

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JOHN DOES et al.,
Plaintiffs,

vs.

No. 18-CIV-24145-WILLIAMS/TORRES

MARK GLASS,
Defendant.

_____ /

PLAINTIFFS' SUR-RESPONSE TO DEFENDANT'S REPLY

In 2004, the Florida Supreme Court issued *State v. Giorgetti*, 868 So. 2d 512, 519-21 (Fla. 2004), which implied the element of knowledge to violations of Section 943.0435, Florida Statutes, then silent about *mens rea*. In response to *Giorgetti*, the Florida Legislature enacted § 943.0435(9)(d), allowing the defense of lack of knowledge for a first violation but precluding it for subsequent violations.

In their Third Amended Complaint (DE:248 ¶¶ 29, 47-56)—as in their initial, first and second amended complaints (DE:1 ¶¶ 43, 99-102; DE:50 ¶¶ 48, 115-118; DE:102 ¶¶ 46, 109-112)—Plaintiffs alleged that §943.0435(9)(d) violates the due process clause by eliminating the element of actual knowledge for any registrant ever previously arrested for violating the registration statute. In all of his motions to dismiss, Defendant either conceded that (9)(d) eliminated the defense of lack of knowledge for those with prior arrests for violating the statute, arguing that other defenses remained viable, or asserted that *Giorgetti*'s holding was unaffected by (9)(d). (DE:10 at 10, DE:56 at 9-10, DE:72 at 9-10, DE:103 at 9-11, DE:255 at 4-6).

It was not until his Reply in support of his fourth motion to dismiss (DE:263), that Defendant proffered a brand new interpretation of (9)(d): that it was radically altered by an amendment enacted in 2017, a year before this case was filed, by inserting the words “[u]pon initial registration” before the words “a sexual offender shall” in §943.0435(2). The words

immediately following “a sexual offender shall” are contained in (2)(a), which requires the new registrant to report in person at a designated location. The second part of (2)(a) requires the registrant to report any changes to the information required to be reported under (2)(b) in the manner prescribed in subsections (4), (7) and (8). Subsection (2)(b) sets forth the information required to be registered.

Defendant argues that the 2017 change to subsection (2) was intended to restore the *mens rea* defense for all subsequent violators except those who fail to initially register, get arrested, then fail to initially register again: “In 2017, subsection (2) was changed to add the language ‘[u]pon initial registration’ ... The plain meaning of the word ‘initial’, makes it clear that subsection (2) is referring to the *first time* a sex offender must register. This establishes that s. 943.0435(9)(d) applies only to the failure to complete the initial registration.” DE:263 at (emphasis in original).

Defendant also argues that because the 2017 amendment reduced the application of (9)(d) to those who had failed to initially register, and because Plaintiffs had already initially registered, Plaintiffs lack standing to challenge (9)(d) (DE:263 at 2-4).

1. The legislative history of the 2017 amendment does not support Defendant’s interpretation

If inserting the words “[u]pon initial registration” in subsection (2) was intended to dramatically increase the availability of a *mens rea* defense to sex offenders, and thereby dramatically increase the state’s burden to prosecute convicted sex offenders, the Florida Legislature would presumably have said so, in some way, somewhere. It did not: as the tapes of the legislative hearings show, the 2017 amendment was enacted for the purpose of redefining the phrase “Internet identifier” in order to comply with a federal court order issued earlier that year

finding the statutory definition vague and chilling.¹ *Delgado v. Swearingen*, 4:16-cv-00501-RH-CAS, DE:29, pp. 6-12 (N.D. Fla. Sept. 27, 2016.). The purpose of the 3-word tweak to subsection (2), as explained by Senator Baxley, who introduced CS/SB 684, was simply to clarify the procedural distinction between initial (first part of (2)(a)) and subsequent (second part of (2)(a)) requirements: “Section 943.0435(2)(a) and (b), F.S., relating to information a sexual offender is required to report at initial registration and changes to that information after initial registration.”²

Indeed, Defendant himself knew at the time that the 2017 amendment had no impact on the availability of a *mens rea* defense. Summarizing the bills enacted during the 2017 Legislative Session, Defendant said nothing about the 3-word tweak to subsection (2), referring only to the

¹ Florida House of Representatives, House Criminal Justice Subcommittee, March 8, 2017, video recording, The Florida Channel, 1:27, <https://thefloridachannel.org/videos/3817-house-criminal-justice-subcommittee/>; Florida House of Representatives, House Justice Appropriations Subcommittee, March 20, 2017, video recording, The Florida Channel, 16:30, <https://thefloridachannel.org/videos/32017-house-justice-appropriations-subcommittee/>; Florida Senate, Senate Criminal Justice Committee, April 3, 2017, video recording, The Florida Channel, 42:02, <https://thefloridachannel.org/videos/4317-senate-criminal-justice-committee/>; Florida Senate, Senate Appropriations Subcommittee on Criminal and Civil Justice, April 18, 2017, video recording, The Florida Channel, 0:56, <https://thefloridachannel.org/videos/41817-senate-appropriations-subcommittee-criminal-civil-justice/>; Florida House of Representatives, House Judiciary Committee, April 24, 2017, video recording, The Florida Channel, 1:00 after roll call, <https://thefloridachannel.org/videos/42417-house-judiciary-committee/>; Florida House of Representatives, House Session Part 1, April 28, 2017, video recording, The Florida Channel, 4:42, <https://thefloridachannel.org/videos/42817-house-session-part-1/>; Florida Senate, Senate Session Part 3, April 28, 2017, video recording, The Florida Channel, 0:12, <https://thefloridachannel.org/videos/42817-senate-session-part-3/>.

² Fla. S. Comm. on Crim. Just., CS on SB 684 (2017), Post-Meeting Staff Analysis (April 4, 2017) p. 7 <https://www.flsenate.gov/Session/Bill/2017/684/Analyses/2017s00684.cj.PDF>. The companion House Bill 699 (which was adopted in Ch. 2017-170) discussed only the internet identifier with no reference at all to the 3-word tweak. Fla. H.B. Comm on Crim, Just. Subcomm. HB699 (2017), Post-Meeting Staff Analysis (April 24, 2017) p. 6 <https://www.flsenate.gov/Session/Bill/2017/684/Analyses/2017s00684.cj.PDF>

change in the definition of Internet identifier.³ If the 3-word tweak to subsection (2) had such a consequential impact on the arrest and prosecution of registrants who violate the statute, Defendant would surely have addressed it in his summary: “**Laws of Interest to Florida Law Enforcement.**”

2. The language of (9)(d) does not support Defendant’s interpretation

The meaning of (9)(d) must be determined in the context of its placement in subsection (9) as a whole. Subsection (9) is the penalty provision for §943.0435. (9)(a) provides that a person who violates the statute in any way – by failing to initially register, failing to re-register, or failing to timely report changes to identifying information – commits a discrete third-degree felony. (9)(b) provides the minimum mandatory sentences for violating the statute. (9)(c) provides the venues for prosecuting “**any act or omission in violation of this section.**” (emphasis supplied). And (9)(d) provides the *mens rea* element for violating the statute:

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.

The word “**section,**” as used in (9)(d) means the **whole of § 943.0435**; the word “**subsection**” means **numbered provisions** within the section, such as subsection (2).⁴ **Advice of**

³ FDLE, “2017 Legislative Summary” by Office of General Counsel, July 7, 2017 pp. 7-8, <http://www.fdle.state.fl.us/cms/OGC/Summaries/Legislative-Summaries.aspx>.

⁴ Preface to Florida Statutes, Numbering System, p. vii (2025), available at <https://www.leg.state.fl.us/Statutes/Preface25.pdf> See *Dep’t of Revenue v. Cent. Dade*

statutory obligations under subsection (2) refers to the first part of (2)(a), pertaining to initial registration, to the second part of (2)(a), pertaining to reports of informational updates, and (2)(b), the information required to be reported and updated. The word “**register**” is used in this “**section**” interchangeably with the word “**report**,” as in reports of informational updates. *See, e.g.*, § 943.0435(4)(e)1. (“A sexual offender **shall register all changes** to home telephone numbers and cellular telephone numbers ...”) (emphasis supplied). That is because reported changes go into the registry, that is, reports are registered. Thus, “**a violation of this section**” as used in (9)(d) refers to all violations of § 943.0435, as listed in (9)(a); and “**failure to register**” encompasses a failure to initially register, to re-register, and to report changes to the information previously registered.

3. Case law does not support Defendant’s interpretation

In *Doe as Next Friend of Doe #6 v. Swearingen*, 51 F.4th 1295, 1299, 1300-01 (11th Cir. 2022), the Eleventh Circuit endorsed Plaintiffs’ construction of (9)(d), noting the never-ending accretion of reporting requirements over the decades since the statute’s enactment, the increasing number of re-registration requirements, the proliferation of reportable events, and the extension of duration from 20 years to life, while “**a registrant is limited to asserting a defense of lack of notice one time: that defense is unavailable in future prosecutions**,” citing (9)(d). 514 F.4th at 1300-01 (emphasis supplied). Thus, the Eleventh Circuit interprets (9)(d)’s preclusion of a *mens rea* defense for subsequent violations of § 943.0435 as applying to all statutory violations.

Because (9)(d) is not limited to subsequent failures to initially register, Plaintiffs, who have long since completed initial registration but continue to be subject to the strictures of (9)(d), have standing.

Malpractice Trust Fund, 673 So. 2d 899, 901 (Fla. 1st DCA 1996) (“There can be no doubt that the Legislature, by using the term ‘this section’ meant the whole of [the statute at issue].”).

Respectfully submitted,

s/Valerie Jonas

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed on November 17, 2025, 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.

s/Todd G. Scher

Todd G. Scher