

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

MANUEL DELGADO, JASON)
ALFORD, and BASSEL HATOUM,)
on behalf of themselves and)
others similarly situated,)
Plaintiffs,)
v.) Civil Case No. 4:16-CV-501-RH/CAS
RICHARD L. SWEARINGEN, in)
his official capacity as Commissioner)
of the Florida Department of Law)
Enforcement,)
Defendant.)

PLAINTIFFS' SECOND MOTION FOR SUMMARY JUDGMENT

Plaintiffs, pursuant to Rule 56 of the Federal Rules of Civil Procedure, move for summary judgment and seek a declaration that Florida's Internet identifier provision, Florida Statute § 943.0435(4)(1), et seq., which went into effect June 26, 2017, is unconstitutional, facially and as applied to them.

INTRODUCTION

For the third time, the State has passed a bill burdening Plaintiffs' Internet access in vague terms, banning their anonymity, regardless of risk, and with strict liability for a third-degree felony carrying a potential five-year prison term. This

Court has already enjoined a similar version of this law. For many of the same reasons, as well as new ones, this Court should enjoin the third version as well.

These are the material facts:

- Plaintiffs were convicted of remote non-Internet sex offenses. They have never since been arrested or convicted of a sex crime. DE 67 ¶¶ 8-10.
- Uncontroverted empirical evidence establishes that they, like the large majority of registrants who have completed their sentences, pose little actuarial risk of reoffense, and even less risk of an Internet-facilitated sex offense. *Id.* at ¶¶ 40-43.
- Their actual risk of reoffense is readily-measurable through means widely-employed elsewhere by the State. *Id.* at ¶ 41.
- Plaintiffs rely extensively on the Internet for work, professional development, continuing education, emotional support, global connection, and political expression throughout millions of online sites with no potential for predation. *Id.* at ¶¶ 51-82.
- Plaintiffs do not know what to register because the statute's terms reasonably mean different things to different people. Furthermore, the statutory criteria for registering a site – commercially-operated with profile and communicative functionality – are, at best, exceedingly difficult for a reasonable person to ascertain, creating a much heavier burden than registration itself. *Id.* at ¶¶ 60, 64, 68, 80, 82.
- Given the heavy burden of compliance, the loss of anonymity, and the severe penalty for inadvertent error due to ambiguous terms, Plaintiffs over-report or under-use the Internet. *Id.* at ¶ 37.

PROCEDURAL HISTORY

Plaintiffs originally challenged the 2014 and 2016 versions of the Internet identifier provision of Florida's sex offender/predator registration act. Fla. Stat. §§ 775.21(2)(i) & (j); 943.0435(1)(g). Plaintiffs alleged that each version was not narrowly tailored and banned anonymity, in violation of the First Amendment, and vague, in violation of the First and Fourteenth Amendments, allegations supported by rulings from five federal courts striking similar restrictions. Plaintiffs also filed a Motion for Preliminary Injunction, construed to target the 2016 version only, set to take effect within weeks.

Days before it took effect, this Court entered a Preliminary Injunction against the 2016 version, holding that it was “hopelessly vague, chill[ed] speech protected by the First Amendment, and [was] far broader than necessary to serve the state’s legitimate interest in deterring or solving online sex crimes,” “net[ing] far more bycatch than targeted product.” DE 29 at 1, 11.

Plaintiffs then moved for summary judgment against both versions. DE 45. FDLE responded that, because sex offenders have a “frightening and high” long-term recidivism rate, its concededly broad restrictions were *rationaly related* to the State’s compelling interest in protecting children, by enabling parents to weed

out registrants from their children's online contacts and by providing leads to law enforcement in case a child goes missing. DE 54 at 18-19.¹

After oral argument but before disposition, the Legislature passed a new version designed to address some of the issues addressed in the Preliminary Injunction. The new law allows registration up to 48 hours after use, and limits the requirement to a certain class of websites, but describes those websites in such ambiguous terms that reasonable people must guess at their meanings. And whatever it means, it still precludes anonymity, applies to all registrants without regard for risk, in vast expanses of the Internet without potential for predation, while imposing strict liability for those who guess wrong.

STATEMENT OF FACTS

A. Florida's Sex Offender and Predator Registry

Every person who has been convicted of enumerated sex-related offenses must register as a sexual offender for life. *See* Fla. Stat. § 943.0435. More serious or repeated sexual offenses require registration as a "sexual predator." § 775.21. There are more than 97,000 sexual offenders and predators with records in the

¹ FDLE argued that it was "common sense to acknowledge that nearly everyone . . . accesses the Internet," that "potential targets can be reached via the Internet," that all registrants should be subject to restriction "[n]o matter" their level of Internet use, in the event "a public safety need should arise," because law enforcement lacked the resources to target substantive Internet crime. *Id.*

registry, with information concerning 70,248 being posted online. Mary Coffee Dec., DE 24-1 ¶ 10. As of September 2015, there were 26,845 sexual offenders (2,988 sexual predators) who were non-incarcerated and living in Florida.² *Id.* Approximately 20,235 (1,583 sexual predators) of those had completed all aspects of their sentence, including post-incarceration supervision. *Id.* The term “sexual offenders” or “registrants” are used here to describe everyone required to register, including sexual offenders and predators.

Registrants must provide to local law enforcement their address, employer information, social security number, numerous identifying features, vehicle identification numbers, professional licenses, and a plethora of other personal information. Fla. Stat. §§ 943.0435(2)(b); 775.21(6)(a). Failure to comply is a third-degree felony. §§ 943.0435(9)(a); 775.21(10)(a). Local law enforcement provides the information to FDLE, which updates the registry and makes it available to the public. § 943.0435(2)(c) & (14)(d).

B. The Internet Identifier Provision

The new provision states that all registrants “shall register all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding

² See Office of Program Policy Analysis and Government Accountability (OPPAGA), No. 15-16, at 18, available at <http://www.oppaga.state.fl.us/Monitor/Docs/Reports/pdf/1516rpt.pdf>, Ex. 1.

website homepage or application software name, with the department through the department's online system or in person at the sheriff's office within 48 hours after using such electronic mail addresses and Internet identifiers." § 943.0435(4)(e)1. *See also* Fla. Stat. §§ 775.21(6)(g)5.a. (same for sexual predators). It defines "Internet identifier" as "any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication." Fla. Stat. §§ 775.21(2)(j); 943.0435(1)(e) (incorporating definition from § 775.21).³

"Social Internet communication" is "any communication through a commercial social networking website" or "application software." Fla. Stat. § 775.21(2)(m).

A "commercial social networking website" is "a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger." Fla. Stat. § 943.0437(1).

Exempted from the definition of "social Internet communication" are "1. Communication for which the primary purpose is the facilitation of commercial

³ The requirement to register Internet identifiers also appears in each list of items that must be reported, which are located in various parts of the statute. *See* Fla. Stat. § 943.0435(2)(a)2, (2)(b), (14)(c)1, (14)(c)4; § 775.21(6)(a)1, (6)(e)2, (8)(a)1.

transactions involving goods or services; 2. Communication on an Internet website for which the primary purpose of the website is the dissemination of news; or 3. Communication with a governmental entity.” Fla. Stat. § 775.21(2)(m). *See also* Fla. Stat. § 943.0435(1) (incorporating definition from § 775.21).

“Application software” is “any computer program designed to run on a mobile device such as a smartphone or tablet computer, that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users, and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.” Fla. Stat. § 775.21(2)(m).

Even unwitting noncompliance is a third-degree felony punishable by five years in prison and a \$5,000 fine. Fla. Stat. §§ 943.0435(14)(c)4.; 775.21(10)(a); 775.082(3)(e); 775.083(1)(c). As with the earlier versions, there was no legislative analysis of whether the State’s interests could be achieved by a more narrowly tailored law.⁴

⁴ *See* Fla. H.R. HB 699 (2017) Final Staff Analysis (July 5, 2017), Ex. 2; Fla. S. SB 684 (2017) Staff Analysis (April 24, 2017), Ex. 3; Fla. H.R. Subcomm. on Crim. Just., video (March 8, 2017) (Rep. Amber Mariano, sponsor); <https://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2921>; Fla. H.R. Subcomm. on Just. Appropriations, video (March 20, 2017) (Mariano); <https://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2897>; Fla. H.R. Comm. on Crim. Just., video (April 24, 2017)

Most information provided by registrants – including Internet identifiers – is not kept confidential. To the contrary, FDLE is encouraged to make the registry accessible to the public, without restriction. § 943.0435(12). *See also* §§ 943.043(1); 775.21(7)(a)&(c) (allowing department to provide online notice to the public of all information not “exempt from public disclosure under s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.”); § 775.21(7)(a)&(c). Internet identifiers are not exempt from public disclosure.⁵

FDLE’s website allows anyone to search for information about any registrant and receive automatic notifications about changes in the information. Fla. Stat. § 943.44353. Any information not displayed online is available to

(Mariano);<https://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=2919> ; Fla. H.R., video (April 27 & 28, 2017) (Mariano, vote);
<https://www.myfloridahouse.gov/Sections/HouseCalendar/SessionVideoArchiveListing.aspx>;
Fla. S. Comm. on Crim. Just., video (April 3, 2017) (Sen. Dennis Baxley, sponsor)
https://www.flsenate.gov/media/videoplayer?EventID=2443575804_2017041006 ;
Fla. S. Subcomm. Appropriations on Crim. & Civil Just., video (April 18, 2017) (Baxley)
https://www.flsenate.gov/media/videoplayer?EventID=2443575804_2017041210 ;
Fla. S. Comm. On Appropriations, video (April 25, 2017) (Baxley)
https://www.flsenate.gov/media/videoplayer?EventID=2443575804_2017041293 ;
Fla. S., video, April 27 & 28, 2017)(Baxley, vote)
<https://www.myfloridahouse.gov/Sections/HouseCalendar/SessionVideoArchiveListing.aspx>

⁵ The only information that is confidential and exempt are social security numbers, and some information in a registrant’s motor vehicle record. § 119.071(5)(a)5.

anyone who requests it. § 943.043(3). Users may input an identifier and be informed if it is associated with a registrant. *See Answer*, D.E. 75, ¶ 19. FDLE is required to tell anyone who asks that the identifier has been used by a registrant, and the registrant's identity. § 119.07(1).⁶ There is no limit on the public's use of this information.

Finally, FDLE is permitted to tell every covered website that a user is a registrant, so that the website can block him, with immunity from liability as long as it does so in "good faith." Fla. Stat. § 943.0437 (1)-(3).

Plaintiffs refer to these laws as the "Internet identifier provision."

C. The Plaintiffs

All three Plaintiffs have convictions for remote non-Internet sex offenses. DE 67 ¶¶ 8-10. They have lived without sexual reoffense for many years. *Id.* They rely extensively on the Internet in all aspects of their lives. *Id.* at ¶¶ 51-82. They do not understand terms used in the 2017 version. *Id.* at ¶¶ 60, 64, 68, 80, 82. Plaintiffs Hatoum and Alford have both contacted FDLE with questions about the meaning of the terms. *Id.* at ¶¶ 68, 69, 81. They were told to consult a lawyer or to over-report to be on the safe side. *Id.* They are afraid to go to prison if they make a

⁶ FDLE has acknowledged providing such information upon request by Plaintiffs' counsel. DE 24-1 ¶ 34.

mistake. *Id.* at ¶¶ 60, 69, 81. As a result, they under-use the Internet, and/or over-report their use. *Id.* at ¶ 37.

D. Recidivism and Internet Use among Sexual Offenders

Contrary to popular beliefs, most convicted sex offenders do not sexually reoffend after completing their prison and probationary terms.⁷ Andrew Harris Am. Dec., D.E. 45-3, ¶19. This makes sense. By definition, registrants are people who have experienced arrest, prosecution, and punishment, which act as deterrents to reoffense. Levenson Second Am. Dec., Ex. 4, ¶4. Moreover, registrants on probation are statutorily mandated to receive counseling, which further reduces the risk of reoffense. *Id.*; Fla. Stat. §§ 948.30(1)(c), (2)(a); 948.31. Treatment programs employ highly-qualified and experienced counselors, who provide long-term counseling with group and individual therapy focused around relapse prevention. Ex. 4, ¶ 4. Counselors administer the Static-99R, which is widely relied upon by treatment professionals to assess risk for sexual reoffense. Other special conditions imposed on registrants include random searches of computers, smart phones, and other devices; and polygraph tests at least once a year. *Id.* at ¶ 5.

⁷ The mythic nature of this stubborn popular belief was recently addressed by the Sixth Circuit in *Does #1-5 v. Snyder*, 834 F.3d 696, 704–05 (6th Cir. 2016).

Partially for this reason, recidivism rates among all convicted sex offenders are actually lower than recidivism rates among non-sex offenders. *Id.* at ¶ 2. Low-risk sex offenders pose the same risk of committing a new sex offense as do those who have committed non-sex offenses. Harris Am. Dec., DE 45-3, ¶¶ 30, 36. In fact, after a number of years in the community without a new arrest, even high-risk sex offenders—a small and easily identifiable subset—pose no more risk of committing a new sex offense than individuals who have committed non-sexual offenses. *Id.* at ¶¶ 2(d).iii; 28.

Furthermore, only a vanishingly small percentage (as low as 1%) of sex crimes against children involve any sort of technology, and even fewer involve the Internet. *Id.* at ¶3; Finkelhor Dec., D.E. 9-3, ¶13. Registrants account for only a tiny percentage (as low as 4%) of these offenses. Harris Am. Dec., DE 45-3, ¶2f; Finkelhor Dec., D.E. 9-3, ¶19. Moreover, a registrant's actual, as opposed to actuarial, risk is readily-measurable with the Static-99R, used by this State in a variety of contexts, including civil commitment proceedings to identify those registrants who pose a higher risk of re-offense, *see, e.g., Hartzog v. State*, 133 So. 3d 570, 574-75, n.7 (Fla. 1st DCA 2014), and judicial determinations of child visitation by registrants on probation. *See Fla. Stat. § 948.30(1)(e).*

E. Efficacy of the Provision in Preventing or Solving Sex Crimes

In its Response to Plaintiffs' discovery requests, FDLE was unable to explain how the Internet identifier provision serves the government's purpose to reduce or solve Internet-facilitated sexual re-offense, what empirical evidence establishes the efficacy of these restrictions, what crimes the provision targets that are not directly addressed under existing laws,⁸ how many registrants used a false name to contact children through social media, or even how many registrants have sexually reoffended. Def. Resp. to Pl. Interrog, DE 57-1, ##8, 10, 16. Indeed, in the nearly three years since enacting its first such restriction, FDLE has produced only two examples in which an Internet identifier was used to investigate a crime. *Id.* at #13. Ultimately, FDLE can only say that the restriction has a conceivable or rational connection to the government's objective. DE 54 at 18-19.

F. The Importance of the Internet

The Supreme Court recently characterized Cyberspace as “the most important place[] (in a spatial sense) for the exchange of views,” and “social media in particular” as a critical democratizing force, because of its ““relatively unlimited, low-cost capacity for communication of all kinds.”” *Packingham v.*

⁸ Defendant acknowledged that it would be “impossible for FDLE to identify” such investigations because doing so would involve “pure speculation.” Def. Resp. to Pl. Interrog., DE 57-1, #8.

North Carolina, 137 S. Ct. 1730, 1735 (2017) (citations omitted). These communications include debating core First Amendment issues, like “religion and politics,” as well as searching for employment, hiring employees, developing and growing a new enterprise, maintaining contact with family and friends, and engaging with elected representatives. *Id.* at 1735.

There are now more than 1.2 billion websites, with more than 4.5 billion web pages, and 300 million domain names (some hosting networks of thousands). Post Second Am. Dec., Ex. 5, at 6. Google processes 40,000 searches per second, YouTube uploads 400 hours of video content per minute, Facebook has more than 1.7 billion active users per month, and Twitter users post 500 million “tweets” per day. *Id.* at 6-7. Among American adults, 87% use the Internet, as do 97% of adults ages 18 to 29, and college graduates. *Id.* at 7. An average Internet user visits dozens to hundreds of sites a day, two-thirds of Americans own a smartphone and nearly one-fifth of Americans use their smartphone for online access. *Id.*

Plaintiffs, like almost everyone else in America, need ready Internet access for effective engagement in almost every aspect of contemporary society. In restricting their access for life, based solely on a single remote sex offense, the 2017 Internet identifier provision violates their rights under the First and Fourteenth Amendments, for the reasons set forth below.

ARGUMENT

THE 2017 INTERNET IDENTIFIER LAW IS UNCONSTITUTIONAL

Vague criminal laws that severely burden speech by many thousands of people in many millions of forums, without regard to the risk posed by the registrant or the forum, violate the First and Fourteenth Amendments to the United States Constitution.

I. The Internet identifier provision violates the First Amendment.

When Plaintiffs originally filed suit, six federal courts had already struck similar laws burdening or banning sex offenders' Internet access. *See Doe v. Harris*, 772 F.3d 563 (9th Cir. 2014); *Doe v. Snyder*, 101 F.Supp.3d 672, 703-04 (E.D. Mich. 2015), *superseded by Does #1-5 v. Snyder*, 834 F.3d 696 (6th Cir. 2016) (striking registration statute, including Internet identifier provision, on ex post facto basis), *cert. pending*, No. 16-768; *Doe v. Nebraska*, 898 F.Supp.2d 1086, 1111-22 (D. Neb. 2012); *Doe v. Prosecutor, Marion County, Indiana*, 705 F.3d 694 (7th Cir. 2013); *Doe v. Shurtleff*, No. 1:08-CV-64 TC, 2008 WL 4427594 (D. Utah Sept. 25, 2008), *vacated after law amended*, 2009 WL 2601458 (D. Utah Aug. 20, 2009), *aff'd*, 628 F.3d 1217 (10th Cir. 2010); *White v. Baker*, 696 F.Supp.2d 1289 (N.D. Ga. 2010). *See also Doe v. Cooper*, 842 F.3d 833, 846-47 (4th Cir. 2016) (law prohibiting all sex offenders from being in certain public areas unconstitutional).

Just before Plaintiffs filed their Amended Complaint, a unanimous United States Supreme Court struck down a North Carolina law banning registrants from access to a “commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages,” citing N.C. Gen. Stat. Ann. §§ 14-202.5(a), (e) (2015). *Packingham v. North Carolina*, 137 S. Ct. 1730, 1733 (2017). *Packingham* thus endorsed the conclusions of the lower federal courts that wholesale Internet restriction on the sole basis of a sex offense conviction violates the First Amendment.⁹

Like the ban in *Packingham*, Florida’s speech restriction applies to vast swaths of the Internet without potential for predation, and applies—regardless of risk—to all registrants, most of whom have completed their sentences. Like the ban in *Packingham*, Florida’s restriction violates the First Amendment.

⁹ Plaintiffs had opposed FDLE’s Motion to Stay the first Motion for Summary Judgment pending resolution of *Packingham*, because that case could have been decided on narrow grounds that would not resolve this case. DE 49 at 11-13. Ultimately, *Packingham* held that a partial ban on Internet use based solely on a prior sex offense conviction was not narrowly tailored to the government’s goal to reduce online child predation, *Packingham*, 137 S. Ct. at 1735-36, a holding that does support the relief requested here.

A. The provision bans anonymous online speech.

“[A]n author’s decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 342 (1995). See also *Peterson v. Nat’l Telecommunications & Info. Admin.*, 478 F.3d 626, 632 (4th Cir. 2007) (“The First Amendment protects anonymous speech in order to prevent the government from suppressing expression through compelled identification.”). Anonymous online speech is especially important to marginalized groups, particularly to registrants. See *Nebraska*, 898 F.Supp.2d at 1121 (“Requiring sex offenders – perhaps the most reviled group of people in our community – to unmask themselves in [online] forums, surely deters faint-hearted offenders from expressing themselves on matters of public concern.”); *Harris*, 772 F.3d at 581 (“[S]ex offenders’ fear of disclosure in and of itself chills their speech. If their identity is exposed, their speech, even on topics of public importance, could subject them to harassment, retaliation, and intimidation.”).

The Internet identifier provision not only deprives registrants of anonymity with respect to law enforcement, it actively encourages and facilitates online unmasking to the public by expressly authorizing the disclosure of registrants’ status to “social commercial networking websites” (with assurances of immunity for damaging consequences to registrants, § 943.0437(2)&(3)), by declaring that

unmasking registrants promotes public safety, § 943.0435(12), and by providing disclosure to anyone who asks under Florida's public records act. § 119.07. These features render Florida's law even worse than others stricken on this basis. *See Harris*, 772 F.3d at 580 (law allowing disclosure if "necessary to ensure public safety"); *White*, 696 F.Supp.2d at 1311 (law allowing information to be released for "law enforcement purposes," or to protect the public). *See also Millard v. Rankin*, No. 13-cv-02406-RPM, 2017 WL 3767796, at *13 (D. Colo. Aug. 31, 2017) (finding disclosure of Internet identifiers a "significant incursion" because it "furthers the ability of state and local authorities to monitor private aspects of a registered sex offender's life and, consequently, chills his or her ability to communicate freely.").

In its Preliminary Injunction, this Court saw no reason why registrants, unlike everyone else, should be deprived of anonymity when posting comments about matters of public interest. D.E. 29 at 9. There *is* no reason. In fact, the tiny fraction of registrants who commit Internet-facilitated sex crimes is highly unlikely to register the identifiers used in doing so. *See Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 169 (2002) (because requiring permit for door-to-door solicitation "unlikely. . .to preclude criminals from" doing so without permit, or from registering under false name, ordinance violated unpopular group's right to anonymity).

The prospect of online unmasking has chilled Plaintiffs' speech as it would anyone else's. D.E. 67 ¶¶ 61, 69, 78, 79. The provision therefore violates registrants' right to anonymous speech.¹⁰

B. Strict scrutiny applies because the law imposes a speaker-based restriction, but alternatively, intermediate scrutiny applies.

Although *Packingham* declined to decide whether strict scrutiny applied, 137 S. Ct. at 1736, this Court should find that it does. "Laws designed or intended to suppress or restrict the expression of specific speakers contradict basic First Amendment principles." *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 812 (2000). The Supreme Court has applied heightened scrutiny to various laws disfavoring discrete groups of speakers. *See Citizens United v. Fed. Elec. Comm'n*, 558 U.S. 310, 340 (2010) (barring corporations from independent expenditures for speech about elections); *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011) (content-based burden on pharmaceutical industry); *Minneapolis Star & Tribune Co. v. Minnesota Com'r of Revenue*, 460 U.S. 575, 582-83 (1983) (tax on newspapers with larger circulation); *Playboy Entertainment*, 529 U.S. at 812-13 (time restriction on adults-only cable programming).

¹⁰ Compelled disclosure of identifiers used to communicate with online groups also violates registrants' First Amendment freedom of association. *See NAACP v. Alabama*, 357 U.S. 449, 458 (1958). *But see White*, 696 F. Supp. 2d at 1312.

Registrants may be the most despised group of people in America. The provision encourages law enforcement to provide registrants' identifiers to the public, who will shun them, and to websites, which will block them. It imposes a severe penalty for even inadvertent omission. So chilling are these features that they suggest an intent to silence registrants in the one forum where they would otherwise be equal. Because this is a speaker-based restriction on a disfavored group that lacks political power and is vulnerable to vigilantism, it should be subject to strict scrutiny, meaning the State must show that it is "the least restrictive means" of achieving the government's compelling interest in protecting children from harm. *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1670 (2015).¹¹

However, this law cannot survive even intermediate scrutiny. Under intermediate scrutiny, a speech restriction must be "narrowly tailored to serve a significant governmental interest." *Ward v. Rock Against Racism*, 491 U.S. 781, 791, 799 (1989) (citations omitted). It is the State's burden to prove narrow tailoring: "[T]he government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests." *McCullen v. Coakley*, 134 S. Ct. 2518, 2540 (2014). "Where certain speech is

¹¹ *But see Harris*, 772 F.3d at 576 (and cases cited therein expressly adopting intermediate scrutiny).

associated with particular problems . . . demanding a close fit between ends and means . . . prevents the government from too readily ‘sacrific[ing] speech for efficiency.’” *Id.* at 2534 (citation omitted). Nor may a court “simply take the [State] at its word that the [statute] serves the [government’s] interests.” *Buehrle v. City of Key West*, 813 F.3d 973, 978-79 (11th Cir. 2015). After identifying the harms at issue, the State must also demonstrate that the regulation “will in fact alleviate these harms in a direct and material way.” *Turner Broadcasting Sys. v. F.C.C.*, 512 U.S. 622, 664 (1994).

C. The law is not narrowly tailored because it applies to vast swaths of the Internet without potential for predation, and to all registrants regardless of risk, in the absence of evidence that it even achieves the government’s objective, or that the government considered and rejected a narrower version.

In *Packingham*, a unanimous Supreme Court concluded that North Carolina’s ban on all registrants’ access to all social networking websites was not narrowly tailored to the State’s compelling interest in reducing child predation. *Packingham*, 137 S. Ct. at 1735-36. The ban applied to all registrants in vast swaths of “the quintessential forum for the exercise of First Amendment rights,” *id.* at 1735, most of which lacked any conceivable potential for predation. *Id.* at 1736. Instead, “specific laws” targeting predatory online conduct “must be the State’s first resort.” *Id.* at 1737. In dicta, the majority was also “troubl[ed]” that the law applied to people like Plaintiffs who had completed their sentences and *needed*

Internet access “to reform and to pursue lawful and rewarding lives.” *Id.* *Packingham* follows lower federal court determinations that similar Internet restrictions were not narrowly tailored. *See Doe v. Prosecutor*, 705 F.3d at 699-703 (ban on social networking websites not narrowly-tailored because it applied regardless of remoteness or nature of predicate offense, and to vast swaths of innocent online expression, where other laws directly targeted online predation); *Nebraska*, 898 F. Supp. 2d at 1111-12 (ban not narrowly tailored where applied to vast swaths of Internet having nothing to do with minors, and to all registrants regardless of factually-based risk); *Harris*, 772 F.3d at 582 (restriction not narrowly tailored where applied to all online expression regardless of forum’s potential for predation); *White*, 596 F.Supp.2d at 1309-10 (disclosure requirement not narrowly tailored where not restricted to websites with potential for predation).

In its concise majority and concurring opinions, *Packingham* cited *McCullen v. Coakley* three times in finding that North Carolina’s law was not narrowly tailored. *Packingham*, 137 S. Ct. at 1736, 1737, 1740. *McCullen* is important for understanding why Florida’s law, like North Carolina’s, is not narrowly tailored to meet its compelling interest in preventing online predation.

McCullen involved a Massachusetts law creating a 35-foot buffer zone around abortion clinics’ entrances, to prevent protesters from harassing patients and staff. 134 S. Ct. at 2525-26. Petitioners wanted to approach patients personally,

for “sidewalk counseling” about alternatives to abortion, having found this approach to be more effective in dissuading women from abortion than waving signs at them from 35-feet away. *Id.* at 2527.

The Court began by extolling the role of public sidewalks as traditional public fora, which “have immemorially been held in trust for the use of the public . . . for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *Id.* at 2529 (citations and internal quotation marks omitted). The Court credited petitioners’ assertions: “It is easier to ignore a strained voice or a waving hand than a direct greeting or an outstretched arm.” *Id.* at 2536. Moreover, there were laws directly targeting harassment, and “other jurisdictions” had found “less intrusive tools” “effective” in mitigating this harm. *Id.* at 2539.

To the government’s argument that restricting speech zones would “make [law enforcement’s] job so much easier,” the Court retorted, “[o]f course they would”; but “the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government’s interests, not simply that the chosen route is easier. . . .” *Id.* at 2526, 2540. Acknowledging that the state had already tried a narrower statute, the Court insisted there were narrower measures that the state had not yet tried. *Id.* at 2539.

Under *McCullen, Packingham, Doe v. Prosecutor of Marion County, Doe v. Nebraska, Doe v. Harris*, and *White v. Baker*, Florida’s law is not narrowly tailored to serve the government’s compelling interest in preventing online predation. It applies equally to all registrants for life, regardless of the nature or remoteness of their sex crime, or their actual risk to commit Internet-facilitated offenses. It applies to hundreds of millions of websites, regardless of potential to facilitate child predation. Florida has laws specifically targeting predatory online speech.¹² And other jurisdictions have adopted “less intrusive” prophylactics.¹³ *McCullen*, 134 S. Ct. at 2539.

FDLE has presented no empirical evidence that the 2017 law would even be effective in preventing online predation, let alone that a less severe restriction would not. Indeed, the legislative history reflects that there was *no consideration* of narrower alternatives.

In lieu of empirical evidence, Defendant offers anecdotes, suppositions, and appeals to logic and “common sense.” DE 54 at 18. This does not establish narrow

¹² *See, e.g.*, Fla. Stat. §§ 847.0135(3)&(4), 847.0137, 847.0138, 847.0141(1)(a).

¹³ *See, e.g.*, Cal. Penal Code § 290.024(1)-(3) (2017) (registration required only where court determined registrant used Internet to harvest victim information, to traffic victims, or for online pornography); Minn. Stat. § 244.05(6)(c) (2016) (banning discrete group of high-risk sex offenders on “intensive supervised release,” and narrowly defining banned websites).

tailoring. *See Cooper*, 842 F.3d at 846 (“The State tries to overcome its lack of data, social science or scientific research, legislative findings, or other empirical evidence with a renewed appeal to anecdotal case law, as well as to ‘logic and common sense.’”); *Playboy Entertainment*, 529 U.S. at 822 (“Government must present more than anecdote and supposition” to warrant time limitation on adults-only cable programming); *McCullen*, 134 S. Ct. at 2539 (evidence of obstruction at one clinic does not justify state-wide buffer zones).

The State will undoubtedly respond that *Packingham* is inapposite because it involved a ban and Florida’s law is a burden. But “[l]awmakers may no more silence unwanted speech by burdening its utterance than by censoring its content.” *Sorrell*, 564 U.S. at 566. *See also Playboy Entertainment*, 529 U.S. at 826 (“[L]atitude is not accorded to the Government merely because the law can somehow be described as a burden rather than outright suppression.”); *Millard*, 2017 WL 3767796, at *13 (noting that, although *Packingham* involved a ban on social media use, having to register identifiers, thereby subjecting registrant to constant surveillance, constituted a “severe restriction” not at issue in *Packingham*). Indeed *McCullen* itself involves a burden, not a ban, as do *White v. Baker* and *Doe v. Harris*.

Nor does this version’s switch from pre-use disclosure to disclosure within 48 hours relieve the burden. To comply, registrants must maintain a separate

database of newly-used identifiers (which could exceed dozens a day), and their precise time of use, because a 48-hour clock runs from each new use. Furthermore, as demonstrated in the next section, the new provision's requirements are staggeringly burdensome, as a result of its multiple ambiguities.

D. The law is hopelessly vague, staggeringly burdensome, and overbroad

A vague statute operates to inhibit the exercise of First Amendment freedoms because “[u]ncertain meanings inevitably lead citizens to ‘steer far wider of the unlawful zone’ . . . than if the boundaries of the forbidden areas were clearly marked.” *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (citations and footnote omitted). Relatedly, a law is facially overbroad if it “punishes a ‘substantial’ amount of protected free speech, ‘judged in relation to the statute’s plainly legitimate sweep.’” *Virginia v. Hicks*, 539 U.S. 113, 118-19 (2003) (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973)).

Florida’s speech restriction is indissolubly ambiguous. A registrant must register an Internet identifier for a site if it: (1) is “commercially operated,” (“commercial” requirement); (2) allows users to create a profile that provides information about themselves that is publicly-available or available to other users (“profile functionality”), and (3) offers a mechanism for communication with other users (“communicative functionality”). § 943.0437(1). On a site meeting these criteria, an Internet identifier may nonetheless be exempt from disclosure if used

for communication: (i) made with the “primary purpose” to facilitate “commercial transactions involving goods or services”; (ii) on a site that has the “primary purpose” to disseminate news; or (iii) with a governmental entity. § 775.21(2)(m). *See also* § 943.0435(1) (incorporating definition from § 775.21).

Plaintiffs do not understand the terms used for the three requirements or the three exemptions. What does “commercial” mean – that the site runs ads, or charges fees for access, or earns a profit, or is not a non-profit? DE 67 ¶ 35. How much information constitutes a “profile” – a name, picture, duration of membership, or an automatically-generated count of the user’s posts? *Id.* at ¶¶ 36, 80. Is a tweet at President Trump exempt because it is communication with the government? Plaintiffs have contacted FDLE for clarification of these and similar terms, but the employees themselves are uncertain, saying to read the statute, ask a lawyer, or over-report to be on the safe side. *Id.* at ¶ 37. As a result, Plaintiffs over-report or under-use the Internet, precisely what the First Amendment prohibits.¹⁴

¹⁴ It is also unclear whether registration is required simply by creating the username, or whether the requirement is not triggered until the username is used to communicate with another person. That is, it is not clear whether the phrase “used for self-identification to send or receive ‘social Internet communication’” means a name *typically used* for communication, or one that has *already* been used for communication. Fla. Stat. § 775.21(2)(j).

(1) The three statutory criteria

a. **“Commercial”**. Undefined in the statute, “commercial” could reasonably mean that the website generates profit for the owner/operator, or engages in “commerce” by generating revenue through fees or ads, or by offering items/services for sale. Post Second Am. Dec., Ex. 5 at 14. Regardless of its definition, whether the site is “commercial” may be impossible for a user to ascertain. First, neither “org” nor “com” at the end of the name provides the answer, because non-profit and for-profit websites operate in both domains. *Id.* Nor may the home page or “about us” page provide an answer. *Id.* at 14-15. Among a set of highly-popular sites, some have no “about us” page. *Id.* at 15. Of those with “about us” pages, if “commercial” means charging fees, none qualify, *id.*, if it means generating ad revenue, some qualify, *id.*, if it refers to for-profit status, others qualify, *id.*, if it means generating revenue through advertisements, yet others qualify. *Id.* “A number of sites contain no information at all,” at either their home or about pages, relevant to any conceivable definition of “commercial.” *Id.* at 15-16 (emphases in original).

But the absence of this information does not necessarily mean the website is non-commercial because, as set forth next, it is extremely difficult to know where a website begins and ends.

b. Profile and Communicative Functionality. Due to ambiguities inherent in the word “website,” these requirements are, at best, very difficult to determine. People assume they know what “website” means until they try to determine these requirements when they want to speak online, and it is at this point where the definition becomes critical. For instance, if a registrant visits one portion of a website (say, the Sports page of the Washington Post, or the Google Translate page of Google), he may conclude that *that* portion has no profile or communicative functionality, and therefore any identifier he creates is non-reportable. However, unbeknownst to the registrant, there may be another portion of the same website (say, the Post Politics Blog page, or the Google Plus page) which *does* have profile and communicative functionality. Thus, the registrant has to determine whether the page he is using constitutes the same “website” as the one with those functionalities, thereby requiring him to report the identifier, because he will then be “using” an “identifier” on a “website” which meets the statutory criteria—even if his particular use doesn’t. The definition of “website” is therefore critical information.

Not defined in the statute, “website” is defined in the dictionary as a “set of interconnected webpages, usually including a homepage, generally located on the same server, and prepared and maintained as a collection of information by a

person, group, or organization.”¹⁵ What comprises the set? It’s unclear. ESPN’s home page links to ten other sites, labeled “ESPN sites.” *Id.* If one of those sites has a “mechanism for communication with other users,” and is part of “the ESPN website,” must the registrant disclose the identifier for the Orlando Magic Page? This depends on whether the linked site with communicative functionality is “prepared and maintained as a collection of information” by the same “person, group, or organization” as ESPN. *Id.* While some of the linked sites prominently display ESPN’s logo, some do so discreetly, and others not at all, but provide a link to ESPN on their home pages. *Id.* at 18

Whether a site has profile and communicative functionality is often impossible to determine. For instance, a registrant who visits only the “Orlando Magic Page” of espn.com needs to determine whether *it* meets the profile and communication requirements, but its home page does not say. Neither does the ESPN home page, although the information might be found on other webpages within ESPN website’s “set of inter-connected pages.” *Id.* at 17. The URLs of the linked sites are of limited help. Some have URLs within the www.espn.com domain,¹⁶ some have URLs at a different subdomain than www.espn.com,¹⁷ and

¹⁵American Heritage Dictionary <http://bit.ly/2h9Z7oy> (Dec. 20, 2016).

¹⁶ For example, SportsNation links to the page at www.espn.com/sportsnation.

¹⁷ For example, “X Games” links to the page at xgames.espn.com.

the remainder have URLs at domains completely outside the espn.com domain.¹⁸ *Id.* at 18-19. Users must therefore study all linked sites to determine whether any have profile and communicative functions if, as with ESPN itself, the “ESPN site” of interest does not say.

Most “websites” link to multiple other sites. Internet users seldom know “where” they are when clicking multiple links in the course of a session. *Id.* at 21. Therefore, “[r]equiring a sex offender to determine whether profile or communicative functionality is provided *somewhere* on those websites is an almost impossibly difficult task.” *Id.* at 22.

(2) The Three Exemptions

a. Communication for primary purpose of facilitating commercial transaction involving goods and services. Registrants must determine whether a communication facilitates a commercial transaction and, if so, what primary purpose law enforcement officers might ascribe to a multitude of commerce-related communications.

Mr. Hatoum was not certain whether this exemption applied to an ad he wanted to post on a popular website for the sale of some old furniture. So he called FDLE for advice, but its employee was also uncertain, advising him to register everything, just to be on the safe side. DE 67 ¶ 81.

¹⁸ For example, “FiveThirtyEight” links to the page at fivethirtyeight.com.

There are many examples of this exemption's ambiguity. Ex. 5 at 23. What about chatting with a customer service representative about a product the registrant might want to purchase? What about asking the representative how to operate a product already purchased? Does writing a glowing review about the product facilitate commercial transactions; and if so, is that the reviewer's primary purpose? What about posting questions about the product to other site users? Or encouraging a particular user to purchase that product? On what basis does a law enforcement officer decide which of these communications facilitates a commercial transaction, or which has facilitation as its "primary purpose"? Just as plaintiffs err on the side of caution by over-reporting, law enforcement might err on the side of caution by over-arresting.

b. Communication on website that has primary purpose of news dissemination. ESPN, Webmd, and Ballotpedia provide sports news, health news, and election news, respectively. Is this "news"? If so, is that the "primary purpose" of these sites? For example, in addition to medical news, Webmd offers multiple services through its Home Page: "Check Your Symptoms," "Find a Doctor," "Find Lowest Drug Prices," "Family & Pregnancy." *Id.* at 23. Assuming the many thousands of webpages devoted to such services are even "within" Webmd's "website," how does a registrant know whether that "set of interconnected pages" has a "primary purpose" to disseminate medical news? As

the statute implies, websites have multiple purposes. And the provision forces registrants to determine not just what *their* primary purpose is, but what the *website's* primary purpose is. Without carefully examining the entirety of the website, even assuming a determinate beginning and end, how can a user know its *primary purpose*? *Id.*

Plaintiff Alford likes reading and posting anonymous comments on websites like that operated by the Florida Action Committee (FAC). FAC publishes news about sex offender laws, sex offender litigation, relevant empirical studies, incidents of harassment and vigilantism. The site also organizes support for efforts to promote more just legislation, and for litigation against needlessly restrictive laws. DE 67 ¶ 63. Although this site is Mr. Alford's primary source of news about sex offender laws, is dissemination of news its "primary purpose? When Mr. Alford called FDLE for advice about which sites to register, the employee answering the phone politely declined, explaining that he was "not a lawyer." *Id.* at ¶ 68. The local sheriff's department advised, "If you think you should report it, then report it." *Id.* at ¶ 69.

c. Communication with a government entity. This may seem easily definable, but it is not: the nature of contemporary online democracy does not lend itself to neat definitions. Sites like <https://www.change.org/> and <https://front.moveon.org/> disseminate petitions intended to influence the

government, but is a registrant's signature a "communication with a government entity"?¹⁹ If a registrant signs a statement from <https://kamalaharris.org/> for presentation to the Chamber of Commerce, is that communication with Senator Harris, or with the Chamber? If a registrant creates a twitter account used solely to tweet insults about elected representatives, are such communications "with" a government entity? What if s/he inserts the representatives' hashtags? What if s/he retweets a post from <http://twitter.com.tedcruz> with a comment?

Contemporary governmental entities, and the thousands of organizations that support them, use the Internet and social media the way they formerly used public sidewalks and the postal service: to organize action, promote views, support parties, and pay for campaigns. In online political participation, Plaintiffs are understandably chilled by ambiguous speech restrictions carrying severe criminal sanctions imposed with strict liability. DE 67 ¶¶ 59, 78.

All of these ambiguities render the provision hopelessly vague and overbroad, with an "obvious chilling effect on free speech." *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 871-72 (1997). And other Internet restrictions far less vague and burdensome have been stricken under the First Amendment. *See*

¹⁹ It may be that such sites have the "primary purpose" of disseminating news about political issues and candidates. Is that "news"? If so, signing the petition may fall within the second rather than the third exemption, assuming these sites meet the three statutory criteria for registration.

White, 696 F.Supp.2d at 1312 (“interactive online communication” vague); *Doe v. Jindal*, 853 F.Supp.2d 596, 600, 605-06 (M.D. La. 2012) (“social networking websites,” “chat rooms,” and “peer-to-peer networks” vague, given inadequate statutory definitions and criminal sanctions); *Nebraska*, 898 F.Supp.2d at 1112-17, 1122-23 (“use,” “collection of web sites” and “instant messaging” vague; and precluding access to social networking websites that “allow” access by a person under 18 years, burdened registrants with determining websites’ actual as opposed to official policy about minors). *See also Packingham*, 137 S. Ct. at 1741 (noting vagueness created by phrase “such as” in definition of “profile,” followed by examples of the kind of information that might, or might not, be contained in a profile).

Plaintiffs challenge the Internet identifier provision not just because their own rights have been violated, but because “the statute’s very existence may cause others not before the court to refrain from constitutionally protected speech or expression.” *Hill v. Colorado*, 530 U.S. 703, 731-32 (2000) (quoting *Broadrick*, 413 U.S. at 612). The provision is facially unconstitutional, violates all registrants’ rights, and should be struck down in its entirety.

II. The Internet Identifier Provision Is Void for Vagueness under the Due Process Clause

“The prohibition of vagueness in criminal statutes ‘is a well-recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law[.]’” *Johnson v. United States*, 135 S. Ct. 2551, 2556-57 (2015) (citation omitted). A law is void for vagueness under the Due Process Clause of the Fourteenth Amendment if “it fails to give ordinary people fair notice of the conduct it punishes, or [is] so standardless that it invites arbitrary enforcement.” *Id.* at 2556. “When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.” *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253-54 (2012). Indeed, “[w]here a statute’s literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the doctrine demands a greater degree of specificity than in other contexts.” *Smith v. Goguen*, 415 U.S. 566, 573 (1974).

For all of the reasons explained in the section on vagueness above, the Internet identifier provision is unquestionably void for vagueness. The numerous ambiguities about what and when to report fail to give an ordinary person fair notice of what is required to avoid committing a third-degree felony. *See Nebraska*, 898 F.Supp.2d at 1123 (reporting requirement void for vagueness);

Jindal, 853 F.Supp.2d at 606 (ban on social media vague due to ambiguities in numerous Internet-related terms); *Cooper*, 842 F.3d at 843 (phrases “regularly scheduled” and “where minors gather” unconstitutionally vague restriction on sex offenders’ movement). Because of its ambiguity, the law invites arbitrary enforcement, leaving to FDLE and local police officers the task of “decid[ing], without any legally fixed standards, what is prohibited and what is not in each particular case.” *Giaccio v. State of Pa.*, 382 U.S. 399, 403 (1966).

Where a statute 1) burdens First Amendment rights in the critically important forum of the Internet, 2) imposes criminal penalties, and 3) criminalizes omissions rather than affirmative conduct, due process demands the highest degree of clarity, and registrants deserve to have fair notice of what they are required to do. The provision fails to provide that, and as such is void for vagueness under the Due Process Clause.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request that this Honorable Court grant their Second Motion for Summary Judgment, and enter an Order declaring that the 2017 version of the Internet identifier provision violates the First and Fourteenth Amendments to the United States Constitution.

Certificate of Word Limit. Pursuant to N.D. Fla. Local Rule 7.1(F), this motion contains 7,833 words.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, September 7, 2017 the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all persons registered to receive electronic notifications for this case, including all opposing counsel.

By: s/ Dante P. Trevisani
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THE FLORIDA LEGISLATURE
OPPAGA



OFFICE OF PROGRAM POLICY ANALYSIS & GOVERNMENT ACCOUNTABILITY

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Report No. 15-16

Sex Offender Registration and Monitoring: Statewide Requirements, Local Practices, and Monitoring Procedures

at a glance

Since OPPAGA's first statutorily required review of sex offender registration in 2005, the number of registered sex offenders in Florida communities has grown by 44% to more than 26,000 offenders. Sheriffs' offices monitor all registered sex offenders and are meeting their statutory requirements for offender registration, address verification, and public notification.

Additionally, the Florida Department of Corrections (FDC) supervises offenders sentenced to community supervision and those who have been conditionally released from prison. Sex offenders under FDC supervision are supervised at the highest risk level which entails frequent one-on-one contact between a probation officer and offender. Some supervised offenders are placed on electronic monitoring for enhanced monitoring and supervision.

The Florida Department of Law Enforcement (FDLE) maintains Florida's sex offender registry. In addition to other information, sex offenders are required to report if they are enrolled or employed at an institution of higher learning and this information is included on FDLE's registry. Our review found this information to be out-of-date for some offenders. Offenders also must attempt to obtain valid state identification cards; however, some are unable to obtain the cards either because they lack the needed documentation or money to pay required fees. Sheriffs' offices have implemented the 30-day transient reporting requirement and report that the more frequent reporting improves accountability. However, the reporting requirement is not tracked consistently throughout the state. Transient offenders continue to be difficult for law enforcement to monitor.

Scope

As directed by Chapter 2005-28, *Laws of Florida*, OPPAGA studied the effectiveness of Florida's sexual offender registration, address verification, public notification provisions, and monitoring of sex offenders.^{1, 2, 3}

Background

Beginning in 1994, the federal government passed multiple laws to establish guidelines and requirements for states to track sex offenders and inform the public of their presence. Over time, Florida's sex offender laws have evolved to meet, and in some cases exceed, federal requirements.

The 2005 Florida Legislature passed the Jessica Lunsford Act, requiring sex offenders to re-register twice a year in person with the sheriff of the county in which they reside.⁴ In 2007, the Legislature further required sexual predators, juvenile sex offenders adjudicated

¹ Chapter [2005-28](#), *Laws of Florida*.

² Sex offender is used in this report as an inclusive term to denote convicted felons who are sex offenders or predators having committed certain crimes.

³ As directed by law, we previously published *Florida's State, County, Local Authorities Are Implementing Jessica Lunsford Act*, OPPAGA [Report No. 06-03](#), January 2006; *Sex Offender Registration and Public Notification Improved; Some Aspects of the Process Could Be Streamlined*, OPPAGA [Report No. 08-60](#), October 2008; and *Registered Sex Offenders in Florida Communities Increased to Over 23,000; Transient Offenders Present Challenges*, OPPAGA [Report No. 12-12](#), December 2012.

⁴ Chapter [2005-28](#), *Laws of Florida*, is known as the Jessica Lunsford Act.

delinquent, and sex offenders convicted of certain crimes to re-register four times a year, required offenders report email addresses and instant message names, and required driver licenses and identification cards issued to registered sex offenders to display distinctive information on the front to identify them as sexual offenders or predators.⁵ In 2014, the Legislature made changes to the law increasing the information an offender must report, including information on vehicles an offender owns and vehicles owned by any person residing with the offender, expanding and clarifying the requirement to report internet identifiers (prior to their use), and tattoos or other identifying marks. The law also specified registration requirements for offenders with transient addresses, requiring them to inform the sheriff within 48 hours after establishing a transient residence and every 30 days thereafter if they maintain a transient residence.⁶

All sex offenders that are required to register have been convicted of certain qualifying felonies set forth in Florida statutes or have registration requirements in other states.⁷ The sex offender registration laws do not apply to acts like public urination or streaking, which are typically punished as disorderly conduct or some other misdemeanor offense, and thus are not qualifying offenses for registration. Some sex offenders are designated by the court as sexual predators because they are deemed to present an extreme threat to public safety as demonstrated through repeated sex offenses, the use of physical violence, or preying on child victims.

The Florida Department of Law Enforcement (FDLE) maintains a sex offender registry, a statewide system for collecting and disseminating sex offender information to both the public and law enforcement agencies.

⁵ Chapters [2007-209](#), [2007-207](#), and [2007-143](#), *Laws of Florida*.

⁶ Chapter [2014-5](#), *Laws of Florida*.

⁷ Sex offenders as defined in s. [943.0435](#), *F.S.*; sex offenders under the custody, control, or supervision of the Department of Corrections as defined in s. [944.607](#), *F.S.*; sexual predators as defined in s. [775.21](#), *F.S.*; and juvenile sex offenders adjudicated delinquent as described in s. [943.0435](#)(1)(a)d, *F.S.*

Information available to the public includes the offender's address, photo, a physical description including any tattoos, a description and tag number for all vehicles registered to the offender, as well as the date and type of sex offense. Additional information available to law enforcement includes work address, home or cellular telephone number, and a description and tag number of any vehicles registered to individuals who reside with the offender, as well as any email or internet identifiers.

Florida's monitoring of sex offenders consists of four main activities.

- **Registration requirements.** Certain sex offenders who are released from prison or placed on supervision must register in-person with the sheriff in the county where they live within 48 hours of establishing a residence or experiencing any change in information required to be provided pursuant to statute.⁸ These offenders also must re-register two or four times a year based on their conviction(s) and status.
- **Identification requirements.** All sex offenders required to register also must attempt to obtain a driver license or identification card from the Department of Highway Safety and Motor Vehicles (DHSMV) within 48 hours of registration and notify that agency within 48 hours of any change of address.^{9, 10}
- **Address verification.** The Florida Department of Corrections (FDC) and local law enforcement agencies are responsible for verifying sex offender addresses in a manner that is consistent with federal laws

⁸ Offenders can update some information online, including email addresses and internet identifiers using login and password information they receive from the sheriff when they register.

⁹ Section [943.0435](#), *F.S.*

¹⁰ Local tax collectors perform driver's license related functions previously conducted by DHSMV, including processing sex offender identification requests, for 64 of Florida's 67 counties. The three counties with DHSMV offices are Broward, Miami-Dade, and Volusia. When combined, these three counties reflect approximately 40% of all transactions and will remain the responsibility of DHSMV because their tax collectors are appointed, not elected officials.

and standards. The department is responsible for conducting address verifications for offenders under its supervision. Local law enforcement is responsible for verifying the addresses of all other sex offenders and additionally may verify addresses for supervised offenders should they choose to do so.

- **Community notification.** FDLE is responsible for statewide public notification efforts. FDLE informs the public of the location of sex offenders and provides information via the sex offender registry online and via a toll-free, nationwide hotline.¹¹ During Fiscal Year 2014-15, FDLE handled approximately 16,500 incoming calls to the hotline, had over 5.6 million sex offender-related searches on its website, and sent over 2.6 million email notifications regarding the addresses of sex offenders.

Some sex offenders are supervised in the community by FDC.¹² Most of these offenders are subject to high levels of supervision by specialized probation officers. Some sex offenders also are subject to statutorily defined conditions of supervision, including a mandatory curfew and submitting to a warrantless search of their person, residence, or vehicle. Further, some sex offenders are subject to electronic monitoring that provides 24-hour location surveillance.

Local law enforcement agencies are also required to notify the public of the presence of sexual predators living in their communities. Within 48 hours, law enforcement agencies must notify licensed child care centers and schools within a one-mile radius of the predator's residence.

In addition, local law enforcement agencies, or FDC, if an offender is on community supervision, are also required to notify institutions of higher learning when a sex offender enrolls, is employed, or volunteers at

that institution of higher learning, including technical schools, community colleges, and state universities.

Florida is 1 of 17 states substantially compliant with federal requirements. The federal Sex Offender Registration and Notification Act (SORNA) provides a comprehensive set of minimum standards for sex offender registration and notification in the United States.¹³ These minimum standards address elements such as the immediate transfer of information, requirements for website registries, and community notification. Both the State of Florida and the Seminole Tribe of Florida are substantially compliant and have substantially implemented the requirements of the act.¹⁴

Jurisdictions who fail to substantially implement SORNA requirements risk losing a portion of their federal Edward Byrne Memorial Justice Assistance Grant (JAG) funds.¹⁵ These funds can be expended by criminal justice programs such as law enforcement programs, prosecution and court programs, and crime victim and witness programs for technical assistance, training, public information, and other purposes. In federal Fiscal Year 2014, Florida received approximately \$18.5 million in JAG funds.¹⁶ Additionally, substantially compliant states can receive bonus funds from previous fiscal year funding reductions from states that are noncompliant with SORNA. In federal Fiscal Year 2014, there was approximately \$1.1 million available from the reduction from non-

¹³ Title I of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248).

¹⁴ In addition to Florida, Alabama, Colorado, Delaware, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, and Wyoming, as well as three territories and 95 tribal jurisdictions, were found to be substantially compliant.

¹⁵ Jurisdictions include the 50 states, five principal U.S. territories, and Indian tribes that elect to function as registration jurisdictions under 42 U.S.C. 16927.

¹⁶ The \$18.5 million in JAG funds includes state government and local government funding awards. The total allocated to state governments was \$11,756,815.

¹¹ Chapter 97-299, *Laws of Florida*.

¹² The Department of Juvenile Justice (DJJ) also supervises a small number (23) of juvenile sex offenders in the community. There are a total of 65 juvenile sex offenders under DJJ supervision when including juveniles in residential facilities.

compliant states. Florida received a bonus award of \$229,588, the largest of any state.¹⁷

Findings

Over 26,000 registered sex offenders and sexual predators live in Florida communities

Over half of the offenders on Florida's sex offender registry are either confined or living outside of the state. Since OPPAGA's first statutorily required review of sex offender registration practices in 2005, the number of registered sex offenders and sexual predators in Florida communities has grown by 44% to a total of 26,845 in 2015. The increase in sexual predators has been greater than the growth rate in the number of sex offenders.

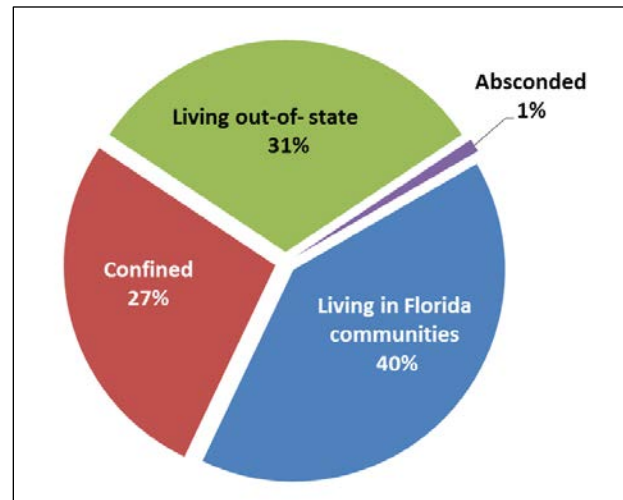
The number of registered sex offenders and sexual predators has steadily increased over the last 11 years. As of September 2015, there were 66,523 sex offenders and sexual predators on the Florida sex offender registry.¹⁸ However, over half (58%) of the offenders on the state registry do not reside in Florida communities. (See Exhibit 1.) Some, (27%) are confined or incarcerated. Thirty-one percent (20,704) are offenders residing outside the state.¹⁹ Roughly 1% (764) of offenders on the registry have absconded and their whereabouts are unknown. Less than half, (40% or over 26,800) of the total number of sex offenders on the registry are known to currently live in Florida communities.

¹⁷ The next highest bonus award was awarded to Pennsylvania at \$126,577, followed by Michigan at \$111,839, and Ohio at \$108,330.

¹⁸ The registry also includes 1,419 deceased persons not included in the above numbers. Deceased offenders' names are left on the registry for one year from the documented date of death so that victims, community members, and criminal justice partners will have notice of a registrant's death.

¹⁹ Of the 20,704 offenders on Florida's registry residing out-of-state, 16,121 were convicted in Florida. Conversely, there are 4,829 registered sex offenders residing within Florida's communities who are on the registry for an out-of-state conviction. Therefore, for every registered sex offender with an out-of-state conviction living in Florida, there are over three offenders with Florida sex offense convictions residing out-of-state.

Exhibit 1 Most Sex Offenders on Florida's Registry Do Not Reside in Florida's Communities¹



¹ Percentages do not total 100% due to rounding.

Source: OPPAGA analysis of Florida Department of Law Enforcement Florida Sex Offender Registry.

Since 2005, when OPPAGA was first required to review sex offender registration, the number of registered sexual predators and sex offenders in Florida communities has grown by 44%.²⁰ Over this same time period, the increase in the growth rate of sexual predators has outpaced the rate of growth for offenders, with the number of predators in Florida's communities growing by 145% to 2,988 in 2015; three times higher than the growth rate of sex offenders. (See Exhibit 2.) For more detailed information on the total number of offenders and predators on Florida's sex offender registry, including those incarcerated or living in other states, see Appendix A.

²⁰ OPPAGA's first statutorily required review of Florida's sex offender registration practices and procedures was *Florida's State, County, Local Authorities Are Implementing Jessica Lunsford Act*, OPPAGA [Report No. 06-03](#), January 2006.

Exhibit 2

The Number of Registered Sex Offenders and Predators Residing in Florida Communities Continues to Increase

Type of Offender	Number of Registered Sex Offenders by Year			
	2005	2008	2012	2015
Offender	17,385	19,090	21,413	23,857
Predator	1,222	1,620	2,400	2,988
Total	18,607	20,710	23,813	26,845

Source: OPPAGA analysis of Florida Department of Law Enforcement Florida Sex Offender Registry.

Sheriffs have adopted various strategies to meet their statutory obligations for registering and monitoring sex offenders

Sheriffs' offices have statutory requirements for offender registration, address verification, and public notification. Our survey of sheriffs found that they are fulfilling these requirements with some variations in local practices.²¹

Local practices for sexual offender registration vary in terms of policies, accessibility, and cost. Certain sex offenders in Florida have registration and re-registration requirements. These offenders must visit the sheriff's office in their county of residence to fulfill registration and re-registration requirements. In our survey of sheriffs' offices, officials reported that they are routinely complying with statutorily required registration and public notification activities. However, local practices differ in terms of responding to failures to register and re-register, hours of registering accessibility, and cost.

- **Failure to register.** Sex offenders who are released from prison or placed on supervision must register with the sheriff in the county where they live within 48 hours of establishing a residence.²² Sheriffs'

offices use different strategies to handle offenders who fail to complete this initial registration. Almost 80% of the sheriffs' offices exercise some discretion in arresting or applying for a warrant for first-time late registration, whereas 21% always arrest late registrants or immediately seek a warrant for a failure to register offense. The agencies who exercise discretion use various strategies to bring the sex offender into compliance. For example, offices reported initiating an investigation to determine if probable cause exists or attempting to locate and advising the offender to register.

Additionally, certain offenders must re-register two or four times a year based on their conviction(s) and status. Offenders must re-register in person during the months designated by Florida statute^{23, 24} Sheriffs' offices reported that handling offenders who fail to re-register is similar to actions for failure to initially register. However, some offices have different actions for the first failure to re-register as opposed to subsequent failures. For example, six agencies reported that for the first re-registration failure, law enforcement makes contact with the offender to help bring them into compliance; however, for the second or subsequent failure, the offender is arrested.

State attorneys can prosecute sex offenders for failure to register or re-register offenses. During Fiscal Year 2014-15, 878 offenders were convicted of offenses related to registration violations. Most were incarcerated, with approximately 57% (499) of the offenders convicted receiving a state prison sentence and 22% (195) a jail sentence.

an offender may be sentenced to imprisonment in a county jail.

²³ Sections [943.0435\(14\)\(a\)](#) and [775.21\(8\)\(a\)](#), *F.S.*

²⁴ Sex offenders who need to re-register are assigned a month to re-register and they must visit the sheriff's office anytime during that assigned month to re-register.

²¹ We received survey responses from all 67 sheriffs' offices; however, some offices did not answer all items on the survey.

²² Per ss. [943.0435\(14\)\(a\)](#) and [775.08](#), *F.S.*, failure to register is a third degree felony punishable by imprisonment in a state prison. However, if sentenced to less than one year and a day,

- Registration hours and cost.** Most sheriffs' offices are open for sex offender registration five days per week. However, this varies from one day to seven days per week depending on the county. Some offices reported that they make an exception if an offender needs to be registered on a day that the office is typically closed. Approximately 24% of sheriffs' offices reported that they offer weekend or evening registration hours. Six sheriffs' offices reported that they require offenders to pay for registration or re-registration and the other 61 do not require payments. For an initial registration, the costs ranged from \$30 to \$75 and for re-registration, the costs ranged from \$10 to \$25. Some agencies also reported a \$10 fee for simple information updates, such as a change in enrollment, employment, or volunteer status at an institution of higher learning.^{25, 26} Offenders who are unable to pay may be sent an invoice for future payment or allowed to complete an affidavit of indigence, but they still complete the registration. While charging offenders may help offset the sheriff's expense for conducting registration and re-registration activities; it is unclear if the cost could act as a deterrent to timely compliance.

Most sheriffs' offices conduct more than one address verification per year. Florida law requires that local law enforcement and FDC verify sex offender addresses in a manner consistent with federal laws and standards.²⁷ The Adam Walsh Child Protection and Safety Act of 2006 requires, at a minimum, regular face-to-face contact between a law enforcement official and the offender. Florida's registration and re-registration activities fulfill this requirement as sex offenders must re-register

in person two or four times a year based on their conviction(s) and status.

Although not required by law, most sheriffs' offices conduct at least one in-person address verification at an offender's residence per year.²⁸ Furthermore, many sheriffs' offices are conducting several address verifications per year with 88% of offices conducting address verifications for predators three or more times per year and 47% conducting address verifications for other sex offenders three or more times per year.

Sheriffs' offices use different methods to notify the public, schools, and child care facilities about sexual predators. Sheriffs' offices must notify the public when a sexual predator moves into their county.²⁹ As shown in Exhibit 3, most sheriffs' offices reported notifying the public via their website (74%), followed by distributing posters or flyers (59%). Additionally, 24% of offices use OffenderWatch®, which is a private licensed software product and service. Sheriffs' offices contract with OffenderWatch® to provide for an automated registration, verification, and notification system specific to their jurisdiction to help manage sex offenders in their community.³⁰

²⁸All of the sheriffs' offices that responded to the question about the frequency of address verifications conduct one or more per year, but seven offices did not respond to this question and thus, we cannot report that all offices conduct at least one address verification per year.

²⁹Section 775.21(7)(a), *F.S.*

³⁰For example, OffenderWatch® allows the sheriff's office to divide sex offenders' residences into zones within the county so they can be grouped together. This allows a sheriff's deputy to more efficiently conduct address verifications because the deputy can check addresses of sexual offenders residing within the same zone.

²⁵Sex offenders who enroll, are employed, or volunteer at an institution of higher education in Florida must notify authorities within 48 hours.

²⁶Sections 775.21(6)(a)1.b and 943.0435(2)(b)2, *F.S.*

²⁷Section 943.0435(6), *F.S.*

Exhibit 3 Sheriffs Most Typically Notify the Public About Sexual Predators Through Their Websites

Notification Method	Percentage ¹
Sheriff's Office Website	74%
Distributing Posters or Flyers	59%
Social Media	48%
Door-to-Door Notification	40%
Phone Calls	26%
OffenderWatch®	24%
Email	22%
Newspapers	17%

¹ Percentages total greater than 100% as each agency may use multiple types of public notification methods.

Source: OPPAGA analysis of Sheriffs' survey data.

Sheriffs' offices must also notify schools and child care facilities when a predator moves within a one-mile radius. Offices reported that they notify schools and child care facilities through face-to-face contact with the administration (38%), email (28%), phone calls (25%), or letters (17%). Furthermore, 23% of sheriffs' offices reported that they notify schools and child care facilities outside of the one-mile radius. Three agencies reported notifying schools and child care facilities within at least a two-mile radius so that more facilities are notified; six agencies reported notifying all schools and child care facilities in the county so that all schools are notified of predators in the county.

The Department of Corrections monitors sex offenders via supervision and electronic monitoring

The Florida Department of Corrections (FDC) is responsible for supervising sex offenders who are placed on community supervision. Sex offenders are supervised at the highest risk level, which entails frequent one-on-one contact between the probation officer and the offender. Additionally, some supervised offenders are placed on electronic monitoring for enhanced monitoring and supervision. For a complete list of special supervision conditions, see Appendix B.

FDC procedures are detailed and specific with regard to sex offender monitoring. Probation officers are required to conduct frequent in-person address verifications for all sex offenders under departmental supervision. As of September 2015, the department had 6,211 sex offenders on active community supervision. This number represents almost one quarter of all sex offenders in Florida's communities.

Sex offenders may be supervised in one of four categories.

- **Regular Probation.** Previously registered sex offenders who commit a non-sex crime can be sentenced to regular probation. Standard conditions of supervision include restrictions on firearm possession and ownership, travel restrictions without department consent, and submitting a DNA sample for analysis. As of September 2015, 25% of registered sex offenders supervised by FDC were on regular probation.
- **Sex Offender Probation.** Over half of sex offenders who are sentenced to probation are placed on sex offender probation. These offenders must meet special conditions in addition to the standard conditions of regular probation. These special conditions include a mandatory curfew from 10 p.m. to 6 a.m., active participation in and successful completion of a sex offender treatment program, and submission to a warrantless search of the offender's person, residence, or vehicle. As of September 2015, 63% of registered sex offenders supervised by FDC were on sex offender probation.
- **Community Control (house arrest).** Community control is a more restrictive form of supervision that is used in lieu of incarceration. Offenders are confined to their residence except for work, school, church, and the probation office. As of September 2015, 6% of registered sex offenders supervised by FDC were assigned to community control.

- **Conditional Release.** Offenders sentenced to prison who have served 85% of their sentence of incarceration may be placed on conditional release for the remaining time left on their sentence (no more than 15%).³¹ In addition to the standard and special conditions of sex offender probation, conditional release offenders have additional conditions such as participation in a minimum of one annual polygraph examination as part of their treatment program, as well as maintaining a driving log and not driving alone. The Florida Commission on Offender Review has the power to revoke an offender's conditional release if conditions are not met and return them to prison. As of September 2015, 7% of registered sex offenders supervised by FDC were on conditional release supervision.

Probation officers are required to make routine home contacts with all sex offenders on supervision; the ability to search electronic devices is an important tool. Regardless of supervision type, all sex offenders are placed in the sex offender risk class. This risk class provides the maximum standards for the amount of probation officer contact with the exception of community control (house arrest). This entails routine visits to the offender's residence, place of work, or treatment provider.³² Probation officers who handle sex offender probation caseloads are specialists with a minimum of five years of experience. Given the frequency of contacts required for supervised sex offenders, the maximum caseload ratio for officers supervising this population is set at 40:1.^{33, 34}

³¹ Conditional release requires mandatory post-prison supervision for inmates who are sentenced for certain violent crimes and who have served a prior felony commitment at a state or federal correctional institution, or who are sentenced as a habitual offender, violent habitual offender, violent career criminal, or court designated sexual predator. Unlike parole, conditional release is not discretionary.

³² FDC standards for contact with offenders are confidential as a means of ensuring offender compliance. Therefore, specific timeframes for field contacts are not included.

³³ In some areas, for example rural counties and counties

In response to state and local residence restrictions for sex offenders, FDC has developed the Sex Offender Residential Restrictions System (SORR). This mapping software is utilized by probation officers to determine if an offender can legally live at a certain address. SORR allows the probation officer to check the address against state and local restrictions as well as the offender's rules of supervision. For example, if there is a local ordinance that an offender cannot live within 2,500 feet of a park or school, then the officer changes the buffer from 1,000 feet to 2,500 feet. (For additional detail, see Appendix C.) The officer enters the address into the system and it prints a map with the address, highlighting the areas where the offender cannot live.³⁵

For offenders on sex offender probation, officers also conduct periodic home inspections to look for evidence of a violation of probation which may include the possession of pornography or alcohol or, if their offense was against a minor, evidence of children in the home. For those on regular probation, the officer conducts visual inspections and, if reasonable suspicion exists, a search is conducted. If the officer finds something that would warrant a new criminal charge, such as illegal drugs or child pornography, the search is paused and local police are called to complete the search and make an arrest based on new charges.

The ability to search electronic devices such as cellular phones, tablets, and computers during contacts is an important component of these home visits. Technology can be used by sex offenders to view or transmit sexual images, as well as stalk or contact victims or potential victims. For those on sex offender probation,

experiencing staff shortages, mixed caseloads are common, where officers may be supervising sex offenders, other high-risk offenders, as well as lower-risk offenders. This can result in officers having more than 40 cases overall, but no more than 40 sex offender probation cases.

³⁴ Sections [947.1405\(8\)](#) and [948.12](#), F.S.

³⁵ If the address is near the border line, the officer will go into the field and physically measure the distance to determine if the address is appropriate.

officers may check an offender's phone, tablet, or computer for sexual images or inappropriate text messages during any home, field, or office contact. If a sex offender on regular probation is suspected of using an electronic device for a sex crime, the officer contacts law enforcement to report the suspected crime.³⁶

Information regarding these visits and searches conducted by FDC are entered into the department's Offender Based Information System (OBIS). Currently, several sheriff offices have obtained access to OBIS through a memorandum of understanding with the department, and can thus review the department's most recent address verification activity for offenders under community supervision. The department currently has plans to make OBIS information available to all law enforcement officers through the Florida Criminal Justice Network (CJNET), a closed network managed by FDLE to enhance the sharing of information among criminal justice agencies.

Florida statute requires active and timely electronic monitoring for offenders convicted of certain sexual offenses. Florida law requires that the court impose electronic monitoring as a condition of probation or community control for sex offenders who have committed specified offenses.^{37, 38} Florida law also requires that an offender 18 years of age or older who sexually molests a child less than 12 years of age be placed on electronic monitoring for the remainder of their natural life following their term of imprisonment.^{39, 40} Further, in

cases where a supervised sex offender violates the terms of his or her supervision but was not originally sentenced to electronic monitoring, Florida law requires the court modify the probation or community control to include electronic monitoring.⁴¹ Lastly, Florida law stipulates that electronic monitoring may be imposed for a supervised offender when deemed necessary by FDC and ordered by the court at the department's recommendation. Of the 6,211 sex offenders on active community supervision by FDC, approximately 50% are on electronic monitoring.⁴²

As of September 2015, 3,088 registered sex offenders were on active electronic monitoring. The average length of time on monitoring for registered sex offenders on probation or community control was 9 years, with 1% serving less than 2 years and 24% serving more than 10 years. One percent (28) of sex offenders on electronic monitoring will be monitored for their lifetime.⁴³ The average electronic monitoring time for registered offenders on conditional release was five years. Offenders on conditional release have served at least 85% of their sentence in incarceration; thus, their time on conditional release cannot be longer than 15% of their sentence. Because of this, the average length of time of electronic monitoring for registered offenders on conditional release is shorter than electronic monitoring ordered as a condition of probation.⁴⁴

California, Georgia, Kansas, Louisiana, Michigan, Missouri, North Carolina, Oregon, Rhode Island, and Wisconsin.

⁴¹ Section [948.063](#), *F.S.*

⁴² As of September 2015, FDC had 4,274 total offenders on GPS monitoring, of which 3,088 (72%) were registered sex offenders.

⁴³ Effective September 1, 2005, individuals convicted of a life felony for lewd and lascivious molestation against a victim less than 12 years of age must be sentenced to at least 25 years imprisonment followed by lifetime community supervision to include electronic monitoring. As this requirement has only been in effect ten years, few sex offenders subject to this provision have been released from prison.

⁴⁴ It is possible that an offender would receive a split sentence of incarceration and community supervision resulting in an offender having a probationary period of Global Positioning System (GPS) monitoring following a conditional release period of GPS monitoring.

³⁶ Although probation officers have the authority to search when reasonable suspicion exists, the offender may be under investigation by law enforcement. According to department staff, FDC does not want to interfere with an active investigation and law enforcement has resources and staff trained and dedicated to conduct this type of search.

³⁷ Offenses include sexual battery, lewd and lascivious offenses committed upon or in the presence of persons less than 16 years of age, sexual performance by a child, and selling or buying of minors.

³⁸ Section [948.30\(3\)](#), *F.S.*

³⁹ Section [948.012\(4\)](#), *F.S.*

⁴⁰ Florida is 1 of 11 states that impose lifetime electronic monitoring for certain sex offenders. Other states are

FDC contracts for electronic monitoring services. FDC is required to use an electronic monitoring system to actively monitor and identify an offender's location and provide timely reports or records of the offender's presence near or within a crime scene or in a prohibited area (exclusion zone) or the offender's departure from specified geographic limitations (inclusion zone).⁴⁵ The department contracts with 3M Electronic Monitoring for this system, which relies on Global Positioning System (GPS) technology to track an offender's position.⁴⁶ The 3M electronic monitoring system provides two pieces of equipment to each offender—a smart XT tracking/communication device and an affixed ankle bracelet.⁴⁷ (See Appendix D for additional detail.) The XT device has a phone number associated with it that allows for two-way communication with the offender.⁴⁸ The ankle bracelet has tamper-resistant features, including a motion sensor and a fiber optic filament that forms a circuit when attached to the offender's ankle allowing the probation officer to know if the strap is broken. Together, the two pieces actively track offenders in three ways—satellites, cellular phone towers, and motion detection all in near real time.^{49, 50}

The 3M electronic monitoring system is web-based and allows FDC probation officers to monitor an offender's current location and movement at any time. Using security features, the officer can access this information from his or her office computer or from the field on portable devices such as tablets and smart phones. The officer can review recent offender movements on the monitoring system's GPS map to verify that the offender has complied with probation requirements such as going to work, attending treatment sessions, or complying with curfew. The officer is notified immediately if an offender's movement violates the terms of supervision by entering an exclusion zone such as a victim's residence or place of employment or by leaving his or her inclusion zone (county of residence or home if on community control). Additionally, when an offender is approved to travel out of the county, the officer can set a time window. During this time window, the system continues to track the offender's movement.

The 3M monitoring system provides a near real time graphic of an offender's location and movement. (See Appendix D.) The system registers different speeds and can determine if the offender is walking, riding a bike, or traveling in a car depending on the speed of movement. Additionally, probation officers can use electronic monitoring to check if an offender is home prior to making a home contact or drop in unannounced on an offender at their current location such as a the laundromat or home of a family member. Officers can plan their route when conducting field visits based on real time location information for offenders under their supervision. This helps to maximize both officer time and face-to-face interaction with offenders. Additionally, the XT device provides anytime, two-way communication, via phone call or text, between the probation officer and the offender.

⁴⁵ Section 948.11 (6), F.S.

⁴⁶ The Fiscal Year 2015-16 budget allocation for 3M electronic monitoring equipment and services for all types of offenders is \$9.1 million. The contract with 3M was recently renewed and the current 3 year contract is in effect until June 30, 2018.

⁴⁷ FDC may charge up to the per diem cost to the offender; currently \$5.25. A judge may modify the offender's obligation to a lesser amount. However, FDC typically recoups only 10%-15% of the cost of electronic monitoring because all other offender costs (court costs, fines, restitution) are paid first.

⁴⁸ The offender is not given the number and it cannot be used for personal communication.

⁴⁹ Near real time refers to the delay introduced, for electronic communication and automated data processing, between the occurrence of an event and the delivery of the processed data, and implies that there are no significant delays.

⁵⁰ The current 3M system technology, which the department began transitioning to in October 2012, can track an offender's position utilizing the cellular phone towers of four carriers—AT&T, Sprint, T-Mobile and Verizon. Probation officers can switch out sim-cards in the device in order to connect to a carrier with a stronger signal for a particular area. If an offender lives in an area without cellular phone service, he or she is issued a base unit to plug into his or her land telephone line.

Electronic monitoring alarms notify 3M and the department of potential offender violations. When the offender's electronic monitoring device identifies any of the several potential violation types, the system sets off an alarm. There are several types of alarm notifications for which the response varies. In most instances, an offender is given the opportunity to respond to an alarm by modifying his or her behavior or correcting a technical problem before it results in a violation of probation. The 3M electronic monitoring center staff provides an initial response to pre-determined offender alarm notifications such as a home curfew violation, when the tracking device is unable to establish a wireless connection, or when the bracelet battery is getting low. The monitoring center will contact the offender via text or phone call to the XT device in an effort to resolve and document actions taken prior to delivering an alarm notification to FDC.⁵¹

Monitoring center staff will first call the offender's assigned probation officer for an alarm notification. Some alarms, because of their seriousness, bypass the monitoring center and go directly to the assigned probation officer or on-call officer who must respond. These alarms include when an ankle strap is broken, the device is tampered with, or an offender enters an exclusion zone or leaves his or her inclusion zone.

Most alarms are resolved by the 3M monitoring center. The contract goal is for the vendor-operated monitoring center to handle 70% of alarms. For September 2015, 72% of alarms were resolved by the monitoring center. The system's web-based platform allows 3M staff to enter case note information when resolving an alarm and the information can later be viewed by the probation officer.

⁵¹ The 3M system has two monitoring centers—one in Jacksonville and one in Odessa (Pasco County) which operate 24-hours a day, seven days a week.

FDC has developed procedures to avoid gaps in electronic monitoring for offenders entering or exiting Florida's communities. Beginning in March of 2014, for those sex offenders sentenced to electronic monitoring, the department began fitting them with electronic monitoring ankle bracelets prior to release from prison. This allows the receiving probation office to begin tracking the offender's movements from the moment of release. Similarly, when an offender is released from a local jail, residential facility, or hospital, FDC will place a hold on his or her release until an officer can go to the jail and fit the offender with the monitoring device. This initiative was first implemented in FDC Region I in the panhandle and has since been adopted statewide.

FDC continues to monitor offenders who relocate to another state until they are placed on electronic monitoring in their new state of residence. When an offender on electronic monitoring is accepted for supervision in another state, the offender remains on active electronic monitoring until the receiving state activates the offender on its electronic monitoring system. FDC continues to monitor the tracking points and will address any alarm notifications until the probation office in the receiving state confirms it has received the offender and removes the ankle bracelet.

Lastly, FDC may require electronic monitoring for supervised sex offenders who relocate to Florida even if they were not sentenced to electronic monitoring in the state where the offense occurred. Prior to accepting an offender for supervision in Florida, department staff reviews the offender's criminal history. If the sex offender's convictions meet Florida statutory criteria for electronic monitoring, the department will impose electronic monitoring for the duration of the offender's term of supervision, regardless of whether he or she was sentenced to electronic monitoring in the offense state.

Electronic monitoring information is also used for other public safety purposes. In addition to monitoring offenders for compliance with their conditions of probation, electronic monitoring provides locational information that is utilized by both FDC and local law enforcement to help ensure public safety. Local law enforcement personnel are able to have read only access to the system and can review location points for a given offender or an address. Applications include issuing an alert if an offender goes near a victim's home and allowing local law enforcement to determine the presence of offender(s) at public events, such as community festivals or parades.

Electronic monitoring is also utilized by the department and local law enforcement for crime scene correlation. By correlating the location points for offenders on electronic monitoring for a geographic area in which a crime occurred, law enforcement can identify subjects at or near the crime scene as well as eliminate known offenders who were not in the area, allowing law enforcement to focus efforts elsewhere.

Registry information on sex offender enrollment at institutions of higher education is not consistently updated

Federal and state laws require offenders to report to law enforcement officials when they are enrolled or employed at an institution of higher education. This information is posted to the Florida Department of Law Enforcement (FDLE) sex offender registry. Our review of a sample of offenders found this information to be out-of-date for some offenders. Additionally, some higher education institutions do not always receive timely notification from law enforcement agencies about an offender's enrollment, employment or volunteerism on campus.

Federal and state laws require offenders to report employment or attendance at an institution of higher education. The Federal Campus Sex Crimes Prevention Act, passed in 2000, requires any person who is obligated to

register in a state's sex offender registry to contact the appropriate state officials and provide notice of each higher education institution in the state at which the offender is enrolled, employed, or volunteers. In 2002, the Florida Legislature added this requirement to Florida statutes.⁵²

FDLE sex offender registry includes information on the presence of sex offenders at institutions of higher education. The public can access this information when searching by offender, neighborhood, or via the university search tool. Sex offenders who enroll, are employed, or volunteer at an institution of higher education in Florida must notify authorities within 48 hours.⁵³ Offenders must provide the name, address, and county of each institution, including each campus attended. Any change in status, such as commencement or termination, must be reported in person at the sheriff's office or the FDC within 48 hours. Failure to report this information is a third degree felony.

After receiving notification from the offender, local law enforcement agencies, or FDC, are required to promptly notify each institution of the offender's presence and any subsequent change in enrollment, employment, or volunteer status.⁵⁴ Sheriff's offices reported notifying institutions via phone call, face-to-face contact with administration or campus security, email, or mailed letter.

FDLE launched the university search tool as part of the sex offender registry in October 2013. This tool allows users to obtain a listing of offenders registered as enrolled, employed, or volunteering at an institution of higher education. Prior to its implementation and since that time, the FDLE Enforcement Unit, has worked with local law enforcement agencies and the U.S. Marshals Service to identify offenders who are out of compliance, who come into the state without registering, or

⁵² Chapter [2002-58](#), *Laws of Florida*.

⁵³ Sections [775.21\(6\)\(a\)1.b](#) and [943.0435\(2\)\(b\)2](#), *F.S.*

⁵⁴ Sections [775.21\(6\)\(a\)1.b](#) and [943.0435\(2\)\(b\)2](#), *F.S.*

commit any other kind of violation of registration requirements. The FDLE Enforcement Unit has conducted comparison initiatives to verify that offenders who are enrolled at institutions of higher education have reported this information to local law enforcement or FDC. FDLE staff compared sex offender registry data to institutional enrollment data. To date, six institutions have participated with FDLE on eight comparison efforts. These resulted in the arrest of two offenders for failure to report their enrollment.

Registry information for institutions of higher education was outdated in our sample for some offenders. Utilizing the sex offender registry university search tool, we reviewed the records of registered sex offenders reported to be enrolled, employed, or volunteering at a sample of four state colleges. Out of 45 offender records, we found 14 instances in which offenders continued to be listed on the sex offender registry as enrolled or volunteering at an institution after their status was terminated. For example, one offender was listed as enrolled, but had absconded to another state in 2004. Six offenders were serving prison sentences and had been confined for as long as 18 months. Five offenders were no longer enrolled or had registered, but never attended. In one case, the offender last enrolled for classes in the summer of 2011. Lastly, two offenders were listed as volunteers in 2004, but the college had no current record of them as volunteers.

Florida statute provides that any institution in the Florida College System may consider the past actions of any person applying for admission or enrollment and may deny admission or enrollment to an applicant because of misconduct if determined to be in the best interest of the institution.⁵⁵ Accordingly, some institutions deny admission or enrollment to students who are officially designated as sexual offenders. Offenders must first follow an appeals process prior to submitting an application for admission.

It is important that institutions are notified of an offender's plan to enroll prior to attending class. This provides campus police and administration time to inform themselves of the offender's offense history prior to his or her interacting with the student community. However, our review of four state colleges also found that, while commencement of enrollment appears to be consistently reported to colleges by local law enforcement agencies or FDC and posted to the registry, it is not always timely. Some institutions of higher education reported receiving information from local law enforcement about an offender's presence on campus after the offender was already admitted and attending classes. One institution reported staff had found currently enrolled sex offenders on the FDLE registry for whom the college never received notification.

In an effort to help ensure timely reporting, the department has suggested a statutory change to the Legislature allowing sex offenders to report additional information online. Currently, offenders may report email addresses and internet identifiers online. The change would allow offenders to also report enrollment, employment, volunteering, or termination of these statuses at an institution of higher education.

State and local agencies continue to provide letters to sex offenders who are unable to obtain identification cards; the number of letters issued has decreased

Florida law requires sex offenders who are required to register to attempt to obtain valid state identification cards and keep their address information current. We found that approximately 20% of sex offenders are unable to obtain identification cards either because they lack the needed documentation or money to pay required fees, but the number of letters issued has decreased since our previous report.

Almost 20% of sex offenders are unable to obtain identification cards; the number of letters issued has decreased by 24% since 2012. Sex offenders legally required to register

⁵⁵ Section [1001.64\(8\)\(a\)](#), F.S.

are also required to attempt to obtain a Florida license or identification card and keep their address information current.⁵⁶ Because some sex offenders lack adequate documentation or funds to obtain the required license or identification cards, the Department of Highway Safety and Motor Vehicles (DHSMV) field offices and Tax Collectors' offices issue letters in lieu of a license or identification card. The letter states that the offender attempted to comply with Florida statutes, but the offender could not provide the required documentation or payment necessary in order to receive a driver's license or identification card. While issuance of this letter does not fulfill the offender's statutory requirement, local law enforcement agencies typically accept the letter as an indication that the offender has attempted to comply.⁵⁷ Previously, DHSMV issued one letter for both sexual offenders and sexual predators. Beginning in January 2016, DHSMV is producing one letter specific to sexual offenders and a separate letter specific to sexual predators; the draft versions of both letters are provided in Appendix E.

In Fiscal Year 2014-15, there were 2,870 sexual offenders who received a letter and a total of 3,956 letters issued; this means that there were many cases where sex offenders obtained more than one letter. This might have occurred for several reasons including a change of residence, loss of the letter, or local practices that require the offender to obtain more than one letter per year. Additionally, the number of letters issued since our previous report decreased by 24%, from 5,194 letters to 3,956 letters, while the number of identification transactions remained relatively constant.^{58, 59}

⁵⁶ The federal Real ID Act requires all applicants produce proof of identification, such as a valid passport or original birth certificate, as well as a social security card and two documents that show their address, in order to obtain identification.

⁵⁷ The sex offenders' inability to obtain the required license or identification cards does not prevent the registry and other relevant databases from being updated with offender information.

⁵⁸ Identification transactions are the total number of transactions for driver licenses, identification cards, and letters.

More frequent transient offender in-person reporting requirement improves accountability; transient offenders are still difficult to monitor

The 30-day transient reporting requirement requires homeless sexual offenders and predators to report every 30 days to their sheriff's office. In our survey, most sheriffs' offices with transient offenders in their county reported that this new requirement increases accountability of transient offenders; however, transient offenders are still difficult to monitor.⁶⁰

Local law enforcement has implemented the 30-day transient reporting requirement but is not tracking the reporting in a consistent way throughout the state. Prior to 2014, transient sexual predators were only required to register every three months and sex offenders every six months. Chapter 2014-5, *Laws of Florida*, added a requirement that transient offenders visit the sheriff's office every 30 days in person to verify some information such as transient location in addition to the three or six month registration.⁶¹ This 30-day transient reporting requirement is different than a typical registration because an offender is not required to verify all information but must provide the addresses and locations of transient residence.⁶²

⁵⁹ The total number of identification transactions and letters issued from our previous report were reported from August 1, 2011 through July 31, 2012; whereas, the total number of identification transactions and letters issued were currently reported for Fiscal Year 2014-15 from July 1, 2014 through June 30, 2015.

⁶⁰ In our survey, 61% (41) of sheriffs' offices reported that there are transient offenders in their county, 34% (23) reported that there are no transient offenders, and 5% (3) did not respond to the question; thus, only the sub-sample of 41 offices that responded affirmatively are included in the analysis of transient offenders. Additionally, while 41 sheriffs' offices reported that there are transient offenders within their county, approximately 50% of all transient offenders in Florida reside in Miami-Dade and Broward counties.

⁶¹ Sections [943.0435\(4\)\(b\)2](#) and [775.21\(6\)\(g\)2.b.](#), *F.S.*

⁶² According to s. [775.21\(2\)\(m\)](#), *F.S.* a transient residence means a county where a person lives, remains, or is located for a period of five or more days in the aggregate during a calendar year and which is not the person's permanent or temporary address. The term includes, but is not limited to, a place where

According to Florida statute, transient offenders who fail to report in person to the sheriff's office every 30 days can be charged with a third degree felony.⁶³ As of October 2015, nine sheriffs' offices reported charging about 68 transient offenders for failing to report under the 30-day transient reporting requirement.

Florida statute allows for the sheriff to coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for the 30-day transient reporting requirement.⁶⁴ In our survey, two agencies reported that they established new reporting sites to accommodate the new requirement but did not coordinate with other entities to do so. No sheriff's offices reported that they had to expand reporting hours at existing sites to accommodate the more frequent reporting by transient offenders.

Finally, Florida statute requires each sheriff's office to establish procedures for reporting transient residence information and providing notice to transient offenders to report every 30 days.⁶⁵ Sheriffs' offices have been experiencing logistical problems in reporting and tracking the 30-day transient reporting requirement because FDLE's system that is used to track typical registration and re-registration activities does not have a separate data field to record this information. As a result, sheriffs' offices are tracking the information in different ways. For example, some sheriffs' offices are using the registration option in FDLE's system and adding a note to specify that it is the 30-day transient reporting requirement as opposed to a re-registration. Other sheriffs' offices are treating the 30-day transient reporting requirement as an information update and therefore it does not register in the system as a re-registration. This results in an inconsistent

tracking of the 30-day transient reporting requirement throughout the state, which may make it difficult to determine the effectiveness of the 30-day transient reporting requirement.

The 30-day transient reporting requirement improved accountability for transient offenders, but monitoring these offenders is still problematic. In our survey of sheriffs' offices with transient offenders in their county, approximately 70% of sheriffs' offices reported that the 30-day transient reporting requirement increased accountability for transient offenders by requiring them to come into the office on a monthly basis. Survey respondents also reported that the 30-day transient reporting requirement is useful because it gives law enforcement visual contact with transient offenders, allowing them to ask transient offenders questions and obtain proper documentation about where transient offenders are in the county to improve tracking of this specific population.

While transient offenders are more accountable under the 30-day transient reporting requirement, sheriffs' offices reported that transient offenders are difficult to monitor because their mobility makes it difficult for law enforcement to locate them and they consume a disproportionate amount of officer time compared to non-transient offenders. In addition, some stakeholders reported that sex offenders may claim to be transient even though they have a permanent or temporary address or they may be transient because they have difficulty finding a legal residence due to enhanced residency restrictions.

Florida statute prohibits certain offenders convicted of a crime against a victim less than 16 years of age from living within 1,000 feet of any school, child care facility, park, or playground.⁶⁶ However, local government can impose municipal or county ordinances that further prohibit where some or all sexual offenders can live. For example, in some communities, certain offenders who committed

the person sleeps or seeks shelter and a location that has no specific street address.

⁶³ Sections [943.0435\(2\)\(d\)](#) and [775.21\(6\)\(g\)4.](#), *F.S.*

⁶⁴ Sections [943.0435\(2\)](#) and [775.21\(6\)\(g\)2.b.](#), *F.S.*

⁶⁵ Sections [943.0435\(2\)](#) and [775.21\(6\)\(g\)2.b.](#), *F.S.*

⁶⁶ Section [775.215\(2\)\(a\)](#), *F.S.*

a crime against a minor less than 16 years of age cannot live within 2,000 feet of any school, designated public school bus stop, day care center, park, playground, or other place where children regularly congregate. Furthermore, some counties have multiple ordinances in different municipalities and each may have different residency restrictions. For example, a sheriff's office in one county may monitor sex offenders who have a 1,500 feet restriction in one city and a 2,500 feet restriction in another city. As of September 2015, there were 189 such ordinances in 47 Florida counties.

As required by statute, OPPAGA sought input from the Florida Association for the Treatment of Sexual Abusers (FATSA) for this review.^{67, 68} FATSA noted that local residency restrictions increased transiency among registered offenders, particularly within south Florida. They assert that this residential instability both impairs the ability of law enforcement to monitor registered sex offenders and increases their risk of recidivism. According to FATSA, there is a lack of empirical evidence to support that local ordinances increase public safety and they do not think that local ordinances should exceed the state law of 1,000-foot buffer zones.

To better monitor transient offenders, some sheriffs' offices have policies that are more stringent than the 30-day reporting requirement. Approximately 24% of sheriffs' offices we surveyed impose additional requirements on transient offenders. Five offices reported that they require transient offenders to report weekly, either by phone or

⁶⁷ Section [943.04353](#), *F.S.*

⁶⁸ As required by statute, the Florida Council Against Sexual Violence was also contacted for this review, but did not provide comment.

in person, and one office reported that that a deputy must conduct an in-person check of the transient's location once per month to confirm that the transient person is staying there.⁶⁹

Policy Options

FDLE is seeking input from sheriffs' offices on needed changes to the sex offender registry. To ensure that the 30-day transient reporting requirement is consistently tracked statewide, FDLE should consider modifying the system to include a specific data element to track the 30-day transient reporting requirement when it makes other changes to the registry.

To ensure information regarding sex offender affiliation at institutions of higher education is accurate and up-to-date, FDLE should consider monitoring the accuracy of the registry information for offenders and predators in confinement. In addition, FDLE should work with public colleges and universities to develop best practices for comparing their student, employee, and volunteer information to the sex offender registry.

Agency Response

In accordance with the provisions of s. 11.51(2), *Florida Statutes*, a draft of our report was submitted to the Commissioner of the Florida Department of Law Enforcement and the Secretary of the Florida Department of Corrections. The Florida Department of Law Enforcement's written response has been reproduced in Appendix F.

⁶⁹ One of the five only requires certain transient sexual predators to report weekly.

OPPAGA supports the Florida Legislature by providing data, evaluative research, and objective analyses that assist legislative budget and policy deliberations. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021), by FAX (850/487-9213), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475). Cover photo by Mark Foley.

OPPAGA website: www.oppaga.state.fl.us

Project supervised by Claire K. Mazur (850/717-0575)
Project conducted by Marina Byrd, Michelle Ciabotti, and James Clark
R. Philip Twogood, Coordinator

Appendix A

The Florida Department of Law Enforcement's Registry Lists Over 66,000 Sex Offenders

As shown in Exhibit A-1, FDLE's registry listed 66,523 offenders as of September 2015. However, only 40% of sex offenders and sexual predators on the registry are in Florida communities. The majority (59%) of offenders on the registry are either confined or do not reside in Florida.

Exhibit A-1

Approximately 40% of Registered Sex Offenders and Sexual Predators Live in Florida Communities

Status		Sex Offenders	Sexual Predators	All
Living in Florida communities	Sentence Served - Required to Register	18,652	1,583	20,235
	Community Supervision	5,205	1,405	6,610
	Department of Corrections	4,811	1,400	
	Department of Juvenile Justice	23	0	
	Federal	371	5	
	Total	23,857	2,988	26,845 (40.3%)
Not Living in Florida communities	Confined	11,446	6,764	18,210
	Incarcerated	11,215	6,418	
	Civily committed	231	346	
	Non-Florida Residents	19,379	1,325	20,704
	Total	30,825	8,089	38,914 (58.5%)
Absconded ¹	Absconded offenders	692	72	764
	Total	692	72	764 (1.1%)
Total Persons on Registry as of September 2015		55,374	11,149	66,523²

¹ Absconded offenders may or may not be in Florida communities as their whereabouts are unknown.

² The registry also includes 1,419 deceased persons: 1,260 sex offenders and 159 sexual predators, whose names are left on the registry for one year from the documented date of death so that victims, community members, and criminal justice partners will have notice of a registrant's death.

Source: OPPAGA analysis of Florida Department of Law Enforcement Florida Sex Offender Registry.

Appendix B

Special Supervision Conditions for Sex Offenders

As shown in Exhibit B-1, sex offenders under probation, community control, and conditional release have special conditions of supervision based on the date(s) and type(s) of crimes.

Exhibit B-1

The Florida Legislature Has Created Additional Special Supervision Conditions for Sex Offenders Over Time^{1,2,3,4,5}

<p>Date: Effective for persons whose crimes were committed on or after October 1, 1995 and were placed on probation or community control for specified offenses.</p> <p>Crimes: Sex offense provided in Ch. 794, ss. 800.04, 827.071, 847.0135(5), or 847.0145, <i>F.S.</i></p>
Curfew from 10 p.m. to 6 a.m. Another eight-hour period may be designated if the offender's employment precludes the specified time, and the alternative is recommended by the FDC. If imposing a curfew would endanger the victim, alternative sanctions may be considered.
If the victim was under the age of 18, a prohibition on living within 1,000 feet of a school, child care facility, park, playground, or other place where children regularly congregate, as prescribed by the court for offenders on probation or community control. For those under conditional release, there is also a prohibition on living within 1,000 feet of a designated public school bus stop.
Active participation in and successful completion of a sex offender treatment program with qualified practitioners specifically trained to treat sex offenders, at the offender's own expense.
No contact with the victim unless approved by the victim, a qualified practitioner in the sexual offender treatment program, and the sentencing court.
If the victim was under the age of 18, no contact with a child under the age of 18 except as provided by s. 948.30(1)(e), <i>F.S.</i> for probationers or community controllees or s. 947.1405(7)(a)5., <i>F.S.</i> for offenders on conditional release.
If the victim was under age 18, a prohibition on working for pay or as a volunteer at places where children regularly congregate such as schools, child care facilities, parks, and playgrounds. For offenders on probation or community control, pet stores, libraries, zoos, theme parks, and malls are also written into statute.
Unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program, a prohibition on viewing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material, including telephone, electronic media, computer programs, or computer services that are relevant to the offender's deviant behavior pattern. For offenders on probation or community control, accessing material is also written into statute.
A requirement that the offender under probation or community control must submit a DNA sample and an offender under conditional release must submit two specimens of blood to the FDLE to be registered with the DNA data bank.
A requirement that the offender make restitution to the victim for all necessary medical and related professional services relating to physical, psychiatric, and psychological care.
Submission to a warrantless search by the community control or probation officer of the offender's person, residence, or vehicle.
<p>In addition to the above provisions,</p> <p>Date: Effective for persons whose crimes committed on or after October 1, 1997 and were placed on probation or community control for specified offenses.</p> <p>Crimes: Sex offense provided in Ch. 794, ss. 800.04, 827.071, 847.0135(5), or 847.0145, <i>F.S.</i></p>
As part of a treatment program, participation at least annually in polygraph examinations, paid for by the offender, to obtain information necessary for risk management and treatment and to reduce the sex offender's denial mechanisms.
Maintenance of a driving log and a prohibition against driving a motor vehicle alone without the prior approval of the supervising officer.
A prohibition against obtaining or using a post office box without the prior approval of the supervising officer.
If there was sexual contact, a submission to, at the offender's expense, an HIV test with the results to be released to the victim or the victim's parent or guardian.
For probation or community control, electronic monitoring when deemed necessary by the community control or probation officer and his or her supervisor, and ordered by the court at the recommendation of the FDC. For conditional release, electronic monitoring of any form when ordered by the commission.

<p>In addition to the above provisions, Date: Effective for persons whose crimes were committed on or after July 1, 2005 and were placed on probation or community control for specified offenses. Crimes: Sex offense provided in Ch. 794, ss. 800.04, 827.071, 847.0135(5), or 847.0145, <i>F.S.</i></p>
<p>A prohibition on accessing the Internet or other computer services until a qualified practitioner in the offender's sex offender treatment program, after a risk assessment is completed, approves and implements a safety plan for the offender's accessing or using the Internet or other computer services.</p>
<p>In addition to the above provisions, Date: Effective for persons whose crimes were committed on or after September 1, 2005 and were placed on probation or community control for specified offenses or other provisions. Crimes: Sex offense provided in Ch. 794, ss. 800.04(4), (5), or (6), 827.071, or 847.0145, <i>F.S.</i>, and the unlawful activity involved a victim 15 years of age or younger and the offender is 18 years of age or older; or are designated as a sexual predator pursuant to s. 775.21, <i>F.S.</i>; or, for offenders on probation or community control, crimes also include previous convictions of a violation of Ch. 794, ss. 800.04(4), (5), or (6), 827.071 or 847.0145, <i>F.S.</i> and the unlawful sexual activity involved a victim 15 years of age or younger and the offender is 18 years of age or older.</p>
<p>Sentenced to mandatory electronic monitoring as described in Appendix D</p>
<p>In addition to the above provisions, Date: Effective for persons who are subject to supervision for specified crimes committed on or after May 26, 2010 with additional provisions. Crimes: Convicted at any time of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses listed in s. 943.0435(1)(a)1.a.(I), <i>F.S.</i>, or a similar offense in another jurisdiction, against a victim who was under the age of 18 at the time of the offense; if the offender has not received a pardon for any felony or similar law of another jurisdiction, if a conviction of a felony or similar law of another jurisdiction necessary for the operation of this subsection has not been set aside in any post-conviction proceeding, or if the offender has not been removed from the requirement to register as a sexual offender or sexual predator pursuant to s. 943.04354, <i>F.S.</i></p>
<p>A prohibition on visiting schools, child care facilities, parks, and playgrounds, without prior approval from the offender's supervising officer. Additional prohibited locations may also be designated to protect a victim. This does not prohibit the offender from visiting these locations for the sole purpose of attending a religious service as defined in s.775.0861, <i>F.S.</i> or picking up or dropping off the offender's children or grandchildren at a child care facility or school.</p>
<p>A prohibition on distributing candy or other items to children on Halloween; wearing a Santa Claus costume, or other costume to appeal to children, on or preceding Christmas; wearing an Easter Bunny costume, or other costume to appeal to children, on or preceding Easter; entertaining at children's parties; or wearing a clown costume; without prior approval from the court or commission.</p>
<p>In addition to the above provisions, Date: Effective for persons whose crimes committed on or after October 1, 2014, and were placed on probation or community control for specified offenses. Crimes: Violation of Chapter 794, s. 800.04, s. 827.071, s. 847.0135(5), or s. 847.0145, <i>F.S.</i></p>
<p>A prohibition on the offender from viewing, accessing, owning, or possessing any obscene, pornographic, or sexually stimulating visual or auditory material unless otherwise indicated in the treatment plan provided by a qualified practitioner in the sexual offender treatment program. Visual or auditory material includes, but is not limited to, telephone, electronic media, computer programs, and computer services.</p>

¹ Sections [948.30](#), [947.1405](#), *F.S.*

² If an offender violates probation or community control, and the conditions in ss. [948.063\(1\) or \(2\)](#), *F.S.* are met, whether probation or community control is revoked or not revoked, the offender shall be placed on electronic monitoring in accordance with s. [948.063](#), *F.S.*

³ Per s. [775.082\(3\)4.a.](#) *F.S.*, except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. [800.04\(5\)\(b\)](#), *F.S.*, punishment by a term of imprisonment for life or a split sentence that is a term of at least 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. [948.012\(4\)](#), *F.S.*

⁴ Per s. [948.012\(4\)](#), *F.S.*, effective for offenses committed on or after September 1, 2005, the court must impose a split sentence pursuant to subsection (1) for any person who is convicted of a life felony for lewd and lascivious molestation pursuant to s. [800.04\(5\)\(b\)](#) *F.S.* if the court imposes a term of years in accordance with s. [775.082\(3\)\(a\)4.a.\(II\)](#), *F.S.* rather than life imprisonment. The probation or community control portion of the split sentence imposed by the court for a defendant must extend for the duration of the defendant's natural life and include a condition that he or she be electronically monitored.

⁵ Per s. [948.012\(5\)](#), *F.S.*, effective for offenses committed on or after October 1, 2014, if the court imposes a term of years in accordance with s. [775.082](#), *F.S.* which is less than the maximum sentence for the offense, the court must impose a split sentence pursuant to subsection (1) for any person who is convicted of a violation of: s. [782.04\(1\)\(a\)2.c](#); ss. [787.01\(3\)\(a\)2. or 3](#); ss. [787.02\(3\)\(a\)2. or 3](#); s. [794.011](#), excluding ss. [794.011\(10\)](#), [800.04](#), [825.1025](#), or [847.0135\(5\)\(b\)](#) *F.S.* The probation or community control portion of the split sentence imposed by the court must extend for at least two years. However, if the term of years imposed by the court extends to within two years of the maximum sentence for the offense, the probation or community control portion of the split sentence must extend for the remainder of the maximum sentence.

Source: OPPAGA analysis of *Florida Statutes*.

Appendix C

Sex Offender Residential Restrictions System (SORR)

As shown in Exhibit C-1, the SORR interface displays buffers around bus stops, schools, daycares, parks, and playgrounds. This allows probation officers to check an offender's proposed address prior to move in to ensure the offender can legally live at the residence. The system allows the probation officer to set the extent of the buffer depending on local residence restriction ordinances.

Exhibit C-1

SORR Interface Displays Buffer Areas Where Sex Offenders Cannot Legally Live



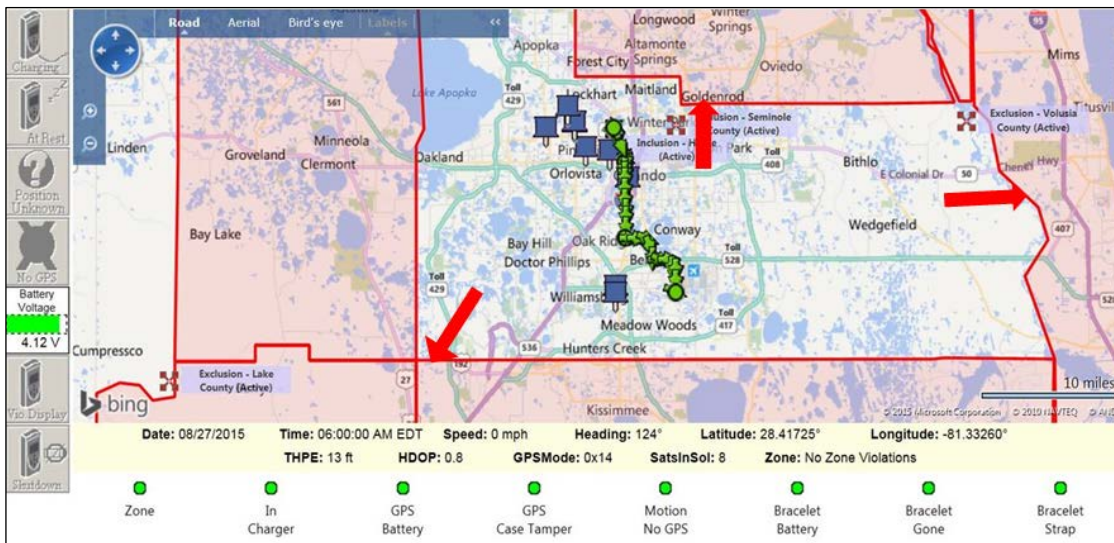
Source: Florida Department of Corrections screenshot (street names are redacted).

Appendix D

Florida Department of Corrections Electronic Monitoring

The 3M electronic monitoring interface, shown in Exhibit D-1, displays offender movement (arrows) and locations where the offender spent time in a location (circles). Blue push-pin symbols reflect the location of schools and daycares. The interface also displays exclusion zones (pink areas outlined in red). In this example, the offender is not allowed to leave his or her county of residence without permission. All surrounding counties are identified as exclusion zones. Exhibit D-2 shows the communication device and the ankle bracelet.

Exhibit D-1 GPS Monitors Offender Movement in Relation to Exclusion Zones



Source: Florida Department of Corrections GPS system screenshot.

Exhibit D-2 Devices Used to Monitor Sex Offenders Through GPS



Source: Training materials from 3M.

Appendix E

Sex Offender and Sexual Predator Letters

Exhibit E-1

Sex Offenders and Sexual Predators Who Cannot Obtain a Driver License or Identification Card Are Provided Letters

A SAFER FLORIDA
HIGHWAY SAFETY AND MOTOR VEHICLES

Terry L. Rhodes
Executive Director

2800 Apalachee Parkway
Tallahassee, Florida 32399-0500
www.fhsmv.gov

Date

Customer Name
Customer Address
Customer City, State, Zip

Attention: Customer Name
DL/ID Number: Customer's Driver License Number

This letter is being issued to show that you reported to (the system will automatically apply the address of the field office) to obtain/update your Florida driver's license or identification card as required in s. 943.0435(3) Florida Statutes.

At the time of reporting, a Florida driver's license or identification card could not be issued because you could not produce the required documentation or payment to secure or update a Florida driver's license or identification card. The following items were not produced to continue with the issuance.

Identification Documents
 Residency Documents
 Required Payment of Fees

Please be aware that the issuance of this letter DOES NOT fulfill the requirements to obtain or update a Florida driver's license or identification card as required in s. 943.0435(3) F.S. Failure to comply with this requirement is a felony in the 3rd degree punishable as provided in sections 775.082, 775.083 or 775.084 F.S.

• Service • Integrity • Courtesy • Professionalism • Innovation • Excellence •
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A SAFER FLORIDA
HIGHWAY SAFETY AND MOTOR VEHICLES

Terry L. Rhodes
Executive Director

2900 Apalachee Parkway
Tallahassee, Florida 32399-0500
www.fhsmv.gov

Date

Customer Name
Customer Address
Customer City, State, Zip

Attention: Customer Name
DL/ID Number: Customer's Driver License Number

This letter is being issued to show that you reported to (the system will automatically apply the address of the field office) to obtain/update your Florida driver's license or identification card as required in s. 775.21(6) Florida Statutes.

At the time of reporting, a Florida driver's license or identification card could not be issued because you could not produce the required documentation or payment to secure or update a Florida driver's license or identification card. The following items were not produced to continue with the issuance.

Identification Documents
 Residency Documents
 Required Payment of Fees

Please be aware that the issuance of this letter DOES NOT fulfill the requirements to obtain or update a Florida driver's license or identification card as required in s. 775.21(6) F.S. Failure to comply with this requirement is a felony in the 3rd degree punishable as provided in sections 775.082, 775.083 or 775.084 F.S.

• Service • Integrity • Courtesy • Professionalism • Innovation • Excellence •
An Equal Opportunity Employer

Source: Florida Department of Highway Safety and Motor Vehicles.

Appendix F



Florida Department of
Law Enforcement

Richard L. Swearingen
Commissioner

Office of Executive Director
Post Office Box 1489
Tallahassee, Florida 32302-1489
(850) 410-7001
www.fdle.state.fl.us

Rick Scott, Governor
Pam Bondi, Attorney General
Jeff Atwater, Chief Financial Officer
Adam Putnam, Commissioner of Agriculture

December 29, 2015

Mr. R. Philip Twogood
Coordinator
Office of Program Policy Analysis and Government Accountability
111 West Madison Street, Room 312
Tallahassee, FL 32399-1475

Dear Mr. Twogood:

Thank you for the opportunity to review, comment, and suggest clarifications to your preliminary report *Sex Offender Registration and Monitoring: Statewide Requirements, Local Practices and Monitoring Procedures*. Please see enclosed comments and clarifications regarding this report.

FDLE works closely with Florida universities and institutions of higher education to ensure reported information is accurate and updated timely and will continue working with Florida's sheriffs to include their input on 30-day transient registrant check-ins and how the state registry system might assist with this local responsibility.

Florida's sexual offender registry is a valuable public safety tool. We look forward to continued state, local and federal partnership efforts to ensure this information is accurate and comprehensive for Florida's citizens. Thank you for the time and attention your staff provided in the development of this report.

Sincerely,

A handwritten signature in blue ink, appearing to read "R. Swearingen", followed by the text "on behalf of" written in the same ink.

Richard L. Swearingen
Commissioner

RLS/mc

Enclosure

Suggestions to Clarify Report

1. p. 13, column 1, end of first full paragraph – “Lastly, two offenders were listed as volunteers in 2004, but the college had no current record of them as volunteers.”

Note: Offenders volunteering or employed on a campus may not be volunteering or employed with the school itself, but with organizations or businesses that are located on that campus; therefore, the school would not necessarily have record of this type of information.

2. p. 14, first line – “Sex offenders legally required to register are also required to attempt to obtain a Florida license or identification card and keep their address information current.”

Suggested edit: “Sex offenders legally required to register are also required to obtain a Florida license or identification card and keep their address information current.”

3. p. 15, column 1, 3rd paragraph – “...FDLE’s system that is used to track typical registration and re-registration activities does not have a separate data field to record this information.”

Note: As the statute requires “Each sheriff’s office shall establish procedures for reporting transient residence information and provide notice to transient registrants to report transient residence information as required in this subparagraph.” As each of the state’s 67 sheriffs’ offices has developed their own protocols for instituting the 30 day transient check-in, FDLE’s system does not *uniquely* record transient check-in information, though free-text fields are available for this purpose and use if desired. However, as noted in the report, FDLE continues to work with Florida sheriffs’ offices to determine how the state registry system might assist with this local responsibility.

4. p. 16, Policy Options, 1st paragraph – “FDLE should consider modifying the system to include...”

Suggested edit: “As a result of the input from Florida sheriffs’ offices, FDLE is currently evaluating modifications to the system to include...”

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 699	FINAL HOUSE FLOOR ACTION:		
SUBJECT/SHORT TITLE	Internet Identifiers	117	Y's 0	N's
SPONSOR(S):	Judiciary Committee; Criminal Justice Subcommittee; Mariano and others	GOVERNOR'S ACTION:	Approved	
COMPANION BILLS:	CS/HB 701; CS/SB 684; CS/SB 686			

SUMMARY ANALYSIS

CS/CS/HB 699 passed the House on April 28, 2017, and subsequently passed the Senate on April 28, 2017. The bill revises law specifying requirements for sexual predators and sexual offenders to register their Internet identifiers.

Florida law currently requires sexual predators and sexual offenders to register their names, addresses, and other personal information, such as electronic mail addresses and Internet identifiers, with the Florida Department of Law Enforcement ("FDLE"), through the local sheriff's office.

During the 2016 Regular Session, the Legislature amended the definition of "Internet identifier" by expanding it to include all identifiers, such as usernames or screen names, used for any Internet communication. Before the legislation took effect, however, a group of plaintiffs filed a lawsuit arguing that the new definition violated the First Amendment and was overbroad and vague. Finding in favor of the plaintiffs, the court granted a preliminary injunction prohibiting enforcement of the new definition.

The bill amends the definition of "Internet identifier" to require registration of Internet identifiers used to send or receive "social Internet communication," rather than any Internet communication. The bill's definition of "social Internet communication" specifically excludes communication by a registrant on certain news websites, with governmental entities, or that is primarily for specified commercial transactions.

The bill also requires sexual predators and sexual offenders to report each Internet identifier's corresponding website homepage or application software name as part of registration and requires any change to an electronic mail address, Internet identifier, or related information or to be reported within 48 hours after using the address or identifier.

The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An "indeterminate amount" means an unquantifiable increase in the need for prison beds.

The bill was approved by the Governor on June 26, 2017, ch. 2017-170, L.O.F., and became effective on that date.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0699z1.CRJ

DATE: July 5, 2017

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Sexual Predators, Sexual Offenders, Social Networking, and the Internet

Currently, there are more than 3 billion people worldwide that have access to the Internet.¹ As of 2015, nearly two thirds of American adults use social networking sites (“SNS”) such as Facebook and similar sites to exchange information or communicate.² “Roughly eight-in-ten online Americans (79%) now use Facebook, a 7-percentage-point increase from a survey conducted at a similar point in 2015.”³

In the past several years, reports have indicated that sexual offenders and sexual predators use SNS to gain information about victims and make contact with them.⁴ In one study published in 2010 by the University of New Hampshire, researchers noted that there had been 503 arrests involving victims and the use of SNS by offenders. Of that number, an estimated 360 arrests (or 72 percent) involved the use of SNS to communicate with the victim.⁵ Further, an estimated 346 arrests (or 69 percent) were made in cases where offenders were using the victim’s SNS to access information about them.⁶

Registration of Sexual Predators and Sexual Offenders - General Information

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sexual offense and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws, which also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders, span several different chapters and numerous statutes,⁷ and are implemented through the combined efforts of the Florida Department of Law Enforcement (“FDLE”), all Florida sheriffs, the Department of Corrections (“DOC”), the Department of Juvenile Justice (“DJJ”), the Department of Highway Safety and Motor Vehicles, and the Department of Children and Families.

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.⁸

A person is classified as a sexual offender if the person:

¹ Jacob Davidson, *Here’s How Many Internet Users There Are*, TIME MAGAZINE, May 26, 2015, available at <http://time.com/money/3896219/internet-users-worldwide/> (last viewed Mar. 3, 2017).

² Andrew Perrin, *Social Media Usage: 2005-2015, 65% of Adults Now Use Social Networking Sites – A Nearly Tenfold Jump in the Past Decade*, Pew Research Center, Oct. 8, 2015, available at <http://www.pewinternet.org/2015/10/08/social-networking-usage-2005-2015/> (last viewed Mar. 3, 2017).

³ Shannon Greenwood, Andrew Perrin, and Maeve Duggan, *Social Media Update 2016, Facebook Usage and Engagement is on the Rise, While Adoption of Other Platforms Holds Steady*, Pew Research Center, Nov. 11, 2016, available at <http://www.pewinternet.org/2016/11/11/social-media-update-2016/> (last viewed Mar. 3, 2016).

⁴ Byron Acohido, *Sex Predators Target Children Using Social Media*, USA TODAY, Mar. 1, 2011, available at http://usatoday30.usatoday.com/tech/news/2011-02-28-online-pedophiles_N.htm (last viewed Mar. 4, 2017).

⁵ Kimberly J. Mitchell, Ph.D., David Finkelhor, Ph.D., Lisa M. Jones, Ph.D., and Janis Wolak, J.D., *Use of Social Networking Sites in Online Sex Crimes Against Minors: An Examination of National Incidence and Means of Utilization*, Journal of Adolescent Health, Jan. 2010, at 3, available at <http://www.unh.edu/ccrc/pdf/CV174.pdf> (last viewed Mar. 4, 2017).

⁶ *Id.*

⁷ ss. 775.21–775.25, 943.043–943.0437, 944.606–944.607, and 985.481–985.4815, F.S.

⁸ s. 775.21, F.S. (“The Florida Sexual Predators Act”).

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.^{9, 10}

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders, but the frequency of reregistration depends on the qualifying offense. Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ. The DOC and DJJ are required to report certain information on sexual predators and sexual offenders to the FDLE and other persons or entities.

FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.¹¹ Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.¹²

Florida's registry laws meet minimum federal requirements. The federal Sex Offender Registration and Notification Act ("SORNA"), which is Title I of the Adam Walsh Protection and Safety Act of 2006 ("AWA"),¹³ attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress has judged to be necessary to be included in states' registry laws. The United States Department of Justice ("DOJ") maintains the Dru Sjojin National Sex Offender Public Website.¹⁴ States are free to choose not to substantially implement SORNA. However, the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.¹⁵ The DOJ has determined that Florida has substantially implemented SORNA.¹⁶ Florida was the third state to do so.¹⁷

⁹ ss. 943.0435 and 985.4815, F.S.

¹⁰ Sections 944.606 and 944.607, F.S., which contain provisions relating to sexual offenders in the custody of or under the supervision of the DOC, also contain definitions of the term "sexual offender" along with qualifying offenses.

¹¹ FDLE is the central repository for registration information. It also maintains the state public registry and ensures Florida's compliance with federal laws. Florida Sheriffs manage in-person registration and reregistration. *See* Florida Department of Law Enforcement, *About Us*, Updated Oct. 1, 2016, available at <http://offender.fdle.state.fl.us/offender/About.jsp> (last viewed Feb. 20, 2017). FDLE maintains a database that allows members of the public to search for sexual predators and sexual offenders through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual predator or sexual offender. *See* FDLE Website at <http://offender.fdle.state.fl.us/offender/Search.jsp> (last viewed on Mar. 2, 2017).

¹² Link to FDLE's Public Offender Homepage, available at <http://offender.fdle.state.fl.us/offender/homepage.do;jsessionid=Te-Tt1GRPwWASHTSbLUQVw> (last visited on Feb. 20, 2017).

¹³ Adam Walsh Child Protection and Safety Act of 2006, Public Law 109-248, 42 U.S.C. § 16911 et seq.

¹⁴ United States Department of Justice, Dru Sjojin National Sex Offender Public Website, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking ("SMART"), available at <http://www.nsopw.gov/Core/Portal.aspx> (last visited on Feb. 20, 2017).

¹⁵ *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance ("JAG Program Sheet"), United States Department of Justice, available at http://www.asca.net/system/assets/attachments/4390/JAG_Fact_Sheet.pdf (last viewed Feb. 20, 2017).

¹⁶ This standard is satisfied if a jurisdiction carries out SORNA requirements (as interpreted and explained by DOJ guidelines). Substantial implementation does not necessarily mean full implementation. Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, United States Department of Justice, *Jurisdictions that have substantially implemented SORNA*, available at http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on Feb. 20, 2017); *see also* Office of Justice Programs, United States Department of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending,

Specified Information at Time of Registration, Electronic Mail Addresses, and Internet Identifiers

Reporting requirements and time periods for reporting differ depending upon whether the registrant (sexual predator or sexual offender) is in or out of custody or supervision. Generally, the registrant must initially report in person to the local sheriff's office within 48 hours after:

- Establishing a residence in Florida (sexual predators and sexual offenders);
- Being designated by the court as a sexual predator;
- Being released from custody or supervision (sexual offenders); or
- Being convicted, if the registrant is not under the control, custody, or supervision of the DOC or the custody of a private correctional facility (sexual offenders).¹⁸

Sections 775.21 and 943.0435, F.S., require sexual predators and sexual offenders to provide specified information at the time of initial registration. This includes:

- Name;
- Social security number;
- Age;
- Race;
- Sex;
- Date of birth;
- Height;
- Weight;
- Tattoos or other identifying marks;
- Hair and eye color;
- Photograph;
- Address of legal residences, including current, known, temporary, transient, or future;
- Electronic mail addresses and all Internet identifiers;
- Home and cellular telephone numbers;
- Employment information and other additional information;
- Vehicle information - make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned;
- Dates and places of conviction and related information such as fingerprints; palm prints; and a brief description of the crime or crimes committed by the offender;
- Information regarding alien immigration status;
- Information regarding whether the offender is enrolled or employed by an institution of higher education; and
- Changes of status (change of address, change of employment, etc.)¹⁹

Among these requirements, s. 775.21(6)(g)5.a., F.S., provides: "A sexual predator shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers." Similarly, s. 943.0435(4)(e), F.S., provides: "A sexual offender shall register all electronic mail addresses and Internet identifiers with the department through the department's online system or in person at the sheriff's office before using such electronic mail addresses and Internet identifiers."

Registering, and Tracking ("SMART"), *SORNA Implementation Status*, available at <https://ojp.gov/smart/sorna-map.htm> (last viewed Feb. 20, 2017).

¹⁷ Elysa Batista, *Florida Becomes Third State to Comply with Sex Offender Tracking Law*, NAPLES DAILY NEWS, June 19, 2010, available at <http://archive.naplesnews.com/news/state/florida-becomes-third-state-to-comply-with-sex-offender-tracking-law-ep-394657717-343306372.html> (last viewed Feb. 20, 2017).

¹⁸ ss. 775.21(6)(e) and 943.0435(2)(a), F.S.

¹⁹ ss. 775.21(6)(a) and (6)(g)(5), and 943.0435(2)(a), (2)(b), and (4)(e), F.S.

The requirement to register electronic mail addresses and instant messaging names has been in place since 2007.²⁰ The requirement to register Internet identifiers was added in 2014.²¹ The 2014 definition for the term “Internet identifier” provided that it meant “all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but does not include a date of birth, social security number, or personal identification number (PIN).”^{22, 23}

In 2016, the Legislature enacted an expanded definition of the term “Internet identifier” and also required the collection of Internet identifiers associated with website or URL²⁴ or software applications. The amended definition of “Internet identifier,” which had an effective date of October 1, 2016, provides:

“Internet identifier” includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application software used for utility, banking, retail, or medical purposes.²⁵

Shortly before the amended definition of “Internet identifier” took effect, a group of plaintiffs, who had been convicted as sexual offenders, filed a lawsuit against the Commissioner of FDLE in federal court.²⁶ The plaintiffs argued that a preliminary injunction prohibiting enforcement of the 2016 definition should be granted because the definition violates the First Amendment and is unconstitutionally overbroad and vague. On September 27, 2016, the court granted the preliminary injunction, agreeing that the language is overbroad and vague and unconstitutionally requires an individual to either forego protected speech or run the risk of criminal prosecution.²⁷ However, the court noted that the injunction did not preclude enforcement of the 2014 definition of Internet identifier.²⁸

Effect of the Bill

The bill amends s. 775.21(2)(j), F.S., to specify a new definition of “Internet identifier.” Under the bill:

“Internet Identifier” means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender’s or sexual predator’s use of an Internet identifier that discloses his or her date of birth, social security number, PIN, password, or

²⁰ Ch. 2007-143, Laws of Fla.

²¹ Ch. 2014-5, Laws of Fla.

²² s. 775.21(2)(i), F.S. (2015).

²³ Section 943.0435(1)(e), F.S., provides that “‘Internet identifier’ has the same meaning as provided in s. 775.21.”

²⁴ “URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files).” See Indiana University Information Technology Knowledge Base Repository, available at <https://kb.iu.edu/d/adnz> (last viewed Feb. 17, 2017).

²⁵ Ch. 2016-104, Laws of Fla. (amending s. 775.21(2)(i), F.S. and renumbering it s. 775.21(2)(j), F.S.).

²⁶ The current Commissioner of FDLE is Richard “Rick” L. Swearingen, and the lawsuit was filed against the Commissioner acting in his official capacity, in the United States District Court for the Northern District of Florida, Tallahassee Division. The style of the case was *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS (N.D. Fla. Aug. 9, 2016), but was later changed to “*Delgado et al. v. Swearingen*.”

²⁷ Order Granting Preliminary Injunction, issued in *Doe v. Swearingen*, Case No. 4:16-cv-00501-RH-CAS, at 6-11 (N.D. Fla. Sept. 27, 2016). The Order noted, in part, that the amended definition of Internet identifier “trenches on First Amendment rights and is unconstitutionally vague.” *Id.* at 11.

²⁸ *Id.* at 12.

other information that would reveal the identity of the sexual offender or sexual predator waives the disclosure exemption in this paragraph for such personal information.

Further, the bill amends s. 775.21(2)(m), F.S., to create a definition for the term “social Internet communication.” Under the bill:

"Social Internet communication" means any communication through a commercial social networking website, as defined in s. 943.0437, or application software. The term “social Internet communication” does not include any of the following: communication for which the primary purpose is the facilitation of commercial transactions involving goods or services; communication on an Internet website for which the primary purpose of the website is the dissemination of news; or communication with a governmental entity. For purposes of this paragraph, the term “application software” means any computer program designed to run on mobile devices such as smartphones and tablet computers which allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.²⁹

The bill also requires sexual predators and sexual offenders to report each Internet identifier’s corresponding website homepage or application software name as part of registration and requires any change to an electronic mail address, Internet identifier, or related information or to be reported within 48 hours after using the address or identifier.

The bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill does not appear to have an impact on state government revenues.
2. Expenditures: The Criminal Justice Impact Conference considered the bill on March 2, 2017, and determined the bill would increase the prison population by an indeterminate amount. An “indeterminate amount” means an unquantifiable increase in the need for prison beds.³⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The bill does not appear to have an impact on local government revenues.
2. Expenditures: The bill does not appear to have an impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

²⁹ The term “commercial social networking website” is defined to mean a “commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger.” s. 943.0437(1), F.S.

³⁰2017 Criminal Justice Impact Conference, Conference Results, HB 699, *available at* <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/HB699.pdf> (last visited April 22, 2017).

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 684

INTRODUCER: Criminal Justice Committee; and Senator Baxley

SUBJECT: Internet Identifiers

DATE: April 24, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Hrdlicka</u>	<u>CJ</u>	Fav/CS
2.	<u>McAuliffe</u>	<u>Sadberry</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>McAuliffe</u>	<u>Hansen</u>	<u>AP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 684 revises provisions requiring registered sexual predators and sexual offenders to report Internet identifiers. These revisions include modifying the definition of the term “Internet identifier” and defining the connected terms “social Internet communication” and “application software.” A recent Florida federal court found that the current definition of “Internet identifier” is overbroad and vague and requires an individual to either forego protected speech or run the risk of criminal prosecution.

The bill also requires a sexual predator and sexual offender to report each Internet identifier’s corresponding website homepage or application software name. The bill also expands third degree felony offenses involving failure to report certain information to include failure to report each Internet identifier’s corresponding website homepage or application software name.

The Criminal Justice Impact Conference estimated that the original bill would have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds). Nominal changes to the original bill, which do not relate to penalties, should not change this estimate. See Section V. Fiscal Impact.

The bill takes effect upon becoming law.

II. Present Situation:

Registration of Sexual Predators and Sexual Offenders

Florida law requires registration of any person who has been convicted or adjudicated delinquent of a specified sex offense or offenses and who meets other statutory criteria that qualify the person for designation as a sexual predator or classification as a sexual offender. The registration laws also require reregistration and provide for public and community notification of certain information about sexual predators and sexual offenders. The laws span several different chapters and numerous statutes,¹ and are implemented through the combined efforts of the Florida Department of Law Enforcement (FDLE), all Florida sheriffs, the Department of Corrections (DOC), the Department of Juvenile Justice (DJJ), the Department of Highway Safety and Motor Vehicles (DHSMV), and the Department of Children and Families (DCF).

A person is designated as a sexual predator by a court if the person:

- Has been convicted of a current qualifying capital, life, or first degree felony sex offense committed on or after October 1, 1993;²
- Has been convicted of a current qualifying sex offense committed on or after October 1, 1993, and has a prior conviction for a qualifying sex offense; or
- Was found to be a sexually violent predator in a civil commitment proceeding.³

A person is classified as a sexual offender if the person:

- Has been convicted of a qualifying sex offense and has been released on or after October 1, 1997 (the date the modern registry became effective) from the sanction imposed for that offense;
- Establishes or maintains a Florida residence and is subject to registration or community or public notification in another state or jurisdiction or is in the custody or control of, or under the supervision of, another state or jurisdiction as a result of a conviction for a qualifying sex offense; or
- On or after July 1, 2007, has been adjudicated delinquent of a qualifying sexual battery or lewd offense committed when the person was 14 years of age or older.⁴

¹ Sections 775.21-775.25, 943.043-943.0437, 944.606-944.607, and 985.481-985.4815, F.S.

² Examples of qualifying sex offenses are sexual battery by an adult on a child under 12 years of age (s. 794.011(2)(a), F.S.) and lewd battery by an adult on a child 12 years of age or older but under 16 years of age (s. 800.04(4)(a), F.S.).

³ Section s. 775.21(4) and (5), F.S. The Jimmy Ryce Involuntary Civil Commitment for Sexually Violent Predators' Treatment and Care Act, part V, ch. 394, F.S., provides for the civil confinement of a group of sexual offenders who, due to their criminal history and the presence of mental abnormality, are found likely to engage in future acts of sexual violence if they are not confined in a secure facility for long-term control, care, and treatment.

⁴ Sections 943.0435(1)(h) and 985.4815(1)(h), F.S. Sections 944.606(1)(f) and 944.607(1)(f), F.S., which address sexual offenders in the custody of or under the supervision of the Department of Corrections, also define the term "sexual offender."

Sexual predators and sexual offenders are required to report certain information, including electronic mail addresses⁵ and Internet identifiers.⁶ The FDLE may provide information relating to electronic mail addresses and Internet identifiers maintained as part of the sexual offender registry to commercial social networking websites⁷ or third parties designated by commercial social networking websites.⁸ The commercial social networking website may use this information for the purpose of comparing registered users and screening potential users of the commercial social networking website against the list of electronic mail addresses and Internet identifiers provided by the FDLE.⁹

Requirements for in-person registration and reregistration are similar for sexual predators and sexual offenders,¹⁰ but the frequency of reregistration may differ.¹¹ Registration requirements may also differ based on a special status, e.g., the sexual predator or sexual offender is in the DOC's control or custody, under DOC or DJJ supervision, or in residential commitment under the DJJ.¹²

The FDLE, through its agency website, provides a searchable database that contains information about sexual predators and sexual offenders.¹³ Further, local law enforcement agencies provide access to this information, typically through a link to the state public registry webpage.

Florida's registry laws meet minimum requirements of the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of

⁵ An "electronic mail address" is defined in s. 775.21(2)(g), F.S., as having the same meaning as provided in s. 668.602, F.S. Section 668.602(6), F.S., defines an "electronic mail address" as a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

⁶ Requirements to report electronic mail addresses and Internet identifiers and changes in this information are in: s. 775.21(6)(a), (e), and (g) and (8), F.S.; s. 943.0435(2)(a), (4)(e), and (14)(c), F.S.; s. 944.607(4)(a) and (13)(c), F.S.; and s. 985.4815(4)(a) and (13)(b), F.S.

⁷ For purpose of s. 943.0437, F.S., the term "commercial social networking website" means a commercially operated Internet website that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users and that offers a mechanism for communication with other users, such as a forum, chat room, electronic mail, or instant messenger. Section 943.0437(1), F.S.

⁸ Section 943.0437(2), F.S.

⁹ *Id.*

¹⁰ Sexual predator reporting requirements are in s. 775.21(6) and (8), F.S. Sexual offender reporting requirements are in ss. 943.0435(2-4), (7-8), and (14), 944.607(4), (9), and (13), and 985.4815(4), (9), and (13), F.S.

¹¹ A sexual predator is required to reregister each year during the month of the predator's birthday and during every third month thereafter. Section 775.21(8), F.S. A sexual offender convicted of any listed offense in s. 943.0435(14)(b), F.S., must reregister in the same manner as a sexual predator. Any other sex offender must reregister each year during the month of the offender's birthday and during the sixth month following the offender's birth month. Section 943.0435(14)(a), F.S.

¹² See footnote 10.

¹³ The FDLE is the central repository for registration information. The department also maintains the state public registry and ensures Florida's compliance with federal laws. The Florida sheriffs handle in-person registration and reregistration. "About Us" (updated October 1, 2016), Florida Department of Law Enforcement, *available at* <http://offender.fdle.state.fl.us/offender/About.jsp> (last visited on March 13, 2017). The FDLE maintains a database that allows members of the public to search for sexual offenders and sexual predators through a variety of search options, including name, neighborhood, and enrollment, employment, or volunteer status at a institute of higher education. Members of the public may also check whether an electronic mail address or Internet identifier belongs to a registered sexual offender or sexual predator. Offender searches and other information may be accessed from "Florida Sexual Offenders and Predators," Florida Department of Law Enforcement, *available at* <http://offender.fdle.state.fl.us/offender/Search.jsp> (last visited on March 13, 2017).

2006 (AWA).¹⁴ The SORNA attempts to make all states' laws uniform with respect to requirements (or minimum standards) that Congress judged to be necessary to be included in states' registry laws. The U.S. Department of Justice (DOJ) maintains the Dru Sjodin National Sex Offender Public Website (NSOPW).¹⁵ States may choose not to substantially implement the SORNA, but the AWA penalizes noncompliance by partially reducing Byrne Justice Assistance Grant funding.¹⁶ The DOJ has determined that Florida has substantially implemented the SORNA.¹⁷

Preliminary Injunction Precluding Enforcement of the Current Definition of Internet Identifier

As previously noted, sexual predators and sexual offenders are required to report certain information, including Internet identifiers. The requirement to report Internet identifiers was created by the Legislature in 2014.¹⁸ In 2016, the Legislature modified the original definition of "Internet identifier."¹⁹ This modified definition, which was to take effect on October 1, 2016,²⁰ expanded the original definition to include Internet identifiers associated with a website or URL²¹ or software applications.

Section 775.21(2)(j), F.S., provides that an "Internet identifier" includes, but is not limited to, all website uniform resource locators (URLs) and application software, whether mobile or nonmobile, used for Internet communication, including anonymous communication, through electronic mail, chat, instant messages, social networking, social gaming, or other similar programs and all corresponding usernames, logins, screen names, and screen identifiers associated with each URL or application software. Internet identifier does not include a date of birth, Social Security number, personal identification number (PIN), URL, or application

¹⁴ 42 U.S.C. Sections 16911 *et seq.* The Department of Justice issued guidelines for the implementation of the SORNA. The final guidelines (July 2008) and supplemental guidelines (January 11, 2011) may be accessed at "Guidelines," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, available at <https://ojp.gov/smart/guidelines.htm> (last visited on March 13, 2017).

¹⁵ Offender searches and other information may be accessed from "NSPOW," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, available at <http://www.nsopw.gov/Core/Portal.aspx> (last visited on March 13, 2017).

¹⁶ *Edward Byrne Justice Assistance Grant (JAG) Program Fact Sheet*, Bureau of Justice Assistance, U.S. Department of Justice (updated January 1, 2016) available at <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=266685> (last visited on March 13, 2017).

¹⁷ "Jurisdictions that have substantially implemented SORNA," Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), Office of Justice Programs, U.S. Department of Justice, available at http://www.ojp.usdoj.gov/smart/newsroom_jurisdictions_sorna.htm (last visited on March 13, 2017).

¹⁸ Chapter 2014-5, L.O.F.

¹⁹ Chapter 2016-104, L.O.F. (amending s. 775.21(2)(i), F.S., and renumbering it as s. 775.21(2)(j), F.S.). The original definition of "Internet identifier" was all electronic mail, chat, instant messenger, social networking, application software, or similar names used for Internet communication, but did not include a date of birth, social security number, or personal identification number (PIN). Voluntary disclosure by a sexual predator of his or her date of birth, social security number, or PIN as an Internet identifier waived the disclosure exemption in this paragraph for such personal information. Section 775.21(2)(i), F.S. (2014).

²⁰ *Id.*

²¹ "URL stands for Uniform Resource Locator, and is used to specify addresses on the World Wide Web. A URL is the fundamental network identification for any resource connected to the web (e.g., hypertext pages, images, and sound files)." "ARCHIVED: What is a URL?", Indiana University Information Technology Knowledge Base Repository, available at <https://kb.iu.edu/d/adnz> (last visited on March 14, 2017).

software used for utility, banking, retail, or medical purposes. Voluntary disclosure by a sexual predator or sexual offender of his or her date of birth, Social Security number, or PIN as an Internet identifier waives the disclosure exemption in this paragraph for such personal information.²²

Shortly before the amended definition of “Internet identifier” was slated to take effect, a group of plaintiffs in Florida who had been convicted as sexual offenders filed a lawsuit against the Commissioner of the FDLE in the United States District Court for the Northern District of Florida, Tallahassee Division.²³ The plaintiffs argued that the prior and amended definition of “Internet identifier” violated the First Amendment and raised a vagueness challenge. The plaintiffs also moved for a preliminary injunction, which the court treated as a challenge only to the amended definition.

The court found the current definition is “hopelessly vague, chills speech protected by the First Amendment, and is far broader than necessary to serve the state’s legitimate interest in deterring or solving online sex crimes.” The court granted the preliminary injunction.

The court stated the definition “sets no outer limit, because the term is expressly ‘not limited to’ what the definition says. Having jettisoned the ordinary understanding and replaced it with an expressly unlimited description, the definition leaves a sex offender guessing at what must be disclosed.” The court also stated that the definition, “at least on many plausible readings, is hopelessly and unnecessarily broad in scope.” One of the examples the court cited in its finding was Mr. Doe’s digital subscription to a newspaper. Mr. Doe receives an e-mail every morning with the day’s headlines and e-mails every day with additional articles or breaking news. The court continued:

He plainly must register at least the URL for the newspaper, if not the URL for every article the newspaper sends. But the State has absolutely no legitimate interest in requiring a sex offender to register the URL of the newspaper or articles the offender reads. And if Mr. Doe chooses one day to make a comment on an article, he must now figure out whether the same URL is in use, and he must make his identity available to the public. Unlike every other subscriber or member of the public, Mr. Doe cannot comment anonymously. *See White v. Baker*, 696 F. Supp. 2d 1289, 1313 (N.D. Ga. 2010) (holding that enforcement of a registration requirement would irreparably harm a registered sex offender “by chilling his First Amendment right to engage in anonymous free speech”).

The order states that the preliminary injunction remains in effect until entry of a final judgment in the case or until otherwise ordered. The injunction prohibits the FDLE Commissioner²⁴ from

²² Sections 943.0435(1)(e), 944.607, and 985.4815, F.S., provide that “Internet identifier” has the same meaning as provided in s. 775.21, F.S.

²³ The plaintiffs filed this action against current FDLE Commissioner Richard “Rick” L. Swearingen in his official capacity. Preliminary Injunction, *Doe I et al. v. Swearingen, etc.*, Case No. 4:16-00501-RH-CAS (N.D. Fla. Sept. 27, 2016) (on file with the Senate Committee on Criminal Justice). All information regarding this case is from this source.

²⁴ The injunction also binds the Commissioner’s “officers, agents, servants, employees, and attorneys - and others in active concert or participation with any of them - who receive actual notice of this injunction by personal service or otherwise.”

taking any action based on the current definition of “Internet identifier.” However, the injunction does not preclude enforcement of the prior definition.

III. Effect of Proposed Changes:

Section 1 amends s. 775.21, F.S., relating to sexual predator registration. The section modifies the definition of “Internet identifier” in s. 775.21(2)(j), F.S. “Internet identifier” means any designation, moniker, screen name, username, or other name used for self-identification to send or receive social Internet communication. Internet identifier does not include a date of birth, social security number, personal identification number (PIN), or password. A sexual offender’s or sexual predator’s use of an Internet identifier that discloses his or her date of birth, social security number, PIN, password, or other information that would reveal the identity of the sexual offender or sexual predator waives the described disclosure exemption described in this paragraph and in s. 119.071(5)(l), F.S.²⁵

Connected to the definition of “Internet identifier,” s. 775.21(2)(m), F.S., is created, which defines “social Internet communication” as any communication through a commercial social networking website, as defined in s. 943.0437, F.S., or application software. The term does not include any of the following:

- Communication for which the primary purpose is the facilitation of commercial transactions involving goods or services;
- Communication on an Internet website for which the primary purpose of the website is the dissemination of news; or
- Communication with a governmental entity.

For purposes of paragraph (2)(m), the term “application software” is defined as any computer program that is designed to run on a mobile device such as a smartphone or tablet computer, that allows users to create web pages or profiles that provide information about themselves and are available publicly or to other users, and that offers a mechanism for communication with other users through a forum, a chatroom, electronic mail, or an instant messenger.

The following provisions of s. 775.21, F.S. are amended or created to require a sexual predator to report each Internet identifier’s corresponding website homepage or application software name:

- Section 775.21(6)(a)1., F.S., relating to information a sexual predator is required to report at initial registration.
- Section 775.21(6)(a)1.a., F.S., which is created by the bill, provides that any change to the following that occurs after the sexual predator initially registers must be reported as provided in s. 775.21(6)(g), (i), and (j), F.S.: permanent, temporary, or transient residence; name; electronic mail addresses; Internet identifiers and each Internet identifier’s corresponding website homepage or application software name; home and cellular telephone numbers; and employment information; and status at an institution of higher education.²⁶

²⁵ A connected bill, SB 686 (2017), creates s. 119.071(5)(l), F.S., which exempts from public disclosure electronic mail addresses and Internet identifiers of sexual predators and sexual offenders which they report pursuant to specified registration statutes, unless otherwise ordered by a court.

²⁶ Excluding changes to Internet identifier’s corresponding website homepage or application software name, changes to all of the other noted information are already reported under current s. 775.21(6)(g), (i), or (j), F.S.

- Section 775.21(6)(e)2., F.S., which requires a sexual predator who is not in the custody or under the supervision of the DOC to report changes in certain information.
- Section 775.21(6)(g)5.a., F.S., which requires a sexual predator to report certain information to: the FDLE through the department's online system or in person with the sheriff's office; or the Department of Corrections or Department of Juvenile Justice, if the sexual predator is in custody or under the supervision of either department. The bill also modifies the current requirement for a sexual predator who is not under custody or supervision to register all electronic mail addresses and Internet identifiers before using them. Under the bill, this sexual predator must register them within 48 hours after using them.
- Section 775.21(6)(g)5.c., F.S., which specifies that FDLE's online system may be accessed by a sexual predator to report changes in certain information.
- Section 775.21(8)(a)1., F.S., which requires a sexual predator at reregistration to report any changes in certain information.

Currently, s. 775.21(6)(k), F.S., provides that the FDLE's sexual predator list, which contains information a sexual predator registers (pursuant to s. 775.21(6)(a)1., F.S.), is a public record. Section 1 specifies that this information is a public record, unless otherwise made exempt or confidential and exempt from public disclosure.

Section 775.21(10)(a), F.S., which provides that it is a third degree felony for a sexual predator to fail to report certain information, is expanded to include the failure to report each Internet identifier's corresponding website homepage or application software name.

Section 1 also makes several technical or conforming changes.

Section 2 amends s. 943.0435, F.S., relating to sexual offender registration. The following provisions of s. 943.0435, F.S., are amended to require a sexual offender to report each Internet identifier's corresponding website homepage or application software name:

- Section 943.0435(2)(a) and (b), F.S., relating to information a sexual offender is required to report at initial registration and changes to that information after initial registration.
- Section 943.0435(4)(e)1., F.S., which requires a sexual offender to report certain information to the FDLE through the department's online system or in person with the sheriff's office; or the Department of Corrections or Department of Juvenile Justice, if the sexual offender is in custody or under the supervision of either department. The bill also modifies the current requirement for a sexual offender who is not under custody or supervision to register all electronic mail addresses and Internet identifiers before using them. Under the bill, this sexual offender must register them within 48 hours after using them.
- Section 943.0435(4)(e)3., F.S., which specifies that FDLE's online system may be accessed by a sexual offender to report changes in certain information.
- Section 943.0435(14)(c)1., F.S., which requires a sexual offender at reregistration to report any changes in certain information.

Section 943.0435(14)(c)4., F.S., which provides that it is a third degree felony for a sexual offender to fail to report certain information, is expanded to include the failure to report each Internet identifier's corresponding website homepage or application software name.

Section 2 of the bill also makes several technical or conforming changes.

Sections 3 through 14 of the bill reenact, respectively, ss. 794.056, 921.0022, 938.085, 943.0437, 944.606, 944.607, 985.481, and 985.4815, F.S., for the purpose of incorporating amendments to ss. 775.21 and 943.0435, F.S., made by the bill.

Section 15 of the bill provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference estimated that the original bill would have a “positive indeterminate” prison bed impact (an unquantifiable increase in prison beds).²⁷ Nominal changes to the original bill, which do not relate to penalties, should not change this estimate.

The CJIC states that, per the Department of Corrections, in FY 2015-2016, there were 1,001 (adjusted)²⁸ offenders sentenced for registration/false information offenses relating to sexual offenders and sexual predators, with 503 (adjusted) of these offenders sentenced to prison (mean sentence length of 40.2 months and an incarceration rate of 60.5 percent

²⁷ Impact information was provided by staff of the Office of Economic and Demographic Research on March 6, 2017, via e-mail (on file with the Senate Committee on Criminal Justice).

²⁸ Sentencing data from the DOC is incomplete, which means that the numbers the EDR receives are potentially lower than what the actual numbers are. The EDR adjusts these numbers by the percentage of scoresheets received for the applicable fiscal year.

adjusted and 60.4 percent unadjusted). It is unknown how many additional offenders might be added due to proposed changes made by the bill.

The FDLE states that Internet identifiers are to be reported as part of the sexual offender or sexual predator registration requirements pursuant to the federal Sex Offender Registration and Notification Act (SORNA), which is Title I of the Adam Walsh Protection and Safety Act of 2006, and SORNA guidelines. According to the FDLE, failure to comply with the guideline requirements could result in a 10 percent reduction of funding provided under the Edward Byrne Justice Assistance Grant (JAG) Program.²⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

A connected bill, CS/SB 686 (2017), creates s. 119.071(5)(1), F.S., to exempt from public disclosure electronic mail addresses and Internet identifiers of sexual predators and sexual offenders which they report pursuant to specified registration statutes, unless otherwise ordered by a court.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 775.21 and 943.0435.

This bill also reenacts sections 794.056, 921.0022, 938.085, 943.0437, 944.606, 944.607, 985.481, and 985.4815, Florida Statutes, for the purpose of incorporating amendments made by the bill to sections 775.21 and 943.0435, Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 3, 2017:

The committee substitute:

- Redefines “social Internet communication” and defines “application software.”
- Provides that the FDLE’s sexual predator list, which contains information a sexual predator registers (pursuant to s. 775.21(6)(a)1., F.S.), is a public record, unless otherwise made exempt or confidential and exempt from public disclosure.

- B. **Amendments:**

None.

²⁹ 2017 FDLE Legislative Bill Analysis (SB 684) (February 9, 2017), Florida Department of Law Enforcement (on file with the Senate Committee on Criminal Justice).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Tallahassee Division**

)	
MANUEL DELGADO, JASON)	
ALFORD, and BASSEL HATOUM,)	
on behalf of themselves and)	
others similarly situated,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Case No. 4:16-CV-501-RH/CAS
)	
RICHARD L. SWEARINGEN, in)	
his official capacity as Commissioner)	
of the Florida Department of Law)	
Enforcement,)	
)	
<i>Defendant.</i>)	

SECOND AMENDED DECLARATION OF JILL LEVENSON, Ph.D.

Summary of Declaration

The vast majority of sex crimes against children are committed by people who already know their victims. As a result, the percentage of Internet-facilitated sex crimes against children is very low. Furthermore, the experience of arrest, prosecution, punishment and post-incarcerative counseling greatly reduces the risk of sexual reoffense. Therefore, the percentage of registered sex offenders who

commit Internet-facilitated sex crimes is also very low. Those sex offenders at high risk of reoffense can usually be identified through the Static-99R, a quick-to-administer risk assessment instrument in high use among treatment professionals.

I, Jill Levenson, Ph.D, declare as follows:

1. I am a professor of Social Work at Barry University, School of Social Work, located in Miami Shores, Florida. I earned my Doctorate degree in Social Welfare in 2003 from Florida International University in Miami, Florida. I earned a Master's Degree in Social Work in 1987 at the University of Maryland, School of Social Work, Baltimore, Maryland. In 1985, I earned my Bachelor of Arts Degree in Sociology at the University of Pittsburgh in Pennsylvania. I am an author or co-author of over one hundred articles, publications, and presentations in the area of sex offender recidivism, treatment, and policies. In addition to my academic work, I maintain a clinical practice as a licensed clinical social worker in Florida specializing in evaluation and treatment of sex offenders. I have worked with approximately 2,000 sexual offenders since 1992. I have qualified to testify as an expert witness in numerous judicial proceedings involving sex offenders. I have testified by invitation before several state legislatures concerning sex offender legislation. My curriculum vitae, including a list of my published work, is attached to this affidavit as Exhibit A.

2. According to studies, including those done by The Bureau of Justice Statistics (BJS), 93% of child sexual abuse perpetrators are known to their victims.” See Levenson, J.S., Brannon, Y.N., Fortney, T., Baker, J., “Public Perceptions About Sex Offenders and Community Protection Policies,” *Analyses of Social Issues and Public Policy*, V. 7, No. 1, 2007, p. 7. The BJS has also found that the recidivism rate for sex offenders is lower than the recidivism rate for non-sex offenders. See Langan, P.A., Schmitt, E.L., Durose, M.R., “Recidivism of Sex Offenders Released from Prison in 1994,” *Statisticians, Bureau of Justice Statistics*, Nov. 2003, NCJ 198281, pp. 1-2.

3. According to studies done at the Family Research Laboratory of the Crimes against Children Research Center at the University of New Hampshire, arrests for all technology-facilitated sex-crimes against children constituted only about 1% of all arrests for sex crimes against children. Of those, only 4% were committed by registered sex offenders. See "Trends in Law Enforcement Responses to Technology-facilitated Child Sexual Exploitation Crimes: The Third National Juvenile Online Victimization Study (NJOV-3)" (Janis Wolak, David Finkelhor, & Kimberly J. Mitchell). Crimes against Children Research Center, University of New Hampshire, Durham, NH.; "Trends in arrests of 'online predators'" (Janis Wolak, David Finkelhor, & Kimberly J. Mitchell). Durham, NH: University of New Hampshire – Crimes against Children Research Center, at pp. 2, 6-7.

4. The chief reason for the low rate of Internet-facilitated sex crimes by registered offenders is that, by definition, registrants are people who have been arrested, prosecuted and punished. These negative consequences act as a significant deterrent to reoffense. In addition, all registrants sentenced to probation receive long-term counseling which is intended to and does further reduce the risk of reoffense. In Florida, sex offender treatment programs approved by DOC provide comprehensive long-term group and individual therapy addressing criminogenic risk factors, offense patterns, distorted thinking, relapse prevention, self-regulation, victim impact, communication skills, and life-management strategies. Sex offender treatment providers are licensed by F.S. chapters 490 (Psychologists) or 491 (clinical social workers, mental health counselors, or marriage and family therapists) and must meet education and experience criteria to be approved by DOC as a “qualified provider.” Qualified providers have 2,000 hours of clinical experience assessing and treating sex offenders, 60 hours of post-degree education in topic areas related to sexual deviance and aggression, and they must receive 20 hours of continuing education credits in these topic areas each license renewal period.

<https://www.flrules.org/gateway/ruleNo.asp?id=64B4-7.0081>

5. In the course of counseling, registrants are assessed for the risk of contact reoffense with the Static-99R, the most well-researched sex offender risk assessment instrument in the world, which treatment professionals as well as

forensic mental health professionals regularly rely upon for risk assessments of sex offenders. This instrument may be administered in as few as thirty minutes and is used to screen registrants into relative risk categories. Though the Static-99R is not normed for use with Internet-only offenders, clinicians can informally apply knowledge of empirically derived risk factors to assess whether a client might possess risk factors known to correlate with reoffending in contact offenders.

6. While on probation, registrants are subject to special conditions of probation which include random searches of computers, smart phones, and other devices by probation officers. They are also polygraphed at least once per year to monitor their compliance with probation. These monitoring and management strategies are designed to prevent recidivism by detecting high-risk behavior before it escalates to offending.

7. Based on my clinical experience, research, and comprehensive review of the literature, it is my opinion that registrants suffer pervasive anxiety, depression, and dread that people will learn of their status and will respond by marginalizing, degrading, or harassing them. This fear is well-founded. Notification to others of a registrant's sex offender status frequently results in social isolation and occasionally in harassment and vigilantism. *See* R. Tewksbury, "Collateral Consequences of Sex Offender Registration," *Journal of Contemporary Criminal Justice*, V. 121, No. 1, Feb. 2005, 67-81 (more than half of registrants reported having lost a friend as a

result of notification, more than one in three reported losing a job, losing a home, being harassed or treated rudely in public; concluding that negative impacts of notification – withdrawal, isolation, heightened anxiety and stress – were all “common precursors to reoffending.”).

8. In a study of the psychological impact of notification upon registrants, 14% reported moderate depression, 21% reported severe depression, 43% reported suicidal ideation. *See* E.L. Jeglic, C.C. Mercado, J.S. Levenson, “The Prevalence and Correlates of Depression and Hopelessness among Sex Offenders Subject to Community Notification and Residence Restriction Legislation,” *Am J. Crim. Just.*, DOI 10.1007/s12103-010-9096-9. *See also* J.S. Levenson, D.A. D’Amora, A.L. Hern, “Megan’s Law and its Impact on Community Re-Entry for Sex Offenders,” *Behav. Sci. Law* 25:587-0602 (2007) (psychosocial impacts even more deleterious than material impacts; feelings of shame discouraged participation in prosocial activities; combined impacts of practical and psychosocial impacts undermined registrants’ stability).

9. If the registrant has a partner and children, he is persistently fearful about the impacts on them of notification. This fear is also reasonable. *See* R. Tewksbury, J. S. Levenson, “Stress Experiences of Family Members of Registered Sex Offenders,” *Behav. Sci. Law* 27:611-626, 623 (2009). Family members experience their own psychological isolation, loss of friends and other relationships,

fear for safety. *Id.* Children of registrants are particularly vulnerable to the impacts of notification. They are stigmatized by classmates, even teachers, and have few friends. They exhibit anger (80%), depression (77%), anxiety (73%), feel left out by peers (65%), and fear for their safety. (63%). Thirteen percent were reported to exhibit suicidal tendencies. *Id.* at 63-64. *See also* E.D. Frenzel, K.N. Bowen, J.D. Spraitz, J.H. Bowers, S. Phaneuf, “Understanding Collateral Consequences of Registry Laws: An Examination of the Perception of Offender Registrants,” *Justice Policy Journal*, V. 11, No. 2 (Fall 2014) (registrants’ children not invited to play-dates and birthday parties; spouses stigmatized and shunned for loyalty and criticized about parenting; registrants banned from school and extra-curricular activities); Levenson, J.S., & Tewksbury, R. (2009). “Collateral Damage: Family Members of Registered Sex Offenders,” *American Journal of Criminal Justice*, <http://dx.doi.org/10.1007/s12103-008-9055-x>.

10. All of the studies cited herein are of the kind I normally rely upon for my own research. These studies represent examples of empirical evidence but do not represent an exhaustive literature review.

11. Because the requirement to register Internet identifiers and corresponding website information subjects the registrant to the possibility of viral disclosure of that information, I would anticipate that registrants would use the Internet less often than they would without the disclosure requirement.

12. My fee in this case is \$250.00 an hour, for research, reports, depositions or in-court testimony.

13. In the past four years, I have testified at deposition in *Ryals v. City of Englewood*, 2016 WL 2909674, 647 Fed.Appx. 869 (10th Cir. 2016); *Does v. Snyder*, 834 F.3d 696 (6th Cir. 2016); *Doe v. City of Lynn*, 2015 WL 505474. 472 Mass. 524, 36 N.E.3d 18; *Freitas et al. v. Kilmartin et al.*, 1:15-XC-00450-M-LDA (D. R.I.).

I declare under penalty of perjury that the foregoing is true and correct. I understand that a false statement in this declaration will subject me to penalties for perjury.

Date: August 18, 2017

A handwritten signature in cursive script that reads "Jill Levenson". The signature is written in black ink on a white background.

Jill Levenson, Ph.D

Curriculum Vitae
JILL S. LEVENSON, Ph.D., LCSW
levenson.jill@gmail.com

EDUCATION:

Ph.D., Social Welfare, 2003 Florida International University, Miami, FL.

MSW, Clinical Social Work, 1987 University of Maryland, School of Social Work, Baltimore, MD.

BA, Sociology, 1985 University of Pittsburgh, Pittsburgh, PA.

ACADEMIC POSITIONS

BARRY UNIVERSITY, MIAMI SHORES, FLORIDA

Associate Professor, School of Social Work (August 2014 - present)

LYNN UNIVERSITY, BOCA RATON, FLORIDA

Associate Professor, Department of Psychology & Social Sciences (2008-2014)

Assistant Professor and Human Services Department Chair (2004-2008)

FLORIDA INTERNATIONAL UNIVERSITY, MIAMI, FLORIDA

Instructor, School of Social Work (1999-2004)

Instructor, Professional Development Center (Child Protection Training Institute) (1994-1999)

PROFESSIONAL CLINICAL EXPERIENCE

- 5/94-present** OAKBROOK COUNSELING CENTER, P.A., Ft. Lauderdale, FL.
Clinical Social Worker, Clinical Supervisor & Consultant, private practice.
- 11/99-12/04** CHRYSALIS CENTER, INC., Ft. Lauderdale, FL.
Clinical Consultant, Clinical Supervisor, & Field Instructor, children's mental health clinic.
- 4/91-4/94** FAMILY SERVICE AGENCY, INC., Ft. Lauderdale, FL.
Clinical Supervisor, Field Instructor, & Clinical Social Worker, outpatient psychotherapy
- 11/90-2/91** KIDS IN DISTRESS, INC., Ft. Lauderdale, FL.
Social Worker, therapeutic preschool program.
- 10/89-9/90** CHILD PROTECTION TEAM OF BROWARD COUNTY, FL.
Social Worker, child protective services.
- 9/87-6/89** BALTIMORE COUNTY DEPT. OF SOCIAL SERVICES, Baltimore, MD.
Social Worker, child protective services & foster care services.

LICENSURE & PROFESSIONAL REGULATION

- *Licensed Clinical Social Worker*, Florida, #SW2659
- *Qualified Supervisor For Licensure*, Florida Department of Health
- *Qualified sex offender treatment provider*, Florida Department of Corrections

PUBLICATIONS**Journal Articles**

Harris, A. J., Lobanov-Rostovsky, C., Levenson, J. S., & Walfield, S. M. (in press). Law Enforcement Perspectives on Sex Offender Registration & Notification: Effectiveness, Challenges, and Policy Priorities. *Criminal Justice Policy Review*.

Levenson, J. S., Grady, M. D., & Leibowitz, G. (in press). Grand challenges: Social justice and the need for evidence-based sex offender registry reform. *Journal of Sociology & Social Welfare*.

Levenson, J. S. (in press). Trauma-informed Social Work Practice. *Social Work*.

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Book Chapters

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Levenson, J.S. (2015). *Report to Florida Office of Program Policy Analysis and Government Accountability: Evidence-based recommendations for Florida's sex offender registry system*. Florida Association for the Treatment of Sexual Abusers. http://www.floridaatsa.com/2015_FATSA_report_to_OPPAGA.pdf

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Levenson, J.S. (2012) Book Review of Sex Fiends, Perverts and Pedophiles: Understanding Sex Crime Policy in America. *Criminal Justice Review*. DOI: 10.1177/0734016812450024

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Morin, J.W., Levenson, J.S., & Cotter, L.P. (1998). *New Directions in the Management of Sexual Offenders: A Report to the Florida Legislature*. Tampa, FL: Florida Association for the Treatment of Sexual Abusers.

Other (Newsletters, Op-Ed, Trade Magazine, Invited Opinion)

Levenson, Jill (August 6, 2015). Does a youthful mistake merit sex-offender status? *CNN.com* (invited opinion).

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Levenson, J.S. & Harris, A.J. (2012). SORNA: Good intentions, flawed policy, and proposed reform. *Engage* (a publication of the Federalist Society for Law and Public Policy Studies). http://www.fed-soc.org/doclib/20121221_SORNAExchangeMalcomLevensonHarris.pdf

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Tewksbury, R. & Levenson, J.S. (2007). When Evidence is Ignored: Residential Restrictions for Sex Offenders. *Corrections Today*, December 2007, p. 54-57.

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Levenson, J.S. (2007). Residence restrictions and their impact on sex offender reintegration, rehabilitation, and recidivism. *ATSA Forum*, Volume XVIII, No. 2, Spring 2007.

Levenson, J.S. (2004). Everything You Ever Wanted To Know About Sex Offenders but Were Afraid To Ask: ATSA's Role in Public Education. *ATSA Forum*, Volume XVI, No. 2, Spring 2004.

Levenson, J.S. (2001). Overstating the Obvious: Social Workers are Mandated Reporters! (Part 2) *NASW Florida Chapter Newsletter*, May/June.

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Levenson, J.S. & Morin, J.W. (1998). The Role of the Nonoffending Parent in Sexual Abuse Prevention. *ATSA Forum*, Vol. X, No. 2, Summer 1998.

Dissertation: Levenson, J. S. (2003). Factors predicting recommendations for civil commitment of sexually violent predators under Florida's Jimmy Ryce Act. *Dissertation Abstracts International*, 64(03), UMI no. AAT 3085817.

AWARDS & HONORS

- **ATSA Fellow**, in recognition of significant contributions to the field of sexual abuse and to the Association for the Treatment of Sexual Abusers (ATSA), granted October 16, 2015.
- Nominee, Faculty member of the year. Lynn University 2009, 2010.
- **\$1,000** Pre-doctoral Research Grant awarded October 2002
Association for the Treatment of Sexual Abusers Role: Principal Investigator (dissertation)
Factors Predicting Recommendations for Civil Commitment of Sexually Violent Predators under Florida's Jimmy Ryce Act. This research examined the psychological evaluation process and identified factors predicting civil commitment.
- Scholarly Forum Competition, Second Place Winner
 - "Empirically Based Risk Assessment of Child Sexual Abuse." Awarded by the Graduate Student Association, Florida International University, April 2001

TEACHING EXPERIENCE / COURSEWORK (# times taught)

Doctoral courses taught at Barry: Empirical Inquiry for Social Work Research (1)

Undergraduate (BSW) Courses taught at Barry: Social Work in the Social Service Environment (1); Models of Intervention (1)

MSW Barry: Advanced Clinical Groupwork (3); Policy, Advocacy & Leadership (2); Environmental Context- Poverty, Oppression & Trauma (1); Advanced Clinical Practice with Individuals (1)

Undergraduate Courses taught at Lynn: Introduction to Human Services; Groupwork & Family Systems; Social Problems & Policy; Ethical Practice in the Helping Professions; Addiction and Society; Introduction to Sociology; Assessment & Interviewing; Criminal Justice Research Methods; Case Management Strategies; Human Services Senior Seminar.

Masters in Applied Psychology Program: Internship Seminars; Advanced Psychopathology, Substance Addiction & Treatment; Techniques & Interventions In Applied Psychology

Courses taught at FIU: MSW: Psychopathology (HBSE II); Theory and Practice with Family Violence; Social Welfare Policy; Child & Family Policy; Human Behavior and the Social Environment I.

BSW: Social Work Practice Methods with Individuals; Social Work Practice Methods with Families and Groups; Techniques of Interviewing; Child Welfare Policy and Practice; Human Behavior and the Social Environment I.

RESEARCH FUNDING**\$38,624** Proposal Submitted April 2016National Sexual Violence Resource Center

Role: Principal Investigator

Co-Investigator: Melissa Grady, PhD, Catholic University School of Social Work

Obstacles to help-seeking for non-offending minor-attracted persons. This national online survey will explore obstacles to seeking therapeutic intervention for non-offending persons with pedophilic interests in an effort to inform child sexual abuse prevention strategies.**\$233,307** awarded September 2013 Award # 2013-IJ-CX-0028National Institutes of Justice

Role: Co-Investigator

Principal Investigator: Andrew Harris, University of Massachusetts Lowell

Understanding Law Enforcement Perspectives on Sex Offender Registration and Notification. This national assessment of law enforcement perspectives on sex offender registration and notification systems will implement a mixed-method data collection from county, local and tribal law enforcement agencies.**\$150,000** awarded October 2010 Award # 2010-WP-BX-0006Department of Justice (SMART Office)

Role: Consultant

Principal Agency Recipient: Palm Beach County Sheriff's Office

Comprehensive Approaches to Sex Offender Management Grant Program Palm Beach County's Comprehensive Sex Offender Management Strategy. This project will implement a multi-faceted, multi-disciplinary strategy that incorporates assessment, risk-based supervision, registration and notification, re-entry services and treatment, and multi-disciplinary collaboration.**\$507,000** awarded 7/08 Award # 2008- MU-MU- 0001National Institute of Justice

Role: Co-Investigator

Principal Investigator: Kristen Zgoba, New Jersey Department of Corrections.

A Multi-state Sexual Violence Recidivism Study investigating the predictive validity of Static-99 Risk Scores and Adam Walsh Act Tier Guidelines. This study will compare the abilities of Static-99 scores and Adam Walsh Act classifications to predict sexual recidivism.**\$296,656** awarded 8/07National Institute of Justice

Role: Consultant

Principal Investigator: Elizabeth Jeglic, John Jay College of Criminal Justice

Sex Offender Management, Treatment, and Civil Commitment: An Evidence-Based Analysis Aimed at Reducing Sexual Violence. This research project involves a comprehensive examination of the treatment and subsequent recidivism of sex offenders incarcerated or detained in the mental health and criminal justice systems in New Jersey.**\$484,000** awarded 7/12/06National Institute of Justice

Role: Co-Investigator

Principal Investigator: Elizabeth Letourneau, Medical University of South Carolina

Evaluating the Effectiveness of Sex Offender Registration & Notification Policies for Reducing Sexual Violence Against Women. This study will examine whether sex offender registration and notification laws in South Carolina have had the intended effect of reducing sex crime rates in general and sex offense recidivism specifically.

INVITED PRESENTATIONS

- Levenson, J.S. (2016). *Creating a trauma Informed Workforce*. Broward County Behavioral Health United Way Conference, Fort Lauderdale, FL 5/11/16.
- Levenson, J.S. (2016). *Trauma Informed Care with Sex Offenders*. Pennsylvania Sex Offender Management Board, Harrisburg, PA, 4/1/16.
- Levenson, J.S. (2016). *Trauma Informed Care with Sex Offenders*. New Jersey ATSA, New Brunswick, NJ, 4/22/16.
- Levenson, J.S. (2016). *Ethical Treatment of Sexual Offenders*. Global Institute of Forensic Research, Online Master Class Training program (<https://www.gifrinc.com/services/continuing-education/>)
- Levenson, J.S. (2016). *Trauma Informed Practice in Clinical & Forensic Settings*. New Zealand Institute of Criminal Justice & Forensic Psychology, Auckland, New Zealand, 3/3-3/4/2016.
- Levenson, J.S. (2015). *Trauma Informed Care with Sex Offenders*. Sex Offender Civil Commitment Provider Network, Montreal, Canada, 10/12/15.
- Levenson, J.S. (2015). *Trauma Informed Care with Sex Offenders*. New York State Office of Mental Health, 6/1-6/4/15.
- Levenson, J.S. (2015). *Trauma Informed Care with Sex Offenders*. Illinois Civil Commitment Center, Rushville, IL, 6/17/15.
- Levenson, J.S. (2015). *Trauma Informed Care with Sex Offenders*. Massachusetts ATSA Chapter Conference, Marlborough, MA, 4/8/15.
- Levenson, J.S. & Stinson, J. (2014). *Trauma Informed Care with Sex Offenders*. 33d Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA, 10/29/14
- Levenson, J.S. & Morin, J.W. (2014). *Judicial Management of Sex Offenders*. Florida Annual Judicial Conference, Orlando, FL 7/21/15.
- Levenson, J.S. (2014). *No Place Like Home: Sex Offender Residence Restrictions*. Virginia Sex Offender Treatment Association, Virginia Beach VA, 3/19/14. Keynote speaker.
- Levenson, J.S. (2014). *Trauma Informed Care with Sex Offenders*. Sand Ridge Secure Treatment Center, Mauston, WI, 3/6/14.
- Levenson, J.S. (2014). *Trauma Informed Care with Sex Offenders*. Wisconsin Department of Corrections, Madison, WI, 3/7/14.
- Levenson, J.S. (2013). *Ethical Practice with Sex Offenders*. 32nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 10/30/13.
- Levenson, J.S. & Rapa, S. (2013). *Ethical considerations treating sex offenders* Florida ATSA conference, Orlando, FL, 5/18/13.
- Levenson, J.S. (2013). *Where am I going to live? Ostracism or Re-entry?* Massachusetts ATSA Chapter Conference, Marlborough, MA, 4/7/13. Keynote Speaker
- Levenson, J.S. (2012). *Who are the people in your neighborhood? U.S. sex offenders and community protection policies*. LA ATSA Chapter Conference, Baton Rouge, LA, 11/1/12.
- Levenson, J.S. (2012). *Who are the people in your neighborhood? U.S. sex offenders and community protection policies*. 31st Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Denver, CO, 10/17/12.
- Levenson, J.S. (2012). *What do we know about sex offenders in Florida?* Florida ATSA conference, Orlando, FL, 4/21/12.
- Levenson, J.S. (2012). *What do we know about sex offenders in the U.S.?* Mid-Atlantic Region ATSA conference, Harrisburg, PA 4/6/12.
- Levenson, J.S. (2011). *Sex offender policy trends: Research and Practice*. Michigan State Bar Association. Dearborn, MI, 9/16/11.

- Levenson, J.S. (2010). *Sex offender policy trends: Research and Practice*. Keynote speaker, Colorado Sex Offender Management Board. Breckenridge, CO, July 16, 2010.
- Levenson, J.S. (2010). *Sex offender policy trends: Research and Practice*. Keynote speaker, Minnesota Association for the Treatment of Sexual Abusers. Minneapolis, MN, April 16, 2010.
- Levenson, J.S. (2009). *Residential proximity and sex offense recidivism*. National Institute of Justice Crime Mapping Conference. New Orleans, LA. August 20, 2009.
- Levenson, J.S. (2009). *Justice System and Children's Rights (response to plenary speaker)*. National Adolescent Perpetrator Conference. Tampa, FL. May 18, 2009.
- Levenson, J.S. (2008). *Sex offender registration, notification, and residence restrictions*. Vermont Legislature. August 29, 2008.
- Levenson, J.S. (2008). *Sex offender residence restrictions*. National Coalition to End Homelessness Web Conference. Washington, DC. July 10, 2008.
- Levenson, J.S. (2008). *Sex offender residence restrictions*. California Coalition on Sexual Offending. San Francisco, CA. May 15-16, 2008.
- Levenson, J.S. (2008). *Sex offender policies: The Emperor's new clothes?* Keynote speaker, New Jersey ATSA Chapter, Scotch Plains, NJ, 4/11/08.
- D'Amora, D., Klein, A., Levenson, J.S., Lieb, R. (2007). *Sex offender policies in the new millennium (Plenary Session)*. 26th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA, 11/2/07.
- Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Liberty Health Care Sex Offender Treatment Conference, Indianapolis, IN, 6/15/07.
- Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Texas Sex Offender Treatment Board Conference, Austin, TX, 2/18/07.
- Levenson, J.S., & Palmer, R. (2006). *Ethical issues in working with sex offenders*. 25th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 9/27/06.
- Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Tennessee Sex Offender Treatment Board Conference, Nashville, TN, 8/21/06.
- Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* National Association of Criminal Defense Attorneys Conference, Miami Beach, FL 7/27/06.
- Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Keynote speaker, Illinois ATSA statewide conference, Bloomington, IL, 4/28/06.
- Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Keynote Speaker, Alliance for Women in Community Corrections, Columbus, OH, 4/27/06.
- Levenson, J.S. (2006). Keynote speaker, Sexual Violence Awareness Day Conference, Fort Myers, FL, 4/7/06.
- Levenson, J.S. (2006). *Sex offender policies: The Emperor's new clothes?* Illinois ATSA Board of Directors Meeting, Chicago, IL, 1/17/05.
- Levenson, J.S. (2005). *Sex offender policies: The Emperor's new clothes?*, Florida Sexual Abuse Intervention Network, Tampa, FL, 9/16/05.
- Levenson, J.S., (2004). *Post conviction sex offender polygraph examination: Client perceptions of accuracy and utility*. Florida Chapter of the Association for the Treatment of Sexual Abusers Annual Meeting, Tampa, FL, 3/6/04.
- Levenson, J.S. (2004). *Working with Families of Juvenile Sex Offenders*, Florida Sexual Abuse Intervention Network, Tampa, FL, 4/30/04.
- Hines, B. & Levenson, J.S. (2004). *Assessment and Treatment of Adolescents and Children with Sexual Behavior Problems*, Sponsored by Children's Psychiatric Center, Miami, FL, 3/13/04.
- Levenson, J.S. (2003). *Reunification, Supervision, and Visitation of Sex Offenders with Children*. Department of Corrections, Portland, OR, 4/24/03.

- Levenson, J.S. (2003). *Working with Families of Juvenile Sex Offenders*, Florida Sexual Abuse Intervention Network, Tampa, FL, 4/3/03.
- Levenson, J.S. (2002). *Juvenile Sex Offender Risk Assessment & Treatment Planning*, NASW Ft. Myers Chapter, Ft. Myers, FL, 10/18/02
- Levenson, J.S. (2002). *Reunification Following Sexual Abuse*, 21st Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Montreal, Quebec, Canada, 10/2/02.
- Levenson, J.S. (2001). *Victim or Victimizer?*, Assessment and Treatment of Adolescents and Children with Sexual Behavior Problems, Ft. Lauderdale, FL, 8/10/01
- Levenson, J.S. (2001). *Juvenile Sex Offender Treatment: Child Development, Psychopathology, Family Safety Planning, & Treatment Issues*, Florida Chapter of the Association for the Treatment of Sexual Abusers State Conference, Orlando, FL, 2/10/01
- Levenson, J.S. (2000). *Family Safety Planning and Reunification Following Sexual Abuse*, Colorado Chapter of the Association for the Treatment of Sexual Abusers State Conference, Denver, CO, 4/14/00.
- Levenson, J.S. (1999). *Connections: Family Safety Planning and Reunification Following Sexual Abuse*, 18th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Orlando, FL, 9/22/99.
- Levenson, J.S. (1998). *Connections: Psychoeducational Group Treatment for Nonoffending Parents of Sexually Abused Children and Partners of Sexual Offenders*, Joining Forces: Sexual Abuse Conference, Lakeland, FL, 10/14/98.
- Levenson, J.S. (1998). *Family Safety Planning and Reunification Following Sexual Abuse*, Third Annual Florida Sex Offender Treatment Conference, Deerfield Beach, FL, 6/18/98.
- Levenson, J.S. (1998). *Family Safety Planning and Reunification Following Sexual Abuse*, DuPage County Probation Department, Wheaton, IL., 5/8/98.

PEER-REVIEWED PRESENTATIONS AT PROFESSIONAL CONFERENCES

- Levenson, J.S. (2016). *Beyond the Ick Factor: Working with non-offending minor-attracted persons*. NASW-FL, Orlando, FL, 6/18/16.
- Levenson, J.S. (2016). *Trauma Informed Care with Sex Offenders*. Florida ATSA, Orlando, FL 4/16/16.
- Levenson, J.S. (2016). *Childhood Adversity and Sexual Offending*. Society for Social Work & Research, Washington, D.C., 1/15/16
- Levenson, J.S. (2015). *Early adversity, criminality, and trauma informed care*. 34th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Montreal, Canada, 10/15/25.
- Levenson, J.S. (2015). *Sympathy for the Devil: Sex offenders legislated into homelessness*. Barry University Human Rights & Social Justice Conference, Miami, FL, March 2015.
- Levenson, J.S., Williams, J. & Feldman, D. (2015). *Early adversity, criminality, and trauma informed care*. Academy of Criminal Justice Sciences, Orlando, FL, 3/6/25.
- Levenson, J.S. (2014). *Law enforcement perspectives about sex offender registration*. 33d Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA, 10/31/14.
- Levenson, J.S. (2013). *Trauma Informed Care*. 32nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 10/31/13.
- Levenson, J.S. & Harris, A.J. (2013). *Sex Offenders and Public Policy: Bridging Research, Policy and Practice*. International Association of Law and Mental Health, Amsterdam, Netherlands, 7/16/13.
- Levenson, J.S. (2012). *Are good intentions enough to produce good results? AWA tiers and recidivism*. 31st Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Denver, CO, 10/18/12.

- Levenson, J.S. & Zgoba, K. (2011). *Multi-State study of Adam Walsh Act Tiers and Recidivism*. American Society of Criminology, Washington, DC, 11/16/11.
- Levenson, J.S. (2011). *A descriptive analysis of individuals on public registries*. 30th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Toronto, CA, 11/3/11.
- Levenson, J.S. (2010). *Residential restrictions for sex offenders*. 29th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Phoenix, AZ, 10/21/10.
- Levenson, J.S. (2009). *Proximity & sex offense recidivism*. American Society of Criminology, November 4, 2009, Philadelphia, PA.
- Levenson, J.S. (2009). *Charting new territory: Mapping trends in sex offender policy*. 28th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Dallas, TX, 9/30/09.
- Levenson, J.S. (2008). *Failure to register & sex offense recidivism*. American Society of Criminology, November 12, 2008, St. Louis, MO.
- Levenson, J.S., Prescott, D., & D'Amora, D. (2008). *What can we learn from sex offenders? Data from a series of consumer satisfaction surveys*. 27th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Atlanta, GA, 10/24/08.
- Levenson, J.S. (2007). *Sex offender residence restrictions*. American Society of Criminology, November 14, 2007, Atlanta, GA.
- Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Florida Council Against Sexual Violence, June 20, 2007, Daytona Beach, FL.
- Levenson, J.S. (2007). *Sex offender policies: The Emperor's new clothes?* Sexual Abuse Intervention Network, May 16, 2007, Tampa FL.
- Levenson, J.S. & Cotter, L.P. (2006). *The impact of Megan's Law and residence restrictions on sex offender reintegration*, 25th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 9/28/06.
- Palmer, R., & Levenson, J.S. (2005). *Ethical issues in working with sex offenders*. 24th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Salt Lake City, UT, 11/18/05.
- Levenson, J.S. & Cotter, L.P. (2005). *The impact of Megan's Law and residence restrictions on sex offender reintegration*, 24th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, New Orleans, LA, 11/3/05.
- Levenson, J.S. (2005). *The Impact of Megan's Law on Sex Offender Reintegration*. 9th Annual Conference of the Society for Social Work and Research, Miami, FL. 1/16/05.
- Levenson, J.S. (2004). *Sex Offender Civil Commitment Selection: Preliminary Research Findings*, 23rd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Albuquerque, NM, 10/29/04.
- Levenson, J.S. & Rapa, S. (2003). *Clinical Supervision of Therapists who Treat Sex Offenders*, 22nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, St. Louis, MO, 10/9/03.
- Rapa, S. & Levenson, J.S. (2003). *Countertransference in the treatment of sexual abusers*, 22nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, St. Louis, MO, 10/9/03.
- Levenson, J.S. (2003). *Engagement, Denial, and Treatment Progress in a Sample of Male Sex Offenders in Group Therapy*, 22nd Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, St. Louis, MO, 10/9/03.
- Macgowan, M.J. & Levenson, J.S. (2003). *Psychometrics of the Group Engagement Measure with Male Sex Offenders*. 7th Annual Conference of the Society for Social Work and Research, Washington, D.C., 1/17/03.

- Levenson, J.S. (2002). *Improving CPS risk assessment in child sexual abuse cases*. 10th Annual Conference of the American Professional Society on the Abuse of Children (APSAC), New Orleans, LA, 5/30/02
- Levenson, J.S. (2001). *The Role of ATSA Members in Child Protection*, 20th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, San Antonio, TX, 11/9/01.
- Levenson, J.S. (2001). *Social Workers are Mandated Reporters*, NASW statewide conference, Ft. Lauderdale, FL, 6/16/01
- Levenson, J.S. (2000). *Connections: Working with the Nonoffending Parent in Sexual Abuse Cases*, 19th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, San Diego, CA, 11/3/00.
- Levenson, J.S. (2000). *Psychopathy in Children*, NASW state conference, Ft. Lauderdale, FL, 6/22/00.
- Levenson, J.S. (1999). *Inside the Mind of the Sex Offender*, NASW state conference, Ft. Laud, FL, 6/11/99.
- Levenson, J.S. (1999). *Family Safety Planning and Reunification Following Child Sexual Abuse*, 7th Annual Conference of the American Professional Society on the Abuse of Children (APSAC), San Antonio, TX., 6/4/99.
- Levenson, J.S. (1998). *Utilizing Group Process as an Intervention Strategy with Sexual Offenders*, 17th Annual Treatment & Research Conference of the Association for the Treatment of Sexual Abusers, Vancouver, British Columbia, 10/16/98.
- Levenson, J.S. (1998). *Bridging the Gap Between Assessment & Case Planning*, 6th Annual Conference of the American Professional Society on the Abuse of Children (APSAC), Chicago, IL., 7/10/98.
- Levenson, J.S. (1997). *Connections: Working with the Nonoffending Parent in Sexual Abuse Cases*, 16th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, Arlington, VA, 10/17/97.
- Morin, J.W. & Levenson, J.S. (1997). *Defining Successful Completion: A Competency Based Treatment Model*, Second Annual Florida Sex Offender Treatment Conference, Tampa, FL, 4/11/97.
- Morin, J.W. & Levenson, J.S. (1996). *Defining Successful Completion: A Competency Based Treatment Model*, 15th Annual Treatment and Research Conference of the Association for the Treatment of Sexual Abusers, Chicago, IL, 11/15/96

UNIVERSITY SERVICE

University Service – Barry University

- Interim Faculty Senator, Elected Spring 2016
- IRB member 2015 to Present, 3 year appointment
- Interim Co-Chair, University Faculty Welfare Committee January-May 2016
- Elected Chair, Curriculum Enhancement Committee, School of SW, 2015-present
- Dean's Advisory Committee, School of SW, 2015-2017
- SSW Faculty Search Committee, School of SW, 2015-2017
- University Ethics Committee August 2014 to present
- Sexual Assault Awareness Month Team, 2014 to present
- Social Work LEAD Day, Barry U School of SW, March 2015

University Service – Lynn University

- IRB Chair 2013-2014; IRB member 2005-2014 at Lynn U
- Faculty Standards Committee, Lynn U
- Strategic Academic Assessment Task Force, Lynn U
- Taskforce on Professoriate, Lynn U
- 3 dissertation committees, 1 QP committee, Lynn
- Clinical supervisor, Masters in Psych students, Lynn
- Sexual Assault Response team, Lynn
- Student Conduct Review Board, Lynn

PROFESSIONAL SERVICE

Host to Fulbright Scholar Dr. Gwenda Willis, from Victoria University, New Zealand, 2011.

Professional Affiliations

- Member, National Association of Social Workers (1987 – present)
- Member, Association for the Treatment of Sexual Abusers (1994 – present)
- Member, American Society of Criminology (2006– present)
- Member, Society for Social Work and Research (2004 – 2006, 2016)
- Member, American Professional Society on the Abuse of Children (1996-2004)

Scholarly Service

- Editorial Board. Sexual Abuse: Journal of Research and Treatment
- Editorial Board: Criminal Justice Policy Review
- Guest Editor: Sexual Abuse: Journal of Research and Treatment *September 2011; 23 (3)* Ethical Issues in Sexual Offender Treatment (with Tony Ward)
- Research grant proposal reviewer. National Science Foundation
- Research grant proposal reviewer. National Institute of Justice
- Research grant proposal reviewer. City University of New York's Collaborative Incentive Research Grant.
- Manuscript reviewer. Victims and Offenders
- Manuscript reviewer. Journal of Interpersonal Violence
- Manuscript reviewer. Law & Human Behavior
- Manuscript reviewer. Criminal Justice and Behavior
- Manuscript reviewer. American Journal of Criminal Justice
- Manuscript reviewer. Criminology & Public Policy
- Manuscript reviewer. Journal of Research on Crime & Delinquency
- Manuscript reviewer. Child Maltreatment
- Manuscript reviewer. Criminology
- Manuscript reviewer. Journal of Criminal Justice
- Manuscript reviewer. Analyses of Social Issues and Public Policy
- Manuscript reviewer. Justice Quarterly
- Manuscript reviewer. Justice Research and Policy.
- Manuscript reviewer. International Journal of Offender Therapy and Comparative Criminology.
- Manuscript reviewer. Human Rights Watch.
- Manuscript reviewer. Sociological Spectrum.
- Manuscript reviewer. Journal of Research on Social Work Practice.
- Manuscript reviewer. Ethical Human Sciences and Services.
- Abstract Reviewer, Annual Conference, Association for the Treatment of Sexual Abusers (2006-present)
- Editor, Florida Forum (1996-2001), Newsletter of the Florida Chapter of the Association for the Treatment of Sexual Abusers (FATSA)
- Abstract Reviewer, 12th National Conference on Child Abuse & Neglect, (1998)

Community Service

- Board member, Association for the Treatment of Sexual Abusers (2001-2007, 2011-present)
- Board member, Florida Council Against Sexual Violence (2012-2013)
- 2009 Chair, Broward County Sex Offender / Sexual Predator Task Force (appointed by Broward County Commissioners).
- Invited Member, Sex Offender Housing Task Force, Council of State Governments, (2008)
- Member, National Advisory Board, Safer Society Foundation (Oct. 2007 – present)
- Member, Prevention Coalition, National Center for Missing and Exploited Children (Oct. 2006 – Dec 2007)
- Committee Chair (Oct. 2003 – 2007), ATSA Ethics Committee (member to present)
- Committee Chair (May 2002 – Oct. 2003), ATSA Organization & Development Committee
- Member and Co-chair, ATSA Public Policy Committee (2002 to present)
- President (2001-2004), Florida Association for the Treatment of Sexual Abusers (FATSA)
- Board Member (1996-present), FATSA
- Member (1999-2002), Statewide Child Abuse Death Review Team; Appointed by the Secretary of the Florida Department of Health
- Member, Broward County Sexual Abuse Intervention Network (SAIN) (1999-2002)
- Subject Matter Expert On Sexual Violence for the Department of Corrections, Broward County Probation Officers
- Advisory Board Member, (1996-1998), Crawford Center, Inc. (A residential facility for sexually aggressive children)
- Invited Member, Assessment Workgroup, Child Welfare League Of America, (1995-1996)

LEGISLATIVE CONSULTATION

- October 16, 2008. Invited testimony before the Vermont Legislature regarding sex offender registration, risk assessment, and the Adam Walsh Act.
- August 29, 2008. Invited testimony before the Vermont Legislature regarding sex offender registration, notification, and residence restrictions.
- March 18, 2008. Invited testimony submitted to the Florida Legislature's Senate Criminal Justice Committee regarding proposed House Bill 1430: Residence of sex offenders and predators.
- August 16, 2007. Invited testimony before the New Mexico Legislature's Courts and Justice Committee regarding sex crime policies.
- November 15, 2006. Invited testimony before the Kansas Legislature regarding residence restrictions for sex offenders and predators.
- October 19, 2005. Invited testimony before the Florida Legislature's House Judiciary Committee regarding proposed House Bill 91: Residence of sex offenders and predators.
- ATSA (2005). Contributor: Amicus Brief submitted to the United States Supreme Court by the Association for the Treatment of Sexual Abusers in the case of Doe v. Miller. [Regarding sex offender residence restrictions]
- ATSA (2002). Contributor: Amicus Brief submitted to the United States Supreme Court by the Association for the Treatment of Sexual Abusers in the case of Connecticut Dept. of Public Safety v. John Doe. [Regarding implementation of "Megan's Law"]

EXPERT WITNESS

Qualified as an expert witness in numerous courts in several states: Florida, Massachusetts, Colorado, Rhode Island, Michigan, Nevada, Alabama.

Doctoral Student Supervision

Claudia Calabrese (current), Barry University, Ph.D. in Social Work. Dissertation committee chair. *Adverse Childhood Experiences and Help-seeking behavior in mental health.*

Revital Goodman (current), Barry University, Ph.D. in Social Work. Dissertation committee member. *Adverse Childhood Experience, emotional intelligence, and substance abuse.*

Kelly M. Socia (2011), University at Albany, SUNY, Ph.D. in Criminal Justice. Dissertation committee outside member. *Residence restriction legislation, sex crime rates, and the spatial distribution of sex offender residences.*

Markell Harrison-Jackson (2009), Lynn University Ph.D. in Educational Leadership. Chair, Dissertation committee. *Factors Influencing Self-sufficiency Outcomes for Emancipated Foster Youth.*

Tina Bauer Goldsmith (2008), Lynn University Ph.D. in Global Leadership. Dissertation committee. *Emotional Intelligence and work performance.*

Judith Cineas (2008), Lynn University Ph.D. in Global Leadership. Dissertation committee. *Faculty perceptions of student evaluations of teaching.*

Sherry Fulmore-Murray (2005-2008), Lynn University Ph.D. in Educational Leadership. Qualifying paper committee chair. *Violence against GLBT high school students.*

Social Work & Mental Health Clinical Supervision (1991-present)

- Field instruction for MSW & BSW students from FIU, FAU, and Barry University
- Clinical supervision for Masters in Applied Psychology students from Lynn University
- Clinical supervision for Masters-Level licensure interns as required by Florida Statute 491

SELECTED MEDIA APPEARANCES

Featured expert in “Untouchable” (2016), a documentary film directed by David Feige, New Documentary Director Award, Tribeca Film Festival 2016.

Bleyer, Jennifer (November 1, 2015). Sympathy for the Deviant. *Psychology Today.*

Milkovits, Amanda (October 3, 2015). Outcasts: In R.I., Level III sex offenders can’t live within 1,000 ft. of schools. *Providence Journal.*

Diane Rehm Show (July 7, 2015). Sex offender registries and calls for reform. *National Public Radio.*

Jones, Abigail (June 23, 2015). The predator next door. *Newsweek.*

Prasinos, Chloe (June 21, 2015). For registered sex offenders, an uphill civil rights battle. *NPR, All Things Considered.*

Eltman, Frank (February 23, 2015). NY ruling on where sex offenders can live sparks debate. *Associated Press.*

Gee, Alastair (March 9, 2015). Outcast at the Gate. *Pacific Standard Magazine.*

Swenson, Kyle (August 20, 2013). Sympathy for the Devils: Should sex offenders have more rights? *Broward Palm Beach New Times.*

Kestin, Sally (August 18, 2013). Sex Predators Unleashed. *South Florida Sun Sentinel.*

CBS 12 News, West Palm Beach (Nov. 30, 2012). Sex offenders set to strike again?

Lee, Michelle (Dec. 4, 2012). States failing to find places for sex offenders to live. *Arizona Republic*.

Reyes, Ray (July 8, 2012). Glut of sex offenders worries residents. *Tampa Tribune*.

Valdes, Ana (June 30, 2012). Sex abuse reporting requirements take effect nationwide in wake of Sandusky case. *Palm Beach Post*.

Leinwand, Donna (January 10, 2012). Sex offenders gather in Trailer Parks. *USA Today*.

Vitelli, Romeo (November 29, 2011). How useful are public sex offender registries? *Huffington Post*.

Crocker, Lizzie (November 22, 2011). The Penn State Scandal: 7 Facts about child sex abuse. *Daily Beast*.

Hudack, Stephen (November 14, 2011). Lake mulls new restrictions for sex offenders. *Orlando Sentinel*.

Nguyen, Linda (November 4, 2011). Sex offender registries don't deter convicts from reoffending. *Calgary Herald*.

Bluestein, Greg (July 19, 2010). Georgia softens once lauded sex offender law. *Associated Press*.

Gardner, Michael (April 12, 2010). King parents lobby for Chelsea's Law. *San Diego Union Tribune*.

Skipp, Catherine (February 1, 2010). A law for sex offenders living under a Miami bridge. *Time Magazine*.

Frank, John (February 24, 2010). Sex Laws Revisited. *Miami Herald*.

Knutson, Ryan (September 3, 2009). Sex-Registry Flaws Stand Out. *Wall Street Journal*.

Gallacher, Andy (August 13, 2009). Florida faces sex offender dilemma. *BBC*.

Harlem, Georgia (August 6, 2009). Unjust and Ineffective. *The Economist*.

Skipp, Catherine (August 3, 2009). A Bridge Too Far. *Newsweek*.

Rood, Lee (July 19, 2009). Sex offender costs to skyrocket. *Des Moines Register*.

Rodriguez, Ihosvani (July 9, 2009). Where neighbors are sex offenders. *South Florida Sun Sentinel*.

Grimm, Fred (June 20, 2009). Sex offender laws burden neighborhood. *Miami Herald*.

Vick, Karl (December 27, 2008). Laws to track sex offenders encouraging homelessness. *Wall Street Journal*.

Reed Ward, Paula (October 26, 2008). Residency restrictions for sex offenders popular, but ineffective. *Pittsburgh Post-Gazette*.

Sandberg, Lisa (October 16, 2008). AG wants online IDs of sex predators listed. *San-Antonio Express News*.

Spangler, Nicholas (April 8, 2008). For sexual predators, a camp of isolation. *Miami Herald*.

Arkowitz, Hal & Lilienfeld, Scott (April, 2008). Once a sex offender, always a sex offender? Maybe not. *Scientific American*.

White, Nicola (April 2, 2008). Senate committee OKs sex offender bill. *Tampa Tribune*.

Koch, Wendy (November 19, 2007). Many sex offenders are often homeless. *USA Today*.

Lane, Mary Beth (October 7, 2007). Sex offender ghettos. *Columbus Dispatch*.

Sher, Julian & Carey, Benedict (July 19, 2007). Debate on child pornography's link to molesting. *New York Times*.

Hopkins, Andrea (June 1, 2007). Fear and hatred push U.S. sex offenders to fringes. *Reuters*.

Keller, Larry (May 19, 2007). Residence limits keep sex offenders on move. *Palm Beach Post*.

Sex offender housing restrictions (March 7, 2007). *ABC World News with Charles Gibson*.

Koch, Wendy (February 26, 2007). Sex offender residency laws get a second look. *USA Today*.

Aldhous, Peter (February 21, 2007). Sex offenders: Throwing away the key. *New Scientist Magazine*.

Kalfrin, Valerie & Stanley, Doug (February 18, 2007). Protecting kids is goal, but how? *Tampa Tribune*.

Eltman Frank (February 16, 2007). New NIMBY twist: Move LI sex offenders around in trailers. *Associated Press*.

Bauer, Laura (February 12, 2007). Kansas resists buffer zones. *Kansas City Star*.

Rood, Lee (January 30, 2007). Lawmakers debate sex offender laws. *Des Moines Register*.

Woodard, Elaine (December 19, 2006). Sex sting suspect teaches children martial arts. *Daytona News-Journal*.

Klepala, Dan (December 11, 2006). Limits on sex offenders questioned. *Cincinnati Enquirer*.

Smith, Jennifer (December 2, 2006). Residency laws for sex offenders under microscope. *Newsday*.

Thompson, Elaine (November 19, 2006). Nowhere to go but out. *Worcester Telegram*.

- Warren, Jenifer (November 9, 2006). U.S. Judge blocks portion of new sex offender measure. *Los Angeles Times*.
- Warren, Jenifer (October 30, 2006). Sex crime residency laws exile offenders. *Los Angeles Times*.
- The Predator Next Door. *MSNBC Documentaries*
- Greenblatt, Alan (September 8, 2006). Sex Offenders. *Congressional Quarterly*.
- Cambria, Nancy (September 3, 2006). O'Fallen, MO expected to rein in where sex offenders can live. *St. Louis Dispatch*.
- Associated Press (July 23, 2006). Panel to mull changes in online sex offender list. *Boston Globe*.
- Bauer, Laura & Rizzo, Tony (June 12, 2006). When evil lurks near our children. *Kansas City Star*.
- Martin, Mark (June 2, 2006). California's most unwanted: Restrictions on residency make nomads of paroled sex offenders. *San Francisco Chronicle*.
- McGraw, Seamus (April 20, 2006). Flaws in sex offender laws. *Court TV Crime Library*
http://www.crimelibrary.com/news/original/0406/2001_sex_offenders.html.
- Crary, David (April 19, 2006). Rethinking sex offender laws a tough sell. *Associated Press*.
- Mooney, Jennifer (April 18, 2006). Bills aim to restrict sexual predators. *Miami Herald*.
- Grotto, Jason (4-day series 1/29/05 – 2/1/06). Predators among us. *Miami Herald*.
- Payne, Melanie (December 18, 2005). Sex offender site criticized. *Southwest Florida News-Press*.
- Koloff, Abbott. (December 12, 2005). Mt. Olive defends sex offender law. *New Jersey Daily Record*.
- Associated Press. (December 5, 2005). Child porn a growing problem online. *Associated Press*
- Weir, Kytja (November 22, 2005). Suspect has prior sex crime conviction. *Charlotte Observer*.
- Sloan, Karen (November 20, 2005). Managing predators among us. *Omaha World-Herald*.
- Dvorak, Todd (November 11, 2005). Iowa cities, towns barring child molesters. *Associated Press*.
- Dvorak, Todd (November 4, 2005). Sex offender law gets another challenge. *Associated Press*.
- Garcia, Jason (October 20, 2005). Lawmaker to re-vamp sex offender limits. *South Florida Sun-Sentinel*.
- Gomez, Alan (October 20, 2005). Florida lawmakers consider tougher statewide restrictions for sex offenders. *Palm Beach Post*.
- Saunders, Jim (October 20, 2005). Lawmakers want uniform law. *Daytona News-Journal*.
- (October 16, 2005). Communities now have eviction power in pedophile ban. *Associated Press*.
- Price, Rita & Sheehan, Tom (October 16, 2005). Sex offender zoning faulted. *Columbus Dispatch*.
- Garcia, Jason (October 16, 2005). Sex offender laws prepared. *South Florida Sun-Sentinel*.
- Clayworth, Jason (October 11, 2005). Researcher says laws are flawed. *Des Moines Register*.
- Grimm, Fred (October 9, 2005). Sex offenders have a place to go: the shadows. *Miami Herald*.
- Harris, Bonnie (October 4, 2005). Ely declares itself 'predator free zone.' *Des Moines Register*.
- Worth, Robert (October 3, 2005). Exiling sex offenders from town. *New York Times*.
- Correll, Deedee & Hethcock, Bill (September 27, 2005). Therapy promises no cure, just reduced risk. *Colorado Springs Gazette*.
- Olkon, Sara (September 19, 2005). Not sex predators, but still outcasts. *Miami Herald*.
- Garcia, Jason (September 15, 2005). Legislator seeks statewide law limiting where sex predators can live. *South Florida Sun-Sentinel*.
- Carlson, Mike (August 25, 2005). Not in my City. *Orlando Weekly*.
- Turner, Jim (August 15, 2005.) Martin, St. Lucie look to keep sex offenders farther from children. *Port St. Lucie News*.
- Perez, Robert (August 14, 2005). Offender rules may backfire, some say. *Orlando Sentinel*
- Ruger, Todd (August 4, 2005). New emails warn of nearby offenders. *Sarasota Herald-Tribune*.
- Perez, Robert (July 15, 2005). Zone law to hit sex offenders. *Orlando Sentinel*
- Pedicini, Sandra & Cox, Erin (June 22, 2005). Child-molester curbs questioned. *Orlando Sentinel*.
- Hemel, Daniel (June 22, 2005). Exile sex offenders from Manhattan, say 14 members of the city council. *New York Sun*.

Hill, Michael (June 20, 2005). Are sex offender laws becoming counterproductive? *Associated Press*.

Moore, Martha (June 20, 2005). States look to high-tech tools to track, map sex offenders. *USA Today*.

Valdemoro, Tania (June 15, 2005). Boce putting sex offenders on channel 20. *Palm Beach Post*.

Willhoit, Dana (June 12, 2005). Experts disagree on treating sexual criminals. *Lakeland Ledger*.

Fisher, Lise (June 13, 2005). Most sex offenders live in rural areas. *Gainesville Sun*.

Torres, Ginelle (June 10, 2005). Sex Offenders Restricted. *South Florida Sun-Sentinel*.

Holland, John (May 29, 2005). South Florida cities target sex offenders in an effort to protect children. *South Florida Sun-Sentinel*.

Medicaid Program says no Viagra for sex offenders (May 27, 2005). *Maine Things Considered*. Maine Public Broadcasting Network.

Musgrave, Jane (May 16, 2005). Murders ignite frenzied furor toward molesters. *Palm Beach Post*.

Dennis, Brady & Waite, Matthew (May 15, 2005). Where is a sex offender to live? *St. Petersburg Times*.

Silvestrini, Elaine (May 1, 2005). State's policies on sex convicts among sternest. *Tampa Tribune*.

Sex Crimes, No easy Answers (April 26, 2005). *The Pat Campbell Show*. WFLA Talk Radio, Orlando FL.

Moeller, Katy (April 24, 2005). Consequences Stem from Sex Offender Registry. *Schenectady Gazette*.

Tracking Sex Offenders (April 21, 2005). *ABC World News Tonight with Peter Jennings*.

Snyder, Susan (December 19, 2004). Shocking Sex Acts in School. *Philadelphia Inquirer*.

Fisher, Lise (November 17, 2004). Chemical castration is ordered for convict. *Gainesville Sun*.

Kelly, Dan (June 27, 2004). Therapist says sex predators can change behavior. *Reading Eagle*.

Lewis, Ken (August 17, 2003). An attempt to explain the unexplainable: Experts share insights into rape, its effects. *St. Augustine Record*.

Wolfson, John (July 6, 2003). Locked Away. *Orlando Sentinel*.

Stopping child sexual abuse (March 27, 2003). *Child Protection Report*, 29(7).

Munno, Greg (December 9, 2002). Sex offender seeks custody of two girls. *Syracuse Post-Standard*.

Richey, Warren (November 13, 2002). Megan's Law faces high-court test. *Christian Science Monitor*.

1 **August 23, 2017**

2 **Second Amended Declaration of David G. Post**

3 At your request, I have reviewed the material you have provided me in connection with
4 the pending challenge to various provisions of the Florida Sexual Offender Registration and
5 Notification Act, Fla. Stat. §§ 943.043 et seq., including the material listed below, in order to
6 provide you with this Declaration concerning a number of questions that have arisen in the
7 matter.

- 8 • The text of the revised statute
- 9 • The “First Amended Verified Complaint for Declaratory and Injunctive Relief,”
10 *Delgado et al. v. Swearingen*, Civil Case No. 4:16-CV-501-RH/CAS (U.S. District
11 Court, ND FL, July 11, 2017)
- 12 • Email from Sexual Predator Unit <SexPredator@fdle.state.fl.us> to Carla Harleys,
13 June 5, 2017, regarding “Question”
- 14 • Email from Sexual Predator Unit <SexPredator@fdle.state.fl.us> to Gail Colletta,
15 July 25, 2017, regarding “High Importance – Internet Identifier Inquiry”
- 16 • 2017 ‘Sexual Offender/Predator Legislative Update’ from Florida Department of
17 Law Enforcement/Florida Sexual Offender/Predator Registry, regarding “Changes
18 to Registration Reporting Effective June 26, 2017”
- 19 • 2017 ‘Sexual Offender/Predator Legislative Update’ from Florida Department of
20 Law Enforcement/Enforcement & Investigative Support/Missing Persons &
21 Offender Registration, regarding new statutory requirements, dated June 28,
22 2017

23 I have no stake in the outcome of this litigation, financial or otherwise, nor do I take any
24 position, or express any opinion, concerning the ultimate merits of the arguments raised by any
25 party. I have attempted to offer my opinions, and answer the questions, set forth below to the
26 best of my ability based upon my relevant professional experience and expertise in the area of
27 cyberspace social behavior and Internet law, described below. I will be compensated at an
28 hourly rate of \$175.00 for professional services, including preparation for and participation in
29 deposition, hearing and/or trial, and I will be reimbursed for travel expenses. I have testified as
30 an expert at trial or by deposition during the previous 5 years in the following cases: *State v.*
31 *Windham*, No. DC-13-118C (Montana 18th Judicial District Court, 2015); *John Doe and Jane Doe*
32 *1through 36 et al. v. State of Nebraska et al.*, (Docket No. 8:09-cv-456 U.S. District Court, D.
33 Neb. 2012); and *Doe et al. v. Swearingen*, No. 4:16cv501-RH/CAS (ND FL, 2016), concerning a
34 challenge to an earlier version of the statute here under consideration.

35 **Background and Experience¹**

¹ I have attached a current *curriculum vitae* as Appendix 1 to this Report.

1 After graduating from Georgetown Law Center in 1986, I served as a law clerk to the
2 Honorable Ruth Bader Ginsburg for one year, at the United States Court of Appeals for the
3 District of Columbia Circuit (1986-87 term), after which I practiced computer and intellectual
4 property law for six years (1987 – 93) as an associate at the Washington, D.C. law firm of
5 Wilmer, Cutler & Pickering. After clerking again for then-Justice Ginsburg at the Supreme Court
6 of the United States (1993-94 term), I began writing and teaching in the area of Internet law,
7 first at Georgetown University Law Center (1994 – 97) and then at Temple University (1997 –
8 2015), where I was the I Herman Stern Professor of Law (a position from which I recently
9 retired). During this period I have published several dozen scholarly articles, and participated
10 as presenter and/or commentator at numerous scholarly conferences and Continuing Legal
11 Education seminars relating to Internet law. One of my articles (*Law and Borders - The Rise of*
12 *Law in Cyberspace*, 48 Stan. L. Rev. 1367, 1400-02 (1996) (co-authored with David R. Johnson) is
13 the most widely-cited law review article in the field of Internet law and intellectual property
14 published in the last 75 years.² I have written two books on the subject: *In Search of Jefferson's*
15 *Moose: Notes on the State of Cyberspace* (Oxford, 2009), and *Cyberlaw: Problems of Policy and*
16 *Jurisprudence in the Information Age* (West, 5th ed. 2016), (co-authored with Paul Berman,
17 Patricia Bellia, and Brett Frischmann).

18 Prior to attending law school, I received a Ph.D. in biological anthropology (1978),
19 specializing in computer analysis of primate behavioral data, and taught in the Anthropology
20 Department at Columbia University for five years (1976 – 81), including courses on
21 mathematical statistics and computer techniques in the social sciences.

22 I have previously served as an expert witness in the following cases involving challenges
23 to Internet-related reporting requirements for registered sex offenders:

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- *John Doe and Jane Doe 1 through 36 et al. v. State of Nebraska et al.*,
Docket No. 8:09-cv-456 (D. Neb.),
- *Doe v. Harris*, No. C12-5713-TEH (US District Court, ND CA, 2012)
- *Doe v. Commonwealth of Kentucky* (US District Court, ED KY 2014)
- *State v. Windham*, No. DC-13-118C (Montana 18th Judicial District Court,
2015)
- *State v. Bonacorsi*, No. 218-2014-CR-01357 (N.H. Superior Court, 2015)
- *Doe et al. v. Swearingen*, No. 4:16cv501-RH/CAS (ND FL, 2016)³

² See Fred Shapiro and Michelle Pearse, “The Most-Cited Law Review Articles of All Time,” 110 Mich. L. Rev 1483, 1494 & 1500 (2012).

³ In addition, I have appeared as an expert witness in the following cases, each of which involved issues of copyright and/or trademark law not pertinent to the issues addressed in this Declaration:

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Statutory provisions: E-mail and Internet Identifier Provisions for Sexual Offenders

Disclosure Requirements

The current version of the Internet identifier provision, which went into effect on June 27, 2017, requires certain persons classified as a “sexual predator” or “sexual offender” to “register all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, with the department through the [FDLE’s] online system or in person at the sheriff’s office within 48 hours after using such electronic mail addresses and Internet identifiers.”⁴ Multiple other portions of the statute require registering and updating Internet identifiers, and impose various criminal penalties for failing to comply.⁵

“Electronic mail address” is defined as “a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.” Fla. Stat. §§ 668.602(6); 775.21(2)(g); 943.0435(1)(c) (incorporating the definition from 668.602).⁶

“Internet identifier” means “any designation, moniker, screen name, username, or other name used for self-identification to send or receive *social Internet communication*.”⁷

“Social Internet communication,” in turn, means any “communication through a commercial social networking website as defined in § 943.0437, or application software.”⁸

Attig v. DRG Inc. et al. (No. 04-CV-03740-JDD, U.S. District Court, ED PA (2005))
Melk et al. v. Pennsylvania Medical Society et al. (Docket No. 08-CV3515, U.S. District Court, E.D. PA (2006))
Gloster et al. v. Jacobs-Meadway et al. (August Term 2004 No. 2049, PA Court of Common Pleas (2008))
Warden et al. v Falk et al. (No. 11-CV-02796, U.S. District Court, ED PA (2010))

⁴ Fla. Stat. § 943.0435(4)(e)(1). See also Fla. Stat. § 775.21(6)(g)5.a (“A sexual predator shall register all electronic mail addresses and Internet identifiers, and each Internet identifier’s corresponding website homepage or application software name, with the department through the department’s online system or in person at the sheriff’s office within 48 hours after using such electronic mail addresses and Internet identifiers.”).

⁵ See, e.g., Fla. Stat. §§ 775.21(6)(a)1, (6)(e)2, (8)(a)1, (10)(a); §§ 943.0435(2)(a)2, (2)(b), (14)(c)1, (14)(c)4.

⁶ Although “electronic mail” is not separately defined, “electronic mail message” is defined as “. . . an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. “

⁷ Fla. Stat. §775.21(2)(j) (emphasis added).

1 “Commercial social networking website” means “a commercially operated Internet
2 website that allows users to create web pages or profiles that provide information about
3 themselves and are available publicly or to other users and that offers a mechanism for
4 communication with other users, such as a forum, chat room, electronic mail, or instant
5 messenger.”⁹

6 “Application software” means “any computer program designed to run on a mobile
7 device such as a smartphone or tablet computer, that allows users to create web pages or
8 profiles that provide information about themselves and are available publicly or to other users,
9 and that offers a mechanism for communication with other users through a forum, a chatroom,
10 electronic mail, or an instant messenger.”¹⁰

11 *Exclusions.* “Social Internet communication” expressly excludes (a) communication “for
12 which the primary purpose is the facilitation of commercial transactions involving goods or
13 services,” (b) communication on “an Internet website for which the primary purpose of the
14 website is the dissemination of news,” and (c) “communication with a governmental entity.”¹¹

15 Taken together, the registration requirement operates as follows:

16 A sex offender” must reveal, within 48 hours of its use, any name “used for self-
17 identification” while sending or receiving communications at any “commercially operated
18 Internet website” that

19 (a) allows users to create publicly-available profiles *and*

20 (b) offers “a mechanism for communication with other users,”

21 *unless*

22 (1) the primary purpose of the communication is “the facilitation of commercial
23 transactions involving goods or services”;

24 (2) the communication takes place on “an Internet website for which the primary
25 purpose of the website is the dissemination of news”; *or*

26 (3) the communication is “with a governmental entity.”

⁸ Fla. Stat. § 775.21(2)(m). See also Fla. Stat. § 943.0435(1)(e) (incorporating the definition from 775.21).

⁹ Fla. Stat. § 943.0437(1).

¹⁰ Fla. Stat. § 775.21(2)(m).

¹¹ Fla. Stat. § 775.21(2)(m). See also Fla. Stat. § 943.0435(1)(e) (incorporating the definition from 775.21).

1 **The Internet and Internet Use**

2 “The Internet” refers to a specific network that uses a common set of inter-networking
3 rules or “protocols” (commonly referred to as the “TCP/IP” protocols) to allow individual
4 computers (and entire computer networks) to exchange information with each other. It has
5 transformed the way Americans work, shop, entertain themselves, obtain information about
6 current events, and communicate with friends and family. Internet access and Internet use is
7 rapidly becoming indispensable for full participation in the social and political life of one’s local
8 community and of the nation as a whole.

9 As the Supreme Court put it this past Term, in *North Carolina v. Packingham*, 582 U.S.
10 ____, slip op. at 4-6 (2017):

11 While in the past there may have been difficulty in identifying the most
12 important places (in a spatial sense) for the exchange of views, today the answer
13 is clear. It is cyberspace—the “vast democratic forums of the Internet” in
14 general, *Reno v. American Civil Liberties Union*, 521 U. S. 844, 868 (1997), and
15 social media in particular.

16 Seven in ten American adults use at least one Internet social networking service.
17 One of the most popular of these sites is Facebook, [which] has 1.79 billion
18 active users. This is about three times the population of North America. Social
19 media offers “relatively unlimited, low-cost capacity for communication of all
20 kinds.” *Reno, supra*, at 870. On Facebook, for example, users can debate religion
21 and politics with their friends and neighbors or share vacation photos. On
22 LinkedIn, users can look for work, advertise for employees, or review tips on
23 entrepreneurship. And on Twitter, users can petition their elected
24 representatives and otherwise engage with them in a direct manner. Indeed,
25 Governors in all 50 States and almost every Member of Congress have set up
26 accounts for this purpose. In short, social media users employ these websites to
27 engage in a wide array of protected First Amendment activity on topics “as
28 diverse as human thought.” *Reno, supra*, at 870 (internal quotation marks
29 omitted).

30 Social media allows users to gain access to information and communicate with
31 one another about it on any subject that might come to mind. [Social networking
32 websites] are for many the principal sources for knowing current events,
33 checking ads for employment, speaking and listening in the modern public
34 square, and otherwise exploring the vast realms of human thought and
35 knowledge. These websites can provide perhaps the most powerful mechanisms
36 available to a private citizen to make his or her voice heard. They allow a person

1 with an Internet connection to become a town crier with a voice that resonates
2 farther than it could from any soapbox.

3 Because it does not have a central control point or directory that will record the
4 existence of a newly-created web page or the addition of a new user, it is impossible to
5 determine the precise “size” of the Internet (*i.e.*, the number of users, or the number of web
6 pages) at any given time point in time. Certain properties of the Internet which can be
7 measured do, however, give a picture of its vast size.

- 8 a. Over 1.2 billion active websites have been identified as of August 2017,¹²
9 containing over 4.5 billion individual web pages.¹³
- 10
11 b. As of December, 2015, approximately 300 million domain names – each of which
12 may be associated with a single user, or alternatively may serve as a “host” for
13 an entire network of hundreds or thousands of users - had been registered.¹⁴
- 14
15 c. Google reported in 2009 that it had found and indexed over 1 trillion Uniform
16 Resource Locators (URL), which are used to identify the location of a specific
17 web page or other form of online content hosted on a given domain, a number
18 that has undoubtedly multiplied itself many times over since then.¹⁵ While some
19 of these URLs are duplicates (they point to the same content) or possibly no
20 longer extant, this gives a rough lower bound as to the number of individual web
21 pages in existence.
- 22
23 d. Google processes over 40,000 search queries every second, or 1.2 trillion
24 searches per year.¹⁶
- 25
26 e. More than 400 hours of video content is posted to Youtube.com every minute,
27 amounting to over a million hours of video uploaded every two days. Facebook
28 recently announced that Facebook users watch almost 10 billion videos every
29 day.
- 30

¹² See <http://www.internetlivestats.com/total-number-of-websites/>

¹³ See <http://www.worldwidewebsize.com/>

¹⁴ See “Internet Grows to 299 Million Domain Names in the Third Quarter of 2015,” available at <https://investor.verisign.com/releasedetail.cfm?releaseid=947518>.

¹⁵ See “We Knew The Web Was Big,” <https://googleblog.blogspot.com/2008/07/we-knew-web-was-big.html>; see also <http://www.worldwidewebsize.com/>.

¹⁶ See <http://www.internetlivestats.com/google-search-statistics/>

1 f. Facebook alone has over 1.7 billion active monthly users (as of March 31,
2 2015),¹⁷ and Twitter users generate over 500,000,000 “tweets” per day.¹⁸
3

4 A series of recent studies by the U.S. Census Bureau¹⁹ and the Pew Research Center for
5 Internet & Society²⁰ found that 87% of American adults now use the Internet, with near-
6 saturation usage for young adults ages 18-29 (97%), and those with college degrees (97%). The
7 average Internet user spends more than an hour per day online, and visits dozens or possibly
8 hundreds of different web sites each day.²¹ Usage has expanded rapidly in recent years as more
9 and more users access the Internet via a mobile device (*e.g.*, a smartphone); as of 2015, nearly
10 two-thirds of Americans own a smartphone, and 19% of Americans rely to some degree on a
11 smartphone for accessing online services and information and for staying connected to the
12 world around them - either because they lack a broadband connection at home or at work, or
13 because they have few options for Internet access other than their cell phone.²²

¹⁷ See <http://newsroom.fb.com/company-info/>; see also “Facebook Now Used by Half of World’s Online Users,” BBC News, available at <http://www.bbc.com/news/business-33712729>.

¹⁸ <https://about.twitter.com/company>.

¹⁹ See Morris, “First Look: Internet Use in 2015,” available at <https://www.ntia.doc.gov/blog/2016/first-look-internet-use-2015>.

²⁰ These data are reported in a continuing series of reports and publications from the Pew Center, including the following: “Online Video 2013” (available at <http://www.pewinternet.org/2013/10/10/online-video-2013/>); “Social Media Update 2014” (available at <http://www.pewinternet.org/2015/01/09/social-media-update-2014/>); “Americans Feel Better Informed Thanks to the Internet” (available at <http://www.pewinternet.org/2014/12/08/better-informed/>); “The Web at 25 in the U.S.” (available at <http://www.pewinternet.org/2014/02/27/the-web-at-25-in-the-u-s/>); “Couples, the Internet, and Social Media” (available at <http://www.pewinternet.org/2014/02/11/couples-the-internet-and-social-media/>); “Photo Ad Video Sharing Grow Online” (available at <http://www.pewinternet.org/2013/10/28/photo-and-video-sharing-grow-online/>); “Who’s Not Online and Why” (available at <http://www.pewinternet.org/2013/09/25/whos-not-online-and-why/>); “Anonymity, Privacy, and Security Online” (available at <http://www.pewinternet.org/2013/09/05/anonymity-privacy-and-security-online/>); “51% of U.S. Adults Bank Online” (available at <http://www.pewinternet.org/2013/08/07/51-of-u-s-adults-bank-online/>); “Teens and Technology 2013” (available at <http://www.pewinternet.org/2013/03/13/teens-and-technology-2013/>); “Health Online 2013” (available at <http://www.pewinternet.org/2013/01/15/health-online-2013/>); “Search and Email Still Top the List of Most Popular Online Activities” (available at <http://www.pewinternet.org/2011/08/09/search-and-email-still-top-the-list-of-most-popular-online-activities/>); “Social Media User Demographics” (available at <http://www.pewinternet.org/data-trend/social-media/social-media-user-demographics/>).

²¹ See CNET, “Average Net User Now Online 13 Hours Per Week,” at <http://www.cnet.com/news/average-net-user-now-online-13-hours-per-week/> (reporting on 2010 Harris survey showing that 80% of Americans use the Internet, and those who do spend an average of 13 hours per week online). See Nielsen/Net Ratings, Internet Audience Metrics, United States, quoted in McDonald & Cranor, “The Cost of Reading Privacy Policies,” 4 I/S: A Journal of Law & Policy for the Information Society 543, 558 (2008) (data as of March 2008).

²² See <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>.

- 1 Americans use the Internet for an extraordinarily broad range of expressive activities:
- 2 · Email (92 percent as of May 2011),
 - 3 · Social networking (74 percent as of January 2014),
 - 4 · Posting photos or videos online (62 percent as of October 2013),
 - 5 · Banking (61 percent as of April/May2013),
 - 6 · Using an online classified ads site (53 percent of those surveyed as of April 2010),
 - 7 · Sending instant messages (48 percent of those surveyed as of October 2010),
 - 8 · Rating a product or service (37 percent of those surveyed as of April 2011),
 - 9 · Playing online games (33 percent of those surveyed as of August 2010),
 - 10 · Commenting on a local news story or local blog (20 percent of those surveyed as
 - 11 of January 2011),
 - 12 · Maintaining a personal online journal or blog (14 percent of those surveyed as of
 - 13 October 2010)

14 **Internet Identifiers**

15 It is important to understand the nature and function of “Internet identifiers” in order to
16 understand the scope of the statutory disclosure requirements. Every Internet user *must*
17 obtain a *unique identifier* – a numerical “IP Address” - before he/she is able to communicate
18 over the Internet; the Internet routers that serve as the Internet’s backbone, moving messages
19 from one machine to another across the network, require that all messages contain the IP
20 Address of the originating computer (and the IP Address of the computer(s) to which the
21 message is to be sent).²³ Users obtain IP Addresses from Internet Service Providers (“ISPs”),

²³ For a non-technical introduction to Internet Addressing, see The Internet Society, “What is the Internet?,” available at <http://www.isoc.org/internet/>; National Research Council, *The Internet’s Coming Of Age* (Nat’l Acad. Press 2001).; Post, *In Search Of Jefferson’s Moose: Notes On The State Of Cyberspace* (Oxford Univ. Press 2009); and Mark A. Lemley & Lawrence Lessig, *The End of End-to- End: Preserving the Architecture of the Internet in the Broadband Era*, 48 UCLA L. REV. 925 (2001).

An IP Address is just a number – 4253, or 11, or 4444444, or 19828383, etc. –expressed as a string of binary digits (“bits”), 32-characters long, *e.g.*,

10011011100110010111111100101100

For convenience, IP Addresses are usually written out as four-item decimal strings. The 32-digit binary number above can be written as 155.153.127.44, by dividing it into 8-digit “octals”:

10011011 10011001 01111111 00101100

And then using the decimal equivalent for each of the four octals:

155 = 10011011

153 = 10011001

127 = 01111111 and

1 who are each allocated a block of IP Addresses that they can distribute to users/subscribers.
2 Typically, ISPs assign a different IP Address to users each time they “log on” to the Internet; in
3 some cases, a user’s IP Address is changed during the course of individual log on sessions.

4 Users are generally unaware of the IP Address that they are using at any given time
5 (although it is possible to obtain that information, either by visiting websites that provide that
6 service²⁴ or by running special software that is available on their computers. ²⁵

7 It is not difficult to obtain an IP Address and access the Internet without revealing one’s
8 identity. While many ISPs (for example, commercial ISPs like Comcast, AT&T, Verizon, Cox
9 Communications, etc.) do require users to provide some proof of actual identity, typically in the
10 form of a valid credit card, before assigning an IP Address to them, many others do not; for
11 example, many “wi-fi hotspots” offering free Internet connectivity in airports, restaurants,
12 coffee shops, or other commercial establishments, do not require users to identify themselves
13 before assigning them an IP Address and allowing them to access the Internet.

14 With Internet access (via an IP Address), one can run any number of Internet
15 applications, the most popular of which are electronic mail and the World Wide Web. Of the 1
16 billion-plus active websites now in operation, I would estimate that the vast majority require no
17 “identifier” (other than a valid IP Address) to allow the user to access the information stored at
18 the site; these websites, in other words, are configured to transmit their content files in
19 response to users identified by nothing other than a valid IP Address. This is the “default” status
20 for sites on the World Web, in the sense that it requires the least amount of time and effort for
21 whomever is configuring the website for Internet access.

22 Websites can, however, be configured differently, so as *not* to allow access (*i.e.*, to not
23 transmit any files or other content) in response to user requests unless those users provide
24 some other “identifier” information in addition to a valid IP Address. These websites typically
25 require some form of registration, involving submission of any or all of the following: a unique
26 “username,” an email address, a password, the user’s real name, the user’s physical address, or
27 virtually any other identifying information the website operator may require.²⁶ This may also

44 = 00101100

²⁴ E.g., <http://whatismyip.com>.

²⁵ For example, the two most popular personal computer operating systems (Microsoft Windows, and Apple’s Mac OS) both are “bundled” with a software program (the “ipconfig” program) which displays the user’s current IP Address.

²⁶ For example, it is a common practice for websites to require users to provide answers to various “security questions” – “What was the name of your first pet?” or “Who was your favorite teacher in high school?” – as a means of authenticating the user’s identity in future communications..

1 include additional identifying information in the form of a credit card, in the case of websites
2 that put their content behind what is commonly referred to as a “paywall” and charge users a
3 fee for access.

4 Finally, even those websites that allow unrestricted user *access* to the site (*i.e.*, for
5 “browsing” the information stored there) may require users to provide additional identifier
6 information before using any of the site’s *interactive* features. Many websites provide such
7 features, permitting users to provide content – a comment, a link, a question, a product or
8 service rating, etc. - which is added to the other content available at the website, but only if
9 the users register; this, again, may involve submitting a unique “username,” email address,
10 name and address, etc. These interactive features include discussion forums (where registered
11 users can submit comments, questions, or opinions in connection with articles, essays, product
12 descriptions, or other content accessible on the website), “chat rooms” (allowing users to
13 engage in real-time conversations with other users and/or with individuals employed by the
14 website operator, such as a customer service representative), and “ratings” functionality
15 (allowing users to designate how much they liked, or didn’t like, specific products or articles or
16 videos, etc.).

17 It is, for the reasons mentioned above,²⁷ impossible even to estimate reliably the
18 number of websites requiring users to provide additional identifiers in order either to access
19 the information on the website (*i.e.*, to receive information from it), or to interact with it (*i.e.*,
20 to send information to it), or both, but the number is without question in the hundreds of
21 thousands, or millions. The scope of the Internet identifier disclosure requirement is vast;
22 websites requiring such identifiers (which would have to be disclosed to FDLE) include:

23 Many, if not most, news/current events websites which permit registered users
24 to comment on news stories or op-ed type articles;²⁸

25 Many, if not most, political, legal, and current affairs sites;²⁹

²⁷ See pp. 6-7, *supra*.

²⁸ For example, the New York Times (<http://www.nytimes.com>), the Wall Street Journal (<http://www.wsj.com>), the Washington Post (<http://www.washingtonpost.com>), the Gainesville Sun (<http://www.gainesville.com>), the Miami Herald (<http://www.miamiherald.com>), and the Orlando Sentinel (<http://www.orlandosentinel.com>) all require registration for use of the site’s “Comment” features, and all make certain content inaccessible to unregistered users.

²⁹ For example, the “Volkh Conspiracy” blog, where I am a regular contributor, permits site visitors to leave comments and to participate in a discussion about individual blog postings, using a username of the visitor’s choosing. See <https://www.washingtonpost.com/news/volkh-conspiracy/>.

1 Many sites promoting discussions of sensitive topics such as sexuality,
2 alcoholism, depression, etc.;³⁰

3 Many sites providing legal, medical, or informational content;³¹

4 Many commercial sites, including many popular sites such as Amazon.com,
5 eBay.com, Yelp.com, and Traveladvisor.com , which allow users to post feedback on
6 recent purchases or otherwise participate in group discussions;

7 Many entertainment sites, such as HBO.com or YouTube.com, which allow users
8 to start, or to participate in, online discussions of the content posted at the site or other
9 matters;

10 Many “blog” websites, which are hosted by platform popular blog platform
11 providers such as Blogger, WordPress, or Tumblr, which allow blog readers to comment
12 on posted material;

13 Many sites offering “social networking” functionality, such as Facebook, Twitter,
14 Reddit, Pinterest, and Instagram.

15 It is, in short, quite easy to imagine even a casual Internet user encountering dozens, or
16 more, of websites requiring some user identifier during the course of a typical day, a number
17 that is likely to be considerably higher for anyone whose job requires more intensive Internet
18 use.

19 **The Meaning of the Statutory Language**

20 I conclude, based upon my personal knowledge and experience, that the statutory
21 disclosure requirements are vague and/or ambiguous in critically important ways in connection
22 with the required determination of whether the websites fall within the definition of a
23 “commercial social networking site,” as well as whether they fall within one or more of the
24 statutory exclusions. In addition, the statute, under reasonable readings of the statutory
25 language, imposes burdens on persons covered by the statutory disclosure requirements that
26 are enormously difficult – and at times, virtually impossible – to comply with.

³⁰ See, e.g., <http://www.soberrecovery.com/forums/>; <http://www.medhelp.org/forums/Alcoholism/>;
<http://www.recovery.org/forums/>; <http://ldssexuality.com/forum/>; <http://www.healthboards.com/boards/sexual-health-women/>.

³¹ Lexis, Westlaw, and the federal courts’ docket and case information system (PACER) are well-known examples of websites that allow access and use of legal reference materials only to registered users; other legal reference sites that require users to provide identifiers in order to use some or all of the website’s functions include Law360.com, Findlaw.com, SSRN.com, Thelegalintelligencer.com, and HeinOnline.com.

1 To illustrate these deficiencies, consider a sex offender who accesses the following
2 websites (hereinafter, the “Example Websites”) from across the vast spectrum of content
3 available on the Internet:

- 4 • Google (google.com)
5 Google.com is the single most-visited website on the Internet.³² The home page
6 at google.com offers the familiar Internet search capability, as well as a “portal”
7 to the many other functions that Google provides. See
8 <https://www.google.com/intl/en/about/products/>
- 9 • Wikipedia (wikipedia.org)
10 Wikipedia, the fifth most visited website on the Internet, is an online, crowd-
11 sourced encyclopedia; it describes itself as “the largest collection of free,
12 collaborative knowledge in human history,” containing more than 40 million
13 articles and viewed more than 15 billion times every month.
- 14 • ESPN (espn.com) (Sports)
15 A multi-faceted sports-oriented website operated in conjunction with the
16 widely-popular ESPN cable network, offering news and interactive features (*e.g.*,
17 “fantasy” sports) across a broad spectrum of different sports.
- 18 • Trip Advisor (Tripadvisor.com)
19 The most popular travel-oriented site on the Internet, containing over 500
20 million user reviews of some 7 million hotels, restaurants, and airlines, as well as
21 interactive travel booking functions. [https://tripadvisor.mediaroom.com/us-](https://tripadvisor.mediaroom.com/us-about-us)
22 [about-us](https://tripadvisor.mediaroom.com/us-about-us)
- 23 • WebMD (Webmd.com)
24 A popular health-oriented website providing “information, supportive
25 communities, and in-depth reference material about health subjects.”
- 26 • Ballotpedia (ballotpedia.org)
27 A popular website focused on U.S. political news and commentary.
- 28 • Wordpress (wordpress.com)
29 Wordpress is a large “blog hosting” site, providing technical support and
30 maintenance for several million separate blog sites across a vast range of subject
31 matter, see <https://en.wordpress.com/notable-users/>, accounting for over 80
32 million blog postings each month. See <https://wordpress.com/activity/>
- 33 • Feedspot (feedspot.com)
34 Feedspot is a popular “blog aggregator,” allowing users to customize a home
35 page organizing information from a user-selected collection of Internet blogs.
36 See [https://feedspot.uservice.com/knowledgebase/articles/355477-what-is-](https://feedspot.uservice.com/knowledgebase/articles/355477-what-is-feedspot-and-how-can-i-benefit-from-using)
37 [feedspot-and-how-can-i-benefit-from-using](https://feedspot.uservice.com/knowledgebase/articles/355477-what-is-feedspot-and-how-can-i-benefit-from-using)

³² All rankings are from Alexa.com, an internet tracking service for website traffic data. See, e.g., Mavrix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1222 (9th Cir. 2011). Alexa site rankings are calculated by combining the average number of daily visitors to a website with the number of pageviews that take place on that site over the course of a month. See <http://www.alexa.com/topsites>.

1
2 These are all among the most popular websites on the Internet, accessed by millions of
3 people during the course of an average day, and it would not be unusual in the least for an
4 individual to visit all of them in a single Internet session.³³

5 **“Commercial social networking website”**

6 Because the Internet identifier disclosure requirement extends to all names used “to
7 send or receive ‘social Internet communication,’” which in turn means communication through
8 a “commercial social networking website,” our hypothetical sex offender accessing any of the
9 Example Websites must first determine whether the site is a “commercial social networking
10 website.” This requires determining whether three conditions are met:

11 [A] it is “a commercially operated Internet website,” (*the “Commercial Operation”*
12 *Requirement*);

13 [B] it “allows users to create web pages or profiles that provide information about
14 themselves and are available publicly or to other users,” (*the “Profile Requirement”*); and

15 [C] it “offers a mechanism for communication with other users, such as a forum, chat
16 room, electronic mail, or instant messenger” (*the “Communication Requirement”*).³⁴

17 Making that determination can be an insurmountably difficult challenge in a large
18 number of cases.

19 **A. The Commercial Operation Requirement**

20 The term “commercial” is not defined in the statute, and it can, in this context,
21 reasonably be interpreted in a number of different ways. It could refer, for instance, to
22 whether the website owner or operator is a profit-making, as opposed to a not-for-profit,
23 entity. Alternatively, it could refer to whether the website itself participates in “commerce,”
24 either by generating revenue (through *e.g.*, registration fees or advertising) or by offering goods
25 or services for sale.

³³ These sites were chosen as being roughly representative of a “typical” user’s Web browsing activities, not because they illustrate any particular characteristic of relevance to the statutory language here in question. To avoid the possibility that they might demonstrate some unconscious bias on my part, I repeated the exercise of applying the statutory language to a set of randomly-chosen websites, a list of which is provided in Appendix 2 (the “Random Sites”). These were chosen using the randomizing search tool provided at <http://makeinternetnoise.com/index.html>.

³⁴ See Fla. Stat. § 943.0437(1)

1 In any case, the information required to make that determination is rarely readily
2 available – and sometimes completely unavailable - to users accessing the website.

3 To begin with, the domain name in the website’s URL³⁵ does not provide reliable
4 information on whether a site is or is not “commercial.” Although many people believe that a
5 website with a .ORG address is necessarily operated by a non-profit entity on a non-profit basis,
6 and, conversely, that a .COM domain indicates that a site is operated by a profit-making entity,
7 neither is the case. Both .ORG and .COM are “unrestricted” domains, allowing any individuals
8 or entities, profit-making or otherwise, to register and use any second-level domains (*e.g.*,
9 *espn.com*, *wikipedia.org*).³⁶ Many for-profit corporations operate websites in the .ORG domain
10 – indeed, the operator of the .ORG domain actively solicits registrations from profit-making
11 entities.³⁷ While I know of no way to estimate the number of websites in the .ORG domain that
12 are operated for profit, or the number of websites in the .COM domain that are *not* operated
13 for profit, but they undoubtedly number in the many hundreds of thousands, if not the millions.

³⁵ A “Uniform Resource Locator,” or “URL,” refers to a standardized means of referencing the location of any Internet resource. It is most commonly used for files accessible over the World Wide Web. The standard format is:

[a] the protocol used to access the resource (such as “http” for the World Wide Web, “ftp” for resources accessible via the file transfer protocol, “news” for resources accessible within Internet newsgroups);

[b] the domain name of the server on which the resource is located; and

[c] the directory path to the resource on that server.

See <http://techterms.com/definition/url>; https://en.wikipedia.org/wiki/Uniform_Resource_Locator;
<https://docs.oracle.com/javase/tutorial/networking/urls/definition.html>

Each of those listed citations – that is, <http://techterms.com/definition/url>,
https://en.wikipedia.org/wiki/Uniform_Resource_Locator, and
<https://docs.oracle.com/javase/tutorial/networking/urls/definition.html> - is itself a URL. The protocol specified in each case is the HTTP protocol (the transport protocol for the World Wide Web); the domain name of the server is *techterms.com*, *en.wikipedia.org*, or *docs.oracle.com*; and the directory path to the file in question is *definition/url* in the first case, *wiki/Uniform_Resource_Locator* in the second, and [javase/tutorial/networking/urls/definition.html](https://docs.oracle.com/javase/tutorial/networking/urls/definition.html) in the third.

³⁶ See <http://pir.org/resources/fag/> (“*.org* is an open and unrestricted domain. Anyone is allowed to register and use *.org* domain names. *.org* is the home for millions of nonprofit websites, [and] even for-profit companies have *.org* sites devoted to their charitable or volunteer programs”). Most top-level domains are unrestricted in this way; there are, however, a small number of so-called “sponsored” top-level domains (*e.g.*, *.EDU*, *.GOV*, *.POST*, *.MUSEUM*) which are open only to registrants with certain particular characteristics. See generally https://en.wikipedia.org/wiki/Sponsored_top-level_domain.

³⁷ See <http://pir.org/products/org-domain/> (“In an age where corporate social responsibility (CSR) programs and crisis management planning are on the rise and more transparent, *.org* stands as the natural domain of choice for businesses – both large and small – to highlight their philanthropic endeavors, strengthen their customer relationships in times of crisis and calm, and to illustrate their commitment to encouraging and making a positive societal impact to their current and potential stakeholders.”)

1 Nor, generally speaking, is there any such reliable indication of whether a site is or is not
2 “commercial” on the website’s Home Page.³⁸ While it may be a matter of common knowledge
3 that some extremely well-known websites – Google.com or ESPN.com, for example – are
4 operated on a for-profit basis, nothing on the Home Pages at either Google.com or ESPN.com
5 expressly indicates that this is so. Only one of the Example Websites – Wikipedia - expressly
6 indicates on its home page whether it is operated on a for-profit or non-profit basis.³⁹ See Table
7 1.

8 Three of the Example Websites (ESPN, TripAdvisor, and WebMD) host advertising on
9 their home pages, two offer goods or services for sale at their home pages (TripAdvisor and
10 WebMD). None of the sites charges any sort of a fee for access, use, and/or registration. See
11 Table 1.

12 Website Home Pages sometimes provide a link – often, by convention and custom,
13 labelled “ABOUT” or “ABOUT US” - to additional information about the website, which may
14 contain information concerning the entity responsible for its management and operation. But
15 there is no legal or other requirement that they do so, and many web sites do not provide this
16 information.

17 Six of the Example Websites (Google, TripAdvisor, WebMD, WordPress, Ballotpedia, and
18 Feedspot), and five of the Random Websites, do have an “ABOUT” link on their respective
19 home pages. However, three of these six Example Websites (WebMD, WordPress, and
20 Feedspot) have no information on their “ABOUT” pages that gives any indication whether the
21 website operator is, or is not, a for-profit entity or is otherwise engaged in “commercial”
22 activity; the same is true for two of the five Random Websites. See Table 1.

23 Consequently, if “commercial” refers to charging fees for registration or access, *none* of
24 the websites on either list appears to qualify. If it means revenue-generation via
25 advertisements, three of the Example Websites (ESPN.com, Tripadvisor.com, and
26 WebMd.com), and one of the Random Websites (Southernliving.com), would qualify. If it refers
27 to the for-profit status of the website operator, three of the Example Websites (Google.com,
28 ESPN.com, TripAdvisor.com), and one of the Random Websites (Southernliving.com), would
29 qualify.

30 And while two of the Example Websites, and three of the Random Websites, appear to
31 be *non*-commercial, at least to the extent that they each indicate that they are being operated

³⁸ See Appendix 3, which displays each of the Example Website Home Pages.

³⁹ See www.wikipedia.org (“Wikipedia is operated by the Wikimedia Foundation, a non-profit organization that also hosts a number of other projects”).

1 by not-for-profit entities,⁴⁰ *a number of sites contain no information at all*, on their Home Page
2 or on their “About” page, about whether they are commercial or non-commercial by *any*
3 definition: no evident “commercial” activity of any kind, no advertisements, no sales of goods
4 or services, no indication of whether the site operator is a for-profit or not-for-profit entity.⁴¹

5 This negative evidence, however, does *not* mean that the website is a non-commercial
6 site. As discussed in the following section, a website may consist of thousands – or even
7 millions – of individual pages; as a result, the absence of any indication of the website’s
8 “commercial” nature at two of those pages (the home page, and the “About” page (if there is
9 one)) can hardly be taken as conclusive evidence that commercial activity is not taking place
10 *elsewhere* on the website.

11 This places a prodigious burden on a sex offender trying to determine whether or not
12 the Internet identifiers that he or she has used to access information at these sites (*e.g.*, at the
13 Wordpress or Feedspot websites) have to be disclosed to FDLE.⁴²

14 **B & C. The Profile Requirement and the Communication Requirement**

15 A number of additional, and quite crippling, ambiguities in the statutory definition of
16 “commercial social networking website” render it all-but-impossible to comply with as a
17 practical matter.

18 Most importantly, the term “website” is not defined in the statute. While its ordinary
19 meaning may be perfectly adequate for everyday speech – we all may understand what a friend
20 means when s/he says “I saw an interesting story at the ESPN website,” or “the WebMD
21 website might have some useful information for you on your medical problem” - it lacks the
22 precision necessary for a criminal statute.

23 The American Heritage Dictionary defines “website” as a “set of interconnected
24 webpages, usually including a homepage, generally located on the same server, and *prepared*
25 *and maintained as a collection of information by a person, group, or organization.*”⁴³

⁴⁰ The non-profit Example Websites are wikipedia.org, ballotpedia.org; the non-profit Random Websites are allaboutphilosophy.org, archive.org, and hrw.org.

⁴¹ This is the case for two of the eight Example Websites (Feedspot.com and Wordpress.com), and two of the eight Random Websites (pinterest.com and github.com).

⁴² An analogy might be helpful. Imagine an individual required to disclose every time he or she enters a store selling alcoholic beverages. Consider the difficulty of complying with that disclosure requirement in a world in which stores (a) frequently occupy buildings that are thousands, or hundreds of thousands, of stories tall, and (b) are under no requirement that they provide a directory of any kind indicating the kind of goods that are sold within the confines of the building.

1 Consider a sex offender who accesses a page at the ESPN website – the page, say,
2 targeted to Orlando Magic fans (http://www.espn.com/nba/team/_/name/orl/orlando-magic)
3 (the “Orlando Magic Page”) – and who therefore needs to determine whether the ESPN
4 website meets the Profile Requirement (“allows users to create [publicly-available] web pages
5 or profiles”) or the Communication Requirement (“offers a mechanism for communication with
6 other users”).

7 There’s nothing at the Orlando Magic Page to suggest that either condition is satisfied;
8 that page contains no mention of profiles or inter-user communication.

9 The ESPN website, however, consists of much more than just the Orlando Magic Page,
10 of course, and it might provide profile or inter-user communication functionality elsewhere on
11 the website. But to determine whether “the ESPN website” contains that functionality, the user
12 must be able to determine where the ESPN website begins and ends, *i.e.*, what other webpages
13 are part of the “set of inter-connected pages” comprising the ESPN website?

14 The ESPN home page (www.espn.com) is surely part of the ESPN website – but it, too,
15 does not mention profiles or inter-user communication. It does, however, contain a list of 10
16 different sites that are labeled “ESPN Sites,” with links to each of them: FiveThirtyEight, The
17 Undeclared, Doubletruck, ESPNw, ESPNFC, X Games, ESPN Deportes, SEC Network, Insider, and
18 SportsNation.⁴⁴

19 Are some, or all, of these linked pages part of “the ESPN website,” or are they different
20 websites? This has critically important implications for our hypothetical sex offender accessing
21 the Orlando Magic Page. SportsNation, for example, does offer a “mechanism for
22 communication with other users” – a “chat” feature⁴⁵ allowing registered users to send and
23 receive messages in real time from other users. If SportsNation is part of “the ESPN website,” a
24 sex offender accessing the Orlando Magic Page must disclose any “Internet identifiers” used to
25 access the page. On the other hand, if SportsNation is a *different* website, the fact that it offers
26 inter-user communication functionality is irrelevant to the question whether “the ESPN
27 website” does so.

28 But on what basis is a user to make that determination? Are *e.g.*, SportsNation and
29 DoubleTruck “prepared and maintained as a collection of information” by the same “person,

⁴³ “Website,” American Heritage Dictionary <http://bit.ly/2h9Z7oy> (last accessed June 9, 2017) (emphasis added).

⁴⁴ See Appendix 4, which displays the ESPN Home Page and the links there to the “ESPN Sites.”

⁴⁵ See <http://www.espn.com/sportsnation/chat/archive>.

1 group, or organization” – in this case, ESPN, Inc.? As discussed above in connection with the
2 Commercial Operation requirement, there is no requirement that web sites provide
3 information regarding the identity of the website operator that is necessary to make that
4 determination, and many do not do so.

5 Some of the linked “ESPN Sites” prominently display the familiar ESPN logo on their
6 Home Pages (*e.g.*, www.espn.com/doubletruck/ and www.espn.com/insider/), which might
7 possibly be taken as an indication that they are part of “the ESPN website”⁴⁶. Others display
8 the ESPN logo, but considerably more discreetly, in small type in a corner of the Home Page
9 (*e.g.*, fivethirtyeight.com, www.espn.com/espnw/); some don’t display the ESPN logo at all, but
10 do provide a link, among many other such links, to the ESPN Home Page (*e.g.*,
11 theundefeated.com); and some have no reference to “ESPN” at all on their Home Pages (*e.g.*,
12 xgames.espn.com/xgames/, www.secsports.com). A user accessing any of these pages can draw
13 no conclusion whatsoever about whether the page is, or is not, part of the set of
14 interconnected pages that make up “the ESPN website.”

15 And just as a business’ ordinary postal address – 345 Main Street, Suite 1200 – does not
16 provide the information necessary to determine either who operates the business located
17 there, or whether that is the same individual or entity operating the business located at a
18 different address, a website’s address – its Uniform Resource Locator, or “URL” – does not
19 provide the information necessary to determine who operates and maintains the website
20 accessible at that address or whether that is the same individual or entity operating the website
21 at a different URL.

22 Some of these “ESPN Sites” have URLs within the www.espn.com domain:

23 SportsNation links to the page at www.espn.com/sportsnation
24 “espnW” to the page at www.espn.com/espnW
25 Doubletruck to the page at www.espn.com/doubletruck,
26 “Insider” to the page at www.espn.com/insider
27

28 Several of them have URLs at espn.com, but not at the “www” subdomain but at a
29 different subdomain:

30 “X Games” to the page at xgames.espn.com
31 ESPN Deportes to the page at espndeportes.espn.com
32

⁴⁶ Although of course even the appearance of the logo is not a clear indication that a single entity is responsible for operation of the two webpages; ESPN, Inc., like any trademark owner, can license others to use its logos in any number of ways, including in its webpage design.

1 And the remainder have URLs at domains outside of the espn.com domain altogether:

- 2 "FiveThirtyEight" to the page at fivethirtyeight.com
- 3 "The Undeclared" to the page at theundefeated.com
- 4 "The SEC Network" to the page at www.secsports.com
- 5 "ESPN FC" to the page at www.espnfc.us

6
7 These different URL addresses tell a user nothing about which of these webpage
8 collections – if any – are operated by the same “person, group, or organization” that operates
9 the www.espn.com Home Page (and, therefore, which are and which are not part of the “ESPN
10 website”). It could be that all 10 are owned and operated by ESPN, Inc. – or it could that *none*
11 of them is. As the owner of the “espn.com” domain, ESPN, Inc. is entirely free to contract with
12 third parties to, in effect, “lease space” at the espn.com domain for their own operations, and,
13 conversely, nothing to prevent the owner of the espn.com domain from purchasing rights to
14 other domains (fivethirtyeight.com, theundefeated.com, etc.) for its own use.

15 In sum, a user accessing the ESPN.com Home Page has no way of knowing whether any,
16 some, or all of these “ESPN Sites” are, or are not, part of “the ESPN website.” Accordingly, to
17 determine whether “the ESPN website” offers a mechanism for users to communicate with
18 each other, the user has to examine *all 10* of these webpage collections, first to determine
19 whether they are operated and maintained by ESPN, Inc., and then to determine whether a
20 mechanism for inter-user communication is provided there. This imposes a virtually impossible
21 burden on a sex offender attempting to comply with the statutory requirements.

22 This problem – determining the boundaries of a website that has multiple services
23 within it or linked to it, some of which may be operated independently, some not - is hardly
24 unique to the ESPN website. For instance, the home page at Google.com provides links to
25 dozens of what it calls “Google Apps”: web pages that offer *e.g.*, an e-mail service
26 (mail.google.com), a video-sharing service (youtube.com), a translator (translate.google.com), a
27 blog hosting service (www.blogger.com), a “news aggregator” (news.google.com), a scholarly
28 research tool at scholar.google.com, and a shopping site (www.google.com/shopping). One of
29 those linked Google Apps – the Google+ service (plus.google.com) – allows users to create
30 publicly-accessible profiles;⁴⁷ does that mean that “the Google website” meets the Profile
31 Requirement, and that sex offenders accessing other parts of “the Google website” where such
32 functionality is *not* provided – *e.g.* “Google Translate” at translate.google.com - must disclose
33 any Internet identifiers used in connection with that access?

⁴⁷ https://support.google.com/plus/answer/6320391?hl=en&ref_topic=6320388 (“See and Edit your Google+ Profile”).

1 Similarly, the WebMD home page lists and provides links to 12 entities that form what it
 2 calls “the WebMD Network,” including Medscape (www.medscape.com), Rxlist (www.Rxlist.com),
 3 BootsWebMd (www.webmd.boots.com), First Aid (www.webmd.com/firstaid), and Dictionary
 4 (dictionary.webmd.com).⁴⁸ The Home Page at WebMD.com offers mechanisms for users to
 5 create profiles and to communicate with other users;⁴⁹ does that mean that a sex offender who
 6 accesses Rxlist.com must disclose the Internet identifiers s/he used to do so, even though
 7 Rxlist.com does *not* appear to offer profile or inter-user communication functionality, on the
 8 grounds Rxlist.com is part of a website - the “WebMD website” – that meets the statutory
 9 requirements? But how would a user accessing the Rxlist.com site have known that?

10 Consider another of the Example Websites, Wordpress.com. Wordpress is one of many
 11 thousands of sites that function as a “hosting service,” or “platform.” Wordpress allows users
 12 to create their own web pages and blogs, all of which are served under the domain name
 13 “wordpress.com.” Wordpress is one of the largest such blogging platforms on the Internet,
 14 serving over 74 million different pages, from astronomy
 15 (<https://10minuteastronomy.wordpress.com/>) to local Florida politics
 16 (https://clearwaterneighborhoodscoalition.wordpress.com) to bluegrass music
 17 (<https://tennysonbluegrass.wordpress.com/>) to stamp collecting
 18 (<https://traffordps.wordpress.com/>) to everything in between.⁵⁰

19 Some of the millions of blogs hosted on the Wordpress platform include “social
 20 networking” functionality that appears to meet either the Profile Requirement or the
 21 Communication Requirement or both;⁵¹ others do not.⁵² Are these different blog pages part of
 22 the “Wordpress website,” or are they 74 million different, independent websites? And how is
 23 the user to make that determination in order to know whether “the Wordpress website” is, or
 24 is not, a “commercial social networking website”?

⁴⁸ See Appendix 4, which displays the WebMD.com Home Page and the links to the “WebMD Network” sites.

⁴⁹ See <http://www.webmd.com/about-webmd-policies/profile> and <http://www.webmd.com/about-webmd-policies/about-community-overview>.

⁵⁰ See <http://www.wordpressblogdirectory.com/>.

⁵¹ See, e.g., the “Leave a Comment” feature at <https://tbking.wordpress.com/category/florida-politics/>, <https://stuartatkinson.wordpress.com/>, <https://ecologyisnotdirtyword.com/>, <https://craigbumgarner.wordpress.com/>, <https://yamamotoguitar.com/comments/>, <https://guitarconsortium.wordpress.com/>

⁵² “14 Surprising Statistics About WordPress Usage,” Feb. 7, 2014, <http://bit.ly/MaYMzp>. See <https://parasiteecology.wordpress.com/>, <https://punkphilatelist.wordpress.com/tag/stamp-collecting/>, <https://therockstaranthropologist.wordpress.com/>.

1 The FDLE appears to take the position that the URL structure of the page determines
2 whether it is, or is not, part of the same website as another page. In its 2017 ‘Sexual
3 Offender/Predator Legislative Update,’ dated June 28, 2017, it wrote:

4 “Registrants must report [e]very designation, moniker, screen name, username, or other
5 name used by them for self-identification to send or receive social internet
6 communication together with its corresponding website homepage or application
7 software name.
8

9 Example: If a registrant reports their Facebook username and its corresponding website
10 homepage of <https://www.facebook.com>, he/she would not also have to report
11 <https://www.facebook.com/directory/> or <https://www.facebook.com/games/>.
12

13 No explanation is provided as to the basis for making this determination; presumably,
14 the FDLE is suggesting that all pages using the www.facebook.com URL are included within “the
15 Facebook website.” That, however, is an entirely arbitrary basis on which to make this
16 distinction, bearing no relationship to the ordinary meaning of the term “website.”

17 This is not an abstract or abstruse technical detail regarding the nature of
18 communication on the World Wide Web; every Internet user would recognize the phenomenon
19 of being unable to determine “where you are” after even a short Web browsing session, as you
20 follow the links that can take you from ESPN.com to Fivethirtyeight.com to
21 <https://fivethirtyeight.com/features/eclipse-towns-planning/> to
22 <https://www.washingtonpost.com/news/speaking-of-science/wp/2017/08/02/august-total-solar-eclipse-gives-scientists-rare-chance-to-study-suns-corona/> to
23 <https://www.theguardian.com/world> to <http://www.100resilientcities.org/> and so on. Without
24 a clear definition of where one website ends and another begins, and without the information
25 necessary to make a determination under the ordinary meaning of “website,” the statutory
26 requirements impose a virtually impossible burden on registered sex offenders.⁵³
27

28 Finally, there is the matter of size and scale. Websites are, simply, too big to require, as
29 the Florida statute does, sex offenders to evaluate whether individual websites contain specific
30 functionality – functionality that “that allows users to create web pages or profiles that provide
31 information about themselves and are available publicly or to other users and that offers a

⁵³ This inability to define and to identify website boundaries adds additional ambiguity and imprecision, it should be noted, to the question whether a website meets the Commercial Operation Requirement, discussed above. If a user cannot determine which web pages linked to the WebMD.com Home Page are, and which are not, part of “the WebMD website,” how is s/he to determine whether WebMD website is “commercial” or not?

1 mechanism for communication with other users, such as a forum, chat room, electronic mail, or
2 instant messenger.”⁵⁴

3 I know of no reliable source of information regarding website size, whether measured
4 by the number of pages comprising the site or the number of bytes of information contained
5 therein, nor am I aware of any studies compiling such information across a range of different
6 websites. That is not surprising; the difficulty inherent in defining “a website” on the Internet,
7 discussed above, makes it impossible to gather this information in a meaningful fashion.

8 But it is clear that by any definition, a single “website” can be an information object of
9 enormous size. There is no technical limit to the number of pages a website may contain, and
10 many of the better-known Internet websites – Amazon.com, Youtube.com, Yahoo.com,
11 Facebook.com, LinkedIn.com, Instagram.com – link hundreds of millions, or billions, of
12 individual web pages together into a single “website.” One could spend – literally – a lifetime
13 searching through these sites. Several of the Example Websites – ESPN.com, TripAdvisor.com,
14 WebMD.com – appear to be similarly vast in terms of the amount of information they contain.
15 Requiring a sex offender to determine whether profile or inter-user communication
16 functionality is provided somewhere on those websites is an almost impossibly difficult task.

17 **The Statutory Exclusions**

18 If a site is deemed a “commercial social networking website,” the Internet identifier
19 disclosure requirement applies to all communication sent to, or received from that website,
20 *unless* one of the specified exclusions applies:

21 (a) communication “for which the primary purpose is the facilitation of commercial
22 transactions involving goods or services,”

23 (b) communication on “an Internet website for which the primary purpose of the
24 website is the dissemination of news,” or

25 (c) “communication with a governmental entity.”

26 Here, again, the statutory language is almost impossibly difficult to apply to ordinary
27 Internet communication activities.

28 There is, to begin with, the ambiguity inherent in determining whether a
29 communication has “the facilitation of [a] commercial transaction” as its “primary purpose.” On
30 what basis is a sex offender to decide whether, for example, an online chat session with a

⁵⁴ Fla. Stat. § 943.0437(1).

1 customer service representative concerning the features of a product one is considering
2 purchasing, or downloading a user manual about that product, or reading its reviews on
3 Amazon, or posting a question about it on a user bulletin board, ... have the “facilitation of a
4 commercial transaction” as its primary purpose?

5 Similarly, there is substantial ambiguity concerning whether a website is, or is not,
6 engaged in “the dissemination of *news*.” Of the Example Websites, Google’s “news
7 aggregator,” at <http://news.google.com>, would appear to fall squarely within any reasonable
8 definition of “the dissemination of news.”⁵⁵ But several of the other Example Websites
9 disseminate information that may, or may not, qualify as “news” within the ordinary meaning
10 of that term. ESPN.com, for instance, contains an enormous quantity of *sports* news;
11 WebMD.com has an entire section of its website devoted to “*health* news for the public,”
12 <http://www.webmd.com/news/default.htm>; Ballotpedia has an entire section of its website
13 devoted to “breaking news” about local, state, and national elections.
14 https://ballotpedia.org/The_Ballotpedia_News_Update. The statute is ambiguous as to
15 whether this kind of specialized information constitutes “news” or not.

16 Finally, there is the difficulty inherent in the determination of whether a Web sites that
17 is engaged in “the dissemination of news” has that as its “*primary* purpose.” The statute offers
18 no guidance as to how this determination is to be made. The difficulties, discussed above, in
19 discerning where one website ends and another begins, and the enormous size of many
20 individual websites, places an almost impossible burden on sex offenders attempting to comply
21 with the statute. Is the dissemination of news – even if “sports news” is considered “news” –
22 the *primary* purpose of the ESPN website? WebMD offers many different services accessible
23 through its Home Page: “Check Your Symptoms,” “Find a Doctor,” “Find Lowest Drug Prices,”
24 “Family & Pregnancy,” in addition to “News”; which of those constitutes the site’s primary
25 purpose? And how is a user to determine that? Given (a) that it can be virtually impossible to
26 tell which services are offered as part of “the WebMD website” and which are offered at other
27 websites, and (b) the WebMD website, by any definition, may contain hundreds of thousands of
28 pages devoted to each of these different services, how is a user to determine whether the
29 dissemination of news – again, even assuming that “health news” is considered “news” – is the
30 site’s “primary” purpose, or merely one of its secondary purposes?

31 The statutory language implies – correctly - that a web site may have many purposes,
32 but its requirement that the sex offender not only identify those purposes but evaluate which
33 one of them is “primary” and which are “secondary” is burdensome in the extreme.

⁵⁵ Although as noted above, it is unclear whether the Google Home Page (www.google.com) and the Google News Page (news.google.com) are, or are not, part of the same “website.”

1 **The Burdens on Registrant Speech**

2 However these statutory ambiguities are resolved, it is my opinion that the statutory
3 disclosure requirements impose a substantial and significant burden on registrants' ability to
4 access Internet resources and to participate in Internet-based activities.

5 As discussed above, see pp. 8-11 *supra*, millions of websites, blogs, etc. require a user to
6 establish some sort of an identity or account – generally involving at the very least the choice of
7 a “username” – in order to (passively) access the information contained on the site, to
8 (actively) contribute information/speech to the site, or both. Casual Internet users might easily
9 encounter dozens of such sites every day; people working in more intensive Internet-related
10 industries could easily encounter scores or even hundreds of them.

11 To comply with the disclosure requirements for Internet identifiers, a registrant must
12 document and submit each distinct identifier he/she uses, including:

13 A transient screen name in a customer support chat;

14 A temporary username or access code enabling participation in an Internet
15 conference call or virtual meeting;

16 A screen name used for expressive purposes in the context of a discussion of
17 political or current events discussion,

18 A username required by a website operated by a customer or a competitor to
19 which the registrant was directed for some legitimate business purpose;

20 A username required for accessing information at a music- or video-sharing
21 website;

22 A temporary forwarding email alias automatically assigned by a classified ad
23 service.

24 Documenting all such information will be difficult and time-consuming even for casual
25 Internet users, and considerably more so for those individuals working in more technology-
26 intensive sectors of the economy. As a result, it may deter registrants from participating in
27 online communications so as to avoid the burden of reporting on such activities or facing
28 criminal penalties for failing to do so.

29 Casual Internet users may visit dozens, or hundreds, of websites each day and, in the
30 course of following the hyperlinks encountered at those websites, could encounter many times
31 that number of different URLs. Keeping track, recording, and transmitting to FDLE each of those
32 URLs would constitute a substantial burden on registrants, and would render the Internet

1 virtually unusable as a practical matter, especially for the many people whose job requires the
2 ability to access Internet resources. A long and cumbersome list of URLs “used for Internet
3 communication” will be generated by any number of simple activities on the World Wide Web.
4 A user could easily generate 50 or 100 different URLs in 10 minutes of searching, say, for books
5 on “the history of American law” at Amazon.com or eBay.com, or for judicial opinions on “the
6 right to anonymous communication” at Lexis.com, Westlaw.com, or some other legally-
7 oriented website.

8 This burden is so onerous, in my opinion, that implementation and enforcement of the
9 statutory registration and disclosure requirements would have a crippling effect on any attempt
10 by a covered registrant to operate, manage, or work for, an Internet-based business.

11 The disclosure requirements burden registrant speech on the Internet quite apart from
12 the practical impediments the statute imposes upon registrants in regard to participating in
13 lawful and legitimate Internet-based speech. Though the statute does not expressly prohibit or
14 limit any speech that registrants may choose to engage in, it does make possible the monitoring
15 and surveillance of a wide range of registrant communication by law enforcement officials
16 without any judicial supervision (e.g. warrant or subpoena) or notice to the registrant.

17 For example, suppose an individual by the name of James Jones, having chosen
18 the username “FloridaResident2016,” posts a comment to an article posted at
19 the washingtonpost.com website. Although persons reading the post have no
20 means by which they can associate Mr. Jones with “FloridaResident2016” or
21 know that he accesses or comments upon material at the site.

22 His identity as the author of the comment is not, however, irretrievably shielded
23 from disclosure. The website operator may possess the information linking Mr.
24 Jones to that particular username (as a result of having collected that
25 information as part of its registration process); alternatively, one can determine
26 that Jones was the author of the posting by matching the IP Addresses assigned
27 to Jones by his ISP, recorded in the ISPs log files, with the IP Address used by the
28 poster of the comment (recorded in the Washingtonpost.com log files). In the
29 proper case, courts can and do issue orders requiring those entities (*i.e.*, Jones’
30 ISP and the operator of the Washingtonpost.com website) to turn over the
31 relevant files to law enforcement officials – or, even, to private plaintiffs (who
32 have alleged, for example, that the posting was defamatory, or contained
33 copyright-infringing material). In all such cases, however, courts require the
34 requester provide some reason for believing that unlawful or tortious activity
35 had taken place before the order will issue.

1 If Mr. Jones is covered by the Florida SORNA disclosure requirements, however,
 2 FDLE agents, and any persons with whom FDL has shared Jones' Internet
 3 identifier disclosures, knowing the username that he uses at that website, can
 4 easily search the site and retrieve all of FloridaResident2016's postings, knowing
 5 that Mr. Jones was the author of each of them. This is true even though those
 6 individuals have no evidence, or even suspicion, that Jones' comments are in any
 7 respect wrongful or tied in any way to wrongful conduct.

8 One recent study shows that sex offender registrants are indeed subject to higher levels
 9 of law enforcement surveillance and monitoring as a consequence of the compelled disclosure
 10 of their online identities to law enforcement,⁵⁶ and many studies have demonstrated that
 11 people are significantly less likely to engage in speech of all kinds if they reasonably fear that
 12 their communications are being monitored.⁵⁷ For obvious reasons, this is especially true for
 13 speech on matters of public controversy or that touches on private, personal concerns.

14 The statutory disclosure regime increases the likelihood that registrants will be the
 15 target of threats, harassment, and/or physical intimidation as a consequence of the compelled
 16 disclosure of their Internet identifiers, by law enforcement officials and/or private parties. The
 17 absence of any meaningful controls on disclosure by FDLE of Internet identifier information, see
 18 pp. 4-5, means that a reasonable registrant should assume that his/her Internet identifiers have
 19 been provided to third parties or otherwise compromised. This raises a significant possibility
 20 that registrants – who are members of a population particularly susceptible to threats,
 21 harassment, and/or physical intimidation⁵⁸ – will decline to participate in online speech

⁵⁶ See Letourneau, E. J., & Armstrong, K. S., "Recidivism rates for registered and nonregistered juvenile sexual offenders. *Sexual Abuse: A Journal of Research and Treatment*, 20, 393-408 (2008); Letourneau, E. J., et al., "The influence of sex offender registration on juvenile sexual recidivism. *Criminal Justice Policy Review*, 20, 136-153 (2008).

⁵⁷ See Penney, "Chilling Effects: Online Surveillance and Wikipedia Use," Berkeley J. Law & Tech. (forthcoming 2016) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2769645), and studies cited therein; see also Kopstein, "Lack of Privacy has Chilling Effect, U.S. Department of Commerce Says," available at http://motherboard.vice.com/en_uk/read/lack-of-online-privacy-has-chilling-effect-us-department-of-commerce-says (reporting on preliminary results of 2016 study by the National Telecommunications and Information Administration showing that the "constant threat of breaches, surveillance, and online data collection stopped almost half of American households from doing business and expressing opinions online last year").

⁵⁸ Examples are unfortunately legion of persons being harassed because of their actual or perceived placement on sex offender registration lists. See, e.g., John T. McQuiston, *Sex Offender Is Suing His Neighbors Over Protests*, N.Y. Times, June 20, 1997 (reporting neighbors protesting at registrant's home and throwing brick threw his car window); Darran Simon, *Sex Offender Sues Suffolk, Monitoring Group Over 'Harassment'*, Newsday, Mar. 1, 2016 (reporting lawsuit over unauthorized interrogations of sex offender by nonprofit contracted by Suffolk County); "Alabama Strengthens Restrictions on Sex Offenders," 119 Harv. L. Rev. 939, 946 (2006)("[T]hose seeking vigilante justice have used registries to locate sex offenders and commit violent crimes against them (or against innocents living at their reported addresses)."); Carolyn Marshall, "Man Charged in Killings of Sex Offenders," N.Y. Times,

1 because of a reasonable fear that third parties will be able to unmask their identity as a sex
2 offender. And studies have shown that many people may engage in *online* harassment and
3 intimidation (“cyber-bullying”) even if they are not willing to do so in face-to-face encounters.⁵⁹
4 Thus the public disclosure of Internet identifiers opens up the possibility of harassment over
5 and above that which may result from publication of physical addresses.

6 **The Burdens on Anonymous Speech and Association**

7 Anonymous speech has long contributed to important public discourse in this country,
8 beginning even before the 1789-90 publication, by an author known only as “Publius,” of the
9 “Federalist Papers,” urging ratification of the recently-drafted Constitution of the United States.
10 The Supreme Court has recognized that anonymous speech is “not a pernicious, fraudulent
11 practice, but an honorable tradition of advocacy and of dissent” and a “a shield from the
12 tyranny of the majority [that] exemplifies the purpose behind the Bill of Rights, and of the First
13 Amendment in particular: to protect unpopular individuals from retaliation ---- and their ideas
14 from suppression ---- at the hand of an intolerant society.”⁶⁰

15 There are any number of legitimate and worthwhile reasons why individuals often
16 choose to communicate publicly with others without revealing their true identity.

17 They may worry that their ideas will not be given serious consideration if the
18 source of those ideas is known.⁶¹

19 They may fear reprisal or harassment, especially if the ideas being expressed are
20 unpopular, or run counter to the majority's deeply held beliefs. It is well-known that the
21 population of previously-convicted sexual offenders covered by the statutory disclosure
22 requirements is especially prone to harassment and reprisals.⁶²

Sept. 7, 2005 (detailing killing of two sex offenders by man who found their address on sheriff's website); Connie Piloto, Retarded Man's Beating Spreads Fear, Dallas Morning News, Oct. 16, 1999 (describing beating of mentally retarded Texas man whom perpetrator mistook for sex offender).

⁵⁹ See Robin M. Kowalski, Susan P. Limber, Sue Limber, Patricia W. Agatston, “Cyberbullying: Bullying in the Digital Age” (John Wiley, 2012); Y. Amichai-Hamburger, “The Social Net: Understanding our Online Behavior” (Oxford Univ. Press, 2013).

⁶⁰ *McIntyre v. Ohio Elections Comm.*, 514 U.S. 334, 357 (1995).

⁶¹ This, presumably, was the motivating factor in the decision to publish The Federalist Papers under a pseudonym, insofar as many readers might have dismissed the views presented there had they known that they were being put forward by individuals (Madison and Hamilton) who had themselves played key roles in drafting the new constitution.

⁶² See note 43, *supra*.

1 They may wish to keep their views on personal, religious, or political matters
2 from employers, colleagues, or co-workers, simply out of concern for their personal
3 privacy.

4 They may wish to ensure that those with whom they communicate do not
5 associate their personal views with the views held by their families, by their employers,
6 or by other institutions with which they may be otherwise associated, *e.g.*, an attorney
7 may wish to express his/her views on controversial legal or political matters without
8 fearing that readers would associate those views with the law firm at which he/she may
9 be employed..

10 The disclosure requirements in the current statute substantially diminish the ability of
11 covered registrants to engage in anonymous Internet communication. As discussed above,⁶³
12 vast numbers of websites require the use of some user-defined name as a pre-condition to
13 allowing users to post comments, ratings, or engage in any communication with other website
14 users. The disclosure requirements mean that registrants can no longer participate in such
15 communication without revealing their true identity to the FDLE, which will enable the FDLE to
16 “match” individual communications using the chosen username with the identity of the
17 speaker.

18 The disclosure requirements will also substantially diminish the ability of covered
19 registrants to *receive* information anonymously. Many websites require registration and the
20 use of a specific username as a precondition to accessing the information contained at the site
21 (quite apart from any ability users may have to contribute information at the site via a
22 comment or chat messaging functionality).⁶⁴ These usernames fall reasonably within the
23 category of names “used for Internet communications” – the communication, in this case, being
24 in one direction only (website-to-user) – it would appear that they would have to be disclosed
25 to FDLE under the current statutory requirements, along with the URLs of the websites at which
26 they were used.⁶⁵ This would in effect preclude registrants from *reading* the material offered
27 by the website anonymously.

28 This is of particular concern for individuals who rely on online anonymous speech to
29 discuss political issues related to their status as a previously-convicted sexual offender, or who
30 exercise their right to speak anonymously in order to criticize public officials – activities for
31 which they have a reasonable fear of retribution were their true identities to be disclosed.

⁶³ See pp. 8-11 *supra*.

⁶⁴ *Id.*

⁶⁵ See discussion at p. 16, line 20 ff.

1 Although the statute only requires disclosure of Internet identifiers to the FDLE,
2 registrants can reasonably fear that the information provided falls into the hands of the
3 broader public, heightening their fears of retaliation or harassment. The statute does not
4 contain any provisions requiring the FDLE to maintain the confidentiality of the Internet
5 identifier information; on the contrary, it provides that FDLE may disclose the information
6 provided by the sexual offender "to law enforcement agencies," to "persons who request such
7 information," and "to the public." Nor does it require any persons to whom the information is
8 disclosed to take any particular steps to retain the information in confidence.

9 * * * * *

10 I declare under penalty of perjury that the foregoing is true and correct. I understand
11 that a false statement in this declaration will subject me to penalties for perjury.
12

13 Signed: David G. Post

Date: August 23, 2017

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16 Washington DC 20008
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APPENDIX 1.

Appendix to Declaration of David G. Post dated July 15, 2016

David G. Post
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<http://www.davidpost.com>

EMPLOYMENT HISTORY

2002 – present Contributor, The Volokh Conspiracy/Washington Post Online
2015 – 2016 Senior Fellow, New America Foundation/Open Technology Institute
1997 – 2014 Professor of Law, Beasley School of Law, Temple University
2002 – 2004 Columnist, Information Week
1994 – 2000 Columnist, The American Lawyer
1994 - 1997 Associate Professor of Law, Georgetown University Law Center
1993 - 1994 Law Clerk, Justice Ruth B. Ginsburg, U.S. Supreme Court
1987 - 1993 Associate, Wilmer, Cutler & Pickering
1986 - 1987 Law Clerk, Judge Ruth B. Ginsburg, U.S. Court of Appeals
1981 - 1983 Director of Programs, American Anthropological Association
1976 - 1981 Assistant Professor of Anthropology, Columbia University

OTHER PROFESSIONAL AFFILIATIONS

Fellow, Center for Democracy and Technology
Adjunct Scholar, Cato Institute

EDUCATION

J.D. 1986 Georgetown University Law Center
summa cum laude, Order of the Coif
Ph.D. 1978 Yale University (Anthropology)
B.A. 1972 Yale College, cum laude

HONORS, AWARDS, NOTABLE ACHIEVEMENTS, ETC.

McGannon Center (Fordham University) Award for Social and Ethical Relevance in Communication Policy Research, 1997 (awarded for “Law & Borders: The Rise of Law in Cyberspace, 48 Stanford L. Rev. 1367 (1996) (co-authored with David Johnson))

“Law and Borders: The Rise of Law in Cyberspace” ranked 2d-most frequently cited intellectual property law review article of all time (*see* Fred Shapiro and Michelle Pearse, “The Most-Cited Law Review Articles of All Time,” 110 Mich. L. Rev 1483, 1494 & 1500 (2012)

Green Bag Award for Exemplary Legal Writing, 2009 (awarded for *In Search of Jefferson ’ s Moose: Notes on the State of Cyberspace*)

Friel-Scanlan Prize for Scholarly Research 2010 (awarded for *In Search of Jefferson ’ s Moose: Notes on the State of Cyberspace*)

1
2 District Judge Richard Kopf, in his published opinion striking down various Internet
3 identifier provisions on First Amendment grounds in a case in which I testified as an expert on
4 behalf of the challengers, wrote:

5
6 “Professor Post was the most thoughtful and knowledgeable of the experts. I found his
7 discussion of the term “collection of web sites” in relation to Google products
8 particularly helpful. It is worth remembering that I strongly suggested that the parties
9 get together to hire one independent expert. I even suggested the name of an
10 independent scholar of Internet law. The parties did not elect to do so. That was their
11 right. However, candor requires that I state that the defense expert—a former
12 prosecutor—struck me as biased, particularly when compared to Professor Post.”
13 *Doe v. Neb.*, 898 F. Supp. 2d 1086, 1119 n. 35 (D. Neb. 2012).

14 15 **EXPERT WITNESS APPEARANCES**

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17 *Attig v. DRG Inc. et al.*, (Docket No. 04-CV-03740-JDD) USDC ED PA [2005] [Copyright
18 infringement Action]
19 *Melk et al. v. Pennsylvania Medical Society et al.* (Docket No. 08-CV3515 -- U.S. District Court,
20 Eastern District of PA) [2008] [Copyright infringement action]
21 *Gloster et al. v. Jacobs-Meadway et al.* (August Term 2004 No. 2049 -- PA Court of Common Pleas)
22 [attorney negligence/copyright and trademark infringement]
23 *John Doe and Jane Doe 1 through 36 et al. v. State of Nebraska et al.*, (Docket No. 8:09-cv-456 – U.S.
24 District Court, D. Neb) [First Amendment/Internet law]
25 *Warden et al. v Falk et al.* (Civil Action 11-cv-02796, United States District Court for the Eastern
26 District of Pennsylvania) [trademark infringement action]
27 *Doe v. Harris*, No. C12-5713-TEH (US District Court, ND CA, 2012) [First Amendment/Internet
28 law]
29 *Doe v. Commonwealth of Kentucky* (US District Court, ED KY 2014) [First Amendment/Internet
30 law]
31 *State v. Windham*, No. DC-13-118C (Montana 18th Judicial District Court, 2015) [Internet
32 law/Privacy law/Criminal procedure]
33 *State v. Bonacorsi*, No. 218-2014-CR-01357 (N.H. Superior Court, 2015) [First Amendment/Internet
34 law]

35 36 **PUBLICATIONS**

37 38 **BOOKS**

39
40 *In Search of Jefferson’s Moose: Notes on the State of Cyberspace* (Oxford University Press, 2009)
41
42 *Cyberlaw: Problems of Jurisprudence and Policy in the Information Age* (with Paul Schiff Berman,
43 Patricia Bellia, and Brett Frischmann) (West Publishing, 2003; Fourth Edition, 2011)
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45 **AMICUS BRIEFS (AUTHORED OR CO-AUTHORED)**

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47 *Packingham v. North Carolina*, US Supreme Court, 2016-17 Term, Amicus Brief submitted on behalf
48 of the Electronic Frontier Foundation, the Center for Democracy and Technology, and Public Knowledge,
49 available online at [http://www.scotusblog.com/wp-content/uploads/2016/12/15-1194_amicus-
50 petitioner-EFF.pdf](http://www.scotusblog.com/wp-content/uploads/2016/12/15-1194_amicus-petitioner-EFF.pdf).

1 *Nelson v. Colorado*, US Supreme Court, 2016-17 Term, Amicus Brief submitted on behalf of the
2 Cato Institute and the Institute for Justice, available online at
3 <https://www.scribd.com/document/331694937>

4 *Doe v. Snyder*, US Court of Appeals for the 6th Circuit, 2016, Amicus Curiae Brief of the Center for
5 Democracy & Technology, First Amendment Lawyers Association, and David G. Post in Support of
6 Plaintiffs-Appellants and Reversal, available online at
7 <https://www.scribd.com/document/322572223/Doe-v-Snyder-Amicus-Final-FALA-DGP-CDT>

8 *Henderson v. United States*, US Supreme Court, 2014-15 Term, Amicus Brief submitted on behalf of
9 Institute for Justice

10 *ABC, Inc. et al. v. Aereo, Inc.*, US Supreme Court, 2013-14 Term, Amicus Brief of 36 IP and
11 Copyright Law Professors, available online at <http://tinyurl.com/p53gnke> (co-authored with James
12 Grimmelmann)

13 *WNET-Thirteen et al v. Aereo, Inc.*, US Court of Appeals for the 2d Circuit, 2012, Brief of Amici
14 Curiae Intellectual Property and Copyright Law Professors in Support Of Aereo, Inc., available online at
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16 *Viacom International, Inc. et al. v. Youtube, Inc. et al.*, US Court of Appeals for the 2d Circuit, 2012,
17 Brief of Amici Curiae Intellectual Property and Internet Law Professors In Support of Defendants-
18 Appellees And Urging Affirmance, available online at <http://www.scribd.com/doc/109867487> (co-
19 authored with Annemarie Bridy)

20 *Craigslist, Inc. v. Superior Court of California*, Supreme Court of California, 2010, Amici Letter
21 Supporting Writ Petition

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23 Urging Certiorari.

24 *The Cartoon Network, Inc. et al., v. CSC Holdings and Cablevision Systems Corp.*, US Court of Appeals
25 for the 2d Circuit, 2007, Brief of Amici Curiae Law Professors in Support of Defendants-
26 Counterclaimants-Appellants and Reversal, available online at <http://www.scribd.com/doc/239174484>

27 *New York v. Direct Revenue LLC et al.*, NY Supreme Court, 2006, Brief of *Amicus Curiae* in Support
28 of Neither Party, available online at <http://www.scribd.com/doc/239173866> (co-authored with Eric
29 Goldman and Scott Christie)

30
31 **SCHOLARLY PAPERS**

32
33 **[Copies available at www.davidpost.com or www.ssrn.com/author=537]**

34
35 Controlling Internet Infrastructure, Part Two: The IANA Transition and ICANN
36 Accountability,

37 Open Technology Institute/New America Foundation Policy Paper, Sept. 2015
38 available online at <http://tinyurl.com/okzxp7b>

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40 Internet Infrastructure and IP Censorship
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3 2012)

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19 The Theory of Generativity

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22 Sending out an SOS (with Duncan Hollis)

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36 2004-05 *Cato Supreme Court Review* (2005)

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2 Masters') No 18 (August 2001)

3 URL: <http://www.arts.uwa.edu.au/MotsPluriels/MP1801index.html>

4
5 'The Free Use of Our Faculties': Jefferson, Cyberspace, and the Languages of Social Life
6 49 Drake L. Rev. 407 (2001)

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8 What Larry Doesn't Get: Code, Law, and Liberty in Cyberspace
9 52 Stan. L. Rev. 1439 (2000)

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11 How Long is the Coastline of the Law? Thoughts on the Fractal Nature of Legal Systems
12 (with Michael B. Eisen)
13 29 Journal of Legal Studies 545 (2000)

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15 Of Horses, Black Holes, and Decentralized Law-Making in Cyberspace
16 2 Vanderbilt Journal of Entertainment Law and Practice 70 (2000)

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19 Encyclopedia of the American Constitution (1999)

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23 73 Chicago-Kent Law Review No. 4 (1998)

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30 5 Indiana J. Global Leg. Stud. 521 (1998)

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32 The New Civic Virtue of the Internet: Lessons from a Model of Complex Systems for the
33 Governance of Cyberspace (with David R. Johnson)
34 In The Emerging Internet (1998 Annual Review of the Institute for Information Studies)
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36
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43 1.0, June, 19, 1996

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46 Borders in Cyberspace, Brian Kahin and Charles Nesson, eds., MIT
47 Press, 1997

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2 Decentralized, Emergent Law
3 In Coordinating the Internet, Brian Kahin and James Keller (eds.), MIT Press, 1997
4
5 Issues, Outcomes, Guidance, and Indeterminacy: A Reply to Professor Rogers
6 49 Vand. L. Rev 1069 (1996) (with Steven C. Salop)
7
8 Pooling Intellectual Capital: Anonymity, Pseudonymity, and Contingent Identity in
9 Electronic Communities
10 1996 University of Chicago Legal Forum 139
11
12 Anarchy, State, and the Internet
13 Journal of Online Law, vol. 1 issue 1 (1995)
14
15 Rowing against the Tidewater: A Theory of Judging for Multi-Judge Panels (with Steven
16 Salop)
17 80 Georgetown Law Journal 743 (1992)
18

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22 <http://cdt.org/blogs/continuing-saga-thomas-jefferson-and-net> [Feb. 2011]
23
24 Flame On: The State of Nature and the First Internet War
25 Reason, April 1996, pp. 28-33
26
27 Privacy, Technology, Law (review of Technology and Privacy: The New Landscape
28 (Philip E. Agre and Marc Rotenberg, eds.)
29 Jurist Books-on-Law vol 1 no.3 (June 1998)
30 URL: <http://jurist.law.pitt.edu/lawbooks/archive.htm>
31
32 The Impact of 'Grokster'
33 National Law Journal August 3, 2005, p. 10.
34
35 Free Culture vs. Big Media (review of Lawrence Lessig's 'Free Culture')
36 Reason (Nov. 2004)
37 URL: <http://www.reason.com/0411/cr.dp.free.shtml>
38
39 Jefferson Ascendant
40 URL:
41 http://www.eff.org/pub/Infrastructure/jefferson_ascendant_post_eff.article
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43 Comments on Uniform Dispute Resolution Policies and Rules
44 URL: <http://www.icannwatch.org/archives/essays/939754407.shtml>
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46 When Cheating Is Cause for Celebration
47 The Washington Post, November 24, 1997 p. A25
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49 Computer Viruses: Legal and Policy Issues Facing Colleges and Universities (with David
50 Johnson and Thomas P. Olson)
51 Educ. L. Rep., Sept 14, 1989 and J. Prop. Rights, Feb. 1990
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8 Overdue Process (Review of Richard Posner's 'Overcoming Law')
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13 Peer Production (Jan 7, 2002)
14 The New Old Thing (January 14, 2002)
15 Who Controls Internet Content, Anyway? (Feb 25, 2002)
16 Cyber-Protection's Murky Waters Run Deep (March 18, 2002)
17 Thorny Issues Surround Hyperlink Ownership (April 22, 2002)
18 When Do Cyber-Crooks Become Terrorists (May 13, 2002)
19 Confusion Reigns Where Law Meets Cyberspace (June 24, 2002)
20 Companies Must Protect Their Employees' Info, Too (July 29, 2002)
21 Let's Get Going with Simple and Affordable Broadband [September 2, 2002]
22 Just who Benefits from 20 More Years? [October 7, 2002]
23 The Internet and the 21st Amendment [November 25, 2002]
24 Your Right to Remain Anonymous is Eroding [December 9, 2002]
25 Your Computer Could Help Fight Terrorism [March 10, 2003]
26 The Next Small Thing? No, in a Word [April 14, 2003]
27 The Slingshot of Information Freedom [June 9, 2003]
28 Let's Talk Jump-Starts, Not Caution [July 7, 2003]
29 No Cyber-Trespassing Here [Sept. 8, 2003]
30 When a Service is More than a Service [Oct. 27, 2003]
31 It's A Matter of Faith [Nov. 2003]
32 Outsourcing Deserves Policy Discussion [November 17, 2003]
33 Three Cheers for Free Trade [Dec. 2, 2003]
34 Who's Best to Manage Internet Plumbing? [Feb. 9, 2004]

35
36 "Plugging In" - a monthly column on law and technology, The American Lawyer

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38 Demystifying the Internet (October 1994)
39 Ode to the 'Virtual Water Cooler' (November 1994)
40 Encryption: It's Not Just for Spies Anymore (December 1994)
41 Encryption vs. the Alligator Clip (January 1995)
42 E-Cash: Can't Live With It, Can't Live Without It (March 1995)
43 The Technology Trap (April 1995)
44 New Wine, Old Bottles: The Case of the Evanescent Copy (May
45 1995)
46 New Age Networking (June 1995)
47 New Rules for the Net? (July 1995)
48 Online Libel (September 1995)
49 Hansel and Gretel in Cyberspace (October 1995)
50 Technology and the Meaning of Life (November 1995)
51 'Knock, Knock: Who's There?' Anonymity and Pseudonymity
52 in Cyberspace (December 1995)

1	Copyright and Free Expression: Battle or Dance? (January 1996)
2	The Law is Where You Find It (March 1996)
3	'Clarifying' the Law of Cyberspace (April 1996)
4	A Domain by Any Other Name (May 1996)
5	Virtual Magistrates, Virtual Law (July 1996)
6	Understanding the Techno Evolution (September 1996)
7	How Shall the Net be Governed? (October 1996)
8	The Case of Virtual Junk Mail (November 1996)
9	A Net Squeeze on the Middleman (December 1996)
10	Staking a Claim on Information (January 1997)
11	The Taxman Cometh (March 1997)
12	Drawing the Line of Jurisdiction (May 1997)
13	Betting on Cyberspace (June 1997)
14	The Link to Liability (July-August 1997)
15	Who Has Dominion over Domain Names? (September 1997)
16	Privacy, Property, Cyberspace (November 1997)
17	Brave New Classrooms (Jan-Feb 1998)
18	Has Cyberspace Law Come of Age? (April 1998)
19	Opening Up Windows (June 1998)
20	Gambling on Internet Laws (September 1998)
21	Cyberspace's Constitutional Moment (November 1998)
22	Napster, Jefferson's Moose, and the Law of Cyberspace (May
23	2000)
24	Juries and the New Common Law of Cyberspace (Sept. 2000)
25	
26	

1 **APPENDIX 2. List of “Random Websites”**

2 <http://www.allaboutphilosophy.org/>

3 <http://www.southernliving.com/>

4 <https://archive.org/>

5 <https://www.pinterest.com/>

6 <https://www.boardofequalization.org/>

7 <https://www.hrw.org>

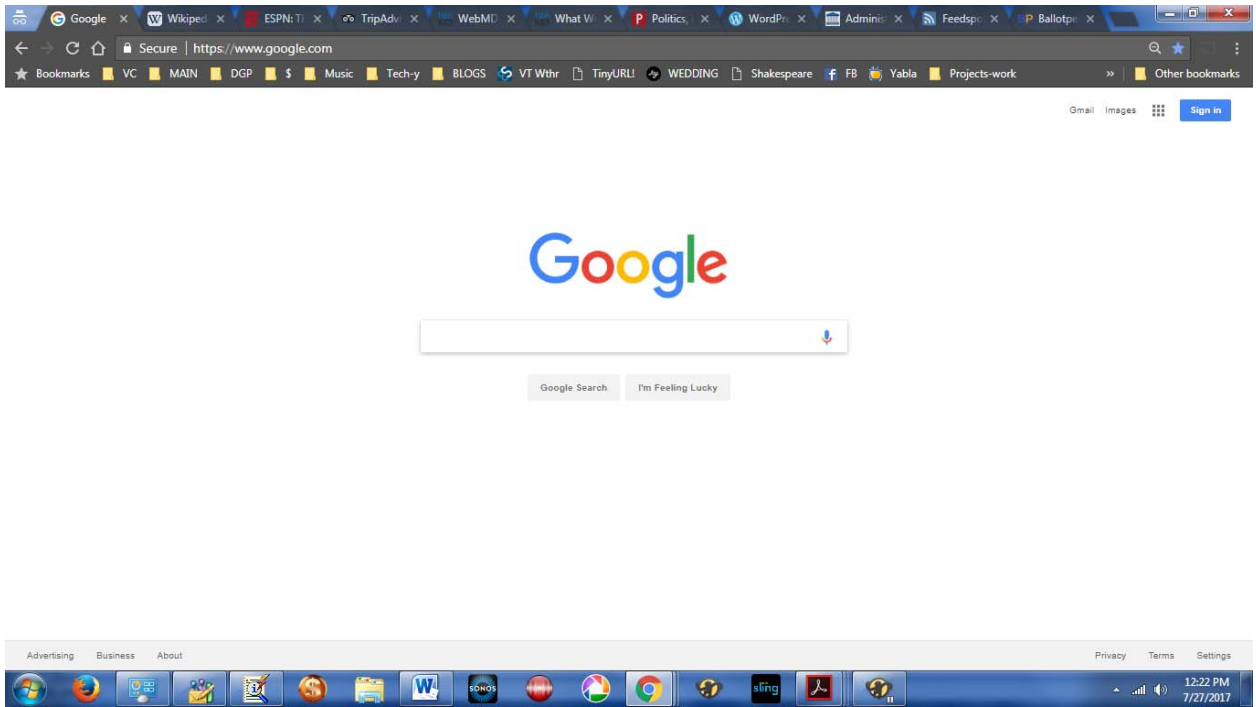
8 <http://www.assateagueisland.com/>

9 <https://github.com/>

10

1 APPENDIX 3. Screenshots of "Example Website" Home Pages

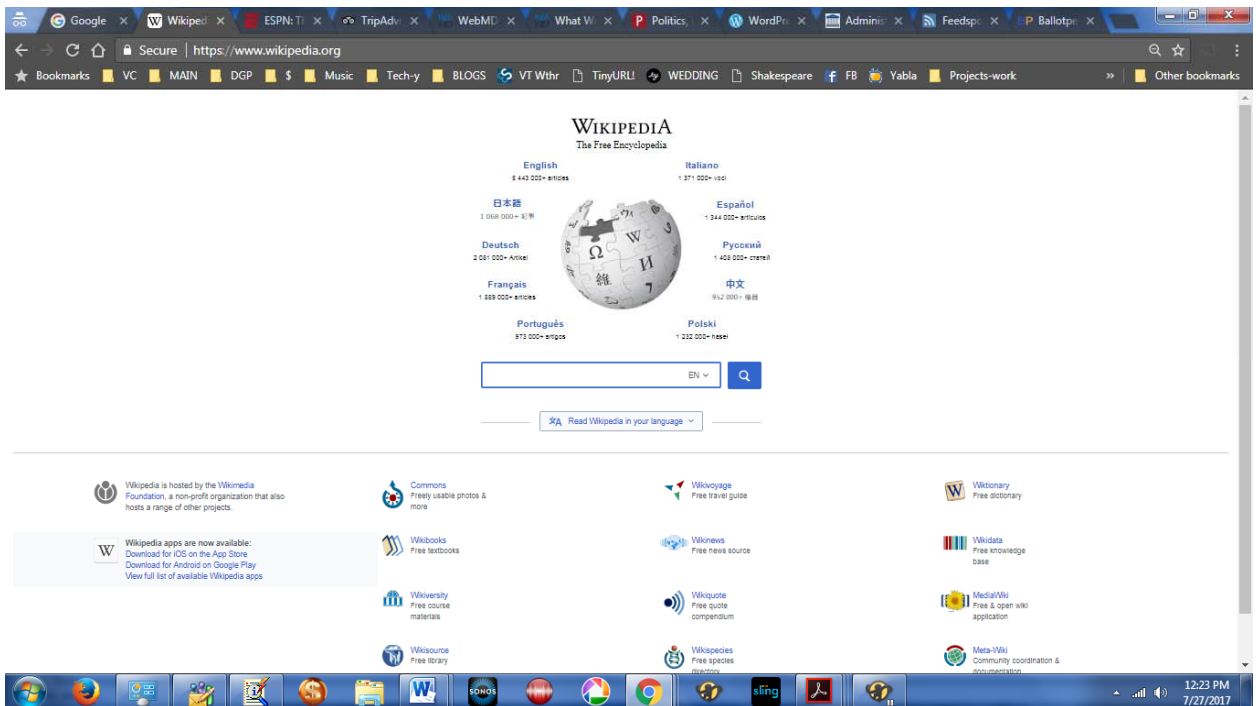
2 1. www.google.com:



3

4

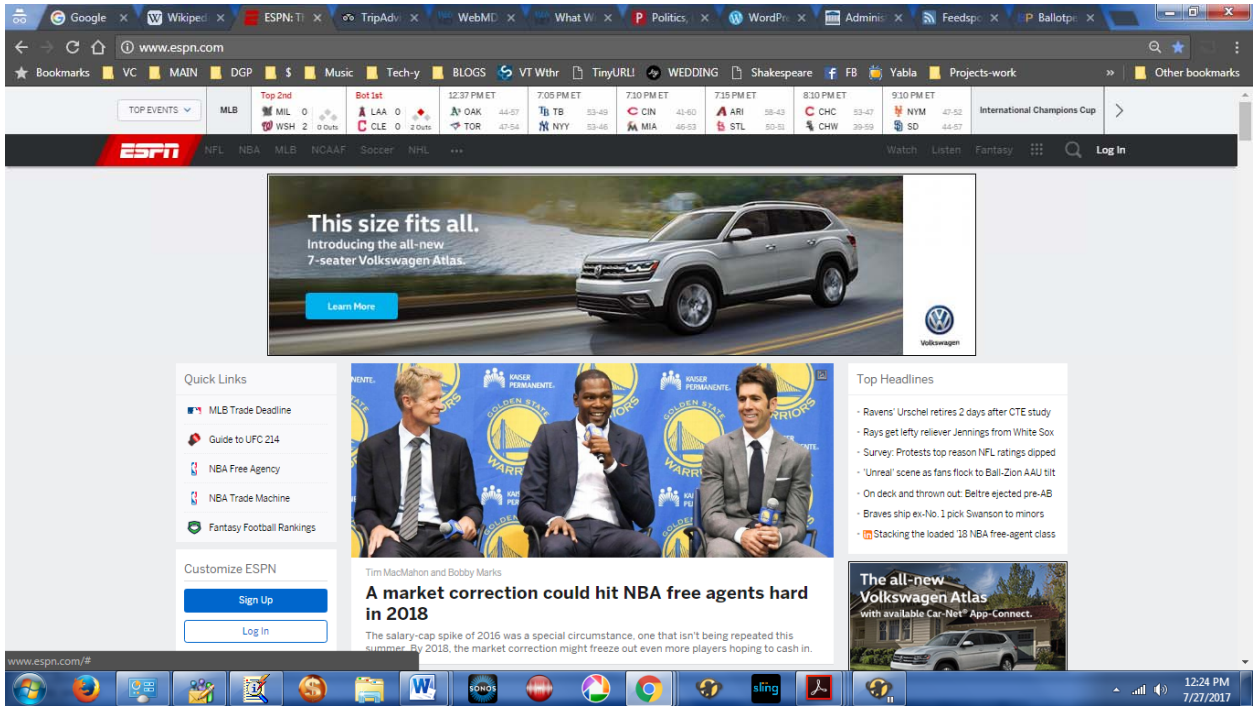
5 2. www.wikipedia.org



6

1

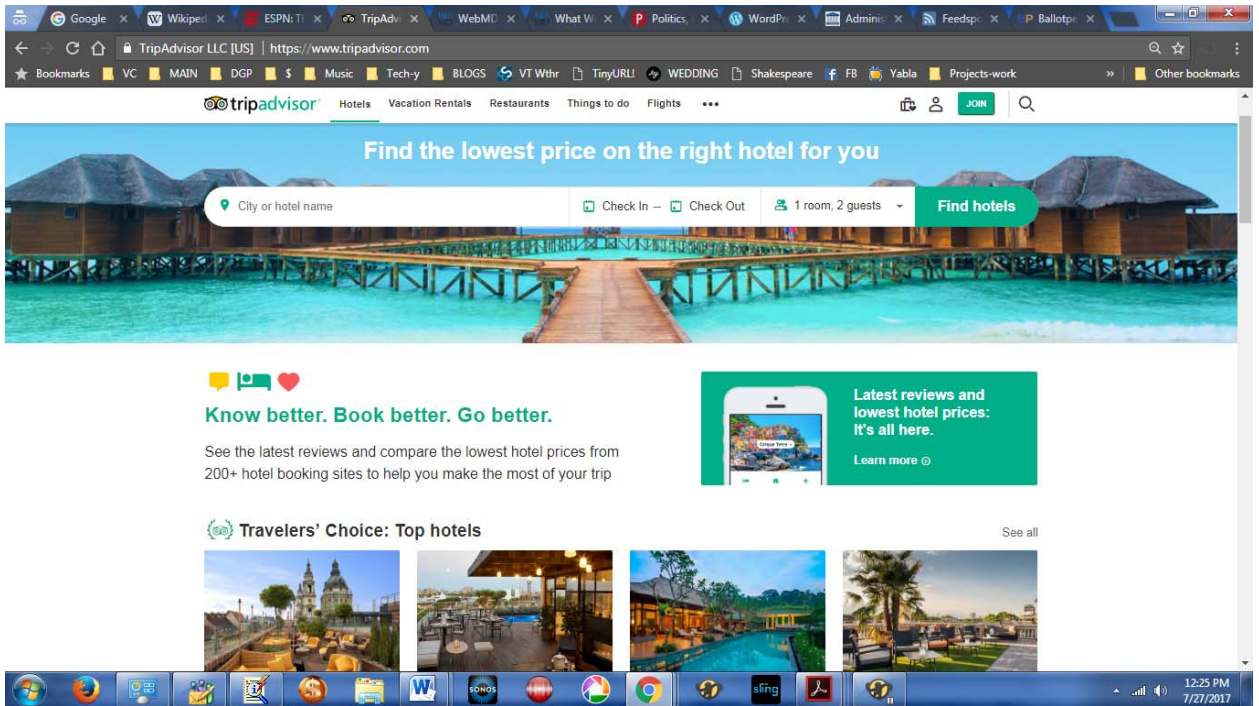
3. www.espn.com



2

3

4. www.tripadvisor.com



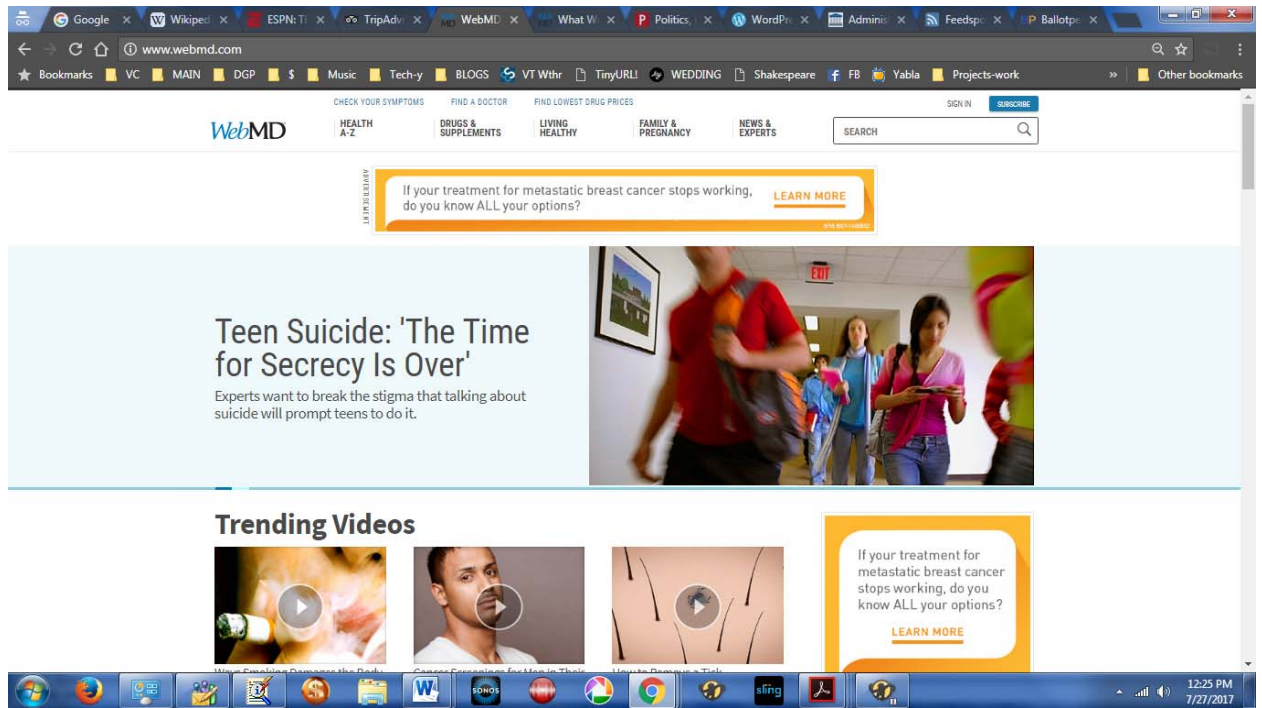
4

5

6

1

5. www.webmd.com



2

3

6. ballotpedia.org/Main_Page

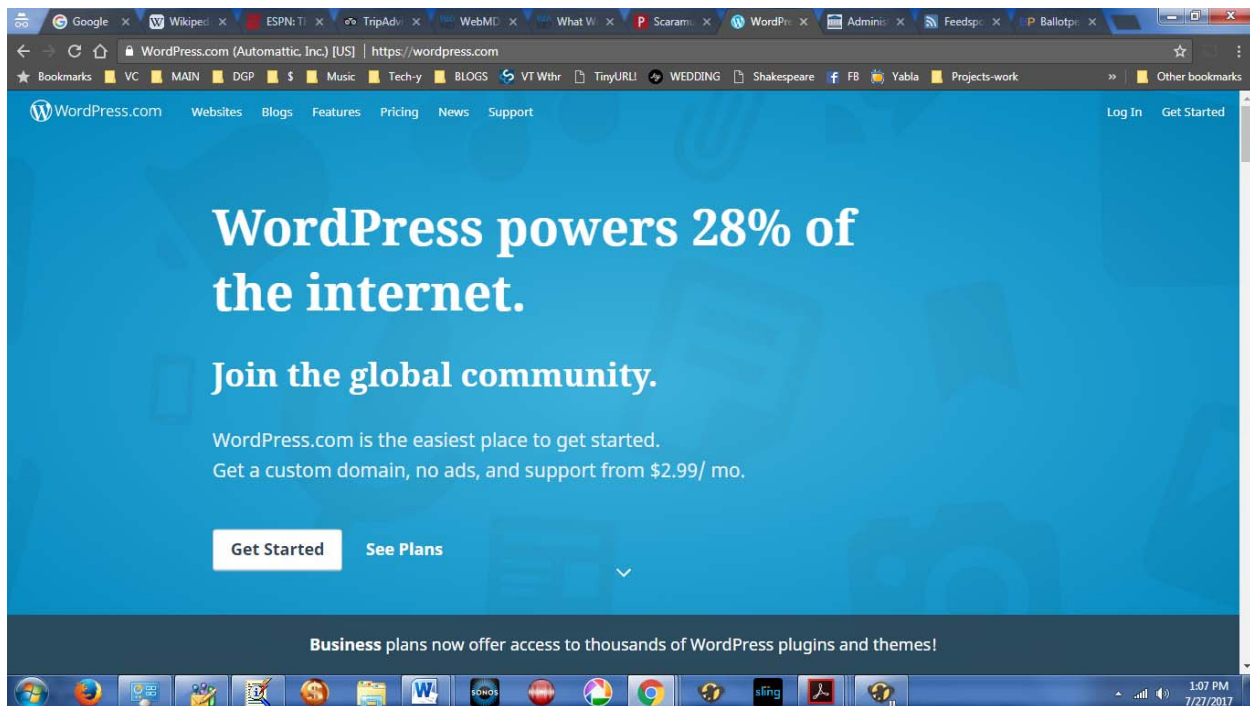


4

5

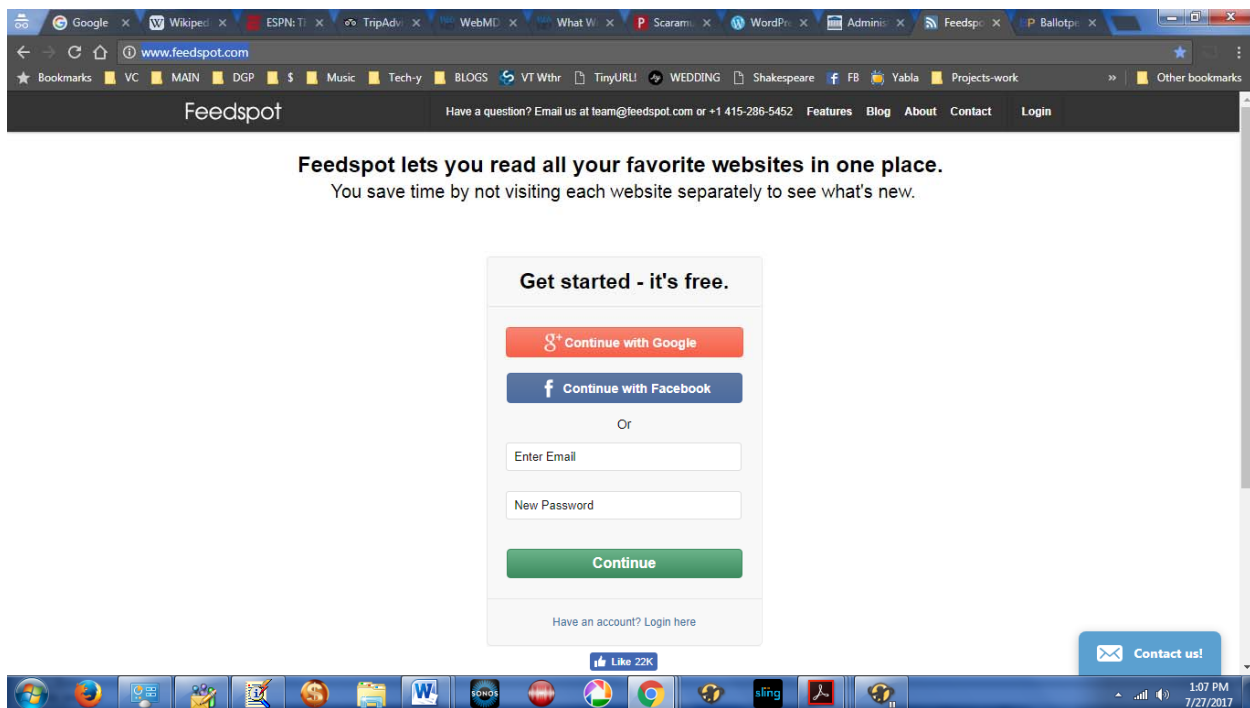
6

1 7. wordpress.com



2

3 8. www.feedspot.com

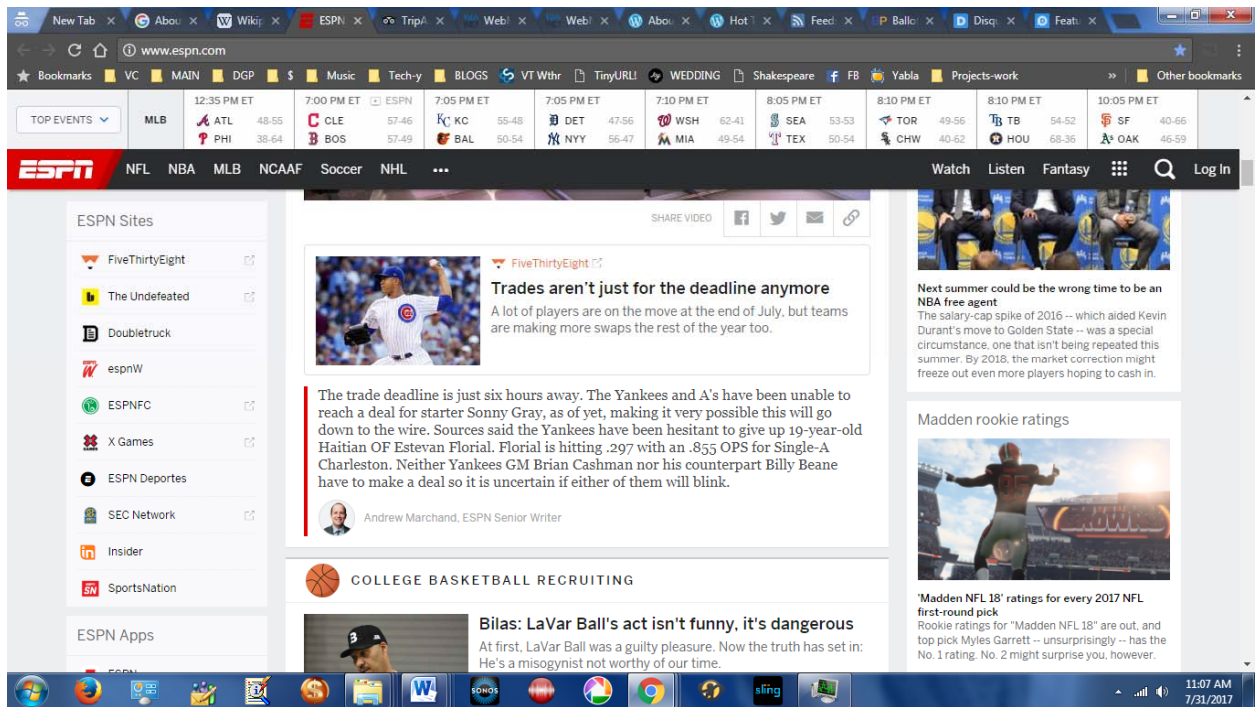


4

5

1 **APPENDIX 4. ESPN.com Home Page, showing list of and links to “ESPN Sites.”**

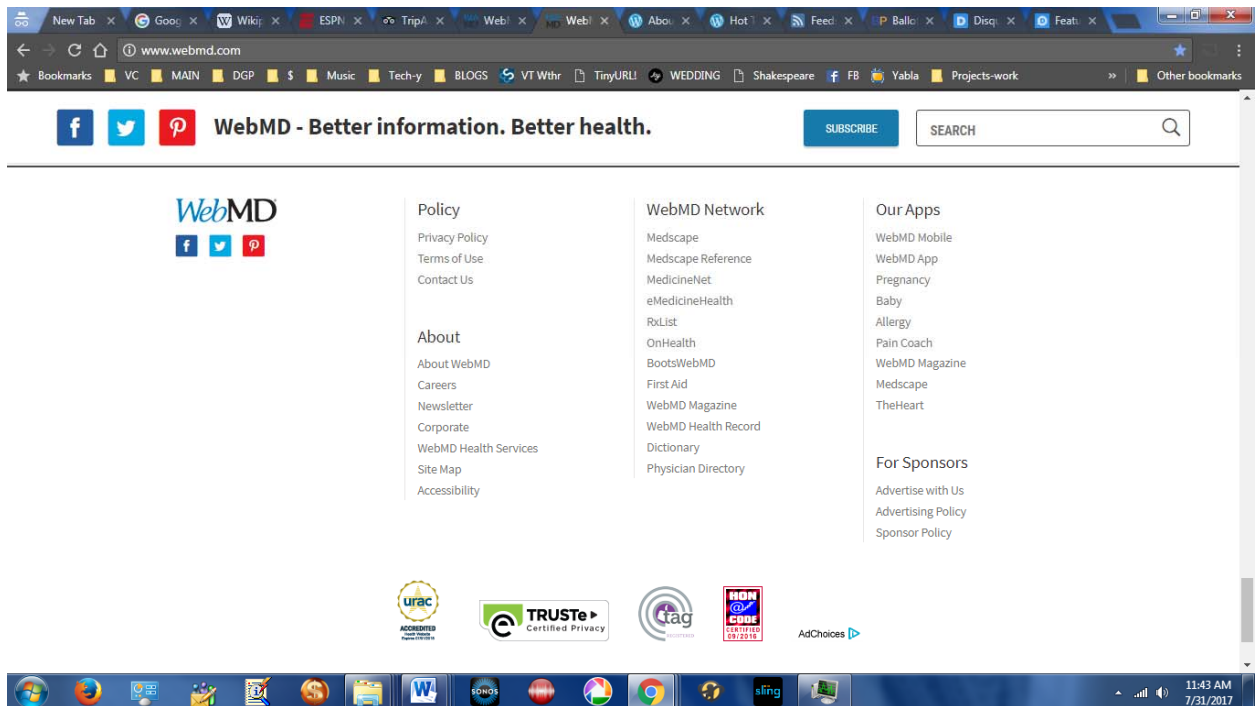
2



3

4

5 **WebMD.com Home Page, showing list of and links to “WebMD Network”**



6

1 **Table 1. Information pertaining to “commercial” nature of Example Websites and Random**
 2 **Websites.**

Website URL	Fees Charged for Access, Use, or Registration?	Home Page References Commercial/Non Commercial Nature of Site?	Home Page Hosts Ads?	Goods or Services for Sale at Home Page?	Website Home Page Contains “About” Link?	“About” Page indicates Commercial/Non-Commercial Nature of Site?
www.google.com	No	No	No	No	Yes	Yes ⁶⁶
www.wikipedia.org	No	Yes	No	No	No	N/A
www.ESPN.com	No	No	Yes	Yes	No	N/A
www.tripadvisor.com	No	No	Yes	Yes	Yes	Yes ⁶⁷
www.webmd.com	No	No	Yes	No	Yes	No
www.ballotpedia.org	No	No	No	No	Yes	Yes ⁶⁸
www.wordpress.com	No	No	No	No	Yes	No? ⁶⁹
www.feedspot.com	No	No	No	No	Yes	No
Random Sites	No (8 Sites) Yes (0)	No (7) Yes (1) ⁷⁰	No (7) Yes (1) ⁷¹	No (7) Yes (1) ⁷²	No (3) ⁷³ Yes (5)	N/A (3) No (2) Yes (3) ⁷⁴

3

4

⁶⁶ The Google “About” page, <https://www.google.com/intl/en/about/>, contains a link to an “Investor Relations” page, from which a reasonable person could infer that Google is a publicly-held for-profit company.

⁶⁷ The TripAdvisor “About” page, <https://tripadvisor.mediaroom.com/us-about-us>, indicates that it is a public company listed on the NASDAQ stock exchange.

⁶⁸ See <https://ballotpedia.org/Ballotpedia>About> (“Ballotpedia is sponsored by the Lucy Burns Institute, a nonpartisan and nonprofit organization headquartered in Middleton, Wisconsin”)

⁶⁹ The WordPress “About” page, <https://wordpress.com/about/>, states that

“Almost everything on WordPress.com is free, and what’s currently free will remain so in the future. We keep your sites free by offering upgrades for things like Plans and custom domains, as well as products like anti-spam software Akismet and VIP hosting partnerships with major media outlets.”

This could be an indication that Wordpress.com is part of a larger commercial enterprise.

⁷⁰ The Internet Archive Home Page (archive.org) indicates that it is a “nonprofit library.”

⁷¹ The Southern Living Home Page (southernliving.com) hosts advertisements for the Southern Living magazine, and indicates that “Southern Living may receive compensation for some links to products and services on this website.”

⁷² The Southern Living Home Page (southernliving.com) offers links to pages offering food and gifts for sale.

⁷³ The Internet Archive, BoardofEqualization.org, and AssateagueIsland.com Home Pages do not contain an “ABOUT” link.

⁷⁴ Human Rights Watch, and AllAboutPhilosophy indicate, on their respective “About” pages, that they are non-profit organizations. Southern Living is a “subsidiary of Time, Inc.” No information is provided at about.pinterest.com or github.com/about concerning the profit or nonprofit status of the operators of those sites.