

## SEX OFFENSE LITIGATION AND POLICY RESOURCE CENTER

### **Guidance: Reducing COVID-19 exposure by revising the implementation of registration policies, housing banishment laws, and other restrictions impacting people with convictions**

MARCH 28, 2020 – We join numerous criminal justice organizations that have issued policy recommendations to prevent the spread of COVID-19 by suspending or eliminating non-essential police and court functions, while ensuring that law enforcement resources are used wisely to keep communities safe.

This guidance focuses on policies affecting people listed on sex offense registries. More than 900,000 Americans are subject to registration and/or housing banishment laws. The nature of these rules and regulations and the enormous number of people who must comply with or enforce them, raise urgent concerns about public health and resource allocation in this extraordinary time.

During the registration process, people are typically required to fill out forms stating their address, employer, school, phone number, vehicle data, etc. and to return, in person, to report even trivial changes.<sup>1</sup> These cumbersome registration processes tie up sworn officers who could instead be investigating crime, attending to emergencies, and assisting people in crisis.

Housing banishment laws often prohibit people from residing in the vast majority of residential areas of a city or town. As a result, those with stable homes, or several housing options, frequently become homeless anyway. This false scarcity of housing also increases prison populations as people have no legally authorized home in which to serve their parole or probation.<sup>2</sup>

Even before COVID-19, the unintended consequences of these policies were well documented.<sup>3</sup> The current pandemic, however, adds urgency to revise current registry and banishment practices as many of them undermine the critical public health measures being implemented nationwide to contain its spread.

The following strategies would reduce COVID-19 exposure among law enforcement officials and those required to register, as well as their families at home, and the broader community:

**Suspend in-person registration requirements.** Registration requires frequent in-person visits to police stations or jails, where dozens of people commonly congregate in waiting rooms or bullpens, multiplying the risk of transmission of COVID-19. Following the lead of Oregon and other jurisdictions, this process should be modified.<sup>4</sup>

**Waive or suspend housing banishment laws and other housing restrictions.** People experiencing homelessness need emergency housing in order to comply with stay-at-home orders or self-quarantine. But many people listed on “homeless registries” have places they could otherwise reside: housing restrictions alone caused their homelessness.

Likewise, prisons have backlogs of people incarcerated past their release dates, or who would be released on parole or probation supervision, if so much housing were not barred.<sup>5</sup> Suspending these restrictions will allow cities to house people more efficiently, conserve emergency beds, and give prison officials the flexibility to place people in homes they already have available. This will protect their populations from the heightened risk of contagion created by needless incarceration and homeless encampments<sup>6</sup> when there are safe available homes for people on the registries.

**Waive or suspend arrests and prosecutions for failure-to-comply offenses.** “Failure to comply” charges are the result of a missed deadline to re-register or update registration. Akin to technical parole violations, these are often hyper-technicalities that stem from the difficulty of following so many onerous reporting requirements, and have no reported correlation to public safety.<sup>7</sup> Despite this, they contribute to jail and prison churn, risking increased transmission of the virus.<sup>8</sup>

**Suspend fees for registration.** Economists are projecting 14%-20% GDP contraction for this quarter and unemployment in double-digit rates. Many people have already lost their incomes as a result of the shutdowns. People with past convictions are far more likely to be poor, with reduced job prospects. Non-payment of these fees can result in failure-to-comply charges; during this crisis registration fees should be suspended.

**Suspend in-person address verifications.** Routine police visits to the addresses of people listed on registries, for the sole purpose of an address check, should be suspended. These visits are widespread, and number in the tens of thousands.<sup>9</sup> At a time when even 911 calls are under stress, law enforcement should be able to redirect their resources as needed.

**Suspend Internet access restrictions.** Some people who are on probation or parole are forbidden from accessing wide swaths of the Internet, and some states have laws limiting Internet access for people listed on a conviction registry.<sup>10</sup> During this crisis, access to the Internet has become even more critical: nearly everyone must rely on Internet access for work, news, homeschooling, services, and family connections. Individual safety, as well as public health compliance, requires timely online access to crucial information about social and health services, as well as access to medical services that are moving online.

**“Step down” people in civil commitment.** More than 6,000 people are locked post-sentence in prison-like state civil commitment facilities,<sup>11</sup> that pose the same coronavirus dangers to staff and detainees as jails and prisons. States should speed up “step-down” procedures and move people into supervised community settings.

## CONCLUSION

State conviction registries were intended to be a tool for law enforcement officials and were limited in scope. In the past quarter century, legislators expanded these public databases and added hundreds of additional reporting requirements and other restrictions, including housing and public space banishment laws, and long-term confinement in civil commitment.<sup>12</sup> Research shows that at least 95% of those arrested for a sexual offense have never had a previous sex offense conviction,<sup>13</sup> while most people currently required to register are unlikely to be re-arrested for a sexual offense.<sup>14</sup> Rather than improve public safety, these regulations:

- Systematically displace people from housing and employment,
- Weaken the resilience of families and communities coping with crime and mass incarceration,
- Divert critical resources away from crime survivors and proven prevention strategies and expand them on regulating the few people who have already been held accountable and punished.<sup>15</sup>

In contrast, public safety and crime reduction principles emphasize a public-health approach to prevention, involving, among other things, primary prevention, focusing on the warning signs inside familial and social circles, and building early and comprehensive support and intervention for people, families, and communities most impacted by violence.<sup>16</sup>

We urge policymakers to suspend rules and policies that are not essential to public safety or that contribute to the spread of COVID-19. These strategies allow law enforcement, on the frontlines of this catastrophe, to dedicate more of their limited resources toward crisis intervention and emergency assistance.

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*This statement was written by the attorneys and scholars associated with the Sex Offense Litigation and Policy Resource Center (SOLPRC) and does not represent the views of Mitchell Hamline School of Law. Comments and questions may be directed to Professor Eric Janus, Director, SOLPRC, Mitchell Hamline School of Law, 875 Summit Avenue, St. Paul, MN 5510, [eric.janus@mitchellhamline.edu](mailto:eric.janus@mitchellhamline.edu).*

The Sex Offense Litigation and Policy Resource Center is housed at Mitchell Hamline School of Law, and works with litigators, scholars, and policy experts across the nation on improving regulatory policies directed at people with past convictions for sexual offenses. Our aim is to improve public safety without sacrificing constitutional rights. Visit our website, and subscribe to our Newsletter, for further information, including updates to this guidance. <https://mitchellhamline.edu/sex-offense-litigation-policy/>.

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## ENDNOTES

<sup>1</sup> WAYNE LOGAN, KNOWLEDGE AS POWER 63-65 (2009). Among the many requirements that Federal law imposes on states that wish to be fully compliant with SORNA (Sex Offender Registration and Notification Act) is that state law require in-person registration, including, e.g., in-person reporting of any change in work or residential address within three business days. *Id.* Because of their objections to a variety of SORNA requirements, most states have chosen not to comply fully with SORNA, and thus already risk the funding penalty that may be imposed for noncompliance, *Id.* See also [SORNA Implementation Status Map](#). For this and other reasons, most if not all states are unlikely to suffer federal funding penalties for suspending in-person reporting requirements.

<sup>2</sup> See, e.g., the studies relied upon by the California Supreme Court in *In re Taylor*, 343 P.3d 867 (Cal. 2015) which led the Court to conclude that the residency restrictions placed on registrant parolees in San Diego had caused many of them "to become homeless," and thereby "denied them reasonable access to medical and psychological treatment resources, drug and alcohol dependency services, job counseling, and other social services." *Id.* at 877. A study conducted for the federal SMART office concluded that "[T]here is no empirical support for the effectiveness of residence restrictions. In fact, a number of negative unintended consequences have been empirically identified, including loss of housing, loss of support systems and financial hardship that may aggravate rather than mitigate offender risk." Chris Lobanov-Rostovsky, SEX OFFENDER MANAGEMENT STRATEGIES in Sex Offender Management Assessment And Planning Initiative 181, 205 (SMART Office, 2017).

<sup>3</sup> ERIC S. JANUS, HOLDING OUR SEXUAL VIOLENCE POLICY ACCOUNTABLE in SEXUAL VIOLENCE: EVIDENCE BASED POLICY AND PREVENTION (Elizabeth L. Jeglic & Cynthia Calkins eds., 2016).

<sup>4</sup> [Oregon State Police Sex Offender Registration Section, COVID-19 Outbreak Protocol \(March 20, 2020\)](#).

<sup>5</sup> [Christie Thompson, For Some Prisoners, Finishing a Sentence Doesn't Mean Getting Out, CITY LIMITS, May 24, 2016](#).

<sup>6</sup> Cheung, et al., *Viral Hepatitis and Other Infectious Diseases in a Homeless Population*, 34 J. of Clinical Gastroenterology 4 (2002); Letter from Jim O'Connell and Barry Bock, Boston Healthcare for the Homeless Program, March 24, 2020 ("We fear an explosive transmission of this virus in the homeless community, much as we saw with AIDS and TB 35 years ago.")

<sup>7</sup> A recent review of the literature concludes that while it "is widely assumed that sex offenders often fail to register precisely so they can evade detection and, in many cases,, find new victims, [r]esearch suggests, however, that SORN non-compliance is a diverse and multi-dimensional phenomenon and that it is not necessarily associated with recidivism." Walfield et al., *Law Enforcement Views on Sex Offender Compliance with Registration Mandates*, 42 Am. J. of Crim. Justice 807, 809 (2017). Registrants with limited cognitive abilities have difficulty complying with complicated reporting requirements, Duwe, G., & Donnay, W., *The effects of failure to register on sex offender recidivism*, 37 Crim. Just. and Behavior 520 (2010), while others may carelessly neglect their duty to periodically update their registration but in fact remain at their registered locations. Salmon, T. M., *Sex offender registry: Reliability could be significantly improved*. (Report No. 10-05), Office of the VT State Auditor (2010).

<sup>8</sup> Among the Federal requirements imposed on states that wish to be fully SORNA compliant is a criminal penalty of at least one year's imprisonment for any registrant to who fails to keep their registration current or otherwise does

not comply with SORNA registration requirements. At least 20 states have implemented this penalty. See the sources cited in Walfield et al., note 7.

<sup>9</sup> See, [Edhat Staff, Sex Offender Compliance Checks, EDHAT SANTA BARBARA \(Jun. 28 2018\)](#) (reporting on 81 checks over a two-day period, as part of a program of “similar sweeps on an ongoing basis” in Santa Barbara County, California); [Staff, Police, agencies conduct sex offender compliance checks, OA ONLINE \(Oct. 24, 2019\)](#) (225 checks in the City of Odessa, Tx, over a one day period, involving “110 law enforcement personnel.”); [Amanda Goodman, Press Release: Sex Offenders Arrested - Hot Springs, Arkansas 911 News \(Sept. 6, 2019\)](#) (officers from six law enforcement agencies “conduct[ed] home visits of the over 300 Registered Sex Offenders living in the Garland County [Arkansas] area.”)

<sup>10</sup> While the United States Supreme Court struck down a North Carolina law criminalizing the use of social media sites by people required to register in *Packingham v. North Carolina*, 582 U.S. \_\_\_, 137 S.Ct. 1730 (2017), there are many other types of restrictions that limit the ability of people both on and off criminal supervision from accessing the internet. Cf. [People v. Morger,, No. 123643 \(Ill. 2019\)](#) (holding that condition of supervision prohibiting accessing social media was unconstitutional.); [People v. Minnis, 67 N.E.3d 272 \(Ill. 2016\)](#) (upholding conviction for failure to register internet identifiers); [J.I. v. New Jersey State Parole Board, 155 A.3d 1008 \(N.J. 2017\)](#) ((total computer and Internet ban imposed upon a registrant reversed and remanded to determine whether the total computer and Internet ban served any public-safety, rehabilitative, or other penological goal); LA. STAT. ANN. § 15:542(1)(D)(1) (Louisiana state law requiring among other things public disclosure of past conviction and current home address on any social networking site that an individual uses).

<sup>11</sup> [Wendy Sawyer and Pete Wagner, Mass Incarceration: The Whole Pie 2020, Prison Policy Initiative, March 24, 2020.](#)

<sup>12</sup> Logan, note 1.

<sup>13</sup> Jeffrey C. Sandler, et al., *Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law* (2008) 14 Psych., Pub. Pol’y & L. 284 (finding that 95% of sex-offense arrestees in New York between 1986 and 2006 were first-time sex offenders). Other studies find consistent results. E.g., Craun et al., *Percentage of Named Offenders on the Registry at the Time of the Assault; Reports From Sexual Assault Survivors* 17 Violence Against Women 1374, 1378 (2011) (only 3.7% of alleged offenders against 1267 sexual assault victims seen in 2006 by an urban sexual assault resource center were on the sex offender registry).

<sup>14</sup> [Mariel Alper & Matthew R. Durose, Bureau of Justice Statistics, Recidivism of Sex Offenders Released From State Prison: A 9-Year Follow-Up, 4 \(2005-14\) \(2019\)](#) (In study of sex offenders released from prison, 92.3% of the individuals were not rearrested for a new sex offense within nine years of release.) [Thornton, et al.,, Estimating Lifetime and Residual Risk for Individuals Who Remain Sexual Offense Free in the Community: Practical Applications, SEXUAL ABUSE \(2019\)](#) (Only 33 of the random sample of 371 adult male registrants followed in the study (8.8%) were “well above average” in sexual re-offense risk, while another 74 (20%) were “above average in risk.” More than 70% of registrants were in the three lower risk categories, Average, Below Average, and Very Low. The lifetime re-offense likelihood for the “average” group is below 15%, and less than 5% for the “below average” group. Indeed, only one-third of those in the “above average” group re-offend sexually at some point.).

<sup>15</sup> See [Grant Duwe, What has Worked and What Has Not With Minnesota Sex Offenders: A Review of the Evidence, 21 J. SEXUAL AGGRESSION 71 \(2015\).](#) [Grant Duwe, The Promise and Potential of Circles of Support and Accountability 4 \(Am. Enterprise Inst., 2018\).](#) [Eric S. Janus, Failure to Protect \(2006\).](#)

<sup>16</sup> See, e.g., Pamela McMahon, *The Public Health Approach to the Prevention of Sexual Violence*, 12 SEXUAL ABUSE: J. OF RES & TREATMENT 27, 28 (2000). Basile, K.C. IMPLICATIONS OF PUBLIC HEALTH FOR POLICY ON SEXUAL VIOLENCE. IN SEXUALLY

COERCIVE BEHAVIOR: UNDERSTANDING AND MANAGEMENT (R.A. Prentky, E.S. Janus, & M.C. Seto (Eds.), (pp. 449-450) (2003). New York: Academy of Sciences; DeGue, et al., *A systematic review of primary prevention strategies for sexual violence perpetration*, 19 AGGRESSION AND VIOLENT BEHAVIOR 346-362 (2014).