

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOHN DOE et al.,

Plaintiffs,

vs.

Case No. 18-24145-CV-KMW

RICHARD L. SWEARINGEN,

Defendant.

_____/

**REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION TO
ALTER OR AMEND ORDER AND JUDGMENT AND/OR FOR RELIEF
FROM ORDER AND JUDGMENT**

s/Valerie Jonas _____

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Plaintiffs, through their undersigned counsel, herein submit their Reply to the Defendant's Response to their Motion to Alter or Amend Order and Judgment and/or for Relief from Order and Judgment (DE:208).

1. "Wanting" discovery versus "conducting" court-ordered discovery in compliance with court-imposed deadlines

Plaintiffs' motion detailed the chronology of the discovery undertaken by the parties and the status of the discovery—nearing completion—at the time of the Court's dismissal of their case with prejudice. Defendant does not take issue with the chronology's accuracy but misapprehends its purpose by arguing that Plaintiffs are advancing it as an "automatic basis for post-judgment relief any time discovery proceeds while a motion to dismiss is pending" (DE:208 at 2). Plaintiffs make no such argument. Rather, in Plaintiffs' view, the extent and status of the discovery is relevant to the Court's consideration of their request for relief from that part of the Court's order dismissing their case with prejudice, a conclusion grounded on the Court's determination that any further amendment would be "inappropriate" (DE:201 at 8).

Defendant argues that Plaintiffs cannot say anything about the discovery undertaken by the parties because they "wanted" it and therefore "accepted the risk" of "getting that much deeper into discovery" while Defendant's motions to dismiss were pending (DE:208 at 2-3). Plaintiffs are not complaining about discovery, nor did they "want" to "get deeper" into the discovery process to waste time or resources. *Discovery was ordered by the Court and deadlines were set by Scheduling Orders.* Overlaying the backdrop to the discovery in this case was this Court's Order of October 16, 2019, rejecting Defendant's renewed motion to stay discovery:

Upon a cursory review of Defendant's motion to dismiss, Plaintiffs' response, and Defendant's Reply, *the Court 'cannot conclude that the [m]otion to [d]ismiss is so clearly meritorious that all discovery should be stayed during its pendency'.*

(DE:86 at 2) (emphasis added) (citation omitted).¹ This Order was entered *after* Defendant filed his motion to dismiss Plaintiffs' First Amended Complaint and *after* Defendant had twice attempted to stay discovery (DE:38, 45). From the time this Order was entered, Plaintiffs endeavored to comply with the Court's mandate to continue discovery, bolstered by the Court's determination that Defendant's motion to dismiss their First Amended Complaint (filed in June, 2019)—which included the very same statute of limitations argument that served as the basis for the Court's dismissal in November, 2020—was not “so clearly meritorious” as to warrant a stay of discovery. Certainly, had the Court determined that Defendant's statute of limitations argument was so clearly dispositive it would have stayed discovery. *See Chudasama v. Mazda Motor Co.*, 123 F.3d 1353, 1367-68 (11th Cir. 1997). During the last quarter of 2019 and the better part of 2020, discovery proceeded with deadlines set forth in the Scheduling Order, adjusted as necessary based on requests for extensions of the discovery deadline (DE:122, 132, 140, 141, 148, 152, 153, 155, 159, 170, 177). The last deadline imposed by the Court to complete discovery was December 18, 2020, at which time the Court indicated that “[r]emaining deadlines *will be* reset following the Court's November 10, 2020 hearing” (DE:177) (emphasis added). Discovery continued uninterrupted until the Court granted Defendant's motion to dismiss on November 23, 2020 (DE:202).

2. Statute of Limitations

Plaintiffs are not seeking to “re-argue” *McGroarty v. Swearingen*, 977 F.3d 1302 (11th Cir. 2020), but to provide the Court their view of the case in the first instance and to seek relief from

¹ The Magistrate Judge likewise sent an unmistakably clear sign to the parties that discovery was to be conducted “as contemplated by the Rules” and that “Defendant cannot unilaterally obtain a stay when one was not entered” (DE:82).

the Court's mistaken mechanistic application of the statute of limitations notwithstanding the continuing violation doctrine (DE:208 at 5). *McGroarty* was decided only weeks before the oral argument in this case, and thus the Court did not have the benefit of the parties' written submissions explaining their respective views on the applicability of *McGroarty* to Plaintiffs' case or to the Defendant's motion to dismiss. And while it is true that *McGroarty* was addressed at oral argument, that proceeding was limited by time constraints and covered a number of matters raised in Defendant's dismissal motion.

Plaintiffs contend that there was clear error in the Court's acceptance of Defendant's argument that *McGroarty* (and other cases addressing the continuing violation doctrine) "dictated" dismissal here (DE:208 at 5), particularly given the Court's mistaken understanding that the *McGroarty* Court "review[ed] the [Florida sex offender registry] scheme" (DE:203-1 at 30), when in fact it eschewed examination of the statutory scheme because *McGroarty* was not alleging a "continuing" obligation to do anything. *McGroarty*, 977 F.3d at 1307 n.4. Defendant may not view reliance by the Court on a highly distinguishable case resulting in dismissal with prejudice as a "manifest injustice" but Plaintiffs do. See *Gold Cross EMS, Inc. v. Children's Hosp. of Ala.*, 108 F. Supp. 3d 1376, 1380 (S.D. Ga. 2015), *aff'd*, 648 Fed. App'x. 976 (11th Cir. 2016) ("A motion to reconsider is properly brought to correct a clear error in the court's interpretation of either the facts or the law" and "should be used in order to prevent manifest injustice . . .").

Wooden application of the statute of limitations without any concomitant analysis of the continuing violation doctrine lies at the heart of Plaintiffs' motion. The *per se* inapplicability of the continuing violation theory to Plaintiffs' case is hardly "well settled" nor is the outcome of Plaintiffs' suit "dictated" by *McGroarty* and other cases such as *Meggison v. Bailey*, 575 Fed. Appx. 865 (11th Cir. 2014) (DE:208 at 5). Indeed, just weeks ago in *McGuire v. Marshall*, 2021

WL 67912 (M.D. Ala. Jan. 7, 2021), an Alabama federal district judge persuasively distinguished *Meggison* from a case much like Plaintiffs' here. *McGuire* involved a challenge to the constitutionality of Alabama's sex offender registry, and the federal judge there distinguished between cases where plaintiffs were alleging they were "wrongly registered as [sex] offenders" as opposed to plaintiffs alleging "constant deprivation of fundamental rights." *McGuire*, 2021 WL 67912 at *21 (citing *Doe 1 v. Marshall*, 367 F. Supp. 3d 1310, 1338-39 (M.D. Ala. 2019)).² Unlike this Court's mechanistic application of the statute of limitations to Plaintiffs' second amended complaint based solely on their date of initial registration (DE:201 at 4), the district court in *McGuire* examined each of the plaintiff's constitutional claims and their allegations, noting, for example, that while Count 5 of the complaint "should be barred by applying this distinction," that

² This critical distinction is one that Plaintiffs pressed in their briefing (DE:109 at 6) ("Plaintiffs do not challenge their designation. They challenge the constitutionality of second-generation registration burdens and the continuing threat of imprisonment for failing to meet them. In such cases, courts around the country, including in this Circuit, apply the continuing violations doctrine to extend the statute of limitations") (footnote omitted). At oral argument, counsel again argued this critical distinction (DE:203-1 at 24 *et seq.*). Yet the Court did not engage with this distinction, insisting that "the case law is clear as to the Statute of Limitations. You are apples and oranges on the continuing violation" (DE:203-1 at 25). The Court ultimately determined that Plaintiffs' attempt to distinguish *Meggison* "does not pass muster in a statute of limitations analysis" because the *Meggison* court noted that the requirement of a sex offender to register has continued consequences (such as reporting and complying with updated requirements) by virtue of that one-time act of registration (DE:201 at 6). But *Meggison*'s claim was that his constitutional rights were violated "when he was classified as a sex offender and required to register." *Meggison*, 2013 WL 6283700 at *2. At its core, *Meggison* was not a continuing violations case, and thus, given the actual claim raised, it is hardly surprising that the Eleventh Circuit "reviewed and affirmed the *Meggison* court's finding and reiterated that the continuing violation doctrine does not apply" (DE:201 at 6). In contrast, the Alabama federal court rejected the defendant's claim that the date of registration is the sole triggering mechanism for the statute of limitations in Alabama, explaining "that cannot be *per se* true without considering how the requirements imposed upon registrants have changed" because "[u]nder Defendant's logic, the State could amend ASORCNA to require that prior registrants be put in stockades for an hour every week, and persons who registered more than two years prior would be unable to bring ex post facto challenges." *McGuire*, 2021 WL 67912 at *21.

appearance “is deceiving” upon actual review of one of the plaintiff’s constitutional claims. *McGuire*, 2021 WL 67912 at *21. And because that plaintiff’s claim “is an argument that each day he is singled out for enforcement when other similarly situated persons are not,” the equal protection discrimination alleged by that plaintiff “represents a continuing violation.” *Id.* The court ultimately denied the motion to dismiss Count 5 as to that plaintiff. *Id.* at *47.³

The *McGuire* court further addressed the continuing violation doctrine as it applied to other claims raised by the plaintiffs there, noting that the “only statute of limitations question meriting [further] discussion is whether the 2017 amendment reset the clock on some of the provisions challenged in Plaintiffs’ ex post facto claims.” *Id.* at 21. The court then examined each of the plaintiffs’ claims to see if the 2017 amendments to the Alabama statute “impose any new punishments.” *Id.* at *21-*22. The court found that some of plaintiffs’ allegations about certain provisions of the newer version of the registration statute were not challengeable “because they were not substantially amended in 2017” while others “constitute new causes of action” because, for example, the complaint demonstrated “how these amendments have inflicted new injuries” that the 2011 version of the statute did not. *Id.* at *16.⁴ To accomplish this, the *McGuire* court engaged with the continuing violations doctrine to determine which, if any, of the plaintiffs’ causes of action fell within the doctrine’s reach. In other words, the *McGuire* court performed the analysis that this

³ The district court issued its ruling in *McGuire* months after the Eleventh Circuit decided *McGroarty*. And while the court did not address *McGroarty* in its order, it was aware of it because the defendant submitted it as supplemental authority. See DE:54 in *McGuire v. Marshall*, No. 2:19-cv-00174-WKW-JTA (filed October 21, 2020).

⁴ *Accord Nat’l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 117 (2002) (ruling that when time-barred and timely-filed claims are alleged to involve application of the same “practice,” the “entire time period” of the practice “may be considered by a court for the purposes of determining liability,” so long as “an act contributing to the claim occurs within the filing period”).

Court, in reliance on a misreading of case law, determined it had no legal authority to undertake. This is clear error resulting in a manifest injustice.

3. Dismissal with prejudice.

Assuming *arguendo* the correctness of the Court's ruling on the statute of limitations, Plaintiffs submit that dismissal with prejudice was incorrect and that they should be allowed to amend their complaint to conform to the concerns raised by the Court. Accordingly, attached hereto is a proposed Third Amended Complaint, which narrows the previous complaint to challenges by John Doe 1, John Doe 7, and Jane Doe 1 to the 2018 amendments to FSORNA. It also adds a new party, Jane Doe 2, who registered within the past 4 years and who challenges the entirety of FSORNA. **The statute of limitations will expire as to Jane Doe 2 on February 5, 2021; the Plaintiffs notify the Court that time is of the essence as to the filing of the Third Amended Complaint given the imminent expiration of the statute of limitations for Jane Doe 2.**

Defendant's central point in arguing that Plaintiffs should not be allowed to amend their complaint (irrespective of which standard applies)⁵ is that they were "aware" and "on notice" of what it labels the statute of limitations "defect" before the deadline in the Scheduling Order and that while they amended their complaint "for other reasons,"⁶ they never amended to "avoid that defect" or requested to extend the deadline (DE:208 at 11; *see also id.* at 12). Defendant's position

⁵ Defendant quibbles with Plaintiffs' reference to Fed. R. Civ. P. 15(a) as opposed to Fed. R. Civ. P. 16(b), but essentially argues that Plaintiffs should not be entitled to amend under any standard because the complaint is not fixable.

⁶ Plaintiffs' amended their complaint twice. The first amended complaint added two plaintiffs along with a "next friend" for one of them, facial challenges to existing claims, words and phrases from the statute in support of the extant vagueness claim, and a state law constitutional claim (DE:48 at 3). The second amended complaint merely added a new plaintiff who was relatively younger than some of the existing ones (DE:100).

suffers from a series of flaws, the most pronounced being its disingenuity. Defendant makes very clear what his position is and always has been: that Plaintiffs' suit is barred by the statute of limitations no matter what they alleged and irrespective of whether they were challenging only amendments to the sex offender registration statute enacted within the past 4 years because they did not sue within the statute of limitations period running from the date of their registration. *See* DE:208 at 17 n.3 (“Relatedly, Plaintiffs imply that FDLE agreed they could proceed with claims based on amendments enacted within the past four years. . . . FDLE’s position has always been that all claims are time-barred as that is supported by Meggison”); *id.* at 18 (“Given that the date of Plaintiffs’ designation would not have changed, this analysis would still apply to an amended pleading”). Put another way, Defendant faults Plaintiffs for not seeking to amend their complaint to fix a “defect” that he says is not fixable anyway. The attached Third Amended Complaint belies Defendant’s position.

Defendant’s other arguments, laden with hindsight, fare no better. His insistence that Plaintiffs lacked diligence because they were “on notice” of putative “pleading deficits by a dispositive motion” (DE:208 at 12), ignores the chronology of this case and rulings in this record—rulings resulting from Defendant’s own serial attempts to delay orderly and timely discovery—that hardly would give competent and reasonably diligent counsel “notice” of any fatal “deficit” in their complaint.⁷ Defendant acknowledged that some courts around the country had “more permissive” standards than this Circuit regarding application of the continuing violation doctrine, referring to *Kuhnle Brothers v. County of Geauga*, 103 F.3d 516, 522 (6th Cir. 1997), as an example of an indulgent jurisdiction. But the Eleventh Circuit cited *Kuhnle* “with approval” in *Hillcrest*

⁷ Again, this assumes Defendant’s position had been (or is even today) that this “deficit” could be remedied by amending the complaint. It was and is not his position, however.

Prop., LLC v. Pasco Cty., 754 F.3d 1279, 1283 (11th Cir. 2014). *McGuire*, 2021 WL 67912 at *20. See also *Beavers v. American Cast Iron Pipe Co.*, 975 F.2d 792, 798 (11th Cir. 1992) (endorsing application of continuing violation doctrine, in reliance on United States Supreme Court case law, where Title VII violation was continuing in nature).⁸ Defendant refused to seek argument on his own motions to dismiss, shrugging off Plaintiffs' requests for oral argument as "unnecessary" (DE:33, 74). The Defendant's fully-briefed motion to dismiss the initial complaint was not ruled on. Instead, the Court issued an Order requiring the parties to file a Joint Conference Report and a Joint Proposed Scheduling Order (DE:37), reasonably signaling to Plaintiffs that their case was not doomed to early dismissal due to a fatal "defect." After Plaintiffs filed their first amended complaint, Defendant moved to dismiss it, seeking again to stay discovery pending a disposition of the motion (DE:56, 57). Defendant's motion to stay was pending for 3 months before the Court denied it in an order transmitting the clearest signal yet that Plaintiffs' first amended complaint might survive the motion to dismiss:

Upon a cursory review of Defendant's motion to dismiss, Plaintiffs' response, and Defendant's Reply, *the Court 'cannot conclude that the [m]otion to [d]ismiss is so clearly meritorious that all discovery should be stayed during its pendency'.*

(DE:86 at 2) (emphasis added) (citation omitted). Defendant never sought reconsideration of this Order, and the case proceeded unimpeded by further attempts to stay discovery until the Court granted Defendant's motion to dismiss Plaintiffs' Second Amended Complaint.

This is the backdrop against which Defendant argues that Plaintiffs should have earlier sought leave to amend their complaint (a complaint it says is un-amendable anyway) and have not

⁸ Indeed, as noted *supra*, an Alabama federal district court recently agreed with Plaintiffs' interpretation of the continuing violation doctrine, distinguishing the case before it from one-act cases like *Meggison*. *McGuire*, 2021 WL 67912 at *21. Plaintiffs' case is like *McGuire*, not like *Meggison*.

established “good cause” to do so now. But as of at least October 16, 2019, Plaintiffs were on notice that their case may survive dismissal because the Court found that Defendant’s motion to dismiss was “not so clearly meritorious” as to warrant a stay of discovery. “Good cause” must be evaluated contextually, and what better justification could exist for a reasonable belief by Plaintiffs that their amended complaint as constructed did not suffer from a fatal statute of limitations “defect” than a finding by the Court that Defendant’s motion was not “so clearly meritorious” as to warrant a stay of discovery? Plaintiffs hardly sat “idly by as [they] awaited the district court’s determination of” the Defendant’s motion to dismiss. *Wagner v. Daewoo Heavy Industries America Corp.*, 314 F.3d 541, 543 (11th Cir. 2002) (en banc). Nor were Plaintiffs put on notice that the complaint lacked sufficient factual allegations to “move [their] claims across the plausibility threshold” or suffered from an irremediable “yawning gap.” *Adams v. City of Indianapolis*, 742 F. 3d 720, 734 (7th Cir. 2014). Certainly, this is not a case where Plaintiffs were placed on notice *by the court* that their allegations failed to state a legal claim. *Eiber Radiology, Inc. v. Toshiba America Medical Systems, Inc.*, 373 Fed. App’x. 925, 930 (11th Cir. 2016) (emphasis added).⁹ Rather, Plaintiffs here were quite reasonably proceeding in reliance on a finding by the Court that the Defendant’s motion to dismiss was “not so clearly meritorious” to warrant a stay of discovery, in addition to the various other orders rebuffing Defendant’s attempts to seek stays of discovery or protective orders and a reminder to Defendant from the Magistrate Judge that he “cannot unilaterally obtain a stay when one was not entered” (DE:82). To summarize, this case was proceeding *at the direction of and with oversight by* this Court and the

⁹ *Accord Jaramillo v. Maoz, Inc.*, 2020 WL 5750098 (S.D. Fla. Sept. 25, 2020) (finding no good cause to amend where Plaintiffs’ complaint had been dismissed by Magistrate Judge, who advised Plaintiff “that her initial pleading on enterprise coverage was insufficient” and amended complaint “again failed to plead facts to support the existence of such coverage”).

Magistrate Judge. The only “tactical decision” (DE:208 at 15) made by Plaintiffs’ counsel was to abide by the Court’s rulings. “Good cause” for Plaintiffs’ present request to amend their complaint is more than established.¹⁰

Plaintiffs attach a proposed Third Amended Complaint to this Reply for the Court’s review, and for the reasons set forth above and in their motion, they should be relieved from the part of the Court’s order dismissing their case with prejudice and be granted leave to file the attached complaint. The Third Amended Complaint is being filed by two of the original John Doe registrants (John Doe 1 and John Doe 7), Jane Doe 1, the next friend of a fourth registrant, who is incompetent to proceed on his own, and Jane Doe 2. Two of the John Does (John Doe 1 and John Doe 7), as well as the brother of Jane Doe 1, committed qualifying offenses before the first version of the Florida Sex Offender Registry Law (FSORNA) was enacted in October 1997. They challenge various provisions of 2018 amendments to FSORNA. Jane Doe 2 has been registered as a sex offender for less than 4 years preceding the Third Amended Complaint, and she challenges various provisions of FSORNA. Plaintiffs believe this Third Amended Complaint remedies what the Court determined to be the jurisdictional problem with the Second Amended Complaint. With the exception of Jane Doe 2, who is a new party, the other Plaintiffs are challenging only certain 2018 amendments FSORNA, thus bringing them within the statute of limitations period. Jane Doe 2 registered less than 4 years ago. Plaintiffs seek relief from this Court’s Order dismissing with prejudice and seek leave to file the attached Third Amended Complaint.

¹⁰ See e.g. *Datto v. Florida Int’l Univ. Bd. Of Trustees*, 2020 WL 6544488 (S.D. Fla. Nov. 6, 2020) (finding good cause under Rule 16(b)(4) to amend complaint after deadline had passed for amendments set by Scheduling Order).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, January 25, 2021, 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 notification for this case, including all opposing counsel.

By: Todd G. Scher
TODD G. SCHER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

)	
JOHN DOE 1, JOHN DOE 7,)	
JANE DOE 1 and JANE DOE 2,)	
<i>Plaintiffs,</i>)	
v.)	Civil Case No. 18-24145-CV-KMW
)	
RICHARD L. SWEARINGEN,)	
<i>Defendant.</i>)	

**THIRD AMENDED VERIFIED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

Introduction

1. The Florida Sex Offender Registration Law, Section 943.0435, Florida Statutes (hereinafter “FSORNA”) first went into effect on October 1, 1997. At that time, it required one-time in-person registration of basic identifying information and crime facts, made available to the public through a toll-free telephone number. The United States Supreme Court upheld a very similar registration statute from Alaska in *Smith v. Doe*, 538 U.S. 84 (2003) against a claim that the impacts were punitive under the ex post facto clause.
2. Through multiple amendments in the 24 years since FSORNA’s enactment, the

Florida Legislature has drastically increased the number and weight of the burdens FSORNA imposes, transforming it into a trip-wired maze of restrictions and affirmative obligations resembling penal supervision for life, with virtually strict liability for any violation of its provisions, a minimum mandatory six-month sentence of GPS-monitored probation and a maximum sentence of five years in prison. Significantly, the Florida Legislature has never advanced any empirical basis to believe that any one of these additional burdens would reduce sexual reoffense by registrants or would otherwise protect the public from sexual harm.

3. While increasing the weight and number of burdens, the Florida Legislature also amplified FSORNA's notification provisions, leading to repeated police warnings to neighbors, repeated police presence at a registrant's home, warnings to online networking websites, warnings emailed to the public, warnings to school staff and students, and a Google-indexed online registry warning to anyone who types in the registrant's name. This aggressive notification has caused housing and employment instability, as well as stigmatization, ostracism, harassment, and vigilantism against registrants *and* their families.
4. FSORNA is premised on the notion that convicted sex offenders categorically represent an intractably high risk of sexual reoffense. This premise is widely acknowledged now to be false: the average rate of registrant reoffense begins

low – 5.3% within 3 years, compared with 68% by non-sex offenders – and declines every year thereafter without reoffense. The average rate of reoffense by female registrants like Jane Doe 2 is considerably less than that – 1.8% within 5 years. Furthermore, an individual registrant’s actual risk of reoffense is easily ascertainable through risk assessment instruments in universal use, including in Florida, and through clinical observation and psychological testing routinely used by certified experts around the country, including in judicial proceedings in Florida. Finally, long-term studies have established that statutes like FSORNA do nothing to decrease the already-low rate of sexual reoffense. Indeed, there is compelling evidence that aggressive notification statutes like FSORNA increase the reoffense rate by creating barriers to community reintegration, employment and housing. Thus, FSORNA, based on the false belief that it would mitigate an egregiously inflated risk of reoffense, is irrational, as evidenced by the facts of Plaintiffs’ complaint.

5. Plaintiffs are three registrants and the next friend of a fourth registrant, her brother, who is incompetent to proceed on his own. The two John Does and Jane Doe 1’s brother committed qualifying offenses before the first version of FSORNA was enacted in October 1997. These three registrants have all completed their sentences, including probation. They have not since been arrested or convicted of any substantive offense, let alone a sexual offense, and all represent virtually no risk of sexual reoffense. They seek to be free from

FSORNA 2018's irrational and onerous redefinition of "temporary residence" from 5 days to 3 days in the aggregate per year, and from the 2018 imposition of a minimum-mandatory sentence for even inadvertent or unavoidable violations of FSORNA's dozens of reporting requirements. Jane Doe 2 has been registered as a sex offender for less than four years preceding this Complaint. She has completed her sentence and seeks to be free from the requirements of FSORNA, because of its 1) ever-increasing punitive impacts, 2) arbitrary and unreasonable deprivations of fundamental liberties, 3) irrebuttable yet demonstrably erroneous presumption that she represents a grave danger to the public for at least 25 years, 4) vague requirements leading to confusion about her obligations and to arbitrary enforcement, and 5) felony conviction and mandatory sentence for even inadvertent violations of any one of dozens of affirmative obligations. They bring this action for declaratory relief and seek to enjoin enforcement of the 2018 amendment against the John Does and Jane Doe 1's brother, and to enjoin enforcement of the entire statute against Jane Doe 2.

Jurisdiction and Venue

6. This action arises under the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.
7. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202.
8. Supplemental jurisdiction over state law claims is authorized by 28 U.S.C. §

1367.

9. Venue properly lies within this District under 28 U.S.C. § 1391(b)(2), because Jane Doe 1 and her brother reside in this district, the events giving rise to their claims have occurred here, John Doe 7 was convicted in this district, and Plaintiffs' counsel reside and practice in this district.

Parties

10. John Doe 1, 46 years old, is subject to lifetime registration requirements because of a qualifying offense occurring in 1989-1990 against his sister when both were minors in a household wracked by abuse and neglect. He received a withhold of adjudication¹, several weekends in jail and was sentenced to ten years' probation, terminated after five years. He has committed no offense in the thirty years since then and poses virtually no risk of sexual reoffense. He has been forced to curtail both work- and family-related travel due to the burden under the 2018 amendment of making multiple in-person reports within 48 hours of departure or return from his home for as few as three days away, whether or not the Sheriff's Office is even open during these intervals and fears mandatory criminal punishment for even inadvertent or unavoidable violations of the travel-related reporting requirements. He is a "sexual offender" as

¹ Florida law permits a criminal court judge to withhold adjudication of guilty only "[i]f it appears to the court upon a hearing of the matter that the defendant is not likely again to engage in a criminal course of conduct and that the ends of justice and the welfare of society do not require that the defendant presently suffer the penalty imposed by law." § 948.01(2), Fla. Stat. (2018) (emphases supplied). A person for whom adjudication is withheld is not considered to have been "convicted" of the offense for most purposes. However, he must still comply with the registry requirements.

defined by § 943.0435(1)(h), Fla. Stat. (2018).

11. Jane Doe is Next Friend on behalf of her younger brother, a registrant, and real party in interest, who is cognitively impaired, with an IQ between 53 and 65, and cannot proceed on his own. He is 49 years old and subject to lifetime registration based on a 1996 crime. He has not since been arrested for a substantive offense, consistent with forensic testing reflecting virtually no risk of reoffense. But he has been arrested, convicted and punished for an inadvertent and unknowing registration violation. He has also been arrested and punished for inadvertent violations, arising from his cognitive impairment, of the technical requirements of GPS-monitored probation. He is illiterate, with the memory and verbal processing abilities of a small child. He was formally determined to be incompetent for trial by Miami-Dade Circuit Court Judge Milton Hirsch on January 8, 2016,² in vacating a plea to failure to register. Due to his severe intellectual deficits, he will never be able to register without supervision. He therefore remains at significant risk for the rest of his life of arrest and conviction for unknowing registration violations and at risk for violating GPS-monitored probation, the minimum-mandatory punishment under the 2018 amendment. He is a “sexual offender” as defined by § 943.0435(1)(h), Florida Statutes.

² In view of this Court’s Order granting anonymity to Plaintiffs, the Circuit Court case number and style of Doe 6’s case are omitted from the First Amended Verified Complaint but will be made available to Defendant during discovery and to the Court under seal.

12. Next Friend Jane Doe, 57 years of age, is the older sister of the registrant described in the preceding paragraph. She is thoroughly knowledgeable about her brother's cognitive deficits, having personally witnessed them since his early childhood until the present day, as they have lived together in a shared family residence for most of their adult lives. Jane Doe is fully aware of the overwhelming difficulties her brother faces in attempting to meet the ever-increasing reporting obligations imposed on him by FSORNA. By necessity and based on genuine, deep sibling love, Jane Doe has always been very protective of and dedicated to her brother's welfare and best interests. She understands the purpose of this litigation is to relieve her brother of the 2018 amendment's imposition of a minimum-mandatory penalty for other unknowing and inadvertent violations of any one of dozens of FSORNA 2018's affirmative obligations requirements. She believes it is in her brother's best interest to be a real party of interest.

13. John Doe 7, 53 years old, committed his qualifying offense, nonconsensual sexual intercourse with an adult woman, in 1994, and served 7 ½ years in prison. He has not since committed nor been arrested for any other offense and demonstrably poses virtually no risk of sexual reoffense. He is now a software engineer, with a wife and 12-year-old child. He has been forced to curtail both work- and family-related travel due to the travel burden under the 2018 amendment of making multiple in-person reports within 48 hours of departure

or return for as few as three days away, whether or not the sheriff's office is even open during these intervals. In view of the 2018 mandatory minimum punishment, he lives in fear of arrest for inadvertent violations. He is a "sexual offender" as defined by § 943.0435(1)(h), Florida Statutes.

14. Jane Doe 2, 30 years old, was convicted for consensual sexual relations with a 16-year-old minor when she was 24. She was sentenced to probation, which she successfully completed, including a sex offender treatment program. She poses virtually no risk of reoffense. She is mother to a 12-year-old daughter and three-year-old twins, a boy and a girl. She is barred from participating in their education and extra-curricular activities as a result of her status. She will be unable to take them for long weekends from home without making one or more in-person reports and subjected to a minimum-mandatory criminal sentence if she inadvertently fails to comply with reporting requirements that are too vague to understand and are enforced arbitrarily. The in-person reporting requirement generally forces her to lose work and wages. Her children, who live in a small town, will be ostracized, harassed, humiliated and shunned as the result of their mother's status. She has been harassed and threatened at work as the result of her status. She lives in fear that she and her family will fall victim to widely-reported vigilantism against registrants, which is facilitated by FSORNA's aggressive notification of her whereabouts. She is a "sexual offender" as defined by § 943.0435(1)(h), Florida Statutes.

15. Defendant Richard L. Swearingen is the Commissioner (also known as the Executive Director) of the Florida Department of Law Enforcement (FDLE), which is responsible for implementing many of Florida's registration requirements. These requirements include creation and maintenance of the registry and the website containing information about the registrants; creation and maintenance of the forms specifying information that must be registered; and disclosure of the information to law enforcement agencies, commercial social networking websites, institutions of higher education and the public. He has statutory authority to implement the relief Plaintiffs seek. *See* Fla. Stat. § 943.03, Fla. Stat. (2018). References to the Commissioner or the FDLE in this Complaint are referring to this Defendant. At all relevant times, Defendant Swearingen and his agents acted, and continue to act, under color of state law.

GENERAL FACTS

Historical Evolution of FSORNA

1997 Version of FSORNA

16. Prior to 1997, Florida had no sex offender registry or notification laws. The Florida Legislature first enacted FSORNA in 1997. Fla. Stat. § 943.0435, Fla. Stat. (1997). It applied retroactively to persons whose qualifying offenses occurred before 1997, where their sanctions were completed on or after October

1, 1997.³ It required persons with qualifying convictions⁴ to register with their local sheriff in person, within 48 hours after establishing permanent or temporary residence in Florida,⁵ and to provide limited identifying information: name, date of birth, race, sex, height, weight, hair and eye color, tattoos or other identifying marks, address of permanent or temporary residence, date and place of each conviction, with a brief description of the crime or crimes committed by the registrant. Under FSORNA, the FDLE was directed to provide a photograph of the registrant, and a summary of the registrant's sexual offense to the public on request. Fingerprints were also taken upon this initial registration. *See Fla. Stat. §943.0435(2)*, Fla. Stat. (1997). Change to the registrant's permanent or temporary address was to be reported in person within 48 hours to the Department of Highway Safety and Motor Vehicles ("DHSMV"). Failure to comply was a third-degree felony. Public notification was accomplished through a toll-free telephone number the public could use to inquire about an individual on the registry. *See Fla. Stat. §943.043*, Fla. Stat. (1997). FDLE was required to furnish anyone who asked a photo of a registrant and a summary of

³ Ch. 97-299, § 8, Laws of Fla., eff. Oct. 1, 1997.

⁴ 1997 Fla. Stat. §943.0435(1)(a) "Sex offender" means a person who has been. . . [c]onvicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or analogous offenses in another jurisdiction: § 787.025, chapter 794, § 796.03, § 800.04, § 827.071, § 847.0133, § 847.0135, § 847.0145, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.

⁵ 1997 Fla. Stat. § 943.0435(2) defined a temporary residence as where the sex offender abides, lodges, or resides in a place for 2 consecutive weeks or less, excluding a stay of 2 consecutive weeks or less at a different residence due to a vacation or an emergency or special circumstance that requires the sex offender to leave his or her place of permanent or temporary residence for 2 weeks or less. 1997 Fla. Stat. § 943.0435(2) defines a permanent residence if the sex offender abides, lodges, or resides in a place for more than 2 consecutive weeks.

publicly-available information. § 943.043(3), Fla. Stat. (1997).

2018 Version of FSORNA: From Regulation to Punishment

17. FSORNA has evolved from a useful tool for police to investigate sex crimes, and for the public to take precautions around those who had committed them, into a labyrinthine trip-wired maze of ever-increasing affirmative requirements and ever-widening notification that lasts for life, regardless of the nature of the qualifying offense, or the individual's actual or actuarial risk of reoffense.

Registration Requirements: From Minimal to Engulfing

18. As a result of multiple amendments since 1997,⁶ registration now entails an engulfing number of mandatory conditions: in-person reporting on an ever-lengthening list of occasions within ever-shortening deadlines; to multiple law enforcement agencies; of a burgeoning amount of personal information; as well as any actual or intended changes to this information; regardless of the registrant's qualifying offense or risk to reoffend⁷; for the rest of his life.⁸ Failure to comply with any of these requirements is a strict liability⁹ third-degree felony, punishable by a mandatory-minimum of six months GPS-

⁶ FSORNA was amended in 1998, 2000, 2002, 2004, 2005, 2007, 2009, 2010, 2012, 2013, 2014, 2016, 2017, and 2018. The legislative history of these amendments does not reflect an empirical basis for any of them. Attached to this Complaint is an Appendix reflecting the changes made in each succeeding year.

⁷ §§ 943.0435(4)(c), (8), (9)(a), (14)(c)4; 943.0437(1), (2), (3), Fla. Stat. (2018).

⁸ § 943.0435(11), Fla. Stat. (2018) establishes lifetime registration unless the sexual offender has received a full pardon or has had a conviction set aside. After being lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years, some registrants, based on the nature of their qualifying offenses, may petition for removal from the registry, but only if they have not been arrested for any felony or misdemeanor since release. Other registrants must remain on the registry for life. The decision to grant removal is wholly within the trial court's discretion.

monitored probation, and a maximum of five years in prison and a \$5,000 fine.¹⁰ Conviction for failure to register is no remote contingency: in FY 2017-2018 alone, 1,283 registrants out of 25,076 residing in Florida – .05% of all registrants in the community -- were convicted of violating one of the dozens of FSORNA requirements, 45% of whom were sentenced to prison, 31% to jail.⁹ A registrant may invoke lack of notice as a defense for a first offense only. Fla. Stat. § 943.0435(9)(d), Fla. Stat. (2018).¹⁰

19. Duration. FSORNA 1997, which required only one-time in-person registration, was silent as to duration. FSORNA 1998 specified life-time registration, but with eligibility for removal twenty years after release from prison, providing no arrests in the interim.¹¹ FSORNA 2018 bars large categories of registrants from ever seeking removal,¹² postpones the count-down for eligibility from prison release to release from all supervision,¹³ and extends the wait for eligibility from 20 to 25 years.¹⁴ FSORNA 2018 also expands the conditions for removal beyond the no-arrest provision, requiring compliance with various federal laws and standards, a judicial determination that the registrant is not a threat, and

⁹ <https://oppaga.fl.gov/Documents/Reports/18-08.pdf>, p. 10

¹⁰ § 943.0435(9)(a) & (14)(c)(4), Fla. Stat. (2018). For a second offense, the mandatory-minimum sentence is one year of GPS-monitored probation; for a third, two years of GPS-monitored probation. § 943.0435(9)(b), Fla. Stat. (2018).

¹¹ § 943.0435(11), Fla. Stat. (1998).

¹² § 943.0435(11)(a)1.(a.-i.), Fla. Stat. (2018).

¹³ § 943.0435(11)(a), Fla. Stat. (2018).

¹⁴ § 943.0435(11)(a)1., Fla. Stat. (2018).

three weeks' notice to the State so it can present opposing evidence.¹⁵

20. Number of qualifying offenses. The 1997 version of FSORNA had eight qualifying offenses. § 943.0435(1)(a)1., Fla. Stat. (1997). The 2018 version has twenty qualifying offenses,¹⁶ vastly increasing the numbers of people required to register. The legislative history does not explain the reason for this vast expansion of qualifying offenses. Because the registration statute now applies to twenty offenses, is fully retroactive, and applies for life, as of June 2018, the number of persons on the registry, who reside in Florida and have completed all aspects of their sentence, including post-incarceration supervision, was 25,076.¹⁷

21. Re-Registration. The 1997 version of FSORNA required one in-person registration report, within 48 hours of release from prison, at the sheriff's office. There was no re-registration requirement. FSORNA 2018 requires re-registration in-person semi-annually or quarterly, at the sheriff's office, whether or not there have been any changes to report in the interim. § 943.0435(14)(a), (b), Fla. Stat. (2018).

22. Volume of information disclosed at registration. The 1997 version of FSORNA required disclosure of a limited amount of identifying information –

¹⁵ § 943.0435(11)(a)3., Fla. Stat. (2018).

¹⁶ See §§ 943.0435(1)(h)1.a.(I), b., c., d.(I-V), Fla. Stat. (2018).

¹⁷ <https://oppaga.fl.gov/Documents/Reports/18-08.pdf>.

name, date of birth, race and sex, height and weight, hair and eye color, tattoos, temporary or permanent address, date and place of conviction, brief description of offense, photograph and fingerprints. § 943.0435(2), Fla. Stat. (1997).

24. FSORNA 2018 requires vastly more information to be disclosed: employment, identifying information for all vehicles¹⁸ and vessels,¹⁹ telephone numbers, email addresses, Internet usernames, status²⁰ at institutions of higher learning,²¹ professional licenses, immigration status, passport, palm prints, genetic markers. § 943.0435(2)(b), Fla. Stat. (2018). Expanding the information required to be disclosed at initial registration may not itself be viewed as terribly onerous. But because FSORNA 2018 requires prompt in-person reporting of **any changes** to information disclosed at registration, § 943.0435(2)(a)2., Fla. Stat. (2018), requiring additional information at initial registration multiplies the number of in-person reporting requirements.

25. **Possession or potential access to vehicles.** The 1997 version did not require disclosure of even the registrant's own vehicle. FSORNA 2018 requires not

¹⁸ “[M]ake model, color, vehicle identification number (Vin), and license tag number of all vehicles. . .” § 943.0435(2)(b), Fla. Stat. (2018).

¹⁹ “[V]essel, live-aboard vessel or houseboat residence identifiers (hull identification number, registration number, manufacturer’s serial number, name of vessel, and physical description. . .” *Id.*

²⁰ Enrollment (whether in a traditional classroom setting or online), employment (whether paid or volunteer). § 775.21(2)(a), Fla. Stat. (2018).

²¹ “[A] career center, a community college, a college, a state university, or an independent postsecondary institution.” § 775.21(2)(i), Fla. Stat. (2018).

only this, § 943.9435(2)(b), Fla. Stat. (2018), but in-person disclosure of any vehicles leased, rented, borrowed or otherwise possessed by the registrant **and any co-inhabitant**, including those of his spouse and kids, and those of their friends and family members.²² He must also report in-person the presence of any vehicles **parked at his home for 5 days** or more, even if he resides in a multi-unit dwelling and has no means of access to those vehicles. § 943.0435(2)(b)3., Fla. Stat. (2018). This means he must count the number of days every vehicle is parked at his home, so he can report it if it stays there 5 days or more.

26. Branded driver’s license or other State identification. FSORNA 1997 did not require a registrant to obtain a driver’s license or other state-issued identification. FSORNA 2018 requires every registrant to obtain and to pay the associated costs for a driver’s license or other state-issued identification, to report any changes to DSHMV, and to report to the sheriff when a driver’s license or state identification is subject to renewal. § 943.0435(2)(b)3, Fla. Stat. (2018). Furthermore, his driver’s license or other state identification must now display his status as a sex offender. § 322.41(3), Fla. Stat. (2018). Because a driver’s license is the document most frequently required to prove identity to the public, the registrant’s public identity is fused with his status in even the

²² § 943.0435(2)(b)3., Fla. Stat. (2018). “Vehicles owned” is very broadly defined as any motor vehicle “which is registered, coregistered, leased, titled or rented” by a sexual offender; “a rented vehicle” that a sexual offender “is authorized to drive”; or a vehicle for which the offender “is insured as a driver.” It also includes any motor vehicle that “is registered, coregistered, leased, titled or rented by a person or persons residing at a sexual offender’s “permanent residence for 5 or more consecutive days.” *See* §§ 943.0435 (1)(h) & 775.21 (2)(p), Fla. Stat. (2018).

most pedestrian transactions.

27. Restrictions on internet use. FSORNA1997 imposed no restriction on a registrant's use of the Internet. FSORNA 2018 requires all registrants to report online within 48 hours their use of any Internet identifier or username in connection with person-to-person online interactions, excepting commercial and political speech. § 943.0435(4)(e)1., Fla. Stat. (2018). Registrants must also report online within 48 hours of changing or adding an email address. *Id.*

28. In-person report of changes to identifying information. The 1997 version required in-person reporting to the DHSMV within 48 hours of changing a temporary or permanent address. § 943.0435, Fla. Stat. (2018).

29. In contrast, FSORNA 2018 requires in-person reporting within 48 hours to the sheriff and/or the DHSMV of any change to almost every item in the mountain of information divulged upon initial registration: a new tattoo (or removal of an old one) or a fresh scar; change of weight or hair color; a new or additional job, a new professional license, a change in status at an institution of higher education,²³ a new or newly-colored car or boat, known future temporary residences, return from temporary residences, etc. § 943.0435(2)(a)2, (4)(a), Fla. Stat. (2018). As noted, registrants expend considerable time and energy making multiple in-person reports of trivial changes to inessential information,

²³ This includes commencement or termination of enrollment (even for online classes), a change in location of enrollment, a change in employment, paid or volunteer. § 775.21(2)(a), Fla. Stat. (2018).

even though the changes must be re-reported at re-registration. Notably, each county has only one sheriff's office. Because many Florida counties are vast and sprawling, many registrants live and work at great distances from the county's only sheriff's office. Furthermore, the sheriff's offices are not necessarily open to registrants every day during business hours, but instead for fewer days and fewer hours, making it even more challenging to meet the 48-hour in-person reporting requirement. Therefore, the burden of in-person reporting multiple times a year is heavy.

30. Transient Registration. The 1997 version of FSORNA had no reporting requirement for "transient" registrants. Since then, proliferating and overlapping state, county and local sex offender residence restrictions, in combination with the stigmatizing impact of aggressive notification, have created a crisis of homelessness among registrants, with thousands sleeping outside in notorious encampments throughout the state. FSORNA 2018 requires homeless registrants to report their "transient residence"²⁴ in-person every thirty days, §943.0435(4)(b)2., (d), Fla. Stat. (2018), in addition to the semi-annual or quarterly in-person re-registration requirement, and the requirement to report any changes to the volume of information divulged upon initial registration.

31. Temporary residence. FSORNA 1997 defined a "permanent" residence as a

²⁴ The term includes places without a street address. *See* §§ 943.0435(1)(f) & 775.21(2)(o), Fla. Stat. (2018).

place the registrant lives for **two consecutive weeks** or more, and a “temporary” residence as a place the registrant stays for two consecutive weeks or less. § 943.0435(2), Fla. Stat. (1997). It expressly exempted from the reporting requirement a stay of two weeks or less made for the purpose of vacation, hospitalization, emergency or other special circumstance. *Id.*

32. In contrast, FSORNA 2018 defines a “permanent” residence as a place the registrant lives for more than three days, and a “temporary” residence as a place the registrant stays for **three days or more in the aggregate** in any calendar year, including vacation, business or personal travel, in or out of state, and not

excluding emergencies. §§ 943.0435(1)(f) & 775.21(2)(n), Fla. Stat. (2018).²⁵ Legislative staff analyses of the 2018 amendment reveals no empirical basis for the change, nor any consideration whether the redefinition had any impact on the risk of registrant reoffense. The analysis noted, however, that the 2018 amendment would increase the need for prison beds,²⁶ due in part to sheriffs’

²⁵ Some states have no definition of temporary residence as applied to state residents, but require registration of short-term residences only for visitors, employees or students. By way of comparison with FSORNA, Arizona defines temporary residence as 14 consecutive days, or an aggregate of 30 days per year, A.R.S. §§ 13-3822; Arkansas as 5 or more consecutive days in a year, A.C.A. § 12-12-903(10); California as any address at which a registrant “regularly reside[s],” Cal. Penal Code § 290.002; Colorado as 14 consecutive days or 30 days a year, C.R.S. §§ 16-22-105 - 16-22.108; Connecticut, as applied to visitors, “on a recurring basis for less than five days,” Conn. Gen. Stat. § 54-253; Delaware as greater than 2 weeks in a year, 11 Del. C. § 4120; Georgia, as applied to visitors, 14 consecutive days or more than 30 days in a year, O.C.G.A. § 42-1-12(e)(7); Hawaii, as applied to visitors, more than 10 days or an aggregate of 30 days in a year, H.R.S. §§ 846E-2, 846E-3; Idaho, as applied to temporary volunteers or employees, more than 10 consecutive days or 30 days in a calendar year, Idaho Code § 18-8303(6); Indiana, as applied to visitors, 7 days within 180-day period or 7 consecutive days or 14 days in the aggregate per year, I.C. § 11-8-8-12; Iowa, as applied to visitors, 5 calendar days in a year, Iowa Code § 692A.104-692A.105; Kansas as 3 consecutive days in one location or 10 days in a period of 30 consecutive days, K.S.A. § 22-4902; Kentucky, as applied to visitors, 14 consecutive days or 30 days in calendar year, K.R.S. § 17.510; Louisiana as 7 consecutive days, La. R.S. § 542.1.2(F)(1); Maine, as applied to visitors, 14 consecutive days or an aggregate of more than 30 days in a calendar year, MR.S. § 11224; Maryland as any place person visits for longer than 5 hours per visit more than 5 times within a 30-day period, Md. Code of Criminal Procedure, § 11-701(d)(2); Massachusetts as 14 or more aggregate days in a calendar year, or place routinely resided in for 4 or more consecutive or non-consecutive days per month, A.L.M. G.L. § 178C; Michigan as more than 7 days, M.C.L. § 28.722(p); Minnesota, as applied to visitors, more than 14 days, Minn. Stat. § 243.166(1b); Mississippi, as applied to visitors, 14 or more consecutive days in calendar year, Miss. Code Ann. § 45-33-27; Missouri, as applied to visitors, more than 7 days in 12-month period, R.S. Mo. § 589.400; Montana, as applied to visitors, 10 days or more or an aggregate of 30 days in calendar year, Mont. Code Ann. §§ 46-23-504, 46-23-505; Nebraska, as applied to visitors, 3 calendar days, N.S. Art. 40, §§ 29-4001.01, 4004; New Hampshire, as applied to visitors, more than 5 days during one-month period, R.S.A. § 65-B-1(XIII); New Jersey as 10 days, N.J. Stat. s. 2C-7-2 New Mexico, 30 days or more in any 365-day period, as applied to out-of-state employees, more than 14 days or an aggregate of 30 days in a calendar year, N.M. Stat. Ann. §§ 29-11A-3(E), (H)(4); New York, as applied to in-state employees, more than 14 consecutive days or aggregate period exceeding 30 days in calendar year, N.Y. C.L.S. Corrections, § 168-a; North Carolina, as applied to new residents, 15 days in state, to employees, 14 days or more than 30 days in calendar year, N.C. Gen. Stat., Art. 27A, § 14-208.6; North Dakota as longer than 10 consecutive days, N.D. Century Code § 12-1-32-15(1)(I), (2); Oklahoma as 7 consecutive days or 14 days in 60-day period, 21 Okl. Stat. §§ 5581-590-.2; Pennsylvania as seven days or more, 42 Pa.C.S. § 9799.12; South Carolina as a place one “habitually resides” or resides for 30 or more days during a 12-month period, S.C. Code Ann. §§ 23-3-43-, 23-3-45-, 23-3-460; Tennessee as 14 or more aggregate days in calendar year, or 4 or more days in a month, Tenn. Code Ann. §§ 40-39-202, 40-39-203; Texas as 3 or more visits of 49 consecutive hours’ duration, Tex. Code Crim. Proc. 62.051, 62.055, 62.059; Vermont as 10 or more consecutive days, 13 V.S.A., C.V.R. 28-050-002 § 3.8; Virginia, as applied to visitors, 30 days or more, Va. Code Ann. § 9.1-905; Washington, as applied to visitors, 10 days or more, Rev. Code Wash. § 9A.44.130(4)(a)(iv). <https://www.google.com/search?client=safari&rls=en&q=summary+of+state+and+territorial+registration+laws+concerning+visiting+and+temporary+residence+by+adults&ie=UTF-8&oe=UTF-8>.

²⁶ <https://www.flsenate.gov/Session/Bill/2018/1301/Analyses/h1301e.JDC.PDF>, pp. 1, 9.

limited days and hours for processing in-person reports.²⁷ The implications of this definition for the registrant's ability to travel are explored next.

33.Travel. FSORNA 1997 did not regulate travel, except to report a new temporary or permanent residence. § 943.0435, Fla. Stat. (1997). FSORNA 2018 strictly regulates, thereby heavily burdening, intra-state, inter-state, and international travel.

34.International Travel. Under FSORNA 2018, the registrant must report in-person to the sheriff 21 days before leaving the country, to register all details of his itinerary, modes of travel and destinations. § 943.0435(7), Fla. Stat. (2018). He must report to the DHSMV within 48 hours of his return. § 945.0435(4)(a) Fla. Stat. (2018). He may also have to report his return to the sheriff, if “unable” to “update” this change of residence at the DHSMV, with proof to the sheriff that he had gone to the DHSMV first.²⁸ If he changes his mind about leaving, he must report his change of mind within 48 hours. Failure to register his change of mind is a second-degree felony. § 943.0435(8), Fla. Stat. (2018). If he had the intent to take this trip at the time of his last registration, he must report it then as well. § 943.0435(2)(b), Fla. Stat. (2018).

35.Out-of-state Travel. Under FSORNA 2018, the registrant must report in-

²⁷ <https://oppaga.fl.gov/Documents/Reports/18-08.pdf>.

²⁸ This section provides that, “within 48 hours after any change in the offender’s permanent, temporary, or transient residence,” he “shall report in person to the” DHSMV; but that if “unable to secure or update a driver license or an identification card” at the DHSMV, he “shall also report any change” of residence within 48 hours “to the sheriff’s office in the county where the offender resides or is located and provide confirmation that he or she reported such information to the” DHSMV. § 943.0435(4)(a), Fla. Stat. (2018).

person to the sheriff within 48 hours of leaving the state and disclose the details of his destination. § 943.0435(7), Fla. Stat. (2018). He must report to the DHSMV within 48 hours of his return, and possibly also to the sheriff, if “unable” to “update” this change of residence at the DHSMV, with proof to the sheriff that he had gone to the DHSMV first. §§ 943.0435(7), (4)(a), Fla. Stat. (2018). If he changes his mind about leaving, he must report his change of mind within 48 hours. Failure to report this change of mind is a second-degree felony. § 943.0435(8), Fla. Stat. (2018). If he had the intent to take this trip at the time of his last registration, he must report it then as well. § 943.0435(2)(b), Fla. Stat. (2018).

36. Intra-state Travel. FSORNA 2018 requires in-person reporting to the DHSMV “within 48 hours of any temporary residential change,” and also to the sheriff, if the DHSMV does not then “update” the change, with confirmation that he already made this report to the DHSMV. § 943.0435(4)(a), Fla. Stat. (2018). Because FSORNA 2018 defines “temporary” residence to be a place the registrant stays for three days or more in the aggregate per year, the registrant must register at one or both offices in-person within 48 hours of leaving home for a three-day weekend. If he had the intent to take this trip at the time of his last registration, he must report it then as well. §§ 943.0435(2)(b) & (14)(c), Fla. Stat. (2018).

37. Unforeseen travel emergencies. Unlike FSORNA 1997, FSORNA 2018 has no

provisions to accommodate unforeseen emergencies in the course of travel. For example, if the registrant intends to travel in-state for two days, but his car breaks down, he is guilty of effecting an unreported change to his residence without having reported it. If he travels out-of-state for a one-day medical consultation, but is instead hospitalized for emergency surgical intervention, he is guilty of establishing a temporary residence without reporting it. If he has provided the hotel address for a temporary out-of-state residence, but the hotel is over-booked or crawling with bed bugs, he is guilty of changing his temporary residence without reporting it in person. If the sheriff's office is closed for registration when the 48-hour reporting period has elapsed, he is guilty of failing to make a timely in-person report.

38. **Ambiguity of Travel Restrictions.** “Temporary residence” in § 943.0435(1)(f) (incorporating the meaning provided in § 775.21(2)(n)) is defined as “a place where the person abides, lodges, or resides, including, but not limited to, vacation business or personal travel destinations in or out of this state, for a period of **3 or more days in the aggregate** during any calendar year and which is not the person’s permanent address ...” A change to or from a temporary residence must be reported in person within 48 hours, first to DHSMV, then, if unable to “secure or update” a driver’s license, to the sheriff’s office with proof of inability to “secure or update” within the same 48 hours.

39. First, the statute does not define “day” for the purpose of the 3-day reporting

requirement. Is it a full 24-hour day or a specific date? If a person arrives at a hotel destination ten minutes before midnight on May 1, is May 1 the first of three days? Or does the temporary residence consist of three consecutive 24-hour intervals commencing at check-in?

40. Second, the statute requires in-person reports “within 48 hours” of any change of residence. Does 48 hours mean 48 consecutive hours or 2 business days? And when does the 48-hour interval begin with respect to the third “day” of a 3-day trip from home?²⁹

41. Third, what is a “place” or “destination[]”? Is it a specific address or a general location? If the latter, may a registrant travel to New York City, staying no more than two days each in different rooms at the same hotel for weeks without reporting a new “temporary residence”?

42. Fourth, the statute requires in-person reporting to the DHSMV “within 48 hours of any change” in a temporary residence. § 943.0435(4)(a). Must a registrant traveling on a 6-day out of-state business trip, with 3 days in Boston and 3 in Chicago, return to Florida for in-person reporting after the 3 days in Boston and before flying to Chicago? Or does the statute require in-person reporting only after returning from Chicago, even if that means more than 48 hours after the

²⁹ Most states avoid this vagueness problem by defining the reporting period in terms of business days. <https://www.google.com/search?client=safari&rls=en&q=summary+of+state+and+territorial+registration+laws+concerning+visiting+and+temporary+residence+by+adults&ie=UTF-8&oe=UTF-8>. This solution also avoids the impossibility problem that arises with a 48-hour reporting period, if the 48 hours elapse at a time when the sheriff’s office is closed.

registrant has vacated his temporary residence in Boston for a temporary residence in Chicago?

43. Fifth, the statute requires the registrant to make an in-person report within 48 hours of a change to residence first to DHSMV and then, if “unable to secure or update a driver license” there, to report in-person within the same 48-hour period to the sheriff’s office with “confirmation that he or she reported such information to the” DSHMV first. § 943.0435(4)(a). What does it mean to “secure” or “update” a license at the DHSMV “within 48 hours of any change” in a temporary residence. Does it mean that a registrant just returning from a temporary residence must have his driver’s license changed to reflect the address of the temporary residence he has just vacated?

44. Sixth, § 943.0435(7), Fla. Stat. (2018) requires that a registrant leaving the state for a temporary residence report to the sheriff “within 48 hours before the date he or she intends to leave this state to establish [temporary] residence in another state.” Does that mean the registrant must report within 48 hours before he leaves, or at least 48 hours before he leaves? If it means he must report the change at least 48 hours before he leaves, does disclosure of the trip as a “known future temporary residence” at his previous re-registration, as required by § 943.0435(2)(a)2, Fla. Stat. (2018) suffice as the report required under § 943.0435(7), Fla. Stat. (2018)?

45. Seventh, § 943.0435(4)(a) requires an in-person report to the DHSMV and/or

sheriff “within 48 hours of any change” in a temporary residence. Does “within 48 hours” of leaving *from* a temporary residence mean the same thing as “within 48 hours” before leaving *for* a temporary residence, as set forth in § 943.0435(7)? For example, if “within 48 hours” before leaving means no fewer than 48 hours before leaving, does “within 48 hours” after returning also mean no fewer than 48 hours after returning?

46.Countless registrants have asked defendant the meaning of these travel-related words and phrases, in order to avoid getting arrested for violating the travel-related restrictions. He tells them to read the statute, hire a lawyer, or ask local law enforcement. Yet defendant provides no guidance to local law enforcement agencies about the meanings of these words and phrases, allowing individual agencies to construe the terms however they see fit. Individual agencies construe them differently. This is no surprise: as shown in the chart below, derived from pretrial discovery and the defendant’s pleadings, defendant and his employee witnesses **cannot agree among themselves** about the meaning of these words and phrases:

Words and Phrases	Swearingen	Coffee	Gordon	Hoffman
3 days (as used in temporary residence)	Excludes first day	Different sheriffs may interpret differently	Includes first day	Includes first day
48 hours		48 consecutive hours but sheriffs may interpret differently	2 business days	48 consecutive hours
Within 48 hours before	No fewer than 48 hours before		During 48-hour interval before; could be 3-4 days before	During 48-hour interval before; could not be 3 days before
Within 48 hours after	No fewer than 48 hours after; No more than 48 hours after		During 48-hour interval after; but can do it before change	During 48-hour interval after
Secure or update driver's license	Get a new license	Not necessarily get a new license	Get a new license	No new license unless change permanent residence
When to get updated license	When vacate temporary residence	Discretion of DHSMV	After 3d day	On 3d day
When to report temporary residence		Before leaving for, upon establishing or when vacating	No need if temporary and permanent residence in Fla.; Sheriff's discretion	Must report in-person if temporary and permanent residence in Fla.; after establishing
In-Person			Could mean by phone	Could mean by phone
When "day" begins	Midnight		Upon arrival	Midnight
When "day" ends	Midnight		Close of business	Midnight
When 48-hour interval begins			After 3d day	On 3d day

47. Ambiguities like these, in the context of a strict liability third degree felony statute with a maximum penalty of five years in prison and a minimum-mandatory penalty of six months GPS-monitored probation, deter Jane Doe 2 from the exercise of her fundamental rights to intra-state travel, under the Florida Constitution, and to interstate travel and freedom of movement under the federal and state constitutions.

48. **From *mens rea* to strict liability.** FSORNA 1997 was silent about the state of mind required for a violation of its registration requirements, a silence construed in conformity with the common law presumption that a statute with criminal penalties attached requires proof of *mens rea*.³⁰ In contrast, FSORNA 2018 expressly dispenses with the intent requirement for any violation of the registration statute, except one: if a registrant has once been arrested or arraigned for failing to register, he may never again for the rest of his life assert lack of knowledge as a defense, even if he does not know or understand a new amendment. § 943.0435(9)(d), Fla. Stat. (2018). Furthermore, there is no statutory or judicially-created exception for emergencies, impossibility, or incapacitation. Finally, defendant provides no guidance to local law enforcement agencies whether to make exceptions under these circumstances,

³⁰ *Lambert v. People of California*, 355 U.S. 225, 229 (1957); *State v. Giorgetti*, 868 So. 2d 512,519 (Fla. 2004).

leaving it up to local police whether to relax or enforce requirements under these circumstances.

49. **Minimum-mandatory sentence.** FSORNA 1997 had no minimum- mandatory sentence for violations of its reporting requirements. FSORNA 2018 provides for a minimum-mandatory sentence of six months GPS-monitored probation for a first offense, one year for a second offense, and two years for a third or subsequent offense. This means that a registrant who concededly had **no knowledge or intent** to violate the statute **must** nevertheless be criminally punished for doing so. § 943.0435(9)(b), Fla. Stat. (2018).

Public Notification: From Discreet to Aggressive

50. **Notification.** FSORNA 1997 provided for public notice through a toll-free telephone number. Any member of the public wanting to know whether an identified individual was a registrant could call that number to find out. § 943.043, Fla. Stat. (1997).

51. FSORNA 2018 expressly endorses aggressive notification to the public: Relying on the demonstrably false premise that sex offenders “often pose a high risk of engaging in sexual” reoffense, FSORNA 2018 expressly declares that registrants have a “reduced expectation of privacy” that warrants indiscriminate notification to protect the public. § 943.0435(12), Fla. Stat. As a result, law enforcement officers are authorized to post signs or distribute flyers in the registrant’s community, to go door-to-door to his neighbor’s’ homes to warn

them of his presence, to post notices on local television channels, to run pre-feature notices in local movie theaters, to send automated email and phone warnings, even to affix a decal to a registrant's license plate.

52. In addition, FSORNA 2018 requires local law enforcement officers to “verify the addresses” of registrants. § 943.0435(6), Fla. Stat. (2018). Law enforcement does this by dispatching contingents of uniformed police officers to registrants' homes to “verify” that they live there, regardless how long they have, in fact, lived there. If the registrant is not home, the police go to the homes of his neighbors, to ask whether they have seen him. Police officers engaged in such “notification” or “verification” are immune from civil liability for any damages in connection with these tasks. § 943.0435(10), Fla. Stat. (2018).

53. There is also an FDLE Internet website,³¹ which lists all registrants, posting their photos, qualifying offenses, addresses and other identifying information. In many states, the public must go to such a website to learn who is registered. In contrast, FDLE chose to Google-index its registry – a choice made by few other states – so that people searching a registrant's name for any other purpose will see his status before seeing anything else. Indeed, because Google gives priority to data from government websites, and because private Web “crawlers” vacuum up such data for re-publication on their websites, typing a registrant's

³¹ See §943.043(1), Fla. Stat. (2018) (“The department may notify the public through the Internet of any information regarding sexual predators and sexual offenders which is not confidential and exempt from public disclosure under § 119.07(1) and §24(a), Art. I of the State Constitution.”).

name into any large search engine may immediately yield page after page of the FDLE website, announcing the registrant's status and crime, and disclosing his current photo and address, criminal history, vehicle and vessel identification, date of birth, race, sex, hair color, eye color, height, weight, and any identifying marks such as scars, marks, or tattoos.

54.FSORNA 2018 also requires law enforcement to notify institutions of higher education that any registrant enrolled or employed, even for online classes, is a sex offender. § 944.607, Fla. Stat. (2018). There are no restrictions on these institutions' dissemination of this information.

55.Because the registrant is now required to register his Internet identifiers, law enforcement can follow where he goes online and what he says there. Law enforcement is authorized to notify the public that an identified username was registered by a sex offender. FDLE may also notify commercial social networking websites³² of a registrant's e-mail addresses and internet identifiers, so that those websites may screen or disable his access.³³ Like his corporeal identity, his virtual identity is, under FSORNA 2018, inseparable from his sex offense.

³² This 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." § 943.0437(1), Fla. Stat. (2018).

³³ § 943.0437(1), (2), (3), Fla. Stat. (2018).

56. Under FSORNA 2018, FDLE's aggressive notification scheme communicates to the public not only that the registrant once committed a sex crime, but also sends the message that he remains at high risk of committing another one. As discussed next, this communication is false: few registrants ever reoffend, while aggressive notification inflicts extreme economic and housing instability, and crushing social isolation, on the registrant and his family.

Empirical Evidence

Low risk of reoffense

58. Contrary to popular belief, convicted sex offenders have a far lower rate of recidivism than convicted felons generally. According to studies published by the United States government, an average of 5.3% of convicted sex offenders are arrested for reoffense within three years of release from prison, compared with 68% of convicted felons generally. Significantly, all convicted felons, including registrants, are at highest risk of reoffense during the first 3 years after release. But even the 5.3% reoffense rate overstates the average, because it comes from a study consisting of only adult, male, violent offenders released from prison, a higher-risk group than registrants generally, many of whom committed non-violent offenses, and, like John Doe 1, Jane Doe's brother and Jane Doe 2, were not sentenced to prison. Even among that study's subjects, the first-time offenders' rate of reoffense was only 3.3%. The risk that female registrants like Jane Doe will sexually reoffend is considerably lower even than

that: 1.8% within five years.

59. A registrant's reoffense risk is easily ascertainable. In particular, the Static-99R, a 10-item actuarial scale that measures individual risk, can be administered within less than twenty minutes, and is more accurate than clinical assessments. It is the most widely used sex offense risk assessment tool in the world, including in Florida, which requires risk assessments to determine the right of registrants on probation to contact visitation with minors, § 948.30(e), Fla. Stat. (2018), and to identify "high-risk" registrants on community supervision. § 948.061, Fla. Stat. (2018). In addition, clinical evaluations and a battery of psychological tests already in use in a variety of judicial settings in Florida can further individualize risk determinations.

60. Whatever risk a registrant presents on release from prison, it decreases with every year the registrant remains offense-free in the community, according to decades-long studies of large samples from around the world, including populations not subject to American-style registration statutes. After seventeen years offense-free in the community, even the highest-risk offenders, who comprise a small fraction of registrants generally, present virtually no risk of sexual reoffense.

61. Registrants like Jane Doe 2 are statutorily required, as a condition of probation, to undergo evaluation and intensive sex offender counseling. § 948.31, Fla. Stat. (2018). The counseling, for which the registrant must pay, *id.*, and

typically lasts for years, is conducted by persons who meet rigorous statutory criteria, § 948.001, Fla. Stat. (2018), and deploy polygraph tests designed to ensure their clients are not committing unreported offenses. These measures work as intended to further reduce a registrant's already-low risk of sexual reoffense. In fact, **95% of sex crime arrests are of people who have never been convicted of a sex offense, that is, people not on the registry.**

62. FSORNA, as originally enacted or as amended over the years, does not reduce whatever risk the registrant presents. A study conducted in Florida, comparing sexual reoffense rates in the eight years before and the eight years after FSORNA's original passage, found no statistically significant difference in those rates. These results are consistent with studies conducted in other states. These results are unsurprising: most registrants are highly unlikely to sexually reoffend, and those that do account for only a tiny percentage of sex crimes generally. In fact, empirical studies establish that aggressive notification, such as that authorized by FSORNA, can increase the risk of reoffense by creating barriers to community reintegration, employment and housing.

Punitive Impacts

63. Aggressive notification falsely stigmatizes registrants as inherently dangerous persons, leading to mass revulsion towards and rejection of them, with devastating housing, economic, civic and psychosocial effects on registrants and their families. Registrants and their partners have trouble finding and

keeping jobs. Landlords, condominium and housing associations do not want them as neighbors. They and their families are shamed, shunned, bullied, and ostracized. They are victimized by scammers pretending to be law enforcement officers who threaten and extort them. Their children are not invited to play dates and birthday parties; their teachers and classmates treat them with hostility; they cannot forge social ties. Worse yet, aggressive notification has led to numerous incidents of violence in Florida: vigilantes damage and deface registrants' property, threaten, attack, torture, even murder them.³⁴ Registrants and their families, including school-age children, suffer disproportionately high rates of depression and suicidality as a result of these impacts, impeding the registrant's efforts at rehabilitation, thereby subverting FSORNA's stated purpose.

64. A recent example of FSORNA's indiscriminately punitive impact is Amendment 4, on the state-wide ballot in November 2018. The amendment, which passed, proposed to restore voting rights to all convicted felons except murderers and sex offenders. As a practical matter, virtually all persons convicted of murder in Florida are in prison for life. So barring murderers from the polls is an empty gesture.

65. In contrast, many registrants, like Jane Doe's brother and Jane Doe 2, were

³⁴ See e.g., <https://twitter.com/hashtag/killyourlocalpedophile?src=hash>, a social media account that sells clothing and paraphernalia bearing this hashtag and other slogans intended to incite violence against registrants.

sentenced to probation, or John Doe 1, who was sentenced to a few weekends in jail followed by probation, because the prosecutor and sentencing judge reasonably determined that these were proportionate penalties for those offenses, and protected the public in light of these individuals' propensity to reoffend. There is no public safety interest in barring registrants from the polls, because children do not vote, and are unlikely to be present at polling locations unattended by an adult parent or legal guardian. The proposed amendment instead reflects the boundless animus inspired by FSORNA's false message that registrants are inherently dangerous persons to be quarantined from the herd.

Burdens of Registration Statute on Plaintiffs

66. **John Doe 1.** Doe 1, a victim of childhood abuse himself, committed his qualifying offense against his sister in 1989-1990 when both were minors. He has never committed another offense.

67. Doe 1, a computer consultant now 46 years old, is married. His wife became pregnant in 2018. In June 2019, two months before the due date, their baby stopped moving. Examination revealed that the baby had died. Doctors had to induce her delivery. Because the 2018 amendment redefined temporary residence from 5 days to 3 days in the aggregate per year, and because his wife needed him to be with her, they left the hospital on the third day instead of staying another night to avoid his having to make one or more in-person reports about his "temporary residence" in the hospital.

68. Doe 1 and his wife used to enjoy taking long weekends together, camping, hiking, kayaking, visiting friends and family elsewhere in the state. But the 2018 FSORNA revision appears to require him to report in person within 48 hours of leaving and returning from as few as 3 days away in the aggregate per year.³⁵ Furthermore, it takes Doe 1 half a day to make an in-person report, between driving to and from the sheriff's office and waiting in line while he's there, costing him money and inconveniencing his customers. Because in-person registration costs so much in time and money, and because he is not certain about the meaning of the statute's restrictions on travel and movement but is strictly liable for making a mistake, he, his wife and their child are chilled from taking such trips at all, particularly in view of the amendment's imposition of a mandatory-minimum penalty.

69. Doe 1 has now been on the registry more than half his life. He had two years of court-ordered sex offender counseling, several voice-stress analysis tests and at least one polygraph, after which he was released from court-ordered therapy. He was a minor when the offense was committed and has lived offense-free ever since. Exhaustive expert evaluation reveals that he poses virtually no risk of sexual reoffense. Therefore, applying the 2018 amendment to John Doe 1,

³⁵ He cannot be certain of this, as the provisions regulating travel – “48 hours,” “within 48 hours,” “secure or update,” “day” – are vague and ambiguous in context. Indeed, defendant's employees do not agree about the definition of “48 hours” or “within 48 hours” or “day” or “secure or update.” Pre-2018 FSORNA allowed 4 report-free travel days unconstrained by reporting burdens. The 2018 amendment allows only 2 travel days, forcing registrants to contend with its ambiguous terms if they are to exercise the right to travel for more than 2 days without violating the law.

which burdens his rights to intra- and interstate travel and to freedom of movement, and imposes a minimum-mandatory sentence for even an unwitting or unavoidable violation, does not serve any conceivable government interest.

70. **Jane Doe 1's brother.** Jane Doe's brother Johnny, who pled guilty to a qualifying offense in 1997, suffers from Intellectual Deficits (ID): he was diagnosed in early childhood, has an IQ between 53 and 65, and low adaptive skills.³⁶ Because of the severity of his deficits, Johnny is illiterate, despite good attendance in special education classes through the age of twenty. Johnny's most profound deficits are in memory and verbal processing. Because he cannot read or write, and cannot remember or process what he is told, he cannot register without someone else knowing the requirements and closely supervising his compliance. He has been arrested twice for failure to register, once in 2007 (the case was dismissed) and again in 2012, both times because his mother who supervised Johnny's compliance until her death in 2019, did not understand FSORNA's requirements.

71. In the 2012 case, he entered a plea and was sentenced to probation, which he violated because he was unable to understand or remember the technical requirements of GPS-monitoring. As a result, his probation was converted to community control, which was revoked for another GPS violation. He was jailed for many months before the affidavit of violation was withdrawn. A

³⁶ § 393.064(21), Fla. Stat.

widely-regarded expert in GPS-monitoring of sexual offenders, and a forensic psychologist with almost fifty years of experience have opined that Johnny's GPS violations were inadvertent and the product of his irremediable cognitive deficits. His guilty plea to the 2012 failure to register charge plea was later vacated, upon the Court's determination that his intellectual deficits rendered him irremediably incompetent to enter a plea.

72. Johnny's wife also has ID. Now that Johnny's mother is dead, she and Jane Doe 1 try to ensure his compliance with the vague and ever-changing requirements of registration. But just like Johnny's mother, his wife and sister do not understand the vague terms of the requirements. If they make a mistake about the requirements, Johnny is vulnerable to arrest, conviction and punishment for their unwitting failures.

73. Due to the 2018 amendments, Johnny is now subject to a minimum-mandatory sentence of 6 months on GPS-monitored probation in the event his wife or sister make a mistake about any one of the dozens of different affirmative registration obligations imposed on Johnny. As evidenced by his former failures with GPS-monitoring equipment, and expert opinions about the impact of his deficits on his ability to comply with GPS-monitoring, Johnny is virtually certain to violate the minimum-mandatory probationary sentence if convicted again for an unknowing failure to register. Although some jurisdictions provide relief from registration for people like Johnny, who pose virtually no risk of sexual reoffense and are incapable of compliance on his own, FSORNA 2018 admits of no

relief from strict compliance with the dozens of vague and ever-changing requirements or from the minimum-mandatory sentence for registrants like Johnny who are demonstrably incapable of handling GPS-monitoring equipment. FDLE provides no guidance to local law enforcement agencies about whether they should arrest a registrant for non-compliance in the event of incapacity and provides no guidance about what constitutes incapacity. Instead, it allows local law enforcement agencies to make their own determinations whether a registrant is incapacitated from compliance, and if so, whether to arrest a registrant for failure to comply arising from incapacity.

74. Under the 2018 amendment, however, a court has no discretion about sentencing someone incapacitated from compliance with the statute. It must impose the minimum-mandatory sentence, with which Johnny cannot comply, or send Johnny to prison. Like other people with severe cognitive deficits, he is particularly vulnerable to abuse and exploitation in prison. Exhaustive expert evaluation reveals that he poses virtually no risk of sexual reoffense. The application to Johnny of the 2018 amendment's minimum-mandatory sentence, where he cannot comply with the statute, cannot comply with GPS-monitored probation yet poses no risk of sexual reoffense, is cruelly irrational.

75. **John Doe 7.** Plaintiff John Doe 7 is subject to the lifetime registration requirements because of a qualifying offense against an adult female that occurred 27 years ago. He served 7 ½ years in prison, with no probation, and

was released 17 years ago. He has neither committed nor been arrested for any offense since then. Exhaustive clinical and actuarial testing reveals that he poses virtually no risk of reoffense.

76. Doe 7, a 53-year-old software engineer, has been married for 13 years. He and his wife have a daughter who is 12 years old. She attends public school and is now in the 6th grade.

77. Doe 7 is required to re-register in person at the Sheriff's Office four times a year and to make in-person reports within 48 hours of a multitude of mundane events. Transportation to and from the office takes approximately twenty minutes with an additional 20 minutes to one hour to make the in-person report once he gets there.

78. The 2018 amendment redefining "temporary residence" from 5 days to 3 has caused Doe 7 to forego work- and family-related travel in order to save the time away from work entailed in making one or more in-person reports for as little as a long weekend from home. He also fears arrest in the event of unavoidable travel-related delays, or a misunderstanding about the statute's travel-related provisions, in view of the 2018 minimum-mandatory sentence.

79. Doe 7 is uncertain when a "day" begins for the purpose of a 3-day trip, what 48 hours means, and when the 48 hours begins and ends with respect to reporting a 3-day trip. When FSORNA defined temporary residence as 5 days in the aggregate per year, he could cut one day off the allotted 5 to ensure against

arrest if he had misunderstood the meaning of “48 hours” or “day,” or if the sheriff’s office was closed when the 48 hours elapsed, or if he encountered unavoidable travel delays. Now that temporary residence is defined as 3 days, cutting a trip short by one day to accommodate these exigencies while expending the time entailed in making one or more in-person reports has deterred him from short-term travel. For example, in 2019, he scheduled a trip to Orlando with his family for 3 days and 4 nights. Then he changed his reservation to one day less to ensure against arrest in the event he misunderstood the terms restricting travel or encountered unavoidable delays, then cancelled it altogether to avoid having to make one or more in-person reports for such a short stay with so much uncertainty.

80. **Jane Doe 2.** Ms. Doe pled guilty on February 6, 2017 to having consensual sexual relations when she was 24 with someone under 18 in exchange for a sentence of 7 years’ probation, which was terminated early. She successfully completed sex offender treatment while on probation. Ms. Doe is herself the victim of sexual abuse: at age 4 she was molested by her uncle, at age 11 she was molested by her step-father then raped by her cousin. She suffered from depression throughout childhood, and was hospitalized twice for suicide attempts. She married at 14 after getting pregnant but lost her baby 8 weeks later. At 17, she gave birth to a daughter. At 21, she divorced her abusive alcoholic husband. She presently resides with her daughter, now 12 years old,

her second husband, whom she married in 2014, and their 3-year-old twins.

81. At the time of her qualifying offense, she was separated from her second husband, deeply depressed, and drinking to excess while taking prescribed psychotropic medication. After the offense, she and her husband reconciled. She is currently sober and in treatment for anxiety and depression. She has also been treated for thyroid disease and cervical cancer.

82. Notwithstanding severe childhood sexual abuse, depression and suicidality, marriage at 14 and childbirth at 17, Ms. Doe graduated high school, obtained an associate degree in law enforcement, became certified as a guard with the Department of Corrections, and got licensed as a CNA. She lost her certification and license due to her conviction. Her status as a sex offender has produced adverse impacts far more severe than conviction alone.

83. Due to her status as a sex offender, she is required to re-register in-person twice a year at the sheriff's office. Occasionally she has had to return the following day when the employee assigned to registration is busy. She has thus far had to make in-person reports 3 times in connection with 3 different vehicles. She will have to make in-person reports when she colors her hair, gains or loses weight, gets a fresh scar, or if she or her husband get a new car or rent one for 5 days. She has to miss work and lose wages to comply with the in-person reporting requirements. Because she is forced to miss work and wages when she makes in-person reports to the sheriff, and because she would have to make one or

more in-person reports of a temporary residence, Ms. Doe and her family must forego camping and fishing trips over long weekends for the rest of her life.

84. Furthermore, Ms. Doe 2 does not understand some of the terms used in FSORNA 2018's restrictions. She does not know whether 48 hours means 48 consecutive hours or 2 business days. She does not know the meaning of "day" for the purpose of the 2018 requirement to make an in-person report for as few as 3 days away from home, or when the 48-hour reporting requirement begins with respect to the third day from home. She does not know what it means to "secure" or "update" her license in connection with a "temporary residence." A mistake, even unwitting, could result in arrest and conviction for a third degree felony with a minimum-mandatory sentence.

85. Due to her status, Ms. Doe 2 has lost opportunities for managerial training, promotion and wage increases. Three job applications were rejected due to her status. Although she is a very hard worker with real initiative who needs to support her family, her status has consigned her to menial low-wage work like the job she has now, working more than 40 hours a week at \$8.56 an hour packing worms at a fishbait warehouse.

86. Ms. Doe has also been subjected to verbal abuse about her status and threats to beat her up and bomb her car. Right after the threat to her car, its tire was slashed. She has been harassed at her workplace while pregnant with her twins. This kind of harassment has occurred approximately four to five times a year

for the past four years. She lives in fear of violent vigilantism against her and her family as the result of her status.

87. By far the most adverse impact of her status has been her virtual banishment from her children's educational and recreational activities. When her 12-year-old daughter was in elementary school, Ms. Doe was not allowed on campus for parent-teacher conferences or sporting events. When Ms. Doe went to pick her daughter up, a school resource officer was assigned to monitor her until her daughter arrived at the front office. Her daughter is now in high school, staying late most days for sports, homework, or other activities. Ms. Doe is not allowed to pick her daughter up from after-school programs and is forced to pay someone else \$20.00/day to bring her daughter home. Ms. Doe 2 is prohibited from being present when her daughter participates in team sports, pep rallies and pageants. Her daughter is already in therapy for depression, and sad about her mother's exclusion from her school and after-school activities. Ms. Doe 2 will be similarly excluded from the school and after-school activities of her 3-year-old twins once they start kindergarten. This exclusion is not only hard on Ms. Doe. It injures her children at the time in their lives when they need her the most. Because her county's population is very small, and notification is aggressive, it is only a matter of time before her children are known for her status, resulting in ostracism, bullying, shunning, depression and suicidality, the fate of many registrants' children.

CLAIM I – Ex Post Facto

88. Plaintiffs allege that the 2018 amendments – redefining temporary residence from 5 days to 3 days in the aggregate per year and imposing a minimum-mandatory sentence for failure to register offenses – are penal in effect if not intent, violating the federal guarantee against ex post facto laws, under the multi-factor intent-effects test set forth in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963) and applied in *Smith v. Doe*, 538 U.S. 84 (2003). Here are the factors:

89. **Penal effects historically regarded as punishment.** Having to make at least one and as many as four in-person reports for as little as a long weekend away from home resembles probation, during which a probationer must inform his probation officer of plans to leave home. The application of a minimum-mandatory sentence to a failure to register offense is significantly more severe than probation. Technical probation requirements resemble FSORNA 2018 requirements in demanding compliance with dozens of affirmative obligations regardless of whether the conduct itself is harmful. But a probationer cannot be punished unless the state has established that the violation was willful and substantial. In contrast, FSORNA violations need not be willful or substantial: being even an hour late to make an in-person report now subjects registrants to a minimum-mandatory criminal sentence, regardless of why they were late.

90. **Affirmative disability or restraint.** In contrast with ASORA's requirement of

one in-person registration event followed by mailed-in annual updates, FSORNA 2018 requires Plaintiffs to report in person to the Sheriff's Office and Department of Highway Safety and Motor Vehicles (DHSMV) multiple times for as few as 3 days away from home. By comparison, a probationer need only call his probation officer before taking a comparable weekend trip.

91. Promotes the purpose of punishment. Although studies show no deterrent impact, FSORNA 2018 was enacted with the express **intent** to deter reoffense, based solely on a past crime, without regard to present risk, and imposes burdens that outpace its stated intent. In particular, the 2018 amendment requiring one or more in-person reports for as few as 3 days away from home and imposing a minimum mandatory sentence for even inadvertent and unknowing offenses, in the absence of any empirical evidence that the amendment reduces the risk of sexual reoffense or otherwise protects the public, gives rise to “serious argument that the ulterior purpose is to revisit past crimes, not prevent future ones.” *Smith*, 538 U.S. at 109, Souter, J., *concurring in judgment*.

92. No rational connection to non-punitive purpose. The absence of a rational connection to a non-punitive purpose is a “most significant” factor. *Smith*, 538 U.S. at 102-03. Significantly, the legislature advanced no purpose at all for redefining temporary residence from 5 days to 3 in the aggregate per year. It relied on no data or studies in redefining temporary residence. Indeed, the only

articulated impact of the amendment is to increase the number of prison beds.³⁷ There is no empirical evidence, nor conceivable basis to believe that redefining temporary residence from 5 days to 3 does anything to reduce sexual reoffense or to otherwise protect the public from sexual harm. There is no empirical evidence, nor conceivable basis to believe that imposing a minimum-mandatory sentence for trivial or inadvertent violations of the statute does anything to reduce sexual reoffense or otherwise protect the public from sexual harm. That is because there is no empirical basis to believe that people who violate the registration statute are more likely to reoffend sexually than people who do not violate the statute. Therefore, the imposition of a minimum-mandatory sentence for failure to register offenses does not deter sexual reoffense but serves only to increase the Does' peril in the event they inadvertently, unknowingly or involuntarily violate the statute.

93. Excessive in relation to non-penal purpose. Assuming *arguendo* some conceivably rational connection to a non-penal purpose, the 2018 amendment is grossly excessive in relation to it. Imposing formidable reporting burdens on short-term travel coupled with a minimum-mandatory sentence for even inadvertent or unavoidable violation of dozens of affirmative obligations, in the absence of any empirical basis or individualized determination of risk, is excessive with respect to whatever its objectives may be.

³⁷ <https://www.flsenate.gov/Session/Bill/2018/1301/Analyses/h1301e.JDC.PDF>, pp. 1, 9.

94. The severe penal effects of the 2018 amendment render it a punishment under the ex post facto clauses of the state and federal constitutions. Striking this amendment, on its face and/or as applied to Plaintiffs would ameliorate the harm.

CLAIM II – 14TH AMENDMENT: Procedural Due Process

Claim II(A) – Strict Liability for Registration Violation

95. Jane Doe 2 repeats and realleges all preceding paragraphs before the Claims for Relief Section, as if fully set forth herein.

96. Principles of procedural due process limit strict liability offenses to those where (1) the penalty available is slight; (2) the statute regulates inherently dangerous or potentially harmful conduct; and (3) a conviction does not result in a substantial stigma. FSORNA meets none of these requirements.

97. FSORNA 2018 is virtually strict liability: it allows of only one defense, lack of notice, and that for only a first failure to register, not for unknowing, inadvertent, or unavoidable failures to timely report in the future. In *State v. Giorgetti*, 868 So. 2d 512, 518-21 (Fla. 2004), the Florida Supreme Court recognized that the statute's silence about *mens rea* would violate due process as applied to a defendant who lacked notice of affirmative obligations with respect to inherently harmless conduct. Accordingly, the Florida Supreme Court implied a lack of notice defense to save the statute. Within months after *Giorgetti* issued, the legislature amended the statute to include a notice

requirement, but tightly circumscribed the defense by restricting it to registrants who had *never* received notice of the requirement to register. A failure to know or understand any subsequent amendment to the requirements is not a defense. Since *Giorgetti*, no court has recognized or implied any other defenses to violating the statute. Although defendant has maintained in these proceedings that lack of intent or impossibility are defenses, he has nevertheless insisted on his right to arrest the John Does if they fail to make timely in-person reports because their respective sheriff's offices were closed when the 48 hours elapsed. DE 178, p.7. Significantly, defendant has never apprised local law enforcement agencies about these alleged defenses. Instead, he leaves it up to local police to decide whether to arrest someone who inadvertently or unavoidably violates the statute.

98. The penalties provided for even inadvertent violations like those are not slight: a minimum of six months' GPS-monitored probation, a maximum of five years in prison. The conduct regulated through registration is not inherently dangerous: it includes traveling for a long weekend without making one or more in-person reports, or making an in-person report an hour late, or having non-registered cars parked outside one's home for 5 days, or carrying a non-branded driver's license, or failing to timely report a fresh scar.

99. Because FSORNA 2018 imposes mandatory criminal punishment for even unwitting or inadvertent failure to meet multiple affirmative obligations

concerning innocent harmless conduct, it violates procedural due process, on its face and/or as applied to Jane Doe 2. This Court's determination of this issue in favor of Jane Doe 2 would ameliorate this constitutional injury.

Claim II (B) – Vagueness: Travel Restrictions

100. Plaintiff Jane Doe 2 repeats and realleges all preceding paragraphs before the Claims for Relief Section, as if fully set forth herein.

101. A law so vague that it fails to give ordinary people fair notice of the conduct it punishes or so standardless that it invites arbitrary enforcement violates the procedural due process clause. FSORNA 2018 laws requiring in-person reporting to the sheriff or DHSMV within 48 hours of trivial events, including brief stays from home, are vague in violation of the due process clause. Jane Doe 2 does not understand the meaning of the words and phrases identified in paragraphs 38 - 47. Defendant and his employees cannot agree about what they mean. Defendant allows local law enforcement officers to interpret these words and phrases however they see fit, leading to arbitrary enforcement of these provisions. Pre-enforcement review of a vague criminal law is appropriate where the vagueness chills constitutionally protected conduct, such as freedom of movement or of interstate and intrastate travel. In particular, when vagueness permeates the text of a criminal law that 1) contains no *mens rea* requirement and 2) infringes on constitutionally protected rights, pre-enforcement review of a facial vagueness challenge is necessary.

102. As set forth in ¶¶38-47, FSORNA's provisions restricting travel are hopelessly

vague and ambiguous, but are enforced with strict liability and mandatory criminal sanctions, chilling Jane Doe 2 from exercising her fundamental rights to interstate and intrastate travel, and to freedom of movement. Striking these provisions now on their face and/or as applied to Jane Doe 2, who poses no risk of reoffense would immediately ameliorate this constitutional harm.

CLAIM III – 14th AMENDMENT: Substantive Due Process

Claim III(A) – Right to Travel/Freedom of Movement under Federal and State Constitutions

103.Plaintiffs repeat and reallege all preceding paragraphs before the Claims for Relief Section, as if fully set forth herein.

104.Plaintiffs have a fundamental federal right to interstate travel³⁸ and freedom of movement³⁹, and a fundamental state right to intrastate travel⁴⁰ and freedom of movement.⁴¹ This right is abridged by the requirement to report in- person to one or two different offices within 48 hours of leaving and/or returning from as few as three days away in the aggregate per year.

105.Before burdening a fundamental liberty interest, the government must show that the burden is necessary to achieve a compelling public purpose. The

³⁸ *United States v. Guest*, 383 U.S. 745, 758 (1966); *Saenz v. Roe*, 526 U.S. 489, 498 (1999); *Kolender v. Lawson*, 461 U.S. 352, 358 (1983); *Shapiro v. Thompson*, 394 U.S. 618, 638 (1969).

³⁹ *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Aptheker v. Sec’y of State*, 378 U.S. 500, 520 (1964); *Edelman v. Jordan*, 415 U.S. 651 (1974); *Kolender v. Lawson*, 461 U.S. at 358.

⁴⁰ *State v. J.P.*, 907 So. 2d 1101, 1113 (Fla. 2004); *T.M. v. State*, 784 So. 2d 442, 444 (Fla. 2001).

⁴¹ *Powell v. Holt*, 850 So. 2d 474, 480 (Fla. 2003).

government cannot meet this burden here. With respect to the 2018 amendment, defendant has no articulable, empirically-supported or even conceivable reason to believe that changing the definition of “temporary residence” from 5 days to 3 days with a minimum-mandatory penalty reduces a registrant’s risk of sexual reoffense or protects the public in any way. While the government’s interest in protecting the public from crime is compelling, this measure does not advance that interest. On the other hand, redefining temporary residence from 5 days to 3, and imposing a minimum mandatory sentence for even inadvertent or unavoidable failures to make one or more in-person reports within 48 hours of a long weekend from home constitutes a staggering burden on plaintiffs’ fundamental rights. Striking these restrictions, on their face and/or as applied to all Plaintiffs, will ameliorate this harm.

106. Jane Doe 2 also challenges pre-2018 restrictions on travel: the requirement to make one or more in-person reports, the chilling vagueness of the words and phrases contained in the travel-related provisions, and felony liability for even inadvertent or unavoidable delays in making these multiple in-person reports. Each report costs her time from work and wages. As a female registrant, she poses a trivial risk of reoffense, a risk that declines with each year at liberty in the community. Defendant has no empirical basis to believe that requiring her to make multiple in-person reports about travel from home reduces her risk of sexual reoffense or protects the public in any way. Without an individualized

determination of risk, defendant has no legitimate, let alone compelling reason to burden her fundamental rights to travel and freedom of movement, especially as applied to someone whose young family will bear the burden as well. Striking these requirements, on their face and/or as applied to Jane Doe 2, will ameliorate this harm.

Claim IV(B) – Stigma-Plus

107. Jane Doe 2 repeats and realleges all preceding paragraphs before the Claims for Relief Section, as if fully set forth herein.

108. The substantive due process clause protects individuals from governmental actions that are arbitrary and unreasonable in impairing individual liberty. FSORNA inflicts stigma-plus, a fundamental liberty interest that the government may not impair unless necessary to serve a compelling government objective. A stigma is “[a] mark or token of infamy, disgrace, or reproach.”⁴² To rise to stigma-plus, it must be coupled with “more tangible interests such as employment,” or altered legal status.⁴³ Striking these requirements, on their face and/or as applied to Jane Doe 2, will ameliorate this harm.

109. FSORNA meets that test. It stigmatizes registrants through aggressive notification, impairing their economic and housing opportunities, as well as the safety and security of their families. And it alters their legal status by subjecting

⁴² *State v. Robinson*, 873 So. 2d 1205, 1213 n.7 (Fla. 2004), quoting *American Heritage Dictionary of the English Language* 1702 (4th ed. 2000).

⁴³ *State v. Robinson*, 873 So. 2d at 1213, n.74, citing *Paul v. Davis*, 24 U.S. 693, 701, 708-09 (1976).

them to a lifetime of mandatory punishments for a plethora of unwitting mis-steps.

110. Due to the stigma of the label “sex offender” and as a result of aggressive notification of her status, Jane Doe has been victimized by harassment and threats 4 to 5 times a year, even in her workplace. She is aware of violent vigilantism against registrants in Florida, and fears for herself and her family. She knows that eventually her children will be stigmatized by her status, and will suffer the impacts – ostracism, hostility, exclusion leading to depression and suicidality – common among registrants’ children.

111. Anchored in demonstrably false assumptions about recidivism and demonstrably failing in its stated purpose to protect the public, FSORNA cannot survive heightened scrutiny, on its face and/or as applied to Jane Doe 2, who demonstrably represents virtually no risk of reoffense, in violation of her rights to substantive due process.

Claim III (C) – No Rational Relationship as Applied to Jane Doe 2

112. Jane Doe 2 repeats and realleges all preceding paragraphs before the Claims for Relief Section, as if fully set forth herein.

113. In the absence of a fundamental liberty interest, substantive due process requires that a statute bear a rational relationship to a permissible legislative objective, that it not be arbitrary, capricious or oppressive. FSORNA fails to satisfy even this indulgent standard of scrutiny, because it is anchored in false

assumptions about risk, and its means fail to mitigate whatever risk there is. Indeed, empirical evidence establishes that the considerable burdens of FSORNA, in particular its aggressive notification, tend to increase rather than decrease the risk of sexual reoffense.

114. Even if the assumptions about categorical and intractable risk were reasonable, which they are not, they are unreasonable as applied to Jane Doe 2, who poses a trivial risk of reoffense and is suffering under the severe constraints of the statute. In the absence of an individualized risk assessment, burdening her with FSORNA's increasingly oppressive affirmative obligations is cruelly irrational. Accordingly, there is no rational relationship between FSORNA's goals and its means, on its face and/or as applied to Jane Doe 2, in violation of her rights to substantive due process. Striking these requirements, on their face and/or as applied to Jane Doe 2, will ameliorate this harm.

Claim III (D) – Irrebuttable Presumption

115. Jane Doe 2 repeats and realleges all preceding paragraphs before the Claims for Relief Section, as if fully set forth herein.

116. FSORNA does not require or even permit individualized assessments to determine a registrant's risk of reoffense before requiring registration. Nor does it offer registrants like Jane Doe 2 an opportunity to present evidence that her risk of sexual reoffense, consistent with scientific consensus, was extremely low when she re-entered the community and will diminish in every year

thereafter. Instead, FSORNA irrebuttably presumes that those who commit qualifying offenses present a high risk of reoffense for the rest of their lives regardless of how easily their real risk of reoffense may be ascertained.

117. The constitutionality of an irrebuttable presumption turns on the “adequacy of the ‘fit’ between the classification and the policy that the classification serves,” where as here the classification and policy infringe on fundamental rights. *See Michael H. v. Gerald D.*, 491 U.S. 110, 121 (1989). The rationale for FSORNA’s irrebuttable presumption, that sex offenders reoffend at very high rates for the rest of their lives – is rebutted by the empirical evidence, especially as applied to woman’s risk of reoffense. Moreover, the presumption as applied to any individual registrant, including Jane Doe 2, can be readily rebutted by risk assessment instruments used in Florida in other contexts. The state can have no legitimate interest in applying an erroneous and disabling yet irrebuttable presumption to registrants like Jane Doe 2, who pose no threat to the public. There is, at best, an inadequate “fit” between the classification and the public interest it purports to serve, violating the substantive due process clause as applied to Jane Doe 2. Striking FSORNA on its face and/or as applied to her would redress this constitutional harm.

CLAIM V – State Constitutional Right to Privacy

115. Jane Doe 2 repeats and realleges all preceding paragraphs before the Claims for Relief Section, as if fully set forth herein.

116. Art. I, § 23, Fla. Const. expressly provides for a right to privacy, which includes disclosural privacy: “Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life.” Aggressive public dissemination through the Florida registry and community notification procedures, of a registrant’s name, home address, photograph, identifying marks, place of employment, contact information, vehicles owned or parked outside his home, etc. – information to which she has a reasonable expectation of privacy – infringes on her state constitutional right to disclosural privacy. Indiscriminate and public disclosure of this information has subjected her to harassment, ostracism, shaming, shunning, and threats of harm to her person and her property. Before the government can infringe on rights protected under Art. I, § 23, it must present a compelling justification and an absence of less restrictive means for doing so. Because Jane Doe 2 represents virtually no risk of sexual reoffense and the public disclosure of her private information does not reduce whatever risk there is, FSORNA’s public notification provisions violate Art. I, § 23, on its face and as applied to Jane Doe 2. Furthermore, because the state right to privacy is enumerated, it is fundamental. Because the government cannot meet its burden to present a compelling justification for infringing upon this fundamental right, aggressive public notification also violates substantive due process, pursuant to Art I, § 9, Fla. Const., on its face and as applied to Jane Doe 2. *See Doe v. State of Alaska, Department of Public Safety*, 444 P.3d 116

(Alaska 2019) (registration statute violated state's enumerated privacy provision under strict substantive due process analysis based in part on increasing harassment and violence against registrants). Striking these requirements, on their face and/or as applied to Jane Doe 2, will ameliorate this harm.

REQUEST FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request that the Court:

Declare the 2018 amendment to Fla. Stat. § 943.0435, Fla. Stat. (2018) unconstitutional, facially and/or as applied to them, in violation of the Fifth, Eighth and Fourteenth Amendments to the United States Constitution and Article I, §§ 9 and 23 of the Florida Constitution.

Declare Fla. Stat. s. 943.0435, Fla. Stat. (2018) unconstitutional, facially and/or as applied to Jane Doe 2.

Permanently restrain and enjoin the Defendant, including all of Defendant's officers, agents, servants, employees, attorneys, and other persons in active concert or participation with Defendant, from enforcing the 2018 amendment to Fla. Stat. § 943.0435, Fla. Stat. (2018), against all Plaintiffs.

Permanently restrain and enjoin the Defendant, including all of Defendant's officers, agents, servants, employees, attorneys and other persons in active concert or participation with Defendant, from enforcing Fla. Stat. s. 943.0435 against Jane Doe 2.

Award Plaintiffs their attorneys' fees and expenses in this action pursuant to 42 U.S.C. § 1988(b).

Award Plaintiffs their costs of suit.

Grant such other and further relief as this Court deems just and proper in the circumstances.

Respectfully submitted,

s/Valerie Jonas

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Fax: 754-263-4147
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed today, January __, 2021, 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 notification for this case, including all opposing counsel.

By:
Todd G. Scher
TODD G. SCHER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

_____)	
JOHN DOE 1, JOHN DOE 7,)	
JANE DOE 1 and JANE DOE 2,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Case No. 18-24145-CV-KMW
)	
)	
RICHARD L. SWEARINGEN,)	
)	
<i>Defendant.</i>)	
_____)	

DECLARATION OF JANE DOE 1

My name is Jane Doe 1. I have reviewed the Third Amended Verified Complaint set forth in the above matter and I find that the facts contained therein which pertain to me to be true and accurate to the best of my knowledge and belief.

I understand that a false statement in this declaration will subject me to penalties for perjury.

By: /s/ Jane Doe 1

Dated: January 25, 2021

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

)	
JOHN DOE 1, JOHN DOE 7,)	
JANE DOE 1 and JANE DOE 2,)	
<i>Plaintiffs,</i>)	
v.)	Civil Case No. 18-24145-CV-KMW
)	
RICHARD L. SWEARINGEN,)	
<i>Defendant.</i>)	

DECLARATION OF JANE DOE 2

My name is Jane Doe 2. I have reviewed the Third Amended Verified Complaint set forth in the above matter and I find that the facts contained therein which pertain to me to be true and accurate to the best of my knowledge and belief.

I understand that a false statement in this declaration will subject me to penalties for perjury.

By: /s/ Jane Doe 2

Dated: January 25, 2021

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

)	
JOHN DOE 1, JOHN DOE 7,)	
JANE DOE 1 and JANE DOE 2,)	
)	
<i>Plaintiffs,</i>)	
)	
v.)	Civil Case No. 18-24145-CV-KMW
)	
)	
RICHARD L. SWEARINGEN,)	
)	
<i>Defendant.</i>)	
)	

DECLARATION OF JOHN DOE 1

My name is John Doe 1. I have reviewed the Third Amended Verified Complaint set forth in the above matter and I find that the facts contained therein which pertain to me to be true and accurate to the best of my knowledge and belief.

I understand that a false statement in this declaration will subject me to penalties for perjury.

By: /s/ John Doe 1

Dated: January 25, 2021

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

**JOHN DOE 1, JOHN DOE 7,
JANE DOE 1 and JANE DOE 2,**

Plaintiffs,

v.

RICHARD L. SWEARINGEN,

Defendant.

)
)
)
)
)
) **Civil Case No. 18-24145-CV-KMW**
)
)
)
)
)

DECLARATION OF JOHN DOE 7

My name is John Doe 7. I have reviewed the Third Amended Verified Complaint set forth in the above matter and I find that the facts contained therein which pertain to me to be true and accurate to the best of my knowledge and belief.

I understand that a false statement in this declaration will subject me to penalties for perjury.

By: /s/ John Doe 7

Dated: January 25, 2021

Appendix

Timeline of Amendments to Florida Statute 943.0435

1997: Florida Statute 943.0435 enacted

943.0435 Sex offenders required to report to the department; penalty.--

[Qualifying Offenses]

(1) As used in this section, the term:

(a) "Sex offender" means a person who has been:

- 1.** Convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or analogous offenses in another jurisdiction: s. 787.025, chapter 794, s. 796.03, s. 800.04, s. 827.071, s. 847.0133, s. 847.0135, s. 847.0145, or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.
- 2.** Released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in subparagraph 1. For purposes of subparagraph 1., a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

[Definitions]

(b) "Convicted" means the person has been determined guilty as a result of a plea or a trial, regardless of whether adjudication is withheld.

[Reporting Requirements, Personal Identification Information, Definitions]

(2) A sex offender shall initially report in person at an office of the department, or at the sheriff's office in the county in which the offender permanently or temporarily resides, within 48 hours after establishing permanent or temporary residence in this state. A sex offender permanently resides in this state if the offender abides, lodges, or resides in a place for more than 2 consecutive weeks. A sex offender temporarily resides in this state if the offender abides, lodges, or resides in a place for 2 consecutive weeks or less, excluding a stay of 2 consecutive weeks or less at a different residence due to a vacation or an emergency or special circumstance that requires the sex offender to leave his or her place of permanent or temporary residence for 2 weeks or less. The sex offender shall provide his or her name, date of birth, race, sex, height, weight, hair and eye color, tattoos or other identifying marks, address of permanent or legal

residence, or address of any current temporary residence, date and place of each conviction, and a brief description of the crime or crimes committed by the offender. If a sex offender reports at the sheriff's office, the sheriff shall take a photograph and a set of fingerprints of the offender and forward the photographs and fingerprints to the department, along with the information provided by the sex offender.

[Reporting Requirements]

(3) Subsequent to the initial report required under subsection (2), a sex offender shall report in person at a driver's license office of the Department of Highway Safety and Motor Vehicles within 48 hours after any change in the offender's permanent or temporary residence. At the driver's license office the sex offender shall:

- (a) If otherwise qualified, secure a Florida driver's license, renew a Florida driver's license, or secure an identification card. The sex offender shall identify himself or herself as a sex offender who is required to comply with this section. The sex offender shall provide any of the information specified in subsection (2), if requested. The sex offender shall submit to the taking of a photograph for use in issuing a driver's license, renewed license, or identification card, and for use by the department in maintaining current records of sex offenders.
- (b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver's license or identification card as required by this section.
- (c) Provide, upon request, any additional information necessary to confirm the identity of the sex offender, including a set of fingerprints.

[Reporting Requirements]

(4) Each time a sex offender's driver's license or identification card is subject to renewal, the offender shall report in person to a driver's license office, regardless of whether the offender's residence has changed, and shall be subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sex offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles is authorized to release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in ss. 943.043, 943.0435, and 944.606.

(5) This section does not apply to a sex offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.

[Penalty for Failure to Comply]

(6) A sex offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

[Immunity]

(7) The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, and the personnel of those departments are immune from civil liability for damages for good faith compliance with the requirements of this section, and shall be presumed to have acted in good faith in compiling, recording, and reporting information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, or the personnel of those departments in compiling or providing information, or if information is incomplete or incorrect because a sex offender fails to report or falsely reports his or her current place of permanent or temporary residence.

History.--s. 8, ch. 97-299.

1998:

Qualifying Offenses Expanded

-Fla. Stat. 943.0435(1)(a): Added s.787.01 (Kidnapping) or s.787.02 (False Imprisonment), where the victim is a minor and the defendant is not the victim's parent; 825.1025 (Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person).

-Fla. Stat. 943.0435 (1)(b) : Expanded definition of "convicted" to include "entry of a plea of guilty or nolo contendere" and to encompass convictions of similar offenses in US Armed Forces and in any state of the United States.

Definitions Added

-Fla. Stat. 943.0435 (1)(c): Permanent and temporary residence as in 775.21

-Added Fla. Stat. 775.21(f) "Permanent residence" means a place where the person abides, lodges, or resides for 14 or more consecutive days.

-Added Fla. Stat. 775.21 (g) "Temporary residence" means a place where the person abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not the person's permanent address; for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state; or a place where

the person routinely abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the person's permanent residence.

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2): Social security number, occupation and place of employment, rural route address and a post office box, post office box cannot be used in lieu of physical residential address, written notice of vehicle identification number, license tag number, registration number, a description including color scheme, hull identification number, manufacturer's serial number, name of vessel, registration number and description including color scheme.

Added Reporting Requirements

-Fla. Stat. 943.0435 (3): After initial report to sheriff's office required under subsection (2), registrant must report in person within 48 hours to the license office of the Department of Highway Safety Motor Vehicles ("DHSMV").

-Fla. Stat. 943.0435 (3)(a): Added that registrant shall provide proof to the DHSMV that the registrant initially reported in person to the sheriff's office as required in Paragraph (2).

-Fla. Stat. 943.0435 (4): Registrant must report in person to a driver's license office within 48 hours after any change in registrant's permanent or temporary residence.

-Fla. Stat. 943.0435 (6): The department ("FDLE") shall verify the addresses of registrants.

-Added Fla. Stat. 943.0435 (7): A registrant who intends to move out of Florida shall notify county sheriff or department within 48 hours before registrant intends to leave.

-Added Fla. Stat. 943.0435 (8): If registrant changes mind about leaving Florida, then must notify the prior agency to whom the registrant reported to within 48 hours after the registrant would have left Florida. Failure to comply is a second-degree felony.

-Added Fla. Stat. 943.0435 (10): Added paragraph granting immunity from civil liability.

Public Notification Expanded via Inter-related Statutes

-Fla. Stat. 943.043: Toll-free telephone number; Internet notification; sexual predator and sexual offender information.--

(1) The department may notify the public through the Internet of any information regarding sexual predators and sexual offenders which is not confidential and exempt from public disclosure under s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

-Fla. Stat. 944.606 (d): “Upon receiving information regarding a sexual offender from the [D]epartment [of Corrections], the Department of Law Enforcement, the sheriff or the chief of police shall provide the information described in subparagraph (a)1. to any individual who requests such information and may release the information to the public in any manner deemed appropriate, unless the information so received is confidential or exempt from s.119.07(1) and s. 24(a), Art. I of the State Constitution.”

Lifetime Registration Requirement and Removal Petition Added

-Added Fla. Stat. 943.0435 (11): A registrant must maintain registration with the department for the duration of his or her life, unless the registrant has had his or her civil rights restored or has received a full pardon or has had a conviction set aside in a post-conviction proceeding for any felony sex offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a registrant who has been lawfully released for at least 20 years and has not been arrested for any felony or misdemeanor offense since release may petition for the purpose of removing the requirement for registration as a sexual offender.

2000:

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2): Reporting any residence within Florida or out of state.

Added Reporting Requirements

-Fla. Stat. 943.0435 (4): Registrant must report in person to a driver’s license office within 48 hours after any change in registrant’s name by reason of marriage or other legal process.

Public Notification Expanded

-Fla. Stat. 943.0435 (6): County and local law enforcement agencies shall verify the addresses of sexual offenders in a manner that is consistent with the provisions of the federal Jacob Wetterling Act, as amended, and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state.

Immunity Expanded

-Fla. Stat. 943.0435 (10) Added to the list of those granted civil immunity: any law enforcement agency in this state and elected or appointed official, public employee, and school administrator.

Lifetime Registration Requirement and Removal Petition Added

-Fla. Stat. 943.0435 (11)(b): A registrant may petition for removal if he or she was 18 years of age or under at the time the offense was committed, adjudication was withheld, who has had 10 years elapse since having been placed on probation, and has not been arrested for any felony or misdemeanor offense since release.

2002:

Expanded Qualifying Offenses and Persons Subject to Registration

-Fla. Stat. 943.0435 (1)(a)1: s. 847.0137 (Transmission of pornography by electronic device or equipment prohibited); s. 847.0138 (Transmission of material harmful to minors by electronic device or equipment prohibited).

-Fla. Stat. 943.0435 (1)(a)3: Persons subject to registration in another state or jurisdiction but not designated as a registrant in Florida.

-Fla. Stat. 943.0435 (1)(a)4: Anyone who is in the custody, control or supervision of any other state or jurisdiction for convictions of the offenses listed in subsection (1)(a)1.

Definitions Added

-Fla. Stat. 943.0435 (1)(d): “‘Institution of higher education’ means a community college, college, state university, or independent postsecondary institution.”

-Fla. Stat. 943.0435 (1)(e): “‘Change in enrollment or employment status’ means the commencement or termination of enrollment or employment or a change in location of enrollment or employment.”

Personal Identification Information and Reporting Requirements Expanded

-Added Fla. Stat. 943.0435 (2)(b)2: Requiring reporting in person within 48 hours after any change in enrollment or employment status, and that the registrant shall report the name, department, address, county, campus, and the registrant’s enrollment or

employment status for any vocation at an institution of higher education in this state. The sheriff shall promptly notify each institution of the registrant's presence and any change in the registrant's enrollment or employment status.

Expanded Lifetime Registration Requirement and Restrictions on Removal Petition by Juvenile Registrants

-Fla. Stat. 943.0435 (11)(b): Restricting ability to petition for removal by registrants who were minors upon conviction unless victim is 12 years of age or older.

-Added Fla. Stat. 943.0435 (11)(c): Persons subject to registration in another state, but not designated in Florida, who establish a residence (even temporary) in Florida must remain on Florida's registry for life. To be removed from the registry, the person must establish not only that his out-of-state designation has been legally removed by the other state, but that h/she no longer meets the criteria for registration as a sex offender under Florida law.

Legislative Intent Added

-Fla. Stat. 943.0435 (12): Florida legislature finds registrants pose a high risk of recidivism and that registrants have a reduced expectation of privacy because of public interest of public safety, and releasing information on registrants to law enforcement agencies and to public upon request. "The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes."

2004:

Added Reporting Requirements for Changes in Residence and Penalty for Failure to Comply

-Added Fla. Stat. 943.0435 (4)(b): Registrant shall report in person within 48 hours to sheriff's office after vacating a permanent residence and failing to establish a new permanent or temporary residence, and update all personal identification information required to be provided in Fla. Stat. 943.0435 (2)(b); the registrant must provide an address for the residence or other location that he/she is or will be occupying.

-Added Fla. Stat. 943.0435 (4)(c): A registrant who remains at a permanent residence after reporting intent to vacate it must report in person within 48 hours to the sheriff's office. Failure to report is a second-degree felony.

Prosecution and Strict Liability for Failure to Register

-Added Fla. Stat. 943.0435 (9)(b): Registrant may be prosecuted for any act or omission of this section in the county where the act or omission was committed, the county registrant last registered, or the county in which the original qualifying sexual offender conviction occurred.

-Added Fla. Stat. 943.0435 (9)(c): An arrest on charges of failure to register when the offender has been notified of his or her registration requirements, the service of an information or complaint for a violation of this section constitutes actual notice of duty to register. A registrant cannot assert in subsequent prosecution an affirmative defense of a lack of notice.

-Added Fla. Stat. 943.0435 (9)(d): Registration following arrest, service, or arraignment is not a defense.

2005:

Semi-Annual Re-registration Imposed

-Added Fla. Stat. 943.0435 (14): Registrant must report in person each year during birthday month and six months after birth month to sheriff's office. Re-registration shall include any changes to the personal identification information required at initial registration as listed in Fla. Stat. 943.0435 (14)(a)1, (14)(a)2, (14)(a)3, (14)(a)4.

Criminal Penalties for Failure to Re-register and to Respond to Address Verification Correspondence

-Fla. Stat. 943.0435 (14)(a)4: Any registrant who fails to semi-annually re-register in person at the sheriff's office, or fails to respond to any address verification correspondence from FDLE within three weeks constitutes a third-degree felony.

2007:

Expanded Qualifying Offenses and Juvenile Offenders Subject to Registration

-Fla. Stat. 943.0435 (1)(a)1: Added 794.05 ("Unlawful sexual activity with certain minors").

-Added Fla. Stat. 943.0435 (1)(d): A juvenile who was 14 years old or older at the time of their offense and has been adjudicated delinquent for committing, or attempting,

soliciting, or conspiring to commit, enumerated offenses in this state or similar offenses in another jurisdiction qualifies as a sexual offender.

Definitions Added

-Added Fla. Stat. 943.0435 (1)(f): “Email address” definition as provided in Fla. Stat. 668.602(6) means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

-Added Fla. Stat. 943.0435(1)(g): Instant message name means an identifier that allows a person to communicate in real time with another person using the Internet.

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2)(a): Added email address and instant message name

-Fla. Stat. 943.0435 (2)(b): Added email address and instant message name

Added Reporting Requirements

-Added Fla. Stat. 943.0435 (4)(d): Must register any email address or instant message name with FDLE prior to using them on or after October 1, 2007. FDLE to establish online system for securely updating this information.

-Added Fla. Stat. 943.0435(3): The face of the registrant’s driver’s license or identification card must have the marking "943.0435, F.S.”

Re-Registration Requirements Imposed Quarterly on Certain Registrants

-Fla. Stat. 943.0435 (14)(a),(b): Registrants convicted of certain offenses in Florida or similar offenses in other jurisdictions required to re-register in person at the sheriff’s office every 3 months for life.

Ability to Petition for Removal from Lifetime Registration: Denial and Constraint

-Fla. Stat. 943.0435 (11)(a)1. a.-g. Registrants permanently prohibited from filing for petition for removal from lifetime registration where their requirement to register was based upon an adult conviction of certain enumerated offenses.

-Fla. Stat. 943.0435 (11)(a)1: Period before otherwise qualified registrants may seek removal from lifetime registration increased from 20 years to “at least 25 years.”

2009:

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2)(b): Added home telephone number and any cellphone number

2010:

Definitions Added

-Fla. Stat. 943.0435 (1)(c), incorporating s. 775.21: “Transient residence” means a place or county where a person lives, remains, or is located for a period of 5 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 the person sleeps or seeks shelter and a location that has no specific street address.

Reporting Requirements Expanded

-Fla. Stat. 943.0435 (2)(a): Reporting in person at sheriff’s office within 48 hours transient residence within Florida, address, location or description, and dates of any current or known future temporary residence within Florida or out-of-state.

-Fla. Stat. 943.0435 (4)(b): A registrant who vacates a transient residence and fails to establish or maintain another residence must, within 48 hours after vacating transient residence, report in person to the sheriff’s office and update all registration information. Transient registrant “must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.”

-Fla. Stat. 943.0435 (4)(c): A transient registrant who remains at a transient residence after reporting an intent to vacate it shall, within 48 hours after that reporting, report in person to the agency for the purpose of reporting his or her transient address. A transient who reports an intent to vacate his or her residence but fails to make a report that he or she has not changed his or her transient residence is guilty of a second-degree felony.

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2)(b): Transient residence address.

2012:

Qualifying Offenses Expanded

-Fla. Stat. 943.0435 (1)(a)a.(I): Added 810.145(8) Video Voyeurism; and s. 787.06(3)(b), (d), (f), (g), or (h) Human Trafficking.

2013:

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2)(b): Fingerprints and photograph.

2014:

Qualifying Offenses Expanded

-Fla. Stat. 943.0435 (1)(a)1. a. (I): Added s. 393.135(2) Sexual Misconduct with an Individual with a Developmental Disability; s. 394.4593(2) Sexual Misconduct with a Patient; s. 916.1075(2) Mentally Ill and Intellectually Disabled Defendants; Sexual Misconduct Prohibited.

Definitions Added

-Fla. Stat. 943.0435 (1)(a)(2)(g): Incorporating s. 775.21(i) “‘Internet identifier’ means 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).”

-Fla. Stat. 943.0435 (1)(a)(2)(h): Incorporating s. 775.21(n) “‘Vehicles owned’ means any motor vehicle as defined in s. 320.01, which is registered, coregistered, leased, titled, or rented by a sexual predator or sexual offender; a rented vehicle that a sexual predator or sexual offender is authorized to drive; or a vehicle for which a sexual predator or sexual offender is insured as a driver. The term also includes any motor vehicle as defined in s. 320.01, which is registered, coregistered, leased, titled, or rented by a person or persons residing at a sexual predator’s or sexual offender’s permanent residence for 5 or more consecutive days.”

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2)(b): Palm prints and make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; all Internet identifiers; production of passport and documentation of immigration status; information regarding any professional licenses.

-Fla. Stat. 943.0435 (2)(b)2: Volunteer status

-Added Fla. Stat. 943.0435 (2)(c): Registrant to “[p]rovide any other information determined necessary by the department, including criminal and corrections records; non-privileged personnel and treatment records; and evidentiary genetic markers, when available.”

-Fla. Stat. 943.0435 (14)(c)(1): For reregistration: Added tattoos or other identifying marks; email addresses or Internet identifiers; vehicle identification number (VIN); palm prints; production of passport; if an alien, shall produce documents establishing his or her immigration status; information regarding any professional licenses.

-Fla. Stat. 943.0435 (14)(c)(2): Name, address, county of each institution and campus attended where registrant volunteers.

Reporting Requirements Expanded

-Fla. Stat. 943.0435 (2)(b)2: Volunteer status must be reported in person to sheriff’s office within 48 hours after any change.

-Added Fla. Stat. 943.0435 (2)(b)3: Registrant shall report in person to sheriff’s office within 48 hours after any change in vehicles owned.

-Added Fla. Stat. 943.0435(4)(b)(2): Transient registrant must report in person within 48 hours after establishing a transient residence and thereafter must report in person every 30 days. Must provide addresses and locations of transient residence. Reporting in person for this does not make the registrant exempt from the other reporting requirements.

-Added Fla. Stat. 943.0435 (4)(d): The failure of a registrant who maintains a transient residence to report in person to the sheriff’s office every 30 days as required in Fla. Stat. 943.0435 (b)2 is punishable as a third-degree felony.

-Added Fla. Stat. 943.0435 (4)(e): Registrant shall register all electronic mail addresses and Internet identifiers with the department before use.

-Fla. Stat. 943.0435 (6): County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual offenders who are under the care, custody, control, or supervision of the Department of Corrections.

-Fla. Stat. 943.0435 (7): Must report in person to the sheriff's office within 21 days before planned departure date if the intended residence of 5 days or more is outside of the United States. Notification to include country of intended residence.

Restrictions on Removal Petition Added

-Fla. Stat. 943.0435 (11)(4)(e): If sentenced to more than 25 years' supervision, registrant may not petition for removal from registry until the term of supervision for that conviction is completed.

2016:

Qualifying Offenses Expanded

-Fla. Stat. 943.0435 (1): Added Fla. Stat. s. 895.03 Racketeering involving sexual offense. Including "where defendant is victim's parent or guardian" to s. 787.01, s. 787.02, or s. 787.025(2)(c).

Definitions Added

-Fla. Stat. 943.0435 (1)(a): Incorporating 775.21(i) "Institution of higher education' means a career center, a community college, a college, a state university, or an independent postsecondary institution."

-Fla. Stat. 943.0435 (1)(d): Incorporating 775.21(a) "Change in status at an institution of higher education' means the commencement or termination of enrollment, including, but not limited to, traditional classroom setting or online courses, or employment, whether for compensation or as a volunteer, at an institution of higher education or a change in location of enrollment or employment, whether for compensation or as a volunteer, at an institution of higher education."

-Fla. Stat. 943.0435 (1)(g): Incorporating 775.21(l) "Professional license' means the document of authorization or certification issued by an agency of this state for a regulatory purpose, or by any similar agency in another jurisdiction for a regulatory purpose, to a person to engage in an occupation or to carry out a trade or business."

Personal Identification Information Expanded

-Fla. Stat. 943.0435(4)(e)1: Registrant must report electronic mail addresses and Internet identifiers through the department's online system or in person at the sheriff's office before use.

-Added Fla. Stat. 943.0435 (4)(e)2: Registrant shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system or in person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes must be reported within 48 hours.

Added Reporting Requirements

-Fla. Stat. 943.0435 (7): For international travel, the sexual offender shall also provide travel information in person to the sheriff's office at least 21 days before he or she intends to travel, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel.

2017:

Personal Identification Information Expanded

-Fla. Stat. 943.0435 (2)(a),(2)(b): Added "each Internet identifier's corresponding website homepage or application software name."

Added Reporting Requirements

-Fla. Stat. 943.0435(4)(e)1: Registrant must report electronic email addresses, Internet identifiers, and each Internet identifier's corresponding website homepage or application software name within 48 hours after use.

Reregistration Reporting Requirements

-Fla. Stat. 943.0435 (14)(c)(1): Added each Internet identifier's corresponding website homepage or application software name

2018:

Definitions Added

-Fla. Stat. 943.0435 (1)(f), incorporating s. 775.21(k): “Permanent residence” means a place where the person abides, lodges, or resides for 3 (formerly 5) or more consecutive days.

-Fla. Stat. 943.0435 (1)(f), incorporating s. 775.21(n): “Temporary residence” means a place where the person abides, lodges, or resides, including, but not limited to, vacation, business, or personal travel destinations in or out of this state, for a period of 3 (formerly 5) or more days in the aggregate during any calendar year and which is not the person’s permanent address or, for a person whose permanent residence is not in this state, a place where the person is employed, practices a vocation, or is enrolled as a student for any period of time in this state.

-Fla. Stat. 943.0435 (1)(f), incorporating s. 775.21(o): “Transient residence” means a county where a person lives, remains, or is located for a period of 3 (formerly 5) 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 the person sleeps or seeks shelter and a location that has no specific street address.

Mandatory Minimum Sentencing for Violations of Failure to Report

-Fla. Stat. 943.0435 (9)(b): For a felony violation of this section, committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months with electronic monitoring.
2. For a second offense, a mandatory minimum term of 1 year with electronic monitoring.
3. For a third or subsequent offense, a mandatory minimum term of 2 years with electronic monitoring.

1997 original list of qualifying offenses:

1. 787.025 Luring or enticing a child;
2. Chapter 794 Sexual Battery;
3. 796.03 Procuring person under age of 18 for prostitution;
4. 800.04 Lewd, lascivious, or indecent assault or act upon or in presence of child;
5. 827.071 Sexual performance by a child;
6. 847.0133 Protection of minors; prohibition of certain acts in connection with obscenity
7. 847.0135 Computer pornography;
8. 847.0145 Selling or buying of minors.

2018 list of qualifying offenses:

1. 393.135(2) Sexual Misconduct with an individual with a developmental disability
2. 394.4593(2) Sexual Misconduct with a patient
3. 787.01 Kidnapping
4. 787.02 False Imprisonment
5. 787.025(2)(c), Luring or enticing a child, where victim is a minor
6. 787.06(3)(b), (d), (f), or (g) Human Trafficking (former 787.06(3)(h))
7. 794.011 Sexual Battery, excluding 794.011(10)
8. 794.05 Unlawful sexual activity with certain minors (former 796.03; former 796.035)
9. 800.04 Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age
10. 810.145(8) Video Voyeurism
11. 825.1025 Lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled person
12. 827.071 Sexual performance by a child
13. 847.0133 Protection of minors; prohibition of certain acts in connection with obscenity;
14. 847.0135 Computer pornography; prohibited computer usage; traveling to meet minor (excluding 847.0135(6))
15. 847.0137 Transmission of pornography by electronic device or equipment prohibited
16. 847.0138 Transmission of material harmful to minors to a minor by electronic device or equipment prohibited
17. 847.0145 Selling or buying of minors
18. 895.03 Racketeering involving sexual offense
19. 916.1075(2) Mentally Ill and Intellectually Disabled Defendants; Sexual misconduct prohibited
20. 985.701(1) Juvenile Justice; Interstate Compact on Juveniles; Sexual misconduct prohibited

2018 Statute (current as of 8.28.18)

943.0435 Sexual offenders required to register with the department; penalty.—

(1) As used in this section, the term:

(a) “Change in status at an institution of higher education” has the same meaning as provided in s. 775.21.

(b) “Convicted” means that there has been a determination of guilt as a result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld, and includes an adjudication of delinquency of a juvenile as specified in this section. Conviction of a similar offense includes, but is not limited to, a conviction by a federal or military tribunal, including courts-martial conducted by the Armed Forces of the United States, and includes a conviction or entry of a plea of guilty or nolo contendere resulting in a sanction in any state of the United States or other jurisdiction. A sanction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility.

(c) “Electronic mail address” has the same meaning as provided in s. 668.602.

(d) “Institution of higher education” has the same meaning as provided in s. 775.21.

(e) “Internet identifier” has the same meaning as provided in s. 775.21.

(f) “Permanent residence,” “temporary residence,” and “transient residence” have the same meaning as provided in s. 775.21.

(g) “Professional license” has the same meaning as provided in s. 775.21.

(h)

1. “Sexual offender” means a person who meets the criteria in sub-subparagraph a., sub-subparagraph b., sub-subparagraph c., or sub-subparagraph d., as follows:

a.(I) Has been convicted of committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3) (b), (d), (f), or (g); former s. 787.06(3) (h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-sub-subparagraph or at least one offense listed in this sub-sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-sub-subparagraph; and

(II) Has been released on or after October 1, 1997, from the sanction imposed for any conviction of an offense described in sub-sub-

subparagraph (I). For purposes of sub-sub-subparagraph (I), a sanction imposed in this state or in any other jurisdiction includes, but is not limited to, a fine, probation, community control, parole, conditional release, control release, or incarceration in a state prison, federal prison, private correctional facility, or local detention facility;

b. Establishes or maintains a residence in this state and who has not been designated as a sexual predator by a court of this state but who has been designated as a sexual predator, as a sexually violent predator, or by another sexual offender designation in another state or jurisdiction and was, as a result of such designation, subjected to registration or community or public notification, or both, or would be if the person were a resident of that state or jurisdiction, without regard to whether the person otherwise meets the criteria for registration as a sexual offender;

c. Establishes or maintains a residence in this state who is in the custody or control of, or under the supervision of, any other state or jurisdiction as a result of a conviction for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes or similar offense in another jurisdiction: s. 393.135(2); s. 394.4593(2); s. 787.01, s. 787.02, or s. 787.025(2)(c), where the victim is a minor; s. 787.06(3)(b), (d), (f), or (g); former s. 787.06(3)(h); s. 794.011, excluding s. 794.011(10); s. 794.05; former s. 796.03; former s. 796.035; s. 800.04; s. 810.145(8); s. 825.1025; s. 827.071; s. 847.0133; s. 847.0135, excluding s. 847.0135(6); s. 847.0137; s. 847.0138; s. 847.0145; s. 895.03, if the court makes a written finding that the racketeering activity involved at least one sexual offense listed in this sub-subparagraph or at least one offense listed in this sub-subparagraph with sexual intent or motive; s. 916.1075(2); or s. 985.701(1); or any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph; or

d. On or after July 1, 2007, has been adjudicated delinquent for committing, or attempting, soliciting, or conspiring to commit, any of the criminal offenses proscribed in the following statutes in this state or similar offenses in another jurisdiction when the juvenile was 14 years of age or older at the time of the offense:

(I) Section 794.011, excluding s. 794.011(10);

(II) Section 800.04(4)(a)2. where the victim is under 12 years of age or where the court finds sexual activity by the use of force or coercion;

(III) Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals;

(IV) Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals; or

(V) Any similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this sub-subparagraph.

2. For all qualifying offenses listed in sub-subparagraph 1.d., the court shall make a written finding of the age of the offender at the time of the offense. For each violation of a qualifying offense listed in this subsection, except for a violation of s. 794.011, the court shall make a written finding of the age of the victim at the time of the offense. For a violation of s. 800.04(4), the court shall also make a written finding indicating whether the offense involved sexual activity and indicating whether the offense involved force or coercion. For a violation of s. 800.04(5), the court shall also make a written finding that the offense did or did not involve unclothed genitals or genital area and that the offense did or did not involve the use of force or coercion.

(i) "Vehicles owned" has the same meaning as provided in s. 775.21.

(2) Upon initial registration, a sexual offender shall:

(a) Report in person at the sheriff's office:

1. In the county in which the offender establishes or maintains a permanent, temporary, or transient residence within 48 hours after:

a. Establishing permanent, temporary, or transient residence in this state; or

b. Being released from the custody, control, or supervision of the Department of Corrections or from the custody of a private correctional facility; or

2. In the county where he or she was convicted within 48 hours after being convicted for a qualifying offense for registration under this section if the offender is not in the custody or control of, or under the supervision of, the Department of Corrections, or is not in the custody of a private correctional facility.

Any change in the information required to be provided pursuant to paragraph (b), including, but not limited to, any change in the sexual offender'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 telephone numbers and cellular telephone numbers; employment information; and any change in status at an institution of higher education after the sexual offender reports in person at the sheriff's office must be reported in the manner provided in subsections (4), (7), and (8).

(b) Provide his or her name; date of birth; social security number; race; sex; height; weight; hair and eye color; tattoos or other identifying marks; fingerprints; palm prints; photograph; employment information; address of permanent or legal residence or address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient

residence within the state, address, location or description, and dates of any current or known future temporary residence within the state or out of state; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; home telephone numbers and cellular telephone numbers; electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; date and place of each conviction; and a brief description of the crime or crimes committed by the offender. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.

1. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide to the department through the sheriff's office written notice of the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide to the department written notice of the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status. The sheriff, the Department of Corrections, or the Department of Juvenile Justice shall promptly notify each institution of higher education of the sexual offender's presence and any change in the sexual offender's enrollment, volunteer, or employment status.

3. A sexual offender shall report in person to the sheriff's office within 48 hours after any change in vehicles owned to report those vehicle information changes.

(c) Provide any other information determined necessary by the department, including criminal and corrections records; nonprivileged personnel and treatment records; and evidentiary genetic markers, when available.

When a sexual offender reports at the sheriff's office, the sheriff shall take a photograph, a set of fingerprints, and palm prints of the offender and forward the photographs, palm prints, and fingerprints to the department, along with the information provided by the sexual offender. The sheriff shall promptly provide to the department the information received from the sexual offender.

(3) Within 48 hours after the report required under subsection (2), a sexual offender shall report in person at a driver license office of the Department of Highway Safety and Motor Vehicles, unless a driver license or identification card that complies with the requirements of s. 322.141(3) was previously secured or updated under s. 944.607. At the driver license office the sexual offender shall:

(a) If otherwise qualified, secure a Florida driver license, renew a Florida driver license, or secure an identification card. The sexual offender shall identify himself or herself as a sexual offender who is required to comply with this section and shall provide proof that the sexual offender reported as required in subsection (2). The sexual offender shall provide any of the information specified in subsection (2), if requested. The sexual offender shall submit to the taking of a photograph for use in issuing a driver license, renewed license, or identification card, and for use by the department in maintaining current records of sexual offenders.

(b) Pay the costs assessed by the Department of Highway Safety and Motor Vehicles for issuing or renewing a driver license or identification card as required by this section. The driver license or identification card issued must be in compliance with s. 322.141(3).

(c) Provide, upon request, any additional information necessary to confirm the identity of the sexual offender, including a set of fingerprints.

(4)

(a) Each time a sexual offender's driver license or identification card is subject to renewal, and, without regard to the status of the offender's driver license or identification card, within 48 hours after any change in the offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process, the offender shall report in person to a driver license office, and is subject to the requirements specified in subsection (3). The Department of Highway Safety and Motor Vehicles shall forward to the department all photographs and information provided by sexual offenders. Notwithstanding the restrictions set forth in s. 322.142, the Department of Highway Safety and Motor Vehicles may release a reproduction of a color-photograph or digital-image license to the Department of Law Enforcement for purposes of public notification of sexual offenders as provided in this section and ss. 943.043 and 944.606. A sexual offender who is unable to secure or update a driver license or an identification card with the Department of Highway Safety and Motor Vehicles as provided in subsection (3) and this subsection shall also report any change in the sexual offender's permanent, temporary, or transient residence or change in the offender's name by reason of marriage or other legal process within 48 hours after the change to the sheriff's office in the county where the offender resides or is located and provide confirmation that he or she reported such information to the Department of Highway Safety and Motor Vehicles. The reporting requirements under this paragraph do not negate the requirement for a sexual offender to obtain a Florida driver license or an identification card as required in this section.

(b)

1. A sexual offender who vacates a permanent, temporary, or transient residence and fails to establish or maintain another permanent, temporary, or transient residence shall, within 48 hours after vacating the permanent, temporary, or transient residence, report in person to the sheriff's office of the county in which he or she is located. The sexual offender shall specify the date upon which he or she intends to or did vacate such residence. The sexual offender must provide or update all of the registration information required under paragraph (2)(b). The sexual offender must provide an address for the residence or other place that he or she is or will be located during the time in which he or she fails to establish or maintain a permanent or temporary residence.

2. A sexual offender shall report in person at the sheriff's office in the county in which he or she is located within 48 hours after establishing a transient residence and thereafter must report in person every 30 days to the sheriff's office in the county in which he or she is located while maintaining a transient residence. The sexual offender must provide the addresses and locations where he or she maintains a transient residence. 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. Reporting to the sheriff's office as required by this subparagraph does not exempt registrants from any reregistration requirement. The sheriff may coordinate and enter into agreements with police departments and other governmental entities to facilitate additional reporting sites for transient residence registration required in this subparagraph. The sheriff's office shall, within 2 business days, electronically submit and update all information provided by the sexual offender to the department.

(c) A sexual offender who remains at a permanent, temporary, or transient residence after reporting his or her intent to vacate such residence shall, within 48 hours after the date upon which the offender indicated he or she would or did vacate such residence, report in person to the agency to which he or she reported pursuant to paragraph (b) for the purpose of reporting his or her address at such residence. When the sheriff receives the report, the sheriff shall promptly convey the information to the department. An offender who makes a report as required under paragraph (b) but fails to make a report as required under this paragraph commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) The failure of a sexual offender who maintains a transient residence to report in person to the sheriff's office every 30 days as required in subparagraph (b)2. is punishable as provided in subsection (9).

(e)

1. A sexual offender 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. If the sexual offender is in the

custody or control, or under the supervision, of the Department of Corrections, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Corrections before using such electronic mail addresses or Internet identifiers. If the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice, he or she must report all electronic mail addresses and Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, to the Department of Juvenile Justice before using such electronic mail addresses or Internet identifiers.

2. A sexual offender shall register all changes to home telephone numbers and cellular telephone numbers, including added and deleted numbers, all changes to employment information, and all changes in status related to enrollment, volunteering, or employment at institutions of higher education, through the department's online system; in person at the sheriff's office; in person at the Department of Corrections if the sexual offender is in the custody or control, or under the supervision, of the Department of Corrections; or in person at the Department of Juvenile Justice if the sexual offender is in the custody or control, or under the supervision, of the Department of Juvenile Justice. All changes required to be reported under this subparagraph must be reported within 48 hours after the change.

3. The department shall establish an online system through which sexual offenders may securely access, submit, and update all changes in status to electronic mail addresses; Internet identifiers and each Internet identifier's corresponding website homepage or application software name; home telephone numbers and cellular telephone numbers; employment information; and institution of higher education information.

(5) This section does not apply to a sexual offender who is also a sexual predator, as defined in s. 775.21. A sexual predator must register as required under s. 775.21.

(6) County and local law enforcement agencies, in conjunction with the department, shall verify the addresses of sexual offenders who are not under the care, custody, control, or supervision of the Department of Corrections, and may verify the addresses of sexual offenders who are under the care, custody, control, or supervision of the Department of Corrections, in a manner that is consistent with the provisions of the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to such verification or required to be met as a condition for the receipt of federal funds by the state. Local law enforcement agencies shall report to the department any failure by a sexual offender to comply with registration requirements.

(7) A sexual offender who intends to establish a permanent, temporary, or transient residence in another state or jurisdiction other than the State of Florida shall report in person to the sheriff of

the county of current residence within 48 hours before the date he or she intends to leave this state to establish residence in another state or jurisdiction or at least 21 days before the date he or she intends to travel if the intended residence of 5 days or more is outside of the United States. Any travel that is not known by the sexual offender 21 days before the departure date must be reported in person to the sheriff's office as soon as possible before departure. The sexual offender shall provide to the sheriff the address, municipality, county, state, and country of intended residence. For international travel, the sexual offender shall also provide travel information, including, but not limited to, expected departure and return dates, flight number, airport of departure, cruise port of departure, or any other means of intended travel. The sheriff shall promptly provide to the department the information received from the sexual offender. The department shall notify the statewide law enforcement agency, or a comparable agency, in the intended state, jurisdiction, or country of residence of the sexual offender's intended residence. The failure of a sexual offender to provide his or her intended place of residence is punishable as provided in subsection (9).

(8) A sexual offender who indicates his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country and later decides to remain in this state shall, within 48 hours after the date upon which the sexual offender indicated he or she would leave this state, report in person to the sheriff to which the sexual offender reported the intended change of permanent, temporary, or transient residence, and report his or her intent to remain in this state. The sheriff shall promptly report this information to the department. A sexual offender who reports his or her intent to establish a permanent, temporary, or transient residence in another state, a jurisdiction other than the State of Florida, or another country but who remains in this state without reporting to the sheriff in the manner required by this subsection commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9)

(a) A sexual offender who does not comply with the requirements of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) For a felony violation of this section, excluding subsection (13), committed on or after July 1, 2018, if the court does not impose a prison sentence, the court shall impose a mandatory minimum term of community control, as defined in s. 948.001, as follows:

1. For a first offense, a mandatory minimum term of 6 months with electronic monitoring.

2. For a second offense, a mandatory minimum term of 1 year with electronic monitoring.

3. For a third or subsequent offense, a mandatory minimum term of 2 years with electronic monitoring.

(c) A sexual offender who commits any act or omission in violation of this section may be prosecuted for the act or omission in the county in which the act or omission was committed, in the county of the last registered address of the sexual offender, in the

county in which the conviction occurred for the offense or offenses that meet the criteria for designating a person as a sexual offender, in the county where the sexual offender was released from incarceration, or in the county of the intended address of the sexual offender as reported by the offender prior to his or her release from incarceration.

(d) An arrest on charges of failure to register when the offender has been provided and advised of his or her statutory obligations to register under subsection (2), the service of an information or a complaint for a violation of this section, or an arraignment on charges for a violation of this section constitutes actual notice of the duty to register. A sexual offender's failure to immediately register as required by this section following such arrest, service, or arraignment constitutes grounds for a subsequent charge of failure to register. A sexual offender charged with the crime of failure to register who asserts, or intends to assert, a lack of notice of the duty to register as a defense to a charge of failure to register shall immediately register as required by this section. A sexual offender who is charged with a subsequent failure to register may not assert the defense of a lack of notice of the duty to register. Registration following such arrest, service, or arraignment is not a defense and does not relieve the sexual offender of criminal liability for the failure to register.

(10) The department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, any law enforcement agency in this state, and the personnel of those departments; an elected or appointed official, public employee, or school administrator; or an employee, agency, or any individual or entity acting at the request or upon the direction of any law enforcement agency is immune from civil liability for damages for good faith compliance with the requirements of this section or for the release of information under this section, and shall be presumed to have acted in good faith in compiling, recording, reporting, or releasing the information. The presumption of good faith is not overcome if a technical or clerical error is made by the department, the Department of Highway Safety and Motor Vehicles, the Department of Corrections, the Department of Juvenile Justice, the personnel of those departments, or any individual or entity acting at the request or upon the direction of any of those departments in compiling or providing information, or if information is incomplete or incorrect because a sexual offender fails to report or falsely reports his or her current place of permanent, temporary, or transient residence.

(11) Except as provided in s. 943.04354, a sexual offender shall maintain registration with the department for the duration of his or her life unless the sexual offender has received a full pardon or has had a conviction set aside in a postconviction proceeding for any offense that meets the criteria for classifying the person as a sexual offender for purposes of registration. However, a sexual offender shall be considered for removal of the requirement to register as a sexual offender only if the person:

(a)

- 1.** Has been lawfully released from confinement, supervision, or sanction, whichever is later, for at least 25 years and has not been arrested for any felony or

misdemeanor offense since release, provided that the sexual offender's requirement to register was not based upon an adult conviction:

- a. For a violation of s. 787.01 or s. 787.02;
 - b. For a violation of s. 794.011, excluding s. 794.011(10);
 - c. For a violation of s. 800.04(4)(a)2. where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
 - d. For a violation of s. 800.04(5)(b);
 - e. For a violation of s. 800.04(5)(c)2. where the court finds the offense involved the use of force or coercion and unclothed genitals or genital area;
 - f. For a violation of s. 825.1025(2)(a);
 - g. For any attempt or conspiracy to commit any such offense;
 - h. For a violation of similar law of another jurisdiction; or
 - i. For a violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this subparagraph.
2. If the sexual offender meets the criteria in subparagraph 1., the sexual offender may, for the purpose of removing the requirement for registration as a sexual offender, petition the criminal division of the circuit court of the circuit:
 - a. Where the conviction or adjudication occurred, for a conviction in this state;
 - b. Where the sexual offender resides, for a conviction of a violation of similar law of another jurisdiction; or
 - c. Where the sexual offender last resided, for a sexual offender with a conviction of a violation of similar law of another jurisdiction who no longer resides in this state.
3. The court may grant or deny relief if the offender demonstrates to the court that he or she has not been arrested for any crime since release; the requested relief complies with the federal Adam Walsh Child Protection and Safety Act of 2006 and any other federal standards applicable to the removal of registration requirements for a sexual offender or required to be met as a condition for the receipt of federal funds by the state; and the court is otherwise satisfied that the offender is not a current or potential threat to public safety. The state attorney in the circuit in which the petition is filed must be given notice of the petition at least 3 weeks before the hearing on the matter. The state attorney may present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. If the court denies the petition, the court may set a future date at which the sexual offender may again petition the court for relief, subject to the standards for relief provided in this subsection.
4. The department shall remove an offender from classification as a sexual offender for purposes of registration if the offender provides to the department a certified copy of the court's written findings or order that indicates that the

offender is no longer required to comply with the requirements for registration as a sexual offender.

(b) As defined in sub-subparagraph (1)(h)1.b. must maintain registration with the department for the duration of his or her life until the person provides the department with an order issued by the court that designated the person as a sexual predator, as a sexually violent predator, or by another sexual offender designation in the state or jurisdiction in which the order was issued which states that such designation has been removed or demonstrates to the department that such designation, if not imposed by a court, has been removed by operation of law or court order in the state or jurisdiction in which the designation was made, and provided such person no longer meets the criteria for registration as a sexual offender under the laws of this state.

(12) The Legislature finds that sexual offenders, especially those who have committed offenses against minors, often pose a high risk of engaging in sexual offenses even after being released from incarceration or commitment and that protection of the public from sexual offenders is a paramount government interest. Sexual offenders have a reduced expectation of privacy because of the public's interest in public safety and in the effective operation of government. Releasing information concerning sexual offenders to law enforcement agencies and to persons who request such information, and the release of such information to the public by a law enforcement agency or public agency, will further the governmental interests of public safety. The designation of a person as a sexual offender is not a sentence or a punishment but is simply the status of the offender which is the result of a conviction for having committed certain crimes.

(13) Any person who has reason to believe that a sexual offender is not complying, or has not complied, with the requirements of this section and who, with the intent to assist the sexual offender in eluding a law enforcement agency that is seeking to find the sexual offender to question the sexual offender about, or to arrest the sexual offender for, his or her noncompliance with the requirements of this section:

(a) Withholds information from, or does not notify, the law enforcement agency about the sexual offender's noncompliance with the requirements of this section, and, if known, the whereabouts of the sexual offender;

(b) Harbors, or attempts to harbor, or assists another person in harboring or attempting to harbor, the sexual offender; or

(c) Conceals or attempts to conceal, or assists another person in concealing or attempting to conceal, the sexual offender; or

(d) Provides information to the law enforcement agency regarding the sexual offender that the person knows to be false information, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(14)

(a) A sexual offender must report in person each year during the month of the sexual offender's birthday and during the sixth month following the sexual offender's birth

month to the sheriff's office in the county in which he or she resides or is otherwise located to reregister.

(b) However, a sexual offender who is required to register as a result of a conviction for:

1. Section 787.01 or s. 787.02 where the victim is a minor;
2. Section 794.011, excluding s. 794.011(10);
3. Section 800.04(4)(a)2. where the court finds the offense involved a victim under 12 years of age or sexual activity by the use of force or coercion;
4. Section 800.04(5)(b);
5. Section 800.04(5)(c)1. where the court finds molestation involving unclothed genitals or genital area;
6. Section 800.04(5)(c)2. where the court finds molestation involving the use of force or coercion and unclothed genitals or genital area;
7. Section 800.04(5)(d) where the court finds the use of force or coercion and unclothed genitals or genital area;
8. Section 825.1025(2)(a);
9. Any attempt or conspiracy to commit such offense;
10. A violation of a similar law of another jurisdiction; or
11. A violation of a similar offense committed in this state which has been redesignated from a former statute number to one of those listed in this paragraph, must reregister each year during the month of the sexual offender's birthday and every third month thereafter.

(c) The sheriff's office may determine the appropriate times and days for reporting by the sexual offender, which must be consistent with the reporting requirements of this subsection. Reregistration must include any changes to the following information:

1. Name; social security number; age; race; sex; date of birth; height; weight; tattoos or other identifying marks; hair and eye color; address of any permanent residence and address of any current temporary residence, within the state or out of state, including a rural route address and a post office box; if no permanent or temporary address, any transient residence within the state; address, location or description, and dates of any current or known future temporary residence within the state or out of state; all electronic mail addresses or Internet identifiers and each Internet identifier's corresponding website homepage or application software name; all home telephone numbers and cellular telephone numbers; employment information; the make, model, color, vehicle identification number (VIN), and license tag number of all vehicles owned; fingerprints; palm prints; and photograph. A post office box may not be provided in lieu of a physical residential address. The sexual offender shall also produce his or her passport, if he or she has a passport, and, if he or she is an alien, shall produce or provide information about documents establishing his or her immigration status. The sexual offender shall also provide information about any professional licenses he or she has.
2. If the sexual offender is enrolled or employed, whether for compensation or as a volunteer, at an institution of higher education in this state, the sexual

offender shall also provide to the department the name, address, and county of each institution, including each campus attended, and the sexual offender's enrollment, volunteer, or employment status.

3. If the sexual offender's place of residence is a motor vehicle, trailer, mobile home, or manufactured home, as defined in chapter 320, the sexual offender shall also provide the vehicle identification number; the license tag number; the registration number; and a description, including color scheme, of the motor vehicle, trailer, mobile home, or manufactured home. If the sexual offender's place of residence is a vessel, live-aboard vessel, or houseboat, as defined in chapter 327, the sexual offender shall also provide the hull identification number; the manufacturer's serial number; the name of the vessel, live-aboard vessel, or houseboat; the registration number; and a description, including color scheme, of the vessel, live-aboard vessel, or houseboat.

4. Any sexual offender who fails to report in person as required at the sheriff's office, who fails to respond to any address verification correspondence from the department within 3 weeks of the date of the correspondence, who fails to report all electronic mail addresses and all Internet identifiers, and each Internet identifier's corresponding website homepage or application software name, or who knowingly provides false registration information by act or omission commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) The sheriff's office shall, within 2 working days, electronically submit and update all information provided by the sexual offender to the department in a manner prescribed by the department.

History.—s. 8, ch. 97-299; s. 7, ch. 98-81; s. 114, ch. 99-3; s. 3, ch. 2000-207; s. 3, ch. 2000-246; s. 3, ch. 2002-58; s. 2, ch. 2004-371; s. 9, ch. 2005-28; s. 3, ch. 2006-200; s. 4, ch. 2006-299; s. 159, ch. 2007-5; s. 10, ch. 2007-143; s. 4, ch. 2007-207; s. 2, ch. 2007-209; s. 3, ch. 2009-194; s. 4, ch. 2010-92; s. 4, ch. 2012-19; s. 11, ch. 2012-97; s. 11, ch. 2013-116; s. 10, ch. 2014-4; s. 5, ch. 2014-5; s. 26, ch. 2014-160; s. 99, ch. 2015-2; ss. 10, 51, ch. 2016-24; s. 3, ch. 2016-104; s. 2, ch. 2017-170; s. 2, ch. 2018-105.