Nos. 127464, 127487 (cons.)

IN THE
SUPREME COURT OF ILLINOIS

MARTIN KOPF, Plaintiff-Appellee/Cross-Appellant, v. BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, and JOE McMAHON, in his official capacity as Kane County State's Attorney, Defendants-Appellants/Cross-Appellees, and HAMPSHIRE POLICE DEPARTMENT, Defendants.	)	On Direct Appeal from the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois No. 19-CH-000883 The Honorable, KEVIN T. BUSCH, Judge Presiding.

BRIEF AND APPENDIX OF STATE DEFENDANTS-APPELLANTS

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POINTS AND AUTHORITIES

NATURE OF THE ACTION

Plaintiff Martin Kopf pleaded guilty to aggravated criminal sexual abuse in 2003 after an incident involving a minor, and as a result he must register as a sex offender for the rest of his life under the Illinois Sex Offender Registration Act, 730 ILCS 150/7 (2020) ("SORA"). The Illinois Criminal Code prohibits a child sex offender from residing within 500 feet of a home day care. 720 ILCS 5/11-9.3(b-10) (2020) ("residency restriction"). In 2017, plaintiff and his wife purchased a plot of land and built on a house on it. The next year, the Hampshire Police Department informed plaintiff that a home day care was operating within 500 feet of his residence, which required him to move.

Plaintiff filed a complaint in the circuit court, naming as defendants the Hampshire Police Department, as well as the Kane County State's Attorney, the Director of the Illinois State Police ("ISP"), and the Illinois Attorney General, all in their official capacities. He claimed that the residency restriction violated several provisions of the Illinois and United States Constitutions, was void for vagueness, and that the ISP Director and the Hampshire Police Department were negligent in not informing him earlier that the location of his residence did not comply with the residency requirement. The circuit court dismissed most of plaintiff's claims, but held that the residency restriction violated his substantive due process and equal protection rights. The court then entered a permanent injunction in favor of plaintiff and against defendants, allowing him to return to his residence and

prohibiting defendants from prosecuting him or removing him from his residence based on the residency restriction.

The ISP Director and the Illinois Attorney General ("state defendants") appealed the circuit court's orders directly to this Court. Thereafter, state defendants moved this Court to vacate those orders and remand for further proceedings because they did not comply with Illinois Supreme Court Rule 18, including the rule's requirement that the circuit court make clear whether it found the residency restriction to be facially unconstitutional or unconstitutional as applied to plaintiff. After this Court remanded for the limited purpose of ensuring compliance with Rule 18, the circuit court clarified that it found the residency restriction to be facially unconstitutional.

The question presented is raised on the pleadings.

ISSUE PRESENTED FOR REVIEW

Whether the circuit court's holding that the residency restriction was facially unconstitutional because it did not satisfy rational basis review was legally erroneous, given that the State has an indisputably legitimate interest in protecting children from sex abuse, and it is reasonably conceivable that prohibiting child sex offenders from residing within 500 feet of a home day care would protect some children from such abuse.

JURISDICTION

On June 22, 2021, the circuit court entered an order dismissing plaintiff's negligence, *ex post facto*, procedural due process, and void for vagueness claims (C 590-91), but held that the residency restriction violated substantive due process and equal protection. (C 591-93).[1] That same day, the court entered a permanent injunction in favor of plaintiff and against defendants, enjoining defendants from prohibiting plaintiff from residing at his house or prosecuting him or removing him from his residence based on the residency restriction. (C 593-94). On June 23, 2021, the circuit court entered an order stating that its June 22, 2021 order was final and appealable and disposed of all claims. (C 595).

On July 20, 2021, state defendants filed in the circuit court a notice of direct appeal to this Court, to challenge the circuit court's June 22 and 23, 2021 orders. (C 608-09). This Court docketed that appeal as No. 127464. On July 22, 2021, the Kane County State's Attorney filed in the circuit court a notice of direct appeal to this Court. (C 621-22). This Court docketed that appeal as No. 127487. These were timely notices of appeal because they were filed within 30 days of the circuit court's final orders. *See* Ill. Sup. Ct. R.

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[1] The common law record, filed in this Court on September 21, 2021, is cited as "C __." The report of proceedings, also filed on September 21, 2021, is cited as "R __." The supplemental record filed on February 17, 2022 is cited as "Sup C ___," the supplemental record filed on March 1, 2022 is cited as "Sup3 C ___," and supplemental report of proceedings, filed on February 25, 2022, is cited as "Sup 2 R ____." State Defendants-Appellants' Appendix is cited as "A __."

303(a)(1). This Court has jurisdiction over these appeals under Illinois Supreme Court Rule 302(a). On August 10, 2021, this Court consolidated appeal Nos. 127464 and 127487.

On August 24, 2021, plaintiff filed in this Court a motion for leave to file a cross-appeal *instanter*, in appeal No. 127464. This Court granted the motion on September 1, 2021.

STATUTES INVOLVED

It is unlawful for a child sex offender to knowingly reside within 500 feet of a playground, child care institution, day care center, part day child care facility, day care home, group day care home, or a facility providing programs or services exclusively directed toward persons under 18 years of age. Nothing in this subsection (b-10) prohibits a child sex offender from residing within 500 feet of a playground or a facility providing programs or services exclusively directed toward persons under 18 years of age if the property is owned by the child sex offender and was purchased before July 7, 2000. Nothing in this subsection (b-10) prohibits a child sex offender from residing within 500 feet of a child care institution, day care center, or part day child care facility if the property is owned by the child sex offender and was purchased before June 26, 2006. Nothing in this subsection (b-10) prohibits a child sex offender from residing within 500 feet of a day care home or group day care home if the property is owned by the child sex offender and was purchased before August 14, 2008 (the effective date of Public Act 95-821).

720 ILCS 5/11-9.3(b-10) (2020)

"Day care homes" means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household.

225 ILCS 10/2.18 (2020)

STATEMENT OF FACTS

The Criminal Code's residency restrictions

The Illinois Criminal Code defines "child sex offender" as any person who has been charged with a sex offense, including aggravated criminal sexual assault, where the victim is a person under 18 years of age. 720 ILCS 5/11-9.3(d)(1)(i), (2)(ii) (2020). In 2008, the Criminal Code was amended to prohibit child sex offenders from residing within 500 feet of, among other things, a home day care, 720 ILCS 5/11-9.3(b-10) (2020), which is defined as a family home that receives

> more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household.

225 ILCS 10/2.18 (2020); Pub. Act No. 95-821.

SORA requires that a sex offender must register with the chief of police of the municipality "in which he or she resides or is temporarily domiciled for a period of time of 3 or more days[.]" 730 ILCS 150/3(a)(1) (2020). Similarly, a person's residence or temporary domicile is defined as "any and all places where the sex offender resides for an aggregate period of time of 3 or more days during any calendar year." 730 ILCS 150/3 (2020).

Plaintiff's second amended complaint[2]

Plaintiff's second amended complaint, the operative one in this case, alleged the following. During his service in the United States Navy, plaintiff was injured, resulting in him having lower back problems. (C 313; A16). He has been diagnosed with "moderate incomplete paralysis" to both of his legs, which limit his mobility. (*Id.*). Plaintiff also has been diagnosed with "adjustment disorder with mixed anxiety and depressed mood." (*Id.*). The United States Department of Veterans Affairs considers these disabilities to be "permanent and total." (C 314; A17).

Plaintiff was convicted of aggravated criminal sexual abuse in 2003. (C 309, 381; A12, A84). According to plaintiff, since his 2003 conviction, he had no other criminal convictions and has not reoffended. (C 316; A19).

Plaintiff is married with two sons. (*Id.*). To build a house that would accommodate his disabilities and comply with the Criminal Code's residency restrictions, plaintiff conducted a search of the Hampshire area using a mapping system provided by the Illinois State Police Sex Offender Response Team ("ISORT"). (C 316-17; A19-20). The property that plaintiff sought to purchase did not show up on ISORT mapping system as prohibited under SORA. (C 316-17; A19-20).

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[2] Around when plaintiff filed his initial complaint in the circuit court, he also moved for a temporary restraining order prohibiting the enforcement of the residency restriction against him. (C 113). The circuit court granted the motion (C 220), and so plaintiff has been allowed to register and reside at his house in Hampshire during this litigation.

Around November 2017, plaintiff contacted ISORT to confirm that the property complied with the residency restrictions. (C 317; A20). According to plaintiff, he was told that the property was compliant, but also that he was required to confirm this with local law enforcement. (*Id.*). That same month, plaintiff contacted the Hampshire Police Department and was told that a nearby preschool and park were "outside the 500 foot radius" of the property. (*Id.*). Plaintiff said that "[a]t no time did [Hampshire Police Department Lieutenant Jones] suggest any home daycares in the area." (*Id.*). Based on this, plaintiff understood that the property was approved. (*Id.*).

Plaintiff and his wife purchased the property in December 2017, and construction of the house began the following month. (*Id.*). On August 24, 2018, plaintiff and his family moved into the house and plaintiff "immediately registered with Lieutenant Jones as required by" SORA. (*Id.*).

To his complaint, plaintiff attached a Hampshire Police Department incident report, which revealed that on November 1, 2018, Lieutenant Jones learned that someone called the police to report that plaintiff lived "a couple of doors down" from a home day care. (C 384; A87). Lieutenant Jones contacted the Illinois Attorney General's Office and relayed that when plaintiff called the Hampshire Police Department before purchasing the property, plaintiff asked whether it was far enough away from the preschool and was told that it was. (*Id.*). After searching the Illinois Department of Children and Family Services ("DCFS") website, Lieutenant Jones learned that there was a home day care

within 500 feet of plaintiff's residence. (*Id.*). The incident report further showed that Lieutenant Jones was informed by the Illinois Attorney General's Office and the Kane County State's Attorney that plaintiff would have to move. (*Id.*). According to plaintiff, he was given 22 days to move. (C 318; A21).

Thereafter, plaintiff purchased a trailer and lived at an RV resort, but on August 12, 2019, was told that he had to leave there because of his status as a sex offender. (*Id.*). After being rejected from "hundreds" of apartments, plaintiff began sleeping in the back seat of his pickup truck. (*Id.*).

In the operative complaint, plaintiff asserted several claims, including: (1) a negligence claim against the ISP Director and the Hampshire Police Department; and against all defendants: (2) an equal protection claim under the United States and Illinois Constitutions; (3) a claim that SORA's registration requirements and the residency restriction were void for vagueness; (4) a claim that SORA created an unconstitutional irrebuttable presumption that plaintiff was "dangerous and likely to commit further criminal sexual acts," and that presumption was "easily rebutted" as applied to him; (5) procedural and substantive due process claims under the United States Constitution; (6) a claim that the residency restriction violated the *ex post facto* clause of the United States and Illinois Constitutions; (7) an as-applied Eighth Amendment claim; and (8) a claim that the residency

restriction violated the proportionate penalties clause of the Illinois Constitution. (C 318-75; A21-78).

As relief, plaintiff sought: (1) a preliminary and permanent injunction prohibiting defendants from arresting or prosecuting him for violating the residency restriction; (2) a declaratory judgment that the residency restriction was unconstitutional as applied to plaintiff; (3) a preliminary and permanent injunction prohibiting defendants from "enforcing 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-5-3(o)" against him; and (4) a declaratory judgment that 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-5-3(o) were unconstitutional as applied to him. (C 369-70; A72-73).

To his second amended complaint, plaintiff attached: (1) a letter from the United States Department of Veterans Affairs about his benefits (C 376-79; A79-82); (2) reports from the Hampshire Police Department, obtained pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq*. (2020), about his interactions with Lieutenant Jones in November 2018 (C 380-88; A83-91); (3) a copy of a January 15, 2003 transcript from plaintiff's criminal sentencing (C 389-405; A92-108); (4) a January 2006 report to the Ohio Criminal Sentencing Commission regarding Sex Offenders (C 406-32; A109-135); and (5) a report from the United States Department of Justice entitled "Recidivism of Sex Offenders Released from Prison in 1994" (C 433-81; A136-184).

State defendants' motion to dismiss

State defendants filed a motion to dismiss plaintiff's second amended complaint under section 2-619.1 of the Code of Civil Procedure, 735 ILCS 5/2-619.1 (2018). (C 518-35). They argued that the residency restriction did not violate the state and federal *ex post facto* clauses because it operates prospectively, not retroactively and does not constitute punishment as a matter of law. (C 522-23).

In addition, state defendants argued, the appellate court rejected the argument that the residency restriction violated a sex offender's procedural due process rights in *People v. Avila-Briones*, 2015 IL App (1st) 132221. (C 524). Moreover, SORA's registration scheme did not create an irrebuttable presumption about plaintiff because it was only a "registration scheme" and "does not take into account, and therefore does no[t] presume, whether an offender is likely to reoffend." (C 525).

State defendants also argued that the residency restriction did not violate plaintiff's substantive due process rights. (C 526). Under the applicable and highly deferential rational basis review standard, protecting children from child sex offenders was a legitimate governmental interest, and the Seventh Circuit Court of Appeals, in analyzing the same statute, concluded that it was "self-evident that creating a buffer between a child day-care home and the home of a child sex offender may protect at least some children from harm." (C 526 (citing *Vasquez v. Foxx*, 895 F.3d 515, 525 (7th Cir. 2018)).

In addition, state defendants argued, provisions of SORA and the Criminal Code did not violate due process principles because it was not impermissibly vague, as this Court and other reviewing courts have concluded. (C 527-28) (citing *People v. Howard*, 2017 IL 120443 at ¶¶ 32-33 (SORA's use of "loiter" not impermissibly vague); *People v. Stork*, 305 Ill. App. 3d 714, 723 (2d Dist. 1999) (definition of "permission" not impermissibly vague); *People v. Diestenhorst*, 344 Ill. App. 3d 1172, 1187 (5th Dist. 2003)), "approach," "communicate," and "contact" not impermissibly vague)).

And plaintiff's proportionate penalties clause and Eighth Amendment claims failed as a matter of law as well, because the appellate court in *Avila-Briones* rejected similar challenges to SORA. (C 529-30).

State defendants also explained that the residency restriction did not violate plaintiff's equal protection rights because it was subject only to rational basis review and several courts have held that it passed that lower level of scrutiny. (C 531). Finally, plaintiff's negligence claim against the ISP Director was barred by the doctrine of sovereign immunity. (C 532-34).

The Hampshire Police Department and the Kane County State's Attorney joined state defendants' motion to dismiss. (C 508-09, 542-43); (*see* R 6).

Plaintiff's response to defendants' motion

In response to the motion to dismiss, plaintiff argued that "the whole registration, notification, and all the other sex offender laws . . . when taken

together as a whole, [we]re punishment." (C 547). Plaintiff asserted that the numerous prohibitions placed on him based on his status as a sex offender were "similar to that of parole/probation." (C 548). As a result, he claimed, those prohibitions violated the *ex post facto* clause. (*Id*.).

As to his procedural due process challenge, plaintiff reiterated that he was bringing an "as-applied" challenge and stated that he had "successfully completed treatment and probation," that a "state paid counsellor" deemed him to be "extremely low-risk to recidivate," and that he had been "offense-free" for the previous 18 years. (C 550). Plaintiff argued that "ever increasing restrictions on his property and liberty rights, without taking into account his current danger to society or if the restriction is even related to his crime, violates procedural process." (C 552). And he reiterated his belief that SORA created an irrebuttable presumption that violated due process. (C 553-54).

In addition, plaintiff argued that his fundamental right to "own and enjoy the use of his current property as well as any future property" was impacted by the residency restriction, and so rational basis was not the correct level of scrutiny for his substantive due process claim. (C 554-55). Further, plaintiff asserted, he was part of a protected class because, as a sex offender, he was part of a "discrete and insular minority." (C 555). Even if he was not a member of a protected class, plaintiff continued, the residency restriction was not reasonably related to a legitimate state interest because "[i]f the goal were

to truly protect and inform the public of the danger of sex offenders, then the public should truly know the specific danger level of a former offender." (*Id.*).

In addition, plaintiff argued, the residency restriction was impermissibly vague because a home day care in a residential neighborhood "looks like any other house." (C 557). And "three law enforcement agencies" failed to find that the property did not comply with the residency restrictions. (C 557-58).

Moreover, citing the concurrence in *People v. Jackson*, 2017 IL App (3d) 150154, plaintiff argued that SORA violated the proportional penalties clause because the restrictions that it imposes on sex offenders "inhibits a former offender's ability to become a useful citizen again." (C 560).

The residency restriction also violated the equal protection clause, plaintiff submitted, because it "impermissibly and irrationally create[d] multiple classes of former offenders who own homes," unless an exception were created to allow sex offenders to remain in their home so long as they purchased it before a home day care opened nearby. (C 561). Finally, the negligence claim was not barred by sovereign immunity because "ISP violated statutory law and/or acted outside the bounds of his authority" by giving him permission to move into a house that violated the residency restrictions. (C 561-62).

The hearing on defendants' motion to dismiss

After state defendants filed a reply in support of their motions to dismiss (C 565-76), the circuit court held a hearing (R 2-4). During the

hearing, state defendants reiterated their arguments for dismissing plaintiff's second amended complaint. (R 10-16, 18-20, 26-32).

Plaintiff appeared at the hearing and represented himself. (*See* R 3). Plaintiff stated that he pleaded guilty in 2003 to aggravated criminal sexual abuse involving a 15-year-old victim. (R 38-39). Plaintiff said that he was sentenced to three years of probation, and that he attended group and individual counseling, which he "did very well at." (R 39). Plaintiff did not present documentary evidence or sworn testimony in support of his allegations or these assertions (*see* R 3-49).

Plaintiff argued that the residency restriction was not rational because he was still permitted to visit his house whenever he wanted. (R 42). And, he continued, a Georgia court in *Mann v. Georgia* held that similar statute, which allowed a sex offender to visit his residence when a nearby day care was open, but prevented him from sleeping there at night when the day care was closed, did not pass rational basis review. (*Id*.).

Plaintiff clarified that he was seeking relief from the entire SORA statutory scheme. (R 36). He added that should "not be subject to these restrictions anymore" because for "almost two decades" he had been a law-abiding citizen. (R 38).

The circuit court's June 22 and 23, 2021 orders

On June 22, 2021, the circuit court entered an order granting in part and denying in part defendants' motion to dismiss plaintiff's second amended

complaint. (C 588-94; A185-191). The court dismissed the following claims: (1) negligence; (2) *ex post facto*; (3) procedural due process; and (4) void for vagueness. (C590-91; A187-188).

But the court held that "the SORA provisions at issue (specifically the definition of Day Care Home and its impact) violate both the equal protection clause as well as substantive due process." (C 591; A188). The court agreed with defendants that these provisions were subject to rational basis review because they did not implicate a suspect class or a fundamental right. (*Id.*). And, the court concluded, protecting children from sex offenders was "a legitimate, if not compelling, state interest." (*Id.*).

But, "as applied to the plaintiff," the court continued, the residency restriction was not rationally related to that interest because the definition of "day care home . . . [led] to some absurd results." (*Id.*). Specifically, the court observed, plaintiff could live next door to someone with a child under 12 years old who also cared for another unrelated child under 12 years old, or next door to someone who had "five, ten or a dozen children without consequence." (C 592; A189). As a result, the court declared, "[s]uch a scheme [wa]s not rationally related to the legitimate state interest of protecting children, and d[id] nothing to promote it." (*Id.*).

Accordingly, the circuit court entered a permanent injunction in favor of plaintiff and against defendants, enjoining them from:

1. Declining or refusing to register plaintiff at his Kathi Dr address based solely on his proximity to a Day Care Home as it is presently defined in the Child Care Act.

2. Taking any action to force plaintiff to move or vacate the property based solely on his proximity to a Day Care Home as it is presented defined in the Child Care Act.

3. Prosecuting plaintiff for any criminal offense based solely on his proximity to a Day Care Home as it is presently defined in the Child Care Act.

(C 594; A191).

The next day, the circuit court entered an order clarifying that its June 22, 2021 order disposed of all of plaintiff's claims, and therefore was final and appealable. (C 595; A192).

State defendants appealed (C 608; A193), along with the Kane County State's Attorney (C 621; A195). And this Court consolidated the appeals.

The circuit court's February 16, 2022 order

After filing a notice of appeal, state defendants moved this Court to vacate the circuit court's June 22 and 23, 2021 orders and remand for further proceedings. (*See* Sup3 C12). This Court denied state defendants' request to vacate the circuit court's orders, but granted their request to remand the matter for further proceedings for the "limited purpose of making and recording findings in compliance with Supreme Court Rule 18." (*Id.*).

On remand, the circuit court held a status hearing on January 28, 2022, during which state defendants proposed submitting stipulated facts, and if the

parties could not agree to the facts, proceeding to an evidentiary hearing. (Sup2 R5-6). Plaintiff objected, arguing that this Court's partial remand order did not allow for an evidentiary hearing. (Sup2 R 9).

State defendants also sought clarification as to whether the court intended to hold the residency restriction unconstitutional on its face or merely as applied to plaintiff. (Sup2 R 12). The court acknowledged that it "had no facts that would have specifically related to Mr. Kopf and what was happening on his block," and stated that its holding was that the challenged provisions were facially unconstitutional. (*Id.*).

The circuit court continued the matter to February 16, 2022, and during that hearing, state defendants reiterated their proposal to submit stipulated facts because they were "operating under the assumption that this was an as-applied challenge." (Sup2 R 18). The court clarified that its ruling was "primarily facial because the defect is in the statutory scheme itself." (Sup2 R 19). But the court also stated that its ruling was "focused on the facts as they exist in Mr. Kopf's neighborhood which was set out in the pleadings and essentially agreed to by the parties which was that he lives within 500 feet of a daycare home." (*Id.*). State defendants agreed that to the extent the court held that the residency restriction was facially unconstitutional, no additional factual presentation would be necessary. (Sup2 R 21).

The circuit court then stated that, in its original order, it "recited certain facts" about plaintiff's "compliance with his [criminal] sentence and . .

. the SORA laws," and that he purchased a home "after being told that it was a place he could locate." (Sup2 R 23). The court explained that defendants did not contest those "facts," it found them to be true, and thus took them into consideration in resolving the case. (*Id.*). State defendants explained that the matter had been before the court on a motion to dismiss. (Sup2 R 21-22). For purposes of that motion, all well plead facts were assumed to be true, but state defendants had not filed an answer to the complaint and thus never stated which allegations they did and did not contest. (*Id.*).

On February 16, 2022, the circuit court entered an order, specifying that it found unconstitutional the portion of 720 ILCS 5/11.9.3(b-10) (2020) that made it illegal for a "child sex offender to knowingly reside within 500 feet of a day care home" as defined in the Child Care Act of 1969, 225 ILCS 10/2.18 (2020). (Sup C 4; A201). The court noted that its "findings [we]re based both upon the due process clause as well as equal protection grounds." (*Id.*). Because the relevant provisions did not infringe on a fundamental right, nor was plaintiff a member of a suspect or protected class, the circuit court indicated that it applied the rational basis test. (*Id.*). The court then concluded that, although the State had a legitimate interest in protecting children from child sex offenders, "the statutory scheme [wa]s not rationally related to that interest, given the definition of 'day care homes.'" (*Id.*).

According to the court, the statutory "scheme is actually irrational" because the definition of "day care home" includes the natural children of the

homeowner. (Sup C 5; A202). As a result, child sex offender could live next to a family with 10 children under the age of 12, but could not live next to that family if it accepted two unrelated children into the home "for day care." (*Id*.). The court also found that the statute violated plaintiff's equal protection rights because it treated similar groups of individuals differently. (*Id*.). Specifically, child sex offenders are treated differently depending on whether they live next to a home day care "consisting of only 3 qualifying children," a home with a family "of 5, 7, or 10 children," or "next to the family that has 3 to 12 kids for day care that all come from a single household." (*Id*.). The first situation would be illegal, while the latter two were not. (*Id*.).

Finally, the circuit court explained that it was "primarily addressing a facial defect in the statutory scheme," although "[t]o some extent . . . the decision was also as applied to Mr. Kopf." (Sup C 5-6; A202-03). The court noted that plaintiff had objected to defendants' proposal to supplement the record with stipulated facts and decided that "no additional facts are necessary." (Sup C 6; A203).

ARGUMENT

I. This Court reviews the circuit court's orders *de novo*.

The circuit court granted in part and denied in part state defendants' motion to dismiss plaintiff's second amended complaint, in which it considered the constitutionality of the residency requirement, and entered a permanent injunction. (C 590-95). This Court reviews *de novo* a lower court's decision regarding the constitutionality of a statute. *People v. Eubanks*, 2019 IL 123525, ¶ 34.

In deciding a statute's constitutionality, a court must determine first whether the plaintiff's challenge is facial or as-applied. *See People v. Thompson*, 2015 IL 118151, ¶ 36. "Although facial and as-applied constitutional challenges are both intended to address constitutional infirmities, they are not interchangeable." *Id.* On the one hand, "[a]n as-applied challenge requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party." *Id.* On the other hand, "a facial challenge requires a showing that the statute is unconstitutional under any set of facts, *i.e.*, the specific facts related to the challenging party are irrelevant." *Id.* Moreover, this Court has repeatedly indicated that "[a]ll statutes carry a strong presumption of constitutionality," and that statutes should be upheld as constitutional "whenever reasonably possible, resolving all doubts in favor of their validity." *People v. Pepitone*, 2018 IL 122034, ¶ 12.

Finally, when a circuit court's order granting a permanent injunction involves a question of law, as it does here because the circuit court decided the constitutionality of a statute, this Court's review is also *de novo*. *Vaughn v. City of Carbondale*, 2016 IL 119181, ¶ 22. A party seeking a permanent injunction must demonstrate: "(1) a clear ascertainable right in need of protection; (2) that he or she will suffer irreparable harm if the injunction is not granted; and (3) that no adequate remedy at law exists." *Id.*, ¶ 44.

II. The residency restriction is not facially unconstitutional and plaintiff has waived any as-applied challenge.

In this case, the circuit court erred as a matter of law by holding that the residency restriction was facially unconstitutional. Although the court correctly determined that the residency restriction was subject to rational basis review, it misapplied that test. Because it is reasonably conceivable that prohibiting child sex offenders from residing within 500 feet of a home day care may protect some children, the residency restriction passes rational basis review and therefore is not facially unconstitutional. And to the extent that plaintiff wanted to pursue an as-applied challenge to the residency restriction, he abandoned such a claim by objecting to an evidentiary hearing before the circuit court. Indeed, because the record contains only unverified allegations and no evidence, there was nothing upon which the circuit court could have made factual findings to render an as-applied ruling.

A. The residency restriction does not violate substantive due process because it is rationally related to the legitimate state interest in protecting children.

Plaintiff claimed, and the circuit court held, that the residency restriction violated the due process clauses of the United States and Illinois Constitutions. (C 307); *see also* U.S. Const. amend. XIV, § 1; Ill. Const. art. I, § 2. The circuit court did not specify upon which clause it based its decision (Sup C 4; A201) and so both are discussed below.

The due process clause in the Illinois Constitution is "nearly identical to its federal counterpart." *Hope Clinic for Women, Ltd., v. Flores*, 2013 IL 112673, ¶ 47. Accordingly, this Court uses the "limited lockstep" approach to interpreting the state clause, meaning that "departure from the United States Supreme Court's construction of the provision will generally be warranted only if [this Court] find[s] in the language of our constitution, or in the debates and the committee reports of the constitutional convention," an indication that the Illinois Constitution was intended to be construed differently. *Id*. (internal quotations omitted). There is no reason here to read the due process clause in the Illinois Constitution as providing more protection than its federal counterpart. *See In re M.A.*, 2015 IL 118049, ¶ 53 ("no compelling reason to interpret the Illinois due process clause to provide greater protection than its federal counterpart" in substantive due process challenge to the Violent Offender Against Youth Registration Act).

The circuit court dismissed plaintiff's procedural due process claim (C 591; A188) but held that the residency restriction violated his substantive due process rights (C 591-92; A188-89). When assessing a substantive due process challenge, the court first "determine[s] whether the statute restricts or regulates a liberty interest and whether that liberty interest is a fundamental right." *Pepitone*, 2018 IL 122034, ¶ 14. Fundamental liberty interests include things such as "freedom of choice concerning procreation, marriage, and family life[.]" *People v. R.G.*, 131 Ill. 2d 328, 343 (1989); *see also Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997)(describing fundamental liberty interests).

1. The residency restriction does not implicate a fundamental right.

The circuit court here correctly concluded that the residency restriction does not implicate a fundamental right (*see* C 591), because it only limits where plaintiff may live, not with whom he may live. The United States Court of Appeals for the Seventh Circuit reached this same conclusion when considering the residency restriction at issue in this case. *See Vasquez v. Foxx*, 895 F.3d 515 (7th Cir. 2018). There, the plaintiffs claimed that the residency restriction violated their substantive due process rights, infringing on their fundamental right to "establish a home." *Id*. at 525. (internal quotations omitted). The Seventh Circuit described their argument as "meritless" because "[a] law limiting where sex offenders may live does not prevent them from establishing a home; it just constrains where they can do so." *Id*.

The Illinois Appellate Court reached a similar conclusion in considering a challenge to the Criminal Code's prohibition on child sex offenders residing within 500 feet of a school. In *People v. Leroy,* 357 Ill. App. 3d 530 (5th Dist. 2005), the defendant, a child sex offender, sought to live with his mother, who owned a home within 500 feet of a school. *Id*. at 532-33. The defendant argued that the statute violated his fundamental right "to live with his mother and enjoy her support," but the court rejected that assertion. *Id*. at 533-34. The court explained that the statute "does not dictate with whom a child sex offender may live," but merely "restricts where, geographically, a child sex offender may live in relation to a playground or a facility providing programs or services exclusively directed toward persons under 18 years of age." *Id*. at 534; *see also Pepitone*, 2018 IL 122034, ¶ 14 (Criminal Code's prohibition on child sex offenders being knowingly present in a public park does not implicate fundamental right).

Consistent with this precedent, this Court should hold that the residency restriction does not implicate a fundamental right. Plaintiff is not prohibited from establishing a home or from living with his family. Instead, the residency restriction limits only where he may live.

For his part, plaintiff argued in the circuit court that the residency restriction violated his fundamental rights to "own and enjoy the use of his current property as well as any future property" (C 544-55) and interfered with his fundamental liberty right in "intrastate travel and the right to parent

one's children." (C 334). Plaintiff is incorrect; the residency restriction does not implicate a fundamental right.

First, as to plaintiff's claim that the residency restriction implicates his ability to enjoy his current or future properties, plaintiff alleged that he purchased the land that he built his house on in 2017 (*see* C 317; A 20). This was nine years after the residency restriction went into effect. Pub. Act No. 95-821 (eff. Aug. 14, 2008). Thus, whatever property interest plaintiff had in the land and the house at the time they were purchased and built was already limited by the residency restriction. *See Vasquez*, 895 F.3d at 524 (affirming dismissal of plaintiffs' takings claims because residency restriction was "on the books" when home was purchased and it was "necessarily part of any property-rights expectations [that he] could have held"); *see also People v. Lander*, 215 Ill. 2d 577, 588 (2005) ("It is well settled that all citizens are charged with knowledge of the law"). Moreover, the Illinois Appellate Court has routinely "rejected the notion that employment or residency restrictions on sex offenders violate their fundamental rights." *People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 75-76 (collecting cases). Thus, plaintiff's assertion that the residency restriction infringes on his ability to enjoy his current and any future property does not implicate a fundamental right.

Second, this Court has yet to expressly recognize a fundamental right to intrastate travel, although it impliedly recognized one in *In re J.W.*, 204 Ill. 2d 50, 77-78 (2003) (citing *People v. Pickens*, 186 Ill. App. 3d 456, 460 (4th Dist.

1989), which referenced *People v. Beach*, 147 Cal. App. 3d 612, 620-21 (Cal. App. 2d Dist. 1983), in which the California appellate court held that "[a] citizen has a basic constitutional right to intrastate as well as interstate travel"). Assuming that plaintiff has such a right, the residency restriction does not infringe it. Plaintiff is prohibited from residing at the residence in question, but he is not prohibited from traveling there. Thus, the residency restriction does not infringe any right to intrastate travel.

Third, parents have a fundamental liberty interest "in raising and caring for their children." *People v. Legoo*, 2020 IL 124965, ¶ 31. That interest "includes the right of parents to direct the upbringing and education of their children and make decisions involving the care, custody, and control of their children." *Id*. The residency restriction, which limits where plaintiff may reside but not how he may raise his children, does not implicate this fundamental right. *See Leroy,* 357 Ill. App. 3d at 544 (residency restriction "does not prohibit the defendant from living with his family . . . . [I]t merely restricts where, geographically, a child sex offender may live"); *see also Legoo*, 2020 IL 124965, ¶¶ 31-32 (rejecting defendant's argument that statute that prohibited him from being present in a public park, where he had gone to look for his son, violated his fundamental liberty interest in raising and caring for his child).

In sum, the circuit court correctly concluded that the residency restriction did not infringe on any fundamental right.

2. The residency restriction passes the applicable rational basis test.

Because the residency restriction does not implicate a fundamental right, it is subject to rational basis review. *Pepitone*, 2018 IL 122034, ¶ 14. Under that test, this Court determines "whether there is a legitimate state interest behind the legislation, and if so, whether there is a reasonable relationship between that interest and the means the legislature has chosen to pursue it." *People v. Johnson*, 225 Ill. 2d 573, 585 (2007). The test is "highly deferential," and its "focus is not on the wisdom of the statute." *Id.* at 584-85; *see also id.* at 592 (court "will not question the wisdom" of General Assembly's choice in enacting statute, as "a statute need not be the best method of accomplishing a legislative goal; it must simply be reasonable"). Thus, "[i]f there is any conceivable set of facts to show a rational basis for the statute, it will be upheld." *Id*.

Protecting children is indisputably a legitimate state interest, *see In re R.C.*, 195 Ill. 2d 291, 305 (2001), and plaintiff has conceded as much (*see* C 334). The first part of the rational basis test, therefore, is satisfied.

The second part of the test is also satisfied because the residency requirement bears a reasonable relationship to furthering the State's interest in protecting children. As the Seventh Circuit explained when sustaining the residency requirement against a similar challenge, it is "self-evident that creating a buffer between a child day-care home and the home of a child sex offender may protect at least some children from harm." *Vasquez*, 895 F.3d at

525; *see also Leroy*, Ill. App. 3d at 535 ("it is reasonable to believe that a law that prohibits child sex offenders from living within 500 feet of a school will reduce the amount of incidental contact child sex offenders have with the children attending that school" and thus will reduce the opportunity for child sex offenders to commit offenses against children).

The circuit court departed from this reasoning, holding that the residency restriction was "irrational" because it would be lawful for a child sex offender to live next door to a family with 10 children under the age of 12, but unlawful for him to live next to that family if it took in two children under the age of 12 from separate households for day care. (Sup C 5; A202). This was a misapplication of the rational basis test. This test does not require that a statute achieve a legitimate state interest in *every* application. Instead, a statute will be upheld if there is "*any* conceivable set of facts to show a rational basis for the statute." *Johnson*, 225 Ill. 2d at 584-85 (emphasis added). And because it is conceivable that children in the hypothetical family envisioned by the circuit court, with 10 children who took in two children from separate households under the age of 12, could be protected by the residency restriction, it satisfies the rational basis test.

The circuit court also erred as a matter of law by holding the statute unconstitutional because the "only way the children are protected in the first instance is if their parents take in enough day care kids from separate households to place them within the 3 to 12 range of protected children." (Sup

C 5; A202). This Court has explained that "[t]he legislature need not choose between legislating against all evils of the same kind or not legislating at all." *Chi. Nat. League Ball Club, Inc. v. Thompson*, 108 Ill. 2d 357, 367 (1985). And "[a]n entire remedial scheme will not be invalidated simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked." *Id*. (cleaned up). Thus, the residency restriction is not facially unconstitutional simply because it may protect some, but not all, children.

In the circuit court, plaintiff argued that the residency restriction did not survive rational basis review because, consistent with SORA, he could visit the house any time that he wanted. *See* R 42. Plaintiff asserted that there was no rational reason to allow him to visit the house during the day when the home day care was open but prohibit him from sleeping at the house at night when the home day care was closed. *See* (R 42). Plaintiff's argument mistakenly assumes that home day cares operate only during the day. But DCFS regulations do not prohibit home day cares from operating at night. *See* 89 Ill. Admin. Code § 406.23 (setting forth regulations for home day cares providing "night care," and providing that "[a] child is considered enrolled in evening and/or night care when a majority of his or her time at the day care home occurs between 6:00 p.m. and 6:00 a.m."). And under a facial challenge, this Court asks whether there is "*any* conceivable set of facts to show a rational basis for the statute." *Johnson*, 225 Ill. 2d at 584-85 (emphasis added).

Because home day cares may operate at night, it is not unreasonable to prohibit child sex offenders from residing next to them so as to create a "buffer" between them and home day cares. *See Vasquez*, 895 F.3d at 525.

Finally, in plaintiff's second amended complaint, he claimed that the residency restriction was unconstitutional as applied to him (*see* C 318-75), but no evidentiary hearing was held before the circuit court entered a permanent injunction. (*See* C 588). Moreover, on this Court's limited remand, plaintiff objected to the circuit court conducting an evidentiary hearing (Sup2 R 8-9). Because an as-applied challenge would require the court to consider plaintiff's specific facts and circumstances, *see People v. Harris*, 2018 IL 121932, ¶ 39, plaintiff has waived any such challenge, *see People v. Bingham*, 2018 IL 122008, ¶ 22 (as-applied challenge "is not properly brought when there has been no evidentiary hearing and no findings of fact"); *People v. Minnis*, 2016 IL 119563, ¶ 19 (refusing to consider as-applied challenge where no evidentiary hearing was held); *Thompson*, 2015 IL 118151, ¶¶ 37-39 (deeming as-applied challenge forfeited because it was raised for the first time on appeal and there was an insufficient factual record to analyze such a claim); *see also In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004) ("a party cannot complain of error which that party induced the court to make or to which that party consented"); *see also Gallagher v. Lenart*, 226 Ill.2d 208, 229 (2007) (defining waiver an affirmative relinquishment of a known right).

Indeed, given plaintiff's refusal to proceed to an evidentiary hearing, there is no evidence in the record upon which a court may decide whether the residency restriction is unconstitutional as applied to him. The circuit court acknowledged several times that there was no evidence before it about the home day care at issue here. *See* (R 26) ("I am not aware of any evidence or pleadings that specifically set out anything more than there is a home on the same street that operates a home day care facility. . . . I don't believe that the Court's been made aware of how often it operates and the makeup of the children who are in the home during its hours of operation."); (Sup2 R 12) ("I had no facts that would have specifically related to Mr. Kopf and what was happening on his block."); (Sup2 R 20) ("I couldn't even imagine what other factors it would be, other than the Court had wondered at some point in time when the daycare home began operating as a daycare home.").

Accordingly, plaintiff's argument that the residency restriction is irrational because he is allowed to visit the home during the day, when the day care was operating, but not at night, when the day care was not, rested on allegations and not evidence about the day care's operating hours. Similarly, although the circuit court noted, during the February 16, 2022 hearing on this Court's limited remand, that it had recited "certain facts" in its initial order about plaintiff's purchase of his home after being told that he could reside there (Sup2 R 23), the record contains no evidence supporting such "facts." All that was before the circuit court were plaintiff's unverified allegations in

his second amended complaint (*see* C 306-75; A9-78), which are not evidence, *Browning v. Jackson Park Hosp.*, 163 Ill. App. 3d 543, 547 (1st Dist. 1987) (allegations in unverified complaint do not constitute evidence). And during the hearings, plaintiff provided no sworn testimony regarding his assertions, and thus state defendants did not have the opportunity to test his allegations. (*See* R 3-48).

The circuit court also purported to make factual findings regarding plaintiff's compliance "with his sentence and his compliance with the SORA laws." (Sup2 R 23). But the record contains no evidence on these topics. Plaintiff's second amended compliant included allegations regarding his compliance with SORA's requirements and his likelihood to reoffend (*see* C 316, 550), but, again, allegations are not evidence, *see Browning*, 163 Ill. App. 3d at 547. Nor does any document attached to plaintiff's complaint speak to these topics. (*See* C 376-81; A79-184). And although plaintiff asserted that he had always complied with SORA's requirements, did "very well" at group and individual counseling, and had not reoffended (R 39), he did not provide these statements under oath, as required by Illinois Rule of Evidence 603, *see* Ill. R. Evid. 603 ("[b]efore testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation, administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so").

In sum, although the circuit court correctly identified rational basis review as the applicable test for plaintiff's substantive due process claim, it misapplied that test. Because a conceivable set of facts exists to support the residency restriction, it satisfies rational basis review and is not facially unconstitutional.

B. The residency restriction also does not violate equal protection.

Plaintiff also claimed, and the circuit court held, that the residency restriction violates the equal protection clauses of the United States and Illinois Constitutions. (C 325-39); *see also* U.S. Const. amend. XVI, § 1; Ill. Const. art. I, § 2. Although, as with plaintiff's substantive due process claim, the circuit court did not specify the clause it rested its decision on (Sup C 4; A201), this Court "applies the same standard under both the Illinois Constitution and the United States Constitution when conducting an equal protection analysis." *In re M.A.*, 2015 IL 118049, ¶ 23.

"[E]qual protection requires the government to treat similarly situated people in a similar manner." *People v. Donoho,* 204 Ill. 2d 159, 176-77 (2003). The level of scrutiny applied to a statute on an equal protection challenge "depends on the type of the legislative classification at issue." *People v. Botruff*, 212 Ill. 2d 166, 176 (2004). If a statute does not implicate a fundamental right or discriminate based on a suspect class (such as race, national origin, or gender), then the rational basis test applies. *People v. Alcozer*, 241 Ill. 2d 248, 262 (2011). And where the rational basis test applies,

challenges to statutes "under due process and equal protection require the same essential analysis," *Alcozer*, 241 Ill. 2d at 262, meaning that "[i]f any set of facts can reasonably be conceived to justify the classification, it must be upheld," *Botruff*, 212 Ill. 2d at 177.

As explained, *see supra* at pp. 25-28, the residency restriction does not implicate a fundamental right. Nor does it discriminate based on a suspect class. Thus, the rational basis test applies. *See In re Destiny P.*, 2017 IL 120796, ¶ 14. And, as also explained, *see supra* pp. at 24-37, the residency restriction satisfies the rational basis test because the State has an indisputably legitimate interest in protecting children from sex abuse, and it is reasonably conceivable that prohibiting child sex offenders from residing within 500 feet of a home day care would protect some children from such abuse.

The circuit court nevertheless held that the residency restriction violated the equal protection clause because "[t]he child sex offender living next to a day care home consisting of only 3 qualifying children is treated differently than the child sex offender living next door to the family of 5, 7, or 10 children." (Sup C 5; A202) But, again, "[w]hen the legislature creates a statute, it is not required to solve all the evils of a particular wrong in one fell swoop." *People v. Adams*, 144 Ill. 2d 381, 391 (1991); *see also supra* p. 31. Here, the General Assembly sought to solve at least part of the problem of child sex offenders coming into close contact with children, and limit the

opportunity of those offenders to reoffend, by prohibiting child sex offenders from being near various locations, including from residing within 500 feet of a home day care. *See* 735 ILCS 5/11-9.3(b-10) (2020); *see also* 720 ILCS 5/11-9.3 (2020) (describing the statute as prohibiting child sex offenders from "approaching, contact, residing with, or communicating with children within certain places"). That the legislature did not prohibit sex offenders from being in or near every location in which they are likely to have access to children does not mean that the residency restriction lacks a rational basis. *See Adams*, 144 Ill. 2d at 391-92 (rejecting equal protection challenge to Habitual Child Sex Offender Registration Act on the basis that it required some convicted felons to register, but not others).

In sum, the circuit court erred when it denied state defendants' motion to dismiss plaintiff's substantive due process and equal protection claims and held that the residency restriction is facially unconstitutional. The State has a legitimate interest in protecting children, and the residency restriction is rationally related to that interest because it may protect some children from child sex offenders. Because the circuit court incorrectly found that the residency restriction violated substantive due process and equal protection, it also incorrectly entered a permanent injunction on that basis. *See Vaughn*, 2016 IL 119181, ¶ 22 (plaintiff seeking permanent injunction must establish, among other requirements, clear right in need of protection). This Court, therefore, should reverse and vacate the circuit court's orders finding that the

residency restriction facially unconstitutional and granting plaintiff permanent injunctive relief.

CONCLUSION

For these reasons, State Defendants-Appellants Brendan Kelly, in his official capacity as the Director of the Illinois State Police, and Kwame Raoul, in his official capacity as the Illinois Attorney General, request that this Court: (1) reverse and vacate the circuit court's June 22 and 23, 2021 orders to the extent that they found that the residency restriction violates plaintiff's substantive due process and equal protection rights; (2) reverse and vacate the circuit court's permanent injunction entered in its June 22, 2021 order; and (3) reverse and vacate the circuit court's January 28, 2022 and February 16, 2022 orders finding that the residency restriction is facially unconstitutional and violates plaintiff's substantive due process and equal protection rights.

Respectfully submitted,

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March 15, 2022

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 38 pages.

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IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT

KANE COUNTY, ILLINOIS

MARTIN T. KOPF)

Plaintiff)

vs.) Case No: 19 CH 883

JOE McMAHON (in his official duties as)

Kane County State's Attorney))

BRENDAN KELLY (in his official duties as)

Director of Illinois State Police))

KWAME RAOUL (in his official duties as)

Illinois Attorney General)

HAMPSHIRE POLICE DEPARTMENT

Defendants

COMPLAINT FOR CIVIL RIGHTS VIOLATIONS, DECLARATORY JUDGEMENT AND OTHER INJUNCTIVE RELIEF

Nature of the Case

1. This is an action challenging the constitutionality of 720 ILCS 5/11-9.3(b-10)(hereinafter referred to as "residency restriction"), which, under Illinois law, makes it illegal for an individual deemed as a "child sex offender" to "knowingly reside within 500 feet of a playground, childcare institution, day care home, group day care home, or a facility providing programs or services exclusively directed towards persons under 18 years of age." Plaintiff challenges the constitutionality of the statute "as-applied," under the Ex Post Facto Clause of both the U.S. Constitution and the State of Illinois Constitution, the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution, as well as Art. I Sect. 2 and Art. I Section 11 of the Illinois Constitution.
2. This is an action challenging the constitutionality of 730 ILCS 150/ (also known as the Sex Offender Registration Act (hereinafter referred to as SORA)), "as-applied," under the Ex Post Facto Clause of both the U.S. Constitution and the State of Illinois Constitution, the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and Art. I, Sect. 2 and 11 of the Illinois Constitution.
3. This is an action challenging the constitutionality of 720 ILCS 5/11-9.3 in its entirety, including, but not limited to, "presence restrictions" and designation of "child sex offender" as-applied to the Plaintiff. Plaintiff challenges the constitutionality under the Ex Post Facto Clause of the U.S. Constitution and the Illinois Constitution, the Fifth,

Eighth and Fourteenth Amendments to the U.S. Constitution and Art. I, Sect. 2 and 11 of the Illinois Constitution.

4. This is an action challenging the constitutionality of 730 ILCS 152 also known as the Sex Offender Community Notification Law (hereinafter referred to Notification Law). Plaintiff challenges the constitutionality under the Ex Post Facto Clause of both the U.S. Constitution and the Illinois Constitution, the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution as well as Art. I, Sect. 2, and 11 of the Illinois Constitution.

5. Plaintiff further challenges the constitutionality of 730 5/5-5-3(*o*) (requiring him to renew his driver's license annually) under the Ex Post facto Clause of both the U.S. and State of Illinois Constitutions, the Fifth, Eighth and Fourteenth Amendments to the U.S. Constitution and Art. I Sect. 2 of the Illinois Constitution.

6. Plaintiff challenges Kane County's procedures for enforcing the "residency restrictions" "as-applied to the Plaintiff. Specifically, Kane County stated "...the timeframe of which [Plaintiff] needs to move should be reasonable and fair." (See Hampshire Police Report #18-04697 (hereinafter referred to as Police Report)). Plaintiff was given exactly 22 days to vacate his residence. After the 22 days, if the Plaintiff did not vacate his property, he would have faced felony prosecution. Plaintiff challenges the policies of the Kane County State's Attorney's Office under the Fifth and Fourteenth Amendments.

Jurisdiction and Venue

7. Jurisdiction is proper in this court pursuant to 735 ILCS 5/209(a-c). Specifically, this is a case brought by a citizen of the State of Illinois and involves real property located within the State as well.

8. Venue is proper in Kane County pursuant to 735 ILCS 5/2 101 as a substantial part of the events occurred in Kane County.

9. Declaratory relief is authorized under 735 ILCS 5/2 701. A declaration of law is necessary and appropriate to determine the respective rights and duties of parties in this action.

The Parties

10. Plaintiff Martin Thomas Kopf is a property owner in the Village of Hampshire, County of Kane, State of Illinois.

11. Plaintiff is a former sex offender and is labeled a "child sex offender" by virtue of his conviction in 2003, therefore he is subject to the requirements of the residency restrictions, presence restriction, SORA, the Notification Law and 730 5/5-5-3(*o*) for the remainder of his life.

12. Defendant Joe McMahon is sued in his official capacity as Kane County State's Attorney. In this capacity, State's Attorney McMahon is charged with the enforcement of the criminal laws of the State of Illinois, including residency restrictions, presence restrictions, SORA, the Notification Law and 730 5/5-5-3(*o*). He is sued solely in his capacity for purposes of declaratory and injunctive relief.

13. State's Attorney McMahon has, in the past, initiated prosecutions for violations of residency restrictions, presence restrictions and SORA. Further, State's Attorney McMahon has the power to initiate prosecutions for violations of 730 ILCS 5/5-5-3(*o*). Plaintiff fears that State's Attorney McMahon will prosecute him in the future for violations of these statutes. The courts have recognized that it is appropriate to bring

forth a constitutional action against a State's Attorney seeking declaratory and injunctive relief.[1]

14. Director Brendan Kelly is sued in his official capacity as the Director of Illinois State Police. In this capacity, Director Kelly is charged with maintaining the sex offender database, ensuring that sex offender are compliant and maintaining the mapping system used to track where sex offenders live. He is sued solely in his capacity for purposes of declaratory and injunctive relief.

15. Plaintiff is fearful that Director Kelly will have him arrested or refer him for criminal prosecution for violations of the sex offender statutes.

16. Attorney General Kwame Raoul is sued in his official capacity as the Attorney General of the State of Illinois. General Raoul is sued solely in his capacity for declaratory and injunctive relief.

17. Hampshire Police Department (hereinafter referred to as H.P.D.), as a local law enforcement agency, is charged with enforcing the laws of the State of Illinois, including residency restrictions, presence restrictions, SORA and 730 ILCS 5/5-5-3(*o*). Further, as Plaintiff is a resident of the Village of Hampshire, Plaintiff is under the direct supervision of the H.P.D. for as long as he lives there. H.P.D. is sued solely for purposes of declaratory and injunctive relief.

18. Plaintiff is fearful that H.P.D. will arrest him for violations of the sex offender statutes.

[1] *Vazquez v. Foxx*, 895 F.3d 515 (2018) (where Plaintiffs were awarded preliminary injunctive relief from prosecution of residency restrictions.

The Challenged Statutes

19. The Plaintiff puts forth an as-applied challenge the statute 720 ILCS 5/11-9.3 Presence within school zone by child sex offenders prohibited; approaching, contacting, residing with, or communicating with a child within certain places by child sex offenders prohibited. Specifically, Plaintiff challenges the following subsections:

> **(a) It is unlawful for a child sex offender to knowingly be present in any school building, on real property comprising any school building...**
>
> **(a-5) It is unlawful for a child sex offender to knowingly be present within 100 feet of a site posted as a pick-up or discharge stop for a conveyance owned, leased, or contracted by a school to transport students to or from school...**
>
> **(a-10) It is unlawful for a child sex offender to knowingly be present in any public park building, a playground or recreation area within any publicly accessible privately owned building, or on real property comprising any public park when persons under 18 years of age are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age unless the offender is a parent of a person under 18 years of age present in the building or on the grounds.**
>
> **(b) It is unlawful for a child sex offender to knowingly loiter within 500 feet of a school building or real property comprising any school...**
>
> **(b-2) It is unlawful for a child sex offender to knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park while persons under the age of 18 are present in the building or on the grounds and to approach, contact, or communicate with a child under 18 years of age, unless the offender is a parent or guardian of a person under 18 years of age present in the building or on the grounds.**
>
> **(b-5) It is unlawful for a child sex offender to knowingly reside within 500 feet of a school building or the real property comprising any school that persons under the age of 18 attend.**
>
> **(b-10) It is unlawful for a child sex offender to knowingly reside within 500 feet of a playground, child care institution, day care center, part day child care facility, day care home, group day care home, or a facility providing programs or services directed toward persons under 18 years of age.**

(c-2) It is unlawful for a child sex offender to participate in a holiday event involving children under 18 years of age.

20. Plaintiff further challenges the 720 ILCS 5/11-9.4-1 (b) and (c) which states:

> **(b) It is unlawful for a sexual predator or a child sex offender to knowingly be present in any public park building or on real property comprising any public park.**
> **(c) It is unlawful for a sexual predator or a child sex offender to knowingly loiter on a public way within 500 feet of a public park building or real property comprising any public park.**

21. Plaintiff challenges the constitutionality of the designation of "child sex offender" as defined in 720 ILCS 5/11-9.3(d)(1-2) and 720 ILCS 11-9.4-1 (a) as being statutorily defined by offense committed.

22. Plaintiff challenges the constitutionality of 730 ILCS 150/ the Sex Offender Registration Act and 730 ILCS 152 the Sex Offender Community Notification Law both in their entirety.

23. Finally, Plaintiff challenges the constitutionality of 730 ILCS 5/5-5-3(*o*).

24. Each of these challenged statutes have changed so dramatically since their inception that it cannot be said they serve the purpose of protecting the public anymore. Instead, these laws undermine public safety, making a former offender *more likely* to reoffend, whether through a technical violation of the draconian laws or through another sex offense.[2]

25. Further, because the requirements of these laws have changed at the whim of the legislators in order to appear "tough on crime,"[3] these changes have negatively affected

[2] Task Force p. iv
[3] *Infra.* at ---

the Plaintiff and his family. For example, had Plaintiff known that the State Legislature would enact laws which would have a negative effect on his ability to parent his children, he might still have gotten married but he definitely would not have fathered any kids.

Factual Allegations

26. Plaintiff is an Honorably Discharged Veteran of the U.S. Navy. While in serving in the Navy, Plaintiff had multiple traumatic experiences which have affected him physically, emotionally and psychologically.[4] The physical injuries include lower back problems[5], in which Plaintiff has had six surgeries thus far and permanent bi-lateral nerve damage, diagnosed as a "[m]oderate incomplete paralysis"[6] to both legs which not only severely limit Plaintiff's mobility but keep Plaintiff in varying degrees of pain on a daily basis and affects the Plaintiff's ability to complete normal tasks such as dressing himself and tying his shoes.

27. The psychological and emotional damage the Plaintiff sustained as a result of his service to this Country is more severe. Plaintiff was diagnosed and is being treated for "adjustment disorder with mixed anxiety and depressed mood," with symptoms such as:

- **occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, *judgement*, thinking, or mood**
- **suicidal ideation**
- **obsessional rituals which interfere with routine activities**
- **speech intermittently illogical, obscure, or irrelevant**

[4] *See* Entitlement Decision from Department of Veterans Affairs.
[5] *Id.* p. 2
[6] *Id.* p. 2-4

- **near-continuous panic or depression affecting the ability to function independently, appropriately and effectively**
- **impaired impulse control**
- **spatial disorientation**
- **neglect of personal appearance and hygiene**
- **difficulty in adapting to stressful circumstances**
- **inability to establish and maintain effective relationships**[7]

28. Because of the severity of Plaintiff's disabilities, the Department of Veterans Affairs had determined that he is "unable to secure or follow substantially gainful occupation as a result of service-connected disabilities."[8]

29. Further, Plaintiff's disabilities are considered "permanent and total" by the Department of Veterans Affairs.[9]

30. In 2001 and again in 2002, Plaintiff had his two back surgeries which both proved to be unsuccessful. Plaintiff became addicted to Vicodin and muscle relaxants, often going to multiple different hospital emergency rooms seeking, and ultimately receiving, prescriptions while concurrently suffering from the untreated mental health issues in which Plaintiff already had two suicide attempts. Also, because Plaintiff was unable to work, he was drinking alcohol excessively, to the point that he would get blackout drunk twice per day, typically going to the bars from 1000-1500 hours, go home and sleep and then return to the bars from 2100-0200 hours. These events directly preceded Plaintiff's sex offense.

31. When Chicago Police came to take Plaintiff into custody at his then apartment located at 4600 N. Cumberland Ave, the arresting sergeant recommended to Plaintiff that he take

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[7] *Id.* p. 3
[8] *Id.* p. 5
[9] See Department of Veterans Affairs letter dated 23 May 2018

"a couple of pain pills because this is going to take a few hours." Plaintiff did as the sergeant recommended, taking triple the dosage in the presence of the officers.

32. Once at the 16th District Police Station, Plaintiff immediately requested an attorney. Over the course of the next few hours, Plaintiff is unsure how long it was, Chicago Police would continue to enter the interrogation room and question Plaintiff. Plaintiff continued to request an attorney. At one point, the sergeant entered the room and told the Plaintiff that if he would just admit to the sexual offense, then he would be back at his apartment within an hour. Because Plaintiff was "buzzing" and tired from the medications, Plaintiff relented and offered a confession. Plaintiff was transferred to Cook County Jail the next day where he spent eight months.

33. On 15 January, 2003, Plaintiff's attorney, William Kunkel, and the Assistant State's Attorney, Ms. Michelle Pappa, approached the Plaintiff with a plea deal. In exchange for a guilty plea, the Plaintiff would receive 3 years of sex offender program probation.[10] Before accepting the plea, Plaintiff inquired about how long he would be required to register. Ms. Pappa assured the Plaintiff that he would only be required to register for 10 years. It was on that assurance that Plaintiff accepted the plea deal. Plaintiff was then handed the Illinois Sex Offender Registration Act Registration Form.[11] The top half of the first page of the form was blank, including the top left corner designating what class of offender Plaintiff would be included in and the offense and statute that the Plaintiff would be pleading guilty to. Plaintiff was instructed to initial the seven lines describing

[10] See Official Trial Transcript Dated 15 January, 2003 p. 2

[11] A copy of the original obtained from Plaintiff's former attorney is included in the exhibits

the duty to register and to sign underneath. "He has filled out the forms and he has filled out half of Sex Offender Registration Act."[12] Without an offense, statute or class of offender notated before Plaintiff read, initialed and signed the form, it would be impossible for the Plaintiff in this case to know that he was required to register for life.

34. It is important to note that the signature of the Notifying Official from the State's Attorney's Office is a different person than the Assistant State's Attorney that promised the 10 year registration period.

35. Since this 2003 conviction, Plaintiff has had no other criminal convictions and has not reoffended.

36. Plaintiff has currently been married for 11 years and has two sons ages 10 (Son #1) and 7 (Son #2). Plaintiff has always been the primary caretaker for both sons their entire lives.

37. Because of Plaintiff's disabilities, Plaintiff and his wife decided that they needed a new home to better accommodate Plaintiff's physical and mental needs. Plaintiff and his wife searched for an existing home but they were not able to find a SORA compliant home that could also be easily adapted to Plaintiff's needs. After researching, Plaintiff and his wife decided it would be more cost-effective to build a new home.

38. Before deciding on building a new home in the current location, Plaintiff and his wife conducted a search of the Hampshire area using the Illinois State Police Sex Offender Response Team's (hereinafter referred to as ISORT) mapping system. The mapping system shows the location of schools, preschools and parks. It also shows the location of

[12] Transcript p. 2

all sex offenders living within a specified area. This search did not turn up any prohibited locations in the area of the proposed building site.

39. In or about November 2017, Plaintiff and his wife contacted ISORT to ensure the proposed building site was compliant with the residency restrictions. They were advised by ISORT that the site was compliant but, by law, Plaintiff was required to check with local law enforcement. At no time did ISORT recommend checking any other State websites or any other procedures that needed to be done.

40. In or about December 2017 Plaintiff and his wife purchased the site at [redacted] Hampshire and construction began on their new residence in or about January 2018.

41. There are numerous and costly upgrades to this semi-custom built home that meet the requirements of the Department of Veteran's Affairs.

42. On or about 24 August 2018, Plaintiff and his family took up residence at [redacted] Plaintiff immediately registered with Lt. Jones as required by 730 ILCS 150/3. At no time during the registration process was [redacted] deemed non-compliant with the residency restrictions.

43. In or about November 2017, Plaintiff contacted the Hampshire Police Department to inquire about whether the site was compliant.[13] Lt. H. Jones, the H.P.D. registering official cited a preschool and a park, which were outside the 500 foot radius. At no time did Lt. Jones suggest any home daycares in the area. Plaintiff and his wife understood that to be an approval for the site.

[13] Police Report #18-04697 p. 2 (hereinafter Police Report)

44. On 01 November, 2018, Lt. Jones contacted Plaintiff and in formed him he was in violation of the residency restrictions and must move. The Kane County State's Attorney and H.P.D. gave Plaintiff 22 days to move.

45. Because Plaintiff could not find an apartment to rent that was compliant or that a landlord would accept the Plaintiff after a criminal background check, Plaintiff and his wife purchased a travel trailer and Plaintiff took up residence at Lehman's RV Resort in Marengo.

46. On or about 12 August 2019, Plaintiff was informed he must move from Lehman's due to his status as a sex offender.

47. Plaintiff then checked in to the Super 8 Motel in Hampshire while looking for a more permanent living situation but due to the cost Plaintiff was forced to move out.

48. After literally well over a hundred rejections for apartments, Plaintiff wound up sleeping in the back seat of his pickup truck at various areas within the Hampshire area.

Negligence

49. Plaintiff sets forth a *prima facie* case of negligence against the Director Kelly and the H.P.D.

50. Plaintiff asserts that the negligence on the part of ISORT and H.P.D. forced Plaintiff into non-compliance of the residency restrictions.

51. Both Director Kelly and the H.P.D. have a duty to ensure that former offenders are, and will stay, in compliance with the residency restrictions.

52. Both Director Kelly and the H.P.D. have a duty to inform former offenders of the resources available to ensure that they stay in compliance with the residency restrictions.

53. Director Kelly, as the person overseeing ISORT mapping system, has a duty to include all restricted locations in the mapping system.

54. The H.P.D. and ISORT had a duty to properly and accurately advise the Plaintiff that the address of [redacted] Hampshire was non-compliant with the residency restrictions and that the Plaintiff, by residing there, would be in violation of the residency restrictions, a felony.

55. Illinois defines negligence as the "[f]ailure to do something which a reasonably careful person would do[...]"[14]

56. The criteria used to define negligence in Illinois are: the existence of a duty owed to another; a failure to perform that duty; an injury proximately caused by the failure to perform the duty.[15]

Duty

57. Law enforcement is bound by the public duty doctrine that "absent a special relationship between the governmental entity and the injured individual, the governmental entity will not be liable for an injury to an individual."[16]

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[14] ILL PATTERN JURY INSTR., 10.1 (2014)

[15] *Quinn v. Sigma Rho Chapter of Beta Theta Pi Fraternity*, 155 Ill.App.3d 231 (1987), *citing Curtis v. County of Cook*, 98 Ill.2d 158, 456 N.E.2d 116; *Ogle v. Fuiten*, 112 Ill.App.3d 1048, 445 N.E.2d 1344

[16] *"Public Duty Doctrine in State Tort Claims Cases"* Glover, D. (2006).

58. The special-duty doctrine is an exception to the public-duty doctrine.[17] A special-duty arises when the government develops a special relationship with an individual or class of individuals and that duty is different than its duty owed to the general public.[18] The courts have further concluded that "when law enforcement officials exercise care or custody of an individual, the individual's status is elevated beyond that of a member of the public at large and the 'special duty' exception is activated."[19]

59. Courts have established four criteria which must be met to establish the special-duty relationship: (1) Assumption...through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge...that inaction (or omission) could lead to harm; (3) some form of direct contact [with] injured party; (4) the party's justifiable reliance on the [...]affirmative undertaking.[20]

60. ISORT assumed an affirmative duty to act by informing the Plaintiff that the property in question was in compliance with the residency restrictions.

61. ISORT is well informed of the sex offender registration laws and the residency restrictions contained therein, therefore they have the direct knowledge that any omission on their part could lead to Plaintiff being non-compliant and subject to felony arrest.

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[17] *See Calloway v. Kinkelaar,* 168 Ill.2d 328 659 N.E.2d 1330; *Moran v. City of Chicago*, 286 Ill.App.3d 746, 751, 676 N.E.2d 1316, 1320 (1997); *Leone v. City of Chicago,* 156 Ill.2d 33, 619 N.E.2d 119

[18] *Burdinie v. Village of Glendale Heights,* 139 Ill.2d 501, 565 N.E.2d 654 (1990); *Arrizi v. City of Chicago,* 201 Ill.App.3d 368, 371, 147 Ill.Dec. 68, 559 N.E.2d 68 (1990).

[19] *Burdinie,* 139 Ill.2d 501, 565 N.E.2d (1990) *citing Anthony v. City of Chicago,* 168 Ill.App.3d 736, 737, 119 Ill.Dec. 554, 523 N.E.2d (1998)

[20] *Bell v. Village of Midlothian,* 90 Ill.3d 967 (1980); *Leone,* 156 Ill.2d 33, 188 Ill.Dec. 755 619 N.E.2d 119 (1993); *Burdinie,* 139 Ill.2d 501, 509, 152 Ill.Dec. 121, 565 N.E.2d 654 (1990); *Anthony,* 168 Ill.App.3d 733, 736

62. H.P.D. assumed an affirmative duty to act by informing the Plaintiff that the property in question was in compliance with the residency restrictions. Further, as a registering official, Lt. Jones is well informed of the sex offender registration laws and the residency restrictions contained therein, therefore, he has the direct knowledge that any omission on his part could lead to Plaintiff being non-compliant with the residency restrictions and subject to felony arrest.

63. Illinois State Police had direct contact with Plaintiff.

64. H.P.D. had direct contact with Plaintiff.

65. Plaintiff relied on the accuracy of the information provided by ISORT, via telephone and the offender mapping system, as well as the information provided by H.P.D. to invest well over $450,000 in a residence adapted for his specific disabilities.

66. As all criteria have been met, Plaintiff asserts that Director Kelly and H.P.D. owed a special-duty to the Plaintiff.

Breach of Duty

67. ISORT failed to fulfill their duty of care to the Plaintiff by not fully investigating the existence of a home daycare in close proximity to the property Plaintiff wished to purchase. H.P.D. failed to fulfill their duty of care to the Plaintiff by not fully investigating the existence of a home daycare in close proximity to the property Plaintiff wished to purchase.

68. ISORT and H.P.D. had a duty to fully investigate home daycares in the area, through DCFS, and advised Plaintiff of their locations.

69. Both ISORT and H.P.D. had a duty to advise the Plaintiff that the property he was about to purchase with the intent to build his residence was not in compliance with the residency restrictions. In *Raley v. Ohio*[21] and *Cox v. Louisiana*[22] the U.S. Supreme Court overturned numerous criminal convictions because the defendants relied on the advice of state officials that their actions were lawful.[23] Like Plaintiff in this case, the defendants in *Raley* and *Cox* sought advice, or received it gratuitously, from state officials as to the proper course of action to be followed in the situation at the time.
70. Both ISORT and H.P.D. had a duty to advise Plaintiff of the website maintained by Illinois DCFS, which lists the locations of all the home daycares in Illinois.
71. ISORT has a duty to map home daycare businesses as they do with commercial daycare sites, schools and parks as well as mapping the locations of former offenders' homes.
72. ISORT has a duty to inform the public that the mapping system maintained by them should not be used to determine if a location meets the residency requirements.
73. The enforcement of the statute against Plaintiff by H.P.D. caused financial and emotional injuries, injuries that were foreseeable, to both the Plaintiff and his family. Therefore, Plaintiff asserts that a breach of duty does exist.

[21] 360 U.S. 423 (1959)
[22] 379 U.S. 559 (1965)
[23] This also is a violation of due process

Proximate Cause

74. "Proximate cause is a two-part inquiry. First, the defendant's act or omission must be the cause in fact of the plaintiff's injury. Second, the defendant's conduct must be the legal cause of the plaintiff's injury."[24]

75. "A defendant's negligence is the cause of fact of a plaintiff's injuries if there is a 'reasonable certainty' that a defendant's acts caused the injury or damage."[25]

76. There can be no doubt that the omissions on the part of ISORT and H.P.D. led to the injuries in this case. Plaintiff phoned law enforcement to inquire about the legality of a proposed address in regards to the residency restrictions. ISORT and H.P.D. both assured Plaintiff that the address was compliant. Plaintiff then purchased the property, built a house to be used as a residence for him and his family. This was done solely on the advisement of H.P.D. and ISORT. Absent the omission of the existence of a home daycare center within the exclusion zone, Plaintiff would not have built a house at the site and therefore, Plaintiff would not have had to spend money maintaining separate residences and Plaintiff and his family would not have suffered both mentally and emotionally.

77. "A defendant's acts are a *legal* cause only if they are 'so closely tied to the plaintiff's injury that he should be held legally responsible for it.'"[26] (Emphasis in original). Plaintiff once again claims that the injuries that he and his family have suffered, both financially

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[24] *Kramer v. Szczepaniak,* 2018 Ill.App.1d 171411 ¶ 24 *citing First Springfield Bank & Trust v. Galman,* 188 Ill.2d 252, 257-58 (1999)

[25] *Kramer,* ¶ 27 *citing Lee v. Chicago Transit Authority,* 152 Ill.2d 432, 455 (1992)

[26] *Simmons v. Garces,* 198 Ill.2d 541, 558 (2002) quoting *McCraw v. Cegielski,* 287 Ill.App.3d 871, 873 (1996)

and psychologically, are inseparable from the omissions on the part of ISORT and H.P.D. Had either ISORT or H.P.D. advised the Plaintiff that there was a home daycare located within a 500 foot radius, Plaintiff would not have built a residence there, would not have had to move under threat of felony prosecution, and therefore, he and his family would not have suffered emotionally and financially. In short, it was the omission on the part of both H.P.D. and ISORT that led to these injuries.

78. "The touchstone of legal causation is foreseeability."[27] Plaintiff posits that it is foreseeable that an omission, accidental or intentional, of a restricted entity within the 500 foot zone required for residency restrictions, when Plaintiff inquired about the existence of any prohibited places, would force the Plaintiff from his home and family.

Damages

79. There can be no doubt that the omissions on the part of ISORT and H.P.D. has caused severe and long-lasting damage to not only the Plaintiff, but more importantly, his family.

80. There have been significant financial damages as a result of attempting to maintain two separate residences. With no apartments willing to rent to the Plaintiff, he was forced to buy a travel trailer to reside in. The cost of the trailer was approximately $42,000. Further, Plaintiff was forced to pay rent at the RV "resort," pay for propane gas and electric. Plaintiff is unable to sell the trailer as the damage caused by the frigid 2018-2019 winter have left Plaintiff owing more money than he could possibly sell it for.

[27] *Kramer*, ¶ 36 citing *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill.2d 351, 395 (2004)

Further, after being kicked out of the RV park for his status on the registry, Plaintiff was domiciled in a motel at $500 per week for approximately 14-16 weeks.

81. As stated in Plaintiff's First Amended Complaint, Plaintiff's marriage has suffered due to being removed from his house. Plaintiff's two children have suffered both mentally and emotionally as well.

82. Since being forced from a residence that was built specifically for his disabilities, Plaintiff has suffered numerous physical injuries and mental health setbacks, including twice having to call the VA Suicide Hotline because Plaintiff was on the verge of killing himself.

Equal Protection

83. The U.S. Constitution states: "[N]or shall any State...deny to any person within its jurisdiction the equal protection of the laws."[28]

84. Similarly, the Illinois Constitution states: "No person shall be...denied equal protection of the laws."[29]

[28] U.S. Constitution Fourteenth Amendment Section 1
[29] Illinois Constitution Article I Section 2

85. The Illinois Supreme Court has found that when conducting an equal protection analysis, the Court shall apply the same standard of review under both the Illinois Constitution Equal Protection Clause and the United States Constitution Equal Protection Clause.[30]

86. The Court in *M.A.* said that:

> **The equal protection clause guarantees that similarly situated individuals will be treated in a similar manner, unless the government can demonstrate an appropriate reason to treat those individuals differently. The equal protection clause does not forbid the legislature from drawing proper distinctions in legislation among different categories of people, but the equal protection clause does prohibit the legislature from doing so based on criteria wholly unrelated to the legislation's purpose.[31]**

87. Plaintiff alleges that the "residency restrictions" violate the Equal Protection Clauses of both the U.S. and State of Illinois Constitutions. As Plaintiff is designated a "child sex offender" and a "sexual predator" by virtue of his conviction, he alleges that the statute: 1. irrationally distinguishes among the classes of "child sex offenders"; 2. irrationally bans him from living in certain areas, and 3. provides more protection of private property from a regulatory taking for homeowners who are not sex offenders than those who are.

The Legislature Irrationally Created Multiple Classes of Similarly Situated "Child Sex Offenders"

88. A "child sex offender" is someone whose "victim is a person under 18 years of age" at the time of the offense.[32] Plaintiff contends that there can be no disagreement in his

[30] *In re. M.A.*, 2015 IL 118049 at ¶ 23 *citing People v. Richardson*, 2015 IL 118255 at ¶ 9
[31] *Id.* at ¶24 *citing Richardson* at ¶ 9
[32] 720 ILCS 5/11-9.3(d-1)

assertion that all persons labeled as child sex offenders are similarly situated based on their conviction. The United States Supreme Court has noted that the Equal Protection Clause forbids "governmental decisionmakers from treating differently persons who are in all relevant aspects alike."[33]

89. Illinois law states that:

> **It is unlawful for a child sex offender to knowingly reside within 500 feet of a school building or the real property comprising any school that persons under the age of 18 attend. Nothing in this subsection (b-5) prohibits a child sex offender from residing within 500 feet of a school building or the real property comprising any school that persons under 18 attend if the property is owned by the child sex offender and was purchased before July 7, 2000 (the effective date of Public Act 91-911).[34]**
>
> **It is unlawful for a child sex offender to knowingly reside within 500 feet of a playground, child care facility, day care home, group day care home, or a facility providing programs or services exclusively directed toward persons under 18 years of age. Nothing in this subsection(b-10) prohibits a child sex offender from residing within 500 feet of a playground or a facility providing programs or services exclusively directed toward persons under 18 years of age if the property is owned by the child sex offender and was purchased before July 7, 2000. Nothing in this subsection prohibits a child sex offender from residing within 500 feet of a child care institution, day care center, or part day child care facility if the property is owned by the child sex offender and was purchased before June 26, 2006. Nothing in this subsection prohibits a child sex offender from residing within 500 feet of a day care home or group day care home if the property is owned by the child sex offender and was purchased before August 14, 2008 (the effective date of Public Act 95-821).[35]**

90. The "residency restrictions" outlined above, create four distinct classes of child sex offenders: (1) Offenders who have not previously purchased a home prior to 2008 and are subject to, and shall be forced to move, if a school, playground, child care institution,

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[33] *Nordlinger v. Hahn,* 505 U.S. 1, 10 (1992); *see also People v. Masterson,* 2011 IL 110072 at ¶ 25 (stating the first step in an equal protection claim is determining whether the person asserting the violation is similarly situated to the comparative group).

[34] 720 ILCS 5/11-9.3(b-5)

[35] 720 ILCS 5/11-9.3(b-10)

day care center, part day child care facility, day care home, group daycare home, facility providing programs or services exclusively directed toward persons under 18 years of age, day care home or group day care home is within 500 feet of offender's property (*supra* at 5); (2) Child sex offenders who purchased their home prior to August 14, 2008 but after June 26, 2006, are exempt from the day care home and group day care home restriction, but are still subject to, and shall be forced to move, if a school, playground, child care institution, day care center, part day child care facility or a facility providing programs or services exclusively directed to ward persons under 18 years of age (*Id.*); (3) Child sex offenders who purchased their home before June 26, 2006 but after July 7, 2000 are exempt from the day care home or group day care home, child care institution, day care center, or part day child care facility, but are still subject to, and shall be forced to move, if a school, playground or facility providing programs or services exclusively directed toward persons under 18 is located within the 500 feet boundary (*Id.*); (4) Child sex offenders who purchased their homes before July 7, 2000 are exempt from all "residency restrictions."

The Four Classes of Child Sex Offenders Created by the Statutes are Irrational

91. The Illinois State Legislature has determined that those deemed child sex offenders will forever remain a danger to the community and the community needs to be protected from them.[36] Ostensibly, in enacting the "residency restrictions," the legislature sought

[36] The Plaintiff refutes the notion that all child sex offenders, or any sex offenders for that matter, are unable to be rehabilitated. In fact, Plaintiff shall show that the overwhelming majority of sex offenders, including those deemed child sex offenders, never recidivate, but are rehabilitated through treatment and support (*Infra.* at --------).

to protect the children of the community from those sex offenders who are beyond rehabilitation and will more than likely recidivate.

92. Yet, the "residency restrictions" do not rationally categorize those deemed as child sex offenders into classes that would further protect the community. The "residency restrictions" irrationally classify child sex offenders into different groups, not by an individual determination of dangerousness nor by the date of conviction, but, illogically, by the date one purchased his/her home. The irrationality of the four different classifications set forth in the "residency restrictions" is exemplified by the fact that the Plaintiff, deemed a child sex offender and sexual predator through statute, an individual who has successfully completed his term of probation, successfully completed counselling, was deemed an extremely low-risk to recidivate and has proven over the past 17 years that he has been rehabilitated, is forever bound by the "residency restrictions" thereby not only severely limiting his choice of housing, but also denying him and his family the right to own property without a 100% guarantee that he will never be forced to move.[37] Yet, a person who has just been convicted, has not completed his/her sentence, has not completed treatment and is, therefore, still a high risk to reoffend,[38] is allowed to reside across the street from a playground, school or daycare center only by virtue of the fact that he/she purchased the property in 1999.

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[37] See *Mann v. Georgia Dep't of Corr.*, 653 S.E.2d 740 (Ga. 2007) Under Illinois statute, like Georgia's, "it is apparent that there is no place...where a registered sex offender can live without being continually at risk of being ejected.

[38] Task Force *Infra.* at ----

93. The Seventh Circuit Court of Appeals addressed this issue in *Miller et al. v. Carter*[39] The Court found that the ordinance, which barred certain felons from obtaining a chauffeur's license, violated the equal protection clause because it treated felons who already had a chauffeur's license differently than those felons who did not already have the license. "Thus, plaintiff Miller is absolutely barred from obtaining a license, although he was convicted of armed robbery over eleven years ago, while someone who already holds a license may be permitted to retain it, although convicted of armed robbery only yesterday."[40]

94. As previously noted,[41] the classification of a child sex offender in terms of the level of "residency restrictions" he/she must abide by are determined by the date in which the offender purchased his/her property, much like *Miller*, in which a convicted felon's ability to be a taxi driver was determined by the date in which a chauffeur's license was applied for.

95. The Court in *Miller* directly addressed this distinction:

> **Such distinctions among those members of the class of ex-offenders are irrational, regardless of the importance of the public safety considerations underlying the statute or the relevance of prior convictions to fitness. In fact, allowing existing licensees who commit felonies to continue to be eligible for licensing undercuts the reasonableness of the basis for the classification, which is that the felony is per se likely to create a serious risk which cannot be sufficiently evaluated to protect the public through individualized hearings...Accordingly, [the ordinances] discriminate irrationally among the class of ex-offenders, they violate the equal protection clause of the Fourteenth Amendment.**[42]

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[39] *Miller et al. v. Carter* 547 F.2d 1314 (7th Cir. 1977) Found that a Chicago ordinance "which permanently bars persons convicted of certain offenses from obtaining a public chauffeur's license [because it] violates the due process and equal protection clauses of the fourteenth Amendment."

[40] *Id.* at ¶ 8

[41] *Supra* at -----

[42] *Id.* at ¶ 9

96. This issue was also addressed in another Seventh District Court opinion in 2017. In *Hoffman v. Village of Pleasant Prairie*[43] a group of registered sex offenders brought action challenging an ordinance which enacted residency restrictions that differentiated between those who lived in the village at the time of conviction and those who did not. The ordinance also contained a "grandfather clause allow[ing] Designated Offenders to stay in their residence if a 'prohibited location' was established near them after they took residence."[44]

97. In finding that the ordinance in question violated plaintiffs' equal protection rights, the Court observed, "[t]he Village has admitted that it has no evidence that the difference between these groups—domicile at the time of their last offense—has any bearing on their safety risk to the community."[45] "[T]his failure leaves the Court no choice but to conclude that the Ordinance violated Plaintiffs' equal protection rights in making an irrational domicile-based distinction between Designated Offenders. This comports with the purpose of the Equal Protection Clause. The 'bare...desire to harm a politically unpopular group cannot constitute a legitimate governmental interest.'"[46] [47]

98. Plaintiff reiterates that the designation of four distinct classes of child sex offenders, for the purposes of the "residency restrictions," is irrational. To further exemplify this allegation, Plaintiff suggests that the Legislature created four distinct classes of child sex

[43] *Hoffman v. Village of Pleasant Prairie* 249 F.Supp.3d 951 (E.D. Wis. 2017)
[44] *Id.* at ¶ 3-4
[45] *Id.* at ¶ 30
[46] *Id.* at ¶ 32
[47] citing *U.S. Dep't of Agric. v. Moreno*, 413 U.S. 528, 534 (1973)

offenders based on the date of purchase of their homes and that date of purchase determines the level of danger to the surrounding community. For example, an offender purchased a home in 2005. The statute determines that it is too dangerous for this offender to live near a school or park but not dangerous enough to live near a home daycare or daycare center. But, if that same offender moves, then that offender is now too dangerous to live near a home daycare or daycare center in addition to being too dangerous to live near a park or school.

99. Further, a child sex offender who purchased his/her home before the enactment of the "residency restrictions" in 2000, has a 100% guarantee that he/she will never be forced from their home due to a prohibited location opening up nearby. Said offender has a 100% guarantee of their property rights no matter what the date of conviction. On the other hand, Plaintiff will forever be bound by all the "residency restrictions" only because he did not purchase his first home until 2009. Plaintiff will never have the same property rights as the other child sex offenders who purchased their homes before random effective dates. For example, an offender purchased a home in 1999. In 2018 a home daycare opened up next door to the offender. Said offender is not forced to vacate his home due to a restricted entity opening next door. Yet, because Plaintiff had not purchased a property before 2000, anytime a restricted entity opens up within 500 feet of any property Plaintiff purchases, Plaintiff and his family will be forced to move every time. Plaintiff asserts that there is no set of facts which justify the disparate treatment of said offender and Plaintiff.

100. As stated above, the Fourteenth Amendment's Equal Protection Clause "'commands that no State shall deny to any person within its jurisdiction the equal protection of the laws, which is essentially a direction that all persons similarly situated be treated alike.' Usually laws pass muster under the Equal Protection clause 'if the classification drawn by the statute is rationally related to a legitimate state interest.[48] However, when a statute burdens a person's fundamental constitutional rights, courts apply a higher level of scrutiny."[49]

101. Plaintiff alleges that property rights are fundamental constitutionally protected rights and, therefore, should be subject to a higher level of scrutiny. Not only does the Illinois State Constitution protect life liberty and property[50] but the United States Constitution's Due Process Clauses under the Fifth and Fourteenth Amendments as well as the Fifth Amendment's Takings Clause protect life, liberty, and property without qualification.

102. Further, the Supreme Court has consistently treated property as a fundamental right, forbidding the government from imposing arbitrary or irrational restrictions on its use.[51]

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[48] Quoting *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439-440 (1985)
[49] *Pleasant Prairie* at ¶ 28 citing *Atty. Gen. of N.Y. v. Soto-Lopez*, 476 U.S. 898, 904 (1986).
[50] Illinois Constitution Art. 1 §2
[51] "The governmental power to interfere by zoning regulations with the general rights of the land owner by restricting the character of his use, is not unlimited, and, other questions aside, such restriction cannot be imposed if it does not bear a *substantial* relation to the public health, safety, morals, or general welfare." (emphasis added) *Nectow v. Village of Cambridge et al*, 277 U.S. 183 (citing *Village of Euclid v. Amber Realty Co.*, 272 U.S. 365)

103. The "residency restrictions" further interfere with fundamental liberty rights such as the right to intrastate travel[52] and the right to parent one's children.[53]

104. Because fundamental rights are at issue, Plaintiff contends that strict scrutiny should be applied in this case.

105. Plaintiff concedes that the government has a compelling interest—that is protecting society's vulnerable children from those who wish to prey on those children. Yet, Plaintiff contends that "residency restrictions" are not sufficiently narrowly-tailored to achieve that goal. Plaintiff asserts that empirical research has shown that "residency restrictions" do nothing in the way of protecting society's most vulnerable population.

Sex Offender Residency Restrictions Have No Impact on Public Safety

106. There have been multiple studies on residency restrictions and the impact on public safety and all the experts agree that residency restrictions do not make the public safer. Rather, quite the opposite is true, that residency restrictions place the communities in more danger. They therefore provide no benefits to weigh against the burdens they impose.

107. Plaintiff wishes to provide this Court with accurate descriptions of scientific studies addressing the subjects of residency restrictions and recidivism, as Plaintiff believes that it is vital this Court have an accurate understanding of the empirical realities.

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[52] *Lutz v. City of York, Penn.*, 899 F.2d 255 (1990)

[53] "This Court has long recognized that freedom of personal choice in matters of marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment." *Moore v. East Cleveland*, 431 U.S. 494 (1977) (quoting *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 639-640 (1974)). also citing *Meyer v. Nebraska*, 262 U.S. 390, 399-401 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510, 534-535 (1925) "[P]rivate realm of family life which the state cannot enter."

108. The Illinois residency restrictions impermissibly burdens constitutionally protected liberty and property interests by imposing a residency ban that forces child sex offenders from their homes, with or without their families, at any time. It imposes these burdens without any process to be relieved of these restrictions, as these restrictions are not based on any factual findings, but on two highly flawed assumptions: 1. That residency restrictions reduce the risk to children posed by registered sex offenders, and 2. all registered sex offenders share inherent and immutable characteristics that make them a high risk to recidivate for the rest of their lives.

109. Residency restrictions are imposed on many people who pose absolutely no threat to children. But some registered sex offenders do reoffend. The important question to be asked is do residency restrictions make recidivism less likely? Research has proven that the answer is residency restrictions *have no effect on recidivism* and, in one study, *not one reconviction would have been stopped due to residency restrictions.*

110. In 2007, the Minnesota Department of Corrections released a study entitled, *Residential Proximity & Sex Offense Recidivism in Minnesota* (https://mn.gov/doc/assets/04-07SexOffenderReport-Proximity_tcm1089-272769.pdf). The study "examines the potential deterrent effect of residency restrictions by analyzing the sexual reoffense patterns of the 224 recidivists (out of 3,166 sex offenders released from prison).[54] In short, the study shows that, out of the 224 sexual reoffenses, "not one...would likely have been deterred by a residency restrictions law. Only 79 (35

[54] *Id.* at p. 1. This report was released in conjunction with *Sex Offender Recidivism in Minnesota* (https://mn.gov/doc/assets/04-07_Sex_Offender_Report-Recidivism_tcm1089-272768.pdf)

percent) of the cases involved offenders who established direct contact with their victims.[55] Of these, 28 initiated victim contact within one mile of their own residence...and 16 within 0.2 miles (1,000 feet). A juvenile was the victim in 16 of the 28 cases. But none of the 16 cases involved offenders who established victim contact near a school, park, or other prohibited area [sic]. *Instead, the 16 offenders typically used a ruse to gain access to their victims, who were most often their neighbors."*[56]

111. The reports goes on to say "residency restrictions law would likely have, at best, only a marginal effect on sexual recidivism. Although it is possible that a residency restrictions law could avert a sex offender from recidivating sexually, the chances that it would have a deterrent effect are slim *because the types of offenses it is designed to prevent are exceptionally rare and, in the case of Minnesota, virtually non-existent over the last 16 years.* Rather than lowering sexual recidivism, housing restrictions may work against this goal by fostering conditions that exacerbate sex offenders' reintegration into society."[57]

112. Another study, entitled *An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri*[58] studied "the efficacy of residency restrictions enacted in Missouri and Michigan."[59]

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[55] Direct contact is defined as the offender "initiating contact with potential victims...as opposed to gaining access to their victims through another person they know such as a significant other, friend, co-worker, or acquaintance." *Id.* at p. 1
[56] *Id.*at p. 2
[57] *Id.* at p. 4
[58] https://www.ncjrs.gov/pdffiles1/nij/grants/242952.pdf
[59] *Id.* at p. 6

113. This study used a sample of almost 9,000 sex offenders and over 16,000 non-sex offenders[60] to examine the "fundamental assumption of the existing residency restrictions legislation...that sex offenders are gaining access to victims through schools/daycare centers...[and risk] can be minimized by removing offenders from the proximity of suitable targets."[61]

114. This study found that, in a two year follow-up period from release from prison, the sex offender reconviction rate for a new sex offense was 0.4% and 0.8% in Michigan and 2% and 1% in Missouri.[62] This shows that the enactment of residency restrictions has no effect on sex offender recidivism. In fact, the study concludes by noting that "if residency restrictions have an effect on recidivism, the relationship will be very small"[63]and "[t]he recidivism results do not support the presumption that residence restrictions substantially reduce general recidivism or sexual related offending."[64]

115. Further, the Illinois General Assembly created the Illinois Sex Offenses and Sex Offender Registration Task Force to "[e]xamine the current data and research regarding evidence-based practices, the conditions, restrictions, and outcomes for registered sex offenders, and the registration process...[and]...[m]ake recommendations to the General Assembly regarding legislative changes to more effectively classify sex offenders based on their level of risk of re-offending, better direct resources to monitor the most violent

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[60] *Id.* at p. 27
[61] *Id.* at p. 28
[62] *Id.* at p. 50 Tables 13 & 14. Note: the two rates for each state are those sex offenders released before residency restrictions were enacted and those who were released after the restrictions were enacted.
[63] *Id.* at p. 70
[64] *Id.* at p. 80

and high-risk offenders, and to ensure public safety."[65] "It is important to note that the Task Force examined the most current and scientifically rigorous research available on sex offender policies and practice and heard testimony from renowned experts in the field."[66]

116. The Task Force reiterates the findings of the other two studies, without naming them as sources, in that "[r]esearch has found that residency restrictions lead to neither reductions in sexual crime[67] nor recidivism,[68] nor do they act as a deterrent."[69]

117. One reason why residency restrictions do not work is in the Residential Proximity study released by the Minnesota Department of Corrections. The study stated:

The results clearly indicated that what matters with respect to sexual recidivism is not residential proximity, but rather social or relationship proximity...more than half (N = 113) of the 224 cases (of reoffense) were "collateral contact" offenses in that they involved offenders who gained access to their victims through another person, typically an adult. For example, one of the most common victim-offender relationships found in this study was that of a male offender developing a romantic relationship with a woman who has children.[70]

This finding is reiterated by the Task Force:

One reason for this null finding is that while residency restrictions were premised on preventing sexual abuse by strangers, research has shown most offenders are not

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[65] *Sex Offenses and Sex Offender Task Force Final Report* December, 2017 (hereinafter "Task Force") p.i

[66] *Id.* at i

[67] citing Blood, P., Watson L., & Stageberg, P. (2008) State Legislation Monitoring Report. Des Moines, IA: Criminal and Juvenile Justice Planning.; Socia K. (2012). The efficacy of county-level sex offender residence restrictions in New York. *Crime & Delinquency, 58*, 612.

[68] citing Colorado Department of Public Safety. (2004). *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community.* Denver, CO: Colorado Sex Offender Management Board; Nobles, M.R., Levenson, J. S., & Youstin, T.J. (2012). Effectiveness of residence restrictions in preventing sex offense recidivism. *Crime and Delinquency, 58,* 491; Zandbergen, P.A., Levenson, J.S.,& Hart, T. (2010). Residential Proximity to schools and daycares: An empirical analysis of sex offense recidivism. *Criminal Justice and Behavior, 37*(5), 482-502.

[69] *Id.* at p. 22 citing Duwe, G. & Donnay, W. (2008) The impact of Megan's Law on sex offender recidivism: The Minnesota experience. *Criminology, 46*(2), 411-446.

[70] Residential Proximity p. 2

strangers to their victims and abuse tends to happen in a private residence rather than identified public locations.[71]

118. The Task Force further stated that the residency restrictions "produce collateral consequences that stem from the inability to secure stable housing...or meaningfully participate in civic, social, or religious activities."[72] It goes on to say that due to loss of family support and adding aggravating factors such as homelessness, the residency restrictions cause sex offenders to be more of a risk to society than if there were no residency restrictions at all.

119. Thus, Plaintiff asserts that "residency restrictions" are not narrowly-tailored to achieve the goal of public safety as all research points to the fact that "residency restrictions" have no effect on the safety of children. As-applied to the Plaintiff, he contends that he has proven over 17 years since his conviction that he has been and still is rehabilitated. Therefore, to apply a restriction to someone who is no longer dangerous to the community, and that restriction implicates fundamental rights, then the law is not narrowly tailored to achieve the intended goal of public safety.

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[71] Task Force p. 22 citing Burchfield, K.B., & Mingus, W. (2014). Sex offender reintegration: Consequences of the local neighborhood context. *American Journal of Criminal Justice, 39*(1), 109-124.; Cohen, M., & Jeglie, E. L. (2007). Sex offender legislation in the United States: What do we know? *International Journal of Offender Therapy and Comparative Criminology, 51*(4), 369-383.; Colombino, N., Mercado, C. C., & Jeglie, E. L. (2009). Situational aspects of sexual offending: Implications for residence restriction laws. *Justice Research and Policy, 11*, 27-43.; Mercado, C. C., Jeglie, E., Markus, K., Hanson, R.K., & Levenson, J. (2011). *Sex Offender Management, Treatment, and Civil Commitment: An Evidence Based Analysis Aimed at Reducing Sexual Violence.* John Jay College of Criminal Justice, New York, NY.

[72] Task Force p. 22-23

120. But, Plaintiff also puts forth the argument that even if rational based scrutiny were to be applied, the *classifications* of child sex offenders by the date in which they purchased their homes cannot survive rational based scrutiny.

Sex Offenders Who Own Homes are the Only Homeowners in Illinois Who Can Lose Their Property Without Notice or Opportunity to be Heard

121. America's Founders understood that private property is the foundation not only of prosperity but of freedom itself. Thus, through common law, state law and the Constitution, they protected property rights—the right of the people to acquire, use and dispose of property freely. The Constitution protects property rights through the Fifth and Fourteenth Amendments Due Process Clauses and through the Fifth Amendment Takings Clause: "Nor shall private property be taken for public use without just compensation." Likewise, the Illinois Constitution prohibits the taking of any citizen's property without Due Process[73]---any citizen except for the Plaintiff.

122. No other homeowners in the State of Illinois, besides those branded as "child sex offenders," can be removed from their home with 22 days notice under the threat of arrest. No other Illinois homeowner can be forced from their home without due process. No other homeowner in Illinois can be subject to a regulatory taking without just compensation.

[73] see in general 735 ILCS 30/10 Eminent Domain Act and 725 ILCS 150 Civil Asset Forfeiture

123. Plaintiff once again claims that strict scrutiny should apply. First, because property is considered a fundamental right and second, because Plaintiff claims that he is a member of a suspect class.

124. Under strict scrutiny, the different treatment of those labeled "child sex offenders" who are homeowners and the rest of the home-owning population of Illinois

125. Plaintiff contends that the "residency restrictions" cannot survive even rational based scrutiny. Plaintiff currently resides in a young, family-oriented sub-division. Kids are always outside playing, riding bikes, skateboarding, etc. But to say that because a homeowner runs a daycare in her residence down three houses away, the Plaintiff is a danger to the area is irrational. A daycare, where the attendees are under the watchful eye of the owner, where the parents drop off and pick up their children cannot be in any danger from the Plaintiff.

126. Further, as stated above, Plaintiff pled guilty to molesting a 15 year old. If Plaintiff was convicted of a sex crime against a pre-teen, then the restriction on living near a daycare would be rational. In this case it is not.

"Residency Restrictions" Give More Protection to Homeowners Seeking to Open a Home Daycare

127. There is no "move to the offender" in the statute dealing with "residency restrictions." This means that anywhere Plaintiff moves, a resident nearby obtain a home daycare license and the Plaintiff will be required to move.

128. Plaintiff contends that this gives other homeowners in the area more protection than is afforded to the Plaintiff as someone who is labeled as a "child sex offender."

129. The State of Illinois has determined it is not safe for someone statutorily deemed a "child sex offender" to live within 500 feet of a home daycare center. Yet, the State deems it perfectly safe for a homeowner to open a home daycare within 500 feet of a "child sex offender."

130. This means that there is no safe place for the Plaintiff to reside within Kane County or the State of Illinois. As the 500 foot boundary is from property line to property line, any "neighbor" could decide to open a home daycare and the Plaintiff would be forced to move. This is even more prevalent as the Plaintiff is on a public blacklist, inviting anyone within the 500 foot boundary to open a restricted entity in order to remove Plaintiff from the area.

Void for Vagueness

131. The Due Process Clause of the Fourteenth Amendment prohibits states from enforcing laws that are unconstitutionally vague. Statutory requirements need to be written in such a way as that persons of ordinary intelligence do not need to guess at what is required of them, what is the meaning of the law and that the application shall not differ[74].

[74] *Village of Hoffman Estates v. The Flipside* 455 U.S. 489, 498 (1982) quoting *Grayned v. City of Rockford* 408 U.S. 104, 108-109 (1972) "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a

132. Criminal statutes that lack sufficient definiteness or specificity are held "void for vagueness."[75] While "perfect clarity and precise guidance have never been required"[76] "the Constitution requires more specificity in statutes with criminal penalties, particularly statutes that lack a *scienter* requirement."[77]

133. The Plaintiff has been harmed by the vagueness of the Residency Restrictions.

134. As noted above, [citation], Plaintiff and his wife searched long and hard to find a residence which was not only compliant with the residency restrictions, but also able to accommodate the Plaintiff's needs for his disabilities.

135. As noted above, [citation], Plaintiff and his wife consulted the ISORT mapping system to ensure the prospective property was compliant with the residency restrictions. [website]. [Exhibit]

136. The area included in [Exhibit] shows the park, a daycare center and three schools. It does not include any other entities designated by the residency restrictions.

137. The ISORT website does not include a disclaimer stating that the mapping system does not include in-home daycare centers or anything to indicate that it should not be used to determine if a specific area or address is legal under the residency restrictions.

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reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning...A vague law impermissibly delegates basic policy matters to policemen...for resolution on an *Ad Hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." *See also Bartlow v. Costigan,* 2014 IL 115152 @ ¶ 40 (*citing Wilson v. County of Cook,* 2012 IL 112026 ¶ 20).

[75] See *e.g. Papachristou v. City of Jacksonville,* 405 U.S. 156 at 162 "[F]ailed to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute." *Grody v. State,* 278 N.E.2d 280 (1972) (quoting *Baggett v. Bullitt,* 377 U.S. 360, 84 (1964); *Connally v. General Construction Co.,* 269 U.S. 385, 46 (1926)) "[A] law forbidding or requiring conduct in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates due process of law"

[76] *Wilson,* 2012 IL 112026 ¶22

[77] *Bartlow,* 2014 IL 11512 ¶41 *citing Wilson,* 2012 IL 112026 ¶22 (quoting *United States v. Williams,* 553 U.S. 285, 304 (2008)).

138. As noted above, [citation] Plaintiff contacted ISORT to inquire about the legality of [redacted] ISORT advised that the address was compliant.

139. As noted above, [citation], Plaintiff also contacted the Hampshire Police Department to inquire about the legality of [redacted] Hampshire Police advised that the address was compliant [see also Exhibit—Police Report]

140. As noted above and in the Police Report, Plaintiff was allowed to register at his new address at [redacted]

141. Under Illinois law [citation], the registering agent is required to send the registration to the Illinois State Police. A copy of the registration is also filed with the Kane County Sheriff's Investigation Unit.

142. It wasn't until eight weeks after the Plaintiff moved into his residence that the Hampshire Police were notified that the address was not in compliance with the residency restrictions. According to the Police Report [citation], it was not a law enforcement agency that figured this out, rather, it was a long-time resident who was aware of the in-home daycare and became aware of Plaintiff's status on the registry that day.

143. The Plaintiff cites the only known void for vagueness case that is on point and which comes from the Sixth Circuit District Court in Michigan[78]. In *Snyder*, the District

[78] *Does v. Snyder* 101 F.3d 672 (2015) rev'd on other grounds *Does v. Snyder* 834 F.3d 696 (6th Cir. 2016) *cert.* denied. The District Court ruled that Michigan's SORA was unconstitutional as-applied to the Plaintiffs on numerous grounds, including but not limited to void for vagueness, strict liability and multiple Due Process violations. On appeal, the Sixth Circuit reversed the District Court's ruling on the *ex post facto* violations of the act while noting '...as the district court's detailed opinions make evident, Plaintiff's arguments on these other issues are far from frivolous and involve matters of great public importance. These questions will have to wait for another day because none of the contested provisions may now be applied to the plaintiffs in this lawsuit, and anything we would say on those other matters would be dicta."

Court found that Michigan's geographic exclusion zones were unconstitutionally vague because neither the registrants nor law enforcement officials could determine exactly where the zones are.

144. While Plaintiff recognizes that this ruling was reversed on other grounds and the Sixth Circuit unfortunately bypassed ruling on this issue, the Plaintiff asks this Honorable Court to find the decision persuasive as-applied to him.

145. The residency restrictions under Illinois SORA are unconstitutionally vague because the State of Illinois does not make maps available to the public showing where the exclusion zones are located or what the boundaries are. In short, Illinois supplies maps showing where registrants live and not showing where they *can* live. "It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."[79]

146. As-applied to the Plaintiff, he and his wife searched for compliant housing. They referenced the ISORT mapping system in the belief that *all*, not just some, prohibited entities were represented on the map.

147. To further ensure compliance, Plaintiff reached out to two separate law enforcement agencies to confirm compliance with the residency restrictions. Furthering Plaintiff's argument is the fact that neither law enforcement agency knew of the existence of the in-home daycare center located within the exclusion zone of Plaintiff's residence.

[79] *Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972)

148. Plaintiff contends that if law enforcement is unable to determine where the geographic exclusion zones are, then it is impossible, and unfair to the Plaintiff, to require him and his family to determine where these zones are by himself.

149. To further his argument that the residency restrictions amendment is vague as-applied to Plaintiff, Plaintiff points to *Hynes v. Mayor of Oradell*, 425 U.S. 610, 96 which found that an ordinance was unconstitutionally vague as it did not explain in detail what steps were needed to be taken in order to comply with the law.

150. As-applied to the Plaintiff, the registration restrictions provide no guidance as to what steps are needed to be taken to be compliant with the law.

151. As this complaint shows [citation], the Plaintiff did not knowingly, purposely nor recklessly engage in actions with the intent to violate the residency restrictions. Quite the contrary, Plaintiff contends that it cannot be disputed that he and his wife were careful about doing their due diligence in searching for a compliant property on which to build their dream home.

152. The Supreme Court addressed this issue in *Lambert v. California*, 355 U.S. 225 (1957)[80]. "We believe that actual knowledge...or proof of such knowledge and subsequent failure to comply are necessary before [enforcement] under the ordinance can stand." *Id.*

[80] In *Lambert*, the Supreme Court overturned the conviction of Ms. Lambert for failing to register in Los Angeles as a convicted felon. The Court stated, "[w]here a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted with due process. Were it otherwise, the evil would be as great as it is when the law is written in print too fine to read or in a language foreign to the community." *Id* at 229-230.

153. *Lambert* is widely recognized as the exception to the principle of *ignorantia legis non excusat*[81]. Plaintiff asks that this Honorable Court apply the same exception as-applied to him.

154. The Plaintiff did not knowingly or willingly build a house within a 500 foot distance of an in-home daycare. The fact that Plaintiff has been strictly compliant with all of the laws only proves this fact. Also, the Plaintiff asks the Court to consider the fact that Plaintiff did indeed consult with law enforcement prior to even purchasing the lot and prior to construction. And in light of the Supreme Court's rulings in *Cox* and *Raley*, the Plaintiff must have fair warning of what conduct the government intends to punish. Finally, the Plaintiff asks this Honorable Court to consider that Plaintiff was living there for eight weeks *before law enforcement was even aware of his non-compliance.*

155. Plaintiff also points to *People v. Pearse*, 2017 IL 121072[82] in which the supreme court said, "person's subject to the Act's {SORA] provision must also have fair notice of what is required. .It appears to us that defendant attempted to comply." *Id.* at ¶ 48

156. Plaintiff reiterates that he did attempt to comply with the residency restrictions and argues that the Defendants would have standing to enforce the residency requirements if there was no attempt to comply or if Plaintiff knowingly and willingly moved into a prohibited area. Plaintiff suggests that this is not the case at hand.

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[81] Roughly translated as ignorance is no excuse under the law. Because *Lambert* deals with the motives(or lack thereof) for committing a crime, it addresses the degree of legal culpability that arises from the motivation of a person.

[82] In *Pearse*, Defendant appealed a conviction for failure to register. The Illinois Supreme Court overturned his conviction as the Defendant attempted to comply with the registration law by registering a home address and a "secondary" address while he was in the hospital. The court went on to state, "in fairness to all concerned and as generally acknowledged by the parties, the circuit court, and the appellate court, the relevant statutory scheme leaves something to be desired, in terms of clarity and consistency, when applied to these facts." *Id.* at ¶39.

157. Plaintiff asks this Honorable Court to consider all the above factors in light of *Lambert*, and find that 1.) there was an attempt by the Plaintiff to comply with the law; 2.) there was no criminal intent in living there; 3.) the residency restriction is so vague in that the restricted areas are impossible to define by law enforcement and a person of ordinary intelligence; and 4.) that enforcement of the residency restrictions as-applied to the Plaintiff in this case are unconstitutional.

158. Plaintiff asks that a preliminary injunction and then a permanent injunction be issued enjoining the Defendant General Raoul, Defendant Director Kelly, Defendant States Attorney McMahon and the Hampshire Police Department from attempting to enforce or prosecute Plaintiff under the residency restrictions.

Irrebuttable Presumption

159. The Illinois Sex Offender Registry and Notification Laws, as well as the other laws pertaining to registrants (i.e. Driver's License Renewal Statute) create multiple irrebuttable presumptions of the Plaintiff. These statutes unconstitutionally rely on the irrebuttable presumptions that the Plaintiff is dangerous and likely to commit further criminal sexual acts and this danger will be mitigated by informing the public of their presence,[83] that Plaintiff, by virtue of his conviction, is and forever will be deemed more dangerous than lower level sex offenders, so he must remain under the supervision and control of law enforcement for life, that, as an individual labeled a "child sex offender, Plaintiff is a danger to all children (otherwise known as "stranger danger") and that

[83] *Smith v. Doe* 538 U.S. 84 (2003) *citing McKune v. Lile*, 536 U.S. 24 (2002); People *v. Malchow*, 193 Ill.2d 413 (2000) at ¶ 9 *citing People v. Adams*, 144 Ill.2d 381 at ¶ 12

residency and presence restrictions protect children from the Plaintiff because he is labeled a "child sex offender."[84]

160. The United States Supreme Court has found that irrebuttable presumptions violate due process when "the presumption is deemed not universally true" and a "reasonable alternative means" of ascertaining that presumed fact are available."[85] Further, in *Stanley v. Illinois*[86] the United States Supreme Court held that an Illinois law that allowed the removal of children from the custody of their unwed fathers was "constitutionally repugnant"[87] because it relied on an irrebuttable presumption that unwed fathers were unfit to be a parent. "[A]s a matter of due process of law, Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him."[88]

161. Under Illinois law, all mandatory presumptions are considered unconstitutional.[89] The Illinois Supreme Court has also applied the United States Supreme Court analysis of the irrebuttable presumption doctrine to civil contexts that deal with important interests, holding that to satisfy due process presumptions cannot foreclose "determinative issues" simply because it is cheaper and easier than providing

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[84] *People v. Morgan* 203 Ill.2d 470 (2007) *citing People v. Leroy*, 357 Ill.App.3d 530 (2005); *People v. Pepitone*, 2017 Ill.App.3d 140627 *Citing People v. Avila-Briones*, 2015 Ill.App.1d 132227

[85] *Vlandis v. Kline*, 412 U.S. 441, 452 (1973); *see also In re Amanda D.*, 349 Ill.App.3d 941, 948 (2nd Dist. 2004) ("[P]ermanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments").

[86] 405 U.S. 645 (1972)

[87] *Id.* at 649

[88] *Id.*

[89] *People v. Pomykala*, 203 Ill.2d 198, 204 (2003) ("[S]tatute created an unconstitutional presumption of recklessness" in violation of defendant's due process rights.)

an individualized determination. [90] The Illinois Supreme Court, in *D.W.* ruled that a statutory irrebuttable presumption that a person who is convicted of certain offenses against a child is unfit to be a parent is unconstitutional because the parent was not able to present evidence to refute the presumption. A conviction alone does offer proof of parental unfitness, therefore, to satisfy the requirements of due process, the parent convicted must have the opportunity to offer evidence to rebut the presumption.

Empirical Evidence Refutes the Irrebuttable Presumptions of Prior Sex Offenders

162. There have been numerous studies completed in which all prove that the irrebuttable presumptions of sex offenders are untrue; that the Supreme Court's oft-cited reference to sex offender recidivism as being "frightening and high"[91] and which has appeared or been referenced in over 100 lower court decisions, including some in Illinois, is not reality. Plaintiff believes that it is important for this Honorable Court to have an understanding of the findings of empirical studies which prove that the recidivism rates for those once convicted of a sex offense are among the lowest of all convicted criminals.

163. First, as pointed out by the Task Force, there are inconsistences in regards to how researchers define recidivism,[92] the length of the follow-up period[93]and definition

[90] *In Re: D.W.*, 214 Ill.2d 289 (2005) *citing Stanley*, at 656-657 (the State applied an irrebuttable presumption to a presumption of fitness of a parent).
[91] *Smith v. Doe*, 538 U.S. 84, 103 (2003) *quoting McKune v. Lile*, 536 U.S. 24, 34 (2002)
[92] Recidivism "may include rearrest, reconviction, or reincarceration. Studies in which rearrest, for instance, will show higher rates in recidivism than those using reconviction." Task Force at p. 14
[93] *Id.*

of sexual offense.[94] But, the Task Force concluded that "recidivism remains the best measure available for determining risk to public safety and is therefore an invaluable tool to assess the risk people pose to public safety and the efficacy of particular interventions."[95]

164. In May, 2019, the U.S. Department of Justice released a report on the recidivism rates of those convicted of a sexual offense that were released from state prison.[96] This study found that 7.7% of the 67,966 released sex offenders were rearrested for a sexual offense in a 9 year follow-up period.[97] The 7.7% recidivism rate over 9 years is statistically equal that found in Ohio over a 10 year follow-up period [Exhibit Entitled Sex Offenders]. The Ohio Department of Rehabilitation and Correction completed a study in which the 10 year recidivism rate (recommitted for a new crime) was 8.0% [Exhibit Sex Offenders p. 14].

165. Studies with a shorter follow-up period will naturally have a lower rate of recidivism, but Plaintiff feels compelled to detail these studies to the Court. In a report entitled Recidivism of Sex Offenders Released from Prison in 1994, that was released by the U.S. Department of Justice, 9,691 released sex offenders were tracked for three years. The overall rearrest rate for those offenders over the three year period was 5.3% (n=517 persons rearrested) with a reconviction rate of 3.5% (n=339), all for new sex offenses.[98]

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[94] *Id.*
[95] *Id.* at p. 15
[96] Recidivism of Sex Offenders Released From State Prison: A 9-Year Follow-Up (2005-2014) https://www.bjs.gov/content/pub/pdf/rsorsp9yfu0514.pdf
[97] *Id.* p. 5
[98] https://www.bjs.gov/content/pub/pdf/rsorsp9yfu0514.pdf at p. 24 also cited in Task Force p. 16

166. These are just a small sample of the numerous studies showing that those who have been convicted of a sex offense do not have a "frightening and high" recidivism rate.

167. Further, Plaintiff has already shown that that empirical data proves that "residency restrictions" have absolutely no effect on sexual recidivism (*Supra.*)

168. Also, empirical data proves that the "stranger danger" myth is just that, a falsehood perpetuated by politicians in order to pass increasingly punitive legislation aimed towards offenders [*Supra*].

Presumption is Easily Rebutted As-Applied to the Plaintiff

169. Plaintiff was convicted and pled guilty in 2003. Since then, Plaintiff has successfully completed his sentence of three years of sex offender probation, three years of counselling, both individual and group and in which he was deemed to be a low-risk to reoffend voluntarily attended counselling after his mandated sentence and treatment expired, is currently on psychotropic medication and, before the pandemic hit, was seeing a therapist bi-monthly, and most importantly has not had any criminal conviction in the last 17 years:

> **While release planning and evidence-based treatment are key components of successful behavior change, research has also established the greatest predictor of risk reduction is the length of time a convicted person lives in the community without re-offending. The longer a convicted person desists from criminal behavior, the lower his or her risk. When a convicted person has been crime free for a certain period of time, he or she meets what research terms the desistance threshold. This is the point at which a convicted person's risk is at the same level as the general population. Research indicates that individuals convicted of sexual offenses reach the desistance threshold at 10 years of offense-free community living.[99]**

[99] Task Force at p. 20 *citing* Hanson, R.K., Harris, A.J.R., Helmus, L., & Thornton, D. (2014). High-risk sex offenders may not be high risk forever. *Journal of Interpersonal Violence, 29(15),* 2792-2813;

170. Further, Plaintiff contends and all experts and the Task Force agree, that there are subsets within the general group of sex offenders which may affect the recidivism rates[100] and which are unique to each individual. For example, a 40 year old male who suffers from bipolar disorder and has no prior criminal history has a much different level of risk to reoffend than a 40 year old male who suffers from bipolar disorder and has a lengthy criminal history.

171. Also, Plaintiff contends that he belongs to a distinguished class of offenders that the Legislature recognized deserve special treatment due to their underlying problems. Under 730 ILCS 167/5 the Legislature created Veteran's Court. In the purpose statement of the statute the Legislature said:

> **Section 5 Purposes: The General Assembly recognizes that veterans and active, Reserve and National Guard servicemembers have provided or are currently providing an invaluable service to our country. In doing so, some may suffer the effects of, including but not limited to, PTSD, TBI, depression and may also suffer drug and alcohol dependency or addiction and co-occurring mental illness and substance abuse problems. As a result of this, some veterans or active duty servicemembers come into contact with the criminal justice system and are charged with felony or misdemeanor offenses. There is a critical need for the criminal justice system to recognize these veterans, provide accountability for their wrongdoing, provide for the safety of the public and provide for the treatment of our veterans. It is the intent of the General Assembly to create specialized veteran and servicemember courts or programs with the necessary flexibility to meet the specialized problems faced by these veteran and servicemember defendants.[101]**

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[100] Task Force at p. 18 *citing* Dr. R. Karl Hanson, among the world's top experts in sexual offender recidivism. "[Risk assessment tools] analyze factors that such as criminal history, attitudes, mental health, age, and other factors that research has found to predict reoffending."

[101] 730 ILCS 167/5

172. While Plaintiff was in sex offender treatment, Plaintiff became aware that the traumatic experiences that occurred to him while serving in the Navy were a big factor in his behavior and offense.

173. One important factor involving offender recidivism is that of the motive; or put another way, what was the need that the offender was looking to meet when he or she offended. Through group therapy, Plaintiff had met numerous offenders. As part of treatment, offenders were required to present to the group all the events leading up to each individual's offense. The purpose of this exercise was for the offender to recognize the stressors and the motive behind their offense. While the motive for the overwhelming majority of offenders in the group was exerting power and control over someone, in Plaintiff's case the motive was quite different and extremely less common. Plaintiff suffered numerous horrific experiences while serving in the Navy and it cannot be contested that he is permanently disabled, both physically and mentally because of them [*see* Exhibit]. It is because of these incidents that the Plaintiff was not looking to exert power or control over any person, rather, Plaintiff was seeking to fulfill a need for acceptance.[102] Plaintiff intends to show that this alone puts him in a much lower risk category to reoffend.

174.

Due Process Violations

[102] Plaintiff would like to note two things: 1. He is not in any way attempting to rationalize his criminal behavior. Plaintiff always has and will continue to accept responsibility for his criminal actions. 2.

175. Plaintiff alleges that SORA, the Notification Law, the residency and presence restrictions, and the driver's license law violate the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution and the Due Process Clause of the Illinois Constitution.

176. "When a state deprives an individual of a protected liberty or property interest, Procedural Due Process generally guarantees the right to fair procedures, such as adequate notice, an opportunity to be heard, and an impartial decision maker."[103]

177. While Plaintiff acknowledges the long line of cases that have rejected Procedural Due Process arguments on the grounds that due process was already achieved with the conviction, Plaintiff contends that the facts as-applied to him, are extraordinary and are not covered by those precedents. As Plaintiff was told he would be only required to register for ten years, Plaintiff made the decision to plead guilty. The registration period was the most significant factor in Plaintiff's decision. The fact that the Assistant State's Attorney (ASA) was mistaken, or pulled a "bait and switch," is of no consequence. The ASA made a promise to the Plaintiff, that in exchange for a guilty plea and to prevent the time and cost of trial, Plaintiff would be sentenced to three years probation and must register for 10 years.

178. "The enforceability of plea agreements was recognized in *Santobello v. New York,*[104] where the Supreme Court held that a defendant who enters a guilty plea in

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[103] *Winters v. Illinois State Bd. of Elections,* 197 Supp.2d 1110 (N.D. Ill 2001) citing *Head v. Chi. Sch. Reform Bd. of Tr.,* 225 F.3d 794, 803-04

[104] 404 U.S. 257, 30 L.Ed.2d 427, 92 S.Ct. 495

reliance upon the promise of a prosecutor is entitled to a remedy when the prosecutor breaches that promise."[105]

179. "When 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."[106]

180. That the State did not fulfill its promise to this Plaintiff means that this Plaintiff has been denied due process of the law under the Fifth and Fourteenth Amendments to the U.S. Constitution and Article 1 Sect. 2 of the Illinois Constitution.

Ex Post Facto

181. Plaintiff asserts that by enforcing all of the amendments to SORA that were enacted after his 2003 conviction violates the *ex post facto* clause of the U.S. Constitution[107].

182. Plaintiff asserts, that the enactment and application of all the amendments to SORA after his 2003 conviction violates the *ex post facto* clause of the constitution of the State of Illinois[108].

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[105] *Illinois v. Navarolli,* 121 Ill.2d 516 (1988), 521 N.E.2d 891 (Enforceability of plea agreements are covered in the principles of due process) (citing *Mabry v. Johnson,* 467 U.S. 504, 81 L.Ed.2d 437)

[106] *Santobello,* 404 U.s. 262, 30 L.Ed.2d 433, 92 S.Ct. 499

[107] U.S. Const. Article 1, § 9, Clause 3 ("No bill of attainder or *ex post facto* Law shall be passed."); U.S. Const. Article 1, § 10, Clause 1, ("No state shall...pass any Bill of Attainder, *Ex Post Facto* Slaw, or Law impairing the Obligation of Contracts...").

[108] IL Const. Art. I, § 16 ("No *ex post facto* law, or law impairing the obligation of contracts...shall be passed").

183. As cited above, Plaintiff was convicted in January, 2003. *Supra* [citation]. Since his lone conviction of a sex offense, the following amendments to SORA have been attached, and apply to the Plaintiff: bars Plaintiff from all parks, forest preserves and conservation at all times even if Plaintiff has a child there (720 ILCS 5/11-9.4); changed the residency restrictions to include home daycare centers (720 ILCS 5/11-b-5); the yearly "registration fee" Plaintiff must pay is now $100 as opposed to $10 (730 ILCS 150/3-c-6); significant changes to the amount of information the Plaintiff must provide to law enforcement at time of registration including, but not limited to, his telephone number, all email, internet messaging identities, chat room identities, and other internet communication identities that he uses or plans to use, all URLs registered or used by the Plaintiff, all blogs and internet sites that the Plaintiff maintains or which he has uploaded content to and license plate number for all vehicles registered in his name (730 ILCS 150/3 (a)); changes the amount of time that Plaintiff is allowed to be away from his residence without registering from 10 days to just 3 days ((730 ILCS 150/3 (a)); Plaintiff is required to renew his Driver's License annually (citation omitted); Plaintiff is not allowed to participate in any holiday event with nieces or nephews present (non-familial members) (citation omitted). Any violation of the above restrictions is considered a Class 3 felony (730 ILCS 150/10 (a)).

Legislative Intent

184. The first step in an "intent-effects" test requires a court to ascertain the legislature's explicit or implicit preference to designate the law as civil or criminal.[109]

[109] *United States v. Ward* 448 U.S. 242 (1980)

185. Plaintiff posits that the legislative intent of SORA and the accompanying amendments to SORNA and the other requirements that apply to Plaintiff due to his status as a child sex offender is to punish him.

186. Plaintiff acknowledges that many courts have ruled that the legislative intent is the public safety (*People v. Malchow*[110]; *Smith v. Doe*[111] etc.).

187. Plaintiff still alleges that the courts have not considered the cumulative nature of the following factors in relation to the intent of SORA and the accompanying Notification Act and other laws listed above: lack of a purpose statement in the statutes; the statutes are codified in the criminal code; actual statements of legislators during debate (including that of Defendant General Raoul); public statements of legislators and other law enforcement officials. Plaintiff alleges that all this evidence, considered as a whole instead of individually, only proves that the intent can be punishment.

188. Plaintiff further alleges that no court considering the constitutionality of the above statutes has considered those factors.

Lack of Stated Purpose

189. The Illinois SORA (730 ILCS 150/1 *et seq.*) contains no stated purpose of the Act.

190. The Illinois Notification Act (720 ILCS 5/11-6 *et seq.*) contains no stated purpose as to the intent of the residency restrictions, "loitering" and presence bans, etc.

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[110] *People v. Malchow*, 193 Ill. 2d at 418-424. The Illinois Supreme Court held that the legislative intent of the 1998 version of SORA (730 ILCS 150/1 *et seq.* (West 1998)) was the "protection of the public, rather than punishing sex offenders." (citing *People v. Adams*, 144 Ill. 2d 381 (1991); *Kansas v. Hendricks*, 521 U.S. 346, 138 L. Ed. 2d 501, 117 S. Ct. 2072 (1997)).

[111] *Smith v. Doe*, 538 U.S. 84, 105-106 (2003). The United States Supreme Court likewise held that the legislative intent behind Alaska's SORA was to protect the public.

191. Numerous Illinois statutes contain a statement of purpose. For example, 740 ILCS 50/1 which states:

> **It is hereby declared, as a matter of Legislative determination, that the remedy heretofore provided by law for the enforcement of the action for criminal conversation has been subjected to grave abuses and has been used as an instrument for blackmail by unscrupulous persons for their unjust enrichment...Accordingly, it is hereby declared as the public policy of the State that the *best interests of the people* of the Sate will be served by limiting the damages recoverable in such actions...Consequently, in the *public interest*, the necessity for the enactment of this Chapter is hereby declare as a matter of Legislative determination.** (740 ILCS 50/1 emphasis added). (see also 740 ILCS 21/5; 740 ILCS 10/2; 740 ILCS 15/1; 740 ILCS 20/2 (a-1-17) (b); 730 ILCS 135/2; 730 ILCS 140/2; 730 ILCS 145/2; 730 ILCS 166/5).

192. The lack of a purpose statement, taken by itself, is does not reflect that the legislative intent is to punish sex offenders. Plaintiff acknowledges the long line of cases in other jurisdictions that have ruled that. But, as this issue has not been raised in Illinois, Plaintiff asks this Honorable Court to consider this factor not only singularly, but also within the cumulative allegations of this section.

Codification into the Illinois Criminal Code

193. The Illinois version of SORA is codified in the Criminal Statutes, specifically Chapter 730 which is entitled "Corrections."

194. Other statutes codified in Chapter 730 "Corrections" include the following:

a. 730 ILCS 5/ Unified Code of Corrections

b. 730 ILCS 105/ Open Parole Hearings Act

c. 730 ILCS 110 Probation and Probation Officers Act

d. 730 ILCS 115/ Probation Community Service Act

e. 730 ILCS 125/ County Jail Act

195. As shown directly above, all of the listed sections of Chapter 730 deal directly with the establishment of punishment of convicted individuals.

196. Plaintiff alleges that, had the legislator intended to create a "civil regulatory scheme," SORA would have been codified under Chapter 740 of the Illinois Code which is entitled "Civil Liabilities." Chapter 740 includes the following:

a. 740 ILCS 7/ Anti-Phishing Act. Deals with the civil consequences of "inducing another person to provide identifying information" through the internet (*Id.* at § 10).

b. 740 ILCS 10 Illinois Antitrust Act. Makes illegal "monopolistic or oligarchic practices" which "tend to...decrease competition." (*Id.* at § 2). Any violation is "a Class 4 felony" and "shall be punished by a fine." (*Id.* § 6).

c. 740 ILCS 21/ Stalking No Contact Order. Deals with the civil consequences of stalking and criminalizes violations of a No Contact Order (*Id.* at §125 and § 130). It also mandates that a copy of the order is to be supplied to the State Police (*Id.* at § 135 (a)) and State Police is to maintain the information (*Id.* at § 135 (b)).

d. 740 ILCS 40/ Controlled Substance and Cannabis Act Nuisance Act. Addresses the civil consequences of drug activity at a property, including, but not limited to, "enjoining the use of the owner's property for a period of one year." (*Id.* at 3.1 (c-3)).

197. As shown above, 740 ILCS "Civil Liabilities" share the same components as SORA and the Notification Act. Plaintiff alleges that if SORA and the Notification Act were truly meant to be civil regulatory scheme, they would have been codified under the Civil Liabilities.

198. Instead, Plaintiff alleges that by codifying SORA and the Notification Act under the section of Illinois statutes that deal with the punishment and supervision of convicted persons, the legislative intent can only be deemed as punitive.

199. Plaintiff asks this Honorable Court to consider this factor as it has not been contemplated by Illinois courts. Plaintiff asks that this factor be considered singularly and in the cumulative aspect of the other allegations in this section.

Legislative Debates

200. There have been many statements during legislative debates surrounding amendments to SORA and the Notification Act which go to prove the intent of the legislators is the continued punishment of sex offenders.

201. On 07 April, 2000, the Illinois Senate debated HB 4045 which was the original statute addressing residency restrictions. This Bill made it a "Class 4 felony for a child sex offender to reside within five hundred feet of a school attended by persons under eighteen, a playground, or a facility providing programs or services exclusively directed towards...persons under eighteen."

(www.ilga.gov/senate/transcripts/strans91/ST040700.pdf) (last retrieved 27 March, 2020). This amendment was the precursor to the current residency restrictions.

202. Plaintiff acknowledges that the public safety was a concern addressed during the Senate debate on this Amendment (*Id.* 54, 56, 60-61). But, during the debate, Chief Senate Sponsor of the Bill, Senator Patrick O'Malley, acknowledged that the Amendment is an *ex post facto* restriction. "[T]he public policy discussion around here is whether or

not certain people who commit certain acts are going to be subject to restrictions even after they have served their time for the crime they have committed." (*Id.* at 56).

203. Finally, Senator O'Malley finished the debate with a statement that shows the true intent of the residency restrictions and all other laws regarding sex offenders: "This is *one more statement to these people...get out of Illinois.*" (*Id.* at 62) (emphasis added).

204. Plaintiff alleges that, while public safety was mentioned as the purpose of this law, the above statement speaks to the real motivation of this residency restrictions, and all other laws surrounding sex offender registration, namely punishment.

205. As this law originally passed in 2000, and the clear intent of this law was to punish child sex offenders, Plaintiff alleges that any change to this law must be considered punishment as well, including the 2008 amendment which added in-home daycares as well as other locales.

206. On 05 May, 2016, the Illinois Senate debated House Bill 4360, which would lift some "collateral consequences" for lower level sex offenders. (99th General Assembly Transcript www.ilga.gov/senate/transcripts/strans99/09900119.pdf at 116-128).

207. During the debate, Defendant General Raoul said the following:

> **[B]ecause what we've done historically is we've gone too far with regards to our reaction to being tough on crime,...as a result, instead of doing something that allows for an elevated level of public safety, it has the opposite effect. The more and more that we remove opportunities for second chance, the more and more we create a circumstance where somebody will return to a life of—of wrongdoing...This is another step...to address the fact that we've historically gone too far."** (*Id.* at 124-125).

208. While there exists no legal definition of "tough on crime," it generally "refers to demands for a strict criminal justice system,...through stricter criminal penalties." (https://en.wikipedia.org/wiki/Law_and_order_(politics))

209. Through that statement, General Raoul acknowledges that "collateral consequences" were an attempt to be "tough on crime." (*Supra.* 56). Further, General Raoul admits that the "collateral consequences" "remove opportunities for second chance." (*Supra.* 56).

210. These examples are by no means an exhaustive list. But Plaintiff alleges that they illustrate the punitive intent of the legislature in enacting more onerous laws for sex offenders.

Comments by Legislators Outside the Debate Process

211. Plaintiff has found numerous quotes by Illinois lawmakers regarding sex offenders in which, Plaintiff alleges, shows that the true aim of sex offender laws is to further punish Plaintiff well beyond the completion of his three year term of probation.

212. "We're making it impossible for them to live anywhere, we're making it impossible for them to work anywhere, we're making it impossible for them to go anywhere. We need to take a step back."—Illinois State Representative Elaine Nekritz (Say What? Notable Quotes on Sex Offenders http://oncefallen.com/quotes.html [112] at page 7

Other Notable Lawmakers About Sex Offender Registries

[112] Citing Kevin McDermott (2011). *Is Illinois reaching the tipping point on its sex-offender registration rules?* St. Louis Today

213. "My first term, I was pretty much a hard-liner. I said, 'Put sex offenders in outer space. Put them all on an island."—New Hampshire Stat Rep. Larry Gagne *Id. at page 2*[113]

214. "I know some folks think it is great that you can go online today and see where these [sex offenders] live...but I look forward to the day when you can go online and see that they all live in one place – in Angola [Prison]"—LA. Governor Bobby Jindal during a televised address. *Id.*

215. "We want those people running away from Georgia. Given the toughest laws here, we think a lot of people could move to another state. If it becomes too onerous and too inconvenient, they just may want to live somewhere else. and I don't care where, as long as it's not Georgia." – Georgia State Rep. Jerry Keen *Id. at 2-3*

216. "Is there anything left we can do to sex offenders with a few days left in the session?" *Id.* at 3.

217. "...When you are convicted...you will also be subject to sex offender registration, the FULL HARASSMENT PACKAGE..." – North Carolina State Sen. Thom Goolsby *Id.* at 3.

218. "Truly, I don't care if we stomp on his civil liberties." Howell, N.J. Councilman Mike Howell *Id.* at 9.

Analysis

[113] Citing Annmarie Timmons, "House committee passes bill prohibiting restrictions on where sex offenders can live." Concord Monitor, 29 Jan. 2014.

219. Plaintiff alleges the above quotes from the state legislators during debate, and most importantly, that of General Raoul, only show that the intent of the sex offender registry is that of punishment.

220. Plaintiff further alleges that the lack of a purpose statement of the registry, coupled with the fact that it is codified under the criminal code entitled "Corrections" further proves the intent of the legislator to make the registry a punishment.

221. Lastly, Plaintiff alleges that the quotes from other lawmakers throughout the country prove that the registration schemes, and the amendments to them, are all passed to further punishment on sex offenders.

222. Plaintiff acknowledges that the codification factor, taken singularly, has been ruled not to prove the intent to punish. Plaintiff further acknowledges that the lack of a purpose statement has been ruled not to show the intent of the registration scheme to enact punishment.

223. But, Plaintiff alleges that the courts have never acknowledged the debates on the sex offender registry and has also never considered the public quotes from legislators on the registration.

224. In lieu of this, Plaintiff asks this Honorable Court to consider all the above factors and rule that the actual intent, even if it is an underlying intent, to find that the recent amendments to the registry were to make it more onerous to the Plaintiff in an attempt to punish him.

Effects of the Registry on the Plaintiff

225. Even if this Honorable Court determines that the registration scheme and its accompanying amendments since 2003 were not intended to impose punishment, the Plaintiff asks that the aggregate effects of the registration scheme in Illinois constitutes punishment as applied to the Plaintiff.

226. While Plaintiff acknowledges that both the Illinois Supreme Court and the Supreme Court of the United States have both ruled that the registration schemes are not punishment (cite cases), Plaintiff contends that multiple amendments to SORA and the accompanying Notification Act have made the registration scheme so onerous that is constitutes further punishment to the Plaintiff, well after his punishment has been finished.

227. Furthermore, there have been numerous rulings nationwide, both at the state level and in the federal courts, that have determined that the numerous amendments to SORA constitute punishment. This includes two decisions in the Appellate Court of Illinois. (*People v. Tetter*, IL App 3rd District (2018) 150243; *People v. Kochevar*, IL App 3rd District (2018) 140660; *Millard etal v. Rankin*, 265 F. Supp. 3d 1211 (2018); *Does v. Snyder*, 834 F.3d 696 (6th Cir. 2016); *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017); *Starkey v. Okla. Dep't of Corr.*. 305 P.3d 1004 (Okla. 2013); *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011); *Doe v. Dep't of Pub. Safety & Corr.*, 62 A.3d 123 (Md. 2013); *State v. Letalien*, 985 A.2d 4 (Me. 2009); *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009); *Doe v. State*, 189 P.3d 999 (Alaska 2008);

228. Plaintiff asks that, in light of these rulings, this Honorable Court reexamine the effects of the registration scheme here in Illinois as applied to the Plaintiff.

229. Plaintiff further suggests that a reexamination of the effects of the registration scheme is warranted due to the release of the 2017 "Sex Offenses & Sex Offender Registration Task Force" report. Plaintiff asserts that the courts have not considered this report since its release.

230. Plaintiff further contends that the courts have not considered the registry and its "collateral consequences" since the 2019 report released by the U.S. Commission on Civil Rights.

231. In light of all these factors, Plaintiff suggests that the effects of the registration scheme as it pertains to his *ex post facto* challenge is ripe for review.

Cruel and Unusual Punishment and Restoring the Offender to Useful Citizenship

232. The Eighth Amendment to the United States Constitution states in part: "nor cruel and unusual punishments inflicted."

233. Plaintiff alleges that the Notification Laws, SORA, the residency and presence laws and the driver's license law are cruel and unusual punishment.

234. These laws, in their aggregate, have morphed into a lifetime of probation-like restrictions on Plaintiff's life. The statutory aspects of the Notification Law brand the Plaintiff a "sexual predator" and "child sex offender" for life, without the possibility of removal.

235. A "sexual predator" is defined as: "a person who has committed a sexually *violent* offense and especially one who is likely to commit more sexual offenses."[114] "A sex offender who has been convicted of a sexually *violent* offence and who suffers from a mental abnormality or personality disorder that makes him or her likely to engage in predatory sexually violent offences."[115]

236. Plaintiff is forever branded as someone "who has been convicted of a sexually violent offence" and "is likely to engage in predatory sexually violent offences" even though (1) his actions, while deplorable, did not have a violent aspect and did not even come close to that level and (2) he has already been deemed a very low risk for reoffending. Therefore, the label of sexual predator is cruel and unusual punishment as it "brands" the Plaintiff with a classification in which he is not part of without ever having the chance to refute the label.

237. Plaintiff is forever branded as a "child sex offender." While Plaintiff readily admits that his conviction was for a sex offense against a 15 year old, Plaintiff was deemed not to be a pedophile during his sex offender evaluation. To label the Plaintiff in such a way is cruel and unusual punishment in that it is (1) not true and (2) the designation can never be removed.

238. Further, Plaintiff contends that registration scheme, encompassing SORA, the Notification Law, residency and presence restrictions, has effectively banished Plaintiff from society thereby violating cruel and unusual punishment.

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[114] https://www.merriam-webster.com/dictionary/sexual%20predator
[115] https://medical-dictionary.thefreedictionary.com/Sexual+predation

239. Plaintiff further is ostracized from the community due to his presence on the registry and, as long as he remains on the registry, Plaintiff will never be accepted into a community. Plaintiff argues that the Notification Law, in light of the presumptions of the recidivism rate of former sex offenders being refuted, only serves as the Legislature publicly shaming the Plaintiff for an offense that was committed over 17 years ago.

240. Plaintiff alleges that the Notification Law violates Article 1 Section 11 of the Illinois Constitution. By proclaiming in bold red letters that Plaintiff is a Sexual Predator, the Notification Law serves as a warning to stay away, that this person is a danger to everyone. That in and of itself prevents the Plaintiff from reintegrating into society, even when he has proven over the last 17 plus years that he is not a danger to anyone.

COUNT I

Violation of the *Ex Post Facto* Clauses of the U.S. Constitution and the Illinois Constitution

241. Plaintiff realleges every allegation above.

242. The application of 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 5/5-5-3(*o*) violate the *Ex Post Facto* Clause of the U.S. Constitution, Art. 1 section 10 cl. 1 and the *Ex Post Facto* Clause of the Illinois Constitution Art. 1 section 2

243. Plaintiff respectfully requests this Honorable Court:

a. Issue a preliminary and then permanent injunction prohibiting the Defendants or any other law enforcement agency from the arrest and/or prosecution of violating 720 ILCS 5/11-9.3(b-10) ("residency restrictions")

b. Issue a declaratory judgement that 720 ILCS 5/11-9.3(b-10) is unconstitutional as-applied to the Plaintiff.

c. Issue a preliminary and then a permanent injunction prohibiting Defendants from enforcing 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-5-3(*o*) against Plaintiff.

d. Issue a declaratory judgement that 720 ILCS 5, 730 ILCS 150, 730 ILCS 152 and 730 ILCS 5/5-5-3(*o*) are unconstitutional as-applied to the Plaintiff.

e. Enter a judgement for reasonable costs in the time and expenses incurred by Plaintiff

f. Grant Plaintiff any other relief in which this Honorable Court deems fit.

COUNT II

Violation of the Guarantee of Procedural Due Process

244. Plaintiff realleges each and every allegation set forth above.

245. The application of 720 ILCS 5, 730 ILCS 150, 730 ILCS 152 and 730 ILCS 5/5-5-3(*o*) to the Plaintiff, deeming him a child sex offender and sexual predator, without any notice, hearing or individualized determination on any threat he may pose to society is in violation of the Fifth and Fourteenth Amendments guarantee of procedural due process.

246. The application of 720 ILCS 5, 730 ILCS 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-5-3(*o*) to the Plaintiff, deeming him a child sex offender and sexual predator, without notice, hearing, or individualized determination on any threat he may pose to society is in violation of Article 1 section 2 of the Illinois Constitution guarantee of due process.

247. Plaintiff respectfully requests that this Honorable Court:

a. Issue a preliminary and then permanent injunction prohibiting Defendants or any other law enforcement agency from the arrest or prosecution of any of the above stated statutes.

b. Issue a declaratory judgement that the above stated statutes are unconstitutional as-applied to the Plaintiff.

c. Enter judgement for reasonable costs for time and expenses incurred

d. Grant Plaintiff any other relief that this Honorable Court deems appropriate.

COUNT III

Violation of the Guarantee of Substantive Due Process

248. Plaintiff realleges each and every allegation set forth above.

249. Enforcement of 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-5-3(*o*) strips Plaintiff and his family of fundamental rights guaranteed them under the U.S.

Constitution and are not narrowly tailored nor do they use the least restrictive means possible and fail the strict scrutiny as-applied to Plaintiff.

250. The classifications of child sex offenders violate the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and Article 1 section 2 of the Illinois Constitution.

251. The above listed statutes create an impermissible irrebuttable presumption in violation of the Fourteenth Amendment to the U.S. Constitution and Article 1 section 2 of the Illinois Constitution.

252. The prohibitions of the above listed statutes are not rationally related to a legitimate state interest, as-applied to the Plaintiff, and therefore fail reational based scrutiny.

253. The Plaintiff respectfully requests that this Honorable Court:

a. Issue a preliminary and then a permanent injunction preventing the Defendants or any other law enforcement agency from enforcement or prosecution of any of the above listed statutes against the Plaintiff.

b. Issue a declaratory judgement that the above listed statutes are unconstitutional as-applied to the Plaintiff.

c. Enter a monetary judgement for reasonable time and costs incurred

d. Grant Plaintiff any other relief deemed appropriate by this Honorable Court

COUNT IV

Violation of Article 1 Section 11 of the Illinois Constitution

254. The Plaintiff realleges each and every allegation set forth above.

255. The prohibitions and restrictions set forth in 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-3(*o*) do not have the objective of restoring an offender to useful citizenship.

256. Plaintiff respectfully requests that this Honorable Court:

a. Issue a preliminary and then a permanent injunction preventing Defendants or any other law enforcement agency from enforcing or prosecuting the restrictions and obligations set forth in 720 ILCS 5, 730 ILCS 150, 730 ILCS 152 and 730 ILCS 5.5-5-3(*o*).

b. Issue a declaratory judgement that the above stated statutes are unconstitutional as-applied to the Plaintiff

c. Grant Plaintiff any other relief this Honorable Court deems appropriate.

COUNT V

Violation of the Eighth Amendment Prohibition on Cruel and Unusual Punishment

257. Plaintiff realleges each and every allegation set forth above.

258. Enforcement of 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-5-3(*o*) are traditional forms of cruel and unusual punishment.

259. Enforcement also places Plaintiff and his family at risk for further harassment from the community.

260. Plaintiff respectfully requests that this Honorable Court:

a. Issue a preliminary and then a permanent injunction preventing the Defendants from enforcing 720 ILCS 5, 730 ILCS 150, 730 ILCS 152, and 730 ILCS 5/5-5-3(*o*) against the Plaintiff

b. Issue a declaratory judgement that the above stated statutes are unconstitutional as-applied to the Plaintiff

c. Enter a monetary judgement for reasonable time and costs incurred

d. Grant Plaintiff any other relief deemed appropriate by this Honorable Court

COUNT VI

Negligence

261. Plaintiff realleges each and every allegation set forth above.

262. The Hampshire Police Department and Director Kelly were negligent in that they improperly advised Plaintiff that his proposed new address was in compliance with 720 ILCS 5/11-9.3(b-10).

263. The enforcement of the statute caused financial and psychological harm to Plaintiff and his family.

264. The Plaintiff respectfully requests that this Honorable Court:

a. Issue a temporary and then a permanent injunction against the Defendants from enforcing the statute against the Plaintiff.

b. Issue a declaratory judgement that the statute is unconstitutional as-applied to the Plaintiff.

c. Enter a monetary award against Defendants for compensatory damages.

d. Enter a monetary award against Defendants for pain and suffering.

e. Enter a monetary judgement for reasonable time and costs incurred

f. Grant Plaintiff any other relief deemed appropriate by this Honorable Court.

Respectfully submitted

Martin T. Kopf

pro se Plaintiff

DEPARTMENT OF VETERANS AFFAIRS
810 Vermont Ave NW
Washington, D.C. 20420

May 23, 2018

[redacted]
Streamwood, IL 60107

[redacted]
27/eBenefits

Dear Mr. Kopf:

This letter is a summary of benefits you currently receive from the Department of Veterans Affairs (VA). We are providing this letter to disabled Veterans to use in applying for benefits such as state or local property or vehicle tax relief, civil service preference, to obtain housing entitlements, free or reduced state park annual memberships, or any other program or entitlement in which verification of VA benefits is required. Please safeguard this important document. This letter is considered an official record of your VA entitlement.

Our records contain the following information:

Personal Claim Information

Your VA claim number is: xxx-xx-[redacted]

You are the Veteran.

Military Information

Your most recent, verified periods of service (up to three) include:

Branch of Service	Character of Service	Entered Active Duty	Released/Discharged
Navy	Honorable	December 19, 1990	June 17, 1994

(There may be additional periods of service not listed above.)

VA Benefit Information

You have one or more service-connected disabilities:	Yes
Your combined service-connected evaluation is:	90%
Your current monthly award amount is:	$3343.48
The effective date of the last change to your current award was:	December 01, 2017
You are being paid at the 100 percent rate because you are unemployable due to your service-connected disabilities:	Yes
You are considered to be totally and permanently disabled due solely to your service-connected disabilities:	Yes
The effective date of when you became totally and permanently disabled due to your service-connected disabilities:	January 07, 2016

You should contact your state or local office of Veterans' affairs for information on any tax, license, or fee-related benefits for which you may be eligible. State offices of Veterans' affairs are available at http://www.va.gov/statedva.htm.

How You Can Contact Us

DEPARTMENT OF VETERANS AFFAIRS

August 28, 2017

[redacted]

[redacted]
Martin Kopf

Dear Martin Kopf:

We made a decision regarding your entitlement to VA benefits.

This letter tells you about your entitlement amount, payment start date, and what we decided. It includes the evidence used and reasons for our decision. We have also included information about what to do if you disagree with our decision and who to contact if you have questions or need assistance.

Payment Summary

Your monthly entitlement amount is shown below:

Monthly Entitlement Amount	Payment Start Date	Reason
$2,906.83	Feb 1, 2016	Original Award
$2,915.55	Dec 1, 2016	Cost of Living Adjustment

We are currently paying you as a single Veteran with no dependents.

You Can Expect Payment

Generally, payments begin the first day of the month following the effective date. When applicable, a retroactive payment, minus any withholdings, will be issued. Thereafter, payment will be made at the beginning of each month for the prior month. For example, benefits due for May are paid on or about June 1.

Your payment will be directed to the financial institution and account number that you specified. To confirm when your payment was deposited, please contact your financial institution.

File Number: [redacted]
KOPF, MARTIN T

Explanation
• Service connection for right lower radiculopathy also claimed as peripheral neuropathy, right lower extremity and as nerve damage) has been established as related to the service-connected disability of lumbosacral strain with degenerative arthritis of the spine and intervertebral disc syndrome (IVDS). • We have assigned a 20 percent evaluation for your peripheral neuropathy, right lower extremity (claimed as nerve damage) based on: • Moderate incomplete paralysis • A higher evaluation of 40 percent is not warranted for paralysis of the sciatic nerve unless the evidence shows nerve damage is moderately severe.

Issue/Contention	Percent (%) Assigned	Effective Date
adjustment disorder with mixed anxiety and depressed mood previously claimed as mental condition diagnosed as alcohol use disorder and unspecified caffeine-related disorder (claimed as depression and post-traumatic stress disorder/PTSD)	70%	Jan 7, 2016

Explanation
• An evaluation of 70 percent is assigned for occupational and social impairment, with deficiencies in most areas, such as work, school, family relations, judgment, thinking, or mood, due to such symptoms as: suicidal ideation; obsessional rituals which interfere with routine activities; speech intermittently illogical, obscure, or irrelevant; near-continuous panic or depression affecting the ability to function independently, appropriately and effectively; impaired impulse control (such as unprovoked irritability with periods of violence); spatial disorientation; neglect of personal appearance and hygiene; difficulty in adapting to stressful circumstances (including work or a worklike setting); inability to establish and maintain effective relationships. A higher evaluation of 100 percent is not warranted unless there is total occupational and social impairment due to such symptoms as: gross impairment in thought processes or communication; persistent delusions or hallucinations; grossly inappropriate behavior; persistent danger of hurting self or others; intermittent inability to perform activities of daily living (including maintenance of minimal personal hygiene); disorientation to time or place; memory loss for names of close relatives, own occupation, or own name.

Issue/Contention	Percent (%) Assigned	Effective Date
left lower extremity	20%	Jan 7, 2016

File Number: [redacted]
KOPF, MARTIN T

Explanation
exists for a serviceperson who died in service. Finally, eligibility can be derived from a service member who, as a member of the armed forces on active duty, has been listed for more than 90 days as: missing in action; captured in line of duty by a hostile force; or forcibly detained or interned in line of duty by a foreign government or power. ◦ Basic eligibility to Dependents' Education Assistance is granted as the evidence shows the veteran currently has a total service-connected disability, permanent in nature.

Issue/Contention	Effective Date
Individual Unemployability (IU)	Jan 7, 2016
Explanation	
◦ Entitlement to individual unemployability is granted because you are unable to secure or follow a substantially gainful occupation as a result of service-connected disabilities.	

Issue/Contention
degenerative arthritis status post bicipital tendon and rotator cuff tear (claimed as shoulder condition)
Explanation
• The issue of compensation for degenerative arthritis status post bicipital tendon and rotator cuff tear (claimed as shoulder condition) is deferred for the following information: VA exam/opinion clarification

Your overall or combined rating is 90%.

Note: The percentages assigned for each of your conditions may not always add up to your combined rating evaluation. We do not add the individual percentages of each condition to determine your combined rating. Instead, we use a combined rating table that considers the effect from the most serious to the least serious conditions.

Are You Entitled to Additional Benefits?

Did you know you may be eligible for a VA guaranteed mortgage with no down payment (potentially exempt from a funding fee depending on your rating)? For more information about this benefit, or to determine and print your Loan Guaranty Certificate of Eligibility, please visit the eBenefits website at http://www.ebenefits.va.gov.

If you served overseas in support of a combat operation you may be eligible for mental health counseling at no cost to you at the Veteran's Resource Center. For more information on this

Village of HAMPSHIRE

www.hampshireil.org

April 18, 2019

Mr. Martin T Kopf
[redacted]

Dear Mr. Kopf:

The Village of Hampshire has received your request, filed pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 et seq., dated March 31, 2019, for the following documents:

Police Report #18-04697

In response to your request, enclosed are six (6) pages of public records.

Pleas note that this report contains certain information about you that would be considered "personal" or "private," which you may wish to redact before providing a copy of this report to any other party.

Sincerely yours,

Linda Vasquez
Village Clerk

(CIRCLE ONE)
Juvenile Delinquent
Sexual Predator
Sexually Dangerous/Violent
Sex Offender

SEX OFFENDER REGISTRATION ACT NOTIFICATION FORM

Photo Required

(PLEASE TYPE OR PRINT-BLACK INK)

DNA: Yes ☐ No ☐	CONDITION OF PROBATION: YES ☐	PAROLE/ PROBATION ATTACHED: NO ☐	☒ PROBATION ☐ PAROLE ☐ OTHER ___	DATE OF CONVICTION: January 15, 2003	
				DATE OF RELEASE: ___ (CONFINEMENT ONLY)	

*NAME											
LAST: Kopf	FIRST: Marti [redacted]							DOB: [redacted]		SEX: M	RACE: W
HGT: 6'5"	WGT: 225	EYE: Grn	HAIR: Brn	COMPLEXION: [redacted]		SSN: [redacted]					
SCARS/MARKS/TATTOOS: Tatto: Shamrock on left chest											
ALIASES											
DLN: [redacted]	STATE: [redacted]	EXPIRATION DATE		POB:							
DOC NO.	FBI NO. 766146HA7	SID NO. 26835790	CHGO. I.D. NO. 814994								
COUNTY OF CONVICTION: Cook	STATE OF CONVICTION: IL										
OFFENSE-STATUTE-CITATION-AOC: 439 Criminal Sexual Abuse 720 ILCS 5/12-16 (d)											
SENTENCE: 3 years Probation	VICTIM UNDER 18 YEARS OF AGE: YES ☒ NO ☐										
ADDRESS: [redacted]	NAME: [redacted]	CITY NAME: IL	STATE/ZIP: 60634								
[redacted]	COUNTY: Cook	PROBATION/PAROLE OFFICE:									
LOCAL AREA OF JURISDICTION (CITY/COUNTY):											

DUTY TO REGISTER. READ FOLLOWING TO OFFENDER and OFFENDER MUST INITIAL EACH

MTK Failure to comply with the provisions of the Sex Offender Registration Act or to willfully provide false information is a Class 4 felony. Failure to comply with any provisions of the Act mandates revocation of probation, mandatory supervised release, parole, or conditional release. The term of registration will be administratively extended by the Illinois State Police 10 years for failure to comply with any provisions of the Act.

MTK You must register, within 10 days of conviction when sentenced to probation or upon release, parole or discharge from prison or mental hospital for a period of 10 years. You must register in person, with the police department, or if none, the sheriff's office having jurisdiction where you reside.

MTK You must, within 10 days of changing your address, report your new address, in writing, with the law enforcement agency with whom you last registered. You must, within 10 days of changing your address, register in person, with the police department or if none, the sheriff's office having jurisdiction at your new address. Temporary absences of more than 10 days in a calendar year require you to register your new address.

MTK If you are employed or attend school outside of Illinois, you must also register with that state. Registration is required within 10 days of gaining employment or attending school. You must register your employment and any changes of employment, in writing, with the agency of jurisdiction of your residence.

MTK If you move to another state, you must register with that state within 10 days. You must also notify the agency with whom you last registered, within 10 days, in writing, of your new address.

MTK You must renew your registration, in person, with the law enforcement agency having jurisdiction, within one year from the date of your most recent registration until your expungement date.

MTK Any offender with a finding or adjudication as a sexually dangerous person or as a sexually violent person is required to report in person to the law enforcement agency having jurisdiction within 90 days of their initial registration and every 90 days thereafter for the period of their natural life. Any person identified as a sexual predator must register every year for the period of their natural life.

I HAVE READ AND/OR HAD READ TO ME, THE ABOVE REQUIREMENTS. IT HAS BEEN EXPLAINED TO ME AND I UNDERSTAND MY DUTY TO REGISTER AND THAT FAILURE TO DO SO IS A CRIMINAL OFFENSE.

SIGNATURE OF REGISTRANT [signature] DATE 1-15-03

Right thumb print

ENTER RECORD INTO "LEADS"
ORIGINAL TO:
COURT OF CONVICTION
ONE COPY EACH TO:
YOUR FILES
SEX OFFENDER

For Additional Information:
Illinois State Police, SIAG
400 Iles Park Place, Suite 140
Springfield, Illinois 62718-1004
(217) 785-0653

James [illegible]
NOTIFYING OFFICIAL NAME (PRINT)
Cook County State's Attorney's Office
NOTIFYING AGENCY
2650 S. California 869-3419
ADDRESS TELEPHONE NO.
Chicago IL Cook
(CITY, ZIP AND COUNTY)
NOTIFYING OFFICIAL SIGNATURE 1-15-03
DATE

Sex Offender Notification Form
Instructions for Form Completion

Administration

The Sex Offender Notification Form is used to notify sex offenders of their duty to register. The Law Enforcement Agencies Data System will serve as a repository for the SOR forms throughout Illinois. The Illinois State Police is requesting disclosure of information that is necessary to accomplish the statutory the requirements as outlined under Chapter 730 ILCS 150/2. Disclosure of this information is required. Failure to provide information or giving false information upon notification is a Class 4 Felony. The notifying agency is required to enter notified person's information into LEADS within 3 working days of providing this information.

Notification Form Submission

A Sex Offender Notification Form is required of persons sentenced to probation or released, discharged, or paroled from confinement for an offense or attempt to commit an offense under Chapter 720 ILCS 5/10.1, 10-2, 10-3, 10-3.1 (eff 01/01/96), 5/9-1, 11-6, 11-9.1, 11-11, 11-15.1, 11-17.1, 11-18.1, 11-19.1, 11-9.2, 11-20.1, 12-13, 12-14, 12-15, 12-16 and 12-33, 12-14.1 (eff 06/01/96), 10-4, 11-6.5, 11-15, 11-16, 11-18, 11-19 (eff 07/01/99). Chapter 725 ILCS 205/1.01 et. seq. Chapter 725 ILCS 207/5 (eff 01/01/98).

Notification Form Completion Instructions

Juvenile Delinquent sex offender: Adjudicated as a juvenile sex offender after June 30, 1999.
Sexual Predator: Sex Offender convicted after June 30, 1999, of the following statutes 9-1, 11-17.1, 11-19.1, 11-19.2, 11-20.1, 12-13, 12-14, 12-14.1, 12-16, 12-33.
Sexually Dangerous: Adjudicated Sexually Dangerous.
Sexually Violent: Adjudicated Sexually Violent after January 1, 1998.
Sex Offender: Sex Offender registrant that does not fit the above definitions, but fits the criteria to register.
Date of Conviction or Adjudication: Date of conviction or date of adjudication if adjudicated as a juvenile sex offender.
Date of Release: Date of release, discharge or parole if confined in the Department of Corrections only.
DNA: Identify whether DNA has been taken by marking the appropriate box.
Conditions of Parole/Probation Attached: Mark whether these are attached.
Probation, Parole or Other: Mark the status by placing a check mark (X) in the appropriate space provided.
Last Name, First Name and Middle Name: Provide the last, first and middle name of the notified person.
DOB: Provide the notified person's month, day and year of birth.
Sex: Provide the notified person's gender (male or female), other if unknown.
Race: Mark the notified person's ethnic origin or if appropriate indicate a specific ethnic origin in the other category.
Height: Provide the notified person's height in feet and inches (example 5'07").
Weight: Provide the notified person's weight in pounds.
Hair Color: Provide the notified person's natural hair color.
Eye Color: Provide the notified person's natural eye color.
Complexion: Provide the notified person's natural complexion color as light, medium, dark, olive etc.
Social Security: Provide the Social Security number(s) used by the notified person.
Scars, marks, tattoos, etc.: Scars, marks, tattoos, deformities, amputations, etc. that are a part of notified person's physical description.
Aliases: Provide alias(es) used by the notified person.
Driver's License: Provide the notified person's drivers license number, state of issuance and expiration date.
Place Of Birth: Provide the notified person's place of birth.
Illinois Department of Corrections: Provide the Illinois Department of Corrections document number assigned to the notified person, if he/she has one.
FBI: Provide the Federal Bureau of Investigation identification number assigned the notified person, if he/she has one.
State Identification Number: Provide the State Identification number assigned to the notified person, if he/she has one.
Chicago Arrest Number: Provide the notified person's Chicago Police Department identification number.
County of Conviction: Provide the notified person's county of conviction.
State of Conviction: Provide the notified person's state of conviction.
Offense-Statute-Citation-AOIC: Provide the notified person's Offense, Statute, Citation and/or AOIC code(s).
Conviction and Date of Release: Provide the date of conviction, if on probation; and date of release if released, discharged or paroled from IDOC, or other court confinement; and expiration of registration date (10 years from date of conviction or release).
Sentence: Provide the notified person's term of sentence.
Victim Under 18 Years of Age: Check "yes" if victim was under 18 years of age and "no" if victim was over 18 years of age.
Address Where Offender Will Reside: Record notified person's correct address where he or she is residing (apt, house number, street/route, city, state, zip code).
Telephone Number: Record the notified person's correct telephone number.
County: Record the notified person's correct county of residence.
Probation/Parole Office: Record the notified person's probation or parole office and county.
Local Area of Jurisdiction: Record the name of the local police agency or sheriff's department of notified person's city/county of residence.
Read Following to Offender-Offender Must Initial Each: Read each of the lined entries and have the notified person initial each one. Have the notified person read, sign name and date the form.
Right Thumb Print: Provide the thumb print from the notified person's right thumb.
Notifying Agency: Record the notifying official's name (print), and signify notifying agency, address, phone number, city, state, zip code and county, and notifying official's signature and date.

HAMPSHIRE IL POLICE DEPARTMENT

215 INDUSTRIAL DRIVE UNIT D
HAMPSHIRE IL 60140

Page 1 **Incident**

Incident # 18-04697

Beat	Rpt Dist	Type	Seq
			1

Crime / Incident (Primary, Secondary, Tertiary)
720 ILCS 5/11-9.3 Presence in school zone by child sex offender

Attempt	Occurred	Date	Time	Day
☐	On or From	11/01/2018		Thu
☐	To	11/01/2018		Thu
☐	Reported	11/01/2018	11:52	Thu

Location of Incident [redacted] HAMPSHIRE, IL
Cross Street
County: KANE

Dispo "V" = Victim "RP" = Reporting Party "W" = Witness "S" = Suspect "O" = Other

Dispo	Last, First, Middle (Firm if Business)	Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone
S	KOPF, MARTIN J	W	M	49	6-04	215	GRY	GRN	(224) 600-8321

Address	DOB	DL Number	State	Work Phone
[redacted]	[redacted]		IL	(847)

City, State, Zip Code	SSN	Local ID #	State #	FBI #	Cell Phone
HAMPSHIRE IL 60140					0

Dispo	Last, First, Middle (Firm if Business)	Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone

Address	DOB	DL Number	State	Work Phone

City, State, Zip Code	SSN	Local ID #	State #	FBI #	Cell Phone

Dispo	Last, First, Middle (Firm if Business)	Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone

Address	DOB	DL Number	State	Work Phone

City, State, Zip Code	SSN	Local ID #	State #	FBI #	Cell Phone

Dispo	Last, First, Middle (Firm if Business)	Race	Sex	Age	HT	WT	Hair	Eyes	Home Phone

Address	DOB	DL Number	State	Work Phone

City, State, Zip Code	SSN	Local ID #	State #	FBI #	Cell Phone

Synopsis

SOLVABILITY

Continuation Attached ☐	PropertyList Attached ☐	Property Damage $
UCR 26	Press Release ☐	Domestic Violence Case ☐
Gang Related N	Hate Crime ☐	Victim Senior Citizen ☐
Pursuit ☐	Force Used ☐	Child Abuse ☐
	County Code KANE	Disposition
		Connecting Case #
Report Complete/Ready for Review ☒		CAD/CFS Event #

Assigned To ______________________ Date

Officer ID		Reviewed By	Approved	Date
Lieutenant Hobert Jones	113	Lieutenant Hobert Jones	YES	11/02/2018

Printed By/On: 113 / 11/23/2018 07:54:28
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1

On November 1st, 2018 I was advised that someone called the PD and advised that a sex offender lives a couple of doors down from a Home day care in Hampshire IL and was concerned that this was a violation of the sex offender.

The sex offender, Martin Kopf, resides at [redacted] and the Monkey GO child day care is at [redacted] I had a message from Theresa Geary, Senior Program Specialist, Policy Bureau with the Office of the Illinois Attorney General. Theresa was notified of the violation and was reaching out to advise us of the violation.

I called Theresa and let her know that we were aware and I explained the situation and I explained that when Martin called the police prior to moving in he did ask if he was far enough away from the Jefferson Street Preschool and I explained to him that he was. I explained that I found out about the Home Day Care this morning when I called DCFS and found out about a website that you can use to find licensed home day care homes in the State of Illinois. I followed the website and did find a licensed Home Day Care at [redacted] which is in the 500 feet radius of [redacted]. Theresa emailed me the statute and explained that he will have to move. I asked that due to Martin checking online and with us about the preschool does that count for anything and Theresa stated that the law does not give any course of action if someone tries to find exempt areas. Theresa stated minus the statute limits of 2006 (living in a house prior to 2006) and someone moves in and finds a sex offender living next to them. If that person opens up a licensed day care after moving in the sex offender still has to move. It does not give different directions if the person has a mortgage or is renting.

I notified Martin of the possible violation and explained I would be checking with several people to find an answer today.

I spoke with Kane County Investigations and while the investigator has made people move in the past they were normally renting and he had not run into someone with a mortgage. I also spoke to Jodie Gleason, First Chair ASA Office, and I explained the situation. She agreed that he was in violation, however the time frame of which he needs to move should be reasonable and fair.

I spoke to the owner of the day care at [redacted] and I advised her of the situation and she stated she was aware of the social media sites and comments. She did not think the law covered home based day cares. I explained the definition I was given by the Attorney General's Office and I explained that we are working it out and that if there are any issues moving forward to notify us right away.

I met with Martin at his house and I explained that he is in violation and he needs to discuss things with his wife and if he has an attorney we can meet next Monday to discuss a time frame that is reasonable and fair.

On Friday November 2, 2018 Martin called me at the PD and he explained that he appreciates how we are handling things and he is going to try and fight this as a civil matter because he believes it is unfair to make him move. I asked him

if he had spoken to an attorney and he stated he was working on it and I explained he should continue to do what he needs to do and we can meet on Monday.

This case remains opened.

HAMPSHIRE IL
POLICE DEPARTMENT
215 INDUSTRIAL DRIVE UNIT D
HAMPSHIRE IL 60140

Supplement

Incident # 18-04697

Title *update*

Reported *11/12/2018* *10:29* *Monday*

On November 5th, 2018 I spoke to Martin and I explained that he needed to be proactive on trying to find a place, even if its for a short time. Martin explained that he is trying to find an attorney to represent him but is finding it difficult. I told him we would talk more on Monday November 12th, 2018.

I spoke to Theresa and explained that things were still being worked on to getting Martin to move and she thanked me for the update.

I spoke to Martin on November 12th, 2018 and he explained that he had an attorney that was handling a U.S. Supremem Court case similar to his and I asked if the attorney was directly assigned to him or he just heard of the case and he stated the attorney is not his directly. I explained that he needs to focus on moving out and that I would like an answer by the end of the week.

We discussed different places such as Veterns Affairs, other family houses, other friends houses and hotels that he could rent on a weekly basis.

case remains open.

Officer ID		Agency	Reviewed By	Date
Lieutenant Hobert Jones	*113*	*HPD*	*Lieutenant Hobert Jones*	*11/12/2018*

HAMPSHIRE IL
POLICE DEPARTMENT
215 INDUSTRIAL DRIVE UNIT D
HAMPSHIRE IL 60140

Supplement

Page 1

Incident # 18-04697

Title *Distance between [redacted] and [redacted]*

Reported *11/16/2018* *09:42* *Friday*

On November 16th, 2018 I measureed the distance from [redacted] driveway to the edge of the [redacted] Driveway and the distance was approximately 280 feet in between the house.

Martin Kopf came into the police station and I spoke to him regarding his plans for the future. I gave him his official notice to be in Moving Status by Friday November 23rd, 2018. Martin is looking into a campground area near Marengo IL and has an appointment today to get approval to move there.

I explained to Martin that he would need to come by the PD on Friday and I will send his paperwork to put him in Moving Status and then he would need to contact the Law Enforcement Agency who has jurisdiction where he is moving to.

Martin asked if he was allowed to be around his kids at their house and I explained he could and the restriction is him living within 500 feet of a daycare.
Martin stated he understood and stated he would be back on Friday November 23rd, 2018.

Officer ID		Agency	Reviewed By	Date
Lieutenant Hobert Jones	*113*	*HPD*	*Lieutenant Hobert Jones*	*11/16/2018*

HAMPSHIRE IL POLICE DEPARTMENT

215 INDUSTRIAL DRIVE UNIT D
HAMPSHIRE IL 60140

Supplement

Page 1

Incident #	18-04697

Title: moving status

Reported: 11/23/2018 07:51 Friday

On November 23rd, 2018 Martin came into the PD and stated he found a place to live and will be moving in this weekend. His new address is 19609 Harmony Road Unit 32B, Marengo IL 60152.

I advised Kane County Dispatch and Kane County Sheriff of his new address and he was put into moving status with the understanding he had to report to McHenry County Sheriff by Monday November 26th, 2018.

Martin was given a copy of his new paperwork and no further action is needed at this time.

Officer ID		Agency	Reviewed By	Date
Lieutenant Hobert Jones	113	HPD	Lieutenant Hobert Jones	11/23/2018

Printed By/On: 113 / 11/23/2018 07:54:31
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STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS)
)
Plaintiff,)
) No. 02 CR 16249
vs.)
)
MARTIN KOPF,)
)
Defendant.)

REPORT OF PROCEEDINGS HAD at the hearing of the above-entitled cause, before the Honorable Bertina Lampkin, one of the Judges of said court, on the 15th day of January, 2003.

PRESENT:

HON. RICHARD A. DEVINE,
STATE'S ATTORNEY OF COOK COUNTY, by
MS. MICHELLE PAPPA,
Assistant State's Attorney,
Appeared on behalf of the People;

MR. EDWIN A. BURNETTE,
PUBLIC DEFENDER OF COOK COUNTY, by
MR. KUNKEL,
Assistant Public Defender of Cook County,
Appeared on behalf of the Defendant.

*****

JENNIFER ZANICHELLI
Official Court Reporter
Circuit Court of Cook County, Illinois
#084-003729

THE CLERK: Martin Kopf.

THE COURT: All right. We have Mr. Martin Kopf before the bench.

Counsel.

MR. KUNKEL: Your Honor, we're prepared to tender a change of plea with the Court. We discussed this matter in depth with the State's Attorney and with Mr. Kopf.

MS. PAPPA: In return for a plea of guilty, it would be to Count 4 of the indictment, aggravated sexual abuse, a Class 2.

THE COURT: A criminal sexual abuse?

MS. PAPPA: Yes.

THE COURT: All right.

MS. PAPPA: It would be a Class 2 and the State's offer was three years probation and that the defendant participate in the sex offender program probation, obviously he have no contact with the victim in this matter. He's filled out the forms and he has filled out half of Sex Offender Registration Act.

I'm also seeking leave to file my motion for the defendant to undergo medical testing for sexually transmitted diseases as well as our motion for the defendant to submit to blood specimen to the Illinois

Department of State Police for analysis.

THE COURT: All right. Sex offender probation includes sex offender counseling.

MS. PAPPA: It does, yes.

THE COURT: All right.

MR. KUNKEL: Your Honor, one point on that, if I may. This defendant has been incarcerated since June and has no immediate prospect of employment. He's also partially disabled. The Court can see he is on crutches. He has a severe back problem which I don't know if they did any surgery while he was in custody, but I know they were considering it at one point. So I think the possibility of him being able to pay for the counseling is pretty remote.

THE COURT: All right. Well, do they have --

MS. PAPPA: It's the first line.

MR. KUNKEL: It says full or partial. I think the Court can waive that.

THE COURT: Well, I won't waive any treatment.

MR. KUNKEL: No. No.

THE COURT: But the payment.

MR. KUNKEL: Just the payment, Judge. No. The defendant is appearing to cooperate with the -- in fact, is desirous of the treatment program, as are his

parents who are both here, by the way.

THE COURT: All right.

Mr. Kopf, you and your attorney and the State's Attorney have reached an agreement on your case.

You talked to the complaining witness and her family or his family; is this male or female?

MS. PAPPA: Male.

THE COURT: You talked to the complaining witness and his family?

MS. PAPPA: I have.

THE COURT: And they're aware that this is your offer?

MS. PAPPA: Yes, they are.

THE COURT: Mr. Kopf, you are charged with criminal sexual assault. There are two counts. Those charges carry a possible sentence of 4 to 15 years in the penitentiary with a mandatory supervised release term of two years. Those charges are going to be nolled, or dismissed, as part of this agreement.

There are also four counts of aggravated criminal sexual abuse. You would be pleading to Count 4.

MS. PAPPA: Correct.

THE COURT: So you would be pleading guilty to one of the four counts of criminal sexual abuse. Those charges carry a possible sentence from 3 to 7 years in the penitentiary with a mandatory supervised release term of two years.

In return for your plea of guilty to the one count of sexual abuse, you will be sentenced to three years probation. As a condition of that probation, you have to participate in the adult sex offender program probation. That probation requires that you participate in sex offender treatment at a court-approved counseling program for a minimum of two years and be responsible for full or partial payment for treatment.

I have indicated on the form that if you cannot pay, then you'll not be responsible for payment because you are disabled. In addition, you will have to submit to searches of your home or your person, your papers or automobile at any time. When those requests are made by a probation officer, you shall consent to the use of anything seized as evidence in court proceedings.

You may not, sir, initiate, establish or maintain contact with any minor child, including your

own children who are under the age of 18, nor attempt to do so except under circumstances that are approved in advance and in writing by your probation officer or by the Court.

You may not enter the premises or work within 100 feet of a school yard, a park, a playground, any kind of arcade or other places primarily used by children under the age of 18. You will not accept employment or volunteer to work at any place that will bring you in contact, in direct contact, with any minor child without permission from the probation officer or this Court.

You shall not have any contact whatsoever with the victim in this case, [redacted], either written or oral, and you shall report any incidental contact with the victim to your probation officer within 72 hours of any kind of contact.

You will submit to polygraf or -- I'll spell this -- p-a-p-h-a-l-l-o-p-m-a-t-r-y, examination as the direct of probation officer and/or your counseling to assist in treatment planning and case monitoring.

You shall not reside with [redacted]. You shall reside only at a place approved in advance by the probation officer or this Court. You may not be in

possession of or have any in your residence any kind of pornography or sexually explicit materials, visual and/or audio and you shall not access any pornography or sexually explicit services or materials via the telephone or internet.

You may not enter or loiter around any adult stores or entertainment facilities where sexually explicit materials are sold or shown. Your curfew, the adult probation department will set curfew for you. You will have to comply with the conditions of that curfew, and you shall notify third parties of the risks that may be occasioned by your criminal record or personal history or characteristics and you shall permit the probation officer to make such notifications and confirm compliance with such notification requirements.

Those are the terms of your probation.

Do you understand that, Mr. Kopf?

THE DEFENDANT: Yes, I do understand.

THE COURT: All right. That is the agreement that's been reached between the State and the defense, and I will go along with it.

You have the right, Mr. Kopf, to continue to plead not guilty and to require the State to prove you guilty beyond a reasonable doubt, and you have the

right to plead guilty.

Do you understand that?

THE DEFENDANT: Yes, I do understand.

THE COURT: You have the right to have a jury trial on those charges. A jury would be composed of 12 citizens selected by you and your attorney and the State's Attorney. Those 12 citizens would sit in the jury box to your right. They'd listen to all of the evidence presented and they would determine whether or not the State had proved you guilty beyond a reasonable doubt and their decision on your guilt must be unanimous. That means all 12 jurors would have to vote you guilty before you could be found guilty.

Do you understand what a jury trial is?

THE DEFENDANT: Yes, I do.

THE COURT: Is this your signature on the jury waiver?

THE DEFENDANT: Yes, it is, your Honor.

THE COURT: Do you understand, sir, that by signing this document, you are giving up the right to have a jury trial?

THE DEFENDANT: Yes, I do understand.

THE COURT: You also have the right to a bench trial during which I would listen to the evidence and

determine your guilt or innocence. When you plead guilty, you give up your right to a bench trial.

Do you understand that, sir?

THE DEFENDANT: Yes, I do.

THE COURT: You have the right to confront and cross-examine the witnesses against you. That means you have the right to see the people who would testify against you in this courtroom face-to-face and to have your attorney question them.

You also have the right to subpoena witnesses to this courtroom to testify on your behalf, and you have the right to remain silent. That means you don't have to answer the questions or say anything. You give up those rights when you plead guilty.

Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: Are you pleading guilty freely?

THE DEFENDANT: Yes, I am, your Honor.

THE COURT: Have any threats or promises of any kind, aside from this plea agreement, been directed against you in order to make you plead guilty?

THE DEFENDANT: No, your Honor.

THE COURT: All right. The Court finds that Mr. Kopf understands the nature of the charges pending

against him, the possible penalties that may be imposed and that he's freely entering a plea of guilty.

Ms. Pappa, may I have a factual basis.

MS. PAPPA: Yes, Judge.

If this case were to proceed to trial, the State would present testimony of [redacted], [redacted] would testify that his date of birth is [redacted]. He would testify that on the date of June 7, 2002, he was 15 years old.

[redacted] would further testify that on June 6, 2002, he met with the defendant, who he would identify in open court, as being this defendant, Martin Kopf.

[redacted] would testify that the defendant picked him up from his house approximately 9:30 p.m. in order for the two of them to go watch movies at the defendant's residence.

[redacted] would testify that he has known the defendant for several years in that the defendant used to be the coach of a couple of his sports teams. [redacted] would testify that he and the defendant then watched movies at the defendant's residence located at 6400 North Cumberland.

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[redacted] would testify that he spent a night at the defendant's residence and slept on the couch. He would further testify that when he awoke in the morning on June 7, 2002, the defendant was kneeling over him with the defendant's mouth over [redacted] penis. [redacted] would further testify that the defendant then removed his mouth from [redacted] penis. Subsequently, the defendant took [redacted] home later in the morning. Once at home, [redacted] would testify that he immediately told his stepfather [redacted] what had happened.

[redacted] would testify that he, in fact, then called the police. There would be testimony showing that the defendant was arrested at 12:00 o'clock p.m. on June 7, 2002 at his residence of 6400 North Cumberland.

The State would also present the testimony of State's Attorney Mike O'Donnell, O-'-D-o-n-n-e-l-l. Mr. O'Donnell would testify that he met with the defendant who he would identify in open court as being this defendant, Martin Kopf.

He would testify that he met with the defendant on June 7, 2002 at approximately 4:25 p.m. in

an interview room at the 16th District. He would testify that he provided the defendant of his constitutional or Miranda warnings.

He would further testify that the defendant waived those rights. He would further testify that the defendant admitted to having placed his mouth over [redacted] penis. He would further testify that the defendant then signed a five-page handwritten statement.

The State would also present the testimony that the defendant's date of birth is [redacted]; and that on June 7, 2002, he was 33 years of age.

MR. KUNKEL: So stipulated, your Honor.

THE COURT: The Court finds there is a factual basis for the plea of guilty. There is a finding of guilty and judgment entered on the finding.

I have a pre-trial investigation that was prepared by the probation department.

Counsel, are there any additions or corrections to that report?

MR. KUNKEL: No, your Honor. I would simply inform the Court that the defendant, upon release, will be living with his father; and the address and phone number have been given to the State's Attorney and have

been put on the appropriate forms.

THE COURT: All right.

Mr. Kopf, is there anything, sir, you want to say before I impose sentence?

THE DEFENDANT: No, your Honor, I don't have anything to say.

THE COURT: All right. Then on Count 4 of the charge of aggravated criminal sexual abuse, you are sentenced to three years probation under the supervision of the Adult Sex Offender Program.

As a condition of that probation, all of these terms and conditions that I read to you earlier will apply. Your probation will end January 15, 2006. It's reporting probation. That means you have to report every time that they schedule a date for you to report.

Of course, there will be no contact, as I indicated, with the complaining witness [redacted]; and you will comply with all of the special conditions of supervision for the Adult Sex Offender Program.

You have read both the Sex Offender Program conditions and the regular order of probation and you have signed both of them in open court.

Counsel, is there anything else you want to point out?

MS. PAPPA: I just want to point out that the defendant has been read by myself in front of Mr. Kunkel the defendant's duty to register with regard to the Sex Offender Registration Act. He has initialed each and every one of his duties to register and then at the bottom of the page, the defendant signed his name as to the signature of the registrant in my presence.

MR. KUNKEL: That is correct, your Honor. I was present during that.

THE COURT: All right.

Is that correct, Mr. Kopf?

THE DEFENDANT: Yes, your Honor.

THE COURT: Wonderful. In a few minutes, my probation officer is going to talk to you and make sure that you cooperate with them fully on this probation because I haven't had one -- do they have quarterly status reports or no?

MS. PAPPA: I think they do.

THE COURT: He's going to have to come back, Counsel, for his quarterly status report. April 15th. That's tax day. It can be April 22nd, if you would like. I want to make it a Tuesday. That's the day that

probation is here.

MS. PAPPA: I should point out, for the record, I will make several copies of the Sex Offender Registration Act provided by Mr. Kunkel with a copy of it and I will give the original to the Court once I have it.

THE COURT: Well, can you make copies of it right now for Mr. Kunkel and --

MR. KUNKEL: I will be out of town on the 15th.

THE COURT: Tell me whatever date is convenient.

MR. KUNKEL: The Court mentioned -- what date?

THE COURT: April 22nd.

MR. KUNKEL: I'm looking at the wrong month, Judge, pardon me.

THE COURT: That's all right. Tuesday is my probation day. So I like to keep it on Tuesday.

MR. KUNKEL: April 15th is fine.

THE COURT: Is it? We'll set it order of Court April 15th for the quarterly status report.

Mr. Kopf, within 30 days of today's date, if you choose to do so, you may file with the Clerk of the Court a written notice of appeal from the disposition that I gave you.

However, before you can file an appeal on my

decision within 30 days of today's date, you have to file in this court a written motion to withdraw, or take back, your plea of guilty.

In the motion, you would have to state all of the reasons why you want to withdraw your guilty plea. If I grant your motion, I will set aside your guilty plea and we set your case for trial.

However, all of the charges that were dismissed as part of this plea agreement would be reinstated at the State's request.

If I deny your motion, then within 30 days of my denial, you could file your notice of appeal. However, you would be limited on your right to appeal to those matters you had first set out in the motion to withdraw your plea.

And if you could not afford the cost of an attorney or the cost of the record for the motion or the appeal, they would be given to you free of cost.

Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: In addition, the State has presented to me a motion for you to undergo medical testing for sexually transmittable diseases and also a motion for you to submit blood specimen to the Illinois Genetic

Analysis.

These are form motions that must be done on every sexual assault case that I'm going to order you to provide with the samples as requested by the State.

In just one moment, I am going to give you a copy of the duty to register that we've gone through earlier and that will complete the plea on your case.

Mr. Kunkel, is there anything else?

MR. KUNKEL: Judge, if the Court's willing to give me an extra signed copy so I can put one in the file of the additional order.

THE COURT: Certainly.

MR. KUNKEL: There's two orders.

THE COURT: Okay. The record should reflect that Mr. Kopf has been given a copy of his duty to register. I did sign the order.

MR. KUNKEL: Thank you, your Honor.

Judge, I'm giving the original of the Registration Act to you or to the Court.

THE COURT: All right.

(WHICH WERE ALL THE PROCEEDINGS HAD)

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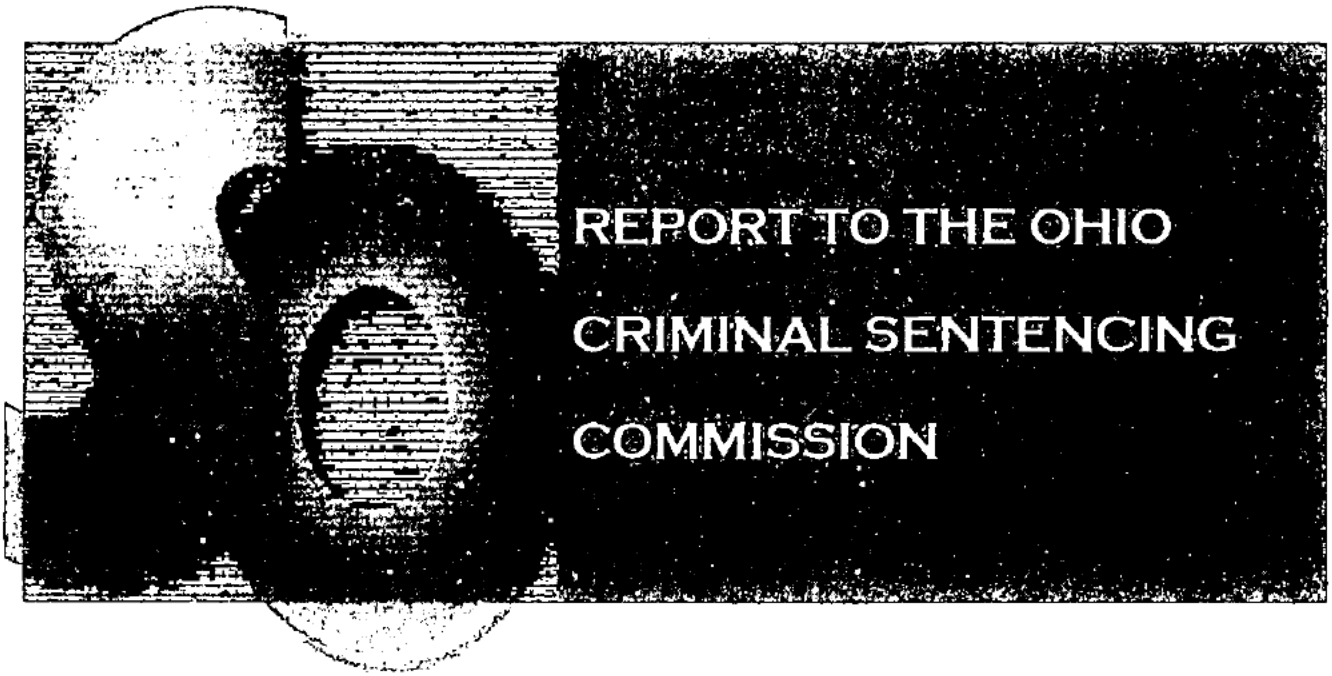

REPORT TO THE OHIO CRIMINAL SENTENCING COMMISSION

JANUARY 2006

SEX OFFENDERS

REPORT TO THE OHIO CRIMINAL SENTENCING COMMISSION: SEX OFFENDERS

JANUARY 2006

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EXECUTIVE SUMMARY

The effective containment of sex offenders has been an ongoing concern for policymakers. In summer 2005, the Ohio Criminal Sentencing Commission created a Penalty Review Subcommittee to examine the current statutes in Ohio and to determine if there was a need for recommendations to improve Ohio's management of sex offenders. The purpose of this report is to provide information on sex offenders in Ohio's prisons and discuss what works in effectively managing this population, including SORN legislation.

Research in Ohio and nationally has found there are effective ways to manage sex offender populations. Assessing sex offenders when they enter the prison system, developing effective treatment programs while they are in prison and closely supervising offenders when they are released to the community can assist in containing sex offender behavior. The following summarizes the highlights of the report:

SEX OFFENDERS IN OHIO

- The largest group of the offenders (45 percent) at the Sex Offender Risk Reduction Center (SORRC) at the Ohio Department of Rehabilitation and Correction was those who victimized children under the age of 13. This number rises to 56 percent when offenders with multiple victims that include children are included. Twenty-three percent of offenders victimized youth 13- to 17-years old, and 21 percent victimized adults.
- Forty-eight (48) percent of the offenders with child victims were convicted of gross sexual imposition and 37 percent were convicted of rape.
- The majority of offenders (52 percent) at SORRC in 1999 had no judicial designation that would require them to register as a sex offender. Twenty-two percent were designated as sexual predators, 23 percent were designated sexually oriented offenders, and 3 percent were habitual sex offenders.
- Eighty-five (85) percent of the sex offenders at SORRC in 1999 had no prior sex offense conviction and 65 percent had no prior violent offense.
- The sex offender was known to the victim in 87 percent of all offenses, and 93 percent of the offenses involving child victims. Fifty-one percent of the child victim offenders only victimized children related to them.
- A higher percentage of offenders sentenced for Felony 1 rape entered prison with longer sentences than other Felony 1 offenders. Fifty-eight (58) percent of the Felony 1 rape offenders in the intake sample received sentences of six years or longer in comparison to 38 percent of other Felony 1 offenders.
- The average sentence length for offenders committed during calendar year 2004 with only one rape conviction and a life sentence was calculated at 11.3 years until a parole board hearing, and 6.9 years for only one Felony 1 rape sentences excluding life sentences. The average sentence length for all Felony 1 rape offenders committed during calendar year 2004 was 17.8 years until a parole board hearing for offenders with a life term, and 11.4 years for offenders with a Felony 1 rape conviction.
- The average time served for Felony 1 rape offenders released in 2004 was 13.2 years for both parole and post-release control.

ASSESSMENT, TREATMENT AND RECIDIVISM

- Valid instruments exist that can assess the risk sex offenders pose in reoffending with new sex offenses or other offenses. The instruments also assist qualified professionals in determining the type of treatment needed.
- Research of treatment for violent offenders has shown that programs that combine treatment for risk, need, and general responsivity[1] are the most effective in reducing recidivism.
- A review of the evaluations of prison-based sex offender treatment found that cognitive behavioral treatment[2] combined with relapse prevention[3] reduced recidivism of sex offenders in the community. The evaluation of a Colorado intensive therapeutic community[4] for sex offenders in prison found that graduates of the program had a lower recidivism than offenders not participating in the program.
- Community containment models that combine treatment, relapse prevention, and intensive supervision have been shown to have success in managing sex offenders in the community.
- In a national sex offender recidivism study, the Bureau of Justice Statistics found no clear link between length of sentence and recidivism.
- Sex offenders in Ohio have a lower recidivism rate than the recidivism rate of all offenders (38.8 percent). A 10-year follow-up of a 1989 cohort of sex offenders released from Ohio prisons found that only 8 percent of sex offenders were recommitted for a new sex offense and 14.3 percent were recommitted for a non-sex offense. The total sex offender sex related recidivism rate, including technical violations, was 11.0 percent. The total recidivism rate for all crime committed by sex offenders was 22.3 percent.

SORN

- There has been very little research on the effectiveness of SORN legislation in protecting the public. Of the few existing studies none found statistically significant reductions in recidivism. However, one study fund that SORN registration resulted in less time to arrest for subsequent offenses.
- SORN laws have had a positive impact on the general public. The notification meetings in Wisconsin were found to be effective in educating the public on how sex offenders are managed in the community.
- Research has shown SORN to have some unintended consequences such as retribution toward the offender's family and offenders having difficulty getting a job or housing.
- Ohio SORN has not been evaluated; however, prison commitments for SORN violations have been steadily increasing since 2000.

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[1] Responsivity is defined as treatment programs designed to meet the different temperament, learning style, motivation, gender, and culture of the offenders in the program.

[2] Cognitive behavioral treatment programs are those that work with offenders to correct distorted thinking patterns and incorrect behavioral responses to situations.

[3] Relapse prevention is teaching offenders self-management including how to avoid or cope with situations that trigger their sex offending behavior.

[4] A therapeutic community is an intensive treatment program where the offenders are required to take increasing responsibility for personal and social responses. Peer influence, mediated through a variety of group processes, is used to help individuals learn and assimilate social norms and develop more effective social skills.

INTRODUCTION

The effective management of sex offenders has been an ongoing concern for policymakers nationally. In summer 2005, the Ohio Criminal Sentencing Commission created a Penalty Review Subcommittee to examine the research and current statutes in Ohio to determine if there was a need for recommendations to improve Ohio's management of sex offenders. The purpose of this report is to provide information on sex offenders in Ohio's prisons and discuss what works in effectively managing this population.

The first section provides a statistical snapshot of the offenders in 1999 at Ohio's Sex Offender Risk Reduction Center (SORCC), sentencing information for calendar year 2003 offenders, and length of stay information for sex offenders released from the system in the past five years. The data given is designed to provide background information for the review of policy.

The second section of the report is a discussion of what works based on 15 years of research on sex offender assessment, treatment, and recidivism. Canadian and British researchers have been trying to identify the characteristics of the "sexual predator," or the sex offender who is violent and causes the most harm to society. Colorado has had a sex offender management and containment approach since 1992 when the legislature created the Sex Offender Management Board as an oversight board for policy. The Board has completed several research studies on the effectiveness of treatment and management of sex offenders. This research indicates that with effective treatment and close supervision of offenders in the community, steps can be taken to reduce the likelihood they will reoffend. Finally, research on recidivism is presented together with an Ohio study which followed a 1989 cohort of offenders for 10 years.

The final section looks at sex offender registration and notification nationally and in Ohio. The report highlights current research on the effectiveness of SORN legislation in implementing the policy purposes and reducing recidivism of sex offenders in the community. Information on program implementation in Ohio has also been provided.

SEX OFFENDERS IN OHIO

CHARACTERISTICS

The Ohio Department of Rehabilitation and Correction collected data on 437 male offenders admitted to the Sex Offender Risk Reduction Center (SORRC) for the first five months of 1999. (Pettway, 2001) The data were then used to provide a profile of the offenders in the system at that time. The victimology of instant conviction of these offenders was:

Victimology of Sex Offenders in Sample

Victim Type	Frequency	Percent
Victim under 13 years old (child victim)	196	45%
Victim 13 to 17 years old (teen victim)	99	23%
Victim 18 years or older (adult victim)	91	21%
Multiple Age Victims	41	9%
Victim Age Unknown	10	2%
Total	**437**	**100%**

Source: Ohio Department of Rehabilitation and Correction, Profile of ODRC Sex Offenders Assessed at the Sex Offender Risk Reduction Center

The largest group of offenders was those who victimized children under the age of 13. Forty-eight percent of the offenders with child victims (victims under the age of 13) were convicted of gross sexual imposition and 37 percent were convicted of rape. The number of offenders who victimized children increases to 56 percent when offenders of multiple victims, one of whom was a child, were included. Forty-five percent of the teen victim offenders were convicted of unlawful sex with a minor. The majority of adult victim offenders were convicted of rape (59 percent).

Most of the sex offenders had female victims (87 percent). In addition, the offender was known to the victim in 85 percent of the cases, which rose to 93 percent in the case of child victims. Fifty-one percent of the child victim offenders only victimized individuals related to them. This is similar to the national statistics. The 2003 national victimization study found that 70 percent of the offenders knew their victim (Catalano 2004).

Very few of the sex offenders tied up their victims (3 percent), transported them to another location (12 percent), or used a weapon during the crime (18 percent). Force was used in the commission of most of the crimes (61 percent) with it being most prevalent for adult victim offenders (99 percent).

According to the *2000 Department of Rehabilitation and Correction Intake Study*, the general male inmate population was 54 percent African American and 46 percent Caucasian. The sex offender sample from SORRC in 1999 was 67 percent Caucasian and 33 percent African American. The child, teen, and multiple-age victim sex offenders were more likely to be Caucasian (79 percent, 65 percent, and 77 percent, respectively) and the adult victim sex offenders were more likely to be African American (60 percent). This is a shift from a 1992 report on an earlier intake sample of male adult victim sex offenders when the majority was Caucasian (65 percent) (Pribe 1992).

Offender Characteristics	1999 Sex Offenders at SORRC				2000 Intake Study
	Child Victims	Teen Victims	Adult Victims	Multiple-Age Victims	All Males
Average Age	37.8	32.3	32.7	37.7	29.3
Race					
White	79%	65%	40%	77%	54%
Black	21%	35%	60%	24%	45%
Marital Status					
Never Married	34%	50%	65%	44%	70%
Married	26%	19%	12%	22%	11%
Separated	5%	4%	1%	10%	6%
Divorced	26%	22%	22%	20%	13%
Common Law	7%	3%	0%	5%	0%
Widowed	1%	1%	0%	0%	.4%
Education					
Less than High School	50%	48%	58%	46%	52%
High School/GED	41%	38%	30%	27%	36%
Some Post-High School	10%	14%	12%	27%	12%
Employment					
Stable, 1 year or Longer	56%	53%	42%	48%	39%
Retired, Disabled	13%	7%	9%	15%	Unknown
Unstable, Seasonal	30%	40%	49%	38%	Unknown

Source: Ohio Department of Rehabilitation and Correction, Profile of ODRC Sex Offenders Assessed at the Sex Offender Risk Reduction Center and 2000 Intake Study

Sixty-five percent of adult victim sex offenders were identified as never married, whereas 52 percent of the child victim sex offenders had been either married or divorced at the time of offense. Sex offenders also have a similar educational level as the general prison population. According to the *2000 Intake Study*, 48 percent of males in the general prison population had a high school or higher education, whereas 50 percent of male sex offenders have a high school or higher education. The data show that sex offenders were more likely to have employment at the time of the offense. The *2000 Intake Study* showed that 39.3 percent of males in the general prison population had stable employment, whereas 48 percent of the male sex offender population in 1999 had stable employment before prison. Another major difference was with regard to substance abuse. The *2000 Intake Study* showed that 81.6 percent of the general male inmate population indicated a history of drug abuse and 64.4 percent indicated a history of alcohol abuse. In contrast, only 30 percent of the 1999 sex offender population indicated a history of substance abuse (alcohol or drugs). Of all sex offenders, adult victim offenders showed the highest history of substance abuse at 45 percent.

Sex offenders do not have long criminal histories. The following table indicates the number of prior sex-related convictions and prior violent offense convictions.

Criminal History for Offenders in Sample	Child Victim		Teen Victim		Adult Victim		Multiple Victims		Total	
	N	%	N	%	N	%	N	%	N	%
Prior Sex Offense Conviction										
None	183	93%	91	92%	76	84%	13	32%	363	85%
1	11	6%	4	4%	11	12%	24	59%	50	12%
2 or More	2	1%	4	4%	4	4%	4	10%	14	3%
Prior Violent Offense Conviction										
None	146	75%	61	62%	45	50%	25	61%	277	65%
1	31	16%	21	21%	29	32%	8	20%	89	21%
2 or More	19	10%	17	17%	17	17%	8	20%	61	14%

Source: Ohio Department of Rehabilitation and Correction, Profile of ODRC Sex Offenders Assessed at the Sex Offender Risk Reduction Center

Eighty-five percent of the sex offenders in 1999 did not have any prior sex offense conviction so would not have been listed on the sex offender registry. Most of the offenders committed to the SORRC had no judicial designation[5] (52 percent) as a sex offender so would not be required to comply with registration and notification laws. The actual judicial designation for 427 offenders for whom data is available in the 1999 study is as follows:

SORN Eligible Offenders in Sample	Child Victim		Teen Victim		Adult Victim		Multiple Victims		Total	
Judicial Designation	N	%	N	%	N	%	N	%	N	%
Sexually Oriented Offender	56	27%	25	25%	15	17%	4	10%	100	23%
Sexual Predator	50	26%	10	10%	20	22%	14	34%	94	22%
Habitual Sexual Offender	2	1%	1	1%	3	3%	6	15%	12	3%
No Designation	88	45%	63	64%	53	58%	17	42%	221	52%
Total	196	46%	99	23%	91	21%	41	10%	427	100%

Source: Ohio Department of Rehabilitation and Correction, Profile of ODRC Sex Offenders Assessed at the Sex Offender Risk Reduction Center

Since this report was completed, the law on sex offender registry was changed effective July 1, 2003. The Ohio Department of Rehabilitation and Correction examined the inmates incarcerated on July 1, 2005 to determine the current designations.

Sex Offender Designations July 1, 2005

Designation[6]	Number	Percent
All Sex Offenders	8,996	
Habitual Sex Offender	492	5%
Sexual Predator	3,328	37%
Sexually Violent Predator	80	1%
Sexually Oriented Offender	5,096	57%
Child Victim Offender	134	1%
Habitual Child Victim Offender	1	<1%
Child Victim Predator	18	<1%

Source: Ohio Department of Rehabilitation and Correction

[5] The sex offender registration category is made by judicial designation as part of the trial and sentencing process. The data presented here are from 1999, prior to the passage of Senate Bill 5 which changed the categories.

[6] Offenders can have more than one designation, so the numbers will not add to the total. For example, an offender can be both a habitual offender and a sexual predator which means the offender has been convicted of more than one sex offense and is likely to engage in future sexually oriented offenses.

There has been an ongoing question of how many sex offenses an offender commits prior to being caught for the first time for a sex offense. The research has varied over time as new investigative techniques have been developed. Generally, all the studies indicate sex offenders admitting to having committed multiple offenses prior to being arrested, but the data is inconsistent with respect to the number of offenses committed. The use of a polygraph as a community management tool has added information based on statements made by the offender. The following is a listing of the studies:

- A 1982 study of male sex offenders from Florida and Connecticut in a therapeutic setting asked about unreported offenses. The researchers excluded nine offenders from their calculations of unreported offending who reported more than 50 offenses so as not to bias the overall estimations. The average number of undiscovered rapes was 5.2 and child sexual assault was 4.7. If the offender was convicted of more than one sex offense, the average rose to 51 for rapists and 26 for child molesters (Groth, Longo, & McFadin 1982).

- A 1990 study by Marshall and Barbaree found that the actual number of prior victims was usually 2.4 times greater than officially reported (CSOM 2001).

- A 1998 study[7] of sex offenders polygraphed in an Oregon treatment program showed that adult offenders admitted to an average of 1.5 victims prior to polygraph and 9 victims when polygraphed. In a follow up 1999 study of polygraphed offenders, the number of victims rose to 11.6 before they were caught. In addition, the number of adult offenders claiming they had been abused sexually as a child dropped dramatically after polygraphing, from 67 percent to 29 percent for adult offenders (Hindman and Peters 2001).

- The same 1998 Oregon study also polygraphed juvenile sex offenders. The authors concluded that juvenile offenders are less likely to lie in treatment than adults. Juvenile sex offenders admitted to an average of 2.1 victims before being caught prior to polygraph and 4.3 while being polygraphed. Juvenile offenders were less likely to lie about past abuse except if the abuser was a female authority figure (Hindman and Peters 2001).

- A polygraph study in Colorado found that a sample of offenders with fewer than two known offenses may have had an average of 110 victims and 318 offenses prior to being caught (CSOM 2001).

[7] A critical part of the study was the local district attorney giving the offenders immunity for any information provided during the polygraph if the offender completed the treatment program. The authors hypothesize this increased the offenders willingness to admit to prior victims.

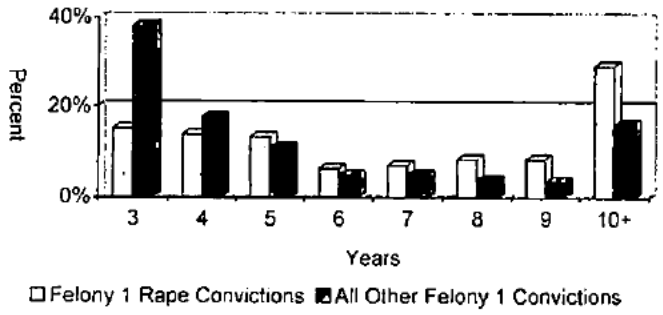
SENTENCING

The average sentence length for all sex offenders committed during calendar year 2004 to the Ohio Department of Rehabilitation and Correction with only one Felony 1 rape conviction with a life sentence[8] was 11.3 years, and 6.9 years for only one Felony 1 rape sentence excluding life sentences. The average sentence length for all Felony 1 rape offenders committed during calendar year 2004 was 17.8 years until a parole board hearing for offenders with a life term, and 11.4 years for offenders with a Felony 1 rape conviction.

Offenders convicted of Felony 1 rape (excluding life sentences) in the 2003 intake sample received, on average, longer sentences than other Felony 1 offenders.[9] Fifty-eight (58) percent of the Felony 1 rape offenders received sentences of six years or longer in comparison to 38 percent of other Felony 1 offenders. A higher proportion of sex offenders received sentences of more than five years compared to all other Felony 1 offenders.

A sample of 25 Felony 1 rape offenders with presentence investigations were examined from the pool of offenders who received sentences of three, four, or five years. Nine offenders received three year sentences, seven received four year sentences, and nine received five year sentences. In 92 percent of the cases the victim was known to the offender. Ninety-two percent of the cases the offender had no prior felony convictions and in only one case did the offender have a prior sexual offense. Eighy-four percent of the offenders had no prior prison commtments. Nineteen (76 percent) of the offenders were under no criminal justice supervision at the time of arrest, two were out on bond, three were on probation, and one had an outstanding warrant for a property offense. Seventeen (68 percent) of the victims were under age 12, three were teenagers, and five were adults. Thirty-six percent of the cases involved the father, stepfather, or boyfriend of the mother as the offender. In 28 percent of the cases the offender was a family friend or a friend of the victim. Twelve percent of the cases involved a boyfriend of the victim and eight percent involved the spouse or significant other of the victim.

Sentence Length for F1 Rape Minus Life Terms and All Other F1 Offenders 2003



Source: 2003 Intake Sample Data, Ohio Department of Rehabilitation and Correction.

[8] Not all offenders with a life sentence at commitment were included in the calculation. There were eight offenders in calendar year 2004 committed for Felony 1 rape with a life sentence without parole. These offenders were not included in the calculation since they will not be released.

[9] Other Felony 1 offenders included convictions for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, aggravated vehicular homicide, felonious assault, kidnapping, aggravated arson, aggravated robbery, robbery, aggravated burglary, corrupt activities, trafficking, illegal manufacturing of drugs, and possession of drugs. Forty-four percent of the group was convicted of aggravated robbery and twenty three percent were convicted of murder, manslaughter, or felonious assault.

Data from the Ohio Department of Rehabilitation and Correction show that the majority of Felony 1 rape offenders being released from prison from 2000 to 2004 were convicted of rape offenses prior to July 1, 1996[10] and consequently were released on parole. Only those offenders who received shorter sentences are being released on post release control. The following table provides information on the number of offenders released and time served[11] during the past five years.

Time Served in Years for Felony 1 Rape

Year	Parole		Post Release Control[12]		All Rape Offenders
	Number	Average Time Served	Number	Average Time Served	
2004	426	15.90	144	4.67	13.2
2003	231	16.09	117	4.71	12.4
2002	244	15.56	102	3.92	12.3
2001	192	15.43	43	3.32	13.3
2000	137	13.90	37	2.86	11.8

Source: Ohio Department of Rehabilitation and Correction

[10] The felony sentencing code was revised effective July 1, 1996. Rape offenders who committed offenses prior to this date are sentenced under the old law for indeterminate periods of time and released on parole following a parole board hearing prior to completion of their maximum sentence. Rape offenders who committed their crime on that date or after are sentenced to determinate sentences and released at the end of their sentence on post release control.

[11] The time served does not include any jail time. Most violent offenders serve time in jail while awaiting trial and prior to sentencing. Offenders receive credit for time served in jail prior to incarceration which needs to be added to the time served to determine sentence.

[12] As can be seen from the data the average time served has increased over the past five years. The time served for offenders on post release control will continue to increase as more offenders convicted under the 1996 felony code reach their determinate sentence length.

ASSESSMENT, TREATMENT AND RECIDIVISM

OVERVIEW

In order to determine how to sentence sex offenders; policy makers and practitioners must first understand if it is possible to identify, treat, and reduce the commission of new sexual offenses by these offenders. Research in the area of sex offender assessment, treatment, and recidivism has increased in the past 15 years. Research has indicated that different sex offenders have different likelihoods of recidivating. The majority of the research has been conducted by Canadian and British researchers who have been trying to identify the characteristics of what has come to be called the "sexual predator," or the sex offender who is violent and causes the most harm to society.

ASSESSMENT

A key to managing sex offenders is to accurately assess the offender's likelihood of re-offending. Research on assessment has provided professionals with a means of determining appropriate treatment. Accurate assessment of sex offenders involves the administration of several technical tests that require qualified mental health professionals.

If the level of risk is known, decisions about the most appropriate treatment, release, and potential recidivism can be more accurate. Sex offenders vary greatly in personal histories and offenses, so it has been extremely difficult to assess likelihood of recidivism. Research has shown that the most intensive treatment is most effective with high-risk high-need offenders in reducing recidivism. Further intensive treatment with low-risk low-need offenders increases those offenders' likelihood of recidivating (Andrews, et. al. 1999). As a result, assessments need to be completed at each of the following steps of the correctional process in order to assure the most appropriate treatment is being delivered to each offender: upon admission to a program, during treatment, at the completion of treatment, and prior to release from the system (Blanchette 1996). The assessment process is even more critical for sex offenders because of the harm they cause to their victims and the extent of their variation in risk and need.

During the 1990s, several schemas were developed that appear to be very successful at assessing a sex offender's risk level. Quinsey and Rice developed an actuarial assessment system based on 219 male sex offenders committed to the Oak Ridge maximum-security psychiatric facility. This schema combines criminal history, phallometric assessment, the Hare Psychopathy Checklist, record of sexual offenses, and marital status of those offending. These static factors, in combination, can assist in determining high-, medium-, and low-risk offenders (Quinsey and Rice 1995). The authors indicate the schema needs to be further enhanced by research-based identification and evaluation of dynamic predictors such as situational predictors (gaining or losing employment), changes in attitude or mood, and treatment-induced changes.

Grubin expanded on the factors identified by Quinsy and Rice to include clinical assessment as a critical part of the risk assessment process (Grubin 1999). Grubin's review of research on sex offenders indicated that the link between fantasy and behavior is what makes the predictor. Offenders who believe they cannot control events in the real world and fantasize are more likely to be sadistic sex offenders. Grubin also notes that an offender's degree of social and emotional isolation are factors that can differentiate rapists who kill their victims from those who do not kill their victims.

Assessment schemas have been used to classify sex offenders into typologies that assist in determining treatment (Blanchette 1996). For example, a male sex offender schema developed by Knight and Prentky classifies child molesters into sub-types by social competence, amount of contact with children, and high- or low-injury. Rapists are sub-typed into classifications based on inferred motivation (opportunistic, pervasively angry, vindictive, or sexual), social competence, and sadism. However, research conducted by the authors based on a 25-year study indicated only the child molester typology had explanatory and predictive power for recidivism.

The current perception of sex offenders is that they make the choice to offend and it is not a result of a defined mental illness in the DSM IV. Only a small group of sex offenders can be diagnosed as having an active mental illness. Researchers argue for a mental health evaluation as part of the assessment process (Sahota and Chesterman 1998), but not to treat all sex offenders as mentally ill.

The most recent research in 2004 by Harris and Hanson is a review of all the studies on predicting recidivism (Harris and Hanson 2004). There was clear evidence the following factors are predictive of future sexual offending:

- Prior sexual offense conviction (most predictive)
- Sexual deviancy (paraphilic interests: e.g., exhibitionism, voyeurism, cross-dressing)
- Antisocial orientation (unstable lifestyles, impulsivity, lack of employment, substance abuse, intoxicated during offense, and hostility)
- History of rule violations (non-compliance with supervision, violation of conditional release)
- Sexual attitudes (attitudes tolerant of sexual crime)
- Emotional identification with children (having children as friends, child-oriented lifestyle)
- Conflicts with intimate partners or lack of intimate partner
- Sexual preoccupations (high rates of sexual interest and activities)

The following appear to have no impact or very little impact on sexual re-offending:

- Adverse child environment (particularly child abuse)
- General psychological problems
- Using phallometric measures
- Social skill deficits or loneliness
- Clinical presentations (denial, low victim empathy, low motivation for treatment)
- Degree of sexual intrusiveness of the instant offense (non-contact offenses[13] had higher recidivism than contact)

The following appear to be predictors of sexual offenders re-offending by committing a non-sexual violent crime:

- Antisocial orientation
- History of violent crime
- General self regulation problems
- Employment instability
- Substance abuse
- History of non-sexual crimes
- Degree of force used in the index sexual offense

The authors then went on to examine the effectiveness of several assessment instruments including the VRAG, SORAG, Static-99, RRASOR, MnSOST-R and SVR. All of these instruments are seen as

[13] Non-contact offenses include offense like voyeurism, exhibitionism, and possession of pornography.

effective. The Static-99 was developed by Harris and Hanson incorporating the factors found to predict sexual reoffending. Ohio uses the Static-99 at SORRC for evaluation of offenders committed to prison. However, there is a caution. Use of these instruments is very technical and requires a trained professional to administer. The codebook for the one page Static-99 assessment is 90 pages long for a one-page assessment.

RESEARCH ON THE EFFECTIVENESS OF TREATMENT

What to do with sex offenders has long been a controversial issue. The "sexual predator," the most serious and high-risk sex offender, is sentenced to prison unless found not guilty by reason of insanity. Treatment of this group of offenders is more difficult because they deny their offense, culpability, and refuse treatment. However, this does not mean there is no effective treatment for sex offenders (Seto and Barbaree 1999).

Research on treatment for violent offenders in general has shown that programs that combine treatment for risk, need, and general responsivity are the most effective in reducing recidivism (Dowden and Andrews 2000). Treatment based on risk means that the services provided should be geared toward the level of risk. The higher the risk the more services to address the needs that should be provided. Needs treatment is based on targeting the criminogenic needs (antisocial attitudes, antisocial feelings, and chemical dependency) and non-criminogenic needs (level of self-esteem, personal problems and anti-social peer groups) of the offender. The needs are dynamic and can be changed through appropriate treatment. Dowden and Andrews found that behavioral/social learning programs had a larger treatment effect than non-behavioral programs. This is supported by the body of research on what works in corrections (Andrews, et. al. 1990).

Very little research exists on the outcome of sex offender treatment. A review of 21 prison and non-prison sex offender treatment programs was conducted using the University of Maryland's method of evaluating the methodological soundness of the studies (Polizzi, MacKenzie, and Hickman 1999). Eight of the studies were not included as methodologically unsound. The review found that cognitive-behavioral treatment paradigms in prisons produced encouraging results in reducing subsequent sex offending. Cognitive-behavioral treatment combined with relapse prevention showed successful sex offense recidivism reduction in community programs. The researchers could not tie treatment modalities to particular types of sex offenders, however.

Colorado started an intensive therapeutic community in prison for sex offenders.[14] The evaluation of the program found that offenders who did not participate in the therapeutic community program had a recidivism rate three times higher than those that did. The amount of treatment time in the program also influenced the community success of the offender. For each month the offender participated, the recidivism went down one percent. Success was also greater for those released with supervision than those with no supervision (Lowden, Hetz, et.al. 2003).

Behavior in treatment is not an indicator of successful rehabilitation (Seto and Barbaree 1999). Research has shown that higher-risk offenders who have scored higher on the Hare Psychopathy Scale respond well to treatment but are more likely to commit a new offense. These offenders may learn to improve their manipulative skills during the treatment process. The use of a comprehensive assessment following treatment is critical to determining the impact of the treatment.

[14] The sex offender therapeutic community is a graduated phase program that includes cognitive behavioral elements. Offenders must admit to their crime and work on their problems. Inmates become responsible for their own behavior and their "brothers" behavior as part of living in a community. The concept is the same as therapeutic communities for drug abuse and addiction.

The release of offenders back into the community elicits strong public response. Currently there is some information regarding the success of community treatment that combines relapse prevention and intensive supervision (Wilson, et. al. 2000). Relapse prevention is similar to the treatment used for substance abusers. Sex offenders are taught ways to recognize triggers and high-risk situations, to develop methods of avoiding them, and how to cope if unexpectedly found in a high-risk situation. The relapse prevention is then paired with a high level of supervision by correctional authorities to protect public safety. A Canadian program that was designed for high-risk offenders that included intensive counseling, cognitive behavioral treatment, and supervision was successful in limiting sexual re-offending to 3.7 percent of the offenders during a seven-year follow-up period.

The containment approach model to community supervision, which combines five components — an overall philosophy and goal of community and victim safety, sex offender specific containment strategies, interagency and interdisciplinary collaboration, consistent public policies, and quality control — is the recommended approach to offenders released to the community (English, Pullen, and Jones 1997). The model is based on a team approach that includes collaboration between non-traditional agencies. The goal is to ensure victim safety through the involvement of victim agencies. The containment of the sex offender requires individualized case management systems, offender specific conditions related to the offenders history, ongoing treatment in the community, close supervision of the offender in the community, teaching the offender self-management techniques, and use of polygraph to verify the conditions of community placement are being met. This involves the collaboration of the probation or parole agency, the treatment provider, and the polygrapher. The use of a team approach ensures that all relevant agencies are informed of the progress of the offender and concerns of relapse. The model is used in Colorado and several other states.

RECIDIVISM

The measurement of recidivism has been an issue for researchers of criminal behavior and it is an especially contentious issue with sex offenders. First, very few methodologically sound evaluations exist to indicate the correlation between treatment and recidivism. The few studies that do show a positive correlation between effective sex offender treatment and reduced recidivism have methodological issues since they did not use an experimental design. Second, many sex offenders in prison and community settings do not receive specialized treatments designed to reduce re-offending. Finally, some researchers believe the rates are misleading because not all sex offenders are caught, and if they are caught, through plea-bargaining the actual conviction offense may not be a sex offense (Groth, Longo, & McFadin 1982).

It is a common misperception that sex offenders have a high recidivism rate. Research has shown that sex offenders recidivate at a lower rate than other offenders.[15] A review of 61 recidivism research studies involving 24,000 sex offenders found that only 13.4 percent committed a new sex offense (Hanson and Morton-Burgon 2004). It further shows that when sex offenders do recidivate, they are more likely to commit a non-sex offense. Rapists, when they do commit a new sex offense, will recidivate within a shorter time following release than other sex offenders. Extra familial male child molesters will recidivate after a longer period in the community than rapists, but at a lower rate. Incest offenders are the least likely to recidivate and have an extremely low recidivism rate. The strongest predictors of committing a new sex offense are factors related to sexual deviance: deviant sexual practices, early onset of sex offending, history of prior sex offenses, and committing diverse sexual crimes, such as both rape and child molesting (Hanson and Morton-Burgon 2004).

[15] A recent Ohio Department of Rehabilitation and Correction study of the recommitment of offenders sentenced to a life term who had been released in 1999 and 2000 found that 19.4 percent returned to prison. The three-year follow up of all offenders released in 2001 found a recommitment rate of 38.8 percent. Sex offender overall recommitment rates for a ten year follow up of a 1989 cohort found a 22.3 percent recommitment rate.

The Ohio Department of Rehabilitation and Correction has completed a five- and 10-year follow-up of sex offenders released in Ohio during 1989. The following table summarizes the results after 10 years:

Ten Year Recidivism Rates[16] of 1989 Cohort of Sex Offenders		
Recommitted for a New Crime		**22.3%**
Sex Offense	8.0%	
Non-Sex Offense	14.3%	
Recommitted for a Technical Violation		**11.7%**
Sex Offense	1.3%	
Sex Lapse	1.7%	
Other non-sex related	8.7%	

The total sex-related recidivism rate for the group was 11 percent. However, the recidivism rate differed dramatically between different types of sex offenders. The table below summarizes the rates:

Sex Offender Type	Recidivism Any Crime	Sex Recidivism
Rapists (adult victims)	56.6%	17.5%
Child Molester – extrafamilial	29.2%	8.7%
Child Molester – incest	13.2%	7.4%

Of all the offenders who came back to an Ohio prison for a new sex offense, one-half did so within two years, and two-thirds within three years. The longer the offender was out of prison, the higher the likelihood he or she would not re-offend. Paroled sex offenders who completed basic sex offender programming while incarcerated appeared to have a lower recidivism rate than offenders who did not complete the treatment (33.9 percent compared to 55.3 percent for all recidivism, and 7.1 percent compared to 16.5 percent for sexual recidivism.)

The Bureau of Justice Statistics looked at a 1994 cohort and found similar results. They also tested sentence length and its impact on recidivism. The Bureau of Justice Statistics study found no clear link between length of sentence and recidivism (Langan, Schmitt, & Durose 2003).

Colorado studied the impact of therapeutic polygraphs on sex offending behavior before and after conviction (English, Jones, et. al., 2000). They found that sex-offending behavior is seriously under-reported. Of the 147 offenders in the study, 14 percent reported sexually abusing victims while under community supervision, most of who were never arrested.[17] Maintenance polygraphs for 122 offenders indicated that 44 percent disclosed high-risk behavior that trigger re-offending through the polygraph.

Sexual assault and rape are very often not reported to the police. The National Crime Victimization Survey indicates that in 2004, only 36 percent of victims over age 12 reported rape or sexual assault to the police (Catalano 2005). A 2005 study of family violence completed by the Bureau of Justice Statistics found that between 1998 and 2002, fewer than four in 10 incidents of sexual assault or rape among family

[16] Ohio measures recidivism through recommitment rates to state prison.

[17] Jurisdictions that use therapeutic polygraphing may give the offenders limited or full immunity from prosecution for unreported crimes. The polygraphs were completed based on the understanding between the justice system and the offender that admissions obtained through the polygraph could not be used to arrest or convict on a new offense. Under these conditions, offenders may be more likely to confess to additional sex offenses or offending behaviors that lead to relapse.

members was reported to the police (Durose, et. al. 2005). Violent crimes were less likely to be reported if the victim was under 18 (32 percent). The most common reason the crimes were not reported was because it was a "private and personal" matter (22.8 percent), and 12 percent did not report the offense to protect the offender. In a national random sample study of 4,009 adult women, 341 women indicated they had been victims of one or more incidents of childhood rape. Eighty three (83) percent of the women never reported the childhood assaults to the police. A significantly greater proportion of the reported childhood rapes were perpetrated by a stranger (Hanson, et. al. 1999).

The Center for Sex Offender Management (CSOM) in their analysis of recidivism states that recidivism rates may be misleading. In a *1992 Rape in America* study, they found that only 16 percent of the victims in the study reported their rapes. The studies of under-reporting of sex offenses and polygraph results of known sex offenders indicate recidivism of this population may be under-reported.

SEX OFFENDER REGISTRATION AND NOTIFICATION

SORN STATUTES

The oldest registration law in the country was passed in California in 1947. The process of community notification began 1989 when a police chief in Washington, fearing the repeat of a particularly vicious sex offense by a repeat offender, started informing the community when a sex offender was being released back to the community. The state of Washington passed the first "modern" notification law in 1990. The federal government, as part of the reauthorization of the Edward Byrne Memorial program, passed Megan's Law in May 1996, which required states to pass sex offender notification and registration laws in order to continue to receive federal funding. All 50 states passed some form of registration and notification laws.

When passing the Ohio SORN 1997, the over-arching concern of the Ohio General Assembly was public safety and the expectation that the registration and notification provisions would increase public safety. At that time, the General Assembly had the following findings:

- "If the public is provided adequate notice and information about offenders and delinquent children who commit sexually oriented offenses that are not registration-exempt sexually oriented offenses or who commit child-victim oriented offenses, members of the public and communities can develop constructive plans to prepare themselves and their children for the offender's or delinquent child's release from imprisonment, a prison term, or other confinement or detention. This allows members of the public and communities to meet with members of law enforcement agencies to prepare and obtain information about the rights and responsibilities of the public and the communities and to provide education and counseling to their children.
- Sex offenders and offenders who commit child-victim oriented offenses pose a risk of engaging in further sexually abusive behavior even after being released from imprisonment, a prison term, or other confinement or detention, and protection of members of the public from sex offenders and offenders who commit child-victim oriented offenses is a paramount governmental interest.
- The penal, juvenile, and mental health components of the justice system of this state are largely hidden from public view, and a lack of information from any component may result in the failure of the system to satisfy this paramount governmental interest of public safety described in division (A)(2) of this section.
- Overly restrictive confidentiality and liability laws governing the release of information about sex offenders and offenders who commit child-victim oriented offenses have reduced the willingness to release information that could be appropriately released under the public disclosure laws and have increased risks of public safety.
- A person who is found to be a sex offender or to have committed a child-victim oriented offense has a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government.
- The release of information about sex offenders and offenders who commit child-victim oriented offenses to public agencies and the general public will further the governmental interests of public safety and public scrutiny of the criminal, juvenile, and mental health systems as long as the information released is rationally related to the furtherance of those goals." (O.R.C. § 2950.02)

Community notification laws fall into three categories: broad community notification, victim notification upon request, and passive notification. States created sex offender registries in response to a federal mandate, and they are slowly being made available through the Internet. Currently, 43 states (including Ohio) and one territory are part of the National Sex Offender Registry. However, the data provided for each is different based on the requirements of the individual state laws.

EVALUATION OF THE EFFECTIVENESS OF SORN LEGISLATION

Only a few studies have examined whether the implementation of SORN legislation increased public safety. None of the studies was able to find statistically significant reduction in recidivism, but one found that SORN registration resulted in less time to arrest for subsequent offenses.

The Washington State Policy Institute evaluated the Washington SORN law in 1995 to determine the effectiveness of the law (Schram & Millroy 1995). The study looked at the offenders released from prison with the highest notification level following passage of SORN and compared them to offenders who would have been on the registry but were released prior to the effective date of SORN. The percent of recidivism was similar for each group, 19 percent and 22 percent, respectively. The difference was not statistically significant. However, they were able to find an 84 percent compliance rate for registration. The notification offenders had their first arrest much more quickly than the non-registry group.

A second study looked at a sample of 136 criminal sexual psychopaths in Massachusetts (Petrosino and Petrosino 1999). The sample was clinically diagnosed as habitual or compulsive offenders and 89 percent of the offenses were against children. The case histories of the offenders were examined to determine if they would have fallen under the state's SORN law and if it could have prevented the offense from occurring. Only 27 percent of the offenders would have been subject to SORN registration. Two-thirds of the group's victims were known to the offender and one-third were stranger predatory offenses. Only four of the 12 stranger victims might have received SORN notifications since the offender went out of the notification area to commit the offense. The conclusion was that only six of the 136 offenses might have been prevented by SORN.

A final study in Iowa compared offenders subject to SORN to a comparison group prior to the registry (Adkins, Huff, and Stageberg 2000). The study found no statistical difference in the recidivism of the two groups for either new sex crimes or any new crime. The registry offenders had a shorter time in the community before being arrested for a general crime other than a sex offense.

The SORN laws do have some positive impacts on the public (Zevitz and Farkas 2000). In Wisconsin, 704 participants were surveyed after community notification meetings. In general, the meetings fulfilled a function of educating the public on how sex offenders are managed in the community. Eighty percent of the attendees expected to collect information to protect them and did receive such information. However, the meetings were not as successful in making the public more comfortable with sex offenders in their communities. A nearly equal percentage of meeting attendees left the meeting feeling more concerned (38 percent) as those who felt less concerned (35 percent).

Most of the studies examined the impact of SORN laws on adult offender recidivism. There is some controversy on the impact the legislation has on juvenile sex offenders. Juvenile offenders have a lower recidivism rate, ranging from 8 to 12 percent, as compared to the adult recidivism rates of 20 to 40 percent. The researchers expressed concern that because of childhood developmental issues it is unclear what is defined as normal adolescent behavior. The authors indicate there is a need for more research in this area (Trivits and Reppucci 2002).

The research is mixed on whether sex offenders believe SORN would impact their likelihood of committing a new crime. Seventy-two percent of a sample of 40 offenders in Nebraska who agreed to participate in a study told their therapist they thought SORN was a strong incentive not to commit a new crime (Elbogen, Patry, and Scalora 2003). The result has been criticized since the interviews were in a therapeutic setting and the offenders may have been telling the therapist what they thought they wanted to hear. The Wisconsin interviews of 30 offenders who were the subject of SORN community meetings found that only a couple thought it might prevent reoffending (Zevitz & Farkas 2000). One offender stated the following:

> "If you're going to reoffend, it doesn't matter if you're on TV, in the newspaper, whatever, you're going to reoffend. It's a choice you make...The only person than can stop it is the sex offender himself."

A recent Colorado study looked at the relationship between the sex offender's residence location and new offending behavior. The study found that sex offenders who commit criminal offenses while under supervision are randomly scattered and there does not appear to be a greater number of these offenders living within proximity to schools and childcare centers (Colorado Department of Public Safety 2004).

UNINTENDED CONSEQUENCES OF SORN

In evaluating the effectiveness of SORN, various researchers have pointed to unintended consequences of the legislation that may have an impact on the public policy purpose of the legislation. Registries have been very useful to law enforcement as an investigative tool. The registry provides a ready pool of potential offenders to review when there is an unsolved sex offense. Across the country the registry is being used for this purpose. Some of the unintended consequences include:

- **Misleading the public** – One of the purposes of SORN is to provide the public with information about dangerous sex offenders who may be living in their community. It is estimated that between 75 and 80 percent of the perpetrators of violent sex crimes against children are committed by relatives and friends of the victim. Researchers hypothesized SORN can give a false sense of security for the public, when the real threat may be from a family member or friend (Avrahamian, 1998 and Freeman-Longo 2000).
- **Negatively impacting family members** – Many of the notification requirements include notifying the community where the sex offender is currently living, which in many cases is the same community where the offender's family resides. Since many of the victims of these sex offenders are family members and neighbors, the notification information provides victim information that was not made public during the trial. The data is mostly anecdotal but includes incidents like an elementary student who went to school and found a note on her locker about her having sex with her father (Edwards and Hensley 2001; Elbogen, Patry and Scalora 2003; Zevitz and Farkas 2000; and CSOM, 2001).
- **Hindering offender reentry** – Research is showing that offenders are having difficulty returning to the community since the passage of SORN. Offenders are unable to find residences, are serially fired from employment, and are unable to establish healthy relationships (Elbogen, Patry, and Scalora 2003; Zevitz and Farkas 2000; Blair 2004; and CSOM 2001).
- **Potentially impacting likelihood of relapse** – Research has shown that two factors that play an important part in relapse for sex offenders are isolation and stress. Researchers have hypothesized the SORN laws are increasing sex offenders' stress and isolation (Edwards and Hensley 2001 and Elbogen, Patry, and Scalora 2003).
- **Increasing displacement** – As sex offenders subject to SORN become frustrated with the inability to find housing or employment, they will end up moving to other areas of the community under a different name. The community they relocate to will not know they are there and will not be able to protect themselves (Edwards and Hensley 2001).
- **Increasing vandalism and retribution** – Most of the research indicates this is not as widespread as originally hypothesized. Most of the data is anecdotal in nature such as a sex offender's home in Washington being burned down when the community learned the offender was returning to the community, or an innocent person being assaulted or harassed due to an incorrect address on the notification. The percent of offenders reporting harassment

by state ranges from 4 percent to 23 percent (Edwards and Hensley 2001; Zevitz and Farkas 2000; Schram and Millroy 1995, and CSOM 2001).

- **Reporting offenses** – There is some preliminary indication that SORN is affecting whether offenses are reported. Victims of domestic assault whose children are also being sexually assaulted by a significant other are reluctant to report the offense when they determine the offender will need to register. The researchers indicated the incidence of these situations appears to be increasing (Edwards and Hensley 2001).
- **Altering the nature of reoffending** – In instances of pedophilia, the offender exhibits a pattern of gaining the confidence of the victim, who he/she usually knows. The hypothesis is that if the offender is cut off from victims who can be "groomed," the nature of the new offense will be more violent. There is no statistical evidence of this currently (Edwards and Hensley, 2001).
- **Complying with registration** – Compliance with registration is a problem in every state. The Wisconsin evaluation surveyed law enforcement in the state regarding the implementation of the program. Law enforcement did not have problems with implementing the program but are having difficulty with maintaining accuracy and completeness of the data. It requires additional resources to validate the whereabouts of sex offenders who are on the registry (Zevitz and Farkas 2000). Estimates on completeness and accuracy of the state SORN systems range from 25 percent to 75 percent (Avrahamian 1998 and CSOM 2001).

OHIO SORN

The Ohio SORN Registry was started following the passage of legislation in 1997. The electronic registry accessible to the public was started late in 2003 by the Ohio Attorney General. There are currently more than 13,500 entries in the database. The database is connected to the National Sex Offender Registry. Ohio's system has not been evaluated for effectiveness. However, the number of offenders being prosecuted for failure to register and update information has been steadily increasing over the past five years.

SORN Commitments

	Calendar Year				
Offense	2000	2001	2002	2003	2004
Duty to Register	9	0	15	10	30
Failure to Register	8	51	70	99	127
Failure to Verify Registration	24	14	28	26	61
Total SORN Commitments	41	65	113	135	218

There is one reported instance of where the registry in Ohio was used by a victim to identify a sex offender in Clark County. The offender was successfully apprehended with the information in the registry (Attorney General 2005).

There is currently no statistical information on the impact of the registry; however, there is some anecdotal evidence from probation and parole agents that SORN has had a negative impact on the offenders. In many of the communities in Ohio it is difficult to find housing for sex offenders. As a result of the changes in the law regarding where offenders can reside, families of sex offenders are being required to move out of homes they have owned for 20 years or more. Without an independent study of the system it is difficult to determine if these are isolated instances.

CONCLUSION

The purpose of this report is to provide policymakers in Ohio with information regarding sex offenders nationally and in Ohio in conjunction with research about managing sex offenders. During the past 15 years, researchers have learned more about sex offenders and their treatment. Sophisticated assessment procedures, cognitive-based treatment, relapse prevention in prisons, and a community containment approach have the potential of reducing the likelihood that a sex offender will commit a new sex crime.

The largest group of sex offenders in Ohio's prisons based on the 1999 Sex Offender Risk Reduction Center (SORRC) report is those who victimize children age 0 to 12. These offenders tend to be white; married or divorced; have more than a high school education; and have had stable employment. The sex offender population that targets adult victims is less than half the size of the child victim population. Sex offenders who target adult victims tend to be black; never married; have less than a high school education; and have not had stable employment. Eighty five (85) percent of the sex offenders in 1999 at SORRC had no prior sex offense and 65 percent had no prior violent offense. Child victim offenders have even less criminal history, with 93 percent having no prior sex offense and 75 percent having no prior violent offense.

Statistics on sex offenders committed during the 2003 calendar year indicates that sex offenders tend to have longer sentences than other Felony 1 offenders. The average time served was 13.2 years, with parole offenders having an average time served of 15.9 years. Since the revised sentences under Senate Bill 2 did not take effect until 1996, it is too soon to determine the average time served for offenders with longer sentences or multiple sentences that are consecutive.

Assessment instruments are available that allow qualified professionals to determine the risk of sex offenders committing new crimes. Several treatment programs both in prisons and the community have shown success in reducing the likelihood the sex offender will re-offend. Finally, it appears with a comprehensive containment approach, the safety of the community can be managed after the release of sex offenders from institutions.

Research, including a 10-year follow-up study of a cohort of Ohio sex offenders, has shown that sex offenders have a low recidivism rate compared to other offenders which is true in the research completed on a 1989 cohort of sex offenders in Ohio. There is controversy in the research community about the validity of the recidivism rates, however. The use of polygraph and therapeutic discussion indicates that a lot of sex offenses are not known to the police.

The national victimization studies show that rape and sexual assault rates are decreasing from 2.5 per thousand people in 1993 to 0.8 per thousand in 2003, a 68 percent reduction (Catalano 2004).[18] The decrease mirrors the decrease in violent crime found across the United States.

There is little research on the impact of sex offender registration and notification laws. The studies that have been completed indicate that the laws have no statistically significant impact on whether sex offenders commit another crime. They do assist the police in locating known sex offenders and may make the public more informed. Further research on the effectiveness of SORN laws is needed.

[18] Victimization surveys are designed to determine actual crime events — not just crime events reported to law enforcement. The 2003 study was a random calling methodology that contacted 83,660 households (149,040 individual interviews). The interviewee was asked about any crime incidents during the past year.

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Offender characteristics

Sentences and criminal records

Comparisons to other offenders

Rearrests and reconvictions

Rearrests for sex crimes against children

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Contents

Introduction

In 1994, prisons in 15 States released 9,691 male sex offenders. The 9,691 men are two-thirds of all the male sex offenders released from State prisons in the United States in 1994. This report summarizes findings from a survey that tracked the 9,691 for 3 full years after their release. The report documents their "recidivism," as measured by rates of rearrest, reconviction, and reimprisonment during the 3-year followup period.

This report gives recidivism rates for the 9,691 combined total. It also separates the 9,691 into four overlapping categories and gives recidivism rates for each category:

- 3,115 released rapists
- 6,576 released sexual assaulters
- 4,295 released child molesters
- 443 released statutory rapists.

The 9,691 sex offenders were released from State prisons in these 15 States: Arizona, Maryland, North Carolina, California, Michigan, Ohio, Delaware, Minnesota, Oregon, Florida, New Jersey, Texas, Illinois, New York, and Virginia.

Highlights

The 15 States in the study released 272,111 prisoners altogether in 1994. Among the 272,111 were 9,691 men whose crime was a sex offense (3.6% of releases).

On average the 9,691 sex offenders served 3½ years of their 8-year sentence (45% of the prison sentence) before being released in 1994.

Rearrest for a new sex crime

Compared to non-sex offenders released from State prisons, released sex offenders were 4 times more likely to be rearrested for a sex crime. Within the first 3 years following their release from prison in 1994, 5.3% (517 of the 9,691) of released sex offenders were rearrested for a sex crime. The rate for the 262,420 released non-sex offenders was lower, 1.3% (3,328 of 262,420).

The first 12 months following their release from a State prison was the period when 40% of sex crimes were allegedly committed by the released sex offenders.

Recidivism studies typically find that, the older the prisoner when released, the lower the rate of recidivism. Results reported here on released sex offenders did not follow the familiar pattern. While the lowest rate of rearrest for a sex crime (3.3%) did belong to the oldest sex offenders (those age 45 or older), other comparisons between older and younger prisoners did not consistently show older prisoners' having the lower rearrest rate.

The study compared recidivism rates among prisoners who served different lengths of time before being released from prison in 1994. No clear association was found between how long they were in prison and their recidivism rate.

Before being released from prison in 1994, most of the sex offenders had been arrested several times for different types of crimes. The more prior arrests they had, the greater their likelihood of being rearrested for another sex crime after leaving prison. Released sex offenders with 1 prior arrest (the arrest for the sex crime for which they were imprisoned) had the lowest rearrest rate for a sex crime, about 3%; those with 2 or 3 prior arrests for some type of crime, 4%; 4 to 6 prior arrests, 6%; 7 to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.

Rearrest for a sex crime against a child

The 9,691 released sex offenders included 4,295 men who were in prison for child molesting.

Of the children these 4,295 men were imprisoned for molesting, 60% were age 13 or younger.

Half of the 4,295 child molesters were 20 or more years older than the child they were imprisoned for molesting.

On average, the 4,295 child molesters were released after serving about 3 years of their 7-year sentence (43% of the prison sentence).

Compared to the 9,691 sex offenders and to the 262,420 non-sex offenders, released child molesters were more likely to be rearrested for child molesting. Within the first 3 years following release from prison in 1994, 3.3% (141 of 4,295) of released child molesters were rearrested for another sex crime against a child. The rate for all 9,691 sex offenders (a category that includes the 4,295 child molesters) was 2.2% (209 of 9,691). The rate for all 262,420 non-sex offenders was less than half of 1% (1,042 of the 262,420).

Of the approximately 141 children allegedly molested by the child molesters after their release from prison in 1994, 79% were age 13 or younger.

Released child molesters with more than 1 prior arrest for child molesting were more likely to be rearrested for child molesting (7.3%) than released child molesters with no more than 1 such prior arrest (2.4%).

Rearrest for any type of crime

Compared to non-sex offenders released from State prison, sex offenders had a lower overall rearrest rate. When rearrests for any type of crime (not just sex crimes) were counted, the study found that 43% (4,163 of 9,691) of the 9,691 released sex offenders were rearrested. The overall rearrest rate for the 262,420 released non-sex offenders was higher, 68% (179,391 of 262,420).

The rearrest offense was a felony for about 75% of the 4,163 rearrested sex offenders. By comparison, 84% of the 179,391 rearrested non-sex offenders were charged by police with a felony.

Reconviction for a new sex crime

Of the 9,691 released sex offenders, 3.5% (339 of the 9,691) were reconvicted for a sex crime within the 3-year followup period.

Reconviction for any type of crime

Of the 9,691 released sex offenders, 24% (2,326 of the 9,691) were reconvicted for a new offense. The reconviction offense included all types of crimes.

Returned to prison for any reason

Within 3 years following their release, 38.6% (3,741) of the 9,691 released sex offenders were returned to prison. They were returned either because they received another prison sentence for a new crime, or because of a technical violation of their parole, such as failing a drug test, missing an appointment with their parole officer, or being arrested for another crime.

Imprisonment offense The 9,691 prisoners were men released from State prisons in 1994 after serving some portion of the sentence they received for committing a sex crime. The sex crime they committed is referred to throughout the report as their "imprisonment offense." Their imprisonment offense should not be confused with any new offense they may have committed after release.

Sex offender The 9,691 released men were all violent sex offenders. They are called "violent" because the crimes they were imprisoned for are widely defined in State statutes as "violent" sex offenses. "Violent" means the offender used or threatened force in the commission of the crime or, while not actually using force, the offender did not have the victim's "factual" or "legal" consent. Factual consent means that, for physical reasons, the victim did not give consent, such as when the offender had intercourse with a sedated hospital patient or with a woman who had fallen unconscious from excessive drug taking. "Legal" consent means that the victim willingly participated but, in the eyes of the law, the victim was not old enough or not sufficiently mentally capable (perhaps due to mental illness or mental retardation) to give his or her "legal" consent.

State statutes give many different names to violent sex offenses: "forcible rape," "statutory rape," "object rape," "sexual assault," "sexual abuse," "forcible sodomy," "sexual misconduct," "criminal sexual conduct," "lascivious conduct," "carnal abuse," "sexual contact," "unlawful sexual intercourse," "sexual battery," "unlawful sexual activity," "lewd act with minor," "indecent liberties with a child," "carnal knowledge of a child," "incest with a minor," and "child molesting."

"Violent" sex offenses are distinguished from "nonviolent" sex offenses and from "commercialized sex offenses." Nonviolent sex offenses include morals and decency offenses (for example, indecent exposure and peeping tom), bestiality and other unnatural acts, adultery, incest between adults, and bigamy. Commercialized sexual offenses include prostitution, pimping, and pornography. As used throughout this report, the terms "sex crimes" and "sex offenders" refer exclusively to violent sex offenses.

Each of the 9,691 sex offenders in this report is classified as either a rapist or a sexual assaulter. Classification was based on information about the imprisonment offense contained in prison records supplied for each sex offender released from prison in 1994. Also based on imprisonment offense information, an inmate could be categorized as a child molester and/or a statutory rapist. Classification to either of these two categories is in addition to, not separate from, classification as a rapist or sexual assaulter. For example, of the 3,115 sex offenders classified as rapists, 338 were child molesters. Or, to put it another way, the imprisonment offense for 338 of the 4,295 child molesters identified in this report was rape. Similarly, 3,957 of the 4,295 child molesters were also sexual assaulters.

	Total	Rapists	Sexual assaulters
Child molesters	4,295	338	3,957
Statutory rapists	443	21	422

The report gives statistics for all sex offenders and each of the four types — rapists, sexual assaulters, child molesters, and statutory rapists. (See *Methodology* on page 37 for details on how sex offenders were separated into categories.)

Rapist "Violent sex crimes" are separated into two categories: "rape" (short for "forcible rape") and "other sexual assault." As used throughout this report the term "rapist" refers to a released sex offender whose imprisonment offense was defined by State law as forcible intercourse (vaginal, anal, or oral) with a female or male. Rape includes "forcible sodomy" and "penetration with a foreign object." Rape excludes statutory rape or any other nonforcible sexual act with a minor or with someone unable to give legal or factual consent. As used throughout this report, "rape" always means "forcible rape." "Statutory rape" is not a type of forcible rape.

A total of 3,115 sex offenders are identified in the report as released rapists — about a third (32%) of the 9,691 released sex offenders. However, enough information to clearly distinguish rapists from other sexual assaulters was not always available in the prison records used to categorize sex offenders into different types. Consequently, the number of rapists among the 9,691 was almost certainly greater than 3,115; how much greater is unknown.

An obstacle to identifying rapists from penal code information is that the label "rape" is not used in about half the 50 States. However, released sex offenders whose imprisonment offense was rape could still be identified. To illustrate, in one State, the term criminal sexual conduct refers to all types of sex crimes. The statutory language was consulted to determine if an offender's imprisonment offense involved "intercourse" that was "forcible," in accordance with the definition of rape used in this report. If the offense was not found to involve intercourse (or penetration), then the inmate was not classified as a rapist. The same was true of force; if the statutory language did not include a reference to force (or coercion), the offense was not categorized as rape.

Sexual assaulter By definition in the report, all sex offenders are either "rapists" or "sexual assaulters." Sex offenders whose imprisonment offense could not be positively identified as "rape" were placed in the "sexual assault" category. To the extent that rapists were reliably distinguished from sexual assaulters, "sexual assaulters" identified in this report were released sex offenders whose imprisonment

offense was "sexual assault," defined as one of the following:
1. forcible sexual acts, not amounting to intercourse, with a victim of any age,
2. nonforcible sexual acts with a minor (such as statutory rape or incest with a minor or fondling), or
3. nonforcible sexual acts with someone unable to give legal or factual consent because of mental or physical reasons (for example, a mentally ill or retarded person or a sedated hospital patient).

A total of 6,576 sex offenders are identified in this report as released sexual assaulters. The 6,576 sexual assaulters made up about two-thirds (68%) of the 9,691 released sex offenders.

Child molester Many of the 9,691 sex offenders were released prisoners whose imprisonment offense was the rape or sexual assault of a child. Throughout the report, released sex offenders whose forcible or nonforcible sex crime was against a child are referred to as "child molesters." The sex crime did not have to involve intercourse to fit the definition of child molestation.

Of the 9,691 sex offenders, 4,295 were identified as child molesters based on prison records made available for the study. However, because complete information was not always supplied, not every child molester could be identified. Of the 9,691 released sex offenders, undoubtedly more than 4,295 were child molesters, but 4,295 represent all who could be identified from the information available. One reason child molesters were not easily identified from penal code information is that most States do not use the term "child molester" in their penal code. Nevertheless, all States have laws against sexual activity with children, which does facilitate identification. As a result of the uncertainty regarding the number of child molesters among the 9,691 sex offenders, the study cannot say what percentage of the victims of the 9,691 sex offenders' offenses were children, and what percentage were adults.

In short, the 4,295 released child molesters in this report were men who —
a. had forcible intercourse with a child or
b. committed "statutory rape" (meaning nonforcible intercourse with a child) or
c. with or without force, engaged in any other type of sexual contact with a child.

Of the 4,295, at least 338 (about 8%) had forcible intercourse, and at least 443 (10%) committed statutory rape.

Statutory rapist State laws define various circumstances in which intercourse between consenting partners is illegal: for example, when one of the partners is married or when the two are blood relatives or when one is a "child." Laws that criminalize consensual intercourse based solely on the marital status of the partners are called "adultery laws." Those that criminalize it based solely on blood relationship are "incest laws." Laws that prohibit consensual sexual intercourse based solely on the ages of the partners are called "statutory rape laws."

Statutory rape pertains exclusively to consensual intercourse, as opposed to other types of sexual contact with a child, such as forcible intercourse, forcible fondling, or consensual fondling. Statutory rape is one specific form of what this study calls "child molestation." The child victim of statutory rape can be male or female, and the offender can be male or female. The offender can be almost any relative ("statutory rape" includes incest with a child), an unrelated person well known to the child (such as a school teacher, neighbor, or minister), someone the child hardly knows, or a stranger.

Statutory rape laws define a "child" as a person who is below the "age of consent," meaning below the minimum age at which a person can legally consent to having intercourse. Age of consent in the 50 States ranges from 14 to 18. Most States set age of consent at 16. In those States, consensual intercourse with someone age 16 or older is usually not a criminal offense, but intercourse with someone below 16 generally is. However, all States make exceptions to their age rules. Consequently, consensual intercourse with children below the age of consent is not always a crime, and consensual intercourse with children who are old enough to give consent is not always legally permissible.

Exceptions for children below age of consent Certain statutory exceptions exist to legal prohibitions against nonforcible intercourse with children who are below the age of consent. One way exceptions are made in statutes is by specifying the minimum age the offender must be (for example, at least age 18, at least age 20) for intercourse to be unlawful. Persons below this minimum age generally cannot be prosecuted. Another common way exceptions are made (virtually every State has these provisions in its laws) is by specifying how much older than the victim the perpetrator must be for criminal prosecution to occur. For example, by law in one State where age of consent is 16, no prosecution can occur unless the age difference is at least 3 years. In that State it is legal for a 17-year-old to have consensual intercourse with a 15-year-old, even though 15 is below the age of consent; but the same act with a 15-year-old is illegal when the other is 18. That is because the 17-year-old is not 3 years older than the 15-year-old, whereas the 18-year-old is. The aim of such exceptions is to distinguish teen behavior from exploitative relationships between adults and children. Another exception is consensual intercourse between husband and wife; no prosecution can occur if one spouse is below the age of consent.

Exceptions for children old enough to give consent Certain adults can be prosecuted for having consensual intercourse with a child who has reached the age of consent. For example, in one State it is a third degree felony for a psychotherapist to have intercourse with a 17-year-old client even though 17 is over the minimum age of consent in that State. In another State, where an adult generally cannot be prosecuted for having consensual intercourse with a 16-year-old, an exception is made when the adult is the child's school teacher. In that case the teacher can be prosecuted for a "class A" misdemeanor. Exceptions are made for other professions as well (clergy, for example).

In this report, 443 of the 9,691 released sex offenders are identified as statutory rapists based on information supplied by the prisons that released them. There were more than 443 statutory rapists among the 9,691 released male sex offenders, but the 443 are all that could be positively identified with the limited information available. One reason statutory rapists are not easily identified from penal code information available on the released sex offenders is that most States do not use the term "statutory rape" in their laws.

First release Though all 9,691 sex offenders in the study were released in 1994, for a fourth of the offenders 1994 was not the first year of release since receiving their prison sentence. This group had previously served a portion of the sentence and were released, then violated parole and were returned to prison to continue serving time still left on that sentence. For the remaining 75% of sex offenders released, the 1994 release was their "first release," meaning their first discharge from prison since being convicted and sentenced to prison.

"First release" should not be confused with first ever release from a prison. "First release" pertains solely to the sentence for the imprisonment offense (as defined above). It does not pertain to any earlier prison sentences offenders may have served for some other offense.

Attention is drawn to first releases because certain statistics in the report — for example, "average time served," "percent of sentence served," "child molester's age when he committed the sex crime for which he was imprisoned" — could only be computed for those prisoners classified as first releases. For such statistics, date first admitted to prison for their imprisonment offense was needed. Since prison records made available for the study only provided this admission date on first releases, first releases necessarily formed the basis for the statistics.

Prior arrest Statistics on prior arrests were calculated using arrest dates from the official criminal records of the 9,691 released sex offenders. Only dates of arrest were counted, not the number of arrest charges associated with that arrest date. To illustrate, one man was arrested on March 5, 1970, and that one arrest resulted in 3 separate arrest charges being filed against him. In this study, that March 5 arrest is considered one prior arrest.

Prior arrests were measured two different ways in this report. The first way did not include the imprisonment offense for which the sex offender was in prison in 1994. Prior arrest statistics that did not include the imprisonment offense are found in sections of the report that describe the criminal records of the 9,691 sex offenders at the time of release from prison. In this case, any arrest that had occurred on a date prior to the sex offender's arrest for his imprisonment offense was considered a prior arrest. For example, one released sex offender was found to have four different dates of arrest prior to the date of arrest for his imprisonment offense. Those four arrests resulted in 17 different charges being brought against him. When describing this released prisoner's criminal record, he is considered to have four prior arrests.

The second way of measuring prior arrests did include the imprisonment offense of the released sex offender. Prior arrest statistics that did include the imprisonment offense are found in sections of the report that describe the recidivism rates of the 9,691 sex offenders following their release from prison. In this case, any arrest that had occurred on a date prior to the sex offender's release from prison was considered a prior arrest. By definition, all 9,691 sex offenders had at least one arrest prior to their release, which was the sex crime arrest responsible for their being in prison in 1994. This means that the sex offender who was arrested on four different dates prior to the arrest for his imprisonment offense under the first definition of prior arrest was, under this second definition, classified as having five prior arrests, once his imprisonment offense is included.

Thirteen tables in the report provide statistics on prior arrests (and, in 2 of the 13, prior convictions and prior imprisonments). In tables 15, 16, 17, 18, 27, 28, 29, 30, 31, 36, and 37, "prior arrests" includes the sex crime arrest for the imprisonment offense; these tables have the heading "prior to 1994 release." In tables 5 and 6, "prior arrests" excludes that arrest; these tables have the heading "prior to the sex crime for which imprisoned."

In all tables, the same counting rule was used: arrest dates, not arrest charges, were counted to obtain the number of prior arrests.

Rearrest Unless stated otherwise, this recidivism measure is defined as the number or percentage of released prisoners who, within the first three years following their 1994 release, were arrested either in the same State that released them (in this report those arrests are called "in-State" arrests) or in a different State (those arrests are

referred to as "out-of-State" arrests). Data on arrests came from State RAP sheets and FBI RAP sheets. RAP sheets (Records of Arrest and Prosecution) are law enforcement records intended to document a person's entire adult criminal history, including every arrest, prosecution and adjudication for a felony or serious misdemeanor offense. Arrests, prosecutions and adjudications for minor traffic offenses, public drunkenness, and other petty crimes are not as fully recorded as those for serious crimes. The "percent rearrested" is calculated by dividing the number rearrested by the number released from prison in 1994.

All measures of recidivism based on criminal records are subject to two types of errors. Type 1 errors arise when the arrest or the conviction in the released prisoner's record is for a crime that person did not commit. Type 2 errors arise when the released prisoner commits a crime but he is not arrested for it, or, even if he is, the arrest does not result in his conviction.

Some amount of type 1 and type 2 error is inevitable, however recidivism is measured. But that does not mean that all recidivism measures are equally suitable, no matter the purpose they are intended to serve. The main purpose of this recidivism study was to document the percentage of sex offenders who continued their involvement in various types of crime after their release from prison in 1994. The more suitable measure for that is the one with the fewest type 2 errors: the one, in other words, less prone to saying someone is not committing crimes when he actually is. Between rearrest and reconviction as the recidivism measure, the one less likely to make that type of error is rearrest. One reason is that the rigorous standard used to convict someone — "proof beyond a reasonable doubt" — makes it certain that guilty persons will sometimes go free. Another reason is record keeping: the justice system does better at recording arrests than convictions in RAP sheets. For such reasons, this study uses rearrest more often than reconviction as the measure of recidivism.

Rearrest forms a conservative measure of reoffending because many crimes do not result in arrest. Not all types of crime are alike in this regard. Crimes committed in nonpublic places (such as in the victim's home) by one family member against another (such as by the husband against his wife, or by the father against his own child) are a type that is less likely than many other types to be reported to police and, consequently, less likely to result in arrest. Sex crimes, particularly those against children, are a specific example of this type. While some sex offenders in this study probably committed a new sex crime after their release and were not arrested or convicted, the study cannot say how many.

As mentioned above, one reason why sex offenders are not arrested is that no one calls the police. Results from the National Crime Victimization Survey indicate that the offenses of rape/sexual assault are the least likely crimes to be reported to the police. (See *Reporting Crime to the Police, 1993-2000,* March 2003, <http://www.ojp.usdoj/bjs/abstract/rcp00.htm>.)

Reconviction Except where stated otherwise, this recidivism measure pertains to State and Federal convictions in any State (not just convictions in the State that released them) in the three years following release. Information on convictions came from State and FBI RAP sheets. RAP sheets are intended to document every conviction for a felony or serious misdemeanor, but not every conviction for a minor offense. "Percent reconvicted" is calculated by dividing the number reconvicted by the number released from prison in 1994. (It is not calculated by dividing the number reconvicted by the number rearrested.)

Return to prison Two recidivism measures are returned to prison —
- with a new sentence
- with or without a new sentence.

Recidivism defined as *Returned to prison with a new sentence* pertains exclusively to sex offenders who, within 3 years following release, were reconvicted for any new crime in any State following their release and received a new prison sentence for the new crime.

Recidivism defined as *Returned to prison with or without a new sentence* includes resentenced offenders plus any who were returned to prison within 3 years because they had violated a technical condition of their release. Technical violations include things such as failing a drug test, missing an appointment with their parole officer, or being arrested for a new crime. Offenders returning to prison for such violations are sometimes referred to as "technical violators."

Prisons should not be confused with jails. A prison is a State or Federal correctional facility reserved for convicted persons with relatively long sentences (generally over a year). A jail is a local correctional facility for convicted persons with short sentences or for persons awaiting trial. Returns to prison refer to any prison, not necessarily the same prison that released the offender in 1994.

The "percent returned to prison with a new sentence" is calculated by dividing the number returned to prison with a new sentence by the number released from prison in 1994. The "percent returned to prison with or without a new sentence " is calculated by dividing the number returned to prison with or without a new sentence by the number released from prison in 1994.

Data on returns with a new sentence are based on State and FBI RAP sheets. Data on returns with or without a new sentence are based on State and FBI RAP sheets plus prison records.

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All sex offenders

Of the 9,691 released sex offenders, approximately —

- 6,503 (67.1% of the 9,691) were white males (table 1)
- 3,053 (31.5%) were black males
- 136 (1.4%) were males of other races (Asian, Pacific Islander, American Indian, and Alaska Native).

The vast majority of sex offenders were non-Hispanic males (80.1%). Half were over the age of 35 when released.

Rapists and sexual assaulters

As defined in this report, all sex offenders are either "rapists" or "sexual assaulters." Of the 9,691 released sex offenders, 3,115 were rapists and the remaining 6,576 were sexual assaulters.

Of the 3,115 rapists, 1,735 (55.7% of 3,115) were white males and 1,327 (42.6%) were black males. Of the 6,576 sexual assaulters, 4,768 (72.5% of 6,576) were white males and 1,723 (26.2%) were black males.

Rapists and sexual assaulters were close in age at time of release: over 70% were age 30 or older. Median age at time of release was about 35 years for both rapists and sexual assaulters.

Table 1. Demographic characteristics of sex offenders released from prison in 1994, by type of sex offender

Prisoner characteristic	Percent of released prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Race			
White	67.1%	55.7%	72.5%
Black	31.5	42.6	26.2
Other	1.4	1.7	1.3
Hispanic origin			
Hispanic	19.9%	22.6%	18.9%
Non-Hispanic	80.1	77.4	81.1
Age at release			
18-24*	12.2%	10.6%	13.0%
25-29	16.4	17.3	16.0
30-34	20.0	22.4	18.8
35-39	19.1	20.9	18.3
40-44	13.3	13.3	13.3
45 or older	19.0	15.5	20.6
Age at release			
Average	36.8 yrs	36.1 yrs	37.1 yrs
Median	35.3	34.9	35.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States. Data identifying race were reported for 98.5% of 9,691 released sex offenders; Hispanic origin for 82.5%; age for virtually 100%.
*Age at release 18-24 includes the few who were under age 18 when released from prison in 1994.

Child molesters and statutory rapists

Some of the 9,691 sex offenders were men whose imprisonment offense was a sex offense against a child. Precisely how many is unknown. In this report, the 4,295 who could be identified are called "child molesters" (table 2). The 4,295 identified child molesters included some (443 out of the 4,295) whose specific sex offense against a child was non-forcible intercourse. These 443 are called "statutory rapists." There were more than 443 among the 4,295, but 443 were all that could be identified from the limited information obtained for the study.

Both the 4,295 child molesters and the 443 statutory rapists were predominantly non-Hispanic white males. Nearly three-fourths of the child molesters (73.2%) were age 30 or older. Just over half the statutory rapists (54%) were 30 or older at the time they were released from prison.

Among the released child molesters there were 3,333 white men (77.6% of 4,295) and 889 black men (20.7%). The 443 statutory rapists included 324 white men (73.2% of 443) and 110 black men (24.8%).

Table 2. Demographic characteristics of child molesters and statutory rapists released from prison in 1994

Prisoner characteristic	Percent of released prisoners: Child molesters	Statutory rapists
Total	100%	100%
Race		
White	77.6%	73.2%
Black	20.7	24.8
Other	1.7	2.0
Hispanic origin		
Hispanic	23.5%	15.9%
Non-Hispanic	76.5	84.1
Age at release		
18-24*	11.4%	24.8%
25-29	15.4	21.2
30-34	17.7	14.7
35-39	18.6	14.9
40-44	14.3	10.2
45 or older	22.6	14.2
Age at release		
Average	37.8 yrs	33.6 yrs
Median	36.5	31.0
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Data identifying race were reported for 99.5% of 4,295 released child molesters; Hispanic origin for 87.8%; and age for 100%.
*Age at release 18-24 includes the few who were under age 18 when released from prison in 1994.

All sex offenders

All 9,691 sex offenders selected to be in this study had a prison sentence greater than 1 year. The shortest terms were a day over 1 year; the longest were life sentences. The fact that sex offenders with a life sentence (18 offenders in the study) were among the 9,691 released in 1994 should not be surprising because only rarely do life sentences in the United States literally mean imprisonment for the remainder of a person's life. Most felons receiving a life sentence are eventually paroled (unpublished tabulation of data from the 1997 BJS Survey of Inmates in State Correctional Facilities).

On average, a sex offender released from prison in 1994 had an 8-year term and served 3½ years of that sentence (45%) before being released (table 3). Half of the released sex offenders had a sentence length of 6 years or less. Half had served no more than a third of their sentence before being released. When released, the majority (54.5%) had more than 3 years of their sentence remaining to be served.

Rapists and sexual assaulters

Rape always involves forcible intercourse, whereas sexual assault (as the term is used here) never does, although it can involve other types of forcible sexual assault. Because forcible intercourse is considered to be a more serious offense than other forms of forcible sexual assault, penalties for rape are generally more severe than those for sexual assault.

Consistent with the more serious nature of rape —

- on average a released rapist had a longer sentence (just over 11 years) than a sexual assaulter (just under 7 years)
- on average a rapist spent more time in confinement before being released (5¼ years) than a sexual assaulter (just under 3 years)
- median sentence length was longer for rapists (half of the rapists had a sentence of 9 years or more, while half of the sexual assaulters had a sentence of 5½ years or more)
- 39.2% of the 3,115 rapists were in prison for over 5 years prior to release, while 12.5% of the 6,576 sexual assaulters served 61 months or more
- rapists served 49% of their sentence before being released, compared to 43% for sexual assaulters.

Depending on the length of their sentence and the amount of time they had served before being released, some of the released sex offenders would have been on parole (or some other type of conditional release) throughout the full 3 years they were tracked in this study. For example, when released, 63.3% of rapists had more than 3 years left to serve on their sentence. In their case, any new crimes they committed during this 3-year followup period were offenses committed while still on parole. By comparison, just over half of released sexual assaulters had more than 3 years left to serve.

Table 3. Sentence length and time served for sex offenders released from prison in 1994, by type of sex offender

Characteristic	All	Rapists	Sexual assaulters
Sentence length (in months)			
Mean	97.3 mo	134.0 mo	82.5 mo
Median	72.0	108.0	66.0
Time served (in months)			
Mean	42.3 mo	62.6 mo	34.1 mo
Median	32.3	48.2	26.5
Percent of sentence served	44.9%	49.3%	43.1%
Upon release in 1994, percent who had served —			
6 months or less	4.5%	3.1%	5.0%
7-12	9.5	3.0	12.1
13-18	16.5	10.5	19.0
19-24	9.7	5.1	11.5
25-30	8.1	6.1	8.9
31-36	9.9	8.0	10.7
37-60	21.6	24.9	20.2
61 months or more	20.2	39.2	12.5
Upon release in 1994, percent with time still remaining to be served			
6 months or less	2.8%	2.4%	2.9%
7-12	5.0	5.7	4.7
13-18	8.4	6.2	9.2
19-24	12.8	9.3	14.2
25-30	8.1	6.2	8.8
31-36	8.5	6.9	9.1
37-60	25.1	22.8	26.0
61 months or more	29.4	40.5	24.9
Total first releases	6,470	1,859	5,860

Note: The 6,470 sex offenders were released in 13 States. Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Child molesters and sexual assaulters

On average, child molesters were released after serving nearly 3 years (33.7 months) of their nearly 7-year sentence (81.1 months) (table 4). Statutory rapists were released after serving a little over 2 years of their approximately 4-year sentence. Upon release, almost half of the child molesters still had at least 3 years of their sentence remaining to be served, compared to 15% of statutory rapists.

Table 4. Sentence length and time served for child molesters and statutory rapists released from prison in 1994

Characteristic	Child molesters	Statutory rapists
Sentence length (in months)		
Mean	81.1 mo	49.5 mo
Median	66.0	36.0
Time served (in months)		
Mean	33.7 mo	27.6 mo
Median	25.8	19.4
Percent of sentence served	43.3%	52.8%
Upon release in 1994, percent who had served —		
6 months or less	5.7%	9.6%
7-12	12.6	20.4
13-18	20.8	18.2
19-24	10.1	14.3
25-30	7.2	8.6
31-36	11.2	7.0
37-60	19.7	13.4
61 months or more	12.8	8.6
Upon release in 1994, percent with time still remaining to be served		
6 months or less	2.5%	10.8%
7-12	5.4	17.4
13-18	10.2	26.9
19-24	16.1	13.1
25-30	7.9	8.5
31-36	8.9	8.5
37-60	24.9	9.2
61 months or more	24.1	5.6
Total first releases	3,104	317

Note. The 3,104 child molesters were released in 13 States; the 317 statutory rapists in 10 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

All sex offenders

Arrests and convictions for minor traffic offenses, public drunkenness, and other petty crimes are often not entered into official criminal records. Since official records formed the basis for this study's statistics on arrests and convictions, these statistics understate levels of contact with the justice system. Statistics shown throughout this report on arrests and convictions pertain mostly to arrests and convictions for felonies and serious misdemeanors.

Statistics on prior arrests in this section of the report do not include the imprisonment offense for which the sex offender was in prison in 1994.

At the time the 9,691 male sex offenders were arrested for the sex crime that resulted in their imprisonment —

- 78.5% (7,607 of the 9,691 men) had been arrested at least one earlier time (table 5)
- half had 3 or more prior arrests for some type of crime
- 58.4% (5,660 men) had at least one prior criminal conviction
- 13.9% (1,347 men) had a prior conviction for a violent sex offense
- 4.6% (446 men) had been convicted for a sex crime against a child
- nearly a quarter had served time in a State or Federal prison at least once before for some type of crime.

All 9,691 were in prison in 1994 because they had been arrested and convicted for a sex offense. For 71.5% of the 9,691 men (6,929), that arrest was their first ever for a violent sex crime. In other words, these 6,929 men had no previous arrest for a sex offense. For the remaining 28.5% (2,762 men), that arrest was not their first sex offense arrest. Some had been arrested once before for a sex crime and some two or more times before.

To illustrate, one of the 9,691 sex offenders in this study had his first arrest for a sex crime in 1966, when he was age 19; he was also arrested for sex crimes in the 1970's and 1980's, in three different States. The arrest for his imprisonment offense was in 1982. In the early part of 1983, 4 months after his arrest, he was convicted of sexual assault and began serving a 25-year prison term. Eleven years later, in 1994 at age 47, he was released.

For 75% of the 9,691 sex offenders, their 1994 release represents their first release since being sentenced for their sex offense. The remaining 25% had previously served time under the same sentence, had been released, had violated one or more conditions of their parole and, consequently, were returned to prison to continue serving time still remaining on their sentence.

Table 5. Prior criminal record of sex offenders released from prison in 1994, by type of sex offender

Prior to the sex crime for which imprisoned	All	Rapists	Sexual assaulters
Percent with at least 1 prior arrest for — [a]			
Any crime	78.5%	83.1%	76.3%
Any sex offense	28.5	28.7	28.4
Sex offense against a child	10.3	5.7	12.5
Prior arrests for any crime[a]			
Mean	4.5	5.0	4.2
Median	3	3	2
Percent with at least 1 prior conviction for — [a]			
Any crime	58.4%	62.9%	56.2%
Any sex offense	13.9	14.6	13.5
Sex offense against a child	4.6	3.4	5.2
Prior convictions for any crime[a]			
Mean	1.8	2.0	1.7
Median	1	1	1
Percent with prior prison sentence for any crime[a]	23.7%	28%	21.6%
Percent who were first releases[b]	74.9%	66.9%	78.7%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
[a]"Prior" does not include the arrest, conviction, or prison sentence that was the reason the sex offenders were in prison in 1994. Persons with no prior arrest or prior convictions were coded zero and were included in the calculations of mean and median priors. Calculation of prior convictions excluded Ohio, and calculation of prior prison sentences excluded Ohio and Virginia.
[b]Data on first releases are based on releases from 13 States. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Sex offenders compared to non-sex offenders

A total of 262,420 non-sex offenders were released from State prisons in 1994 in the 15 States. Of the 262,420 non-sex offenders, 94% had at least 1 prior arrest and 82% had at least 1 prior conviction (not in a table). Overall, the 9,691 sex offenders had a shorter criminal history than the 262,420 non-sex offenders. Before the arrest that resulted in their prison sentence, sex offenders had been arrested 4.5 times, on average. This prior arrest record was about half that of non-sex offenders (8.9 prior arrests). In addition, among the 1994 prison releases, 23.7% of the sex offenders (2,297), compared to 44.3% of non-sex offenders (116,252), had served prior prison sentences.

Sex offenders were more likely to have been arrested (28.5%) or convicted (13.9%) for a sexual offense than non-sex offenders (6.5% with a prior arrest for a sex crime; 0.2% with a prior conviction for a sex crime). The same is true for child molesting — about 1 in 10 sex offenders had a prior arrest for a sex offense against a child, compared to about 1 in 100 non-sex offenders.

Rapists and sexual assaulters

For approximately 71% of the 3,115 rapists, the arrest for rape that resulted in their imprisonment was their first for a sex crime. The remaining 29% had one or more prior sex crime arrests. Likewise, for sexual assaulters, the sexual assault arrest that led to their imprisonment was the first arrest for a sex crime for 72% of the 6,576 sexual assaulters. The remaining 28% had been arrested at least once before for some type of sex crime.

Table 6. Prior criminal record of child molesters and statutory rapists released from prison in 1994

Prior to the sex crime for which imprisoned	Child molesters	Statutory rapists
Percent with at least 1 prior arrest for — [a]		
Any crime	76.8%	80.6%
Any sex offense	29.0	38.4
Sex offense against a child	18.3	19.6
Prior arrests for any crime[a]		
Mean	4.1	4.8
Median	2	3
Percent with at least 1 prior conviction for — [a]		
Any crime	54.6%	64.6%
Any sex offense	11.9	21.2
Sex offense against a child	7.3	11.5
Prior convictions for any crime[a]		
Mean	1.6	2.2
Median	1	1
Percent with prior prison sentence for any crime[a]	19.3%	23.4%
Percent who were first releases[b]	74.5%	73.7%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

[a]"Prior" does not include the arrest, conviction, or prison sentence that was the reason the sex offenders were in prison in 1994. Persons with no prior arrest or prior convictions were coded zero and were included in the calculations of mean and median priors. Calculation of prior convictions excluded Ohio, and calculation of prior prison sentences excluded Ohio and Virginia.

[b]Data on first releases are based on releases from 13 States. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Child molesters and sexual assaulters

The 4,295 child molesters had at least 1 arrest for child molesting (the arrest that led to their imprisonment). For 3,509 (81.7%) of them, that arrest was their first ever arrest for child molesting (table 6). For the other 786 men (18.3% of the 4,295), that was not their first. Some had one prior arrest for a sex offense against a child, some had two, and others had three or more.

Among those with three or more priors was a man whose first arrest for child molesting was in 1966, when he was age 20. When released in 1994, he was serving an 11-year sentence for molesting a child under age 14. The prior criminal record of this serial pedophile spanned three decades, with arrests for child molesting in the 1970's, the 1980's, and the 1990's.

This section measures recidivism four ways:

- percent rearrested for any type of crime
- percent reconvicted for any type of crime
- percent returned to prison with a new prison sentence for any type of crime
- percent returned to prison with or without a new prison sentence.

"Percent rearrested" is calculated by dividing "the number rearrested" by "the number released from prison in 1994."

"Percent reconvicted" is obtained by dividing "the number reconvicted" by "the number released from prison in 1994." (It is *not* calculated by dividing "the number reconvicted" by "the number rearrested.")

"Percent returned to prison with a new sentence" is calculated by dividing "the number returned to prison with a new sentence" by "the number released from prison in 1994." (It is *not* calculated by dividing "the number returned to prison with a new sentence" by "the number reconvicted.")

Except where stated otherwise, all four recidivism measures —

- refer to the full 3-year period following the prisoner's release in 1994
- include both "in-State" and "out-of-State" recidivism.

"In-State" recidivism refers to new offenses committed within the State that released the prisoner in 1994. "Out-of-State" recidivism is any new offenses in States other than the one that released him in 1994.

Not all 4 of the recidivism measures are based on data from 15 States —

- "Percent rearrested" is based on 15 States
- "Percent reconvicted" is based on 14 of the 15 States participating in the study
- "Percent returned to prison with a new sentence" is based on 13 of the 15 States
- "Percent returned to prison with or without a new sentence" is based on 9 of the 15.

Three of the four recidivism measures were calculated from data on fewer than 15 States because the information needed to perform the calculations was not available (or not readily available) from each of the 15 participating States. Notes at the bottom of the tables alert readers to such missing data.

Four measures

All sex offenders

The 9,691 sex offenders in this study were all released from prison in 1994.

Within the first 3 years following their release —

- 43% (4,163 of the 9,691) were rearrested for at least 1 new crime (table 7)
- 24% (2,326 of the 9,691) were reconvicted for any type of crime
- 11.2% (1,085 of the 9,691) were returned to prison with another sentence
- 38.6% (3,741 of the 9,691) were returned to prison with or without a new sentence.

For approximately three-fourths of the 4,163 men who were rearrested for some new crime, their most serious rearrest offense was a felony; for the remaining fourth, the most serious was a misdemeanor (not shown in table).

Of the 4,163 men rearrested for some new offense, nearly 9 in 10 (87%) were still on parole when taken into custody (not shown in table).

Table 7. Recidivism rate of sex offenders released from prison in 1994, by recidivism measure and type of sex offender

Recidivism measure	Percent of released prisoners		
	All	Rapists	Sexual assaulters
Within 3 years following release:			
Rearrested for any type of crime	43.0%	46.0%	41.5%
Reconvicted for any type of crime[a]	24.0%	27.3%	22.4%
Returned to prison with a new sentence for any type of crime[b]	11.2%	12.6%	10.5%
Returned to prison with or without a new sentence[c]	38.6%	43.6%	36.1%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
[b]"New prison sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.
[c]"With or without a new sentence" includes prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of percent returned to prison with or without a new sentence. New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 38.6%. When California is excluded, the return-to-prison rate falls to 27.9%.

The 2,326 reconvicted for a new crime consisted of 1,672 (71.9%) whose most serious conviction offense was a felony, and 654 (28.1%) whose most serious offense was a misdemeanor (not shown in table).

Of the 2,326 reconvicted for any new crime after their release, 1,085 were resentenced to prison, and the remaining 1,241 were placed on probation or ordered to pay a fine or sentenced to short-term confinement in a local jail. The 1,241 not resentenced to prison made up a little over half (53%) of the total 2,326 reconvicted. One reason why over half were not resentenced to prison was that the new conviction offense for about 650 of the 2,326 newly convicted men (approximately 30%) was a misdemeanor rather than a felony, and State laws usually do not permit State prison sentences for misdemeanors.

Altogether, 3,741 (38.6%) of the 9,691 released sex offenders were returned to prison either because of a new sentence or a technical violation. Of the 3,741, 2,656 (71%) were returned for a technical violation, such as failing a drug test, missing an appointment with the parole officer, or being arrested for another crime; and 1,085 were returned with a new prison sentence. The 2,656 consisted of 664 who were reconvicted but not resentenced to prison, plus 1,992 not reconvicted.

As previously explained, a total of 1,241 released sex offenders were reconvicted but not resentenced to prison for their new crime. The 1,241 included 664 (described immediately above) who were returned to prison for a technical violation. The 664 were 54% of the 1,241, indicating that most of those who were reconvicted but not given a new prison sentence were, nevertheless, returned to prison.

Sex offenders compared to non-sex offenders

The 15 States in this study released 272,111 prisoners altogether in 1994. The 9,691 released sex offenders made up 3.6% of that total. The remaining 262,420 released prisoners were non-sex offenders. Of the 262,420 non-sex offenders, 68% (179,391 men and women out of the 262,420) were rearrested for a new crime within 3 years (not shown in table). The 43% overall rearrest rate of the 9,691 released sex offenders (4,163 out of 9,691) was low by comparison.

Another difference was the rearrest charge. The rearrest offense was a felony for about 3 out of 4 (75%) of the 4,163 rearrested sex offenders (not shown in table). By comparison, about 84% of the 179,391 non-sex offenders were charged by police with a felony (not shown in table).

Of the 4,163 sex offenders rearrested for a new crime, nearly 9 in 10 (87%) were on parole when taken into custody; of the 179,391 rearrested non-sex offenders, also about 9 in 10 (85%) were on parole (not shown in table).

There was a difference in reconvictions. The reconviction rate for the 9,691 released sex offenders was 24.0%, compared to 47.8% for 262,420 non-sex offenders released in 1994 (not shown in table). The 2,326 sex offenders reconvicted for any new crime included 1,672 (71.9%) whose most serious conviction offense was a felony (not shown in table). Of the 262,420 non-sex offenders, 125,437 (47.8%) were reconvicted, which included 94,078 (75.0%) whose most serious reconviction offense was a felony (not shown in table).

Rapists and sexual assaulters

Within the first 3 years following release —

- 46.0% of the 3,115 rapists (1,432 men) and 41.5% of the 6,576 sexual assaulters (2,731 men) were rearrested for all types of crimes (table 7)
- 27.3% of the 3,115 rapists (850 men) were reconvicted, compared to 22.4% of the 6,576 sexual assaulters (1,473 men) for all types of crimes
- 12.6% of the 3,115 rapists (392 men) and 10.5% of the 6,576 sexual assaulters (690 men) were resentenced to prison for their reconviction offense
- 43.6% of the 3,115 rapists (1,358 men) and 36.1% of the 6,576 sexual assaulters (2,374 men) were returned to prison either because of a new sentence or because of a technical violation of their parole.

For approximately three-fourths of the 1,432 rapists who were rearrested for a new crime, the crime was a felony; for the remainder, the most serious was a misdemeanor (not shown in table). As indicated earlier, 2,731 sexual assaulters were rearrested for a new offense after their release, and for about three-fourths, their most serious rearrest offense was a felony; for the remainder, the most serious crime was a misdemeanor (not shown in table).

The 850 rapists reconvicted for any new crime included 617 (72.6%) whose most serious reconviction offense was a felony; the 1,473 reconvicted sexual assaulters included 1,052 (71.4%) who were reconvicted for a felony (not shown in table).

Child molesters and statutory rapists

Of the child molesters and statutory rapists released from prison in 1994 —

- 1,693 of the 4,295 child molesters (39.4%) and 221 of the 443 statutory rapists (49.9%) were rearrested for a new crime (not necessarily a new sex crime) (table 8)
- 876 of the 4,295 child molesters (20.4%) and 145 of the 443 statutory rapists (32.7%) were reconvicted for any type of crime
- 9% of the 4,295 child molesters and 13% of the 443 statutory rapists were resentenced to prison for their new conviction offense
- 38% of the 4,295 child molesters and 46% of the 443 statutory rapists were back in prison within 3 years as a result of either a new prison sentence or a technical violation of their parole.

The most serious offense for three-fourths of the 1,693 child molesters who were rearrested was a felony, and a misdemeanor for the remainder (not shown in table). Following their release in 1994, 221 statutory rapists were rearrested for a new crime. The most serious offense that approximately three-fourths were charged with was a felony (not shown in table).

The 876 child molesters reconvicted for any type of crime included 643 (73.4%) whose most serious reconviction offense was a felony; the 145 reconvicted statutory rapists included 97 (66.7%) whose most serious was a felony (not shown in table).

Table 8. Recidivism rate of child molesters and statutory rapists released from prison in 1994, by recidivism measure

Recidivism measure	Percent of released prisoners	
	Child molesters	Statutory rapists
Within 3 years following release:		
Rearrested for any type of crime	39.4%	49.9%
Reconvicted for any type of crime[a]	20.4%	32.7%
Returned to prison with a new sentence for any type of crime[b]	9.1%	13.2%
Returned to prison with or without a new sentence[c]	38.2%	45.7%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.

[b]"New prison sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percent returned to prison with a new sentence.

[c]"With or without a new sentence" includes prisoners with new sentences to State or Federal prisons plus prisoners returned for technical violations. Because of missing data, prisoners released in 6 States (Arizona, Delaware, Maryland, New Jersey, Ohio, and Virginia) were excluded from the calculation of percent returned to prison with or without a new sentence. New York State custody records did not always distinguish prison returns from jail returns. Consequently, some persons received in New York jails were probably mistakenly classified as prison returns. Also, California with a relatively high return-to-prison rate affects the overall rate of 39.4%. When California is excluded, the return-to-prison rate falls to 23.4%.

Time to recidivism

All sex offenders

Within 6 months following their release, 16% of the 9,691 men were rearrested for a new crime (not necessarily another sex offense) (table 9). Within 1 year, altogether 24.2% were rearrested. Within 2 years the cumulative total reached 35.5%. By the end of the 3-year followup period, 43% (4,163 of the 9,691) were rearrested for some type of crime.

These statistics indicate that most recidivism within the first 3 years following release occurred in the first year (56%, since 24.2% / 43% = 56%).

While the bulk of rearrests occurred in the first year, that period did not account for the bulk of reconvictions or reimprisonments. This is largely because a sizable number of those rearrested in the first year were not reconvicted and reimprisoned until sometime in the second year, due to the additional time needed to prosecute, convict, and sentence a criminal defendant. For example, by the end of the first year, 8.6% of the 9,691 released sex offenders were reconvicted, and by the end of the third year, a cumulative total of 24% were reconvicted, indicating that the first year accounted for a relatively small percentage of all the reconvictions in the 3 years (36%, since 8.6% / 24% = 36%).

Rapists and sexual assaulters

Forty-six percent of released rapists were rearrested within 3 years, and over half of those rearrests (56%) occurred in the first year (since 25.8% / 46.0% = 56%). Similarly, 41.5% of released sexual assaulters were rearrested within the first 3 years following their 1994 release, and over half of those rearrests (56%) occurred in the first year (since 23.4% / 41.5% = 56%).

Table 9. Recidivism rate of sex offenders released from prison in 1994, by type of recidivism measure, type of sex offender, and time after release

Time after 1994 release	Cumulative percent of sex offenders released from prison in 1994		
	All	Rapists	Sexual assaulters
Rearrested for any type of crime within —			
6 months	16.0%	16.3%	15.8%
1 year	24.2	25.8	23.4
2 years	35.5	38.6	34.0
3 years	43.0	46.0	41.5
Reconvicted for any type of crime within —[a]			
6 months	3.6%	4.3%	3.3%
1 year	8.6	10.0	8.0
2 years	17.2	19.9	15.9
3 years	24.0	27.3	22.4
Returned to prison with a new sentence for any type of crime within —[b]			
6 months	1.8%	1.9%	1.8%
1 year	4.0	4.1	3.9
2 years	8.0	9.0	7.5
3 years	11.2	12.6	10.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
[b]"New sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percentage returned to prison with a new sentence.

Table 10. Recidivism rate of child molesters and statutory rapists released from prison in 1994, by type of recidivism measure and time after release

Time after 1994 release	Cumulative percent of sex offenders released from prison in 1994: Child molesters	Statutory rapists
Rearrested for any type of crime within —		
6 months	16.0%	18.5%
1 year	22.9	29.8
2 years	32.9	42.4
3 years	39.4	49.9
Reconvicted for any type of crime within —[a]		
6 months	3.0%	4.5%
1 year	7.1	13.6
2 years	14.5	24.4
3 years	20.4	32.7
Returned to prison with a new sentence for any type of crime within —[b]		
6 months	1.5%	0.9%
1 year	3.1	4.0
2 years	6.5	9.3
3 years	9.1	13.2
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
[a]Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted.
[b]"New sentence" includes new sentences to State or Federal prisons but not to local jails. Because of missing data, prisoners released in Ohio and Virginia were excluded from the calculation of percentage returned to prison with a new sentence.

Child molesters and statutory rapists

Of the 4,295 released child molesters, 1,693 (39.4%) were rearrested during the 3-year followup period (table 10). The majority of those charged (approximately 982 of the 1,693, or 58%) were charged in the first 12 months. While 49.9% of released statutory rapists were rearrested within 3 years, nearly three-fifths of those rearrests occurred within the first year following release (29.8% / 49.9% = 60%).

Table 11. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and demographic characteristics of released prisoners

Prisoner characteristic	Percent rearrested for any type of crime within 3 years: All	Rapists	Sexual assaulters
Race			
White	36.7%	39.1%	35.8%
Black	56.1	55.0	57.0
Other	40.4	38.5	41.7
Hispanic origin			
Hispanic	42.2%	47.7%	39.6%
Non-Hispanic	45.9	50.2	44.3
Age at release			
18-24	59.8%	58.6%	60.2%
25-29	54.2	53.8	54.3
30-34	48.8	52.6	46.7
35-39	41.4	46.1	38.9
40-44	34.7	41.2	31.6
45 or older	23.5	23.0	23.7
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States. Data identifying race were reported for 98.5%; Hispanic origin for 82.5%; age for virtually 100%.

Table 12. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by demographic characteristics of released prisoners

Prisoner characteristic	Percent rearrested for any type of crime within 3 years: Child molesters	Statutory rapists
Race		
White	36.2%	46.0%
Black	51.7	61.5
Other	37.8	55.6
Hispanic origin		
Hispanic	37.1%	56.9%
Non-Hispanic	41.9	48.8
Age at release		
18-24	59.6%	70.0%
25-29	51.4	56.4
30-34	46.5	47.7
35-39	38.0	37.9
40-44	28.0	44.4
45 or older	23.8	23.8
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Data identifying race were reported for 98.5%; Hispanic origin for 82.5%; age for virtually 100%.

Demographic characteristics

All sex offenders

Race Black men (56.1%) released in 1994 were more likely than white men (36.7%) to be rearrested for a new crime (not limited to just a new sex crime) within the first 3 years following their release (table 11).

Hispanic origin Among released sex offenders, non-Hispanics (45.9%) were more likely than Hispanics (42.2%) to have a new arrest within the 3-year followup period.

Age The younger the prisoner when released, the higher the rate of recidivism. For example, of all the sex offenders under age 25 at the time of discharge from prison, 59.8% were rearrested for some type of crime within 3 years, or more than double the 23.5% of those age 45 or older.

Rapists and sexual assaulters

Race Among releasees whose imprisonment offense was sexual assault, 57% of black men and 35.8% of white men were rearrested for all types of crimes. A higher rearrest rate for blacks was also found among released rapists.

Hispanic origin Among released rapists, non-Hispanics (50.2%) were more likely than Hispanics (47.7%) to be rearrested within the 3-year followup period. The same was true among released prisoners whose imprisonment offense was sexual assault.

Age For both rapists and sexual assaulters, younger releasees had higher rearrest rates than older releasees.

Table 13. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and time served before release

Time served in prison before 1994 release	Percent rearrested for any type of crime within 3 years: All	Rapists	Sexual assaulters
6 months or less	45.7%	48.3%	45.0%
7-12	42.1	32.1	43.1
13-18	38.9	37.6	39.2
19-24	46.7	51.1	45.9
25-30	44.6	42.9	45.1
31-36	35.7	42.6	33.7
37-60	38.9	43.2	36.7
61 months or more	39.9	43.4	35.5
Total first releases	6,470	1,859	5,860

Note: The 6,470 sex offenders were released in 13 States. Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Child molesters and statutory rapists

Race The rearrest rate among released child molesters was 51.7% for black men and 36.2% for white men (table 12). Among statutory rapists, black men (61.5%) had a higher rearrest rate than white men (46.0%).

Hispanic origin Among released prisoners whose imprisonment offense was statutory rape, Hispanics (56.9%) were more likely than non-Hispanics (48.8%) to be rearrested within the 3-year followup period. The opposite was true of child molesters, as Hispanics had a lower rearrest rate (37.1%) than non-Hispanics (41.9%).

Age The younger the sex offender was when released, the higher was his likelihood of being rearrested. For example, the rearrest percent for statutory rapists younger than 25 was higher (70.0%) than the rearrest percent for statutory rapists ages 25 to 30 (56.4%). The same was true among child molesters.

Table 14. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by time served before being released

Time served in prison before 1994 release	Percent rearrested for any type of crime within 3 years: Child molesters	Statutory rapists
6 months or less	42.9%	56.7%
7-12	39.7	45.3
13-18	34.5	43.9
19-24	45.5	48.9
25-30	39.4	25.9
31-36	27.2	59.1
37-60	31.5	21.4
61 months or more	29.9	33.3
Total first releases	3,104	317

Note: The 3,104 child molesters were released in 13 States; the 317 statutory rapists in 10 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Time served before 1994 release

All sex offenders

Sex offenders who served the shortest amount of time in prison before being released (6 months or less) had a higher rearrest rate (45.7%) than those who served the longest (over 5 years, 39.9% rate) (table 13). Similarly, prisoners who served 6 months or less had a higher rearrest rate (45.7%) than those who served 7 months to 1 year (42.1%). However, other comparisons did not indicate a connection between serving more time and lower recidivism. For example, among sex offenders who served 1 to 1½ years in prison before being released, 38.9% were rearrested for all types of crimes, compared to 46.7% of sex offenders who served a bit longer — 1½ to 2 years. Similarly, released prisoners who served between 3 and 5 years in prison had a higher rate of rearrest (38.9%) than released prisoners who served 2½ to 3 years (35.7%). Because of these mixed results, and others illustrated below, the data do not warrant any general conclusion about an association between the level of recidivism and the amount of time served.

Rapists and sexual assaulters

Among sexual assaulters who served no more than 6 months, 45.0% were rearrested for all types of crimes. Those who served a little longer — from about 6 months to 1 year — had a lower rearrest rate, 43.1%. Those released after serving even more time — 1 to 1½ years — had an even lower rate, 39.2%. However, there are numerous instances where serving more time was not linked to lower recidivism. For example, rapists released after about 1 to 1½ years in prison had a 37.6% rearrest rate, while those imprisoned a little longer – from about 1½ to 2 years – had a higher rate, 51.1%.

Child molesters and statutory rapists

Among released statutory rapists and child molesters, the results continued to be mixed regarding an association between the rate of recidivism and the amount of time served (table 14). For example, child molesters released after serving about 2 to 2½ years had a higher rate of rearrest for all types of crimes (39.4%) than those who served somewhat longer – about 2½ to 3 years (27.2%). However, the rearrest rate rose (31.5%) among molesters who served more time – 3 to 5 years.

Table 15. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and prior arrest for any type of crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any type of crime within 3 years			
Total	43.0%	46.0%	41.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	24.8	28.3	23.6
Not their first arrest for any type of crime	47.9	49.6	47.1
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	21.5	16.9	23.7
Not their first arrest for any type of crime	78.5	83.1	76.3
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release; namely, the sex crime arrest responsible for their being in prison in 1994.

Prior arrest for any type of crime

All sex offenders

For 2,084 sex offenders (21.5% of the 9,691 total), their only arrest prior to being released in 1994 was the arrest for their imprisonment offense (a sex offense) (table 15). Among these 2,084 released sex offenders with just 1 prior arrest, 24.8% were rearrested for a new crime (not necessarily a new sex crime). For the remaining 7,607 (78.5% of 9,691), their prior record showed an arrest for the sex offense responsible for their current imprisonment plus at least 1 earlier arrest for some type of crime. Of these 7,607 prisoners, 47.9% were rearrested, or about double the rate of their counterparts with 1 prior arrest (24.8%).

Rapists and sexual assaulters

Of the 3,115 released rapists, 83.1% (2,589 rapists) had more than 1 arrest for some type of crime prior to their release from prison in 1994, and 16.9% (526 rapists) had just 1 prior arrest, the arrest for the sex crime that resulted in their being in prison in 1994. The multiple prior arrests for the 2,589 rapists included the arrest for their imprisonment offense plus at least 1 other arrest for any type of crime. The 2,589 with more than 1 prior arrest had a rearrest rate (49.6%) nearly double that of the 526 with just 1 prior (28.3%).

Child molesters and statutory rapists

Of the 4,295 child molesters, 76.8% (3,299 men) had more than 1 prior arrest (table 16). These 3,299 child molesters had a rearrest rate (44.3%) nearly double the 23.3% rate of the 996 molesters with just 1 prior arrest (996 is 23.2% of 4,295). The 357 statutory rapists with more than 1 prior arrest (357 is 80.6% of 443) had a rearrest rate (55.7%) more than double the 25.6% rate of the 86 statutory rapists with 1 prior arrest (86 is 19.4% of 443).

Table 16. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by prior arrest for any type of crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any type of crime within 3 years		
Total	39.4%	49.9%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any type of crime	23.3	25.6
Not their first arrest for any type of crime	44.3	55.7
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was —*		
Their first arrest for any type of crime	23.2	19.4
Not their first arrest for any type of crime	76.8	80.6
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the sex crime arrest responsible for their being in prison in 1994.

Number of prior arrests for any type of crime

Statistics on prior arrests in this section of the report do include the imprisonment offense of the released sex offender.

All sex offenders

The number of times a prisoner was arrested in the past was a relatively good predictor of whether that prisoner would continue his criminality after release (table 17). Prisoners with just one prior arrest for any type of crime had a 24.8% rearrest rate for all types of crimes. With two priors, the percentage rearrested rose to 31.9%. With three, it increased to 36.9%. With four, it went up to 42.6%. With additional priors, there were further increases, ultimately reaching a rearrest rate of 67.0% for released prisoners with the longest criminal record (more than 15 prior arrests).

Rapists and sexual assaulters

Both rapists and sexual assaulters followed the pattern described immediately above: the more prior arrests they had, the more likely they were to have a new arrest for some type of crime after their release in 1994.

Table 17. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release*	All	Rapists	Sexual assaulters
Percent rearrested for any type of crime within 3 years			
1 prior arrest for any type of crime	24.8%	28.3%	23.6%
2	31.9	36.4	29.9
3	36.9	36.3	37.1
4	42.6	47.2	40.4
5	50.5	48.6	51.6
6	49.7	47.3	50.9
7-10	59.0	59.6	58.6
11-15	65.1	63.7	66.0
16 or more	67.0	66.1	67.5
Percent of released prisoners			
All sex offenders	100%	100%	100%
1 prior arrest for any type of crime	21.5	16.9	23.7
2	16.0	15.2	16.3
3	11.9	12.1	11.8
4	9.0	9.2	8.9
5	7.2	8.0	6.8
6	6.3	6.6	6.1
7-10	14.4	15.8	13.8
11-15	7.9	8.9	7.4
16 or more	5.8	7.2	5.2
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. In this table, that arrest is counted as 1 prior arrest.

Child molesters and statutory rapists

Among released prisoners with the smallest number of prior arrests (1 prior arrest), 23.3% of child molesters and 25.6% of statutory rapists were rearrested for all types of crimes within 3 years (table 18). Rearrest rates generally rose with each increase in the number of prior arrests. Among released prisoners with the largest number of prior arrests (more than 15), 62.0% of child molesters and 76.2% of statutory rapists had at least 1 new arrest after being released in 1994.

Table 18. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release*	Child molesters	Statutory rapists
Percent rearrested for any type of crime within 3 years		
1 prior arrest for any type of crime	23.3%	25.6%
2	28.0	29.3
3	32.4	46.9
4	39.2	41.0
5	47.4	60.6
6	50.2	53.8
7-10	58.1	65.1
11-15	62.9	81.3
16 or more	62.0	76.2
Percent of released prisoners		
All sex offenders	100%	100%
1 prior arrest for any type of crime	23.2	19.4
2	17.2	13.1
3	12.1	11.1
4	8.5	8.8
5	7.0	7.4
6	6.4	5.9
7-10	13.6	18.7
11-15	7.3	10.8
16 or more	4.8	4.7
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least one arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. In this table, that arrest is counted as 1 prior arrest.

State where rearrested for any type of crime

The State where the rearrest occurred was not always the State that released the prisoner. In some cases, the released sex offender left the State where he was imprisoned and was rearrested for a new crime in a different State. For example, a sex offender released from prison in California may have traveled to Nevada, where he was arrested for committing another crime.

Sex offenders

A total of 4,163 sex offenders were rearrested for some type of new crime after their 1994 release. Of the 4,163 arrests, 16.0% — or 1 in 6 — were outside the State where the prisoner was released (table 19). The rest (84.0%) were made in the State that released them.

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 179,391 were rearrested for a new crime within 3 years (not shown in table). Of the 179,391 arrests for any type of crime, 11.2%, or 20,092 arrests, were arrests that occurred outside the State that released them.

Rearrested sex offenders had a higher percentage: 1 in 6 of their rearrests for any type of crime were in a State other than the one that released them.

Rapists and sexual assaulters

Following their 1994 release, 1,432 rapists and 2,731 sexual assaulters were rearrested for any new crime (table 19). For 17.4% of the 1,432 rearrested rapists, and 15.2% of the 2,731 rearrested sexual assaulters, the place where the arrest occurred was in a different State than the one that released them.

Table 19. Where sex offenders were rearrested for any new crime following release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners: All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	84.0	82.6	84.8
Another State	16.0	17.4	15.2
Total rearrested for any new crime	4,163	1,432	2,731

Note: The 4,163 rearrested sex offenders were released in 15 States, but table percentages are based on 14 States.

Child molesters and statutory rapists

Out of the 4,295 child molesters, 1,693 were rearrested for any new crime after being released from prison in 1994 (table 20). The 1,693 recidivists consisted of 84.8% whose new arrest was in the same State that released them in 1994, and 15.2% whose alleged violation occurred in a different State.

About half of all statutory rapists were not rearrested for any type of crime after their release. Of the 221 who were, 16.6% were rearrested outside the State where they were released.

Table 20. Where child molesters and statutory rapists were rearrested for any new crime following release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	84.8	83.4
Another State	15.2	16.6
Total rearrested for any new crime	1,693	221

Note: The 1,693 rearrested child molesters were released in 15 States, but table percentages are based on 14 States. The 221 rearrested statutory rapists were released in 11 States, but table percentages are based on 10 States.

Rearrest and reconviction

All sex offenders

Based on official arrest records, 517 of the 9,691 released sex offenders (5.3%) were rearrested for a new sex crime within the first 3 years following their release (table 21). The new sex crimes for which these 517 men were arrested were forcible rapes and sexual assaults. For virtually all of the 517, the most serious sex crime for which they were rearrested was a felony. Their victims were children and adults. The study cannot say what percentage were children and what percentage were adults because arrest files did not record the victim's age.

Of the total 9,691 released sex, 3.5% (339 of the 9,691) were reconvicted for a sex crime (a forcible rape or a sexual assault) within 3 years.

Sex offenders compared to non-sex offenders

The 15 States in this study released a total of 272,111 prisoners in 1994. The 9,691 released sex offenders made up less than 4% of that total. Of the remaining 262,420 non-sex offenders, 3,328 (1.3%) were rearrested for a new sex crime within 3 years (not shown in table). By comparison, the 5.3% rearrest rate for the 9,691 released sex offenders was 4 times higher.

Assuming that the 517 sex offenders who were rearrested for another sex crime each victimized no more than one victim, the number of sex crimes they committed after their prison release totaled 517. Assuming that the 3,328 non-sex offenders rearrested for a sex crime after their release also victimized one victim each, the number of sex crimes they committed was 3,328. The combined total number of sex crimes is 3,845 (517 plus 3,328 = 3,845). Released sex offenders accounted for 13% and released non-sex offenders accounted for 87% of the 3,845 sex crimes committed by all the prisoners released in 1994 (517 / 3,845 = 13% and 3,328 / 3,845 = 87%).

Rapists and sexual assaulters

Of the 3,115 rapists, 5.0% (155 men) had a new arrest for a sex crime (either a sexual assault or another forcible rape) after being released. Of the 6,576 released sexual assaulters, 5.5% (362 men) were rearrested for a new sex crime (either a forcible rape or another sexual assault).

A total of 100 released rapists were reconvicted for a sex crime. The 100 men were 3.2% of the 3,115 rapists released in 1994. Among the 6,576 released sexual assaulters, 3.7% (243 men) were reconvicted for a sex crime.

Child molesters and statutory rapists

After their release, 5.1% (221 men) of the child molesters and 5.0% (22 men) of the statutory rapists were rearrested for a new sex crime (table 22). Not all of the new sex crimes were against children. The new sex crimes were forcible rapes and various types of sexual assaults.

Following their release, 3.5% (150 men) of the 4,295 released child molesters were convicted for a new sex crime against a child or an adult. The sex crime reconviction rate for the 443 statutory rapists was 3.6% (16 reconvicted men).

Table 21. Of sex offenders released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime, by type of sex offender

	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years	5.3%	5.0%	5.5%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.2%	3.7%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

Table 22. Of child molesters and statutory rapists released from prison in 1994, percent rearrested and percent reconvicted for any new sex crime

	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years	5.1%	5.0%
Percent reconvicted for any new sex crime within 3 years*	3.5%	3.6%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*Because of missing data, prisoners released in Ohio were excluded from the calculation of percent reconvicted. Due to data quality concerns, calculation of percent reconvicted excluded Texas prisoners classified as "other type of release."

Time to rearrest

All sex offenders

Within 6 months following their release, 1.4% of the 9,691 men were rearrested for a new sex crime (table 23). Within 1 year the cumulative total grew to 2.1% rearrested. By the end of the 3-year followup period, altogether 5.3% had been rearrested for another sex crime. The first year was the period when 40% of the new sex crimes were committed (since 2.1% / 5.3% = 40%).

Rapists and sexual assaulters

The first year following release accounted for 40% of the new sex crimes committed by both released rapists (since 2.0% / 5.0% = 40%) and released sexual assaulters (since 2.2% / 5.5% = 40%).

Child molesters and statutory rapists

For child molesters and statutory rapists, the first year following their release was the period when the largest number of recidivists were rearrested. Similar to rapists and sexual assaulters, about 40% of the arrests for new sex crimes committed by child molesters and statutory rapists occurred during the first year (table 24).

Demographic characteristics

All sex offenders

Race Among sex offenders released from prison in 1994, black men (5.6%) and white men (5.3%) were about equally likely to be rearrested for another sex crime (table 25).

Hispanic origin Among released sex offenders, non-Hispanics were more likely to be rearrested for a new sex offense (6.4%) than Hispanics (4.1%). One reason for the lower rearrest rate for Hispanics may be that some were deported immediately following their release.

Age Recidivism studies typically find that, the older the prisoner when released, the lower the rate of recidivism. Results reported here on released sex offenders did not follow the familiar pattern. While the lowest rate of rearrest for a sex crime (3.3%) did belong to the oldest sex offenders (those age 45 or older), other comparisons between older and younger prisoners did not consistently show older prisoners' having the lower rearrest rate.

Table 23. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and time after release

Time after 1994 release	Cumulative percent rearrested for any new sex crime within specified time: All	Rapists	Sexual assaulters
6 months	1.4%	1.3%	1.4%
1 year	2.1	2.0	2.2
2 years	3.9	3.7	4.1
3 years	5.3	5.0	5.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.

Table 24. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by time after release

Time after 1994 release	Cumulative percent rearrested for any new sex crime within specified time: Child molesters	Statutory rapists
6 months	1.3%	1.4%
1 year	2.2	2.0
2 years	3.9	3.2
3 years	5.1	5.0
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

Table 25. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by demographic characteristics of released prisoners

Prisoner characteristic	Percent of released sex offenders rearrested for any new sex crime within 3 years
Total released	5.3%
Race	
White	5.3%
Black	5.6
Other	4.4
Hispanic origin	
Hispanic	4.1%
Non-Hispanic	6.4
Age at release	
18-24	6.1%
25-29	5.5
30-34	5.8
35-39	6.1
40-44	5.6
45 or older	3.3
Total released	9,691

Note: The 9,691 sex offenders were released in 15 States. Data identifying race were reported for 98.5% of 9,691 released sex offenders; Hispanic origin for 82.5%; age for virtually 100%.

Time served before 1994 release

All sex offenders

The study compared recidivism rates among prisoners who served different lengths of time before being released from prison in 1994. No clear association was found between how long they were in prison and their recidivism rate (table 26). For example, those sex offenders who served from 7 to 12 months were rearrested for a new sex crime at a higher rate (5.2%) than those who served slightly less time (3.8%), which seemed to suggest that serving more time raised the recidivism rate. But other comparisons suggested the opposite. Compared to men who were confined for 7 to 12 months (5.2% rearrest rate), those who served more time (13 to 18 months) were less likely to be rearrested for any new sex crime (4.1%).

Prior arrest for any type of crime

All sex offenders

Of the 9,691 released sex offenders, 21.5% (2,084 of the 9,691) had only 1 arrest in their criminal record up to the time they were released (table 27). That one arrest was the arrest for the sex crime that resulted in a prison term. The remaining 78.5% (7,607 men) had the arrest for their imprisonment offense in their record, and they also had at least 1 earlier arrest for some type of crime. For example, some had an earlier arrest for theft or a drug offense. Most of them did not have an earlier arrest for a sex crime.

Compared to the 2,084 sex offenders with the 1 arrest in their criminal record, the 7,607 with a longer prior arrest record were more likely to be rearrested for another sex crime (5.9% compared to 3.3%).

Rapists and sexual assaulters

Of the 3,115 released rapists, the majority (83.1% of the 3,115, or 2,589 men) had more than 1 arrest (for any type of crime) prior to release from prison in 1994. Of these 2,589 released rapists, 5.4% (140) had a new arrest for a sex crime. The rate was lower (3.0%) for the 526 released rapists with no prior arrest.

Results for sexual assaulters followed the same pattern: the 5,017 sexual assaulters with more than 1 prior arrest (76.3% of 6,576 is 5,017) were more likely to be rearrested for a new sex crime (6.2%) than the 1,559 with just the 1 prior arrest (23.7% of 6,576 is 1,559).

Table 26. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by time served before being released

Time served in prison before 1994 release	Percent of released sex offenders rearrested for any new sex crime within 3 years
6 months or less	3.8%
7-12	5.2
13-18	4.1
19-24	6.4
25-30	5.2
31-36	3.3
37-60	5.2
61 months or more	4.9
Total first releases	6,470

Note: The 6,470 sex offenders were released in 13 States. Figures are based on first releases only. First releases include only those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release.

Table 27. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and prior arrest for any type of crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years			
Total	5.3%	5.0%	5.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	3.3	3.0	3.4
Not their first arrest for any type of crime	5.9	5.4	6.2
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any type of crime	21.5	16.9	23.7
Not their first arrest for any type of crime	78.5	83.1	76.3
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any type of crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Child molesters and statutory rapists

Released child molesters with more than one prior arrest were more likely than those with only one arrest in their criminal record to be rearrested for a new sex crime (5.7% compared to 3.2%) (table 28). The same was true of statutory rapists (5.3% compared to 3.5%).

Number of prior arrests for any type of crime

All sex offenders

The more arrests (for any type of crime) the sex offender had in his criminal record, the more likely he was to be rearrested for another sex crime after his release from prison (table 29). Sex offenders with one prior arrest (the arrest for the sex crime for which they had been imprisoned) had the lowest rate, about 3%; those with 2 or 3 prior arrests for some type of crime, 4%; 4 to 6 prior arrests, 6%; 7 to 10 prior arrests, 7%; and 11 to 15 prior arrests, 8%.

Table 28. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by prior arrest for any type of crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years		
Total	5.1%	5.0%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any type of crime	3.2	3.5
Not their first arrest for any type of crime	5.7	5.3
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any type of crime	23.2	19.4
Not their first arrest for any type of crime	76.8	80.6
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."

*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any type of crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Table 29. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by number of prior arrests for any type of crime

Number of adult arrests prior to 1994 release	Percent rearrested for any new sex crime within 3 years
All sex offenders	5.3%
1 prior arrest for any type of crime	3.3
2	4.3
3	4.4
4	5.8
5	6.3
6	6.1
7-10	6.9
11-15	7.8
16 or more	7.4
	Percent of released prisoners
All sex offenders	100%
1 prior arrest for any type of crime	21.5
2	16.0
3	11.9
4	9.0
5	7.2
6	6.3
7-10	14.4
11-15	7.9
16 or more	5.8
Total released	9,691

Note: The 9,691 sex offenders were released in 15 States. By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. In this table, that arrest is counted as one prior arrest.

Prior arrest for a sex crime

All sex offenders

Prior to their release in 1994, 2,762 of the sex offenders (28.5% of the total 9,691) had 2 or more arrests for a sex offense in their criminal record: the arrest for the sex offense that resulted in their imprisonment, plus at least 1 earlier arrest for a sex crime (table 30). For the remaining 6,929 (71.5% of the total 9,691), their only prior arrest for a sex crime was the arrest that brought them into prison. (Any other prior arrests the 6,929 may have had were for non-sex crimes.) Following their release, the 2,762 with more than 1 sex crime in their criminal background were about twice as likely to be rearrested for another sex crime (8.3%) as the 6,929 with a single prior arrest (4.2%).

Rapists and sexual assaulters

Rapists (4.0%) and sexual assaulters (4.2%) with one prior arrest for a sex crime were less likely to be rearrested for another sex crime than rapists (7.4%) and sexual assaulters (8.7%) who had been arrested two or more times for a sex crime prior to release from prison in 1994.

Child molesters and statutory rapists

By definition, all 4,295 child molesters had been arrested for a sex offense at least once prior to their release in 1994 — the sex offense that landed them in prison. For 3,049 of them (71% of 4,295), that arrest was their only prior arrest for a sex offense (table 31). The remaining 1,246 child molesters (29% of 4,295) had at least 2 prior arrests for a sex crime: the arrest for their imprisonment offense plus at least 1 other prior arrest for a sex offense (not necessarily one against a child). Of the 1,246 child molesters with multiple sex crimes in their past, 8.4% (105 of the 1,246) were rearrested for another sex crime (not necessarily another sex crime against a child), or more than double the 3.8% rate for the 3,049 released child molesters with just 1 prior arrest for a sex crime.

Similar results were found for released statutory rapists. Those with a more extensive record of prior arrests for sex crimes were more likely to be rearrested for another sex crime (8.8%) than those with just one past arrest (2.6%).

Table 30. Of sex offenders released from prison in 1994, percent rearrested for any new sex crime, by type of sex offender and prior arrest for any sex crime

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for any new sex crime within 3 years			
Total	5.3%	5.0%	5.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any sex crime	4.2	4.0	4.2
Not their first arrest for any sex crime	8.3	7.4	8.7
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for any sex crime	71.5	71.3	71.6
Not their first arrest for any sex crime	28.5	28.7	28.4
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any sex crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Table 31. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for any new sex crime, by prior arrest for any sex crime

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for any new sex crime within 3 years		
Total	5.1%	5.0%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any sex crime	3.8	2.6
Not their first arrest for any sex crime	8.4	8.8
Percent of released prisoners		
Total	100%	100%
The arrest responsible for their being in prison in 1994 was — *		
Their first arrest for any sex crime	71.0	61.6
Not their first arrest for any sex crime	29.0	38.4
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists, 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for any sex crime" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

State where rearrested for a sex crime

When sex offenders were arrested for new sex crimes after their release, the new arrest typically occurred in the same State that released them. Those arrests are referred to as "in-State" arrests. When released sex offenders left the State where they were incarcerated and were charged by police with new sex crimes, those arrests are referred to as "out-of-State" arrests.

All sex offenders

Of the 9,691 released sex offenders, 517 were rearrested for a new sex crime within 3 years. Most of those sex crime arrests (85.2% of the 517, or 440 men) were in the same State that released them (table 32). Seventy-seven of them (14.8% of the 517) were arrests in a different State.

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 3,328 were rearrested for a new sex crime within 3 years (not shown in table). Of the 3,328 non-sex offenders arrested for a new sex crime, an estimated 10% were men rearrested outside the State that released them. The 15% figure for released sex offenders was high by comparison (table 32).

Rapists and sexual assaulters

A total of 155 released rapists and 362 released sexual assaulters were rearrested for a new sex crime within the 3-year followup period. In-State arrests for new sex crimes accounted for 85% of the rearrested rapists and 85% of the rearrested sexual assaulters. Out-of-State arrests accounted for the rest.

Child molesters and statutory rapists

A total of 221 child molesters were rearrested for a new sex crime (not necessarily against a child) after their release (table 33). Among the 221 were 191 (86.6%) whose new sex crime arrest was in the same State that released them in 1994. For the remaining 13.4%, the arrest was elsewhere.

Of all statutory rapists, 5% (22) were rearrested for a new sex crime after their release. Of these 22, none had the new arrest outside the State that released them.

Table 32. Where sex offenders were rearrested for a new sex crime following their release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	85.2	85.2	85.2
Another State	14.8	14.8	14.8
Total rearrested for a new sex crime	517	155	362

Note: The 517 rearrested sex offenders were released in 15 States, but table percentages are based on 14 States.

Table 33. Where child molesters and statutory rapists were rearrested for a new sex crime following their release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	86.6	100
Another State	13.4	0
Total rearrested for a new sex crime	221	22

Note: The 221 rearrested child molesters were released in 14 States, but table percentages are based on 13 States. The 22 rearrested statutory rapists were released in 6 States, but table percentages are based on 5 States.

Undercounts of sex crimes against children

This section documents percentages of men who were arrested for a sex crime against a child after their release from prison in 1994. To some unknown extent, these recidivism rates undercount actual rearrest rates. That is because the arrest records that the study used to document sex crime arrests did not always contain enough information to identify those sex crime arrests in which the victim of the crime was a child. Some sense of the potential size of the undercount can be gained by comparing rearrests for any sex crime and rearrests for any sex crime against a child. Rates of rearrest for a sex crime (tables 21 and 22) are from 2 to 3½ percentage points higher than rates of rearrest for a sex crime against a child (tables 34 and 35), suggesting that rates of rearrest for a sex crime against a child could be, at most, a few percentage points below actual rates.

No data on precise ages of molested children

This section also documents the ages of the children that the men were alleged to have molested after their release from prison. Sex crime statutes contained in the arrest records of the released prisoners were used to obtain ages. The first step was to identify those sex crime statutes that were applicable just to children. Among those that were, some were found to apply just to children whose age fell within a certain range (for example, under 12, or 13 to 15, or 16 to 17). Those statutes applicable to children within specified age ranges became the source of information on the approximate ages of the allegedly molested children. Information on precise ages could not be determined because statutes applicable just to children of a specific age (for example, just to 12-year-olds, or just to age 15-year-olds) do not exist.

Rearrest

All sex offenders

Following their release in 1994, 209 of the total 9,691 released sex offenders (2.2%) were rearrested for a sex offense against a child (table 34). For virtually all 209, the rearrest offense was a felony. For the reason given earlier, the 2.2% figure undercounts the percentage rearrested for a sex offense against a child. It seems unlikely that the correct figure could be as high as 5.3% (table 21), which is the percentage rearrested for a sex crime against a person of any age. The only way it could be that high is if none of the sex crime arrests after release were crimes in which the victim was an adult, an unlikely possibility. The more likely possibility is that the 2.2% figure undercounts the rate by a maximum of 1 or 2 percentage points.

An estimated 76% of the children allegedly molested by the 209 men after their prison release were age 13 or younger, 12% were 14- or 15-years-old, and the remaining 12% were 16- or 17-years-old.

Sex offenders compared to non-sex offenders

Prisons in the 15 States in the study released 272,111 prisoners altogether in 1994, 9,691 of whom were the sex offenders in this report. As previously stated, 2.2% of the 9,691 sex offenders were rearrested for a child sex crime after their release. That rate is high compared to the rate for the remaining 262,420 non-sex offenders. Of the 262,420 non-sex offenders, less than half of 1 percent (1,042 of the 262,420) were rearrested for a sex offense against a child within the 3-year followup period (not shown in table).

Since each of the 1,042 was charged at arrest with molesting at least 1 child, the total number they allegedly molested was conservatively estimated at 1,042. Of the conservatively estimated 1,042 children, 65% were age 13 or younger, 11% were 14- or 15-years-old, and 24% were 16- or 17-years-old (not shown in table). (These percentages were based on the 554 cases out of the 1,042 in which the approximate age of the child could be determined.)

Table 34. Of sex offenders released from prison in 1994, percent rearrested for a sex crime against a child, and percent of their alleged victims, by age of victim and type of sex offender

	Percent rearrested for a sex crime against a child within 3 years		
	All	Rapists	Sexual assaulters
Total	2.2%	1.4%	2.5%
Number released	9,691	3,115	6,576
Age of child that sex offender was charged with molesting after release	Percent of allegedly molested children		
13 or younger	76.2%	89.3%	72.3%
14-15	11.5	0.0*	14.9
16-17	12.3	10.7*	12.8
Number of molested children	209	44	165

Note: The 9,691 sex offenders were released in 15 States. The approximate ages of the children allegedly molested by the 209 prisoners after their release were available for 58.4% of the 209. "Number of molested children" was set to equal the number of released sex offenders rearrested for child molesting.
*Percentage based on 10 or fewer cases.

Assuming that the 209 sex offenders who were rearrested for a sex crime against a child each victimized no more than one child, the number of sex crimes they committed against children after their prison release totaled 209. Assuming that the 1,042 non-sex offenders rearrested for a sex crime against a child after their release also victimized only one child, the number of sex crimes against a child that they committed was 1,042. The combined total number of sex crimes is 1,251 (209 plus 1,042 = 1,251). Released sex offenders accounted for 17% and released non-sex offenders accounted for 83% of the 1,251 sex crimes against children committed by all the prisoners released in 1994 (209 / 1,251 = 17% and 1,042 / 1,251 = 83%).

Rapists and sexual assaulters

Following their 1994 release, 1.4% of the 3,115 rapists (44 men) and 2.5% of the 6,576 sexual assaulters (165 men) were rearrested for molesting a child (table 34).

Child molesters and statutory rapists

Within 3 years following their release from prison in 1994, 141 (3.3%) of the released 4,295 child molesters and 11 (2.5%) of the 443 released statutory rapists were rearrested for molesting another child (table 35). For the reasons outlined earlier, these percentages undercount actual rearrest rates by a few percentage points at most.

Each of the 141 released molesters rearrested for repeating their crime represented at least 1 child victim. Of the conservatively estimated 141 children allegedly molested by released child molesters, 79% were age 13 or younger, 9% were 14 or 15 years of age, and 12% were ages 16 or 17.

Table 35. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for a sex crime against a child, and percent of their alleged victims, by age of victim

	Percent rearrested for a sex crime against a child within 3 years	
	Child molesters	Statutory rapists
Total	3.3%	2.5%
Number released	4,295	443
Age of child that sex offender was charged with molesting after release	Percent of allegedly molested children	
13 or younger	79.2%	30.0*%
14-15	9.1	10.0*
16-17	11.7	60.0*
Number of molested children	141	11

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." The approximate ages of the children allegedly molested by the 141 prisoners after their release were available for 54.6% of the 141. "Number of molested children" was set to equal the number of released sex offenders rearrested for child molesting.
*Percentage based on 10 or fewer cases.

Prior arrest for a sex crime against a child

All sex offenders

After their 1994 release from prison, sex offenders with a prior arrest for child molesting were more likely to be arrested for child molesting (6.4%) than those who had no arrest record for sex with a child (1.7%) (table 36).

Table 36. Of sex offenders released from prison in 1994, percent rearrested for a sex crime against a child, by prior arrest for a sex crime against a child and type of sex offender

Arrest prior to 1994 release	All	Rapists	Sexual assaulters
Percent rearrested for a sex crime against a child within 3 years			
Total	2.2%	1.4%	2.5%
The arrest responsible for their being in prison in 1994 was —*			
Their first arrest for a sex crime against a child	1.7	1.3	1.9
Not their first arrest for a sex crime against a child	6.4	4.0	6.9
Percent of released prisoners			
Total	100%	100%	100%
The arrest responsible for their being in prison in 1994 was — *			
Their first arrest for a sex crime against a child	89.7	94.3	87.5
Not their first arrest for a sex crime against a child	10.3	5.7	12.5
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States.
*By definition, all sex offenders had at least 1 arrest prior to their release: namely, the arrest responsible for their being in prison in 1994. "First arrest for a sex crime against a child" pertains exclusively to those released prisoners whose first arrest was the sex offense arrest responsible for their being in prison in 1994.

Rapists and sexual assaulters

After being released in 1994, 4.0% of rapists with a prior arrest record for child molesting and 1.3% of those without were arrested for child molesting. The same pattern — having a history of alleged child molesting was associated with a greater likelihood of arrest for child molesting — was found for sexual assaulters. Those with a prior arrest had a 6.9% rate; those without, 1.9%.

Child molesters and statutory rapists

The 4,295 released child molesters fell into 2 categories: 1) 3,509 (81.7% of the 4,295) whose criminal record prior to their 1994 release contained no more than 1 arrest for a sex offense against a child (this was the offense for which they were imprisoned); and 2) 786 (18.3%) whose record showed the arrest for their imprisonment offense plus at least one earlier arrest for a sex offense against a child (table 37). After release, 7.3% of the 786 and 2.4% of the 3,509 were rearrested for molesting another child, indicating that child molesters with multiple arrests for child molesting in their record posed a greater risk of repeating their crime than their counterparts.

Similarly, the 443 statutory rapists consisted of —
- 356 (80.4%) whose first arrest for a sex offense against a child was the arrest that resulted in their current imprisonment
- 87 (19.6%) with more than 1 prior arrest for a sex offense against a child.

The 87 were more likely to be rearrested for child molesting (6.9%) than the 356 (1.4%).

Molester's and child's ages at time of imprisonment offense

Child molesters

The released child molesters were all men who were arrested, convicted, and

Table 37. Of child molesters and statutory rapists released from prison in 1994, percent rearrested for a sex crime against a child, by prior arrest for a sex crime against a child

Arrest prior to 1994 release	Child molesters	Statutory rapists
Percent rearrested for a sex crime against a child within 3 years	3.3%	2.5%
The arrest responsible for their being in prison in 1994 was —[a]		
Their first arrest for a sex crime against a child	2.4	1.4
Not their first arrest for a sex crime against a child	7.3	6.9
Percent of released prisoners	100%	100%
The arrest responsible for their being in prison in 1994 was —[a]		
Their first arrest for a sex crime against a child	81.7	80.4
Not their first arrest for a sex crime against a child	18.3	19.6
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters."
[a]By definition, all sex offenders had at least 1 arrest prior to their release the arrest responsible for their being in prison in 1994. "First arrest for a sex crime against a child" pertains exclusively to those released prisoners whose first arrest was responsible for their being in prison in 1994.

Table 38. Among child molesters released from prison in 1994, the molester's age when he committed the crime that resulted in his imprisonment, the child's age, and percent rearrested for a sex crime against a child

Age characteristic	Percent of total	Percent of released child molesters rearrested for a sex crime against a child within 3 years
Child molester's age when he committed the sex crime for which imprisoned[a]		
18-24	19.7%	4.1%
25-29	17.4	3.1
30-34	18.7	3.3
35-39	16.3	1.2
40-44	11.5	2.8
45 or older	16.4	3.0
Age of child he was imprisoned for molesting[b]		
13 or younger	60.3%	2.8%
14-15	30.5	3.7
16-17	9.2	1.2
How much older he was than the child he was imprisoned for molesting		
Up to 5 years older	3.9%	4.9*%
5 to 9 years older	13.6	3.6
10 to 19 years older	34.1	3.2
20 or more years older	48.4	2.5
Total first releases	3,104	3,104

Note: The 3,104 child molesters were released in 13 States. Figures are based on first releases only, those offenders leaving prison for the first time since beginning their sentence. First releases exclude those who left prison in 1994 but who had previously been released under the same sentence and had returned to prison for violating the conditions of release. Data identifying the child molester's age were reported for 100% of the released child molesters. Data identifying the approximate age of the child were reported for 88.1%.
[a]The molester's age at the time of the crime for which imprisoned was estimated by subtracting 6 months (the approximate average time from arrest to sentencing) from his age at admission.
[b]The approximate age of the child "he was imprisoned for molesting" was usually obtained from the State statute the molester was convicted of violating.
*Percentage based on 10 or fewer cases.

sentenced to prison for a sex crime against a child. At the time they committed their imprisonment offense, most (62.9%) were age 30 and older, and most (60.3%) molested a child who was age 13 or younger (table 38). Some of the victims were below age 7. Nearly half of the men (48.4%) were 20 years or more older than the child they were imprisoned for molesting.

Among the men who were in prison for molesting a child age 13 or younger and who were released in 1994 for that crime, 2.8% were subsequently arrested for molesting another child. Of those whose imprisonment offense was against a 14- or 15-year-old, 3.7% had a new arrest for child molesting after their release. Of the men who were in prison for molesting a 16- or 17-year-old, 1.2% were arrested by police for molesting another child after leaving prison in 1994.

Among the men who were 20 years or more older than the child they were imprisoned for molesting, 2.5% were rearrested for another sex offense against a child within the first 3 years following their release. That is a lower rate than the 3.2% rate for men who were 10 to 19 years older than the child victim in their imprisonment offense, and compared to the 3.6% for those 5 to 9 years older than the victim in their imprisonment offense.

State where rearrested for a sex crime against a child

When sex offenders were arrested for new sex crimes against children after their release, the new arrest typically occurred in the same State that released them. Those arrests are referred to as "in-State" arrests. When arrests occurred in a different State, they are referred to as "out-of-State."

All sex offenders

Of the 9,691 sex offenders, 209 were rearrested for child molesting after their release from prison in 1994 (table 39). In 180 cases (86.3%), the alleged crime took place in the State that released him. In the 29 others (13.7%), it occurred elsewhere.

Sex offenders compared to non-sex offenders

The 15 States in this study released 262,420 non-sex offenders in 1994, of whom 1,042 were rearrested for a sex crime against a child (not shown in table). Of the 1,042 arrests, 11% were out-of-State rearrests. The comparable figure for released sex offenders was higher: 14% (table 39).

Rapists and sexual assaulters

Forty-four released rapists and 165 released sexual assaulters were rearrested for a sex crime against a child within 3 years. Out-of-State arrests for child molesting accounted for 13.5% of the 44 rearrested rapists and 13.7% of the 165 rearrested sexual assaulters.

Child molesters and statutory rapists

Police arrested 141 of the 4,295 released child molesters for repeating their crime (table 40). For 126 of them (89.2%), the new arrest for child molesting was in the same State that released them. For 15 (10.8%), the new charges for child molesting were filed in a different State.

Of the 443 statutory rapists released from prison in 1994, 11 were rearrested for child molesting. All 11 of the arrests were in the same State that released the men.

Table 39. Where sex offenders were rearrested for a sex crime against a child following their release from prison in 1994, by type of sex offender

State where rearrested within 3 years	Percent of rearrested prisoners		
	All	Rapists	Sexual assaulters
Total	100%	100%	100%
Same State where released	86.3	86.5	86.3
Another State	13.7	13.5	13.7
Total rearrested for a new sex crime against a child	209	44	165

Note: The 209 rearrested sex offenders were released in 10 States, but table percentages are based on 9 States.

Table 40. Where child molesters and statutory rapists were rearrested for a sex crime against a child following their release from prison in 1994

State where rearrested within 3 years	Percent of rearrested prisoners	
	Child molesters	Statutory rapists
Total	100%	100%
Same State where released	89.2	100
Another State	10.8	0
Total rearrested for a new sex crime against a child	141	11

Note: The 141 rearrested child molesters were released in 9 States, but table percentages are based on 8 States. The 11 rearrested statutory rapists were released in 3 States, but table percentages are based on 2 States.

Rearrest for other types of crime

All sex offenders

Of the 9,691 male sex offenders released from prison in 1994 —

- 43% (4,163 men) were rearrested for a crime of any kind (table 41)
- 5.3% (517 men) were rearrested for a sex offense
- 17.1% (1,658 men) were rearrested for a violent crime
- 13.3% (1,285 men) were rearrested for a property crime of some kind.

Of the 9,691 released men, 168 (1.7%) were rearrested for rape and 396 (4.1%) were rearrested for sexual assault. The 168 rearrested for rape plus the 396 rearrested for sexual assault totals 564, which is 47 greater than the total 517 who were rearrested for a sex crime. The reason is that 47 men were rearrested for both rape and sexual assault.

The category of violent crime for which a prisoner was most likely to be rearrested was assault (8.8%, or 848 of the 9,691); the category least likely was homicide (0.5%, or 45 of the 9,691 men).

Just over 1 in 5 sex offenders (2,045 out of 9,691) were rearrested for a public-order offense, such as a parole violation or traffic offense.

Rapists and sexual assaulters

Among the 3,115 released rapists —

- 46% (1,432) were rearrested for a crime of any kind
- 18.7% (582) were rearrested for a violent crime
- 0.7% (22) were rearrested for homicide
- 14.7% (459) were rearrested for a property offense.

A relatively small percentage of rapists (2.5%, or 78 of the 3,115) were charged with repeating the crime for which they were imprisoned.

Among the 6,576 released sexual assaulters —

- 41.5% (2,731) were rearrested for a crime of any kind
- 16.4% (1,076) were rearrested for a violent crime
- 0.3% (23) were rearrested for killing someone
- 12.6% (826) were rearrested for a property offense.

Nearly 1 in 20 released sexual assaulters (4.7%, or 308 of the 6,576) were charged with committing the same type of crime for which had just served time in prison.

Table 41. Rearrest rate of sex offenders released from prison in 1994, by type of sex offender and charge at rearrest

	Percent rearrested for specified offense within 3 years		
Rearrest charge	All	Rapists	Sexual assaulters
All charges[a]	43.0%	46.0%	41.5%
Violent offenses[b]	17.1%	18.7%	16.4%
Homicide[c]	0.5	0.7	0.3
Sex offense[d]	5.3	5.0	5.5
Rape	1.7	2.5	1.4
Sexual assault	4.1	2.8	4.7
Robbery	2.7	3.9	2.1
Assault	8.8	8.7	8.8
Property offenses[e]	13.3%	14.7%	12.6%
Burglary	3.8	4.4	3.5
Larceny/theft	5.7	6.1	5.6
Motor vehicle theft	1.7	2.3	1.4
Fraud	2.1	1.8	2.2
Drug offenses[f]	10.0%	11.2%	9.4%
Public-order offenses[g]	21.1%	20.4%	21.4%
Other offenses	5.9%	5.0%	6.3%
Total released	9,691	3,115	6,576

Note: The 9,691 sex offenders were released in 15 States. Detail may not add to totals because persons may be rearrested for more than one type of charge.
[a]All offenses include any offense type listed in footnotes *b* through *f* plus "other" and "unknown" offenses.
[b]Total violent offenses include homicide, kidnaping, rape, other sexual assault, robbery, assaults, and other violence.
[c]Homicide includes murder, voluntary manslaughter, vehicular manslaughter, negligent manslaughter, nonnegligent manslaughter, unspecified manslaughter, and unspecified homicide.
[d]Includes both rape and sexual assault.
[e]Total property offenses include burglary, larceny, motor vehicle theft, fraud, forgery, embezzlement, arson, stolen property, and other forms of property offenses.
[f]Drug offenses include drug trafficking, drug possession, and other forms of drug offenses.
[g]Public-order offenses include traffic offenses, weapon offenses, probation and parole violations, court-related offenses, disorderly conduct, and other such offenses.

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Child molesters and statutory rapists

Of the 4,295 child molesters released from prison in 1994 —

- 39.4% (1,693) were rearrested for a crime of any kind (table 42)
- 0.4% (17) were rearrested for intentionally or negligently killing someone.

Child molesters were less likely to be rearrested for a property crime (10.6%, 456 of 4,295) than a violent crime (14.1%, 607 of 4,295).

Of the 443 statutory rapists released in 1994 —

- 49.9% (221) were rearrested for some new crime
- 0.7% (3) were rearrested for homicide
- 22.6% (100) were rearrested for a property crime
- 21.2% (94) were rearrested for a violent crime.

Table 42. Rearrest rate of child molesters and statutory rapists released from prison in 1994, by charge at rearrest

Rearrest charge	Percent rearrested for specified offense within 3 years: Child molesters	Statutory rapists
All charges[a]	39.4%	49.9%
Violent offenses[b]	14.1%	21.2%
Homicide[c]	0.4	0.7
Sex offense[d]	5.1	5.0
Rape	1.3	1.6
Sexual assault	4.4	3.6
Robbery	1.7	4.3
Assault	7.1	12.6
Property offenses[e]	10.6%	22.6%
Burglary	2.8	4.3
Larceny/theft	4.6	10.8
Motor vehicle theft	1.5	3.8
Fraud	1.9	3.6
Drug offenses[f]	8.6%	12.0%
Public-order offenses[g]	20.0%	27.1%
Other offenses	7.8%	4.3%
Total released	4,295	443

Note: The 4,295 child molesters were released in 15 States; the 443 statutory rapists in 11 States. Because of overlapping definitions, all statutory rapists also appear under the column "child molesters." Detail may not add to totals because of rounding.
[a]All offenses include any offense type listed in footnotes *b* through *f* plus "other" and "unknown" offenses.
[b]Total violent offenses include homicide, kidnaping, rape, other sexual assault, robbery, assaults, and other violence.
[c]Homicide includes murder, voluntary manslaughter, vehicular manslaughter, negligent manslaughter, nonnegligent manslaughter, unspecified manslaughter, and unspecified homicide.
[d]Includes both rape and sexual assault.
[e]Total property offenses include burglary, larceny, motor vehicle theft, fraud, forgery, embezzlement, arson, stolen property, and other forms of property offenses.
[f]Drug offenses include drug trafficking, drug possession, and other forms of drug offenses.
[g]Public-order offenses include traffic offenses, weapon offenses, probation and parole violations, court-related offenses, disorderly conduct, and other such offenses.

Survey of State inmates

The 9,691 prisoners in this study were all men sentenced to prison for sex crimes. Characteristics of the victims of these sex crimes were largely unavailable for the study. For information on imprisoned sex offenders and their victims, data were drawn from a survey covering the approximately 73,000 male sex offenders in State prisons nationwide in 1997.

Of the 73,000 victims of their sex crimes —
- about 90% were female
- nearly 75% were white
- 89% were non-Hispanic
- 36% were below age 13
- altogether, 70% were under age 18.

Child victims of sex crimes were more likely than adult victims to be male (11% versus 3%). Whites made up 76% of child victims and 66% of adult victims.

The biggest difference between child victims and adult victims was their relationship to the man who committed the sex crime:

Among cases where the victim was under 18, the boy or girl was the prisoner's own child (16%), stepchild (16%), sibling or stepsibling (2%), or other relative (13%) in nearly half of all child victim cases (46%). Among cases where the victim was an adult, the victim was a relative less often (11%).

Among inmates who were in prison for a sex crime against a child, the child was the prisoner's own child or stepchild in a third of the cases. Seven percent of the inmates reported their child victims to have been strangers. Among adult victims, 34% were strangers to their attacker.

Characteristics of victims of rape or sexual assault, for which male inmates were serving a sentence in State prisons, 1997

	Percent of victims of rape or sexual assault		
		Victim age	
Victim characteristic	All	18 years or older	Under 18 years
Total	100%	100%	100%
Gender			
Male	8.8%	2.8%	11.1%
Female	91.2	97.2	88.9
Race			
White	73.2%	66.0%	76.4%
Black	22.8	30.2	19.4
Other	4.0	3.8	4.2
Hispanic origin			
Hispanic	11.3%	9.9%	12.1%
Non-Hispanic	88.7	90.1	87.9
Age			
12 or under	36.4%	--	51.6%
13-17	34.1	--	48.4
18-24	10.8	36.7%	--
25-34	11.2	37.9	--
35-34	7.0	23.8	--
55 or over	0.5	1.6	--
Victim was the prisoner's —			
Spouse	1.1%	3.8%	0%
Ex-spouse	0.6	2.0	0
Parent/stepparent	0.6	0.4	0.6
Own child	11.5	1.4	15.7
Stepchild	11.2	0.4	15.8
Sibling/stepsibling	1.3	0.4	1.7
Other relative	9.4	2.1	12.7
Boy/girlfriend	5.5	8.2	4.4
Ex-boy/girlfriend	1.1	2.0	0.8
Friend/ex-friend	22.7	24.8	22.0
Acquaintance/other	19.4	20.1	19.6
Stranger	15.6	34.4	6.7
Total estimated number	73,116	20,958	50,027

Note: Data are from the BJS Survey of Inmates in State Correctional Facilities, 1997. This table is based on 73,116 prisoners who reported having one victim in the crime for which they were sentenced to prison. (They accounted for approximately 84% of all incarcerated male sex offenders in 1997.) Data identifying victim's sex were reported for 99.8% of the 73,116 males incarcerated for sex crimes; victim's race were reported for 98.9%; Hispanic origin for 98.2%; victim's age for 97.1%; victim's relationship to prisoner for 98.3%. Detail may not sum to total due to missing data for age of victim.
--Not applicable.

3-year followup period

For analytic purposes, "3 years" was defined as 1,096 days from the day of release from prison. Any rearrest, reconviction, or re-imprisonment occurring after 1,096 days from the 1994 release was not included. A conviction after 1,096 days was not counted even if it resulted from an arrest within the period.

Separating sex offenders into four types

The report gives statistics for four types of sex offenders. Separating sex offenders into the four types was done using information — in particular, the statute number for the imprisonment offense, the literal version of the statute, a numeric FBI code (called the "NCIC" code, short for "National Crime Information Center") indicating what the imprisonment offense was, and miscellaneous other information — available in the prison records on the 9,691 men. However, the prison records obtained for the study did not always contain all four pieces of information on the imprisonment offense. Moreover, the available offense information was not always detailed enough to reliably distinguish different types of sex offenders.

The process of sorting sex offenders into different types involved first creating the study's definitions of the four types, and then determining which State statute numbers, which literal versions of those statutes, and which NCIC codes conformed to the definitions. Each inmate was next classified into one of the types (or possibly into more than one type, since the four are not mutually exclusive) depending on whether the imprisonment offense information available on him fit the study's definition.

An obstacle to classifying sex offenders into types was that the labels "rape," "sexual assault," "child molestation," "statutory rape" were not widely used in State statutes, and when they were used they did not always conform to the study's definitions of them. In deciding which type of sex offender to classify the prisoner as, importance was attached not to the label the law gave to his conviction offense, but to how well the law's definition of the offense fit the study's definition of the type.

Sex offenders compared to non-sex offenders

In 1994, prisons in 15 States released 272,111 prisoners, representing two-thirds of all prisoners released in the United States that year. Among the 272,111 were 262,420 released prisoners whose imprisonment offense was not a sex offense. Non-sex offenders include inmates, both male and female, who were in prison for violent crimes (such as murder or robbery), property crimes (such as burglary or motor vehicle theft), drug crimes, and public order offenses. Like the 9,691 male sex offenders examined in this report, all non-sex offenders were serving prison terms of one year or more in State prison when they were released in 1994.

At various places, this report compares 9,691 released male sex offenders to 262,420 released non-sex offenders. While labeled "non-sex offenders," the 262,420 actually includes a small number- 87- who are sex offenders. The 87 are all the female sex offenders released from prisons in the 15 States in 1994.

Ages of molested and allegedly molested children

Information on the ages of molested children was needed for two calculations: 1) age of the child the released sex offender was sent to prison for molesting, and 2) age of the child allegedly molested by the released sex offender during the 3-year follow-up period. The most frequent source of both was a sex statute: either the sex statute the offender was imprisoned for violating, or the statute the released prisoner was charged with violating when he was rearrested for a sex crime. The former was obtained from the prison records assembled for the study; the latter, from the assembled arrest records.

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Because of these anomalies, the 129 were excluded from the calculation of "percent reconvicted for a sex crime."

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The aim of these rules was to count people, not events. The only tables in the report that do not follow the rule are tables 41 and 42.

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from data on first releases (for example, percent of sentence served), Michigan was excluded from all tables based on first releases.

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The 302,309 total released consisted of 10,546 released sex offenders plus 291,763 released non-sex offenders. The 38,624 sample consisted of 10,546 released sex offenders plus 28,078 released non-sex offenders. The number of sex offenders in the sample was the same as the number in the 302,309 total because all sex offenders released in 1994 in the 15 States were selected for the study, not a sample of them.

Because no sampling was used to select sex offenders, numbers and percentages in this report for sex offenders were not subject to sampling error. However, comparisons in the report between sex offenders and non-sex offenders were subject to sampling error because sampling was used to select non-sex offenders. Where sex offenders were compared to all non-sex offenders released in 1994, sampling error was taken into account. All differences discussed were statistically significant at the .05 level.

Not all 10,546 sex offenders in the sample were used in the report. To be in the report, the sex offender had to be male and meet all 4 of the following criteria:

1. A RAP sheet on the prisoner was found in the State criminal history repository.
2. The released prisoner was alive throughout the entire 3-year followup period. (This requirement resulted in 21 sex offenders' being excluded.)
3. The prisoner's sentence was greater than 1 year (missing sentences were treated as greater than 1 year).
4. The State department of corrections that released the prisoner in 1994 did not designate him as any of the following release types: release to custody/detainer/warrant, absent without leave, escape, transfer, administrative release, or release on appeal.

A total of 9,691 released male sex offenders met the selection criteria. The number of them released in each State is shown in the appendix table.

Other methodological details

To help the reader understand the percentages provided in the report, both the numerator and denominator were often given. In most cases, the reader could then reproduce the percentages. For example, the report indicates 38.6% (3,741) of the 9,691 sex offenders were returned to prison.

Appendix table. Number of sex offenders released from State prisons in 1994 and number selected for this report, by State

State	Sex offenders released from prison in 1994: Total	Sex offenders released from prison in 1994: Selected to be in this report
Total	10,546	9,691
Arizona	156	122
California	3,503	3,395
Delaware	53	45
Florida	1,053	965
Illinois	775	710
Maryland	277	243
Michigan	477	444
Minnesota	249	239
New Jersey	449	429
New York	799	692
North Carolina	508	441
Ohio	824	606
Oregon	452	408
Texas	708	692
Virginia	263	260

Note: "Total released" includes both male and female sex offenders; "Total selected to be in this report" includes only male sex offenders.

Using the 3,741 and the 9,691, the reader could exactly reproduce the results. However, the reader should be aware that in a few places, the calculated percentages will differ slightly from the percentages found in the report. This is due to rounding. For example, 43.0%, or 4,163, of the 9,691 sex offenders were rearrested; however, 4,163 / 9,691 is 42.96%, which was rounded to 43.0%.

Offense definitions and other methodological details are available in the BJS publication *Recidivism of Prisoners Released in 1994*, NCJ 193427, June 2002.

3-year followup period

For analytic purposes, "3 years" was defined as 1,096 days from the day of release from prison. Any rearrest, reconviction, or re-imprisonment occurring after 1,096 days from the 1994 release was not included. A conviction after 1,096 days was not counted even if it resulted from an arrest within the period.

Separating sex offenders into four types

The report gives statistics for four types of sex offenders. Separating sex offenders into the four types was done using information — in particular, the statute number for the imprisonment offense, the literal version of the statute, a numeric FBI code (called the "NCIC" code, short for "National Crime Information Center") indicating what the imprisonment offense was, and miscellaneous other information — available in the prison records on the 9,691 men. However, the prison records obtained for the study did not always contain all four pieces of information on the imprisonment offense. Moreover, the available offense information was not always detailed enough to reliably distinguish different types of sex offenders.

The process of sorting sex offenders into different types involved first creating the study's definitions of the four types, and then determining which State statute numbers, which literal versions of those statutes, and which NCIC codes conformed to the definitions. Each inmate was next classified into one of the types (or possibly into more than one type, since the four are not mutually exclusive) depending on whether the imprisonment offense information available on him fit the study's definition.

An obstacle to classifying sex offenders into types was that the labels "rape," "sexual assault," "child molestation," "statutory rape" were not widely used in State statutes, and when they were used they did not always conform to the study's definitions of them. In deciding which type of sex offender to classify the prisoner as, importance was attached not to the label the law gave to his conviction offense, but to how well the law's definition of the offense fit the study's definition of the type.

Sex offenders compared to non-sex offenders

In 1994, prisons in 15 States released 272,111 prisoners, representing two-thirds of all prisoners released in the United States that year. Among the 272,111 were 262,420 released prisoners whose imprisonment offense was not a sex offense. Non-sex offenders include inmates, both male and female, who were in prison for violent crimes (such as murder or robbery), property crimes (such as burglary or motor vehicle theft), drug crimes, and public order offenses. Like the 9,691 male sex offenders examined in this report, all non-sex offenders were serving prison terms of one year or more in State prison when they were released in 1994.

At various places, this report compares 9,691 released male sex offenders to 262,420 released non-sex offenders. While labeled "non-sex offenders," the 262,420 actually includes a small number- 87- who are sex offenders. The 87 are all the female sex offenders released from prisons in the 15 States in 1994.

Ages of molested and allegedly molested children

Information on the ages of molested children was needed for two calculations: 1) age of the child the released sex offender was sent to prison for molesting, and 2) age of the child allegedly molested by the released sex offender during the 3-year follow-up period. The most frequent source of both was a sex statute: either the sex statute the offender was imprisoned for violating, or the statute the released prisoner was charged with violating when he was rearrested for a sex crime. The former was obtained from the prison records assembled for the study; the latter, from the assembled arrest records.

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IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

MARTIN KOPF, Plaintiff, vs. JOE McMAHON, in his official capacity as, Kane County State's Attorney, BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, and KWAME RAOUL Attorney General, HAMPSHIRE POLICE Dept. Defendants,	Case No. 19 CH 883

Decision and Order

This Cause comes before the court for ruling on defendant's motion to dismiss. The court having heard argument from the parties, and having considered their briefs and the relevant law, now finds as follows:

Background

This case involves plaintiff's challenge to the Illinois Sex Offender Registration Act. (SORA) and related statutes. In 2003, plaintiff, a disabled veteran, was convicted of the offense of aggravated criminal sexual abuse. The offense involved a 15 year old minor, and plaintiff was sentenced to three years' probation, which he successfully completed. Although plaintiff was told he would only have to register as a sexual offender for ten years, he is classified as a child sex offender and sexual predator, and as such, he must register for life.

Plaintiff has diligently registered without incident since his conviction. He has also led a law-abiding life and now lives with his wife and two minor children at 724 Kathi Dr. Hampshire, Il. In 2017, plaintiff sought to purchase or build a home designed to accommodate his disabilities. He consulted the Illinois State Police's Sex Offender Response Team (I-SORT) mapping system to locate suitable sites that would comply with his SORA obligations. Based on his search he

determined that the Kathi Dr address was compliant. I-SORT initially confirmed the site was suitable but advised the plaintiff that he needed to check with local law enforcement. In November of 2017, plaintiff contacted the Hampshire police department, and was told that the Kathi Dr address was compliant. Based on this information, plaintiff constructed his home at 724 Kathi Dr.

Plaintiff and his family moved into their new custom built home in August of 2018. In November of that year, the Hampshire police advised plaintiff of the existence of a "Day Care Home" on his block that was within 500 feet of his address, and that as a result, he would have to move. Plaintiff initially complied but found it difficult to secure regular SORA compliant housing. Eventually, in November of 2011, he filed this case and the court granted injunctive relief allowing plaintiff to return to his home on Kathi Dr. Plaintiff subsequently filed a six count amended complaint listing general challenges to the relevant statutes based on equal protection, void for vagueness, and his claim that the statutes create an unlawful irrebuttable presumption that the plaintiff is dangerous. The six enumerated counts are respectively: violation of the ex post facto clause, violations of the due process clause - procedurally and substantively, violation of the proportionate penalty clause, violation of the cruel and unusual punishments clause, and negligence.

Defendants now bring section 2-619 motions to dismiss addressing plaintiff's constitutional challenges and the negligence count.

SORA and Relevant Statutes

SORA is set out at 730 ILCS 150/1, et. sec. It defines sex offender and sexual predator, and imposes an obligation upon them to register and comply with the act. 720 ILCS 5/11-9.3 of the criminal code prohibits registered sex offenders from residing in certain areas. Specifically, paragraph (b-10) makes it unlawful for a child sex offender to knowingly reside within 500 feet of a "Day Care Home" The definition of "Day Care Home" is found in the Child Care Act at 225 ILCS 10/2.18. That section defines Day Care Homes as "family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household."

Analysis

Most of plaintiff's claims can be resolved easily. Particularly the negligence claim in count six. Plaintiff alleges that both the Illinois State Police and the Hampshire Police Department owed a duty to plaintiff to accurately inform him of SORA compliant home sites. He asserts that by not doing so they were negligent, thereby causing him to suffer damages.

Regardless of these claims, the State enjoys statutory sovereign immunity that defeat plaintiff's claim. Plaintiff's attempt to plead the special duty doctrine is of no consequence as the Illinois Supreme Court abolished it in 2016. See *Coleman v. East Joliet Fire Prot. Dist., 2016 IL 117952.* Therefore, this claim must fail.

The negligence claim against the Hampshire Police Department must also fail because the police department is not an entity subject to a suit for damages. The police are employed by the municipality, and any suit for damages would have to be brought against it. Even then, the municipality enjoys statutory immunity from suits that do not involve willful and wanton conduct.

Most of plaintiff's constitutional claims must also fail, as they have been rejected by prior courts in favor of the legislative schemes at issue. Furthermore, all statutes carry a strong presumption of constitutionality. *People v. Wright, 194 Ill. 2d 1, 24, (2000); People v. Maness, 191 Ill. 2d 478, 483, (2000).* To overcome this presumption, the party challenging the statute bears a heavy burden of clearly establishing its constitutional infirmities. *People v. Kimbrough, 163 Ill. 2d 231, 237, (1994).* Any reasonable construction, which affirms a statute's constitutionality, must be adopted, and any doubt regarding a statute's construction must be resolved in favor of the statute's validity. *Burger v. Lutheran General Hospital, 198 Ill. 2d 21, 32, (2001)*

Count I raises a challenge based on the ex post facto clause. However, the United States Court of Appeals for the Seventh Circuit conducted a thorough analysis of this issue in *Vasquez v. Foxx, 895 F.3d 515*, and found that SORA was neither retroactive nor penal, thus defeating the claim.

Count II asserts a procedural due process violation. However, this exact argument was rejected by the Court of Appeals *in People v. Avila-Briones, 2015 IL App (1st) 132221*. There the Court relied on a U.S. Supreme Court decision holding that a similar SORA statutory scheme did not violate procedural due process. *Connecticut Dep't of Pub. Safety v. Doe, 538 U.S. 1 (2003)*. Likewise, the Doe decision informed the 1st district court of appeals when it rejected a challenge based on alleged irrebuttable presumptions in SORA. *People v. Avila-Briones, 2015 IL App (1st) 132221. ¶¶ 91-92.*

Counts IV and V raise challenges base on alleged disproportionate penalties and cruel and unusual punishment. The court in *Avila-Briones* resolved these issues in favor of SORA as well.

The void for vagueness allegation also fails as our supreme court has already weighed in on this topic as well. *People v. Howard, 2017 IL 120443*

Substantive Due Process and the Equal Protection Clause

This court initially grated injunctive relief based on a finding that plaintiff's equal protection argument had merit. This court now finds that the SORA provisions at issue (specifically the definition of Day Care Home and its impact) violate both the equal protection clause as well as substantive due process.

Plaintiff's challenges based on equal protection and substantive due process do not implicate any suspect class or fundamental right. As such, the court must apply the rational basis test in weighing plaintiff's claims. That is, does the statutory scheme purport to address a legitimate state interest? If so, is the statute rationally related to that purpose? *Harris v. Manor Healthcare Corp., 111 Ill. 2d 350. People v. Kimbrough, 163 Ill. 2d 231.* There is no question that the stated purpose of the statute, to protect children from sex offenders, is a legitimate, if not compelling, state interest. Whether the scheme is rationally related to that interest however, is another question. This court finds that as applied to the plaintiff, it is not.

As noted above, a Day Care Home is private home that is licensed to care for 3 to 12 children under age 12 for less than 24 hours a day. The number of children include the children living in the home under age 12 as well. This definition leads to some absurd results.

Take an imagined neighbor who cares for one unrelated child and has one child of their own under the age of 12 at home. With only two children in that day care setting, plaintiff can live

next door to that person and still comply with SORA. Likewise, he can legally live next to his neighbor with five, ten or a dozen children without consequence. Further, it is reasonable to assume that there could be dozens of children under age 12 within 500 feet of plaintiff's house, and that would be permissible. It is only when that first neighbor invites a third child into the home, be it thru birth, adoption or day care, that plaintiff's ability to reside in that neighborhood, is terminated. This example becomes even more absurd when the next-door neighbor has two to eleven of their own children at home and brings in **one** unrelated child for day care. Plaintiff could have become a model neighbor to that family, yet that one additional child suddenly disqualifies him. Moreover, a home with thirteen children is outside the possible definition of Day Care Home.

Such a scheme is not rationally related to the legitimate state interest of protecting children, and does nothing to promote it. It is unreasonable for a statutory scheme to turn a blind eye to the many children potentially living next door and within close proximity to plaintiff, only to attempt to afford protection to a limited few.

The constitutional right to equal protection of the law guarantees that the State must treat similarly situated persons in a similar manner. *Kimbrough at 237.* When it comes to "Day Care Homes", SORA violates these principles. Plaintiff, living down the block from a private home with three children under the age of twelve is treated differently from the sex offender living next door to a comparable family, if the former has at least one child that is being provided day care. Such a bizarre result cannot survive scrutiny. When viewed in that light, prohibiting plaintiff from living within 500 feet of such a home is irrational, as it does not reasonably protect children.

Defendants cites numerous cases that purportedly hold otherwise, but all of them are distinguishable when analyzing the definition of a "Day Care Home" and its relationship to the acts stated purpose.

For example, *Vasquez v. Foxx, 895 F.3d 515*, is one of defendant's primary authorities because it dealt with the prohibition relating to day care homes. It is important to note that this is a federal court decision and the only 2nd district appellate court case citing *Foxx* is the case of *People v. Pepitone, 2019 IL App (2d) 151161.* The Pepitone case did not involve day care homes, but instead was a challenge to the SORA laws based on the defendant's conviction for being a child sex offender in a public park. The sole issue in *Pepitone* was whether the conviction

violated ex post facto laws. Moreover, the *Foxx* court failed to engage in any substantive analysis of the statutory scheme and how it is, or isn't, reasonably served by the definition of "Day Care Home".

The first District Appellate court also cited *Foxx* in *People v. Avila-Briones, 2015 IL App (1st) 132221*. The specific issue relating to day care homes was not argued, nor did the court conduct an analysis of it definition and its impact on serving the states interests. Likewise the court in *People v. Pollard, 2016 IL App (5th) 130514* resolved the due process issue without specific reference to the day care home definition.

Other cases cited by defendants deal with other issues, and not due process or equal protection. *United States v. Leach, 639 F. 3d 769* and *Mueller v. Raemisch, 740 F.3d 1128* only addressed SORA like statutes and the ex post fact clause. *People ex rel Birkett v. Konetski, 233 Ill. 2d 185* merely addressed whether SORA constituted punishment. In fact, defendants cannot cite to any case that specifically resolved the deficiency found to exist by this court.

The court recognizes that the equal protection claim was not set out in a separate count. Never the less, the court will consider it as having been duly plead given plaintiff's status as self-represented; and, because defendants fully addressed that claim in their briefs.

Having found that SORA, in concert with the criminal codes residency restrictions for child sex offenders and the Child Care Act's definition of "Day Care Home", violate both substantive due process and equal protection; and, having resolved all the other issues against the defendant, there are no remaining issues before the court except for injunctive relief. Given the courts findings herein, no further hearing is required.

Accordingly, plaintiff is entitled to a permanent injunction enjoining state and local law enforcement agencies from declining to register plaintiff at his Kathi Dr address, and further from taking any action to force plaintiff to move or vacate the property based solely on his proximity to a Day Care Home as it is presently defined in the Child Care Act. Nor can law enforcement take any action to force plaintiff to move or vacate the property, or prosecute him for any criminal offense based solely on his proximity to a Day Care Home as it is presently defined in the Child Care Act.

NOW WHEREFORE IT IS ORDERED:

A. Defendant's Motions to dismiss are granted with prejudice as to counts I, II, IV, V and VI, as well as those general challenges raised in the complaint, but not addressed paragraph B below.

B. Defendant's motions are denied as to count III and the equal protection challenge for the reasons stated.

C. A permanent injunction hereby enters in favor of plaintiff and against the defendants enjoining defendants from the following conduct:

1. Declining or refusing to register plaintiff at his Kathi Dr address based solely on his proximity to a Day Care Home as it is presently defined in the Child Care Act.
2. Taking any action to force plaintiff to move or vacate the property based solely on his proximity to a Day Care Home as it is presently defined in the Child Care Act.
3. Prosecuting plaintiff for any criminal offense based solely on his proximity to a Day Care Home as it is presently defined in the Child Care Act.

/s/ Kevin Busch 6/22/2021 11:17 AM

DATED:_____ _____

JUDGE

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. **19 CH 883**

Martin Kopf Plaintiff(s)/Petitioner(s)	**Kane County State's Attorney, et al.** Defendant(s)/Respondent(s)	Theresa E. Barreiro Clerk of the Circuit Court Kane County, Illinois 6/23/2021 2:25 PM FILED/IMAGED
Pro Se Plaintiff(s)/Petitioner(s) Atty.	**AAG Hal Dworkin; ASA Megan Baxter; Charles Hervas** Defendant(s)/Respondent(s) Atty.	
Kevin Busch Judge	**n/a** Court Reporter	Deputy Clerk
A copy of this order ☐ should be sent ☒ has been sent ☒ Pltf/Pet Atty. ☒ Def/Resp Atty. ☐ Other _____		File Stamp

ORDER

The Decision and Order on Defendants' Motion to Dismiss entered on June 22, 2021 is a final and appealable order disposing of all claims.

/s/ Kevin Busch 6/23/2021 2:25 PM

Date: **6/23/21** ☐ Yes - Disposal ☐ No - Disposal Judge: _____

P7-MISC-001 (07/20) Original - Clerk Copy - Plaintiff/Petitioner Copy - Defendant/Respondent

APPEAL TO THE SUPREME COURT OF ILLINOIS

FROM THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

MARTIN KOPF, Plaintiff-Appellee, v. BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, and KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendants-Appellants, and JOE McMAHON, in his official capacity as Kane County State's Attorney, and HAMPSHIRE POLICE DEPARTMENT, Defendants.	)	No. 19-CH-000883 The Honorable KEVIN T. BUSCH, Judge Presiding.

NOTICE OF APPEAL

Under Illinois Supreme Court Rule 302(a)(1), Defendants Brendan Kelly, in his official capacity as Director of the Illinois State Police, and Kwame Raoul, in his official capacity as Attorney General of the State of Illinois, by their attorney, Kwame Raoul, Attorney General of the State of Illinois, hereby appeal directly to the Illinois Supreme Court from the final orders entered by the Honorable Judge Kevin T. Busch of the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois on June 22, 2021, and June 23, 2021, in which the circuit court dismissed most counts in the

operative complaint filed by Plaintiff Martin Kopf, but ruled that the home day care provision in section 11-9.3(b-10) of the Illinois Sex Offender Registration Act, 720 ILCS 5/11-9.3(b-10), violated substantive due process and equal protection principles as applied to Plaintiff, and entered a permanent injunction preventing Defendants from taking specific actions toward Plaintiff. A copy of the circuit court's June 22, 2021 and June 23, 2021 orders are attached hereto as Exhibits A and B.

By this appeal, Defendants Director of the Illinois State Police and Attorney General of the State of Illinois, in their official capacities, request that the supreme court reverse and vacate these orders of the circuit court to the extent that they were adverse to them, and grant them any other relief deemed appropriate.

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

By: /s/ Nadine J. Wichern
NADINE J. WICHERN
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Assistant Attorney General
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July 20, 2021

APPEAL TO THE SUPREME COURT OF ILLINOIS

FROM THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

MARTIN KOPF, Plaintiff-Appellee, v. JAMIE L. MOSSER, in her official capacity as Kane County State's Attorney, Defendant-Appellant, and BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, and KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, and HAMPSHIRE POLICE DEPARTMENT, Defendants.	)	No. 19-CH-000883 The Honorable KEVIN T. BUSCH, Judge Presiding.

NOTICE OF APPEAL

Under Illinois Supreme Court Rule 302(a)(1), Defendant Jamie L. Mosser, in her official capacity as Kane County State's Attorney, hereby appeals directly to the Illinois Supreme Court from the final orders entered by the Honorable Judge Kevin T. Busch of the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois on June 22, 2021, and June 23, 2021, in which the circuit court dismissed most counts in the operative complaint filed by Plaintiff Martin Kopf, but ruled that the home day

care provision in section 11-9.3(b-10) of the Illinois Sex Offender Registration Act, 720 ILCS 5/11-9.3(b-10), violated substantive due process and equal protection principles as applied to Plaintiff, and entered a permanent injunction preventing Defendants from taking specific actions toward Plaintiff. A copy of the circuit court's June 22, 2021 and June 23, 2021 orders are attached hereto as Exhibits A and B.

By this appeal, Defendant Jamie L. Mosser, in her official capacity as Kane County State's Attorney, requests that the supreme court reverse and vacate these orders of the circuit court to the extent that they were adverse to her, and grant her any other relief deemed appropriate.

Respectfully submitted,

JAMIE L. MOSSER
Kane County State's Attorney

By: /s/ Megan L. Baxter
Megan L. Baxter
Assistant State's Attorney

JAMIE L. MOSSER
KANE COUNTY STATE'S ATTORNEY
Kane County State's Attorney's Office
Megan L. Baxter
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AMENDED CROSS-APPEAL TO THE SUPREME COURT OF ILLINOIS

FROM THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

MARTIN KOPF, Plaintiff-Appellee-Appellant v. BRENDAN KELLY, in his official capacity as Director of the Illinois State Police, and KWAME RAOUL, in his official capacity as Attorney General of the State of Illinois, Defendants-Appellants-Appellees, and JOE McMAHON, in his official as Kane County State's Attorney, and HAMPSHIRE POLICE Defendants-Appellees	No. 19-CH-000883 The Honorable KEVIN T. BUSCH Judge Presiding

NOTICE OF CROSS-APPEAL

Under Supreme Court Rule 302(a)(1), Plaintiff *pro se,* hereby appeal directly to the Illinois Supreme Court the final orders entered by the Honorable Judge Kevin T. Busch of the Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois on 22 June 2021 and 23 June

2021, in which the circuit court ruled unconstitutional, as-applied to the Plaintiff, a substantive due process and equal protection clause, and entered a permanent injunction preventing Defendants from applying 11-9.3(b-10) of the Sex Offender Registration Act, 720 ILCS ILCS 5/11-9.3(b-10), but dismissed all other claims with prejudice. A copy of the 22 June, 2021 and 23 June, 2021 are included as Exhibits A and B as well as the transcript of the Motion to Dismiss Hearing as Exhibit C.

Plaintiff, a *pro se* litigant, files this timely cross-appeal under Supreme Court Rule 303(a)(3).

Through this appeal, Plaintiff Martin Kopf request that the supreme court reverse and remand the order of dismissal with prejudice as to counts I, II, IV, V and VI, as well as the general challenges raised in the complaint as the orders of the circuit court was adverse to him, and grant any other relief this Honorable Court deems appropriate.

Respectfully submitted,

Martin Kopf
pro se
724 Kathi Dr.
Hampshire, IL 60140

CERTIFICATE OF FILING AND SERVICE

I certify that on 01 August, 2021, I electronically filed the foregoing Notice of Cross-Appeal with the Clerk of the Circuit Court for the Sixteenth Judicial Circuit, Kane County, using the Odyssey eFileIL system.

I also certify that the other participants in the suit, named below, are registered contacts on the Odyssey eFile system, and therefore willed be served via the Odyssey eFile system.

Megan L. Baxter
baxtermegan@co.kane.il.us
Defendant

Nadine J. Wichern
CivilAppeals@atg.state.il.us
Defendants-Appellant-Appellees
Attorney General for the State of Illinois Kwame Raoul and,
Director of the Illinois State Police Brendan Kelly

Julia Hurley
j.hurley@hcbattorneys.com
Defendant-Appellees
Hampshire Police Department

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information and belief.

MARTIN KOPF
pro se Plaintiff-Appellee-Appellant
724 Kathi Dr.
Hampshire IL, 60140
224-800-8321
kopfem@gmail.com

Kane County Circuit Court THERESA E. BARREIRO ACCEPTED: 1/31/2022 8:31 AM By: MK Env #16485023

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. **19CH883**

Martin Kopf Plaintiff(s)	**ISP, et al.** Defendant(s)
Pro Se Plaintiff(s) Atty.	**AAG Hal Dworkin; ASA Erin Brady; Charles Hervas** Defendant(s) Atty.

Busch Judge	**n/a** Court Reporter	Deputy Clerk

A copy of this order ☐ should be sent ☒ has been sent

☒ Plaintiff Atty. ☒ Defense Atty. ☐ Other _____

Clerk of the Circuit Court
Kane County, Illinois
1/28/2022 4:42 PM
FILED/IMAGED

File Stamp

Plaintiff present in Open Court ☒ Yes ☐ No

Defendant present in Open Court ☒ Yes ☐ No

ORDER

☒ **CONTINUANCE** ☐ **JUDGMENT** ☐ **MISC.**

THE COURT BEING FULLY ADVISED IN THE PREMISES:

It is ordered:

On motion of **Defendants** that this cause be continued in room **320** of the **Kane County Courthouse, 100 S. Third St., Geneva, IL** at **9AM** m. on **02/16/22** .

Judge _____

☐ _____ **MUST APPEAR**

For:

- ☐ Hearing on Motion/Petition For/To: _____
- ☐ Default/Judgment
- ☐ Dismiss/setting
- ☐ Proof of damages
- ☐ Trial
- ☐ Other (describe) _____

It is ordered as follows:

- ☐ Dismissed without prejudice and strike pending dates.
- ☐ Dismissed with prejudice and strike pending dates.
- ☐ Judgment to enter:
  - ☐ By default
  - ☐ Upon trial or hearing
  - ☐ Defendant having admitted liability
  - ☐ Proof of damages made
  - ☐ Proof of reasonable attorney's fees made
- ☐ Strike pending dates
- ☐ Discharge Rule to Show Cause
- ☐ Dismiss citation
- ☐ Alias _____ to issue

In favor of _____

and against _____ ,

in the amount of _____ , costs of _____ and Attorney's fees of _____ .

☒ Misc. Orders:

Defendants' Motion for Clarification is granted in that the Court clarifies that its ruling of June 21, 2021 found the definition of a Day Care Home from the Child Care Act, 225 ILCS 10/2.18, as utilized in the Section 11-9.3(b-10) of the Sex Offender Registration Act, 720 ILCS 5/11-9.3(b-10), prohibiting sex offenders from living within 500 feet of a Day Care Home is facially unconstitutional. This matter is continued to February 16, 2022 at 9AM for status on the entry of Rule 18 findings.

Date: **01/28/22**

Judge: _____

/s/ Kevin Busch 1/28/2022 4:41:45 pm

RECEIPT ACKNOWLEDGED: _____

P2-SC-001 (05/11)

A200

SUP3 C 22

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

MARTIN KOPF,	)	Case No 2019 CH 883
Petitioner,	)	
vs.	)	
	)	
ILLINOIS STATE POLICE, et. al. ,	)	
	)	
Respondent.	)	

SUPREME COURT RULE 18 FINDINGS
SUPPLEMENTING THIS COURT'S ORDER OF JUNE 22, 2021

This case is before the court, following remand from the Illinois Supreme Court, for the limited purpose of supplementing this court's order of June 22, 2021 with the requisite findings pursuant to Supreme Court Rule 18. Accordingly, the court finds as follows:

(a) These written findings are for the specific purpose of satisfying the provisions of Supreme Court Rule 18.

(b) This court's order of June 22, 2021 found a portion of 720 ILCS 5/11-9.3(b-10) unconstitutional. Namely, the portion that made it illegal for a "child sex offender to knowingly reside within 500 feet of a …day care home" as that term is presently defined by the Child Care Act. (225 ILCS 10/2.18)

(c) The specific grounds for this finding are as follows:

(1) This court's findings are based both upon the due process clause as well as equal protection grounds. The statute does not infringe upon any fundamental right, nor does it implicate a suspect or protected class. Accordingly, the court applied a rational basis test to determine constitutionality. Clearly, the state has a legitimate interest in protecting children from child sex offenders. However, the statutory scheme is not rationally related to that interest, given the definition of "day care homes".

"Day care homes" means family homes which receive more than 3 up to a maximum of 12 children for less than 24 hours per day. The number counted includes the family's natural or adopted children and all other persons under the age of 12. The term does not include facilities which receive only children from a single household. (225 ILCS 10/2.18)

Given the fact that the definition includes the natural children of the homeowner, the scheme is actually irrational. This court cited a few examples of that irrationality in its June 22 order. A simple and extreme example of which is the following: It is perfectly legal for a child sex offender to live next door to a family with 10 children under the age of 12. However, if that same family takes in 2 children from separate households, under the age of 12, for day care, it becomes illegal for the sex offender to continue to live next door to that family. Therefore, the only way the children are protected in the first instance, is if their parents take in enough day care kids from separate households to place them within the 3 to 12 range of protected children.

A penal statute, which serves a legitimate state interest, must still be rationally related to that interest to survive a constitutional challenge on due process grounds. The definition of day care home renders 720 ILCS 5/11-9.3(b-10) irrational.

Furthermore, a penal statute cannot treat particular groups of people differently. The child sex offender living next to a day care home consisting of only 3 qualifying children is treated differently than the child sex offender living next door to the family of 5, 7 or 10 children. Or the child sex offender living next to the family that has 3 to 12 kids for day care that all come from a single household. In the first example it is illegal, the two latter examples it is not. For the same reasons as above, the statutory scheme cannot survive an equal protection challenge.

(2) This courts findings are primarily addressing a facial defect in the statutory scheme. However, the court's analysis was limited to the definition of "day care homes" and the fact that it is Mr. Kopf's proximity to a "day care home" that was the sole issue before the court. To some extent therefore, the decision was also as applied to Mr. Kopf.

Initially, upon remand, defendants sought leave to supplement the record with some stipulated facts. Mr. Kopf objected and for the reasons that follow, the court finds that no additional facts are necessary.

The facial defect is apparent given the court's analysis above. It is the definition of a day care home, and its inclusion of natural children in the home, that lead to the absurd results highlighted by the court. A facial defect is not reliant on facts, but rather the impact the statutory scheme has. As such, no additional facts are necessary for the court to reach the conclusions it did.

The court's June 22 decision however, was primarily limited to Mr. Kopf's proximity to a "day care home." The same analysis would apply were a "group day care home" to locate within 500 feet of his home. However, the court's ruling was limited to finding 720 ILCS 5/11-9.3(b-10) unconstitutional because of the definition of "day care homes", and as such, the ruling is also as applied to petitioner.

(3) The defects in the statutory scheme stem from the absurd possibilities that can occur given the definition of a day care home. Protecting a small number of children in some instances, while ignoring the home with potentially 3 times as many children in others. As long as the definition remains as it presently is, the statute cannot be construed to survive a constitutional challenge.

(4) Furthermore, there exists no alternative basis upon which the court could grant the relief sought.

(5) Plaintiff satisfied Supreme Court Rule 19 as he properly served the ISP, and the Kane County State's Attorney; and, the Attorney General filed his appearance and all parties participated in the hearing before the court.

DATED: /s/ Kevin Busch 2/16/2022 9:35:57 am

JUDGE

CERTIFICATE OF FILING AND SERVICE

I certify that on March 15, 2022, I electronically filed the foregoing Brief and Appendix of State Defendants-Appellants with the Clerk of the Court for the Supreme Court of Illinois, by using the Odyssey eFileIL system.

I further certify that the other participants in this action, named below, are registered contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

Martin Kopf
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(Plaintiff)

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(Defendant Kane County State's Attorney)

Erin Brady
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(Defendant Kane County State's Attorney)

Charles Hervas
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(Defendant Hampshire Police Department)

Jodi Beasley
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(Defendant Hampshire Police Department)

Julia Hurley
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(Defendant Hampshire Police Department)

Christian Ketter
Cketter@hcbattorneys.com
(Defendant Hampshire Police Department)

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and

belief.

/s/ Kaitlyn N. Chenevert
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