #2 Dep 91 ln 8-22, Exh 2.

658. Mr. Doe #2 admits that it could be useful for police to be able to search for suspects by an on-line screen name that they used. Doe #2 Dep 96 ln 1-10, Exh 2.

659. Mr. Doe #3 testified that he was unsure what Internet activity he has to report, such as a fantasy football league where he has a unique user name. Moreover, "there's things I want to do with my son, like Study Island, but I have to – he's nine and my other son is six, so if I want to put in my name and my e-mail am I allowed to do that? I don't know." Doe #3 Dep 71-72, Exh 3.

660. Mr. Doe #3 testified:

> Q. Is it your understanding that you are prohibited from doing anything on the Internet?
> A. I feel as if I'm prohibited.
> Q. Has any law enforcement officer or an attorney or anybody ever told you that you are actually legally prohibited?
> A. No.
> Q. Do you understand the – you know, you can have any account that you want, you just have to register if you're going to use an e-mail, Internet chat, or message board or anything like that?
> A. I understand that I can have accounts, but what I don't understand is what accounts need to be registered. What do I need to tell them and what don't I tell them…. Where am I safe and where I'm not safe…. Say I've got 16 different accounts to where – like I listed here in my answer, as far as like [My City] Soccer, Facebook, Twitter, other social networks, Study Island, math websites, ESPN fantasy football, these are the things that I don't – I'm not on because I'm unclear if I can have them…. Especially the ones with Study Island, math websites, those two are crucial in my life because I want to be a father and I want to teach my kids, you know, this is education.

Doe #3 Dep 79 ln 20—81 ln 4, Exh 3.

661. Mr. Doe #3 then explained how a website called Study Island would allow

him to get his son's scores if Mr. Doe #3 could sign up for the website, and how the [My City] Soccer site would allow him to keep track of his children's games, cancelled practices, and who is supposed to bring a snack for the team. But he does not participate "because I don't know if I can be involved … because it's a children thing." "If I'm not allowed near schools how am I allowed to do anything online with kids' websites?" Doe #3 Dep 80-84, 99-102, Exh 3; Doe #3 Interrog Resp No. 4, 5, Exh 38.

662. When asked whether he'd inquired of law enforcement about his Internet reporting obligations Mr. Doe #3 testified:

> A. With all due respect, nobody inside the [city] police station has a clue about the law or the statute of a sex offender.
> Q. And why do you say that?
> A. Because I've asked questions before and they can never answer them.

Doe # 3 Dep 87-88, Exh 3.

663. When Mr. Doe #3 asked local law enforcement what internet accounts he needed to register, they told him just his e-mail account. He was told he did *not* need to register his Instagram account. Doe #3 Dep 88 ln 23—89 ln 24, Exh 3.

664. Mr. Doe #3 has asked questions about whether he needed to register his fantasy football account or his child's Study Island account, and whether he needed to provide his passwords. He was told he only needed to provide e-mail addresses. Mr. Doe #3 could not remember asking any additional internet questions on the

occasion when he asked those questions. Doe #3 Dep 71 ln 10—p 72 ln 24, Exh 3.

665. Mr. Doe #3 avoids doing anything on the Internet that would require him to open additional accounts, because he would then have to go and report in person. Doe #3 Interrog Resp No. 2, Exh 38. Mr. Doe #3 has a Craigslist account, an Instagram account, and a PayPal account, and visits the Detroit News website. He also has an on-line banking account. He does not read comments on news stories. Doe #3 Dep 88 ln 9-22, 90 ln 2-8, Exh 3.

666. Mr. Doe #3 does not use Facebook or Twitter because he does not want someone to recognize him from the registry. Doe #3 Dep 85 ln 17—86 ln 3, Exh 3.

667. Mr. Doe #3's wife knows what an e-mail address is, what a chat ID is, and that regularly means "often." S.F. 65 ln 3-22, Exh 8.

668. Mr. Doe #4 would like to use the Internet, email friends or family, use Facebook, comment on websites, and purchase items on-line. Doe #4 Dep 53-58, 93, Exh 4; Doe #4 Interrog Resp No. 2, 4, Exh 39.

669. Mr. Doe #4 testified that he does not understand his Internet obligations. Doe #4 Dep 57 ln 25, Exh 4. When defense counsel read Mr. Doe #4 sections of the Explanation of Duties Form stating that he must register if he establishes an e-mail or instant message address, or any other designation used in internet communications postings, and asked if Mr. Doe #4 understood this, he replied, "From what you are telling me yes." Doe #4 Dep 55 ln 19—56 ln 3, Exh 4.

670. Mr. Doe #4 has never used e-mail, instant messaging, or internet forums because "I don't understand what I can or cannot do with this." Doe #4 Dep 58 ln 1-11, Exh 4.

671. Mr. Doe #4 stated that he will be getting a work-related email account. Doe #4 Interrog Resp No 3, Exh 39.

672. Mr. Doe #4 testified that "it is just easier and safer not to use the Internet at all. I do know that I have to report in person when I get a new account…. it is too complicated to report in person." Doe #4 Dep 53-58, 93, Exh 4; Doe #4 Interrog Resp No. 2, 4, Exh 39.

673. Mr. Doe #4 testified that, given his lack of experience with the Internet, if SORA disappeared, he would have no idea what to do with e-mail, instant messaging, or forum posting. Doe #4 Dep 58 ln 12-15, Exh 4.

674. Mr. Doe #5 is unclear about what his responsibilities are in terms of the Internet. Doe #5 Interrog Resp No. 2, Exh 40.

675. Mr. Doe #5 uses the Internet for entertainment and to keep up with the news. Doe #5 Interrog Resp No 2-4, Exh 40; Doe #5 Dep 63, Exh 5.

676. Mr. Doe #5 has had one e-mail address which he used primarily to contact a vocational counselor. He used that account for less than one month. By the time he began registering as a sex offender, he had already stopped using that e-mail and was not using e-mail at the time of his deposition. Doe #5 Interrog Resp No 2,

Exh 40; Doe #5 Dep 62 ln 4-21, Exh 5.

677. Mr. Doe #5 does not use social media and is not interested in using it because he is a private person. Doe #5 Dep 62 ln 22—63 ln 10, Exh 5.

678. Mr. Doe #5 admits that the main reason he rarely uses the internet is that he is not computer savvy, rather than because he is on the sex offender registry. Doe #5 Requests to Admit #5, Exh 105.

679. Because Mr. Doe # 5 is not computer-savvy, he does not know what accounts he might open if SORA did not exist. Doe #5 Interrog Resp No 4, Exh 40; Doe #5 Dep 63, Exh 5.

680. Mr. Doe #5 has not asked any local law enforcement officers or the prosecuting attorney about what he is required to do in regards to the internet. Doe #5 Dep 61 ln 18-25, Exh 5.

681. Mary Doe testified that she limits her Internet use because she is "very confused about what I do and do not need to report," and because she has to report new accounts in person. Mary Doe Interrog Resp No. 2, 4, 5, Exh 41; Mary Doe Dep 31, Exh 6.

682. Ms. Doe has sought legal advice on what Internet information she must register "but because the laws are so confusing even they [the attorneys] don't know the answer." Mary Doe Dep 50-51, Exh 6.

Defendants object to this statement as hearsay.

683. Ms. Doe asked the police what identifiers she must register, and was told she did not have to register identifiers associated with bank accounts or utility bill payment accounts. Mary Doe Interrog Resp No. 2, 4, 5, Exh 41; Mary Doe Dep 30 ln 19-31 ln 8; 32 ln 12-20, Exh 6.

684. The police asked Ms. Doe if she uses social networking websites, which she does not. They told her that if she uses them, she would have to register them. The police did not tell her that she cannot have social media accounts. Mary Doe Dep 32 ln 21—33 ln 16, Exh 6.

685. Mary Doe stated that—but for registration requirements—she would open Facebook, Twitter, and Instagram accounts. Mary Doe Dep 47 ln 5—48 ln 1, Exh 6.

686. Ms. Doe would like to respond to on-line news articles (on websites like the Detroit News, Click on Detroit, or Fox) and use Facebook, Instagram and Twitter to communicate with family and friends. Mary Doe Dep 47-48, Exh 6; Mary Doe Interrog Resp No. 4, Exh 41.

687. Mary Doe testified that she does not do these things because then she would have to go register within three days, and because she is confused about what she has to report. An additional reason for not commenting on news articles is that she believes readers would find her account name on the registry. Verified Compl 207; Mary Doe Dep 31, 47-48, 50-52, 60, 104-04, Exh 6; Mary Doe Interrog Resp No 4, Exh 41.

688. Ms. Doe testified that the registry also affects her ability to shop on-line:

> [I]f I were to create … an account one day for one store and then I saw something on sale a couple days later and something on sale a couple days more later, it's very confusing that if I don't report it if I'm going to be charged with a felony, a misdemeanor, and just be sent right back to prison or be on probation again.

Mary Doe Dep 104-05, Exh 6; Mary Doe Interrog Resp No. 4, Exh 41.

689. Mary Doe has not specifically asked police or the prosecutor whether she needs to register online identifiers she uses to purchase clothes over the Internet. Mary Doe Dep 49 ln 19—50 ln 21, Exh 6.

690. Mary Doe maintains and registers a Paypal account, but she has never looked at online store websites closely enough to know whether she can buy from those stores using her Paypal account. Mary Doe Dep 114 ln 25—115 ln 17, Exh 6.

691. Mary Doe "is not positive" whether internet identifiers are part of the public registry website. Mary Doe Dep 52 ln 4-8, Exh 6.

692. Mary Doe objects to police having access to her internet identifiers because she considers herself a "private person," because she wants "to keep everything I do private," and because "to me it's big brother watching." Mary Doe Dep 59 ln 5—60 ln 18, Exh 6.

693. Mary Doe testified that the Explanation of Duties Form does not state that she is prohibited from having internet accounts. Rather, this is information that she is required to report. Mary Doe Dep 54 ln 24—55 ln 22; 58 ln 10—59 ln 4, Exh 6.

694. If a registrant post comments using a registered internet identifier, any law enforcement user with access to the SOR system could search in OffenderWatch and determine which registrant made the posting. L. Wagner Dep 71-72, Exh 18.

Defendants objected to this question on the grounds that it called for speculation and assumed facts not in evidence.

695. There are approximately 8,000 users of the SOR database who have access to registrants' internet identifiers. Johnson Dep 92-93, Exh 15.

XV. LAW ENFORCEMENT'S UNDERSTANDING OF SORA

A. Local Law Enforcement's and Prosecutors' Interpretations of SORA

696. SORA registration and enforcement is handled by law enforcement agencies, including county sheriffs' departments, municipal police departments, probation agents and parole agents. M.C.L. §§ 28.722(n); 28.724.

697. There are 83 county prosecutors' offices that prosecute SORA violations. Tanner Dep 31, Exh 21.

698. There are approximately 600 law enforcement agencies that can access Michigan's SOR database. OffenderWatch Training, Disc 3, Part 1, Exh 68.

699. There are approximately 8,000 individual users who can access Michigan's SOR database. Law enforcement employees do not need to be trained before they access the system. Johnson Dep 92-93, Exh 15.

700. Mr. Poxson reported that he did not receive consistent answers to any of the questions on his survey of law enforcement agencies and prosecutors. The

people he called were often unsure about their answers, or provided conflicting answers, including to questions like when registrants must report an address change, or whether registrants must report self-employment or on-line education. Poxson Decl 2-9, Exh 32.

Defendants continue their objection to Mr. Granzotto's and Mr. Poxson's surveys as hearsay.

701. Respondents to Mr. Granzotto's survey were unsure about, or provided varying answers to, questions about whether registrants may pick up or drop off their children at school, or whether school sports fields are included in the geographic zones, or under what circumstance registrants can pass through a geographic zone. Granzotto Decl 2-3, 5-7, 9-11, Exh 33.

702. When asking about how long registrants have to report an address change, Mr. Poxson got answers ranging from three days (including weekends) to ten days. Poxson Decl 2, Exh 32. Of the two prosecutor's offices that responded to the same question, one respondent said a week, and the other 10-15 days. *Id.* at 8-9, Exh 32.

703. Similarly, when Mr. Poxson asked prosecutors' offices about the requirements to report travel, one reported that travel need not be reported, and the other did not know. Poxson Decl 8-10, Exh 32. Under SORA 2013, registrants must report travel. M.C.L. §§ 28.725(1)(e), (7).

704. Sergeant Bruce Payne, the MSP's SORA Enforcement Coordinator,

testified that after he took that job it took "a good six, seven months" before he felt like he really understood SORA's requirements. Payne Dep 15-16, Exh 17.

705. In response to a deposition question, Sgt Payne testified that registrants cannot live within 1000 feet of a university. Payne Dep 47, Exh 17.

Defendants objected to this question on the grounds that it called for legal conclusions.

706. SORA creates geographic zones around schools, defined as grades 1-12. M.C.L. § 28.733(d).

707. Sgt. Payne also testified that a homeless person could not stay at a shelter that is within 1000 feet of a school. Payne Dep 64, Exh 17. A federal court has held that SORA does not bar emergency shelter use within 1000 feet of a school. *Poe v. Snyder*, 834 F. Supp. 2d at 733.

Defendants objected to this question on the grounds that it called for legal conclusions. Defendants further object to the remainder of this statement as legal argument challenging the witness' legal conclusions.

708. Sgt. Payne could not remember what education information registrants must report. Payne Dep 96, Exh 17.

Defendants objected to these questions on the grounds that they called for legal conclusions.

B. Parole and Probation Agents' Understanding of SORA

709. Richard Stapleton, former Legal Affairs Administrator for the Michigan Department of Corrections (MDOC), stated in his expert report that parole and

probation agents charged with supervising parolees and probationers who are also subject to sex offender registration have great difficulty interpreting and applying SORA. Stapleton Expert Rep 1, Exh 28.

710. The portion of Mr. Stapleton's report that concludes that parole/probation agents have difficulty interpreting SORA is based upon his own experience. Mr. Stapleton retired from MDOC in 2011. Stapleton Dep ln 6-9, 51 ln 13—52 ln 2, Exh 13.

711. Mr. Stapleton testified that some parole/probation agents contact local prosecutors with questions about SORA, and that agents must have a supervisor's approval before violating an offender for non-compliance with SORA. Stapleton Dep 75 ln 17—76 ln 9, Exh 13.

712. At the MDOC, Mr. Stapleton was responsible for assisting department managers and field staff in answering legal questions about SORA. Stapleton Expert Rep 8, Exh 28; Stapleton Dep 30-31, 83, Exh 13.

713. Mr. Stapleton testified that although he is an attorney and has been professionally responsible for providing guidance to the MDOC on the meaning of SORA, he could not remember the details without looking at the statute. In his opinion, registrants who lack legal training, professional experience, or access to legal resources would "find it quite confusing." Stapleton Dep 101-02, Exh 13.

714. Mr. Stapleton stated that he could not recite all the requirements of SORA

off the top of his head without looking at the statue because "[t]here's so many requirements within SORA it's hard to remember them all." Specifically he could not precisely recite all the information that must be registered about a registrant's vehicle, their schools, and internet identifiers. Mr. Stapleton is aware of the Attorney General's opinion regarding geographic zones, but could not recall whether it allows a registrant to pick up or dropping off their own children at school. He stated it "would be something that I would look up very fast, I know exactly where to find the opinion." Stapleton Dep 69 ln 10—79 ln 7, Exh 13.

715. Mr. Stapleton received many questions, mostly related to employment, "loitering", family reunification, and how to measure geographic zones. He found that many such questions "could not be appropriately answered because of the lack of adequate definition or guidance within SORA itself." Stapleton Expert Rep 8, Exh 28; Stapleton Dep 30-31, 83, Exh 13.

Defendants make a continuing objection to Mr. Stapleton's report and testimony to the extent it reveals legal advice he provided to MDOC or its employees, as such matters are protected by attorney-client privilege and MDOC has not wavied that privilege.

716. In trying to answer questions about SORA, Mr. Stapleton looked at the statute and tried to determine legislative intent. He testified that his focus was not so much "legal research . . . because most of the questions arise because of the lack of an answer in the act itself." Stapleton Dep 34, Exh 13.

Defendants object to this statement as being a legal conclusion.

717. Instead Mr. Stapleton "sounded out" the question with the attorneys in the Corrections Division of the Office of Attorney General, called the Michigan State Police, or phoned the MDOC's Field Operations Administration to "find out what we've been doing" in practice. When Mr. Stapleton found that different MDOC agents were applying SORA differently, he would draft internal memorandum in an effort to promote uniform application among MDOC employees across the state. Stapleton Dep 33-35, Exh 13.

Defendants object to the extent that Mr. Stapleton's report or testimony reveals or discusses legal advice or opinions provided to him by the Corrections Division of the Department of Attorney General, on the grounds that Mr. Stapleton would have such discussions only in his official capacity on behalf of MDOC, and MDOC has not waived its attorney-client privilege.

718. Mr. Stapleton reported that even though the MDOC has a central legal office to address questions and promote consistent application of the law, there was "very much inconsistency" and a "great deal of disparity" in how MDOC agents were applying SORA. For example, on the west side of the state parole agents were not allowing registrants to attend their children's sporting events or plays, whereas on the east side of the state they were. Stapleton Dep 86-88, Exh 13.

719. Mr. Stapleton also explained that measuring geographic zones was complicated for MDOC agents because:

> there isn't a standard process by which to measure, you know, is it as the crow flies again or do you measure from property corner to property corner. You know, sometimes there's private property that you cannot cross in between but if you go down the sidewalk and over then . . . it's more than 1000 feet, but if you cut across between the houses right across it might be 800 feet.

Stapleton Dep 85, Exh 13.

720. Mr. Stapleton testified that at least within the MDOC there "was some means of trying to communicate with the field operations administration folks to get [interpretations] out to their agents, but independent police departments, sheriffs, troopers at the front desk, they don't know this stuff and there's a lot of bad information that gets put out." Stapleton Dep 87-88, Exh 13.

Defendants object to this statement as hearsay, speculation, and beyond Mr. Stapleton's supposed expertise.

721. Mr. Stapleton also reported that the MDOC has established "sex offender specific" caseloads, allowing agents to specialize in the technical requirements of SORA. "But even with intensive supervision, SORA's complexity and vagueness all but guarantee that parolees and probationers will still be unsure about what they can and cannot do." No similar orientation is provided to registrants who are not under MDOC supervision. Stapleton Expert Rep 9, Exh 28.

722. In Mr. Stapleton's experience, the interpretation of SORA varies significantly from jurisdiction to jurisdiction, meaning that to avoid prosecution registrants must rely on the varying interpretations of prosecutors and courts across the

state. Stapleton Expert Rep 9, Exh 28.

Defendants object to this statement as speculation and beyond Mr. Stapleton's supposed expertise.

723. Law enforcement officials told Mr. Stapleton more than once that "loitering" is something you know when you see it. Mr. Stapleton testified that there were circumstances where MDOC agents approved registrants to work in particular areas, but law enforcement would say they were loitering even though they have the agent's approval to work in that area. Stapleton Expert Rep 9, Exh 28; Stapleton Dep 77, Exh 13.

Defendants object to these statements as hearsay.

724. Mr. Stapleton also testified that in his opinion, the disparities in SORA enforcement do not reflect disparities in prosecutorial decisions about whether to prosecute an offense, but rather in how different prosecutors interpret what conduct even constitutes an offense. Stapleton Dep 109-11, Exh 13.

C. SOR Unit Training

725. The SOR Unit is responsible for conducting training on the registry for the general law enforcement community and for MSP enforcement coordinators. Burchell Dep 24 ln 3-15, Exh 16.

726. Karen Johnson testified that when the law or the SOR registration database changes in significant ways, the SOR unit provides training to every law enforcement agency, probation or parole officers, the Department of Corrections

and MSP personnel. Johnson Dep 94 ln 3-7, 95-98, 110, Exh 15.

727. If an agency cannot attend a SOR unit training and requests training, the SOR Unit sends troopers to the agency and provides the training there free of charge. Johnson Dep 94 ln 18-23, Exh 15.

728. Training on SORA is not required for MSP or other law enforcement officers, with the exception of MSP post coordinators. Burchell Dep 24 ln 16-22, 94 ln 9-17, Exh 16.

729. The SOR Unit advises each law enforcement jurisdiction to establish a Sex Offender Enforcement Coordinator as a resource "to other agencies and the general public." Where such local coordinators are appointed, the SOR Unit's four regional coordinators work with the local officers to coordinate SORA enforcement. MSP Training PowerPoint, 12, Exh 58; MSP Sex Offender Registry and Enforcement Coordinators, Exh 56; Johnson Dep 148-50, Exh 15.

730. The MSP does not have supervisory authority over local law enforcement, and cannot compel them to comply with SORA. Hawkins Dep 61 ln 4-10, Exh 19.

731. Ms. Johnson testified that the SOR unit trains a minimum of 3,000 people each year. Johnson Dep 94 ln 8-17, Exh 15.

732. Sgt. Payne testified that he had been in his job approximately one and a half years, and that no training had occurred during that time. Payne Dep 12, 119 ln 6-9, Exh 17.

733. The SOR training PowerPoint was created in approximately April or May of 2011. The PowerPoint was used by Trooper Burchell and others when providing training. Burchell Dep 10 ln 6-16; 27 ln 4—29 ln 4, Exh 16; MSP Training Powerpoint 2011, Exh 58.

734. The SOR training PowerPoint includes information on use of the SOR database, the system of enforcement coordinators, how to conduct investigations, who is required to register, what agencies are responsible for registration, what information must be reported, and the public website. MSP Training Powerpoint 2011, Exh 58.

735. Trooper Burchell testified that a "large portion" of the SOR Unit's training focus on how to use the SOR data management system, as opposed to how to interpret the law. Burchell Dep 25 ln 10-13, Exh 16.

736. The SOR Training PowerPoint does not contain any slides on "loitering" or the geographic zones. MSP Training PowerPoint, Exh 58.

737. Trooper Burchell testified that the training discusses the statute's prohibitions regarding geographic zones, and "what's allowed," but does not provide information on "loitering," other than advising that one should refer to the statute and to check with the prosecutor. Burchell Dep 48, 49 ln 8-10, Exh 16.

738. The SOR Unit's training PowerPoint contains several slides on registrant's reporting duties. The PowerPoint states that "immediately" is defined as

three business days, and that registrants must immediately report in person if they establish any e-mail address, instant message address, or other designations "used in Internet communications or postings," if they intend to temporarily reside at another address for more than seven days, or if they purchase or regularly use a vehicle or discontinue its use. MSP Training PowerPoint, 12-13, Exh 58.

739. Trooper Burchell testified that he has conducted training with several state coordinators at once that lasted for seven hours that included a review of statutory changes and how to use the SOR system. Burchell Dep 25 ln 5-9; 27 ln 21—28 ln 6, Exh 16.

740. During trainings, Trooper Burchell has received questions from law enforcement about what a geographic zone is, and he answered by referring to the statute and pointing out that the statute refers to "real property" and "school property." Burchell Dep 29 ln 10-22, Exh 16.

741. Trooper Burchell has received questions about registering offenders' employment, telephone numbers, vehicles, and aliases—including internet identifiers. Burchell Dep 29 ln 23-30 ln 7, Exh 16.

742. Trooper Burchell—as a state coordinator—is available to assist if someone from an MSP post, from his district or from local law enforcement has questions regarding the registry. Burchell Dep 42 ln 14-43 ln 4, Exh 16.

743. Trooper Burchell cannot give legal advice. Burchell Dep 47 ln 1-4, Exh 16.

744. The SOR Unit training emphasizes that any officer investigating a SOR violation check with their prosecutor. MSP Training PowerPoint, 14-15, Exh 58.

745. The SOR Unit has developed a training manual which it provides to every law enforcement agency. The manual is not provided to registrants. Johnson Dep 95 ln 17-24, Exh 15; SOR Unit Manual, Exh 83.

746. The training manual focuses on how to use the SOR database. The training manual reiterates the registration requirements contained in the statute, such as that registrants must provide address, work, campus, e-mail and instant message addresses, and vehicle information. The manual does not define what constitutes "regular use" of a telephone or vehicle. SOR Unit Manual §2.5.1-2.5.7, Exh 83.

747. The training manual lists the statutory requirements of geographic zones. The manual does not address how or from what point zones should be measured. SOR Unit Training Manual, §4-4.5, Exh 83.

748. The manual includes a "Frequently Asked Questions" section. The FAQ states that an offender picking up and dropping off their own children is not a violation. The FAQ also states that it is a violation for a registrant to attend his/her own child's play or sporting event. SOR Unit Training Manual, §4-4.5, Exh 83.

749. There is a help guide within the SOR database software itself. Johnson Dep 95 ln 17-24, Exh 15.

D. Trainings by the Prosecuting Attorneys Association of Michigan

750. Herb Tanner, a former prosecutor who works for the Prosecuting Attorney's Association of Michigan (PAAM), has provided trainings on SORA to prosecutors at least five times. The 2013 PowerPoint is the latest version of the training he provides. Tanner Dep 37 ln 15-18; 36 ln 24—37 ln 14, Exh 21; Tanner 2013 PowerPoint, Exh 58.

751. Mr. Tanner first gave a public presentation on the sex offender registry in 2008, and the purpose was to discuss the changes that were coming. Tanner Dep 42 ln 15—43 ln 2, Exh 21.

752. Prosecutors and police will call PAAM because PAAM has demonstrated expertise in issues prosecutors face with SORA. Mr. Tanner receives calls and provides answers to questions about SORA between one and five times per month. Tanner Dep 26 ln 5—29 ln 1, Exh 21.

753. The most common question Mr. Tanner receives from prosecutors concerns loitering—usually prompted by a phone call to the prosecutor from a school principal asking what to do because somebody, such as a parent seeking to attend a school function or parent-teacher conference, is a registrant. In those cases, the answer is to point the principal to the law and direct him/her to talk to the school's legal counsel so they can decide what their policy is going to be. Tanner Dep 27 ln 11—29 ln 22, Exh 21.

754. Wayne County, Oakland County, and Kent County have units of prosecuting attorneys dedicated to sex crimes, and there may be more counties that have similar units. Tanner Dep 32 ln 5-13, Exh 21.

755. Mr. Tanner testified that different prosecutors have different levels of familiarity with SORA and SORA violations, just as prosecutors have different levels of expertise and experience with every other criminal law. Tanner Dep 33 ln 3—34 ln 4, Exh 21.

756. Mr. Tanner's training does not focus on violations of SORA because that is not something that prosecutors or anyone else has asked for training on. Tanner Dep 54 ln 9-21, Exh 21.

757. In Mr. Tanner's experience, geographic zones are not the most common violation of SORA, and he does not believe prosecutors charge them often. Rather, the most common violations are the failure to change a registered address after moving, and the failure to comply with other registration requirements. Tanner Dep 54 ln 22—55 ln 5; 96 ln 6-23, Exh 21.

758. Approximately 632 registrants have been charged with geographic zone violations between 2006 and 2013. MSP SORA Charging Data 2, Exh 45.

759. Mr. Tanner infers from the fact that prosecutors have not asked for training on geographic zones, there is either a consensus on the definitions, or there are not that many cases involving such violations because otherwise "they would be at

[his] doorstep." Tanner Dep 96 ln 6-23, Exh 21.

760. I n 2009, before Michigan amended SORA to comply with SORNA, Mr. Tanner delivered a training presentation at the MSP conference, which was geared toward troopers involving failure-to-register crimes and what prosecutors were looking for in prosecuting those cases. Tanner Dep 57 ln 7-18, Exh 21; Tanner PowerPoint 2009, Exh 117.

761. During the 2009 MSP conference, troopers asked Mr. Tanner about prosecutors who would decline to bring charges for violations of SORA. Tanner Dep 59 ln 15— 60 ln 4, Exh 21.

762. In the 2009 MSP conference, Mr. Tanner received questions from troopers about what "loitering" is and how it was interpreted by prosecutors. Tanner Dep 60 ln 5-10, Exh 21.

763. Mr. Tanner repeated his SORA-specific training for police, prosecutors, and educators in 2010, and again in 2011 in conjunction with MSP, the latter focusing on changes to the law and included discussions on pleading and charging. Tanner Dep 62 ln 22—64 ln 4; 64 ln 19—65 ln 6, Exh 21; Tanner PowerPoint 2011, Exh 60.

764. PAAM prepared an outline of changes made in the SORA in 2011, and Lt. Hawkins from the MSP has used that outline in training. Hawkins Dep 92 ln 3-12, Exh 21; PAAM Outline of 2011 SORA Changes, Exh 114.

XVI. REGISTRANTS' UNDERSTANDING OF SORA

765. Karen Johnson, the SOR Unit Manager, testified about problems that arise if the MSP does not have Explanation of Duties Form on file for an offender: "[it] is difficult [for registrants] to maintain compliance if they don't know what they're supposed to do." Johnson Dep 28 ln 18-20, Exh 15.

766. Leslie Wagner, the statewide SOR coordinator, admitted that it is "difficult for people to comply if they don't know what the law is." L. Wagner Dep 78 ln 6-11, Exh 18.

A. The Explanation of Duties Form

767. The "only document provided to registrants that describes or explains what information registrants must report" is the "Explanation of Duties" Form. Defs' Supp Resps to 1st Interrogs, RFP No 10, Exh 43; Explanation of Duties Form, Exh 62.

768. R egistrants are required to sign the Explanation of Duties Form at their initial registration. Johnson Dep 144-145, Exh 15.

769. Failure to sign the registration or notice form is a misdemeanor. M.C.L. §§ 28.725a(1)-(2), 28.727(3)-(4); 28.729(3).

770. The Explanation of Duties Form is "the way in which registrants are informed about what their obligations are." L. Wagner Dep 80 ln 1-3, Exh 18.

771. Leslie Wagner testified that she believes registrants must comply with SORA regardless of whether they ever received and signed that form. L. Wagner

Dep 80 ln 4-8, Exh 18.

772. Ms. Johnson testified that after a person is convicted of a sex offense, the registering official will prepare the registration form and "advise the offender of their responsibilities" by having the registrant sign the registration form and Explanation of Duties Form. The SOR Unit trains local law enforcement agencies to provide registrants with copies of those documents. Johnson Dep 26 ln 19—27 ln 25, 145 ln 1-19, Exh 15.

773. The Explanation of Duties Form is only provided to registrants at the time of signing. "They're notified once and that satisfies what our unit asks for. They have been notified of their duties." Burchell Dep 92, Exh 16.

774. The Explanation of Duties Form was revised in 2011. Individuals on the registry at that time, who had previously signed an earlier version of the form, were required to sign the new form. Johnson Dep 141, Exh 15.

775. According to Ms. Johnson, the Explanation of Duties Form is "supposed to encapsulate what registrants are supposed to do." But "[t]he statute has things in it that are not in this explanation of duties." Johnson Dep 141, 147, Exh 15; Explanation of Duties Form, Exh 62.

776. For example, the Explanation of Duties Form states that registrants are "prohibited by law from loitering within 1000 feet" of school properties. The form does not define what "loitering" is. Johnson Dep 141, 145-47, Exh 15; Explanation

of Duties Form, No 13, Exh 62.

777. The Explanation of Duties Form also states that registrants must provide all phone numbers they "routinely use" and information regarding any vehicle they "regularly operate." Explanation of Duties Form, No 4, Exh 62.

778. Plaintiffs contend that the form does not quantify how frequently a phone number or vehicle must used to be reported, by for example listing a specified number of uses before reporting is required. Explanation of Duties Form, No 4, Exh 62. Defendants contend that the "regularly operate" and "routinely use" language was inserted into the statute at the request of the ACLU legislative liason.

779. The Explanation of Duties Form states that registrants must report within three business days upon establishing any email address, instant messaging address or "any other designation used in Internet communications." Explanation of Duties Form, No 6, Exh 62.

780. Sgt. Payne testified that if a registrant cannot read, the Explanation of Duties Form is read to him/her so there is a clear understanding of what the registrant's duties are. Payne Dep 24 ln 13-20, Exh 17. In his experience, for offenders who can read, law enforcement agencies only read the form if the person indicates, "that, you know, there's something in here I don't understand or I'm having trouble with." *Id.* at 24 ln 21—25 ln 1.

781. Sgt. Payne testified that there is no definition of "loitering" listed on the

Explanation of Duties Form. In his experience, if the offender was reading the document on their own, law enforcement would not volunteer explanations of what "loitering" means. If someone asked what loitering meant, Sgt. Payne would put it "simple terms," like "you can't hang around schools." Payne Dep 24 ln 6—26 ln 7, Exh 17.

782. The Explanation of Duties Form is available on the MSP website, although it is not on the Public Sex Offender Registry website. Ms. Johnson testified that "if you were a registrant looking on the SOR website [the Explanation of Duties form] would not be there." Johnson Dep 142 ln 11-21, Exh 15.

B. Michigan State Police Letters to Registrants

783. The SOR unit has sent mass mailing to notify registrants of major changes to SORA. Ms. Johnson testified that there had been "very, very, very few" mailings and estimated that this occurred fewer than five times. One mailing was done after the 2011 amendments, and another after registrants' photographs were added to the public registry. Johnson Dep 108-10, 142-44, Exh 15.

784. The letters sent out after the 2011 statutory changes notified registrants of their tier level, some of the changes to the statute, and some of the registrants' new obligations. For example, a form letter was sent to all newly reclassified Tier III registrants notifying them that they would have to register for life and would have to provide additional information. Letters were also sent to offenders who were

removed from the registry or whose registration periods were reduced as a result of the 2011 amendments, informing them of their changed registration status. Johnson Dep 78 ln 19—79 ln 11; 139-41, Exh 15; L. Wagner Dep 54 ln 8—56 ln 1, Exh 18; Tier Notification Letters, Exh 48.

785. Ms. Johnson testified that the letters "weren't intended to be comprehensive about what the requirements were." Johnson Dep 139-41, Exh 15.

786. The tier notification letters do not contain information about the geographic zones. Tier Notification Letters, Exh 48.

C. Allocation of Responsibility Between Local Law Enforcement and the Michigan State Police for Answering Questions about SORA

Defendants continue their hearsay objection on the survey testimony of Mr. Granzotto and Mr. Poxson.

787. When Mr. Granzotto surveyed local police departments, of the 17 police departments that provided some kind of response, nine referred him to the Michigan State Police for answers to his questions. Granzotto Decl 2, Exh 33.

788. Of the 23 police departments surveyed by Mr. Poxson, three told him to contact the Michigan State Police. Poxson Decl 2, Exh 32.

789. Leslie Wagner, MSP Registry Coordinator, testified that the MSP SOR Unit refers registrants' questions on the meaning of SORA to local law enforcement, or if the registrant has already contacted local law enforcement, to the prosecutor. "[I]f the local law enforcement agency is asking that question I'm not going

to refer them back to themselves, I would refer them to the county prosecutor." L. Wagner Dep 39-40, Exh 18.

790. Sgt. Payne, SORA Enforcement Coordinator, testified that when the MSP is unsure about what SORA means, the MSP refers the registrant asking the question to local law enforcement. If local law enforcement does not know, then it would "be up to the local prosecutor to decide what the law means." Payne Dep 32-33, 90-91, Exh 17.

791. The MSP refers to local law enforcement any questions about whether a residence is within a geographic zone, or whether a particular educational establishment qualifies as a "school" for the purpose of creating a geographic zone, or whether a registrant must report cross-country travel for a week, or report a vehicle that is used three times during a three month period. Payne Dep 32-33, 49, 68-69, 90, 93, 98-99, Exh 17.

792. Karen Johnson testified that one reason the MSP refers questions to local prosecutors is that different prosecutors can have different answers to the same questions. Johnson Dep 315-16, Exh 15.

793. Sgt. Payne testified that when registrants "can't get anywhere with the local law enforcement agency we will refer them to the prosecutor's office" to seek clarity. Payne Dep 34, Exh 17.

794. Sgt. Payne testified that because local law enforcement would have to

prosecute violations, they are the ones who make the determination of whether an offender is registering an address or employer that is inside a geographic zone. Payne Dep 31 ln 10-19; 32 ln 9-14; 114 ln 16-19, Exh 17.

795. Trooper Burchell, SOR Unit Coordinator, testified that he refers questions from local law enforcement agencies to their local prosecutors:

> Q. And why do you tell them to check with their local prosecutor?
> A. Because every county's different.
> Q. When you say 'every county's different,' what do you mean by that?
> A. That the prosecutors make different decisions from county to county on what they will prosecutor [sic] and what they won't.
> Q. What things do they decide differently?
> A. I'm not sure, but I know that in our experience that we can't give a broad statement that covers how the law's going to be enforced.

Burchell Dep 45, Exh 16.

796. Prosecutors rarely call the SOR Unit, and when they do call they are usually asking for documents. Johnson Dep 287 ln 24— 288 ln 16, Exh 15.

797. Ms. Johnson cannot recall a time when a prosecutor called and asked how to interpret a provision of SORA. Johnson Dep 288 ln 2-16, Exh 15.

D. How the MSP SOR Unit and Local Law Enforcement Respond to Registrants' Questions

798. When Ms. Johnson was asked how registrants could determine whether activities like attending a child's football game, volunteering at a church picnic, or taking a job would violate SORA, she testified that because different law enforcement agencies interpret SORA differently, registrants should contact their local law

enforcement agency before engaging in those activities:

> Q. [F]rom the perspective of the registrant, if they want to determine whether they can go to [their child's] football game, whether they can volunteer at the church fundraiser and whether they could apply for work at the 50 different places they're applying for work, you would say to them you need to contact your local law enforcement to get the answers to all those questions?
> A. Yes.
> Q. So for many common life activities a person would first have to contact their local law enforcement before doing that in order to avoid the risk of prosecution?
> [Objections and discussion between counsel omitted.]
> A. For all the – leaving common life activities out, the answer would be yes, they need to contact their law-enforcement agencies if they want to ensure they are not working within a student safety zone or doing other activities that would violate the statute.

Johnson Dep 331-32, Exh 15.

Defendants objected to the questions as argumentative.

799. Ms. Johnson also testified that if a registrant was applying for 50 jobs and wanted to determine if those jobs were within a geographic zone, the registrant would need to contact local law enforcement about each of the 50 jobs. Johnson Dep 323, Exh 15.

800. Mr. Doe #3's wife explained that "anything we want to do we have to think of [the registry] first" to see what is permitted and whether the registry will interfere. S.F. Dep 34, Exh 8.

801. Mr. Granzotto, who surveyed 29 local police departments, found that nine departments answered his questions, with three more providing answers to some of

his questions. Respondents at the remaining departments did not return messages after repeat calls, or could not connect Mr. Granzotto to anyone who could answer his questions. Of the ten prosecutor's offices he contacted, three provided answers. The remaining prosecutor's offices either did not answer his questions, or Mr. Granzotto was unable to reach anyone. Granzotto Decl 2, 4-5, 8-9, Exh 33.

Defendants continue their hearsay objection on the survey testimony of Mr. Granzotto and Mr. Poxson.

802. Mr. Poxson, who surveyed 23 local police departments, found that 11 departments answered most or all of his questions about SORA. Respondents at the remaining 12 either did not answer his questions, or did not know the answer. Of the 19 prosecutors' offices he contacted, two answered all of his questions. Respondents at five offices told him to contact a private attorney, and six told him to contact another agency for answers. Poxson Decl 2, 7, Exh 32.

803. Mr. Poxson, who was previously a registrant but whose registration period has expired, testified that as a registrant he would call law enforcement with questions but "couldn't get direct answers." When he called to find out whether he could reside within 1000 feet of a school bus garage, he was "never was able to get an answer" about whether that was permitted. Poxson Dep 63-64, Exh 14.

Defendants object to this statement on the grounds of relevance, because Mr. Poxson is not a plaintiff and he was no longer registered when SORA 2011 was enacted.

804. Ms. Johnson testified both that she receives questions from registrants, and that the SOR Unit does not receive many questions from registrants about their responsibilities. She rarely receives question about geographic zones. Instead, the questions from registrants are about how to get off the registry. Johnson Dep 58, 98 ln 6-8; 144 ln 3-10, Exh 15.

805. Trooper Burchell testified that SOR unit personnel will "answer [registrants'] questions to the best of our ability." Burchell Dep 44 ln 5-12, Exh 16.

806. In answering questions, Trooper Burchell refers to the statute. In his experience the SOR Unit "can't give a broad statement that covers how the law's going to be enforced." Rather, he directs the caller to check with the local prosecutor. Burchell Dep 45 ln 3-18, Exh 16.

807. The Michigan Public Sex Offender Registry webpage has a "Frequently Asked Questions" page. Public Sex Offender Registry FAQ, Exh 113.

808. Ms. Johnson testified that the FAQ site is geared to the members of the public using the registry, and is "more about how the registry works and how to access information on registrants." The MSP does not have an "FAQ for registrants" on its website. Johnson Dep 143 ln 24–144 ln 2, Exh 15.

809. Sgt. Payne testified that he had no prior experience with the registry before joining the SOR Unit. He stated that after he started with the SOR Unit, he learned the SOR is "quite different and I know they are very specific and there's

certain duties that the offenders have to comply to, so the responsibility is really on the offender to make sure that he or she complies with the requirements of the registry." Payne Dep 14, Exh 17.

E. Plaintiffs' Understanding of SORA

810. Mr. Doe #1 stated that he does not know how to read or understand the statute, and that "[n]o one has given me a guide to what I can and cannot do." Doe #1 Interrog Resp No 11, Exh 36.

811. When Mr. Doe #1 was paroled, his parole agent explained his registration requirements, going through the 2009 version of the Explanation of Duties Form line-by-line. Doe #1 Dep 41 ln 10-21, Exh 1.

812. Mr. Doe #1 was provided with an updated Explanation of Duties Form in 2011. At the time he received the updated form, he did not have any questions for the parole officer. He had questions later. Doe #1 Dep, 44 ln 1-7, Exh 1.

813. Mr. Doe #1 stated, with respect to the Explanation of Duties Form, that he "[doesn't] understand any of it." He does understand the individual words on the form. Doe #1 Dep 77 ln 22-78 ln 8-10, Exh 1.

814. Mr. Doe #1 has "some familiarity with where you can find laws and look up cases" as a result of the legal research he did while in prison. Since his release he has done legal research related to SORA. He testified that he could not understand SORA despite this research: "So as far as the research of the stipulations or

the rules in and of itself, I did read them but I did not understand them. I still don't understand them." Doe #1 Dep 72, Exh 1.

815. While he was still on parole, John Doe #1 would ask his parole officer when he had any questions about his registration responsibilities. He no longer has a parole officer. Doe #1 Dep 44 ln 8-15, Exh 1; Verified Compl ¶ 22.

816. Mr. Doe #2 testified that it is difficult to ask questions about SORA when registering because the lines are so long:

> I wanted to ask . . . exactly what the guidelines were with different stuff like schools and where to move, where to live, what to register, what not to register. I didn't get a chance to say much at all. They just told me to sign a paper, get in line.

Doe #2 Dep 74, Exh 2.

817. Mr. Doe #2 stated that when he asked questions of local law enforcement about what he "can and cannot do . . . they could not answer my questions." He was never given any kind of rulebook:

> I am clueless about the rules… It seems like the state is more concerned with getting us on the list than telling us what the rules are. There is not [sic] manual or rulebook that we can look at to figure out what we can and cannot do. There aren't any public maps about where the school safety zones are either. It seems like if they want us to follow the rules, they should tell us what the rules are.

Doe #2 Interrog Resp Nos 6, 11, Exh 37.

818. When Mr. Doe #3 first received the Explanation of Duties Form, he did not have any questions at the time for the officer about his registration duties.

When he received the updated form, he asked questions about why he was a Tier III offender who had to register for life, why he had to pay a fee, and what the paper was for. Doe #3 Dep 64 ln 18—67 ln 16, Exh 3.

819. When Mr. Doe #3 has questions about his registration requirements, one of the places he contacts is the Police Records Bureau. Doe #3 Dep 70 ln 16—71 ln 9, Exh 3.

820. Mr. Doe #3 testified that when he has tried to ask local law enforcement officials questions, "they're like, we're not the court. You've got to go and talk to other people. We can't – we need you to initial this paper, give us I think it was $35, and have a nice day." Doe #3 Dep 66, Exh 3.

821. Mr. Doe #3 has asked questions at the police department about his registration obligations, "but no one can give me clear answer about what information I have to give them.... Now I don't ask questions because the police officers don't know the answer to my questions anyway." Doe #3 Interrog Resp No 6, Exh 38.

822. Mr. Doe #3, who works in auto repair, testified that he does not know what work is permissible. "[F]or work . . . I do a lot of tows . . . . If I get a call, hey, you've got a lockout, a lady locked her keys out in the parking lot of this school, can I go do that call? I'm unclear about what I can do and what I can't do." Doe #3 Dep 10-11, 109, Exh 3.

823. Mr. Doe # 3's wife testified that the lack of clarity affects day-to-day life:

Q. And when you don't know if he can or can't do something or if he has to do something or not do something, what do you guys do as a couple?
A. We don't do it, honestly, because of our past experiences.
Q. And why don't you do it? Why do you err on the side of caution?
A. I don't want him getting arrested, so, I mean, if we have to stay away from doing something, again not living normal, you know, we won't do it.
Q. Okay. So if there's an area, a gray area, something you don't understand, your response is?
A. Don't do it… It's just not worth it.

S.F. Dep 99-100, Exh 8.

824. S.F. further testified that the SORA requirements were not clear to her "[s]o we avoid anything that could potentially get him in trouble or arrested." S.F. Dep 36-37, 78-79, Exh 8.

825. In Mr. Doe #3's experiences, when he does get answers from police, those answers may be wrong. For example, when Mr. Doe #3 told police that he was planning a four-day trip to Mexico with his wife, the registering official told him registrants cannot leave the country. He conducted his own research and determined that was incorrect, and he went to Mexico anyway. Doe #3 Dep 93, 131 ln 10—132 ln 7, Exh 3. SORA would not bar the trip, although registrants must provide 21 days advance notice for foreign travel lasting more than seven days. M.C.L. § 28.725(7).

826. Mr. Doe #3 did not contact the prosecutor's office with questions about his registration requirements. He did contact an attorney, but is not willing to discuss what his attorney told him. Doe #3 Dep 67 ln 22—68 ln 5, Exh 3.

827. Mr. Doe #4 has asked local police and his own lawyer about his registration requirements. Doe #4 Dep 70 ln 18-22, Exh 4.

828. Mr. Doe #4 testified that when he asks questions of the police about his SORA obligations, "[s]ometimes they don't even know," and "[s]ometimes my lawyer doesn't even know." For example, when his employer was going to have him move from store to store, he sought legal advice from his attorney, who was unable to answer his question. He then asked the police, who told him that if he worked anywhere for between two and five hours, he would have to register that location. Doe #4 Dep 49-50, 68-69, 89, Exh 4.

829. Mr. Doe #4 stated in his answers to interrogatories:

> There are no maps about where I can live, work or be. … I am not [a] lawyer, and I don't know how to read laws. But even when I ask my lawyers[Plaintiffs' counsel] what something means, they often don't know, but have to guess what it probably means.

Doe #4 Interrog Resp No 11, Exh 39.

830. In Mr. Doe #4's experience, different law enforcement officers within the same agency can provide different answers to the same question. For example, he testified that he has received different answers from different registering officials about whether or not he needed to register his GED classes. Doe #4 Dep 88, Exh 4.

Defendants object to Doe #4 testifying about what unidentified officers told him on the grounds that such statements are hearsay.

831. Mr. Doe #4 testified that he does not know whether he can take his own

children to a playground on school property, attend a minor cousin's birthday party in a public park, or go to a mall where children may be present. Verified Compl, ¶ 224; Doe #4 Dep 76, Exh 4.

832. Because of his confusion about what the law requires, Mr. Doe #4 avoids activities, some of which are in fact prohibited by the statute and others of which are actually permitted. Doe #4 Dep 71-72, 76, Exh 4.

833. Mr. Doe #4 has never asked the prosecutor about his registration requirements. Doe #4 Dep, 70 ln 23—71 ln 3, Exh 4.

834. Mr. Doe #5 was given an Explanation of Duties Form, but he chose not to read it because he decided he did not want to. Mr. Doe #5 objected to signing the form because "it's like acknowledging something that I never had to do over 30 years." The registering officer did not go through the form with him. Doe #5 Dep 88 ln 24—89 ln 18, Exh 5.

835. Mr. Doe #5 has never asked any questions of the police about his registration. Doe #5 Dep 59 ln 10-12, Exh 5. Mr. Doe #5 has not conducted any research on his own about the legal requirements of his registration. Doe #5 Dep 62 ln 1-3, Exh 5.

836. Mary Doe was given a copy of the Explanation of Duties Form. Other than the requirements listed on 4(i), 4(k), 6(f), 7, 12, and 13, Mary Doe admits understanding the remaining requirements on the Explanation of Duties Form "to

the best of [her] knowledge." Mary Doe Dep 76 ln 17—78 ln 9; 92 ln 19—93 ln 7, Exh 6; Explanation of Duties Form, Exh 62.

837. Mary Doe has asked local police officers questions about her registration requirements, and they have given her answers although for some questions there "has never been a clear answer." Mary Doe Dep 30 ln 19—32 ln 6, Exh 6.

838. Mary Doe has never looked up the sex offender registration statute. Mary Doe 43 ln 8-10, Exh 6.

839. As a non-lawyer, Mary Doe explained that she does not know how to "decipher" the SORA statute. She can read what it says "but I don't understand exactly what it's requiring." Ms. Doe testified that "because everything in [the law] is very vague, that if you make a mistake you're always worried about, you know, did I make a mistake? … You're constantly worrying about that. It's always in the back of your mind." Mary Doe Dep 53-56; 105, Exh 6.

F. The Impact of Amendments to SORA on Registrants' Understanding

840. Mr. Doe #1 stated that "the state keeps changing the requirements. But I don't know how I am supposed to know when the laws change." Doe #1 Interrog Resp No 11, Exh 36.

841. Mr. Doe #2 stated that because the registry requirements have changed so often in the past, and have been applied retroactively, he has no faith that SORA will not change again in the future, and be applied retroactively. He is therefore concerned

about turning over personal information to the government that, though not publicly posted now, could be made public in the future. Doe #2 Dep 138-39, Exh 2.

842. Mr. Doe #3 stated that as a non-lawyer he does not know how to understand the law but he does "know that the state keeps changing the requirements." Doe #3 Interrog Resp No 11, Exh 38.

843. Mr. Doe #4 testified that it seems to him as if the "registry changes every day," making it is difficult to understand what he can and cannot do. Doe #4 Dep 65, Exh 4.

844. Ms. Johnson testified that the MSP was "assuming there are going to be sex offenders that are confused" by recent legislative changes, which set different verification periods for registrants depending on their birth month, rather than requiring all registrants to verify at the same time (formerly January, April, July and October for Tier III registrants). Ms. Johnson testified that it would be up to the prosecutor to decide whether individuals who verify in the wrong month are prosecuted. Johnson Dep 272-76, Exh 15; Mich. Pub. Act 149 (2013).

Defendants objected to questions directed to Ms. Johnson about what prosecutors would prosecute on the grounds that they called for legal conclusions and lack of foundation.

845. Plaintiffs' expert, Richard Stapleton, testified that in his experience, registrants are unlikely to know about judicial decisions that affect the interpretation of SORA, since they do not typically have access to Westlaw/Nexis alerts to inform

them of new cases. The SOR Unit does not provide registrants with copies of cases or Attorney General opinions interpreting SORA. Stapleton Dep 102-03, Exh 13.

Defendants object to Stapleton testifying to what registrants do or do not know about a statute that has been amended since he retired, or what the SOR Unit does or does not provide. These matters are beyond his stated expertise and lack foundation.

G. Misinterpretation of SORA and Criminal Liability

846. SORA 2013 imposes penalties of up to 10 years imprisonment for violations of the Act. M.C.L. §§ 28.729(1); 28.734(2); 28.735(2).

Defendants object to this statement as being both legal argument and vague. Further, it misrepresents the statute. The only 10 year penalty is for 2 or more willful violations for failing to register. The student safety zone violations are one year misdemeanors, and become a felony only if there are prior violations—and even then are punishable by only two years.

847. A registrant who does not comply with SORA requirements faces jail or prison. As Mr. Doe #4 testified, "the consequences of making a mistake" about what the registry requires are "[p]rison, and I don't want to go to prison." Doe #4 Dep 87, Exh 4.

848. In Mr. Poxson's experience, where he was able to get information from law enforcement about his obligations, reliance on that information does not protect him from prosecution if the information was erroneous. Mr. Poxson testified that the local police told him that his misdemeanor offense required only annual verification. But the MSP disagreed, and told him that unless he began registering

quarterly, he would be arrested. Mr. Poxson was prosecuted for failure to report even though he was "doing exactly what [he] had been told to do by local law enforcement." Poxson stated that the prosecutor eventually dropped the charges after seeing that Mr. Poxson had it in writing that he was only required to report once a year. Poxson Dep 66-68, Exh 14.

Defendants object to this statement on the grounds of relevance, because Mr. Poxson is not a plaintiff and he was no longer registered when SORA 2013 was enacted.

849. Former MDOC Legal Affairs Director Stapleton reported that confusion about the meaning of SORA leads to situations where MDOC agents inform parolees/probationers that some conduct is permissible, only to find that prosecutors or law enforcement agencies disagree. Stapleton was involved in several cases where parole agents had authorized parolees to attend their children's sporting events, only to have the registrants charged with SORA violations by local prosecutors. In another case, a parolee was approved to re-shingle roofs near a school, and the local prosecutor wanted to prosecute him for loitering. Stapleton Expert Report 9, Exh 28; Stapleton Dep 83-85, 105-06, Exh 13.

850. Mr. Stapleton testified that because SORA requires that any violation of the act results in parole rescission, the MDOC is required to return registrants to prison if they are not in compliance, even where prosecutors do not prosecute these violations. Registrants are returned to prison for SORA violations under a prepon-

derance of the evidence standard, which is all that is required for a parole violation. Parolees have no right to appeal such a parole violation internally within the department. Stapleton Dep 88-89, 108-09, Exh 13; M.C.L. §§ 28.729(5), (7).

XVII. SORA'S REPORTING REQUIREMENTS

A. Statutory Reporting Obligations

851. As Tier III registrants, plaintiffs must report in person every three months within a specified 15-day period[3], M.C.L. 28.725a(3)(c), and must provide or update (if changed):

- all names and nicknames, Social Security number, and date of birth;
- residential address, including any address where the individual expects to spend more than seven days, as well as the dates of any such temporary stays;
- employer names and addresses, as well as the general areas worked and routes of travel if the individual does not have a fixed employment location;
- schools attending or schools to which accepted;
- telephone numbers registered to the individual or routinely used;
- e-mail and instant message addresses assigned to the individual or routinely used, and log-in names or other identifiers used by the individual when using any e-mail address or instant messaging system;
- all other designations used in Internet communications or postings;
- license plate and registration information for any vehicle owned or regularly operated by the individual, and the location where that vehicle is kept;
- driver's license number or personal ID card number;

[3] Registrants previously had to report during the first 15 days of January, April, July and October. After passage of Public Act 149 of 2013, Tier III registrants continue to report quarterly, but must do so according to a schedule set by their birth month. M.C.L. § 28.725a(3), *as amended*.

- passport and immigration documents;
- occupational license information; and
- a complete physical description.

M.C.L. § 28.727(1).

852. Plaintiffs must provide a photograph, fingerprints, and palm prints. If a plaintiff's appearance changes, he or she must update the photograph. M.C.L. §§ 28.725a(5), 28.727(1)(q).

853. In addition to reporting in person at regular intervals, the plaintiffs must report "immediately" (within three days) whenever certain information changes. The immediate, in-person reporting requirement is triggered whenever the plaintiffs:

- change their residence;
- change or discontinue employment;
- enroll or dis-enroll as a student;
- change their name;
- intend to temporarily reside at any place other than their residence for more than seven days;
- establish an e-mail address, instant message address, or any other Internet designation used in internet communications or postings; and
- buy or begin using a vehicle, or cease owning or using a vehicle.

M.C.L. § 28.725(1).

B. Law Enforcement's Understanding of What Registrants Must Report

Defendants continue their hearsay objection to testimony about Mr. Poxson's and Mr. Granzotto's surveys.

854. When Mr. Poxson asked local law enforcement agencies about the em-

ployment reporting requirements, some respondents did not answer and some provided different answers to the same questions regarding reporting requirements. Some respondents said that shoveling snow (or ceasing to shovel snow) must be reported, others said it need not be, and others did not know. Of the two responding prosecutor's offices, one respondent did not know, and the other said snow shoveling is not reportable. Poxson Decl 5, 8-9, Exh 32.

855. When Mr. Poxson surveyed local law enforcement agencies about how often a registrant could use a vehicle before having to report it, some respondents did not know the answer, and others provided answers ranging from once or twice, to six or seven times, to "whatever is reasonable." Respondents from the prosecutor's offices stated that they either did not know the answer to the question, or that there was no requirement to report borrowed vehicles. Poxson Decl 3, 8-9, Exh 32.

856. In response to questions from Plaintiffs' counsel at their depositions, Sgt. Payne, Trooper Burchell, and Ms. Wagner were unable to answer questions about whether volunteering at a church fundraiser needs to be reported, whether snow-shoveling is reportable employment, whether a registrant whose manager sent him to work at a different job site for a week would need to report that change, or how a registrant who is traveling but does not have a specified address destination could report. Payne Dep 85-89, Exh 17; Burchell Dep 67-68, Exh 16; L. Wagner Dep 37,

60-63, Exh 18.

Defendants objected to these questions on the grounds that they call for legal conclusions, call for speculation, and lack of foundation.

857. During his deposition Trooper Burchell reviewed both the Explanation of Duties Form and the SORA statute in responding to those questions. He was asked:

> Q: [I]f you don't know the answer to those questions, is there any information that is given to registrants that would allow them to know the answer to those questions?
> A. Not that I know of.

Burchell Dep 70-71, Exh 16.

Defendants objected to this question on grounds of calling for speculation and lack of foundation.

858. Ms. Johnson responded to questions about what constitutes reportable employment by saying that she "would give [registrants] a definition [of employment in the statute] and rely on them to get with their prosecutor and make that determination." Johnson Dep 327, Exh 15.

Defendants objected to this question on grounds of calling for speculation and lack of foundation.

859. When asked about SORA 2013's requirements for reporting certain property items that are "regularly used" or "routinely operated," Sgt. Payne, Trooper Burchell, and Ms. Wagner did not know how often a registrant could borrow a car before needing to report it. Trooper Burchell testified that this is "up to interpreta-

tion by the prosecutor." Sgt. Payne testified, "Some may say, yes, it's regular use, some may say no. That would be probably a judgment call by the prosecutor or the law enforcement agency." Payne further agreed that "each law enforcement agency might come to a different conclusion about what regular use means." Payne Dep 93, Exh 17; Burchell Dep 73-74, Exh 16; L. Wagner Dep 38, Exh 18.

Defendants objected to this question on grounds of calling for speculation and lack of foundation.

860. Plaintiffs contend that the SOR Unit's Manual does not explain what qualifies as reportable "employment," what "designations used in internet communications" are reportable, or how often a vehicle can be used before it must be reported. MSP SOR Manual § 2.5, Exh 83.

C. Plaintiffs' Understanding of What They Are Required to Report

861. Mr. Doe #1's employer has a fleet of vehicles. Mr. Doe #1 testified that he does not know which vehicles he must report: "I don't know whether or not I have to go tell them I got to register 36 vehicles that they have because there may come a time I may get van 27." Doe #1 Dep 89, 94-95, Exh 1.

862. Mr. Doe #1, when asked about reporting his own vehicle, testified that he has no questions about the process of registering vehicles. Doe #1 Dep 72 ln 8-12, Exh 1.

863. Mr. Doe #1 has never asked his parole officer any questions about vehicle registration, using the internet, or where he can be in relation to a school because

"all those things were explained to me, so I didn't have no further questions." Doe #1 Dep 46 ln 2-12, Exh 1.

864. Mr. Doe #1 has never attempted to contact anyone in the prosecutor's office with any questions he may have about his registration duties or use of the internet. Doe #1 Dep 59 ln 11-14, Exh 1.

865. Mr. Doe #1 stated that "One of the biggest problems with being on the registry is the constant fear that I will not be in compliance with the registry requirements. I have a hard time knowing what exactly I have to report and what I don't." Doe #1 Interrog Resp No 5, Exh 36. Mr. Doe # 1 repeatedly testified to finding the statute confusing. Doe #1 Dep 52-59, 65-67, 89, 94-95, Exh 1.

866. Mr. Doe #2 understands that he has to register vehicles that he uses regularly. Doe #2 Dep 122 ln 15-22, Exh 2.

867. Mr. Doe #2 uses his girlfriend's car once a quarter to go register and maybe two or three other times in that time period. He himself does not consider that to be "regular use." Doe #2 Dep 123 ln 25—124 ln 21, Exh 2.

868. Mr. Doe #2 does not know if he must register his girlfriend's car. Doe #2 Interrog Resp No. 15, Exh 37. Mr. Doe #2 has read the Explanation of Duties Form. He has not read the SORA statute. Doe #2 Dep 85 ln 25—86 ln 25, Exh 2.

869. Mr. Doe #2 has attempted to seek legal advice regarding his registration requirements, but was discouraged by the cost. He has counsel in the present case.

Other than that, Mr. Doe has not sought or obtained legal counsel with respect to his registration. Doe #2 Dep 75 ln 15-21, Exh 2.

870. Mr. Doe #2 has not attempted to contact the prosecutor's office with any questions about the terms of his registration. Doe #2 Dep 75 ln 10-14, Exh 2.

871. Mr. Doe #3 understands the word "routinely" to mean the same thing as "frequently or regularly." Doe #3 130 ln 6-8, Exh 3.

872. Mr. Doe #3 is unsure whether the term "routinely use" means daily use, weekly use, or monthly use. Doe #3 Dep 121-22, Exh 3.

873. Mr. Doe #3 understands that if he stays somewhere for longer than 7 days, he must update his registration. Doe #3 Dep 92 ln 14-20, Exh 3.

874. Mr. Doe #3's wife admitted that she understands the wording of John Doe #3's registration requirements, but testified that "still there's just a gray area." She identified various requirements she did not understand, such as what parenting activities are permissible. S.F. Dep 71 ln 24 –72 ln 12-24, 87-88, 104-05, Exh 8.

875. Mr. Doe #4 understands the word "regularly" to mean something that you do often. Doe #4 Dep 84 ln 7-9, Exh 4.

876. Mr. Doe #4 does not have a vehicle of his own, but has been told by the police that if he borrows a car more than three times he must immediately report in person. Mr. Doe #4's colloquial understanding is that the term "regular use" of a vehicle should mean a vehicle he drives every day. Verified Compl, ¶ 218; Doe #4

Dep 84, Exh 4.

877. Mr. Doe #4, who does not have a phone of his own, states that he is unsure whether he must register his mother's telephone number if he uses her phone on occasion, such as to get messages from counsel. Verified Compl, ¶ 219.

878. Mr. Doe #5 understands "routinely" to mean "ordinary or regular." Doe #5 Dep 82 ln 8-11, Exh 5.

879. Mr. Doe #5 uses public transportation and does not drive. He does not want a car. Doe #5 Dep 63 ln 18—64 ln 2, Exh 5.

880. Mary Doe was uncertain whether she needed to register a vehicle she drives that belongs to her parents. When she asked her local police department, she was told she had to register a vehicle if she was driving it or if it was parked in her driveway. Mary Doe now understands that she needs to register her parent's vehicle if she uses it every day even if it is not titled in her name. Mary Doe Dep 41 ln 22–44 ln 11-25, Exh 6.

881. Mary Doe's everyday vehicle is titled in her parents' name, and the vehicle her husband drives is titled in her name. She understands that she must register both those vehicles. Mary Doe Dep 73 ln 13–74 ln 7-24, Exh 6.

882. Mary Doe does not think she can get a passport because she is a sex offender, but is not aware of any particular law that prohibits registered sex offenders from having passports. Mary Doe Dep 87 ln 5-18, Exh 6.

883. Mary Doe understands that she would have to register her passport if she obtained one. Mary Doe Dep 88 ln 14-22, Exh 6.

XVIII. STRICT LIABILITY AND IMPOSSIBILITY

A. The Strict Liability Provisions of SORA

884. Defendants admit that SORA makes plaintiffs strictly liable for failure to comply with certain requirements and prohibitions. Defs' Answers to First Req for Admis, No. 142-45, Exh 44.

885. SORA's penalty provisions include both strict liability provisions and "willful" violation provisions. M.C.L. §§ 28.729; 28.734, 28.735.

886. Defendants admit that under M.C.L. § 28.729(2), plaintiffs are strictly liable for violating the requirements of M.C.L. § 28.725a (other than payment of the fee). M.C.L. § 28.725a includes the requirement that plaintiffs report in person every three months, and the requirement that a registrant must get a new photo-graph taken within three days if the registrant's current photograph does not match the registrant's appearance sufficiently to properly identify him or her. M.C.L. § 28.725a(5); Defs' Answers to First Req for Admis, No. 142, Exh 44.

887. Defendants admit that M.C.L. §§ 28.734-28.735 makes registrants strictly liable for working, residing, or loitering in a geographic zone. Defs' Answers to First Req for Admis, No. 143-45, Exh 44.

B. Strict Liability Where Compliance Is Practically or Actually Impossible

888. Sgt. Payne testified that if a registrant were run over by a bus and hospitalized, the registrant would still be a violation of SORA for failing to register in person during the 15-day verification window. He believed such a person probably would not be charged. Payne Dep 105 ln 15—106 ln 5, 120 ln 5-13, Exh 17.

Plaintiffs object (continuing) to all testimony regarding what prosecutors would or would not prosecute. Speculation. Relevance: state law and state policy policy requires all non-compliant registrants to have a warrant. M.C.L. §28.728a(1)(d); MSP SOR Manual §6.2, Exh 83; MSP Sex Offender Registry and Enforcement Training Powerpoint 2011, 82, Exh 58.

889. As a prosecutor, Herbert Tanner would not charge a sex offender with failing to register if they had a good reason, such as being in the hospital. Even if they "just forgot" and were only 10 days late but not trying to evade the requirements, he would look at that and—even if it were a violation of the law—he would consider that in his prosecutorial discretion before "taking someone's liberty away from them again." Tanner Dep 59 ln 6—61 ln 14, Exh 21.

890. MSP does not provide guidance to local law enforcement on how to handle situations where registrants cannot verify in person due to age, disability, or similar factors. Rather, training materials state: "It is up to your agency to determine verification procedures when an offender is physically unable to verify his/her address. Hospital. Nursing Home. Mental Health Facility." MSP Training Powerpoint 2011, 50, Exh 58; L. Wagner Dep 76-77, Exh 18; Payne Dep 104-06,

Exh 17; Johnson Dep 337-38, Exh 15.

891. Defendants admit that registrants are strictly liable if they do not have a driver's license or personal identification card that matches their registry address, regardless of whether they can meet the Secretary of State's criteria for issuance of such identification. Defs' Answers to First Req for Admis, No. 141, Exh 44; MSP Official Order No. 79, 4, Exh 47; M.C.L. § 28.725a(7).

892. Since becoming homeless Mr. Doe #4 has been unable to comply with the SORA requirement that he maintain a driver's license or personal identification that matches the address he uses to register for SORA. The Secretary of State will not issue identification with "homeless" as an address. Mr. Doe #4, who is registered under SORA as homeless, cannot get a driver's license that matches his registration information. Doe #4 Dep 90 ln 5—91 ln 8, Exh 4; Verified Compl, ¶ 227; M.C.L. § 28.725a(7).

893. Mr. Doe #4 also has difficulty complying with the reporting requirements because he does not have a vehicle and cannot always arrange for transportation to update information within three days. Doe #4 Dep 99-100, Exh 4.

894. Mr. Poxson surveyed law enforcement agencies about registrants' reporting obligations with respect to travel. Respondents stated that registrants must have a destination address, must have an itinerary, and must report to local law enforcement each time they change locations. Poxson Decl 6, Exh 32. M.C.L. § 28.725

(1)(e) (requiring in-person reporting whenever registrants "intend[] to temporarily reside at any place other than his or her residence for more than 7 days").

Defendants object to this statement as hearsay.

895. Sgt. Payne testified that a registrant traveling across the country should stop in every state to check with local law enforcement to see what the requirements are, since they differ from state to state. A homeless registrant who was moving from place to place might need to register in person as often as every eight days. Payne Dep 90-92, Exh 17.

Defendants objected to these questions on grounds of lack of foundation and calling for a legal conclusion.

896. According to Ms. Wagner, a homeless registrant who is staying with different friends for short periods could have to report every eight days. L. Wagner Dep 62, Exh 18.

Defendants objected to these questions on grounds of lack of foundation and calling for a legal conclusion.

C. Enforcement Requirements and Prosecutorial Discretion

897. SORA provides that law enforcement "[s]eek a warrant for the individual's arrest if the legal requirements for obtaining a warrant are satisfied." M.C.L. §28.728a(1)(d).

898. I n response to letters from registrants regarding the difficulties of registration, the MSP SOR Unit explains that MSP is "obligated to obey and enforce the

Michigan Sex Offenders Registration Act. The Department does not have the legal authority to deviate from the requirements under the Act." Sample SOR Letter to Registrant, Exh 57.

899. MSP training materials state that "[e]very non-compliant offender should have a warrant." MSP SOR Manual §6.2, Exh 83; MSP Sex Offender Registry and Enforcement Training Powerpoint 2011, 82, Exh 58.

900. Ms. Johnson explained that slide from the training materials and testified that not every instance of non-compliance will result in a warrant being sought against the offender. The investigating officer is still responsible for establishing probable cause. The SOR Unit provides training that discusses bringing an offender into compliance as the priority instead of just assuming non-compliance. Johnson Dep 308 ln22—312 ln 1, Exh 15.

901. Trooper Burchell testified that a police officer finding an offender who is non-compliant would have discretion whether to arrest and could decide that the non-compliance does not warrant arrest. Burchell Dep 39 ln 15—40 ln 1, Exh 16.

902. When a registrant fails to verify for the first time, Trooper Burchell will call and determine if a legitimate reason exists, and will try to convince the registrant to comply. Burchell Dep 19 ln 17—20 ln 3, Exh 16.

903. In Mr. Tanner's experience, if an individual is not trying to evade registration requirements and just forgot to update their information or if they were in the

hospital, that—although not a valid legal defense—would be something that Mr. Tanner as a prosecutor would consider in the exercise of his prosecutorial discretion before bringing charges. Tanner Dep 60 ln 14—62 ln 11, Exh 21.

904. According to Mr. Tanner, if a registrant tries to comply with the registration requirements by, for example, trying to measure the 1000 foot distance, those attempts to comply could be considered by a prosecutor and, depending on all the facts and circumstances, "discretion could be exercised to say I'm not going to prosecute" even where a person is in violation of the law. Tanner Dep 98 ln 8—100 ln 2, Exh 21.

905. Mr. Tanner and Lt. Hawkins testified that there is always an element of discretion, not only at the local law-enforcement level, but the prosecutorial level as to which violations will be investigated and/or charged. Tanner Dep 96 ln 24—98 ln 7, Exh 21; Hawkins Dep 52 ln 17-22, Exh 19.

906. Sgt. Payne testified that in his experience, it is not unusual for law enforcement officers or prosecutors to make judgments about whether an act constitutes a crime. Payne Dep114 ln 20—115 ln 5, Exh 17; Burchell Dep 39 ln 15—40 ln 1, Exh 16.

D. Data on Specified Types of Non-Compliance

907. The prior SOR Data Management System flagged certain types of non-compliance by registrants, including failure to verify, non-payment of fees, and

missing forms. That system did not track other types of non-compliance, such as non-compliance with geographic zones. Johnson Dep 29 ln 6 – 34 ln 20, Exh 15.

908. Trooper Burchell testified that approximately 95% of offenders were compliant with the SORA requirements tracked by the prior SORA data management system. Burchell Dep Exh 33 ln 2-23, Exh 16.

909. MSP data from October 2012 showed that there were then approximately 2,894 registrants flagged as non-complaint within the SOR data management system. That represents approximately 10% non-compliance among the 27,000-28,000 "active" registrants who are not incarcerated or out of state. MSP News Releases on Sweeps, Exh 93; Johnson Dep 298-299, Exh 15.

XIX. THE EFFECTS OF LIFETIME REGISTRATION

A. Plaintiffs' Access to Housing

910. SORA 2013 bars plaintiffs from "residing" within 1000 feet of school property, making housing within those geographic zones unavailable as a matter of law. Plaintiffs are also prohibited from living with family members if those family members live within 1000 feet of school property. M.C.L. § 28.735.

911. According to plaintiffs' expert Dr. Levenson, national research shows that residential restrictions profoundly reduce housing options for registrants, increasing transience and homelessness, as well as preventing registrants from living with their families. Levenson Expert Rep 4, Exh 23.

912. Mr. Doe #1 stated that when he was released from prison, he had to live in a half-way house, although he had hoped to live with his family. He could not live with either his mother or his sister, because they both lived within 1000 feet of a school. He also could not live with another sister or his aunt because the MDOC does not allow registrants to live in homes with children. Verified Compl, ¶ 145; Doe #1 Dep 86, Exh 1.

913. Mr. Doe #1 stated that he was rejected by landlords because of his status as a registered sex offender. He stated that he was finally able to get an apartment when he had a friend lease a unit for him. Verified Compl, ¶ 146.

914. Mr. Doe #2 stated that when he was looking for apartments, he was rejected by landlords because he is a registrant. Verified Compl, ¶ 147; Doe #2 Dep 127-28, 145-46, Exh 2.

915. Mr. Doe #2 does not have criminal record and his dismissed HYTA case does not appear on a criminal background check. He attributes his difficulties finding housing to his status as a registrant.

> Even when I tried to get into an apartment, they gave me a readout of why they wouldn't let me live there, and it said national sex offender registry and up under it said, conviction information, none.

Doe #2 Dep 76, Exh 2.

916. Mr. Doe #2 stated that he asked his cousin for a place to stay. His cousin refused, stating that the neighbors would find Mr. Doe #2 on the registry, and

would then seek to have both Mr. Doe #2 and his cousin evicted. Verified Compl, ¶ 149.

917. Mr. Doe #2 stated that he could qualify for subsidized housing as a disabled military veteran. He identified a program that would have provided him with a Section 8 voucher for his own apartment, but individuals subject to lifetime sex offender registration are barred under federal law from subsidized housing. Verified Compl, ¶ 150; 42 U.S.C.A. § 13663.

918. Mr. Doe #3 and his wife testified that in antcipation of their third child, they wanted to move their family to a larger home. They restricted their search to houses that were more than 1000 feet of a school. The home they purchased cost $25,000 more than bigger homes they wanted to purchase that were in the prohibited geographic zones. Verified Compl, ¶ 159; S.F. Dep 11-14, 85, Exh 8; Doe # 3 Dep 125-31, Exh 3.

919. Mr. Doe #4 stated that he lost his home to foreclosure after he lost his job when his employer found out he was on the registry. Verified Compl, ¶ 152.

920. Mr. Doe #4 testified that when he has tried to rent an apartment, he has been denied due to his status as a registrant. He also states that he tried to rent a room from friends, but they refuse because he is on the registry. Verified Compl, ¶ 153; Doe #4 Dep 33-35, 39, Exh 4.

921. For a time after his conviction Mr. Doe #4 was registered at his mother's

address. He testified that after an anonymous caller reported that he was on the registry, his mother was threatened with eviction unless he moved out, so he left. Verified Compl, ¶ 154; Doe #4 Dep 39, 97-98, Exh 4.

922. Mr. Doe #4 then lived with his sister, but had to leave after "the marshals went over there, I guess, for a sweep." It is Mr. Doe #4's understanding that his sister would have been evicted if he had not left. Doe #4 Dep 98 ln 6—99 ln 9, Exh 4.

923. Mr. Doe #4 testified that he had been able to live with both his mother and his sister despite having a felony conviction, but was forced to leave immediately in both cases once the landlord learned he was a registrant. Doe #4 Dep 39, 97-99, Exh 4. Verified Compl, ¶ 154.

924. I.G., who is a leasing agent, testified that apartment complexes are unwilling to rent to registrants. In her job, she not only screens potential tenants on the sex offender registry, but also gets automated updates if someone registers using an address at her complex. In addition, other residents sometimes inform her that they have found out through registry phone or email alerts that another tenant is on the registry. She then starts the eviction process. Her complex rejects all applicants who are on the sex offender registry, even if they only have misdemeanors. I.G. Dep 77-81, Exh 7.

925. Mr. Doe #4 testified that he does not stay with his mother or sister for

more than several days at a time because then he would have to register their addresses, and he is concerned that his family members could get evicted. Verified Compl, ¶ 157; Doe #4 Dep 39, Exh 4.

926. Mr. Doe #4 testified that in the previous eight to nine months before his deposition, Mr. Doe #4 had unsuccessfully tried to rent a room. Since getting a job, he has not looked for an apartment of his own, due to his prior experiences looking for housing while on the registry. Doe #4 Dep 38 ln 21-23; 39 ln 12—40 ln 4, Exh 4.

927. Mr. Doe #4 was homeless when the Complaint was filed, and remains homeless. Verified Compl, ¶ 156; Doe # 4 Dep 35, Exh 4.

928. Mr. Doe #5 was able to live wherever he wanted for 33 years after he was convicted. When he was retroactively added to the registry, he became subject to the geographic zones. Doe #5 Dep 77, Exh 5.

929. Mr. Doe #5 testified that he does not understand why he could no longer live near a school and was forced to move out of his apartment, given that "[m]y case was dealing with an adult or someone of age." Doe # 5 Dep 67, Exh 5; Verified Compl, ¶ 360.

930. In 2010, before Mr. Doe #5 was on the registry, he began receiving Section 8 federal housing assistance. Mr. Doe #5 states that his 1980 conviction for a

sex offense did not disqualify him for such assistance when he applied in 2010. Doe #5 2nd Decl, Exh 29.

Defendants object to this paragraph because is a conclusory statement from his own declaration.

931. In November 2013, Mr. Doe #5 received a notice that his federal housing assistance was being terminated because he is now subject to lifetime sex offender registration. Mr. Doe #5 stated that the termination notice he received was based on his lifetime registration status, not his conviction. Doe #5 2nd Decl, Exh 29.

Defendants object to this paragraph because is a conclusory statement from his own declaration.

932. Federal law prohibits individuals who are subject to lifetime sex offender registration from admission into the Section 8 housing assistance program. 42 U.S.C.A. § 13663.

933. Mr. Doe #5 stated in his declaration that he fears that without voucher assistance he will not be able to afford an apartment and will become homeless. Doe #5 2nd Decl, Exh 29.

934. According to Mary Doe, she and her husband rented a home from a distant cousin, but when the cousin lost the home to foreclosure, the bank notified the family that they might be forced to vacate on short notice. Mary Doe stated that despite an exhaustive search, Ms. Doe and her husband were unable to find alternate affordable housing that was not within a restricted zone. Eventually, Ms. Doe

and her husband negotiated with the bank to let them remain in the home. Verified Compl, ¶¶ 158-59.

B. Plaintiffs' Ability to Find Employment

935. SORA 2013 bars the plaintiffs from working within 1000 feet of school property. M.C.L. § 28.735.

936. Under SORA 2013 employer address information is posted on the public sex offender registry. M.C.L. § 28.728(2)(d); Verified Compl, ¶ 178.

937. As of October 30, 2013, MSP data showed that 13,494 registrants – or less than half of non-incarcerated registrants living in Michigan – reported having any employment. Johnson Dep 298-300, Exh 15. Defs' 2nd Supp. Resp to Pls' First Interrog, No. 15b, Exh 98.

938. Mr. Doe #1 has repeatedly lost employment opportunities because he is a registered sex offender. When he was first released from prison, he participated in a reentry program designed to help him find employment. Verified Compl, ¶ 162; Doe #1 Dep 86-87, Exh 1.

939. Mr. Doe #1 actively sought work and flagged potential jobs off employment lists, but his case manager told him repeatedly that those employers would not hire registrants. The occupations where he was denied employment included garbage collection and fast food restaurants. Verified Compl, ¶ 163.

940. Mr. Doe #1 tried to open his own business as a subcontractor on a home

preservation project to restore foreclosed homes. Mr. Doe #1's parole agent required him to close the business because many contracting jobs are within restricted geographic zones. Verified Compl, ¶ 164.

941. Mr. Doe #1 was hired by the organization that ran his reentry program for its programs for special needs adults, and he has been employed there since. Verified Compl, ¶ 165.

942. Mr. Doe #2 need not list his sealed HYTA case on job applications asking whether he has a criminal record. However, employers refuse to hire him when they find out that he is on the registry. Due to his registry status he was unable to work as a firefighter, at Home Depot, and in various Department of Defense positions. Verified Compl, ¶ 166; Doe #2 Dep 139, Exh 2.

943. Mr. Doe #2 stated that he hoped to start a program mentoring at-risk youth by engaging them in construction projects. He was unable to do so because his status as a registered sex offender would have made it impossible for him to work with youth. Verified Compl, ¶ 167.

944. Mr. Doe #3 is a co-owner of a family business, and has worked there for many years. Although he is employed now, he is concerned that if he were unable to continue working in the family business, his status as a registrant would prevent him from finding another job. Verified Compl, ¶ 168.

945. Mr. Doe #4 worked at an auto parts factory at the time of his offense and

for much of the time he was on probation. Mr. Doe #4 stated that he did well, repeatedly earning raises over a three-year period. Verified Compl, ¶ 170.

946. Mr. Doe #4 stated that in 2008, an anonymous caller informed the factory's management that Mr. Doe #4 was listed on the sex offender registry. Mr. Doe #4's boss showed him a print-out from the registry and fired him. He was escorted off the premises by security. Verified Compl, ¶ 171; Doe #4 Dep 27-29, Exh 4.

947. Mr. Doe #4 stated that he could not pay his bills after he was fired. As a result, he lost his home to foreclosure, and his car was repossessed. Verified Compl, ¶ 173.

948. Mr. Doe #4 had great difficulty finding work thereafter because, in his experience, few employers are willing to hire registrants. Verified Compl, ¶ 174.

Defendants object to this statement from the verified complaint on the grounds that it is conclusory.

949. Mr. Doe #4 stated that he found a job with a finishing company and worked there for about six months. Then the newspaper *Busted*, which republishes photos and information from the sex offender registry in a newsprint format, published the registry listing for Mr. Doe #4. He was fired from his job the day after *Busted* appeared in the break room at work. He tried to explain the circumstances of his offense, but "they didn't want to listen." Doe #4 Dep 30-31, Exh 4; Verified

Compl, ¶ 175; Doe #4 *Busted* Newspaper, Exh 69.

Defendants object to these statements from the verfied complaint on the grounds that they are conclusory.

950. Mr. Doe #4 stated that he was offered a factory job by a staffing agency, but the factory was within 1000 feet of a school, so he could not accept. Verified Compl, ¶ 176.

951. Mary Doe earned a degree in medical billing and was placed in an externship through her career services office. She stated that although the host organization was pleased with her work, the employer was concerned about hiring her because the employer's information would be posted on the registry. Verified Compl, ¶ 178.

Defendants object to the statement from the verfied complaint about concerns over hiring Mary Doe on the grounds that they are conclusory and hearsay.

952. When Ms. Doe worked in a previous medical billing job, someone told her employer she was on the registry, and she was terminated the next day. Ms. Doe's current employer does not know she is on the registry, and Ms. Doe believes she would be fired if the employer found out. Mary Doe Dep 114, Exh 6.

C. Reporting and Verification

953. Not every law enforcement agency in Michigan handles sex offender registration, and some registrants must travel to report. Lines to register can be "upwards of a 100 people." Johnson Dep 101-02, 212, Exh 15.

954. Mr. Doe #2 testified that registration took two hours at the location where he used to register. Mr. Doe #2 overheard someone say that it was quicker to register at another location. At the new location, it currently takes Mr. Doe #2 about 20 minutes to register. Doe #2 Dep 75, 140-141, Exh 2.

955. Mr. Doe #3 has had to report several vehicle purchases in-person within three days. He must take off work and the registration process at the police station can take an hour: "It's a long process just for something so simple." Because his police station is only open three to four hours a day, with a different schedule depending on the day of the week, Mr. Doe #3 sometimes goes to register only to find that the office is closed and he will have to come back. Doe #3 Dep 77-79, 120-21, Exh 3.

956. The first time John Doe #5 registered at the local police station, it took approximately 30 minutes. Doe #5 Dep 59 ln 13-15, Exh 5.

957. Ms. Doe, who has completed 40 quarterly registrations, used to report at a police station that was open on the weekends. After moving, she now reports to a station that is only open on weekdays, and must take off work to register: "I might be gone two hours, it's not an easy thing to do every three months with an employer." The actual registration process, not counting travel time, can take 45 minutes, and is embarrassing because she must speak loudly through bulletproof glass or through a speaker, allowing other people to hear that she is a registered sex offen-

der. Mary Doe Dep 51, 106-07, Exh 6.

958. Michigan has purchased, but not yet started using, OffenderWatch Express, a product that would allow registrants who have computer access to log into any internet-connected computer and enter information, which "save[s] time on data entry of the actual law-enforcement agency." Johnson Dep 204-10, Exh 15.

959. OffenderWatch Express' marketing materials claim that it has the potential to reduce the amount of data-entry time at the station-house to less than three minutes. Registrants would need to pre-enter the data, and would need to travel to the law enforcement agency and possibly wait in line to register in person. OffenderWatch Express Description, Exh 51; OffenderWatch Contract 17, Exh 52; Johnson Dep 204-10, Exh 15.

960. Ms. Johnson testified that law enforcement "simply take[s] the registrant's word for it" when they report registration information, with the exception of residence information, where the police may require documentary proof. She further testified that there is no reason "other than that the law requires it" that registrants must appear quarterly in person to update information that they could provide online. Johnson Dep 205 ln 19—206 ln 15; 208 ln 4—210 ln 22, Exh 15; OffenderWatch Express Description, Exh 51; OffenderWatch Contract 17, Exh 52.

961. At present SORA requires in–person reporting. M.C.L. §§ 28.724a, 28.725. Lt. Hawkins "speculate[d]" that in the future there might be changes to the

in-person reporting requirement when the MSP has the capability to do that. Hawkins Dep 47 ln 17—48 ln 18, Exh 19.

962. Lt. Hawkins testified that being able to register by e-mail would be more convenient, but would require a statutory change and would not necessarily alter any other SORA restrictions or change the information registrants are required to provide. Hawkins Dep 70 ln 13-21, Exh 19.

D. Enforcement of SORA

963. MSP data from 1994 through part of 2013 shows that over 10,000 felony-level charges have been brought against registrants for various registration violations, along with almost 7,000 misdemeanor charges. There have been over 6,000 felony convictions and over 9,000 misdemeanor convictions. MSP SORA Charging Data, Exh 45; MSP SORA Conviction Data, Exh 46.

964. Between 2006, when the geographic zones were enacted, and 2013, over 600 people were charged with and over 450 people were convicted of geographic zone violations. MSP SORA Charging Data, Exh 45; MSP SORA Conviction Data, Exh 46.

965. The MSP, county sheriff's offices, the U.S. Marshalls, and local law enforcement agencies regularly engage in a variety of sweeps to determine SORA compliance. These operations include: (a) random residence checks to "just randomly knock on the door of offenders to make sure they are in fact staying where

they are reporting they are staying;" Payne Dep 71-78, Exh 17; (b) operations targeted at registrants who are "noncompliant;" Burchell Dep 36-42, Exh 16; (c) "absconder sweeps;" Johnson Dep 155-57, Exh 15; and (d) other types of sweeps. For at least ten years, the MSP has annually run "Operation Verify" to locate registrants deemed non-compliant. MSP SOR Manual §3.3.12, Exh 83; MSP Memo re Operation Verify, Exh 87.

966. Registrants can be non-compliant for various reasons, including missing a verification period or failing to pay a fee or turn in a form. Sweeps are not limited to individuals who fail to verify. Payne Dep 76, Exh 17; Burchell Dep 39, Exh 16.

967. The Public Sex Offender Registry includes a "submit a tip" button on each registrant's page. Information provided by the public through that system is sent to the registrant's local law enforcement agency for follow-up. Johnson Dep 131-33, Exh 15; Doe #2 PSOR Print-Out, Exh 64.

968. Both the former SOR database and the new OffenderWatch database include investigative screens for each registrant, which are used to document citizen tips, track follow-up law enforcement actions, and track the progress of investigation into registrants. SOR Unit Manual § 3.3.13, Exh 83; OffenderWatch User Manual 44, Exh 50; Johnson Dep 255, Exh 15.

969. Mr. Doe #1 reported that when officers come to his home to do random residence checks, they sometimes talk to his neighbors to ask if Mr. Doe #1 lived

there. It is not clear from Mr. Doe #1 deposition testimony whether or not the officers revealed his registration status. Doe #1 Dep 85-86, Exh 1.

970. When the police come to Mr. Doe #3's home for residence checks, he and his wife have to try to explain to his children, as well as the neighbors, why the police are there asking for him.

> Mom, there's a police officer at the door. So unprofessional[]. Knocking – banging on the door… and he'll come to the door, and them driving by down the street and saying, just making sure. Really? My neighbors questioning, why was there an officer at your door? Scaring my children. I mean, there are other ways of handling this.

The officers do these sweeps multiple times a year, and have come in the early morning when the family is sleeping, and shouted out Mr. Doe #3's name, being "very aggressive." S.F. Dep 23-24, 45-51, Exh 8; Doe # 3 Dep 126-27, Exh 3.

971. Mr. Poxson reported that when he was on the registry, the police would come to his home to verify that he lived there, sometimes showing up as late at 11:30 p.m. They would ask to come in and look around, and required him to provide two forms of identification. Poxson Dep 68-69, Exh 14.

> **Defendants object to the relevance of this statement on the grounds that Mr. Poxson is not a plaintiff and he was no longer required to register when SORA 2013 was enacted.**

972. In Mr. Doe #3's experience, the SOR system can show a registrant as non-compliant when they are in fact compliant. He and his children were pulled over by a police officer who claimed that he was noncompliant. Mr. Doe #3 was "begging

this [officer] in front of my children," explaining that he had in fact registered. Doe #3 Dep 110-12, Exh 3.

973. S.F. testified: "I never want my husband being arrested in front of his children for something that had happened when he was a teenager." Eventually the officer determined that while the state police records indicated Mr. Doe #3 had failed to register, a local police verification receipt, that Mr. Doe #3 had with him in the car, showed he was in fact compliant. S.F. Dep 23, Exh 8.

Defendants object to the first sentence of this paragraph on the grounds that it is irrelevant and conclusory.

974. Plaintiffs contend that the fact that they are now required to register for life increases the likelihood that they will be arrested for, prosecuted, or convicted of a SORA-related offense.

975. An MSP trainer said at an OffenderWatch training for law enforcement agencies: "Maybe we don't get them for the violation that day, but [we] got the rest of their lives to, you know, basically finally get them." OffenderWatch Training Video, Disk 4, Part 1, Minute 20:25, Exh 68.

E. Supervision Requirements Compared to Probation and Parole

976. Parolees do not have to report some of the information required of registrants, such as phone numbers or vehicles they regularly use. SORA also automatically imposes restrictions on employment and residency within geographic zones. MDOC conditions that restrict residency or employment are generally

tailored to the individual's circumstances. SORA requirements apply for 15 years to life. Parole restrictions typically last two years. SORA requirements do not decrease over time and cannot be contested. Probation/parole conditions are frequently relaxed during the course of supervision and can be challenged through the MDOC grievance procedures. Stapleton Expert Rep, 1, 7-8, Exh 28; Stapleton Dep 73-75, 104-05, Exh 13.

977. Plaintiffs reported that SORA 2013's reporting and supervision requirements are more onerous than what they experienced while serving their sentences on probation or parole, both because they must report more information and because they must report certain changes in person within three business days – a level of reporting that exceeds what plaintiffs experienced on probation or parole. Verified Compl, ¶¶ 122-125.

Defendants object to this statement from the verified complaint on the grounds that it is conclusory.

978. Mr. Doe #1 testified: "I feel like I'm still on parole… each day it's like I'm still on parole… So I still feel as though I'm not free..." Doe #1 Dep 87, Exh 1.

979. Mr. Poxson testified that "when you had police showing up at your house and you had to go in and report to the police, to me it was just another form of probation," except that it was "worse than probation." Having experienced both probation and sex offender registration, Mr. Poxson testified that "without

question" registration was more punitive. Moreover, after he proved himself on probation, his reporting requirements decreased very substantially to almost nothing. By contrast, his reporting requirements on the registry increased over time. Poxson Dep 65-72, Exh 14.

Defendants object to the relevance of this statement on the grounds that Mr. Poxson is not a plaintiff and he was no longer required to register when SORA 2013 was enacted.

980. As a former police officer, Mr. Poxson testified that law enforcement officers view sex offender registration as a form of probation. When he made a complaint to the Ingham County Sheriff regarding residence checks, he was told by the sheriff that "we check on probation and parole people all the time and you're just the same, a registrant is just the same." Poxson Dep 69-72, Exh 14.

Defendants object to this statement on the grounds that it is speculation and hearsay, and Mr. Poxson lacks the foundation to describe how law enforcement officers view registration as compared to parole under SORA 2013.

F. Plaintiffs' Access to Education

981. Mr. Doe #2 stated that he wanted to pursue a degree as a medical assistant. When he applied to such a program at the Everest Institute, he was denied because he was on the registry. Because Mr. Doe #2's HYTA case is sealed, the Everest Institute would not have known of his history but for the fact that Mr. Doe #2 is on the registry. Verified Compl, ¶ 181; Doe #2 Dep 139-40, 142-45, Exh 2.

Defendants objected to questions about what Everest Institute would

have known on the grounds of calling for speculation and lack of foundation.

982. Mr. Doe #2 was eventually able to earn a degree as a medical assistant through another institution. He then wanted to become a cardio-vascular stenographer. That degree requires clinical courses. Because of Mr. Doe #2's status as a registered sex offender, he is not allowed to take clinical courses, and could not pursue his chosen degree. Verified Compl, ¶ 182; Doe #2 Dep, 15-17, Exh 2.

Defendants object to the statement about clinical courses on the grounds that this statement from the verified complaint is conclusory, and is not a requirement of SORA.

983. Mr. Doe #3 enrolled in college in 2005. When he learned that he had to report attending college, he feared that his classmates would find out that he was a registrant, and dropped out of school rather than risk facing hostility. Verified Compl, ¶ 183.

984. Mr. Doe #4 was rejected by several GED programs because he is a registered sex offender. With the assistance of his probation officer, Mr. Doe #4 was eventually able to identify a GED program that accepts registrants, and completed his GED. Verified Compl, ¶¶ 184 185; Doe #4 Dep 5, Exh 4.

G. Plaintiffs' Ability to Travel

985. Plaintiffs must provide advance notice when they intend to travel anywhere for seven days or more, and must inform the police where they are going, where they will stay, how long they will be there, and when they will return.

M.C.L. § 28.725(1). Twenty-one days advance notice is required for travel outside the U.S. for more than seven days. M.C.L. § 28.725(7).

986. If the plaintiffs travel, they must comply with any applicable sex offender laws in other jurisdictions. According to plaintiffs' expert, Dr. Prescott, because sex offender laws are complex and vary from state to state, it is difficult to obtain information about either affirmative reporting obligations (such as registering one's presence in a state) or restrictions (such as prohibitions on visiting a library or park) in other jurisdictions. He surveyed sex offender laws across the country, and concluded that "there is incredible variety in the procedures and substantive obligations across the states." An attachment to his report provides examples from different jurisdictions. *See* Prescott Expert Report, 11, and Attach A, Exh 22.

987. Mr. Doe #1, Mr. Doe #2, and Mary Doe all reported limiting travel to no more than six days at a time, because otherwise they would be required to notify law enforcement in person about their travel plans. Verified Compl, ¶ 191-198.

988. Mr. Doe #3 took his wife on a four-day getaway to a resort in Mexico in 2011 to celebrate her university graduation. On their return, border agents separated him from his wife, interrogated him for hours, and asked questions about his sex offender status. Mr. Doe #3 is now reluctant to travel outside the U.S. Verified Compl, ¶ 196; Doe #3 Dep 94-97, Exh 3; S.F. Dep 33-34, Exh 8.

989. Ms. Doe once took a wrong turn while driving in Detroit, and accidentally

got into a traffic lane leading to the tunnel to Canada. She had to go back through the U.S. border checkpoint. Because of Ms. Doe's status as a registrant, border agents demanded that Ms. Doe and her family get out of the vehicle. The agents searched the car, interrogated Ms. Doe, her husband, and her daughter separately, and suggested that Ms. Doe was abducting her daughter. The family was eventually released. Verified Compl, ¶¶199-200.

Defendants object to the statement about the border agents' motivations or statements, as those allegations from the verified complaint are conclusory or hearsay.

H. The Effects of Public Registration

990. As of May 22, 2013, there had been over 12,568,000 visitors to Michigan's Michigan Public Sex Offender Registry (PSOR) website. Defs' Responses to Pls' 1st Interrog, No. 10, Exh 42.

991. The old data management system showed the current number of visitors on its website. (http://www.mipsor.state.mi.us, last visited 12/19/2014, at which time the counter showed 14,373,268 visitors.) The record does not indicate whether this number represents unique vistors, or if it includes page views from non-unique visitors. The OffenderWatch website does not publicly show the number of visitors. OffenderWatch Home Screen, Exh 118.

992. Michigan's sex offender registry website posts personal information about each plaintiff, including residential address, employer address, date of birth, school

information, vehicle information, physical description (weight, height, etc.), and a photograph. M.C.L. § 28.728(2); Doe #2 PSOR Print-out, Exh 64; Doe #2 OffenderWatch Page, Exh 120.

993. The public registry website lists each registrants' tier classification. All of the plaintiffs are classified as Tier III offenders. *See, e.g.*, Doe #2 PSOR Print-Out, Exh 64; Doe #2 OffenderWatch Page, Exh 120.

994. The home page for OffenderWatch states that the registry is intended to prevent crimes by "convicted sex offenders." OffenderWatch Home Screen, Exh 118.

995. The OffenderWatch page for Mr. Doe #1 lists the date convicted and the state of conviction. Doe #1 OffenderWatch Page, Exh 127. Mr. Doe #1 was never convicted of a sex offense. Verified Compl, ¶ 208

Defendants object to the last sentence of this paragraph as conclusory. Also, this statement is not accurate or complete because Mr. Doe #1 was convicted of a "listed offense" under SORA.

996. The OffenderWatch page for Mr. Doe #2 lists the date convicted and the state of conviction. Doe #2 OffenderWatch Page, Exh 120. Mr. Doe #2's case was dismissed without conviction under HYTA. Verified Compl, ¶ 209, Doe #2 Dep 138, Exh 2; Doe #2 Criminal History Print-Out, Exh 63.

997. Mr. Doe #4 states that he received an anonymous death threat by mail in 2010. He received an envelope containing a print-out of his sex offender registry page. His eyes were blacked out on the photo. Handwritten on the paper were the

words "You will die." Mr. Doe #4 also states that he has been called a child molester on the street. Doe #4 Death Threat, Exh 70; Verified Compl, ¶ 213.

Defendants object to this statement from the verified complaint and the alleged threat the grounds that allegation is conclusory, and the supposed threat is hearsay. Further, there is nothing beyond Mr. Doe #4's own testimony establishing that this threat was actually sent to him instead of having been created by him.

998. Mary Doe testified that a vigilante came to her home when she was not home, but her husband was, and inquired about her status on the registry. Ms. Doe, who believed the man was "threatening my family," reported the incident to the police to "find out what rights I had, and I found out I had none" and that the police "couldn't do anything about it." Mary Doe Dep 97-98, Exh 6.

Defendants object to this paragraph on the grounds it is entirely based on statements Mary Doe's husband made to her. Mary Doe lacks personal knowledge of this event.

I. Additional Restrictions Triggered By Plaintiffs' Status as Registrants

999. Because the plaintiffs are required to register as sex offenders under SORA 2013, they will be subject for life to an array of laws, other than SORA, imposed on registrants by the federal government, other state or tribal governments, and local municipalities. Prescott Expert Report, 11-12, Attach A, Exh 22.

1000. A compendium of some state laws (which does not include federal, tribal, or local laws, and which disregards many of the more minor requirements) contains over 1000 pages of obligations and restraints. *Id.* at Attach A, 9.

1001. According to Dr. Prescott, because registration in one state generally triggers registration in other states, the fact that plaintiffs are subject to Michigan's SORA makes them subject to sex offender laws in other jurisdictions if they travel or move. *Id.* at Attach A, 1.

J. Plaintiff's Allegations that Their Alleged Harms Are Attributable to SORA

Defendants object to these paragraphs as repetitive and cumulative.

1002. Doe #2's case was dismissed under HYTA and he does not have a criminal record that would appear on a background check. Mr. Doe #2 alleges that he has suffered consequences stemming from the fact that the state publicly labels him as a registered sex offender. Verified Compl, ¶ 35; Doe #2 Dep 61, 66, 76, 127-28, 137-39, 145-46, Exh 2; Doe #2 MSP Criminal History Print-out, Exh 63; Doe #2 Public Sex Offender Registry Print-out, Exh 64.

1003. Plaintiffs testified to situations where they were able to access housing or employment despite having criminal records, but then lost that housing or employment when the landlord/employer learned they were on the sex offender registry. *See*, *e.g.*, Doe #4 Dep 27-29, 30-31, 39, 97-98, Exh 4; Doe #5 Dep 77, Exh 5; Doe #5 2nd Decl, Exh 29; Mary Doe Dep 114, Exh 6.

1004. As Mr. Poxson testified, his life changed significantly after he came off the sex offender registry, even though he continues to have criminal record. Mr. Poxson explained that much more information is available on the registry, and that,

unlike with the sex offender registry, criminal history information is available only if one knows a person's name and date of birth. For him, being a registered sex offender was the worst experience of his life, other than the death of his ten-year-old daughter. Poxson Dep 18, 70-74, Exh 14.

Defendants object to this paragraph as irrelevant because Mr. Poxson is not a plaintiff, and his opinions do not constitute harms alleged by the Plaintiffs. The statement about Mr. Poxson's daughter is also irrelevant and has no bearing on any fact at issue in this case.

XX. THE ANNUAL FEE REQUIREMENT

1005. In 2013, while this case was pending, Michigan enacted new legislation requiring non-incarcerated registrants to pay a $50 annual fee (capped at $550). The requirement applies retroactively to all registrants. Mich. Pub. Act 149 (2013); M.C.L. § 28.725a (eff. 4/1/14).

1006. An indigent registrant may seek a temporary waiver of the fee by proving indigency to the satisfaction of the local law enforcement agency. A registrant who is unable to pay must prove indigency every 90 days. The statute defines "indigent." M.C.L. §§ 28.722(h); 28.725b(3); Johnson Dep 275-77, Exh 15.

1007. In March 2014, the MSP sent a mass mailing notifying registrants of the due date for the new annual fee. The letter does not inform registrants that they can seek a temporary waiver based on indigency. MSP Annual Fee Letter, Exh 126.

1008. The MSP trains law enforcement that they "may charge an offender with a 90-day misdemeanor for refusing to pay the registration fee … after claiming one instance of indigence." MSP Official Order 79, 6, Exh 47.

1009. Willful refusal or failure to pay the fees is a misdemeanor, punishable by imprisonment for not more than 90 days. M.C.L. § 28.729(4).

1010. The annual fee was adopted after Ms. Johnson recommended to the budget office that SORA include an annual fee similar to that in some other states. The record does not show how many states do or do not impose charges on registrants, how much those charges are on average, or how Michigan's charges compare. All the states surrounding Michigan have an annual fee, and Ms. Johnson testified that there are states that charge $100 or $250 a year. Johnson Dep 215 ln 18—216 ln 21, 350 ln 18-22, Exh 15; Hawkins Dep 62 ln 11-14, Exh 19.

1011. The annual fee was a legislative priority for the MSP because of budget concerns. Hawkins Dep 13 ln 22—14 ln 9, Exh 19. Federal funding was diminishing, there was a concern about financially supporting the SOR system, and there was a need to cover budget shortfalls resulting from the purchase of the $2-millon-dollar OffenderWatch system. The additional fee revenue will be used to offset the loss of grant funding and other budget shortfalls. Johnson Dep 201-201, 214-219, Exh 15; Hawkins Dep 62 ln 11-14, Exh 19.

1012. The annual fee was not created solely to pay for OffenderWatch, and the fee change would have been sought whether or not OffenderWatch was purchased. The purchase process for OffenderWatch was started well prior to any discussion of changing the fee structure. However, the annual charge was needed to cover budget shortfalls when the decision was made to purchase OffenderWatch and in light of declining federal funding. Johnson Dep 199 ln 2-8; 216 ln 15-21; 218 ln 7-22; 350 ln 23—351 ln 4, Exh 15.

1013. Ms. Johnson estimated that 50-60% of registrants would pay the fee. Johnson Dep 280-83, Exh 15; Senate Fiscal Agency Analysis for S.B. 221, Exh 76.

1014. As of September 6, 2013, 16,980 registrants had not paid what was at that time a one-time registration fee of $50. Johnson Dep 42 ln 21-24, Exh 15.

1015. The fee structure which had been in place since 2004 (when fees were first imposed) provided approximately $90,000 per year to the MDP for operation of the SOR database and $60,000 to local law enforcement agencies for enforcement. With the new annual fee, estimates are that the MSP will receive up to $420,000 and local agencies will receive $280,000. These figures do not account for fees not collected from indigent offenders. Senate Fiscal Agency Analysis for Senate Bill 221, at 1, Exh 76.

1016. For each $50 fee, $30 goes to the sex offenders registration fund held at the Department of Treasury and $20 of the fee is retained by the local law enforcement agency that collects the fee. Johnson Dep 282 ln 1-6, Exh 15.

1017. Michigan's SORA amendments provide a "sunset" provision for the annual fee requirement. The annual fee does not cover the entire cost of the registry. Hawkins Dep14 ln 17—15 ln 11; 99 ln 3-9, Exh 19.

XXI. SYSTEM COSTS AND THE MECHANICS OF REGISTRATION

A. The Cost of Michigan's Sex Offender Registry

1018. The total cost of Michigan's sex offender registry is unknown. Neither the legislature nor the State Police have conducted any study of the cost of setting up and operating the registry. Hawkins Dep 18-19, Exh 19.

1019. The budget of the SOR unit is between $1.2 and $1.5 million. Johnson testified that the unit's annual budget is about $1.2 million, of which $600,000 is for database support and $600,000 is for staff, supplies, training, and other expenses. Fiscal year 2014 documents show the budget as almost $1.5 million. Johnson Dep, 215 ln 19-21, 283 ln 12-15, 284, Exh 15; Fiscal Year 2014 SOR Unit Budget, Exh 67; Senate Fiscal Agency Analysis for Senate Bill 221, at 2, Exh 76.

1020. The SOR Unit has a 14-person staff. Roster of SOR Unit Staff, Exh 55.

1021. The SOR Unit budget does not include any of the costs imposed on local law enforcement agencies, on the Department of Corrections (which handles

registration and supervision of registrants on parole/probation), or on the court system. Johnson Dep 284, Exh 15; Fiscal Year 2014 SOR Unit Budget, Exh 67.

Defendants object to the relevance of this paragraph on the grounds that the Headlee claim has already been dismissed by Order of this Court.

Plaintiffs state: this paragraph is relevant to determining the true cost of SORA, which is much greater than simply the SOR Unit budget.

1022. Plaintiffs contend that the SOR Unit budget does not include the cost of incarcerating registrants who are convicted for failure to comply with SORA. The estimated daily cost for a prisoner in the MDOC is approximately $94 per day. State of Michigan Prison Costs, Exh 90. The average cost of housing an inmate in a Michigan county jail varies from county to county, but is approximately $70 per day. *Regional Jail Feasibility Study* 223, Exh 89.

1023. Since 1997, approximately 2,000 new registrants have been added to Michigan's registry each year, with the exception of 2011-12, when some registrants (such as youth under age 14) were removed. There were approximately 17,000 registrants in March 1997, and approximately 40,000 registrants in January 2013. Legislative Services Bureau Report on SORA, Exh 92; Total Number On SOR By Year, Exh 53; Mich. Pub. Act. 17-18 (2011).

B. Registration Occurs Prior to or as Part of Sentencing and Involves Multiple Law Enforcement Agencies

1024. Sex offender registration is supposed to occur prior to sentencing. A

judge cannot sentence unless the defendant has been registered. M.C.L. § 28.724 (5); Yantus Dep 58-59, Exh 20.

1025. The current Judgment of Sentence form approved by the State Court Administrative Office contains a checkbox to show that sex offender registration has been completed. Judgment of Sentence Form CC 219b, box 3, Exh 84.

1026. Depending on when a defendant was sentenced, the requirement for sex offender registration may have been written on an earlier version of the Judgment of Sentence form or on a probation order. *See, e.g.*, Doe #2 Order Amending Probation, Exh 85; Doe #3 Order of Probation, Exh 86.

1027. For offenses not specifically listed in SORA as requiring registration, the judge must determine whether the offense is by its nature a sexual offense against a person under the age of 18, and then include a finding that registration is required on the judgment. M.C.L. § 769.1(13); Yantus Dep 58-59, Exh 20.

1028. Depending on the defendant's sentence, responsibility for initial registration can lie with a probation agent, parole agent, the MDOC, the sheriffs' department, the probate court, or other entities. M.C.L. § 28.724; Johnson Dep 26-27, Exh 15.

1029. The MSP SOR unit has established procedures for initial registration, periodic verification, and updating of registration information. A new registrant must (a) fill out a registration form, and (b) sign an Explanation of Duties Form.

Johnson Dep 22-24, 53, Exh 15.

1030. The Michigan Department of State provides digitized state identification photos (e.g. driver's license photographs) for use on the public website. Johnson Dep 85 ln 9—89 ln 1, Exh 15.

1031. For their ongoing verification and immediate reporting requirements, registrants must report to their "registering authority," defined as 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 [MSP] post designated to receive and enter sex offender registration information." M.C.L. § 28.722(n).

1032. Information that changes as result of registrants' ongoing verification and reporting requirements (*e.g.*, updating address, employment, phone number, email address, etc.) is generally entered directly by local law enforcement via their own office computers. A local law enforcement agency can also mail or fax updated information to the SOR unit in Lansing. Johnson Dep 19, 24-27, 72-73, Exh 15; SOR Manual § 8.3, Exh 83.

1033. Hard copies of registration receipts are supposed to be provided to registrants, so that if a question arises or a computer error occurs, the registrant can prove that he or she reported. Johnson Dep 19, 75, Exh 15.

C. Sex Offender Registration and Plea Negotiations

1034. Plaintiffs contend that the evidence shows that prosecutors are trained to leverage sex offender registration as part of plea negotiations, as well as to use charging decisions to ensure certain defendants are required to register or are subject to public registration. Tanner Training 2013, 11, Exh 59; Tanner 2011 Training 2011, 4-7, Exh 60.

1035. According to Herbert Tanner, prosecutors consider the registry when engaging in plea bargaining considerably less now than in the past:

> Many of the prosecutors who did that lost their election bids or re-election bids or retired, and I think the sex offender registry changes—the SORNA registry really made those opportunities—foreclosed a lot of those opportunities to do that. And we have I think done our best in the process of education of why they should not use that as a bargaining chip, but to the extent that we still get defense lawyers who come and say can you cut a deal that will keep him off the registry, they're still--there are still considerations like that made. Like the changes in the law, I would frown upon that and tell my prosecutors that is not the best practice.

Tanner Dep 67 ln 7—68 ln 2, Exh 21.

1036. The PAAM 2013 powerpoint used to train prosecutors contains the question: "How can/should this [sex offender registration] be used in plea bargaining? For example, an agreement not to contest the hearing [on whether the sex act was consensual] in exchange for a plea." Tanner 2013 Training, 11, Exh 59.

1037. The PAAM 2011 powerpoint used to train prosecutors contains a series of hypothetical case studies regarding charging decisions and sex offender registration. Case Study # 1 involves a defendant who cannot join the Marines if he

pleads to a registrable offense. The example shows that by pleading to disorderly conduct, registration can be avoided. Case Study #2 involves a situation where "you [the prosecutor] believe the defendant should be punished but you don't believe he should be on the registry." The example discusses which possible convictions will result in Tier I (non-public) versus Tier II (public) registration. Case Study #4 involves an offense that would not result in public registration, and states that by charging separate counts in consecutive complaints, the defendant can be made a Tier II (public) registrant. Tanner 2011 Training 2011, 4-7, Exh 60.

1038. Mr. Tanner stated that he created Case Study #2 in the training powerpoint to talk about the pitfalls of trying to plea bargain out of registration requirements. Tanner Dep 70 ln 25—72 ln 1, Exh 21.

1039. Mr. Tanner stated that he invented Case Study #4 in the training powerpoint in part to convey certain ideas and concepts. He wanted to challenge prosecutors' ethics and talk about why prosecutors should not do business that way. Tanner Dep 68 ln 23—70 ln 3, Exh 21.

1040. Mr. Tanner testified that he has tried to educate prosecutors that it is not the best practice to use the registry as a bargaining chip in plea negotiations, but that there are defense attorneys who try to cut deals to keep a defendant off the registry. Tanner Dep 67 ln 7—68 ln 2, Exh 21.

1041. Mr. Tanner testified that "there are prosecutors who – just like everybody else, who think that there are certain circumstances that would justify not putting someone on the registry, like when the prosecutor thinks the defendant is "a good kid from a good family and [the prosecutor doesn't] want to ruin his life." Tanner Dep 66 ln 15-22, Exh 21.

1042. Both Mr. Tanner of PAAM and Ms. Yantus, plaintiffs' expert who is a managing attorney with the State Appellate Defender Office, testified that defense attorneys will try to negotiate for a conviction that does not entail registration, or for non-public registration, if possible. Yantus Expert Rep ¶¶ 5-7, Exh 27; Tanner Dep 67 ln 7—68 ln 2, Exh 21.

1043. Ms. Yantus stated that because of the burdens associated with sex offender registration, the issue of whether a conviction will result in registration is critical for criminal defendants. The choice whether or not to plead guilty often turns on whether a defendant must register, for how long a defendant must register, and whether registration is public or private. Yantus Expert Rep ¶¶ 5-7, Exh 27.

1044. Ms. Yantus testified that defense attorneys are unable to give accurate advice to defendants about any registration-related consequences of their convictions because SORA has been repeatedly amended. In her opinion, the possibility of future amendments means that legal advice given today about whether regis-

tration will be public, the length of registration, or even whether a conviction will result in registration, may not be accurate in the future. Yantus Dep 80-81, Exh 20.

1045. Ms. Yantus testified that some of problems that may arise with requiring offenders to register as sex offenders for crimes that were not sexual in nature can sometimes be resolved by a post-conviction appeal. Yantus Dep 71-74, Exh 20.

1046. Ms. Yantus stated that some probation conditions track the language of the SORA, such as the loitering provisions. Yantus Dep 75, Exh 20.

1047. Ms. Yantus testified that if an individual decides to plead to a listed offense it is not possible to negotiate away the registration requirement. In order to negotiate a plea where there is no registration, the prosecutor can "change the offense and that may eliminate registration." Yantus Dep 60, Exh 20.

XXII. BACKGROUND OF LAW ENFORCEMENT WITNESSES

A. Karen Johnson

1048. Karen Johnson is the manager of the MSP SOR Unit, a position she has held for over two years. Johnson Dep 8 ln 8-13; 12 ln 10-12, Exh 15.

1049. Ms. Johnson started working for the MSP in 2000 as a Department Technician in the SOR Unit. Prior to that she worked with the MDOC for three years, including time in the Ingham County probation office. Johnson Dep 12 ln 6-9; 12 ln 24—13 ln 11, Exh 15.

1050. Ms. Johnson testified that she believes that within the SOR Unit she has the most knowledge concerning what SORA does or does not require. Johnson Dep 287 ln 5-8, Exh 15.

B. Sergeant Bruce Payne

1051. Sgt. Payne is the Enforcement Coordinator for the MSP SOR Unit and is responsible for supervising the four troopers who provide sex offender registry training to local law enforcement agencies. He has not yet provided any training himself. Payne Dep 16 ln 8—17 ln 13, Exh 17.

1052. Sgt. Payne has been with the MSP since 1989, working as a road trooper for over three years and as a sergeant on the fugitive team for three years. He has also worked on the violent crime task force for cold case homicide, and worked another year and half as a post detective before spending over four years on the Governor's security detail. He then spent another year and a half in the Emergency Management Homeland Security Division assigned to critical infrastructure protection. He transferred into the SOR Unit in April, 2012. Payne Dep 11 ln 8—12 ln 24, Exh 17.

C. Trooper Timothy Burchell

1053. Trooper Burchell is a state coordinator for the SOR Unit working under Sgt. Payne. He has worked with MSP for fourteen years. Burchell Dep 14 ln 24—15 ln 2; 21 ln 19—22 ln 21, Exh 16.

1054. Prior to working as a state coordinator, Trooper Burchell worked as a trooper investigator, performing residence checks and seeking warrants for non-compliant offenders. Burchell described "non-compliant" offenders as those that failed to verify, did not pay the fee, those who did not sign the form, and those found not to be living at the address they listed on their registration. Burchell Dep 16 ln 1—17 ln 22; 17 ln 24—18 ln 6, Exh 16.

1055. Trooper Burchell believes that he has more direct contact with local law enforcement than Sgt. Payne. Burchell Dep 21 ln 19 22 ln 3, Exh 16.

D. Leslie Wagner

1056. Leslie Wagner has worked for MSP as a civilian employee since 2004, and has worked in the SOR Unit since August of 2011—after the implementation of SORNA. L. Wagner Dep 11 ln 11-13; 15 ln 2-10, Exh 18.

1057. Ms. Wagner is the statewide SOR coordinator and oversees the SOR database system. She is involved in some legislative activities. There are other legislative activities, including SORNA compliance, in which she is not involved. L. Wagner Dep 15 ln 11-15; 16 ln 12-25; 58 ln 12-18, Exh 18.

1058. Ms. Wagner answers questions from across the state concerning the SOR database. L. Wagner Dep 19 ln 10-17; 16 ln 15-25, Exh 18.

E. Herbert Tanner, J.D.

1059. Herbert Tanner is the Director of the Violence Against Women project with the Prosecuting Attorneys Association of Michigan (PAAM) and has provided training on SORA for prosecutors and others. Tanner Dep 8 ln 12-19; 17 ln 18—18 ln 25; 22 ln 21—24 ln 19, Exh 21.

1060. Before working at PAAM, Mr. Tanner had a private practice that included criminal defense. He defended some sexual offenders. He left private practice after ten years and became a prosecutor in Montcalm County. Tanner Dep 11 ln 17—13 ln 23, Exh 21.

1061. As the Chief Assistant in the Montcalm Prosecutor's office, Mr. Tanner handled almost all of the felony sexual assault cases and domestic violence cases from 1993 to 2003. Tanner Dep 13 ln 20—14 ln 18; 15 ln 15, Exh 21.

1062. Herbert Tanner has personal experience with sex offenders in Montcalm County, where he helped start a dedicated sex offender oversight probation/parole unit that included polygraphy, therapy, and "really intensive oversight." In that experience, he learned, "quite a bit from the discussions you have with the offenders." Tanner Dep 91 ln 25—92 ln 10, Exh 21.

1063. Mr. Tanner is the only attorney in PAAM that conducts trainings on the sex offender registry, and is aware of no other organization providing training to prosecutors. Tanner Dep 36 ln 2-9, Exh 21.

F. Lt. Chris Hawkins

1064. Lt. Hawkins holds a bachelor's degree in Criminal Justice and a law degree from Wayne State University. Hawkins Dep 6 ln 12-20, Exh 19.

1065. Lt. Hawkins worked in the field as a Michigan State Trooper for three and a half years. Hawkins Dep 7 ln 25—8 ln 3, Exh 19.

1066. Lt. Hawkins is the commander of the legislative and legal resources section of the Michigan State Police. In that capacity, he supervises the government affairs unit, which is the MSP's legislative liaison. Hawkins Dep 63 ln 1-13, Exh 19.

1067. Lt. Hawkins is personally familiar with the process by which the 2011 amendments to Michigan's SORA were drafted, revised, and ultimately passed. Hawkins Dep 67 ln 5-9, Exh 19.

XXIII. BACKGROUND OF OTHER WITNESSES

A. I.G.

1068. I.G. is a high school graduate. She completed one year of community college. I.G. Dep 7, Exh 7.

1069. I.G. is currently employed as a leasing agent. She has been a leasing

agent for four years. *Id.* at 8-9. As part of her job I.G. checks to see if potential tenants are on the Michigan sex offender registry. *Id.* at 78.

1070. I.G. was the victim in Mr. Doe #4's criminal case. They are romantically involved and have two children together. Doe #4 Dep 59-64, Exh 4; I.G. Dep 46-47, Exh 7.

B. S.F.

1071. S.F. is married to Mr. Doe #3. They have been married 11 years and have three sons together. S.F. Dep 9, 15, Exh 8.

1072. S.F. earned her B.A. in education in 2005 and M.A. in education in 2010. She has been a public school teacher for eight years. She teaches in the same district in which her children attend school. S.F. Dep 10, 31, Exh 8.

C. Timothy Poxson

1073. Timothy Poxson worked for the Lansing Police Department for twenty-two years. He now works in real estate. Poxson Dec 1, Exh 32. Mr. Poxson holds a bachelor's degree graduate of Michigan State University. Poxson Dep 6, Exh 14.

1074. Mr. Poxson was on Michigan's sex offender registry for seventeen years, from 1994 until 2011. Mr. Poxson was required to register because he was convicted of two counts of Criminal Sexual Conduct in the 4th Degree following an investigation into complaints that he touched female drivers' breasts during traffic

stops outside of a strip club. His conviction ended his career in law enforcement. Poxson Dep 14 ln 25—16 ln 14, 17, Exh 14.

1075. He is an unpaid volunteer in the ACLU of Michigan's Lansing office. He has volunteered weekly since 2009. Poxson Dec 1, Exh 32.

1076. In his capacity as volunteer, Mr. Poxson conducted a survey of 23 Michigan police departments and 19 Michigan prosecutor's offices to ask questions about SORA. Poxson Dec, Exh 32.

D. Joseph Granzotto

1077. Joseph Granzotto is a graduate of Kalamazoo College. From September 2013 to May 2014 he worked as a Civil Liberties Fellow for the ACLU of Michigan in Grand Rapids. Granzotto Dec 1, Exh 33.

1078. In his capacity as a Civil Liberties Fellow, Mr. Granzotto conducted a survey of 29 Michigan police departments and 10 Michigan prosecutor's offices to ask questions about SORA. Granzotto Dec, Exh 33.

XXIV. QUALIFICATIONS OF EXPERT WITNESSES

A. Dr. James J. Prescott

1079. Dr. Prescott holds a bachelor's degree in Public Policy and Economics from Stanford University, a law degree from Harvard Law School, and a Ph.D. in Economics from the Massachusetts Institute of Technology. Prescott Expert Rep 1, Exh 22; Prescott Dep 14, Exh 10.

1080. Dr. Prescott works as a professor of law at the University of Michigan Law School in Ann Arbor, Michigan. He began as an assistant professor in 2006 and was promoted to a full-time professor of law in 2011. He teaches and writes in the areas of criminal law and criminal sentencing. Prescott Expert Rep 1, Exh 22; Prescott Dep 16, Exh 10.

1081. Between college and graduate school Dr. Prescott worked as a research assistant at the Brookings Institution in Washington D.C. doing economic and data analysis. After completing law school he clerked for a federal judge on the District of Colombia Court of Appeals. Prescott Dep 15-16, Exh 10.

1082. Dr. Prescott's recent work focuses on the consequences of sex-offender post-release laws, specifically on the effects that sex offender registration and community notification have on sex offense rates. Prescott Expert Rep 1, Exh 22.

1083. Dr. Prescott's export report particularly concentrates on a 15-state study he conducted in 2008, 2009, and 2011. This study uses registry size information and distinguishes between registration laws and notification laws in order to separate out the effects of registration laws versus notification laws. This methodology allowed Dr. Prescott not only to assess whether these laws have any deterrent effect on first-time offenders and any recidivism reduction effect on prior offenders, but also to distinguish between these two effects. Prescott Dep 6-7, Exh 10.

B. Dr. Janet Fay-Dumaine

1084. Dr. Fay-Dumaine holds a bachelor's degree from the University of Massachusetts Boston and a doctorate in clinical psychology from the Virginia Consortium Program in Clinical Psychology. She is also a certified forensic examiner. Fay-Dumaine Dep 6, Exh 12; Fay-Dumaine Expert Rep, Attach B 1, Exh 24.

1085. Dr. Fay-Dumaine currently works as a psychologist at the State of Michigan's Center for Forensic Psychiatry, where she runs the sex offender treatment program. She has worked at that facility for approximately three and a half years and has been the coordinator for the sex offender program for about two years. Immediately prior to working at the Center, Dr. Fay-Dumaine worked as supervisor of mental health at the Diagnostic and Evaluation Center for the Nebraska Department of Correctional Services. She has worked with both sex offenders and victims of sex offenses. Fay-Dumaine Dep 6; 9; 129-30, Exh 12; Fay-Dumaine Expert Rep, Attach B 1-2, Exh 24.

1086. At the Center for Forensic Psychiatry, Dr. Fay-Dumaine coordinates treatment for and conducts risk assessments on patients in the sex offender program. Fay-Dumaine Dep 6, Exh 12; Fay-Dumaine Expert Rep, Attach B 1, Exh 24.

C. Dr. Jill S. Levenson

1087. Dr. Jill S. Levenson has been an associate professor at Lynn University, Department of Psychology, in Boca Raton, Florida since 2004. She has a Doctorate Degree in Social Welfare from Florida International University in Miami (2003), a Masters in Social Work from the University of Maryland, School of Social Work in Baltimore (1987), and a Bachelor of Arts Degree in Sociology at the University of Pittsburgh (1985). Levenson Expert Rep 1, Exh 23.

1088. She has authored over eighty publications and presentations in the area of sex offender recidivism, treatment, and policies regulating sex offenders. *Id.* at 1.

1089. Dr. Levenson also has extensive experience working with both victims of sexual violence, including child sex abuse survivors, and sex offenders. She maintains a clinical practice as a licensed clinical social worker evaluating and treating sex offenders. *Id.* at 1.

1090. Dr. Levenson is currently engaged in research projects funded by the National Institute of Justice regarding sex offender registration. She also serves on the editorial board of the journal "Sexual Abuse: Journal of Research and Treatment." *Id.* at 1.

D. Peter Wagner, J.D.

1091. Peter Wagner earned his Juris Doctor in 2003 from the Western New England College School of Law and is barred in the state of Massachusetts. He

received his Bachelors of Arts from the University of Massachusetts at Amherst in 1994. Wagner 2nd Expert Rep 41, 47, Exh 26.

1092. Since 2001 Mr. Wagner has been employed by the Prison Policy Initiative, where he currently serves as Executive Director. In this capacity he regularly creates maps that analyze demographic data in relation to statutory restrictions that impose geographic limits for criminal justice purposes. Mr. Wagner attested that for the last decade, exclusion zone mapping has been a significant part of his work. Wagner 2nd Expert Rep 1, Exh 26; Wagner Supp Decl 1, Exh 128.

1093. Mr. Wagner has submitted expert reports, including maps, and testified regarding geographic zones created by sex offender laws in both state and federal court cases. He has been involved in cases in the U.S. District Courts for the Northern District of Georgia, the District of Colorado, and the Middle District of Alabama, as well as in Massachusetts state courts. Wagner 2nd Expert Rep 6-7, Exh 26; Wagner Supp Decl 1, Exh 128.

1094. Mr. Wagner was retained in 2006 by the Massachusetts Committee for Public Counsel Services to conduct a detailed study of sex offender residency restrictions. Wagner 2nd Expert Rep 7, Exh 26.

1095. Mr. Wagner's mapping work has also been used by the *New York Times* and similarly prominent newspapers. Wagner Supp Decl 3, Exh 128

Defendants object to this statement on the grounds that it is irrelevant and that it is vague because there is no context for what kind of maps or for what purpose they were used.

1096. Mr. Wagner has published numerous articles regarding geographic zones, sentencing enhancement zones, and gerrymandering. Wagner 2nd Expert Rep 43-45, Exh 26.

E. Richard Stapleton, J.D.

1097. Mr. Richard Stapleton received his J.D. in 1986 from the Michigan State University College of Law. Stapleton Expert Rep 14, Exh 28.

1098. From 1999 to 2011, Mr. Stapleton was Administrator of the Michigan Department of Corrections' Office of Legal Affairs. As chief legal counsel for the MDOC he was responsible for development of policy directives and promulgation of administrative rules. *Id.* at 1-2.

1099. During his tenure at the MDOC Office of Legal Affairs, the department and the parole board began using empirically-based actuarial instruments to assess each prisoner, parolee, or probationers' individual risk level. The MDOC also began using these risk assessment tools to tailor supervision levels to the needs of the individual probationer or parolee. *Id.* at 3-4.

1100. As MDOC's Legal Affairs Administrator Mr. Stapleton often had to attempt to interpret SORA as part of his duties. He was responsible for assisting

department managers in interpreting the statute in order to provide the appropriate guidance to probation and parole officers. *Id.* at 8-9.

F. Anne Yantus, J.D.

1101. Anne Yantus is managing attorney with the State Appellate Defender Office (SADO) Plea Unit. Yantus Expert Rep 1, Exh 27. She has held this position since 2006. Yantus Dep 10, Exh 20.

1102. Ms. Yantus frequently conducts trainings on plea matters in Michigan. Yantus Expert Rep 1, Exh 27.

1103. Ms. Yantus teaches criminal sentencing at the University of Detroit-Mercy School of Law. *Id*.

1104. Ms Yantus co-authored a chapter on sentencing for *Michigan Criminal Procedure* (ICLE), and is published in the areas of sentencing and plea matters. *Id*.

1105. Ms. Yantus estimates in her own practice she has reviewed approximately two thousand criminal cases. Yantus Expert Rep 2, Exh 27.

Respectfully submitted,

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Exhibit B

Expert Report of

Dr. James J. Prescott

John Doe #1, *et al.*, v. Richard Snyder, *et al.*

EXPERT REPORT/DECLARATION OF JAMES J. PRESCOTT, J.D., PH.D.

I, James J. Prescott, J.D., Ph.D., state under penalty of perjury as follows:

1. Background, Education, and Qualifications

I am a professor of law at the University of Michigan Law School in Ann Arbor, Michigan. In 2006, I received my Ph.D. in Economics from the Massachusetts Institute of Technology. I earned my J.D. *magna cum laude* from Harvard Law School in 2002, and my B.A. in Public Policy and Economics with honors and distinction from Stanford University in 1996.

I teach and write in the areas of criminal law and criminal sentencing. Much of my recent work (which is primarily empirical) centers on the consequences of sex offender post-release laws. I focus on the effects that sex offender registration and community notification laws have on sex offense rates. The attached c.v. provides further details, including links to relevant papers and a list of institutions and conferences at which I have presented my research on measuring the effects of sex offender notification laws.

At present, I have two ongoing projects that attempt to further refine our collective understanding of the consequences of registration and community notification on the number and nature of sex offenses. (Note: I use the term "registration" to refer to laws that require the *private* registration of released sex offenders with the police or other local authorities, and the term "notification" to refer to laws that mandate that registration information be made public—i.e., *public* registries.) The first project examines whether registration and, particularly, notification laws (again, *public* registries) have any effect on the location of sex offenses (joint work with Amanda Agan, an economics graduate student at the University of Chicago). The second project studies the consequences of registration and notification laws using public health measures of sexual activity rather than reported crime levels (joint work with Jonathan Klick of the University of Pennsylvania Law School).

2. The Effects of Sex Offender Registration and Notification Laws

More than three years ago, I began a series of large-scale empirical projects designed to identify and measure the consequences of sex offender post-release laws, including sex offender registration and notification laws. Last year, I published an article with Jonah Rockoff of Columbia University that offers comprehensive evidence on the relationship between sex offender notification laws (i.e., *public* registries) and the frequency and nature of sex offenses.[1]

[1] *See* J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L.&Econ. 161 (2011), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1100663.

This peer-reviewed study, which analyzed data from 15 states (including Michigan) over approximately ten years, provides compelling evidence that rather than reducing recidivism, notification laws may well have *increased* (and almost certainly have *not* reduced) the frequency of sex crimes committed by convicted sex offenders.

I describe this research in three parts. First, I report the empirical results of my research with Rockoff and explain their implications for evaluating Michigan's sex offender registration and notification laws. Second, I describe our study's data and empirical methodology. Third, I explain how and why public registries, although intended to make people safer, may actually put people at greater risk.

A. The Recidivism Consequences of Notification (i.e., *Public* Registration)

Registration and notification laws have the potential to influence sex-offending behavior in two primary ways. First, potential first-time sex offenders (or non-registered offenders more generally) could become less likely to commit offenses because they fear having registration and notification laws applied to them in the future if they are caught and convicted. We refer to this behavioral response as "deterrence." Second, convicted sex offenders who are presently subject to registration and notification could become less likely to commit offenses because these laws make doing so more difficult—by increasing the difficulty of finding a victim or the chance of detection, or by mitigating the risk factors that cause individuals to return to crime. We term this behavioral response "recidivism reduction."

While both deterrence and recidivism reduction can influence the overall frequency of sex crimes, proponents of sex offender registration and notification laws have always (and have almost exclusively) justified them on the grounds that they can reduce recidivism. This makes sense: the goal of enabling potential victims to protect themselves by learning the identities and criminal histories of potential recidivists requires, by assumption and design, the collection and sharing of such information. By contrast, generally deterring potential offenders may be achieved in many potential ways (like increasing prison sentences).

With respect to reducing the recidivism of convicted sex offenders, the results of our empirical research do not support the use of notification (i.e., public registries). But our results do provide some support (with the caveats detailed below) for the use of private registries to help the police and other authorities monitor convicted offenders.

Private Registration: To begin with, we find no discernible deterrent effect of private registries. This is not surprising—in the 1990s, private registries allowed only the police or other state officials to learn of a conviction. As a result, there was little public shame (so long as the records remained confidential), and the burdens of complying with registry requirements were very low by comparison with today's time-consuming, difficult, and expensive obligations. We do, however, find evidence that these private registries reduced recidivism, at least with respect to sex offenses committed against family members, friends, acquaintances, and neighbors (but not

against strangers), suggesting that closer monitoring by the police provides some protection for easily identifiable targets.

Public Registration: With respect to notification, however, we observe quite the opposite pattern. The threat of becoming subjected to a notification regime—and the shame and collateral consequences that accompany being publicly identified as a sex criminal—had a measurable deterrent effect (i.e., reducing offenses by non-registrants). But, once we take into account the number of individuals subjected to public notification, we find that the more people a state subjects to notification, the higher the relative frequency of sex offenses in that state. These results are highly statistically significant: our estimates indicate that it is very unlikely that these laws are reducing recidivism by registrants, and that it is likely that these laws are actually increasing recidivism (that is, that the laws are causing positive harm).

Specifically, we find a 0.86% increase in the number of sex offenses per year for every additional registrant per 10,000 people in a notification state. Using the average registry size across our sample of states, this economically and statistically significant increase in recidivism by registrants more than offsets the estimated gains from the deterrence of crimes by potential or non-registered offenders. On balance, for states with average-sized registries, we calculate that notification laws lead to an additional 0.144 sex offenses per 10,000 people (relative to the number of offenses that would have occurred with only a private registration law in place). If Michigan were a "typical" jurisdiction in terms of the per capita number of offenders it chose to subject to notification, these findings would translate to between 100 and 200 additional sex offenses per year in the state.

Michigan, however, has one of the largest public sex offender registries in the country.[2] At registry sizes like Michigan's circa 2005 (well more than 30 registrants per 10,000 individuals in the state by any measure), notification-generated increases in recidivism dwarf deterrence gains, leading to sex offense rates that could be more than 10% higher than they would otherwise be. In fact, this estimate of the increase in the number of sex offenses resulting from notification is very conservative given the results of our study. (This is a conservative estimate because Michigan's per capita registry size is such an outlier that extrapolation is risky.) Nevertheless, our study provides evidence that can be used to show, strikingly, that Michigan's notification regime is very unlikely to be *reducing* recidivism; to the contrary, our research suggests it accounts for hundreds of additional sex offenses each year.

[2] Estimates of the number of publicly registered offenders can vary. Two reputable sources, Family Watchdog (http://www.familywatchdog.us/OffenderCountByState.asp, visited on March 1, 2012) and the National Center for Missing & Exploited Children (http://www.missingkids.com/en_US/documents/sex-offender-map.pdf, visited on March 1, 2012) both report that Michigan has a per-capita registration rate far above the national average, somewhere between 35 and 50 registered offenders per 10,000 individuals in the state.

We base these empirical conclusions on comparisons of sex offense frequencies over time and across states, carefully controlling for inherent geographic, economic, and social differences and trends over time. Changes in national mood would not generate these results; the study's findings also cannot be accounted for by arguing that states with large registries are just *different* from other states. For one, we control for county-level demographics and income over time and for other crime rates (e.g., the frequency of non-sex crime generally as well as the frequency of assaults). Therefore, when public registries grow, we find that even *relative to other kinds of crime*, the number of sex offenses rises under notification. For another, even within a state, if the number of publicly registered offenders grows faster than average (relative to other states), the frequency of sex offenses also grows relatively faster than average.

In the final published paper, we also address and reject a number of other explanations for our empirical findings. We consider, among others, changes in victim reporting behavior, strain on police resources, and public fatigue.

We also find evidence in our study that notification does *not*, in fact, make it much more difficult for registered offenders to commit new crimes. This result is at odds with the underlying theory that publicly identifying past offenders will alert potential victims to the presence of "nearby" offenders and allow these potential victims to protect themselves (see part C below). Specifically, we find that notification laws generate similar increases in the frequencies of sex offenses against each type of victim—i.e., against family members, neighbors, acquaintances, *and strangers*. Therefore, even in a relative sense, it does not appear that neighbors and acquaintances have benefited from the enactment of notification laws.

Finally, although our research indicates that *private* registration laws appeared to reduce recidivism in the 1990s, care is necessary in extrapolating those results to the effects of present regimes re-imagined as private registries. Leaving aside the fact that registration information is now public in Michigan (and in all states for at least high-risk offenders), the procedures and requirements of registration in the 1990s were *significantly* less burdensome in time and money, and in terms of the difficulty of compliance, than they would be if a "private version" of the average public registry were used today.

B. Empirical Methodology for Identifying the Effects of Notification

Because the effects of these laws depend a great deal on how they are structured (see part C below), and because the states and the federal government passed these laws with no in-depth investigation of their likely consequences, my research with Rockoff on notification employed well-known federal crime data covering many states over many years to generate reliable evidence on both how these laws influence recidivism levels and, even if crime frequency remains unaffected, how these laws alter sex offender behavior more generally.

Our approach builds on the fact that notification laws are designed to reduce recidivism by making individuals who are located "near" potential recidivists (like neighbors, acquaintances,

etc.) safer by providing any potential victim with supposedly useful identifying information about released offenders who might pose a threat. Therefore, if notification works as its proponents suggest, we would expect to see relatively fewer attacks against neighbors and acquaintances under a notification regime. To test this hypothesis, Rockoff and I made use of the federal government's National Incident-Based Reporting System (NIBRS) data, the only high-quality, multi-state crime data with details about offender-victim relationships. (We discuss the NIBRS data in detail in Section 4 and the Appendix of our article, including many advantages and disadvantages of the NIBRS program and the steps we took to ensure the reliability of the data we used in our analysis.)

NIBRS is a relatively new data collection effort, with only a few states participating at the outset in the early 1990s. As registration and notification laws were enacted primarily in the 1990s, we selected the 15 states that were participating in NIBRS as of 1998: Colorado, Connecticut, Idaho, Iowa, Kentucky, Massachusetts, Michigan, Nebraska, North Dakota, Ohio, South Carolina, Texas, Utah, Vermont, and Virginia. This is a fairly representative group of states, both geographically and in terms of the evolution of their sex offender legislation. To enhance the reliability of our work, we limited our analysis to states that were part of NIBRS by 1998 to be sure that we had data for a significant period of time both before and after the states enacted their notification laws. We conducted our analysis using NIBRS data through 2005, giving us more than 10 years of data for some states and at least 7 years for all states.

Next, we characterized the content and timing of the registration and notification laws in each of these 15 states. We conducted painstaking legal analysis for more than a year to identify the precise times that statutes were enacted and when each became effective and operational. (Because NIBRS crime data is collected by month, we are able to make use of these precise legal details in our work.)

In coding these laws, we were careful to distinguish between private registries and notification (public registries) because they are meant to function in very different ways. We were also careful in how we described each notification law, as the content of these laws varies across states and over time. For example, early notification laws allowed the public merely to access paper registries; eventually, all notification laws required that sex offender data be posted to publicly accessible internet web-registries. Some states also enacted "active" notification laws in which government actors took affirmative steps to make sure individuals deemed to be at-risk by legislators (e.g., neighbors) were informed of relevant released offenders, for example, by written notice or a personal visit by a police officer.

Our research also took into account whether these laws had discretionary or mandatory features as they evolved over time. Finally, with respect to internet registries, we conducted a separate investigation to determine not only when each web registry law became effective, but when each site became operational *in fact* and largely complete in its coverage.

With data on individual sex offense incidents by county for 15 states over many years, we were in a position to conduct a fairly straightforward "program evaluation" had we wished to go that route. In effect, using multiple regression analysis, we could have proceeded by examining how the frequency of sex offenses (and the types of sex offenses—in particular, the frequency of sex offenses between neighbors or acquaintances) changed in response to the implementation of registration and notification laws. With 15 states and a long stretch of years, we were able to control for national trends or a trend over time in a single state (one that might affect the number of sex offenses at just around the time a state passed a sex offender law) to ensure that neither was confounding our results. Our data allow us, for example, to account for state-specific trends in the number of sex offenses as well as trends in other crime levels.

If we were interested purely in whether registration and notification laws reduced crime *on the whole*, this would have been the appropriate strategy. But these laws have been defended as attempts to reduce sex offender *recidivism*, not merely as additional deterrents to "potential" or non-registered sex offenders. As described above, public registration laws could theoretically reduce new sex offenses in one of two ways: (1) by deterring non-registered offenders (who wish to avoid, for example, the burdens and shame of public notification should they be caught and convicted); and (2) by reducing the recidivism of registered offenders by providing information to and facilitating monitoring by the public. Our research design was constructed to assess each of these possibilities separately.

Separately identifying and measuring these two hypothetical consequences of notification laws is essential, but difficult to do persuasively with comprehensive federal crime data because these data do not indicate whether a crime was committed by a registered sex offender or a new, non-registered offender.

Our research solved this problem in an intuitive way. Although we, too, were unable to observe whether a crime in our data was committed by a registered sex offender or by a non-registered or potential offender, we made use of the following simple fact: registration and notification laws cannot reduce (or increase) the frequency of sex offenses through changes in recidivism levels (by, for example, improving police and public monitoring or by informing potential victims of nearby threats) when nobody or only a few convicted sex offenders are subject to these laws—i.e., when registries are close to "empty." On the other hand, both registration and notification laws *can*, in theory, reduce the frequency of sex offenses even when registries are "empty" by deterring potential sex offenders who fear becoming subject to these laws in the future if they are convicted of committing a sex crime.

We extend this logic in our research to take advantage of the significant variation in retroactive coverage of registration and notification laws across states. This coverage variation resulted in dramatic differences in the numbers of covered individuals as these laws became effective: some states applied their laws only prospectively; others made them retroactive, applying them to individuals convicted and/or released over a range of different time frames.

Accordingly, as states began to enforce their registration and notification laws, some states had large registries while others had empty or nearly empty registries.

To operationalize this idea, we collected registry size data for each state at different points in time, and used county-level registry sizes in August 2007 to estimate the size of the registry in each county for each month. In effect, we studied how county patterns in the number and type of sex offenses vary with registry size over time. If these laws worked to reduce recidivism, we would have expected to see that counties with larger registry sizes had greater relative reductions in the number sex offenses, all else equal (i.e. after controlling statistically for other differences across counties, states, and time—crime rates and how they change, demographics and how they change, national trends and shocks, etc.). This pattern is not what we found, however.

C. Explaining Why Notification Laws, though Intended to Keep People Safe, Actually Increase Recidivism

The conclusion of our research that notification appears to *increase* recidivism (see part A) may seem counterintuitive at first blush. After all, notification (i.e., the active identification of sex offenders through public registries) is designed to alert potential victims to the threat a nearby released sex offender may pose. But, for this approach to reduce the recidivism levels of released sex offenders, two separate conditions must be met.

First, for notification laws to reduce recidivism, the public identification of sex offenders must make it more difficult, on average, for an offender to commit a sex crime.

This condition, in turn, requires 1) that individuals who are likely to be victimized must be *newly* informed of an offender's status as a result of the operation of the notification law, 2) that potential victims are *newly* capable of acting in ways that reduce their exposure to victimization by registered offenders, and 3) that a released offender who becomes at risk for committing a new crime will not discover an alternative victim nearby who is either unaware of the offender's status or is unable to act on the basis of that information to reduce (or reduce by a lot) the risk of becoming a victim.

But, as ample research demonstrates, offenders are rarely strangers to their victims. Friends and family members will often already be aware of a sex offender's criminal history. When the potential victim of an offender is a stranger, it may be hard for the victim to determine the offender's status or to reduce her exposure. Even if the victim is able to reduce her exposure, a released offender who becomes at risk for reoffending may find himself surrounded by other potential victims, many or some of whom *are* unaware, in all or almost all cases. Neighbors seem most likely to benefit from notification so long as they receive the information and are able to behave in ways that reduce their risks. Neighbors, however, make up much less than 5% of all sex offense victims (Prescott & Rockoff (2011), at p.176).

Second, for notification to reduce recidivism, these laws must avoid aggravating the risk factors that significantly increase an offender's chance of reoffending.

Even if notification were to succeed at making it more difficult for sex offenders to reoffend, recidivism might still increase under notification regimes: after all, the difficulty of committing a crime is only one factor, among many, affecting an offender's likelihood of recidivating. Publicly identifying an individual as a sex offender (as well as imposing other significant burdens—residency restrictions, frequent reporting requirements, etc.), on the other hand, influences *many* of these factors by dramatically changing a sex offender's daily life, future prospects, and psychological and financial burdens. While a law that imposes restraints and/or burdens on a released offender does have the potential to reduce recidivism if that law makes the commission of crime more difficult or if it mitigates risk factors, such a law also has the potential to *increase* recidivism if it exacerbates risk factors (e.g., unemployment, unstable housing) that are known to contribute to reoffending.

Notification regimes, with their attendant registration burdens, appear much more likely to *increase* the likelihood that affected individuals return to crime, all else equal. These laws and their application exacerbate recidivism risk factors. Many compelling studies have established that publicly identifying sex offenders makes it more difficult for them to find employment and housing, residency restrictions make everything more expensive and life less stable, and both make it harder for registered offenders to be with family. Life as a registered sex offender, by all accounts, is simply much more difficult than it otherwise would be—in no small part because of the operation of sex offender post-release laws.

Notification schemes are intended to reproduce an upside of incarceration, essentially by "incapacitating" potential recidivists. Public registration attempts to create a barrier between released sex offenders and potential victims. Unfortunately, the analogy of post-release laws to prison is too apt: the public identification of individuals as "sex offenders" reproduces many of the deprivations and burdens of prison in addition to the incapacitation effect. Plus, by making the world outside of prison more like being in prison, the threat of sending someone to prison should he commit another sex crime is much reduced. Put another way, the more difficult, lonely, and unstable a registered sex offender's life is, the more likely he is to return to crime—and the less he has to lose by committing new crimes.

It is easy to see, therefore, that the effect on recidivism of public registration laws (and of most sex offender post-release laws generally) is an empirical question: the effectiveness of these laws will depend on how they are structured and applied.

If notification and its associated burdens make it more difficult for a registered sex offender to find victims, while at the same time not aggravating the risk factors known to lead to recidivism and not reducing a registered offender's desire to avoid prison, then crime rates should drop. But if these laws impose significant burdens on a large share of former offenders, and if

only a limited number of victims benefit from knowing who and where sex offenders are, then we should not be surprised to observe more recidivism under notification, with recidivism rates rising as notification expands.

3. Evidence from a Compendium of Sex Offender Post-Release Laws

A. The Purposes and Process of Compilation

To carry out my empirical research into the consequences of sex offender post-release laws, and to create a resource for other researchers, I have compiled a comprehensive history (compendium) of such laws for each of the 50 states.

In order to understand the consequences of these laws on health, crime, life prospects, etc., it is necessary to carefully distill the substantive provisions of these laws into categories that can be useful for analysis. Because my work is empirical and requires comparisons across states, I designed the compendium from the outset not only to include all substantive post-release laws that are applied specifically to sex offenders, but also to ensure consistent notation and organization across states. The compendium thus records and describes the establishment and subsequent evolution of all forms of laws targeted exclusively at controlling and supervising sex offenders—including sex offender registration, community notification, residency restrictions, employment restrictions, and civil commitment, among others.

The record begins for most states in the late 1980s or 1990s—Michigan's story begins in 1994, when its legislature enacted its first registration law—but in the intervening years, dozens of laws have been passed in every state, creating a complicated, constantly changing picture for released offenders subject to registration and notification. The compendium is regularly updated, and is current through the end of 2009 (which is sufficient for its primary purpose—facilitating empirical research—as any study of a post-release law's consequences requires a significant post-period for measurement.) The compendium contains over 1000 pages of concise descriptions of every state's sex offender post-release laws.

In the 2000s, states began developing and deploying a number of new post-registration restrictions (and imposing new duties) on released sex offenders. Most of these more recent post-release restrictions have been built "on top" of the basic registration framework laid down in the early 1990s. In Michigan (as in many other states), examples include residency restrictions, employment restrictions, and loitering restrictions, first adopted in 2005 and effective on the first day of 2006.

A limitation of the compendium is that it focuses on "substantive" restrictions on behavior, not the many burdensome "procedural" requirements that must be satisfied for a released sex offender to remain free (such as registering changed residency information within a specified number of days, paying for updating registration information, etc.). Although the compendium does contain some of this information, and it is often easy to see how many new procedural

obligations have been added to Michigan's and other states' sex offender post-release laws, the compendium is underinclusive in that it omits many of the complicated day-to-day requirements and fees that covered offenders are under pain of penalty to satisfy.

B. Evidence from the Compendium

Analysis of the evolution of the sex offender laws of the 50 states shows that the number of post-release obligations, restrictions, constraints, and disabilities placed on sex offenders has exploded over the last twenty years and especially during the last decade.

With very few exceptions, sex offender post-release laws across the states have been caught for years in a one-way ratchet of imposing increasingly severe and burdensome restraints and disabilities on released sex offenders. In many states, these laws have become progressively more wide-reaching on an almost yearly basis, requiring more and more of an individual's time (and money) to remain in compliance. The regular changes and growing complexity of these laws make compliance more difficult and innocent errors more common. Furthermore, legislatures regularly broaden the scope of laws that had been previously on the books, adding new individuals to the class of "registered sex offenders," even though the crimes newly covered may have been committed many years in the past.

The structures undergirding the vast array of state sex offender laws are the basic sex offender registration statutes. Historically, a state identified those individuals it wished to register for the sake of monitoring (often by their crimes of conviction), and defined that category as "sex offenders" or some similar term. Registration statutes sometimes created two or more groups of offenders, differentiating one from the other and from non-sex offenders on the basis of the perceived seriousness of the crime of conviction and the perceived need, in particular, to register the groups in question.

Although these groups were demarcated for a particular purpose (i.e., for registration and police monitoring) at a particular point in time, subsequent sex offender post-release laws have in effect piggybacked on the existing structure and definitions. Yet it has never been made clear whether the individuals who the legislature originally determined ought to be publicly registered as sex offenders *also* ought to be subject to residency restrictions, employment restrictions, etc. Nor is it clear that those who are subject to residency restrictions ought to be subject also to employment restrictions, and vice versa.

In other words, the panoply of obligations and restrictions now knotted up with "sex offender" registration are premised on an individual's underlying status as a registrant regardless of whether those particular obligations and restrictions are appropriate for the wide range of individuals who are now classified as sex offenders. Consequently, registration requirements have become indistinguishable in many states from the package of myriad restrictions and obligations that legislatures have enacted in recent years.

Registration laws and the post-release laws that derive from them share, as a general matter, a number of other characteristics, as well.

First, failure to comply with the increasingly complex and confusing restraints and disabilities will not uncommonly return a registered individual to incarceration, and these failures are often considered strict liability offenses (see, e.g., MCL § 28.735, MCL § 28.734; MCL § 28.729(2)). Considerable vagueness plagues many of the definitions of these constraints and obligations. There is often little discretion on the part of judges or others to loosen these restrictions, and the penalties for violations can be severe.

Second, while the basic categories of sex offender restrictions built on top of the early registration statutes seem straightforward enough in the abstract (e.g., residency restrictions), the vast web of sex offender post-release laws across the states are numerous, unpredictable, unexpected, burdensome, complicated, and often vague. In the attached exhibit, I list and describe several examples taken from the compendium (relying on state laws through 2009) and other research conducted for this report. Note the sheer volume of constraints and obligations the laws impose, and the constant vigilance required of offenders to stay in compliance.

One serious set of difficulties for registered sex offenders arises from the fact that they face additional obligations in other states should they travel. Post-release laws allow only very small windows within which to comply, and because there is incredible variety in the procedures and substantive obligations across the states, confusion is certain, in addition to the time and effort the satisfaction of these obligations requires.

For example, consider an offender who must register in Michigan because he maintains a residency in the state (see M.C.L. 28.723, which requires offenders "who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state" to register). If this offender visits Ohio for more than three days at a time, works there, or attends school there, he must register in Ohio as well (see R.C. § 2950.04). In Indiana, an offender must register if he spends or intends to spend at least *seven* days, inclusive, in Indiana, or if he owns any real property in Indiana and returns to the state at any time (see IC 11-8-8-7). Registration laws are written such that individuals may have to be simultaneously registered in many states at a time and yet the rules and procedures for registration vary by enough to make complete compliance difficult and time-consuming. It does not help that many states require regular in-person registration.

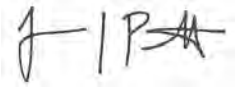
Consider other types of post-release restraints for a Michigan registrant who travels regularly, as well: Indiana prohibits certain registrants from residing (for a period longer than 3 nights in one location in any 30-day period) within 1000 feet of a school, youth program center, or public park (see IC 35-42-4-11). Ohio prohibits offenders from residing within 1000 feet of any school or child day care center (see R.C. § 2950.034). Thus, while both states have residency restrictions, who is subject to them and what areas are off-limits varies by state. Consequently,

registered individuals travelling to other states where they also must register will be subject to a range of different regimes of post-release laws.

Finally, while post-release laws are typically defended as attempts by legislatures to reduce recidivism and improve public safety, the history of these laws across the states undermines this interpretation (and instead is suggestive of an interest in punishment):

- States enacted and implemented registration and notification laws with no sustained or rigorous study of their likely consequences, often doing so in response to a public outcry and anger following a particular crime.
- A significant body of empirical work has examined the behavior of convicted sex offenders and the likely consequences of sex offender registration and notification laws on recidivism. This evidence is consistent with my work, showing overwhelmingly that, at best, public registration does not improve recidivism rates, and it may well be counterproductive.
- Despite this research, most of these laws and their amendments remain non-evidence-based and do not reflect our current understanding of how sex offenders behave, or what research suggests works and does not work in reducing their recidivism levels.
- Research has also demonstrated that these laws are financially costly to states and local governments, create a great deal of useless fear among members of the public, and are financially, physically, and emotionally costly to covered offenders.
- Many states impose post-release laws on the basis of the crime of conviction, regardless of whether the offender presents any risk to anyone and regardless of the availability of accurate and cost-effective risk assessment protocols.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.



James J. Prescott, J.D., Ph.D.

Dated: March 15, 2012

ATTACHMENT A

CONSEQUENCES TRIGGERED BY MICHIGAN SEX OFFENDER REGISTRATION, A NATIONAL SAMPLE

Consequences Triggered by Michigan Sex Offender Registration:
A National Sample

In addition to complying with their home state's registration requirements, Michigan registrants must also comply with the idiosyncratic laws of any jurisdiction in which they are "temporarily domiciled." In many states, including nearby Ohio, Illinois, and Pennsylvania, a visit lasting longer than two days triggers registration, even if the registrant's crime of conviction would not have otherwise warranted registration in those states.

Examples of such reciprocal registration laws include: Colo. Rev. Stat. § 16-22-103 ("[A]ny person convicted of an offense in any other state or jurisdiction . . . for which the person, as a result of the conviction, is, was, has been, or would be required to register if he or she resided in the state or jurisdiction of conviction . . . shall be required to register in the manner specified in section 16-22-108, so long as such person is a temporary or permanent resident of Colorado."); Mich. Comp. Laws § 28.724(6)(d); Ohio Rev. Code Ann. § 2950.04(4); 42 Pa. Cons. Stat. § 9795.2(b)(4) (all substantively similar). Every state appears to have some sort of reciprocal registration law.

Thus, registrants who travel out-of-state, even temporarily to visit family or to engage in business, may find themselves subject to unfamiliar, unpredictable, and burdensome obligations and restrictions—not to mention registration fees. As these laws reach into many areas of life, they render it very difficult to travel lawfully. This exhibit highlights some of these travel-related burdens and provides examples of some of the more unexpected and onerous sex offender laws from around the country, to which Michigan registrants are subject if they move or travel to other states.

1. Reporting, Surveillance, and Supervision

- Registrants must register, in person, if they visit for longer than two days in Illinois, Maryland, or Ohio, and if they spend 7 days in Indiana over any six-month period. They must register within 48 hours of arriving in Pennsylvania and by the first working day of arriving in Alaska. These obligations apply even if the registrant intends to stay only temporarily. Other states mandate similar time periods for registration. Alaska Stat. § 12.63.010; 730 Ill. Comp. Stat. 150/3(a)(1); Ind. Code § 11-8-8-7(a); Md. Code Ann. Crim. Proc. § 11-705(b)(5)(3); Ohio Rev. Code Ann. § 2950.04(4) (West); 42 Pa. Cons. Stat. § 9795.2(b)(4).
- In Illinois, registrants must pay a $100 initial registration fee and a $100 annual renewal fee; in Iowa, registrants must pay a $200 or $250 one-time fee post-conviction, plus a $25 annual registration fee; and in Idaho, registrants must pay a $40 annual registration fee. Idaho Code Ann. § 18-8307(2); 730 Ill. Comp. Stat. 150/3(c)(6); Iowa Code § 692A.110.

- In Alabama, registrants must obtain travel permits if they intend to leave their county of residence temporarily for more than two days. Ala. Code § 15-20A-15.

- In Illinois, registrants must provide law enforcement with a detailed travel itinerary if they will be away, or intend to be away, from their registered residence for more than two days; in Alabama, for visits longer than two days; and in Iowa, for visits longer than five days. Ala. Code § 15-20A-15; 730 Ill. Comp. Stat. 150/3; Iowa Code § 692A.105.

2. Denial of Access to Public Accommodations

- In Warren, Michigan, registrants are banned from public parks, playgrounds, or city recreation facilities. Warren Mun. Code 22-140 (Warren, MI). See also Irvine Mun. Code 4-14-803 (Irvine, CA) (similarly, for registrants convicted of crimes involving minors).

- In Huachuca City, Arizona, registrants are banned from all public places, including public schools, parks, pools, and libraries. Sonu Wasu, *Ordinance Bans Registrants From All Public Places*, Tucson News Now (Sept. 26, 2011).

- In Iowa, certain registrants are barred from public libraries, and in Tennessee, library directors may exclude registrants at any time. Iowa Code § 692A.113(f); Tenn. Code Ann. § 40-39-216. But see *Doe v. City of Albuquerque*, 667 F.3d 1111 (10th Cir. 2012) (striking down municipality's library ban on First Amendment grounds).

- In Florida, registrants may be banned from public hurricane or emergency shelters. *Sex Offenders Kept From Storm Shelters*, Associated Press (Aug. 8, 2005), http://www.nytimes.com/2005/08/08/national/08florida.html. In Collier County and Indian River County, registrants must be kept in a separate room of the shelter. In Lee County, registrants may use only "pre-designated" shelters specifically intended for registrants. Collier County, Fla. Code of Ordinances 111-33; Indian River County, Fla. Code of Ordinances 306.06; Lee County, Fla. Code of Ordinances 24½-5.

3. Restrictions on Religious Participation and Social Activities

- In Georgia, registrants cannot work or volunteer at a church. Ga. Code. Ann. § 42-1-15(c)(1).

- In Oklahoma, registrants must receive written permission from the "religious leader" of a church or other institution before entering to worship. Okla. Stat. tit. 21, § 1125(E).

- In North Carolina, certain registrants may not be present in any place where minors gather for regular educational, recreational, or social programs. N.C. Gen. Stat. § 14-208.18(a)(3). That includes churches and other institutions of religious worship. See

Bonnie Rochman, *Should Sex Offenders Be Barred from Church?* Time (Oct. 14, 2009), http://www.time.com/time/nation/article/0,8599,1929736,00.html.

- In North Hudson, Wisconsin, registrants cannot "participate in any holiday event involving children," except if the registrant is the parent or guardian and no other children are present. North Hudson, Wis. Code of Ordinances 70-95.
- In Tennessee, certain registrants may not "[p]retend to be, dress as, impersonate or otherwise assume the identity of a real or fictional person or character or a member of a profession, vocation or occupation while in the presence of a minor." Tenn. Code Ann. § 40-39-215(a)(1).
- In Missouri; Nassau County, Florida; and Orange County, California, registrants on Halloween must post a sign stating, "No candy or treats at this residence," and must turn off all outside residential lighting. Missouri registrants must also stay inside their homes "unless required to be elsewhere for just cause." Mo. Rev. Stat. § 589.426; Nassau County, Fla. Code of Ordinances 19¼-44; Orange, Cal. Code of Ordinances 9.10.045. See also *F.R. v. St. Charles County Sheriff's Dept.*, 301 S.W.3d 56 (Mo. 2010) (finding the Missouri provision punitive and prohibiting its retroactive application).

4. Restrictions on Civic Engagement

- In Minnesota and Missouri, registrants cannot be candidates for school board positions. Minn. Stat. § 609B.123; Mo. Rev. Stat. § 162.014.
- In Illinois, registrants cannot be selected as election judges. 10 Ill. Comp. Stat. 5/14-1.
- In Virgo County, Indiana, registrants cannot vote at schools. *Officials: Sex Offenders Can't Vote at Schools*, WTHI (Terre Haute, IN) (May 10, 2011), http://www.wthitv.com/dpp/news/local/officials%3A-sex-offenders-can%27t-vote-at-schools.

5. Free Speech, Internet, and Web Site Restrictions

- In Kentucky and North Carolina, registrants are barred from using social networking Web sites or instant messaging and chat room programs if those Web sites or programs also permit minors to use them. Ky. Rev. Stat. Ann. § 17.546 (West); N.C. Gen. Stat. § 14-202.5. For statutes imposing this restriction only on certain registrants, see Ind. Code § 35-42-4-12; La. Rev. Stat. Ann. § 14:91.5; Neb. Rev. Stat. § 28-322.05; Tex. Gov't Code Ann. § 508.1861.
- Such Web sites are defined broadly to include "any Internet website through which users have the ability to communicate via text and which allows messages to be visible to all other users or to a designated segment of all other users." La. Rev. Stat. Ann. §

14:91.5(c)(1). But see *Doe v. Jindal*, No. 11-554-BAJ-SCR, 2012 WL 540100 (M.D. La. Feb. 16, 2012) (striking down statute barring certain registrants from accessing social media as substantially overbroad and therefore a violation of the First Amendment).

- In Indiana, registrants must sign a "consent form" authorizing law enforcement authorities to search "at any time" their personal computers or other devices with Internet capability, as well as to install hardware or software to monitor their Internet usage. This installation shall occur at the registrant's expense. Ind. Code § 11-8-8-8(b).
- In New Jersey, registrants whose crime involved a computer or any other device with Internet capability must receive court approval to use any device with Internet access and must submit to unannounced searches of those devices. N.J. Stat. Ann. § 2C:43-6.6.
- In Wisconsin, a registrant cannot intentionally photograph a minor without obtaining the written consent of the minor's parent or guardian and notifying the parent or guardian of the registrant's registration status. Wis. Stat. § 948.14. See also Ga. Code Ann. § 42-1-18.

6. Identification Cards

- In Alabama, Indiana, and Tennessee, registrants must carry identification at all times. Ala. Code § 15-20A-18(a); Ind. Code § 11-8-8-15; Tenn. Code Ann. § 40-39-213.
- In Florida, Tennessee, and Texas, registrants must carry special driver's licenses or identification cards that clearly indicate that they are sex offender registrants. Fla. Stat. § 322.141; Tenn. Code Ann. § 55-50-353; Tex. Transp. Code Ann. § 521.057.
- In Texas, registrants must renew their driver's license or personal identification cards annually. Tex. Code Crim. Proc. Ann. art. 62.060 (West).

7. Housing Restrictions

- Across the country, any person whose household includes a person subject to life-time registration is barred from accessing federally subsidized housing. 42 U.S.C. § 13663 (2006).
- In Delaware, Illinois, Indiana, Maryland, and Washington, among other states, homeless registrants must report to the local sheriff, in person, once a week. Del. Code Ann. tit. 11, § 4120; 730 Ill. Comp. Stat. 150/3(a); Ind. Code § 11-8-8-12(c); Md. Code Ann., Crim. Proc. § 11-705(d)(2); Wash. Rev. Code § 9A.44.130(5)(b).
- In Pennsylvania, any person, homeless or not, who "fails to establish a residence" where he or she "is domiciled or intends to be domiciled for 30 consecutive days," must report

in person once a week. Such individuals must also report "a list of places the individual eats, frequents and engages in leisure activities." 42 Pa. Cons. Stat. § 9795.2(a)(2).

- In California, a registrant on parole may not live with any other registrant in a "single family dwelling." In Oregon, registrants on probation, parole, or supervision may not "reside in any dwelling" together. In Idaho and Oklahoma, a registrant may not live with more than one other registrant. Of these states, only California and Oklahoma provide statutory exceptions to allow married or related registrants to live together. Cal. Penal Code § 3003.5(a); Idaho Code Ann. § 18-8331; Okla. Stat. tit. 57, § 590.1; Or. Rev. Stat. § 144.642.

8. Employment Restrictions

- In Daytona Beach, Florida, registrants cannot work as garbage collectors for recycling or waste disposal franchisees. Daytona Beach Shores, Fla. Code of Ordinances 12-7.
- In Georgia, registrants are barred from working or volunteering at any childcare facility, school, or church – or "at any business or entity that is located within 1,000 feet of a childcare facility, a school, or a church." Ga. Code. Ann. § 42-1-15(c)(1).
- In Louisiana, registrants cannot operate any bus, taxicab, or limousine, or work in any service position that would involve entering a residence. La. Rev. Stat. Ann. § 15:553.
- In Massachusetts, New York, and Tennessee, registrants cannot operate an ice cream truck. Mass. Gen. Laws ch. 265, § 48; N.Y. Correct. Law § 168-v; Tenn. Code Ann. § 40-39-215(a)(3).
- In Illinois, certain registrants cannot work at a state or county fair, lease to a family with children, or operate vending, rescue, or emergency vehicles. 720 Ill. Comp. Stat. 5/11-9.3.

9. Restrictions by Private Businesses and Universities

Many private actors also use sex offender registries to deny registered individuals goods and services. Examples include:

- Mary Helen Miller, *Lake Michigan College Bans Sex Offenders of Children from Its Campuses*, The Chronicle of Higher Education (Mar. 3, 2010), http://chronicle.com/article/Lake-Michigan-College-Bans-Sex/64474/.
- *Muskegon YMCA Revokes Memberships of Registered Sex Offenders*, Associated Press (Nov. 29, 2007), http://blog.mlive.com/kzgazette/2007/11/muskegon_ymca_revokes_membersh.html (crediting the Michigan online sex offender registry for "making the

policy even possible"); Emily Friedman, *YMCAs Revoke Memberships of Registered Sex Offenders*, ABC News (Feb. 4, 2010), http://abcnews.go.com/US/ymca-community-centers-membership-sex-offenders/story?id=9737459 (explaining how 12 Connecticut YMCAs revoked memberships after cross-referencing their membership lists against the state's sex offender registry).

- *Assoc. Asks Church with Sex-offender to Resign*, Town Hall Magazine (Mar. 08, 2012), http://townhall.com/news/religion/2012/03/08/assoc_asks_church_with_sexoffender_to_resign (reporting that the Jacksonville Baptist Association in Jacksonville, Florida, is seeking a member church's resignation after the church hired a registrant as a minister).
- Heather May & Julia Lyon, *Utah Children's Hospital Screens Visitors to See if They Are Sex Offenders*, The Salt Lake Tribune (Dec. 18, 2011), http://www.sltrib.com/sltrib/news/53116318-78/visitors-hospital-primary-sex.html.csp (reporting on computerized check-in program used to identify registered sex offenders at "more than 100 other hospitals across the country"). This Utah children's hospital reportedly allows registrants to visit their own children (while devoting "extra scrutiny") but asks other registrants to leave.
- Carol J. Williams, *Match.com Agrees to Screen for Sex Offenders to Settle Lawsuit*, Los Angeles Times (Aug. 24, 2011), http://articles.latimes.com/2011/aug/24/local/la-me-match-20110824 (reporting that "the company's promise to screen all members is expected to spark a new industry norm").
- Aline Reynolds, *Facebook and Myspace Kick Out Thousands of NY Sex Offenders*, Discover Magazine (Dec. 4, 2009), http://blogs.discovermagazine.com/80beats/2009/12/04/facebook-and-myspace-kick-out-thousands-of-ny-sex-offenders/; *MySpace Kicks Out 90,000 Sex Offenders, Connecticut AG Says*, CNN Tech (Feb. 3, 2009), http://articles.cnn.com/2009-02-03/tech/myspace.sex.offenders_1_hemanshu-nigam-myspace-sexual-predators.

ATTACHMENT B

CURRICULUM VITAE

JAMES J. PRESCOTT

University of Michigan Law School
Ann Arbor, MI 48109
734-763-2326
jprescott@umich.edu

EMPLOYMENT

UNIVERSITY OF MICHIGAN LAW SCHOOL, Professor of Law (2011–).
Assistant Professor of Law (2006–11).

Research: Criminal Law
Empirical Law and Economics
Sentencing and Corrections
Employment Law

Teaching: Criminal Law
Employment Law
Law and Economics Workshop
Economic Analysis of Law

Service: Organizer, Law Student Research Roundtable (2007–); University of Michigan Civil Liberties Board (2010–13); Technology Committee (2010–11); Alumni Promotion Committee (2010–11); Institutional Advancement Committee (2009–11); Academic Standards and Practices Committee (2009–10); Clinical Committee (2008–09); Student Careers and Professional Affairs Committee (2007–08); Curriculum Committee (2006–07).

EDUCATION

MASSACHUSETTS INSTITUTE OF TECHNOLOGY, Ph.D., Economics, 2006

Honors: MIT Department of Economics Fellowship (1997–99)
Jacob K. Javits Fellowship (1998–2002)
Dissertation: *Essays in Empirical Law and Economics*
(Advisers: David Autor, Michael Greenstone, Christine Jolls)

HARVARD LAW SCHOOL, J.D., 2002

Honors: Graduated *magna cum laude*
John M. Olin Fellowship in Law and Economics (1999–2002)
Treasurer (Vol. 115) and Editor, *Harvard Law Review*
Clerkship: Hon. Merrick B. Garland, U.S. Court of Appeals for the D.C. Circuit (2002–03)

STANFORD UNIVERSITY, B.A., Public Policy and Economics, 1996

Honors: Graduated with Honors and Distinction; Phi Beta Kappa (elected in junior year); Ethics-in-Society Honors Program; Presidential Award for Excellence in the Freshman Year; Truman Scholar Finalist (CA)
Thesis: *Why Vote? Using Principles to Solve the Paradox of the Irrational Voter*

PUBLICATIONS & MANUSCRIPTS

Prescott, J.J., "Child Pornography and Community Notification: How an Attempt to Reduce Crime Can Achieve the Opposite" *Federal Sentencing Reporter*, 24 (2011), 93–101.

Prescott, J.J. and Jonah E. Rockoff, "Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?" *Journal of Law and Economics*, 53 (2011), 161–206.

Prescott, J.J., "The Challenges of Calculating the Benefits of Providing Access to Legal Services," *Fordham Urban Law Journal*, 37 (2010), 303–46.

Prescott, J.J., Kathryn E. Spier, and Albert H. Yoon, "Settlement and Trial? A Study of High-Low Agreements," revise and resubmit at *Journal of Law and Economics*.

Prescott, J.J., "Measuring the Consequences of Criminal Jury Trial Protections," revise and resubmit at *Journal of Legal Studies*.

Prescott, J.J, and Sonja B. Starr, "Improving Criminal Jury Decision Making After the *Blakely* Revolution," *University of Illinois Law Review*, 2006, 301–56.

Jolls, Christine M. and J.J. Prescott, "Disaggregating Employment Protection: The Case of Disability Discrimination," *NBER Working Paper 10740* (2004).

WORKS IN PROGRESS

Prescott, J.J., "Empirical Evidence of Prosecutorial Charging Manipulation: And What It Tells Us about What Prosecutors Are Trying to Do," draft available.

Garrett, Brandon L. and J.J. Prescott, "Determinants of Success in Post-Conviction Litigation by the Innocent," draft available.

Prescott, J.J., and Sonja Starr, "Evaluating the Impact of Criminal Record Set-Aside Laws on Recidivism and Socioeconomic Outcomes," 15-page funding narrative available.

Prescott, J.J., "The Possibilities of Offender Choice in Sentencing: Eliciting Forward-Looking Information," précis and partial draft available.

Klick, Jonathan, and Prescott, J.J., "The Effect of Sex Offender Laws on the Sexual Abuse and Health of Minors," 25-page funding narrative available.

Prescott, J.J., and Eric B. Laber, "The Effects of Judge, Prosecutor, and Defendant Race and Gender Interactions on Defendant Outcomes," 15-page funding narrative available.

Bailey, Martha J., and J.J. Prescott, "The Regulation of Vice in the 1960s: The Case of Contraception as 'Obscene,'" précis available.

Prescott, J.J., "Data Set: New Orleans District Attorney's Office Data, 1988-1999," including arrest, charging, conviction, and sentencing data with judge, prosecutor, and defendant identifiers and over 30,000 defendant observations.

OTHER WRITING & RESEARCH

Prescott, J.J., "A Fifty-State Compendium of Sex Offender Regulation," mimeo (2010).

Prescott, J.J., "Tort as a Debt Market: Agency Costs, Strategic Debt, and Borrowing against the Future, *Harvard Law Review*, 115 (2002), 2294–316 (Student Note).

Prescott, J.J., "Prevailing Party—*Buckhannon Board & Care Home, Inc. v. West Virginia Department of Health & Human Resources*, 121 S. Ct. 1835 (2001)," *Harvard Law Review*, 115 (2001), 457–67 (Student Supreme Court Case Comment).

Prescott, J.J., "Second Circuit holds that Punitive Damages are Unavailable against Municipalities—*Ciraolo v. City of New York*, 216 F.3d 236 (2d Cir. 2000)," *Harvard Law Review*, 114 (2000), 666–72 (Student Recent Case Comment).

GRANTS AND AWARDS

University of Michigan, Office of the Vice President for Research ($15,000) (2011) ("The Role of the Prosecutor in Criminal Justice Outcome Disparities")

Population Studies Center, University of Michigan ($4,000) (2011) ("The Effects of Sex Offender Laws on Teenage Sexual Health and on the Geography of Crime Commission")

National Fellow, Hoover Institution, Stanford University, Stanford, CA (2010–11)

National Science Foundation, Law and Social Sciences Program ($145,000) (2010) ("Evaluating the Impact of Set-Aside Laws on Ex-Offender Recidivism and Socioeconomic Outcomes") (Co-PI: Sonja Starr)

University of Michigan, Office of the Vice President for Research ($15,000) (2009) ("Evaluating the Impact of Set-Aside Laws on Ex-Offender Recidivism and Socioeconomic Outcomes")

National Poverty Center, University of Michigan ($7,500) (2009) ("Evaluating the Impact of Set-Aside Laws on Ex-Offender Recidivism and Socioeconomic Outcomes")

ABA Section on Litigation, Litigation Research Fund ($12,000) (2008) (with Albert Yoon) ("Settlement and Trial? A Study of High-Low Agreements")

PROFESSIONAL ACTIVITIES

Affiliations:	Faculty Affiliate, Population Studies Center, University of Michigan
	Associate Editor, *International Review of Law and Economics*
	Member, State Bar of California (admitted in 2002)
	Member, American Bar Association
	Member, American Economic Association
	Member, American Law and Economics Association
Referee Service:	*Journal of Legal Studies*
	Journal of Law and Economics

Journal of Empirical Legal Studies
American Law and Economics Review
Review of Law and Economics
Quarterly Journal of Economics
Review of Economics and Statistics
Journal of Labor Economics
American Economic Journal: Applied Economics
Journal of Public Economics
Law and Society Review
Law and Social Inquiry
Crime and Delinquency

OTHER EMPLOYMENT

Research: Visiting Lecturer, University of Tokyo Faculty of Law (Summer 2009)
Visiting Researcher, Georgetown University Law Center (2004–2006)
Special Guest, Brookings Institution, Economic Studies Program (2004–2005)
Fellow in Law and Economics, Univ. of Michigan Law School (Winter 2005)
Post-Graduate Olin Research Fellow, Harvard Law School (2003–2004)
Research Assistant, Brookings Institution, Economic Studies (1996–1997)

Law Practice: Summer Associate, Gibson, Dunn & Crutcher, LLP, New York, NY (2002)
Summer Associate, Munger, Tolles & Olson, LLP, Los Angeles, CA (2001)
Summer Associate, Morrison & Foerster, LLP, San Francisco, CA (2001)
Summer Associate, Gibson, Dunn & Crutcher, LLP, Los Angeles, CA (2000)

PRESENTATIONS

2012: University of Toledo College of Law (Toledo, OH) (March) ("Criminal Choice in Sentencing")

2011: CELS Meetings (Northwestern Law School) (Chicago, IL) (November) (Discussant on Jonah Gelbach, "The Effects of Heightened Pleading on Motion to Dismiss Adjudication")

University of Chicago Law School (Law and Economics Workshop) (Chicago, IL) (November) ("Criminal Choice in Sentencing")

Columbia Law School (Law and Economics Workshop) (New York, NY) (October) ("Settlement and Trial? A Study of High-Low Agreements")

Stanford Law School (Faculty Workshop) (Palo Alto, CA) (March) ("Settlement and Trial? A Study of High-Low Agreements")

Cornell Law School (Empirical Colloquium) (Ithaca, NY) (March) ("Settlement and Trial? A Study of High-Low Agreements")

NBER Mid-Year Law and Economics Meetings (Cambridge, MA) (February) (Discussant on Howard Chang & Hilary Sigman, "An Empirical Analysis of Cost Recovery in Superfund Cases: Implications for Brownfields and Joint and Several Liability")

2010: Conference on Empirical Legal Studies (Yale Law School) (New Haven, CT) (November) ("Settlement and Trial? A Study of High-Low Agreements")

CELS Meetings (Yale Law School) (New Haven, CT) (November) (Discussant on Sasha Romanosky, Rahul Telang, and Alessandro Acquisti, "Do Data Breach Disclosure Laws Reduce Identity Theft?")

American Law and Economics Association Annual Meetings (Woodrow Wilson School of Public Policy) (Princeton, NJ) (May) ("Settlement and Trial? A Study of High-Low Agreements")

University of Haifa Law School (Law and Economics Workshop) (Haifa, Isreal via Internet) (May) ("Settlement and Trial? A Study of High-Low Agreements")

University of Virginia Law and Economics of Crime Conference (Charlottesville, VA) (March) ("Determinants of Success in Post-Conviction Litigation by the Innocent")

Rice University and University of Houston (Applied Economics Workshop) (Houston, TX) (March) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

American Economic Association Annual Meetings (Atlanta, GA) (January) ("Empirical Evidence of Prosecutorial Charging Manipulation" and Discussant on Richard Boylan and Naci Mocan, "Intended and Unintended Consequences of Prison Reform")

2009: Harvard Law School (Law and Economics Workshop) (Cambridge, MA) (October) ("Settlement and Trial? A Study of High-Low Agreements")

University of Michigan, Population Studies Center (Brown Bag) (Ann Arbor, MI) (October) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

University of Toronto, Faculty of Law (Law and Economics Workshop) (Toronto, ON) (September) ("Settlement and Trial? A Study of High-Low Agreements")

NBER Law and Economics Summer Institute (Cambridge, MA) (July) ("Settlement and Trial? A Study of High-Low Agreements")

Hastings Law School Faculty Workshop (San Francisco, CA) (February) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

Stanford Law School (Law and Economics Workshop) (Palo Alto, CA) (January) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

American Economic Association Annual Meetings (San Francisco, CA) (January) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?" and "The Effects of Judge, Prosecutor, and Defendant Race and Gender Interactions on Defendant Outcomes")

2008: American Bar Association Litigation Section Access to Justice Symposium (Atlanta, GA) (December) ("The Challenges of Calculating the Benefits of Providing Access to Legal Services")

Searle Center Research Symposium on Empirical Studies of Civil Liability (Northwestern Law School) (October) ("Settlement and Trial? A Study of High-Low Agreements")

Conference on Empirical Legal Studies (Cornell Law School) (October) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

CELS Meetings (October) (Cornell Law School) (Discussant on John F. Pfaff, "The Myths and Realities of Correctional Severity: Evidence from the National Corrections Reporting Program on Sentencing Practices")

Harvard Law School (Law and Economics Workshop) (Cambridge, MA) (September) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

Law and Society Annual Meetings (Montreal, Canada) (May) ("The Effects of Judge, Prosecutor, and Defendant Race and Gender Interactions on Defendant Outcomes")

American Law and Economics Association Annual Meetings (Columbia Law School) (May) ("The Effects of Judge, Prosecutor, and Defendant Race and Gender Interactions on Defendant Outcomes")

University of Chicago Law School (Criminal Law Colloquium) (Chicago, IL) (April) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

Brooklyn Law School (Faculty Workshop) (Brooklyn, NY) (April) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

University of Haifa Law School (Law and Economics Workshop) (Haifa, Isreal via Internet) (March) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

University of Virginia School of Law (Law and Economics Workshop) (Charlottesville, VA) (February) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

NBER Mid-Year Law and Economics Meetings (Cambridge, MA) (February) (Discussant on Betsey Stevenson, "Beyond the Classroom: Using Title IX to Measure the Return to High School Sports")

2007: Northwestern University Law School (Law and Economics Colloquium) (December) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

CELS Meetings (November) (NYU Law School) (Discussant on Stéphane Mechoulan, "The External Effects of Black-Male Incarceration on Black Females")

NBER Working Group on Crime (Cambridge, MA) (September) ("Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?")

National Federal Sentencing Guidelines Seminar (Salt Lake City, UT) (May) ("Using U.S. Sentencing Commission Data in Empirical Research")

American Law and Economics Association Annual Meetings (Harvard Law School) (May) ("The Effects of Sex Offender Notification laws")

2006: Conference on Empirical Legal Studies (Univ. of Texas Law School) (October) ("Empirical Evidence of Prosecutorial Charging Manipulation")

CELS Meetings (October) (Univ. of Texas Law School) (Discussant on Brandon Garrett, "Judging Innocence")

Junior Empirical Legal Scholars Conference (Cornell Law School) (September) ("Empirical Evidence of Prosecutorial Charging Manipulation")

Law and Society Annual Meetings (Baltimore, MD) (July) ("Measuring the Consequences of Criminal Jury Trial Protections")

Various Job Talks (January and February) ("Measuring the Consequences of Criminal Jury Trial Protections") (Michigan; Harvard; Stanford; NYU; Columbia; Univ. of Pennsylvania; UCLA; Georgetown; USC; Washington University; Univ. of Texas)

2005: Various Job Talks (September through December) ("Measuring the Consequences of Criminal Jury Trial Protections") (Yale; Univ. of Virginia; Duke; Cornell; Boston Univ.; Minnesota; Univ. of Colorado; William and Mary; Univ. of Miami)

MIT Department of Economics Labor Seminar (November) ("Measuring the Consequences of Criminal Jury Trial Protections")

Florida State College of Law (Faculty Enrichment Series) (June) ("Measuring the Consequences of Criminal Jury Trial Protections")

Brookings Institution, Economic Studies Program (Brown Bag Lunch Talk) (June) ("Measuring the Consequences of Criminal Jury Trial Protections")

American Law and Economics Association Meetings (May) (NYU) ("Measuring the Consequences of Criminal Jury Trial Protections")

MICHIGAN LAW
UNIVERSITY OF MICHIGAN

JAMES J. PRESCOTT
Professor of Law

September 29, 2013

Clerk of the Court
Eastern District of Michigan
Via e-filing by the plaintiffs' counsel

Re: *John Does #1-5 and Mary Doe v. Rick Snyder and Col. Kriste Etue*
E.D. Mich. No. 12-cv-11194
Amendment to James J. Prescott's expert report,

To Whom It May Concern:

I am writing today to ensure that my original expert report, filed with the court on March 15, 2012, on behalf of the plaintiffs, is in full compliance with Federal Rule of Civil Procedure 26(a)(2)(B).

Rule 26(a)(2)(B)(iv) requires an expert report to contain the witness's qualifications, including a list of all publications authored in the previous 10 years. Given the time that has passed since I filed my report, I have attached my most recent CV to be included as an appendix to my original report.

I would also note that my original report did not include a list of cases in which I have testified as an expert in the past four years or a statement of compensation for my work on this case, as required by the rule. At that time, I had not testified as an expert on any cases in the past four years and was not receiving compensation for my work on this case. Nothing has changed since then.

Sincerely,

James J. Prescott

encl: updated CV
cc: by e-filing notice to all counsel (w/ encl)

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Exhibit C

Expert Report of

Dr. Jill Levenson

Mary Doe, *et al.*, v. Richard Snyder, *et al.*

EXPERT REPORT/DECLARATION OF JILL LEVENSON, Ph.D.

I, Jill S. Levenson, Ph.D.,state under penalty of perjury as follows:

1. Background and Education

I am an associate professor at Lynn University, College of Liberal Education, Department of Psychology, in Boca Raton, Florida. I earned my Doctorate Degree in Social Welfare at Florida International University in Miami (2003). I earned my Masters Degree in Social Work at the University of Maryland, School of Social Work in Baltimore (1987). I earned my Bachelor of Arts Degree in Sociology at the University of Pittsburgh (1985).

I am the author of over 80 articles, publications, and presentations in the area of sex offender recidivism, treatment, and policies regulating sex offenders. In addition to my academic work, I maintain a clinical practice as a licensed clinical social worker evaluating and treating sex offenders. I began my career as a child protection social worker, and have extensive experience working with both victims of sexual violence and sexual offenders. I have qualified to testify as an expert in at least 12 judicial proceedings involving sex offenders. I have testified by invitation before four state legislatures concerning sex offender legislation. I am currently engaged in several research projects funded by the National Institute of Justice regarding sex offender registration, and also serve on the editorial board of "Sexual Abuse: Journal of Research and Treatment." My *curriculum vitae*, including a list of my published work, is attached as Exhibit A.

2. The Michigan Registry

As of June 2011, the National Center for Missing and Exploited Children reported a total of 739,853 registered sex offenders (RSOs) across the 50 states, the District of Columbia, and six U.S. territories. Of this total, approximately 42% (308,388) came from five states: California (106,216), Texas (66,587), Florida (55,999), Michigan (47,329), and New York (32,257). (California removes from its total those offenders who are incarcerated, deported, or have moved to another state.) Michigan is, therefore, the fourth largest state registry in the U.S.

3. Overview of Sex Offender Registration and Notification (SORN) Policies

A. History of SORN Laws

Federal SORN policies began in 1994 with the passage of the Jacob Wetterling Act, which required all 50 states to create procedures for tracking the addresses of convicted sex offenders. These registries were initially intended for law enforcement purposes to assist with the identification and apprehension of suspects. In 1996, the Wetterling Act was amended to include "Megan's Law," allowing states to disclose registry information to the public. In 2006, the Adam

Walsh Act (AWA) was passed, again revising federal guidelines and requiring states to comply with new standards for the frequency and duration of registration for sex offenders based on a tiering system tied to the offense of conviction. In 2011, Michigan became one of just 16 states compliant with federal AWA guidelines. As of today, the majority of states have not complied due to concerns about the costs and efficiency of federal requirements.

B. Offense-based versus Risk-based Classification Schemes

Though federal guidelines exist, registry laws are administered by individual states. Some states include all individuals convicted of a sex crime on their public registries, and some disclose information only about those who appear to be high risk. Some states classify risk based strictly on the conviction. Statutorily-based sex offender designations cover a wide and diverse spectrum of behavior patterns, and may obscure important distinctions that affect a given offender's public safety risk. Other jurisdictions have adopted more refined approaches (*e.g.*, using empirically-derived risk assessment methods) to assist in distinguishing the most dangerous offenders and creating restrictions and monitoring consistent with an offender's assessed threat to the community.

Empirically validated risk assessment stands in stark contrast to the offense-based classification system required by the Adam Walsh Act. Whereas actuarial assessment procedures evaluate research-based risk factors and screen offenders into relative risk categories, offense-based schemes like the AWA (used in Michigan) classify offenders based only on the purported severity of the offense. Offense-based categories inflate risk in many cases, but will also underestimate the risk of offenders who pled down to lesser offenses. **The result of offense-based categories is that the public's and law enforcement's ability to identify sexually dangerous persons is significantly diluted.**

Recent studies show that the federally-mandated system of classification – based on the categories of offenses listed in the Adam Walsh Act (AWA) – fail to distinguish between registered offenders who present significant threats to public safety and those who present lower risk. For instance, in New York, AWA tiers did a poor job of identifying sexual recidivists. In fact, lower-tiered individuals had higher recidivism rates than those who were assigned into ostensibly higher-risk tiers. Empirically-derived risk factors, in contrast, were better able to predict recidivism than were the AWA "tiered" categories of offenses. (Freeman & Sandler, 2009.) In Florida, AWA Tier 3 offenders had lower recidivism rates and lower actuarial risk assessment scores than Tier 2 offenders (report in progress).

Research has also suggested a potential "net-widening" effect of implementing the AWA-mandated classification system, which places a significant majority of registrants into the highest category of offenders, contradicting evidence suggesting that the highest risk of sexual re-offense is concentrated among a much smaller group of offenders. (A. J. Harris, Lobanov-Rostovsky, & Levenson, 2010.)

C. Impact of SORN on Sex Offense Recidivism

At this time, several empirical studies have been conducted on the efficacy of SORN laws and policies. These include five group comparison studies (Adkins, Huff, & Stageberg, 2000; Duwe & Donnay, 2008; Schram & Milloy, 1995; Zevitz, 2006; Zgoba, Witt, Dalessandro, & Veysey, 2009) and six trend analysis studies (Letourneau, Levenson, Bandyopadhyay, Sinha, & Armstrong, in press; Prescott & Rockoff, 2008; Sandler, Freeman, & Socia, 2008; Vasquez, Maddan, & Walker, 2008; Veysey, Zgoba, & Dalessandro, 2009; Washington State Institute for Public Policy, 2005). These studies have examined the impact of SORN laws on general sex crime rates and/or sex offense recidivism.

The relative scarcity of empirical research is partly due to the recent implementation of these laws and partly due to methodological challenges faced by researchers when conducting sex crime policy analysis. For example, low base rates, the multiple criminal justice policies enacted within short time frames, challenges obtaining reliable recidivism data, and the need for long follow-up periods all contribute to the complexity of understanding the impact of these laws. Furthermore, each state's SORN policy is idiosyncratic, subjecting different types of offenders to a variety of registration and notification requirements. The variability in research methodologies and SORN policy characteristics likely accounts for the varied results reported across the studies.

One thing is clear, however: **Most studies reveal no significant reductions in sex crime rates that can be attributed to SORN laws and policies. The two studies that have detected reductions in sex crime recidivism as a result of SORN were conducted in Minnesota and Washington (Duwe & Donnay, 2008; Washington State Institute for Public Policy, 2005); both states use risk assessment instruments to classify offenders, and they limit public notification only to those who pose the greatest threat to community safety. An analysis examining over 300,000 sex offenses in 15 states found that while registration with law enforcement appeared to reduce recidivistic sex offenses, public notification did not. (Prescott & Rockoff, 2011.)**

D. Residence Restrictions

Sex offender registration often triggers additional requirements related to housing. Residential restriction laws prohibit sex offenders from living near places where children are likely to be found. Some 30 states have laws designating where sex offenders can live. (Meloy, Miller, & Curtis, 2007.) Too abundant to count are municipal housing ordinances passed by cities, towns, and counties. The most common proximity zones are 1,000 to 2,000 feet from venues such as schools, parks, playgrounds, and daycare centers. Some laws include other facilities such as arcades, amusement parks, movie theaters, youth sports facilities, school bus stops, and libraries. (Meloy, Miller, & Curtis, 2008.)

Residence restrictions are based on the seemingly logical premise that by requiring child molesters to live far from places where children congregate, repeat sex crimes can be prevented. The first problem, however, is that most SORN provisions apply to all sex offenders, without regard to whether or not the offender poses a danger to children. Moreover, the best current research finds no support for the hypothesis that sex offenders who live closer to child-oriented settings are more likely to reoffend.

In fact, the empirical research indicates that where sex offenders live is not a significant contributing factor to reoffending behavior. Zandbergen, Levenson and Hart (2010) compared the residential proximity of sexual recidivists and non-recidivists to schools and daycares in Florida. Those who lived within 1,000, 1,500, or 2,500 feet of schools or daycare centers did not reoffend more frequently than those who lived farther away. There was no significant correlation between sexual recidivism and the number of feet the offender lived from a school. The two groups were matched on relevant risk factors (prior arrests, age, marital status, predator status). **The authors of the study concluded that proximity measures were not significant predictors of recidivism.**

Similarly, in Colorado, the addresses of sex offender recidivists and non-recidivists were found to be distributed randomly throughout the geographical area, with no evidence that recidivists lived closer to schools and daycare centers. (Colorado Department of Public Safety, 2004.)

In Jacksonville, Florida, researchers investigated the effects of a 2,500 foot residence restriction ordinance and found no reduction in sex crime rates and sex offense recidivism over time. (Nobles, Levenson, & Youstin, in press.) The Iowa Department of Criminal and Juvenile Justice Planning studied the effect of Iowa's 2,000 foot residence restrictions law that went into effect in August of 2005 and did not observe a downward trend in the number of sexual charges over time following the passage of the law. (Blood, Watson, & Stageberg, 2008.) **In fact, sex crime arrests increased steadily each year** (with 913 charges filed during the year prior to implementation, 928 charges filed the subsequent year, and 1,095 the year after that.) **The authors concluded that Iowa's residence law "does not seem to have led to fewer charges or convictions, indicating that there probably have not been fewer child victims."** (Blood, *et al.*, 2008, p. 10.)

In Minnesota, an analysis of 224 repeat sex offenders led the authors to conclude that residential restriction laws would not have prevented even one re-offense. (Duwe, Donnay, & Tewksbury, 2008.) Most of the cases involving children were committed not by strangers but by registered sex offenders who were well acquainted with their victims, such as parents, caretakers, paramours of the mother, babysitters, or friends of the family. The repeat offender was a neighbor of the victim in only about four percent of the cases. **Predatory assaults that occurred within a mile of the offender's residence typically involved adult victims.** Although some of the offenders established relationships with minor victims within 2,500 feet of their homes, none of the crimes took place in or near a school, daycare center, or park. C**urrent**

research shows that sex offenders do not appear to abuse children because they live near schools, but rather they take advantage of opportunities to cultivate relationships with children and their families in order for sexual abuse to take place. (Duwe, *et al.*, 2008.)

Similarly, the majority (67%) of New Jersey offenders met victims in private locations while relatively few (4.4%) met victims in the types of locations designated as off-limits by residential restriction laws. (Colombino, Mercado, Levenson, & Jeglic, 2011.) **Noteworthy is that sex offenders rarely encountered their victims in public locations where children congregate, and therefore policies emphasizing residential proximity to schools, parks, and other "child-friendly" locations ignore the empirical reality of sexual abuse patterns.**

Residential restrictions also create barriers to offender reintegration into society. As restricted zones increase, so do transience, homelessness, and reduced employment opportunities for offenders. (Levenson, 2008.) Many sex offenders reported that housing restriction laws forced them to relocate; that they were unable to return to their homes after incarceration; that they were not permitted to live with family members; or that they experienced a landlord refusing to rent to them or to renew a lease. (Levenson, 2008; Levenson & Cotter, 2005a; Levenson & Hern, 2007; Mercado, Alvarez, & Levenson, 2008.) Many indicated that affordable housing is less available due to limits on where they can live, and that they are forced to live farther away from employment, public transportation, social services, and mental health treatment. Young adults seemed to be especially affected by these laws: age was significantly inversely correlated with being unable to live with family and having difficulties securing affordable housing. (Levenson, 2008; Levenson & Hern, 2007.) Family members of registered sex offenders also reported that residential restriction laws created housing disruption for them; larger restricted zones led to an increased chance of a housing crisis. (Levenson & Tewksbury, 2009.)

A growing body of evidence illustrates how residential restrictions profoundly reduce housing options for sex offenders. In Orlando, Florida, a study found that 99 percent of all residential dwellings are located within 2,500 feet of schools, parks, daycare centers, or school bus stops. (Zandbergen & Hart, 2006.) The vast majority of residential territory in Nebraska and New Jersey is also located within 2,500 feet of a school. (Bruell, Swatt, & Sample, 2008; Chajewski & Mercado, 2009; Zgoba, Levenson, & McKee, 2009.) Affordable housing is especially affected, since it tends to be in more densely populated areas, where homes are in closer proximity to places frequented by children.

Of nearly one million residential parcels studied in Miami-Dade County, Florida, only about 4% of residential units were outside the overlapping state and local restricted zones in effect, and only 1% had a monthly housing cost of $1,250 or less. (Zandbergen & Hart, 2009.) A study in Nebraska showed that average home values were significantly higher outside of the restricted zone of 2,000 feet, making it difficult for sex offenders to find affordable housing. (Bruell, et al., 2008.) Ohio showed the same pattern. (Red Bird, 2009.)

When prisoners are released from incarceration, they commonly seek housing with relatives, but strict residence laws can eliminate such options for sex offenders. Unable to reside with family, and without the financial resources to pay security deposits and rent payments, some sex offenders face homelessness. **Importantly, housing instability is consistently associated with higher criminal recidivism and absconding.** In Georgia, every time a parolee moved, the risk of re-arrest increased by 25%. (Meredith, Speir, & Johnson, 2007.) Residential instability was a robust predictor of absconding in a study of California parolees. (Williams, McShane, & Dolny, 2000.)

In a national sample of 2,030 offenders, those who moved multiple times during probation were almost twice as likely as stable probationers to have some sort of disciplinary hearing. (Schulenberg, 2007.) In New Zealand, unstable housing, unemployment, and limited social support were found to predict sexual recidivism. (Willis & Grace, 2009; Willis & Grace, 2008.) Some prosecutors and victim advocates have publicly denounced residence restrictions, cautioning that the transience created by housing restrictions undermines the validity of sex offender registries and makes it more difficult to track and supervise sex offenders. (Iowa County Attorneys Association, 2006; NAESV, 2006.)

4. Collateral Consequences of SORN Laws

The problems of re-entry commonly faced by other criminal offenders are exacerbated for registered sex offenders. The stigma of sex offender registration and community notification is well documented, as are the ways in which they can impede community re-entry and adjustment. (Levenson & Cotter, 2005b; Levenson, D'Amora, & Hern, 2007; Mercado, *et al.*, 2008; Sample & Streveler, 2003; Tewksbury, 2004, 2005; Tewksbury & Lees, 2006; Zevitz & Farkas, 2000.) Sex offenders have been surveyed in Florida, Indiana, Connecticut, New Jersey, Wisconsin, Oklahoma, Kansas, and Kentucky. They consistently reported adverse consequences such as unemployment, relationship loss, threats, harassment, physical assault, and property damage as well as psychological symptoms such as shame, embarrassment, depression, or hopelessness as result of public disclosure. Housing difficulties are commonly noted by registered sex offenders, and the proliferation of residential restriction laws compounds this problem. Obstacles to employment include the public disclosure of information (including employer address) on the registry, and restrictions prohibiting sex offenders from working within close proximity to a school.

Social stability and support increase the likelihood of successful reintegration for criminal offenders, and public policies that create obstacles to community reentry may compromise public safety. Stable employment and supportive relationships lead to lower recidivism rates for sex offenders. (Colorado Department of Public Safety, 2004; Kruttschnitt, Uggen, & Shelton, 2000.) It is well established that the stigma of even a non-sex offense felony conviction can inhibit participation in pro-social roles such as employment, education, parenting, and property ownership. (Tewksbury & Lees, 2007; Uggen, Manza, & Behrens, 2004.) Uggen *et al.* 2004

highlighted that self-concept, civic engagement, and stability are essential to an offender's identity as a conforming citizen and therefore to desistance from crime. Obstacles to reintegration reduce stakes in conformity and increase the likelihood that a criminal offender will resume a life of crime. (Hirshi, 1969; Travis, 2005.) SORN laws and policies interfere with employment, housing, social support, and engagement in pro-social activities, potentially and paradoxically reducing the deterrent effect intended by these laws.

The impact of SORN laws is also felt by the families of convicted sex offenders. Levenson and Tewksbury (2009) found that employment problems for registered sex offenders (RSOs) emerged as the most pressing issue identified by family members, followed by concerns about housing. The likelihood of housing disruption was higher for families of RSOs to whom residential restrictions applied; larger buffer distances were correlated with increased housing crises. Those who lived with an RSO were more likely to experience threats and harassment by neighbors. Children of RSOs were also reported to experience adverse consequences. More than half (58%) said they were treated differently by other children at school, or that their friendships had been affected (78%) by public notification. More than half said that the children of an RSO had experienced ridicule, teasing, depression, anxiety, fear, or anger. (Levenson & Tewksbury, 2009.) Family members of RSOs experienced high levels of social isolation, fear, shame, property damage, and forced residential relocation. Perceived stress was significantly higher for those who are of lower economic means, who feel isolated, have high levels of fear and shame/embarrassment, or were forced to move. (Tewksbury & Levenson, 2009.)

In another survey, several common themes emerged. Many family members spoke of persistent feelings of depression, hopelessness, and frustration as they adjusted to life with a registered sex offender. Many reported that housing and employment were disrupted by limitations imposed by the RSO's probation or registration requirements, resulting in economic hardships for family members. Family members felt they were subject to intense scrutiny and intrusion by parole or law enforcement agents, and that their right to privacy was severely affected by public notification procedures, leading to a great sense of shame and stigma. Many reported feeling "overwhelmed and demoralized," struggling to cope on a day-to-day basis. Some noted that reentry assistance policies (*e.g.*, the Second Chance Act) exclude sex offenders from receiving services. Stress for family members can impede the important role they play in facilitating successful reentry. (Farkas & Miller, 2007.)

5. Risk and Recidivism

A. Overview

Some sex offenders are going to reoffend, and steps should be taken to prevent that from happening. But according to the U.S. Department of Justice, only 5.3% of sex offenders released from prison were re-arrested for a new sex crime within three years. (Bureau of Justice Statistics, 2003.) Over four to six years, only about 14% of more than 20,000 sex offenders (in an interna-

tional sample) were re-arrested for a new sex offense. (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005.) A 24% recidivism rate was observed over 15 years (A. J. R. Harris & Hanson, 2004), and 27% were re-arrested over 20 years. (Hanson, Morton, & Harris, 2003.) (Note that these figures are for re-arrest rates, not re-conviction rates.) Thus, after two decades, nearly three-quarters of convicted sex offenders have not been re-arrested for a new sex crime.

The vast majority of new sexual assaults are not committed by registered sex offenders. (Bureau of Justice Statistics, 2003; Sandler, et al., 2008.) In fact, in New York, 95% of all arrests for sexual offenses are of offenders without a prior sexual offense conviction (*i.e.*, offenders who are not on the registry at the time of their arrests). (Sandler, *et al.*, 2008.) It is true that arrest data naturally underestimate true re-offense rates, because some crimes are never detected or reported to authorities. (Arrest data can also overstate re-offense rates, as some arrestees are not guilty.) The available research suggests, however, that after two decades the great majority of convicted sex offenders have not re-offended.

Risk and recidivism vary with the presence of risk factors. Risk assessment procedures consistently have been shown to improve the accuracy of predictions by setting thresholds for decision-making and by standardizing factors that professionals readily recognize as key diagnostic indicators. This process, known as the actuarial method, estimates the likelihood of a certain outcome by referring to the known (actual) outcomes of individuals with similar characteristics. Actuarial assessment is used in the insurance industry to adjust premiums and its uses are growing in a variety of other disciplines, including criminal justice. The actuarial method cannot predict with certainty that a given individual will behave in a particular way. It can, however, provide probability data with which to inform one's expectations regarding an individual and to screen offenders into relative risk categories. When sexual violence risk assessment procedures have been directly compared, empirically derived risk scales were better able to predict recidivism (r = .61) than clinical judgment alone (r = .40) or empirically guided assessments (r = .41). (Hanson & Morton-Bourgon, 2004.) As well, actuarial risk assessment has demonstrated significantly better utility in identifying recidivists than offense-based procedures.

The most commonly used and most well-researched risk assessment instrument, the Static-99 (Hanson & Thornton, 1999), is easily scored by anyone trained to do so (*e.g.*, probation agents, clinicians, case managers) and has demonstrated good predictive accuracy in multiple validation studies over the past several years. This instrument is used nationwide in all states that have sex offender civil commitment laws. Though not perfect, it offers a firm scientific basis for assessing the likelihood that a convicted sex offender will re-offend and assigning that individual to a risk category. Of additional interest with regard to AWA's newly enacted lifetime registration and supervision requirements is that the Static-99 scoring guidelines state that "the expected offense recidivism rate should be reduced by about half if the offender has five to ten years of offense-free behavior in the community. … **As offenders successfully live in the community without incurring new offenses, their recidivism risk declines**." (Static 99, p. 59.)

Without doubt, some registered sex offenders are pedophilic or sexually violent and are likely to pose a threat to public safety. For instance, a more extensive criminal history places an offender at increased risk for recidivism, as does younger age, a preference for male child victims, and a history of victimizing strangers. (Hanson & Bussiere, 1998; A. J. R. Harris & Hanson, 2004; A. J. R. Harris, Phenix, Hanson, & Thornton, 2003.) Nationwide, about 14% of all registered sex offenders are designated by states as high risk or sexually violent predators. However, sex offenders are more likely to commit subsequent non-sexual crimes than to reoffend sexually. (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998; Sample & Bray, 2003, 2006) Moreover, the vast majority of new sexual assaults are not committed by registered sex offenders, but by first-time sex offenders. (Bureau of Justice Statistics, 2003.) Sexually motivated homicides have inspired most of our modern sex crime policies, but sex offenders are among the least likely criminals to murder their victims. (Sample, 2006.)

B. Stranger Danger

The myth of "stranger danger" had led to policies designed to prevent predatory sexual assaults against children, which actually represents a very small percentage of sex crimes. Community protection policies tend to be passed in response to highly publicized sex crimes which often involve abduction and sexually motivated homicide. These types of offenses, however, are exceedingly rare. According to the Office of Juvenile Justice and Delinquency Prevention, there are about 115 cases nationwide in which children are abducted by strangers in a given year. (U.S. Department of Justice, 2002.) The most common types of child sexual abuse cases involve perpetrators who are well known to their victims. According to the Department of Justice, in 93% of sexual molestation cases the child is abused by a relative or family acquaintance. In fact, policies like community notification and residence restrictions may give parents a false sense of security by their implication that if we know where convicted sex offenders live, or if we banish them from our neighborhoods, children will be safe. **The disturbing reality is that sexually abused children are victimized by family members in 34% of cases, and by acquaintances in 59% of cases.** (Bureau of Justice Statistics, 2000.) About 40% of sexual assaults take place in the victim's own home, and 20% take place in the home of a friend, neighbor, or relative. (Bureau of Justice Statistics, 1997.) Only 7% of child sex abusers are strangers to their victims. (Berliner, Schram, Miller, & Milloy, 1995; Bureau of Justice Statistics, 2002.) Less than 1% of all murders involve sexual assault, and the prevalence of sexual murders has declined substantially since the 1970's. (Bureau of Justice Statistics, 1997.) Although cases involving children receive the most media coverage, 75% of sexual murder victims are over the age of 18. (Bureau of Justice Statistics, 1997.)

C. Housing, Employment, and Family Support as Risk Factors for Recidivism

Practical, legal, and social consequences of crime are more severe for sex offenders than for other criminals. (Lees & Tewksbury, 2006; Uggen, Manza, & Thompson, 2006.) Hardships related to housing and employment, social stigma, and relationship problems can lead to higher

recidivism rates. (Lees & Tewksbury, 2006.) Conversely, employment, social bonds, and housing stability increase the likelihood of successful reintegration for all criminal offenders. (Kruttschnitt, et al., 2000; Petersilia, 2003; Uggen, 2002; Uggen, et al., 2004; Willis & Grace, 2009.) **Therefore, social policies which ostracize and disrupt the stability of sex offenders are unlikely to be in the best interest of public safety.**

D. Lifetime Registration and Risk/Recidivism

The recent trend toward lifetime registration for all sex offenders contradicts empirical evidence. The result of this movement is a growing number of sex offender registrants which requires increased fiscal and personnel resources to update technology, enforce registration rules, and incarcerate violators. Research indicates that risk for sexual re-offending is reduced by half once the offender has spent 5-10 years offense-free in the community, and that risk continues to decline as time offense-free in the community lengthens. (A. J. R. Harris, et al., 2003.) Furthermore, risk for sexual recidivism declines with advancing age, meaning that the aging sex offender population is likely to pose less of a threat to public safety. There is no empirical evidence to support the notion that more frequent registration check-ins lower recidivism, nor is there evidence to conclude that additional reporting requirements (*e.g.,* email addresses, employment information) reduce recidivism. **Requiring registration for 25 years to life is therefore both inefficient and unnecessary, based on empirical research.**

E. Effectiveness of Treatment in Reducing Recidivism

Sex offender treatment has been viewed with skepticism, and some studies have failed to detect significant differences in recidivism rates between treated and untreated offenders. (Furby, Weinrott, & Blackshaw, 1989; Hanson, Broom, & Stephenson, 2004; Marques, Wiederanders, Day, Nelson, & van Ommeren, 2005.) Other studies, however, have shown that cognitive behavioral therapy can diminish sex offense recidivism by about 40%. (Hanson, et al., 2002; Losel & Schmucker, 2005.) Although treatment does not guarantee success in every case, many sex offenders do benefit from therapy, and sex offenders who successfully complete treatment programs are re-arrested less often than those who do not. (Marques, et al., 2005, p. 97.) Collaborative approaches to sex offender management, supervision, and rehabilitation have been successful in reducing sex offense recidivism. (English, Pullen, & Jones, 1996, 1998.)

Collaborative risk management approaches evaluate and address individual offender's risks and needs, reinforce their strengths, and facilitate support systems. (English, *et al.*, 1996, 1998; Ward & Brown, 2004.) By working together, treatment providers and probation officers can apply restrictions and interventions relevant to a particular offender's patterns and risk factors. At the same time, the team can facilitate a plan that encourages engagement in pro-social activities and minimizes obstacles to reintegration.

F. Failure to Register as a Risk Factor for Recidivism

Only four published studies have looked at the relationship between failure to register (FTR) and sex-offense recidivism. The first, conducted by researchers at the Washington State Institute of Public Policy, tracked over 12,000 sex offenders required to register between 1990 and 1999. The proportion of individuals convicted for FTR climbed steadily each year from 5% in 1990 to 18% in 1999. Results indicated that sex offenders with FTR convictions were more likely to be subsequently re-arrested. (Washington State Institute for Public Policy, 2006.) Most of the new convictions, however, were for general crimes (38.5%) and violent activity (15.8%), while sexual recidivism for the FTR group was 4.3%, compared to 2.8% for compliant registrants (statistical significance was not reported). Although the rates of sexual recidivism were slightly higher for those who failed to register, the proportion of offenders who sexually re-offended was very low for both groups, and not substantially different.

Duwe and Donnay (2010) found that FTR has become the most common type of recidivism for sex offenders released from prison in Minnesota. (This may be because FTR is the crime most likely to result in detection.) When analyzing the recidivism outcomes of 1,561 high-risk sex offenders who were required to register, the authors found that 11% had been convicted of FTR. They further reported that FTR did not predict future sexual or general recidivism. Instead, the results indicated only that a FTR conviction significantly increased the likelihood of subsequent FTR arrests. The authors found that FTR offenders were less educated, less likely to have participated in treatment, less violent, less likely to have assaulted victims of different age groups, more likely to be a minority, and more likely to have prior felonies and supervision violations. **Overall, the authors concluded that registration noncompliance did not appear to raise the risk for sexual reoffending.** (Duwe & Donnay, 2010.)

In South Carolina, a study involving 2,970 registered sex offenders indicated that those who failed to register were not more likely to sexually re-offend than those who cooperated with registration mandates. (Levenson, Letourneau, Armstrong, & Zgoba, 2010.) Specifically, 10% of the sample had registry violation convictions across a follow-up period of approximately six years. No statistically significant differences were found in the sexual recidivism rates for those with an FTR charge (11%) versus obedient registrants (9%). FTR offenders were younger, had more prior non-sexual arrests, were more likely to be non-white, and were less likely to have a minor victim. **In regression analyses, FTR did not predict sexual recidivism, although it was associated with non-sexual recidivism.** The authors concluded that FTR and sexual offending may represent different constructs, with FTR being related to rule breaking behavior and sexual offending being related to sexual deviance.

A similar study in New Jersey also revealed that FTR was not a significant predictor of sexual recidivism. (Zgoba & Levenson, in press.) Few differences between the groups were detected, but FTR offenders were more likely to have sexually assaulted a stranger and to have adult female victims. **These results further refuted the myth of the pedophilic predator who absconds in order to avoid detection.** These similar findings offer some common themes that

inform our understanding of FTR offenders: namely, that they are younger, more versatile criminals who tend not to specialize in the abuse of children.

In a related line of research, other scholars have noted that FTR is not tantamount to absconding. (A.J. Harris & Pattavina, 2009; Levenson & Harris, 2011.) It is doubtful that all sex offenders arrested for FTR are willful violators, as most FTR offenders are easily located and do not appear to have absconded. (Ackerman, Harris, Levenson, & Zgoba, 2011; Duwe & Donnay, 2010; A. J. Harris, Levenson, & Ackerman, under review; Levenson & Harris, 2011; Levenson, *et al.*, 2010.) Some sex offenders may appear to be "missing" due to inadequate or incomplete address information, data entry errors, lag times in updating registry information, unauthorized travel, or homelessness. (A.J. Harris & Pattavina, 2009.) Additionally, some offenders may be confused by complex registration requirements, carelessly disregarding their duty to update information, but remaining in their known locations despite their lapse.

6. Conclusion: What Would an Effective Sex Offender Management System Look Like?

Empirically derived risk assessment models based on factors known to correlate with recidivism should be used to identify sex offenders who pose the greatest threat to public safety. Public registries, if used, should be reserved for high-risk offenders. In this way, the public would be better informed specifically about pedophilic, predatory, repetitive, or violent sex offenders likely to commit new sex offenses. At the same time, collateral consequences could be minimized for lower risk offenders re-entering communities and attempting to become productive, law abiding citizens. **Given the dearth of evidence that public notification protects children, prevents recidivism, or improves public safety, lawmakers should consider the unintended consequences of these laws.**

In addition to risk-based classification, states should also create a mechanism for sex offenders to earn release from certain registration requirements, such as public notice and residency restrictions. Sex offenders should be permitted to request exemption or de-registration if: (1) they are assessed to pose a low risk to the community based on empirical and actuarial risk factors; (2) they have successfully completed a sex offender treatment program; and (3) they have been living in the community offense-free for at least five years. Such a policy would create evidence-based incentives for law-abiding behavior and would expand opportunities for positive psychosocial adjustment and community re-entry.

Risk-based classification and collaborative risk management evaluates individual offender's risks and needs, reinforces the offender's strengths, and facilitates support systems. (English, *et al.*, 1996, 1998; Ward & Brown, 2004.) By working together, treatment providers and probation officers can address an offender's unique behavior patterns and risk factors. At the same time, the team can facilitate a plan that encourages pro-social activities and minimizes the risks of recidivism.

Public education and awareness campaigns should highlight the likelihood that children will be abused by someone they know and trust. Parents should be made aware of the signs and symptoms of child sexual abuse and of the common types of grooming patterns used by perpetrators who gain access to victims via their positions of trust or authority. In addition, factual data about the relative rarity of child sex offenses and the low recidivism rates would temper the fear induced by current law and policy. "It does not help the child maltreatment field or the public and policymakers to see child molesters as simply incorrigibly compulsive fiends who cannot be stopped." (Finkelhor, 2003, p. 1227.) The media play a crucial role in public education and should be enlisted as responsible partners in the dissemination of accurate information. Sensationalistic journalism perpetuates the myths that tend to drive legislative responses, which are then ultimately less likely to accomplish their goals of protecting communities. (Proctor, Badzinski, & Johnson, 2002; Sample, 2001; Sample & Kadleck, 2006; Wright, 2003.)

Enormous fiscal resources are allocated each year for registration and notification, despite the virtual absence of research demonstrating the effectiveness of these policies. While there is little resistance to funding criminal justice initiatives, social services and prevention programs are often discarded first when budgets need to be balanced.

This means that victims of sexual abuse often go without therapy and counseling. Child protective services and foster care programs are often underfunded and poorly staffed. Early maltreatment can create a cycle of abuse in which individuals grow up to repeat behavior witnessed and learned in childhood. Many sex offenders have experienced such problems in their own families, including physical abuse, neglect, criminality, and substance abuse. (Seghorn, Prentky, & Boucher, 1987.) Though childhood sexual abuse alone is a weak predictor of future sexual violence, early sexual abuse combined with other developmental and family problems contribute to the development of abusive behaviors. (Hanson & Bussiere, 1998; Knight & Prentky, 1990.) Funding social services for abused children is an important step in preventing future sexual violence in our communities, but is often ignored in favor of punitive criminal justice responses.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

Jill S. Levenson, Ph.D.

Dated: January 13, 2012

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ATTACHMENT A

CURRICULUM VITAE

Curriculum Vitae

JILL S. LEVENSON, Ph.D., LCSW

EDUCATION:

Ph.D., Social Welfare, 2003 Florida International University, Miami, FL.

MSW, Clinical Social Work, 1987 University of Maryland, School of Social Work, Baltimore, MD.

BA, Sociology, 1985 University of Pittsburgh, Pittsburgh, PA.

ACADEMIC POSITIONS

September 2004 - present: LYNN UNIVERSITY, BOCA RATON, FLORIDA
College of Liberal Education, Department of Psychology

Associate Professor (2008-present)
Assistant Professor and Human Services Department Chair (2004-2008)

May 1994-August 2004: FLORIDA INTERNATIONAL UNIVERSITY, MIAMI, FLORIDA

Instructor, **School of Social Work** (8/99-8/04)
Instructor, Professional Development Center (Child Protection Training Institute) (5/94 - 6/99)

PROFESSIONAL CLINICAL EXPERIENCE

5/94-present	OAKBROOK COUNSELING CENTER, P.A., Ft. Lauderdale, FL. Clinical Social Worker, Clinical Supervisor & Consultant, private practice.
11/99-12/04	CHRYSALIS CENTER, INC., Ft. Lauderdale, FL. Clinical Consultant, Clinical Supervisor, & Field Instructor, children's mental health clinic.
4/91-4/94	FAMILY SERVICE AGENCY, INC., Ft. Lauderdale, FL. Clinical Supervisor, Field Instructor, & Clinical Social Worker, outpatient psychotherapy center.
11/90-2/91	KIDS IN DISTRESS, INC., Ft. Lauderdale, FL. Social Worker, therapeutic preschool program.
10/89-9/90	CHILD PROTECTION TEAM OF BROWARD COUNTY, FL. Social Worker, child protective services.
9/87-6/89	BALTIMORE COUNTY DEPT. OF SOCIAL SERVICES, Baltimore, MD. Social Worker, child protective services & foster care services.

LICENSURE & PROFESSIONAL REGULATION

- *Licensed Clinical Social Worker*, Florida, #SW2659
- *Qualified Supervisor For Licensure*, Florida Department of Health
- *Qualified sex offender treatment provider*, Florida Department of Corrections

PUBLICATIONS

1. Levenson, J. S., Sandler, J. C., & Freeman, N. J. (under review). Do Failure to Register Laws Fail to Increase Public Safety? An Examination of Risk Factors and Sex Offense Recidivism in New York State.

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31. Levenson, J.S. (2009). Sex offender residence restrictions. In R. Wright (Ed.) *Sex Offender Policies*. New York: Springer Publishing Company.

32. Fortney, T., Baker, J. N., & Levenson, J. S. (2009). A Look in the Mirror: Sexual Abuse Professionals' Perceptions about Sex Offenders. *Victims and Offenders, 4(1), 42-57*.

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34. Zgoba, K., Levenson, J.S. & McKee, T. (2009). Examining the Impact of Sex Offender Residence Restrictions on Housing Availability. *Criminal Justice Policy Review, 20(1)*.

35. Levenson, J.S., Macgowan, M.J., Morin, J.W., & Cotter, L.P. (2009). Perceptions of sex offenders about treatment: Satisfaction and engagement in group therapy. *Sexual Abuse: Journal of Research & Treatment 21(1)*.

36. Levenson, J.S. & Prescott, D. (2009). Treatment experiences of civilly committed sex offenders: A consumer satisfaction survey. *Sexual Abuse: Journal of Research & Treatment 21(1)*.

37. Levenson, J.S. (2009). Sex offense recidivism, risk assessment, and the Adam Walsh Act. *Sex Offender Law Report, 10(1)*.

38. Katz, S.M, Levenson, J.S., & Ackerman, A.R. (2008). Myths and facts about sexual violence: Public perceptions and implications for prevention. *Journal of Criminal Justice and Popular Culture, 15(3)*.

39. Mercado, C.C., Alvarez, S., & Levenson, J.S. (2008). The Impact of Specialized Sex Offender Legislation on Community Re-Entry. *Sexual Abuse: Journal of Research & Treatment, 20(2)*.

40. Levenson, J.S. (2008). Collateral consequences of sex offender residence restrictions. *Criminal Justice Studies 21(2), 153-166*.

41. Levenson, J.S., Becker, J., & Morin, J.W. (2008). The relationship between victim age and gender crossover among sex offenders. *Sexual Abuse: Journal of research and treatment, 20(1), 43-60*.

42. Zgoba, K. & Levenson, J.S. (2008). Variations in the Recidivism of Treated and Non-Treated Sexual Offenders in New Jersey: An Examination of Three Time Frames. *Victims and Offenders*, 3(1), 10-30.

43. Morin, J.W. & Levenson, J.S. (2008). Exhibitionism: Assessment and Treatment. In D.R. Laws & W. O'Donohue (Eds) *Sexual Deviance*. Guilford Press, p. 76-107.

44. Levenson, J.S. (2008). Risk assessment of criminal justice populations. In Thomlison, B. & Corcoran, K. (Eds). *Evidence-Based Practice: A Student Manual for Criminal Justice and Social Work Internships*. Oxford Press.

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47. Levenson, J.S., Zgoba, K., & Tewksbury, R. (2007). Sex Offender Residence Restrictions: Sensible Crime Policy or Flawed Logic? *Federal Probation, 71(3), 2-9*.

48. Tewksbury, R. & Levenson, J.S. (2007). When Evidence is Ignored: Residential Restrictions for Sex Offenders. *Corrections Today, December 2007, p. 54-57*.

49. Brannon, Y., Levenson, J.S., Fortney, T., & Baker, J. (2007). Attitudes about Community Notification: A Comparison of Sexual Offenders and the Non-offending Public. *Sexual Abuse: Journal of research and treatment 19(4) 369-379*.

50. Levenson, J.S. (2007). The new scarlet letter: Sex offender policies in the 21st century. In D. Prescott, Ed., *Applying Knowledge to Practice: Challenges in the Treatment and Supervision of Sexual Abusers, p. 21-41*. Wood and Barnes Publishing.

51. Levenson, J.S. & Prescott, D. (2007). Considerations in evaluating the effectiveness of sex offender treatment. In D. Prescott *Applying Knowledge to Practice: Challenges in the Treatment and Supervision of Sexual Abusers, p. 124-142*. Wood and Barnes Publishing.

52. Levenson, J.S, D'Amora, D., & Hern, A. (2007). Megan's Law and its Impact on Community Re-entry for Sex Offenders. *Behavioral Sciences and the Law (25), 587-602*.

53. Fortney, T., Levenson, J.S., Brannon, Y., & Baker, J. (2007). Myths and Facts about sex offenders: Implications for practice and public policy. *Sex Offender Treatment 2(1), 1-17*.

54. Levenson, J.S, & Hern, A. (2007). Sex offender residence restrictions: Unintended consequences and community re-entry. *Justice Research and Policy, 9(2), 59-73*.

55. Levenson, J.S, & D'Amora, D. (2007). Social policies designed to prevent sexual violence: The Emperor's new clothes. *Criminal Justice Policy Review, 18(2), 168-199*.

56. Prescott, D. & Levenson, J.S. (2007). Youth who have sexually abused: registration, recidivism, and risk. *ATSA Forum, Volume XVIII, No. 2, Spring 2007*.

57. Levenson, J.S. (2007). Residence restrictions and their impact on sex offender reintegration, rehabilitation, and recidivism. *ATSA Forum, Volume XVIII, No. 2, Spring 2007*.

58. Levenson, J.S., Brannon, Y., Fortney, T., & Baker, J. (2007). Public perceptions about sex offenders and community protection policies. *Analyses of Social Issues and Public Policy, 7(1), 1-25*.

59. Packard, R.L. & Levenson, J.S. (2006). Revisiting the reliability of diagnostic decisions in sex offender civil commitment. *Sex Offender Treatment, 1(3)*.

60. Levenson, J.S. & Morin, J.W. (2006). Factors predicting selection of sexual offenders for civil commitment. *International Journal of Offender Therapy and Comparative Criminology, 50(6), 609-629*.

61. Levenson, J.S. (2006). Sexual harassment or consensual sexual relations? Implications for social work education. *Journal of Social Work Values and Ethics 3(2)*.

62. Levenson, J.S. (2006). Sex offender residence restrictions. *Sex Offender Law Report, 7(3), April/May 2006, p. 33*.

63. Levenson, J.S. & Morin, J.W. (2006). Risk assessment in child sexual abuse cases. *Child Welfare, 85(1), 59-82*.

64. Kokish, R., Levenson, J.S., & Blasingame, G. (2005). Post conviction sex offender polygraph examination: Client perceptions of accuracy and utility. *Sexual Abuse: Journal of Research & Treatment, 17(2), 211-221*.

65. Levenson, J.S. (2005). Sex offender residence restrictions: *Report to the Florida Legislature*.

66. Levenson, J.S. & D'Amora, D. (2005). An ethical paradigm for sex offender treatment. *Western Criminology Review. 6(1)*.

67. Levenson, J.S. & Cotter, L.P. (2005). The impact of sex offender residence restrictions: 1,000 feet from danger or one step from absurd? *International Journal of Offender Therapy and Comparative Criminology, 49(2), 168-168*.

68. Levenson, J.S. & Cotter, L.P. (2005). The impact of Megan's Law on sex offender reintegration. *Journal of Contemporary Criminal Justice. 21(1), 49-66*.

69. Levenson, J.S. (2004). Sexual predator civil commitment: A comparison of selected and released offenders. *International Journal of Offender Therapy and Comparative Criminology, 48(6), 638-648*.

70. Levenson, J.S. (2004). Reliability of sexually violent predator civil commitment criteria. *Law & Human Behavior, 28(4), 357-368*.

71. Levenson, J.S. & Macgowan, M.J. (2004). Engagement, denial, and treatment progress among sex offenders in group therapy. *Sexual Abuse: Journal of Research & Treatment, 16(1), 49-64*.

72. Levenson, J.S. (2004). Policy interventions designed to combat sexual violence: Community notification and civil commitment. In R. Geffner & K. Franey (eds.) *Identifying and Treating Sex Offenders: Current Approaches, Research, and Techniques*. New York: Haworth Press.

73. Levenson, J.S. (2004). Everything You Ever Wanted To Know About Sex Offenders but Were Afraid To Ask: ATSA's Role in Public Education. *ATSA Forum, Volume XVI, No. 2, Spring 2004*

74. Levenson, J.S. (2003). Community notification and civil commitment of sex offenders: A review of policies designed to combat sexual violence. *Journal of Child Sexual Abuse, 12(3/4)*.

75. Macgowan, M. J., & Levenson, J. S. (2003). Psychometrics of the Group Engagement Measure with male sex offenders. *Small Group Research, 34*(2), 155-169.

76. Levenson, J.S. (2003). Book Review of Inside the Brain. *Social Work in Health Care, 36(3),* 97-99.

77. Morin, J.W., and Levenson, J.S. (2002). *The Road to Freedom*. [A workbook for sex offenders in treatment]. Distributed by Safer Society Press: Brandon, VT.

78. Levenson, J.S. and Morin, J.W. (2001). *Treating Nonoffending Parents in Sexual Abuse Cases: Connections in Family Safety*. Thousand Oaks, CA: Sage Publications.

79. Levenson, J.S. and Morin, J.W. (2001). *Connections workbook for non-offending parents*. Thousand Oaks, CA: Sage Publications.

80. Levenson, J.S. (2001). Overstating the Obvious: Social Workers are Mandated Reporters! (Part 2) *NASW Florida Chapter Newsletter, May/June*.

81. Levenson, J.S. (2001). Overstating the Obvious: Social Workers are Mandated Reporters! (Part 1*) NASW Florida Chapter Newsletter, March/April*.

82. Levenson, J.S. & Morin, J.W. (1998). The Role of the Nonoffending Parent in Sexual Abuse Prevention. *ATSA Forum, Vol. X, No. 2, Summer 1998.*

83. Morin, J.W., Levenson, J.S., & Cotter, L.P. (1998). *New Directions in the Management of Sexual Offenders: A Report to the Florida Legislature*. Tampa, FL: Florida Association for the Treatment of Sexual Abusers.

Dissertation: Levenson, J. S. (2003). Factors predicting recommendations for civil commitment of sexually violent predators under Florida's Jimmy Ryce Act. *Dissertation Abstracts International, 64*(03), UMI no. AAT 3085817.

RESEARCH FUNDING

$150,000 awarded October 2010 Award # 2010-WP-BX-0006
Department of Justice (SMART Office) Role: Consultant
Principal Agency Recipient: Palm Beach County Sheriff's Office
Comprehensive Approaches to Sex Offender Management Grant Program Palm Beach County's Comprehensive Sex Offender Management Strategy. This project will implement a multi-faceted, multi-disciplinary strategy that incorporates assessment, risk-based supervision, registration and notification, re-entry services and treatment, and multi-disciplinary collaboration.

$507,000 awarded 7/08 Award # 2008- MU-MU- 0001
National Institute of Justice Role: Co-Investigator
Principal Investigator: Kristen Zgoba, New Jersey Department of Corrections.
A Multi-state Sexual Violence Recidivism Study investigating the predictive validity of Static-99 Risk Scores and Adam Walsh Act Tier Guidelines. This study will compare the abilities of Static-99 scores and Adam Walsh Act classifications to predict sexual recidivism.

$484,000 awarded 7/12/06
National Institute of Justice Role: Co-Investigator
Principal Investigator: Elizabeth Letourneau, Medical University of South Carolina
Evaluating the Effectiveness of Sex Offender Registration & Notification Policies for Reducing Sexual Violence Against Women. This study will examine whether sex offender registration and notification laws in South Carolina have had the intended effect of reducing sex crime rates in general and sex offense recidivism specifically.

$296,656 awarded 8/07
National Institute of Justice Role: Consultant
Principal Investigator: Elizabeth Jeglic, John Jay College of Criminal Justice
Sex Offender Management, Treatment, and Civil Commitment: An Evidence-Based Analysis Aimed at Reducing Sexual Violence. This research project involves a comprehensive examination of the treatment and subsequent recidivism of sex offenders incarcerated or detained in the mental health and criminal justice systems in New Jersey.

$1,000 Pre-doctoral Research Grant awarded October 2002
Association for the Treatment of Sexual Abusers Role: Principal Investigator (dissertation)
Factors Predicting Recommendations for Civil Commitment of Sexually Violent Predators under Florida's Jimmy Ryce Act. This research examined the psychological evaluation process and identified factors predicting civil commitment.

AWARDS

Nominee, Faculty member of the year. Lynn University 2009.

Scholarly Forum Competition, Second Place Winner
"Empirically Based Risk Assessment of Child Sexual Abuse."
Awarded by the Graduate Student Association, Florida International University, April 2001

Expert Witness Qualification, Broward County (FL) Circuit Court

- Judge Kearney
- Judge Holmes
- Judge Frusciante
- Judge Seidlin
- Judge Aramony
- Master Beilly
- Judge Birken
- Judge Gold
- Judge Horowitz

Expert Witness Qualification, Duval County (FL) Circuit Court

- Judge Eleni Derke
- Judge Russell Healey

PROFESSIONAL SERVICE

Professional Affiliations

- Member, National Association of Social Workers (1987 – present)
- Member, Association for the Treatment of Sexual Abusers (1994 – present)
- Member, American Society of Criminology (2006– present)
- Member, Society for Social Work and Research (2004 – 2006)
- Member, American Professional Society on the Abuse of Children (1996-2004)

Scholarly Service

- Editorial Board. Sexual Abuse: Journal of Research and Treatment
- Research grant proposal reviewer. National Science Foundation
- Research grant proposal reviewer. National Institute of Justice
- Manuscript reviewer. American Journal of Criminal Justice
- Manuscript reviewer. Criminology & Public Policy
- Manuscript reviewer. Journal of Research on Crime & Delinquency
- Manuscript reviewer. Child Maltreatment
- Manuscript reviewer. Journal of Criminal Justice
- Manuscript reviewer. Analyses of Social Issues and Public Policy
- Manuscript reviewer. Justice Quarterly
- Manuscript reviewer. Sexual Abuse: Journal of Research and Treatment
- Manuscript reviewer. American Journal of Orthopsychiatry: Interdisciplinary Perspectives on Mental Health and Social Justice
- Manuscript reviewer. Justice Research and Policy.
- Manuscript reviewer. International Journal of Offender Therapy and Comparative Criminology.
- Manuscript reviewer. Human Rights Watch.
- Manuscript reviewer. Sociological Spectrum.
- Manuscript reviewer. Journal of Research on Social Work Practice.
- Manuscript reviewer. Ethical Human Sciences and Services.
- Abstract Reviewer, Annual Conference, Association for the Treatment of Sexual Abusers (2006-present)
- Editor, Florida Forum (1996-2001), Newsletter of the Florida Chapter of the Association for the Treatment of Sexual Abusers (FATSA)
- Abstract Reviewer, 12th National Conference on Child Abuse & Neglect, (1998)

Community Service

- Invited Member, Sex Offender Housing Task Force, Council of State Governments, (2008)
- Member, National Advisory Board, Safer Society Foundation (Oct. 2007 – present)
- Member, Prevention Coalition, National Center for Missing and Exploited Children (Oct. 2006 – Dec 2007)
- Board Member (2001-2007), Association for the Treatment of Sexual Abusers (ATSA)
- Committee Chair (Oct. 2003 – 2007), ATSA Ethics Committee (member to present)
- Committee Chair (May 2002 – Oct. 2003), ATSA Organization & Development Committee
- Member, ATSA Public Policy Committee
- President (2001-2004), Florida Association for the Treatment of Sexual Abusers (FATSA)
- Board Member (1996-present), FATSA
- Member (1999-2002), Statewide Child Abuse Death Review Team; Appointed by the Secretary of the Florida Department of Health
- Member, Broward County Sexual Abuse Intervention Network (SAIN) (1999-2002)
- Subject Matter Expert On Sexual Violence for the Department of Corrections, Broward County Probation Officers
- Advisory Board Member, (1996-1998), Crawford Center, Inc. (A residential facility for sexually aggressive children)
- Invited Member, Assessment Workgroup, Child Welfare League Of America, (1995-1996)

PUBLIC POLICY ACTIVITIES

2009 Chair, Broward County Sex Offender / Sexual Predator Task Force (appointed by Broward County Commissioners).

October 16, 2008. Invited testimony before the Vermont Legislature regarding sex offender registration, risk assessment, and the Adam Walsh Act.

August 29, 2008. Invited testimony before the Vermont Legislature regarding sex offender registration, notification, and residence restrictions.

March 18, 2008. Invited testimony before the Florida Legislature's Senate Criminal Justice Committee regarding proposed House Bill 1430: Residence of sex offenders and predators.

August 16, 2007. Invited testimony before the New Mexico Legislature's Courts and Justice Committee regarding sex crime policies

November 15, 2006. Invited testimony before the Kansas Legislature regarding residence restrictions for sex offenders and predators.

October 19, 2005. Invited testimony before the Florida Legislature's House Judiciary Committee regarding proposed House Bill 91: Residence of sex offenders and predators.

ATSA (2005). Contributor: Amicus Brief submitted to the United States Supreme Court by the Association for the Treatment of Sexual Abusers in the case of Doe v. Miller. [Regarding sex offender residence restrictions]

ATSA (2002). Contributor: Amicus Brief submitted to the United States Supreme Court by the Association for the Treatment of Sexual Abusers in the case of Connecticut Dept. of Public Safety v. John Doe. [Regarding implementation of "Megan's Law"]

UNIVERSITY SERVICE

- IRB
- Internship Committee
- Human Services Dept Chair
- Strategic Academic Assessment Plan Task Force
- Taskforce on Professoriate
- Quantitative Reasoning taskforce
- 3 dissertation committees, 1 QP committee
- Research practicum site for Masters in Psych students
- Clinical supervisor, Masters in Psych students
- Sexual Assault Response team
- Alert Team 2006-2007
- Student Conduct Review Board

Courses taught at Lynn: Introduction to Human Services; Groupwork & Family Systems; Social Problems & Policy; Ethical Practice; Current Perspectives in Substance Abuse; Introduction to Sociology; Assessment & Interviewing; Criminal Justice Research Methods; Case Management Strategies; Human Services Senior Seminar. Masters in Applied Psychology Internship Seminar.

Courses taught at FIU: Graduate courses taught: Human Behavior and the Social Environment I; Psychopathology (HBSE II); Theory and Practice with Family Violence; Social Welfare Policy; Child & Family Policy; Social Welfare Policy & Services. Undergraduate courses taught: Child Welfare Policy and Practice; Human Behavior and the Social Environment I; Social Work Practice Methods with Individuals; Social Work Practice Methods with Families and Groups; Techniques of Interviewing.

DOCTORAL STUDENT SUPERVISION

Tina Bauer Goldsmith (2007-2008), Lynn University Ph.D. in Global Leadership. Dissertation committee. *Emotional Intelligence and work performance*.

Judith Cineas (2007-2008), Lynn University Ph.D. in Global Leadership. Dissertation committee. *Faculty perceptions of student evaluations of teaching*.

Sherry Fulmore-Murray (2005-2008), Lynn University Ph.D. in Educational Leadership. Qualifying paper committee chair. *Violence against GLBT high school students*.

Markell Harrison-Jackson (2005-2009), Lynn University Ph.D. in Educational Leadership. Dissertation committee chair. *Factors Influencing Self-sufficiency Outcomes for Emancipated Foster Youth*.

SELECTED MEDIA APPEARANCES

Vitelli, Romeo (November 29, 2011). How useful are public sex offender registries? *Huffington Post*.
Crocker, Lizzie (November 22, 2011). The Penn State Scandal: 7 Facts about child sex abuse. *Daily Beast*.
Hudack, Stephen (November 14, 2011). Lake mulls new restrictions for sex offenders. *Orlando Sentinel*.
Nguyen, Linda (November 4, 2011). Sex offender registries don't deter convicts from reoffending. *Calgary Herald*.
Bluestein, Greg (July 19, 2010). Georgia softens once lauded sex offender law. *Associated Press*.
Gardner, Michael (April 12, 2010). King parents lobby for Chelsea's Law. *San Diego Union Tribune*.
Skipp, Catherine (February 1, 2010). A law for sex offenders living under a Miami bridge. *Time Magazine*.
Frank, John (February 24, 2010). Sex Laws Revisited. *Miami Herald*.
Levenson, Jill (November 4, 2009). Child safety zones work. *Miami Herald* (OP-ED).
Knutson, Ryan (September 3, 2009). Sex-Registry Flaws Stand Out. *Wall Street Journal*.
Gallacher, Andy (August 13, 2009). Florida faces sex offender dilemma. *BBC*.
Levenson, Jill (August 11, 2009). Residency rules endanger us. *Miami Herald* (OP-ED).
Harlem, Georgia (August 6, 2009). Unjust and Ineffective. *The Economist*.
Skipp, Catherine (August 3, 2009). A Bridge Too Far. *Newsweek*.
Rood, Lee (July 19, 2009). Sex offender costs to skyrocket. *Des Moines Register*.
Rodriguez, Ihosvani (July 9, 2009). Where neighbors are sex offenders. *South Florida Sun Sentinel*.
Grimm, Fred (June 20, 2009). Sex offender laws burden neighborhood. *Miami Herald*.
Vick, Karl (December 27, 2008). Laws to track sex offenders encouraging homelessness. *Wall Street Journal*.
Reed Ward, Paula (October 26, 2008). Residency restrictions for sex offenders popular, but ineffective. *Pittsburgh Post-Gazette*.
Sandberg, Lisa (October 16, 2008). AG wants online IDs of sex predators listed. *San-Antonio Express News*.
Spangler, Nicholas (April 8, 2008). For sexual predators, a camp of isolation. *Miami Herald*.
Arkowitz, Hal & Lilienfeld, Scott (April, 2008). Once a sex offender, always a sex offender? Maybe not. *Scientific American*.
White, Nicola (April 2, 2008). Senate committee OKs sex offender bill. *Tampa Tribune*.
Koch, Wendy (November 19, 2007). Many sex offenders are often homeless. *USA Today*.
Lane, Mary Beth (October 7, 2007). Sex offender ghettos. *Columbus Dispatch*.

Sher, Julian & Carey, Benedict (July 19, 2007). Debate on child pornography's link to molesting. *New York Times*.
Hopkins, Andrea (June 1, 2007). Fear and hatred push U.S. sex offenders to fringes. *Reuters*.
Keller, Larry (May 19, 2007). Residence limits keep sex offenders on move. *Palm Beach Post*.
Sex offender housing restrictions (March 7, 2007). *ABC World News with Charles Gibson*.
Koch, Wendy (February 26, 2007). Sex offender residency laws get a second look. *USA Today*.
Aldhous, Peter (February 21, 2007). Sex offenders: Throwing away the key. *New Scientist Magazine*.
Kalfrin, Valerie & Stanley, Doug (February 18, 2007). Protecting kids is goal, but how? *Tampa Tribune*.
Eltman Frank (February 16, 2007). New NIMBY twist: Move LI sex offenders around in trailers. *Associated Press*.
Bauer, Laura (February 12, 2007). Kansas resists buffer zones. *Kansas City Star.*
Rood, Lee (January 30, 2007). Lawmakers debate sex offender laws. *Des Moines Register*.
Woodard, Elaine (December 19, 2006). Sex sting suspect teaches children martial arts. *Daytona News-Journal*.
Klepal, Dan (December 11, 2006). Limits on sex offenders questioned. *Cincinnati Enquirer*.
Smith, Jennifer (December 2, 2006). Residency laws for sex offenders under microscope. *Newsday*.
Thompson, Elaine (November 19, 2006). Nowhere to go but out. *Worcester Telegram*.
Warren, Jenifer (November 9, 2006). U.S. Judge blocks portion of new sex offender measure. *Los Angeles Times*.
Warren, Jenifer (October 30, 2006). Sex crime residency laws exile offenders. *Los Angeles Times*.
The Predator Next Door. *MSNBC Documentaries*
Greenblatt, Alan (September 8, 2006). Sex Offenders. *Congressional Quarterly*.
Cambria, Nancy (September 3, 2006). O'Fallen, MO expected to rein in where sex offenders can live. *St. Louis Dispatch*.
Associated Press (July 23, 2006). Panel to mull changes in online sex offender list. *Boston Globe*.
Bauer, Laura & Rizzo, Tony (June 12, 2006). When evil lurks near our children. *Kansas City Star*.
Martin, Mark (June 2, 2006). California's most unwanted: Restrictions on residency make nomads of paroled sex offenders. *San Francisco Chronicle*.
McGraw, Seamus (April 20, 2006). Flaws in sex offender laws. *Court TV Crime Library http://www.crimelibrary.com/news/original/0406/2001_sex_offenders.html*.
Crary, David (April 19, 2006). Rethinking sex offender laws a tough sell. *Associated Press*.
Mooney, Jennifer (April 18, 2006). Bills aim to restrict sexual predators. *Miami Herald*.
Grotto, Jason (4-day series 1/29/05 – 2/1/06). Predators among us. *Miami Herald*.
Payne, Melanie (December 18,2005). Sex offender site criticized. *Southwest Florida News-Press*.
Koloff, Abbott. (December 12, 2005). Mt. Olive defends sex offender law. *New Jersey Daily Record*.
Associated Press. (December 5, 2005). Child porn a growing problem online. *Associated Press*
Weir, Kytja (November 22, 2005. Suspect has prior sex crime conviction. *Charlotte Observer*.
Sloan, Karen (November 20, 2005). Managing predators among us. *Omaha World-Herald*.
Dvorak, Todd (November 11, 2005). Iowa cities, towns barring child molesters. *Associated Press*.
Dvorak, Todd (November 4, 2005). Sex offender law gets another challenge. *Associated Press*.
Garcia, Jason (October 20, 2005). Lawmaker to re-vamp sex offender limits. *South Florida Sun-Sentinel*.
Gomez, Alan (October 20, 2005). Florida lawmakers consider tougher statewide restrictions for sex offenders. *Palm Beach Post*.
Saunders, Jim (October 20, 2005). Lawmakers want uniform law. *Daytona News-Journal*.
(October 16, 2005). Communities now have eviction power in pedophile ban. *Associated Press*.
Price, Rita & Sheehan, Tom (October 16, 2005). Sex offender zoning faulted. *Columbus Dispatch*.
Garcia, Jason (October 16, 2005). Sex offender laws prepared. *South Florida Sun-Sentinel*.

Clayworth, Jason (October 11, 2005). Researcher says laws are flawed. *Des Moines Register*.
Grimm, Fred (October 9, 2005). Sex offenders have a place to go: the shadows. *Miami Herald*.
Harris, Bonnie (October 4, 2005). Ely declares itself 'predator free zone.' *Des Moines Register*.
Worth, Robert (October 3, 2005). Exiling sex offenders from town. *New York Times*.
Levenson, Jill (September 28, 2005). Laws don't help keep kids safe. *Miami Herald*. Op-Ed.
Correll, Deedee & Hethcock, Bill (September 27, 2005). Therapy promises no cure, just reduced risk. *Colorado Springs Gazette*.
Olkon, Sara (September 19, 2005). Not sex predators, but still outcasts. *Miami Herald*.
Levenson, Jill (September 18, 2005). E-alerts on sex offenders. *New York Daily News*. Op-Ed.
Garcia, Jason (September 15, 2005). Legislator seeks statewide law limiting where sex predators can live. *South Florida Sun-Sentinel*.
Carlson, Mike (August 25, 2005). Not in my City. *Orlando Weekly*.
Turner, Jim (August 15, 2005.) Martin, St. Lucie look to keep sex offenders farther from children. *Port St. Lucie News*.
Perez, Robert (August 14, 2005). Offender rules may backfire, some say. *Orlando Sentinel*
Ruger, Todd (August 4, 2005). New emails warn of nearby offenders. *Sarasota Herald-Tribune*.
Perez, Robert (July 15, 2005). Zone law to hit sex offenders. *Orlando Sentinel*
Pedicini, Sandra & Cox, Erin (June 22, 2005). Child-molester curbs questioned. *Orlando Sentinel*.
Hemel, Daniel (June 22, 2005). Exile sex offenders from Manhattan, say 14 members of the city council. *New York Sun*.
Hill, Michael (June 20, 2005). Are sex offender laws becoming counterproductive? *Associated Press*.
Moore, Martha (June 20, 2005). States look to high-tech tools to track, map sex offenders. *USA Today*.
Valdemoro, Tania (June 15, 2005). Boce putting sex offenders on channel 20. *Palm Beach Post*.
Willhoit, Dana (June 12, 2005). Experts disagree on treating sexual criminals. *Lakeland Ledger*.
Fisher, Lise (June 13, 2005). Most sex offenders live in rural areas. *Gainesville Sun*.
Torres, Ginelle (June 10, 2005). Sex Offenders Restricted. *South Florida Sun-Sentinel*.
Holland, John (May 29, 2005). South Florida cities target sex offenders in an effort to protect children. *South Florida Sun-Sentinel*.
Medicaid Program says no Viagra for sex offenders (May 27, 2005). *Maine Things Considered*. Maine Public Broadcasting Network.
Musgrave, Jane (May 16, 2005). Murders ignite frenzied furor toward molesters. *Palm Beach Post*.
Dennis, Brady & Waite, Matthew (May 15, 2005). Where is a sex offender to live? *St. Petersburg Times*.
Silvestrini, Elaine (May 1, 2005). State's policies on sex convicts among sternest. *Tampa Tribune*.
Sex Crimes, No easy Answers (April 26, 2005). *The Pat Campbell Show*. WFLA Talk Radio, Orlando FL.
Moeller, Katy (April 24, 2005). Consequences Stem from Sex Offender Registry. *Schenectady Gazette*.
Tracking Sex Offenders (April 21, 2005). *ABC World News Tonight with Peter Jennings*.
Snyder, Susan (December 19, 2004). Shocking Sex Acts in School. *Philadelphia Inquirer*.
Fisher, Lise (November 17, 2004). Chemical castration is ordered for convict. *Gainesville Sun*.
Kelly, Dan (June 27, 2004). Therapist says sex predators can change behavior. *Reading Eagle*.
Lewis, Ken (August 17, 2003). An attempt to explain the unexplainable: Experts share insights into rape, its effects. *St. Augustine Record*.
Wolfson, John (July 6, 2003). Locked Away. *Orlando Sentinel*.
Stopping child sexual abuse (March 27, 2003). *Child Protection Report*, 29(7).
Munno, Greg (December 9, 2002). Sex offender seeks custody of two girls. *Syracuse Post-Standard*.
Richey, Warren (November 13, 2002). Megan's Law faces high-court test. *Christian Science Monitor.*

INVITED PRESENTATIONS

Levenson, J.S. (2011). *Sex offender policy trends: Research and Practice*. Michigan State Bar Association. Dearborn, MI, 9/16/11.

Levenson, J.S. (2010). *Sex offender policy trends: Research and Practice*. Keynote speaker, Colorado Sex Offender Management Board. Breckenridge, CO, July 16, 2010.

Levenson, J.S. (2010). *Sex offender policy trends: Research and Practice*. Keynote speaker, Minnesota Association for the Treatment of Sexual Abusers. Minneapolis, MN, April 16, 2010.

Levenson, J.S. (2009). *Residential proximity and sex offense recidivism*. National Institute of Justice Crime Mapping Conference. New Orleans, LA. August 20, 2009.

Levenson, J.S. (2009). *Justice System and Children's Rights (response to plenary speaker)*. National Adolescent Perpetrator Conference. Tampa, FL. May 18, 2009.

Levenson, J.S. (2008). *Sex offender registration, notification, and residence restrictions*. Vermont Legislature. August 29, 2008.

Levenson, J.S. (2008). *Sex offender residence restrictions*. National Coalition to End Homelessness Web Conference. Washington, DC. July 10, 2008.

Levenson, J.S. (2008). *Sex offender residence restrictions*. California Coalition on Sexual Offending. San Francisco, CA. May 15-16, 2008.

Levenson, J.S. (2008). *Sex offender policies: The Emperor's new clothes?* Keynote speaker, New Jersey ATSA Chapter, Scotch Plains, NJ, 4/11/08.

D'Amora, D., Klein, A., Levenson, J.S., Lieb, R. (2007). *Sex offender policies in the new millennium (Plenary Session)*. 26th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA, 11/2/07.

Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Liberty Health Care Sex Offender Treatment Conference, Indianapolis, IN, 6/15/07.

Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Texas Sex Offender Treatment Board Conference, Austin, TX, 2/18/07.

Levenson, J.S., & Palmer, R. (2006). *Ethical issues in working with sex offenders*. 25th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 9/27/06.

Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Tennessee Sex Offender Treatment Board Conference, Nashville, TN, 8/21/06.

Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* National Association of Criminal Defense Attorneys Conference, Miami Beach, FL 7/27/06.

Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Keynote speaker, Illinois ATSA statewide conference, Bloomington, IL, 4/28/06.

Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Keynote Speaker, Alliance for Women in Community Corrections, Columbus, OH, 4/27/06.

Levenson, J.S. (2006). Keynote speaker, Sexual Violence Awareness Day Conference, Fort Myers, FL, 4/7/06.

Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Illinois ATSA Board of Directors Meeting, Chicago, IL, 1/17/05.

Levenson, J.S. (2005). *Sex offender policies: The Emperor's new clothes?*, Florida Sexual Abuse Intervention Network, Tampa, FL, 9/16/05.

Levenson, J.S., (2004). *Post conviction sex offender polygraph examination: Client perceptions of accuracy and utility*. Florida Chapter of the Association for the Treatment of Sexual Abusers Annual Meeting, Tampa, FL, 3/6/04.

Levenson, J.S. (2004). *Working with Families of Juvenile Sex Offenders*, Florida Sexual Abuse Intervention Network, Tampa, FL, 4/30/04.

Hines, B. & Levenson, J.S. (2004). *Assessment and Treatment of Adolescents and Children with Sexual Behavior Problems*, Sponsored by Children's Psychiatric Center, Miami, FL, 3/13/04.

Levenson, J.S. (2003). *Reunification, Supervision, and Visitation of Sex Offenders with Children*. Department of Corrections, Portland, OR, 4/24/03.

Levenson, J.S. (2003). *Working with Families of Juvenile Sex Offenders*, Florida Sexual Abuse Intervention Network, Tampa, FL, 4/3/03.

Levenson, J.S. (2002). *Juvenile Sex Offender Risk Assessment & Treatment Planning*, NASW Ft. Myers Chapter, Ft. Myers, FL, 10/18/02

Levenson, J.S. (2002). *Reunification Following Sexual Abuse*, 21st Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Montreal, Quebec, Canada, 10/2/02.

Levenson, J.S. (2001). *Victim or Victimizer?*, Assessment and Treatment of Adolescents and Children with Sexual Behavior Problems, Ft. Lauderdale, FL, 8/10/01

Levenson, J.S. (2001). *Juvenile Sex Offender Treatment: Child Development, Psychopathology, Family Safety Planning, & Treatment Issues*, Florida Chapter of the Association for the Treatment of Sexual Abusers State Conference, Orlando, FL, 2/10/01

Levenson, J.S. (2000). *Family Safety Planning and Reunification Following Sexual Abuse*, Colorado Chapter of the Association for the Treatment of Sexual Abusers State Conference, Denver, CO, 4/14/00.

Levenson, J.S. (1999). *Connections: Family Safety Planning and Reunification Following Sexual Abuse*, 18th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Orlando, FL, 9/22/99.

Levenson, J.S. (1998). *Connections: Psychoeducational Group Treatment for Nonoffending Parents of Sexually Abused Children and Partners of Sexual Offenders*, Joining Forces: Sexual Abuse Conference, Lakeland, FL, 10/14/98.

Levenson, J.S. (1998). *Family Safety Planning and Reunification Following Sexual Abuse*, Third Annual Florida Sex Offender Treatment Conference, Deerfield Beach, FL, 6/18/98.

Levenson, J.S. (1998). *Family Safety Planning and Reunification Following Sexual Abuse*, DuPage County Probation Department, Wheaton, IL., 5/8/98.

PEER-REVIEWED PRESENTATIONS AT PROFESSIONAL CONFERENCES

Levenson, J.S. (2011). A descriptive analysis of individuals on public registries. 30 Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Toronto, CA, 11/3/10.

Levenson, J.S. (2010). *Residential restrictions for sex offenders*. 29th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Phoenix, AZ, 10/21/10.

Levenson, J.S. (2009). *Proximity & sex offense recidivism*. American Society of Criminology, November 4, 2009, Philadelphia, PA.

Levenson, J.S. (2009). *Charting new territory: Mapping trends in sex offender policy*. 28th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Dallas, TX, 9/30/09.

Levenson, J.S. (2008). *Failure to register & sex offense recidivism*. American Society of Criminology, November 12, 2008, St. Louis, MO.

Levenson, J.S., Prescott, D., & D'Amora, D. (2008). *What can we learn from sex offenders? Data from a series of consumer satisfaction surveys*. 27th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Atlanta, GA, 10/24/08.

Levenson, J.S. (2007). *Sex offender residence restrictions*. American Society of Criminology, November 14, 2007, Atlanta, GA.

Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Florida Council Against Sexual Violence, June 20, 2007, Daytona Beach, FL.

Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Sexual Abuse Intervention Network, May 16, 2007, Tampa FL.

Levenson, J.S. & Cotter, L.P. (2006). *The impact of Megan's Law and residence restrictions on sex offender reintegration*, 25th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 9/28/06.

Palmer, R., & Levenson, J.S. (2005). *Ethical issues in working with sex offenders*. 24th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Salt Lake City, UT, 11/18/05.

Levenson, J.S. & Cotter, L.P. (2005). *The impact of Megan's Law and residence restrictions on sex offender reintegration*, 24th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, New Orleans, LA, 11/3/05.

Levenson, J.S. (2005). *The Impact of Megan's Law on Sex Offender Reintegration*. 9th Annual Conference of the Society for Social Work and Research, Miami, FL. 1/16/05.

Levenson, J.S. (2004). *Sex Offender Civil Commitment Selection: Preliminary Research Findings*, 23rd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Albuquerque, NM, 10/29/04.

Levenson, J.S. & Rapa, S. (2003). *Clinical Supervision of Therapists who Treat Sex Offenders*, 22nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, St. Louis, MO, 10/9/03.

Rapa, S. & Levenson, J.S. (2003). *Countertransference in the treatment of sexual abusers*, 22nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, St. Louis, MO, 10/9/03.

Levenson, J.S. (2003). *Engagement, Denial, and Treatment Progress in a Sample of Male Sex Offenders in Group Therapy*, 22nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, St. Louis, MO, 10/9/03.

Macgowan, M.J. & Levenson, J.S. (2003). *Psychometrics of the Group Engagement Measure with Male Sex Offenders*. 7th Annual Conference of the Society for Social Work and Research, Washington, D.C., 1/17/03.

Levenson, J.S. (2002). *Improving CPS risk assessment in child sexual abuse cases*. 10th Annual Conference of the American Professional Society on the Abuse of Children (APSAC), New Orleans, LA, 5/30/02

Levenson, J.S. (2001). *The Role of ATSA Members in Child Protection*, 20th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, San Antonio, TX, 11/9/01.

Levenson, J.S. (2001). *Social Workers are Mandated Reporters*, NASW statewide conference, Ft. Lauderdale, FL, 6/16/01

Levenson, J.S. (2000). *Connections: Working with the Nonoffending Parent in Sexual Abuse Cases*, 19th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA, 11/3/00.

Levenson, J.S. (2000). *Psychopathy in Children*, NASW statewide conference, Ft. Lauderdale, FL, 6/22/00.

Levenson, J.S. (1999). *Inside the Mind of the Sex Offender*, NASW statewide conference, Ft. Lauderdale, FL, 6/11/99

Levenson, J.S. (1999). *Family Safety Planning and Reunification Following Child Sexual Abuse*, 7th Annual Conference of the American Professional Society on the Abuse of Children (APSAC), San Antonio, TX., 6/4/99.

Levenson, J.S. (1998). *Utilizing Group Process as an Intervention Strategy with Sexual Offenders*, 17th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Vancouver, British Columbia, 10/16/98.

Levenson, J.S. (1998). *Bridging the Gap Between Assessment & Case Planning*, 6th Annual Conference of the American Professional Society on the Abuse of Children (APSAC), Chicago, IL., 7/10/98.

Levenson, J.S. (1997). *Connections: Working with the Nonoffending Parent in Sexual Abuse Cases*, 16th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, Arlington, VA, 10/17/97.

Morin, J.W. & Levenson, J.S. (1997). *Defining Successful Completion: A Competency Based Treatment Model*, Second Annual Florida Sex Offender Treatment Conference, Tampa, FL, 4/11/97.

Morin, J.W. & Levenson, J.S. (1996). *Defining Successful Completion: A Competency Based Treatment Model*, 15th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 11/15/96.

Social Work Supervision (1991-present)

- Field instruction for MSW & BSW students from FIU, FAU, and Barry University
- Clinical supervision for Masters-Level licensure interns as required by Florida Statute 491

LYNN UNIVERSITY
3601 North Military Trail
Boca Raton, FL 33431-5598

September 30, 2013

Clerk of the Court
Eastern District of Michigan
Via e-filing by the plaintiffs' counsel

Re: *John Does #1-5 and Mary Doe v. Rick Snyder and Col. Kriste Etue*
E.D. Mich. No. 12-cv-11194
Amendment to Jill S. Levenson's expert report,

To Whom It May Concern:

I am writing today to ensure that my original expert report, filed with the court on March 15, 2012 on behalf of the plaintiffs, is in full compliance with Federal Rule of Civil Procedure 26(a)(2)(B).

Rule 26(a)(2)(B)(iv) requires an expert report to contain the witness's qualifications, including a list of all publications authored in the previous 10 years. Given the time that has passed since we filed my report, I have attached my most recent CV to be included as an appendix to my original report.

In addition, I have attached a statement of compensation for my work on this case as well as a list of cases in which I have recently provided expert testimony. These attachments make my report compliant with the requirements set forth in Rules 26(a)(2)(B)(v) and (vi).

Sincerely,

Jill S. Levenson, PhD, LCSW

encl: updated CV; compensation & case list

cc: by e-filing notice to all counsel (w/ encls)

Exhibit D

Expert Report of

Dr. Janet Fay-Dumaine, Psy. D.

Declaration and Report of Janet Fay-Dumaine, Psy. D.

TO: Miriam Aukerman and Paul Reingold
RE: Static-99R Assessment of Named Plaintiffs
DT: February 29, 2012

Introduction

You asked me to provide an actuarial assessment regarding the risk for recidivism in five sex offender cases that you sent to me for review. As we discussed, there are multiple methods for risk assessment, some of which include interviewing the offender and some of which do not. The actuarial risk assessment technique used for this report is the Static-99R, which is widely employed throughout the United States, including by the Michigan Department of Corrections. It is described in more detail below. It is described in more detail below.

I scored three male offenders (John Doe #2, John Doe #3, and John Doe #4) using the Static-99R. One other offender (John Doe #1) could not be scored because his conviction was for armed robbery and kidnapping; there was nothing in the record to indicate that he has ever been convicted of a sexual offense or that there was a sexual component to his offense and the Static-99R only measures risk for sexual offenders. In addition, the one female offender (Mary Doe) could not be scored because the Static-99R does not apply to female offenders. I have included some general information about female offenders in this report.

Summary of the Report

The three cases that I scored using the Static-99R came out as follows: John Doe #2, John Doe #3, and John Doe #4 all earned a score of “two.”

The Static-99R score for risk of reoffending is typically expressed as a percentage. Offenders from routine correctional samples with a score of two have been found to sexually reoffend at a rate of 5.0 percent in five years. Using a confidence interval of 95%, the range of the rate of reoffending would be 3.4 percent to 7.4 percent.

As to the female offender Mary Doe, the available information suggests that the five-year risk for reoffending in that population is extremely low, which means in the 2 percent range.

For all, the risk of sexual reoffending declines both with the passage of time (without a new offense) and with increasing age. Mr. Doe #2 has been in the community, offense free, for 15 years (since 1997), and Mr. Doe #3 has been in the community, offense free, for 11 years (since 2001). Previous data show that those in the Low and Low-Moderate nominal category for risk for re-offending have a significant decline in risk as time in the community increases. All three offenders here also earned one point for being under 35 years of age. When they turn 35 (absent new offenses) their Static-99R score will drop to “one.” A score of “one” has a predicted recidivism rate of 3.8 percent with a 95% confidence interval from 2.5 percent to 5.8 percent.

Overview

In the following brief report I describe both the measures used and the interpretation of the results. The results presented are only for recidivism for sexual reoffending. Each Static-99R coding form will not be presented here, but is available for review. The score for each subject is attached as Exhibit 1. A copy of my CV is attached as Exhibit 2.

Risk Assessment

The Static-99 Revised (Static-99R) is an instrument designed to assist in the prediction of sexual (and violent) recidivism for male sexual offenders. The measure defines recidivism in terms of officially detected new offenses (charges or convictions). This instrument has been shown to be a moderate predictor of sexual re-offense potential. All risk assessment instruments are based on officially detected new offenses within the population, and therefore may understate risk to the extent that such offenses are underreported, or overstate risk to the extent that a charged offense may turn out to be mistaken or misattributed.

The Static-99R fully incorporates the relationship between age at release and sexual recidivism, whereas the original Static-99 scale did not (Helmus, 2009). Therefore, the developers of Static-99R recommend that the revised version of the scale (Static-99R) replace Static-99 in all contexts. Static-99R has shown moderate accuracy in ranking offenders according to their relative risk for sexual recidivism. The recidivism estimates provided by the Static-99R are group data and as such these estimates do not directly correspond to the recidivism risk of an individual offender. The accuracy in assessing relative risk with the Static-99R has been consistent across a wide variety of samples, countries, and unique settings (Helmus, 2009).

Discussion of Static-99R Scores

Of the three male cases that had sufficient data to develop a Static-99R score, they all scored a “two.”

Percentile data for Static-99R scores are based on an international sample of sexual offenders from eight studies, including samples from Canada, the United States, England, Austria, and Sweden (*n* = 4,040). The samples used for percentile data were considered relatively unselected groups that would be representative of the population of all adjudicated sex offenders within a given correctional system. The norms are presented as percentile ranges, reflecting the observed percentage of offenders scoring at or below a specified score. Percentile rankings are useful in situations where the allocation of limited resources must be made, such as for treatment, community supervision, etc.

Absolute degrees of recidivism risk cannot be directly inferred from the percentile rankings. The appropriateness of applying these percentiles to sexual offenders in jurisdictions other than those listed above is not known.

Compared to a representative and international sample of adult male sexual offenders, a Static-99R score of “two” falls into the 39.7 – 54.4 percentile. This percentile range means that 39.7 – 54.4 of sex offenders in these samples scored at or below a score of “two.” Conversely, 45.6 – 60.3 percent of this sample of sex offenders scored higher.

Relative risk refers to the ratio of two recidivism rates. Research has found the relative risk associated with different Static-99R scores to be consistent even when the overall base rate

of recidivism varies across samples. Information concerning relative risk for Static-99R scores were based on 22 samples of sexual offenders from Canada, the United States, the United Kingdom, Denmark, Holland, Austria, Sweden, Germany, and New Zealand (*n* = 8,047). The recidivism rate for sex offenders with a score of "two" would be expected to be approximately the same as the recidivism rate for the typical sexual offender (defined as median score of two).

There have been a large number of studies examining the absolute sexual recidivism rates associated with Static-99 scores. Helmus (2009) combined 28 Static-99 replication studies and was able to calculate Static-99R scores for 23 of these samples. The samples (*n* = 8,139) were drawn from Canada, the United States, United Kingdom, western Europe and New Zealand. Recidivism was defined as charges in about half of these studies and as convictions in the other half.

Although the relative risk was consistent across studies, the observed recidivism base rates varied considerably across samples based on factors not measured by Static-99R. Samples that were preselected to be high-risk/high-needs (6 samples) show the highest recidivism rates; samples preselected based on treatment need (6 samples) had intermediate recidivism rates; and routine correctional samples had recidivism rates substantially lower than the pre-selected groups (and also lower than the recidivism rates in the original development samples for Static-99).

Local recidivism norms applicable to the group of offenders to which a specific offender most closely resembles would be ideal, but are not available for these cases. The routine sample norms developed in the Static-99R research as considered appropriate to reflect recidivism rates as the routine sample norms were developed with typical sex offenders in correctional systems. A description of the routine correctional samples follows.

Routine Correctional Samples

This group consisted of eight samples of sex offenders from Canada, the United States, England, Austria and Sweden. These samples were relatively random (i.e., unselected) samples from a correctional system (as opposed to samples from specific institutions or subject to specific measures). In other words, they can be considered roughly representative of all adjudicated sex offenders. Some offenders in these samples would have been subsequently screened for treatment or other special interventions (e.g., psychiatric admission or exceptional interventions related to dangerousness), but these samples represent the full population of all offenders prior to any pre-selection processes. The recidivism norms for the unselected samples are the closest available to a hypothetical average of all sex offenders.

As noted in the summary above, offenders from routine correctional samples with a score of two have been found to sexually reoffend at a rate of 5.0 percent in five years. Using a confidence interval of 95%, the range of the rate of reoffending would be 3.4 percent to 7.4 percent.

All three offenders in this case earned a point due to their age of under 34.9 years. As with other types of criminal offenses, sexual offending tends to decrease steadily with age (Barbaree & Blanchard, 2008; for research on general offending, see Hirschi & Gottfredson, 1983; Sampson & Laub, 2003). The offenders scored are all currently under 34 years old. They will therefore drop from a score of "two" to a score of "one" after their 35th birthday. A score of "one" has a predicted recidivism rate of 3.8 percent with a 95% confidence interval from 2.5 percent to 5.8 percent.

Length of Follow-Up and Recidivism

In addition to the risk for sexual offense recidivism information provided above, two of the offenders in the ACLU sample have been in the community, offense free, for more than ten years. Mr. Doe #2 has been in the community since his conviction in 1997, and Mr. Doe #3 has been in the community since his conviction in 2001.

The original recidivism estimates for Static-99 included adjustments for time offense-free in the community, but the authors do not currently recommend using these estimates because they are outdated. The authors do endorse discussing the overall pattern of relative risk reduction that occurs as offenders spend more time offense-free in the community. Previous data show that those in the low and low-moderate nominal category for risk for re-offending have a significant decline in risk as time in the community continues to increase.

In general, longer follow-up periods for offenders in the community increase the recidivism base rate because recidivism accumulates over time. The increase in risk for recidivism, however, is not linear and the available data show that most re-offending occurs within the first five years in the community. The data indicate that the longer an offender is offense-free in the community, the more their individual probability of re-offending decreases (Harris & Hanson, 2004; A.J.R. Harris, Phenix, Hanson & Thornton, 2003).

Studies that directly compare the rate of sex offense charges versus convictions within a single sample do find differences in recidivism rates when charges versus convictions are compared (Epperson, 2003; Johansen, 2007; Langan, Schmitt, & Durose, 2003; Minnesota Department of Corrections, 2007). For example, of 9,691 sex offenders from 15 states, 5.3% were charged with a new sexual offense within three years, whereas only 3.5% were convicted, suggesting a small but nonetheless meaningful difference (Langan et al., 2003). A similar difference was found in a smaller study (n = 280) with a longer follow-up (average of seven years), where 6.8% of offenders were rearrested and only 3.9% were re-convicted (Johansen, 2007).

Female Sexual Offenders

Risk assessment of female sex offenders is limited to statements about female sex offenders generally because instruments to assess risk have yet to be developed. A recent meta-analysis published in Sexual Abuse: A Journal of Research and Treatment by Cortoni, Hanson and Coache (2010) examined the findings of ten studies that included over 2400 female sex offenders with an average follow-up period of six and a half years. In summary, the sample group were found to have an "extremely low" rate of sexual recidivism (between one and three per cent). Violent recidivism (including sexual recidivism) remained extremely low and ranged from four to eight per cent. Thus, the results suggest that female sex offenders, after release from sanctions by the criminal justice system, tend to refrain from engaging in detected sexual offenses.

Thank you again for the opportunity assess your clients. Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

janet fay-dumaine PsyD

Janet Fay-Dumaine, Psy. D.
Licensed Psychologist

ATTACHMENT A

PLAINTIFFS' STATIC 99R SCORES

Static-99R Scores

Name	Score	Items for which point(s) earned
JOHN DOE #2	two	Aged 18 to 34.9 Any unrelated victims
JOHN DOE #3	two	Aged 18 to 34.9 years Any unrelated victims
JOHN DOE #4	two	Aged 18 to 34.9 years Any unrelated victims

Unable to score JOHN DOE #1 (did not commit a sexual offense) and MARY DOE (female).

ATTACHMENT B

CURRICULUM VITAE

Curriculum Vitae

Janet Fay-Dumaine, Psy. D.
PO Box 3263
Ann Arbor MI 48106
734/845-8872

Educational History

Virginia Consortium Program in Clinical Psychology*
Virginia Beach, Virginia

*The College of William and Mary, Eastern Virginia Medical School, Norfolk State University, Old Dominion University
Full APA Accreditation
Doctoral degree requirements completed August 31, 1994
Psy.D. awarded December 1994

University of Massachusetts/Boston
B.A., Summa Cum Laude with Honors in Psychology May 1988

Professional Employment History

Center for Forensic Psychiatry
November 2010 to present

The Center for Forensic Psychiatry is a state facility that provides forensic evaluations and treatment services to criminal defendants throughout Michigan. Responsibilities include evaluations of competence to stand trial, criminal responsibility and other forensic issues; providing group therapy and participation in treatment team meetings; participation in the Path Oversight Committee for committed sex offenders and other duties as assigned.

Diagnostic and Evaluation Center
Nebraska Department of Correctional Services
March 2006 to November 2010

The Diagnostic and Evaluation Center is the initial classification center for inmates entering the Nebraska prison system. Responsibilities as supervisor of mental health include supervision of five licensed, master level clinicians and an administrative assistant, development and implementation of assessment protocol for incoming inmates, monitoring and treatment of inmates on suicide prevention plans and inmates with major mental illness, evaluation and

assessment of pre-sentence and post-conviction sex offenders as assigned, clinical supervision of pre-licensed doctoral level psychology staff, participation Clinical Sex Offender Review Team, Clinical Violent Offender Review Team and Mentally Ill Review Team and various administrative duties.

Legal Services Branch of Forensic Services Administration
District of Columbia Department of Mental Health
May 1999 to February 2005

Legal Services Branch is a forensic evaluation public service in Washington, D.C., located at the St. Elizabeths Campus. Evaluations are conducted at the D.C. Detention Facility, Correctional Treatment Facility, St. Elizabeths Campus, and the D.C. Superior Court cellblock. Responsibilities as a clinical psychologist include conducting post-trial evaluations – probation, sex offender and aid at sentencing; pre-trail competency screenings at the field office at Superior Court, competency and criminal responsibility evaluations, and providing consultation to attorneys, probation officers, and clinical staff. Responsibilities also include clinical supervision of unlicensed psychology staff and pre-doctoral psychology interns and post-doctoral residents, as well as providing the Ethics Seminar to pre-doctoral interns.

Northern Virginia Mental Health Institute
Falls Church, Virginia
June 1997 to May 1999

NVMHI is a state inpatient facility. Responsibilities as senior psychologist included participation in treatment team, providing treatment services for inpatients including patients adjudicated not guilty by reason of insanity and conducting the competency education group. Services included development of treatment plans, individual and group psychotherapy, and psychological assessment and evaluation. Evaluation services for NGRI acquittees included reports to Forensic Review Panel to petition for privileges and annual reports to the court. Supervised psychology externs for psychological assessment and psychotherapy. Additional responsibilities included serving as Forensic Coordinator for the facility as of October 1998. Responsibilities included risk assessment of forensic admissions, supervision of forensic evaluations, and administrative duties.

Central State Hospital, Forensic Unit
Petersburg, Virginia
October 1994 to May 1997

CSH Forensic Unit is the only maximum-security forensic mental health facility in Virginia. Responsibilities as senior psychologist included participating in treatment team and providing services for jail transfers, defendant's order for restoration to competency and defendants found not guilty by reason of insanity. Services included individual psychotherapy, psychological assessment, conducting community meeting and monitoring of point system on ward. Co-leader of competency education group for patients admitted for restoration to competency. Evaluation services included initial psychological evaluation, analysis of aggressive behavior, competency to stand trial, and mental status at the time of the offense. Provided clinical supervision of pre-doctoral interns from the Medical College of Virginia.

Faculty Appointments

December 2011 – present
Adjunct Faculty
Madonna University
Livonia, Michigan

December 1999 - January 2005
Adjunct Faculty
Argosy University
Washington, D.C.

August 1996 – May 1997
Assistant Clinical Professor of Psychiatry
Virginia Commonwealth University/Medical College of Virginia
Richmond, Virginia

Presentations

Symposium: Difficult Cases, Multiple Choices: A Few Forensic Dilemmas presented at the March 2006 Society for Personality Assessment Annual Meeting, San Diego, California.

Ethics Workshop
March 19, 2002 Pathways Homes, Inc. Fairfax, Virginia

Professional and Ethical Issues Workshop
December 7, 2001 St. Elizabeths Psychology Department Washington, D.C.

Mental Illness as a Risk Factor for Interpersonal Violence
October 2, 2001 Workplace Violence Conference Huntington, West Virginia

Ethical Issues in Forensics
March 2001 St. Elizabeths Campus, Washington, D.C.

Institute of Law, Psychiatry and Public Policy's Risk Assessment Training
April 1998 Participate in panel discussion highlighting risk assessment issues.

"Awareness of illness in Inpatients Diagnosed with Schizophrenia and Bipolar Disorder." Poster session at Southeastern Psychological Association 1997 Annual Meeting presented April 1997.

Institute of Law, Psychiatry and Public Policy's Insanity Acquittee Evaluation Training March 1997 Presentation, instruction, and discussion of not guilty by reason of insanity case illustrating forensic evaluation process.

Training and Clinical Internship

Institute of Law, Psychiatry and Public Policy
University of Virginia, Charlottesville

March 2000 Juvenile Evaluation Update Training
March 1995 Sex Offender Evaluation Training
December 1994 Insanity Acquitte Evaluation Training
November 1994 Basic Forensic Evaluation Training

Springfield Hospital Center Sykesville, Maryland
September 1993 through August 1994

SHC is an APA accredited internship program that includes two six-month inpatient rotations at the state hospital. Each rotation included individual and group psychotherapy, treatment team meetings, conducting ward community meetings, and completing at least one psychological assessment case per month. Staff psychologist for the ward supervised all ward activities. Group psychotherapy supervision and a weekly assessment seminar were conducted for the interns. During the year, completed one day a week outpatient practice at a community mental health center. Responsibilities for adolescent and child services included initial psychological evaluation of new referrals, individual psychotherapy for a caseload of three to four clients and participation in family therapy practice seminar. Throughout the internship year, interns and staff

participated in a series of seminars covering a broad array of psychotherapy and assessment topics.

Doctoral Practica

Eastern State Hospital – Mentally Ill/Chemical Abuse Recovery Unit
July 1992 to March 1993

Twenty hour per week advanced graduate training. Responsibilities included co-leader of group psychotherapy and substance abuse group, individual psychotherapy, participation in treatment team meetings, intake assessments, including administration of Addiction Severity Index interview, and other psychological testing as appropriate.

Research Experience

Research Assistant – College of William and Mary
September 1991 to May 1992

Responsibilities included conducting research investigating interaction styles of depressed/non-depressed female college students. Directed small groups in systematic relaxation, videotapes interpersonal interactions between subjects, and rated interactions. Conducted interviews with adult inpatients diagnosed with schizophrenia in a long term care unit at Eastern State Hospital. Rated interviews for positive and negative symptoms.

Research Assistant – College of William and Mary
September 1990 to May 1991

Assisted in clinical interview and administration of the Wisconsin Card Sort to adult inpatients diagnosed with schizophrenia in long term care unit at Eastern State Hospital. Rated interviews for positive and negative symptoms.

Professional Licensure and Associations

Licensed Psychologist - Michigan
Licensed Psychologist – Nebraska (inactive)
Licensed Clinical Psychologist – Virginia (inactive)
Licensed Psychologist - Washington, D.C. (inactive)
Society for Personality Assessment - Member

October 4, 2013

Clerk of the Court
Eastern District of Michigan
Via e-filing by the plaintiffs' counsel

Re: *John Does #1-5 and Mary Doe v. Rick Snyder and Col. Kriste Etue*
E.D. Mich. No. 12-cv-11194
Amendment to Janet Fay-Dumaine's expert report,

To Whom It May Concern:

I am writing today to ensure that my original expert report, filed with the court on March 15, 2012 on behalf of the plaintiffs, is in full compliance with Federal Rule of Civil Procedure 26(a)(2)(B).

Rule 26(a)(2)(B)(v) requires an expert report to contain a list of all other cases in which the witness has testified as an expert in the previous four years. I have attached a list of these cases to be included as an appendix to my original report.

I would also note that my original report did not include a statement of compensation for my work on this case. At that time, I was not receiving compensations for my work on this case. Nothing has changed since. In addition, the CV attached to my original report is still up-to-date.

Sincerely,

Janet Fay-Dumaine, Psy. D.
Licensed Psychologist

encl: case list

cc: by e-filing notice to all counsel (w/ encls)

List of Cases for Janet Fay-Dumaine

Regarding Competence to Stand Trial:

Defendant: M. Coolidge 52-3 Judicial District Court of Oakland County 04-20-2012

Defendant: D. Pollard Third Judicial Circuit Court of Wayne County 09-17-2012

Regarding Criminal Responsibility:

Defendant: W. Woods 52-3 Judicial District Court of Oakland County 05-24-2012

Exhibit E

First Expert Report of Peter Wagner, J.D.

John Doe #1, *et al.*, v. Richard Snyder, *et al.*

EXPERT REPORT/DECLARATION OF PETER WAGNER, J.D.

1. Introduction

I am an attorney and Executive Director of the Prison Policy Initiative, a non-profit research organization based in Easthampton, Massachusetts. The Prison Policy Initiative focuses on the intersection of criminal justice policy and other social issues.

I have been retained by plaintiffs as a geographic expert to address and quantify the impact of Michigan's laws that prohibit registered sex offenders from living, working, or loitering within 1,000 feet of a school.

2. Relevant experience

As further detailed in my c.v., I regularly make maps that analyze Census and other demographic data in relation to statutory restrictions that impose geographic limits for criminal justice purposes.[1] My experience includes:

- I testified in *Whitaker v. Perdue* (U.S. Dist. Ct., N.D. Georgia, 4:06-cv-00140-CC) in 2006 and 2008 regarding the impact of HB1059, Georgia's sex offender residency restriction law. I prepared maps of 1,000 foot exclusion zones around schools, day-care centers, bus stops, parks and other areas listed in the statute as places that people on the sex offender registry cannot live. I initially prepared analyses of the law's effect in 6 counties, and subsequently prepared detailed maps of the exclusion zones in two additional counties.

- From 2006 to 2009, I led a project that involved mapping 1,000 foot zones around schools — and a smaller distance around parks — in Hampden County, Massachusetts and then analyzing the Census populations of the affected areas. The purpose was to evaluate the efficacy and socio-economic implications of a sentencing law that gave higher

[1] A copy of my c.v. is attached.

sentences for certain drug offenses committed in prohibited areas. These findings were published in reports I co-authored entitled *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children*[2] and *Reaching too far, coming up short: How large sentencing enhancement zones miss the mark.*[3]

- In 2006, I prepared a detailed study for the Massachusetts Committee for Public Counsel Services of a sex offender residence ordinance in Revere, Massachusetts, which prohibited offenders from living within 1,000 linear feet of a school, nursery school, day care center, kindergarten, or playground.

- I have performed similar analyses in Massachusetts in the city of Lynn (2009 and 2011)**,** the city of Waltham (2010) and the town of Barnstable (2009).

3. Methodology

The methodology in all of these research projects was to use a Geographic Information Systems software package called ArcView to map each protected property by drawing a 1,000 foot "buffer" around each. For my socio-demographic analysis, I would then overlay that map with U.S. Census data and calculate the population that lived within and outside the zones. For housing analyses, I then determined which properties in the jurisdiction were within the exclusion zones.

Identifying each protected place is a time-consuming but straight-forward process. The key ingredient for each of these analyses is the ability to obtain the complete geographic coordinates of every property parcel *boundary* in the jurisdiction. It is not sufficient to perform such an analysis with only the address of the protected property/building.

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[2] *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children*, by Aleks Kajstura, Peter Wagner and William Goldberg, Prison Policy Initiative, July 2008 available at http://www.prisonpolicy.org/zones/

[3] *Reaching too far, coming up short: How large sentencing enhancement zones miss the mark*, by Aleks Kajstura, Peter Wagner and Leah Sakala, Prison Policy Initiative, January, 2009, available at http://www.prisonpolicy.org/toofar/

For example, the residence restrictions for sex offenders that I analyzed in Georgia and Massachusetts were measured on a property line to property line basis. Similarly, the drug sentencing enhancement statute I analyzed in Massachusetts was measured from the property line of the school parcels. To be accurate, such analyses must account for the fact that laws are enforced based on distance from a property boundary line, rather than from a building. This analysis produces a result that encompasses significantly more area than non-geographers would expect.

4. The Difficulties Created by Mapping Exclusion Zones.

In my work mapping criminal justice exclusion zones in other states, I have identified several significant problems with the use of such zones:

A. It is extremely difficult if not impossible to identify the areas that are inside and outside the exclusion zones, even with sophisticated mapping technology;

B. Exclusion zones cover a huge area, much of which is not actually "near" schools as we think of distance in human terms;

C. Exclusion zones have the practical effect of severely restricting access to housing and employment, and of limiting the ability to engage in normal human activity for those subject to exclusion.

A. Identifying areas that are inside and outside of the zones is extremely difficult if not impossible.

Geographic exclusion zones can only function to keep individuals out of prohibited areas if individuals know where the exclusion zones are.[4] However, in practice it is extremely difficult if not impossible for an individual to determine, at any given time, whether he or she is within an exclusion zone because:

[4] My research on the Massachusetts school zones law showed that it has been ineffective at moving drug activity away from schools and that, *as currently designed it can never work*, because individuals do not know where the zones are.

- **The protected areas are unmarked.** Moreover, because protected areas bisect private property, their boundaries are impossible to mark.

- **Long distances are extremely hard to estimate.** Most people have a very hard time estimating distances, and the only experience most people have with quantifying the distance of 1,000 feet is when approaching work construction zones at highway speeds. Experiments conducted for my reports demonstrated that very few people can estimate large distances reliably.

- **Protected locations are difficult to locate.** Even if people can recognize 1,000 feet, they need to know where the protected locations are in order to mentally measure that distance. This is often difficult and frequently impossible. Even if one knows where a school is, one is unlikely to know where its property line is (e.g., see the strange shapes below in Figures 3, and 4). Further, in both urban and rural locales, it is generally difficult to see 1,000 feet in a single direction without visual obstructions.

- **Protected zones will have irregular shapes and be difficult to recognize and avoid.** The zones are measured from the irregularly shaped property boundaries of the protected places, making for an irregularly shaped zone. Then, they frequently overlap with other zones, making an even more irregular shape that is difficult to recognize and avoid.

- **Exclusion zones in dense areas frequently intersect and overlap, blanketing communities with multiple zones.** This has the effect of making it impossible for an individual to determine when he or she is inside the boundaries of a zone, or of multiple zones that *simultaneously extend from multiple locations*.[5] The most critical finding in our

[5] In New Jersey, the Sentencing Commission explained the problem in particularly colorful language exploring the impact of the state's then-existing statute creating a 1,000-foot sentencing enhancement zone for certain drug offenses: "Simply stated, New Jersey's densely populated urban areas have been literally transformed into massive, unsegmented 'drug free' zones. Consequently, the protected areas demarcated by the statutes no longer exist, having merged with contiguous zones." The New Jersey Commission to Review Criminal Sentencing, *Supplemental Report on New Jersey's Drug Free Zone Crimes and Proposal for Reform*, April 2007 at 4, available at http://sentencing.nj.gov/downloads/supplemental%20schoolzonereport.pdf.

Massachusetts school zone report was that the law — which mandated a single unmarked zone around numerous protected places — resulted in a massive overlapping zone that covered a majority of the urban parts of our study area. One of our recommendations was to reduce the size of the zones to 100 feet, allowing distinct and identifiable zones to be created.

Figure 1. *Note the overlapping shapes of the zones in Holyoke Massachusetts from the* Geography of Punishment report. *This detail view is a good explanation of the strange shapes that multiple 1,000 feet exclusion zones will create.*

- **Accurately mapping exclusion zones, even with sophisticated technology *and* access to the relevant parcel boundary data is very time consuming.** For example, after obtaining the parcel boundary data for my analysis of the Massachusetts town of Barnstable, it took more than 15 hours to produce my map. And as discussed below, given the unavailability of the parcel boundary data in Michigan, an individual on the registry would not be able to determine the boundaries of the prohibited areas even if they had the required time, expertise and tools to map the exclusion zone.

The difficulty — or impossibility — of determining what areas are inside or outside exclusion zones is relevant to Michigan's laws prohibiting registrants from residing, working, or loitering within 1,000 feet of school property. I did not find any evidence that the Michigan legislature knew where the boundaries would be when it passed this legislation. Moreover, I was unable to identify any state agency that maintains a state-wide map of the exclusion zones.

While it is possible to use specialized tools to evaluate individual locations one at a time, there is no systematic way to map an entire area short of the research methodology outlined above. The process of determining whether a particular property is within a protected area is burdensome in the context of the employment and residence restrictions. In the context of a prohibition on "loitering," which requires moment-to-moment knowledge of whether one is within an exclusion zone, it is likely impossible for a registrant to comply.

B. Exclusion zones cover a huge area, much of which, in conventional human terms, is not actually "near" schools.

- **1,000 feet is actually quite far.** For the *Geography of Punishment* report, we set out to discover whether people can be seen 1,000 feet from a school under ideal circumstances. We sought out a school on a flat, straight and unobstructed road, but we had considerable difficulty finding such a location. We eventually found a street in West Springfield that fit our criteria and then, because common household tools are incapable of measuring such large distances, we purchased a measuring wheel typically used for surveying. While standing on the school's property line, I took pictures of my co-author at various distances from the property. (See images in Figure 2 below.) Despite picking a day in early spring before the trees had leaves, *and* despite picking the flattest street we could find, *and* despite my co-author carrying a huge white sign, it was nearly impossible to see my co-author at the longer distances.


100
View From School Property
250
View From School Property
500
View From School Property
1000
View From School Property

Figure 2.

- **The laws restrict access to areas that, in human terms, are not at all close to schools.** The distances are measured as the crow flies, not as human beings travel. Measuring the exclusion zone in a straight line, regardless of obstruction, puts many distant areas under the law's jurisdiction. Below in Figure 3 is an example of a single 1,000 foot school zone from the *Geography of Punishment* report illustrating how a 1,000 foot zone can apply to housing that, in human terms, is significantly further away. The map below shows a single school zone that abuts a large pond and a cemetery. Given the arrangement of properties, a person living in the marked house would need to travel 3,200 feet to get to the closest part of the school property (without trespassing or navigating major obstacles). Getting to the closet part of the actual school building would require a total travel distance of 4,200 feet. Yet the law requires that the exclusion zone be measured in a straight line from the edge of the property, regardless of the obstacles in between.

Figure 3.

Another example from my *Geography of Punishment* report is even more extreme: The 1,000 foot zone from a high school reaches across the Connecticut River (the largest river in all of New England) to reach a different town. (See Figure 4.) Although the legislature assumed that all people within 1,000 feet of the school would have

proximity to children, the driving distance between the two points in this example is 4.4 miles, which would take about 11 minutes to travel by car.

Figure 4.

- **Schools are not a single point at the front entrance, but instead tend to be large complexes that include playing fields, auditoriums, etc.** A single 1,000 foot zone around a school is generally considerably larger than a circle with a 1,000 foot radius and will render off limits far more housing and employment opportunities than a simple 1,000 foot circle.

- **Residence and workplaces are considerably larger than the single point at their entrance.** As can be seen in the below illustration prepared for the *Whitaker v Perdue* case, even when the zone is centered around an actual point (a bus stop) the resulting exclusion zone is considerably larger than a simple circle. The 1,000 foot distance is itself a circle around a bus stop, but the properties that are within the zone (in peach) make the exclusion area significantly larger.

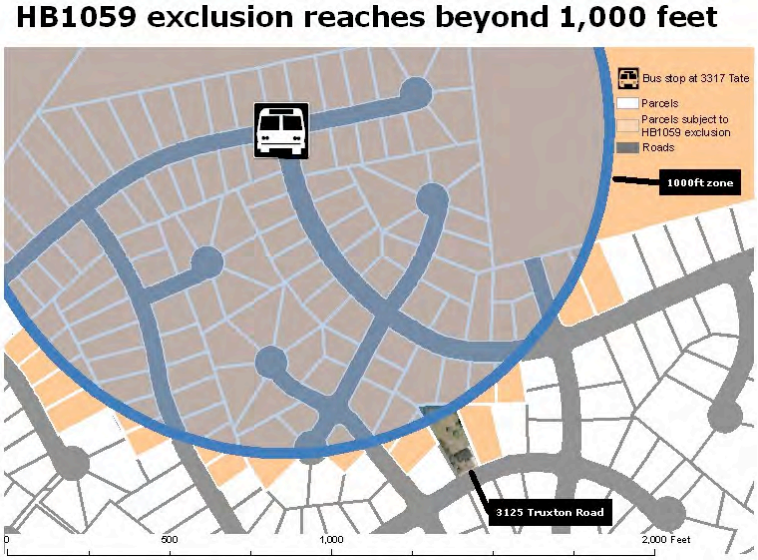

Figure 5. This illustration shows that drawing simple circles with a radius of 1,000 feet understates the actual impact of the exclusion zones.

C. Exclusion zones have the practical effect of severely restricting access to housing and employment, and of limiting the ability to engage in normal human activity.

My work mapping exclusion zones has shown that such zones render large portions of the affected jurisdiction off-limits. As a result, whatever activity is limited (e.g. housing, employment, spending time in parks, etc), is significantly restricted for those subject to exclusion. For example, my prior research has shown:

- In the *Whitaker v. Perdue* case, I demonstrated that Georgia's HB1059, in large part due to the inclusion of school bus stops on the list of prohibited places, rendered all urban areas, all suburban areas, and most of the inhabitable portions of rural areas off limits to people on the registry.

- In my study of the Revere Massachusetts city ordinance[6] which prohibited certain offenders from living within 1,000 linear feet of a public or private school, nursery school, day care center, kindergarten, or playground, I found that at least 99% of the city's residential properties were off limits

[6] See my affidavit of August 14, 2006 at http://www.prisonpolicy.org/articles/affidavit08142006.html and the accompanying map at http://www.prisonpolicy.org/atlas/revere528060.html.

to people on the registry. I did not perform a formal analysis of the impact on employment opportunities, but it is relevant here to note that the only parts of the city not within 1,000 feet of a protected place were parts of a fuel oil terminal, parts of a race track, undeveloped woodlands and a marsh.

- My research on Massachusetts' 1,000 foot sentencing enhancement zones showed that these zones disproportionately cover lower-income and lower-rent areas off-limits to people on the registry.[7]

The key factors in evaluating the scope of an exclusion zone are the combination of the size of the zones and the number of places that are to be protected. While large-sized zones and multiple protected places can make entire cities and towns off-limits, even smaller zones around one or two protected places can make significant portions of a city or town off-limits.

5. Efforts to conduct similar research in Michigan

Despite my considerable experience developing methodologies to study how legislation that regulates activities in special geographic zones operates, I have been unable to secure the data needed to perform a similar analysis of Michigan's laws in a sample city or county.

As a preliminary matter, there do not appear to be any unified maps of the prohibited areas. Michigan state and local law enforcement claim to measure the distance of potential properties to protected places one at a time in an online system roughly equivalent to using the measuring tool in Google Earth. This is insufficient to tell someone on the registry which places they should avoid. Similarly, there is not even one centralized list of protected places under the statute, although one could be built from other data sources with a reasonable likelihood of being mostly complete.

[7] See the section in *The Geography of Punishment* entitled "An 'urban effect': Interlocking sentencing enhancement zones blanket urban areas and barely touch rural populations" for my research on density, poverty and educational attainment as it relates to Massachusetts' sentencing enhancement zone statute available at http://www.prisonpolicy.org/zones/urban.html .

I attempted to prepare an analysis of how the sex offender registry law is applied in two counties in Michigan: Kent and Ingham. These counties were chosen for their diversity in density and land uses and would have been representative samples to apply to the state as a whole. Unfortunately, the counties refused to make available the necessary data showing the property lines of each property, making it impossible to prepare accurate maps of the exclusion zones.[8]

The difficulties I encountered while attempting to map Michigan's exclusion zones speaks to the difficulty that registrants face in complying with the exclusion zone laws. If I, despite my specialized skills and software, cannot develop a map of exclusion zones for two counties, it is highly unlikely that a typical registrant would be able to determine what places she or he must avoid around the state.

6. Analysis of Michigan Statutes during Discovery.

Assuming that it is possible to obtain the necessary parcel data through the discovery process, I plan to show the Court the number, size, and scope of sample exclusion zones in Michigan. I would then be able to overlay the protected areas over U.S. Census data and other data to demonstrate the portion of the sample county that is rendered off-limits by Michigan's sex offender registry law. I would be able to do this by analyzing factors such as:

- Portion of the county's population;
- Portion of the county's housing stock;
- Portion of the county's affordable housing stock.

Based on my experience with performing similar analyses of school zones elsewhere, I anticipate that the analysis will show that Michigan's sex offender residence exclusion zones cover large portions of urban and suburban areas and somewhat smaller portions of rural areas. Many of the areas that are theoretically

[8] The data that I sought exists as government records held by Kent and Ingham Counties. Both counties make this data available in a free online mapping system designed for typical uses like identifying abutters. This is insufficient for identifying how 1,000-foot zones around hundreds or thousands of protected places overlap. The only way to answer that question is by accessing the parcel database in a mapping program with more features.

available will likely be industrial or agricultural in nature, and therefore not appropriate for housing.

I also expect that the exclusion zones will be irregular shapes. If this is the case, it would support a finding that it is difficult or impossible to identify and avoid the exclusion zones when moving about the state.

Once I am able to build a geographic database of the exclusion areas in sample counties, I will apply this map to existing datasets on employment patterns (if they can be obtained) to produce estimates of the size and nature of the employment impact of the law. I would expect to find that a significant number of jobs are rendered off-limits to people on the registry due to the exclusion zones.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

Peter Wagner
Executive Director
Prison Policy Initiative
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Northampton MA 01061
(413) 961-0002
pwagner@prisonpolicy.org
March 13, 2012

ATTACHMENT A

CURRICULUM VITAE

PETER J. WAGNER

69 Garfield Ave, Floor 1, Easthampton MA 01027
pwagner@prisonpolicy.org (413) 527-0845

EDUCATION

Western New England College School of Law — **Springfield, MA**
Juris Doctor, May 2003

University of Massachusetts at Amherst, — **Amherst, MA**
B.A., August 1994
Major: Social Thought and Political Economy
Minor: African-American Studies

WORK EXPERIENCE

Prison Policy Initiative — **Springfield, Easthampton, MA**
Co-Founder, Exec. Director, Asst. Director — **September 2001 – Present**

Co-founded organization committed to documenting how mass incarceration affects individuals, communities, and the national welfare. Lead a national movement to change the way that the Census Bureau counts people in prison, and the way that state and local governments use Census prison counts to draw legislative districts.

Civil Liberties Union of Massachusetts — **Boston, MA**
Mapping Consultant — **June 2009 – Present**

Assist litigators with evaluating potential challenges to overly broad city ordinances in Barnstable, Lynn and Waltham, showing that city overreached and rather than regulating where people on the sex offender registry could live, the cities barred people on the registry from living anywhere.

Southern Center for Human Rights — **Atlanta, GA**
Mapping Consultant — **June 2006 – September 2009**

Prepared maps and analysis, and testified twice for plaintiffs in federal court in the case *Whitaker v. Perdue.* The case challenged Georgia's ban on people on the sex offender registry from living within 1,000 feet of schools, churches and a long list of other places including school bus stops. My testimony showed that because almost every tract of habitable housing in Georgia was served by one of 350,000 school bus stops, the legislature unwittingly declared all urban areas, all suburban areas and most rural areas off limits to people on the registry.

Open Society Institute Fellowship Program — **New York City**
Consultant — **January – June 2007**

Assist Soros Justice Fellows with a range of research and technical support needs, including combing databases, developing educational materials and using quantitative research to tell stories and illustrate problems to diverse audiences.

Prison Policy Initiative **Cincinnati, OH; Northampton, MA**
Open Society Institute Soros Justice Fellow **June 2003 – May 2005**

Conducted a national research and advocacy project to quantify, publicize, and reform the current practice of utilizing the Census to shift political power away from poor and minority communities and into the hands of prison expansion proponents. Conducted state-specific analyses of the impact of prison-based gerrymandering on state legislative redistricting and develop both national and state-specific solutions.

Center for First Amendment Rights **Hartford, CT**
Webmaster **December 2000 – May 2003**

Law Clerk **Springfield, MA**
Magistrate Judge Kenneth P. Neiman **January – May 2003**

Jessup International Moot Court Team **Springfield, MA**
Member **October 2002 – February 2003**

Anti-Discrimination Clinic **Springfield, MA**
Student Attorney **August 2002 – December 2002**
Represented victims of employment discrimination and public accommodations discrimination in proceedings before the Massachusetts Commission Against Discrimination. Performed research for the Attorney General's Office on housing discrimination cases.

Capital Defender Office **Albany, NY**
Legal Intern **June 2002 – August 2002**
Performed legal research on the constitutionality of a jury "life qualification" statute. Digitized and organized mitigation evidence. Transcribed witness interviews.

Massachusetts Correctional Legal Services **Boston, MA**
Legal Intern **May 2001 – October 2001**
Investigated prisoner complaints of poor medical care; conducted medical advocacy and prepared referrals to outside attorneys for potential medical malpractice litigation. Investigated a major disturbance at a super-maximum facility and represented the alleged ring-leader against 54 charges at his disciplinary hearing and on administrative appeal.

TEACHING EXPERIENCE

Smith College **Northampton, MA**
Instructor **January 2003, 2005, 2006, 2011, 2012**
Designed and taught "Prison Industrial Complex Through Film" non-credit course.

Smith College **Northampton, MA**
Instructor **January 2002, 2004, 2008**
Designed and taught "Constitutional Law Through Film" non-credit course.

HONORS & AWARDS

Soros Justice Postgraduate Fellow, 2003-2005
Massachusetts Bar Foundation Legal Intern Fellow, Summer 2001
Partial tuition academic scholarship, 1999-2003
Recipient, Law Alumni Scholarship, Fall 2002
Recipient, Katherine M. Connell Scholarship, Fall 2001
Deans' List, Spring 2002

PUBLISHED REPORTS

Primer for reporters on county or municipal redistricting & prison-based gerrymandering, by Peter Wagner, Prison Policy Initiative, March 2011

Preventing Prison-Based Gerrymandering in Redistricting: What to Watch For, by Peter Wagner and Brenda Wright, Prison Policy Initiative and Dēmos, February 23, 2011

Aleks Kajstura and Peter Wagner, *Importing Constituents: Incarcerated People and Political Clout in California*, Prison Policy Initiative, March 2010

Peter Wagner and Christian de Ocejo, *Importing Constituents: Incarcerated People and Political Clout in Connecticut*, Prison Policy Initiative, March 2010

Peter Wagner, Aleks Kajstura, Elena Lavarreda, Christian de Ocejo, and Sheila Vennell O'Rourke, *Fixing prison-based gerrymandering after the 2010 Census: A 50 state guide*, Prison Policy Initiative, March 2010

Peter Wagner and Olivia Cummings, *Importing Constituents: Incarcerated People and Political Clout in Maryland*, Prison Policy Initiative, March 4, 2010

Brett Blank and Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Illinois*, Prison Policy Initiative, February 2010

Elena Lavarreda, Peter Wagner and Rose Heyer, *Importing Constituents: Prisoners and Political Clout in Massachusetts*, Prison Policy Initiative, October 6, 2009

Peter Wagner and Elena Lavarreda, *Importing Constituents: Prisoners and Political Clout in Oklahoma*, Prison Policy Initiative, September 21, 2009

Peter Wagner and Elena Lavarreda, *Importing Constituents: Prisoners and Political Clout in Pennsylvania*, Prison Policy Initiative, June 26, 2009

Aleks Kajstura, Peter Wagner and Leah Sakala, *Reaching too far, coming up short: How large sentencing enhancement zones miss the mark*, Prison Policy Initiative, January, 2009

Peter Wagner, *Phantom Constituents in Maine's Regional School Unit 13: How the Census Bureau's outdated method of counting prisoners harms democracy*, Prison Policy Initiative, January 15, 2009

Aleks Kajstura, Peter Wagner and William Goldberg, *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children,* Prison Policy Initiative, July 2008

John Hejduk and Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Wisconsin,* Prison Policy Initiative, March, 2008

Peter Wagner and JooHye DellaRocco, *Phantom Constituents in Tennessee's Boards of County Commissioners*, Prison Policy Initiative, February 21, 2008

Brenda Wright and Peter Wagner, *Report to U.N. Committee for the Elimination of Racial Discrimination that U.S. Census practices dilute votes of minority populations*, Prison Working Group, December 2007

Peter Wagner, Meghan Rudy, Ellie Happel and Will Goldberg, *Phantom constituents in the Empire State: How outdated Census Bureau methodology burdens New York counties*, Prison Policy Initiative, July 18, 2007

Peter Wagner, *Democracy Toolkit: Interactive tools to help rural citizens determine if prison populations in legislative districts are diluting their right to equal representation*, Prison Policy Initiative, April 2007

Peter Wagner, Eric Lotke and Andrew Beveridge, *Why the Census Bureau can and must start collecting the home addresses of incarcerated people*, Prison Policy Initiative, February 10, 2006

Brenda Wright and Peter Wagner, Brief Amici Curiae In Support Of Plaintiff-Appellant Jalil Abdul Muntaqim, a/k/a/Anthony Bottom, Urging Reversal Of The District Court, Prison Policy Initiative and National Voting Rights Institute, January 28, 2005

Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Nevada* Prison Policy Initiative and the Progressive Leadership Alliance of Nevada, December 15, 2004

Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Montana,* Prison Policy Initiative, December 14, 2004

Peter Wagner and Rose Heyer, *Importing Constituents: Prisoners and Political Clout in Texas*, Prison Policy Initiative, November 8, 2004

Peter Wagner, *Jim Crow in Massachusetts? Prisoner disenfranchisement,* Prison Policy Initiative, October 31, 2004

Peter Wagner, *Actual Constituents: Students and Political Clout in New York,* Prison Policy Initiative, October 6, 2004

Peter Wagner and Rose Heyer, Importing Constituents: Prisoners and Political Clout in Ohio, Prison Policy Initiative, July 6, 2004

Rose Heyer and Peter Wagner, *Too big to ignore: How counting people in prisons distorted Census 2000*, Prison Policy Initiative, April 13, 2004

Peter Wagner, *The Prison Index: Taking the Pulse of the Crime Control Industry*, Prison Policy Initiative and Western Prison Project, April 2003

Peter Wagner, *Importing Constituents: Prisoners and Political Clout in New York*, Prison Policy Initiative, April 22, 2002.

BOOK CHAPTERS

Gary Hunter and Peter Wagner, Prisons, Politics and the Census, in *Prison Profiteers: Who Makes Money from Mass Incarceration*, edited by Tara Herivel and Paul Wright, The New Press (2008)

Peter Wagner, Skewing Democracy: Where the Census Counts Prisoners, in *The Emerging Agenda: Poverty and Race in America*, edited by Chester Hartman, Lexington Books (2006)

EDITED ARTICLES

Peter Wagner, Breaking the Census: Redistricting in an era of mass incarceration, William Mitchell Law Review, Spring 2012 (forthcoming)

Peter Wagner, Prison Populations Create Complications at Redistricting Time, *Missouri Municipal Review*, January 2012

Eric Lotke and Peter Wagner, Prisoners of the Census: Electoral and Financial Consequences of Counting Prisoners Where They Go, Not Where They Come From, *Pace Law Review*, Volume 24, Number 2 (Spring 2004)

FILM APPEARANCES

Gerrymandering, directed by Jeff Reichert, Green Film Company (2010)

PRESENTATIONS (SELECT)

Keynote address: *Prison Branches: The Untapped Resource*, 101st NAACP Convention Adjunct Event, Crossroads Correctional Center, (Cameron, MO) July 11, 2010

Presentation: *Prisons, Redistricting, and the Census: New Options for States and Localities*, Congressional briefing, Rayburn Congressional Office Building, (Washington, D.C.) April 27, 2010

Panelist: *Census and Redistricting*, NAACP Continuing Legal Education Seminar, 100th NAACP Convention, (New York City) July 13, 2009

Panelist: *Technical solutions to avoid prison-based gerrymandering*, National Conference of State Legislature's Legislative Summit, (Philadelphia, PA) July 21, 2009

Workshop: *Legislative options to avoid prison-based gerrymandering*, Legislative Black Caucus of Maryland, (Annapolis, MD) October 2, 2009

Keynote address: *The U.S. Prison System: Community and Political Impacts*, Brown University (Providence, RI) December 3, 2005

Keynote address: *Coming Home: Addressing the Issues Faced by Prisoners as They Re-enter the Community*, Community Service Society of New York (New York City) December 10, 2005

Panel presentation: *Prisoners of the Census: Criminal Justice Populations in Census Data*, Crime Mapping Research Conference, National Institute of Justice (Savannah, GA), September 9, 2005

Panel presentation: *Felony disenfranchisement and its impact on the Voting Rights Act*, 40 Years After the Voting Rights Act, The Democracy Project, (Selma, AL) August 5, 2005

Panel presentation: *Protecting and expanding voting rights*, NAACP Continuing Legal Education Seminar, NAACP Convention (Milwaukee, WI) July 11, 2005

Presentation: *Changing how prisoners are counted in the Census*, presentation to the Residence Rules in the Decennial Census Panel at the National Academy of Sciences (Washington, D.C.) June 2, 2005

Presentation: *Prisoners, the Census and the Political Geography of Mass Incarceration,* Prisons 2004: Prisons and Penal Policy: International Perspectives (City University London, England) June 25, 2004

Panel presentation: *Prisoners and Redistricting, Accuracy Counts: Incarcerated People & the Census* Congressional Briefing (Washington, D.C.) April 14, 2004

Panel presentation: *Prisoners and the Census*, History's Scorecard: The Role of the Census Bureau in America's Development, Census Bureau (Washington D.C.) March 5, 2004

Presentation: *Prisoners and the Census*, U.S. Census Policy and Prisoners Working Meeting, Ford Foundation (New York City) June 30, 2003

Panel presentation: *Felon Disenfranchisement: Black Codes in the 21st Century*, Africana Studies Against Criminal Injustice Conference (New York City) April 11, 2003

Panel presentation: *What's in a Number: Diluted Census and Voting Representation*, National Summit on the Impact of Incarceration on Black and Latino Families and Communities (Washington D.C.) June 29, 2002

Keynote address: *Unlocking Prisons: Re-Thinking the Crisis, Creating a Network for Action Conference*, Harvard University (Cambridge, MA) April 27, 2002

Panel presentation: Felon Disenfranchisement and the Three-Fifths Clause, Rebellious Lawyering Conference, Yale University (New Haven, CT) February 18, 2001

LEGISLATIVE TESTIMONY

Testimony in support of SB400, the "No Representation Without Population Act" before the Education, Health & Environmental Affairs Committee of the Maryland State Senate (Annapolis, MD) March 4, 2010

Testimony on the 2010 Census: Enumerating People Living in Group Quarters, before the Subcommittee on Information Policy, Census and National Archives, Committee on Oversight and Government Reform, United States House of Representatives (New York, NY) February 22, 2010

Testimony in support of the Census Correction Amendment, before the Committee on State Affairs and Homeland Security, Wisconsin House of Representatives (Madison, WI) September 15, 2009

Testimony in support of ending prison-based gerrymandering, before the Assembly Standing Committee on Governmental Operations and the Assembly Legislative Task Force on Demographic Research and Reapportionment, New York State Assembly (Albany, NY) October 24, 2007

Testimony in support of ending prison-based gerrymandering, before the Assembly Standing Committee on Governmental Operations and the Assembly Legislative Task Force on Demographic Research and Reapportionment, New York State Assembly (New York, NY) October 17, 2006

Testimony on Adjusting Prisoner Census Enumeration for Purposes of State Legislative Redistricting, New York State Legislative Task Force on Demographic Research and Reapportionment (Bronx, NY) March 14, 2002

PROFESSIONAL ASSOCIATIONS

Member of Massachusetts Bar, BBO# 662207

Exhibit F

Second Expert Report of Peter Wagner, J.D.

John Doe #1, *et al.*, v. Richard Snyder, *et al.*

EXPERT REPORT/DECLARATION OF PETER WAGNER, J.D.

Executive Summary

The Michigan Sex Offender Registration Act (SORA) prohibits individuals on the registry from engaging in certain activities within any "student safety zone." How a "student safety zone" is defined and measured determines the shape and extent of the protected areas, and therefore controls whether or not a registrant is engaging in unlawful behavior. The major findings of this report include:

1. In Michigan, the size, shape and boundaries of "student safety zones" are effectively unknowable, even for experts with specialized software and relevant training, because:

    - Different measurement methodologies significantly affect shape of exclusion zones, and can impact the size of the protected area by a factor of 3.5 or more.

    - Michigan law does not specify how safety zones are to be measured, leaving these decisions to local law enforcement agencies. This lack of uniformity likely results in significant measurement variation around the state, based on how local law enforcement officials choose to interpret the law.

    - The state of Michigan does not make available even the most basic information about school locations that is needed for registrants to determine in advance whether residing/working/visiting a particular location is illegal. Some methodologies for application of the law further require specialized parcel data that is also not publically available.

    - Most people are unable to accurately determine 1,000-foot distances. Tools that have the capability to measure 1,000-foot distances are not appropriate for measuring the prohibited zones. Mapping software and tools that can be used to determine the area of the zones are generally not

accessible to laypeople, and require data that are prohibitively expensive.

2. Despite the unavailability of critical data, I have produced an admittedly under-inclusive map for the City of Grand Rapids that illustrates the "student safety zones" that the law creates. That map shows that at least **46% of Grand Rapids property parcels lie within exclusion zones**. Many of the "permissible" areas, furthermore, are likely not appropriate for living, working, or spending time, for example because they are industrial areas.

This analysis concludes that there is no reasonable way for a person who seeks to comply with the law to be able to identify and avoid the protected areas.

Table of Contents

I. Introduction

I am an attorney and the Executive Director of the Prison Policy Initiative, a nonprofit research organization based in Easthampton, Massachusetts. The Prison Policy Initiative focuses on the geographic implications of criminal justice policy.

I have been retained by the plaintiffs as a geographic expert to quantify and comment on the impact of Michigan's laws that prohibit registered sex offenders from living, working, or loitering within 1,000 feet of a school.

II. Relevant experience

As further detailed in my attached C.V., I regularly make maps that analyze U.S. Census and other demographic data in relation to statutory restrictions that impose geographic limits for criminal justice purposes. My experience includes:

- I testified in *Whitaker v. Perdue* (U.S. Dist. Ct., N.D. Georgia, 4:06-cv-00140-CC) in 2006 and 2008 regarding the impact of HB1059, Georgia's sex offender residency restriction law. I prepared maps of 1,000-foot exclusion zones around schools, day-care centers, bus stops, parks and other areas listed in the statute as places that people on the sex offender registry cannot live. I initially prepared analyses of the law's effect in 6 counties, and subsequently prepared detailed maps of the exclusion zones in two additional counties.

- I testified in *Ryals v. City of Englewood* (U.S. Dist. Ct., Colo., 12-cv-02178-RBJ) in July 2013 regarding the impact of a city ordinance that prevented certain people on the sex offender registry from residing within 2,000 feet of schools, parks, and playgrounds, and within 1,000 feet of child care centers, recreation centers, swimming pools, and other locations.[1]

- In September 2013, I submitted an expert report/declaration in the case *McGuire vs. City of Montgomery*, Case No. 2:11-CV-1027 (M.D.Ala.) regarding the impact in

[1] This is the only case that I have testified as an expert at trial or by deposition in the last four years.

Montgomery of a state statute that prohibits sex offenders from living or working within 2,000 feet of schools or childcare facilities.

- I prepared an expert report/declaration in the Massachusetts state court case of *Five Registered Sex Offenders v. the City of Lynn* on April 10, 2012, analyzing an ordinance prohibiting registered sex offenders from residing within 1,000 feet of schools and parks.

- In 2006, I prepared a detailed study for the Massachusetts Committee for Public Counsel Services of a sex offender residence ordinance in Revere, Massachusetts, which prohibited offenders from living within 1,000 linear feet of a school, nursery school, day care center, kindergarten, or playground. I have performed similar unpublished analyses in the city of Waltham (2010) and the town of Barnstable (2009).

- From 2006 to 2009, I led a project that involved mapping 1,000-foot zones around schools — and a smaller distance around parks — in Hampden County, Massachusetts and then analyzing the Census populations of the affected areas. The purpose was to evaluate the efficacy and socio-economic implications of a sentencing law that gave higher sentences for certain drug offenses committed in prohibited areas. These findings were published in reports I co-authored entitled *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children*[2] and *Reaching too far, coming up short: How large sentencing enhancement zones miss the mark*.[3]

- I prepared a prior expert report in the present case: Docket 11-1.

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[2] *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children*, by Aleks Kajstura, Peter Wagner and William Goldberg, Prison Policy Initiative, July 2008 available at http://www.prisonpolicy.org/zones/

[3] *Reaching too far, coming up short: How large sentencing enhancement zones miss the mark*, by Aleks Kajstura, Peter Wagner and Leah Sakala, Prison Policy Initiative, January, 2009, available at http://www.prisonpolicy.org/toofar/

III. Overview of factors in exclusion zone mapping.

The Michigan Sex Offender Registration Act (SORA) prohibits registrants from engaging in certain activities within any "student safety zone." My analysis finds that four significant variables radically affect the interpretation of the law:

1. The activity (reside, work, or "loiter," as defined in M.C.L. § 28.733(b))
2. The measurement of the distance (as the crow flies or along the road)
3. What point the distance is measured from (the building, the property line, etc.)
4. What point the distance is measured to (your person, your building, your property line, etc.)

Analysis of each of these factors shows that mapping the exclusion zones – and hence determining the extent of the prohibition – is extremely complicated. Any variations in any of these factors leads to dramatically different results in the size, shape and boundaries of the exclusion zones, and therefore, in whether or not an individual is engaging in lawful behavior.

IV. The nature of the prohibited activity affects how the exclusion zone is measured.

It is obvious that in order for a registrant to comply with an exclusion zone, the registrant must be able to clearly understand which activities are prohibited within the restricted area.[4] Less obvious is that the very *nature* of the prohibited activity can affect how one measures distance from that activity, making it even more difficult for a registrant to determine whether or not his or her location *and* activity are in compliance with the statute.

Michigan law prohibits three activities within the protected zones: residing, working, and "loitering." The fact that working or "loitering" are not necessarily stationary activities that take place in a single, fixed location means that determining whether or not a registrant is in compliance with the law would often involve real-time mapping of the distance between a fixed protected area and an ambulatory person going about his or her daily business.

[4] Whether it is clear exactly what conduct constitutes residing, working and "loitering" is beyond the scope of this report.

While in most cases people reside at a fixed location, many people do not work at a fixed location. For example, an office or factory worker likely works in one place, but a bus driver, mail carrier, or construction worker does not. Furthermore, "loitering" – which the statute defines as "remain[ing] for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors," M.C.L. § 28.733(b) – can occur anyplace a person goes. For example, a parent supervising her young child would be "loitering" any time she remains with her child at any place for a period of time.

While it is possible to agree on a standard method of mapping the distance between two stationary points, such as between a registrant's house and a particular school, measuring the distance between a moving person and all protected locations in the area in a standard manner is far more complex. For example, measuring from parcel boundary to parcel boundary might make sense to determine the distance between two fixed points (e.g. a school property boundary and a residential property boundary), but it is much more difficult to measure from parcel boundary to parcel boundary if one is measuring between a fixed point (e.g. a school property boundary) and a moving point (e.g. a parent walking through town with her child).

V. Determining a specified distance: Different measurement methods affect the size and boundaries of exclusion zones.

1,000 feet is an objective distance. In order to determine if a particular point is within 1,000 feet of a protected place, one needs to know:

- Does one measure the distance as the crow flies or as a person actually could travel?
- Between which two points does one measure?

It is impossible to accurately determine the locations of exclusion zones without knowing the answers to these questions. Moreover, the answers to these two questions have a significant impact on the size, shape and boundaries of those zones.

A. Measuring as the crow flies results in the creation of exclusion zones that are, for the purposes of human travel, far more than 1,000 feet away from a school.

There are two main ways to measure 1,000 feet for the purposes of determining compliance with the law. One way to measure 1,000 feet is "as the crow flies" in a straight line between two points. Alternatively, one can measure 1,000 feet as human beings actually travel, such as via the distance Google Maps reports a person must travel to get from one point to another.

If exclusion zones for registrants are measured as the crow flies, then Michigan's sex offender registration act restricts access to areas that, in practical terms, are not at all close to schools. Measuring the exclusion zone in a straight line, regardless of obstruction, renders many areas off limits that are, for all practical purposes, distant from the protected area.

Below in Figure 1 is an example of a single 1,000-foot school zone from the Prison Policy Initiative's *Geography of Punishment* report illustrating how a 1,000-foot zone can apply to housing that, in human terms, is significantly further away. The map below shows a single school zone that abuts both a large pond and a cemetery. Given the arrangement of properties, a person living in the marked house would need to travel 3,200 feet to get to the closest part of the school property (without trespassing or navigating major obstacles). Getting to the closest part of the actual school building would require a total travel distance of 4,200 feet — far beyond the 1,000-foot scope of the area the legislature intended to protect.

Figure 1.

Another example from my *Geography of Punishment* report is even more extreme: The 1,000-foot zone from a high school reaches across the Connecticut River (the largest river in all of New England) to reach a different town. (See Figure 2.) Although the legislature assumed that all people within 1,000 feet of the school would have proximity to children, the driving distance between the two points in this example is 4.4 miles, which would take about 11 minutes to travel by car.

Figure 2.

In sum, if Michigan's sex offender registration act requires that exclusion zones be measured as the crow files, regardless of the obstacles between the registrant's location and the school, the

distance – understand in human terms of how one actually travels – can be much more than 1,000 feet.

B. Variation in the methodology used to measure the protected distance results in dramatically disparate applications of the law, and can impact the size of an exclusion zone by a factor of 3.5 or more.

To measure distance, one must decide not only how to measure (the linear distance versus actual travel distance), but also where to start and end that measurement. As discussed above, if the registrant is engaging in an ambulatory activity, it becomes even more difficult to determine from which point one should measure.[5] Therefore, for the purposes of this discussion, I will focus on measurement between two fixed locations, such as between a school and a registrant's home.

There are at least four possible ways to measure the distance:

- From the school building to the home building.
- From the school property line to the home property line.
- From the school property line to the home building.
- From the school building to the home property line.

The MSP's Sex Offender Registration Unit itself does not know or provide guidance on the appropriate starting and ending point criteria to use to measure 1,000 feet. As Leslie Wagner, Michigan's Sex Offender Registry Coordinator, testified:

> A: We don't know and I don't know in the registry if it's supposed to be from one parcel to a point or parcel to parcel or point to point…
> Q. You yourself are not sure whether it should be measured parcel to parcel or point to point?
> A. Correct.[6]

Ms. Wagner further testified that, although the SOR Unit is considering establishing a mapping feature in an upgraded version of its database in the future, whether mapping will be done from

[5] For example, should the distance be measure on a parcel to parcel basis when a registrant crosses into a corner of a very large parcel that may abut, many thousands of feet away, a school property?

[6] Wagner Deposition Transcript, 28:2-10.

point to point or from parcel to parcel has yet to be decided, and will depend on whether the SOR unit can access parcel data.[7]

The Michigan State Police has left the decision about how to measure up to local law enforcement agencies. As a result, different law enforcement agencies may make different decisions about where the 1,000 feet starts and stops. For example, the following exchange occurred during the deposition of Sgt. Bruce Payne, Michigan's Sex Offender Registry Enforcement Coordinator:

> Q. But it would be the local law enforcement decision whether to measure from the building to the property line or whether to measure from the property line to property line?
> A. Absolutely, yes.[8]

Although Michigan's Sex Offender Registration Unit is itself unclear how distances should be measured, the decision about which measurement methodology to use has a tremendous impact on the size, shape, and boundaries of exclusion zones, and hence a tremendous impact on whether registrants are in fact residing, working, or visiting a place unlawfully. The following example illustrates the large geographic differences that result from variations in measurement methods.

Figure 3 shows an example area that contains the George Washington Carver High School in Montgomery, Alabama.[9] The school's green roofed buildings, the baseball fields and the large track are visible:

[7] Wagner Deposition Transcript, 28:11 – 29:2.
[8] Payne Deposition Transcript, 35:14-18.
[9] Due to the difficulty of obtaining parcel data in Michigan, I used parcel data from Montgomery, Alabama to create this example.

Figure 3.

Figure 4 shows, in successively darker colors, a school symbol for the front entrance to the school, the school building's outline in orange, and the school's property line in brown:

Figure 4.

Figure 5 shows 1,000-foot exclusion zones drawn around each of three nested protected areas: the school's entrance, the school

building and the school property. Notably, the area covered by the same 1,000-foot distance around the school property perimeter is much more extensive than the area that extends from either the school entrance or the perimeter of the building itself:

Figure 5.

In fact, the sizes of the three distinct areas can be quantified and directly compared:

Starting point for the protected area	**Area of 1,000-foot exclusion zone around protected place**
School Entrance	3,140,214 square feet
School Building	5,367,492 square feet
School Property	11,068,275 square feet

Table 1.

In this example, the area of the 1,000-foot exclusion zone is 3.5 times larger if the zone is measured from the property line than if it is measured from a single point at the entrance of the school. The differential created by the two measurement techniques would be even greater for a larger parcel, and consequently would be smaller for a smaller parcel.[10]

[10] There is not a clear mathametical formula for this relationship, but it is analogous to the calculation for the area of a circle where the area equals π times the square of the radius. Doubling the radius of a circle results in increasing the area by *four* times. Since drawing 1,000-foot exlusion zones around an irregular shape does not produce a circle — but rather a rounded version of the irregular shape — a simple formula like πr^2 is not

Obviously, the sizes of school buildings and the properties they sit on vary from school to school depending on many factors including the number of students, the number of ball fields, and so forth. However, as a general rule, zones extending from school property lines are significantly larger than the zones measured from the buildings themselves.

Not only does measuring from the property line rather than a single point significantly increase the size of the exclusion zone, it also affects the shape. Measuring 1,000 feet from a fixed point produces a circle. Measuring 1,000 feet from a parcel boundary will produce an irregular shape (unless the parcel itself is a circle).

Furthermore, if the zones are measured based on property lines, drawing simple "buffers"[11] around protected places, regardless of how they are measured, still understates the scope of the exclusion zones. If the 1,000-foot distance is measured to the home property line, rather than to the home itself, the entire parcel of the home becomes off limits even if the home itself is outside the 1,000-foot distance.

Figures 6a, 6b and 6c show the properties that are bisected by the 1,000-foot school buffers as measured around the school's front door, the building and the property:

appropriate. The same underlying principle applies, though, that increasing the distance by which the zone is measured by a certain percent necessarily increases the protected area by more than that percent.

[11] "Buffers" are a technical term used in mapping software to draw a shape with contours that are a defined by given distance from another shape. Many mapping technicians incorrectly draw only the buffer zones, neglecting to include the area of the bisected parcels, when determining the extent of an exclusion zone.

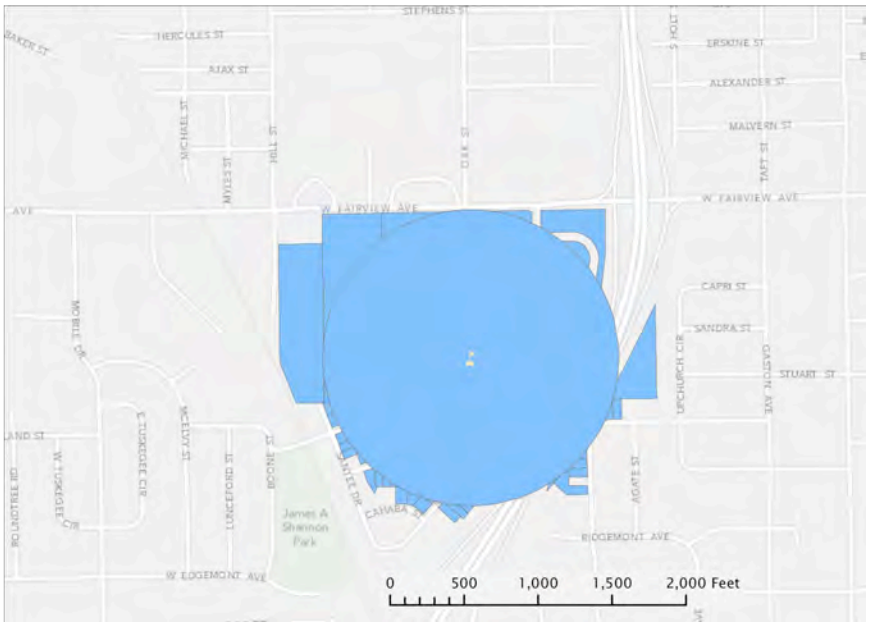

Figure 6a. Exclusion zone measured from school entrance to home property line.

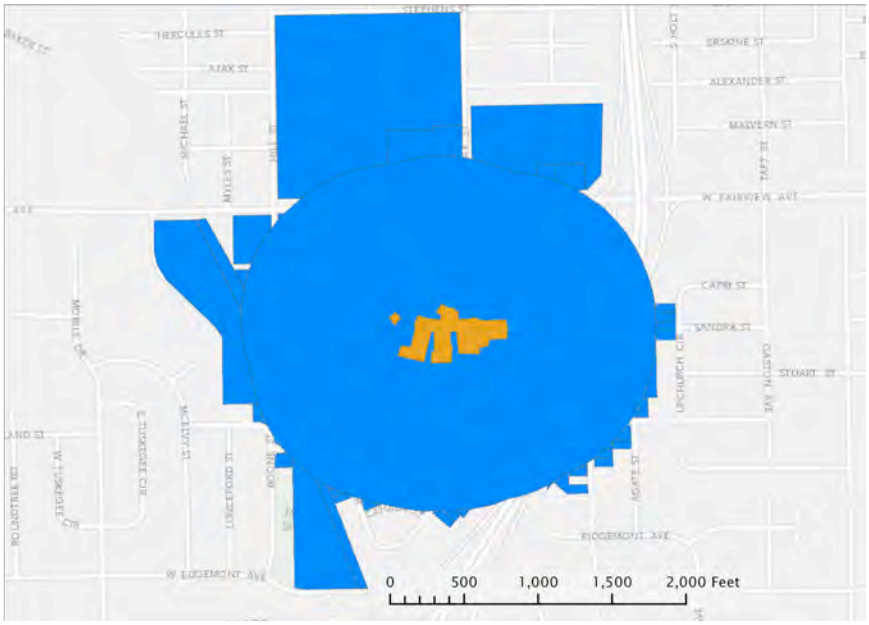

Figure 6b. Exclusion zone measured from school building perimeter to home property line.

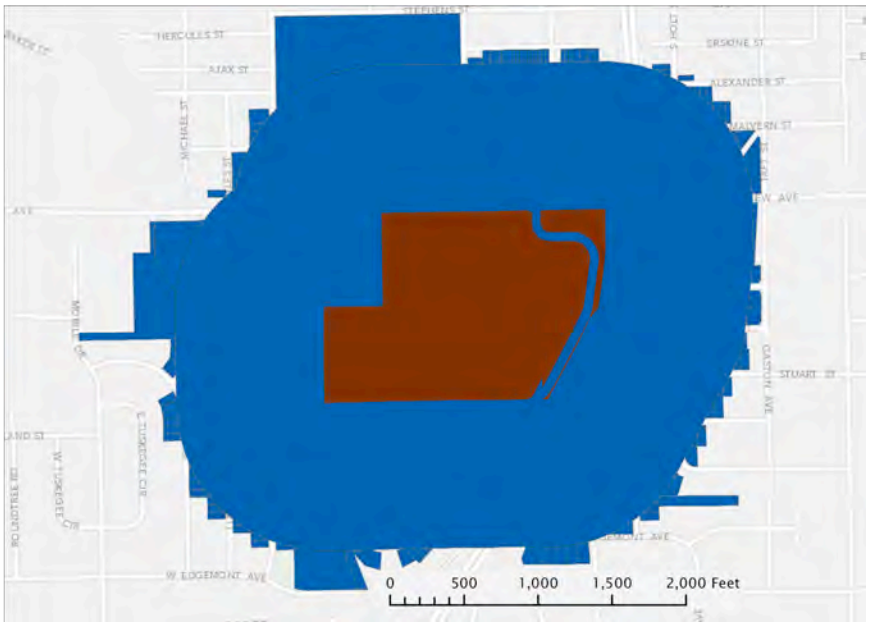

Figure 6c. Exclusion zone measured from school property line to home property line.

Again, the size of the exclusion zone depends on which measurement method one chooses. Moreover when the zones are measured based on parcel lines, the size of the parcels that intersect the 1,000-foot line significantly impacts the total size of the exclusion zone. If the intersecting parcels are large, the exclusion zone will be much larger than if the intersecting parcels are small.

Figures 6a, 6b, and 6c also illustrate the bizarre shapes created by exclusion zones that are measured parcel-to-parcel. In this context it is critical to note that if parcel-to-parcel measurement is used for all prohibited conduct, registrants must be able to identify these oddly-shaped exclusion zones and structure their lives accordingly, not just when making larger decisions such as where to live, but also when engaging in everyday activities such as taking their children to the park.

Finally, the question of whether distance should be measured as the crow flies, or as human beings actually travel, also significantly impacts the size, shape and boundaries of the exclusion zone. Figure 7a shows the Carver High School property and 1,000-foot distances along streets that connect to the school property.[12] Figure

[12] It is also possible that the 1,000-foot distances could be measured along the road on the ground from either the building or the front entrance, although in this case, given the

7b shows the properties that are adjacent to the 1,000-foot distances as measured along the roads in Figure 7a.

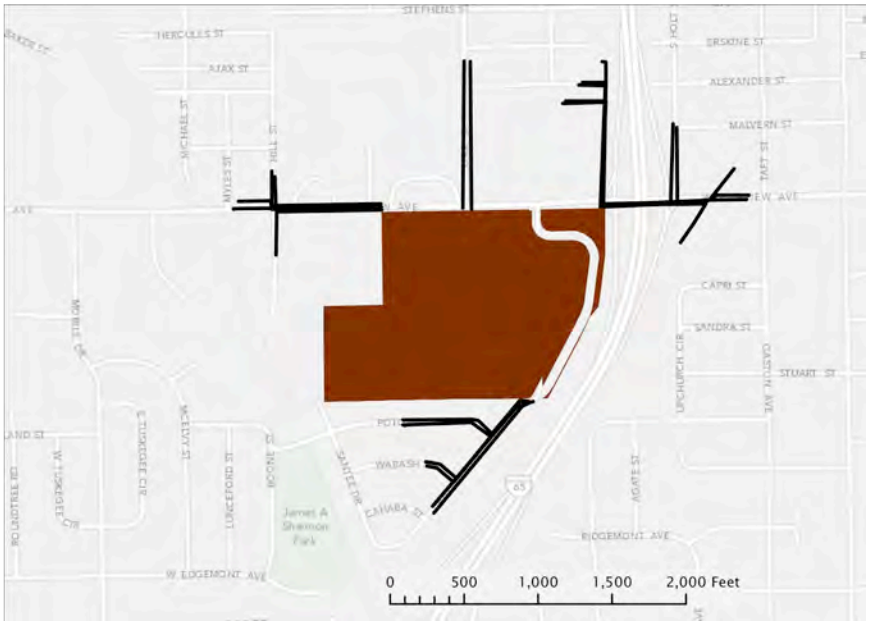

Figure 7a.

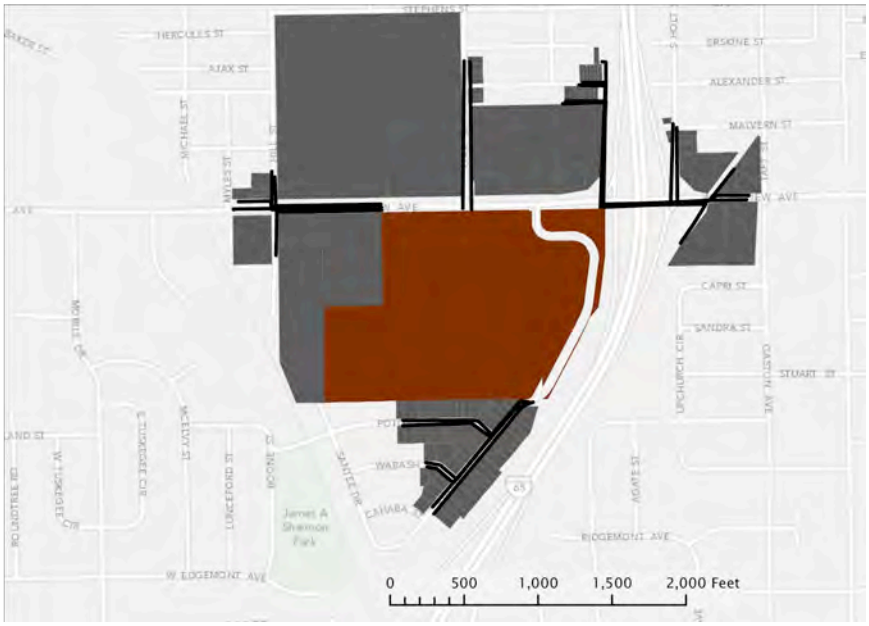

Figure 7b.

large size of the parcel and the long school driveway, the lines would reach even less of the residential areas.

In sum, in Michigan the decision about which measurement method to use to determine the protected zones is left to each individual law enforcement agency. Yet the particular measurement methodology will determine the size, shape and boundaries of the exclusion zone. Therefore, in many circumstances, whether or not a person is violating the law will depend on which measurement method an individual law enforcement agency chooses to use.

VI. The practicalities of measuring distance: How to actually measure 1,000 feet.

Assuming that one knows both the starting and ending point of the distance to be measured, and also that one also knows whether the distance should be measured linearly or as humans travel, a separate question remains of how – as a practical matter – to actually measure the distance. 1,000 feet is not a distance that the average person can accurately approximate visually (as compared to, for example, an inch or a foot, which are familiar to most people and relatively easy to approximate).

There are two basic methods that are appropriate for calculating distances of 1,000 feet. Neither of them are common or easy, and both produce results that non-geographers tend to find surprising.

Those two methods are:

- Using mapping software like Google Earth, or more specialized software like ArcView to measure the given distance in a straight line as the crow flies.
- Using specialized equipment to measure the given distance on the ground.

Both of these methods require the ability to locate the parcel boundaries, be it electronically or on the ground. I've only rarely — and never in Michigan — seen parcel data available in a format that can be directly used in Google Earth. Parcel data is theoretically available for ArcView and similar programs, but it is not available for all areas, and where it does exist, it is often prohibitively expensive to obtain. Standard licenses for specialized software such as ArcView start at $1,500, and using the software requires considerable training and experience. Further, as I explain below, this data in Michigan can cost up to $125,000 for a single county.

It is simply unreasonable to require registrants to purchase expensive mapping software and geographic data, acquire the technical skills to use such programs, and effectively become mapping experts in order to simply go about their daily business in manner that complies with state law.

Furthermore, it is impossible to measure 1,000 feet on the ground with ordinary consumer tools.[13] A common carpentry tape measure extends only 16 or 30 feet.[14] Even more expensive consumer tools cannot measure 1,000 feet. Home Depot, for example, sells very large tape measures that come on a spool and extend to 100 or 300 feet[15], as well as a laser range finder that measures up to 650 feet.[16] But all of these tools fall far short of reaching the 1,000 feet required to determine the scope of a protected zone.

Registrants could potentially buy a measuring wheel, which contains an odometer similar to the one in a car and measures feet instead of miles. This tool, however, only works on pavement and other smooth surfaces and is not capable of measuring distances "as the crow flies" if there are any obstructions (e.g. other buildings) between the two points of measurement.

VII. 1,000 feet is actually quite far.

In our experience, 1,000 feet is farther than most people assume. For our *Geography of Punishment* report, we set out to discover whether people can be seen at 1,000 feet from a school under ideal circumstances. We sought out a school that was located on a flat, straight and unobstructed road, but we had considerable difficulty finding such a location. We eventually found a street in West Springfield, Mass. that fit our criteria and then, because common household tools are incapable of measuring such large distances,

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[13] By contrast professional equipment, such as those used by surveyors, would accurately measure distances, but most registrants to not have access to such equipment, nor know how to use it.

[14] See http://www.homedepot.com/b/Tools-Hardware-Hand-Tools-Measure-Layout-Tools-Measuring-Tools/N-5yc1vZc24n

[15] See the available "long tapes" listed at http://www.homedepot.com/b/Tools-Hardware-Hand-Tools-Measure-Layout-Tools-Measuring-Tools-Tape-Measures/Long-Tape/N-5yc1vZc256Z1z0zwja

[16] The Hilti PD 40 Laser Range Meter retails for $359. One serious challenge with using this device is that you aim the laser at a target, meaning that while it could be used to measure *from* a property line, it couldn't measure *to* a property line. http://www.homedepot.com/p/Hilti-PD-40-Laser-Range-Meter-320280/100619110?N=c24n#.Um49XyhIfd6

we purchased a measuring wheel typically used for surveying. While standing on the school's property line, I took pictures of my co-author at various distances from the property. (See images in Figure 8 below.) Despite having picked a day in early spring before the trees had leaves, *and* despite being on the flattest street we could find, *and* despite my co-author carrying a huge white sign, it was nearly impossible to see my co-author at 500, let along 1,000 feet.


100
View From School Property
250
View From School Property
500
View From School Property
1000
View From School Property

Figure 8.

VIII. Defining the specified place: Without the necessary data, it is difficult or impossible to determine what areas are within 1,000 feet of a school.

Assuming, for the sake of argument, that all the other issues with measurement could be resolved, it would still be difficult or impossible – even for individuals with sophisticated mapping technology – to determine the contours of Michigan's exclusion zones because the necessary data are not readily available.

A. The Michigan State Police does not make public a list of schools or school properties, making it difficult or impossible to accurately determine what areas are within exclusion zones.

Michigan defines "student safety zones" as "the area that lies 1,000 feet or less from school property." M.C.L. § 28.733(f). "School property" is defined as:

> 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. M.C.L. § 28.733(e).

A "school" is defined as "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." M.C.L. § 28.733(d). Thus, unless one knows where schools and school properties are, one cannot start to determine where "student safety zones" are.

As the complexity of the above definitions suggests, it is not always obvious whether a particular property qualifies as a school property, and therefore whether it triggers creation of an exclusion zone. While a registrant may well know where the local high school is, it may not be immediately apparent whether a particular baseball diamond on which the school's team practices is owned

by the school or the town.[17] Even determining whether a particular educational program qualifies as a school can be difficult. For example, when asked whether a particular Grand Rapids educational program located in a zoo qualifies as a school, Sgt. Bruce Payne, Michigan's Sex Offender Registry Enforcement Coordinator, testified that this was a question that local law enforcement would decide.[18]

The Michigan State Police does not provide the public with a list of schools or school properties that meet the definitions in SORA. In discovery, plaintiffs' counsel requested that defendants provide such a list for two sample counties so that I could map exclusion zones in those two jurisdictions. Defendants responded that no such lists exist. Defendants did have in their possession a statewide list of schools. But defendants refused to provide that document, maintaining that it was for use only by the Sex Offender Registration Unit staff. Defendants also indicated that the undisclosed list was *not* a comprehensive list of locations that qualify as "school property" for the purposes of M.C.L. § 28.733(e), because it "does not include all buildings, facilities, structures, or real property owned, leased, or otherwise controlled by the school."[19]

After negotiations between plaintiffs' counsel and defendants' counsel, the State Police eventually agreed to produce the aforementioned list. Because this list was only obtained by plaintiffs' counsel through this litigation, and even then not produced initially, it seems clear that ordinary registrants are unlikely to have access to the necessary information to map exclusion zones.

Despite the fact that the State Police's list does not apparently include all "school properties," as defined in SORA, I have used that list as a foundation to make the Michigan maps included in this report, since I have been unable to identify — and defendants have been unable to produce — a comprehensive list.

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[17] *See also* Payne Deposition Transcript, 51:15-20:

> Q. What if the property is owned by the township and regularly used by the school for sport, the school leases it for sports?
> [Objection omitted.]
> A. That I don't know.

[18] Payne Deposition Transcript, 52:24 – 54:6.

[19] Defendants' Responses to Plaintiffs' First Set of Interrogatories, No. 6.

Accordingly, I supplemented this list with schools identified by Kent County as discussed in the methodology section, but I believe the list continues to be under-inclusive.

At the same time it is important to note that if the State Police's Sex Offender Registration Unit itself does not have comprehensive information on the location of all school properties, registrants who seek to comply with the SORA requirements cannot reasonably be expected to have it either.

B. Parcel data is required in order to comply with the exclusion zone law.

If exclusion zones are measured from school property lines, rather than from schools themselves, then it is not enough to know where the schools are — one must also know the parcel boundaries both for the schools and for the surrounding parcels. Moreover, in order to accurately map exclusion zones, one must also be able to access property ownership data. For example, Figure 9 shows that the Carver High School is actually located on *two* parcels. The school building sits on the larger blue parcel, but a ball field owned by a school is located on a separate parcel marked by the pink area. The blue area is a single parcel, even though it is bisected by Oak Street and there is no visible indication that the eastern portion is a part of the school's property. The only way to determine the extent of the school's property is to use ownership data for all parcels in the area to determine which parcels are owned by schools – and thus should serve as the basis for determining protected areas – and which are not.

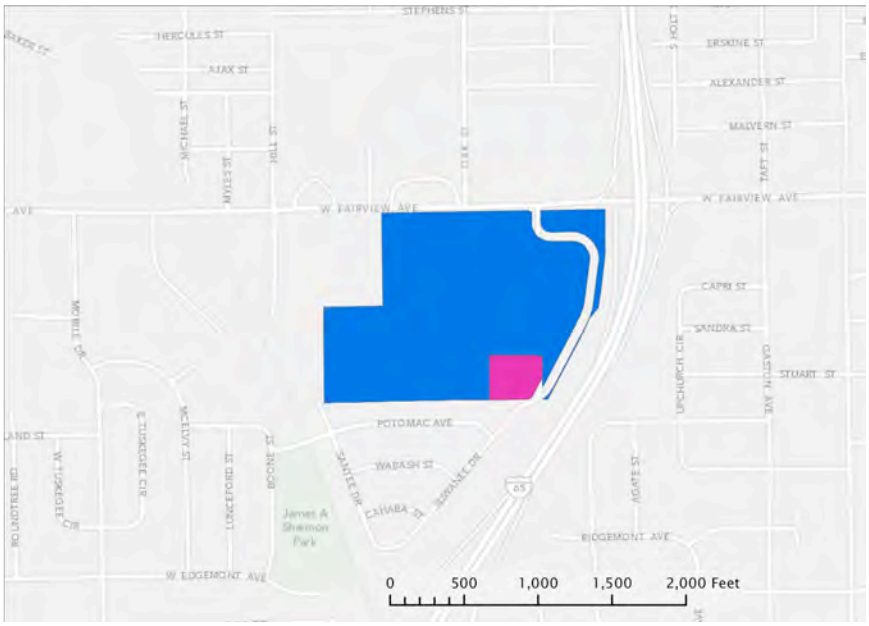

Figure 9.

Moreover, because Michigan's statute prohibits registrants from residing, working *and* "loitering" in exclusion zones, a registrant must know the parcel boundaries of every place where he or she could possibly reside, work, or spend time.

C. Michigan does not make parcel data publicly available, making it difficult or impossible to accurately determine what locations are within exclusion zones.

Parcel boundaries are, of course, not marked on the ground.[20] The following exchange in the deposition of Sgt. Payne illustrates the problem:

> Q. But if you're measuring property line to property line you have to know where the property line is?
> A. Right, yes.
> Q. So how would a registrant know where the property line is?
> A. I don't know. I don't have that answer.

[20] It would be impossible to physically demarcate the exclusion zones completely enough to allow people on the registry to choose to avoid them. While it might be possible to place identifying markers on public land, this would be particularly difficult in areas that contain multiple overlapping zone areas. Furthermore, many zones bisect private property where such identifiers would be almost certainly be unwelcome.

Q. But it's not like -- I mean, you can see a corner of a building, right? You can see where that is, right?
A. Right.
Q. But you can't necessarily see where a property line is; is that accurate?
A. That could be accurate, yes.
Q. Do you know if there's any publicly available maps showing parcel data that are available to registrants?
A. Personally I do not, no.[21]

Parcel data is not readily available in Michigan. Indeed the Michigan State Police Sex Offender Registration Unit itself does not have access to parcel data, and has thus far been unable to obtain it, despite attempting to do so through the Geographic Information Systems office.[22] Neither I nor plaintiffs' counsel were able to identify a source for statewide parcel data, nor was the Michigan State Police able to provide any information on where we might obtain such parcel data.[23]

Plaintiffs' counsel and I also engaged in extensive efforts, starting in 2011, to obtain local parcel data. These efforts included calling police departments, contacting local information offices and private vendors, sending Freedom of Information Act requests, and speaking with Michigan experts regarding potential sources for this data. Some jurisdictions, such as Kent County and Sparta, told us that they did not have such data. Other jurisdictions and agencies indicated that they did have parcel data, but the cost they quoted us to obtain it was prohibitive. For example, my staff called the following counties, and was quoted the following prices for parcel data:

- Macomb County: $48,000
- Oakland County: approximately $9,000, or just $4,299 for the parcel shapes without any of the descriptive attribute information
- Genesee County: $28,200
- Ingham County: $9,651
- Kent County: $125,000[24]

[21] Payne Deposition Transcript, 57:9-23.
[22] *See* Deposition of Leslie Wagner, Registry Coordinator, 27:13-28:7; Deposition of Karen Johnson, Manager of the MSP's Sex Offender Registration, 61:5-7.
[23] Johnson Deposition Transcript, 61:5-7.
[24] In January 2012 Kent County told me that they don't have the parcel data and they denied a FOIA request for it, instead referring me to REGIS, an agency of the Grand

Shortly before this report was due, one of my staff discovered that although Kent County had responded to a Freedom of Information Act request indicating that it did not have parcel data, it is in fact possible to download the shapes of most parcels in Kent County from the county for free.[25] To date, I have been unable to identify any other sources of free parcel data for other Michigan jurisdictions.

IX. Exclusion zones make large areas off-limits.

Using data from Kent County — the only parcel data I was able to obtain — I was able to create a map of exclusion zones in the city of Grand Rapids. Although, for the reasons set out above and below, that map is significantly under-inclusive, it shows that more than 46% of parcels in Grand Rapids are in exclusion zones.

A. Methodology and data sources used to map exclusion zones.

Although the process of mapping an exclusion zone is time-consuming, it is possible for someone with the relevant technical skills to do so, *provided one can obtain the necessary data.*[26] If an

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Valley Regional Metropolitan Council that sells the parcels for $1.25 each, or $125,000 for the county. See the REGIS price list at http://gvmc-regis.org/data/ordering.html

[25] See http://gis.kentcountymi.gov/public/kcviewerweb/

[26] To make my maps, I used a variety of data sources:

- Schools
  - A list of schools from the Michigan State Police, received in discovery. I had this spreadsheet list of addressed turned into a map of points for two purposes: to get a list of places considered to be schools by the MSP; and to access their approximate locations. My staff and I then used the Kent County Parcel Viewer at http://gis.kentcountymi.gov/public/kcviewerweb/ to explore the ownership of individual parcels in that area. This allowed us to determine the boundaries of school property.
  - Kent County's GIS Data Library at https://www.accesskent.com/GISLibrary/#Administration has a point shapefile of schools in the County. My staff and I examined this list for schools that we believed were covered by the statute, removing places such as colleges and adult education centers from the list. Once the list was pared down to schools offering grades K-12, we once again used the Kent County Parcel Viewer at http://gis.kentcountymi.gov/public/kcviewerweb/ to explore the ownership of individual parcels in that area. This allowed us to determine the boundaries of school property.
  - Kent County's GIS Data Library also provides a downloadable shapefiles of parcel data at https://www.accesskent.com/GISLibrary/#Parcels&Streets. These

exclusion zone is measured parcel-to-parcel, then the most critical ingredient is the complete geographic coordinates of every property parcel *boundary* in the jurisdiction. For this reason, I focused on schools that were either located within the city of Grand Rapids, or within 1,000 feet of the city's border.

Using ArcView mapping software, I started with the Michigan State Police's list of schools that I received through discovery. I had demographer Bill Cooper geocode (transfer street addresses to map coordinates) all of the schools on the State Police's list to determine a preliminary location. Then, after excluding all of the schools that the State Police records indicated were closed, my staff used the Kent County's Parcel Viewer application[27] to determine the ownership and exact location(s) of each school which I then marked on the map.

Then, I used a shapefile of schools distributed by the Kent County GIS Department. This file already had the schools in a map format, but included colleges and some facilities that appeared to be day cares, which would not be subject to the statute. Then we used the internet to gather additional information about each school on the

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files contain the boundary and address of every parcel in the County, but provide none of the other information necessary to confirm whether the property was a school. This is the same data that Kent County denied possessing in December 2011.

- As discussed above, my staff and I used the Kent County Parcel Viewer at http://gis.kentcountymi.gov/public/kcviewerweb/ to explore the ownership of individual parcels around schools we identifed in the city of Grand Rapids and surrounding border areas. The Parcel Viewer included attributes that were not included with the County's downloadable shapefiles, such as the owner and address of the parcel. The Parcel Viewer also allowed for a visual confirmation of buildings on the property through aerial imagery.
- Where I could not conclusively determine the location of a school on one of the lists I conducted open web searches using Google (https://www.google.com/) to find supplemental information directly from the school's websites.
- *Google Maps (https://maps.google.com/) was used where Parcel Viewer did not find an address on one of the school lists. Once I had the general location of the school provided by Google Maps I was able to manually find the school's location and corresponding parcel in the County's Parcel Viewer. Google Maps was also used when Street View feature was necessary to confirm school locations where there were ambiguities in the County's aerial imagery.

- The shapefile I used to illustrate measurement methods using the George Washington Carver High School in Montgomery, Alabama was produced by and purchased from the Montgomery County Mapping Department, showing the boundaries and ownership of all properties in Montgomery County as of August 28, 2013.

[27] See https://www.accesskent.com/GISLibrary/#Parcels&Streets

county's schools list.[28] My staff used the Parcel Viewer application to determine the ownership and exact location(s) of each K-12 school, which I then marked on the map.

Critically, this methodology surely produces an under-inclusive map. My map does not reflect the exclusion zones created by schools that are neither on the State Police's list nor the county's list, and also schools on the county's list that had a K-12 function we were not immediately aware of. We may also have missed schools that are spread across multiple, non-adjoining parcels, or schools that rent separate parcels of land from different owners. Since neither the State Police nor the County GIS department are directly responsible for regulating or tracking schools, it is reasonable to assume that new schools, particularly small or private schools, will be missing from their lists. Furthermore, I excluded some schools from my map that are identified on the county's list because I decided that they were ambiguous in character, such as the Godfrey-Lee Adult & Alternative Education Station at 1530 Grandville Ave SW.

Finally, I then used the software to identify all parcels that were within 1,000 feet of each school property. See Figure 10 for my map.

I have significant expertise making maps and have made dozens of maps of exclusion zones in many states, allowing me to develop an efficient methodology. Despite this fact, I spent many hours over the course of almost 2 years looking for a place in Michigan where I could make a single map like this, and the map of Grand Rapids took approximately 6 hours of my time plus 10 hours of research support from my staff. It is reasonable to assume that generating a map such as this one would take far more time for a mapmaker with less experience, and would be impossible for a lay person on the registry who has no mapmaking experience or tools whatsoever.

[28] I did not evaluate the Michigan State Police's determination of what constitutes a school under the statute. The State Police said that they did not consider their list complete, so I looked only to supplement their list.

"School safety zones" in the city of Grand Rapids

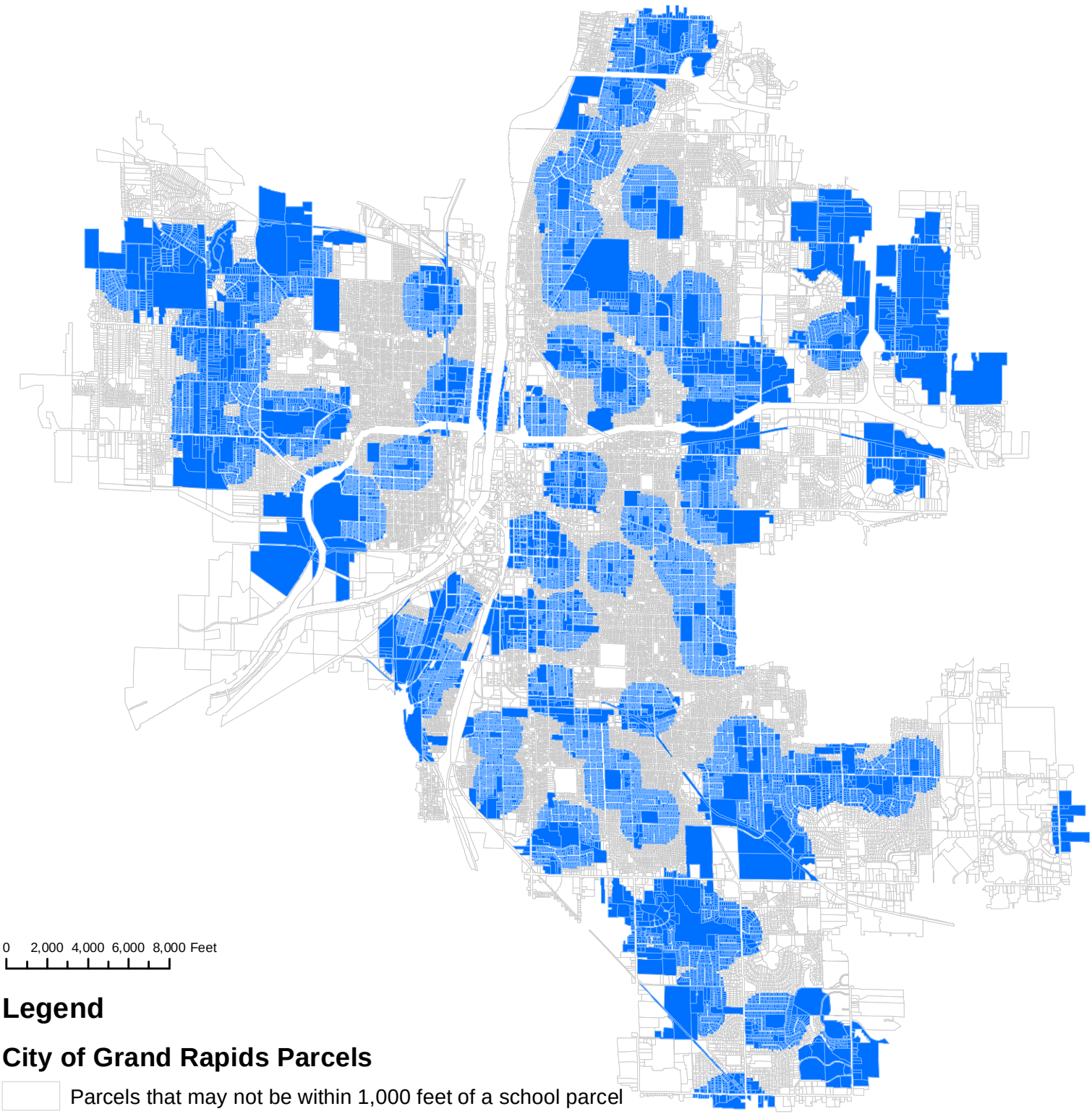

Figure 10.

B. In Grand Rapids, 46% of Properties Fall within an Exclusion Zone.

I found that 30,316 out of 65,650 parcels in the city were within 1,000 feet of a school property. Based on this under-inclusive methodology, more than 46% of the city of Grand Rapids is off limits to people on the registry for living, working or spending time.

Based on my experience performing similar analyses of school zones elsewhere, I anticipate that many of the areas that the map shows as theoretically available will likely be unavailable in practice. For example, of the areas not in exclusion zones, some may not be suitable for housing or work because they are industrial or forested areas. Nor does the map account for whether or not the available areas include affordable housing.

C. Exclusion zones expand significantly if the number of protected places increases.

Finally, it is worth reviewing two other Michigan maps, as they demonstrate some important geographic principles regarding exclusion zones.

The overall area covered by exclusion zones depends, generally, on the following factors:

- How distance is measured (from where to where, and whether it is linear distance or human travel distance);
- The distance used to measure from the protected place (here 1,000 feet);
- The number and distribution of the protected places, in this case school properties.

The Michigan legislature has considered expanding the categories — and therefore number of protected places — which could dramatically increase the total area covered by exclusion zones. This legislative session the Michigan Senate passed S.B. 76 and 77, which would criminalize "loitering" not only within a "student safety zone", but also within 1,000 feet of a child care center or daycare center.

There are approximately 10,729 day care providers in Michigan.[29] By contrast, there are 4,253 schools in Michigan.[30] If Michigan adopted S.B. 76/77, or similar legislation, the number of places that trigger exclusion zones would exponentially increase, rendering even larger portions of the state off limits.

I created a detailed map showing 1,000-foot circles around just two dozen licensed day cares in the Lansing area. The map shows that large portions of Lansing are within 1,000 feet of a day care center. Significantly, this map understates the size of the exclusion zones in Lansing within the application of this bill for three separate reasons:

- It does not include daycare providers that are not licensed by or registered with the state.
- It does not include school properties, which of course also create exclusion zones.
- Because parcel data for Lansing is not freely available to the public, the map is based on each day care center as a single point, whereas in reality, the property boundaries for each day care facility are much larger. The exclusion zone would therefore extend an unknown but significant amount beyond the simple 1,000-foot circles shown on the map.

[29] How one defines "day care center" could itself affect the size of the exclusion zones. A definition that includes licensed centers, registered family providers, and non-registered family providers, for example, would create larger exclusion zones than one limited to licensed center-based care. I was unable to obtain any list showing all the locations where childcare is provided, i.e. a list including non-registered providers. The number of daycare centers is drawn from a list of providers who are licensed by or registered with the Michigan Department of Human Services. *See* Department of Human Services, Statewide Search for Childcare Centers and Homes, at http://www.dleg.state.mi.us/brs_cdc/sr_lfl.asp. However, it is not immediately apparent exactly what types of child care providers are included on that list, or how many providers of each type there are.

[30] The number of schools is drawn from the list provided in discovery by the Michigan State Police.


What do 1,000 foot circles around 10,729 points look like?
(And SB76 would apply to more than just the 10,729 day cares, and likely be measured from the property line, making each shape larger than a simple circle.)
N
0 500 1,000 Feet

Figure 11.

Finally, I also made a map showing how, if day cares are added to the list of protected places, that would instantly affect 75% of the city of Grand Rapids. See Figure 12.

Most of Grand Rapids is within 1,000 feet of a school or day care property

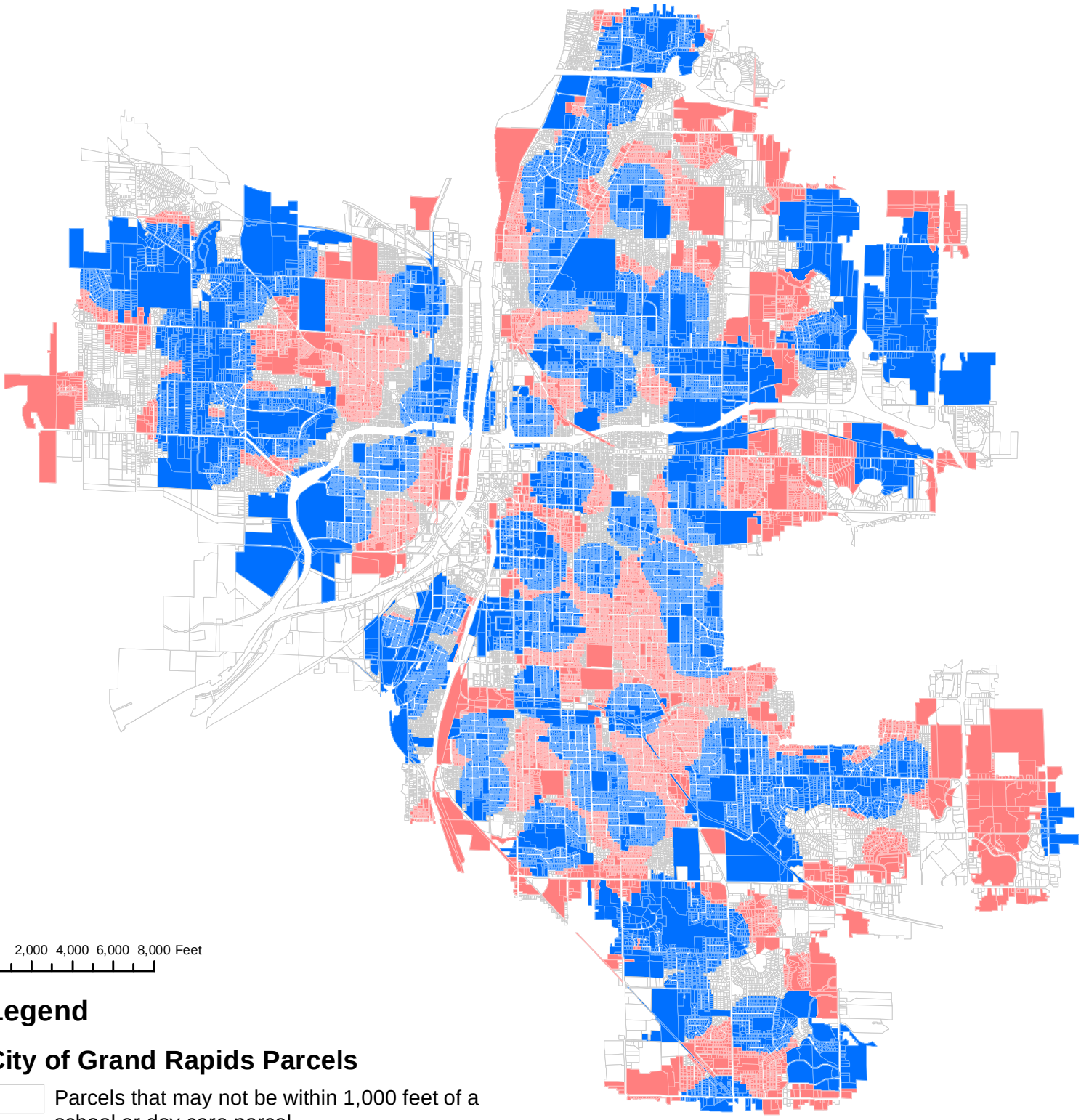

Figure 12.

X. People on the registry cannot reliably know what areas are within 1,000 feet of a school.

It is important to remember that from the perspective of both registrants and law enforcement officials charged with enforcing exclusion zones, the operative question is "Is specific location X permissible?" But, that question cannot be reliably answered in a straightforward manner. The only efficient way to answer the question is to first map all of the protected areas and then measure out from those protected areas.

In order to map, and thus avoid exclusion zones, a registrant needs to be able to simultaneously do all of the following:

A. Be familiar with *all* schools and school properties and know the exact location of *each* one.
B. Know how the distance from each school property should be measured.
C. If distances are to be measured from property line to property line, know the property lines both of all school properties and of all other properties in the area.
D. Be able to measure 1,000-foot distances in a matter consistent with how the statute is being enforced.
E. Be able determine how different individual exclusion zones intersect and overlap.

The first four points have been addressed above. The final point is illustrated by the map in Figure 13 below, which I prepared for a study of a Massachusetts drug sentencing statute, showing exclusion zones around parks, schools, head start facilities, and licensed day care centers.[31] Each zone is colored a different color to illustrate how the various zones overlap.

[31] The then existant, and since changed, Massachusetts statute set distances of 1,000 feet for all of these properties except for 100 foot distances around parks.

Figure 13.

(Notably, this map was drawn based on the property line of the school or other protected places, but the map does not show the property line of the locations subject to the statute.)

If the goal of an exclusion zone is to have registrants avoid living, working, or spending time in particular locations, then the registrant must be able to determine where those locations are. Yet, for the reasons outlined above, the areas and edges of those zones are unknowable.

Exclusion zones in Michigan are not only unknowable for the average person on the street. They are also unknowable to trained geographers with special software, access to specialized data and expertise in criminal justice mapping. For example, even though I was fortuitously able to obtain parcel data for Kent County, the Grand Rapids map does not include all protected areas, for the reasons discussed in that section.

In sum, there is simply no good way in Michigan for experts, much less registrants, to determine exactly what areas are subject to SORA's "student safety zone" provisions.

XI. Statement of compensation

My standard hourly rate for preparing expert reports is $130. My standard hourly rate for testifying is $250. For research and presentation assistance, my two colleagues, Aleks Kajstura, JD, and Leah Sakala, are paid at $80/hr and $40/hr, respectively.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

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October 28, 2013

PETER J. WAGNER

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EDUCATION

Western New England College School of Law — **Springfield, MA**
Juris Doctor, May 2003

University of Massachusetts at Amherst, — **Amherst, MA**
B.A., August 1994
Major: Social Thought and Political Economy
Minor: African-American Studies

WORK EXPERIENCE

Prison Policy Initiative — **Springfield, Easthampton, MA**
Co-Founder, Exec. Director, Asst. Director — **September 2001 – Present**

Co-founded organization committed to documenting how mass incarceration affects individuals, communities, and the national welfare. Lead a national movement to change the way that the Census Bureau counts people in prison, and the way that state and local governments use Census prison counts to draw legislative districts.

McGuire & Associates LLC — **Montgomery, AL**
Mapping Consultant — **September 2013 – Present**

Serve as an expert witness in *McGuire vs. City of Montgomery, et. al.* a case challenging a state law restricting where people on the sex offender registry may live and work.

Civil Liberties Union of Massachusetts — **Boston, MA**
Mapping Consultant — **June 2009 – Present**

Assist litigators with evaluating potential challenges to overly broad city ordinances in Barnstable, Lynn and Waltham, showing that cities overreached and rather than regulating where people on the sex offender registry could live, the cities barred people on the registry from living anywhere.

Faegre Baker Daniels LLP — **Denver, CO**
Mapping Consultant — **January 2013 – July 2013**

Serve as an expert witness in *Ryals v. Englewood*, challenging a city ordinance banning certain people on the sex offender registry from almost anywhere in the city of Englewood. I made a map of the city's exclusion zones and calculated that, as Judge R. Brooke Jackson ruled, that the ordinance "leaves essentially no place for offenders to live" and pushes sex offenders into neighboring cities.

Southern Center for Human Rights — **Atlanta, GA**
Mapping Consultant — **June 2006 – September 2009**

Prepared maps and analysis, and testified twice for plaintiffs in federal court in the case *Whitaker v. Perdue*. The case challenged Georgia's ban on people on the sex offender registry from living within 1,000 feet of schools, churches and a long list of other places including school bus stops. My testimony showed that because almost every tract of habitable housing in Georgia was served by one of 350,000 school bus stops, the legislature unwittingly declared all urban areas, all suburban areas and most rural areas off limits to people on the registry.

Open Society Institute Fellowship Program **New York City**
Consultant **January – June 2007**

Assist Soros Justice Fellows with a range of research and technical support needs, including combing databases, developing educational materials and using quantitative research to tell stories and illustrate problems to diverse audiences.

Prison Policy Initiative **Cincinnati, OH; Northampton, MA**
Open Society Institute Soros Justice Fellow **June 2003 – May 2005**

Conducted a national research and advocacy project to quantify, publicize, and reform the current practice of utilizing the Census to shift political power away from poor and minority communities and into the hands of prison expansion proponents. Conducted state-specific analyses of the impact of prison-based gerrymandering on state legislative redistricting and develop both national and state-specific solutions.

Center for First Amendment Rights **Hartford, CT**
Webmaster **December 2000 – May 2003**

Law Clerk **Springfield, MA**
Magistrate Judge Kenneth P. Neiman **January – May 2003**

Jessup International Moot Court Team **Springfield, MA**
Member **October 2002 – February 2003**

Anti-Discrimination Clinic **Springfield, MA**
Student Attorney **August 2002 – December 2002**
Represented victims of employment discrimination and public accommodations discrimination in proceedings before the Massachusetts Commission Against Discrimination. Performed research for the Attorney General's Office on housing discrimination cases.

Capital Defender Office **Albany, NY**
Legal Intern **June 2002 – August 2002**
Performed legal research on the constitutionality of a jury "life qualification" statute. Digitized and organized mitigation evidence. Transcribed witness interviews.

Massachusetts Correctional Legal Services **Boston, MA**
Legal Intern **May 2001 – October 2001**
Investigated prisoner complaints of poor medical care; conducted medical advocacy and prepared referrals to outside attorneys for potential medical malpractice litigation. Investigated a major disturbance at a super-maximum facility and represented the alleged ring-leader against 54 charges at his disciplinary hearing and on administrative appeal.

TEACHING EXPERIENCE

Smith College **Northampton, MA**
Instructor **January 2003, 2005, 2006, 2011, 2012**
Designed and taught "Prison Industrial Complex Through Film" non-credit course.

Smith College **Northampton, MA**
Instructor **January 2002, 2004, 2008**
Designed and taught "Constitutional Law Through Film" non-credit course.

HONORS & AWARDS

Recipient, Champion of State Criminal Justice Reform Award, National Association of Criminal Defense Lawyers, 2013
Finalist, Maria Leavey Tribute Award, 2012
Recipient, Soros Justice Postgraduate Fellowship, 2003-2005
Recipient, Massachusetts Bar Foundation Legal Intern Fellowship, Summer 2001
Recipient, Law Alumni Scholarship, Fall 2002
Recipient, Katherine M. Connell Scholarship, Fall 2001

PUBLISHED REPORTS

Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry, by Drew Kukorowski, Peter Wagner and Leah Sakala, Prison Policy Initiative, May 8, 2013

Imported "Constituents": Incarcerated People And Political Clout In Connecticut, by Peter Wagner, Prison Policy Initiative and Common Cause Connecticut,April 17, 2013.

One Last Chance to Avoid Prison-Based Gerrymandering in Kansas, by Peter Wagner and Brenda Wright, Prison Policy Initiative and Dēmos, May 28, 2012.

Primer for reporters on county or municipal redistricting & prison-based gerrymandering, by Peter Wagner, Prison Policy Initiative, March 2011

Preventing Prison-Based Gerrymandering in Redistricting: What to Watch For, by Peter Wagner and Brenda Wright, Prison Policy Initiative and Dēmos, February 23, 2011

Aleks Kajstura and Peter Wagner*, Importing Constituents: Incarcerated People and Political Clout in California*, Prison Policy Initiative, March 2010

Peter Wagner and Christian de Ocejo*, Importing Constituents: Incarcerated People and Political Clout in Connecticut*, Prison Policy Initiative, March 2010

Peter Wagner, Aleks Kajstura, Elena Lavarreda, Christian de Ocejo, and Sheila Vennell O'Rourke, *Fixing prison-based gerrymandering after the 2010 Census: A 50 state guide*, Prison Policy Initiative, March 2010

Peter Wagner and Olivia Cummings, *Importing Constituents: Incarcerated People and Political Clout in Maryland*, Prison Policy Initiative, March 4, 2010

Brett Blank and Peter Wagner*, Importing Constituents: Prisoners and Political Clout in Illinois*, Prison Policy Initiative, February 2010

Elena Lavarreda, Peter Wagner and Rose Heyer, *Importing Constituents: Prisoners and Political Clout in Massachusetts*, Prison Policy Initiative, October 6, 2009

Peter Wagner and Elena Lavarreda*, Importing Constituents: Prisoners and Political Clout in Oklahoma*, Prison Policy Initiative, September 21, 2009

Peter Wagner and Elena Lavarreda*, Importing Constituents: Prisoners and Political Clout in Pennsylvania*, Prison Policy Initiative, June 26, 2009

Aleks Kajstura, Peter Wagner and Leah Sakala*, Reaching too far, coming up short: How large sentencing enhancement zones miss the mark*, Prison Policy Initiative, January, 2009

Peter Wagner*, Phantom Constituents in Maine's Regional School Unit 13: How the Census Bureau's outdated method of counting prisoners harms democracy*, Prison Policy Initiative, January 15, 2009

Aleks Kajstura, Peter Wagner and William Goldberg, *The Geography of Punishment: How Huge Sentencing Enhancement Zones Harm Communities, Fail to Protect Children*, Prison Policy Initiative, July 2008

John Hejduk and Peter Wagner*, Importing Constituents: Prisoners and Political Clout in Wisconsin*, Prison Policy Initiative, March, 2008

Peter Wagner and JooHye DellaRocco, *Phantom Constituents in Tennessee's Boards of County Commissioners*, Prison Policy Initiative, February 21, 2008

Brenda Wright and Peter Wagner, *Report to U.N. Committee for the Elimination of Racial Discrimination that U.S. Census practices dilute votes of minority populations*, Prison Working Group, December 2007

Peter Wagner, Meghan Rudy, Ellie Happel and Will Goldberg, *Phantom constituents in the Empire State: How outdated Census Bureau methodology burdens New York counties*, Prison Policy Initiative, July 18, 2007

Peter Wagner, *Democracy Toolkit: Interactive tools to help rural citizens determine if prison populations in legislative districts are diluting their right to equal representation*, Prison Policy Initiative, April 2007

Peter Wagner, Eric Lotke and Andrew Beveridge*, Why the Census Bureau can and must start collecting the home addresses of incarcerated people*, Prison Policy Initiative, February 10, 2006

Brenda Wright and Peter Wagner, *Brief Amici Curiae In Support Of Plaintiff-Appellant Jalil Abdul Muntaqim, a/k/a/Anthony Bottom, Urging Reversal Of The District Court,* Prison Policy Initiative and National Voting Rights Institute, January 28, 2005

Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Nevada*
Prison Policy Initiative and the Progressive Leadership Alliance of Nevada, December 15, 2004

Peter Wagner, *Importing Constituents: Prisoners and Political Clout in Montana,*
Prison Policy Initiative, December 14, 2004

Peter Wagner and Rose Heyer, *Importing Constituents: Prisoners and Political Clout in Texas*, Prison Policy Initiative, November 8, 2004

Peter Wagner, *Jim Crow in Massachusetts? Prisoner disenfranchisement,* Prison Policy Initiative, October 31, 2004

Peter Wagner, *Actual Constituents: Students and Political Clout in New York,* Prison Policy Initiative, October 6, 2004

Peter Wagner and Rose Heyer, Importing Constituents: Prisoners and Political Clout in Ohio, Prison Policy Initiative, July 6, 2004

Rose Heyer and Peter Wagner, *Too big to ignore: How counting people in prisons distorted Census 2000*, Prison Policy Initiative, April 13, 2004

Peter Wagner, *The Prison Index: Taking the Pulse of the Crime Control Industry*, Prison Policy Initiative and Western Prison Project, April 2003

Peter Wagner, *Importing Constituents: Prisoners and Political Clout in New York*, Prison Policy Initiative, April 22, 2002.

BOOK CHAPTERS

Gary Hunter and Peter Wagner, Prisons, Politics and the Census, in *Prison Profiteers: Who Makes Money from Mass Incarceration*, edited by Tara Herivel and Paul Wright, The New Press (2008)

Peter Wagner, Skewing Democracy: Where the Census Counts Prisoners, in *The Emerging Agenda: Poverty and Race in America*, edited by Chester Hartman, Lexington Books (2006)

EDITED ARTICLES

Peter Wagner, Breaking the Census: Redistricting in an era of mass incarceration, *William Mitchell Law Review*, Spring 2012

Peter Wagner, Prison Populations Create Complications at Redistricting Time, *Missouri Municipal Review*, January 2012

Eric Lotke and Peter Wagner, Prisoners of the Census: Electoral and Financial Consequences of Counting Prisoners Where They Go, Not Where They Come From, *Pace Law Review*, Volume 24, Number 2 (Spring 2004)

FILM APPEARANCES

Gerrymandering, directed by Jeff Reichert, Green Film Company (2010)

PRESENTATIONS (SELECT)

Presentation: Fees and Commissions in the prison telephone industry, Federal Communications Commission, (Washington, D.C.) July 10, 2013.

Keynote address: *Prison Branches: The Untapped Resource*, 101st NAACP Convention Adjunct Event, Crossroads Correctional Center, (Cameron, MO) July 11, 2010

Presentation: *Prisons, Redistricting, and the Census: New Options for States and Localities*, Congressional briefing, Rayburn Congressional Office Building, (Washington, D.C.) April 27, 2010

Panelist: *Census and Redistricting*, NAACP Continuing Legal Education Seminar, 100th NAACP Convention, (New York City) July 13, 2009

Panelist: *Technical solutions to avoid prison-based gerrymandering*, National Conference of State Legislature's Legislative Summit, (Philadelphia, PA) July 21, 2009

Workshop: *Legislative options to avoid prison-based gerrymandering*, Legislative Black Caucus of Maryland, (Annapolis, MD) October 2, 2009

Keynote address: *The U.S. Prison System: Community and Political Impacts*, Brown University (Providence, RI) December 3, 2005

Keynote address: *Coming Home: Addressing the Issues Faced by Prisoners as They Re-enter the Community*, Community Service Society of New York (New York City) December 10, 2005

Panel presentation: *Prisoners of the Census: Criminal Justice Populations in Census Data*, Crime Mapping Research Conference, National Institute of Justice (Savannah, GA), September 9, 2005

Panel presentation: *Felony disenfranchisement and its impact on the Voting Rights Act*, 40 Years After the Voting Rights Act, The Democracy Project, (Selma, AL) August 5, 2005

Panel presentation: *Protecting and expanding voting rights*, NAACP Continuing Legal Education Seminar, NAACP Convention (Milwaukee, WI) July 11, 2005

Presentation: *Changing how prisoners are counted in the Census*, presentation to the Residence Rules in the Decennial Census Panel at the National Academy of Sciences (Washington, D.C.) June 2, 2005

Presentation: *Prisoners, the Census and the Political Geography of Mass Incarceration,* Prisons 2004: Prisons and Penal Policy: International Perspectives (City University London, England) June 25, 2004

Panel presentation: *Prisoners and Redistricting, Accuracy Counts: Incarcerated People & the Census* Congressional Briefing (Washington, D.C.) April 14, 2004

Panel presentation: *Prisoners and the Census*, History's Scorecard: The Role of the Census Bureau in America's Development, Census Bureau (Washington D.C.) March 5, 2004

Panel presentation: *Felon Disenfranchisement: Black Codes in the 21st Century*, Africana Studies Against Criminal Injustice Conference (New York City) April 11, 2003

Panel presentation: *What's in a Number: Diluted Census and Voting Representation*, National Summit on the Impact of Incarceration on Black and Latino Families and Communities (Washington D.C.) June 29, 2002

Keynote address: *Unlocking Prisons: Re-Thinking the Crisis, Creating a Network for Action Conference*, Harvard University (Cambridge, MA) April 27, 2002

Panel presentation: Felon Disenfranchisement and the Three-Fifths Clause, Rebellious Lawyering Conference, Yale University (New Haven, CT) February 18, 2001

LEGISLATIVE TESTIMONY (SELECT)

Testimony in support of SB400, the "No Representation Without Population Act" before the Education, Health & Environmental Affairs Committee of the Maryland State Senate (Annapolis, MD) March 4, 2010

Testimony on the 2010 Census: Enumerating People Living in Group Quarters, before the Subcommittee on Information Policy, Census and National Archives, Committee on Oversight and Government Reform, United States House of Representatives (New York, NY) February 22, 2010

Testimony on Adjusting Prisoner Census Enumeration for Purposes of State Legislative Redistricting, New York State Legislative Task Force on Demographic Research and Reapportionment (Bronx, NY) March 14, 2002

PROFESSIONAL ASSOCIATIONS

Member of Massachusetts Bar, BBO# 662207

Exhibit G

Expert Report of Anne Yantus, J.D.

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

JOHN DOES # 1-4 and MARY DOE,

Plaintiffs

File No.

Hon.

-vs-

RICHARD SNYDER, Governor of the State Michigan, and COL. KRISTE ETUE. Director of the Michigan State Police, in their Official capacities

Defendants

_____/

AFFIDAVIT OF ANNE YANTUS

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

ANNE YANTUS, being first sworn, states as follows:

1. I am a managing attorney with the State Appellate Defender Office (SADO) in Detroit, Michigan. I am in charge of the Special Unit (also known as the Plea Unit) that focuses on plea appeals and sentencing relief. Most of the work I do in handling plea appeals has to do with sentencing error or plea withdrawal claims.

2. I also teach a criminal sentencing class at the University of Detroit-Mercy School of Law, and have done so since 2003. I taught a corrections law class for Baker College in 2011, and edited the SADO Defender Plea and Sentencing book in 2011. I co-authored a chapter on circuit court sentencing for *Michigan Criminal Procedure* (ICLE) in 2010. And I have written a number of articles on sentencing and plea matters for the Criminal Defense Newsletter.

3. I frequently conduct seminars or lectures around the state that address sentence and/or plea issues for the following organizations: the Criminal Defense Attorneys of Michigan, the Wayne County Criminal Advocacy Program, the Michigan Assigned Appellate Counsel System, the Institute of Continuing Legal Education, the Michigan Judicial Institute, the Criminal Law Section of the Michigan State Bar, and local bar organizations. I also taught a sentencing guidelines seminar for the Michigan Court of Appeals in February 2012.

4. Much of the plea and sentence training I do is directed at criminal defense attorneys. As part of that training, I offer suggestions on better client counseling vis-à-vis plea bargains so that defense attorneys can adequately advise their clients about the consequences of their pleas. I regularly update practitioners on new case law and

new laws that address some of the harsher consequences of criminal convictions, including sex offender registration. I have included a discussion of sex offender registration in my training handouts since 2007.

5. In training events, I have stressed the need for defense attorneys to provide complete and accurate advice to their clients about sex offender registration. This has been a growing area of concern within the criminal justice community, and this is especially true since 2006 when the first Student Safety Zone laws were enacted in Michigan. Michigan also passed laws increasing the penalty for certain sex crimes against individuals under the age of 13 in 2006, and passed the first lifetime electronic monitoring statutes for sex offenders in 2006. The increased legislative and legal activity related to sex offenders has been an important area of concern for attorneys since at least 2006.

6. In my own practice, I have reviewed approximately two thousand cases in the past 26 years. Issues related to sex offender registration have become more and more prevalent since the sex offender laws were modified in 2006. I have seen in my own cases that a defendant's decision to plead guilty or stand trial may often hinge on whether sex offender registration will result from the conviction. For example:

   a. Several years ago I handled an appeal from Ingham County where the prosecutor, defense attorney and judge agreed on the record that the guilty plea would not entail sex offender registration. The probation department nevertheless referred the case to the Michigan State Police for registration. We were able to remove the defendant's name from the registry as a result of the appeal, and this was the only relief we requested.

   b. I also had a case in 2006 that involved a defendant's guilty plea on December 29, 2005 to attempted criminal sexual conduct in the fourth degree. The plea was entered just days before the Student Safety Zone laws took effect on January 1, 2006. Unbeknownst to the defendant, his guilty plea would have precluded him from living in the home he was then purchasing. We filed a motion to withdraw the plea, claiming he would not have pled guilty had he known about the new law. The case was resolved by agreement in the trial court.

7. Through my own cases and from discussion with hundreds of attorneys from around the state, it is clear to me that sex offender registration is a critical issue for criminal defendants who are charged with sex crimes. The questions of whether a defendant must register, for how long, and whether registration is public or private are often pivotal in resolving cases through plea negotiations.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

ANNE YANTUS (MICH BAR NO. 39445)

Dated: March 5, 2012

Exhibit H

Expert Report of Richard Stapleton, J.D.

Doe, *et al.*, v. Snyder, *et al.*

EXPERT REPORT OF RICHARD B. STAPLETON

Executive Summary

I have been asked to compare Michigan's parole and probation supervision processes to the requirements of the Michigan Sex Offender Registration Act, MCL 28.721 *et seq*. The key conclusions of this report are:

- The Michigan Department of Corrections (MDOC) uses actuarial assessment instruments to measure offender risk, and then uses evidence-based practices to narrowly tailor parole and probation conditions based on offender risk level and individual needs. The MDOC not only targets interventions to high-risk offenders, but also minimizes interventions with low-risk offenders, because research shows that intensive supervision of low-risk offenders is counter-productive. By contrast, the requirements of the Sex Offender Registration Act (SORA) are applied indiscriminately to all registrants, regardless of risk level or individual circumstances.

- SORA undermines MDOC's use of evidence-based correctional practices because it imposes virtually identical requirements on all registrants regardless of risk level; it requires extensive and potentially counter-productive interventions for low-risk offenders; and it significantly limits employment opportunities, access to housing, and family reunification, which are critical to offender success.

- SORA is both similar to and different from regular parole/probation supervision in that both systems require regular reporting, but SORA requires more information to be reported in shorter time periods; SORA automatically imposes restrictions on employment or residency that are imposed on probationers/parolees only on an individualized basis; SORA requirements apply for 15 years to life, while parole restrictions typically last two years; and SORA requirements do not decrease over time and cannot be contested, whereas probation/parole conditions are frequently relaxed during the course of supervision and can be challenged through MDOC grievance procedures.

- Parole and probation agents charged with supervising parolees/probationers who are also subject to sex offender registration have great difficulty interpreting and applying SORA because the statute is so vague. The interpretation of enforcing agencies varies greatly from jurisdiction to jurisdiction.

I. Background, Education, and Qualifications.

I was Administrator of the MDOC Office of Legal Affairs (formerly the Office of Policy and Hearings) beginning in 1999 until my retirement in June 2011. As chief legal counsel for the Michigan Department of Corrections I was responsible for development of all policy directives and for coordination of all policy decisions with the MDOC's Executive

Policy Team and the Department of Attorney General. I was the chairperson of the MDOC's Policy Review Committee and responsible for the promulgation of all administrative rules, policy directives and Director's Office Memoranda in accordance with MDOC policy. I was also responsible for management of the overall prisoner disciplinary process within the MDOC; for the direction and supervision of formal administrative disciplinary hearings in correctional facilities pursuant to the Corrections Hearings Act (MCL 791.251, *et seq*.); and for the administrative management of the litigation, prisoner grievance, internal audit, and FOIA sections within the Office of Legal Affairs.

During my tenure as the MDOC Legal Affairs Administrator I was the chairperson of the Department's Resource Team between 2003 and 2010. The Resource Team was a committee of high-level administrative staff that strategically planned and managed the development of the Michigan Prisoner Reentry Initiative (MPRI). The Resource Team coordinated the implementation of a comprehensive evidence-based reentry model that has been recognized nationally for increasing parole rates and reducing recidivism by 33% for parolees who were released through MPRI.

I have a Juris Doctor degree from Michigan State University College of Law (1986) and a Bachelor of Science in Criminal Justice from Wayne State University (1977). A copy of my resume is attached as Exhibit A.

II. The MDOC Uses Evidence-Based Practices and Risk Assessments to Improve Outcomes for Parolees and Probationers.

A vast body of research has been published over the past 20 years establishing that evidence-based practices work in reducing criminal behavior. In the correctional context, "evidence-based practices" mean organizing criminal justice interventions to promote rather than hinder the implementation of programs and services that are known to work in reducing criminal behavior. Effective correctional interventions lead to reductions in risk and recidivism, and to improved outcomes for individuals under supervision, particularly when those interventions are targeted to those who are at higher risk and are focused on the individual's specific criminogenic needs.

In 2003, the National Institute of Corrections (NIC), in collaboration with the Crime and Justice Institute, assembled leading scholars and practitioners from the fields of criminal justice and corrections to define the core elements of evidence-based practices based on published research. The evidence-based principles identified by the NIC now form the basis for the MDOC's interventions with offenders, and have been incorporated into the MDOC's policies and practices for supervision of parolees and probationers.[1]

[1] Bogue, B., Campbell, N., Carey, M., Clawson, E., Faust, D., Florio, K., Joplin, L., Keiser, G., Wasson, B., & Woodward, W. (2004). *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention*. Washington, DC: U.S. Department of Justice, National Institute of Corrections.

Since research has demonstrated that aligning the level of intervention with the level of risk produces the best outcomes, the starting point for evidence-based corrections is **to assess an offender's risk level**. For supervision and case management strategies to be effective, they must be based upon an offender's risk level. Higher intensity programs, services, supervision and surveillance techniques are reserved for those assessed as high risk. **Research has consistently shown that lower risk offenders tend to recidivate at higher rates when interventions are over-delivered.** Lower risk offenders may still require services such as housing, family reunification, or medical support to effectively reduce their risk of re-offending. However, offenders who are at low risk to re-offend are unlikely to benefit from interventions that are designed to change their behavior, and such interventions are often counter-productive.[2]

The MDOC uses empirically-based actuarial instruments to enable the Department and the parole board to assess each individual's actual level of risk. At the recommendation of the Resource Team, the MDOC began using the Northpointe COMPAS risk assessment instrument in 2005 to measure prisoners' risks and needs and to inform the Parole Board in the parole release decision making process. The parole board also began using the Static-99 risk assessment instrument for assessing the likelihood of sex offenders to commit new sex offenses after release.[3] These actuarial risk assessment tools are used because they have proven to have greater accuracy in predicting risk than either basing risk on the offense of conviction or basing risk on a parole or probation agent's subjective assessments of the offender.

Actuarial instruments used to assess risk look at both static risk factors, *i.e.*, factors that cannot be changed, such as the offense of conviction, and dynamic risk factors, *i.e.*, factors that change over time, such as age, marital status, behavior, attitudinal changes, *etc.* Accordingly, not only may individuals with the same offense have very different risk levels, but **individuals with more serious offenses may have lower risk levels than individuals with lesser offenses**, especially as time passes**.**

COMPAS is a dynamic instrument that employs evidence-based principles as a tool for creating treatment and supervision plans. COMPAS has demonstrated that by addressing the specific and defined criminogenic needs of individual offenders their risk for violence and recidivism may be reduced. "COMPAS Core" identifies risk and needs when an offender first begins serving his or her sentence. Programming is assigned by the MDOC to target those needs and to effect change in behavior given the prisoner's specific characteristics.

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[2] Andrews, D.A. & Bonta, J. (2007). *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation* (2007-06). Ottawa: Public Safety Canada. Latessa, E., Cullen, F.T. & Gendreau, P. (2002). Beyond Professional Quackery: Professionalism and the Possibility of Effective Treatment. *Federal Probation*. 66(2): 43-49.

[3] Fass, T., Heilbrun, K., DeMatteo, D. and Fretz, R. (2008), "*The LSI-R and the Compas: Validation Data on Two Risk-Needs Tools*", Criminal Justice and Behavior.

A "COMPAS Reentry" assessment is used by the MDOC prior to release consideration and during parole supervision to measure the effectiveness of programming and the impact of changes in circumstances specific to the offender in order to create a more accurate prediction for risk of violence and recidivism. COMPAS Reentry provides a statistically accurate prediction of an individual's risk for engaging in further criminal behavior.

III. The MDOC Uses Risk Assessments and Individualized Case Management Tools to Tailor Supervision Levels to the Needs of Individual Offenders.

Supervision for parolees and probationers is individually tailored to an offender's actual risk and needs, and is based on actuarial risk assessments, including the COMPAS, and, for people with sex crimes, the Static-99.

The MDOC uses multidisciplinary groups in the local community, called a case management team (CMT), to facilitate information-sharing and to inform supervision decisions.[4] The CMTs consist of parole/probation agents, treatment providers, law enforcement, polygraph examiners, and victim advocates. The MDOC's collaborative case management approach recognizes that research "has proven that to have the greatest impact on recidivism, markedly different case management strategies must be employed based on the offender's risk as judged by correctional risk assessments and aided by professional judgment."[5] Examples of the issues and decisions that may be the subject of CMT meetings include addition or deletion of specific parole/probation conditions and sanctions for rule violations.

The number and type of required contacts between offenders on community supervision and their agents has changed with the implementation of collaborative case management. Historically, parolees and probationers were required to report in person at least monthly to the agent's office. Agents were also required to conduct at least monthly home calls to the offender's residence. **Current case management standards no longer require in-person monthly reporting for all offenders, regardless of their risk. Rather, the frequency and nature of reporting (*e.g.*, in person, by phone, by mail) are determined by the offender's assigned level of supervision.** The standards recognize that effective case management may require "sporadic differences in the numbers and types of contacts required over a period of time."[6] In-person contacts with offenders may therefore occur outside of the office, including at the offender's home, place of employment, and during CMT meetings. Depending on the level of supervision, some parolees and probationers can use the phone or mail or email to contact their agents and/or to report changes.

The offender's score on risk assessment instruments also determines the frequency of CMT meetings. In-person meetings are staffed for moderate and high-risk offenders

[4] FOA Work Statement 06.04.130D, "Sex Offender Case Management Teams".
[5] FOA Work Statement 06.04.130, page 2, "Case Management Standards".
[6] FOA Work Statement 06.04.130, page 2.

every 6 to 8 months during the period of parole or probation. CMT meetings for offenders who score low risk may be conducted by email or in-person, as needed.[7]

IV. The MDOC Uses Risk Assessments and Individualized Case Management Tools to Tailor Parole/Probation Conditions to the Needs of Individual Offenders.

Michigan Administrative Rule 791.7730 requires that parole orders contain conditions that are reasonably necessary to assist a parolee to lead a law-abiding life. Further, the rule requires there to be a reasonable relationship between parole conditions and both the prisoner's previous conduct and present capabilities. Since the adoption of evidence-based principles within the Department, the parole board uses risk assessment instruments to identify appropriate special conditions based on a prisoner's specific risks and needs.[8] Probation agents are also guided by risk assessments in recommending probation conditions to be imposed by the sentencing court.

The Parole Board and probation agents thus strive to narrowly tailor the special conditions of supervision to the individual circumstances of each prisoner with the goal of ensuring the success of the offender and the protection of the public while the offender is under community supervision. For example, unless an offender was sentenced for an offense involving use of an automobile, the parole board or sentencing courts generally do not impose special conditions prohibiting or restricting driving.

Conditions can be chosen off a "menu" of standardized special conditions. For example, the parole board routinely imposes a restriction on computer use for parolees whose crimes involved computers. Conditions can also be individually drafted for the specific offender. For example, in domestic violence cases, a special condition may prohibit the parolee from going within 1000 feet of the victim's home. Agents have the authority and discretion to recommend the addition or removal of special conditions during the period of supervision, and several of the conditions are drafted to enable the agent to grant permission for otherwise prohibited behavior – again tailored to the individual parolee.

V. SORA Undermines Evidence-Based Correctional Practices.

Michigan's parole and probation supervision process, with its use of empirically validated risk assessments, stands in stark contrast to the offense-based classification system required by SORA. The current system under SORA fails to distinguish between registered offenders who present significant threats to public safety and those who present little or no risk. Registration under SORA is determined solely by reference to the original offense committed (no matter how old the offense may be).

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[7] FOA Work Statement 06.04.130D, para. 4.

[8] All probationers and parolees are subject to "standard" supervision conditions, which include such general provisions as reporting when directed.

The fact that parolees and probationers with sex offenses are subject to SORA creates challenges for the MDOC's efforts to use evidence-based correctional practices with this population. First, SORA imposes virtually identical reporting, public notification, and "student safety zone" requirements on all registrants.[9] This approach breeds universal hysteria about sex offenders by inaccurately branding them all as intolerably dangerous, and furthers the isolation of offenders. Moreover, to the extent that the public considers tier classifications as indicating risk levels, the public registry may also serve to mislead the community as to the true risks, since tier classifications are based not on risk assessments but solely on offense classifications.

Second, evidence-based research shows that correctional interventions are counter-productive when applied to low-risk individuals. Yet the MDOC must ensure compliance with SORA, and the extensive requirements it imposes, for low-risk offenders.

Third, the expanded registration and community notification policies, and the creation of "sex offender free" zones that restrict residency and employment can significantly hamper reintegration efforts. A primary goal for CMTs is to ensure that parolees/probationers have stable housing and employment, since these are strongly correlated with offender success. SORA makes the CMTs' task much more difficult.

Fourth, SORA also conflicts with the MDOC's use of evidence-based principles with respect to reunifying families and developing a strong community support network with non-offending partners, family members, and other persons – all factors that are also strongly correlated with offender success. The MDOC's supervision strategies are based on research documenting that "family, peer, and community support have a greater direct effect on offender behavior than formal social controls imposed by law enforcement and correctional supervision."[10] MDOC parole and probation agents are therefore required to "work to build productive relationships with the offender's social support network," and the Department recognizes that "identifying appropriate family and non-family social supports with whom the offender may associate during supervision is important not only to the offender's success, but in enhancing public safety."[11] A "goal in supervising moderate and high risk offenders is to assist them in strengthening relationships with their families and pro-social community supports."[12] Unfortunately, SORA requirements place undue public scrutiny and stigma on the families of offenders. Residency restrictions are especially difficult on families, particularly when a family is forced either to live apart due to SORA residency restrictions, or to relocate, which can involve uprooting children from their established environments.

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[9] Tier I registrants are non-public. Tier I and Tier II registrants report the same information as Tier III registrants, but report less frequently. Although there are limited exceptions to the student safety zone requirements, the vast majority of registrants are subject to these restrictions.

[10] FOA Work Statement 06.04.130, page 3.

[11] FOA Work Statement 06.04.130E, para. A, "Sex Offender Family and Pro-Social Supports".

[12] FOA Work Statement 06.04.130, page 3.

Due in large part to the need to ensure compliance with SORA and other statutory obligations for sex offenders, parolees and probationers who must register are initially placed at the maximum level of supervision, regardless of their actual risk level, which creates a burden for MDOC agents. By contrast, other parolees/probationers generally have their risk and reporting levels determined by a COMPAS assessment, although agents and CMTs can reassess risk and reassign risk levels with supervisor approval to accommodate the needs and circumstances of the specific parolee.[13]

VI. Comparing SORA Requirements with Parole/Probation Supervision Requirements.

If one compares the requirements imposed on registrants under SORA with those imposed on offenders as part of probation/parole, there are both significant similarities and significant differences.

First, both systems require regular reporting of information to supervising authorities. **SORA registrants, however, are required to report a great deal of information** (*e.g.*, vehicles used, all internet identifiers) **that the MDOC does not require parolees and probationers to report. Even where the same information is required, the time frames and in-person requirements for reporting are much more onerous under SORA.** For example, under SORA a registrant must report a new job *in person* to SORA authorities within 3 days, but could wait to report that same job to his/her parole agent until the next scheduled meeting with the agent. Parolees and probationers can also report address, employment or other changes by phone, rather than in person.

Second, under SORA virtually all registrants are barred from employment or residency within "student safety zones." By contrast, while the MDOC sometimes imposes special conditions restricting residency or employment, these are generally tailored to the circumstances of the individual offender. For example, a parole/probation condition may prohibit an offender from living in the same town as his/her victim, or bar him/her from financial employment based on a financial crime. But because of SORA, the MDOC must impose parole/probation conditions that largely mirror SORA with respect to the residency and employment of all sex offenders, in order to ensure compliance with SORA.

Third, the requirements under SORA apply to registrants for periods ranging from 15 years to life. By contrast, most periods of parole supervision will end after 2 years with satisfactory adjustment.[14] Indeed, in recent years the MDOC has shortened parole terms and accelerated discharge dates for low-risk parolees, absent statutory provisions to the contrary.

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[13] FOA Work Statement 06.04.130I, "Offender Classification and Supervision Level Assignment".

[14] The supervision requirements under parole and probation can be applied for up to 5 years for probation or until discharge from sentence in the case of parole.

Fourth, SORA requirements do not decrease over time, and there is no procedure under SORA for an offender to challenge his/her tier classification, reporting requirements, public notification requirements, or student safety zone requirements. By contrast, parole/probation agents constantly review conditions of supervision, and typically relax conditions over time for offenders who are successfully reintegrating into the community. Moreover, offenders on probation or parole supervision have the opportunity to contest the conditions of their supervision under the established grievance procedures within the MDOC.[15]

Finally, other than the publication of offense information through the public registry, there is no mechanism in SORA for involving victims or employers. By contrast, the parole and probation process considers the interests of victims (who in sex offense cases may be partners or family members of the offender) and collaborates with relevant partners in the community, including employers, during the period of an offender's supervision. To the extent that is possible to do so, agents must share information with the offender's family or social supports throughout the period of supervision.[16] It is the agent's responsibility to educate the support network and to ensure they are aware of the nature of the offense, SORA and supervision requirements, and the importance of protecting victim's interests.[17] In addition, members of the sex offender CMTs are encouraged to "seek out public education opportunities in their communities to assist with educating employers, landlords, and faith-based groups on sex offender topics."[18]

VII. SORA's Vagueness Makes It Difficult for MDOC Agents to Ensure Compliance with SORA.

All parolees and probationers who are subject to SORA have a parole/probation condition requiring them to comply with SORA, and parole/probation agents work with offenders and their families to try to achieve compliance. **But many of the SORA requirements are vague enough that MDOC agents themselves cannot know which behaviors violate the Act.** These are issues that are often the subject of discussion at local CMT meetings. Although law enforcement representatives are included as team members on CMTs, the interpretations reached frequently vary from one case management team to the next.

As the MDOC's Legal Affairs Administrator, my role was to assist department managers in the interpretation of legal requirements for guidance to field staff. Sometimes these legal questions were raised proactively, and at other times they came up in determining whether a probation/parole violation had occurred (since it is a violation of probation/parole to be non-compliant with SORA). Many of the questions raised by field staff could not be appropriately answered because of the lack of adequate definition or guidance within SORA itself.

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[15] Policy Directive 03.02.130 "Prisoner/Parolee Grievances."
[16] FOA Work Statement 06.04.130E, para. 1.
[17] FOA Work Statement 06.04.130E, para. 4.
[18] FOA Work Statement 06.04.130D, para. J, "Sex Offender Case Management Teams".

In my experience, interpretation of SORA varies significantly from jurisdiction to jurisdiction, meaning that – to avoid criminal prosecution for non-compliance – registrants must rely on the varying interpretations of prosecutors and courts across the state. There are no mechanisms in place, however, to ensure that offenders are made aware of the interpretations of their local prosecutors and courts as to what constitutes, for example, "loitering" in a school zone. When I was the Legal Affairs Administrator, law enforcement officials explained to me on more than one occasion that "loitering" is something you know when you see it. While that may be true depending on the case, such a subjective interpretation by law enforcement does not provide adequate notice of prohibited behavior to the offender who is subject to SORA's requirements. For example, some school districts and law enforcement agents construe "loitering" to include parent-teacher conferences, sporting or theater activities, or dropping kids off on school property. Others do not. As a result, registrants have no way of knowing what constitutes "loitering" in their jurisdiction.

Confusion about the meaning of SORA also leads to situations where MDOC agents inform parolees/probationers that some conduct is permissible, only to find that prosecutors or law enforcement agencies disagree. I was involved in several cases as the Legal Affairs Administrator where parole agents had authorized parolees to attend their children's school sporting events, only to have the registrants charged by local prosecutors for violating SORA. Other examples included how to measure the distance from a residence to school property, or agents authorizing an offender to work at temporary construction-related jobs in school zones.

The MDOC has established "sex offender specific" caseloads for probation and parole agents who specialize in the supervision of sex offenders and the technical requirements of SORA. But even with intensive supervision, SORA's complexity and vagueness all but guarantee that parolees and probationers will still be unsure about what they can and cannot do. And to my knowledge, no similar orientation was provided to registrants who completed their sentences before the major amendments to SORA that passed in 2006 and 2011, nor does the MDOC or any other agency provide guidance about the meaning of SORA to registrants who are no longer on probation or parole but who remain subject to the amended act.

VIII. Statement Regarding Prior Expert Testimony

During the previous four years, I have testified at trial or in deposition as an expert in the following cases: *Iswed v. Caruso, et al.*, USDC-WD 1:08-cv-1118; *Hoffman v. Rutter, et al.*, USDC-WD 2:10-cv-269; and *People v. Yengling*, 18th Circuit Court 10-11079-FC.

IX. Statement Regarding Compensation

My hourly rate of compensation for consultation, report writing, and testimony is $125 per hour.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the above statements are true and correct to the best of my knowledge, information, and belief.

Dated: October 2, 2013

Richard B. Stapleton

Exhibit A

Richard B. Stapleton
16346 Wacousta Rd.
Grand Ledge, MI 48837
517-627-4704
rbstapleton@hotmail.com

EMPLOYMENT:

Associate Director
Citizens Alliance on Prisons and Public Spending
403 Seymour Ave., Suite 200
Lansing, MI 48993
517-482-7753
www.capps-mi.org
September, 2011 – June, 2012

The Citizens Alliance on Prisons and Public Spending (CAPPS), a non-profit public policy organization, is concerned about Michigan's excessive use of punitive strategies rather than preventive ones to deal with crime and its impact on the quality of life for all Michigan citizens. Because policy choices, not crime rates, determine corrections spending, CAPPS advocates re-examining those policies and shifting our resources to services that prevent crime, rehabilitate offenders and address the needs of all citizens in a cost-effective manner. Associate Director responsibilities included informing policymakers, advocacy groups, affected communities and the general public about these issues through legislative testimony, speaking appearances, newsletters, and development of research reports.

Administrator, Office of Legal Affairs
Michigan Department of Corrections
(517) 373-0450
2005 – June, 2011 (Retired)

Overall management of the department's litigation, prisoner grievance, prisoner discipline, freedom of information, and policy development operations. Position functioned as chief legal counsel within the department for developing litigation strategies and coordinating the activities of the Department of Attorney General in defending the department in the state and federal courts. Reviewed all case law and legislation that impacted the department's operations and facilitated the development of statewide implementation strategies for programs, policies, and staff training. Regularly reviewed proposed contracts between the department and outside agencies and advised executive management staff. Consulted with facility wardens on policy objectives and strategies for avoiding litigation. Served as chairperson for the department's Policy Review and Post- Incident Review committees.

Achievements:

- Chairperson (2003-10), Michigan Prisoner ReEntry Initiative (MPRI) "Resource Team". The Resource Team was a committee of MDOC administrators representing custody, field,

and operations support staff who, with technical support and assistance from the National Governor's Association (NGA) and the National Institute of Corrections (NIC), were charged with developing and implementing a comprehensive model of prisoner transition planning. The MPRI's mission is to reduce crime by implementing a seamless plan of services and supervision developed with each offender—delivered through state and local collaboration—from the time of their entry to prison through their transition, reintegration, and aftercare in the community. The MPRI is credited with reducing Michigan's prison population by 7,500 prisoners while at the same time reducing the return to prison rate by 33%.

- Designed revisions to the MDOC prisoner disciplinary process and facilitated successful implementation in November, 2010. The process in place for over 30 years required attorney hearing officers to conduct approximately 85,000 major misconduct hearings year. The revised process created three levels of misconduct (Class I, II, and III). Class II misconducts, comprising 70% of previously defined major misconducts and appealable to the state circuit courts, are now heard by custody shift commanders and may be appealed only to the facility level. Conducted statewide due process training for all shift commanders. First year anticipated savings will exceed $2,000.000.00. Additional savings are expected within the Department of Attorney General and the state courts.

- Primary liaison with court appointed monitors in the class action lawsuit entitled, *Michigan Protection and Advocacy Services (MPAS) v. Caruso*. Facilitated settlement agreement in the U.S. District Court and implemented revisions to MDOC policies involving the screening, identification and appropriate classification of mentally ill prisoners.

- Facilitated development of a Segregation Incentive Program within the Department's maximum security prisons designed to transition long term segregation prisoners back to general population. The program is structured to provide prisoners the opportunity to experience progressive success and rewards for small improvements in behavior, as well as providing staff with meaningful consequences when inmates behave inappropriately. Lengths of stay in segregation and rates of misconduct have been significantly reduced.

- Facilitated the MDOC's response and policy development consistent with standards proposed for the Prison Rape Elimination Act (PREA).

- Department policy liaison for class action lawsuits, including *Bazetta v. Overton*, *Hadix v. Caruso, MPAS v. Caruso* and *Cain v. Department of Corrections.*

- Oversaw development of an electronic document system for Department-wide distribution and retention of policies and procedures.

- Developed the contract with the Pennsylvania Department of Corrections for housing Pennsylvania prisoners within an MDOC facility.

Memberships:
- Chief Information and Privacy Officer, State of Michigan Information and Privacy Council.
- MDOC Regulatory Affairs Officer, State Office of Administrative Hearings and Rules.
- MDOC Post-Incident Review Committee, chairperson.
- MDOC Shoot Review Committee, member.
- MDOC Policy Review Committee, chairperson.
- MDOC ReEntry Implementation Resource Team, chair.
- State Bar of Michigan Prison and Corrections Section, MDOC representative and elected council member.
- Criminal Justice Information Systems Policy Council, MDOC Representative.
- Michigan Judicial Institute, Faculty - New Judges Seminars.
- State Court Administrator's Office, Evidence-Based Sentencing Committee

Administrator, Office of Policy and Hearings
Michigan Department of Corrections, 1993 – 2005

Managed the development of department-wide policy operations, issued policy directives and facilitated the promulgation of administrative rules. Directed and supervised attorney level administrative law examiners who conduct formal administrative hearings in correctional facilities pursuant to the Corrections Hearings Act (MCL 791.251, et seq.). Issued final agency decisions and rehearing orders in response to appeals submitted by prisoners and wardens.

Assistant for Rehearings and Rules, Hearings Division
Michigan Department of Corrections, 1988 – 1993

Reviewed and decided prisoner and warden appeals of formal administrative hearing decisions in behalf of the Hearings Administrator. Drafted and promulgated Department of Corrections' administrative rules pursuant to MCL 24.231 *et seq.* at the direction of the Administrator.

Prior MDOC positions:
Administrative Law Examiner, 1987 – 1988
Parole / Probation Officer, 1978 - 1987
Corrections Officer, 1977 - 1978

EDUCATION: **Juris Doctor, Michigan State University College of Law, 1986**
BS Criminal Justice, Wayne State University, 1977

LICENSES: **Attorney, State Bar of Michigan P# 38793**

Exhibit I

Declaration of Timothy Poxson

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-5 and MARY DOE,

Plaintiffs,

v.

RICHARD SNYDER, Governor of the State of Michigan, and COL. KRISTE ETUE, Director of the Michigan State Police, in their official capacities,

Defendants

No. 2:12-cv-11194

Hon. Robert H. Cleland

Magistrate Judge David Grand

DECLARATION OF TIMOTHY POXSON REGARDING RESULTS OF SURVEY OF LAW ENFORCEMENT AGENCIES AND PROSECUTORS' OFFICES

I, Timothy Poxson, state as follows:

I was born on 1949 in Lansing, MI. I currently work as a realtor in East Lansing, MI. Previously I served as a military police officer for four years and in the Lansing Police Department for 22 years. I was once on the Michigan Sex Offender Registry, but my registration period has since expired.

I am an unpaid volunteer for the American Civil Liberties Union of Michigan (ACLU). I volunteer at the ACLU of Michigan's Lansing office. I began volunteering with the ACLU in 2009. I volunteer on a weekly basis.

I made the calls detailed in this declaration upon the request of Shelli Weisberg, Legislative Director, and Miriam Aukerman, Staff Attorney. The survey summary, below, submitted to this Court is a complete and accurate summation of the responses I received to questions I asked local law enforcement and prosecutors' offices in Michigan regarding their enforcement of the Sex Offender Registration Act (SORA).

I. Executive Summary of Calls to Local Law Enforcement

During several days in the fall of 2013 I made phone calls to local law enforcement agencies and asked questions regarding their enforcement of the Sex Offender Registration Act (SORA). I made a total of 31 calls to 23 different departments. The questions that I asked are as follows:

- Vehicles: How many times can a registrant borrow a car before reporting that they regularly use it?
- Internet: Must an individual report when setting up an online bank account? Mlive Account? Amazon account? X-Box account?
- Address Changes: If the registrant changes their residence on a Friday, what is the latest day that they can report that change? Is a homeless registrant who spends seven nights staying with a friend required to register at that friend's address?
- Employment: Must a registrant report shoveling snow for pay? If a registrant works for an employer and subsequently changes job positions, but continues to work for that same employer, must the registrant report this to law enforcement?
- Education: If a registrant enrolls in online classes, must they report that to law enforcement?
- Travel: If a registrant intends to travel for more than 7 days, but does not know exactly where they will be staying, how should that registrant report that to law enforcement?

Eleven departments answered most or all of my questions; twelve departments either refused to answer my questions or did not know the answers. Several departments directed me to call many different numbers until I finally reached a person who could answer my questions or who responded that they did not know the answers. I was told once to contact the Michigan Sex Offender Registry Unit and twice to contact Michigan State Police if I wanted an answer to a particular question. I was once told that it is the registrant's job to know the law, and that if a registrant has questions about how to comply with the law, the registrant should look it up.

I did not receive consistent answers from local law enforcement to any of my questions. With regard to how long a registrant had to report an address change, answers ranged from three days (including weekends) to ten days. Some departments insisted that a registrant had to report shoveling snow for pay and others said a registrant did not need to report self-employment. Some departments stated that a registrant must report enrollment in online courses, others said a registrant need not report online classes. Overall, answers to my questions varied greatly from department to department.

II. Methodology

I chose departments in Michigan at random and placed calls. When I reached a person within the department, I asked if I could speak to the person within the agency who could answer some questions about the sex offender laws in Michigan. If asked "why" I would respond that I was doing a study on how certain questions were answered by law enforcement in Michigan. If asked

who I was doing the study for I would tell them I was conducting the survey for the American Civil Liberties Union (ACLU) of Michigan. (Fewer than 5 departments asked this question.)

The following is a list of the departments that I contacted:

Michigan State Police 1st District, Michigan State Police 2nd District, Michigan State Police Post 21, Michigan State Police District 3, Michigan State Police District 6, Michigan State Police Post 61, Kent County Sheriff's Department, Wayne County Sheriff's Department, Detroit City Police Department, Grand Rapids Police Department, Auburn Hills Police Department, Allen Park Police Department, Luce County Sherriff's Department, Menominee Sherriff's Department, Iron County Sherriff's Department, Iron River Police Department, Chippewa County Sherriff's Department, Cheboygan County Sherriff's Department, Cheboygan Police Department, Roscommon County Sherriff's Department, VanBuren County Sheriff's Department, Paw Paw Police Department, Jackson County Sherriff's Department, Jackson City Police Department, Michigan State Police Jackson Post

III. Results

A. Vehicles: How many times can a registrant borrow a car before reporting that they regularly use it?

Nine departments answered this question and their answers were varied. Two Departments said they did not know the answer to this question.

MSP Post 21 said a vehicle could be borrowed six or seven times and then it must be reported. Grand Rapids P.D. said there is no number of times. Auburn Hills P.D. said there is no court case saying how many times, but whatever is reasonable. Allen Park P.D. said only a vehicle used on a regular basis must be registered. Luce County Sherriff Dept. said one or two times, but no more than two times. Iron County Sherriff Dept. said there is no specific number of times that a registrant can use a car without reporting it, even if only used from time to time. Cheboygan County Sherriff Dept. told me the law has no definition. Roscommon County Sherriff Dept. said there is no time or amount. Jackson County Sheriff Dept. said there is no number of times.

B. Internet: Must an individual report when setting up an online bank account? Mlive account? Amazon account? X-Box account?

Eleven departments answered this question, giving varied responses.

MSP Post 21 said that the bank account did not have to be reported, but all of the rest of the accounts would have to be reported. Grand Rapids P. D. said all e-mail and user names associated with such accounts must be reported. Auburn Hills P.D. said only the e-mail address used would have to be reported. Allen Park P. D. responded that any identifier used with e-mail

accounts of any type must be reported. Luce County Sherriff Dept. said that all such accounts would have to be reported. Menominee County Sherriff Dept. said that if a registrant uses an e-mail address with such accounts then they must register them. Iron County Sherriff Dept. said all accounts that use an e-mail address must be reported. Chippewa County Sherriff Dept. said that all such accounts must be reported. Cheboygan County Sherriff Dept. said yes if a user-name is required for the accounts, they must report it. Roscommon County Sherriff Dept. said yes all the accounts must be reported. Jackson City P.D. said yes all the accounts must be reported.

C. Address Changes: If a registrant changes their residence on a Friday, what is the latest day that he or she can report that change? Is homeless registrant who spends seven nights staying with a friend required to register at that friend's address?

Ten Departments answered this question or part of this question. One department did not know the answer to these questions.

MSP Post 21 said registrants have three business days to report an address change so it must be reported by Wednesday of the following week. In response to the second part of the question they said on the seventh day of the stay a registrant would have to report the address of his/her friend. The Grand Rapids P.D. said registrants have three business days to report and address change and that they have to report where they were staying as soon as they have personal property at the address. Auburn Hills P.D. first responded that address changes had to be made within five days, but then the person I was speaking to looked up the answer and said three days. For the second part of the question he said that a registrant must report a friend's address as a residence after staying there seven days. Allen P.D. said registrants had three days to report a change of address, but was unsure if that included weekends. As for the second part of the question the employee did not know the answer and asked if he could look it up and get back to me. The Luce County Sherriff Dept. told me they were unsure of the last day a registrant would have to report. In response to the second part of the question they said that after seven days a registrant would have to report that address. Menominee County Sherriff Dept. said registrants have ten days including Saturday and Sunday to report a change of address. In response to the second part of the question they did not know the answer and told me to call the Michigan State Police. Iron County Sherriff Dept. said registrants had three business days so he/she would have till Wednesday to report the change. As for reporting the seven day stay he said that was a hard call, but after looking it up said a registrant would not have to report it if they were homeless, but a registrant must have a mailing address and go to the Secretary of State to report said address. Chippewa County Sherriff Dept. said registrants have seven or ten days to report address changes, but were unsure whether it was seven or ten. As for the second part of this question, they did not know the answer. Cheboygan County Sherriff Dept. said a registrant has three days to report an address change including weekends and holidays. And for the second part of the question, they said on the seventh day they would have to report the address. Jackson

County Sherriff Dept. said the address change would have to be reported right away, but only after they got it changed on their Michigan I.D. card or Driver's License.

D. Employment: Must a registrant report shoveling show for pay? If a registrant works for an employer and subsequently changes job positions, but continues to work for that same employer, must the registrant report this to law enforcement?

Nine Departments tried answering this question or parts of this question. Two departments that answered other questions I posed responded that they did not know the answer to this particular question.

MSP Post 21 said a registrant did not have to report snow shoveling, but if the change of job with the same employer caused a change in the registrant's supervisor then the registrant would have to report that change. Grand Rapids P.D. said that the snow shoveling would have to be reported because it was self-employment, and a registrant would only have to report a change of position at work if their workplace location changed. Auburn Hills P.D. said if a registrant is self-employed shoveling snow he/she must report it and when they stop they must report that also. As for the second part of the question they said they would have to write it up and give it to their commander or to the County Prosecutor to see what would be done with a sex offender who changes jobs within the same employer. Allen Park P.D. said yes, any employment of any type must be reported to them and that a change of jobs within the same company would not need to be reported unless the address of the registrant's workplace changed. Luce County Sherriff Dept. said that if a registrant shovels snow everyday then yes it must be reported, and if they changed jobs within the same company it also must be reported. Menominee County Sherriff Dept. said that if a registrant is self-employed shoveling snow they must report it. They did not know the answer to whether a registrant must report a changed position within the same company. Iron County Sherriff Dept. said a registrant is not considered employed without a W-2. They went on to say a registrant would only have to report employment if paid by check. As for the change of jobs with the same employer, Iron County said that did not have to be reported. Cheboygan County Sherriff Dept. said a registrant did not have to report shoveling snow because it was not a permanent job, and also did not have to report a job change with the same company unless the job site changed. Jackson County Sherriff Dept. said the snow shoveling job would have to be reported if it constituted "verifiable income." As for the change of job with the same employer, they said that would not have to be reported.

E. Education: If a registrant enrolls in online classes, must they report that to law enforcement?

Eight departments answered this question. Three departments that answered other questions I posed responded that they did not know the answer to this particular question.

MSP Post 21 said no to this being reported. Grand Rapids P.D. said no to this being reported. Auburn Hills P.D. said no to this being reported. Allen Park P.D. said the screen name

the registrant used in connection with the online classes must be reported. Luce County Sherriff Dept. said maybe it had to be reported. Iron County Sherriff Dept. said yes it would have to be reported along with the e-mail address the registrant was using to communicate with the school. Chippewa County Sherriff Dept. said they were unsure if it needed to be reported, but if the registrant has a user name then they would have to report that. Cheboygan County Sherriff Dept. said yes it would have to be reported because any higher education must be reported, and that the user name and password would also have be reported.

F. Travel: If a registrant intends to travel for more than 7 days, but does not know exactly where they will be staying, how should the registrant report that to law enforcement?

Seven departments answered this question. Four that answered other questions I posed responded that they did not know the answer to this particular question.

MSP Post 21 said yes a registrant would have to advise police that they are leaving, but was unsure how to fully answer the question so they advised me to call Michigan State Police Sex Offender Registration unit. Grand Rapids P.D. said they must be given an exact address or a comment would be entered by local law enforcement that the registrant does not have an exact address and will be traveling. They also responded that a registrant must follow the law of any state they are traveling to because some states require sex offenders to report if they are staying in that state for more than twenty-four hours. Auburn Hills P.D. said that the sex offenders must have an itinerary if traveling for more than three days, but he also stated that as long as the registrant worked with the department he would not prosecute them. Luce County Sherriff Dept. said a registrant must have some idea where they will be going. Iron County Sherriff Dept. said a registrant would have to report to local law enforcement that they are leaving, and they must report in person to the local law enforcement where they will end up staying each time they change locations. Chippewa County Sherriff Dept. said it was the sex offender's job to know the laws and if the sex offender does not know the law the sex offender can look it up. Cheboygan County Sherriff Department said not having an exact address would be a problem, and that a registrant must have an address and must follow the law if leaving the state of Michigan.

IV. Executive Summary of Calls to Prosecutors' Offices

On the 13th day of November 2013 I called nineteen prosecutor's offices within the state of Michigan, located in the northern part of the state and the Upper Peninsula. I asked them questions regarding their enforcement of the Sex Offender Registration Act (SORA). The questions that I asked are as follows:

- Vehicles: How many times can a registrant borrow a car before reporting that they regularly use it?
- Internet: Must an individual report when setting up an online bank account? Mlive Account? Amazon account? X-Box account?

- Address Changes: If the registrant changes their residence on a Friday, what is the latest day that they can report that change? Is a homeless registrant who spends seven nights staying with a friend required to register at that friend's address?
- Employment: Must a registrant report shoveling snow for pay? If a registrant works for an employer and subsequently changes job positions, but continues to work for that same employer, must the registrant report this to law enforcement?
- Education: If a registrant enrolls in online classes, must they report that to law enforcement?
- Travel: If a registrant intends to travel for more than 7 days, but does not know exactly where they will be staying, how should that registrant report that to law enforcement?

Of the nineteen offices I called, only two answered all of my questions. Five offices told me to contact a private attorney if I wanted my questions answered. Six offices told me to contact another state agency, usually local law enforcement. On four occasions I was unable to reach the person in the office who deals with the registry. I was given varied answers by the two offices that answered my questions. For example, the Delta County Prosecutor's Office informed me that a registrant had one week to report a change of address, while the Menominee County prosecutor's Office said that a registrant has ten or fifteen days to report an address change.

V. Methodology

I was asked by Ms. Aukerman to contact a random sampling of prosecutor's offices in northern Michigan and the Upper Peninsula. When I reached a person within the department, I told them I was calling to get some answers to a set of questions regarding the sex offender registry laws in Michigan. If asked my name, I would tell them my name is Tim Poxson and spell my name. None of the agencies I called asked why I was calling with questions or who, if anyone, I was working for.

I attempted to contact the following offices:

Cheboygan County Prosecutor's Office, Alger County Prosecutor's Office, Alpena County Persecutor's Office, Baraga County Prosecutor's office, Benzie County Prosecutor's Office, Chippewa County Prosecutor's Office, Delta County Prosecutor's Office, Dickinson County Prosecutor's Office, Gogebic County Prosecutor's Office, Grand Traverse County Prosecutor's Office, Houghton County Prosecutor's Office, Iron County Prosecutor's Office, Keweenaw County Prosecutor's Office, Luce County Prosecutor's Office, Mackinac County Prosecutor's Office, Marquette County Prosecutor's Office, Menominee County Prosecutor's Office, Ontonagon County Prosecutor's Office, and Schoolcraft County Prosecutor's Office.

VI. Results

A. Cheboygan County Prosecutor's Office: They advised me to call a private attorney or check with the Sheriff's Department. Prosecutor Daryl P. Vizina recommended that it would be best to talk to a private attorney.

B. Alger County Prosecutors Office: I was advised to talk to the Probation and Parole office agent Bill Shidding, but also told that he would be hard to reach. I was transferred to his number but he was not in.

C. Alpena County Prosecutors Office: I was told to go to the State of Michigan website for answers to questions or to call a private attorney.

D. Baraga County Prosecutor's Office: I was told to call the Michigan State Police to get answer to my questions.

E. Benzie County Prosecutor's Office: I was told they cannot give those types of answers and to call a private attorney.

F. Chippewa County Prosecutor's Office: I was connected to the person who works with the sex offender registry. I asked the first question: how many times can a registrant borrow a car before reporting that they regularly use it? The individual responded, "I do not know the answer to that question." I then asked the second question: must an individual report when setting up an online bank account? Mlive account? Amazon account? X-Box account? The individual responded, "I do not know the answer to that question." After my second question, I was then told to call the Michigan State Police with the rest of my questions.

G. Delta County Prosecutor's Office: I was told the person that could answer questions about the sex offender registry would be available at 9:15. At 9:15 I called back and asked to talk with that individual, and was connected and he answered all my questions. The questions and answers are listed as I asked them and he answered them. How many times can a registrant borrow a car before reporting that they regularly use it? "I do not know the answer to that question." Must an individual report when setting up an online bank account? Mlive account? Amazon account? X-Box account? "No." If a registrant changes their residence on a Friday, what is the latest day that they can report that change? "Within one week." Is a homeless registrant who spends seven nights staying with a friend required to register at that friend's address? "Any place they stay for more than seven days must be reported." Must a registrant report shoveling snow for pay? "I do not know the answer to that question." If a registrant works for an employer and subsequently changes job positions, but continues to work for that same employer, must the registrant report this to law enforcement? "No." If a registrant enrolls in online classes, must they report that to law enforcement? "I do not know the answer to that question." If a registrant intends to travel for more than seven days, but does not know exactly where they will be staying, how should the registrant report that to law enforcement? He

responded that if I wished he would find the answers to the questions he did not know and then e-mail me the answers. I did not take him up on that offer.

H. Dickinson County Prosecutor's Office: I was told to contact the Iron Mt. State Police Post as the prosecutor's office does not answer questions for the public, including general questions.

I. Gogebic County Prosecutor's office: The phone was answered by an answering machine and I was asked to leave a message.

J. Grand Traverse County Prosecutor's office: I was told that the person who handles the sex offender registry was in court. I was also told that person is hard to reach, but I could leave a message.

K. Houghton County Prosecutor's Office: I was told that all prosecutors were in court today and to call the Michigan State Police. I was told that they should know all the laws as the prosecutor's office only has two prosecutors and they are in court most of the time. I was told it would be hard for them to call me back.

L. Iron County Prosecutor's Office: I was advised that they are not available to answer questions as they only have one prosecutor. I was advised to call a private attorney.

M. Keweenaw County Prosecutors Office: I was advised they cannot answer the questions because they only have one prosecutor and that the person I was talking to did not know whom to call to get answers to my questions.

N. Luce County Prosecutor's Office: A recording answered the phone saying no one was available to answer the phone and to leave a message.

O. Mackinac County Prosecutor's Office: I was advised that the prosecutor was in court and may be back at 11:00 am, but they only have the one prosecutor.

P. Marquette County Prosecutor's Office: I was advised to call a private attorney as the prosecutor's office cannot give legal advice.

Q. Menominee County Prosecutor's Office: I was transferred to the elected Prosecutor. The questions are listed in the order I asked them with the answers. How many times can a registrant borrow a car before reporting that they regularly use it? "There is no requirement to report borrowed vehicles." Must an individual report when setting up an online bank account? Mlive account? X-Box Account? "No unless they are on probation or parole." If a registrant changes their residence on a Friday, what is the latest day that he or she can report that change? "Ten or fifteen days." Is a homeless registrant who spends seven nights staying with a friend required to register at that friend's address? "If they regularly stay they must report it." Must a registrant report shoveling snow for pay? "No." If a registrant works for an employer and subsequently changes job positions, but continues to work for that same employer, must they report that to law enforcement? "No." If a registrant enrolls in online classes, must they report that to law enforcement? "No unless they are on probation or parole." If a registrant intends to travel for more than seven days, but does not know exactly where they will be staying, how should the registrant report that to law

enforcement? "Traveling is not required to be reported in or out of state as long as they are not moving permanently."

R. Ontonagon County Prosecutor's Office: After asking them the first question, I was told that questions about the sex offender registry should be directed to a private attorney or the Sherriff's Department.

S. Schoolcraft County Prosecutor's Office: I was advised by an assistant prosecutor that their office does not have the answers to the sex offender registry laws and to call the Michigan State Police.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under the laws of the United States that the above statements are true and correct to the best of my knowledge, information and belief.

Dated: 1-14-2019

Timothy E Bryson

Exhibit J

Declaration of Joseph Granzotto

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOHN DOES #1-5 and MARY DOE,

Plaintiffs,

v.

RICHARD SNYDER, Governor of the State of Michigan, and COL. KRISTE ETUE, Director of the Michigan State Police, in their official capacities,

Defendants

/

No. 2:12-cv-11194

Hon. Robert H. Cleland

Magistrate Judge David Grand

DECLARATION OF JOSEPH GRANZOTTO REGARDING RESULTS OF SURVEY OF LAW ENFORCEMENT AGENCIES AND PROSECUTORS' OFFICES

I, Joseph Granzotto, state as follows:

I was born on Detroit, MI in 1990. I am a graduate of Kalamazoo College. I am currently an unpaid Civil Liberties Fellow at the American Civil Liberties Union of Michigan (ACLU). I work out of the Grand Rapids office of the ACLU under the supervision of attorney Miriam Aukerman. I began working at the ACLU in September of 2013.

I made the calls outlined below and compiled the Freedom of Information Act Request responses detailed below upon the request of Ms. Aukerman. The survey results submitted to this Court are a complete and accurate summation of the responses I received to questions I asked local law enforcement and prosecutors in Michigan regarding their enforcement of the Sex Offender Registration Act (SORA). The summary of the Freedom of Information Act (FOIA) request responses submitted to this Court are a complete and accurate summation of the responses I compiled to FOIA requests submitted by the ACLU of MI.

I. Executive Summary of Calls to Local Law Enforcement

During several days in the fall of 2013 I made phone calls to local law enforcement and asked questions regarding their enforcement of the Sex Offender Registration Act (SORA). I

made a total of 47 calls to 29 different departments (including repeat calls when I didn't receive an answer on the first attempt). The questions that I asked are as follows:

- From where to where is 1,000 feet measured? From building to building? From property line to property line? What about sports fields belonging to schools?
- Do you provide maps to registrants that show the student safety zones?
- What tool do you use to measure the 1000 feet? (e.g. laser pointer, Google maps, measuring wheel)
- Will a registrant who is a parent be in violation of SORA for dropping off or picking up his or her child at school?
- May a registrant who is a parent attend parent-teacher conferences?
- When someone registers a new address or employment, how do you determine whether the address is within 1000 feet of a school?
- How long can a person stay at a place within a school safety zone without violating SORA?
- Can a registrant who is a local bus driver drive a route that passes through multiple student safety zones several times a day?
- Can a registrant who is a mail carrier deliver mail each day to a school without violating SORA?
- Will a registrant who is a parent violate SORA by attending his or her child's school play or sporting event at the child's school?
- May a registrant who is a parent take his or her child to play on a school playground on the weekend? What if other children are present?

In total, I received answers to some of my questions from eleven departments. Eight departments were able to answer all of my questions, and six departments were unable to answer any of my questions. I left six voicemails that were not returned. I was told to contact the state police by nine departments in order to get my questions answered.

Most striking were the varying answers to the rather routine questions of whether a parent on the registry can pick-up or drop-off their children from school, and similarly, whether a parent on the registry can attend parent teacher conferences. Four departments informed me that dropping a child off or picking a child up from school would not violate SORA, two departments were unsure of the answer, and two departments stated that that would constitute a violation of SORA. With respect to parent-teacher conferences three departments indicated that whether a registrant would be allowed to attend parent-teacher conferences would vary from school to school, which did not address whether or not a registrant attending parent-teacher conferences is in violation of SORA. One department stated that a registrant cannot attend parent-teacher conferences, and two others departments were unsure.

Two of my questions were answered more uniformly by the departments that were willing or able to answer my questions. Eleven of twelve departments answered that they measure 1,000 feet from property line to property line. Furthermore, all ten departments that answered my

question concerning whether maps of student safety zones were provided to registrants stated that no such maps were routinely made available.

In conclusion, there was variation between departments in the answers provided to my questions and many departments were either unsure or unable to answer my questions. I was also unable to reach many departments and none of my voicemails were returned.

II. Methodology

I chose departments in Michigan at random and placed calls. When I reached a person within the department, I stated that I was doing a research project on sex offender registration and asked for the person that could best address my questions. If asked who I was doing the research for, I stated that my name is Joe Granzotto and that I work for the American Civil Liberties Union of Michigan. If I was directed to a particular individual in charge of SORA enforcement I would ask that individual the series of questions outlined above, or if they were unavailable I would ask to leave a message. I followed a script in making my calls.

The following is a list of the departments that I contacted:

Kent County
Grand Rapids PD
Rockford PD
Sparta PD
Sand Lake PD
Walker PD

Wayne County
Harper Woods PD
Plymouth PD
Taylor PD
Westland PD
Garden City PD

Oakland County
Royal Oak PD
Southfield PD
Pleasant Ridge PD
West Bloomfield PD
Oakland County Sheriff's Office
Ferndale PD

Other Counties
St. Claire PD
Port Huron PD
Lansing PD
Milan PD

Kalamazoo DPS
Vicksburg PD
Carson City PD
Jackson PD
Iron Mountain PD
Marquette PD
Delta County Sheriff's Office
East Lansing PD
Portage PD

III. Results

A. Departments that answered some/all questions (eleven total):

- Grand Rapids (answered all)
- Sparta (answered all)
- Walker (answered some)
- Pleasant Ridge (answered some and then told me to contact the MSP)
- Plymouth (answered one question and then told me to contact the MSP)
- Garden City (answered all)
- Milan (answered all)
- Vicksburg (answered all)
- Delta County (answered all)
- East Lansing (answered some and then told me to contact the MSP)
- Portage (answered all)

B. Departments that I called at least twice and left a message that was not returned (six total):

- Rockford
- West Bloomfield
- Westland
- Kalamazoo
- Iron Mountain
- Ferndale

C. Departments that told me to call the Michigan State Police without answering any questions (six total):

- Oakland County Sheriff's Office
- Southfield
- St. Clair
- Carson City
- Jackson
- Marquette

D. Departments that I called at least twice and was never connected to anybody who could address my questions (six total):

- Sand Lake
- Royal Oak
- Harper Woods
- Taylor
- Port Huron
- Lansing

E. Summary of Responses:

i. **Property line measurement-** In total, eleven of the twelve departments that gave me answers to any or all questions answered that the measurement of 1,000 feet was to be conducted from property line to property line. For one department (Marquette), an employee told me that this was a grey area and that she was not sure if anybody in her department would know the answer, so she directed me to call the state police. She also told me that whenever they have questions about the registry, they call the state police.

ii. **How 1,000 feet is determined-** For the most part, these answers were largely different between the departments. In Garden City and Delta County, they use a laser measuring system if there is a concern about 1,000 feet. The Portage PD informed me that they mostly use Google maps, but if there were a borderline case, they would use a measuring laser. In Milan, they use a wheel marker to measure 1,000 feet if there is a borderline case. In Vicksburg, they use a walking tape measure if a registrant lives close to the line. The Walker Police Department uses a satellite mapping system that a compliance officer will check to ensure that a registrant is not within a student safety zone. In Sparta, they use the map in the station that has "property bubbles" to check the 1,000 foot zone. In Grand Rapids, they have an "internal mapping system" that they check when a registrant moves into the area. The employee that I spoke to from East Lansing informed me that she did not know the answer to this question and that I would have to contact the state for the remainder of my questions. Finally in Pleasant Ridge, the police chief informed me that they only have one school in the area, so enforcement was largely not an issue.

iii. **Parent pick up or drop off kids-** When I asked if a parent who is a registrant would be in violation for picking up or dropping off his/her kids at school, I again got differing answers. The officers from Garden City, Vicksburg, Delta County, and Grand Rapids said that this would not be a violation as long as he/she did not loiter or attempt to initiate contact with a minor. While, the Sparta PD and Milan PD both said that it would be a violation. Again the police chief from Pleasant Ridge was unsure about this question. Similarly, the individual from the Walker PD said that he was unsure, but believed that they would not be allowed, although

he did state that there could be exceptions based on plea deals. For Portage, the officer informed me that the prosecutor said that picking up and dropping kids off was allowed, but said that the school districts do not want registrants on school property, so they could arrest a registrant for trespassing. The Portage officer did say that it would be largely up to the school to decide.

iv. **Attend parent-teacher conferences-** For this question, the officer from Garden City said that the issue would have to be addressed on a school-by-school basis and it would be the school's decision to say whether the registrant would be allowed. The officer from Grand Rapids stated that one would be allowed, but would have to first arrange with, and receive permission from the school before he/she came. The individual that I spoke to from Sparta said that this would not be allowed, while the individual from Walker was unsure and directed me to speak with the compliance officer who was not working on the day that I called. The employee from the Milan PD said that it would "probably not" be allowed unless the registrant had special permission from his/her probation officer. The individual from Vicksburg said that he thought a registrant would be allowed to attend because a parent-teacher conference is a school-sanctioned event. For Delta County, I was told a registrant would be allowed to attend a parent-teacher conference because he said they typically occur when there are no children in the school. He did acknowledge, however, that this has been determined by the Delta County prosecutor and may not be the same in other areas. Finally for Portage, the officer whom I spoke with said that this was a grey area, and said that it may be allowed, but the schools still may say no to permitting a registrant to enter the school.

v. **Is a sports field included-** Upon asking this question, an employee from the Plymouth PD informed me that my question was "too technical" and that I would have to call the state for the remainder of my questions. For the Pleasant Ridge PD and the East Lansing PD, the person that I spoke to was not sure if the sports field was included in the property line. The employee from the East Lansing PD informed me that they were still trying to determine which measurement to use. For the remaining eight departments, the measurement of 1,000 feet included a sports field. In Sparta, the sports field was attached to the school, so it was included in the school property line. Vicksburg, Milan, Walker, Garden City, Delta County, Portage and Grand Rapids made it clear that any school property was included in the 1,000 feet.

vi. **Maps to registrants-** For all ten of the departments that answered this question, none said that they gave registrants a map of restricted areas. In Sparta and Grand Rapids individuals informed me that if a registrant goes into the police station they will show him/her the map that they use and explain restricted areas. Walker PD and East Lansing were unsure if they supplied maps, but the individual from

Walker thought that the state would provide maps to registrants. In Garden City, they typically tell the individual to use Google maps to determine if a place is within 1,000 feet, and then if there is a concern, they will come to the police station for clarification. The Portage PD does not provide maps, but said that if a registrant asked for one, they would provide one. Delta County also did not provide a map, but stated that there is a map on their website and one in the police department that they use to show registrants.

vii. **How long can an individual stay within the zone/ pass through-** For the nine departments that answered this question, none gave an exact time that was considered too long to be within the zone, although some did elaborate on this question. In Garden City, Delta County, and Portage the officers informed me that one would be allowed to pass through, but never allowed to initiate contact with a minor or loiter within the zone. For Grand Rapids, the officer gave a more detailed report of how long an individual could stay within the zone. He informed me that one would always be allowed to pass through the zone as long as there were no attempts to contact a minor or loiter with the intent of making contact with a minor. However he did add that a registrant that was, for instance, a plumber, could do his/her job within the school as long as they did not attempt to make contact with a minor. The Sparta PD informed me that one would be allowed to pass through the school zone, but they are not allowed to live within 1,000 feet or ever stop at a school. The employee from the Walker PD was not certain about an exact time, but informed me that if a law enforcement officer told an individual that they needed to leave, then they must immediately leave the area. The employee from the Milan PD informed me that the amount of time an individual could spend within the zone would depend on the charge that he/she received. She said that some people are never allowed in the zone, while others are sometimes allowed, although she did not specify which charges cause the different rules. The employee from Vicksburg was unsure about his answer, but said that if it was for a job and the individual was not loitering, then it would not be an issue and that the individual could pass through. Finally, the Pleasant Ridge Police Department told me that a registrant would be allowed to pass through.

viii. **Deliver Mail-** When I asked if a registrant who is a mail carrier would be allowed to deliver mail to a school, I got several different answers. The officer from Garden City said that he did not think that one could work for the federal government if one had a felony, so he said that a registrant as a mail carrier would be a non-issue. Similarly, the officer from Portage said that this would not be allowed and was skeptical that a registrant could be hired by the Postal Service. The officer from Grand Rapids informed me that delivering mail to a school would be allowed, while the individual from the Walker PD was unsure, but thought that it would not be allowed because there is a "no tolerance policy" for

registrants in school zones. Again the employee from the Milan PD said that this was questionable and would depend on the sentence that the registrant received. Vicksburg PD was unsure about this question, but came to the conclusion that if one were performing his/her job and not loitering at the school, then it would be permissible. The police chief from Pleasant Ridge was unsure about this question and said that he did not know the answer. The officer from Delta County said that there were some exceptions for employment of registrants, but he was not positive about this example. He said it might be a violation, but it would ultimately have to be determined by the prosecuting attorney.

ix. **Can a parent attend a school play or sports event-** For this question, the answers between the departments were not as divergent. Garden City, Grand Rapids, Sparta, Delta County and Milan all said that the registrant would be in violation if they attended a school play or sporting event. The individual from Vicksburg said that he was unsure and that it would be better to consult with the compliance officer, who was not in that day. The employee from the Walker PD was also unsure, but he said that he thought it would not be allowed. Again the individual from the Pleasant Ridge Police Department was unsure, and at this point informed me that I should contact the state website or call the state to get the answers to my questions, since he could not answer them. The officer from Portage told me that this was a grey area because the local prosecutor says that it would be allowed if they were there to watch their own children, however he did acknowledge that the state and the school say that it is not allowed.

x. **Can a registrant take his/her children to a school playground on the weekend-** Those that I spoke to from Grand Rapids, Sparta, Milan, Delta County, and Vicksburg all said that this would not be allowed, yet the officer from Garden City said that it would be allowed as long as there were not any other children around. The individual from Walker said that he was not positive, but thought that this would not be allowed. The officer from Portage informed me that this was a grey area that would have to be determined by the state.

IV. Executive Summary of Calls to Prosecutors' Offices

During the month of November 2013, I made phone calls to county prosecutors' offices in Michigan. In total, I made fifteen calls to ten different prosecutors' offices. The following is a list of the questions that I asked if I was connected to an individual who was willing to answer my questions:

- From where to where is 1,000 feet measured? From building to building? From property line to property line?
- Will a registrant who is a parent be in violation of SORA for dropping off or picking up his or her child at school?
- May at registrant who is a parent attend parent-teacher conferences?
- When someone registers a new address or employment, how do you determine whether the address is within 1000 feet of a school?
- How long can a person stay at a place within a school safety zone without violating SORA?
- Can a registrant who is a local bus driver drive a route that passes through multiple student safety zones several times a day?
- Can a registrant who is a mail carrier deliver mail each day to a school without violating SORA?
- Will a registrant who is a parent violate SORA by attending his or her child's school play or sports event at the child's school?
- May a registrant who is a parent take his or her child to play on a school playground on the weekend? What if other children are present?

In total, I received answers to my questions from only three prosecutors' offices (Muskegon, Saginaw, and Paw Paw). Among those three offices, answers to my questions varied. For example, I was told by the Saginaw County Prosecutor's Office that it was a violation of SORA for a registrant to pick-up or drop-off his or her own child from school. The Muskegon County Prosecutor's Office told me that dropping one's kids off is not a violation. While the Paw Paw County Prosecutor responded that technically it was a violation, but the spirit of the law does not prevent a registrant from dropping-off his or her own children provided he or she does not make contact with other minors.

For the offices that did not answer my questions it was either because I was unable to get ahold of anyone or because they refused to answer my questions. I exchanged a number of emails with the Oakland County Prosecutor's Office, but ultimately my questions were left unanswered. In emails with the Oscoda County Prosecutor's Office, I was asked for my identity; when I stated that I was with the ACLU of Michigan, they did not answer any further emails. The prosecutor whom I spoke with from Kalamazoo County answered one question, and then asked why I was conducting the study. When I responded that I was with the ACLU, he refused an answer any more questions. I contacted the Washtenaw County Prosecutor's office on two occasions; during the first call, I was instructed to send an email, which I did. I did not receive a response to my email so I called back and left a voicemail. My voicemail was not returned. I contacted the Isabella County Prosecutor's office twice, leaving one voicemail. I contacted the Livingston County Prosecutor's Office twice, but was never able to connect with someone willing to answer my questions. Finally, the prosecutor from St. Clair County told me to contact the Michigan State Police.

V. Methodology

I chose prosecutors' offices in Michigan at random and placed calls. When I reached a person within the office, I stated that I was doing a research project on sex offender registration and asked if there would be somebody there that could address my questions. If asked who I was doing the research for I stated that I was Joe Granzotto at the American Civil Liberties Union of Michigan. If I was directed to a particular individual in charge of SORA enforcement I would ask that individual the series of questions outlined above. If I was directed to another individual within the prosecutor's office, I would leave a voicemail.

VI. Results

i. **Property line measurement-** For the three offices that answered my questions, one, Saginaw, stated that it was measured center of the property to center of the property. The Muskegon prosecutor stated that it was measured property line to property line as the crow flies, but also stated that he could imagine other jurisdictions measuring it differently. Prior to instructing me that he could not answer any further questions, an individual from the Kalamazoo County Prosecutors' Office said that the measurement of 1,000 feet would have to be interpreted by a judge. Lastly, the prosecutor from Paw Paw said that it would be measured 1,000 feet from the property line of the school, including any sports fields owned by the school.

ii. **Parent pick up or drop off kids-** The individual from the Saginaw County Prosecutor's Office stated that she thought it would not be a violation of SORA for a registrant to pick up or drop off their children from school. The individual from the Muskegon County office said that the courts have ruled that this would be allowed, but the registrant would not be able to contact any other children while there. The prosecutor from Paw Paw stated "technically, by a literal reading of the statute, literal reading of the statute, it would seem that this would be a violation. However, the spirit of the law is also important, and [he] don't think the law was intended for this, unless the parent initiated or maintained contact with another minor not his/her own."

iii. **Attend parent-teacher conferences-** The individual from the Saginaw office said that this was generally determined to be allowed because there are typically no children present at the time of the meetings. The individual from Muskegon said it would be allowed. The prosecutor from Paw Paw said that it would be allowed as long as the parent was not loitering for the purpose of observing children.

iv. **How long can an individual stay within the zone/ can they pass through?-** Both the individuals from the offices of Saginaw and Muskegon stated that the answer to this question would depend on what the registrant was doing within the zone. Both stated that as long as the registrant was not there for the purpose of observing children, then it would be tolerated. However, the individual from Muskegon stated that a registrant could "be there for as long as they want" if they were not observing children. Both the Saginaw and Muskegon offices stated that a registrant who is a bus driver would be allowed to pass through, and the woman from Saginaw added: "as long as it was not a bus full of children." The individual from Paw Paw stated that there was no set time, but rather what was reasonable under the circumstances and as long as the person was not loitering with the purpose of observing children.

v. **Deliver Mail-** I did not ask this question of Saginaw (I accidently overlooked the question while conducting the survey). The individual from Muskegon stated that this issue had never come up before, but it was a good question. He thought that it would be allowed because a mail carrier would only be entering the zone sporadically and intermittently. The Paw Paw prosecutor said that it would probably be allowed as long as the registrant did not initiate or maintain contact with a minor in a school zone. He did add that it would "obviously be better for him to have a route that did not include a school, if possible."

vi. **Can a parent attend a school play or sports event-** The individual from Saginaw stated that this was an issue that had been problematic in the past. She informed me that typically they have reviewed the issue on a case-by-case basis because the state "has no comprehensive set of laws" for this issue. The individual from Muskegon mentioned that this would be a violation and that they have successfully prosecuted registrants who have attended their child's sporting events. The Paw Paw prosecutor said "a registrant is getting very close to the edge by attending a school event even for his/her own child. But it could be difficult to successfully prosecute someone who had a child in a school event for violating SORA, because the registrant's defense would be that they were not there to observe or contact minors, but rather their own child."

vii. **Can a registrant take his/her children to a school playground on the weekend-** The individual from Saginaw stated that she thought this would not be allowed because it is "still in the student-safety-zone." The individual from

Muskegon stated that if there were no other children present, he did not see a problem with this. The prosecutor from Paw Paw said that this would be the same as a parent attending a school play or sports event, and therefore would be close to a violation, but the registrant could say that they were there only to observe their own children.

VII. Freedom Of Information Act Requests

In October and November of 2013 the ACLU of MI sent a number of FOIA requests asking for the following information:

- Question #1:"Any and all maps or similar documents used to define the 'student safety zones' in _____ County, Michigan with respect to the Michigan Sex Offender Registry."
- Question #2: "If the County/Sheriff's Department has any documents responsive to question number 1, all documents showing how the map(s) were created."
- Question #3: "Parcel database in an ESRI shapefile or geodatabase format"
- Question #4: Any and all policies, guidelines, rules, regulations, training materials or other documents concerning school safety zone enforcement used in by the county/ sheriff's department."

I compiled and summarized the responses our office received.

The Following is a list of the locations to which we sent FOIA requests:

- Barry County Sheriff's Department
- Delta County Board of Commissioners
- County of Emmet
- Garden City
- Muskegon County Sheriff's Office
- Sparta Police Department
- Washtenaw County
- Wexford County Sheriff's Office

In response to question #1, only the Sparta Police Department provided us with the map that they use to determine where a registrant can and cannot reside. The County of Emmet replied that we could get a map by paying $15.42 and all other locations responded that they did not have any records responsive to this request.

In response to question #2, no departments were able to provide us with responsive documents.

In response to question #3, the Delta County Board of Commissioners responded that we could access the parcel data for $500, while the County of Emmet responded that access to parcel database would cost $2,000. Washtenaw County responded that they could produce parcel

shapes for $7,500 and assessor's data for $12,500. All other locations responded that they had no records responsive to this request.

In response to question #4, both the Delta County Board of Commissioners and the Wexford County Sheriff's Office provided a copy of the Michigan State Police training manual "School Safety Zone Enforcement" portion, while all other locations denied our request for lack of responsive records. Wexford County also enclosed a list of addresses of schools in their county.

Note: Both the Barry County Sheriff's Office and Wexford County sent requests for extensions on the FOIA response time, but we have yet to receive another response.

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury under the laws of the United States that the above statements are true and correct to the best of my knowledge, information and belief.

Dated: Jan 17, 2014

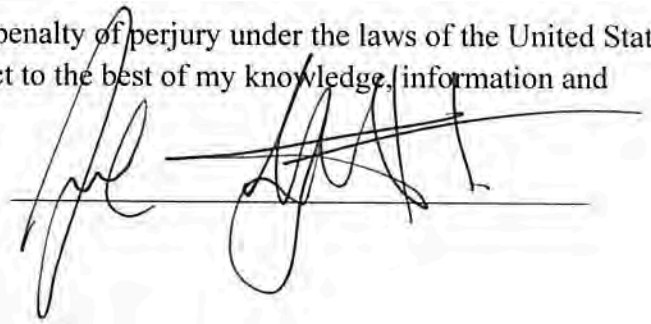

Exhibit K

Summary of Obligations, Disabilities and Restraints Imposed by SORA

Obligations, Disabilities, and Restraints Imposed by Michigan's Sex Offender Registration Act[1]

Table of Contents

[1] This document lists only affirmative obligations, disabilities and restraints imposed directly by Michigan's Sex Offender Registration and Notification Act, M.C.L. § 28.721 *et.seq*. It does not include other affirmative obligations, disabilities and restraints that are triggered by an individual's status as a registrant, but that are contained in other Michigan laws and regulations, or in the laws and regulations of the federal government, other states, or local governments. Those restrictions are too extensive to be compiled here.

1. Defined Terms

The following terms are used throughout the statute and are defined once here so that they need not be re-stated repeatedly below.

a. "Immediately Report" means report *in person* to the local registering authority *within three business days*.[2]

b. "Student Safety Zone" means the area that lies 1,000 feet or less from any building, facility, structure, or real property owned, leased or otherwise controlled by a school (meaning a public, private, denominational, or parochial school, offering developmental kindergarten, kindergarten, or any grade from 1 through 12) that is used to impart educational instruction or is used by students not more than 19 years of age for sports or other recreational activities.[3]

2. Requirement to Provide Personal Information

Registrants Must Provide:

a. Legal name and any aliases, nicknames, ethnic or tribal names, or other names by which the individual is or has been known.[4]
b. Social Security number and any Social Security numbers or alleged Social Security numbers previously used.[5]
c. Date of birth and any alleged dates of birth previously used.[6]
d. The address where the individual resides or will reside.[7]
e. The name and address of any place of temporary lodging used or to be used for more than 7 days.[8]
f. The name and address of each employer. [9]
g. The name and address of any person who has agreed to hire or contract with the individual for his or her services.[10]
h. The general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment if the individual lacks a fixed employment location.[11]
i. The name and address of any school being attended.[12]

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[2] M.C.L. § 28.722(d)-(g).
[3] M.C.L. § 28.733(f).
[4] M.C.L. § 28.727(1)(a).
[5] M.C.L. § 28.727(1)(b).
[6] M.C.L. § 28.727(1)(c).
[7] M.C.L. § 28.727(1)(d).
[8] M.C.L. § 28.727(1)(e).
[9] M.C.L. § 28.727(1)(f).
[10] M.C.L. § 28.727(1)(f).
[11] M.C.L. § 28.727(1)(f).
[12] M.C.L. § 28.727(1)(g).

j. The name and address of any school that has accepted the individual as a student that he or she plans to attend.[13]
k. All telephone numbers registered to the individual.[14]
l. All telephone numbers routinely used by the individual.[15]
m. All electronic email addresses assigned to the individual.[16]
n. All electronic email addresses routinely used by the individual.[17]
o. All instant message addresses assigned to the individual.[18]
p. All instant message addresses routinely used by the individual.[19]
q. All login names used by the individual when using any electronic mail address or instant messaging system.[20]
r. Any other identifiers used by the individual when using any electronic mail address or instant messaging system.[21]
s. The license plate number, registration number, and description of any motor vehicle owned by the individual.[22]
t. The license plate number, registration number, and description of any motor vehicle regularly used by the individual.[23]
u. The location at which any motor vehicle owned or regularly used by the individual is habitually stored or kept.[24]
v. The license plate number, registration number, and description of any aircraft owned by the individual.[25]
w. The license plate number, registration number, and description of any aircraft regularly used by the individual.[26]
x. The location at which any aircraft owned or regularly used by the individual is habitually stored or kept.[27]
y. The license plate number, registration number, and description of any vessel owned by the individual.[28]
z. The license plate number, registration number, and description of any vessel regularly used by the individual.[29]

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[13] M.C.L. § 28.727(1)(g).
[14] M.C.L. § 28.727(1)(h).
[15] M.C.L. § 28.727(1)(h).
[16] M.C.L. § 28.727(1)(i).
[17] M.C.L. § 28.727(1)(i).
[18] M.C.L. § 28.727(1)(i).
[19] M.C.L. § 28.727(1)(i).
[20] M.C.L. § 28.727(1)(i).
[21] M.C.L. § 28.727(1)(i).
[22] M.C.L. § 28.727(1)(j).
[23] M.C.L. § 28.727(1)(j).
[24] M.C.L. § 28.727(1)(j).
[25] M.C.L. § 28.727(1)(j).
[26] M.C.L. § 28.727(1)(j).
[27] M.C.L. § 28.727(1)(j).
[28] M.C.L. § 28.727(1)(j).
[29] M.C.L. § 28.727(1)(j).

aa. The location at which any vessel owned or regularly used by the individual is habitually stored or kept.[30]
bb. Driver's license number or state personal identification card number.[31]
cc. The individual's passport and other immigration documents.[32]
dd. Occupational and professional licensing information, including any license that authorizes the individual to engage in any occupation, profession, trade, or business.[33]
ee. Written documentation of employment status, contractual relationship, volunteer status, or student status when individual enrolls or discontinues enrollment at an institution of higher education.[34]
ff. A summary of convictions for listed offenses recorded by the registering authority. That summary includes all 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.[35]
gg. A complete physical description of the individual recorded by the registering authority.[36]

3. Public Disclosure of Personal Information and Labeling by Tier Status

a. The public registry indicates for each individual to which tier the individual has been assigned.[37]
b. Information made available on a public internet website, searchable by name, village, city, township, county, zip code, and geographical area, includes:[38]
   i. Legal name.[39]
   ii. Aliases.[40]
   iii. Nicknames.[41]
   iv. Ethnic or tribal names.[42]
   v. Other names by which the individual is or has been known.[43]
   vi. Date of birth.[44]
   vii. Address of residence.[45]
   viii. Address of employment.[46]

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[30] M.C.L. § 28.727(1)(j).
[31] M.C.L. § 28.727(1)(k).
[32] M.C.L. § 28.727(1)(l).
[33] M.C.L. § 28.727(1)(m).
[34] M.C.L. §§ 28.727(1)(r), 28.724a(5).
[35] M.C.L. § 28.727(1)(n).
[36] M.C.L. § 28.727(1)(o).
[37] M.C.L. § 28.728(2)(l).
[38] M.C.L. § 28.728(7).
[39] M.C.L. § 28.728(2)(a).
[40] M.C.L. § 28.728(2)(a).
[41] M.C.L. § 28.728(2)(a).
[42] M.C.L. § 28.728(2)(a).
[43] M.C.L. § 28.728(2)(a).
[44] M.C.L. § 28.728(2)(b).
[45] M.C.L. § 28.728(2)(c).

ix. Address of school being attended.[47]
x. Address of school that has accepted individual that he or she plans to attend.[48]
xi. License plate number or registration number of any motor vehicle owned.[49]
xii. License plate number or registration number of any motor vehicle regularly operated.[50]
xiii. License plate number or registration number of any aircraft owned.[51]
xiv. License plate number or registration number of any aircraft regularly operated.[52]
xv. License plate number or registration number of any vessel owned.[53]
xvi. License plate number or registration number of any vessel regularly operated.[54]
xvii. Brief summary of convictions for listed offenses.[55]
xviii. Complete physical description of the individual.[56]
xix. Photograph of the individual.[57]
xx. The text of the provision of the law that defines the criminal offense for which the individual is registered.[58]
xxi. Registration status.[59]

c. In addition to the public website, access to the above information is also available for inspection by any member of the public during regular business hours at a department post, local law enforcement agency, or sheriff's department.[60]
d. Any member of the public may subscribe to electronic notifications for any initial registrations and changes in registration within a designated area or geographic radius designated by the subscribing member of the public.[61]

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[46] M.C.L. § 28.728(2)(d).
[47] M.C.L. § 28.728(2)(e).
[48] M.C.L. § 28.728(2)(e).
[49] M.C.L. § 28.728(2)(f).
[50] M.C.L. § 28.728(2)(f).
[51] M.C.L. § 28.728(2)(f).
[52] M.C.L. § 28.728(2)(f).
[53] M.C.L. § 28.728(2)(f).
[54] M.C.L. § 28.728(2)(f).
[55] M.C.L. § 28.728(2)(g).
[56] M.C.L. § 28.728(2)(h).
[57] M.C.L. § 28.728(2)(i).
[58] M.C.L. § 28.728(2)(j).
[59] M.C.L. § 28.728(2)(k).
[60] M.C.L. § 28.730(2).
[61] M.C.L. § 28.730(3).

4. Restrictions on Residency

Registrants Must:

a. Not reside within a "student safety zone."[62] This restriction includes an affirmative obligation to determine, prior to changing residences, whether a proposed residence is located within an exclusion zone.
b. Register the address where the individual resides or will reside.[63]
c. Immediately report when the individual changes or vacates his or her residence or domicile.[64]
d. Immediately report when the individual intends to temporarily reside at any place other than his or her residence for more than 7 days.[65]
e. Immediately report before the individual changes his or her domicile or residence to another state.[66] The new state and the new address, if known, must be provided at the time of reporting.[67] (The address where the individual resides is made available on the public internet website.)[68]

5. Restrictions on Employment

Registrants Must:

a. Not work within a "student safety zone."[69] This restriction includes an affirmative obligation to determine, prior to accepting employment, whether a proposed employment opportunity is located within an exclusion zone.
b. Register the name and address of each employer or any person who has agreed to hire or contract with the individual for his or her services.[70]
c. Register the general areas where the individual works and the normal travel routes taken by the individual in the course of his or her employment if the individual lacks a fixed employment location.[71] (The address where the individual works is made available on the public internet website.)[72]
d. Immediately report in person to the local registering authority when the individual changes his or her place of employment.[73]

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[62] M.C.L. §§ 28.735(1), 28.733, 28.722(p). *See* exceptions in M.C.L. §§ 28.735(3); 28.736.
[63] M.C.L. § 28.727(1)(d).
[64] M.C.L. § 28.725(1)(a).
[65] M.C.L. § 28.725(1)(e).
[66] M.C.L. § 28.725(6).
[67] M.C.L. § 28.725(6).
[68] M.C.L. § 28.728(2)(c).
[69] M.C.L. §§ 28.734(1)(a), 28.733. *See* exceptions in M.C.L. §§ 28.734(3); 28.736.
[70] M.C.L. § 28.727(1)(f).
[71] M.C.L. § 28.727(1)(f).
[72] M.C.L. § 28.728(2)(d).
[73] M.C.L. § 28.725(1)(b).

e. Immediately report in person to the local registering authority when the individual discontinues employment.[74]

6. Requirement to Create Biometric and Appearance Information

Registrants Must:

a. Provide fingerprints to the registering authority.[75]
b. Provide palm prints to the registering authority.[76]
c. Have a photograph taken by the Secretary of State, which shall make the photograph available to the Michigan State Police. [77]
d. Have a new photograph taken whenever the license or identification card is renewed.[78]
e. Immediately have another photograph taken if the photograph on file does not match the individual's appearance sufficiently to properly identify him or her from the photo-graph.[79]

7. Restrictions on "Loitering"

a. Must not 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 within a "student safety zone."[80]

8. Restrictions on Travel

Registrants Must:

a. Organize any travel so that the individual is still able to comply with requirements for regular in-person reporting.[81]
b. Immediately report when the individual intends to temporarily reside at any place other than his or her residence for more than 7 days.[82]
c. Report in person to the local registering authority at least 21 days before he or she travels to another country for more than 7 days.[83]
d. Report in person to the local registering authority at least 21 days before he or she changes his or her domicile to another country.[84]

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[74] M.C.L. § 28.725(1)(b).
[75] M.C.L. § 28.727(1)(q).
[76] M.C.L. § 28.727(1)(q).
[77] M.C.L. §§ 28.725a(8), 28.727(1)(p).
[78] M.C.L. §§ 28.725a(8), 28.727(1)(p).
[79] M.C.L. § 28.725a(5).
[80] M.C.L. §§ 28.734(1)(b), 28.733.
[81] M.C.L. § 28.725a(3) (effective April 1, 2014).
[82] M.C.L. § 28.725(1)(e).
[83] M.C.L. § 28.725(7).

e. The new country and, if known, the new address must be reported at the time of reporting.[85]

9. Restrictions on School Attendance

a. Michigan Resident Registrants Must:
   i. Immediately report where his or her new residence or domicile is located if the individual enrolls as a student.[86]
   ii. Immediately report where his or her new residence or domicile is located if the individual discontinues enrollment as a student.[87]
   iii. Pay the $50.00 registration fee upon reporting.[88]
   iv. Present to the local registering authority written documentation of employment status, contractual relationship, volunteer status, or student status. Documentation may include, a W-2 form, pay stub, written statement by an employer, a contract, or a student identification card or transcript.[89]
b. Michigan Non-Residents Registrants Must:
   i. Immediately report in person to the campus registering authority if the individual enrolls as a student.[90]
   ii. Immediately report in person to the campus registering authority if the individual discontinues enrollment as a student.[91]
   iii. Pay the $50.00 registration fee upon reporting.[92]
   iv. Present to the local registering authority written documentation of employment status, contractual relationship, volunteer status, or student status. Documentation may include, a W-2 form, pay stub, written statement by an employer, a contract, or a student identification card or transcript.[93]
c. School information is made available to the public on the public internet website.[94]

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[84] M.C.L. § 28.725(7).
[85] M.C.L. § 28.725(7).
[86] M.C.L. §§ 28.724a(2), 28.725(1)(c), 28.724a(3)(b), 28.722(g).
[87] M.C.L. §§ 28.724a(2), 28.725(1)(c), 28.724a(3)(b), 28.722(g).
[88] M.C.L. § 28.724a(5).
[89] M.C.L. § 28.724a(5).
[90] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b), 28.722(g).
[91] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b), 28.722(g).
[92] M.C.L. § 28.724a(5).
[93] M.C.L. § 28.724a(5).
[94] M.C.L. § 28.728(2)(e).

10. Restrictions on Vehicle Use or Ownership

Registrant Must Immediately Report When:

a. He or she purchases any vehicle.[95]
b. He or she discontinues ownership of any vehicle.
c. He or she begins to regularly operate any vehicle.[96]
d. He or she discontinues regular operation of any vehicle.[97] (Vehicle information is made available to the public on the public internet website.)[98]

11. Restrictions on Internet Usage

Registrants Must Immediately Report In Person When The Individual Establishes:

a. Any electronic mail address.[99]
b. Any instant message address.[100]
c. Any other designations used in internet communications or postings.[101]

12. Requirements for Supervision by Law Enforcement

a. Registrants must, in addition to other reporting requirements, report in person to the local registering authority:
   i. Tier I: Once per year, during the individual's month of birth, for 15 years.[102]
   ii. Tier II: Twice per year, during the individual's month of birth and six months later (e.g., January and July; February and August; etc.), for 25 years.[103]
   iii. Tier III: Four times per year, during the individual's month of birth and every three months thereafter (e.g., January, April, July, and October; February, May, August, and November; etc.), for life.[104]

b. Registrants must, at the above regularly scheduled visits:
   i. Verify domicile or residence.[105]
   ii. Verify all registration information.[106]

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[95] M.C.L. § 28.725(1)(g).
[96] M.C.L. § 28.725(1)(g).
[97] M.C.L. § 28.725(1)(g).
[98] M.C.L. § 28.728(2)(f).
[99] M.C.L. § 28.725(1)(f).
[100] M.C.L. § 28.725(1)(f).
[101] M.C.L. § 28.725(1)(f).
[102] M.C.L. §§ 28.725a(3)(a) (eff. Apr. 1, 2014), 28.725(10).
[103] M.C.L. §§ 28.725a(3)(b) (eff. Apr. 1, 2014), 28.725(11).
[104] M.C.L. §§ 28.725a(3)(c) (eff. Apr. 1, 2014), 28.725(12).
[105] M.C.L. § 28.725a(3).
[106] M.C.L. § 28.725a(5).

iii. Provide whatever documentation is required by the registering authority to prove residency or domicile, including, but not limited to driver's license, state personal identification card, voter registry card, utility bill, or other bill.[107]

iv. Provide whatever documentation is required by the registering authority to prove employment status, contractual relationship, volunteer status, or student status, including but not limited to a W-2 form, pay stub or written statement by an employer, a contract, or a student identification card or student transcript.[108]

v. Immediately have another photograph taken if the photograph on file does not match the individual's appearance sufficiently to properly identify him or her from the photograph.[109]

13. Requirements for "Immediate" Reporting to Law Enforcement

Registrants Must Immediately Report In Person To The Local Registering Authority:

a. When he or she changes or vacates his or her residence or domicile.[110]
b. When he or she intends to temporarily reside at any place other than his or her residence for more than 7 days.[111]
c. Before the individual changes his or her domicile or residence to another state.[112] The new state and, if known, the new address must be reported at the time of reporting.[113]
f. When the individual changes his or her name[114] or place of employment.[115]
g. When he or she discontinues employment.[116]
h. When he or she purchases any vehicle.[117]
i. When he or she discontinues ownership of any vehicle.
j. When he or she begins to regularly operate any vehicle.[118]
d. When he or she discontinues regular operation of any vehicle.[119]
e. When he or she establishes any electronic mail address.[120]
f. When he or she establishes any instant message address.[121]
g. When he or she establishes any other designations used in internet communications or postings.[122]

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[107] M.C.L. § 28.725a(7).
[108] M.C.L. § 28.724a(5).
[109] M.C.L. § 28.725a(5).
[110] M.C.L. § 28.725(1)(a).
[111] M.C.L. § 28.725(1)(e).
[112] M.C.L. § 28.725(6).
[113] M.C.L. § 28.725(6).
[114] M.C.L. § 28.725(1)(d).
[115] M.C.L. § 28.725(1)(b).
[116] M.C.L. § 28.725(1)(b).
[117] M.C.L. § 28.725(1)(g).
[118] M.C.L. § 28.725(1)(g).
[119] M.C.L. § 28.725(1)(g).
[120] M.C.L. § 28.725(1)(f).
[121] M.C.L. § 28.725(1)(f).

h. Where his or her new residence or domicile is located if the individual enrolls as a student.[123]
i. Where his or her new residence or domicile is located if the individual discontinues enrollment as a student.[124]
j. Where his or her new residence or domicile is located if, as part of his or her course of studies, the individual is present at any other location in Michigan or throughout the United States.[125]
k. Where his or her new residence or domicile is located if the individual discontinues his or her studies at any other location in Michigan or throughout the United States.[126]
l. If he or she enrolls as a student (to campus registering authority).[127]
m. If he or she discontinues enrollment as a student (to campus registering authority).[128]
n. If, as part of his or her course of studies, the individual is present at any other location in Michigan or throughout the United States (to campus registering authority).[129]
o. If the individual discontinues his or her studies at any other location in Michigan or throughout the United States (to campus registering authority).[130]
p. If the photograph on file does not match the appearance sufficiently to properly identify him or her from the photograph, so that a new photograph may be taken.[131]
k. If upon release from incarceration his or her appearance has changed from the date of a photograph taken for a driver's license (in which case a new digitized photo must be taken).[132]

14. Financial Obligations

a. Must pay a one-time $50.00 initial registration fee.[133]

b. Must pay an annual $50.00 registration fee.[134]

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[122] M.C.L. § 28.725(1)(f).
[123] M.C.L. §§ 28.724a(2), 28.725(1)(c), 28.724a(3)(b), 28.722(g).
[124] M.C.L. §§ 28.724a(2), 28.725(1)(c), 28.724a(3)(b), 28.722(g).
[125] M.C.L. §§ 28.724a(2), 28.724a(3)(b), 28.722(g).
[126] M.C.L. §§ 28.724a(2), 28.724a(3)(b), 28.722(g).
[127] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b), 28.722(g).
[128] M.C.L. §§ 28.724a(1)(a), 28.724a(3)(b), 28.722(g).
[129] M.C.L. §§ 28.724a(1)(b), 28.724a(3)(b), 28.722(g).
[130] M.C.L. §§ 28.724a(1)(b), 28.724a(3)(b), 28.722(g).
[131] M.C.L. § 28.725a(5).
[132] M.C.L. § 28.725a(8).
[133] M.C.L. §§ 28.725a(6)(a), 28.727(1).
[134] M.C.L. § 28.725a(6)(b) (eff. Apr. 1, 2014)

15. Affirmative Obligations to the Secretary of State

Registrants Must:

a. Maintain a valid Michigan driver's license, or an official state issued personal identification card with the individual's current address.[135]
b. Immediately report to the Secretary of State upon release from incarceration to have his or her digitized photograph taken if his or her appearance has changed from the date of a photograph taken for a driver's license.[136]

16. Penalties for Failure to Comply

a. Willful violation of the Act is a felony punishable by:[137]
   i. Up to 4 years imprisonment and/or a maximum fine of $2,000.00 for the first conviction of a violation of the registration act.[138]
   ii. Up to 7 years imprisonment and/or a maximum fine of $5,000.00 for the second conviction of a violation of the registration act.[139]
   iii. Up to 10 years imprisonment and/or a maximum fine of $10,000.00 for the third or greater conviction of a violation of the registration act.[140]
   iv. Mandatory revocation of probation for any individual on probation.[141]
   v. Mandatory revocation of youthful trainee status for any individual assigned to youthful trainee status.[142]
   vi. Mandatory rescission of parole for any individual released on parole.[143]

b. Failure to comply with any of the following is a misdemeanor punishable by imprisonment for up to 2 years and/or a maximum fine of $2,000.00:[144]
   i. Maintain a valid Michigan driver's license, or an official state issued personal identification card with the individual's current address.[145]
   ii. Immediately report to the Secretary of State upon release from incarceration to have his or her digitized photograph taken if his or her appearance has changed from the date of a photograph taken for a driver's license.[146]
   iii. Tier I Individuals: Report once per year, during the individual's month of birth, for 15 years, and:[147]

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[135] M.C.L. § 28.725a(7).
[136] M.C.L. § 28.725a(8).
[137] M.C.L. § 28.729(1).
[138] M.C.L. § 28.729(1)(a).
[139] M.C.L. § 28.729(1)(b).
[140] M.C.L. § 28.729(1)(c).
[141] M.C.L. § 28.729(5).
[142] M.C.L. § 28.729(6).
[143] M.C.L. § 28.729(7).
[144] M.C.L. § 28.729(2).
[145] M.C.L. §§ 28.729(2), 28.725a(7).
[146] M.C.L. §§ 28.729(2), 28.725a(8).
[147] M.C.L. §§ 28.729(2), 28.725a(3)(a) (eff. Apr, 1, 2014), 28.725(10).

1. Verify domicile or residence.[148]
2. Verify all registration information.[149]
3. Verify written documentation of employment status, contractual relationship, volunteer status, or student status.[150]
4. Immediately have another photograph taken if the photograph on file does not match the appearance sufficiently to properly identify him or her from the photograph.[151]

iv. Tier II Individuals: Report twice per year, during the individual's month of birth and six months later (e.g., January and July; February and August; etc.), for 25 years, and:[152]

1. Verify domicile or residence.[153]
2. Verify all registration information.[154]
3. Verify written documentation of employment status, contractual relationship, volunteer status, or student status.[155]
4. Immediately have another photograph taken if the photograph on file does not match the appearance sufficiently to properly identify him or her from the photograph.[156]

v. Tier III Individuals: Report four times per year, during the individual's month of birth and every three months thereafter (e.g., January, April, July, and October; February, May, August, and November; etc.), for life, and:[157]

1. Verify domicile or residence.[158]
2. Verify all registration information,[159]
3. Verify written documentation of employment status, contractual relationship, volunteer status, or student status,[160] and
4. Immediately have another photograph taken if the photograph on file does not match the appearance sufficiently to properly identify him or her from the photograph.[161]

c. Willful failure to sign a registration and notice is a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of $1,000.00.[162]

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[148] M.C.L. §§ 28.729(2), 28.725a(3).
[149] M.C.L. §§ 28.729(2), 28.725a(5).
[150] M.C.L. §§ 28.729(2), 28.725a(5), 28.724a.
[151] M.C.L. §§ 28.729(2), 28.725a(5).
[152] M.C.L. §§ 28.729(2), 28.725a(3)(b) (eff. Apr. 1, 2014), 28.725(11).
[153] M.C.L. §§ 28.729(2), 28.725a(3).
[154] M.C.L. §§ 28.729(2), 28.725a(5).
[155] M.C.L. §§ 28.729(2), 28.725a(5), 28.724a.
[156] M.C.L. §§ 28.729(2), 28.725a(5).
[157] M.C.L. §§ 28.729(2), 28.725a(3)(c) (eff. Apr. 1, 2014), 28.725(12).
[158] M.C.L. §§ 28.729(2), 28.725a(3).
[159] M.C.L. §§ 28.729(2), 28.725a(5).
[160] M.C.L. §§ 28.729(2), 28.725a(5), 28.724a.
[161] M.C.L. §§ 28.729(2), 28.725a(5).
[162] M.C.L. § 28.729(3).

d. Willful refusal or failure to pay the $50.00 registration fee within 90 days is a misdemeanor punishable by imprisonment for up to 90 days.[163]

e. Working within a "student safety zone"[164] is a:
   i. Misdemeanor punishable by up to 1 year imprisonment and/or a maximum fine of $1,000.00 for the first violation.[165]
   ii. Felony punishable by up to 2 years imprisonment and/or a maximum fine of $2,000.00 for anything greater than one violation.[166]

f. Remaining for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors (i.e., "loitering") within a "student safety zone"[167] is a:
   i. Misdemeanor punishable by up to 1 year imprisonment and/or a maximum fine of $1,000.00 for the first violation.[168]
   ii. Felony punishable by up to 2 years imprisonment and/or a maximum fine of $2,000.00 for anything greater than one violation.[169]

g. Residing within a "student safety zone"[170] is a:
   i. Misdemeanor punishable by up to 1 year imprisonment and/or a maximum fine of $1,000.00 for the first violation.[171]
   ii. Felony punishable by up to 2 years imprisonment and/or a maximum fine of $2,000.00 for anything greater than one violation.[172]

[163] M.C.L. § 28.729(4).
[164] M.C.L. §§ 28.734(1)(a), 28.733.
[165] M.C.L. § 28.734(2)(a).
[166] M.C.L. § 28.734(2)(b).
[167] M.C.L. §§ 28.734(1)(b), 28.733.
[168] M.C.L. § 28.734(2)(a).
[169] M.C.L. § 28.734(2)(b).
[170] M.C.L. §§ 28.735(1), 28.733, 28.722(p).
[171] M.C.L. § 28.735(2)(a).
[172] M.C.L. § 28.735(2)(b).

Exhibit L

Excerpts of Deposition of Lieutenant Christopher Hawkins *Compaan v Snyder* 15-cv-01140 (W.D. Mich.)

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

SOUTHERN DIVISION

BRYAN COMPAAN,

EDWARD PEREZ RIOS,

and MIGUEL GARCIA,

Plaintiffs, Case No. 1:15-cv-01140

v Hon. Robert J. Jonker

RICHARD SNYDER, Governor of the State of Michigan, and COL. KRISTE ETUE, Director of the Michigan State Police, in their official capacities,

Defendants.

DEPOSITION OF: CHRISTOPHER HAWKINS

DATE: August 10, 2017

TIME: 10:31 a.m.

LOCATION: 525 Ottawa Street, 5th Floor
Lansing, Michigan

REPORTER: Lori J. Cope, RPR, CSR-4113

APPEARANCES:

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On behalf of the Plaintiffs

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CIVIL LITIGATION, EMPLOYMENT & ELECTIONS DIVISION
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On behalf of the Defendants

I N D E X

E X H I B I T S

NO.	PG.	IDENTIFICATION
1	26	Sex Offenders Registration Act (Excerpt) Act 295 of 1994
2	31	Memo from MSP Sex Offender Registry Unit
3	33	8-31-16 Memo to Michigan Prosecutors from L. Burdick
4	37	3-25-16 Emails Re Urgent Issue with SB 581 and Proposed Solution
5	46	Michigan Sex Offender Registration and Enforcement Document

August 10, 2017

Lansing, Michigan

10:31 a.m.

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CHRISTOPHER HAWKINS,

after having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. HOWARD:

Q. Good morning, Lieutenant Hawkins.

A. Good morning.

Q. My name is Sarah Howard. I represent the plaintiffs in this case. Please state and spell your name for the record.

A. It's Christopher Hawkins, C-h-r-i-s-t-o-p-h-e-r, H-a-w-k-i-n-s.

Q. Where are you employed, Lieutenant Hawkins?

A. I am employed for the Michigan State Police. I currently work at our headquarters in Dimondale, Michigan.

Q. What do you do there?

A. I am the commander of the Legislative and Legal Resources section.

Q. Now, you have been deposed at least once before. Correct?

A. Correct.

Q. Just the one time, or more than that?

A. Just the once.

new bills or legislation?

A. It was a very high-level meeting. No, I don't think we ever went through the bill section by section or discussed that. It was a very brief just high-level meeting. Are we ready to -- should we do amendments now or should we wait.

Q. Did anyone in the meeting suggest that it was appropriate to attempt to make amendments to SORA without waiting for further court decision?

A. I don't think so, no. No, I don't recall anyone making that suggestion.

Q. Did anyone in the meeting suggest it might be more politically expedient to wait until the court essentially required changes to SORA before attempting to make those changes in the legislature?

A. I suppose that was part of my argument as to why to wait, yeah.

Q. It might be more palatable to an individual member of the Senate or House's constituents to make changes to the Sex Offender Registry because the court is requiring the state to do so?

A. Yes.

Q. Is there any discussion that you remember in that meeting about eight to ten months ago specifically with respect to the student safety zone provision of SORA?

A. No. No.

Q. Okay. Any other specific provision of SORA that you recall being discussed? I know you said it was a high-level meeting, but to the extent you remember any discussion about specifics, any specific provision of the statute that you recall?

A. No, just the act in general. No specific provision, no.

Q. Okay. Was there any discussion in that meeting about difficulties in enforcing SORA while the Does V Snyder case at least made its way through the court system?

A. No.

Q. Okay. Was there any discussion in that meeting with Senator Jones that took place about eight to ten months ago about this case, the Compaan case that is pending in the Western District of Michigan?

A. No.

Q. Any discussion in the meeting with Senator Rick Jones and others about eight to ten months ago about any other case currently pending, either in Michigan State courts or in federal courts, with respect to the constitutionality of any provision of SORA?

A. No.

Q. Have you had any discussions, either in person or email or telephone, with Senator Rick Jones since that meeting on the topic of making amendments to Michigan SORA?

A. No, not that I can recall. Nothing.

Q. Okay. Have you had any discussions with any other member of

Exhibit M

Michigan State Police Sex Offender Registration Unit Bulletin to Law Enforcement Regarding *Does I*.

FROM: MICHIGAN STATE POLICE
SEX OFFENDER REGISTRY UNIT

**** IMPORTANT INFORMATION REGARDING ENFORCEMENT OF SPECIFIC REVISIONS OF THE SEX OFFENDER REGISTRATION ACT (SORA), MCL 28.721 et seq.****

The United States Sixth Circuit Court of Appeals has ruled that retroactive application of the 2006 and 2011 amendments to Michigan's SORA is unconstitutional. While only six registered sex offenders were parties to the decision, **the opinion is binding precedent in all federal courts in Michigan**.

The 2006 amendments prohibited SORA registrants from living, working, or loitering within 1,000 feet of a school. The 2011 amendments divided offenders into tiers and increased the reporting requirements for SORA offenders, including but not limited to:

- Registration of e-mail, instant message or other Internet identifiers;
- Registration of license plates for vehicles regularly used by offenders;
- Registration of phone numbers routinely used by offenders;
- Requirement that offenders report immediately after moving or changing other registered information.

Enforcement of any of the 2006 or 2011 requirements retroactively against any offender could subject individual officers and law enforcement agencies to possible civil liability.

Please also note that whether enforcement of the above provisions operates retroactively is dependent on the date of offense, ***not*** the date of conviction.

Officers/law enforcement agencies should first contact their prosecutor to determine if any proposed enforcement of the above provisions would be consistent with the Court's opinion.

The Michigan State Police is working with the Michigan Attorney General's Office to review the Court's opinion in this matter to determine its further impact on the sex offender registry and other registrants.