No. 19-35391

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOES, John and Jane, 1-134,

Plaintiffs-Appellants,

v.

LAWRENCE WASDEN, Attorney General
of the State of Idaho; et al.,

Defendants-Appellees.

Appeal from the United States District Court for the District of Idaho
D.C. No. 1:16-cv-00429-DCN
Honorable David C. Nye, Presiding

APPELLEES' ANSWERING BRIEF

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I. JURISDICTIONAL STATEMENT

The district court asserted jurisdiction over Appellants' ("the Does") federal claims under 28 U.S.C. §§ 1331 and 1343, and over their state law claims pursuant to 28 U.S.C. § 1367(a). This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1291.

II. STATEMENT OF ISSUES ON APPEAL

1. Whether the Does' arguments before this Court are adequate to justify overturning the *Judgment* entered by the district court.
2. Whether this Court should consider arguments that the Does are making for the first time on appeal.

An addendum containing constitutional provisions, statutes and rules of civil procedure is attached hereto.

III. STATEMENT OF THE CASE

A. Introduction

The Does have leveled facial and as-applied attacks on the constitutionality of Idaho's Sexual Offender Registration Notification and Community Right-to-Know Act, Idaho Code § 18-8301, *et seq.* ("SORA"). At their core, the Does' attacks consist of various constitutional challenges to the retroactive application of the definition of "aggravated offense" set forth in Idaho Code § 18-8303(1). An "aggravated offense" includes crimes committed in Idaho and offenses committed

in other jurisdictions if those offenses are 'substantially similar" to an "aggravated offense" as defined in Idaho. Idaho Code § 18-8303(1). Sex offenders convicted of an aggravated offense cannot be released from lifetime registration requirements. Idaho Code § 18-8310.

The Does argue that SORA's lifetime registration requirement, retroactively applied to them, converts SORA to an unconstitutionally punitive statutory scheme. However, this Court's precedents have considered and rejected the types of allegations the Does make in support of their claims.

B. SORA Registration and Community Notification

SORA's registration requirement for sex offenders is found at Idaho Code § 18-8304 and includes sex offenders who, on or after July 1, 1993, are convicted in Idaho of any crime listed in Idaho Code § 18-8304(1)(a), or who have been convicted of such crimes and were incarcerated or on probation or parole on or after July 1, 1993. Any sex offender convicted in another jurisdiction on or after July 1, 1993 of crimes "substantially equivalent" to those set forth in Idaho Code § 18-8304(1)(a) must also register as a sex offender in Idaho. Idaho Code § 18-8304(1)(b). Registration is also required for those who committed a crime substantially equivalent to those listed in Idaho Code § 18-8304(1)(a) in another jurisdiction and were required to register in that jurisdiction at the time of moving to Idaho to become a resident, go to school or to work. Idaho Code §§ 18-8304(1)(c); 18-8304(1)(e).

All of the Does listed in their *Amended Complaint for Injunctive and Declaratory Relief* ("Amended Complaint") (ER vol. II, 54-227) and their *Amended Complaint for Injunctive and Declaratory Relief (Part II)* ("Amended Complaint II") (ER vol. II, 6-50) appear to fall under the rubric of a sex offender who committed an aggravated offense, as they claim they are required to register for life. A sex offender that has committed an aggravated offense is not eligible to petition the court to be exempt from registration requirements. Idaho Code § 18-8310(1). None of the Does allege they are a "recidivist" or "Violent Sexual Predator" as defined in Idaho Code §§ 18-8303(14) and (17). Violent sexual predators are required to register quarterly; all other sex offenders, such as the Does, must register annually. Idaho Code § 18-8307(5)(a)(b).

The Idaho State Police maintain the digital sex offender registry. Idaho Code §§ 18-8303(5); 18-8305(1). The registry includes such information as names and aliases used by a sex offender, names or identifiers the sex offender uses on the internet, a physical description, all arrests and convictions, the text of the law that the sex offender violated resulting in his registration as an offender, parole status, physical address where the sex offender resides, license plate and vehicle description, place of employment, what professional licenses the sex offender maintains, current photograph, set of finger and palm prints, and a copy of the sex

offender's driver's license. Idaho Code § 18-8305(1). The public has access to the sex offender registry via the internet. Idaho Code § 18-8323(1).

Registration forms are mailed annually to sex offenders via non-forwardable mail, unless the sex offender is a recidivist or violent sexual predator, in which case the form is mailed quarterly. Idaho Code § 18-8307(5). Completion of the registration process requires appearing in person at the sheriff's office for the county in which the sex offender is required to register. Idaho Code § 18-8307(5)(c). Failure to register is a felony with penalties of imprisonment up to ten years and a fine of no more than $5,000. Idaho Code § 18-8311(1). Use of the information on the registry to commit a crime against any person is punishable as a misdemeanor with up to a year in jail and/or no more than a $1,000 fine. Idaho Code § 18-8326.

C. Conduct Prohibited by SORA

The only employment that Idaho's SORA specifically prohibits for sex offenders is working at a day care center, group day care facility or family day care home. Idaho Code § 18-8327(1). Nor can a sex offender be on the premises of such places if children are present, unless dropping off or picking up the sex offender's children. *Id.*

Sex offenders are prohibited from being on the premises of school buildings or grounds, to include any property posted with a notice that it is used by a school, when the sex offender has reason to believe children under the age of eighteen are

present and involved in a school activity. Idaho Code § 18-8329(1)(a). Further, sex offenders may not be present on such premises when children are present within thirty minutes before and after a scheduled school activity. *Id.* Nor can sex offenders loiter within five hundred feet of such properties when children under eighteen are present and involved in a school activity, or present within thirty minutes before or after a scheduled school activity. Idaho Code § 18-8329(1)(b). An offender cannot be on any vehicle used to transport children under the age of eighteen to or from school or a school related event when such children are on the vehicle. Idaho Code § 18-8329(1)(c).

A sex offender cannot reside within five hundred feet of property on which a school is located. Idaho Code § 18-8329(1)(d). Sex offenders who lived in a residence within five hundred feet of a school prior to July 1, 2006 are exempt from the prohibition. *Id.* Additional exceptions to the five hundred foot proscription apply, to include dropping off or picking up the sex offender's children and living in an approved or licensed incarceration facility or homeless shelter that is within the proscribed five hundred foot limit. Idaho Code § 18-8329(2).

Idaho's SORA does not prevent sex offenders from being places where children may be found, such as parks or playgrounds. Nor does SORA prohibit sex offenders from being on church premises. If any such prohibitions apply to any of the Does, those prohibitions are likely imposed by conditions of parole, not SORA.

D. Procedural history

The Does Amended Complaint, filed on April 26, 2017, asserts several violations of constitutional rights, including:

- Violation of Fourteenth Amendment due process protections based on SORA's alleged vagueness and failure to provide the Does with notice and a hearing regarding changes to SORA that affected them. The Does also claim a lack of governmental purpose for the changes. *See* ER vol. II, 184-85 ¶¶ 235-237.
- Substantive due process violations based on alleged impingement of the Does' right to attend church, travel, freedom of association, and freedom to raise their children without governmental interference. *See* ER vol. II, 186 ¶ 245.
- First Amendment free exercise of religion based on the possibility that an offender might be within five hundred feet of a school when attending church. *See* ER vol. II, 185¶ 241.
- Fourteenth Amendment equal protection violations based on creation of two separate groups – juvenile versus adult offenders - that are treated dissimilarly in relation to sex offender registration requirements. *See* ER vol. II, 187-88 ¶¶ 252, 253.

- Eighth Amendment cruel and unusual punishment violations due to changing the definition of "aggravated offense" so that it retroactively and prospectively subjects sex offenders, including the Does, to lifetime sex offender registration. *See* ER vol. II, 189 ¶ 259.
- Violations of Article I, Section 9, Clause 3 of the U.S. Constitution because the retroactive requirements of SORA are punitive due to registration requirements and related community notification. *See* ER vol. I, 190 ¶ 263.
- Fifth Amendment double jeopardy violations because retroactive application of registration requirements are punitive and imposed without determination of an individual sex offender's risk of recidivism. *See* ER vol. II, 191 ¶ 267.
- Violations of Article I, Section 10, Clause 1 of the U.S. Constitution and article I, section 16 of the Idaho Constitution because SORA allegedly alters the Does' contractual terms as they relate to registration under SORA. *See* ER vol. II, 192 ¶ 271.
- Violation of the Fifth Amendment clause prohibiting the taking of property without compensation based on alleged residential restrictions. *See* ER Vol. II 193 ¶ 279.

- Violation of the State's separation of powers doctrine because SORA impinges upon the judicial power to impose sentences, particularly in relation to registration requirements of SORA. *See* ER vol. II 193-94 ¶ 283.
- Violations of the police powers clause found at article XI, section 8 of the Idaho Constitution and Article 1, Section 10 of the U.S. Constitution because Does 4, 7, 18, 53, 62, 80, 85, 100, 105 and 132 had been unconditionally released from custody, probation and parole requirements, as well as sex offender registration requirements, prior to the SORA amendments that caused those Does to be subject to lifetime registration. *See* ER vol. II, 194 ¶ 287.

Defendants (collectively, "the State") moved to dismiss the Does' Amended Complaint pursuant to Federal Rule Civil Procedure 12(b)(6). *See* ER vol. II 51. The district court appropriately dismissed the Does' Amended Complaint without prejudice (*see* ER vol. I, 29-68), allowing them to file another amended complaint setting forth as-applied claims relating to:

> Claim 1 (Due Process – Reporting and Vagueness); Claim 2 – (Free Exercise); Claim 3 (Due Process – Free Association and Travel); Claim 5 (Cruel and Unusual Punishment); Claim 6 (*Ex Post Facto*); Claim 7 (Double Jeopardy); Claim 8 (Contracts); and Claim 10 (Separation of Powers).

ER vol. I, 67. The deficiencies of the Does' equal protection, takings and police powers as-applied claims could not be remedied according to the district court, so the Does were not to file another amended complaint relying on such claims. ER vol. I, 68. The district court rejected all of the Does' facial claims because SORA is not unconstitutional in all situations as to all sex offenders. ER vol. I, 37.

In relation to the Does' free exercise of religion claim, the district court noted that pursuant to Idaho's Free Exercise of Religion Protected Act ("FERPA"), Idaho Code § 73-401, *e seq.*, passed in 2000, any state law, including SORA, could not substantially burden the exercise of religion unless the law explicitly stated it was exempt from FERPA. ER vol. I, 53. FERPA prohibits burdening the free exercise of religion unless the burden is essential to furthering a compelling a governmental interest and does so in the least restrictive means. Idaho Code § 73-402(3). The Does had not raised a FERPA claim in their Amended Complaint. As SORA does not explicitly exempt itself from FERPA, the district court directed the Does to address FERPA's impact, if any, on SORA when filing yet another amended complaint. ER vol. I, 54. The Does failed to do so.

In their Amended Complaint II, the Does set forth allegations specifically related to twelve appellants. Their claims included, once again, violations based on prohibitions against *Ex Post Facto* laws, cruel and unusual punishment, double jeopardy and impairment of contracts, as well as claims relying on the separation of

powers, due process and substantive due process rights, and the free exercise of religion. *See* ER vol. II, 44-47 ¶¶ 18-24. The facts purporting to support their as-applied claims consist mainly of difficulties suffered in the following areas: finding employment and/or disruption of business opportunities; traveling; maintaining familial, social or personal relationships; finding a place to live; and attending church. *See* ER vol. II, 9-44.

The State then moved to dismiss the Amended Complaint II pursuant to Federal Rules of Civil Procedure 12(b)(6). ER vol. II, 4. By a *Memorandum Decision and Order* filed April 5, 2019, the district court dismissed the Amended Complaint II with prejudice because it could not survive application of binding precedent of this Court and the Supreme Court. ER vol. I, 2-28. The district court then entered the *Judgment* against the Does from which they appeal. ER vol. I, 1.

E. New Arguments on Appeal

On appeal, the Does have made new arguments, which should be deemed to have been waived, to include the following:

1. Based on the Does' misinterpretation of Idaho Code § 18-8316, they argue that SORA violates the *Ex Post Facto* Clause because Idaho law requires individualized assessment of an offender's risk of recidivism. Appellants' Opening Br. (Dkt. 11) ("Does' Brief") at 10-11.

2. SORA is unconstitutionally punitive because it creates two separate categories of sex offenders - those convicted outside of Idaho, and those convicted within Idaho. *Id*. at 14.

3. SORA is vague at to what it requires of sex offenders convicted in jurisdictions other than Idaho. *Id.* This argument appears to be based on the misconception that SORA requires someone convicted of any crime outside of Idaho to register as a sex offender upon moving to Idaho. *Id*. at 17.

4. Based on a former version of Idaho Code § 18-8304 as interpreted by *State v. Dickerson*, 129 P.3d 1263 (Idaho Ct. App. 2016), SORA unconstitutionally burdens a sex offender's right to travel. *Id*. at 17.

5. The Does raise a new state claim in relation to Does 62, 82, 85, 132 and 106 based on the alleged misapplication by the State of Idaho Code § 18-8304.

6. The Does now claim that SORA violates Idaho's Free Exercise of Religion Protected Act ("FERPA"), Idaho Code § 73-401, et seq. *Id*. at 5, 26.

7. The Does' equal protection argument now relies on the alleged impingement of their right to travel. *See id*. at 5, 15-19.

IV. SUMMARY OF ARGUMENT

The Does have failed to meet the plausibility requirement of Rule 12(b)(6), Federal Rules of Civil Procedure, as to any of their claims, whether an as-applied or facial challenge. The types of hardships alleged by the Does in support of their

claims have been repeatedly rejected by this Court, as well as the U.S. Supreme Court, as inadequate to establish a valid constitutional challenge to sex offender registration laws such as Idaho's SORA.

A facial challenge to a statutory scheme requires a plaintiff to demonstrate that there is no set of facts or circumstances under which the law would be valid. The Does have not even attempted to demonstrate that SORA is facially unconstitutional under any and all sets of facts. Moreover, SORA plainly has a legitimate sweep as to any sex offender that did not commit an aggravated offense.

The Does as-applied claims based on the *Ex Post Facto* Clause, the Eighth Amendment prohibition against cruel and unusual punishment, and the Fifth Amendment prohibition against double jeopardy all fail because SORA is not punitive in intent or effect. The Idaho legislature clearly intended SORA to be a civil remedy rather than a punitive criminal scheme. The Does have not provided the clearest proof that the alleged punitive effects of SORA overcome the non-punitive intent of the legislature.

The Does have provided no cogent support for their separation of powers, impairment of contract, police powers or takings claims. They assert that those claims hinge on SORA being punitive in effect. Not only does that argument make no sense, it has no merit given this Court's repeated determination that SORA-type statutory schemes similar to Idaho's SORA are not punitive.

The Does' substantive due process claim is based on various classifications of sex offenders created largely by what the Does call the "inception date" of July 1, 1993. This argument fails because sex offenders have no liberty interest to be free from registration. Thus, the State need only show a reasonable relation to a legitimate state interest to justify SORA. That is shown by SORA's relation to the State's interest in protecting children and the communities in which they live.

The Does allege that the burden SORA allegedly places on their exercise of religion violates FERPA, an argument that they are not only making for the first time, but refused to make below in spite of the district court's request to do so. Either under FERPA or the First Amendment to the U.S. Constitution, the Does have failed to demonstrate how SORA burdens their right to the free exercise of religion.

V. ARGUMENT

A. Standard of review.

This Court conducts a *de novo* review of a dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6). *Conservation Force v. Salazar*, 646 F.3d 1240, 1241 (9th Cir. 2011) (citation omitted). Dismissal is upheld unless a claim asserts facts that "state a claim to relief that is plausible on its face." *ESG Capital Partners, LP v. Stratos*, 828 F.3d 1023, 1031 (9th Cir. 2016) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007)).

This Court "must accept as true the facts alleged in a well-pleaded complaint, but mere legal conclusions are not entitled to an assumption of truth." *Stratos*, 828 F.3d at 1031(quoting *Iqbal*, 556 U.S. at 678-79). "Factual allegations must be enough to raise a right to relief above the speculative level[.]" *Twombly*, 550 U.S. at 555 (citation omitted). The Court is not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (citation omitted), *opinion amended on denial of reh'g*, 275 F.3d 1187 (9th Cir. 2001).

"The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 556). In cases such as this one, where multiple plaintiffs are challenging the validity of a statutory scheme, each claim must be plausible on its face for each plaintiff. *Cf. Allen v. Wright*, 468 U.S. 737, 752 (1984) ((("Typically, however, the standing inquiry requires careful judicial examination of a complaint's allegations to ascertain whether the particular plaintiff is entitled to an adjudication of the particular claims asserted."), abrogated on other grounds by *Lexmark Intern, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014). "Where a complaint pleads facts that are 'merely consistent with' a

defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). "In sum, for a complaint to survive a motion to dismiss, the non-conclusory 'factual content,' and reasonable inferences from that content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Twombly*, 550 U.S. at 557).

Accepting as true the allegations in the Does' Amended Complaint and Amended Complaint II leads to the inevitable conclusion that the district court appropriately dismissed all claims. Repeatedly, this Court has held that SORA statutes do not violate the *Ex Post Facto* Clause and other provisions of the U. S. Constitution based on hardships allegedly created by the registration and notification requirements of such statutes. The Does have provided this Court with no reason to deviate from its established case law.

B. The Does' have failed to support their facial challenge to SORA.

"A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). "The fact that the [legislative] Act might operate unconstitutionally under some conceivable set of circumstances is insufficient to render it wholly invalid[.]" *Id*. As the Supreme Court has observed:

> Under *United States v. Salerno*, 481 U.S. 739 (1987), a plaintiff can only succeed in a facial challenge by "establish[ing] that no set of circumstances exists under which the Act would be valid," *i.e.*, that the law is unconstitutional in all of its applications. While some Members of the Court have criticized the *Salerno* formulation, all agree that a facial challenge must fail where the statute has a "'plainly legitimate sweep.'"

Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008) (citations omitted).

The district court observed that the Does "never address whether their claims are facial or as-applied challenges in their Complaint, nor do they even address this argument in their briefing." ER vol. I, 37, n. 5. The same criticism holds true on appeal. The Does have simply made no effort to support a facial challenge to SORA, or distinguish their facial from as-applied claims. For this reason alone, the Does' appeal of the dismissal of their facial claims falls short.

The district court correctly noted that the Does "cannot establish a facial challenge to SORA generally because the law has a "plainly legitimate sweep" and is applicable to thousands of Idahoans who are required to register for a time, but then in due course are no longer required to register." ER vol. I, 37. "In other words, there are numerous circumstances under which the [SORA] is valid and constitutional." *Id.* The Does are only a subset of sex offenders to whom SORA applies, and therefore a facial challenge cannot possibly withstand scrutiny unless

the Does explain how SORA is facially unconstitutional as to all sex offenders. They failed to do so at the district court level and fail to do so on appeal.

C. The Does' allegations lack the clearest proof required to establish an *Ex Post Facto* Clause claim.

1. Difficulties alleged by the Does fail to meet the clearest proof standard necessary to convert SORA's regulatory intent to punitive effect.

The *Ex Post Facto* Clause is found in the Eighth Amendment to the U.S. Constitution, and prohibits "cruel and unusual punishments." Article I, § 6 of the Idaho constitution contains the same prohibition, the interpretation of which tracks case law of the Supreme Court. *State v. Draper*, 262 P.3d 853 (Idaho 2011). The *Ex Post Facto* Clause prohibits a state from enacting any law that "'imposes a punishment for an act which was not punishable at the time it was committed; or imposes additional punishment to that then prescribed.'" *Russell v. Gregoire*, 124 F.3d 1079, 1083 (9th Cir. 1997) (quoting *Weaver v. Graham*, 450 U.S. 24, 28 (1981)). "'The focus of the *ex post facto* inquiry is not on whether a legislative change produces some sort of disadvantage, but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable.'" *Id.*, (alterations omitted) (quoting *Calif. Dep't of Corr. v. Morales*, 514 U.S. 499, 506 n.3 (1995)). The Does' allegations may demonstrate that they suffer from some "disadvantage" as a result of SORA, but the allegations fall well short of demonstrating a plausible *Ex Post Facto* claim.

This Court, as well as the U.S. Supreme Court, has on a number of occasions upheld the constitutionality of SORA statutory schemes in the face of the types of difficulties the Does have alleged in support of their claims. *See, Smith v. Doe,* 538 U.S. 84 (2003); *Conn. Dep't of Pub. Safety v. Doe,* 538 U.S. 1 (2003); *Litmon v. Harris*, 768 F.3d 1237 (9th Cir. 2014); *United States. v. Elk Shoulder,* 738 F.3d 948 (9th Cir. 2013); *Am. Civ. Liberties Union of Nev. v. Masto*, 670 F.3d 1046 (9th Cir. 2012); *United States. v. Elkins*, 683 F.3d 1039 (9th Cir. 2012); *United States. v. Juv. Male,* 670 F.3d 999 (9th Cir. 2012); *Doe v. Tandeske,* 361 F.3d 594 (9th Cir. 2004).

The seminal case of *Smith* involved an as-applied challenge to the Alaskan SORA, a statutory scheme that applied retroactively and required sex offender registration and community notification. *See Smith*, 538 U.S. at 89-92. The Alaskan SORA required lifetime in-person registration every ninety days for conviction of an aggravated offense. *Id.* at 90. Failure to comply with registration requirements was punishable by criminal prosecution. *Id*.

As part of the registration process, sex offenders were to provide information including "name, aliases, identifying features, address, place of employment, date of birth, conviction information, driver's license number, information about vehicles to which he had access, and postconviction treatment history." *Id.* The sex offender was also to be photographed and fingerprinted. *Id.* Much of this information was made publicly available over the internet, to include "the sex offender's or child

kidnapper's name, aliases, address, photograph, physical description, description[,] license [and] identification number of motor vehicles, place of employment, date of birth, crime for which convicted, date of conviction, place and court of conviction, length and conditions of sentence, and a statement as to whether the offender of kidnapper is in compliance with [the update] requirements…or cannot be located." *Id.* at 91 (quoting Alaska Stat. § 18.65.087(b)).

Sex offenders claimed the law violated the *Ex Post Facto* and Fourteenth Amendment Due Process clauses of the U.S. Constitution. The district court granted summary judgment against them, and the offenders appealed. *Id*. This Court held that while the Alaska legislature intended its SORA to be nonpunitive, its effects were punitive and therefore it violated the *Ex Post Facto* Clause. *Id.* at 91-92. The Supreme Court granted *certiorari*. *Id.* at 92.

Smith looked to the statutory language to determine whether the Alaska legislature intended it to be punitive in character and found the stated intent was to protect the public from sex offenders. *Smith* observed that "'['n]othing on the face of the statute suggest that the legislature sought to create anything other than a civil…scheme designed to protect the public from harm.'" *Id.* at 93 (quoting *Kansas v. Hendricks*, 521 U.S. 346, 361 (1997)).

The analysis then turned to whether the scheme was "'so punitive either in purpose or effect as to negate [the State's] intention' to deem it 'civil'." *Id.* at 92

(quoting *Hendricks*, 521 U.S. at 361). The Supreme Court noted that "[b]ecause we 'ordinarily defer to the legislature's stated intent,' 'only the clearest proof' will suffice to override legislative intent and transform what has been denominated a civil remedy into a criminal penalty.'" *Id*. (first quoting *Hendricks*, 521 U.S. at 361, then quoting *Hudson v. United States*, 522 U.S. 92, 100 (1997)). *Hendricks* referred to the "clearest proof" standard as a "heavy burden". *Hendricks*, 521 U.S. at 361.

Smith utilized the factors identified in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963), to determine whether the punitive effects of Alaska's SORA had overcome its legislative intent. Those factors include, "whether, in its necessary operation, the regulatory scheme has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose." *Smith*, 538 U.S. at 97.

Smith rejected the notion that the regulatory scheme operated as a traditional form of punishment, finding that any public shame, humiliation or stigma did not result from the SORA registration and notification scheme, but from the already publicly available fact of the offender's conviction. *Id*. at 98. Moreover, the social ostracism that may arise from the scheme was not "an integral part of the objective of the regulatory scheme." *Id*. at 99. Further, the "purpose and the principal effect of notification are to inform the public for its own safety, not to humiliate the

offender." *Id.* As *Smith* stated, "[o]ur system does not treat dissemination of truthful information in furtherance of a legitimate governmental objective as punishment." *Id*. at 98. According to *Smith*, "[w]idespread public access is necessary for the efficacy of the scheme, and the attendant humiliation is but a collateral consequence of a valid regulation." *Id*. at 99.

In relation to whether the Alaska SORA scheme created an affirmative disability or restraint, the *Smith* court observed that SORA imposed no physical restraint. *Id*. at 100. The Court further noted that the record in the case "contains no evidence that the Act has led to substantial occupational or housing disadvantages for former sex offenders that would not have otherwise occurred through the use of routine background checks by employers and landlords." *Id.* Here again, the Court stated that detrimental effects of SORA on an offender "flow not from the Act's registration and dissemination provisions, but from the fact of conviction, already a matter of public record." *Id*. at 101.

Regarding the traditional aims of punishment - deterrence and retribution - the Court observed that the Alaska SORA scheme could act as a deterrent, but so could any number of statutory schemes that do not impose punishment. *Id*. at 102. The fact that offenders may need to register for life did not meet the definition of retribution because the category of offenders "and the corresponding length of the

reporting requirement, are reasonably related to the danger of recidivism, and this is consistent with the regulatory objective." *Id.*

The most important factor identified by *Smith* is the existence of a rational connection between the statutory scheme and a nonpunitive purpose, which purpose is public safety. *Id*. at 102-03. The sex offenders argued that the scheme was not narrowly drawn to accomplish the nonpunitive purpose. *Id*. at 103. Rejecting that argument, the Court observed that a "statute is not deemed punitive simply because it lacks a close or perfect fit with the nonpunitive aims it seeks to advance." *Id*.

The sex offenders also argued that the Alaska SORA was excessive in regard to its regulatory purpose by including all sex offenders without considering their "future dangerousness". *Id*. The *Smith* court disagreed, stating that the "*Ex Post Facto* Clause does not preclude a State from making reasonable categorical judgments that conviction of specified crimes should entail particular regulatory consequences." *Id.* Further, the "State's determination to legislate with respect to convicted sex offenders as a class, rather than require individual determination of their dangerousness, does not make the statute a punishment under the *Ex Post Facto* Clause." *Smith,* 538 U.S. at 104. The Court stated that Alaska was allowed to rely on the fact that "conviction for a sex offense provides evidence of a substantial risk of recidivism." *Id.* at 103.

The Court further found that the wide dissemination of the registry information did not convert the Alaska SORA statutory scheme into an unconstitutional punishment because the system is passive. *Id*. at 105. It requires someone to actively seek the information. *Id.* The Court noted that in light of the "general mobility of our population," easy accessibility to the registry system across the state of Alaska did not equate to punishment. *Id.*

In sum, *Smith* held that the plaintiffs failed to provide "the clearest proof[] that effects of the law negate Alaska's intention to establish a civil regulatory scheme". *Id*. Without this required showing for a successful *Ex Post Facto* Clause claim, the judgment of this Court was reversed.

This Court, following *Smith*, has consistently rejected *Ex Post Facto* Clause challenges to sex offender registration statutory schemes. For example, in *Litmon v. Harris*, a sex offender alleged that the lifetime requirement to register every ninety days pursuant to California's SORA violated due process, *Ex Post Facto* and equal protection rights. 768 F.3d at 1241. This Court disagreed with the assertion that requiring registration every ninety days amounted to unconstitutional physical restraint. *Id*. at 1243. Further, problems finding and holding employment created

by the registration requirement do not implicate a fundamental right, so the state need only show a rational relationship to public safety.[1] *Id.* at 1242.

With similar results, in *Elkins*, this Court reviewed an appeal from the dismissal of an indictment for failure to register as a sex offender in violation of the federal Sex Offender Registration and Notification Act (SORNA).[2] *See Elkins*, 683 F.3d at 1041-42. *Elkins* involved a sex offender who traveled from the state of Washington, where he had registered based on his juvenile sex offender conviction, to California, where he failed to register. *Id*. at 1041. An indictment was returned against the sex offender in Washington, charging him with one count of failing to register under SORNA. *Id*. at 1042. The sex offender filed a motion to dismiss the indictment, successfully arguing that as applied to him, SORNA's registration requirements violated the *Ex Post Facto* Clause. *Id*. Relying on *Smith*, this Court reversed, holding that retroactive application of the SORNA's lifetime registration requirements did not render SORNA punitive in violation of the *Ex Post Facto* Clause. *Id*. at 1045. *Elkins* forecloses the Does' argument that retroactive application of SORA to them, even for convictions that occurred prior to the promulgation of SORA, is unconstitutional.

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[1] Idaho's SORA only prohibits sex offenders from working at a daycare center, group daycare facility or a family daycare home. The Does have not alleged that they have been denied employment because of this prohibition.

[2] 42 U.S.C. § 16901 *et seq*.

The sex offender in *Elk Shoulder* claimed among other things that the federal SORNA violated the *Ex Post Facto* Clause because of its punitive effect. *Elk Shoulder*, 738 F.3d at 952. This Court rejected the argument, noting that its decision in *Elkins* that SORNA is not punitive, was on point. *Id.* at 953. Further, the holding in *Elkins* foreclosed the plaintiff's argument that public ridicule and problems finding employment and housing caused SORNA to be punitive in effect. *Id.* at 953. This Court's holding in *Elkins* has the same effect on the Does' allegations that they suffer disadvantages in finding employment and housing as a result of SORA.

In *Masto*, this Court reviewed amendments to the Nevada SORA scheme that expanded the category of sex offenders subject to the registration and notification requirements, and added residency and movement restrictions. *See Masto*, 670 F.3d at 1050-51. Based on facial and as-applied constitutional challenges, the district court found that the amendments violated the *Ex Post Facto* Clause, and implicated the contract impairment, double jeopardy and due process clauses of the U.S. Constitution. *See id*. at 1051-52. This Court reversed all of those holdings except the ones rendered moot by the state's agreement to not retroactively enforce residency and movement restrictions. *Id*. at 1067.

Noting that the *Ex Post Facto* Clause analysis is the same for a double jeopardy challenge, this Court found, using the *Smith* analysis, that humiliation and stigmatization arise from the underlying conviction, not from SORA registration and

notification requirements. *Masto*, 670 F.3d at 1056 (citation omitted). Consistent with *Smith*, this Court also held that frequent in-person registration requirements do not create a disability to the extent that it becomes punitive. *Id.* Nor did Nevada's SORA scheme meet the traditional aim of punishment – deterrence and retribution. *Id*. at 1057 (citation omitted). Additionally, the registration and notification requirements, along with the residency restrictions, were rationally related to the nonpunitive purpose of public safety. *Id.* The lack of particularized determinations as to the recidivist threat posed by each offender did not render unconstitutional the statutory classification of those who fell within its rubric. *Id*. (citing *Smith,* 538 U.S. at 103).

Idaho intended its SORA to be a civil regulatory scheme. Idaho Code § 18-8302. As is reflected in Idaho case law, SORA registration requirements, to include the law as currently amended, do not implicate *Ex Post Facto* prohibitions. *State v. Johnson*, 266 P.3d 1146, 1150 (Idaho 2011) (citation omitted) (the effects of registering under SORA were not "so clearly punitive as to override the Legislature's stated purpose"); *State v. Joslin*, 175 P.3d 764, 775 (Idaho 2007) (SORA's essential regulatory purpose to protect children and communities does not create unconstitutional cruel and unusual punishment); *State v. Kinney*, 417 P.3d 989 (Idaho Ct. App. 2018) (SORA registration effects not sufficient to override regulatory scheme); *Groves v. State*, 328 P.3d 532, 536-37 (Idaho Ct. App. 2014)

(SORA registration requirements did not morph its regulatory nature into a punitive scheme); *State v. Gragg*, 137 P.3d 461, 464-65 (Idaho Ct. App. 2005) (rejecting claims that adverse social and employment impacts are sufficiently punitive to negate the legislative intent that SORA is a civil scheme).

The Does' have not provided an adequate basis upon which to circumvent the clear holdings of this Court, the Supreme Court, and Idaho appellate courts. All of the Does' alleged difficulties in finding employment and housing, as well as shunning by others, have been rejected by this Court as a basis for an *Ex Post Facto* claim. The difficulties stem from the Does' convictions for sex offenses, not from punishment imposed by SORA. The Does' convictions are information that is publicly available to anyone who would do a normal background check as part of the employment or housing application process. The allegations in the Amended Complaint and Amended Complaint II fall well short of the "clearest proof" standard that must be met in order to convert SORA from its nonpunitive regulatory scheme into an unconstitutional retroactive increase in punishment. The Does have not cited any case law within the bounds of this Court's jurisdiction that supports their appeal.

2. The discretion of an Idaho court to order a psychosexual evaluation for sentencing purposes does not render SORA punitive in character.

Raising a new argument on appeal, the Does challenge the district court's dismissal of their claims based on the *Ex Post Facto* Clause by arguing that because

Idaho must perform a psychosexual evaluation of each sex offender pursuant to Idaho Code § 18-8316, the categorization of sex offenders without an individualized determination of the risk of recidivism "rings of punishment and retribution." Does' Br. at 9-10. This is an argument the Does did not make below, and this Court should not allow the Does to raise it now. *Baccei v. United States*, 632 F.3d 1140, 1149 ("Absent exceptional circumstances, we generally will not consider arguments raised for the first time on appeal, although we have discretion to do so." (citation omitted)). The Does' responses to the State's motions to dismiss, as well as the transcripts for the hearings on those motions, are found in the Supplemental Excerpts of Record filed by the State. To the extent that the Does' argument is a matter of law and does not require development of a factual record, an exceptional circumstance exists. *In re Am. W. Airlines*, 217 F.3d 1161, 1165 (9th Cir. 2000) (citation omitted).

The immediate problem with the Does' argument is that Idaho Code § 18-8316 does not mandate that all sex offenders undergo a psychosexual evaluation:

> If ordered by the court, an offender convicted of any offense listed in section 18-8304, Idaho Code, may submit to an evaluation to be completed and submitted to the court[.]

Idaho Code § 18-8316. The Does' argument fails on this point alone.

Further, as the Does admit, the Supreme Court has held that a state does not violate the *Ex Post Facto* Clause by categorizing sex offenders, resulting in regulatory consequences, without performing individualized risk assessments. Does' Br. At 10; *Smith*, 538 U.S. at 103. It obviously makes no sense to argue that states cannot make such categorizations if they mandate psychosexual evaluations for sentencing purposes. According to the Does' logic, if Idaho stopped performing psychosexual evaluations of sex offenders for sentencing purposes, SORA would pass constitutional muster. The fact that Idaho can use psychosexual evaluations for sentencing purposes does not render SORA unconstitutionally punitive.

3. The Does' unfounded creation of four classes of sex offenders under Idaho Code § 18-8304 does not convert SORA to a punitive statutory scheme.

The Does also claim that Idaho's SORA is unconstitutionally punitive because it creates classes of sex offenders, some of whom need to register and others who do not. Does' Br. at 31-33. The Does' argument revolves around what they refer to as the "Inception Date" of Idaho's SORA, July 1, 1993. *Id.* Using that date, the Does believe that Idaho's SORA creates four classes of offenders, which the Does claim have no rational relationship to any non-punitive purpose, rendering SORA unconstitutionally punitive. This is another new argument being made on appeal. The four classes of sex offenders created by the Does include the following:

1. Sex offenders found guilty of a listed crime on or after July1, 1993, or who were found guilty before July 1, 1993, but were incarcerated or on probation or parole on or after that date. *Id*. at 31-32. The Does appear to include in this group a sex offender who committed a "crime covered in this chapter" (Idaho Code § 18-8304(1)(e)) after July 1, 1993 and is required to register as a sex offender in another jurisdiction. *Id*.
2. Anyone convicted on or after July 1, 1993 of "any crime" in another jurisdiction and who moves to Idaho to establish residency here. *Id*. at 32-33.
3. Anyone convicted in another jurisdiction on or after July 1, 1993 of a crime that is substantially similar to those listed under to Idaho Code § 18-8304(1)(c) and who moves to Idaho to establish residency here. *Id*. at 33.
4. An offender convicted in another jurisdiction of a crime that is substantially equivalent to the offenses requiring registration in Idaho, and at the time of moving to Idaho to establish residency, was still required to register as a sex offender in another state. *Id.*

As part of this new argument, the Does mistakenly believe that subsection (d) of Idaho Code § 18-8304(1) applies to different sex crimes than subsections (a), (b)

and (c). Subsection (a) indicates that the "provisions of this chapter shall apply to any person who" commits one of the crimes listed therein. Idaho Code § 18-8304(1)(a). Subsections (b) and (c) apply to offenders who committed a crime in another jurisdiction "that is substantially equivalent to the offenses listed in paragraph (a)." Subsection (d) applies to "a crime covered in this chapter." Because subsection (d) uses different language to describe the applicable sex crimes, the Does believe it does not apply to the same crimes, and offenders who had a conviction on or after July 1, 1993 in a foreign jurisdiction should not be required to register as a sex offender. The argument is meritless.

This argument sheds no light on whether SORA is punitive in nature or violates the *Ex Post Facto* Clause. Moreover, the Does are simply misinterpreting Idaho Code § 18-8304. Clearly, the reference in subsection (d) of Idaho Code § 18-8304(1) to a "crime covered in this chapter" includes those listed in subsection (a), as well as any that are substantially equivalent in another jurisdiction.

The Does also suffer from the misconception that subsection (b) refers to those convicted of <u>any</u> crime in another jurisdiction, rather than a crime substantially equivalent to those listed in subsection (a). *See* Does' Br. at 32. The language of subsection (b) should be read to include offenders who commit "any crime" that is "substantially equivalent" to those listed in subsection (a).

The Does then make the general statement that there "is no rational relationship to any non-punitive purpose or public safety" for the distinctions between offenders who are required to register and offenders who are not required to register. Does' Br. at 33. Therefore, according to the Does, the Idaho SORA is punitive. *Id.* This argument is, of course, based on the Does' faulty premise that several classifications of offender registration requirements exist. *See id.* at 31-33.

Further, Idaho has a legitimate interest in knowing if and when sex offenders who are required to register in other jurisdictions are taking up residency in Idaho, and SORA furthers that interest. See, *State v. Joslin,* 175 P.3d 764, 775 (Idaho 2007) (SORA "provides an essential regulatory purpose that assists law enforcement and parents in protecting children and communities." (quoting *Ray v. State,* 982 P.2d 931, 936 (Idaho 1999))). Requiring non-resident sex offenders to also register in Idaho is rationally related to Idaho's legitimate interest in the safety of its children and communities. The Does' faulty classification of sex offenders under SORA does not provide a basis to find SORA unconstitutional.

4. The Does' allegation that certain of them are illegally being required to register is a new claim that does not support reversing the dismissal of their claims.

Another new argument the Does raise on appeal is that two of them, Does 85 and 132, are required to register as sex offenders in spite of the fact that their convictions and parole occurred prior to July 1, 1993, and they were not required to

register at the time they moved to Idaho. Does' Br. at 36. This issue was not developed or litigated below, but it appears that the Does are arguing that SORA has been misapplied to Does 85 and 132. *See id*. The Does' allegation is not evidence, as they claim, of the punitive character of SORA. Rather, it is an argument that Idaho Code § 18-8304 has been misapplied to them, an argument they should make before the appropriate state forum.

The same holds true for Does 82, 62, and 106. If, as they now allege on appeal, they believe SORA has been improperly applied to them (*see id*. at 37-40), they should file a lawsuit or petition in the proper state forum to seek relief. However, their arguments are to no avail in relation to whether SORA violates the *Ex Post Facto* Clause .

D. SORA has not placed any of the Does in double jeopardy.

In support of their double jeopardy claim, the Does rely on the registration distinction required in SORA for adult (eighteen and older) sex offenders and juvenile sex offenders (between age fourteen and eighteen) set forth in the "Juvenile Sex Offender Registration Notification and Community Right-to-Know Act." Idaho Code § 18-8401, *et seq.* Does' Br. at 20-25. This is the argument the Does used below to support their equal protection claim. SER 141-144. In apparent recognition that their argument has nothing to do with double jeopardy, on appeal the Does do not attempt to connect their argument to double jeopardy proscriptions.

Moreover, the Does' argument fails to address the reasons why juveniles are generally treated differently than adults. For example, juveniles "are more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably depraved character' than are the actions of adults." *Graham v. Florida*, 560 U.S. 48, 68, (2010), as modified (July 6, 2010) (quoting *Roper v. Simmons*, 543 U.S. 551, 570 (2005)). As noted in *Roper*, "[f]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed." *Roper*, 543 U.S. at 570. Plainly, merely pointing out that juveniles are treated differently than adults is of no help to the Does.

Pursuant to the proper analysis, the Does' double jeopardy claim fails. The Fifth Amendment to the U.S. Constitution provides, in relevant part, that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." The analysis of a double jeopardy claim is essentially the same as under the *Ex Post Facto* clause. A two-step approach is applied to determine if additional punishment has been imposed: First, did the legislature intend to impose a criminal punishment or promulgate a nonpunitive regulatory scheme; second, is the law so punitive that its effect negates the legislative intent. *Masto*, 670 F.3d at 1053 (citation omitted).

As discussed in the section above regarding the Does' *Ex Post Facto* Clause claims, because SORA is not punitive by intent and the Does have not alleged

sufficient facts to establish that as applied to them SORA is punitive, the double jeopardy claim fails.

E. The disadvantages alleged by the Does do not meet the necessary criteria for a valid cruel and unusual punishment claim.

The Eighth Amendment to the U.S. Constitution proscribes "cruel and unusual punishment," as does art. I, section 6 of the Idaho Constitution. In support of their argument that SORA creates cruel and unusual punishment, the Does do little more than cite to *Millard v. Rankin*, 265 F.Supp.3d 1211 (D. Colo. 2017), a district court decision from within the Tenth Circuit Court of Appeals. The *Millard* decision does not appear to reflect current Tenth Circuit law as set forth in *Shaw v. Patton*, 823 F.3d 556 (10th Cir. 2016) (finding that retroactive application of Oklahoma's SORA does not violate *Ex Post Facto* Clause prohibitions). *Millard* has been appealed to the Tenth Circuit Court of Appeals. *Millard v. Rankin*, No. 17-1333 (Sept. 2, 2017). More importantly, the *Millard* decision does not comport with the decisions of this Court or the Supreme Court.

The "bar for cruel and unusual punishment is high." *Juv. Male*, 670 F.3d at 1010 (citations omitted). As is the case with the *Ex Post Facto* and double jeopardy claims, because SORA is not punitive, the Does' cruel and unusual punishment claim also fails as a matter of law.

In *Juvenile Male*, this Court addressed the constitutionality of the federal SORNA in light of a cruel and unusual punishment challenge. *See id.* Noting that

the sex offenders, as well as their families, would face shame and humiliation as a result of SORNA, this Court held that such shame and humiliation do not meet the "high standard of cruel and unusual punishment." *Id.* This Court further observed that the plaintiffs were not exposed to any additional risk of incarceration or physical harm as a result of SORNA requirements, so the registration requirements were not punitive in character. *Id.*

As is the case with the Does *Ex Post Facto* and double jeopardy claims, the lack of a punitive intent and effect of Idaho's SORA renders the cruel and unusual punishment claim meritless. The decision in *Juvenile Male* forecloses the Does' cruel and unusual punishment claim, as it is based on the same type of allegations already rejected by this Court.

F. SORA does not violate the Does' due process rights.

The Does essentially make a substantive due process argument on appeal. *See* Does' Br. At 11-15. They have provided no argument whatsoever in support of a procedural due process claim.

Critical to a substantive due process claim is whether the statute at issue implicates a fundamental right. *Juv. Male*, 670 F.3d at 1012 (citing *Reno v. Flores*, 507 U.S. 292, 302 (1993)). If a fundamental right is not implicated, then the statute is constitutionally sound if it bears a "'reasonable relation to a legitimate state

interest[.]'" *Juv. Male*, 670 F.3d at 1012 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 722 (1997)).

As this Court has previously held, sex offenders have no liberty or property interest to be free from the registration and notification requirements under a SORA-type of statutory scheme. *Tandeske*, 361 F.3d at 597. Therefore, the State must only show "'a reasonable relation to a legitimate state interest to justify the action.'" *Id.* (emphasis omitted) (quoting *Glucksberg*, 521 U.S. at 722).

Based on their claim that SORA's "inception date" of July 1, 1993 creates different classes of sex offenders – those convicted in Idaho before the inception date and those convicted after it, as well as a class of sex offenders convicted in other jurisdictions – the Does assert that SORA is "excessive and [does] not bear any rational relationship to any nonpunitive purpose nor a rational relationship to public safety." Does' Br. at 12. The Does argue that a sex offender convicted before July 1, 1993 is just as dangerous as one convicted after that date, so the intent of SORA must be punitive. *Id.* at 13.

The Does further argue that the failure of Idaho Code § 18-8304(c) [sic] to include an inception date creates a class of sex offenders convicted in another jurisdiction before July 1, 1993 who were not on probation or parole, or incarcerated, as of that date, but were required to register as a sex offender in the other jurisdiction at the time they establish residency in Idaho. Does' Br. at 14-15. This class,

according to the Does, is separate from those offenders that fall under the rubric of Idaho Code § 18-8304(1)(b), which covers those sex offenders who on or after July 1, 1993, were convicted in other jurisdictions of sex crimes "substantially equivalent to those listed in Idaho Code § 18-8304(1)(a). *Id*. at 14.

Based on these classifications, the Does question "'whether the regulatory means chosen are reasonable in light of the nonpunitive objective.'" *Id*. at 15 (quoting *Smith*, 538 U.S. at 105). The Does believe that the distinction between these classifications of sex offenders casts doubt as to the reasonableness of SORA in relation to its nonpunitive objective. *Id*. They further claims that as a result, SORA is too vague to allow them to understand what they are required to do. *Id.*

This is a new argument for the Does, and this Court should refuse to consider it. Below, they relied on a due process argument that focused on SORA's impact on their liberty interests – the "stigma plus" test as set forth in *Neal v. Shimoda,* 131 F.3d 818 (9th Cir. 1997). Does' Brief in Opp. To Motion to Dismiss at 54-55. SER 123-25. They also argued that their due process rights had been violated because the Idaho state legislature amended SORA in 2009, resulting in a lifetime registration requirement. Does' Brief in Opp. To Motion to Dismiss at 65. SER 125.

The Does' new argument has no merit. In essence, the Does are saying that if the State simply made all sex offenders register regardless of the date of their

conviction, SORA would not implicate due process rights or be punitive in effect. Does' Br. at 13-15. Further, requiring sex offenders who are under a duty to register in another jurisdiction, to register upon residing in Idaho, helps the State protect its citizens and communities. From the State's perspective, "[g]aining timely access to the names and addresses of residents with foreign sex offense convictions unquestionably is a legitimate state interest. *State v. Dickerson*, 129 P.3d 1263, 1270 (Idaho Ct. App. 2006). This Court has generally agreed with that assessment, stating in relation to Alaska's SORA that "the statute's provisions serve 'a legitimate nonpunitive purpose of "public safety, which is advanced by alerting the public to the risk of sex offenders in their community".'" *Tandeske*, 361 F.3d at 597 (internal quotations omitted) (quoting *Smith*, 538 U.S. at 102-03).

Given the clear precedent establishing that the Does have no fundamental right to be free from the requirements of SORA, as well as the precedent establishing that the State has a legitimate nonpunitive interest in tracking sex offenders, the Does' new due process argument clearly fails.

G. Because the Does have no fundamental right to be free from registering as a sex offender and are not members of a suspect class, their equal protection claim fails.

"The Equal Protection Clause of the Fourteenth Amendment applies strict scrutiny if the aggrieved party is a member of a protected or suspect class, or otherwise suffers the unequal burdening of a fundamental right." *Juv. Male*, 670

F.3d at 1009 (citing *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-40 (1985)). If a suspect class or fundamental right is not involved, then a government action is constitutional if it is "'rationally related to a legitimate state interest.'" *Id*., (quoting *Fields v. Palmdale Sch. Dist.*, 427 F.3d 1197, 1208 (9th Cir. 2005)). As sex offenders, the Does are not part of a protected class. *Id.* (citing *United States v. LeMay*, 260 F.3d 1018, 1030-31 (9th Cir. 2001)). Nor do they have a liberty or property interest to be free from the registration and notification requirements of SORA. *Tandeske*, 361 F.3d at 597.

Once again, the Does abandon an argument they made below and assert a new argument on appeal. Before the district court, the Does argued that SORA impermissibly created two classes of sex offenders – juveniles between the ages of fourteen and eighteen, and sex offenders eighteen and older. Does' Brief in Opp. To Motion to Dismiss at 72-75. SER 141-144. That argument reflected the equal protection claim the Does made in their Amended Complaint. (ER vol. II, 186-89, ¶¶ 247-257).

In support of their equal protection claim on appeal, the Does assert that SORA impinges on their constitutional right to travel. In doing so, the Does reiterate their argument that a sex offender convicted in another jurisdiction needs to register in Idaho if they are required by their home state to register at the time they become Idaho residents, regardless of the date of their conviction. Does' Br. at 15-18. In

contrast, sex offenders convicted in Idaho need only register if convicted on or after July 1, 1993, or had been convicted before that time and were on probation or parole, or incarcerated, as of that date. *Id*. at 14. The Does assert that this distinction impinges on the right to travel of those offenders convicted in other states before July 1, 1993, but are required to register in Idaho if regularly employed or enrolled as a student in Idaho. *Id*. at 5, 16-18.

The issue is whether the classification of which the Does complain burdens the right to travel by deterring it. *Att'y Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (citations omitted). Only nonresident sex offenders that are already required to register as a sex offender in their resident state are required to register upon moving to Idaho. Idaho Code §§ 18-8304(1)(c) and (e). That hardly burdens their right to travel. The alternative – that sex offenders who are residents of other jurisdictions could potentially reside, work or go to school in Idaho and thereby avoid registration – would encourage sex offenders to reside, work or attend school in Idaho unbeknownst to Idaho residents and law enforcement officials.

Further, as is the case with due process, the State need only demonstrate a legitimate purpose for requiring sex offenders, who are required to register in their state of residence, to register in Idaho. This Court has found that public safety is a "legitimate non-punitive purpose". *Tandeske*, 361 F.3d at 597 (citation omitted); *Juv. Male*, 670 F.3d at 1009 (citation omitted). Acquiring knowledge of the identity

and location of nonresident sex offenders clearly justifies the requirements of Idaho Code §§ 18-8304(1)(c) and (e).

The Does attempt to further distinguish classes of sex offenders by arguing that Idaho Code § 18-8304(1)(b) requires someone convicted of any crime, not just a sex crime, to register as a sex offender in Idaho. Does' Br. at 17. The Does argument requires an interpretation of Idaho's statute that is quite a stretch. In reaching for their interpretation, the Does ignore the requirement that the crime be "substantially equivalent" to the offenses listed in Idaho Code § 18-8304(1)(a).

In support of their argument, the Does cite *Dickerson,* a case holding that a former version of Idaho Code § 18-8304(1)(b) unconstitutionally impinged on the right to travel. The language at issue stated:

> (b) Enters the state on or after July 1, 1993, and who has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another state, territory, commonwealth, or other jurisdiction of the United States, including tribal courts and military courts, that is substantially equivalent to the offenses listed in subsection (1)(a) of this section.

Dickerson, 129 P.3d at 1265 (quoting former Idaho Code I. § 18-8304(1)(b)(2001)). As stated by the court, the "characteristic of this statute that gives rise to this appeal is the distinction between the time period under subsection (a) for which convictions in the state of Idaho will require registration and the time period under subsection (b) for convictions committed elsewhere by someone who enters the state after July 1, 1993." *Id*. The plaintiff successfully argued that the "disparity in the statute's

treatment of in-state offenders versus those who were convicted elsewhere and subsequently moved to Idaho violated the constitutional right to travel. *Id*. at 1266. The court held that the disparity in treatment resulted in impingement on their right to travel without even a rational relationship to a legitimate state interest. *Id*. at 1271.

The current language of Idaho Code § 18-8304(1)(b) addresses the problem noted in *Dickerson* by adding the cutoff date of July 1, 1993:

> (b) On or after July 1, 1993, has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction or who has a foreign conviction that is substantially equivalent to the offenses listed in paragraph (a) of this subsection and enters this state to establish residence or for employment purposes or to attend, on a full-time or part-time basis, any public or private educational institution including any secondary school, trade or professional institution or institution of higher education.

The Does complain that the current version still creates unconstitutionally disparate classes of offenders because of the use of "or" between "convicted of any crime" and "foreign conviction that is substantially equivalent to the offenses listed in paragraph (a) of this subsection. Does' Br. at 18-19.

It strains credulity to interpret Idaho Code § 18-8304(1)(b) as requiring SORA registration of anyone convicted of <u>any</u> <u>crime</u> in another jurisdiction, and that anyone in another jurisdiction convicted of sex crimes listed in paragraph (a) must also register. In Idaho, "effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant." *Verska v. Saint Alphonsus Regional Medical Center*, 265 P.3d 502, 510 (Idaho 2011) (quoting *In re Winton*

Lumber Co., 63 P.2d 664, 666 (Idaho 1936)). The Does' interpretation renders superfluous the language regarding sex offenders convicted in another jurisdiction of an offense substantially equivalent to the offenses listed paragraph (a). Notably, none of the Does would fall within the Does' erroneous interpretation of Idaho Code § 18-8304(1)(b), as all of their out-of-state convictions are for offenses substantially equivalent to those listed in paragraph (1)(a).

The Does have failed to allege any facts indicating that any of the indicia of free travel have been implicated. None of them has been prohibited from travel to another state or prohibited from entering a state because of SORA. *See Doe v. Miller*, 405 F.3d 700, 711-12 (8th Cir. 2005). Nor have the Does provided any factual basis supporting an allegation that any of them have been treated differently from one state to another by the requirements of SORA.

H. SORA does not burden the Does' free exercise of religion.

Raising yet another new argument on appeal, the Does assert that SORA violates Idaho's Free Exercise of Religion Protected Act ("FERPA"), Idaho Code § 73-401, *et seq*. In general, FERPA prohibits the government from substantially burdening the free exercise of religion unless the burden is "essential to further a compelling governmental interest" and is the "least restrictive means of furthering" the interest. Idaho Code § 73-402. The Does make the conclusory statement that

"the provisions of SORA run contrary to FERPA", but provide no basis for their argument. Does' Br. at 26.

In dismissing the Does' Amended Complaint, the district court specifically directed the Does to address FERPA in relation to an as-applied challenge to SORA based on the free exercise of religion:

> The Court will allow Plaintiffs to amend this claim. Plaintiffs must provide specific facts for an as-applied challenge, but must also address FERPA, specifically what, if anything, rebuts the presumption that the State enacted SORA in accordance with FERPA's requirements and thus SORA cannot violate the Free Exercise Clause as a matter of state law.

ER vol. I, 54. As the district court noted in dismissing the Does' claim based on the free exercise of religion in their Amended Complaint II:

> When permitting Plaintiffs leave to amend their free exercise claim, the Court directed Plaintiffs to address FERPA, and specifically what, if anything, rebuts the presumption that the State enacted SORA in accordance with FERPA's requirements and thus that SORA cannot violate the Free Exercise Clause as a matter of law. Plaintiffs did not address FERPA in the Second Amended Complaint, in their Response to Defendant's Motion to Dismiss, or during oral argument. As such, the Second Amended Complaint fails to state an as-applied claim for violation of Plaintiffs' First Amendment free exercise of religion rights.

ER vol. I, 27**.** Because the Does failed to raise FERPA below, and have not provided any basis for this Court to find that the provisions of SORA violate FERPA, denial of their appeal is appropriate.

FERPA provides that "government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability."

Idaho Code § 73-402(2). The person claiming a violation of FERPA has the burden of showing that a law, in this case SORA, substantially burdens their exercise of religion. *State v. White*, 271 P.3d 1217, 1221 (Idaho Ct. App. 2011). In *White*, the appellant challenged his arrest pursuant to Idaho Code § 37-2732(c) for possession of marijuana and Idaho Code § 37-2734A for possession of drug paraphernalia as it related to his use of marijuana for religious purposes.

In contrast to the laws at issue in *White*, which directly regulated use of marijuana, SORA does not directly or indirectly regulate religious practices in any way. Rather, SORA only prohibits conduct related to school activities and buildings. Nothing in SORA prohibits or regulates church attendance or involvement with religious activities. SORA only prevents a sex offender from attending church during those times the church is used as a school and is properly posted as such pursuant to Idaho Code § 18-8329(1)(a).

Moreover, the difficulties the Does experience when attending church arise from the conduct of third parties. *See, e.g.*, ER vol. II, 10-11, 27, 30, 43. The Does brought their claims pursuant to 42 U.S.C. § 1983, which creates liability for a "person who, under color of any statute…of any State…subjects, or causes to be subjected, any citizen…to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws [.]" The people that are creating difficulties

for the Does at church are not acting under the color of law, and are not the people named as defendants in this lawsuit.

Therefore, neither the government nor a person acting under the color of law has done anything to burden the Does' freedom to exercise their religious beliefs. The difficulty the Does may have in attending church is not a result of SORA proscriptions. Rather, their status as sex offenders, a status that is publicly known or available due to their conviction, is the source of their difficulties.

Nor do the Does have a valid freedom of religion claim pursuant to the First Amendment to the U.S. Constitution. "The Free Exercise Clause 'protect[s] religious observers against unequal treatment' and subjects to the strictest scrutiny laws that target the religious for 'special disabilities' based on their 'religious status.'" *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2019, (2017) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 533, 542 (1993)). The Does have not alleged that they have been targeted because of their religious beliefs. Without any allegations that the Does have been discriminated against on the basis of religion, their freedom to exercise their religious beliefs has not been impinged upon.

Further, as the U.S. Supreme Court has noted, "the Free Exercise Clause [does] not entitle the church members to a special dispensation from the general criminal laws on account of their religion." *Trinity Lutheran Church of Columbia,*

Inc., 137 S. Ct. at 2021 (citing *Emp't Div. v. Smith*, 494 U.S. 873 (1990)); *Lyng v. Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988)).

The Does have failed to meet their burden under FERPA to show how SORA burdens their free exercise of religion. Nor have they demonstrated how SORA targets their religious beliefs. The dismissal of their free exercise claim should be upheld.

I. The Does have failed to allege a plausible impairment of contract claim.

The extent of the Does' support for their impairment of contract claim is part of a single sentence indicating that it "in most ways relate[s] to the analysis set forth above, i.e., punitive vs. non-punitive." Does' Br. at 25. Plainly, this falls far short of a reason to overturn the dismissal of their contract impairment claim by the district court. The existence of a valid contract impairment claim bears no relationship to "punitive vs. non-punitive".

The U.S. Constitution provides that "no State shall…pass any…Law impairing the Obligation of Contracts." U.S. Const. Art. I, § 10. Article I, section 16 of the Idaho Constitution contains virtually identical language as in the U.S. Constitution, and is interpreted consistent with federal law. *CDA Dairy Queen, Inc. v. State Ins. Fund*, 299 P.3d 186, 190, 194 (Idaho 2012). Relying on those two constitutional provisions, some of the Does claim, without providing specifics, that

SORA somehow violates the terms of court orders or plea agreements. *See, e.g.*, ER vol. II, 28, 34, 39.

Doe 126 asserts he pleaded guilty to the crime of Child Sexually Abusive Activity in Michigan, and that as part of his plea bargain, his case would be disposed pursuant to the Holmes Youthful Training [sic] Act. *See id*. at 28. That Act, according to Doe 126, meant that his conviction would be sealed and not become public information. *Id*. He claims that placing his conviction in the public sex offender registry violates the terms of his plea agreement. *Id*. However, Michigan's "Sex Offenders Registration Act," Mich. Comp. Laws Ann. § 28.721, *et seq*., specifically provides that sex offenders assigned to the Holmes Youthful Trainee Act are required to register as sex offenders. *See Mich. Comp. Laws. Ann*. §§ 28.722 and 28.723. That requirement has existed since 1994. 1994 Mich. Legis. Serv. P.A. 295 (S.B. 397). Doe 126 has not alleged that he entered into a guilty plea on the condition he would not need to register as a sex offender in contravention of the Michigan SORA.

Doe 134 alleges that he entered into a plea agreement stating that the record of his felony charges of Statutory Sexual Seduction and Open or Gross Lewdness, with two 15 year old victims would be sealed, but because of the Nevada SORA, his crime was revealed publicly. *See* ER vol. II, 32, 34. Here as well, Doe 134 has not alleged he entered into a plea agreement on the basis that he would not be required

to register as a sex offender. He has not even alleged that criminal records do not fall under the rubric of the Nevada SORA.

In 1997, Doe 111 was convicted in Idaho of two counts of Battery with the Intent to Commit Lewd Conduct and the crime of Battery with the Intent to Commit Rape with a Minor Child between the ages of fourteen and sixteen. ER vol. II, 39. He alleges that after completing six months of court-retained jurisdiction, his probation officer told him he had to register as a sex offender. *Id*. Doe 111 alleges that he told his probation officer that he did not need to register per his plea agreement. *Id*. He does not specifically allege that he plead guilty in exchange for a promise that he would not need to register as a sex offender.

Although Does 126, 134 and 111 are the only Does that even mention a plea agreement, the Does claim in their Contract Clause cause of action that any of them that received a withheld judgment or had their charges reduced or dismissed has a valid impairment of contract claim. ER vol. II, 46. There is no merit to this unsupported argument. SORA, in fact, requires a sex offender to register even if the offender has received a withheld judgment. Idaho Code § 18-8306(2).

This Court uses a two-step analysis to determine if a valid contract impairment claim exists. *Masto*, 670 F.3d at 1060. *Masto* involved a challenge to the retroactive application of two Nevada SORA laws, one expanding the scope of sex offender registration and public notification requirements, the other setting movement and

residency limits on offenders. *See id.* at 1050-51. Nevada's SORA public notification requirements exceed Idaho's in that Nevada requires police notification of every school and public housing agency in the area where an offender lives, along with notification to youth and religious organizations. *See id.* at 1051. Further, in regard to the most serious offenders, Nevada officials are to notify any member of the public that might come into contact with the offender. *Id*. A district court enjoined retroactive application of both laws based on violation of the *Ex Post Facto* Clause, contract impairment, double jeopardy and due process clauses of the U.S. Constitution. *Id*. at 1052.

On appeal, this Court observed that a contract impairment claim consists of a two-step analysis: "(1) whether the state law has the effect of impairing a contractual obligation; (2) if so, whether that impairment is permitted under the Constitution." *Id*. at 1060 (citing *U.S. Trust Co. v. New Jersey*, 431 U.S. 1, 25 (1977)). In relation to the second step of the analysis, this Court noted:

> In connection with the second question, the [*U.S. Trust Co.*] Court observed that "it is not every modification of a contractual promise that impairs the obligation of contract under federal law." *U.S. Trust Co.* also reiterated that a "'State has the sovereign right to protect the general welfare of the people" and "'we must respect the wide discretion on the part of the legislature in determining what is and what is not necessary.'"…
>
> > [T]he state also continues to possess authority to safeguard the vital interest of its people. It does not matter that legislation appropriate to that end has the result of modifying or abrogating contracts already in effect. Not

> only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.
>
> ….Moreover, *U.S. Trust Co.* reminds us that "States must possess broad power to adopt general regulatory measures without being concerned that private contracts will be impaired, or even destroyed as a result."

Id. at 1060-61 (quoting *U.S. Trust Co.*, 431 U.S. at 16; then quoting *El Paso v. Simmons*, 379 U.S. 497, 506-07 (1965); and then quoting *Home Bldg. & Loan Ass'n Blaisdell*, 290 U.S. 398, 434-35 (1934)). Even if the statute at issue had impaired the plea bargain contracts, this Court stated it would have found that the impairment was constitutionally permitted:

> We would do so for the same reasons previously articulated and because of the importance of this law to the protection of the general welfare of people in Nevada against sexually motivated crimes. Nevada's police power to promote public safety is entitled to respect. A State's law in this context is entitled to a presumption of constitutionality.

Masto, 670 F.3d at 1061 (citing *Smith*, 538 U.S. at 110 (Thomas, J., concurring)). Assuming, although the Does have provided no allegations to support the contention, that SORA impaired their plea bargains in some fashion, the protection of the children and their communities would not be unconstitutional.

This Court recognized only one exception to this respect for police power:

> However, we do note that in individual cases where the state has made an explicit promise to a defendant that the defendant would be exempt from registration as a condition of his guilty plea, that promise—whether memorialized in the terms of the written plea agreement or

> otherwise proven—is entitled to be enforced against the State. *Santobello v. New York*, 404 U.S. 257, 262, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971) ("[W]hen a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled."); *see also Buckley v. Terhune*, 441 F.3d 688, 694 (9th Cir.2006) (en banc).

Id. at 1061. No Doe has specifically alleged that they plead guilty to a sex crime in return for a promise from the State that they would not need to register as a sex offender. The dismissal of the Does' contract impairment claims should be upheld.

J. SORA does not violate the Separation of Powers doctrine.

Article II, § 1 of the Idaho Constitution prohibits one branch of government from exercising the power ascribed to another branch. The U.S. Constitution lacks a similar provision. Here as well, in support of their separation of powers claim, the Does merely assert that the proper analysis is "punitive vs. non-punitive." Does' Br. at 25. Obviously, that analysis has nothing to do with the question of whether SORA violates the separation of powers clause found in the Idaho Constitution. The allegations on which the Does base their separation of powers claim are the same basis as those on which their impairment of contract claim rests: an alleged interference with the plea agreements some Does may have entered into. *See* ER vol. II, 46 ¶ 22.

In Idaho, "the separation of powers doctrine is triggered when (1) a 'textually demonstrable constitutional commitment' assigns the matter to a particular branch

of government; or (2) the matter implicates another branch's discretionary authority." *Tucker v. State*, 394 P.3d 54, 72 (2017) (quoting *Miles v. Idaho Power Co.*, 778 P.2d 757, 761-62 (1989)). The Does allege that "the Idaho Legislature has usurped the authority of the Idaho Courts to enter into and enforce plea agreements, to grant withheld judgments, and/or reduce and/or dismiss charges." *See* ER vol. II 46, ¶ 22.

The Does have not provided any factual allegations relating to the existence of plea agreements or withheld judgments, or how the SORA amendments may have affected those documents. Regardless, because the SORA statutory scheme is a civil regulatory scheme and not punitive, the legislature has not usurped the courts' authority whatsoever.

K. The Does have not alleged any facts to support a takings claim.

The only support the Does raise for their takings claims consists of a statement that it "in most ways relate[s] to the analysis set forth above, i.e., punitive vs. non-punitive." Does' Br. at 25. Such statements do not justify reversing the dismissal of the Does' claims. A takings claim does not depend on whether the governmental conduct at issue is somehow punitive.

The district court dismissed the Does' Fifth Amendment takings claim because they had failed to comply with the exhaustion of state remedies requirement as mandated by *Williamson Cnty Reg'l Planning Comm'n v. Hamilton Bank of*

Johnson City, 473 U.S. 172 (1985). ER vol. I, 11 n.3. For that reason, the takings claim was not addressed before the district court. The Supreme Court overturned *Williamson County* in *Knick v. Township of Scott, Pa*. U.S. __, 139 S.Ct. 2162, 2170 (2019).

However, dismissal of the Does' takings claims should still be upheld because they have not alleged any facts on which a valid takings claim could be based. They provide no allegations regarding the value of their property or how that value has been affected by the imposition of SORA.

The Does claim that SORA, "by placing residential and movement restrictions on Plaintiffs, unconstitutionally restricts Plaintiffs' property rights to the point that constitutes a regulatory taking requiring just compensation." ER vol. II 193. Without more, such conclusory statements are plainly inadequate to establish a takings claim.

As stated by the Supreme Court:

> [A] plaintiff seeking to challenge a government regulation as an uncompensated taking of private property may proceed under one of the other theories discussed above—by alleging a "physical" taking, a *Lucas*-type "total regulatory taking," a *Penn Central* taking, or a land-use exaction violating the standards set forth in *Nollan* and *Dolan.*

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528, 548 (2005) (citing *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Lucas v. S. C. Council*, 505 U.S. 1003 (1992); *Nollan v. Cal. Coastal Comm'n.*, 483 U.S. 825 (1987); *Penn Cent. Transp. Co. v. City of*

New York, 438 U.S. 104 (1978)). The Does have not alleged any facts that fit within any of the appropriate takings theories recognized by the Supreme Court. Dismissal of their takings claim should be upheld.

L. SORA does not violate the police powers clause of the Idaho Constitution.

The Does once again rely on their "punitive vs. non-punitive" analysis to support what they call their "Police Power" claim. Does' Br. at 25. The claim is not specifically addressed in the Does' Amended Complaint II, other than being mentioned in paragraph 18 of the "Prayer for Relief". ER vol. II, 50 ¶ 18. It is also set forth in their Amended Complaint as a twelfth cause of action, styled as "Violation of Article 11, Section 8 of the Idaho Constitution (Police Powers)." ER vol. II, 194. The Does also reference Article I, Section 10 of the U.S. Constitution in relation to their police powers claim. *Id.* at 194 ¶287.

Reliance on Article I, Section 10 of the U.S. Constitution and article XI, section 8 of the Idaho Constitution for the police power claim makes no sense. Article I, Section 10 of the U.S. Constitution has nothing to do with police powers. Article XI, section 8 of the Idaho Constitution addresses police powers retained by the State ("…and the police powers of the state shall never be abridged…"). The purpose of this constitutional clause is to prevent the State from limiting its police power. *See Idaho Water Resource Bd. v. Kramer*, 548 P.2d 35, 63 (Idaho 1976) (agreement between Water Res. Board and private power company was not an

"impermissible limitation…on the exercise by the state of its power of eminent domain…"). At no point in his litigation have the Does explained how SORA abridges the police power of the State.

Apparently, what the Does actually mean is that in exercising its police powers by enacting SORA, the State has exceeded its police powers. Unfortunately, the Does have made no cogent argument on appeal to support that argument either.

Idaho's SORA reflects a reasonable and necessary use of police power to address the public safety posed by the potential abuse of minor children. This Court as well as the Supreme Court, have held that SORA statutory schemes can retroactively apply to sex offenders without running afoul of constitutional protections. In other words, SORA is not punitive in effect. *See, Juv. Male,* 670 F.3d 999. Dismissal of the Does' police powers claim should be upheld.

VI. CONCLUSION

The State respectfully requests that this Court affirm the *Judgment* entered by the district court.

DATED THIS 15th day of October, 2019.

s/ Chris Kronberg
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STATEMENT OF RELATED CASES

Pursuant to Ninth Circuit Rule 28-2.6, Appellees are not aware of any related cases pending in this Court:

CERTIFICATE OF COMPLIANCE

PURSUANT TO CIRCUIT RULE 32-1

I certify that:

The brief is:

_XX_ Proportionately spaced, has a typeface of 14 points or more and contains 13,922 words

or is

_____ Monospaced, has 10.5 or fewer characters per inch and contains _____ words or _____ lines of text

or is

_____ In conformance with the type specifications set forth at Fed. R. App. P. 32(a)(5) and does not exceed _____ pages

DATED THIS 15th day of October, 2019.

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CERTIFICATE OF SERVICE

9th Circuit Case Number: 19-35391

I HEREBY CERTIFY that I electronically filed the foregoing/attached documents with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the Appellate Electronic Filing system on October 15, 2019, which electronically served the Appellee's Answering Brief, Appendix, Certificate of Compliance for Briefs, Statement of Related Cases, and Supplemental Excerpts of Record to the following:

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No. 19-35391

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOES, John and Jane, 1-134,

Plaintiffs-Appellants,

v.

LAWRENCE WASDEN, Attorney General
of the State of Idaho; et al.,

Defendants-Appellees.

Appeal from the United States District Court for the District of Idaho
D.C. No. 1:16-cv-00429-DCN
Honorable David C. Nye, Presiding

ADDENDUM

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United States Code Annotated
Constitution of the United States
Annotated
Amendment I. Religion; Speech and the Press; Assembly; Petition

U.S.C.A. Const. Amend. I-Full text

Amendment I. Establishment of Religion; Free Exercise of Religion; Freedom of Speech and the Press; Peaceful Assembly; Petition for Redress of Grievances

Currentness

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const Amend. I--Establishment clause; Free Exercise clause>

<USCA Const Amend. I--Free Speech clause; Free Press clause>

<USCA Const Amend. I--Assembly clause; Petition clause>

U.S.C.A. Const. Amend. I-Full text, USCA CONST Amend. I-Full text
Current through P.L. 116-63.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment V. Grand Jury; Double Jeopardy; Self-Incrimination; Due Process; Takings

U.S.C.A. Const. Amend. V full text

Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Takings without Just Compensation

Currentness

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<Historical notes and references are included in the full text document for this amendment.>

<For Notes of Decisions, see separate documents for clauses of this amendment:>

<USCA Const. Amend. V--Grand Jury clause>

<USCA Const. Amend. V--Double Jeopardy clause>

<USCA Const. Amend. V--Self-Incrimination clause>

<USCA Const. Amend. V-- Due Process clause>

<USCA Const. Amend. V--Takings clause>

U.S.C.A. Const. Amend. V full text, USCA CONST Amend. V full text
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United States Code Annotated
Constitution of the United States
Annotated
Amendment VIII. Excessive Bail, Fines, Punishments

U.S.C.A. Const. Amend. VIII

Amendment VIII. Excessive Bail, Fines, Punishments

Currentness

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Notes of Decisions (6615)

U.S.C.A. Const. Amend. VIII, USCA CONST Amend. VIII
Current through P.L. 116-63.

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United States Code Annotated
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U.S.C.A. Const. Amend. XIV-Full Text

AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Currentness

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

U.S.C.A. Const. Amend. XIV-Full Text, USCA CONST Amend. XIV-Full Text
Current through P.L. 116-63.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 9, cl. 3

Section 9, Clause 3. Bills of Attainder and Ex Post Facto Laws

Currentness

No Bill of Attainder or ex post facto Law shall be passed.

Notes of Decisions (993)

U.S.C.A. Const. Art. I § 9, cl. 3, USCA CONST Art. I § 9, cl. 3
Current through P.L. 116-63.

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United States Code Annotated
Constitution of the United States
Annotated
Article I. The Congress

U.S.C.A. Const. Art. I § 10, cl. 1

Section 10, Clause 1. Treaties, Letters of Marque and Reprisal; Coinage of Money; Bills of Credit; Gold and Silver as Legal Tender; Bills of Attainder; Ex Post Facto Laws; Impairment of Contracts; Title of Nobility

Currentness

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

<This clause is displayed in six separate documents according to subject matter,>

<see USCA Const Art. I § 10, cl. 1-Treaties, Etc.>

<see USCA Const Art. I § 10, cl. 1-Coinage of Money>

<see USCA Const Art. I § 10, cl. 1-Bills of Credit>

<see USCA Const Art. I § 10, cl. 1-Legal Tender>

<see USCA Const Art. I § 10, cl. 1-Bills of Attainder, Etc.>

<see USCA Const Art. I § 10, cl. 1-Impairment of Contracts>

U.S.C.A. Const. Art. I § 10, cl. 1, USCA CONST Art. I § 10, cl. 1
Current through P.L. 116-63.

End of Document

West's Idaho Code Annotated
Constitution of the State of Idaho
Article I. Declaration of Rights

Const. Art. I, § 6

§ 6. Right to bail--Cruel and unusual punishments prohibited

Currentness

All persons shall be bailable by sufficient sureties, except for capital offenses, where the proof is evident or the presumption great. Excessive bail shall not be required, nor excess fines imposed, nor cruel and unusual punishments inflicted.

Notes of Decisions (116)

Const. Art. I, § 6, ID CONST Art. I, § 6
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

West's Idaho Code Annotated
Constitution of the State of Idaho
Article I. Declaration of Rights

Const. Art. I, § 16

§ 16. Bills of attainder, etc., prohibited

Currentness

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall ever be passed.

Notes of Decisions (79)

Const. Art. I, § 16, ID CONST Art. I, § 16
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

West's Idaho Code Annotated
Constitution of the State of Idaho
Article II. Distribution of Powers

Const. Art. II, § 1

§ 1. Departments of government

Currentness

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the others, except as in this constitution expressly directed or permitted.

Notes of Decisions (303)

Const. Art. II, § 1, ID CONST Art. II, § 1
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

West's Idaho Code Annotated
Constitution of the State of Idaho
Article XI. Corporations, Public and Private

Const. Art. XI, § 8

§ 8. Right of eminent domain and police power reserved

Currentness

The right of eminent domain shall never be abridged, nor so construed as to prevent the legislature from taking the property and franchises of incorporated companies, and subjecting them to public use, the same as the property of individuals; and the police powers of the state shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals, or the general well being of the state.

Notes of Decisions (7)

Const. Art. XI, § 8, ID CONST Art. XI, § 8
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1331

§ 1331. Federal question

Currentness

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 930; Pub.L. 85-554, § 1, July 25, 1958, 72 Stat. 415; Pub.L. 94-574, § 2, Oct. 21, 1976, 90 Stat. 2721; Pub.L. 96-486, § 2(a), Dec. 1, 1980, 94 Stat. 2369.)

Notes of Decisions (3034)

28 U.S.C.A. § 1331, 28 USCA § 1331
Current through P.L. 116-63.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1343

§ 1343. Civil rights and elective franchise

Currentness

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section--

(1) the District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimitation Recognized by In re Mid-Continent Electric, Inc., Bkrtcy.M.D.Fla., Apr. 11, 2002

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 85. District Courts; Jurisdiction (Refs & Annos)

28 U.S.C.A. § 1367

§ 1367. Supplemental jurisdiction

Currentness

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if--

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

CREDIT(S)

(Added Pub.L. 101-650, Title III, § 310(a), Dec. 1, 1990, 104 Stat. 5113.)

Notes of Decisions (1588)

28 U.S.C.A. § 1367, 28 USCA § 1367
Current through P.L. 116-63.

End of Document

United States Code Annotated
Title 28. Judiciary and Judicial Procedure (Refs & Annos)
Part IV. Jurisdiction and Venue (Refs & Annos)
Chapter 83. Courts of Appeals (Refs & Annos)

28 U.S.C.A. § 1291

§ 1291. Final decisions of district courts

Currentness

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

CREDIT(S)

(June 25, 1948, c. 646, 62 Stat. 929; Oct. 31, 1951, c. 655, § 48, 65 Stat. 726; Pub.L. 85-508, § 12(e), July 7, 1958, 72 Stat. 348; Pub.L. 97-164, Title I, § 124, Apr. 2, 1982, 96 Stat. 36.)

Notes of Decisions (3405)

28 U.S.C.A. § 1291, 28 USCA § 1291
Current through P.L. 116-63.

End of Document

KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedLimited on Preemption Grounds by Molinelli-Freytes v. University of Puerto Rico, D.Puerto Rico, July 27, 2010
KeyCite Yellow Flag - Negative TreatmentProposed Legislation

United States Code Annotated
Title 42. The Public Health and Welfare
Chapter 21. Civil Rights (Refs & Annos)
Subchapter I. Generally

42 U.S.C.A. § 1983

§ 1983. Civil action for deprivation of rights

Effective: October 19, 1996

Currentness

<Notes of Decisions for 42 USCA § 1983 are displayed in six separate documents. Notes of Decisions for subdivisions I to IX are contained in this document. For additional Notes of Decisions, see 42 § 1983, ante.>

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CREDIT(S)

(R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284; Pub.L. 104-317, Title III, § 309(c), Oct. 19, 1996, 110 Stat. 3853.)

Notes of Decisions (5962)

42 U.S.C.A. § 1983, 42 USCA § 1983
Current through P.L. 116-63.

End of Document

West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8301

§ 18-8301. Short title

Currentness

This chapter shall be known and may be cited as the "Sexual Offender Registration Notification and Community Right-to-Know Act."

Credits

S.L. 1998, ch. 411, § 2.

Notes of Decisions (4)

I.C. § 18-8301, ID ST § 18-8301
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8302

§ 18-8302. Findings

Currentness

The legislature finds that sexual offenders present a danger and that efforts of law enforcement agencies to protect their communities, conduct investigations and quickly apprehend offenders who commit sexual offenses are impaired by the lack of current information available about individuals who have been convicted of sexual offenses who live within their jurisdiction. The legislature further finds that providing public access to certain information about convicted sexual offenders assists parents in the protection of their children. Such access further provides a means for organizations that work with youth or other vulnerable populations to prevent sexual offenders from threatening those served by the organizations. Finally, public access assists the community in being observant of convicted sexual offenders in order to prevent them from recommitting sexual crimes. Therefore, this state's policy is to assist efforts of local law enforcement agencies to protect communities by requiring sexual offenders to register with local law enforcement agencies and to make certain information about sexual offenders available to the public as provided in this chapter.

Credits

S.L. 1998, ch. 411, § 2. Amended by S.L. 2011, ch. 311, § 1, eff. July 1, 2011.

Notes of Decisions (6)

I.C. § 18-8302, ID ST § 18-8302
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8303

§ 18-8303. Definitions

Effective: July 1, 2019

Currentness

As used in this chapter:

(1) "Aggravated offense" means any of the following crimes: 18-1506A (ritualized abuse of a child); 18-1508 (lewd conduct); 18-4003(d) (murder committed in the perpetration of rape); 18-4502 (first-degree kidnapping committed for the purpose of rape, committing an infamous crime against nature, committing any lewd and lascivious act upon any child under the age of sixteen years or for purposes of sexual gratification or arousal); 18-4503 (second-degree kidnapping where the victim is an unrelated minor child and the kidnapping is committed for the purpose of rape, committing an infamous crime against nature, committing any lewd and lascivious act upon any child under the age of sixteen years or for purposes of sexual gratification or arousal); 18-6101 (rape, but excluding section 18-6101(1) where the victim is at least twelve years of age or the defendant is eighteen years of age); 18-6608 (forcible penetration by use of a foreign object); 18-8602(1)(a)(i) (sex trafficking); and any other offense set forth in section 18-8304, Idaho Code, if at the time of the commission of the offense the victim was below the age of thirteen (13) years or an offense that is substantially similar to any of the foregoing offenses under the laws of another jurisdiction or military court or the court of another country.

(2) "Board" means the sexual offender management board described in section 18-8312, Idaho Code.

(3) "Central registry" means the registry of convicted sexual offenders maintained by the Idaho state police pursuant to this chapter.

(4) "Certified evaluator" means either a psychiatrist licensed by this state pursuant to chapter 18, title 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to chapter 23, chapter 32, or chapter 34, title 54, Idaho Code. Such person shall have by education, experience and training, expertise in the assessment and treatment of sexual offenders, and such person shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in section 18-8314, Idaho Code.

(5) "Department" means the Idaho state police.

(6) “Employed” means full-time or part-time employment exceeding ten (10) consecutive working days or for an aggregate period exceeding thirty (30) days in any calendar year, or any employment that involves counseling, coaching, teaching, supervising or working with minors in any way regardless of the period of employment, whether such employment is financially compensated, volunteered or performed for the purpose of any government or education benefit.

(7) “Foreign conviction” means a conviction under the laws of Canada, Great Britain, Australia or New Zealand, or a conviction under the laws of any foreign country deemed by the U.S. department of state, in its country reports on human rights practices, to have been obtained with sufficient safeguards for fundamental fairness and due process.

(8) “Incarceration” means committed to the custody of the Idaho department of correction or department of juvenile corrections, but excluding cases where the court has retained jurisdiction.

(9) “Jurisdiction” means any of the following: a state, the District of Columbia, the commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, the federal government or a federally recognized Indian tribe.

(10) “Minor” means an individual who has not attained the age of eighteen (18) years.

(11) “Offender” means an individual convicted of an offense listed and described in section 18-8304, Idaho Code, or a substantially similar offense under the laws of another jurisdiction or military court or the court of another country deemed by the U.S. department of state, in its country reports on human rights practices, to have sufficient safeguards for fundamental fairness and due process.

(12) “Offense” means a sexual offense listed in section 18-8304, Idaho Code.

(13) “Psychosexual evaluation” means an evaluation that specifically addresses sexual development, sexual deviancy, sexual history and risk of reoffense as part of a comprehensive evaluation of an offender.

(14) “Recidivist” means an individual convicted two (2) or more times of any offense requiring registration under this chapter.

(15) “Residence” means the offender’s present place of abode.

(16) “Student” means a person who is enrolled on a full-time or part-time basis, in any public or private educational

institution, including any secondary school, trade or professional institution or institution of higher education.

(17) “Violent sexual predator” means a person who was designated as a violent sexual predator by the sex offender classification board where such designation has not been removed by judicial action or otherwise.

Credits

S.L. 1998, ch. 411, § 2; S.L. 1999, ch. 349, § 1; S.L. 2000, ch. 236, § 1; S.L. 2000, ch. 469, § 30; S.L. 2001, ch. 194, § 1; S.L. 2002, ch. 183, § 1; S.L. 2003, ch. 235, § 1; S.L. 2004, ch. 125, § 1; S.L. 2009, ch. 250, § 1, eff. July 1, 2009. Amended by S.L. 2010, ch. 352, § 6, eff. July 1, 2010; S.L. 2011, ch. 311, § 2, eff. July 1, 2011; S.L. 2016, ch. 296, § 9, eff. July 1, 2016; S.L. 2019, ch. 30, § 1, eff. July 1, 2019; S.L. 2019, ch. 143, § 5, eff. July 1, 2019.

Notes of Decisions (9)

I.C. § 18-8303, ID ST § 18-8303
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document


KeyCite Yellow Flag - Negative Treatment
Unconstitutional or PreemptedPrior Version Held Unconstitutional by State v. Dickerson, Idaho App., Feb. 03, 2006

West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8304

§ 18-8304. Application of chapter--Rulemaking authority

Effective: July 1, 2019

Currentness

(1) The provisions of this chapter shall apply to any person who:

(a) On or after July 1, 1993, is convicted of the crime, or an attempt, a solicitation, or a conspiracy to commit a crime provided for in section 18-909 (assault with intent to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-911 (battery with intent to commit rape, infamous crime against nature, or lewd and lascivious conduct with a minor, but excluding mayhem, murder or robbery), 18-919 (sexual exploitation by a medical care provider), 18-925 (aggravated sexual battery), 18-1505B (sexual abuse and exploitation of a vulnerable adult), 18-1506 (sexual abuse of a child under sixteen years of age), 18-1506A (ritualized abuse of a child), felony violations of 18-1507 (sexual exploitation of a child), 18-1508 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor child sixteen or seventeen years of age), 18-1509A (enticing a child over the internet), 18-4003(d) (murder committed in perpetration of rape), 18-4116 (indecent exposure, but excluding a misdemeanor conviction), 18-4502 (first degree kidnapping committed for the purpose of rape, committing the infamous crime against nature or for committing any lewd and lascivious act upon any child under the age of sixteen, or for purposes of sexual gratification or arousal), 18-4503 (second degree kidnapping where the victim is an unrelated minor child), 18-5605 (detention for prostitution), 18-5609 (inducing person under eighteen years of age into prostitution), 18-5610 (utilizing a person under eighteen years of age for prostitution), 18-5611 (inducing person under eighteen years of age to patronize a prostitute), 18-6101 (rape, but excluding 18-6101(1) where the defendant is eighteen years of age), 18-6110 (sexual contact with a prisoner), 18-6602 (incest), 18-6605 (crime against nature), 18-6608 (forcible penetration by use of a foreign object), 18-6609 (video voyeurism where the victim is a minor or upon a second or subsequent conviction), 18-7804 (if the racketeering act involves kidnapping of a minor) or 18-8602(1)(a)(i) (sex trafficking), Idaho Code.

(b) On or after July 1, 1993, has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction or who has a foreign conviction that is substantially equivalent to the offenses listed in paragraph (a) of this subsection and enters this state to establish residence or for employment purposes or to attend, on a full-time or part-time basis, any public or private educational institution including any secondary school, trade or professional institution or institution of higher education.

(c) Has been convicted of any crime, an attempt, a solicitation or a conspiracy to commit a crime in another jurisdiction, including military courts, that is substantially equivalent to the offenses listed in paragraph (a) of this subsection and was required to register as a sex offender in any other state or jurisdiction when he established residency in Idaho.

(d) Pleads guilty to or has been found guilty of a crime covered in this chapter prior to July 1, 1993, and the person, as a result of the offense, is incarcerated in a county jail facility or a penal facility or is under probation or parole supervision, on or after July 1, 1993.

(e) Is a nonresident regularly employed or working in Idaho or is a student in the state of Idaho and was convicted, found guilty or pleaded guilty to a crime covered by this chapter and, as a result of such conviction, finding or plea, is required to register in his state of residence.

(2) An offender shall not be required to comply with the registration provisions of this chapter while incarcerated in a correctional institution of the department of correction, a county jail facility, committed to the department of juvenile corrections or committed to a mental health institution of the department of health and welfare.

(3) A conviction for purposes of this chapter means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment or withheld judgment.

(4) The department shall have authority to promulgate rules to implement the provisions of this chapter.

Credits

S.L. 1998, ch. 411, § 2; S.L. 1999, ch. 302, § 1; S.L. 1999, ch. 349, § 2; S.L. 2001, ch. 194, § 2; S.L. 2003, ch. 145, § 2; S.L. 2004, ch. 122, § 2; S.L. 2005, ch. 233, § 1; S.L. 2006, ch. 408, § 1, eff. July 1, 2006; S.L. 2009, ch. 250, § 2, eff. July 1, 2009. Amended by S.L. 2010, ch. 352, § 7, eff. July 1, 2010; S.L. 2011, ch. 27, § 2, eff. July 1, 2011; S.L. 2011, ch. 311, § 3, eff. July 1, 2011; S.L. 2012, ch. 269, § 4, eff. July 1, 2012; S.L. 2012, ch. 271, § 1, eff. July 1, 2012; S.L. 2013, ch. 240, § 3, eff. July 1, 2013; S.L. 2016, ch. 296, § 5, eff. July 1, 2016; S.L. 2016, ch. 377, § 3, eff. July 1, 2016; S.L. 2018, ch. 322, § 3, eff. July 1, 2018; S.L. 2019, ch. 30, § 2, eff. July 1, 2019; S.L. 2019, ch. 143, § 6, eff. July 1, 2019.

Notes of Decisions (12)

I.C. § 18-8304, ID ST § 18-8304
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8305

§ 18-8305. Central registry--Notice to agencies

Currentness

(1) The department shall establish and maintain a central sexual offender registry separate from other records maintained by the department. The information contained in the registry shall be in digital form or include links or identification numbers that provide access to the information in other databases in which it is included in digital form. The registry shall include, but is not limited to, the following information:

(a) Name and all aliases that the offender has used or under which the offender has been known including the offender's primary or given name, nicknames and pseudonyms generally, regardless of the context in which they are used, any designations or monikers used for self-identification in internet communications or postings and traditional names given by family or clan pursuant to ethnic or tribal tradition;

(b) A complete physical description of the person including any identifying marks, such as scars or tattoos, the offender's date of birth including any date the offender uses as his or her purported date of birth and the offender's social security number including any number the offender uses as his or her purported social security number;

(c) The criminal history of the offender including the jurisdiction of all arrests and convictions, the name under which the offender was convicted of each offense, the status of parole, probation or supervised release; registration status; and the existence of any outstanding arrest warrants for the offender;

(d) The text of the provision of law defining the criminal offense for which the sexual offender is registered as formulated at the time the offender was convicted;

(e) The name and location of each hospital, jail or penal institution to which the offender was committed for each offense covered under this chapter;

(f) The address or physical description of each residence at which the offender resides;

(g) The name and address of any place where the offender is a student or will be a student unless the offender is only participating in courses remotely through the mail or the internet;

(h) The license plate number and a description of any vehicle owned or regularly operated by the sexual offender including any vehicle the offender drives, either for personal use or in the course of employment, regardless of to whom the vehicle is registered. The term "vehicle" includes watercraft and aircraft. To the extent the vehicle does not have a license plate, a registration number or other identifying information shall be provided;

(i) Any e-mail or instant messaging address used by the offender;

(j) The offender's telephone numbers including, but not limited to, fixed location telephone numbers, voice over internet protocol numbers and cell phone numbers;

(k) The name and address of any place where the offender is employed or will be employed and the name and address of any place where the offender works as a volunteer or otherwise works without remuneration or if the offender does not have a fixed place of employment, a description of normal travel routes or the general areas in which the offender works;

(l) Information regarding any professional license maintained by the offender that authorizes the offender to engage in an occupation or carry out a trade or business;

(m) Information about the offender's passport, if any, and if the offender is an alien, information about documents establishing the offender's immigration status including document type and number information for such documents and a digitized copy of the documents;

(n) A set of fingerprints and palm prints of the offender;

(o) A current photograph of the offender; and

(p) A photocopy of a valid driver's license or identification card issued to the offender, if any.

(2) The department shall adopt rules relating to providing notice of address changes to law enforcement agencies, developing forms, operating the central registry, reviewing and correcting records, and expunging records of persons who are deceased, whose convictions have been reversed or who have been pardoned, and those for whom an order of expungement or relief from registration has been entered pursuant to section 18-8310, Idaho Code.

(3) The department shall develop and distribute to appropriate agencies the standardized forms necessary for the administration of the registry and shall provide appropriate agencies with instructions for completing and submitting the forms. The attorney general shall approve the forms and instructions prior to distribution.

(4) The department shall notify the attorney general of the United States and appropriate law enforcement agencies of any failure by an offender to comply with the requirements of this chapter and shall revise the registry to reflect the nature of that failure.

Credits

S.L. 1998, ch. 411, § 2. Amended by S.L. 2011, ch. 311, § 4, eff. July 1, 2011.

I.C. § 18-8305, ID ST § 18-8305
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8306

§ 18-8306. Notice of duty to register and initial registration

Currentness

(1) When a person is sentenced for an offense identified in section 18-8304, Idaho Code, the prosecuting attorney shall seek and the court shall order a designated law enforcement agency to immediately photograph that person and obtain fingerprints and palm prints unless the person has been photographed and has provided fingerprints and palm prints previously for the same offense. Fingerprints, palm prints and photographs may be taken at the jail or correctional facility to which the person is remanded or sentenced. The fingerprints, palm prints and photographs taken pursuant to this subsection shall be submitted to the department as provided in section 67-3005, Idaho Code.

(2) A person convicted of an offense identified in section 18-8304, Idaho Code, and released on probation without a sentence of incarceration in a county jail or correctional facility, including release pursuant to a withheld judgment or release from any mental institution, shall be notified by the sentencing court of the duty to register pursuant to the provisions of this chapter and the offender shall register in accordance with this chapter no later than two (2) working days after sentence is imposed or judgment is withheld. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the defendant. The court shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(3) With respect to an offender convicted of a sexual offense identified in section 18-8304, Idaho Code, and sentenced to a period of immediate incarceration in a jail or correctional facility and subsequently released, placed on probation, or paroled, the department of correction or jail shall provide, prior to release from confinement, written notification of the duty to register and the offender shall register prior to his or her release. The written notification shall be a form provided by the department and approved by the attorney general and shall be signed by the offender. The department of correction or jail shall retain one (1) copy, provide one (1) copy to the offender, and submit one (1) copy to the central registry within three (3) working days of release.

(4) The sheriff of each county shall provide written notification, on a form provided by the Idaho transportation department and approved by the attorney general, of the registration requirements of this chapter to any person who enters this state from another jurisdiction and makes an application for an identification card or a license to operate a motor vehicle in this state. The written notice shall be signed by the person and one (1) copy shall be retained by the sheriff's office and one (1) copy shall be provided to the person.

(5) The notification form provided by the department and approved by the attorney general shall:

(a) Explain the duty to register, the procedure for registration and penalty for failure to comply with registration requirements;

(b) Inform the offender of the requirement to provide notice of any change of address within Idaho or to another jurisdiction within two (2) working days of such change and of the immediate notification requirements set forth in subsections (2) and (3) of section 18-8309, Idaho Code;

(c) Inform the offender of the requirement to register in a new jurisdiction within two (2) working days of changing residence to that jurisdiction, becoming employed in that jurisdiction or becoming a student in that jurisdiction; and

(d) Obtain from the offender and agency or court, the information required for initial registration in the central registry as set forth in section 18-8305, Idaho Code, and any other information required by rules promulgated by the department.

(6) The official conducting the notice and initial registration shall ensure that the notification form is complete, that the offender has read and signed the form, and that a copy is forwarded to the central repository within three (3) working days of the registration.

(7) No person subject to registration shall willfully furnish false or misleading information when complying with registration and notification requirements of this chapter.

(8) An offender required to register under this chapter shall initially register in the jurisdiction in which he or she was convicted as well as any other jurisdiction requiring registration under this chapter. If the jurisdiction in which the offender is initially required to register is Idaho, the offender shall register in the county in which he or she primarily intends to reside. The county of initial registration shall then notify the department, which shall notify any other county or jurisdiction in which the offender is required to register.

Credits

S.L. 1998, ch. 411, § 2; S.L. 1999, ch. 249, § 4; S.L. 1999, ch. 302, § 2; S.L. 2004, ch. 126, § 2. Amended by S.L. 2011, ch. 311, § 5, eff. July 1, 2011.

Notes of Decisions (1)

West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8307

§ 18-8307. Registration

Currentness

(1) Registration shall consist of a form provided by the department and approved by the attorney general, which shall be signed by the offender and shall require the information set forth in subsection (1) of section 18-8305, Idaho Code.

(2) At the time of registration, the sheriff shall obtain a photograph and fingerprints, in a manner approved by the department, and require the offender to provide full palm print impressions of each hand. A violent sexual predator shall pay a fee of fifty dollars ($50.00) to the sheriff at the time of the first calendar quarter registration and ten dollars ($10.00) per registration every subsequent quarter in the same calendar year. All other offenders shall pay an annual fee of eighty dollars ($80.00) to the sheriff for registration. The sheriff may waive the registration fee if the violent sexual predator or other offender demonstrates indigency. The fees collected under this section shall be used by the sheriff to defray the costs of violent sexual predator and other sexual offender registration and verification and for electronic notification, law enforcement information sharing and tracking. Irrespective of the classification or designation of the offender or predator, each county shall cause forty dollars ($40.00) per offender per year of the fees collected under this section to be used for development, continuous use and maintenance of a statewide electronic notification, information sharing and tracking system as implemented by the Idaho sheriffs' association.

(3) The sheriff shall forward the completed and signed form, photograph, fingerprints and palm prints to the department within three (3) working days of the registration.

(a) The official conducting the registration shall ensure that the notification form is complete and that the offender has read and signed the form.

(b) No person subject to registration shall furnish false or misleading information when complying with registration and notification requirements of this chapter.

(4)(a) Within two (2) working days of coming into any county to establish residence, an offender shall register with the sheriff of the county. The offender thereafter shall register annually, unless the offender is designated as a violent sexual predator, in which case the offender shall register with the sheriff every three (3) months as provided in this section. If the

offender intends to reside in another jurisdiction, the offender shall register in the other jurisdiction within two (2) days of moving to that jurisdiction and will not be removed from the sexual offender registry in Idaho until registration in another jurisdiction is complete.

(b) A nonresident required to register pursuant to section 18-8304(1)(b), Idaho Code, shall register with the sheriff of the county where employed or enrolled as a student within two (2) working days of the commencement of employment or enrollment as a student in an educational institution, provided that nonresidents employed in counseling, coaching, teaching, supervising or working with minors in any way, regardless of the period of employment, must register prior to the commencement of such employment.

(5) Registration shall be conducted as follows:

(a) For violent sexual predators the department shall mail a nonforwardable notice of quarterly registration to the offender's last reported address within three (3) months following the last registration;

(b) For all other sex offenders the department shall mail an annual, nonforwardable notice of registration to the offender's last reported address;

(c) Within five (5) days of the mailing date of the notice, the offender shall appear in person at the office of the sheriff in the county in which the offender is required to register for the purpose of completing the registration process;

(d) If the notice is returned to the department as not delivered, the department shall inform the sheriff with whom the offender last registered of the returned notice.

(6) All written notifications of duty to register as provided herein shall include a warning that it is a felony as provided in section 18-8327, Idaho Code, for an offender to accept employment in any day care center, group day care facility or family day care home, as those terms are defined in chapter 11, title 39, Idaho Code, or to be upon or to remain on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the offender's child or children.

(7) An offender shall keep the registration current for the full registration period. The full registration period is for life; however, offenders may petition for release from the full registration period as set forth in section 18-8310, Idaho Code.

Credits

S.L. 1998, ch. 411, § 2; S.L. 1999, ch. 302, § 3; S.L. 1999, ch. 349, § 3; S.L. 2004, ch. 270, § 4; S.L. 2005, ch. 233, § 2; S.L. 2006, ch. 178, § 10, eff. March 24, 2006. Amended by S.L. 2011, ch. 311, § 6, eff. July 1, 2011; S.L. 2013, ch. 131, § 1, eff. July 1, 2013.

West's Idaho Code Annotated
Title 18. Crimes and Punishments
Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8308

§ 18-8308. Verification of address and electronic monitoring of violent sexual predators

Currentness

(1) The address or physical residence of an offender designated as a violent sexual predator shall be verified by the department between registrations.

(a) The procedure for verification shall be as follows:

(i) The department shall mail a nonforwardable notice of address verification every thirty (30) days between registrations, to each offender designated as a violent sexual predator.

(ii) Each offender designated as a violent sexual predator shall complete, sign and return the notice of address verification form to the department within seven (7) days of the mailing date of the notice. If the notice of address verification is returned to the department as not delivered, or if the signed notice is not returned on time, the department shall, within five (5) days, notify the sheriff with whom the offender designated as a violent sexual predator last registered.

(iii) The sheriff shall verify the address of the offender by visiting the offender's residence once every six (6) months or, if the offender fails to comply with the provisions of paragraph (a)(ii) of this subsection, at any reasonable time to verify the address provided at registration.

(2) The address or physical residence of any sex offender not designated as a violent sexual predator shall be verified by the department between registrations. The procedure for verification shall be as follows:

(a) The department shall mail a nonforwardable notice of address verification every four (4) months between annual registrations.

(b) Each offender shall complete, sign and return the notice of address verification form to the department within seven (7) days of the mailing date of the notice. If the notice of address verification is returned as not delivered or if the signed notice is not returned on time, the department shall notify the sheriff within five (5) days and the sheriff shall visit the residence of the registered offender at any reasonable time to verify the address provided at registration.

(3) Any individual designated as a violent sexual predator shall be monitored with electronic monitoring technology for the duration of the individual's probation or parole period as set forth in section 20-219(2), Idaho Code. Any person who, without authority, intentionally alters, tampers with, damages or destroys any electronic monitoring equipment required to be worn or used by a violent sexual predator shall be guilty of a felony.

(4) A sexual offender who does not provide a physical residence address at the time of registration shall report, in person, once every seven (7) days to the sheriff of the county in which he resides. Each time the offender reports to the sheriff, he shall complete a form provided by the department that includes the offender's name, date of birth, social security number and a detailed description of the location where he is residing. The sheriff shall visit the described location at least once each month to verify the location of the offender.

Credits

S.L. 1998, ch. 411, § 2; S.L. 2006, ch. 178, § 11, eff. March 24, 2006; S.L. 2009, ch. 156, § 1, eff. July 1, 2009; S.L. 2009, ch. 250, § 3, eff. July 1, 2009. Amended by S.L. 2010, ch. 79, § 2, eff. July 1, 2010; S.L. 2011, ch. 311, § 7, eff. July 1, 2011.

Notes of Decisions (1)

I.C. § 18-8308, ID ST § 18-8308
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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de §

I.C. § 18-8310

§ 18-8310. Release from registration requirements--Expungement

Currentness

(1) Registration under this act is for life; however, any offender, other than a recidivist, an offender who has been convicted of an aggravated offense, or an offender designated as a violent sexual predator, may, after a period of ten (10) years from the date the offender was released from incarceration or placed on parole, supervised release or probation, whichever is greater, petition the district court for a show cause hearing to determine whether the offender shall be exempted from the duty to register as a sexual offender. If the offender was convicted in Idaho, the offender shall file his or her petition in the county in which he or she was convicted. If the offender was convicted in a jurisdiction other than Idaho, then the offender shall file his or her petition in the county in which he or she resides. In the petition the petitioner shall:

(a) Provide clear and convincing evidence that the petitioner has completed any periods of supervised release, probation or parole without revocation;

(b) Provide an affidavit indicating that the petitioner does not have a criminal charge pending nor is the petitioner knowingly under criminal investigation for any violent crime or crime identified in section 18-8304, Idaho Code;

(c) Provide proof of service of such petition and supporting documents upon the county prosecuting attorney for the county in which the application is made and upon the central registry;

(d) Provide a certified copy of the judgment of conviction which caused the petitioner to report as a sexual offender;

(e) Provide clear and convincing evidence that the petitioner has successfully completed a sexual offender treatment program;

(f) Provide an affidavit demonstrating that the petitioner has no felony convictions during the period for which the petitioner has been registered; and

(g) Provide an affidavit demonstrating that the petitioner has committed no sex offenses during the period for which the petitioner has been registered.

(2) The county prosecuting attorney and the central registry may submit evidence, including by affidavit, rebutting the assertions contained within the offender's petition, affidavits or other documents filed in support of the petition.

(3) The district court may grant a hearing if it finds that the petition is sufficient. The court shall provide at least sixty (60) days' prior notice of the hearing to the petitioner, the county prosecuting attorney and the central registry. The central registry may appear or participate as a party.

(4) The court may exempt the petitioner from the registration requirement only after a hearing on the petition in open court and only upon proof by clear and convincing evidence and upon written findings of fact and conclusions of law by the court that:

(a) The petitioner has complied with the requirements set forth in subsection (1) of this section;

(b) The court has reviewed the petitioner's criminal history and has determined that the petitioner is not a recidivist, has not been convicted of an aggravated offense or has not been designated as a violent sexual predator; and

(c) It is highly probable or reasonably certain the petitioner is not a risk to commit a new violation for any violent crime or crime identified in section 18-8304, Idaho Code.

(5) Concurrent with the entry of any order exempting the petitioner from the registration requirement, the court may further order that any information regarding the petitioner be expunged from the central registry.

Credits

S.L. 1998, ch. 411, § 2; S.L. 2000, ch. 236, § 2; S.L. 2001, ch. 194, § 3; S.L. 2009, ch. 68, § 1, eff. July 1, 2009. Amended by S.L. 2011, ch. 311, § 10, eff. July 1, 2011.

Notes of Decisions (16)

I.C. § 18-8310, ID ST § 18-8310
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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I.C. § 18-8311

§ 18-8311. Penalties

Currentness

(1) An offender subject to registration who knowingly fails to register, verify his address, or provide any information or notice as required by this chapter shall be guilty of a felony and shall be punished by imprisonment in the state prison system for a period not to exceed ten (10) years and by a fine not to exceed five thousand dollars ($5,000). If the offender is on probation or other supervised release or suspension from incarceration at the time of the violation, the probation or supervised release or suspension shall be revoked and the penalty for violating this chapter shall be served consecutively to the offender's original sentence.

(2) An offender subject to registration under this chapter, who willfully provides false or misleading information in the registration required, shall be guilty of a felony and shall be punished by imprisonment in a state prison for a period not to exceed ten (10) years and a fine not to exceed five thousand dollars ($5,000).

Credits

S.L. 1998, ch. 411, § 2; S.L. 2000, ch. 236, § 3; S.L. 2006, ch. 178, § 13, eff. Mar. 24, 2006. Amended by S.L. 2011, ch. 311, § 11, eff. July 1, 2011.

Notes of Decisions (6)

I.C. § 18-8311, ID ST § 18-8311
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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I.C. § 18-8316

§ 18-8316. Requirement for psychosexual evaluations upon conviction

Currentness

If ordered by the court, an offender convicted of any offense listed in section 18-8304, Idaho Code, may submit to an evaluation to be completed and submitted to the court in the form of a written report from a certified evaluator as defined in section 18-8303, Idaho Code, for the court's consideration prior to sentencing and incarceration or release on probation. The court shall select the certified evaluator from a central roster of evaluators compiled by the sexual offender management board. A certified evaluator performing such an evaluation shall be disqualified from providing any treatment ordered as a condition of any sentence, unless waived by the court. An evaluation conducted pursuant to this section shall be done in accordance with the standards established by the board pursuant to section 18-8314, Idaho Code.

Credits

S.L. 1998, ch. 411, § 2; S.L. 1999, ch. 380, § 1; S.L. 2003, ch. 235, § 3. Amended by S.L. 2011, ch. 311, § 15, eff. July 1, 2011.

Notes of Decisions (3)

I.C. § 18-8316, ID ST § 18-8316
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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I.C. § 18-8323

§ 18-8323. Public access to sexual offender registry information

Currentness

Information within the sexual offender registry collected pursuant to this chapter is subject to release only as provided by this section.

(1) The department or sheriff shall provide public access to information contained in the central sexual offender registry by means of the internet.

(2) Information that shall be made available to the public is limited to:

(a) The offender's name including any aliases or prior names;

(b) The offender's date of birth;

(c) The address of each residence at which the offender resides or will reside and, if the offender does not have any present or expected residence address, other information about where the offender has his or her home or habitually lives;

(d) The address of any place where the offender is a student or will be a student;

(e) A physical description of the offender;

(f) The offense for which the offender is registered and any other sex offense for which the offender has been convicted and the place of the convictions;

(g) A current photograph of the offender; and

(h) Temporary lodging information including the place and the period of time the offender is staying at such lodging. "Temporary lodging" means any place in which the offender is staying when away from his or her residence for seven (7) or more days. If current information regarding the offender's residence is not available because the offender is in violation of the requirement to register or cannot be located, then the website shall so note.

(3) The following information shall not be disclosed to the public:

(a) The identity of the victim;

(b) The offender's social security number;

(c) Any reference to arrests of the offender that did not result in conviction;

(d) Any internet identifier associated with and/or provided by the offender;

(e) Any information pertaining to the offender's passports and immigration documents; and

(f) Any information identifying any person related to, living with, working for, employing or otherwise associated with a registered sexual offender.

(4) Where a crime category such as "incest" may serve to identify a victim, that crime will be reported as a violation of section 18-1506, Idaho Code.

(5) The department shall include a cautionary statement relating to completeness, accuracy and use of registry information when releasing information to the public or noncriminal justice agencies as well as a statement concerning the penalties provided in section 18-8326, Idaho Code, for misuse of registry information.

(6) Information released pursuant to this section may be used only for the protection of the public.

(7) Further dissemination of registry information by any person or entity shall include the cautionary statements required in

subsection (5) of this section.

Credits

S.L. 1998, ch. 411, § 2; S.L. 1999, ch. 302, § 7; S.L. 2001, ch. 195, § 1. Amended by S.L. 2011, ch. 311, § 22, eff. July 1, 2011.

Notes of Decisions (1)

I.C. § 18-8323, ID ST § 18-8323
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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I.C. § 18-8326

§ 18-8326. Penalties for vigilantism or other misuse of information obtained under this chapter

Currentness

Any person who uses information obtained pursuant to this chapter to commit a crime or to cause physical harm to any person or damage to property shall be guilty of a misdemeanor and, in addition to any other punishment, be subject to imprisonment in the county jail for a period not to exceed one (1) year, or by a fine not to exceed one thousand dollars ($1,000) or both.

Credits

S.L. 1998, ch. 411, § 2.

I.C. § 18-8326, ID ST § 18-8326
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8327

§ 18-8327. Adult criminal sex offender--Prohibited employment

Currentness

(1) Except as provided in section 18-8328, Idaho Code, it is a felony for any person to: apply for or to accept employment at a day care center, group day care facility or family day care home; or to be upon or to remain on the premises of a day care center, group day care facility or family day care home while children are present, other than to drop off or pick up the person's child or children if the person is currently registered or is required to register under the sex offender registration act as provided in chapter 83, title 18, Idaho Code.

(2) The owner or operator of any day care center, group day care facility or family day care home who knowingly employs a person or who knowingly accepts volunteer services from a person, which person is currently registered or is required to register under the sex offender registration act as provided in chapter 83, title 18, Idaho Code, to work in the day care center, group day care facility or family day care home is guilty of a misdemeanor unless judicial relief has been granted pursuant to section 18-8328, Idaho Code.

Credits

S.L. 2004, ch. 270, § 1.

I.C. § 18-8327, ID ST § 18-8327
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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West's Idaho Code Annotated
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Chapter 83. Sexual Offender Registration Notification and Community Right-to-Know Act (Refs & Annos)

I.C. § 18-8329

§ 18-8329. Adult criminal sex offenders--Prohibited access to school children--Exceptions

Currentness

(1) If a person is currently registered or is required to register under the sex offender registration act as provided in chapter 83, title 18, Idaho Code, it is a misdemeanor for such person to:

(a) Be upon or to remain on the premises of any school building or school grounds in this state, or upon other properties posted with a notice that they are used by a school, when the person has reason to believe children under the age of eighteen (18) years are present and are involved in a school activity or when children are present within thirty (30) minutes before or after a scheduled school activity.

(b) Knowingly loiter on a public way within five hundred (500) feet from the property line of school grounds in this state, including properties posted with a notice that they are used by a school, when children under the age of eighteen (18) years are present and are involved in a school activity or when children are present within thirty (30) minutes before or after a scheduled school activity.

(c) Be in any conveyance owned or leased by a school to transport students to or from school or a school-related activity when children under the age of eighteen (18) years are present in the conveyance.

(d) Reside within five hundred (500) feet of the property on which a school is located, measured from the nearest point of the exterior wall of the offender's dwelling unit to the school's property line, provided however, that this paragraph (d) shall not apply if such person's residence was established prior to July 1, 2006.

The posted notices required in this subsection (1) shall be at least one hundred (100) square inches, shall make reference to section 18-8329, Idaho Code, shall include the term "registered sex offender" and shall be placed at all public entrances to the property.

(2) The provisions of subsections (1)(a) and (1)(b) of this section shall not apply when the person:

(a) Is a student in attendance at the school; or

(b) Resides at a state licensed or certified facility for incarceration, health or convalescent care; or

(c) Is exercising his right to vote in public elections; or

(d) Is taking delivery of his mail through an official post office located on school grounds; or

(e) Stays at a homeless shelter or resides at a recovery facility if such shelter or facility has been approved for sex offenders by the county sheriff or municipal police chief; or

(f) Contacts the school district office annually and prior to his first visit of a school year and has obtained written permission from the district to be on the school grounds or upon other property posted with a notice that the property is used by a school. For the purposes of this section, "contacts the school district office" shall include mail, facsimile machine, or by computer using the internet. The provisions of this subsection are required for an individual who:

(i) Is dropping off or picking up a child or children and the person is the child or children's parent or legal guardian; or

(ii) Is attending an academic conference or other scheduled extracurricular school event with school officials present when the offender is a parent or legal guardian of a child who is participating in the conference or extracurricular event. "Extracurricular" means any school-sponsored activity that is outside the regular curriculum, occurring during or outside regular school hours including, but not limited to, academic, artistic, athletic or recreational activities; or

(iii) Is temporarily on school grounds, during school hours, for the purpose of making a mail, food or other delivery.

(3) Nothing in this section shall prevent a school district from adopting more stringent safety and security requirements for employees and nonemployees while they are in district facilities and/or on district properties. If adopting more stringent safety and security requirements, the school district shall provide the requirements to any individual listed in subsection (2)(f)(i) through (iii) by mail, facsimile machine or by computer using the internet.

Credits

Added by S.L. 2006, ch. 354, § 1, eff. April 7, 2006. Amended by S.L. 2008, ch. 250, § 1, eff. July 1, 2008; S.L. 2011, ch. 266, § 1, eff. July 1, 2011.

West's Idaho Code Annotated
Title 37. Food, Drugs, and Oil
Chapter 27. Uniform Controlled Substances (Refs & Annos)
Article IV

I.C. § 37-2732

§ 37-2732. Prohibited acts A--Penalties

Currentness

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(A) A controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, except as provided for in section 37-2732B(a)(3), Idaho Code, is guilty of a felony and upon conviction may be imprisoned for a term of years not to exceed life imprisonment, or fined not more than twenty-five thousand dollars ($25,000), or both;

(B) Any other controlled substance which is a nonnarcotic drug classified in schedule I, or a controlled substance classified in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars ($15,000), or both;

(C) A substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars ($10,000), or both;

(D) A substance classified in schedules V and VI, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(A) A counterfeit substance classified in schedule I which is a narcotic drug, or a counterfeit substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, fined not more than twenty-five thousand dollars ($25,000), or both;

(B) Any other counterfeit substance classified in schedule I which is a nonnarcotic drug contained in schedule I or a counterfeit substance contained in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars ($15,000), or both;

(C) A counterfeit substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars ($10,000), or both;

(D) A counterfeit substance classified in schedules V and VI or a noncontrolled counterfeit substance, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars ($5,000), or both.

(c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.

(1) Any person who violates this subsection and has in his possession a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than seven (7) years, or fined not more than fifteen thousand dollars ($15,000), or both.

(2) Any person who violates this subsection and has in his possession lysergic acid diethylamide is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than five thousand dollars ($5,000), or both.

(3) Any person who violates this subsection and has in his possession a controlled substance which is a nonnarcotic drug classified in schedule I except lysergic acid diethylamide, or a controlled substance classified in schedules III, IV, V and VI is guilty of a misdemeanor and upon conviction thereof may be imprisoned for not more than one (1) year, or fined not more than one thousand dollars ($1,000), or both.

(d) It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this section shall deem those persons guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars ($300) and not more than ninety (90) days in the county jail, or both.

(e) If any person is found to possess marijuana, which for the purposes of this subsection shall be restricted to all parts of the plants of the genus Cannabis, including the extract or any preparation of cannabis which contains tetrahydrocannabinol, in an amount greater than three (3) ounces net weight, it shall be a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than ten thousand dollars ($10,000), or both.

(f) If two (2) or more persons conspire to commit any offense defined in this act, said persons shall be punishable by a fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

(g)(1) It is unlawful for any person to manufacture or distribute a "simulated controlled substance," or to possess with intent to distribute, a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars ($1,000) and not more than one (1) year in the county jail, or both.

(2) It is unlawful for any person to possess a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars ($300) and not more than six (6) months in the county jail, or both.

(h) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale simulated controlled substances. Any person who violates this subsection is guilty of a misdemeanor and shall be punished in the same manner as prescribed in subsection (g) of this section.

(i) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in section 37-2701(aa), Idaho Code, in the course of professional practice or research.

(j) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.

(k) Upon conviction of a felony or misdemeanor violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and

witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

Credits

S.L. 1971, ch. 215, § 1; S.L. 1972, ch. 133, § 6; S.L. 1972, ch. 409, § 1; S.L. 1974, ch. 242, § 1; S.L. 1977, ch. 185, § 1; S.L. 1982, ch. 169, § 2; S.L. 1983, ch. 218, § 2; S.L. 1984, ch. 200, § 1; S.L. 1986, ch. 286, § 1; S.L. 1989, ch. 268, § 2; S.L. 1992, ch. 20, § 1; S.L. 1993, ch. 105, § 1; S.L. 1999, ch. 143, § 1; S.L. 2000, ch. 469, § 86; S.L. 2004, ch. 242, § 1; S.L. 2009, ch. 108, § 3, eff. July 1, 2009. Amended by S.L. 2010, ch. 118, § 3, eff. July 1, 2010.

Notes of Decisions (498)

I.C. § 37-2732, ID ST § 37-2732
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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Article IV

I.C. § 37-2734A

§ 37-2734A. Prohibited acts D--Penalties

Currentness

(1) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(3) Any person who is in violation of the provisions of subsections (1) and/or (2) of this section is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than one thousand dollars ($1,000), or both.

Credits

S.L. 1980, ch. 388, § 2; S.L. 1990, ch. 311, § 1.

Notes of Decisions (21)

I.C. § 37-2734A, ID ST § 37-2734A
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

End of Document

West's Idaho Code Annotated
Title 73. General Code Provisions
Chapter 4. Free Exercise of Religion Protected (Refs & Annos)

I.C. § 73-401

§ 73-401. Definitions

Currentness

As used in this chapter unless the context otherwise requires:

(1) "Demonstrates" means meets the burdens of going forward with evidence, and persuasion under the standard of clear and convincing evidence.

(2) "Exercise of religion" means the ability to act or refusal to act in a manner substantially motivated by a religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

(3) "Government" includes this state and any agency or political subdivision of this state.

(4) "Political subdivision" includes any county, city, school district, taxing district, municipal corporation, or agency of a county, city, school district, or municipal corporation.

(5) "Substantially burden" means to inhibit or curtail religiously motivated practices.

Credits

S.L. 2000, ch. 133, § 2.

Notes of Decisions (5)

I.C. § 73-401, ID ST § 73-401
Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

West's Idaho Code Annotated
Title 73. General Code Provisions
Chapter 4. Free Exercise of Religion Protected (Refs & Annos)

I.C. § 73-402

§ 73-402. Free exercise of religion protected

Currentness

(1) Free exercise of religion is a fundamental right that applies in this state, even if laws, rules or other government actions are facially neutral.

(2) Except as provided in subsection (3) of this section, government shall not substantially burden a person's exercise of religion even if the burden results from a rule of general applicability.

(3) Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person is both:

(a) Essential to further a compelling governmental interest;

(b) The least restrictive means of furthering that compelling governmental interest.

(4) A person whose religious exercise is burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. A party who prevails in any action to enforce this chapter against a government shall recover attorney's fees and costs.

(5) In this section, the term "substantially burden" is intended solely to ensure that this chapter is not triggered by trivial, technical or de minimis infractions.

Credits

S.L. 2000, ch. 133, § 2.


KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or PreemptedUnconstitutional as Applied by Does #1-5 v. Snyder, 6th Cir.(Mich.), Aug. 25, 2016


KeyCite Yellow Flag - Negative TreatmentProposed Legislation

Michigan Compiled Laws Annotated
Chapter 28. Michigan State Police
Sex Offenders Registration Act (Refs & Annos)
I General (Refs & Annos)

M.C.L.A. 28.722

28.722. Definitions

Effective: January 14, 2015

Currentness

Sec. 2. As used in this act:

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

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

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

(*ii*) Either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

(*v*) The actor was an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person was enrolled, or was a volunteer who was not a student in any public school or nonpublic school, or was an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor used his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with,

that other person.

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

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

(*viii*) That other person was a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor was an employee or a contractual employee of, or a volunteer with, the county or the department of corrections who knew that the other person was under the county's jurisdiction and used his or her position of authority over the victim to gain access to or to coerce or otherwise encourage the victim to engage in sexual contact.

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

(d) "Department" means the department of state police.

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

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

(g) "Immediately" means within 3 business days.

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

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

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

(*iii*) He or she demonstrates an annual income below the current federal poverty guidelines.

(i) "Institution of higher education" means 1 or more of the following:

(*i*) A public or private community college, college, or university.

(*ii*) A public or private trade, vocational, or occupational school.

(j) "Listed offense" means a tier I, tier II, or tier III offense.

(k) "Local law enforcement agency" means the police department of a municipality.

(*l*) "Minor" means a victim of a listed offense who was less than 18 years of age at the time the offense was committed.

(m) "Municipality" means a city, village, or township of this state.

(n) "Registering authority" means the local law enforcement agency or sheriff's office having jurisdiction over the individual's residence, place of employment, or institution of higher learning, or the nearest department post designated to receive or enter sex offender registration information within a registration jurisdiction.

(o) "Registration jurisdiction" means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the United States Virgin Islands, American Samoa, and the Indian tribes within the United States that elect to function as a registration jurisdiction.

(p) "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be

construed to affect existing judicial interpretation of the term residence for purposes other than the purposes of this act.

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

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

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

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

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

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

(*iv*) A violation of section 449a(2) of the Michigan penal code, 1931 PA 328, MCL 750.449a.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) All of the following:

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

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

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

(B) All of the following:

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

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

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

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

(A) All of the following:

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

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

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

(B) All of the following:

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

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

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

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

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

(*ix*) A violation of section 455 of the Michigan penal code, 1931 PA 328, MCL 750.455.

(*x*) A violation of section 520c, 520e, or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c, 750.520e, and 750.520g, committed against an individual 13 years of age or older but less than 18 years of age.

(*xi*) A violation of section 520c committed against an individual 18 years of age or older.

(*xii*) An attempt or conspiracy to commit an offense described in subparagraphs (*i*) to (*xi*).

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

(v) "Tier III offender" means either of the following:

(*i*) A tier II offender subsequently convicted of a tier I or II offense.

(*ii*) An individual convicted of a tier III offense.

(w) "Tier III offense" means 1 or more of the following:

(*i*) A violation of section 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.338, 750.338a, and 750.338b, committed against an individual less than 13 years of age.

(*ii*) A violation of section 349 of the Michigan penal code, 1931 PA 328, MCL 750.349, committed against a minor.

(*iii*) A violation of section 350 of the Michigan penal code, 1931 PA 328, MCL 750.350.

(*iv*) A violation of section 520b, 520d, or 520g(1) of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520d, and 750.520g. This subparagraph does not apply if the court determines that the victim consented to the conduct constituting the violation, that the victim was at least 13 years of age but less than 16 years of age at the time of the offense, and that the individual is not more than 4 years older than the victim.

(*v*) A violation of section 520c or 520g(2) of the Michigan penal code, 1931 PA 328, MCL 750.520c and 750.520g, committed against an individual less than 13 years of age.

(*vi*) A violation of section 520e of the Michigan penal code, 1931 PA 328, MCL 750.520e, committed by an individual 17 years of age or older against an individual less than 13 years of age.

(*vii*) An attempt or conspiracy to commit an offense described in subparagraphs (*i*) to (*vi*).

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

(x) "Vehicle" means that term as defined in section 79 of the Michigan vehicle code, 1949 PA 300, MCL 257.79.

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

Credits

P.A.1994, No. 295, § 2, Eff. Oct. 1, 1995. Amended by P.A.1999, No. 85, Eff. Sept. 1, 1999; P.A.2002, No. 542, Eff. Oct. 1, 2002; P.A.2004, No. 240, Eff. Oct. 1, 2004; P.A.2005, No. 301, Eff. Feb. 1, 2006; P.A.2011, No. 17, Eff. July 1, 2011; P.A.2014, No. 328, Eff. Jan. 14, 2015.

Editors' Notes

VALIDITY

<The retroactive application of the 2006 and 2011 amendments to the Michigan Sex Offenders Registration Act violated the Ex Post Facto clause of U.S. Const. Art. 1, § 10, cl. 1. Does #1-5 v. Snyder, C.A.6 (Mich.)2016, 834 F.3d 696, rehearing denied, certiorari denied 138 S.Ct. 55, 199 L.Ed.2d 18.>

Notes of Decisions (42)

KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or PreemptedUnconstitutional as Applied by Does #1-5 v. Snyder, 6th Cir.(Mich.), Aug. 25, 2016

Michigan Compiled Laws Annotated
Chapter 28. Michigan State Police
Sex Offenders Registration Act (Refs & Annos)
II Sex Offender Registration (Refs & Annos)

M.C.L.A. 28.723

28.723. Registration requirements

Effective: July 1, 2011

Currentness

Sec. 3. (1) Subject to subsection (2), the following individuals who are domiciled or temporarily reside in this state or who work with or without compensation or are students in this state are required to be registered under this act:

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

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

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

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

8.722

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

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

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

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

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

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

(3) A nonresident who is convicted in this state on or after July 1, 2011 of committing a listed offense who is not otherwise described in subsection (1) shall nevertheless register under this act. However, the continued reporting requirements of this act do not apply to the individual while he or she remains a nonresident and is not otherwise required to report under this act. The individual shall have his or her photograph taken under section 5a.[2]

Credits

P.A.1994, No. 295, § 3, Eff. Oct. 1, 1995. Amended by P.A.1995, No. 10, § 1, Eff. Oct. 1, 1995; P.A.1999, No. 85, Eff. Sept. 1, 1999; P.A.2011, No. 17, Eff. July 1, 2011.

Editors' Notes

VALIDITY

<The retroactive application of the 2006 and 2011 amendments to the Michigan Sex Offenders Registration Act violated the Ex Post Facto clause of U.S. Const. Art. 1, § 10, cl. 1. Does #1-5 v. Snyder, C.A.6 (Mich.)2016, 834 F.3d 696, rehearing denied, certiorari denied 138 S.Ct. 55, 199 L.Ed.2d 18.>

Notes of Decisions (33)

Footnotes

1994 Mich. Legis. Serv. P.A. 295 (S.B. 397) (WEST)

MICHIGAN 1994 LEGISLATIVE SERVICE

Eighty-Seventh Legislature, Regular Session

Additions are indicated by <<+ Text +>>; Deletions by

<<- *** ->>. Changes in tables are made but not highlighted.

Vetoed provisions within tabular material are not displayed.

PUBLIC ACT NO. 295

S.B. No. 397
CRIMINAL PROCEDURE–SEX OFFENDERS REGISTRATION ACT

AN ACT to require persons convicted of certain offenses to register; to prescribe the powers and duties of certain departments and agencies in connection with that registration; and to prescribe penalties and sanctions.

The People of the State of Michigan enact:

<< MI ST 28.721 >>

M.C.L.A. § 28.721

Sec. 1. This act shall be known and may be cited as the "sex offenders registration act".

<< MI ST 28.722 >>

M.C.L.A. § 28.722

Sec. 2. As used in this act:
(a) "Convicted" means 1 of the following:
(*i*) Having a judgment of conviction or a probation order entered in a court having jurisdiction over criminal offenses, including a conviction subsequently set aside pursuant to Act No. 213 of the Public Acts of 1965, being sections 780.621 to 780.624 of the Michigan Compiled Laws.
(*ii*) Being assigned to youthful trainee status pursuant to sections 11 to 15 of chapter II of the code of criminal procedure, Act No. 175 of the Public Acts of 1927, being sections 762.11 to 762.15 of the Michigan Compiled Laws.
(*iii*) Having a disposition entered pursuant to section 18 of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.18 of the Michigan Compiled Laws, that is open to the general public pursuant to section 28 of chapter XIIA of Act No. 288 of the Public Acts of 1939, being section 712A.28 of the Michigan Compiled Laws.
(b) "Department" means the department of state police.
(c) "Local law enforcement agency" means the police department of a municipality.
(d) "Listed offense" means any of the following:
(*i*) A violation of section 145a, 145b, or 145c of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.145a, 750.145b, and 750.145c of the Michigan Compiled Laws.
(*ii*) A third or subsequent violation of any combination of the following:
(A) Section 167(1)(f) of Act No. 328 of the Public Acts of 1931, being section 750.167 of the Michigan Compiled Laws.

(B) Section 335a of Act No. 328 of the Public Acts of 1931, being section 750.335a of the Michigan Compiled Laws.
(C) A local ordinance substantially corresponding to a section described in sub-subparagraph (A) or (B).
(*iii*) A violation of section 455 of Act No. 328 of the Public Acts of 1931, being section 750.455 of the Michigan Compiled Laws.
(*iv*) A violation of section 520b, 520c, 520d, 520e, or 520g of Act No. 328 of the Public Acts of 1931, being sections 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g of the Michigan Compiled Laws.
(*v*) An attempt or conspiracy to commit an offense described in subparagraphs (*i*) to (*iv*).
(*vi*) An offense substantially similar to an offense described in subparagraphs (*i*) to (*v*) under a law of the United States, any state, or any country.
(e) "Municipality" means a city, village, or township of this state.
(f) "Unit" means the department's investigative resources unit.

<< MI ST 28.723 >>

M.C.L.A. § 28.723

Sec. 3. The following individuals who are domiciled or temporarily reside in this state for 14 days or more are required to be registered under this act:
(a) An individual who is convicted of a listed offense after October 1, 1995.
(b) An individual convicted of a listed offense on or before October 1, 1995 who on October 1, 1995 is on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or under the jurisdiction of the juvenile division of the probate court or the department of social services for that offense or who is placed on probation or parole, committed to jail, committed to the jurisdiction of the department of corrections, or placed under the jurisdiction of the juvenile division of the probate court or the department of social services after October 1, 1995 for that offense.
(c) An individual convicted of an offense described in section 2(d)(*v*) [1] on or before October 1, 1995 who on October 1, 1995 is on probation or parole that has been transferred to this state for that offense or whose probation or parole is transferred to this state after October 1, 1995 for that offense.

[1] Section 28.722(d)(*v*).

<< MI ST 28.724 >>

M.C.L.A. § 28.724

Sec. 4. (1) Registration of an individual under this act shall proceed as provided in this section.
(2) For an individual convicted of a listed offense on or before October 1, 1995 who on or before October 1, 1995 is sentenced for that offense, has a disposition entered for that offense, or is assigned to youthful trainee status for that offense, the following shall register the individual by December 31, 1995:
(a) If the individual is on probation for the listed offense, the individual's probation officer.
(b) If the individual is committed to jail for the listed offense, the sheriff or his or her designee.
(c) If the individual is under the jurisdiction of the department of corrections for the listed offense, the department of corrections.
(d) If the individual is on parole for the listed offense, the individual's parole officer.
(e) If the individual is within the jurisdiction of the juvenile division of the probate court or the department of social services pursuant to an order of disposition for the listed offense, the juvenile division of the probate court or the department of social services.
(3) For an individual convicted of a listed offense on or before October 1, 1995:
(a) If the individual is sentenced for that offense after October 1, 1995 or assigned to youthful trainee status after October 1, 1995, the probation officer shall register the individual before sentencing or assignment.
(b) If the individual's probation or parole is transferred to this state after October 1, 1995, the probation or parole officer shall register the individual within 14 days after the transfer.
(c) If the individual is placed within the jurisdiction of the juvenile division of the probate court or the department of social services pursuant to an order of disposition entered after October 1, 1995, the juvenile division of the probate court shall

register the individual before the order of disposition is entered.
(4) For an individual convicted of a listed offense in this state after October 1, 1995, the individual shall register before sentencing, entry of the order of disposition, or assignment to youthful trainee status. The probation officer or the juvenile division of the probate court shall give the individual the registration form after the individual is convicted, shall explain the duty to register, and shall accept the completed registration for processing pursuant to section 6.[1]
(5) For an individual convicted of a listed offense in another state or country after October 1, 1995, the individual shall register with the local law enforcement agency, or the state police or the sheriff's department within 14 days after becoming domiciled or temporarily residing in this state.

[1] Section 28.726.

<< MI ST 28.725 >>

M.C.L.A. § 28.725

Sec. 5. (1) Within 10 days after any of the following occur, an individual required to be registered under this act shall notify the local law enforcement agency in which his or her new address is located, or the state police or the sheriff's department of the individual's new address:
(a) The individual changes his or her address.
(b) The individual is paroled.
(c) Final release of the individual from the jurisdiction of the department of corrections.
(2) Within 10 days after either of the following occurs, the department of corrections shall notify the local law enforcement agency for the area to which the individual is transferred, or the state police or the sheriff's department of the transferred address of an individual required to be registered under this act:
(a) The individual is transferred to a community residential program.
(b) The individual is transferred into a minimum custody correctional facility of any kind, including a correctional camp or work camp.
(3) Except as provided in subsection (4), an individual shall comply with this section for 25 years after the date of initially registering.
(4) An individual shall comply with this section for life if the individual is convicted of a second or subsequent listed offense after October 1, 1995 regardless of when the first listed offense was committed.

<< MI ST 28.726 >>

M.C.L.A. § 28.726

Sec. 6. (1) The officer, court, or agency registering an individual or receiving or accepting a registration under section 4 [1] or receiving notice under section 5(1) [2] shall provide the individual with a copy of the registration or notification at the time of registration or notice.
(2) The officer, court, or agency registering an individual or receiving or accepting a registration under section 4 or notified of an address change under section 5(1) shall forward the registration or notification to the department within 7 days after registration or notification.
(3) If an individual registers at a Michigan state police post, the department shall forward a copy of the registration within 7 days to the local law enforcement agency in the municipality in which the individual's address is located or to the sheriff's department if the municipality does not have a local law enforcement agency.

[1] Section 28.724.

[2] Section 28.725(1).

<< MI ST 28.727 >>

M.C.L.A. § 28.727

Sec. 7. (1) A registration under this act shall be made on a form provided by the department and shall contain all of the following:
(a) The individual's name, social security number, and address or expected address.
(b) A brief summary of the individual's convictions for listed offenses, including where the offense occurred and the original charge if the conviction was for a lesser offense.
(c) A complete physical description of the individual.
(d) The individual's blood type and whether a DNA identification profile of the individual is available.
(2) A registration shall have a recent photograph of the individual.
(3) A form used for registration under this act shall contain a written statement that explains the duty of the individual being registered to provide notice of a change of address under section 5 [1] and the procedures for providing that notice.
(4) The individual shall sign the registration or notice.
(5) The officer, court, or an employee of the agency registering the individual or receiving or accepting a registration under section 4 [2] shall also sign the registration.
(6) An individual shall not knowingly provide false or misleading information concerning a registration or notice.
(7) The department shall prescribe the form for a notification required under section 5.

[1] Section 28.725.

[2] Section 28.724.

<< MI ST 28.728 >>

M.C.L.A. § 28.728

Sec. 8. The department shall maintain a computerized data base of registrations and notices required under this act.

<< MI ST 28.729 >>

M.C.L.A. § 28.729

Sec. 9. (1) An individual required to be registered under this act who willfully violates this act is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $2,000.00, or both.
(2) The court shall revoke the probation of an individual placed on probation who willfully violates this act.
(3) The court shall revoke the youthful trainee status of an individual assigned to youthful trainee status who willfully violates this act.
(4) The parole board shall rescind the parole of an individual released on parole who willfully violates this act.

<< MI ST 28.730 >>

M.C.L.A. § 28.730

Sec. 10. (1) Except as provided in this act, a registration is confidential and shall not be open to inspection except for law enforcement purposes. The registration and all included materials are exempt from disclosure pursuant to section 13 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.243 of the Michigan Compiled Laws.
(2) Except as provided in this act, an individual other than the registrant who knows of a registration under this act and who divulges, uses, or publishes information concerning the registration in violation of this act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than $500.00, or both.
(3) An individual whose registration is revealed in violation of this act has a civil cause of action against the responsible party for treble damages.

<< MI ST 28.731 >>

M.C.L.A. § 28.731

Sec. 11. This act shall take effect October 1, 1995.

<< MI ST 28.732 >>

M.C.L.A. § 28.732

Sec. 12. This act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:
(a) Senate Bill No. 193.
(b) Senate Bill No. 194.
(c) Senate Bill No. 400.
(d) House Bill No. 4601.

Approved July 13, 1994.

Filed July 14, 1994.

MI LEGIS 295 (1994)

End of Document

United States Code Annotated
Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)
Title III. Pleadings and Motions

Federal Rules of Civil Procedure Rule 12

Rule 12. Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidating Motions; Waiving Defenses; Pretrial Hearing

Currentness

<Notes of Decisions for 28 USCA Federal Rules of Civil Procedure Rule 12 are displayed in multiple documents. >

(a) Time to Serve a Responsive Pleading.

(1) ***In General.*** Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer:

(i) within 21 days after being served with the summons and complaint; or

(ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

(2) ***United States and Its Agencies, Officers, or Employees Sued in an Official Capacity.*** The United States, a United States agency, or a United States officer or employee sued only in an official capacity must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.

(3) ***United States Officers or Employees Sued in an Individual Capacity.*** A United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf must serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the officer or employee or service on the United States attorney, whichever is later.

(4) ***Effect of a Motion.*** Unless the court sets a different time, serving a motion under this rule alters these periods as follows:

(A) if the court denies the motion or postpones its disposition until trial, the responsive pleading must be served within 14 days after notice of the court's action; or

(B) if the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the more definite statement is served.

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

(2) lack of personal jurisdiction;

(3) improper venue;

(4) insufficient process;

(5) insufficient service of process;

(6) failure to state a claim upon which relief can be granted; and

(7) failure to join a party under Rule 19.

A motion asserting any of these defenses must be made before pleading if a responsive pleading is allowed. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one or more other defenses or objections in a responsive pleading or in a motion.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed--but early enough not to delay trial--a party may move for judgment on the pleadings.

(d) Result of Presenting Matters Outside the Pleadings. If, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion.

(e) Motion for a More Definite Statement. A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 14 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

(f) Motion to Strike. The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

(1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

(g) Joining Motions.

(1) ***Right to Join.*** A motion under this rule may be joined with any other motion allowed by this rule.

(2) ***Limitation on Further Motions.*** Except as provided in Rule 12(h)(2) or (3), a party that makes a motion under this rule must not make another motion under this rule raising a defense or objection that was available to the party but omitted from its earlier motion.

(h) Waiving and Preserving Certain Defenses.

(1) ***When Some Are Waived.*** A party waives any defense listed in Rule 12(b)(2)-(5) by:

(A) omitting it from a motion in the circumstances described in Rule 12(g)(2); or

(B) failing to either:

(i) make it by motion under this rule; or

(ii) include it in a responsive pleading or in an amendment allowed by Rule 15(a)(1) as a matter of course.

(2) ***When to Raise Others.*** Failure to state a claim upon which relief can be granted, to join a person required by Rule 19(b), or to state a legal defense to a claim may be raised:

(A) in any pleading allowed or ordered under Rule 7(a);

(B) by a motion under Rule 12(c); or

(C) at trial.

(3) ***Lack of Subject-Matter Jurisdiction.*** If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.

(i) Hearing Before Trial. If a party so moves, any defense listed in Rule 12(b)(1)-(7)--whether made in a pleading or by motion--and a motion under Rule 12(c) must be heard and decided before trial unless the court orders a deferral until trial.

CREDIT(S)

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