

**U.S. Department of Justice**

Office of Justice Programs

*Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART)*

---



# **Sex Offender Registration and Notification in the United States**

**Current Case Law and Issues**

**March 2018**

## Contents

I.	Overview of U.S. Sex Offender Registration.....	1
	Registration is a Local Activity.....	1
	Federal Minimum Standards.....	1
	National Sex Offender Public Website.....	1
	Federal Law Enforcement Databases.....	2
	Federal Corrections.....	3
	Federal Law Enforcement and Investigations.....	3
II.	Who Is Required to Register?.....	3
	‘Sex Offenders’.....	4
	Kidnapping.....	4
	‘Catch-All’ Provisions.....	4
	Comparable Convictions from Other Jurisdictions.....	4
	Elements vs. Facts.....	4
	Recidivists.....	5
III.	Registration of Juvenile Offenders.....	5
	Juvenile Registration Requirements Vary Across Jurisdictions.....	5
	Issues Unique to Juvenile Adjudications.....	6
	Federal Juvenile Delinquency Act.....	6
IV.	Military Registration.....	6
V.	Retroactive Application & Ex Post Facto Considerations.....	7
	United States Supreme Court.....	7
	Federal Courts.....	8
	Significant State Court Decisions.....	8
	Additional Court Opinions.....	8
VI.	Other Constitutional Issues.....	8
	Varied Successful Challenges.....	9
	Interaction Between SORNA and State Law.....	10
	Jury Determination of Obligation to Register as a Sex Offender.....	10
	Ineffective Assistance of Counsel.....	10
VII.	Sex Offender Registration and Notification in Indian Country.....	11
	Tribal Residents and State Registration Responsibilities.....	11
VIII.	Failure to Register.....	12
	Failure to Register as a ‘Continuing Offense’.....	12
	Failure to Register as a ‘Strict Liability’ Offense.....	12
	‘Incarceration’ as It Affects Registration Responsibilities.....	12

Notice.....	12
Prosecution Based on Failure to Update Information .....	12
Venue .....	12
IX. Residency Restrictions.....	13
X. Miscellaneous .....	13
Defamation .....	13
Fair Credit Reporting Act .....	13
Homeless & Transient Offenders .....	13
HUD Housing.....	14
Immigration & Deportation .....	14
Impeachment.....	14
Sentencing Enhancement Under Federal Law.....	14
XI. Conclusion.....	15
Endnotes .....	16

Disclaimer: The U.S. Department of Justice makes no claims, promises or guarantees about the accuracy, completeness or adequacy of the contents of this update, and expressly disclaims liability for errors and omissions in the contents of this update. The information appearing in this update is for general informational purposes only and is not intended to provide legal advice to any individual or entity. We urge you to consult with your own legal advisor before taking any action based on information appearing in this update.

## I. Overview of U.S. Sex Offender Registration

Sex offender registration and notification schemes have existed in the United States for decades. These systems are loosely referred to as sex offender registries. We begin this summary with an outline of those systems.

### Registration is a Local Activity

In the United States, sex offender registration is conducted at the local level. Generally, sex offenders in the United States<sup>1</sup> are required to register with law enforcement in each state, locality, territory or tribe where they reside, work or attend school.<sup>2</sup> Every U.S. state, the District of Columbia, the five principal U.S. territories and over 125 federally recognized Indian tribes have their own sex offender registration and notification systems.<sup>3</sup> Every one of these systems has its own nuances and distinct features. Every jurisdiction (state, territory and tribe) makes its own determinations about who is required to register, what information offenders must provide, which offenders are posted on the jurisdiction's public registry website, and so forth.

Although the federal government does not directly administer sex offender registries, it is involved in sex offender registration and notification in meaningful ways.<sup>4</sup>

### Federal Minimum Standards

Congress has enacted various measures setting "minimum standards" for jurisdictions to implement in their sex offender registration or notification systems.<sup>5</sup> The first of these was passed in 1994 and is commonly referred to as the "Wetterling Act." This Act established a set of minimum standards for registration systems for the states.<sup>6</sup> Two years later, Congress passed "Megan's Law" as a set of minimum standards for community notification.<sup>7</sup> The current set of standards — the Sex Offender Registration and Notification Act (SORNA) — was passed in 2006.<sup>8</sup>

If a state, tribe or territory chooses not to substantially implement SORNA's standards, the jurisdiction risks losing 10 percent of its Edward R. Byrne Justice Assistance Grant (Byrne JAG) funds.<sup>9</sup> As of March 1, 2018, 18 states, four territories and over 125 federally recognized Indian tribes have substantially implemented SORNA.<sup>10</sup> Among jurisdictions that have substantially implemented SORNA, registration and notification laws vary.<sup>11</sup> Practitioners are advised to become familiar with the specific registration and notification systems in all jurisdictions where they plan to work.

### National Sex Offender Public Website

The National Sex Offender Public Website (NSOPW), located at [www.nsopw.gov](http://www.nsopw.gov), was created by the U.S. Department of Justice in 2005 and is administered by the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART Office).<sup>12</sup> NSOPW works much like a search engine: Jurisdictions connect their public sex offender registries to NSOPW by way of a web service or automated upload to enable NSOPW to query the jurisdictions' websites. Only information that is publicly listed on a jurisdiction's public sex offender registry website will display in NSOPW's search results. The Department of Justice does not administer the registration information searched for or displayed on NSOPW, and only ensures that jurisdictions' registries can be queried through and results displayed on NSOPW.<sup>13</sup>

Note that some jurisdictions do not post information about **all** of their registered offenders on their public registry website: A search of NSOPW is not a comprehensive search of **all** registered offenders nationwide.



## Federal Law Enforcement Databases

Federal databases are utilized by law enforcement across the country to access accurate information about registered sex offenders. Registering agencies and other law enforcement entities submit the information necessary to populate these databases:<sup>14</sup>

- The National Sex Offender Registry (NSOR) is a law-enforcement only database that is a file of the National Crime Information Center (NCIC) database managed by the Federal Bureau of Investigation (FBI) Criminal Justice Information Services (CJIS) division. It was created in the late 1990s to store data on every registered sex offender in the United States, and to provide law enforcement nationwide access to that data.<sup>15</sup>
- The Next Generation Identification (NGI) system officially replaced the legacy fingerprint database at the FBI (IAFIS) in October 2014.<sup>16</sup> NGI fingerprint records are linked to the offender's corresponding NSOR record at CJIS.
- The National Palm Print System (NPPS) is the database for palm prints housed with the FBI.
- The Combined DNA Index System (CODIS) is the national DNA database administered by the FBI.

SORNA requires that jurisdictions submit information on **all of** their registered sex offenders to NSOR, and ensure that all of their offenders' fingerprints have been submitted to NGI, palm prints to NPPS and DNA profiles to CODIS.<sup>17</sup>

## Federal Corrections

The federal government is also involved with sex offenders housed in federal correctional institutions. Specifically, some federal government agencies are required to notify local law enforcement when a sex offender is released from federal custody. Military detention issues are discussed in the section on military registration.

The Bureau of Prisons (BOP) does not register sex offenders prior to their release from incarceration, as registration is primarily a function of state, territory and tribal governments. However, 18 U.S.C. § 4042(c) requires that BOP or a federal probation officer notify the chief law enforcement officer and registration officials of the appropriate state, tribe or local jurisdiction whenever a federal prisoner required to register under SORNA is released from custody.<sup>18</sup> In 2014, BOP issued guidelines governing its release of sex offenders.<sup>19</sup>

The Bureau of Indian Affairs (BIA), as an agency of the Department of the Interior, it is not governed by the terms of 18 U.S.C. § 4042(c). There are no generally applicable statutory or administrative requirements for the BIA-operated detention centers (approximately one-quarter of the 90 BIA detention centers) to notify local law enforcement when a sex offender is released from custody.

The Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) is generally responsible for detaining and deporting undocumented individuals who are present within the United States. As of 2012, 5 percent of the nearly 60,000 aliens under an Order of Supervision in the community after being released from detention and pending deportation actions had been previously convicted of a sex offense.<sup>20</sup> In 2015 DHS issued a rule amending its Privacy Act provisions to permit the transfer of information from DHS to any sex offender registration agency about an offender who is released from DHS custody or removed from the United States.<sup>21</sup> Like the Bureau of Prisons and BIA detention facilities, offenders are not registered prior to their release from ICE custody.

## Federal Law Enforcement and Investigations

SORNA designated the United States Marshals Service (USMS) as the lead agency in investigations of suspected violations of the federal failure to register statute, 18 U.S.C. § 2250. To further their investigative capacity, the USMS established the National Sex Offender Targeting Center in 2009.<sup>22</sup>

## II. Who Is Required to Register?

Nearly all registration requirements in the United States are initially triggered by a conviction for a criminal offense.<sup>23</sup> Most jurisdictions limit their registration and notification systems to persons convicted of sex offenses and nonparental kidnapping of a minor. Some states also include other violent or dangerous offenders in their registration and notification systems.<sup>24</sup>

## ‘Sex Offenders’

Federal courts have interpreted SORNA as directly imposing a duty on a person to attempt to register if they meet the federal definition of “sex offender.”<sup>25</sup> SORNA’s standards call for jurisdictions to register all persons who have been convicted of a tribal, territory, military, federal or state sex offense.<sup>26</sup> In addition, certain foreign sex offense convictions will also trigger a registration requirement under SORNA.<sup>27</sup> In practice, a jurisdiction generally will not register an offender unless **that jurisdiction’s laws** require that the offender be registered.<sup>28</sup> At least one state has concluded that if a person has **ever** been required to register as a sex offender pursuant to federal law, that person is required to register in the state.<sup>29</sup> In addition, at least one state imposes the registration requirements of the **originating** state, even if the receiving state’s requirements are less stringent.<sup>30</sup>

## Kidnapping

The inclusion of kidnapping offenses in sex offender registration systems is a legacy of the first federal legislation regarding sex offender registration in 1994.<sup>31</sup> Inclusion of kidnapping offenses in a jurisdiction’s sex offender registry has been largely upheld by the courts.<sup>32</sup>

## ‘Catch-All’ Provisions

When jurisdictions specifically outline the offenses that require registration, there is little question as to who is required to register. Most jurisdictions also include catch-all provisions, which, in varying forms, require any person convicted of an offense that is “by its nature a sex offense” to register. One court concluded that the state need only prove by “clear and convincing” evidence that an offender engaged in sexual contact to qualify under its catch-all registration provision,<sup>33</sup> while another held that such proof must meet the “beyond a reasonable doubt” standard.<sup>34</sup>

## Comparable Convictions from Other Jurisdictions

A more difficult situation arises when a convicted sex offender moves from one jurisdiction to another, and the new jurisdiction has to make a determination as to whether the person is required to register there. Most jurisdictions require registration if a person was convicted of an out-of-state offense that is “comparable,” “similar” or “substantially similar” to one or more of the receiving jurisdiction’s registerable offenses.<sup>35</sup> When a state’s registration system treats persons convicted of in-state offenses differently from those convicted out-of-state, equal protection problems may arise.<sup>36</sup> On occasion, offenders have had their convictions expunged, but still might face registration requirements in other states; at least one state has issued an Attorney General opinion determining that “out-of-state offenders whose convictions have been expunged must register ...[so long as] they were required to register” in another jurisdiction as a sex offender.<sup>37</sup>

## Elements vs. Facts

Determinations of whether an offense fits under one of these catch-all or comparable provisions has led to a great deal of litigation.<sup>38</sup> Some jurisdictions look at the elements of the offense of conviction, while others also look at the underlying facts.<sup>39</sup> Often, courts take an expansive view of which offenses trigger registration requirements; sometimes, however, the approach can be quite narrow.<sup>40</sup>

## Recidivists

In many states, as under SORNA's requirements, an offender who has been convicted of more than one sex offense is subject to heightened registration requirements. One court has held that the two (or more) offenses **do not** need to arise out of separate proceedings to trigger increased requirements.<sup>41</sup>

### III. Registration of Juvenile Offenders

State juvenile justice systems within the United States have handled juvenile sex offender registration in different ways. For example, at the time of SORNA's passage, 36 states required certain juveniles adjudicated delinquent of sex offenses to register as sex offenders, while the remainder did not require any such juveniles to register. SORNA's minimum standards require registration for certain juvenile offenders adjudicated delinquent of serious sex offenses.<sup>42</sup> However, SORNA does *not* require jurisdictions to disclose information about juveniles adjudicated delinquent on their public registry websites.<sup>43</sup>

On August 1, 2016, the Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act were published in the Federal Register.<sup>44</sup> In the event that a jurisdiction does not exactly conform with SORNA's juvenile registration requirements, the Juvenile Supplemental Guidelines permit the SMART Office to expand its inquiry in the process of determining if a jurisdiction has substantially implemented SORNA's juvenile registration provisions. Specifically, the Juvenile Supplemental Guidelines allow the SMART Office to review the following:

- (i) Policies and practices to prosecute as adults juveniles who commit serious sex offenses;
- (ii) Policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and
- (iii) Other policies and practices to identify, track, monitor or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes.<sup>45</sup>

### Juvenile Registration Requirements Vary Across Jurisdictions

Despite SORNA's requirement that juveniles adjudicated delinquent of certain offenses register as a sex offender, the implementation of this provision varies across jurisdictions.<sup>46</sup> Some jurisdictions do not register any juveniles at all; some limit the ages of the offenders who might be registered; some limit the offenses for which they might be registered; and others limit the duration, frequency or public availability of registration information.<sup>47</sup> Some jurisdictions have mandatory registration provisions for certain juveniles, some are discretionary, and some have a hybrid approach.<sup>48</sup> At least one jurisdiction required a person who committed an offense at age 12 — who would *not* have been required to register under SORNA had an adjudication occurred at the time of the offense — to register as an adult because the conviction for that offense did not occur until after the individual was 18.<sup>49</sup>

As with adult registration requirements, registration requirements for juveniles are generally triggered by the equivalent of a conviction for a sex offense in juvenile court, which is typically referred to as an “adjudication of delinquency.” Most jurisdictions mandate registration for juveniles transferred and convicted for sex offenses in adult court. In addition, one federal circuit court has held that a person previously adjudicated delinquent of a SORNA-registerable offense in state court can be ordered to register as a sex offender as a mandatory condition of probation for a subsequent, unrelated federal conviction.<sup>50</sup>

Because of the varying nature of juvenile justice systems across jurisdictions, problems often arise when a juvenile is adjudicated delinquent in one jurisdiction and then moves to another.<sup>51</sup> Many of those issues mimic the issues discussed above regarding adult offenders.

### Issues Unique to Juvenile Adjudications

There are some issues unique to juvenile court cases. When a jurisdiction requires that juveniles be subjected to registration requirements more onerous than those imposed on adults convicted of the same offense, equal protection issues exist.<sup>52</sup> In two states, courts ruled that the automatic lifetime registration requirement as applied to adjudicated juveniles unconstitutionally violated due process and, in one of those states, the prohibition against cruel and unusual punishment.<sup>53</sup> However, when a juvenile court judge refuses to order a juvenile to register, as required by statute, a writ of mandamus may be successfully pursued by the state.<sup>54</sup>

### Federal Juvenile Delinquency Act

There are particular issues which arise when a person is ordered to register by a federal court because of a federal adjudication of delinquency for a sex offense.<sup>55</sup> In particular, multiple courts have held that it is *not* a contravention of the Federal Juvenile Delinquency Act confidentiality provisions to require such individuals to register as a sex offender.<sup>56</sup>

## IV. Military Registration

Prior to 2015, no provision of federal law (since the passage of SORNA) generally enabled or permitted federal authorities to register sex offenders such that the information from those registrations would be submitted to any national database. However, in 2015, Congress amended SORNA to require the Department of Defense (DoD) to provide information to NSOR and NSOPW on any sex offender who is adjudged by courts-martial or released from a military corrections facility.<sup>57</sup> In 2016, DoD issued an instruction establishing policies for the “identification, notification, monitoring and tracking of DoD-affiliated personnel” who are registered sex offenders.<sup>58</sup>

Offenders convicted by military tribunals of registerable sex offenses are generally required under SORNA to register with any jurisdiction where they live, work or go to school.<sup>59</sup> Through a series of statutory and administrative cross-references, SORNA requires that persons convicted of a Uniform Code of Military Justice (UCMJ) offense listed in Department of Defense Instruction 1325.07 must register as a sex offender.<sup>60</sup>

Given the unique structure of the military justice system, state jurisdictions must determine which military convictions will be recognized as registerable offenses — and how they will be categorized. For example, a state-level requirement to register based on a conviction of a sex offense in “federal court” was held to also include a court-martial from a military court.<sup>61</sup> Issues

also arise when trying to compare uniquely military offenses that might have a sexual component — such as “Conduct Unbecoming an Officer” — to jurisdiction-level sex offenses. In at least one state, an offender convicted under article 134 of the UCMJ for an offense relating to child pornography was required to register because the offense of conviction was determined to be a “like violation” to a state offense.<sup>62</sup>

If a person resides, works or attends school on a military base, depending on the source and how the federal government obtained the land where the base is located, a state or territory might not have jurisdiction over matters occurring thereon. In other words, the base may be a “federal enclave” where only federal law applies.<sup>63</sup> Therefore, in some locations there may be sex offenders present on military bases who are not required to register with the state because they live, work and attend school solely on land considered to be a federal enclave.

In part because of this problem, the Department of Defense (DoD) and Congress took steps to address the issue of convicted sex offenders in the military.<sup>64</sup> As of 2013, a person required to register as a sex offender is not permitted to enlist or be commissioned as an officer in the Armed Forces.<sup>65</sup> The Army requires that anyone convicted of a sex offense be processed for administrative separation.<sup>66</sup> Further, the Army prohibits overseas assignments for any soldier convicted of a sex offense.<sup>67</sup>

Certain branches have also adopted policies and procedures to independently track and monitor sex offenders who are active duty members, civilian employees, contractors or dependents of active duty members located on U.S. military installations at home and abroad.<sup>68</sup> For example, the Army now requires all sex offenders who reside or are employed on an Army installation (including those outside of the continental United States) to register with the installation provost marshal.<sup>69</sup>

## V. Retroactive Application & Ex Post Facto Considerations

One of the first issues to be litigated as sex offender registration systems were established across the country was whether or not an offender who had been convicted prior to the passage of the laws requiring registration could be required to register.<sup>70</sup> Numerous challenges to the retroactive application of registration laws were heard throughout the 1990s and 2000s.

### United States Supreme Court

In 2003, the United States Supreme Court seemingly settled the issue in the case of *Smith v. Doe*, a challenge from a sex offender in Alaska who argued that the imposition of registration requirements on him violated the ex post facto clause of the Constitution.<sup>71</sup> The court held that registration and notification — under the specific facts of that case — were not punitive, and therefore could be retroactively imposed as regulatory actions.<sup>72</sup>

While the issue was settled for a time, subsequent litigation has ensued based on increased sex offender registration and notification requirements in many jurisdictions since the *Doe* decision.<sup>73</sup> In a series of recent cases interpreting 18 U.S.C. § 2250, the Supreme Court has declined to take a fresh look at any ex post facto implications raised by the increasing requirements that have been placed on registered sex offenders over the past 15 years.<sup>74</sup>

## Federal Courts

From the *Smith v. Doe* decision until 2017, federal courts had nearly universally held that sex offender registration and notification schemes did not violate the ex post facto clause.<sup>75</sup> However, in *Doe v. Snyder*, the Sixth Circuit Court of Appeals held that Michigan's SORNA-implementing law is punitive and, therefore, could not be applied retroactively.<sup>76</sup> The Supreme Court denied certiorari in the case in October 2017 and it is now binding for the states in the circuit: Kentucky, Michigan, Ohio and Tennessee.

## Significant State Court Decisions

Eight state supreme courts in recent years have held that the retroactive application of their sex offender registration and notification laws violate their respective state constitutions.<sup>77</sup> Other state courts have found issues with the retroactive application of their sex offender registration laws in less sweeping fashion.<sup>78</sup> In 2017, the Supreme Court of Pennsylvania held that the application of the state's SORNA-implementing law to a person whose offense occurred prior to the law's effective date was unconstitutional under the ex post facto clause.<sup>79</sup> Conversely, many courts continue to stand by the reasoning of the *Smith v. Doe* case in affirming the retroactive application of sex offender registration laws.<sup>80</sup> However, at least one state that has found an ex post facto violation as applied to its own offenders does not apply to persons convicted in another state who then relocate.<sup>81</sup>

Some courts require the specific performance of a plea agreement or court order when sex offender registration was not specifically ordered by the sentencing court, was bargained away as part of plea negotiations or when an offender was given a specific classification or tier at sentencing.<sup>82</sup> However, many states continue to permit registration and notification under such circumstances. For example, California held that a defendant was properly subjected to community notification in 2004 even though he had entered a plea agreement in 1991 that was silent on the issue.<sup>83</sup>

## Additional Court Opinions

A review of pertinent case law since the passage of SORNA reveals that, in one case, a federal court enjoined the enactment of Nevada's SORNA-implementing legislation based on ex post facto concerns;<sup>84</sup> although the federal court injunction has been lifted,<sup>85</sup> the matter remains in litigation at the state level.<sup>86</sup> In Texas, a writ of mandamus was granted compelling the Department of Public Safety to comply with a court order to remove an offender from the registry.<sup>87</sup> In other states, some offenders have been able to be removed from the registry when the statute is changed in a way that benefits them.<sup>88</sup> One court has held that increasing the penalties for a *failure to register* does not violate the ex post facto clause.<sup>89</sup>

Massachusetts requires a due process hearing before an offender is ordered to comply with its full registration requirements, including those convicted prior to the registration statute's effective date.<sup>90</sup> Applying community notification retroactively to Massachusetts' existing *Level 2* offenders was held to violate due process.<sup>91</sup>

## VI. Other Constitutional Issues

Nearly all persons required to register as sex offenders must do so because they have been convicted of a criminal offense. Accordingly, by the time a person is actually required to register,

a number of constitutional protections have already been afforded — namely, those which inure to a defendant throughout the course of a criminal trial and sentencing.

In prosecutions for *failure to register* cases or civil challenges to registration requirements, offenders have launched unsuccessful challenges based on the following arguments: takings,<sup>92</sup> double jeopardy,<sup>93</sup> procedural due process,<sup>94</sup> substantive due process,<sup>95</sup> equal protection,<sup>96</sup> the right to a trial by jury,<sup>97</sup> right to travel,<sup>98</sup> cruel and unusual punishment,<sup>99</sup> full faith and credit,<sup>100</sup> the supremacy clause<sup>101</sup> and separation of powers.<sup>102</sup> Another set of constitutional arguments are those advanced by the “sovereign citizen movement,” which, though creative, have proven unsuccessful.<sup>103</sup> In addition, in *Bond v. United States*,<sup>104</sup> the Supreme Court granted standing to sex offenders to challenge SORNA on 10th Amendment grounds where previously they had no standing to do so, but no challenges on those grounds have been successful at the circuit level thus far.<sup>105</sup>

## Varied Successful Challenges

Although, as noted above, the vast majority of constitutional challenges to sex offender registration and notification requirements are unsuccessful, there have been some notable decisions based on constitutional grounds. For example, a successful challenge was made in Maine utilizing the Bill of Attainder clause under Article I, Section 9 of the U.S. Constitution.<sup>106</sup>

There were two notable federal court decisions in 2017 where various provisions of state law were found to violate the Constitution. First, the United States Supreme Court held that a North Carolina law prohibiting registered sex offenders from accessing social media sites where minors are permitted (such as Facebook) violated the First Amendment.<sup>107</sup> More than 1,000 people had previously been prosecuted under the law.<sup>108</sup> Second, a federal court in Colorado found that the state’s sex offender registration and notification system violated both the Eighth and 14th Amendments.<sup>109</sup>

In addition to these two recent cases, state and federal courts have previously held the following:

- The collection of internet identifiers violates the First Amendment<sup>110</sup>
- Being ordered to register as a sex offender triggers the protections of procedural due process<sup>111</sup>
- Publishing information about an offender’s “primary and secondary targets” violates due process<sup>112</sup>
- Being ordered to register as a parole condition violates due process when the underlying convictions are not sexual in nature<sup>113</sup>
- Requiring registration for a conviction for solicitation, and not prostitution, when each offense had the same elements, violates due process<sup>114</sup>
- A “three-strikes” sentence based on a failure to register conviction is cruel and unusual punishment<sup>115</sup>
- Mandatory life imprisonment for a second conviction of failure to register is cruel and unusual punishment<sup>116</sup>
- Requiring an offender to continue to register when he had been convicted of having consensual sex with his 14-year-old girlfriend (he was 18 at the time) and had his case successfully dismissed under a deferred disposition is cruel and unusual punishment<sup>117</sup>

In addition, the Pennsylvania Supreme Court invalidated a portion of the state’s SORNA-implementing law because it violated the “single subject” rule of its constitution.<sup>118</sup>

## Interaction Between SORNA and State Law

There have been some notable cases regarding the interaction between SORNA and the existing registration and notification laws in a state: Missouri has held that SORNA preempts state law to the extent that any state constitutional concerns are not implicated,<sup>119</sup> and North Carolina concluded that SORNA is directly incorporated (in part) in to state law and that incorporation is not an unconstitutional delegation of legislative authority.<sup>120</sup> In addition, Texas explicitly considers the federal duration of registration under SORNA in making a determination about whether an offender's registration period can be terminated.<sup>121</sup>

## Jury Determination of Obligation to Register as a Sex Offender

There are a number of Supreme Court cases that do not directly address sex offender registration, yet continue to have a bearing on litigation in the field.<sup>122</sup> For example, the case of *Apprendi v. New Jersey* spurred a number of challenges to registration requirements; namely, contending that a jury should be required to determine whether an offender should be subject to the additional "punishment" of sex offender registration.<sup>123</sup> The test as to whether sex offender registration constitutes "punishment" is the same as that used to determine whether something is "punitive" for purposes of an ex post facto analysis as discussed in the section on Retroactive Registration.<sup>124</sup> To date, most challenges under *Apprendi* have been unsuccessful.<sup>125</sup>

## Ineffective Assistance of Counsel

One frequent argument in failure to register cases is that the offender had ineffective assistance of counsel during the trial for the underlying sex offense, because counsel did not advise them that they would be required to register as a sex offender. Most of these cases have focused on sex offender registration as a "collateral consequence" of conviction;<sup>126</sup> other cases involving whether a guilty plea is knowing, voluntary and intelligent have also discussed the issue.<sup>127</sup> At least one court has concluded that the heightened registration and notification requirements imposed on sex offenders have rendered any registration requirement a "direct consequence," rather than a "collateral consequence," of conviction.<sup>128</sup>

While most courts do not find any constitutional violation in these circumstances, one court held that an affirmative misrepresentation that an offender would not have to register as a sex offender is ineffective assistance of counsel;<sup>129</sup> another determined that incorrect advice to an offender regarding whether he would be required to register as a sex offender is ineffective assistance of counsel;<sup>130</sup> and a constitutional violation was found where counsel advised that an offender plead guilty to a charge of failure to register when the offender had never been convicted of an offense legally requiring registration.<sup>131</sup> In addition, when an attorney does not advise their client of their duty to register and the court's advisement is limited to an admonition that "[y]ou'd have to sign up with the sexual registry and different other things," counsel's performance is constitutionally insufficient.<sup>132</sup>

### *Padilla v. Kentucky*

*Padilla v. Kentucky*<sup>133</sup> held that counsel's failure to correctly advise a client that a conviction would count as a deportable offense under the Immigration and Naturalization Act was deficient assistance under the Sixth Amendment.<sup>134</sup> Since the decision in *Padilla*, a number of cases have addressed the issue of whether counsel's failure to advise their client that a conviction would

result in sex offender registration also runs afoul of the Sixth Amendment; thus far, those challenges have been unsuccessful.<sup>135</sup> The Supreme Court concluded that the holding in *Padilla* does not apply retroactively.<sup>136</sup>

## VII. Sex Offender Registration and Notification in Indian Country

SORNA created, for the first time under federal law, the possibility for certain federally recognized tribes to register sex offenders who live, work or attend school on tribal lands.<sup>137</sup> Generally, the tribes eligible to opt-in as SORNA registration jurisdictions are those who are **not** PL-280 tribes.<sup>138</sup> As of March 1, 2018, there are approximately 160 federally recognized tribes operating as SORNA registration jurisdictions: They either have established — or are in the process of establishing — a sex offender registration and notification program.

The vast majority of the more than 125 tribes that have substantially implemented SORNA have used the Model Tribal Code, which was developed by Indian Law experts in conjunction with the SMART Office and fully covers all of SORNA's requirements.<sup>139</sup> Many tribes have passed more rigorous registration requirements than the states within which they are located — in particular, those tribes located within states that have not substantially implemented SORNA.<sup>140</sup> For example, in addition to possible criminal sanctions for failure to register, tribes are also generally able to exclude any person (such as a convicted sex offender) from their lands altogether.<sup>141</sup>

There are legal issues unique to Indian Country that impact the registration of tribal sex offenders or the enforcement of sex offender registration requirements against persons who reside on tribal lands or were convicted by tribal courts. For example, because of the different standards regarding the right to counsel in some tribal courts, it was sometimes argued that prosecuting a person based in part on an underlying tribal conviction violates the Sixth Amendment. However, in *United States v. Bryant*<sup>142</sup> the United States Supreme Court held that tribal court convictions obtained in proceedings that comply with the Indian Civil Rights Act may be used as predicate convictions in a subsequent federal prosecution.<sup>143</sup>

### Tribal Residents and State Registration Responsibilities

Further complications may develop when an offender lives on tribal land but was convicted of a state or federal offense. One question that arises is whether an offender who exclusively lives, works and attends school on tribal land can be compelled to register with the state within which that tribal land is located. If the offender cannot be compelled to register with the state, it falls to the tribe to register the offender, if the tribe has opted-in to SORNA's provisions and is operating as a registration and notification jurisdiction under its terms.

For example, in New Mexico, the state cannot impose a duty to register on enrolled tribal members living on tribal lands who have been convicted of federal sex offenses.<sup>144</sup> In neighboring Arizona, persons living in Indian Country are required to keep their registration current with both the state and the tribe.<sup>145</sup> In Arizona, however, a tribal member residing on tribal land could not be prosecuted under state law for failure to register unless that tribe's registration responsibilities had been delegated to the state via SORNA's delegation procedure.<sup>146</sup>

## VIII. Failure to Register

Nearly all jurisdictions that require sex offender registration also have a criminal penalty for *failure to register as a sex offender*. Such penalties may facilitate compliance with the sex offender registration process. The following are a sample of some of the prominent issues that arise in state-level failure to register prosecutions.

### Failure to Register as a ‘Continuing Offense’

Many jurisdictions hold that a *failure to register* is a “continuing offense,” much like larceny or escape, such that a person cannot be prosecuted for multiple *failures to register* within a given time frame.<sup>147</sup>

### Failure to Register as a ‘Strict Liability’ Offense

Many jurisdictions require a *mens rea* (i.e., *criminal intent*) of some sort be proven before a person can be convicted of *failure to register*,<sup>148</sup> while others hold that it is a strict liability offense.<sup>149</sup>

### ‘Incarceration’ as It Affects Registration Responsibilities

Although offenders are not generally required to maintain their sex offender registration while incarcerated, offenders who are part of a state department of corrections residential work release program may have a duty to maintain their registration information while there.<sup>150</sup>

### Notice

All jurisdictions require notice of registration requirements be given to sex offenders prior to them being held criminally liable for *failure to register*. That notice can be “imperfect,”<sup>151</sup> or even constructive, and still be found sufficient and valid.<sup>152</sup> However, there are situations where notice will be found insufficient.<sup>153</sup>

### Prosecution Based on Failure to Update Information

Most jurisdictions require sex offenders to update their registration information when that registration information changes. In one state, the failure to provide an online identifier supported a conviction for failure to update a registration.<sup>154</sup> In another, however, a change of residence outside of the U.S. did not require the offender to update the state registry, and a failure to do so could not be prosecuted under state law.<sup>155</sup>

### Venue

Generally speaking, the proper venue for a *failure to register* case is the jurisdiction in which the person has failed to comply with his registration requirements.<sup>156</sup> In addition, at least one state has held that there is no need to prove where an offender was during the time that he failed to register.<sup>157</sup>

## IX. Residency Restrictions

SORNA does not address or require residency restrictions in any way. These residency restrictions are generally passed and enforced on a local or municipal level, although a state, tribe or territory can pass such provisions.<sup>158</sup> When a jurisdiction chooses to impose residency restrictions on registered sex offenders, such restrictions may prohibit registered sex offenders from residing within a certain perimeter of schools, day care centers, parks and other locations frequented by children.

In North Carolina, one portion of the state's residency restriction provisions was recently held to be unconstitutionally vague.<sup>159</sup> Other significant opinions have been issued in previous years. For example, in California, certain residency restrictions were held unconstitutional as applied on due process grounds.<sup>160</sup> In New York and some other states, municipal residency restrictions have been invalidated because they were preempted by state law.<sup>161</sup> In another case, a residency restriction was deemed to be punitive and therefore not retroactively applicable.<sup>162</sup> The 11th Circuit recently permitted a case to proceed where the plaintiffs allege that Florida's residency restrictions are punitive.<sup>163</sup> More frequently, however, local residency restrictions have been upheld,<sup>164</sup> such as in Colorado, where a local ordinance that in effect bars certain sex offenders from living within a city was *not* preempted by state law.<sup>165</sup>

## X. Miscellaneous

The status of having been convicted of a sex offense, being required to register as a sex offender or having failed to register as a sex offender, can trigger other legal issues in a variety of contexts.<sup>166</sup>

### Defamation

Defamation is a civil tort action which can be pursued when someone's reputation in the community has been injured by false or malicious statements.<sup>167</sup> Some individuals have unsuccessfully made claims under 42 U.S.C. § 1983 on the basis of defamation, when they were posted on the sex offender registry website without the due process provided by statute.<sup>168</sup>

### Fair Credit Reporting Act

Certain people have had limited success in pursuing claims under the Fair Credit Reporting Act when they have been incorrectly reported by a credit bureau as having prior sex offense convictions.<sup>169</sup>

### Homeless & Transient Offenders

Homeless or transient sex offenders engender litigation as states have tried to enforce registration requirements. Many states are rewriting their laws to clarify that these offenders are required to register.<sup>170</sup> This issue has recently come to the fore in Chicago, where there has been a great deal of civil litigation based on the city's policy to deny registration to any sex offender who lacked a fixed address.<sup>171</sup>

In most cases, an offender's homelessness has not prevented a successful prosecution for failure to register, although sometimes statutory or evidentiary problems have arisen.<sup>172</sup> Differing

check-in requirements for homeless offenders as opposed to offenders who have a residence address have been affirmed.<sup>173</sup> Homeless offenders have also been successfully prosecuted for failing to update their “residence” location.<sup>174</sup> In one case, a court found that when an offender repeatedly uses a “mail drop” address as his legal address, he “resides” at that location for the purposes of a prosecution for failure to register as a sex offender.<sup>175</sup> In another, when an offender still technically lived at the same address, even though he lived in an outbuilding or his truck rather than the main residence, he could not be prosecuted for a failure to update his residence address.<sup>176</sup> However, in an attempt to prosecute a long-haul trucker for failure to register, a conviction could not be had, even when he had prolonged absences from his registered residence.<sup>177</sup>

## HUD Housing

One collateral consequence of a state-imposed lifetime sex offender registration requirement is that a person is no longer permitted to be admitted to any “federally assisted housing.”<sup>178</sup> Some courts have held that once a person has been admitted to a federal program such as Section 8,<sup>179</sup> they cannot be thereafter terminated because of a new, or newly discovered, lifetime sex offender registration requirement,<sup>180</sup> while others take a different approach.<sup>181</sup> A person may be prosecuted for perjury if they have lied on an application for Section 8 housing about a lifetime registered sex offender living in the residence.<sup>182</sup> One recent case permitted the termination of a beneficiary’s federal assistance based only on the fact that the address displayed on the jurisdiction’s public sex offender registry website for the individual was in a federally subsidized housing development.<sup>183</sup>

## Immigration & Deportation

A recent case analyzed in detail the requirement of the Adam Walsh Act that a person convicted of a specified offense against a minor is not entitled to file a petition to sponsor a fiancé(e) or family member unless the Secretary of the Department of Homeland Security determines that the offender poses no risk to the person on whose behalf the petition is filed.<sup>184</sup>

Convictions for failure to register have triggered subsequent deportation proceedings in some cases. There is currently a circuit split as to whether a conviction for a state *failure to register* offense is a crime involving “moral turpitude” under the immigration code such that a person is removable because of that conviction.<sup>185</sup>

When a naturalized U.S. citizen received his citizenship at least in part because he concealed a prior serious sex offense conviction, he can be denaturalized and have his citizenship revoked.<sup>186</sup>

## Impeachment

Generally speaking, rules of evidence permit attacking the credibility of a witness by way of introducing evidence of certain prior convictions. In one state, a conviction for failure to register was determined to be a “crime of deception,” rendering it admissible in a subsequent criminal trial to impeach the defendant’s testimony.<sup>187</sup>

## Sentencing Enhancement Under Federal Law

Under federal law, additional punishment can result if certain crimes are committed while an offender is required to register as a sex offender. Under 18 U.S.C. § 2260A, the commission of certain offenses against a minor while the perpetrator is required to register as a sex offender

under *any law* will result in a 10-year mandatory minimum sentence to run consecutively to any other sentences imposed.<sup>188</sup> The retroactive application of these provisions does not violate the ex post facto clause.<sup>189</sup>

## **XI. Conclusion**

The statutes, regulations and laws addressing sex offender registration and notification in the United States are varied and complex. While this summary seeks to provide updated and accurate information, practitioners are advised to conduct their own research to confirm that they are utilizing the most current information available and applicable in their jurisdiction.

For any questions about SORNA itself or for more information about any of the SMART Office projects described in this resource, please feel free to contact the SMART Office at [asksmart@usdoj.gov](mailto:asksmart@usdoj.gov) or visit our website at [www.smart.gov](http://www.smart.gov).

---

## Endnotes

<sup>1</sup> Except for military offenders, addressed in more detail in the “Military Registration” section of this update.

<sup>2</sup> Colleges must also annually include in a security report a statement advising the campus community of the location where information about registered sex offenders on campus may be obtained. Institutional Security Policies and Crime Statistics, 34 C.F.R. § 668.46(b)(12).

<sup>3</sup> Federally recognized tribes located in PL-280 states typically have their registration functions handled by the state within which their lands are located. 34 U.S.C. § 20929(a)(2)(A), *citing* Pub. L. No. 83-280, c. 505, 67 Stat. 588 (1953) (codified at 18 U.S.C. § 1162).

<sup>4</sup> Cong. Research Service Report 7-5700, Federal Involvement in Sex Offender Registration and Notification: Overview and Issues for Congress, In Brief (March 25, 2015), *available at* [www.fas.org/sgp/crs/misc/R43954.pdf](http://www.fas.org/sgp/crs/misc/R43954.pdf).

<sup>5</sup> For a comprehensive legislative history of federal sex offender registration and notification legislation, *see* Lori McPherson, *The Sex Offender Registration and Notification Act (SORNA) At 10 Years: History, Implementation, and the Future*, 64 Drake L. Rev. 741 (2016), *available at* [lawreviewdrake.files.wordpress.com/2015/01/mcpherson-final.pdf](http://lawreviewdrake.files.wordpress.com/2015/01/mcpherson-final.pdf).

<sup>6</sup> Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Pub. L. No. 103-322, § 170101, 108 Stat. 2038 (1994). This was an incentive-based system, where states would be penalized (via loss of federal grant funds) for a failure to implement its terms. The five principal U.S. territories (American Samoa, Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico and the U.S. Virgin Islands) were included under Wetterling’s requirements by way of Final Guidelines issued in April 1996. Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 61 Fed. Reg. 15,110 (April 4, 1996).

<sup>7</sup> In the same way that the Wetterling Act’s provisions were incentive-based (*see supra* text accompanying note 6), so were the provisions of Megan’s Law.

<sup>8</sup> 34 U.S.C. §§ 20901-20945. All United States Code references are current as of January 2018. SORNA was reclassified from Title 42 of the U.S. Code to Title 34 in 2017. Editorial Reclassification: Title 34, United States Code, [uscode.house.gov/editorialreclassification/t34/index.html](http://uscode.house.gov/editorialreclassification/t34/index.html); SMARTWatch Dispatch, Editorial Reclassification of SORNA: SORNA Provisions Moved from Title 42 to Title 34, [www.smart.gov/pdfs/Dispatch-Title34-Oct2017.pdf](http://www.smart.gov/pdfs/Dispatch-Title34-Oct2017.pdf).

Three sets of guidelines have been issued to assist in the implementation of SORNA. The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030 (July 2, 2008) [*hereinafter* Final Guidelines]; Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1630 (Jan. 11, 2011) [*hereinafter* Supplemental Guidelines]; Supplemental Guidelines for Juvenile Registration under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 50,552 (Aug. 1, 2016) [*hereinafter* Juvenile Supplemental Guidelines]. Guidelines provisions, standing alone, generally do not create an additional basis for criminal liability under 18 U.S.C. § 2250, *United States v. Belaire*, 480 Fed. Appx. 284 (5th Cir. 2012) (defendant could not be prosecuted for failing to update “temporary lodging” information when neither originating nor destination state required such information to be provided). *But see* *United States v. Piper*, 2013 U.S. Dist. LEXIS 113059 (D. Vt. Aug. 12, 2013).

<sup>9</sup> For any state or territory, the penalty is contained in 34 U.S.C. § 20927:

For any fiscal year after the end of the period for implementation, a jurisdiction that fails, as determined by the Attorney General, to substantially implement this title shall not receive 10 percent of the funds that would otherwise be allocated for that fiscal year to the jurisdiction under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968.

If the 10 percent penalty is assessed, the jurisdiction can apply for reallocation of those funds to use for purposes of implementing SORNA.

For tribes that elect to function as registration jurisdictions, the penalty contained in 34 U.S.C. § 20927 may apply, if the tribe qualifies for that funding, which is determined by formula. However, there is a separate and significant penalty for noncompliance by tribes contained in 34 U.S.C. § 20929: For any federally recognized tribe that the Attorney General determines has “not substantially implemented the requirements of [SORNA] and is not likely to become capable of doing so within a reasonable amount of time,” the statute creates automatic delegation of SORNA functions:

... to another jurisdiction or jurisdictions within which the territory of the tribe is located [and requires the tribe] to provide access to its territory and such other cooperation and assistance as may be needed to enable such other jurisdiction or jurisdictions to carry out and enforce the requirements of [SORNA].

<sup>10</sup> Current as of March 1, 2018. For the current list of implemented jurisdictions, please visit [www.smart.gov/newsroom/jurisdictions\\_sorna.htm](http://www.smart.gov/newsroom/jurisdictions_sorna.htm). For a comprehensive report on the efforts and challenges in implementing SORNA, see GAO-13-211, Sex Offender Registration and Notification Act: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects (2013), available at [www.gao.gov/assets/660/652032.pdf](http://www.gao.gov/assets/660/652032.pdf).

<sup>11</sup> Official reports detailing the systems of each jurisdiction for which an official report has been completed by the SMART Office are available at [www.smart.gov/sorna-map.htm](http://www.smart.gov/sorna-map.htm). In addition, this year the SMART Office released the Sex Offender Registration and Notification Act (SORNA) State and Territory Implementation Progress Check, [www.smart.gov/progress\\_check](http://www.smart.gov/progress_check), which provides a brief overview of each state’s SORNA implementation status.

<sup>12</sup> The precursor of NSOPW was NSOPR (the National Sex Offender Public Registry), which was the official name of the website from the time of its administrative creation in 2005 until the passage of SORNA in 2006 when it was renamed the Dru Sjodin National Sex Offender Public Website. Press Release, Dep’t of Justice, Office of Justice Programs, Department of Justice Activates National Sex Offender Public Registry Website (July 20, 2005), available at [www.amberalert.gov/newsroom/pressreleases/ojp\\_05\\_0720.htm](http://www.amberalert.gov/newsroom/pressreleases/ojp_05_0720.htm). By July of 2006, all fifty states were linked to NSOPR. Press Release, Dep’t of Justice, Office of Justice Programs, All 50 States Linked to Department of Justice National Sex Offender Public Registry Website (July 3, 2006), available at [www.justice.gov/archive/opa/pr/2006/July/06\\_ag\\_414.html](http://www.justice.gov/archive/opa/pr/2006/July/06_ag_414.html).

<sup>13</sup> The SMART Office administers the Tribe and Territory Sex Offender Registry System (TTSORS), which is a system developed particularly for federally recognized tribes and territories which had not previously operated a sex offender registration system or website. All of the information in TTSORS is supplied and administered by the jurisdictions. More information about TTSORS is available at [www.smart.gov/pdfs/TTSORSFactSheet.pdf](http://www.smart.gov/pdfs/TTSORSFactSheet.pdf).

<sup>14</sup> For example, a local police department might submit an offender’s fingerprints to the FBI at the time of arrest.

<sup>15</sup> See Pam Lychner Sexual Offender Tracking and Identification Act of 1996, Pub. L. No. 104-236, 110 Stat. 3093.

<sup>16</sup> NGI Officially Replaces IAFIS—Yields More Search Options and Investigative Leads, and Increased Identification Accuracy (Oct. 24, 2014), [www.fbi.gov/services/cjis/cjis-link/ngi-officially-replaces-iafis-yields-more-search-options-and-investigative-leads-and-increased-identification-accuracy](http://www.fbi.gov/services/cjis/cjis-link/ngi-officially-replaces-iafis-yields-more-search-options-and-investigative-leads-and-increased-identification-accuracy).

<sup>17</sup> In many cases, an offender will have had their fingerprints, palm prints or DNA submitted prior to the registration process, as part of their arrest, sentencing, incarceration or at some other point in the processing of their case. Registration agencies are not required to submit duplicate entries to federal databases where a fingerprint, palm print or DNA record already exists. Final Guidelines, *supra* note 8, at 38,057.

<sup>18</sup> 18 U.S.C. § 4042(c). The Bureau of Prisons is a Department of Justice subdivision and part of the Executive Branch. Federal probation officers are governed by the Administrative Office of the United States Courts, a Judicial Branch office.

<sup>19</sup> Program Statement 5110.15, Notification Requirements Upon Release of Sex Offenders, Violent Offenders, and Drug Traffickers (May 16, 2014), available at [www.bop.gov/policy/progstat/5110\\_017.pdf](http://www.bop.gov/policy/progstat/5110_017.pdf). The

form utilized by BOP to provide notice of registration responsibilities to its prisoners upon release can be found at [www.bop.gov/policy/forms/BP\\_A0648.pdf](http://www.bop.gov/policy/forms/BP_A0648.pdf).

<sup>20</sup> GAO-13-832, *Ice Could Better Inform Offenders it Supervises of Registration Responsibilities and Notify Jurisdictions when Offenders are Removed* (2013) at p. 1, available at [www.gao.gov/assets/660/657831.pdf](http://www.gao.gov/assets/660/657831.pdf).

<sup>21</sup> Notice of Amendment of Privacy Act System of Records, 80 Fed. Reg. 24,269 § HH (April 30, 2015). ICE-ERO uses the SORNA Exchange Portal to provide notifications to jurisdictions when a sex offender is released from ICE-ERO custody. For additional information about the SORNA Exchange Portal, see [www.smart.gov/pdfs/SORNA\\_Portalfactsheet.pdf](http://www.smart.gov/pdfs/SORNA_Portalfactsheet.pdf).

<sup>22</sup> The National Center for Missing and Exploited Children (NCMEC) operates the Sex Offender Tracking Team (SOTT). SOTT publishes a biannual survey of the number of registered sex offenders in the United States. [www.missingkids.com/en\\_US/documents/Sex\\_Offenders\\_Map.pdf](http://www.missingkids.com/en_US/documents/Sex_Offenders_Map.pdf).

<sup>23</sup> Withheld adjudications have been held to require registration under SORNA. See *United States v. Bridges*, 901 F. Supp. 2d 677 (W.D. Va. 2012), *aff'd*, 741 F.3d 464 (4th Cir. 2014) (withheld adjudication in Florida registerable under SORNA); *Roe v. Replogle*, 408 S.W.3d 759 (Mo. 2013) (“suspended imposition of sentence” is a “conviction” under SORNA). In some jurisdictions, registration is required when a person has been civilly committed, received a withheld adjudication, found “Not Guilty by Reason of Insanity” or incompetent to stand trial or when ordered to register by a probation officer. See *Mayo v. People*, 181 P.3d 1207 (Colo. App. 2008) (civil commitment triggered requirement to register); *Price v. State*, 43 So.3d 854 (Fla. Dist. Ct. App. 2010) (withheld adjudication); *State v. Cardona*, 986 N.E.2d 66 (Ill. 2013) (a finding of “not not guilty” for an incompetent defendant sufficient to require registration); *State v. Olsson*, 958 N.E.2d 356 (Ill. App. Ct. 2011) (defendant found incompetent to stand trial was required to register); *In re Kasckarow*, 32 N.E.3d 927 (N.Y. Ct. App. 2015) (nolo contendere plea and withheld adjudication in Florida registerable in New York); *Walters v. Cooper*, 739 S.E.2d 185 (N.C. Ct. App.) (“Prayer for Judgment Continued” on a charge of sexual battery is a final conviction triggering requirement to register); *State v. Townsend*, 2017 Tenn. Crim. App. LEXIS 277 (April 13, 2017) (nolo contendere plea followed by diversion of sentencing is not a “conviction” triggering registration requirement). *But see United States v. Moore*, 449 Fed. Appx. 677 (9th Cir. 2011) (probation condition requiring registration for a tier I offender more than 15 years after the conviction was invalid). In addition, some jurisdictions require registration even if an offender has been pardoned for the underlying offense, *In re Edwards*, 720 S.E.2d 462 (S.C. 2011), had their underlying complaint dismissed and pleas vacated under a special statutory procedure, *People v. Hamdon*, 225 Cal. App. 4th 1065 (2014) (procedure under California Penal Code 1203.4a), *Witten v. State*, 145 So. 3d 625 (Miss. 2014) (procedure under California Penal Code 1203.4a), had their conviction for a sex offense vacated on double jeopardy grounds, *Montoya v. Driggers*, 320 P.3d 987 (N.M. 2014), and in some jurisdictions an offender can remain on the public registry website even if that offender no longer has any meaningful ties to the jurisdiction, *Doe v. O'Donnell*, 924 N.Y.S.2d 684 (N.Y. App. Div. 2011). *But see Stallworth v. State*, 160 So.3d 1161 (Miss. 2015) (expungement of underlying conviction from Maryland entitles the defendant to relief from registration responsibilities in Mississippi).

<sup>24</sup> For example, Montana’s violent offender registry is displayed with its sex offender registry information ([app.doj.mt.gov/apps/svow](http://app.doj.mt.gov/apps/svow)). See Mont. Code § 46-23-502(13) (definition of “violent offense”). Other states have registries for other kinds of offenses. See *In re M.A.*, 43 N.E.3d 86 (Ill. 2015) (13-year-old added to Illinois’ “Murderer and Violent Offender Against Youth” registry); *State v. Brown*, 399 P.3d 872 (Kan. 2017) (describing Kansas’ drug offense registry); *State v. Galloway*, 50 N.E.3d 1001 (Ohio Ct. App. 2015) (discussing Ohio’s Arson registry); *Tennessee Animal Abuse Registry*, Tennessee Bureau of Investigation, [www.tn.gov/tbi/topic/tennessee-animal-abuse-registry](http://www.tn.gov/tbi/topic/tennessee-animal-abuse-registry); Ben Winslow, *Governor Signs More Bills into Law, Including ‘White Collar Crime Registry,’* Fox 13 Now (March 24, 2015), available at [fox13now.com/2015/03/24/governor-signs-more-bills-into-law-including-white-collar-crime-registry/](http://fox13now.com/2015/03/24/governor-signs-more-bills-into-law-including-white-collar-crime-registry/) (Utah).

<sup>25</sup> 34 U.S.C. § 20911(1). The bulk of these cases have been appeals of convictions under 18 U.S.C. § 2250 and interpret the “initial registration” requirement contained in 34 U.S.C. § 20913. See *Carr v. United States*, 560 U.S. 438 (2010).

<sup>26</sup> “Sex Offense” is defined in 34 U.S.C. § 20911(5)(A). For guidance on which persons convicted of UCMJ offenses are required to register, see *United States v. Jones*, 383 Fed. Appx. 885 (11th Cir. 2010) and the “Military Registration” section of this update.

<sup>27</sup> 34 U.S.C. § 20911(5)(B). See *McCarty v. Roos*, 2014 U.S. Dist. LEXIS 48363 (D. Nev., Apr. 8 2014) (describing the standard for registering a Japanese conviction under SORNA); *Board of Examiners v. D’Agostino*, 2015 N.Y. App. Div. LEXIS 5735 (July 2, 2015) (Cambodian conviction registerable in New York).

<sup>28</sup> In other words, there will be situations where SORNA imposes a registration requirement directly on an offender, but the jurisdiction where that offender lives, works or attends school refuses to register him, because the jurisdiction’s laws do not require registration for the offense of conviction. See *Dep’t of Pub. Safety v. Doe*, 94 A.3d 91 (Md. 2014) (state is not required to register an offender if the state’s laws do not require it).

<sup>29</sup> *Doe v. Toelke*, 389 S.W.3d 165 (Mo. 2012) (“the [state] registration requirements apply to any person who ‘has been’ required to register as a sex offender pursuant to federal law. Consequently, even if Doe presently is not required to register pursuant to SORNA, he ‘has been’ required to register as a sex offender and, therefore, is required to register [with the state]”) (offender convicted in 1983 required to register, even though Missouri law only requires registration of persons convicted on or after January 1, 1995).

<sup>30</sup> *Oulman v. Setter*, 2014 Minn. App. Unpub. LEXIS 842 (Aug. 4, 2014) (Colorado registration requirements imposed on offender who relocated to Minnesota).

<sup>31</sup> *Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act*, *supra* note 6.

<sup>32</sup> See *Rainer v. State*, 690 S.E.2d 827 (Ga. 2010) (non-parental false imprisonment is registerable); *Moffitt v. Commonwealth*, 360 S.W.3d 247 (Ky. Ct. App. 2012) (citing the legislative history of the Wetterling Act to support registration for kidnapping); *People v. Knox*, 903 N.E.2d 1149 (N.Y. 2009) (nonparental kidnapping and unlawful imprisonment is registerable); *State v. Smith*, 780 N.W.2d 90 (Wisc. 2010) (non-parental false imprisonment is registerable).

<sup>33</sup> *State v. Norman*, 824 N.W.2d 739 (Neb. 2013).

<sup>34</sup> *In re K.B.*, 285 P.3d 389 (Kan. Ct. App. 2012).

<sup>35</sup> See *Doe v. Board*, 925 N.E.2d 533 (Mass. 2010) (Maine conviction for unlawful sexual contact registerable in Massachusetts); *Skaggs v. Neb. State Patrol*, 804 N.W.2d 611 (Neb. 2011) (California conviction registerable in Nebraska); *Lozada v. South Carolina Law Enforcement Division*, 719 S.E.2d 258 (S.C. 2011) (Pennsylvania conviction for unlawful restraint registerable as kidnapping in South Carolina); *In re Shaquille O’Neal B.*, 684 S.E.2d 549 (S.C. 2009) (North Carolina juvenile adjudication for “indecent liberties between children” registerable in South Carolina); *State v. Harbin*, 2014 Tenn. Crim. App. LEXIS 959 (Oct. 15, 2014) (Michigan conviction for criminal sexual conduct registerable in Tennessee); *Scott v. State*, 2014 Tex. App. LEXIS 11410 (Oct. 16, 2014) (Illinois conviction for criminal sexual assault registerable in Texas). *But see* *People v. Brooks*, 296 P.3d 216 (Colo. 2012) (Texas conviction not registerable in Colorado); *Sharma v. State*, 670 S.E.2d 494 (Ga. Ct. App. 2008) (Texas conviction not registerable in Georgia); *State v. Frederick*, 251 P.3d 48 (Kan. 2011) (Minnesota adjudication for criminal sexual conduct not registerable in Kansas because it is not a “conviction” under Kansas law); *Doe v. Sex Offender Registry Board*, 11 N.E.3d 153 (Mass. App. Ct. 2014) (federal conviction for Kidnapping of a minor not registerable in Massachusetts); *State v. Hall*, 294 P.3d 1235 (N.M. 2013) (California conviction for “annoying or molesting children” not registerable in New Mexico without evidence of actual conduct comparable to New Mexico offense, regardless of the elements of the offense); *State v. Orr*, 304 P.3d 449 (N.M. Ct. App. 2013) (conviction for “taking indecent liberties with children” in North Carolina not registerable in New Mexico); *People v. Diaz*, 2017 N.Y. App. Div. LEXIS 2852 (April 13, 2017) (Virginia conviction for murder of a child, without any sexual conduct or motivation, did not require registration in New York); *Dep’t Pub. Safety v. Anonymous*, 382 S.W.3d 531 (Tex. App. 2012) (Massachusetts conviction for indecent assault and battery not registerable in Texas); *Ex parte Harbin*, 297 S.W.3d 283 (Tex. Crim. App. 2009) (California conviction for “annoying or molesting a child” not registerable in Texas); *State v. Howe*, 212 P.3d 565 (Wash. 2009) (California conviction for “lewd acts upon a child” not registerable in Washington); *State v. Werneth*, 197 P.3d 1195 (Wash. Ct. App. 2008) (Georgia conviction for child molestation not registerable in Washington).

<sup>36</sup> See *Doe v. Pa. Bd. of Prob. & Parole*, 513 F.3d 95 (3d Cir. 2008) (Pennsylvania’s disparate treatment of in-state and out-of-state offenders violated the Equal Protection Clause of the 14th Amendment).

<sup>37</sup> *Tenn. Att’y Gen. Op. 09-01* (Jan. 8, 2009), [www.tn.gov/assets/entities/attorneygeneral/opinions/op09-001.pdf](http://www.tn.gov/assets/entities/attorneygeneral/opinions/op09-001.pdf).

<sup>38</sup> See *United States v. Schofield*, 802 F.3d 722 (5th Cir. 2015) (18 USC § 1470 registerable under SORNA, even though it is not listed); *United States v. Dodge*, 597 F.3d 1347 (11th Cir. 2010) (same); *United States v. Hahn*, 551 F.3d 977 (10th Cir. 2008) (probation conditions properly required registration in a fraud case when there was a prior state conviction for a sex offense); *United States v. Byun*, 539 F.3d 982 (9th Cir. 2008) (conviction for alien smuggling which had underlying facts of sex trafficking properly triggered registration); *United States v. Jensen*, 278 Fed. Appx. 548 (6th Cir. 2008) (Conspiracy to Commit Sexual Abuse is a registerable offense). *But see* *United States v. Jimenez*, 275 Fed. Appx. 433 (5th Cir. 2008) (where only evidence of sexual misconduct was three unsubstantiated police reports, registration requirement was inappropriate); *State v. Coman*, 273 P.3d 701 (Kan. 2012) (bestiality is not a registerable offense); *State v. Haynes*, 760 N.W.2d 283 (Mich. Ct. App. 2008) (bestiality not registerable).

<sup>39</sup> See, e.g., *Doe v. Sex Offender Registry Bd.*, 925 N.E.2d 533 (Mass. 2010) (may not consider facts underlying the conviction); *Commonwealth v. Sampolski*, 89 A.3d 1287 (Pa. Super. Ct. 2014) (looking to the elements of the offense).

<sup>40</sup> See, e.g., *State v. Duran*, 967 A.2d 184 (Md. 2009) (determining that indecent exposure was not registerable because the lewdness element of the crime incorporated conduct that was not sexual in addition to that which could be sexual), *superseded by statute*, see *Wallace v. State*, Md. App. LEXIS 431 at \*15-\*19 (2015).

<sup>41</sup> *Ward v. State*, 288 P.3d 94 (Alaska 2012). SORNA's provisions for enhanced tiering of recidivists are found in 34 U.S.C. § 20911(3)(C) & § 20911(4)(C).

<sup>42</sup> SORNA's minimum standards require that jurisdictions register juveniles who were at least 14 years old at the time of the offense and who have been adjudicated delinquent for committing (or attempting or conspiring to commit) a sexual act with another by force, by the threat of serious violence or by rendering unconscious or drugging the victim. "Sexual Act" is defined in 18 U.S.C. § 2246.

<sup>43</sup> The Supplemental Guidelines (2011) give jurisdictions full discretion over whether they will post information about juveniles adjudicated delinquent of sex offenses on their public registry website. Supplemental Guidelines, *supra* note 8.

<sup>44</sup> *Id.*

<sup>45</sup> SMARTWatch Dispatch, *Juvenile Registration and SORNA* (Sept. 2016), [www.smart.gov/pdfs/juvenile-dispatch-final-2016.pdf](http://www.smart.gov/pdfs/juvenile-dispatch-final-2016.pdf).

<sup>46</sup> A survey of the varying juvenile registration responsibilities imposed by each state can be found in *A Snapshot of Juvenile Registration and Notification Laws: A Survey of the United States* (2011), [www.njcn.org/uploads/digital-library/SNAPSHOT\\_web10-28.pdf](http://www.njcn.org/uploads/digital-library/SNAPSHOT_web10-28.pdf).

<sup>47</sup> See, e.g., *Clark v. State*, 957 A.2d 1 (Del. 2008) (lifetime registration requirement for juvenile was not contravened by requirement to consider the "best interests of the child" in fashioning a disposition). Some states go beyond SORNA's requirements. See, e.g., *State v. I.C.S.*, 145 So.3d 350 (La. 2014) (defendants who committed sex offenses prior to age 14, were not transferrable to adult court at that age, and whose offenses did not require registration upon a juvenile adjudication of delinquency were prosecuted in adult court in their 20s for those offenses and required to register); *In re J.L.*, 800 N.W.2d 720 (S.D. 2011) (14-year-old boy adjudicated delinquent for nonforcible sex with his 12-year-old girlfriend was ordered to register for life).

<sup>48</sup> See *N.L. v. State*, 989 N.E.2d 773 (Ind. 2013) (adjudicated juvenile may only be required to register after an evidentiary hearing, using the "clear and convincing" standard). For a complete summary of the juvenile registration schemes across the United States, see *Smart Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders* (2015), <https://www.smart.gov/pdfs/SMARTSummary.pdf>.

<sup>49</sup> *State v. I.C.S.*, 145 So. 3d at 350.

<sup>50</sup> *United States v. Shannon*, 511 Fed. Appx. 487 (6th Cir. 2013) (Ohio adjudication for Gross Sexual Imposition triggered registration condition in subsequent sentencing for possession of a firearm by a felon).

<sup>51</sup> See, e.g., *In re Crockett*, 159 Cal. App. 4th 751 (Cal. Ct. App. 2008) (juvenile adjudicated delinquent of sex offense in Texas was not required to register when he moved to California); *Murphy v. Commonwealth*, 500 S.W.3d 827 (Ky. 2016) (juvenile adjudicated delinquent in Michigan required to register in Kentucky, even though Kentucky-adjudicated juveniles are not required to register).

<sup>52</sup> See *In re Z.B.*, 757 N.W.2d 595 (S.D. 2008) (treating juvenile sex offenders convicted of the same crimes as adult sex offenders differently and more harshly than the adult sex offenders served no rational purpose and violated the Equal Protection Clause of the 14th Amendment); cf. *In re C.P.T.*, 2008 Minn. App. Unpub. LEXIS 929 (Aug. 5, 2008) (lifetime registration requirement for juveniles does not violate due process).

<sup>53</sup> *In re C.P.*, 967 N.E.2d 729 (Ohio 2012) (due process and the prohibition against cruel and unusual punishment); *In re J.B.*, 107 A.3d 1 (Pa. 2014) (procedural due process). Other courts have held that registration requirements as applied to juveniles adjudicated delinquent of a sex offense does not violate the Eighth Amendment. *United States v. Under Seal*, 709 F.3d 257 (4th Cir. 2013); *People v. J.O.*, 2015 Colo. App. LEXIS 1319 (Aug. 27, 2015); see also *In re Justin B.*, 747 S.E.2d 774 (S.C. 2013) (lifetime GPS monitoring of a juvenile adjudicated delinquent of a sex offense does not violate the Eighth Amendment).

<sup>54</sup> *Illinois ex. rel. Birkett v. Konetski*, 909 N.E.2d 783 (Ill. 2009).

<sup>55</sup> In 2010, the U.S. Supreme Court granted certiorari in a case where the Ninth Circuit had held that the juvenile registration provisions of SORNA were unconstitutional when applied retroactively. *United States v. Juvenile Male*, 581 F.3d 977 (2009), *vacated and remanded*, 131 S. Ct. 2860 (2011), *appeal dismissed as moot*, 653 F.3d 1081 (9th Cir. 2011). In its decision, however, the Supreme Court did not in any way address the question of the constitutionality of the retroactive application of SORNA's requirement that certain adjudicated juveniles register as sex offenders.

<sup>56</sup> *United States v. Under Seal*, 709 F.3d 257 (4th Cir. 2013); *United States v. Juvenile Male*, 670 F.3d 999 (9th Cir. 2012). The Federal Juvenile Delinquency Act is found at 18 U.S.C. §§ 5031-5042.

<sup>57</sup> Military Sex Offender Reporting Act of 2015 (Title V of the Justice for Victims of Trafficking Act of 2015), Pub. L. No. 114-22, § 502, 129 Stat. 227 (codified at 34 U.S.C. § 20931).

<sup>58</sup> Registered Sex Offender (RSO) Management in DoD, Dep't of Defense Instruction 5525.20 (November 14, 2016), [www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/552520\\_dodi\\_2016.pdf](http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/552520_dodi_2016.pdf). This instruction repealed a memorandum previously issued in 2015: Registered Sex Offender (RSO) Identification, Notification, and Monitoring in DoD, Directive-Type Memorandum (DTM) 15-003 (March 26, 2015).

<sup>59</sup> *United States v. Kebodeaux*, 133 S.Ct. 2496 (2013).

<sup>60</sup> Administration of Military Correctional Facilities and Clemency and Parole Authority, Dep't of Defense Instruction 1325.07, Appx. 4 to Enc. 2 (March 11, 2013), [www.dtic.mil/whs/directives/corres/pdf/132507p.pdf](http://www.dtic.mil/whs/directives/corres/pdf/132507p.pdf). Although the United States Coast Guard is technically a part of the Department of Homeland Security, this Instruction also governs their proceedings. See *Kebodeaux*, 133 S.Ct. at 2496.

<sup>61</sup> *Billingsley v. Alabama*, 115 So.3d 192 (Ala. Crim. App. 2012).

<sup>62</sup> *Doe v. Sex Offender Registry Board*, 23 N.E.3d 938 (Mass. 2015).

<sup>63</sup> "Federal Enclave" is a legal term of art which refers to property that is either in whole or in part under the law enforcement jurisdiction of the United States Government. See generally the "Enclave Clause," U.S. Const. art. I, § 8, cl. 17 ("[The Congress shall have Power...] [t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings"); see also 40 U.S.C. § 3112 (2006) (concerning federal jurisdiction). A similar issue arises regarding offenders located within national parks or other federally held land that holds the status of "federal enclave."

<sup>64</sup> The Department of Defense has also acted by way of investigations and regulatory actions. In August 2014, the Inspector General of the Department of Defense (DoD) issued a report regarding DoD's compliance with SORNA. DODIG-2014-103, Evaluation of DoD Compliance with the Sex Offender Registration and Notification Act (August 29, 2014), available at [web.archive.org/web/20170614201826/http://www.dodig.mil/pubs/documents/DODIG-2014-103.pdf](http://web.archive.org/web/20170614201826/http://www.dodig.mil/pubs/documents/DODIG-2014-103.pdf).

<sup>65</sup> National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, § 523, 126 Stat. 1723 (codified at 10 U.S.C. § 504 note); Enlistment, Appointment, and Induction Criteria, 32 C.F.R. § 66.6(b)(8)(iii) (2015).

<sup>66</sup> See, e.g., Army Regulation 135-178, § 12-4 (2017); Antonieto Rico, *Army to Discharge Convicted Sex Offenders*, Military Times (Nov. 20, 2013), [web.archive.org/web/20131127165311/http://www.militarytimes.com/article/20131120/NEWS/311200024/Army-discharge-convicted-sex-offenders](http://www.militarytimes.com/article/20131120/NEWS/311200024/Army-discharge-convicted-sex-offenders).

<sup>67</sup> Initiating Separation Proceedings and Prohibiting Overseas Assignment for Soldiers Convicted of Sex offenses, Army Directive 2013-21.

<sup>68</sup> See Army Regulation 190-45, § 2-7 (2016), available at [www.apd.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/r190\\_45\\_Web\\_FINAL.pdf](http://www.apd.army.mil/epubs/DR_pubs/DR_a/pdf/web/r190_45_Web_FINAL.pdf). This regulation was heavily revised in 2016 and now provides detailed information about the responsibilities of convicted soldiers, Provost Marshals and Directors of Emergency Services.

<sup>69</sup> Registration of Sex Offenders on Army Installations (inside and outside the Continental United States), 32 C.F.R. § 635.6 (2016). Provost Marshal officials have also been directed to seek to establish Memoranda of Understanding with state and local sex offender registration officials to facilitate the flow of information regarding sex offenders (along with other criminal justice information). Establishing Memoranda of Understanding, 32 C.F.R. § 635.20 (2015); see also Army Regulation 27-10, §§ 24-1 to 24-4 (May 11, 2016) (Registration of Military Sexual Offenders), [www.apd.army.mil/epubs/DR\\_pubs/DR\\_a/pdf/web/r27\\_10\\_FINAL.pdf](http://www.apd.army.mil/epubs/DR_pubs/DR_a/pdf/web/r27_10_FINAL.pdf). The Navy also has its own policies, Policy for Sex Offender Tracking, Assignment, and Installation Access Restrictions, CNIC Instruction 1752.1 (Feb. 7, 2011), [www.cnic.navy.mil/content/dam/cnic/hq/pdfs/Instructions/01000%20Series/CNICINST%201752.1.pdf](http://www.cnic.navy.mil/content/dam/cnic/hq/pdfs/Instructions/01000%20Series/CNICINST%201752.1.pdf).

<sup>70</sup> SORNA Guidelines require that jurisdictions register offenders whose “predicate convictions predate the enactment of SORNA or the implementation of SORNA in the jurisdiction” when an offender is —

- (1) incarcerated or under supervision, either for the predicate sex offense or for some other crime;
- (2) already registered or subject to a pre-existing sex offender registration requirement under the jurisdiction’s law; or
- (3) re-enters the jurisdiction’s justice system because of a subsequent felony conviction.

The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38,030, 38,046 (July 2, 2008); Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1630, 1639 (Jan. 11, 2011).

<sup>71</sup> *Smith v. Doe*, 538 U.S. 1009 (2003).

<sup>72</sup> *Id.*

<sup>73</sup> See, e.g., *Jensen v. State*, 905 N.E.2d 384 (Ind. 2009) (person convicted after the initial passage of the law could be required to comply with amended requirements).

<sup>74</sup> See *United States v. Kebodeaux*, 133 S.Ct. 2496 (2013) (assuming without deciding that Congress did not violate the ex post facto clause in enacting SORNA’s registration requirements); *United States v. Juvenile Male*, 131 S.Ct. 2860 (2011) (declining to address whether SORNA’s requirements violated the ex post facto clause on grounds of mootness); *Carr v. United States*, 560 U.S. 438 (2010) (declining to address the issue of whether SORNA violates the ex post facto clause).

<sup>75</sup> See, e.g., *Shaw v. Patton*, 823 F.3d 556 (10th Cir. 2016); *United States v. Parks*, 698 F.3d 1 (1st Cir. 2012); *United States v. WBH*, 664 F.3d 848 (11th Cir. 2011).

<sup>76</sup> *Doe v. Snyder*, 834 F.3d 696 (6th Cir. 2016), *cert. denied*, 2017 U.S. LEXIS 4754 (Oct. 2, 2017).

<sup>77</sup> *Doe v. State*, 189 P.3d 999 (Alaska 2008); *Wallace v. State*, 905 N.E.2d 371 (Ind. 2009); *State v. Letalien*, 985 A.2d 4 (Me. 2009); *Doe v. Dep’t of Pub. Safety & Corr. Servs.*, 62 A.3d 123 (Md. 2013); *State v. Williams*, 952 N.E.2d 1108 (Ohio 2011); *Starkey v. Okla. Dep’t of Corr.*, 305 P.3d 1004 (Okla. 2013) (detailing all case law from state courts regarding retroactive application of sex offender registration and notification statutes); *Commonwealth v. Muniz*, 2017 Pa. LEXIS 1682 (2017). One additional case along these lines, *Doe v. Phillips*, 194 S.W.3d 833 (Mo. 2006), has subsequently been rendered moot, *Doe v. Keathley*, 2009 Mo. App. LEXIS 4 (Jan. 6, 2009). In 2016, an unusual series of cases in Kansas first held that the state’s registration system was punitive in effect — and thus retroactive application was unconstitutional — then overturned that decision. *Doe v. Thompson*, 373 P.3d 750 (Kan. 2016) (registration system is punitive); *State v. Buser*, 371 P.3d 886 (Kan. 2016) (same); *State v. Redmond*, 371 P.3d 900 (Kan. 2016) (same). *But*

---

see *State v. Petersen-Beard*, 304 Kan. 192 (2016) (registration system does not violate the Ex Post Facto clause).

<sup>78</sup> The New Hampshire Supreme Court held that requiring lifetime registration without the opportunity for review violates the ex post facto provisions of the state's constitution. *Doe v. State*, 111 A.3d 1077 (N.H. 2015) (registration requirements can only be applied to the petitioner if he is "promptly given an opportunity for either a court hearing, or an administrative hearing subject to judicial review, at which he is permitted to demonstrate that he no longer poses a risk sufficient to justify continued registration ....[and] must be afforded periodic opportunities for further hearings, at reasonable intervals, to revisit whether registration continues to be necessary to protect the public"). In Pennsylvania, the retroactive application of a requirement to appear in person to update any changes to an offender's registration information was held to violate the ex post facto clause. *Cappolino v. Commissioner*, 102 A.3d 1254 (Pa. Commw. Ct. 2014). *But see Commonwealth v. Perez*, 97 A.3d 747 (Pa. Super. Ct. 2014) (retroactive application of new registration scheme did not violate the ex post facto clause).

<sup>79</sup> *Commonwealth v. Muniz*, 2017 Pa. LEXIS 1682 (2017).

<sup>80</sup> See, e.g., *Shaw v. Patton*, 823 F.3d 556 (10th Cir. 2016); *State v. Henry*, 228 P.3d 900 (Ariz. Ct. App. 2010); *Finnicum v. State*, 673 S.E.2d 604 (Ga. 2009); *State v. Yeoman*, 236 P.3d 1265 (Idaho 2010); *Illinois ex. rel. Birkett v. Konetski*, 909 N.E.2d 783 (Ill. 2009); *In re Nick. H.*, 123 A.3d 229 (Md. 2015); *Smith v. Commonwealth*, 743 S.E.2d 146 (Va. 2013); *Kammerer v. State*, 322 P.3d 827 (Wyo. 2014). In addition, one federal circuit concluded that retroactive application of New York's registration amendments to an offender did not violate the ex post facto clause. *Doe v. Cuomo*, 755 F.3d 105 (2d Cir. 2014).

<sup>81</sup> *State v. Zerbe*, 50 N.E.3d 368 (Ind. 2016).

<sup>82</sup> *Commonwealth v. Hainesworth*, 82 A.3d 444 (Pa. 2014) (defendant entitled to specific performance of his plea agreement, a component of whose negotiation was that he would not be required to register as a sex offender). *But see Commonwealth v. Giannantonio*, 114 A.3d 429 (Pa. Super. Ct. 2015) (extension of state duration of registration period did not violate Ex Post Facto when conviction secured pursuant to federal plea agreement).

<sup>83</sup> *Doe v. Harris*, 302 P.3d 598 (Cal. 2013).

<sup>84</sup> *ACLU v. Masto*, 2:08-cv-00822-JCM-PAL (D. Nev., Oct. 7, 2008).

<sup>85</sup> *ACLU v. Masto*, 670 F.3d 1046 (9th Cir. 2012). The Nevada Supreme Court also held that retroactive application of registration and notification requirements to juveniles adjudicated delinquent does not violate due process or the ex post facto clause. *State v. Eighth Jud. Dist. Ct.*, 306 P.3d 369 (Nev. 2013); *injunctio n dissolved*, *S.M. v. State*, 2015 Nev. Unpub. LEXIS 131 (Feb. 6, 2015).

<sup>86</sup> Sandra Chereb, *Nevada Supreme Court Stops Sex Offender Law from Being Implemented*, Las Vegas Review Journal (July 1, 2016), [www.reviewjournal.com/news/nevada/nevada-supreme-court-stops-sex-offender-law-being-implemented](http://www.reviewjournal.com/news/nevada/nevada-supreme-court-stops-sex-offender-law-being-implemented); Sandra Chereb, *Nevada to Add Hundreds to Sex Offender Registry*, Las Vegas Review Journal (June 3, 2016), <https://www.reviewjournal.com/crime/nevada-add-hundreds-sex-offender-registry>.

<sup>87</sup> *McCraw v. Gomez*, 2014 Tex. App. LEXIS 13911 (Dec. 30, 2014).

<sup>88</sup> *State v. Jedlicka*, 747 N.W.2d 580 (Minn. App. 2008); see also *Flanders v. State*, 955 N.E.2d 732 (Ind. App. 2011).

<sup>89</sup> *Buck v. Commonwealth*, 308 S.W.3d 661 (Ky. 2010).

<sup>90</sup> See the procedure followed in Massachusetts, where the Sex Offender Registry Board must find that the offender poses a danger to the community before requiring registration: 803 CMR 106(B), available at [www.mass.gov/courts/docs/lawlib/800-899cmr/803cmr1.pdf](http://www.mass.gov/courts/docs/lawlib/800-899cmr/803cmr1.pdf). In *Doe v. Sex Offender Registry Board*, 41 N.E.3d 1058 (Mass. 2015), the court held that the burden of proof for classification was no longer by a 'preponderance of the evidence' but was constitutionally required to be by the higher standard of "clear and convincing evidence."

<sup>91</sup> *Moe v. Sex Offender Registry Board*, 6 N.E.3d 530 (Mass. 2014).

<sup>92</sup> *Smith v. Commonwealth*, 743 S.E.2d 146 (Va. 2013).

<sup>93</sup> *State v. Larson*, 2008 Minn. App. Unpub. LEXIS 1525 (Dec. 30, 2008); *State v. Sparks*, 657 S.E. 2d 655 (N.C. 2008); *State v. Green*, 230 P.3d 654 (Wash. App. 2010).

<sup>94</sup> *Murphy v. Rychlowski*, 2017 U.S. App. LEXIS 15662 (7th Cir. Aug. 18, 2017); *Meza v. Livingston*, 607 F.3d 392 (5th Cir. 2010) (defendant had a liberty interest in being free from registration requirements where he had not been convicted of a sex offense); *State v. Arthur H.*, 953 A.2d 630 (Conn. 2008) (no due process hearing required); *Doe v. Dep't of Public Safety*, 971 A.2d 975 (Md. App. 2009) (presumption of dangerousness flowing from a rape conviction was permissible); *Smith v. Commonwealth*, *supra* note 92.

<sup>95</sup> *Litmon v. Harris*, 768 F.3d 1237 (9th Cir. 2014) (requiring sexually violent predators to check in every 90 days did not violate substantive due process); *Woe v. Spitzer*, 571 F.Supp.2d 382 (E.D.N.Y. 2008) (when amended statute extended the registration period by ten years three days before petitioner's registration requirement expired, there was no protected liberty interest).

<sup>96</sup> *Doe v. Jindal*, 2011 U.S. Dist. LEXIS 100408 (E.D. La., Sept. 7, 2011); *State v. Dickerson*, 97 A.3d 15 (Conn. App. Ct. 2014). California has a long line of cases litigating equal protection issues in sex offender registration cases, based on *People v. Hofsheier*, 129 P.3d 29 (Cal. 2006), which was overruled in *Johnson v. Cal. Dep't of Justice*, 341 P.3d 1075 (Cal. 2015).

<sup>97</sup> *See Thomas v. United States*, 942 A.2d 1180 (D.C. 2008) (underlying misdemeanor charges which required registration upon conviction were "petty" for purposes of the Sixth Amendment, and a jury trial was not required); *In re Richard A.*, 946 A.2d 204 (R.I. 2008). *But see Fushek v. State*, 183 P.3d 536 (Ariz. 2008) (because of the seriousness of the consequences of being designated a sex offender, jury trial must be afforded when there is a special allegation of sexual motivation in a misdemeanor case).

<sup>98</sup> *Doe v. Jindal*, 2015 U.S. Dist. LEXIS 155908 (E.D. La. Nov. 18, 2015); *State v. Smith*, 344 P.3d 1244 (Wash. App. 2015).

<sup>99</sup> *People v. Nichols*, 176 Cal. App. 4th 428 (3d Dist. 2009) (28 years to life sentence for failure to register under California's three-strikes law did not violate the Eighth Amendment); *People v. T.D.*, 823 N.W.2d 101 (Mich. 2011) (requiring a juvenile to register was not cruel and unusual punishment), *dismissed as moot*, 821 N.W.2d 569 (Mich. 2012); *State v. Blankenship*, 48 N.E.3d 516 (Ohio 2015) (Tier II registration requirements for an offense committed when the offender was 21 and the victim was 15 is not cruel and unusual punishment).

<sup>100</sup> *Rosin v. Monken*, 599 F.3d 574 (7th Cir. 2010) (an offender convicted in New York was promised in his plea agreement that he would never have to register as a sex offender, but when he moved to Illinois and was required to register under its laws, it was not a violation of the Full Faith and Credit Clause); *see Burton v. State*, 977 N.E.2d 1004 (Ind. Ct. App. 2012) (state unsuccessfully argued that the Full Faith and Credit clause should apply).

<sup>101</sup> *United States v. King*, 431 Fed. Appx. 630 (10th Cir. 2011).

<sup>102</sup> *State v. Caton*, 260 P.3d 946 (Wash. Ct. App. 2011), *rev'd on other grounds*, 273 P.3d 980 (Wash. 2012).

<sup>103</sup> Proponents of the sovereign citizen movement "believe they are not subject to federal or state statutes or proceedings, reject most forms of taxation as illegitimate, and place special significance on commercial law." *United States v. Harding*, 2013 U.S. Dist. LEXIS 62471 (W.D. Va., May 1, 2013) (18 U.S.C. § 2250 prosecution), *quoting* *United States v. Brown*, 669 F.3d 10 (1st Cir. 2012). In *Harding* the defendant argued that the federal court did not have jurisdiction over him, citing the Organic Act of 1871, the fact that his name was listed in all caps on the indictment, that there was no corpus delicti for the offense, and that the federal court was an "Admiralty Court" because the flag in the courtroom had fringe on it. *Id.* at \*3-\*15.

<sup>104</sup> 564 U.S. 211 (2011), *on remand at* 681 F.3d 149 (3d Cir. 2012), *cert. granted on other grounds*, 568 U.S. 1140 (2013). Thus far, 10th Amendment challenges raised under *Bond* have been unsuccessful. *See United States v. Kidd*, 2013 U.S. App. LEXIS 5032 (6th Cir., Mar. 11, 2013); *United States v. Smith*, 504 Fed. Appx. 519 (8th Cir. 2012).

<sup>105</sup> *See United States v. Reynolds*, 565 U.S. 432 (2012).

<sup>106</sup> *Doe v. Anderson*, 108 A.3d 378 (Me. 2015) (holding, in part, that a guilty plea is not a "criminal trial"). *But see Bell v. Pennsylvania Board of Probation & Parole*, 2014 Pa. Commw. Unpub. LEXIS 460 (July 24, 2014).

<sup>107</sup> *Packingham v. North Carolina*, 137 S.Ct. 1730 (2017).

<sup>108</sup> *Id.* at 1731.

<sup>109</sup> *Millard v. Rankin*, 2017 U.S. Dist. LEXIS 140301 (D. Colo. Aug. 31, 2017).

---

<sup>110</sup> *Doe v. Prosecutor, Marion County*, 705 F.3d 694 (7th Cir. 2013) (statute prohibiting sex offenders from using social networking websites, instant messaging services, and chat programs violated the First Amendment); *Doe v. State*, 898 F.Supp.2d 1086 (D. Ne. 2012) (requirement to provide internet identifiers found unconstitutional on First Amendment and other grounds); *Doe v. Shurtleff*, 2008 U.S. Dist. LEXIS 73787 (D. Utah Sept. 25, 2008), *vacated after legislative changes*, 628 F.3d 1217 (10th Cir. 2010); *Harris v. State*, 985 N.E.2d 767 (Ind. Ct. App. 2013) (statute prohibiting use of a social networking site by a registered sex offender violated the First Amendment).

<sup>111</sup> *Brown v. Montoya*, 662 F.3d 1152 (10th Cir. 2011).

<sup>112</sup> *State v. Briggs*, 199 P.3d 935 (Utah 2008) ('target' information could include, among other things, a description of the offender's preferred victim demographics).

<sup>113</sup> *Ex parte Evans*, 338 S.W.3d 545 (Tex. Crim. App. 2011).

<sup>114</sup> *Doe v. Jindal*, 851 F. Supp.2d 995 (E.D. La. 2012).

<sup>115</sup> *Gonzalez v. Duncan*, 551 F.3d 875 (9th Cir. 2008).

<sup>116</sup> *Bradshaw v. State*, 671 S.E.2d 485 (Ga. 2008).

<sup>117</sup> *People v. Dipiazza*, 778 N.W.2d 264 (Mich. Ct. App. 2009).

<sup>118</sup> *State v. Nieman*, 84 A.3d 603 (Pa. 2013).

<sup>119</sup> *Doe v. Keathley*, 2009 Mo. App. LEXIS 4 (Jan. 6, 2009). *But see State v. Hough*, 978 N.E.2d 505 (Ind. Ct. App. 2012); *Andrews v. State*, 978 N.E.2d 494 (Ind. Ct. App. 2012) (stating without deciding that the federal duty to register could apply if the offender engaged in interstate travel).

<sup>120</sup> *In re McClain*, 741 S.E.2d 893 (N.C. 2013) (North Carolina's registration law directly incorporates the clean record provisions of SORNA); *see In re Hall*, 768 S.E.2d 39 (N.C. Ct. App. 2014) (using SORNA's tiering structure).

<sup>121</sup> Tex. Code. Crim. Proc. §§ 62.402 & 62.405.

<sup>122</sup> While beyond the scope of this update, other cases such as *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (2012), and *Arlington v. FCC*, 569 U.S. 220 (2013), are having an impact on certain prosecutions under 18 U.S.C. § 2250.

<sup>123</sup> 530 U.S. 466 (2000).

<sup>124</sup> However, the fact that a state has found its sex offender registration and notification system "punitive" does not render any person registered under it "in custody" for purposes of a Habeas Corpus petition. *Dickey v. Allbaugh*, 664 Fed. Appx. 690 (10th Cir. 2016) (offender registered in Oklahoma).

<sup>125</sup> *See People v. Mosley*, 344 P.3d 788 (Cal. 2015) (residency restrictions are not "punishment" for the purposes of Sixth Amendment analysis); *Colorado v. Rowland*, 207 P.3d 890 (Colo. Ct. App. 2009); *State v. Meredith*, 2008 Minn. App. Unpub. LEXIS 324 (April 8, 2008).

<sup>126</sup> The American Bar Association's Collateral Consequences Project, <http://www.abacollateralconsequences.org>, has produced a standing resource which lists *all* collateral consequences which flow at the federal and state level for convictions of certain crimes. Users may select "sex offenses" as a search term and view all of the collateral consequences which may be imposed on persons so convicted.

<sup>127</sup> *See United States v. Cottle*, 355 Fed. Appx. 18 (6th Cir. 2009); *Mireles v. Bell*, 2008 U.S. Dist. LEXIS 2451 (D. Mich. Jan. 11, 2008); *State v. Flowers*, 249 P.3d 367 (Idaho 2011); *Magyar v. State*, 18 So.3d 807 (Miss. 2009) (citing thorough collection of controlling case law across the country); *People v. Gravino*, 928 N.E.2d 1048 (N.Y. 2010) (guilty plea); *People v. Nash*, 48 A.D.3d 837 (N.Y. App. Div. 3d Dep't 2008); *see also United States v. Molina*, 68 M.J. 532 (U.S.C.G. CCA 2009) (mutual misunderstanding of registration requirement was grounds for withdrawing a guilty plea entered pursuant to a plea agreement); *People v. Bowles*, 89 A.D.3d 171 (N.Y. App. Div. 2011) (offender has the right to the effective assistance of counsel in a risk level assessment hearing).

<sup>128</sup> *United States v. Riley*, 72 M.J. 115 (C.A.A.F. 2013) (substantial basis to question the providence of guilty plea when the judge failed to ensure that the defendant understood the registration requirements associated with a plea of guilty). The *Riley* decision was clarified in *United States v. Talkington*, 73 M.J. 212 (2014), as applying only to considerations raised by the *Padilla* case and its progeny regarding the voluntariness of

---

guilty pleas, and is further clarified in *Washington v. United States*, 74 M.J. 560 (A.C.C.A. 2014), as not applying retroactively.

<sup>129</sup> *United States v. Rose*, 2010 CCA LEXIS 251 (A.F. Ct. Crim. App. June 11, 2010). *Contra Edmonds v. Pruett*, 2014 U.S. Dist. LEXIS 116736 (E.D. Va. Aug. 20, 2014).

<sup>130</sup> *People v. Fonville*, 804 N.W.2d 878 (Mich. Ct. App. 2011).

<sup>131</sup> *People v. Armstrong*, 50 N.E.3d 745 (Ill. App. Ct. 2016).

<sup>132</sup> *Vaughn v. Nixon*, 2015 U.S. Dist. LEXIS 164918 (M.D. Tenn. Dec. 9, 2015).

<sup>133</sup> 559 U.S. 356 (2010).

<sup>134</sup> *Id.*

<sup>135</sup> *Rodriguez-Moreno v. Oregon*, 2011 U.S. Dist. LEXIS 151123 (D. Or. Nov. 15, 2011) (failure to advise of registration requirements is not ineffective assistance of counsel); *People v. Cowart*, 28 N.E.3d 862 (Ill. App. Ct. 2015) (trial court failure to admonish regarding registration requirements is not constitutionally deficient); *Embry v. Commonwealth*, 476 S.W.3d 264 (Ky. 2015); *Taylor v. State*, 2016 Minn. LEXIS 786 (Dec. 7, 2016) (distinguishing between deportation and predatory-offender registrations). *Contra Taylor v. State*, 698 S.E.2d 384 (Ga. Ct. App. 2010); *People v. Dodds*, 7 N.E.3d 83 (Ill. App. Ct. 2014); *People v. Fonville*, *supra* note 130; *State v. Trotter*, 330 P.3d 1267 (Utah 2014).

<sup>136</sup> *Chaidez v. United States*, 568 U.S. 342 (2013).

<sup>137</sup> 34 U.S.C. § 20929.

<sup>138</sup> *See* 34 U.S.C. § 20929(b)(2); 18 U.S.C. § 1162.

<sup>139</sup> [www.smart.gov/pdfs/MTSOR\\_Code.pdf](http://www.smart.gov/pdfs/MTSOR_Code.pdf).

<sup>140</sup> For example, the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) was one of the first tribes to implement SORNA, and met all of SORNA's requirements in doing so, *see* Substantial Implementation Report: Confederated Tribes of the Umatilla Indian Reservation at [www.smart.gov/pdfs/sorna/ConfTribes-UmatillaIndianReservation.pdf](http://www.smart.gov/pdfs/sorna/ConfTribes-UmatillaIndianReservation.pdf). CTUIR is located entirely within the State of Oregon, which falls short of many of SORNA's provisions. Maxine Bernstein, *Sex Offenders in Oregon: State Fails to Track Hundreds*, *The Oregonian* (Oct. 2, 2013), available at [www.oregonlive.com/sexoffenders/special-presentation/](http://www.oregonlive.com/sexoffenders/special-presentation/) (Oregon only posts 2.5 percent of its registered sex offenders on its public sex offender registry website).

<sup>141</sup> *See United States v. Nichols*, 2014 U.S. Dist. LEXIS 118129 (D. S.D. Aug. 20, 2014) (tribes have the inherent power to exclude outsiders from their territory).

<sup>142</sup> 136 S.Ct. 1954 (2016).

<sup>143</sup> The Indian Civil Rights Act is found at 25 U.S.C. §§ 1301-1304. For previous cases holding that tribal court convictions could be used in subsequent federal prosecutions, *see United States v. First*, 731 F.3d 998 (9th Cir. 2013) (admissible so long as the uncounseled conviction would not violate the Constitution) (possession of a firearm prosecution), *United States v. Shavanaux*, 647 F.3d 993 (11th Cir. 2011) (tribal court convictions that meet the due process requirements of the Indian Civil Rights Act may be admitted in subsequent federal prosecutions) (domestic violence prosecution), *United States v. Cavanaugh*, 643 F.3d 592 (8th Cir. 2011) (domestic violence prosecution); *Kirkaldie v. United States*, 21 F.Supp. 3d 1100 (D. Mont. 2014) (domestic violence prosecution), *rev'd and remanded*, 670 Fed. Appx. 452 (9th Cir. 2016). There are also cases that have interpreted the above decisions in other settings, *see, e.g., United States v. Bundy*, 966 F.Supp. 2d 1175 (D. N.M. 2013) (tribal conviction did not meet the *Shavanaux* test) (DUI prosecution).

<sup>144</sup> *State v. Atcitty*, 215 P.3d 90 (N.M. 2009).

<sup>145</sup> *United States v. Begay*, 622 F.3d 1187 (9th Cir. 2010), *abrogated on other grounds*, *United States v. DeJarnette*, 741 F.3d 971 (9th Cir. 2013).

<sup>146</sup> *State v. John*, 308 P.3d 1208 (Ariz. Ct. App. 2013). If such an offender had an independent registration responsibility because they worked or attended school on state lands in Arizona, they would be subject to the state's registration laws and any failure to register (based on the requirements triggered by employment and/or school attendance) could therefore be prosecuted by the state.

<sup>147</sup> *See United States v. Ogburn*, 590 Fed. Appx. 683 (9th Cir. 2015); *State v. Cook*, 187 P.3d 1283 (Kan. 2008); *Longoria v. State*, 749 N.W.2d 104 (Minn. Ct. App. 2008).

<sup>148</sup> *In re C.P.W.*, 213 P.3d 413 (Kan. 2009); *People v. Haddock*, 48 A.D.3d 969 (N.Y. App. Div. 2008); *State v. Vick*, 2010 Wash. App. LEXIS 2462 (Nov. 2, 2010).

<sup>149</sup> *Christie v. State*, 2008 Ark. App. LEXIS 10 (Jan. 9, 2008); *State v. T.R.D.*, 942 A.2d 1000 (Conn. 2008). When a crime is a *strict liability* offense, its elements do not include a need to prove *mens rea* or criminal intent.

<sup>150</sup> *State v. Wiles*, 873 N.W.2d 301 (Iowa Ct. App. 2015).

<sup>151</sup> *Petway v. State*, 661 S.E.2d 667 (Ga. App. 2008) (prerelease notice of registration requirements is not a prerequisite to the obligation to register); *Barrientos v. State*, 2013 Tex. App. LEXIS 7712 (June 24, 2013) (primarily Spanish-speaking defendant properly convicted even when all notices were in English and he claimed he did not understand his responsibilities).

<sup>152</sup> *See United States v. Leach*, 2009 U.S. Dist. LEXIS 104703 (D. Ind. Nov. 6, 2009); *United States v. Benevento*, 633 F. Supp. 2d 1170 (D. Nev. 2009); *State v. Bryant*, 614 S.E.2d 479, 488 (N.C. 2005) (“the pervasiveness of sex offender registration programs [combined with additional factors in this case] certainly constitute circumstances which would lead the reasonable individual to inquire of a duty to register in *any* state upon relocation”). North Carolina subsequently included a *mens rea* requirement into its failure to register statute. 2006 N.C. Session Laws, ch. 247, *codified at* N.C. Gen. Stat. § 14-208.11.

<sup>153</sup> *State v. Binnarr*, 733 S.E.2d 890 (S.C. 2012) (notice of changed registration responsibilities sought to be proven by way of an unreturned letter, without more, does not prove actual notice sufficient to prosecute for failure to register).

<sup>154</sup> *State v. White*, 58 A.3d 643 (N.H. 2012) (defendant failed to report the creation of a MySpace account).

<sup>155</sup> *State v. Lee*, 286 P.3d 537 (Idaho 2012). While this was a state court prosecution, the provisions of International Megan’s Law amended the federal failure to register statute in order to prosecute individuals who fail to provide advance notice of international travel. *See* 18 U.S.C. § 2250(b).

<sup>156</sup> However, in *United States v. Haslage*, 853 F.3d 331 (7th Cir. 2017), the court held that venue for a violation of 18 U.S.C. § 2250 was only proper in the state where the offender traveled, then failed to register — not the state where the offender had originally registered.

<sup>157</sup> *State v. Peterson*, 186 P.3d 1179 (Wash. Ct. App. 2008).

<sup>158</sup> *See, e.g.*, Cal. Penal Code § 3003.5; Idaho Code § 18-8329; 57 Okla. Stat. § 590.

<sup>159</sup> *Doe v. Cooper*, 842 F.3d 833 (4th Cir. 2016) (prohibition on being present at “any place where minors gather for regularly scheduled educational, recreational, or social programs” is impermissibly vague).

<sup>160</sup> *In re William Taylor*, 343 P.3d 867 (Cal. 2015).

<sup>161</sup> *Doe v. City of Lynn*, 36 N.E.3d 18 (Mass. 2015); *G.H. v. Twp. of Galloway*, 951 A.2d 221 (N.J. 2008) (New Jersey law preempted municipal residency restrictions); *People v. Diack*, 26 N.E.3d 1151 (N.Y. 2015) (New York law preempts local residency restriction provisions); *People v. Oberlander*, 880 N.Y.S.2d 875 (N.Y. Sup. Ct. 2009) (Rockland County residency restriction preempted by New York state law); *People v. Blair*, 873 N.Y.S.2d 890 (Albany City Ct. 2009) (Albany County residency restriction preempted by New York state law). *Contra United States v. King*, 431 Fed. Appx. 630 (10th Cir. 2011) (Oklahoma’s residency restrictions did not present an obstacle to complying with federal sex offender registration requirements).

<sup>162</sup> *See Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009) (Kentucky’s residency restrictions exceeded the nonpunitive purpose of public safety and thus violated the Ex Post Facto clause); *see also Duarte v. City of Lewisville*, 759 F.3d 514 (5th Cir. 2014) (standing granted in challenge to residence restrictions suit), *all claims dismissed on remand*, 136 F.Supp. 3d 752 (E.D. Tex. 2015). *But see McAteer v. Riley*, 2008 U.S. Dist. LEXIS 26209 (M.D. Ala. March 31, 2008) (“The court expresses no opinion today on whether McAteer could present evidence and arguments to establish by the clearest proof that the residency and employment restrictions violate the ex post facto clause and leaves that question for another day”).

<sup>163</sup> *Doe v. Miami-Dade County*, 838 F.3d 1050 (11th Cir. 2016).

<sup>164</sup> *State v. Stark*, 802 N.W.2d 165 (S.D. 2011) (discussing state-level loitering and safety zone provisions).

<sup>165</sup> *Ryals v. City of Englewood*, 2016 Colo. LEXIS 74 (Jan. 25, 2016). *But see Millard v. Rankin*, 2017 U.S. Dist. LEXIS 140301 (D. Colo. Aug. 31, 2017) (relying in part on certain localities’ residency restriction provisions in finding that Colorado’s registration scheme violated the Eighth and 14th Amendments).

<sup>166</sup> The fact that a person has been convicted of a sex offense involving children can result in the revocation of a person's Certified Shorthand Reporter's License, *Sonntag v. Stewart*, 53 N.E.3d 46 (Ill. Ct. App. 2015), or their Ham radio license, FCC Reverses ALJ's Decision, Revokes Convicted Sex Offender's Ham License, ARRL.org, [www.arrl.org/news/fcc-reverses-alj-s-decision-revokes-convicted-sex-offender-s-amateur-radio-license](http://www.arrl.org/news/fcc-reverses-alj-s-decision-revokes-convicted-sex-offender-s-amateur-radio-license) (Nov. 13, 2014). In at least one state, there is a statutory presumption against any registered sex offender being granted unsupervised visitation, custody or residential placement of a child. 13 Del. Code Ann. § 724A.

<sup>167</sup> See *Black's Law Dictionary* (Abr. 6th ed., 1991) at p. 288.

<sup>168</sup> *Balentine v. Tremblay*, 554 Fed. Appx. 58 (2d Cir. 2014).

<sup>169</sup> *Meyer v. Nat'l Tenant Network, Inc.*, 10 F.Supp. 3d 1096 (N.D. Cal. 2014).

<sup>170</sup> *Santos v. State*, 668 S.E.2d 676 (Ga. 2008) (registration requirements unconstitutionally vague); *Rodriguez v. Maryland*, 108 A.3d 438 (Md. Ct. App. 2015) (weekly registration requirement for homeless offenders not unconstitutional); *State v. Crofton*, 2008 Wash. App. LEXIS 1283 (June 2, 2008) (weekly registration requirement for homeless offenders permissible).

<sup>171</sup> See *Beley v. City of Chicago*, 2015 U.S. Dist. LEXIS 163919 (N.D. Ill., Dec. 27, 2015), *summary judgment granted, partial summary judgment denied* 2017 U.S. Dist. LEXIS 28167 (N.D. Ill. Feb. 28, 2017); *Saiger v. City of Chicago*, 2014 U.S. Dist. LEXIS 83206 (N.D. Ill., June 19, 2014) (permitting plaintiff's Due Process claim to proceed); *Derfus v. City of Chicago*, 42 F.Supp. 3d 888 (N.D. Ill. 2014), *summary judgment granted*, 2015 U.S. Dist. LEXIS 44529 (N.D. Ill. April 6, 2015); *People v. Wlecke*, 6 N.E.3d 745 (Ill. Ct. App. 2014) (offender who lacked identification and was turned away from registering could not be convicted for failure to register).

<sup>172</sup> See *People v. Deluca*, 176 Cal. Rptr. 3d 419 (Cal. App. 2d Dist. 2014) (even though shelter had limited hours, it counted as a "residence" for the purposes of registration); *State v. Allman*, 321 P.3d 557 (Colo. Ct. App. 2012) (offender used his car as a residence when working away from "home" during the week, was a "residence" for purposes of the statute); *Branch v. State*, 917 N.E.2d 1283 (Ind. Ct. App. 2009) (homeless defendant was successfully prosecuted for failure to register when he failed to inform authorities that he had left a shelter); *Milliner v. State*, 890 N.E.2d 789 (Ind. Ct. App. 2008) (offender kicked out of house by wife and staying with friends had to update his registration every time he moved); *Tobar v. State*, 284 S.W.3d 133 (Ky. 2009) (when offender did not notify authorities of leaving homeless shelter, conviction for failure to register was proper); *State v. Samples*, 198 P.3d 803 (Mont. 2008) (when offender failed to notify authorities of leaving shelter, conviction was proper); *Commonwealth v. Wilgus*, 40 A.3d 1201 (Pa. Super. 2009) (where defendant was unable to rent a room at his intended residence he had a duty to inform registry officials of a change of address); *Breeden v. State*, 2008 Tex. App. LEXIS 2150 (March 26, 2008) (offender who moved out of hotel into car in parking lot of hotel properly convicted and sentenced to 55 years). *But see Commonwealth v. Bolling*, 893 N.E.2d 371 (Mass. App. 2008) (offender did not need to update his address when he found a friend willing to take him in for a few days); *State v. Dinkins*, 810 N.W.2d 787 (Wis. 2012) (offender was charged with failure to register, prior to release from incarceration, for failure to provide a residence address, and this was not permissible).

<sup>173</sup> *Lamberty v. Delaware*, 108 A.3d 1225 (Del. 2015).

<sup>174</sup> *McRae v. State*, 2015 Nev. Unpub. LEXIS 1261 (Oct. 16, 2015).

<sup>175</sup> *United States v. Pendleton*, 2009 U.S. Dist. LEXIS 85347 (D. Del. Sept. 18, 2009).

<sup>176</sup> *State v. Edwards*, 87 A.3d 1144 (Conn. Ct. App. 2014).

<sup>177</sup> *Nikolaev v. State*, 474 S.W.3d 711 (Tex. Ct. App. 2014).

<sup>178</sup> 42 U.S.C. § 13663; see also *When Must I Prohibit Admission of Sex Offenders?*, 24 C.F.R. § 5.856 (2001); *To What Criminal Records and Searches Does this Subpart Apply?*, 24 C.F.R. § 5.901 (2001); *What Special Authority is there to Obtain Access to Sex Offender Registration Information?*, 24 C.F.R. § 5.905 (2001); *Fair Housing and Equal Opportunity*, 24 C.F.R. § 578.93(b)(4) (2012); *Denial of Admission for Criminal Activity or Drug Abuse by Household Members* (2001) 24 C.F.R. § 960.204(a)(4); *Denial of Admission and Termination of Assistance for Criminals and Alcohol Abusers*, 24 C.F.R. § 982.553(a)(2) (2015). HUD issued guidance in 2012 describing the duties of owners, agents, and public housing authorities with regards to admitting registered sex offenders. *State Registered Lifetime Sex Offenders in Federally Assisted Housing*, [portal.hud.gov/hudportal/documents/huddoc?id=12-28pihn12-11hsgn.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=12-28pihn12-11hsgn.pdf). This

---

guidance was drafted in part as a response to an Inspector General's report which had been issued in 2009. HUD Subsidized an Estimated 2,094 to 3,046 Households that Included Lifetime Registered Sex Offenders, Audit Rep't No. 2009-KC-0001 (Aug. 14, 2009), [www.hudoig.gov/sites/default/files/pdf/Internal/2009/ig0970001.pdf](http://www.hudoig.gov/sites/default/files/pdf/Internal/2009/ig0970001.pdf).

<sup>179</sup> "Section 8" refers to the housing assistance provisions contained in the United States Housing Act of 1937, ch. 896, Title I, § 8 (Sept. 1, 1937), as amended.

<sup>180</sup> *Miller v. McCormick*, 605 F.Supp.2d 296 (D. Me. 2009). *But see* State Registered Lifetime Offenders in Federally Assisted Housing, United States Dep't of Housing and Urban Development, Notice PIH 2012-28/H 2012-11 (June 11, 2012), [portal.hud.gov/hudportal/documents/huddoc?id=12-28pihn12-11hsgn.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=12-28pihn12-11hsgn.pdf) (persons that are a sex offender subject to a lifetime registration requirement who are wrongfully admitted to Section 8 housing are subject to termination procedures).

<sup>181</sup> *Bostic v. D.C. Hous. Auth.*, 162 A.3d 170 (D.C. 2017).

<sup>182</sup> *Johnson v. California*, 2011 U.S. Dist. LEXIS 101623 (C.D. Cal. July 25, 2011).

<sup>183</sup> *Henley v. Housing Auth. of New Orleans*, 2013 U.S. Dist. LEXIS 62255 (E.D. La. May 1, 2013).

<sup>184</sup> *Struniak v. Lynch*, 159 F.Supp. 3d 643 (E.D. Va. 2016). For the full text of the requirement, see 8 U.S.C. § 1154(a)(1)(A)(viii)(I). Interoffice Memorandum from Michael Aytes, Assoc. Dir. Of Domestic Operations, U.S. Citizenship & Immigration Servs. to Reg'l Dirs. et al. (July 28, 2006), [www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static\\_Files\\_Memoranda/Archives%201998-2008/2006/adamwalshact072806.pdf](http://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/Static_Files_Memoranda/Archives%201998-2008/2006/adamwalshact072806.pdf); see also *Suhail v. United States Attorney General*, 2015 U.S. Dist. LEXIS 152884 (E.D. Mich. Nov. 12, 2015); *In re Aceijas-Quiroz*, 26 I. & N. Dec. 294 (BIA 2014); *In re Introcaso*, 2014 26 I. & N. 304 (BIA 2014).

<sup>185</sup> *Bushra v. Holder*, 529 Fed. Appx. 659 (6th Cir. 2013) (conviction for failure to register is a crime involving moral turpitude). *Contra* *Mohamed v. Holder*, 769 F.3d 885 (4th Cir. 2014); *Efange v. Holder*, 642 F.3d 918 (10th Cir. 2011); *Plascencia-Ayala v. Mukasey*, 516 F.3d 738 (9th Cir. 2008), *overruled on other grounds by* *Marmolejo-Campos v. Holder*, 558 F.3d 903 (9th Cir. 2009).

<sup>186</sup> News Release, *Repeat Sex Offender from Mexico Denaturalized in Houston* (June 29, 2017), [www.ice.gov/news/releases/repeat-sex-offender-mexico-denaturalized-houston](http://www.ice.gov/news/releases/repeat-sex-offender-mexico-denaturalized-houston).

<sup>187</sup> *Tristan v. State*, 393 S.W. 3d 806 (Tex. App. 2012). *Contra* *Dingman v. Cart Shield USA, LLC*, 2013 U.S. Dist. LEXIS 93551 (S.D. Fla., July 3, 2013) (failure to register not proven to involve a dishonest act or false statement).

<sup>188</sup> Statute addressed in *United States v. Walizer*, 600 Fed. Appx. 546 (9th Cir. 2015). In *Alleyne v. United States*, 133 S.Ct. 2151 (2013), the Supreme Court concluded that "any fact that increases the mandatory minimum is an 'element' that must be submitted to the jury." *Id.*

<sup>189</sup> *United States v. Hardeman*, 704 F.3d 1266 (9th Cir. 2013).