

# “The Irons Are Always in the Background”: The Unconstitutionality of Sex Offender Post- Release Laws as Applied to the Homeless<sup>\*1</sup>

## Introduction

Convicted sex offenders who have served their criminal sentence must, upon release, navigate “a byzantine code [that] govern[s their lives] in minute detail.”<sup>2</sup> Sex offender post-release (SOPR) laws impose affirmative obligations on sex offenders<sup>3</sup> that extend far beyond any sentence of incarceration, often lasting the person’s lifetime.<sup>4</sup> SOPR laws require sex offenders to register with and periodically report in person to law enforcement, ban offenders from various avenues of gainful employment, mandate GPS monitors, and demand periodic fees.<sup>5</sup> Some states and localities employ residency restrictions that prohibit sex offenders from living within a certain distance from schools, playgrounds, parks, or other places where children congregate.<sup>6</sup> Municipalities also restrict where sex offenders may be physically present.<sup>7</sup> Many paroled sex offenders must subject themselves to

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1. Does #1–5 v. Snyder, 834 F.3d 696, 703 (6th Cir. 2016) (describing the looming possibility of imprisonment for failure to comply with SOPR laws—for convicted sex offenders, the “irons are always in the background since failure to comply with these restrictions carries with it the threat of serious punishment, including imprisonment”).

2. *Id.* at 697.

3. I use the terms “registrant” and “sex offender” to refer to people who are required to register and comply with SOPR laws as a result of a conviction for a sex offense. In so doing, I recognize that these terms are problematic insofar as they do not emphasize people’s humanity, but reduces them to a term that is likely the worst thing they have ever done. Despite my personal discomfort with this terminology, I use it here because it is concise. For the most part, I believe “registrant” is the more appropriate term, so when it makes sense to do so, I use registrant.

4. Who is deemed a “sex offender” and required to comply with SOPR laws varies by state, but the list of eligible offenses is often lengthy. See Elizabeth R. Platt, *Gangsters to Greyhounds: The Past, Present, and Future of Offender Registration*, 37 N.Y.U. REV. L. & SOC. CHANGE 727, 754–58 (2013) (arguing that registries are both underinclusive and overinclusive by including crimes such as public urination, but due to the uniquely private nature of sex crimes, many are underreported and, as a result, these individuals would not be included on the registry); see also LISA WILLIAMS-TAYLOR, INCREASED SURVEILLANCE OF SEX OFFENDERS: IMPACTS ON RECIDIVISM 181–94 (2012) (providing an appendix of all registrable offenses in New York state).

5. See *infra* Part II.

6. See *infra* subpart I(A).

7. Until recently, North Carolina prohibited sex offenders from being “[a]t any place where minors frequently congregate, including, but not limited to, libraries, arcades, amusement parks,

regular psychological evaluation, routinely take polygraph tests, and enroll in lengthy and expensive therapy.<sup>8</sup> SOPR laws frequently require sex offenders to pay for their psychological treatment, polygraph tests, and GPS monitoring.<sup>9</sup>

Sex offender registration laws emerged as a response to a string of horrific crimes and resulting public outrage.<sup>10</sup> In one such case, a disguised, armed man stopped eleven-year-old Jacob Wetterling while he was riding his bike with friends.<sup>11</sup> The man ordered the friends to flee, and Jacob was not seen again.<sup>12</sup> Although Jacob's body was never found, and his perpetrator never identified, the police discovered that recently released sex offenders had been staying in a nearby halfway house.<sup>13</sup> In another case, seven-year-old Megan Kanka accepted a neighbor's invitation to play with his puppy.<sup>14</sup> The neighbor, a twice-convicted pedophile, raped and murdered Megan before dumping her body in a park.<sup>15</sup> Megan's parents said they would not have allowed Megan to travel around the neighborhood if they had known that there was a convicted sex offender living across the street.<sup>16</sup>

Incidents like these convinced legislators that sex offenders posed a high risk of recidivism and must be monitored.<sup>17</sup> Congress responded in 1994 with

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recreation parks, and swimming pools, when minors are present." N.C. GEN. STAT. § 14-208.18 (2016), *invalidated by* Doe v. Cooper, 842 F.3d 833 (4th Cir. 2016); Marcie Shields, *Illinois Court Strikes Sex Offender Park Ban*, COURTHOUSE NEWS SERV. (Feb. 14, 2017), <https://www.courthousenews.com/illinois-court-strikes-sex-offender-park-ban/> [<https://perma.cc/H5CB-M8YF>] (explaining how an Illinois appellate court struck down a similar park ban because the law "criminalizes substantial amounts of innocent conduct" and "makes no attempt to assess the dangerousness of a particular individual").

8. See *infra* subpart II(C).

9. See *infra* subpart II(C); see also, e.g., UNTOUCHABLE (Panoptican Productions 2016) (chronicling the cost of one woman's compliance—a \$40 monthly probation fee, \$170 monthly group therapy fee, and \$200 for a polygraph test, which over fourteen years totaled to \$35,800 for probation fees, classes, and polygraphs—and explaining that she is required to register and remain on probation for the rest of her life).

10. See Platt, *supra* note 4, at 736–38, 743–45 (chronicling public response to the specific sex offenses and overwhelming public support of harsh registry laws); *Megan's Law Website: History of the Law and Federal Facts*, PA. ST. POLICE, <https://www.pameganslaw.state.pa.us/InformationalPages/History> [<https://perma.cc/ZGS7-K5QR>] (outlining public response for various heinous crimes against children, including sex offenses and how the presence of sex offenders near an unsolved crime caused public outrage).

11. PA. ST. POLICE, *supra* note 10. For more on Jacob Wetterling's abduction, how the police mishandled the investigation, and how this fueled the fear about sex offenders, see generally *In the Dark*, AM. PUB. MEDIA (Sept. 7, 2016) (downloaded using iTunes).

12. PA. ST. POLICE, *supra* note 10.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. See, e.g., LA. STAT. ANN. § 15:540 (2017) (introducing the stated purpose of Louisiana's sex offender laws); see also Smith v. Doe, 538 U.S. 84, 92–95 (2003) (examining the stated purpose of the Alaska Sex Offender Registration Act). The claim of high rates of recidivism by sex offenders

the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act.<sup>18</sup> The statute made certain federal funding to the states contingent on each state establishing a sex offender registry. The states complied.<sup>19</sup> Legislators and groups lobbying for registries believed that the “release of certain information about sex offenders to public agencies and the general public [would] assist in protecting the public safety.”<sup>20</sup> Sex offender registration was intended to “provide[] a system by which law enforcement agencies can track, supervise, and monitor these offenders.”<sup>21</sup> Legislators justified sex offender registration and community notification by the need to “increase public awareness about sex offenders . . . so that concerned citizens and parents can take protective actions to prevent victimization.”<sup>22</sup> The aim was “to prevent recidivism by increasing scrutiny of sex offenders through enhanced law enforcement monitoring and public awareness.”<sup>23</sup> In sum, SOPR laws attempt to inform communities about a sex offender’s presence in their neighborhood, expand the information available to police seeking to identify suspects, deter potential offenders, and limit access to potential victims through the use of residency and employment restrictions.<sup>24</sup>

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has been debunked. See PATRICK A. LANGON, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, at 24 (2003) (noting that only 5.3% of sex offenders released from prison were re-arrested for a sex crime within three years and only 3.5% were convicted). In fact, sex offenders are less likely to be re-arrested than property and drug offenders. DUROSE ET AL., BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010, at 8–9 (2014); see also Jill S. Levenson et al., *Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform*, J. SOC. & SOC. WELFARE, June 2016, at 3, 14 (providing a comprehensive overview of the studies that show that sex offender recidivism rates are much lower than commonly believed and decline substantially overtime); Eli Lehrer, *Rethinking Sex-Offender Registries*, 26 NAT’L AFF., Winter 2016, at 52, 55, 61 (noting that sex offenders have lower recidivism rates than other felons).

18. Catherine L. Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Laws*, 63 HASTINGS L.J. 1071, 1077 & n.26 (2012).

19. For a comprehensive history of the Federal Sex Offender Registration and Notification Act (SORNA), see generally LISA WILLIAMS-TAYLOR, INCREASED SURVEILLANCE OF SEX OFFENDERS 83–116 (2012); Carpenter & Beverlin, *supra* note 18, at 1077–81; Platt, *supra* note 4, at 729–42. Today, only nineteen states substantially comply with SORNA because the costs of implementing a similar version at the state level are more costly than losing federal funding. Levenson, *supra* note 17, at 6, 15.

20. Act of Apr. 20, 1994, 1994 Alaska Sess. Laws ch. 41, §§ 1(4), 4(b)(1) (requiring a sex offender to give their address, place of employment, date of birth, each convicted sex offense that requires registration, date of the convictions, place and court of sex offense convictions, and driver’s license number).

21. Levenson, *supra* note 17, at 5.

22. *Id.* For a detailed overview of the purpose of sex offender registries, see Platt, *supra* note 4, at 745–50.

23. Jill S. Levenson et al., *Failure-to-Register Laws and Public Safety: An Examination of Risk Factors and Sex Offense Recidivism*, 36 L. & HUM. BEHAV. 555, 555 (2012).

24. See Platt, *supra* note 4, at 745–49 (detailing the intent and purpose of sex offender registries).

Notwithstanding these goals, there is no proof that SOPR laws actually reduce recidivist sexual violence or deter first-time offenses.<sup>25</sup> Indeed, numerous scholars and activists maintain that SOPR laws may actually increase non-sex crime recidivism because registrants have a more difficult time reentering society. Patty Wetterling, Jacob Wetterling's mother, was an early advocate of the registry and these comprehensive laws, but has recently questioned their effectiveness. She believes the laws have gone too far, are used against too many people, and are fueled by our anger.<sup>26</sup> Due to the

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25. Most people think that all sex offenders will reoffend, and when they do, they will commit a more serious offense than their first. In *Smith*, the landmark case upholding sex offender registration and SOPR laws, Justice Kennedy, writing for the Court, wrote that “[t]he risk of recidivism posed by sex offenders is ‘frightening and high.’” *Smith v. Doe*, 538 U.S. 84, 103 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)). David Feige traced this assertion and discovered that it was “an entirely invented number.” David Feige, *When Junk Science About Sex Offenders Infects the Supreme Court*, N.Y. TIMES (Sept. 12, 2017), <https://www.nytimes.com/2017/09/12/opinion/when-junk-science-about-sex-offenders-infects-the-supreme-court.html> [https://perma.cc/AW23-8PYH]. In fact, study after study confirms that sex offenders actually have a very low rate of recidivism. See, e.g., CRIMINAL JUSTICE POLICY & PLANNING DIV., OFFICE OF POLICY & MGMT., RECIDIVISM AMONG SEX OFFENDERS IN CONNECTICUT 10–12 (2012), [http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/sex\\_offender\\_recidivism\\_2012\\_final.pdf](http://www.ct.gov/opm/lib/opm/cjppd/cjresearch/recidivismstudy/sex_offender_recidivism_2012_final.pdf) [https://perma.cc/MUN9-DMD5] (finding 3.6% of sex offenders were re-arrested for a new sex offense, 2.7% were convicted for a new sex offense, and 1.7% returned to prison for a new sex offense); PATRICK A. LANGAN ET AL., DEP’T OF JUSTICE, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, at 24 tbl.21 (2003), <https://www.bjs.gov/content/pub/pdf/rsorp94.pdf> [https://perma.cc/ZER5-AXD5] (finding a recidivism rate of 3.5% within three years of release based on 9,691 sex offenders released from fifteen states); BRAD MYRSTOL ET AL., ALASKA JUSTICE STATISTICAL ANALYSIS CTR., ALASKA SEX OFFENDER RECIDIVISM AND CASE PROCESSING STUDY 23, 27–28 (2016) <https://scholarworks.alaska.edu/bitstream/handle/11122/7342/1408.02.aksorcps-final.pdf> [https://perma.cc/7DNQ-5MTQ] (stating that “findings affirm the results of previous sex offender recidivism studies in Alaska and elsewhere showing that sex offenders recidivate at a lower rate than individuals convicted of other types of criminal offenses” and concluding that “the proportion of sex offenders who commit new crimes following their release from prison steadily decreases over time” and that “Alaska sex offenders are infrequently rearrested or reconvicted for the commission of new sex offenses”); OFFICE OF RESEARCH, CAL. DEP’T OF CORR. & REHAB., 2013 OUTCOME EVALUATION REPORT 26 fig.11 & tbl.12 (2014), [http://www.cdcr.ca.gov/adult\\_research\\_branch/research\\_documents/outcome\\_evaluation\\_report\\_2013.pdf](http://www.cdcr.ca.gov/adult_research_branch/research_documents/outcome_evaluation_report_2013.pdf) [https://perma.cc/L33V-V8C8] (revealing that offenders required to register are more likely to be recommitted for a new non-sex crime than for a new sex crime); ME. STATISTICAL ANALYSIS CTR., SEXUAL ASSAULT TRENDS AND SEX OFFENDER RECIDIVISM IN MAINE 14 tbl.4 (2010) [http://muskie.usm.maine.edu/justiceresearch/Publications/Adult/Sexual\\_Assault\\_Trends\\_and\\_Sex\\_Offender\\_Recidivism\\_in\\_Maine\\_2010.pdf](http://muskie.usm.maine.edu/justiceresearch/Publications/Adult/Sexual_Assault_Trends_and_Sex_Offender_Recidivism_in_Maine_2010.pdf) [https://perma.cc/G9EY-G686] (finding a sex offender recidivism rate of 3.9% within 3 years of entering probation); see also Radley Balko, *The Big Lie About Sex Offenders*, WASH. POST (Mar. 9, 2017), <http://www.washingtonpost.com/news/the-watch/wp/2017/03/09/the-big-lie-about-sex-offenders> [https://perma.cc/5NCE-XYLJ] (stressing that policies underlying sex offenders’ post-release requirements are “all based on a widely held assumption that all the available data say is utterly false”); *Recidivism Studies*, WOMEN AGAINST REGISTRY, <http://www.womenagainstry.org/page-1752769> [https://perma.cc/C4SU-4RYH] (listing various federal and state studies that show sex offender recidivism rates); UNTOUCHABLE, *supra* note 9.

26. Jennifer Bleyer, *Patty Wetterling Questions Sex Offender Laws*, CITY PAGES (Mar. 20, 2013), <http://www.citypages.com/news/patty-wetterling-questions-sex-offender-laws-6766534> [https://perma.cc/ZX76-HRDA].

difficulty registrants experience reentering society, many struggle with unemployment and end up homeless. This unanticipated effect of SOPR laws makes it more difficult to track registrants.

Despite the purported nonpunitive purpose of sex offender registries and SOPR laws,<sup>27</sup> registrants must bear their costs and face the threat of further incarceration and prosecution for noncompliance. For convicted sex offenders, the “irons are always in the background since failure to comply with these restrictions carries with it the threat of serious punishment, including imprisonment.”<sup>28</sup> While reentry following any criminal conviction is challenging,<sup>29</sup> it is especially difficult for sex offenders. Sex offenders must endure significant social consequences<sup>30</sup> from their convictions: instability in housing; difficulty finding and keeping steady employment; stress, shame, and isolation stemming from the stigma of inclusion on the registry; and increased strain on familial and other relationships.<sup>31</sup> Forced to live on the

27. SOPR laws were upheld by the Supreme Court in *Smith v. Doe* as civil statutes meant to protect public safety. Most states explicitly state that their SOPR laws are civil schemes, but the California Supreme Court held that the California law was intended to be punitive. See *In re Taylor*, 343 P.3d 867, 868–69 (Cal. 2015) (quoting *In re E.J.*, 223 P.3d 31, 34 (Cal. 2010)) (recognizing California’s sex registry law was adopted for punitive reasons).

28. *Does #1–5 v. Snyder*, 834 F.3d 696, 703 (6th Cir. 2016).

29. See generally JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY (2003) (discussing the consequences of a felony conviction: employment obstacles, denial of public benefits, decreased educational opportunities, and disenfranchisement—and that housing instability is consistently associated with criminal recidivism and absconding). For an overview of the specific effects of unstable housing on reentry, see Hensleigh Crowell, Note, *A Home of One’s Own*, 95 TEXAS L. REV. 1103, 1115–21 (2017). For an overview of the challenges formerly incarcerated people face finding employment, see JOHN SCHMITT & KRIS WARNER, CTR. FOR ECON. & POL’Y RES., EX-OFFENDERS AND THE LABOR MARKET (2010).

30. See JENNIFER L. KLEIN & DANIELLE J.S. BAILEY, TECHNICAL REPORT: THE EFFECTS OF LIVING ON THE REGISTRY—EXPERIENCES OF REGISTRANTS AND FAMILY MEMBERS 3–4 (2016), [https://www.researchgate.net/publication/308902828\\_Technical\\_Report\\_The\\_Effects\\_of\\_Living\\_on\\_the\\_Registry\\_-\\_Experiences\\_of\\_Registrants\\_and\\_Family\\_Members](https://www.researchgate.net/publication/308902828_Technical_Report_The_Effects_of_Living_on_the_Registry_-_Experiences_of_Registrants_and_Family_Members) [<https://perma.cc/2B9C-F9RE>] (expounding the unintended social consequences of sex offender registries); Levenson, *supra* note 17, at 11–13 (examining the collateral consequences of sex offender registration policies); Platt, *supra* note 4, at 759–67 (summarizing the negative social consequences experienced by sex offender registrants).

31. See J.J. Prescott, *Portmanteau Ascendant: Post-Release Regulations and Sex Offender Recidivism*, 48 CONN. L. REV. 1035, 1055–56 (2016) (noting that sex offenders have “difficulty finding employment, . . . trouble securing stable, quality, reasonably priced housing, . . . [and that] pervasive public awareness that one has committed a sex crime makes it difficult to form and maintain relationships”); Emily DePrang, *Life on the List*, TEX. OBSERVER (May 31, 2012) (detailing the struggles one juvenile registrant faced as a result of being listed on the registry); see generally 19 HUMAN RIGHTS WATCH, NO EASY ANSWERS: SEX OFFENDER LAWS IN THE U.S. pt. 8, at 78–99 (2007) [hereinafter NO EASY ANSWERS] (analyzing the effects of registration on sex offenders and their family members); JUSTICE POLICY INST., REGISTERING HARM: HOW SEX OFFENSE REGISTRIES FAIL YOUTH AND COMMUNITIES 16–32 (2008) (discussing the harmful effects of the Adam Walsh Act); RICHARD TEWKSBRURY ET AL., SEX OFFENDERS: RECIDIVISM & COLLATERAL CONSEQUENCES (2012); Klein & Bailey, *supra* note 30 (researching how being on a sex offender registry affects registrants and family members of registrants); Jill Levenson, *Hidden*

margins of society, sex offenders' lives lack stability and are characterized by a continuing struggle for stable work, housing, and community. These increased barriers to reentry contribute to the significant number of registrants who are homeless.

Once homeless, states subject registrants to more onerous reporting requirements, which in turn increases the attendant risk of prosecution and future imprisonment.<sup>32</sup> There is no comprehensive overview of how sex offender registration laws across the country address homeless registrants. This Note explores the constitutionality of SOPR laws as they continue to apply after people have served their sentences. It surveys how the fifty states and the District of Columbia address homeless registrants and assesses the constitutionality of those measures.<sup>33</sup> Part I reviews the unique reentry challenges faced by sex offenders. Part II describes how specific SOPR laws pose unique challenges to homeless registrants, the guidance states provide to homeless registrants, and the additional burdens that jurisdictions impose on homeless registrants. Part III distinguishes these additional homeless-specific provisions from the burdens upheld by the Supreme Court and lower courts against constitutional challenges brought by non-homeless registrants, and concludes that this constellation of SOPR laws is vulnerable to *ex post facto* and void-for-vagueness challenges as applied to homeless registrants.

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*Challenges: Sex Offenders Legislated into Homelessness*, J. SOC. WORK, June 2016, at 1, 1 (discussing how zoning laws that prevent sex offenders from living in certain areas are not good public policy); Carla Schultz, *The Stigmatization of Individuals Convicted of Sex Offenses: Labeling Theory and the Sex Offense Registry*, 2 THEMIS: RES. J. JUST. STUD. & FORENSIC SCI. 64, 64 (2014) (examining "how the registry reproduces labeling and how sex offenders are consequently damaged by their given label"); Richard Tewksbury et al., *Sex Offender Residential Mobility and Relegation: The Collateral Consequences Continue*, 41 AM. J. CRIM. JUST. 852, 852 (2016) (suggesting that "the collateral consequences of sex offender policies have long-term deleterious effects on housing for sex offenders").

32. See, e.g., *McGuire v. Strange*, 83 F. Supp. 3d 1231, 1239 & n.6 (M.D. Ala. 2015), *appeal filed*, No. 15-10958 (11th Cir. Mar. 06, 2015) (noting that failure to comply with registration in Alabama subjects an offender to one of 115 Class C felonies, which carry a sentence from one to ten years). While these are low-level felonies, the court in *McGuire* likens these to "being shot with a smaller caliber bullet." *Id.*; see also OFF. OF RES., CAL. DEP'T OF CORR. & REHAB., *supra* note 25 (finding that 88% are returned to prison for parole violations); UNTOUCHABLE, *supra* note 9 (describing how one man, Clyde Newton, was eight minutes late to the homeless sex offender camp set up in Florida for registrants to live and was convicted of a technical violation and went back to prison for four years).

33. The federal government's Sex Offender Registration and Notification Act (SORNA) does not mention homelessness, and the SOPR laws of several other jurisdictions follow suit. In these states, as the Survey explains in Part II, what registrants are required to do varies by jurisdiction. Other states' laws clarify for homeless residents how frequently they must verify their status as homeless with law enforcement. These states impose more frequent reporting requirements for homeless residents.

## I. The Unique Challenges that Reentry Poses for Convicted Sex Offenders

Persons convicted of a crime will encounter obstacles upon seeking to reintegrate into society.<sup>34</sup> SOPR laws and the sex offender label exacerbate these challenges.<sup>35</sup> Barriers like residency and employment restrictions—which are consequences of a sex offense conviction—are statutorily imposed, whereas other obstacles flow from the presence of a conviction or societal prejudices against sex offenders. This Part does not presume to exhaustively catalog the challenges that registrants face reentering society or to fully survey the jurisdictional variations in residency and employment restrictions.<sup>36</sup> Rather, this Part aims to provide an overview of some of the most common challenges that registrants face.

These challenges are best understood through their impact on an individual's quotidian life. What follows is a partial sketch of the challenges faced by one man, Michael McGuire.<sup>37</sup> The challenges Mr. McGuire experienced, and likely continues to experience today, are merely an example of what some registrants face. The registry impacts individuals differently depending on their unique circumstances—the jurisdiction they live in and its requirements, family and social support networks, skills and job training. Mr. McGuire was relatively well-resourced and sophisticated: he had support from family and friends, a career, ties to his community, and even a brother with legal expertise. Many registrants encounter more difficult challenges than those Mr. McGuire faced. Yet Mr. McGuire was unable to retain housing and employment in the face of SOPR laws.

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34. Regardless of whether a person serves jail time for an offense, a criminal conviction keeps people from employment, housing, and public benefits. For a discussion of reentry challenges, see Platt, *supra* note 4, at 759–65, and Levenson, *supra* note 17, at 11 (postulating that registries “may unfairly and unnecessarily deprive offenders of opportunities for success”).

35. See Levenson, *supra* note 17, at 11 (asserting that “[a]n ever-growing national registry . . . weakens the public’s ability to distinguish truly dangerous offenders”).

36. These challenges include, but are not limited to, employment and residency restrictions, GPS and electronic surveillance, chemical castration, and involuntary civil commitment, a form of indefinite detention. For a comprehensive overview of these laws, see generally CHARLES PATRICK EWING, JUSTICE PERVERTED: SEX OFFENDER LAW, PSYCHOLOGY, AND PUBLIC POLICY 69–116 (2011); SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS (Richard G. Wright ed., 2d ed. 2015); and LISA WILLIAMS-TAYLOR, INCREASED SURVEILLANCE OF SEX OFFENDERS: IMPACTS ON RECIDIVISM 84–87, 102–07 (2012). It is probably impossible to accurately survey the residency restrictions as they exist at the state and municipal levels.

37. See *McGuire*, 83 F. Supp. 3d at 1269–70 (holding that while Mr. McGuire did not show that “ASORCNA’s scheme as a whole is so punitive either in purpose or effect as to negate the Legislature’s stated nonpunitive intent,” he did show that “requiring dual, in-person weekly registration for in-town homeless registrants and dual applications for travel permits for all in-town registrants are affirmative disabilities or restraints excessive of their stated nonpunitive intent” and therefore “violate the Ex Post Facto Clause of the United States Constitution”).

In 1986, Mr. McGuire was convicted of sexual assault in Colorado.<sup>38</sup> This remains his only criminal conviction.<sup>39</sup> He served three years in prison and another year on parole, successfully completing his prison sentence.<sup>40</sup> He then had a career as a hair stylist and jazz musician.<sup>41</sup> In 2010, in order to be closer to his aging mother, he and his wife moved to his hometown, Montgomery, Alabama.<sup>42</sup> The following describes his attempts to comply with Alabama's SOPR law and how his life unraveled as a result.<sup>43</sup> The information about Mr. McGuire's struggles is drawn from the pleadings and record of a lawsuit he filed challenging Alabama's SOPR law.<sup>44</sup>

A. *Residency Restrictions*

Alabama bars registrants from living within 2,000 feet of any school or childcare facility.<sup>45</sup> Mr. McGuire was, therefore, prohibited from living with his wife in the home they rented.<sup>46</sup> The McGuires lived in a hotel, depleting their savings while attempting to find suitable housing.<sup>47</sup> Unable to find housing that complied with the residency restrictions, Mr. McGuire began to live under a bridge.<sup>48</sup>

Despite his diligent efforts, Mr. McGuire's fate seems to have been sealed. An expert analyzed the residency restrictions, housing stock, and presence of schools and childcare facilities in Montgomery.<sup>49</sup> The expert discovered that "80 percent of where the people are actually living in the city is off limits to people subject to the statute."<sup>50</sup> However, even this figure underestimates the actual burden on sex offenders. Of the limited housing purportedly available, the expert noted that "many of the larger parcels . . . d[id] not include any potential housing" and that other potential homes would be unaffordable for many registrants.<sup>51</sup>

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38. *Id.* at 1236.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. ALA. CODE § 15-20A-11(a) (2017). Alabama prohibits registrants from living within 2,000 feet of their victims or the victims' immediate families. *Id.* § 15-20A-11(b).

46. *McGuire*, 83 F. Supp. 3d at 1240.

47. *Id.* at 1241.

48. *Id.* at 1236.

49. *Id.* at 1241.

50. *Id.*; Expert Report/Declaration of Peter Wagner, J.D., at 9, *McGuire v. City of Montgomery*, 83 F. Supp. 3d 1231 (M.D. Ala. 2015) (No. 2:11-cv-01027-WKW-CSC) at \*5.

51. Expert Report/Declaration of Peter Wagner, J.D., *supra* note 50, at 8.



Alabama, of course, is not unique in imposing residency restrictions on sex offenders.<sup>52</sup> At least twenty-seven states have “rules restricting how close sex offenders can live to schools and other places where groups of children may gather.”<sup>53</sup> Residency restrictions range from 1,500 to 2,000 feet from schools, parks, and recreation centers.<sup>54</sup> In some communities with more onerous restrictions, “[l]ocating legal housing for offenders has become so difficult . . . that when parole officers find an apartment building beyond the exclusion zones, they often pile in as many offenders as the landlord will accept.”<sup>55</sup> In Mr. McGuire’s case, the court noted that “[a]ccurately

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52. For a comprehensive overview of these laws, their ineffectiveness and their effects on registrants, see Levenson, *supra* note 31, at 3–8; *see also* CAL. SEX OFFENDER MGMT. BD., HOMELESSNESS AMONG CALIFORNIA’S REGISTERED SEX OFFENDERS: AN UPDATE 1 (2011) (“Analysis of the situation in California shows that residence restrictions have led to dramatically escalating levels of homelessness among sex offenders, particularly those on parole, of whom nearly one in three are now homeless. In addition, sex offender homelessness is likely to be exacerbated by local ordinances, which continue to proliferate. It is extremely difficult to keep track of these ordinances and to evaluate their contribution to the problem.”); Jacob Carpenter, *Sex Offender Ordinance Hasn’t Worked as Planned, Putting Public at Greater Risk*, MILWAUKEE J. SENTINEL (Aug. 20, 2016), <http://www.jsonline.com/story/news/local/2016/08/20/sex-offender-ordinance-worked-planned-putting-public-greater-risk/88948028/> [<https://perma.cc/B33Y-5F9W>] (asserting that residency ordinances for sex offenders increase the risk of reoffending and place “the public at greater risk”); Jen Fifield, *Despite Concerns, Sex Offenders Face New Restrictions*, STATELINE (May 6, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/05/06/despite-concerns-sex-offenders-face-new-restrictions> [<https://perma.cc/MEL3-J5XR>] (pointing to studies showing that residency restrictions for sex offenders not only “make more offenders homeless” but also fail to decrease the risk of reconviction for sexual offenses); Lehrer, *supra* note 17, at 61 (explaining that “[m]aking it impossible for sex offenders to live in most places contributes directly to their becoming homeless . . .”); Ian Lovett, *Neighborhoods Seek to Banish Sex Offenders by Building Parks*, N.Y. TIMES (Mar. 9, 2013), <http://www.nytimes.com/2013/03/10/us/building-tiny-parks-to-drive-sex-offenders-away.html> [<https://perma.cc/JTF9-K46Z>] (explaining how cities in California build tiny parks to restrict where sex offenders may live and how this makes it virtually impossible for sex offenders to find eligible housing); Steven Yoder, *New Evidence Says US Sex-Offender Policies Are Actually Causing More Crime*, QUARTZ (Dec. 21, 2016), <https://qz.com/869499/new-evidence-says-us-sex-offender-policies-dont-work-and-are-actually-causing-more-crime/> [<https://perma.cc/75PB-K3BU>] (positing that re-offense rates are increased by implementing policies such as “making it harder to find a place to live” and using sex offender registries). *But see California Loosens Sex Offender Residency Restrictions*, KCRA (Mar. 27, 2017), <http://www.kcra.com/article/california-loosens-sex-offender-residency-restrictions/6421299> [<https://perma.cc/FW58-Z8GP>] (explaining that California is scaling back its restrictions based on a court decision).

53. Fifield, *supra* note 52. This is not the whole picture, as many counties enact residency restrictions even if the state does not have any. *Id.*

54. *See* Michelle L. Meloy et al., *Making Sense Out of Nonsense: The Deconstruction of State-Level Sex Offender Residence Restrictions*, 33 AM. J. CRIM. JUST. 209, 215 (2008) (proffering survey results of thirty states’ sex offender registry restriction laws ranging from 500 to 2,000 feet).

55. Karl Vick, *Laws to Track Sex Offenders Encouraging Homelessness*, WASH. POST (Dec. 27, 2008), [http://www.washingtonpost.com/wp-dyn/content/article/2008/12/26/AR2008122601722\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/12/26/AR2008122601722_pf.html) [<https://perma.cc/KAV2-8KQ4>]; *see also* Meloy et al., *supra* note 54, at 213, 218 (arguing that residency restrictions for sex offenders both “result in the relocation of many offenders . . . into more rural communities” and increase the likelihood of “offender displacement”).

accounting for housing availability for sex offenders is, in short, an unresolvable nightmare for law enforcement.”<sup>56</sup> Further, “[f]or registrants, who bear the burden of locating such housing under the penalty of several felony offenses should they make the wrong decision, keeping track is impossible, period.”<sup>57</sup>

Municipalities may also enact residency restrictions that are even more onerous than the applicable state’s laws.<sup>58</sup> Florida, for example, provides that certain sex offenders “may not reside within 1,000 feet of any school, child care facility, park, or playground.”<sup>59</sup> But, in 2009, “Miami-Dade County . . . adopted an ordinance banning sex offenders from living within 2,500 feet of anywhere that children gather.”<sup>60</sup> After the city dismantled a homeless encampment under the Julia-Tuttle Causeway in 2007, today approximately 260 people are registered as living in a tent village with no electricity, running water, or bathroom facilities.<sup>61</sup> And, although Colorado lacks residency restrictions at the state level, the Colorado Supreme Court upheld a municipal ordinance that banished all sex offenders from a town.<sup>62</sup> There, the residency restriction in question made “99% of the city off limits to qualifying sex offenders.”<sup>63</sup>

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56. *McGuire v. Strange*, 83 F. Supp. 3d 1231, 1241 (M.D. Ala. 2015), *appeal filed*, No. 15-10958 (11th Cir. Mar. 06, 2015).

57. *Id.*

58. For a curated collection of articles on the subject, see *Sex Offender Residency Restrictions: A Curated Collection of Links*, MARSHALL PROJECT (Sept. 25, 2017), <https://www.themarshallproject.org/records/2061-sex-offender-residency-restrictions#.wLCZ3Mu2c> [https://perma.cc/4SLZ-BYPP]. These laws are frequently challenged. See Lauren Phillips, *Over 20 Texas Towns Repeal Restrictions on Where Sex Offenders Live After Broad Legal Challenge*, DALL. NEWS (Feb. 2016), <https://www.dallasnews.com/news/local-politics/2016/02/07/over-20-texas-towns-repeal-restrictions-on-where-sex-offenders-live-after-broad-legal-challenge> [https://perma.cc/WUP4-HT9Y].

59. FLA. STAT. § 775.215(2)(a) (2017).

60. Greg Allen, *Sex Offenders Forced to Live Under Miami Bridge*, NPR (May 20, 2009), <http://www.npr.org/templates/story/story.php?storyId=104150499> [https://perma.cc/R4ME-MGKN] (reporting that due to the residency restrictions in Miami, probation officers instructed released sex offenders to live under an underpass of a causeway because it was the only place in Miami where they were allowed to live).

61. Douglas Hanks, *Tent Camp of Homeless Sex Offenders Near Hialeah “Has Got to Close,” County Says*, MIAMI HERALD (Aug. 22, 2017), <http://www.miamiherald.com/news/local/community/miami-dade/article168569977.html> [https://perma.cc/R9JB-9GYK]; see also Wilson Sayre, *Sex Offenders Sent To Homeless Encampment Told To Find Housing, But Where?*, WLRN (Aug. 22, 2017), <http://wlrn.org/post/sex-offenders-sent-homeless-encampment-told-find-housing-where> [https://perma.cc/55KS-48DL].

62. *Ryals v. City of Englewood*, 364 P.3d 900, 909 (declaring that “[t]here is nothing in Colorado’s sex offender regulatory regime that prevents home-rule cities from banning sex offenders from residing within city limits, nor is there anything that suggests that sex offenders are permitted to live anywhere they wish”).

63. *Id.* at 904.

Residency restrictions force registrants to leave their homes, social support networks, and communities; result in homelessness; and, in some cases, return registrants to prison.<sup>64</sup> Courts are split on how lawful they are and how onerous they must be to be unconstitutional. For example, the Supreme Court of California found that “blanket enforcement of [residency restrictions] in San Diego County has led to greatly increased homelessness among registered sex offenders.”<sup>65</sup> The Court noted that residency restrictions effectively barred registrants from 97% of the multifamily rental housing in San Diego County.<sup>66</sup> It held that these restrictions “cannot survive even the more deferential rational basis standard of constitutional review.”<sup>67</sup> Moreover, the blanket enforcement of the restrictions there “infringed the affected parolees’ basic constitutional right to be free of official action that is unreasonable, arbitrary, and oppressive.”<sup>68</sup> But, in Maryland, “not having a fixed address to register with the Maryland Sex Offender Registry is a parole violation which places the offender back into prison [housing].”<sup>69</sup> And, in Wisconsin, a man was held for nearly fourteen months beyond the end of his official sentence because he could not find housing that complied with the residency restrictions.<sup>70</sup>

A registrant who is able to find affordable housing that complies with residency restrictions often faces other hurdles in actually securing that housing. Sex offenders who are required to register for life are barred from public housing.<sup>71</sup> Landlords frequently refuse to rent to people with criminal

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64. Tewksbury et al., *supra* note 31, at 853, 864 (summarizing well-established research that sex offenders struggle with unstable housing due in part to residency restrictions and hostility from landlords and describing a study the authors conducted following registrants fifteen years after arrest, which found that registrants moved to “less desirable neighborhoods” and that “the placement (or, relegation) of registered sex offenders in poor, low social capital, and often crime-ridden communities may actually be working counter to the justifications for sex offender registration and community notification”).

65. *In re Taylor*, 343 P.3d 867, 881 (Cal. 2015).

66. *Id.* at 876.

67. *Id.* at 879.

68. *Id.*

69. Sarah S. Rhine, *Criminalization of Housing: A Revolving Door that Results in Boarded Up Doors in Low-Income Neighborhoods in Baltimore, Maryland*, 9 U. MD. L.J. RACE, RELIG., GENDER & CLASS 333, 350 (2009). Illinois has a similar scheme. There, one ex-offender was due to be released but because he had no family to take him in and no facility would accept him due to his sex offender status, he was not released on parole and held until the completion of his sentence. *Cordrey v. Prisoner Review Bd.*, 21 N.E.3d 423, 425 (Ill. 2014); Patrick Yeagle, *Imprisoned for Poverty*, ILL. TIMES (Jan. 22, 2015), <http://illinoistimes.com/article-permalink-15006.html> [https://perma.cc/XT4X-5WQW].

70. *Werner v. Wall*, 836 F.3d 751, 756–57 (7th Cir. 2016).

71. Rhine, *supra* note 69, at 347.

records<sup>72</sup> and consider sex offender status to be the ultimate scarlet letter.<sup>73</sup> Property owners deploy restrictive covenants to create and advertise “sex offender free communities.”<sup>74</sup> Given these sweeping obstacles, it is no wonder that so many registrants end up homeless.

### B. *Employment Restrictions*

Alabama, like most states, also imposes restrictions on registrants’ employment.<sup>75</sup> Numerous states have enacted “employment restrictions intended to keep sex offenders away from schools, daycare facilities, playgrounds, public swimming pools, video arcades, recreation centers, or public athletic fields and the like.”<sup>76</sup> While these restrictions may be reasonable when applied to individuals convicted of sexually abusing children, many states apply them to all sex offenders.<sup>77</sup> Furthermore, geographic restrictions that “bar all registered sex offenders . . . from employment where they may inadvertently come into contact with children effectively bar[s] registered sex offenders from employment in large sectors of the economy.”<sup>78</sup> The court in Mr. McGuire’s case found that

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72. One study estimates that “10%–30% of homeless individuals have recently been released from incarceration or have a criminal record.” Levenson, *supra* note 31, at 2 (citing KATHERINE CORTES & SEAN ROGERS, COUNCIL OF STATE GOV’TS JUSTICE CTR., REENTRY HOUSING OPTIONS: THE POLICYMAKERS’ GUIDE (2010), <https://csgjusticecenter.org/reentry/publications/reentry-housing-options-the-policymakers-guide-2/> [<https://perma.cc/UV56-NX2Z>]).

73. See Crowell, *supra* note 29, at 1105–12.

74. Asmara M. Tekle, *Safe: Restrictive Covenants and the Next Wave of Sex Offender Legislation*, 62 SMU L. REV. 1817, 1819 (2009); see also Brett Jackson Coppage, *Balancing Community Interests and Offender Rights: The Validity of Covenants Restricting Sex Offenders from Residing in a Neighborhood*, 38 URB. LAW. 309, 315–35 (2006) (explaining how private covenants exemplify private attempts to limit offender housing).

75. In Alabama, registrants are not allowed to work or volunteer “at any school, childcare facility, mobile vending business that provides services primarily to children, or any other business or organization that provides services primarily to children.” ALA. CODE § 15-20A-13(a) (2016). They are prohibited from “apply[ing] for, accept[ing], or maintain[ing] employment or volunteer[ing] for any employment or vocation within 2,000 feet of the property [of] a school or childcare facility.” *Id.* § 15-20A-13(b). Registrants are also prohibited from working or volunteering “within 500 feet of a playground, park, athletic field or facility, or any other business or facility having a principal purpose of caring for, educating, or entertaining minors.” *Id.* § 15-20A-13(c). These provisions apply regardless of whether the registrant’s former victim was a minor. *McGuire v. Strange*, 83 F. Supp. 3d 1231, 1238 n.3 (M.D. Ala. 2015), *appeal filed*, No. 15-10958 (11th Cir. Mar. 06, 2015).

76. Joseph L. Lester, *Off to Elba! The Legitimacy of Sex Offender Residence and Employment Restrictions*, 40 AKRON L. REV. 339, 354 (2007). For a list of sex offender employment-restriction statutes, see *id.* at 385–88 tbl.3.

77. See, e.g., *McGuire*, 83 F. Supp. 3d at 1264 (explaining that Alabama’s SOPR law “does not differentiate between registrants who committed sexual offenses against children and those who committed offenses against adults”). Many states employ broad definitions of “sex offense,” which include offenses such as public urination, prostitution, and “Romeo and Juliet” offenses. See Platt, *supra* note 4, at 754–60.

78. NO EASY ANSWERS, *supra* note 31, at 82.

“approximately 85 percent of jobs in [Montgomery, Alabama,] are barred to offenders . . . [and] approximately 50 percent of the 500 offenders in Montgomery County are unemployed.”<sup>79</sup> Alabama’s employment restrictions prevented Mr. McGuire from “accepting or applying for a number of jobs, including music-related engagements” that he was otherwise qualified for.<sup>80</sup> As a result, he lives on a fixed income of disability benefits.<sup>81</sup>

Registrants also face discrimination from potential employers, many of whom use the sex offender status as a litmus test to deny employment. According to a Human Rights Watch report, “private employers are reluctant to hire sex offenders even if their offense has no bearing on the nature of the job.”<sup>82</sup> Employers may be motivated by fear that their address will be listed on the registry, which could harm business or otherwise hurt their commercial reputation, or simple revulsion about the sex offense conviction. Regardless of employer motivation, when registrants tell prospective employers of their status they are usually denied employment.<sup>83</sup> Registrants have also reported that hostility from community members has resulted in losing jobs and other employers being less willing to hire them.<sup>84</sup>

### C. *Mental Health*

People reentering society after serving time in jails and prisons often suffer from untreated mental health conditions. Some experts believe that sex offenders experience even higher rates of mental illness.<sup>85</sup> Placement on the registry saddles people with the “psychological burden of shame, isolation and stigma . . .”<sup>86</sup> Social scientists and mental health experts have conducted a number of studies on the stigma associated with the sex offender label and SOPR laws.<sup>87</sup> They found that sex offender registration “may exacerbate the stressors (for example, isolation, disempowerment, shame, depression,

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79. *McGuire*, 83 F. Supp. 3d at 1241 n.7.

80. *Id.* at 1241.

81. *Id.*

82. NO EASY ANSWERS, *supra* note 31, at 81.

83. *Id.* at 81–82.

84. *Id.* at 82–83; *see also, e.g.*, UNTOUCHABLE, *supra* note 9 (describing how one woman felt she had finally made it as a journalist for her local newspaper until someone complained and she was fired).

85. Silke Harsch et al., *Prevalence of Mental Disorders Among Sexual Offenders in Forensic Psychiatry and Prison*, 29 INT’L J.L. & PSYCHIATRY 443, 447 (2006).

86. Carolyn E. Frazier, *Today’s Scarlet Letter—the Sex Offender Registry—Is Risky Justice for Youth*, CHI. TRIB. (May 26, 2017), <http://www.chicagotribune.com/news/opinion/commentary/ct-sex-offenders-list-teens-risk-perspec-0529-md-20170526-story.html> [https://perma.cc/QHV4-BFYW].

87. Klein & Bailey, *supra* note 30, at 4.

anxiety, and a disconnection from social supports) that can trigger relapse and reoffending in some former offenders.”<sup>88</sup>

Placement on the registry and compliance with SOPR laws distances registrants from their families and communities, through both physical separation and the stigma associated with the sex offender label.<sup>89</sup> Registrants commonly express experiencing feelings of alienation due to this “exclusionary atmosphere.”<sup>90</sup> This manifests in registrants as “feel[ing] as tho[ugh] there is no way out of the physical and social isolation that results from this exclusion.”<sup>91</sup> People report “feeling ashamed, having a difficult life, feeling excluded from their communities, having close relationships suffer, and experiencing disrespect all as a result of being required to register as a sex offender with the state.”<sup>92</sup>

Unstable housing and employment are frequently associated with mental health issues.<sup>93</sup> When people have difficulty with securing a place to live and work, they are more likely to become homeless. Once homeless, it becomes even more challenging to find a job, which in turn makes affording and finding housing unobtainable.<sup>94</sup>

88. NO EASY ANSWERS, *supra* note 31, at 62 (citing Jill Levenson & Leo Cotter, *The Effects of Megan’s Law on Sex Offender Reintegration*, 21 J. CONTEMP. CRIM. JUST. 49 (2005); Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. CONTEMP. CRIM. JUST. 67 (2005); Telephone Interview with Dr. Jill Levenson (Oct. 11, 2006); Telephone Interview with Dr. Robert Prentky (Mar. 20, 2007)).

89. Klein & Bailey, *supra* note 30, at 4.

90. *Id.*

91. *Id.* (citing Richard Tewksbury & David Patrick Connor, *Incarcerated Sex Offenders’ Perceptions of Family Relationships: Previous Experiences and Future Expectations*, 13 W. CRIMINOLOGY REV., no. 2, 2012, at 25–35; Richard Tewksbury & Matthew B. Lees, *Perceptions of Punishment: How Registered Sex Offenders View Registries*, 53 CRIME & DELINQ. 611, 611–26 (2007)).

92. *Id.* at 14.

93. Public health research established that social determinants of health—the conditions in which people are born, grow, live, work, and age—have a significant impact on mental and physical health. See generally REG’L OFFICE FOR EUR., SOCIAL DETERMINANTS OF HEALTH: THE SOLID FACTS, WORLD HEALTH ORGANIZATION [WHO] (Richard Wilkinson & Michael Marmot eds., 2d ed. 2003), [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0005/98438/e81384.pdf](http://www.euro.who.int/__data/assets/pdf_file/0005/98438/e81384.pdf) [<https://perma.cc/8Q5W-PUKX>] (outlining how social determinants strongly correlate with mental health issues); Jessica Allen et al., *Social Determinants of Mental Health*, 26 INT’L REV. PSYCHIATRY 392 (2014) (same).

94. See ADAM STEEN ET AL., SWINBURNE INST. FOR SOC. RES., HOMELESSNESS AND UNEMPLOYMENT: UNDERSTANDING THE CONNECTION AND BREAKING THE CYCLE, SWINBURNE UNIVERSITY 2 (2012), [http://wp.shelternas.org.au/wp-content/uploads/2015/03/Homelessness-and-unemployment\\_Final-Report-20121.pdf](http://wp.shelternas.org.au/wp-content/uploads/2015/03/Homelessness-and-unemployment_Final-Report-20121.pdf) [<https://perma.cc/89CB-4T2R>] (explaining the barriers to obtaining jobs that pay enough to afford housing due to a lack of credentials or permanent address); see also NAT’L COAL. FOR THE HOMELESS, EMPLOYMENT AND HOMELESSNESS (2009), <http://www.nationalhomeless.org/factsheets/employment.html> [<https://perma.cc/4KZW-K4J3>] (“[C]limbing out of homelessness is virtually impossible for those without a job.”).

## II. Surveying State Approaches to Homeless Sex Offender Registration

Most states do not substantially comply with SORNA, despite its threat to withhold federal funding from noncompliant states.<sup>95</sup> In fact, SORNA compliance is so expensive that some states have deliberately chosen to relinquish the associated federal funding and enact their own SOPR laws.<sup>96</sup> As a result, state SOPR laws differ significantly in their treatment of homeless registrants: some do not address homeless registrants and some require more frequent in-person reporting. This Part provides an overview of SORNA and how states address homeless registrants. These variations are important when analyzing both their vulnerability to constitutional challenges and their complexity—how difficult it can be for a registrant to understand what he is supposed to do to comply.

### A. *SORNA Is an Inadequate Model*

SORNA is an inadequate model because it does not explicitly mention homeless registrants, much less provide separate registration provisions for homeless registrants.<sup>97</sup> SORNA instead defines the place a sex offender “resides” as “the location of the individual’s home or other place where the individual habitually lives.”<sup>98</sup> In 2008, the U.S. Department of Justice issued National Guidelines for Sex Offender Registration and Notification<sup>99</sup> “to provide guidance and assistance to jurisdictions in implementing the SORNA standards in their sex offender registration and notification programs.”<sup>100</sup> The Guidelines further define “habitually lives” as “any place in which the sex offender lives for at least 30 days.”<sup>101</sup>

This provides—at best—ambiguous guidance to homeless registrants, police departments, and courts. The SORNA Guidelines do not answer reasonable questions that a homeless registrant might have in seeking to understand his obligations and how to avoid prosecution for failing to register. For instance, at what point does a registrant register as homeless? Does he register when he loses stable housing and begins to sleep on the

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95. *SORNA Implementation Status*, OFF. JUST. PROGRAMS, <https://www.smart.gov/sorna-map.htm> [https://perma.cc/45T7-HWEF] (representing that as of Fall 2017, eighteen states and three territories have substantially implemented SORNA).

96. *Some States Refuse to Implement SORNA, Lose Federal Grants*, PRISON LEGAL NEWS, Sept. 2014, at 54, 54.

97. SORNA was meant to provide a model for states and provides funding for states that “substantially comply” with it. However, thirty-two states forgo federal funding because the cost of complying is too onerous. SMART, *supra* note 95.

98. 34 U.S.C.A. § 20911 (West 2017).

99. The National Guidelines for Sex Offender Registration and Notification, 73 Fed. Reg. 38030 (July 2, 2008) [hereinafter SORNA Guidelines].

100. Supplemental Guidelines for Sex Offender Registration and Notification, 76 Fed. Reg. 1630 (Jan. 11, 2011).

101. SORNA Guidelines, *supra* note 99, at 38062.

street? Or, does he register when he has been homeless for thirty days? Does a homeless registrant who repeatedly moves around a city in a thirty-day period qualify as habitually living in that city? Do people who move more often avoid the reporting provisions? Or, are they required to re-register more frequently? Must a registrant update his registration when he moves from Shelter A to Park B within a jurisdiction, or may he wait until the next thirty-day re-registration period when he is required to update his registration? Does he habitually live in the city, or does he habitually live at Shelter A? Homeless registrants struggle to answer such questions.

Yet, homeless registrants are, of course, expected to register; the Eighth Circuit rejected the idea that “a savvy sex offender can move to a different city and avoid having to update his SORNA registration by sleeping in a different shelter or other location every night.”<sup>102</sup> Numerous federal courts interpreting SORNA have defined “habitually lives” as the place where a transient registrant “regularly returns to sleep, eat his meals and keep personal belongings in a localized area . . . .”<sup>103</sup> This definition encompasses many homeless registrants and requires them to register despite not having a more conventional stable address.<sup>104</sup> The prevailing understanding is that “terminating a residence with no intention of returning constitutes a ‘change’ in residence under SORNA.”<sup>105</sup>

However, Justice Alito questioned this reasoning, writing for the Court in *Nichols v. United States*.<sup>106</sup> Mr. Nichols, a non-homeless registered sex offender who had been living in Kansas, moved to the Philippines without updating his registration.<sup>107</sup> He was subsequently charged and convicted of failing to update his registration. Prosecutors alleged that Mr. Nichols changed his residence—and thus should have updated his registration—twice: once when he abandoned his apartment in Kansas and again when he checked into a hotel in the Philippines.<sup>108</sup> Justice Alito questioned this reasoning and the resulting conviction:

We think this argument too clever by half; when someone moves from, say, Kansas City, Kansas, to Kansas City, Missouri, we ordinarily would not say he moved twice: once from Kansas City, Kansas, to a

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102. *United States v. Voice*, 622 F.3d 870, 875 (8th Cir. 2010).

103. *Marsh v. United States*, Nos. 3:13-CV-15, 3:10-CR-76, 2015 WL 5470236, at \*9 (N.D. W. Va. Sept. 15, 2015) (citing *Voice*, 622 F.3d at 875; *United States v. Bruffy*, No.1:10cr77 (LMB), 2010 WL 2640165, at \*3 (E.D. Va. June 30, 2010)).

104. *See, e.g.*, *United States v. Van Buren*, 599 F.3d 170, 175 (2d Cir. 2010) (holding that “SORNA requires a convicted sex offender to update his registration information in person upon terminating his current residence with no intention of returning, even if the sex offender has not yet established a new residence”).

105. *Id.* at 172.

106. 136 S. Ct. 1113 (2016).

107. *Id.* at 1115.

108. *Id.* at 1118.



state of homelessness, and then again from homelessness to Kansas City, Missouri. Nor, were he to drive an RV between the cities, would we say that he changed his residence *four* times (from the house on the Kansas side of the Missouri River to a state of homelessness when he locks the door behind him; then to the RV when he climbs into the vehicle; then back to homelessness when he alights in the new house's driveway; and then, finally, to the new house in Missouri). And what if he were to move from Kansas to California and spend several nights in hotels along the way? Such ponderings cannot be the basis for imposing criminal punishment. "We interpret criminal statutes, like other statutes, in a manner consistent with ordinary English usage."<sup>109</sup>

Justice Alito's reasoning was adopted unanimously to overturn Mr. Nichols's conviction because, in plain English, Mr. Nichols had moved just once. However, lower federal courts had previously applied this definition of a move to homeless defendants and may continue to do so given their unique circumstances.<sup>110</sup> For example, the Eighth Circuit held in 2010 that there was evidence that a defendant repeatedly changed his residence because he "habitually lived" in more than one location of the same town.<sup>111</sup> Federal courts may still apply this reasoning in future cases with homeless registrants.<sup>112</sup>

#### B. *Inconsistent Approaches to Homeless Registrants*

Because SORNA provides little instruction to states seeking guidance on registering homeless sex offenders, states in turn lack a uniform approach. Some states implement policies addressing and accommodating homeless

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109. *Id.* at 1118–19 (quoting *Abramski v. United States*, 134 S. Ct. 2259, 2277 (2014) (Scalia, J., dissenting)).

110. *See, e.g.*, *United States v. Bruffy*, 466 F. App'x 239, 244 (4th Cir. 2012) (requiring the defendant to register under SORNA and rejecting the defendant's argument challenging that "resides" is vague as applied to transient offenders who have vacated one residence but have not yet established a new residence in a different state because the defendant was not in transit, but merely transient in a defined jurisdiction, in that "[he] was not merely passing through [an] area in uninterrupted travel," but had one location where he habitually lived); *United States v. Voice*, 622 F.3d 870, 875 (8th Cir. 2010) ("We reject the suggestion that a savvy sex offender can move to a different city and avoid having to update his SORNA registration by sleeping in a different shelter or other location every night."); *Van Buren*, 599 F.3d at 175 ("[A] registrant must update his registration information if he alters his residence such that it no longer conforms to the information that he earlier provided to the registry."); *United States v. Kimble*, 905 F. Supp. 2d 465, 472–74 (W.D.N.Y. 2012) (holding that "resides" is not unconstitutionally vague for transient sex offenders).

111. *Voice*, 622 F.3d at 874–75.

112. In *Nichols*, the Supreme Court did not address homeless registrants; the Supreme Court noted that Mr. Nichols's conduct was in violation of state law and revisions to SORNA, which require that the registrant provide information regarding travel in foreign commerce. *Nichols*, 136 S. Ct. at 1119.

registrants,<sup>113</sup> while other states emulate SORNA's failure to textually address how homeless registrants should comply. While many aspects of these laws have the potential to impact homeless registrants, a few categories of provisions pose unique burdens.

This subpart summarizes variations of SOPR laws that particularly burden homeless registrants to a degree that, as Part III analyzes, raises constitutional concerns. The Appendix details all fifty states' reporting requirements for transient registrants: whether there is an in-person reporting requirement; the statutorily imposed fines and fees; and, for comparison, the reporting requirements for nontransient registrants. This subpart summarizes those findings and provides context to understand the impact of these provisions on homeless registrants.

*1. Nineteen states and the District of Columbia do not provide any statutory guidance for how homeless registrants should comply with the required registration.*—Nineteen states and the District of Columbia do not provide any statutory guidance for homeless registrants seeking to comply with the required registration.<sup>114</sup> As a result, many homeless registrants face uncertainty, confusion, and additional hurdles in attempting to comply. The absence of statutory guidance does not mean homeless registrants are ignored; courts and agencies interpret the statutes and impose requirements that fill some gaps. However, the absence of statutory guidance raises due process concerns. Homeless registrants are provided no notice of what they must do to comply and avoid prosecution. As one court acknowledged: “without an explanation or clarification of how the term ‘residence’ applies

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113. States differ in their definitions of “homeless.” Some supply no definition; some provide definitions for “homeless,” “transient,” or “habitually lives.” For the purposes of this Note, I use the term “homeless” to mean a person with an unstable address, and lump “homeless,” “transient,” and “habitually lives” within this definition. For example, Maryland defines all three in its statute. *See* MD. CODE ANN., CRIM. PROC., § 11-701 (West 2017). Habitually lives is defined as “any place where a person lives, sleeps, or visits with any regularity, including where a homeless person is stationed during the day or sleeps at night. . . . [This] includes any place where a person visits for longer than 5 hours per visit more than 5 times within a 30-day period.” *Id.* § 11-701(d). Homeless is defined as “having no fixed residence.” *Id.* § 11-701(e). Transient refers to “a nonresident registrant who enters a county of this State with the intent to be in the State or is in the State for a period exceeding 14 days or for an aggregate period exceeding 30 days during a calendar year for a purpose other than employment or to attend an educational institution.” *Id.* § 11-701(r). However, in Montana, the definition of residence “does not mean a homeless shelter” and transient “means an offender who has no residence.” MONT. CODE ANN. §§ 46-23-502(7)(b), (12) (2017). For comparison, the Department of Housing and Urban Development has four categories of homeless. *See Homeless Definition*, DEP’T OF HOUSING & URB. DEV., [https://www.hudexchange.info/resources/documents/HomelessDefinition\\_RecordkeepingRequirementsandCriteria.pdf](https://www.hudexchange.info/resources/documents/HomelessDefinition_RecordkeepingRequirementsandCriteria.pdf) [https://perma.cc/X679-PDB9].

114. *See infra* Appendix (identifying those nineteen states as Alaska, Connecticut, Kentucky, Maine, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, South Dakota, Utah, Virginia, West Virginia, and Wisconsin).

to homeless people, the provisions . . . that require sex offenders to report any change of residence raise significant legal problems when they are applied to homeless sex offenders.”<sup>115</sup> When a homeless registrant is charged with failure to register, courts must interpret these statutes to answer: Are registrants whose homelessness forces them to move more often exempt from registration requirements, or does a homeless registrant’s transience subject them to more frequent—and possibly constant—reporting?

Several states interpret any move a registrant makes as triggering re-registration.<sup>116</sup> The vast majority of states require a registrant, homeless or not, who changes residences to report in person within three days of the move.<sup>117</sup> Requiring homeless individuals to report within three days or immediately after a move leads to an unworkable morass. Housing can be so unstable that homeless individuals are forced to move every night, begetting a Kafkaesque obligation of continual reporting.

For instance, a Kentucky registrant moved to a shelter and attempted to register its address as his residence.<sup>118</sup> The shelter informed him that he could not continue to live at the shelter because the shelter had a policy against housing sex offenders.<sup>119</sup> He left the shelter and subsequently became homeless, a change he did not report to authorities. He defended himself by arguing that “he was homeless when charged and therefore unable to register a change in address.”<sup>120</sup> The court rejected this argument and held: “Nowhere in the plain language of the statute does it require that the registrant must have an actual place he is moving to.”<sup>121</sup> As this case indicates, a major

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115. *Shayen v. State*, 373 P.3d 532, 534 (Alaska Ct. App. 2015).

116. *See Tobar v. Commonwealth*, 284 S.W.3d 133, 135 (Ky. 2009) (“[T]he focus . . . is not that the sex offender have an address, but that any change in address be reported to the proper authorities.”).

117. For instance, in Missouri, “[w]hen a sex offender leaves a residence with no intention to return, even if he leaves to become homeless, his residence has *changed* as it is no longer that of the original residence.” *State v. Kelly*, 367 S.W.3d 629, 632 (Mo. Ct. App. 2012); *see also State v. Younger*, 386 S.W.3d 848, 856–57 (Mo. Ct. App. 2012) (“‘[C]hange of residence’ also includes within its scope any time an offender is not actually living or dwelling at a registered address, regardless the intent to return . . . . Common sense and the plain meaning of ‘residence’ suggest that the focus of determining whether a ‘change of residence’ has occurred should not be on the offender’s intent to return, but instead on whether there has been a change in the location where the offender is actually dwelling.”); *Tobar*, 284 S.W.3d at 135 (“[T]he focus . . . is not that the sex offender have an address, but that any *change* in address be reported to the proper authorities.”).

118. *Tobar*, 284 S.W.3d at 134.

119. *Id.*

120. *Id.*

121. *Id.* at 135; *see also State v. Worley*, 679 S.E.2d 857, 864 (N.C. Ct. App. 2009) (explaining that in North Carolina, “the sex offender registration statutes operate on the premise that everyone does, at all times, have an ‘address’ of some sort, even if it is a homeless shelter, a location under a bridge or some similar place.”).

concern of courts is not to immunize homeless registrants “from the registration requirements . . . as long as they continue[] to ‘drift.’”<sup>122</sup>

Not all jurisdictions, however, take this approach. In Oregon, “the duty to report is triggered only when the sex offender has both left the offender’s former residence to go to a new residence *and* has acquired a new residence.”<sup>123</sup> Oregon courts have overturned at least three failure-to-register convictions on a finding that there was insufficient evidence to support that the sex offender had established a new residence.<sup>124</sup>

Some states implement ad hoc interpretations.<sup>125</sup> Connecticut illustrates how such approaches, although designed to ease burdens, can still result in vague guidance and arbitrary enforcement. If a Connecticut registrant moves, he must “without undue delay” notify law enforcement in writing of the new address.<sup>126</sup> Connecticut’s SOPR laws do not address homeless registrants,<sup>127</sup> but its courts relax daily reporting requirements for the homeless and no longer require such registrants to report in person.<sup>128</sup> Instead of periodic in-person reporting, the Department of Emergency Services and Public Protection mails a non-forwardable verification form to the registrant’s last reported address every ninety days.<sup>129</sup> The registrant must sign the form and return it within ten days of receipt.<sup>130</sup> However, this does not work for

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122. *Worley*, 679 S.E.2d at 864.

123. *State v. Hiner*, 345 P.3d 478, 480 (Or. Ct. App. 2015) (emphasis added) (interpreting the former reporting requirement).

124. *Id.* at 482; *State v. McColligan*, 381 P.3d 1101, 1102 (Or. Ct. App. 2016); *State v. Williams*, 377 P.3d 677, 677 (Or. Ct. App. 2016) (explaining that, as in the previous two cases, “the state failed to prove that defendant had acquired a new residence after he left previous residences and, therefore, the trial court erred in denying his motions for judgment of acquittal”).

125. For example, in Alaska, the Department of Public Safety asked homeless registrants to “identify the place they were staying with as much detail as reasonably possible.” *Shayen v. State*, 373 P.3d 532, 534 (Alaska Ct. App. 2015). The department would accept a general location and even a zip code if the registrant did not know the exact physical location or address. *Id.* But even the court acknowledged that: “if the Department did formalize this approach by regulation or written policy, we are not sure that this approach would resolve every difficulty involved in applying the ‘change-of-residence’ reporting requirement to homeless sex offenders.” *Id.* In Michigan, the Michigan State Police allowed homeless registrants to register their address as “123 Homeless.” *People v. Dowdy*, 802 N.W.2d 239, 247 (Mich. 2011). In *Dowdy*, the defendant claimed he should not have to register because he was homeless and did not have a residence. *Id.* at 243. Rejecting this defense, the court held that “[n]othing in the text of SORA suggests that homelessness is an excuse for an offender’s failure to comply with the act.” *Id.* at 249. The court restructured its definition of “residence” to contemplate homelessness: “homelessness in no way prevents a sex offender from complying with the notification obligation . . . either because every person must have a legal domicile or, for practical purposes, because the Michigan State Police has promulgated an order to accommodate homeless sex offenders for the purposes of registration.” *Id.* at 247.

126. CONN. GEN. STAT. § 54-251(e) (2015).

127. *Id.* §§ 54-250 to -262.

128. See *infra* notes 144–49 and accompanying text.

129. *Id.* § 54-257(c).

130. *Id.*

homeless registrants, as there is no way for them to receive the verification form. And, because the homeless registrant cannot receive the verification form, he cannot return it and has failed to comply with the plain language of the statute. Courts and law enforcement have recognized the resulting absurdity and have provided a way for homeless registrants to comply.

In *State v. Winer*,<sup>131</sup> the Appellate Court of Connecticut endorsed an ad hoc approach and rejected a homeless defendant's argument that it was impossible for him to register. The court agreed with the State that "an adoption of the defendant's proposed definition would excuse homeless and temporarily housed sex offenders from compliance, thereby frustrating the intent of the statute to maintain records of the offenders' locations for the purpose of public safety."<sup>132</sup> At trial, a trooper testified that when "newly released registrants do not have an address, they provide the unit with daily updates on their location until they find housing so that the unit's records always reflect the registrant's current location."<sup>133</sup> Satisfied with the officer's ad hoc policy requiring unusually burdensome daily reporting for all homeless registrants, the court affirmed the defendant's conviction.<sup>134</sup>

However, just a few years later, the Connecticut Supreme Court distinguished typical "homelessness" in *Winer* from mere unstable housing in *Drupals*.<sup>135</sup> *Drupals* demonstrates how registrants and law enforcement struggle to understand the contours of these obligations when applied to the homeless, and how courts work to interpret what SOPR laws require. Despite diligent efforts to comply with the SOPR laws,<sup>136</sup> Mr. Drupals was charged and convicted of two counts of failure to register.<sup>137</sup>

Mr. Drupals lived in Stamford, Connecticut, for a number of years, during which time he had some form of housing and registered as required.<sup>138</sup> He diligently attempted to comply with Connecticut's SOPR laws.<sup>139</sup> But,

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131. 963 A.2d 89 (Conn. App. Ct. 2009).

132. *Id.* at 93.

133. *Id.* at 92.

134. *Id.* at 93.

135. *State v. Drupals*, 49 A.3d 962, 972 (Conn. 2012) ("Unlike the situation of a homeless registrant like the defendant in *Winer*, where the unit may expect daily updates of a registrant's location, a registrant who has a residence address is required only to verify that address, in writing, . . . and to provide written notice of a change of that 'residence address . . . without undue delay . . . .' [T]herefore, . . . *Winer* is distinguishable on its facts.")

136. During his trial for failure to register, a detective with the state police described him as "one of the unit's most compliant registrants." *Id.* at 966.

137. *Id.* at 965.

138. *Id.* at 966 (noting that Mr. Drupals was able to receive mail at his address in Stamford).

139. Mr. Drupals received a verification form and hand delivered it to the sex offender registry headquarters within ten days. *Id.* He informed them that the address was currently correct, but that he would be moving the next day. *Id.* He confirmed that he had five days until he needed to provide an updated address. *Id.* The next day he sent a letter to the office informing them that he would no longer be living at the previous address and that he would let them know within five days where he

when he experienced unstable housing, he moved to Maryland to live with his brother.<sup>140</sup> His brother was quickly confronted by his landlord, who was upset that a registered sex offender was living in the apartment.<sup>141</sup> Mr. Drupals tried to find his own apartment, but failed and was forced to leave his brother's house as a result of the stigma associated with his criminal history.<sup>142</sup> Unable to find housing in Maryland, he returned to Connecticut but lived with his mother rather than at his old address.<sup>143</sup> He sent notice to the Maryland registry that he would be leaving Maryland.<sup>144</sup> Despite having five days to register in Connecticut,<sup>145</sup> Connecticut issued a warrant for Mr. Drupals's arrest for failure to register just two days after he moved back.<sup>146</sup>

The Connecticut Supreme Court vacated Mr. Drupals's convictions<sup>147</sup> and held that its SOPR laws must be interpreted "so that [they do] not lead to absurd or unworkable results."<sup>148</sup> The Court also noted the absurdity that could result from imposing constant reporting:

If a registrant were in the process of moving from Connecticut to California and was driving a car across the country, pursuant to the state's definition, he would be required to fax the registry every night when he stopped at a motel, even though the registry would be closed if he stopped late at night, and he would possibly have left his motel location before the registry opened in the morning. The absurdity of this scenario is exacerbated if the registrant were traveling on a weekend, when the registry is closed. He would be required to send two separate changes of address to an office where no one could record those addresses until he had already left the location.<sup>149</sup>

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was living. *Id.* When the office received this letter, they listed Mr. Drupals as "noncompliant" on Connecticut's sex offender registry website. *Id.* Three days later, Mr. Drupals faxed the registration office a letter giving notice in writing of his new address and claiming that he was in compliance. *Id.* Because this letter had a return address in Maryland, the office updated his registration to the Maryland address. *Id.*

140. *Id.* at 966–67. Mr. Drupals moved in with his brother in Maryland and subsequently registered as a sex offender in Maryland. *Id.* A Maryland police officer assigned to verify Mr. Drupals's presence stopped by his brother's house. The officer stopped by unannounced on a few weekdays and confirmed that Mr. Drupals's brother lived there. *Id.* When the officer did not see Mr. Drupals, he determined that Mr. Drupals was not living at the Maryland address and alerted both the Maryland and Connecticut sex offender registry programs. *Id.*

141. *Id.* at 967.

142. *Id.* (noting that Mr. Drupals failed "in his attempt to rent his own apartment due to his status as a registered sex offender").

143. *Id.*

144. *Id.*

145. *Id.* at 976; CONN. GEN. STAT. § 54-251(e) (2015).

146. *Drupals*, 49 A.3d at 967.

147. *Id.* at 976.

148. *Id.* at 972.

149. *Id.*

In vacating the conviction, the court determined that “residence means the act or fact of living in a given place for *some time*, and the term does not apply to temporary stays.”<sup>150</sup> The Connecticut Supreme Court thus distinguished homelessness from unstable housing. But it failed to clarify when someone should be considered homeless and when he is “in the process of moving.”<sup>151</sup>

Connecticut provides an example of how a vague statute can be interpreted in many different ways by registrants, police officers, prosecutors, and courts. With a vague statute, enforcement can easily become arbitrary.<sup>152</sup> Courts typically defer to the legislative purpose and rarely interpret ambiguities in the defendant’s favor. In light of the strong public interest in maintaining up-to-date registries, courts rarely address the burdens homeless registrants face in complying. Instead, homeless registrants across the country are punished for failing to comply with provisions that are vague and ambiguous.

*2. Thirty-one states statutorily impose more onerous reporting requirements for homeless registrants.*—Thirty-one states expressly require homeless registrants to report in person to law enforcement more frequently than if they were not homeless.<sup>153</sup> Typically, states with statutes that

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150. *Id.* at 971 (emphasis added).

151. *Id.* at 972. Two years later in *State v. Edwards*, the Appellate Court of Connecticut clarified that homeless registrants are not required to report on a daily basis and that homelessness does not always equal a change of address. *State v. Edwards*, 87 A.3d 1144, 1148 n.6 (Conn. App. Ct. 2014). Explicitly rejecting *Winer*, the Court held that “a homeless registrant may be required to frequently update authorities of *changes* of address, but this frequency is not the product of being homeless per se, but rather flows from being transient.” *Id.* Thus, in Connecticut, “a homeless person may elect to sleep on a particular park bench, so long as he has informed the commissioner of his location and returns to that particular bench daily, he may be considered in compliance.” *Id.*

152. Mr. Drupals alleged in a civil rights suit that he was “falsely arrested, maliciously prosecuted, and denied procedural and substantive due process in Connecticut by Connecticut local and state law enforcement officers and other Connecticut local and state officials, with the involvement of a police officer from a county in Maryland.” *Drupals v. Mabey*, 3:13-CV-00404 (CSH), 2014 WL 3696374, at \*1 (D. Conn. July 23, 2014).

153. *See infra* Appendix. The following states expressly require homeless registrants to report in person more frequently than if they were not homeless: Alabama, *compare* ALA. CODE § 15-20A-10(f) (2017) (requiring registrants to report in person every three months), *with* ALA. CODE § 15-20A-12(b) (2017) (requiring weekly in-person registration for the homeless); Arizona, *compare* ARIZ. REV. STAT. ANN. § 13-3821(J) (requiring registrants to report online identifiers and obtain a new driver’s license yearly), *and* ARIZ. REV. STAT. ANN. § 13-3822(A) (requiring registrants to report address changes within 72 hours), *with* ARIZ. REV. STAT. ANN. §§ 13-3821(I), 13-3822(A) (2017) (requiring the homeless to report to the sheriff every 90 days); Arkansas, *compare* ARK. CODE ANN. § 12-12-909(a)(1) (West 2017) (requiring registrants to register in person every six months), *with* ARK. CODE ANN. § 12-12-909(a)(6) (West 2017) (requiring homeless registrants to register in person every 30 days); California, *compare* CAL. PENAL CODE § 290(b) (West 2017) (requiring registrants to register within five business days of moving to a new city, county, or campus), *with* CAL. PENAL CODE § 290.011(a) (West 2017) (requiring homeless registrants to register every 30 days); Colorado, *compare* COLO. REV. STAT. ANN. § 16-22-108(b)

(requiring registrants to register yearly), and COLO. REV. STAT. ANN. § 16-22-108(d)(I) (requiring certain violent or adult registrants to register quarterly), with COLO. REV. STAT. ANN. §§ 16-22-109(3.5)(b), (c)(I)–(II) (West 2017) (requiring homeless registrants to register based on a tier system: annual registration is converted to every three months; quarterly is converted to monthly); Delaware, *compare* DEL. CODE ANN. tit. 11, §§ 4120(g)(1–3) (West 2017) (requiring registrants to register by tier: tier III (every 90 days); tier II (every 6 months); tier I (every 12 months)), with DEL. CODE ANN. tit. 11, §§ 4121(k)(1)–(3) (West 2017) (requiring homeless registrants to register by tier: tier III (weekly); tier II (30 days); tier I (every 90 days)); Florida, *compare* FLA. STAT. ANN. § 943.0435(14)(a) (West 2017) (requiring most registrants to register every 12 months), and FLA. STAT. ANN. § 943.0435(4)(b) (West 2017) (requiring certain registrants to register quarterly), with FLA. STAT. ANN. § 943.0435(4)(b)(2) (West 2017) (30 days); Georgia, *compare* GA. CODE ANN. § 42-1-12(f)(4)–(5) (West 2017) (requiring registrants to report annually and within 72 hours of changes to required registration information), with GA. CODE ANN. § 42-1-12(f)(5) (West 2017) (requiring homeless registrants to report within 72 hours of changing sleeping locations); Hawaii, *compare* HAW. REV. STAT. ANN. § 846E-5(a) (West 2017) (requiring registrants with permanent addresses to report quarterly through the mail), with HAW. REV. STAT. ANN. § 846E-5(b) (West 2017) (requiring homeless registrants to report in person quarterly); Idaho, *compare* IDAHO CODE ANN. § 18–8308(1) (West 2017) (requiring violent sexual predators to return via mail an address verification every thirty days), with IDAHO CODE ANN. § 18–8308(4) (West 2017) (requiring those homeless registrants to report in person weekly); Illinois, 730 ILL. COMP. STAT. ANN. 150/6 (West 2017) (requiring registrants with a fixed domicile to report yearly, unless requested at other times by law enforcement, but requiring homeless registrants to report in person weekly); Indiana, *compare* IND. CODE ANN. § 11–8–8–14(a) (West 2017) (requiring registrants to report in person yearly), with IND. CODE ANN. § 11–8–8–12(c) (West 2017) (requiring homeless registrants to report in person weekly); Iowa, IOWA CODE § 692A.108(1) (2017) (providing law enforcement discretion to require registrants “to appear in person more frequently . . . to verify relevant information if good cause is shown”); Kansas, *compare* KAN. STAT. ANN. § 22–4905(b) (West 2017) (requiring registrants to register in person quarterly), with KAN. STAT. ANN. § 22–4905(f) (West 2017) (requiring homeless registrants to report in person “. . . every 30 days, or more often at the discretion of the registering law enforcement agency”); Louisiana, *compare* LA. STAT. ANN. §§ 542.1.1(A)(1)–(3) (2017) (requiring registrants to register every three months (those convicted of aggravated offenses), every six months (those convicted of sexual offenses against a minor), or every twelve months (all others subject to registration)), with LA. STAT. ANN. § 542.1.1(A)(4) (2017) (requiring homeless registrants to report in person every fourteen days); Maryland, *compare* MD. CODE ANN., CRIM. PROC. §§ 11–707(a)(1)–(3) (West 2017) (requiring registrants to report in person by tier: tier I and II (every 6 months), tier III (every 3 months), sexually violent predators (every 3 months)), with MD. CODE ANN., CRIM. PROC. § 11–705(d)(2) (West 2017) (requiring homeless registrants to register in person weekly); Massachusetts, *see* MASS. GEN. LAWS ANN. ch. 6, §§ 178F–F1/2 (West 2017) (requiring registrants to mail in registration form and report in person annually but requiring homeless registrants to mail in registration form and report in person monthly); Minnesota, *compare* MINN. STAT. ANN. § 243.166(3)(b) (West 2017) (requiring registrants to report in person only when changing addresses), with MINN. STAT. ANN. § 243.166(3a)(e) (West 2017) (requiring homeless registrants to report in person weekly); Montana, *compare* MONT. CODE ANN. §§ 46–23–504(6)(a), (c) (West 2017) (requiring registrants to report in person by level: level 3 (every 90 days), level 2 (every 180 days), level 1 (every 365 days)), with MONT. CODE ANN. § 46–23–504(5) (West 2017) (requiring homeless registrants to report in person monthly); Nebraska, *compare* NEB. REV. STAT. ANN. §§ 29–4006(3)–(5) (West 2017) (requiring registrants to report in person according to the duration of their registration requirement: fifteen years (every twelve months), twenty-five years (every six months), for life (every three months)), with NEB. REV. STAT. ANN. § 29–4004(9) (West 2017) (requiring homeless registrants to register in person every 30 days); Nevada, *compare* NEV. REV. STAT. ANN. § 179D.480(1) (West 2017) (requiring registrants to report in person by tier: tier I (annually); tier II (every 180 days); tier III (every ninety days)), with NEV. REV. STAT. ANN. § 179D.470(3) (West 2017) (requiring homeless registrants to report in person every 30 days); New Mexico, *see* N.M. STAT. ANN. § 29–11A–4(H)



expressly accommodate homeless registrants require them to report in person more frequently than non-homeless registrants.<sup>154</sup> The majority of states classify registrants into tiers based on the seriousness of the underlying conviction that triggered registration.<sup>155</sup> For example, Pennsylvania classifies

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(West 2017) (“When a sex offender who is registered or required to register is homeless . . . the sex offender shall register each address or temporary location with the county sheriff for each county in which the sex offender is living or temporarily located.”); North Dakota, *compare* N.D. CENT. CODE ANN. § 12.1-32-15(7) (West 2017) (requiring registrants to register a change of registration information), *with* N.D. CENT. CODE ANN. § 12.1-32-15(2) (West 2017) (requiring homeless registrants to register every three days); Oklahoma, *compare* Sex Offender Registration Procedure, ch. 224, sec. 2, OKLA. STAT. tit. 57, § 584(A)(5) (2017) (requiring registrants to report based on their numeric risk: one (annually); two (semiannually); three (every ninety days)), *with* OKLA. STAT. ANN. tit. 57, § 584(G) (West 2017) (requiring homeless registrants to report in person weekly); Pennsylvania, *compare* 42 PA. STAT. AND CONS. STAT. ANN. §§ 9799.15(e)–(f) (West 2017) (requiring registrants to report in person by tier: tier I (annually); tier II (semiannually); tier III (quarterly)), *with* 42 PA. STAT. AND CONS. STAT. ANN. § 9799.15(h) (West 2017) (requiring homeless registrants to report in person monthly); South Carolina, *compare* S.C. CODE ANN. § 23-3-460(A) (requiring registrants to report semi-annually or quarterly), *with* S.C. CODE ANN. § 23-3-460 (requiring registrants who “habitually live or reside” somewhere to update their registration within three days of moving); Tennessee, *compare* TENN. CODE ANN. §§ 40-39-204(b)(1)–(3) (West 2017) (requiring registrants to report yearly or quarterly, if the individual is a violent sexual offender), *with* TENN. CODE ANN. § 40-39-203(f) (West 2017) (requiring homeless registrants to report in person monthly); Texas, TEX. CODE CRIM. PROC. ANN. art. 62.051(h)(1)–(2) (West Supp. 2015) (weekly or monthly for some, *see id.* art. 62.055(i)); Vermont, VT. STAT. ANN. tit. 13 § 5407(h); Washington, *compare* WASH. REV. CODE ANN. §§ 9A.44.130(1)(b)–(2)(a) (West 2017) (not requiring in-person reporting for normal registration), *with* WASH. REV. CODE ANN. § 9A.44.130(6)(b) (West 2017) (requiring homeless registrants to report weekly and in-person); Wyoming, *compare* WYO. STAT. ANN. § 7-19-302(e) (2015) (requiring no in-person reporting for normal registration), *with* WYO. STAT. ANN. § 7-19-302(e) (requiring homeless registrants to report in person weekly). Georgia, New Mexico, and Vermont do not fit easily into either category, but are included here. They may impose more frequent registration of new addresses or dwelling locations but do not statutorily impose more frequent reporting. For example, in Vermont, “[a] registrant who has no permanent address shall report to the department to notify it as to his or her temporary residence. Temporary residence, for purposes of this section, need not include an actual dwelling or numbered street address, but shall identify a specific location. A registrant shall not be required to check in daily if he or she makes acceptable other arrangements with the department to keep his or her information current. The department may enter into an agreement with a local law enforcement agency to perform this function, but shall maintain responsibility for compliance with this subsection.” VT. STAT. ANN. tit. 13 § 5407(h). In Georgia, homeless registrants must provide “information regarding the [ ] new sleeping location to the sheriff” within 72 hours of a change. GA. CODE ANN. § 42-1-12 (f)(5) (West 2017). While this could be more onerous due to the nature of homelessness, it mirrors the requirements of housed registrants to report a “change” within three days.

154. *See infra* Appendix.

155. *See, e.g.*, 42 PA. CONS. STAT. § 9799.14 (2017). This is in contrast to tiers based on an evaluation of current dangerousness. *See* COLO. REV. STAT. § 18-3-414.5 (2017) (requiring a risk assessment to deem someone a sexually violent predator). For a critical discussion of basing reporting requirements on the underlying offense, *see* Naomi J. Freeman and Jeffrey C. Sandler, *The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative?*, 21 CRIM. JUST. POL’Y REV. 31, 43–45 (2010).

a person convicted of rape<sup>156</sup> as a tier III offender<sup>157</sup> and requires him to report quarterly.<sup>158</sup> However, if he were homeless, he would have to report monthly.<sup>159</sup>

Many states require homeless registrants to report more frequently than non-homeless registrants. Eleven states require all homeless registrants to report weekly regardless of their underlying offense's severity classification.<sup>160</sup> This obligation is doubled if the registrant is required to register with both the sheriff of the county and the chief of police of any municipality, as registrants in Alabama are required to do.<sup>161</sup> North Dakota requires homeless registrants residing there to report every three days.<sup>162</sup>

Some states specify that if a registrant is homeless and reports more frequently, he does not need to register each change in address during the periods in which he reports, but merely provide an account at each monthly registration.<sup>163</sup> However, many statutory schemes lack this clarifying detail,

156. 18 PA. CONS. STAT. § 3121 (2017).

157. 42 PA. CONS. STAT. § 9799.14(d) (2017).

158. *Id.* § 9799.15(e).

159. *Id.* § 9799.15(h)(1). A homeless tier I registrant is required to report monthly as well, as opposed to annually. *Id.* § 9799.15(e)(1).

160. See *infra* Appendix (identifying these states as Alabama, Delaware, Idaho, Illinois, Indiana, Maryland, Minnesota, Oklahoma, Texas, Washington, and Wyoming).

161. McGuire v. Strange, 83 F. Supp. 3d 1231, 1239, 1259 (M.D. Ala. 2015), *appeal filed*, No. 15-10958 (11th Cir. Mar. 06, 2015) (finding that the combination of “residency, employment, and travel restrictions generally, as well as dual weekly registration requirements for in-town homeless registrants specifically, are affirmative disabilities and restraints”).

162. N.D. CENT. CODE § 12.1-32-15(2) (2017) (“A homeless individual shall register every three days with the sheriff or chief of police of the jurisdiction in which the individual is physically present.”). For a comprehensive discussion of North Dakota’s sex offender registry scheme and how the status of being a homeless sex offender is criminalized, see Emily Donaher, Note, *Sex Offender Registration Laws for the Homeless: Safeguarding Society or Punishing Sexually Dangerous Individuals for Being Homeless?*, 91 N.D. L. REV. 375, 387–89 (2016). Donaher argues that “[t]he laws in North Dakota make it nearly impossible for homeless sex offenders to reside within the state without being in violation of a registration requirement.” *Id.* at 390. For example, in *State v. Rubey*, Rubey was convicted for failing to notify the authorities that he secured a post office box. *State v. Rubey*, 611 N.W.2d 888, 892 (N.D. 2000) (“[I]f the offender, as in this case, has no new residing address, but has a new mailing address, the offender must notify authorities of the new address.”). Summarizing this case, Donaher notes that the defendant “was convicted of failing to give notice of a mailing address, which was a post office box, after he had signed an acknowledgement form agreeing to notify law enforcement within ten days of moving to a new address.” Donaher, *supra*, at 387.

163. See, e.g., CAL. PENAL CODE § 290.011(d) (West 2017) (“A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.”); TEX. CODE CRIM. PROC. ANN. art. 62.051(j)(1)–(2) (West 2017) (requiring that if a registrant does not indicate an address on the registration form and has a residence that does not have a physical address, the registrant must report “not less than once in each succeeding 30-day period and provide that authority with . . . a detailed description of the geographical location of the

so the same interpretation problem identified above with a change of temporary location could require registrants to report changes at least every three days.<sup>164</sup> For example, the Arizona Court of Appeals rejected the argument that requiring updates within seventy-two hours of a move to a temporary location would “clog” the system.<sup>165</sup> But the Arizona Supreme Court overturned this decision and held that “if a cardboard box or a spot by a dumpster is a ‘residence’ for purposes of the seventy-two-hour reporting requirement, then ‘moving’ from it to another transient location would repeatedly trigger the reporting requirement, which would render the ninety-day transient registration requirement largely pointless.”<sup>166</sup>

A Nebraska case demonstrates the burden of even more lenient requirements. In Nebraska, transient registrants are required to update their registrations once every thirty days.<sup>167</sup> Jason Harris began registering as transient in 2009 because he travelled frequently as a truck driver and tech for touring bands.<sup>168</sup> In May of 2010, Mr. Harris updated his registration nine days late.<sup>169</sup> In his defense at trial, he asserted that his truck broke down in Iowa while he was travelling for work.<sup>170</sup> In his appeal, he claimed that the sex offender registration statute “violates the Ex Post Facto, Due Process, Equal Protection, and Commerce Clauses of the U.S. and Nebraska Constitutions on its face and as applied to him.”<sup>171</sup> The Nebraska Supreme Court rejected all of his challenges, upheld his felony conviction for failure to comply,<sup>172</sup> and noted that while “appearing in person may be more inconvenient, . . . requiring it is not punitive.”<sup>173</sup> In rejecting his equal

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person’s residence.”). This provision only applies to registrants who actually lack a physical address; homeless registrants who are transient but have an address must report weekly. *Id.* art. 62.051(h)(1)–(2).

164. The vast majority of states follow SORNA and require any change of residence to be reported within three days. There are very real consequences for failing to report a change in address. One man in New Mexico faced up to three years in jail for failing to report his move from a dumpster to a homeless shelter. *Homeless Man Arrested for Moving Out of a Rubbish Bin*, GUARDIAN (May 4, 2011), <https://www.theguardian.com/world/2011/may/04/homeless-man-arrested-dumpster> [<https://perma.cc/PM2N-7QU3>].

165. *See* State v. Burbey, 381 P.3d 290, 295 (Ariz. Ct. App. 2016) (denouncing defendant’s assertions that “[a] transient offender may occupy many locations on a more or less regular basis during the course of a day, week, or month” and “a good faith effort to comply with the literal terms of the statute would clog the registration system” because “nothing in [Arizona’s statute on sex offender registration] requires that a homeless person re-register ‘every particular location,’ but only a change from a previously registered address”).

166. State v. Burbey, 403 P.3d 145, 148 (2017).

167. NEB. REV. STAT. § 29-4004(9) (2017).

168. State v. Harris, 817 N.W.2d 258, 265 (Neb. 2012).

169. *Id.*

170. *Id.*

171. *Id.* at 267.

172. *Id.* at 277.

173. *Id.* at 273 (quoting United States v. W.B.H., 664 F.3d 848, 857 (11th Cir. 2011)).

protection claim, the court held that “treating transient registrants different than registrants with a regular residence”<sup>174</sup> is rationally related to the legislative purpose of the Sex Offender Registration Act—“to keep track of the whereabouts of known sex offenders.”<sup>175</sup> Essentially, “as it is more difficult to keep track of registrants who do not have a regular residence, domicile, or living location than it is for those registrants who have a regular residence, it is rational to require such persons to update their registration more frequently than other registrants.”<sup>176</sup>

Defined reporting-frequency requirements can still be vague.<sup>177</sup> For example, a homeless registrant in Florida unsuccessfully argued that “the policy’s burdens exceeded those the statute imposed upon him.”<sup>178</sup> His local sheriff’s office required registrants to “report in person to its main office by 10 a.m. each Monday morning to specify where they intend[ed] to spend the next seven nights”<sup>179</sup> and keep a “weekly log of their expected whereabouts.”<sup>180</sup> The court held that this policy was in accord with the statute as it “clearly envisions that sheriff’s offices must establish some protocols by which a transient registered offender presents himself in person and provides locational information.”<sup>181</sup>

### C. *Financial Burdens of Registration*

SOPR laws impose a range of fees for registration and fines for noncompliance, which uniquely burden the poor in general and homeless individuals in particular. The most obvious of these costs are the financial penalties associated with conviction,<sup>182</sup> the cost of complying with parole or other supervised release programs,<sup>183</sup> and the fees associated with

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174. *Id.* at 276.

175. *Id.* at 277.

176. *Id.*

177. For an example, see *supra* note 162, reviewing North Dakota’s reporting requirements.

178. *Goodman v. State*, 117 So. 3d 32, 34 (Fla. Dist. Ct. App. 2013).

179. *Id.* at 33. It is common for police departments to require homeless registrants to report during specific hours of the day. In Dallas, registration is open for only a few hours three days a week. Registrants there report that they frequently wait for hours in long lines with no available restroom. Amy Martyn, *Dallas Prisoner Advocate Josh Gravens Faces Prison Himself over Technicality*, DALL. OBSERVER (May 14, 2015), <http://www.dallasobserver.com/news/dallas-prisoner-advocate-josh-gravens-faces-prison-himself-over-technicality-7212827> [https://perma.cc/H8XN-7KZU].

180. *Goodman*, 117 So. 3d at 38.

181. *Id.* at 37.

182. See, e.g., TEX. PENAL CODE ANN. § 12.32(b) (West 2011) (stating that a person convicted of aggravated sexual assault, a first degree felony, is subject to a fine “not to exceed \$10,000”).

183. Defense attorneys report that complying involves following all recommendations, including counseling, treatment, and polygraphs, which cost thousands of dollars. Telephone Interview with Kristin Etter, Partner, Sumpter & González, L.L.P. (Apr. 24, 2017) (notes on file with author); see also Stephen J. Dubner, *Making Sex Offenders Pay—and Pay and Pay and Pay*,

registering.<sup>184</sup> Some states require GPS monitoring of certain registrants at the registrants' expense for significant periods of time after their formal supervised release.<sup>185</sup> These costs are manageable for some, but even small expenses can be daunting for homeless individuals. The differential impact that these fines have on indigent homeless registrants renders the fines vulnerable to Equal Protection challenges.

For example, in Louisiana, at their initial registration and each anniversary, the registrant is required to pay a \$60 annual fee.<sup>186</sup> If a registrant fails to pay the fee within thirty days, he will be charged with failure to register.<sup>187</sup> Adults convicted of a sex offense or criminal offense against a minor are also required to take out an advertisement in the official local paper for two separate days and prepare and mail postcards notifying their neighbors of their presence and status on the registry at the registrant's expense.<sup>188</sup> These obligations must be met within twenty-one days of the conviction, release from incarceration, or establishing a residence.<sup>189</sup> The court of conviction may also impose additional notification requirements as "deemed appropriate."<sup>190</sup>

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FREAKONOMICS (June 10, 2015), <http://freakonomics.com/podcast/making-sex-registrants-pay-and-pay-and-pay-a-new-freakonomics-radio-podcast/> [<https://perma.cc/V72U-F7GK>].

184. *See infra* Appendix. These annual charges range from \$15 in Oklahoma to \$150 in Tennessee. While some states only require registrants to pay for their initial registration (like Arizona and North Carolina), other states, such as New York, require registrants pay a fee with every move.

185. Some states require GPS monitoring for life or significant periods of time. *See, e.g.*, N.C. GEN. STAT. § 14-208.40 (2017). Other "costs" are associated with GPS monitoring that are specific to homeless individuals. *See Wilson v. State*, 485 S.W.3d 698, 700 (Ark. Ct. App. 2016) (noting that the officer gave defendant permission to charge his GPS device at McDonald's). *See also* Carpenter & Beverlin, *supra* note 18, at 1098–99 (noting that at least thirty-nine states permit some form of electronic monitoring of convicted sex offenders, some for life, and that the majority of those states require the registrant to pay).

186. LA. STAT. ANN. § 15:542(D) (2017).

187. *Id.*

188. *Id.* § 15:542.1(A)(1)(a), (2)(a).

189. *Id.* § 15:542.1(A)(2)(a).

190. LA. STAT. ANN. § 15:542.1(A)(3) (2017). For example, the court of conviction may require any other notice it deems appropriate, including (but not limited to) "signs, handbills, bumper stickers or clothing labeled to that effect." *Id.* The court may require a statement under oath of intended residential address after sentencing or release. LA. STAT. ANN. § 15:542.1(A)(4) (2017). Further, the residence must display its number of address so that it's "visible to an ordinarily observant person . . . during the daylight hours." LA. STAT. ANN. § 15:542.1(A)(5) (2017). Providers of "noneducational" instruction or lessons (martial arts, dance, music, etc.) must place a prominent notice of sufficient size in the building where instruction is given. LA. STAT. ANN. § 15:542.1(B) (2017). While these costs of notifying community members are unique to Louisiana, public notification akin to shaming is prevalent in other states as well. For example, a judge in Corpus Christi, Texas, required sex offenders to "post warning signs in the front yard of their homes [and on their cars] reading 'Danger! Registered Sex Offender Lives Here!'" *Forcing Sex Offenders to Publicize Crimes*, ABC NEWS (June 18, 2017) <http://abcnews.go.com/2020/story?id=132693&page=1> [<https://perma.cc/7AAP-CBHC>].

In New Orleans, it costs \$193.50 to publish each day's ad in the *Times-Picayune*, the official newspaper for Orleans Parish.<sup>191</sup> There are two ways to comply with the advertisement and postcard requirements.<sup>192</sup> One method is to pay a company, Watch Systems.<sup>193</sup> This company typically charges between \$700 and \$1,000 and includes the cost of *Times-Picayune* notification.<sup>194</sup> The second way to comply is a labor-intensive "do-it-yourself" route that some public defenders assist their clients in completing.<sup>195</sup>

Public defenders in New Orleans report that the New Orleans Police Department does not require registrants who are homeless—defined as living outside—to send the postcards or publish in the paper.<sup>196</sup> However, homeless individuals' housing may be unstable in the sense that they move frequently, live with family or friends on an intermittent basis, live in shelters, or are otherwise not living outside but lack a home in the traditional sense.<sup>197</sup> Based on the black letter law, these registrants with unstable housing—with a roof over their heads but functionally homeless—could be required to frequently provide this costly community notification.<sup>198</sup> Moreover, the enforcement policy of the New Orleans Police Department provides no succor to those outside of New Orleans and, indeed, would not protect New Orleans's homeless from enforcement by other law enforcement agencies.

In Colorado, public defenders report that their sex offender clients are subject to psychological evaluation and treatment, tracking and monitoring, and polygraph tests as a condition of parole.<sup>199</sup> Evaluations can cost anywhere

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191. Telephone Interview with Dylan Duffey, Staff Attorney, Orleans Public Defender's Office (Apr. 23, 2017) (on file with author).

192. The New Orleans Police Department partners with Watch Systems to send these cards. *See id.*

193. *Id.* The registrants simply submit their addresses, and the software populates, prints, and mails notifications to all addresses within the defined radius. *Id.*

194. *Id.*

195. *Id.* First, the registrants must copy a sample notification postcard on card stock or blank postcards. Then, the registrants create a list of all the addresses in a 3/10-mile radius of their homes; OPD suggests that residents do this by walking around their neighborhoods to be sure they catch all the addresses. Next, the registrants must address each postcard to all of these addresses and one to the New Orleans Police Department. Finally, the registrants must affix postcard stamps to these notification cards and deposit them with the postal service. *Id.*

196. *Id.*

197. *See supra* Part I.

198. While there may not be many examples of this in court cases, prosecutors can always charge defendants with multiple failure-to-register charges, with community notification being one of many, and defendants may plead guilty to one failure-to-register in order to avoid increased prison sentences. This understanding was confirmed by conversations with public defenders in Louisiana and Colorado. Telephone Interview with Laurie Kepros, Colorado Public Defender (May 24, 2017) (notes on file with author); Telephone Interview with Dylan Duffey, *supra* note 192.

199. Dubner, *supra* note 183.

from \$700 to \$1,300 or more.<sup>200</sup> Treatment costs, at a minimum, around \$275 a month<sup>201</sup> and “the person will be in treatment . . . for years and years.”<sup>202</sup> Even when someone is engaged in treatment while in prison, they will be required to fund and cooperate with community-based treatment as well. Colorado may also require probationers and parolees to pay for “trackers,”<sup>203</sup> often off-duty law enforcement officers “whose entire job is to pop up everywhere you go in your life and make sure you are where you say you are.”<sup>204</sup> Some people are required to take semi-annual or more frequent polygraph tests,<sup>205</sup> which cost \$250 each time.<sup>206</sup> If someone fails or gets an inconclusive result on a polygraph test, the tests become more frequent.<sup>207</sup>

Many states have indigency provisions, but exactly what qualifies as indigent and what costs are covered varies by jurisdiction.<sup>208</sup> While homeless people should qualify as presumptively indigent, they may not know that there is an indigency provision or that they qualify. For those unable to pay legal debts, it “carries [an] additional hardship as they are regularly summoned to court or arrested for outstanding warrants because of nonpayment.”<sup>209</sup> Public defenders report that fees are often imposed despite an individual’s inability to pay.<sup>210</sup> As registrants are not provided counsel

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200. COLO. DEPT. OF CORR. ET AL., LIFETIME SUPERVISION OF SEX OFFENDERS ANNUAL REPORT 31 tbl.6 (2016) [hereinafter LIFETIME SUPERVISION REPORT]; Telephone Interview with Laurie Kepros, *supra* note 198.

201. LIFETIME SUPERVISION REPORT, *supra* note 200, at 31–32.

202. Dubner, *supra* note 183. Laurie Kepros, Colorado Public Defender, confirmed that this was still the case. She noted that the duration of evaluation can be “never ending” and that she has seen people in treatment for ten to thirteen years, sentences for twenty to life for parole terms. She said therapists often think that sex offenders are done with treatment, but the supervising parole officer will keep them in treatment. Telephone Interview with Laurie Kepros, *supra* note 198.

203. Dubner, *supra* note 183.

204. *Id.*

205. See COLO. SEX OFFENDER MGMT. BD., STANDARDS AND GUIDELINES FOR THE ASSESSMENT, EVALUATION, TREATMENT AND BEHAVIORAL MONITORING OF ADULT SEX OFFENDERS 121–22 (rev’d 2017) <https://cdpsdocs.state.co.us/dvomb/SOMB/Standards/SAAdult.pdf> [<https://perma.cc/R4SM-4GAW>] (recommending time frames for polygraphs, which are far more frequent than biannually); Dubner, *supra* note 183 (reasoning that frequent polygraph examinations exemplify unceasing punishment on sex offenders beyond their years in prison).

206. LIFETIME SUPERVISION REPORT, *supra* note 200, at 31 tbl.6; Dubner, *supra* note 183. In Texas, a polygraph test costs \$500. Telephone Interview with Kristin Etter, *supra* note 183.

207. Dubner, *supra* note 183; Telephone Interview with Laurie Kepros, *supra* note 198; Telephone Interview with Kristin Etter, *supra* note 183.

208. See generally ALEXES HARRIS, A POUND OF FLESH: MONETARY SANCTIONS AS PUNISHMENT FOR THE POOR (2016) (surveying state statutory indigency statutes).

209. *Id.* at 53.

210. Telephone Interview with Laurie Kepros, *supra* note 198. Kepros noted that indigency provisions are entirely up to the judge. She has heard judges impose fees and say “maybe they’ll have money later.” *Id.*

after their criminal trial,<sup>211</sup> they are forced to navigate registering and seeking indigency status on their own or rely on the very people who will arrest them if they err. Registrants may be so overwhelmed by the complex registration scheme—the frequency of reporting, residency and employment restrictions, and amounts of money they owe—that instead of seeking help, they may not register and try to evade detection.<sup>212</sup>

Costs imposed on registrants are part of a larger trend in the criminal justice system to implement alternatives to incarceration.<sup>213</sup> Such efforts to keep people out of prison are undeniably laudable, and their intent should be encouraged. However, charging defendants or registrants for their freedom leads to situations where the poor experience higher rates of incarceration for the same crimes as those who can afford to pay for their freedom.<sup>214</sup>

### III. As-Applied Constitutional Challenges to SOPR Laws for Homeless Registrants

SOPR laws are vulnerable to a number of constitutional challenges. Due to the variations in these laws, constitutional challenges will be brought as

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211. See *Gagnon v. Scarpelli*, 411 U.S. 778, 790–91 (1973) (holding that the Sixth Amendment right to counsel extends through sentencing in the formal criminal trial). There is a limited right to counsel in parole and probation revocation settings. *Id.* This exists where the sentence was not imposed at the hearing and where there are special circumstances. *Id.* at 790.

212. Telephone Interview with Laurie Kepros, *supra* note 198; Levenson, *supra* note 31, at 4 (noting that “transient sex offenders are more likely to abscond from registration, suggesting that housing restrictions may undermine the very purpose of registries”); Jill S. Levenson et al., *Catch Me If You Can: An Analysis of Fugitive Sex Offenders*, 26 SEXUAL ABUSE 129, 134 (2013) (suggesting that there are many explanations for why individuals abscond and refuting the assertion that absconders were more sexually dangerous). For a discussion of the despair and hardship that fines and fees impose on the poor, see HARRIS, *supra* note 208, at 70–72 (describing the emotional despair related to owing the court money); Richard A. Webster, *\$23,000 in Traffic Fines Reduced to \$9 for Man as Pilot Program Takes on New Orleans’ Court System*, TIMES-PICAYUNE (Mar. 29, 2017), [http://www.nola.com/crime/index.ssf/2017/03/23000\\_in\\_traffic\\_fines\\_reduced.html](http://www.nola.com/crime/index.ssf/2017/03/23000_in_traffic_fines_reduced.html) [<https://perma.cc/QL92-S6AC>] (describing the emotional turmoil one man suffered for twenty years as a result of traffic fines: “Mayes, whose license was suspended in 1997, says driving to work was a terrifying, daily experience, with every police car representing the threat of being pulled over, handcuffed and thrown in jail. Not able to pay even a fraction of his court balance, Mayes says he resigned himself to the risk of imprisonment every time he got behind the wheel.”).

213. Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1077–78 (2015).

214. The principle that “[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has” led the Supreme Court to hold that debtor’s prisons were unconstitutional under the Equal Protection Clause. *Williams v. Illinois*, 399 U.S. 235, 241 (1970) (quoting *Griffin v. Illinois*, 351 U.S. 12, 19 (1956)); see also *Tate v. Short*, 401 U.S. 395, 398 (1971) (concluding that the Constitution prohibited states from automatically converting a fine into a jail term solely because the defendant was indigent); *Bearden v. Georgia*, 461 U.S. 660, 661–62 (1983) (requiring a new sentencing determination because the state had not determined whether petitioner had made bona fide efforts to pay his fine). By the same token, levying charges on people after they have completed the sentence for the underlying crime and when they are unable to pay is similarly vulnerable to constitutional challenges when failure to comply means future imprisonment.



“as-applied” challenges and require extensive discovery particular to each jurisdiction and the variations in their SOPR laws.<sup>215</sup> This Part explores two possible challenges<sup>216</sup> to the two main variations in these laws as applied to homeless registrants: First, states with SOPR statutes that fail to describe how a homeless registrant should comply are void for vagueness for failing to provide the notice required by the Due Process Clause. Second, the affirmative obligations of states that impose more frequent reporting on homeless registrants, extensive GPS monitoring, residency and employment restrictions, and financial burdens are punitive in their effect as applied to homeless registrants and thus violate the Ex Post Facto Clause of the Constitution.

#### A. *Void for Vagueness*

Fundamental to the American criminal justice system is the concept that people take responsibility for their crimes. However, in order to take responsibility, people must have notice that conduct is either prohibited or required.<sup>217</sup> Under the Due Process Clause of the Fourteenth Amendment, a statute is invalidated “if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits . . . .”<sup>218</sup> Accordingly, “[n]o one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes.”<sup>219</sup>

A criminal law may be invalid because it is vague for either of two independent reasons: first, it may fail to “provide the kind of notice that will enable ordinary people to understand what conduct it prohibits; second, it may authorize and even encourage arbitrary and discriminatory enforcement.”<sup>220</sup> A statute is vague if it “offers no guidance as to what conduct it prohibits, inducing . . . impermissible speculation and uncertainty.”<sup>221</sup> In a recent case, the Ninth Circuit analyzed a city law that

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215. See, e.g., *Does #1–5 v. Snyder*, 834 F.3d 696, 698 (6th Cir. 2016) (noting plaintiff challenged the constitutional validity of Michigan’s SORA law); *McGuire v. Strange*, 83 F. Supp. 3d 1231, 1252–59, 1263, 1267, 1270 (M.D. Ala. 2015), *appeal filed*, No. 15-10958 (11th Cir. Mar. 6, 2015) (enumerating other challenges to these laws).

216. Some of the possible challenges include the Takings Clause of the Fifth Amendment, the Cruel and Unusual Punishment Clause of the Eighth Amendment, the Due Process Clause of the Fourteenth Amendment, and the First Amendment guarantees of freedom of speech, association, and religion. Most recently, a district court in Colorado found the Colorado SOPR statutory scheme violated the Eighth Amendment’s proscription against cruel and unusual punishment. *Millard v. Rankin*, No. 13–CV–02406–RPM, 2017 WL 3767796, at \*16 (D. Colo. Aug. 31, 2017). For an overview of some of these challenges, see Rachel J. Rodriguez, *The Sex Offender Under the Bridge: Has Megan’s Law Run Amok?*, 62 RUTGERS L. REV. 1023, 1043–51 (2010).

217. *F.C.C. v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012).

218. *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966).

219. *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939).

220. *City of Chi. v. Morales*, 527 U.S. 41, 56 (1999).

221. *Desertrain v. City of L.A.*, 754 F.3d 1147, 1155 (9th Cir. 2014).

prohibited using a car as living quarters.<sup>222</sup> The court reviewed the experiences of a number of homeless individuals who were subjected to this law in a variety of different situations:

Plaintiffs [were] left guessing as to what behavior would subject them to citation and arrest by an officer. Is it impermissible to eat food in a vehicle? Is it illegal to keep a sleeping bag? Canned food? Books? What about speaking on a cell phone? Or staying in the car to get out of the rain?<sup>223</sup>

Despite attempting to comply with a law that gave them no guidance, the court held “there appears to be nothing they can do to avoid violating the statute short of discarding all of their possessions or their vehicles, or leaving Los Angeles entirely. . . . [T]his broad and cryptic statute criminalizes innocent behavior, making it impossible for citizens to know how to keep their conduct within the pale.”<sup>224</sup>

Sex offender registration laws have been held to be void for vagueness when applied to homeless registrants.<sup>225</sup> In states that do not define how frequently homeless registrants should report to law enforcement or otherwise ensure their compliance with SOPR laws, homeless registrants are left guessing. When statutes do not address the unique circumstances and challenges homeless registrants face, there is no way for registrants to know how to comply. For instance, in some states, the registrant is required to report “any change” in address,<sup>226</sup> whereas Oregon only requires reporting when the registrant has established a new address.<sup>227</sup> These laws functionally criminalize the status of being a homeless sex offender. Like the homeless plaintiffs in Los Angeles, for homeless sex offenders “there appears to be nothing [they] can do to avoid violating the statute.”<sup>228</sup> Registrants are left with the choice of securing housing—at which many have likely failed due to residency restrictions—or leaving one state and seeking refuge in a more lenient one. There appears to be nothing homeless registrants can do to avoid violating such a statute short of obtaining a home. Therefore, SOPR laws that do not clarify how a homeless registrant can successfully comply are void for vagueness.

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222. *Id.*

223. *Id.* at 1555–56.

224. *Id.* at 1556.

225. *See, e.g.,* *People v. North*, 112 Cal. App. 4th 621 (2003) (holding that the statute did not provide adequate notice to homeless registrants regarding what constitutes a “location”); *Santos v. State*, 668 S.E.2d 676, 678 (2008) (explaining that the statute contains “no objective standard or guidelines that would put homeless sexual offenders without a street or route address on notice of what conduct is required of them, thus leaving them to guess as to how to achieve compliance with the statute’s reporting provisions”).

226. *See supra* notes 102–05 and accompanying text.

227. *See supra* notes 123–24 and accompanying text.

228. *Desertrain*, 754 F.3d at 1147, 1156.

These SOPR statutes also fail to serve their purpose. The stated purpose of SOPR laws is to protect the public; by collecting information about sex offenders' whereabouts and releasing that information, law enforcement and the public attempt to monitor the presence of sex offenders in their vicinity. However, when released sex offenders are unable to successfully reintegrate into communities and end up homeless, they become more difficult to track and monitor. Thus, the effectiveness of this goal is dubious. Not only are these laws unconstitutional as applied to homeless sex offenders; they also fail to fulfill their purpose.

*B. Ex Post Facto*

The Ex Post Facto Clause of the United States Constitution bars retroactive punishment.<sup>229</sup> The Supreme Court considered the constitutionality of Alaska's sex offender registration and notification law in *Smith v. Doe* in 2003.<sup>230</sup> It held that the Alaska statute was not punitive; therefore, its retroactive application did not violate the Ex Post Facto Clause.<sup>231</sup> However, since then, states have enacted more and more aggressive laws.<sup>232</sup> For example, the Alaska statute the Supreme Court analyzed required registrants to report annually or quarterly depending on the severity of the underlying offense, whereas many jurisdictions today require much more frequent reporting. Although nearly every state's statute today requires in-person reporting, Alaska's law did not.<sup>233</sup> The Supreme Court also did not consider residency restrictions, which have a profound effect on a registrant's successful reentry. Because the current landscape of laws has changed significantly since *Smith*, the Supreme Court should find that the current SOPR laws violate the Ex Post Facto Clause.

The *Smith* court applied the framework developed in *Kennedy v. Mendoza-Martinez*<sup>234</sup> for determining if "an ostensibly civil and regulatory law" is punitive.<sup>235</sup> Under *Mendoza-Martinez*, plaintiffs must "show 'by the clearest proof' that 'what has been denominated a civil remedy' is, in fact, 'a criminal penalty.'"<sup>236</sup> The first step is to determine if "the legislature intended

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229. U.S. CONST. art. 1, § 10, cl. 1; *see also* *Calder v. Bull*, 3 U.S. 386, 388 (1798).

230. *Smith v. Doe*, 538 U.S. 84 (2003).

231. *Id.* at 85. The Alaska Supreme Court ultimately held that the same law violated Alaska's constitution's Ex Post Facto Clause. *Doe v. State*, 189 P.3d 999, 1019 (Alaska 2008).

232. *See* *Carpenter & Beverlin*, *supra* note 18, at 1078–81 (describing how SOPR laws are much more harsh today than they were at their inception).

233. *See Smith*, 538 U.S. at 89–90 (outlining the requirements of the statute which included annual verification of registry information, but did not mandate the verifications be made in person).

234. 372 U.S. 144 (1963).

235. *Does #1–5*, 834 F.3d at 700 (citing *Smith*, 538 U.S. at 92).

236. *Id.*

to [impose] punish[ment].”<sup>237</sup> Yet, there is rarely facial evidence that the legislative intent was in fact punitive as nearly all SOPR statutes include legislative findings describing how sex offenders pose a heightened risk to public safety due to their high recidivism rate<sup>238</sup> and how the registry will assist law enforcement and the public in preventing future crimes.<sup>239</sup>

When there is no clear evidence that the legislative intent was punitive, the plaintiff must show that “the statutory scheme is so punitive either in purpose or effect as to negate [the State’s] intention to deem it civil.”<sup>240</sup> The *Smith* Court identified five factors to analyze the purpose or effect:

- (1) Does the law inflict what has been regarded in our history and traditions as punishment?
- (2) Does it impose an affirmative disability or restraint?
- (3) Does it promote the traditional aims of punishment?
- (4) Does it have a rational connection to a nonpunitive purpose?
- (5) Is it excessive with respect to this purpose?<sup>241</sup>

When analyzing these factors, the *Smith* Court instructed that courts should consider “how the effects of the Act are felt by those subject to it.”<sup>242</sup> While one provision may not be enough to make a statute punitive, the constellation of effects may be punitive. Thus, courts must decide whether “the cumulative effects of the scheme as a whole”<sup>243</sup> are punitive.

*1. History and Traditions.*—In *Smith*, the Supreme Court dismissed the argument that Alaska’s registration and notification law was a historical form of punishment for two reasons: First, because the law was relatively recent,

237. *Smith*, 538 U.S. at 92–93.

238. *See supra* notes 17, 23, 25, 26 and accompanying text (chronicling the myth of sex offender recidivism studies).

239. *See, e.g.*, ALA. CODE § 15-20A-2 (2017) (stating the purpose of Alabama’s statute).

240. *Smith*, 538 U.S. at 92 (citing the factors the Supreme Court identified in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168–69 (1963), to determine whether or not a law is punitive) (cleaned up).

241. *Does #1–5 v. Snyder*, 834 F.3d at 696, 701 (citing *Smith*, 538 U.S. at 97).

242. *Smith*, 538 U.S. at 99–100.

243. *McGuire v. Strange*, 83 F. Supp. 3d 1231, 1251 (M.D. Ala. 2015), *appeal filed*, No. 15-10958 (11th Cir. Mar. 06, 2015); *see also Snyder*, 834 F.3d at 705 (evaluating the effects of Michigan’s Sex Offender Registration Act in its totality, the Sixth Circuit summarized that “[a] regulatory regime that severely restricts where people can live, work, and ‘loiter,’ that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe, is something altogether different from and more troubling than Alaska’s first-generation registry law”); *Commonwealth v. Muniz*, 164 A.3d 1189, 1208 (Pa. 2017) (explaining that “in determining whether a statute is civil or punitive, we must examine the law’s entire statutory scheme”).

“it did not involve . . . traditional means of punishing.”<sup>244</sup> Second, the notification provisions were not akin to shaming because they merely disseminated accurate, public information through the internet.<sup>245</sup> In contrast, the Sixth Circuit held in 2016 that Michigan’s more recent SOPR law resembled the traditional punishments<sup>246</sup> of banishment, shaming, and supervised release.<sup>247</sup> SOPR laws monitor registrants, dictate where they can live and work, limit what jobs they can take, and shame and ostracize registrants—all restrictions and impositions that are in their essence akin to historical forms of punishment of banishment, shame, and supervised release programs.

*a. Banishment.*—As Part II explained, residency restrictions impact not only where sex offenders sleep, but also their families’ ability to reside in desirable areas,<sup>248</sup> employment opportunities, access to treatment, ability to comply with parole, and the availability of other social services.<sup>249</sup> The impact of residency restrictions is local—both the actual law and the makeup of the city affect how much of the city is functionally off-limits to sex offenders.<sup>250</sup> While many states have residency restrictions, municipalities also enact residency restrictions that apply in addition to the state laws, if they exist. Residency restrictions are also more harmful in dense urban areas, where a 1,000-foot restriction eliminates more housing due to the presence of more schools per square mile. Because the impact is highly fact specific, proving banishment in any particular place requires expert analysis, is expensive, and often out of reach for many low-income people.

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244. *Smith*, 538 U.S. at 86.

245. *Id.*

246. Before analyzing the specific provisions, the Sixth Circuit sought to define punishment. *Does #1–5 v. Snyder*, 834 F.3d 696, 701 (6th Cir. 2016), *reh’g denied* (Sept. 15, 2016). The court referenced the “general, and widely accepted, definition . . . offered by legal philosopher H.L.A. Hart: (1) it involves pain or other consequences typically considered unpleasant; (2) it follows from an offense against legal rules; (3) it applies to the actual (or supposed) offender; (4) it is intentionally administered by people other than the offender; and (5) it is imposed and administered by an authority constituted by a legal system against which the offense was committed.” *Id.* (cleaned up).

247. *Id.* at 701, 703 (summarizing that “while [the Michigan law] is not identical to any traditional punishment[], it meets the general definition of punishment, has much in common with banishment and public shaming,” employs geographical restrictions similar to those employed by punitive sun-down laws, and “has a number of similarities to parole/probation”).

248. *In re Taylor*, 343 P.3d 867, 880 (Cal. 2015) (noting that “although the restrictions do not expressly prohibit them from living with family members, if the family members’ residence is not in a compliant location, they cannot live there”).

249. *Id.* at 881 (reporting that “registered sex offender parolees can be cut off from access to public transportation, medical care, and other social services to which they are entitled, as well as reasonable opportunities for employment”).

250. It involves hiring a geographic expert who can analyze the laws using mapping software. This process is time-consuming; it involves consulting multiple sources for the location of schools and parks. *See* Expert Report/Declaration of Peter Wagner, J.D., *supra* note 50, at 2–3 (describing the process of consulting multiple lists of schools).

Despite these financial hurdles, when presented with evidence of the effects of residency restrictions, courts across the country find that residency restrictions force sex offenders to the margins of society and make registrants homeless. For example, residency restrictions made large portions of densely populated, urban areas “basically unavailable” for sex offenders living and working in Michigan.<sup>251</sup> In San Diego, California, “residency restrictions . . . prevented paroled sex offenders as a class from residing in large areas of the county.”<sup>252</sup> In Montgomery, Alabama, 80% of the housing stock is off-limits to sex offenders.<sup>253</sup> In communities across the country, residency restrictions lead to functional banishment.

*b. Shame.*—While many sex offenders experience shame due to their past acts, “the ignominy under [Michigan’s SOPR law] flows not only from the past offense, but also from the statute itself.”<sup>254</sup> In contrast to *Smith*, the Sixth Circuit noted in *Snyder* that the Michigan law publishes a registrant’s tier classification and information that would not otherwise be public, such as juvenile convictions.<sup>255</sup> The Pennsylvania Supreme Court explained that, as “an individual’s presence in cyberspace is omnipresent,” the registry broadcasts status worldwide.<sup>256</sup> This “exposes registrants to ostracism and harassment without any mechanism to prove rehabilitation—even through the clearest proof.”<sup>257</sup> Other shaming punishments include mandating that registrants take out newspaper advertisements and send postcards<sup>258</sup> and requiring registrants to have special driver’s licenses and to post signage on their cars or lawns that publicizes their status.<sup>259</sup>

*c. Supervised “Freedom.”*—The Sixth Circuit held that frequent in-person reporting and residency restrictions “resemble[d] the punishment of parole/probation.”<sup>260</sup> These obligations are more onerous for homeless registrants, especially in states that require homeless registrants to report more frequently than housed registrants. States also frequently require registrants to pay fees for registering<sup>261</sup> and mandate that registrants wear and

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251. *Snyder*, 834 F.3d at 702.

252. *In re Taylor*, 343 P.3d at 880.

253. Expert Report/Declaration of Peter Wagner, J.D., *supra* note 50, at 7, at \*7.

254. *Snyder*, 834 F.3d at 703.

255. *Id.* at 702–03.

256. *Commonwealth v. Muniz*, 164 A.3d 1189, 1212 (Pa. 2017) (quoting *Commonwealth v. Perez*, 97 A.3d 747, 765–66 (Pa. Super. Ct. 2014) (Donohue, J., concurring)).

257. *Id.* (quoting *Perez*, 97 A.3d at 765–66 (Donohue, J., concurring)).

258. See *supra* notes 186–90 and accompanying text.

259. See *supra* note 190.

260. *Snyder*, 834 F.3d at 703.

261. These costs are likely a fraction of what registrants are required to pay in addition to incarceration. While many states have provisions waiving fines and fees for indigent defendants, which homeless people would likely qualify for, indigency guidelines are often arbitrarily imposed. See HARRIS, *supra* note 208, at 28 (listing fees associated with felony convictions); Alexes Harris

pay for GPS tracking devices.<sup>262</sup> In addition to their indigency, homeless registrants face other unique challenges, such as where to charge GPS monitoring devices.<sup>263</sup>

There is no question that these laws succeed in physically banishing registrants from communities,<sup>264</sup> that they shame people, and that they resemble other forms of supervised release. Like probation, these conditions are mandatory and failure to comply results in prosecution, and possibly incarceration.<sup>265</sup> Furthermore, registrants, like probationers, would not be subject to these mandatory obligations absent the underlying offense, which weighs heavily in finding that SOPR laws are punitive as applied to homeless registrants.

2. *Affirmative Disability or Restraint.*—As explained in Part I, current SOPR laws require much more from registrants than did the Alaska statute the Supreme Court analyzed in *Smith*.<sup>266</sup> Direct restraints on conduct—in-person reporting, residency, employment, and loitering restrictions—are imposed on many for life.<sup>267</sup> While courts are split on whether in-person reporting imposes a disability or restraint,<sup>268</sup> the burden on homeless

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et al., *Drawing Blood from Stones: Legal Debt and Social Inequality in the Contemporary United States*, 115 AM. J. SOCIOLOGY 1753, 1796, 1772–74 (2010) (same); Joseph Shapiro, *As Court Fees Rise, the Poor Are Paying the Price*, NPR (May 19, 2014), <http://www.npr.org/2014/05/19/312158516/increasing-court-fees-punish-the-poor> [<https://perma.cc/XHJ3-FHGR>] (reporting that Vanessa Torres-Hernandez, a lawyer with the ACLU of Washington, explained that the threat of incarceration is used to squeeze money from those who do not have it. If one were wealthy or if one were to have resources, “a court fine or fee isn’t a big deal. You can pay that money. You can walk free. But for people who are already poor, a court fine or fee is in essence an additional sentence.”); *State-By-State Court Fees*, NPR (May 19, 2014), <http://www.npr.org/2014/05/19/312455680/state-by-state-court-fees> [<https://perma.cc/8PQP-REPT>] (displaying court fees by state).

262. In 2014, a report by National Public Radio found that “in all states except Hawaii, and the District of Columbia, there’s a fee for the electronic monitoring devices defendants and offenders are ordered to wear.” Shapiro, *supra* note 261 (citing *State-By-State Court Fees*, *supra* note 256).

263. See *Wilson v. State*, 485 S.W.3d 698, 700 (Ark. Ct. App. 2016) (describing how one homeless registrant was concerned about where to charge his electronic ankle monitor and how the police officer told him he could charge it at McDonald’s).

264. See *Ryals v. City of Englewood*, 364 P.3d 900, 909 (Colo. 2016) (holding that “[t]here is nothing in Colorado’s sex offender regulatory regime that prevents home-rule cities from banning sex offenders from residing within city limits, nor is there anything that suggests that sex offenders are permitted to live anywhere they wish”).

265. See, e.g., *Commonwealth v. Muniz*, 164 A.3d 1189, 1208 (Pa. 2017) (citing 42 PA. CONS. STAT. § 9799.21(a) (2017)) (explaining that people who fail to register, verify information, or provide accurate information are subject to prosecution and incarceration).

266. *Does #1–5 v. Snyder*, 834 F.3d 696, 703 (6th Cir. 2016).

267. *Id.*

268. *Compare State v. Letalien*, 985 A.2d 4, 18 (Me. 2009) (opining that quarterly in-person verification “imposes a disability or restraint that is neither minor nor indirect”), with *Doe v. Miller*, 405 F.3d 700, 720 (8th Cir. 2005) (explaining that sex offender registration laws, which require only periodic reporting and updating of information, do not have a punitive restraining effect),

registrants is greater than it is for housed registrants. For homeless registrants, frequent in-person reporting is an affirmative restraint on a registrant's freedom because it interferes with a registrant's ability to hold a job and go about life. The Pennsylvania Supreme Court recently held that in-person reporting requirements were a "direct restraint" on registrants' freedom.<sup>269</sup> The court expressed dismay at the sheer number of times housed registrants in Pennsylvania were required to report.<sup>270</sup> In Pennsylvania, a Tier III registrant is required to report in person a minimum of four times a year for the rest of his life, which amounts to 100 times over the next twenty-five years.<sup>271</sup> It was important to the Pennsylvania Supreme Court that these reporting obligations are "the minimum number of times [registrants] will have to appear in person, and [do] not account for the times [a registrant] must appear due to his 'free' choices including 'moving to a new address or changing his appearance . . .'"<sup>272</sup> The Pennsylvania Supreme Court highlighted that homeless registrants there are required to report monthly.<sup>273</sup> This analysis bolsters the claim that more frequent reporting interferes with registrants' liberty, as it is a direct restraint on freedom.

Registrants are also subject to indirect disabilities and restraints, such as limits on out-of-state travel and obstacles to finding and keeping housing, employment, and schooling. Being on the registry and labeled as such also increases the likelihood that registrants will be subject to adverse social and psychological experiences. GPS and electronic monitoring is also an affirmative disability in that it is highly intrusive, burdensome, and expensive.<sup>274</sup> This factor weighs heavily in finding that SOPR laws as applied to homeless registrants are punitive.

3. *Traditional Aims of Punishment.*—Both proponents and opponents of SOPR laws acknowledge that these laws advance the traditional aims of punishment—deterrence and retribution.<sup>275</sup> These statutes serve to deter

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People v. Mosley, 344 P.3d 788, 803 (Cal. 2015) (finding that "residency restrictions impose no additional obligations on registrants whose domiciles . . . are . . . in compliance" with the law, and therefore the "restrictions do not necessarily inflict onerous disabilities and restraints"), and State v. Seering, 701 N.W.2d 655, 668 (Iowa 2005) (holding that residency restrictions "clearly impose a form of disability").

269. Commonwealth v. Muniz, 164 A.3d 1189, 1211 (Pa. 2017).

270. *Id.* at 1210–11.

271. *Id.*

272. *Id.* at 1210–11 (citing 42 PA. CONS. STAT. § 9799.15(g) (2017); Commonwealth v. Perez, 97 A.3d 747, 754 (Pa. Super. Ct. 2014)).

273. *Id.* at 1211.

274. For an analysis of how electronic monitoring is punitive, see Avlana K. Eisenberg, *Mass Monitoring*, 90 S. CAL. L. REV. 123, 163–67 (2017).

275. See *Muniz*, 164 A.3d at 1235 (noting that these laws can operate as deterrents). The Sixth Circuit explained in *Snyder*:



potential offenders from committing sex crimes. Consistent with retributive theories, these restrictions are often, but not always, backward looking; they are determined by the underlying offense and not present dangerousness or lack thereof.<sup>276</sup> SOPR laws also aim to reduce recidivism by incapacitation—keeping registrants away from potential victims. Courts give this factor little weight because these goals can also rightly be described as civil and regulatory. However, the Supreme Court thought it was a relevant factor in analyzing whether or not a law was punitive in *Smith* and *Mendoza-Martinez*.<sup>277</sup>

SOPR laws today are more expansive than the Alaska statute analyzed in *Smith*. Beyond the differences previously discussed, today's SOPR statutes often require registration for minor misdemeanor offenses, which often do not lead to incarceration but may lead to a fifteen-year period of registration in Pennsylvania<sup>278</sup> or registration for life in other states.<sup>279</sup> The Internet is also much more prevalent today than it was in 2003, which makes the registry much more public.<sup>280</sup> Unlike the Alaska statute analyzed in *Smith*, which disseminated otherwise publicly accessible information, statutes today mandate the release of private information, such as home and work addresses, photographs, vehicle descriptions, and license-plate numbers.<sup>281</sup> This constellation of changes since *Smith*—increased length of time on the registry, inclusion of minor offenses, mandatory in-person reporting, residency restrictions, electronic monitoring, and inclusion of private information—alongside a public that has greater access to the registry via the

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Its very goal is incapacitation insofar as it seeks to keep sex offenders away from opportunities to reoffend. It is retributive in that it looks back at the offense (and nothing else) in imposing its restrictions, and it marks registrants as ones who cannot be fully admitted into the community . . . it does so in ways that relate only tenuously to legitimate, nonpunitive purposes. Finally, its professed purpose is to deter recidivism (though . . . it does not in fact appear to do so), and it doubtless serves the purpose of general deterrence.

*Does #1–5 v. Snyder*, 834 F.3d 696, 704 (6th Cir. 2016).

276. See *supra* note 155. For example, in Ohio, the period of post-release control required for sex offenders is determined by the degree of the felony. OHIO REV. CODE ANN. § 2967.28 (West 2006). In New York, on the other hand, offenders' notification requirements are based upon individualized recommendations made by the Board of Examiners of Sex Offenders. N.Y. CORRECT. LAW § 168-n (McKinney 2014). The Board's recommendations are, in turn, based upon the offender's risk of recidivism and the threat the offender poses to the public. N.Y. CORRECT. LAW §§ 168-l (f)–(h) (McKinney 2014).

277. *Smith v. Doe*, 538 U.S. 84, 92–93 (2003); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 167–69 (1963).

278. *Muniz*, 164 A.3d at 1215.

279. See state statutes cited in *supra* note 153.

280. See *Muniz*, 164 A.3d at 1212 (explaining that “*Smith* was decided in an earlier technological environment”).

281. *Id.* at 1215–16.

Internet, makes current SOPR laws more retributive than earlier SOPR schemes.

4. *Rational Connection to a Nonpunitive Purpose.*—Public safety is the purported nonpunitive purpose for SOPR laws.<sup>282</sup> However, as “sexual offense recidivism rates . . . are lower than commonly believed,”<sup>283</sup> and most sex offenses are committed by someone the victim knows and not by someone already on the registry, there is “scant support” for the proposition that SOPR laws get anywhere close to accomplishing their goals.<sup>284</sup> Notably “[t]he requirement that registrants make frequent, in-person appearances before law enforcement . . . appears to have no relationship to public safety at all.”<sup>285</sup> Residency restrictions<sup>286</sup> and constant in-person reporting resemble traps more than they do legitimate means of protecting the larger community. This factor weighs heavily in finding that SOPR laws are punitive as applied to homeless registrants.

5. *Excessiveness with Respect to This Nonpunitive Purpose.*—There has been little, if any, research establishing that SOPR laws actually reduce recidivism,<sup>287</sup> protect the community, or prevent crime. However, it is clear that SOPR laws “put[] significant restrictions on where registrants can live, work, and ‘loiter’ . . . .”<sup>288</sup> These restrictions are commonly imposed on all “sex offenders” regardless of the severity of the underlying offense. In fact, many SOPR laws are overinclusive as they include minor and nonsexual

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282. Legislators erroneously claim that the recidivism rates are “frightening and high” and that the registry and accompanying laws “provide[] a mechanism to keep tabs on them with a view to preventing some of the most disturbing and destructive criminal activity.” *Snyder*, 834 F.3d at 704; see also Prescott, *supra* note 31 (stating registration laws do not serve their stated purpose).

283. Levenson et al., *supra* note 23, at 555; see also Brief for the Association for the Treatment of Sexual Abusers et al. as Amici Curiae Supporting Plaintiff-Appellees, Does #1–5 v. *Snyder*, 834 F.3d 696 (6th Cir. 2016) (No. 15-2346/2486), 2016 WL 147210, at \*17 tbl.1 (stating recidivism rates from various jurisdictions).

284. Does #1–5 v. *Snyder*, 834 F.3d 696, 704 (6th Cir. 2016).

285. *Id.* at 705. But see *Shaw v. Patton*, 823 F.3d 556, 576 (10th Cir. 2016) (announcing that reporting requirements are reasonable “in light of [a] statute’s nonpunitive purpose for protecting public safety”); *United States v. Parks*, 698 F.3d 1, 6 (1st Cir. 2012) (observing that in-person registration serves the remedial purpose of establishing “that the individual is in the vicinity”); *United States v. W.B.H.*, 664 F.3d 848, 857 (11th Cir. 2011) (“The in-person requirements help law enforcement track sex offenders and ensure that the information provided is accurate.”).

286. The Kentucky Supreme Court analyzed Kentucky’s residency restrictions in an ex post facto challenge. It noted that while there was a connection with residency restrictions and public safety, the connection was not rational. *Commonwealth v. Baker*, 295 S.W.3d 437, 445–46 (Ky. 2009). “It is difficult to see how public safety is enhanced by a registrant not being allowed to sleep near a school at night, when children are not present, but being allowed to stay there during the day, when children are present.” *Id.* at 445.

287. The Sixth Circuit noted, “Michigan has never analyzed recidivism rates despite having the data to do so.” *Snyder*, 834 F.3d at 705.

288. *Id.*

offenses.<sup>289</sup> States rarely conduct risk assessments before subjecting people to these onerous provisions.

First, residency restrictions insofar as they make securing stable housing nearly impossible are excessive with respect to their nonpunitive purpose. Courts, legislators, and leading experts for both sex offenders and victims of sexual violence agree that finding stable housing as a sex offender is difficult and, in many communities, impossible. Due to high rates of homelessness among sex offenders, victim rights advocates, law enforcement, legislators, and scholars question the effectiveness of residency restrictions. Law enforcement and treatment experts argue that “residency restriction ‘should be recognized as a well-intentioned failure’ and repealed . . . .”<sup>290</sup> Put simply: “[a]s restricted zones increase, so do transience, homelessness, and reduced employment opportunities for offenders.”<sup>291</sup> Moreover, for a number of years, the California Sex Offender Management Board has advised that these restrictions have the opposite effect from that which was intended, as they increase the risk of reoffending and do not make communities safer.<sup>292</sup> A state’s interest in residency restriction is therefore low.<sup>293</sup> Thus, residency restrictions are excessive in relation to their stated purpose.

Second, frequent reporting is excessive in relation to its purported purpose. While frequent in-person reporting requirements aim to keep track of registrants, it is unclear that the frequent reporting actually achieves anything besides making it more difficult for registrants to regain control of

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289. The overinclusiveness and lack of an individualized determination contributed to the Kentucky Supreme Court’s decision that its residency restrictions were unconstitutional. *See Baker*, 295 S.W.3d at 446–47 (holding that the statute was excessive because “there is no individual determination of the threat a particular registrant poses to public safety”).

290. Karl Vick, *Laws to Track Sex Offenders Encouraging Homelessness*, WASH. POST (Dec. 27, 2008), [http://www.washingtonpost.com/wp-dyn/content/article/2008/12/26/AR2008122601722\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/12/26/AR2008122601722_pf.html) [<https://perma.cc/2Z4P-NDHX>] (quoting NIKI DELSON ET AL., CAL. COALITION ON SEXUAL OFFENDING, POSITION PAPER ON SEX OFFENDER RESIDENCE RESTRICTIONS 11 (2008)).

291. Expert Report/Declaration of Jill Levenson, Ph.D. at 5, *McGuire v. City of Montgomery*, 83 F. Supp. 3d 1231 (M.D. Ala. 2015) (No. 211CV01027), 2014 WL 8331476, at \*4.

292. CAL. SEX OFFENDER MGMT. BD., *supra* note 52, at 1, 13 (2011); *see also* 2016 CAL. SEX OFFENDER MGMT. BD. ANN. REP. 17–19 (2016) (“[T]he enforcement of blanket residency restrictions against all registrants is counterproductive to effective sex offender management and reduces public safety related to registrants on supervised release. Residency restrictions remain an applicable tool for registrants on supervised release when their criminal history has a nexus to schools, parks, or other specified locations, and their risk level warrants special restrictions.”); Paul A. Zandbergen et al., *Residential Proximity to Schools and Daycares: An Empirical Analysis of Sex Offense Recidivism*, 37 CRIM. JUST. & BEHAV. 482, 498 (2010) (“The results of this study indicate no empirical association between where a sex offender lives and whether he reoffends sexually against a minor”).

293. *In re Taylor*, 343 P.3d 867, 879 (Cal. 2015) (“Such enforcement has imposed harsh and severe restrictions . . . while producing conditions that hamper, rather than foster, efforts to monitor, supervise, and rehabilitate these persons. Accordingly, it bears no rational relationship to advancing the state’s legitimate goal of protecting children from sexual predators . . .”).

their lives and successfully reenter society. Indeed, frequent reporting may be counterproductive to the extent it prevents sex offenders from finding and holding stable housing and employment—which is arguably more relevant to the registry’s stated purpose.

Unstable housing, unemployment, and lack of social support exacerbate the problems of reentry.<sup>294</sup> According to one expert, “[s]ocial stability and support increase[d] the likelihood of successful reintegration for criminal offenders, and public policies that create obstacles to community reentry may compromise public safety.”<sup>295</sup> SOPR laws, such as residency restrictions and near-constant reporting, that “interfere with employment, housing, social support, and engagement in pro-social activities, potentially and paradoxically reduc[e] the deterrent effect intended by these laws.”<sup>296</sup> Some jurisdictions also have restrictions on where registrants may “loiter.”<sup>297</sup> Further municipalities across the country “criminalize homelessness by making it illegal for people to sit, sleep, or even eat in public places, despite the absence of adequate alternatives.”<sup>298</sup> Beyond making it more likely that a registrant will have increased difficulty reentering society, being homeless also impacts what a registrant must do to comply with his state’s registry system.<sup>299</sup>

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294. See Expert Report/Declaration of Jill Levenson, Ph.D., *supra* note 291, at 9 (discussing the consequences of SOPR laws, Dr. Levenson concludes that “social policies which ostracize and disrupt the stability of sex offenders are unlikely to be in the best interest of public safety”).

295. *Id.* at 6.

296. *Id.* at 6–7.

297. See *Does #1–5 v. Snyder*, 834 F.3d 696, 698 (6th Cir. 2016) (describing how these restrictions “kept those Plaintiffs who have children (or grandchildren) from watching them participate in school plays or on school sports teams, and they have kept Plaintiffs from visiting public playgrounds with their children for fear of ‘loitering’”).

298. ERIC S. TARS, NAT’L LOW INCOME HOUS. COAL., ADVOCATES’ GUIDE 2017, at 6–27 (2017); see also Crowell, *supra* note 29, at 1121 (highlighting that many cities fine or jail individuals for acts homeless people must do in public); Maria Foscarinis & Rebecca K. Troth, *Reentry and Homelessness: Alternatives to Recidivism*, 39 CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 440, 441–42 (2005) (noting that many cities have essentially criminalized homelessness by making certain activities illegal).

299. See *supra* Part II.

Instead of leading to higher rates of reporting, homelessness may actually lead to less frequent reporting.<sup>300</sup> Less frequent reporting is entirely contrary to the stated purpose of the SOPR laws.<sup>301</sup> Homeless registrants may purposefully avoid registration or, alternatively, as “laws become more cumbersome and complex, compliance . . . become[s] more challenging, especially for those with limited intellectual, social, and psychological resources.”<sup>302</sup>

This factor weighs heavily in finding that SOPR laws as applied to homeless registrants are punitive. These requirements—residency restrictions and in-person reporting—hobble a registrant’s reentry into society. By impeding registrants’ ability to live with their families, forcing them to disengage from their communities, and mandating frequent in-person reporting, “[t]he punitive effects of these blanket restrictions thus far exceed even a generous assessment of their salutary effects.”<sup>303</sup>

6. *Constellation of Effects.*—Courts evaluate “the law’s entire statutory scheme”<sup>304</sup> to determine if a law or set of laws is punitive.<sup>305</sup> Under this framework, SOPR laws subject registrants to punishment. Despite their stated public safety purpose, SOPR laws are punitive. They impose affirmative disabilities and restraints, resemble traditional forms of punishment, promote the aims of punishment, lack a rational connection to a nonpunitive purpose, and are excessive in relation to their stated nonpunitive purpose.

## Conclusion

This Note highlights the perils that homeless registrants encounter when attempting to comply with the vast array of laws that govern their lives. Pushed to the actual margins of society, the current landscape is bleak for people convicted of sex offenses. They are required to comply with extensive

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300. Levenson et al., *supra* note 17, at 13 (“[H]ousing instability is consistently associated with criminal recidivism and absconding.”); *see also* Telephone Interview with Laurie Kepros, *supra* note 198 (explaining the consequences of being homeless in this context: “You don’t pay the fee. You don’t have the money. So you don’t register. Or stop going to treatment.”).

301. *Smith v. Doe*, 538 U.S. 84, 93 (2003) (the purpose of Alaska’s sex offender registration statute is to protect the public from sex offenders by monitoring sex offenders and releasing “certain information about sex offenders to public agencies and the general public” (quoting 1994 Alaska Sess. Laws ch. 41 § 1)); *see also, e.g.*, SORNA Guidelines, *supra* note 99, at 38032–33, 38044 (explaining the basic purpose of SORNA is to track sex offenders following their release into the community and make information about them available to law enforcement agencies); *see generally* Daniel M. Filler, *Making the Case for Megan’s Law: A Study in Legislative Rhetoric*, 76 IND. L.J. 315, 316 (2001) (discussing the reporting and community notification aspects of SOPR laws).

302. Levenson et al., *supra* note 23, at 562.

303. *Does #1–5 v. Snyder*, 834 F.3d 696, 705 (6th Cir. 2016).

304. *Commonwealth v. Muniz*, 164 A.3d 1189, 1208 (Pa. 2017).

305. *See supra* note 246 and accompanying text.

regulations that aim to control their every move. When they ultimately trip, prosecutors are eager to charge and courts are eager to condemn them to lengthy sentences. While there is no proof that these regulations protect the public, there is evidence that they are counterproductive as they make reentry more difficult. Moreover, SOPR laws effectively criminalize the status of “homeless sex offender” through these comprehensive statutory schemes. By continuing to brand people as sex offenders while eschewing social and psychological research, we create a modern-day caste system that fails to meet the very goals it set out to address.

*Elizabeth Esser-Stuart*

## Appendix

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Alabama</b>	Quarterly. ALA. CODE § 15-20A-10(f) (2017).	Yes	Weekly. ALA. CODE § 15-20A-12(b) (2017).	\$10 quarterly and with every move. ALA. CODE § 15-20A-22(a)-(b)(2017).	10 years for sexually violent predator (SVP), offender pays. ALA. CODE § 15-20A-20(c), (e) (2017).	
<b>Alaska</b>	Annual or quarterly. ALASKA STAT. § 12.63.010(d)(1)-(2) (2008).	No	None			
<b>Arizona</b>	Annual. ARIZ. REV. STAT. ANN. §§ 13-3821(O), 13-3827(C), (G) (2017).	Potentially	90 days. ARIZ. REV. STAT. ANN. §§ 13-3821(O), 13-3822(A) (2017).	\$250 (one time). ARIZ. REV. STAT. ANN. § 13-3821(Q) (2017).		It is not clear if annual in-person registration is required. The statute places onus on the Department of Public Safety to keep information up-to-date. See ARIZ. REV. STAT. ANN. § 13-3822 (2017).

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Arkansas</b>	Six months or 90 days. ARK. CODE ANN. §§ 12-12-909(a)(1)–(2)(A)(i), 12-12-907(b)(3) (Supp. 2017).	Yes	30 days. ARK. CODE ANN. § 12-12- 909(a)(6) (Supp. 2017).	\$250 (DNA). ARK. CODE ANN. § 12-12- 906(2)(C)(iii)(a) (Supp. 2017).	10 years for SVP. ARK. CODE ANN. § 12-12-923(a)(1) (Supp. 2017).	
<b>California</b>	Annually or every 90 days. CAL. PENAL CODE § 290.012(a)–(b) (2016).	Potentially	30 days. CAL. PENAL CODE §§ 290.011(a)– (h), 290.012(c) (2016).		SVP may be subject to GPS monitoring. See CAL. SEX OFFENDER MGMT. BD., HOMELESSNESS AMONG CALIFORNIA'S REGISTERED SEX OFFENDERS: AN UPDATE 5 (2011).	The statute requires people to provide an update if they move within five days but does not specify how people complete their annual or 90-day registration. CAL. PENAL CODE § 290(b) (2017) (requiring offenders to register within five business days of moving to a new city, county, or campus); CAL. PENAL CODE § 290.012(b) (2016) (requiring people to verify their address "... in a manner established by the Department of Justice").



State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Colorado</b>	Annually or quarterly. COLO. REV. STAT. § 16-22-108 (1)(b), (d)(I)–(1.5)(A) (2014).	Yes	Annual registration becomes every three months; quarterly becomes monthly. COLO. REV. STAT. § 16-22-109(3)(b); (c)(I)–(II) (2012).	Up to \$75 initially, then up to \$25 for subsequent quarterly or annual verifications. COLO. REV. STAT. § 16-22-108(7)(a) (2014).		
<b>Connecticut</b>	90 days. CONN. GEN. STAT. ANN. § 54-257(c) (2011).	No	None		Yes. CONN. GEN. STAT. ANN. § 54-260a (2006).	

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>D.C.</b>	"[A]t least annually, or at more frequent intervals as specified by the Agency." D.C. Code Mun. Regs. tit. 22, § 4008(a)(1) (2000).	Yes. D.C. Code Mun. Regs. tit. 22, § 4008(a)(3) (2000).	None			This statute is especially vague. It instructs registrants to "[i]n]et with responsible officers and officials for the purpose of carrying out any requirements adopted by the Agency under this chapter." D.C. Code Mun. Regs. tit. 22, § 4014(7) (2000).
<b>Delaware</b>	By tiers: tier III (90 days); tier II (six months); tier I (annually). DEL. CODE ANN. tit. 11, § 4120(g)(1)–(3) (2013).	Yes	By tiers: tier III (weekly); tier II (30 days); tier I (every 90 days). DEL. CODE ANN. tit. 11, § 4120(k)(1)–(3) (2013).	\$30. DEL. CODE ANN. tit. 11, § 4120(g)(3) (2013).	Yes. DEL. CODE ANN. tit. 11, § 4121(u) (2013).	
<b>Florida</b>	Quarterly or semi-annually. FLA. STAT. §§ 775.21(8)(a), 944.607(13)(a) (2017).	Yes	30 days. FLA. STAT. § 943.0435(4)(b)(2) (2017).			

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Georgia</b>	Annually. GA. CODE. ANN. § 42-1-12 (f)(4) (2017).	Yes	With every change in sleeping location, must update within 72 hours. GA. CODE. ANN. § 42-1-12 (f)(5) (2017).	\$250. GA. CODE. ANN. § 42-1-12 (i)(14) (2015).	SVP. GA. CODE. ANN. § 42-1-14 (e) (2016).	
<b>Hawaii</b>	Mailed verification form sent quarterly. HAW. REV. STAT. § 846E-5 (2013).	No	Quarterly in person. HAW. REV. STAT. § 846E-5 (2013).			
<b>Idaho</b>	Annual or quarterly. IDAHO CODE § 18-8307(5) (2013).	Yes	Weekly. IDAHO CODE § 18-8308(4) (2011).	\$80. IDAHO CODE § 18-8307(2) (2013).	Yes. IDAHO CODE § 18-8308(3) (2011).	
<b>Illinois</b>	Annually or quarterly. 730 ILL. COMP. STAT. 150/6 (2012). Law enforcement may request more frequently, but cannot exceed four times a year. 730 ILL. COMP. STAT. 150/6 (2012).	Yes	Weekly. 730 ILL. COMP. STAT. 150/3, 150/6 (2012).	\$100/annually. 730 ILL. COMP. STAT. 150/3 (2016).		

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Indiana</b>	Annually or quarterly. IND. CODE § 11-8-8-14 (2013).	Yes	Weekly. IND. CODE § 11-8-8-12(c) (2007);	Up to each county, may not exceed \$50. IND. CODE § 36-2-13-5.6 (2008).		
<b>Iowa</b>	Annual, semi-annual, quarterly. IOWA CODE § 692A.108(1) (2009).	Yes	At discretion of law enforcement. <sup>1</sup> IOWA CODE § 692A.108(1) (2009).	\$25. IOWA CODE § 692A.110(1) (2009).	Yes (when under "conditional release" programs). IOWA CODE § 692A.124 (2009).	

1. Homelessness is defined in IOWA CODE § 692A.101 under "habitually lives": "If a sex offender does not reside, sleep, or habitually live in a fixed place, 'residence' means a description of the locations where the offender is stationed regularly, including any mobile or transitory living quarters." *Id.* § 692A.101(24); *see also id.* § 692A.108(2) ("A sheriff may require a sex offender to appear in person more frequently than provided in subsection 1 to verify relevant information if good cause is shown. The circumstances under which more frequent appearances are required shall be reasonable, documented by the sheriff, and provided to the offender and the department in writing. Any modification to such requirement shall also be provided to the sex offender and the department in writing."). *Id.* § 692A.108(1) (2017).

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Kansas</b>	Quarterly. KAN. STAT. ANN. § 22-4905(b) (2016).	Yes	Monthly. KAN. STAT. ANN. § 22-4905(e) (Supp. 2016) ("... [E]very 30 days, or more often at the discretion of the registering law enforcement agency.").	\$20/quarterly. KAN. STAT. ANN. § 22-4905(l) (2016). Failure to pay is a misdemeanor if full payment is received within fifteen days; it is a Level 9 felony if two or more payments are outstanding.		
<b>Kentucky</b>	Quarterly or annually. KY. REV. STAT. ANN. § 17.510(13)(a) (2017).	Yes. Must report in person biannually and pay cost of updating photo. KY. REV. STAT. ANN. § 17.510(4) (2017).	None			

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Louisiana</b>	Quarterly, six months, annually. LA. STAT. ANN. § 542.1.1(A)(1)–(3) (2014).	Yes	14 days. LA. STAT. ANN. § 542.1.1(A)(4) (2014).	\$60/annually. LA. STAT. ANN. § 542(D) (2014).		
<b>Maine</b>	Annual or quarterly (must return verification form within 5 days of receipt). ME. REV. STAT. ANN. tit. 34-a, § 11282(3) (2015).	Yes	None	\$25. ME. REV. STAT. ANN. tit. 34-a, § 11287 (2012).		
<b>Maryland</b>	Semi-annually or quarterly. MD. CODE ANN., CRIM. PROC. § 11–707 (LexisNexis 2010).	Yes	Weekly. MD. CODE ANN., CRIM. PROC. § 11–705(d)(2), (i)(1) (LexisNexis 2010).		Yes. MD. CODE ANN., CRIM. PROC. § 11–723(d)(3)(i) (LexisNexis 2017).	
<b>Massachusetts</b>	Level 1 registrants may “verify” (not in person); Level 2 and 3 registrants are required to register annually in person; SVP are required to register in person every 45 days. MASS. GEN. LAWS ch. 6, § 178F 1/2 (2013).	Yes	Monthly. (Must mail in registration form and report in person monthly.) MASS. GEN. LAWS ch. 6, § 178F (2010).	\$75. MASS. GEN. LAWS ch. 6, § 178Q (2012).	Yes. MASS. GEN. LAWS ch. 6, § 178F 3/4 (2010).	

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Michigan</b>	Quarterly, six months, or annually depending on the tier. MICH. COMP. LAWS § 28.725a (2015).	Yes	None	\$50 MICH. COMP. LAWS § 28.727 (2011).		
<b>Minnesota</b>	Annual. MINN. STAT. § 243.166 (2016).	No	Weekly (in-person). MINN. STAT. § 243.166(3a)(e), (4) (2016).			
<b>Mississippi</b>	Annual or quarterly. MISS. CODE ANN. § 45-33-31 (2013).	Yes	None	Yes. MISS. CODE ANN. § 45-33-57 (2013) (up to the DPS).	Yes	

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Missouri</b>	Semi-annually or quarterly. MO. ANN. STAT. § 589.414(3)-(4) (West 2008).	Yes	None			
<b>Montana</b>	Quarterly, six months, annually. MONT. CODE ANN. § 46-23-504(6)(a) (2015).	Yes	Monthly. MONT. CODE ANN. § 46-23-504(5) (2015).	Potentially. <sup>2</sup> MONT. CODE ANN. § 46-23-504(8) (2015).		
<b>Nebraska</b>	Annual, semi-annual, quarterly. NEB. REV. STAT. § 29-4006(3)-(5) (2015).	Yes	30 days. NEB. REV. STAT. § 29-4004(9) (2015).			
<b>Nevada</b>	Annual, semi-annual, quarterly. NEV. REV. STAT. § 179D.480(1) (2007).	Yes	30 days. NEV. REV. STAT. § 179D.470(3) (2011). <sup>3</sup>			

2. "The offender is responsible, if able to pay, for costs associated with registration. The fees charged for registration may not exceed the actual costs of registration. The department of justice may adopt a rule establishing fees to cover registration costs incurred by the department of justice in maintaining registration and address verification records. The fees must be deposited in the general fund." MONT. CODE ANN. § 46-23-504(8) (2015).

3. However, the court may dismiss any criminal charges filed for failure to comply with this subsection if the sex offender immediately updates his or her record of registration.



State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
New Hampshire	Semi-annually or quarterly. N.H. REV. STAT. ANN. § 651-B:4(I)(a)-(b) (2011).	Yes	None	\$50. N.H. REV. STAT. ANN. § 651-B:11(I) (2007).		
New Jersey	Quarterly or annually. N.J. STAT. ANN. § 2C:7-2(e) (West 2017). <sup>4</sup>	Possibly	None		Yes. N.J. STAT. ANN. § 30:4-123.90 (West 2007).	Registration is to be completed "in a manner prescribed by the Attorney General." There is limited case law and it is unclear how this works in practice.
New Mexico	Semi-annually or quarterly. N.M. STAT. ANN. § 29-11A-4(c) (2013).	Yes	Every change. N.M. STAT. ANN. § 29-11A-4 (H) (2013).			

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4. According to the statute, in order to be released from prison, a sex offender's address must be verified.

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
New York	Annual or quarterly. N.Y. CORRECT. LAW § 168-h (McKinney 2006).	Yes. In- person reporting is only required for level 3 registrants.	None	\$50 initial, \$10 w/ every change. N.Y. CORRECT. LAW § 168-b(8) (McKinney 2013); N.Y. PENAL LAW § 60.35 (McKinney 2013).		
North Carolina	Semi-annual. N.C. GEN. STAT. § 14- 208.9A(a) (2014).	Yes	None	\$90 (one-time). N.C. GEN. STAT. § 14-208.45(a) (2017).	Yes (for SVP for life), N.C. GEN. STAT. § 14-208.40 (2017).	
North Dakota	Vague. N.D. CEN. CODE ANN. § 12.1-32-15(7) (2017) ("Registration consists of a written or electronic statement signed by the individual, giving the information required by the attorney general . . .").	Yes	Every three days. N.D. CEN. CODE ANN. § 12.1-32-15(2) (2017).			

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Ohio</b>	Annual, semi-annual, quarterly. OHIO REV. CODE ANN. § 2950.04.	Yes	None	\$100. OHIO REV. CODE ANN. § 311.171.		Law enforcement is allowed to confirm all information provided to them with anyone who owns, leases, or otherwise has custody, control, or supervision of the premises at the address provided at registration. <i>See</i> OHIO REV. CODE ANN. § 2950.111.
<b>Oklahoma</b>	Annual, semi-annual, quarterly. OKLA. STAT. tit. 57, § 584(A)(5) (Supp. 2009).	Yes	Weekly. OKLA. STAT. tit. 57, §§ 584(A)(5), (G) (Supp. 2009).	\$15. OKLA. STAT. tit. 57, § 584(M) (Supp. 2009).		

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Oregon</b>	Annually, within ten days of birth date. OR. REV. STAT. §§ 163A.010(3)(a)(C), 163A.015(4)(a)(C), 163A.020(1)(a)(C), 163A.020(3)(a)(C), 163A.025(3)(b). Address verification mailed to sexually dangerous violent predators every 90 days. It must be returned within 10 days. OR. REV. STAT. § 163A.035(4).	Yes	None	\$70. OR. REV. STAT. § 163A.035(5).		While there is no mention in the statute, case law supports the position that registration is only required when the registrants find a new place to live. <i>See</i> State v. Hiner, 345 P.3d 478 (Or. Ct. App. 2015); State v. McColligan, 381 P.3d 1101 (Or. Ct. App. 2016); State v. Williams, 377 P.3d 677 (Or. Ct. App. 2016).
<b>Pennsylvania</b>	Annual, semi-annual, quarterly. 42 PA. CONS. STAT. § 9799.15(e) (2014).	Yes	Monthly. 42 PA. CONS. STAT. § 9799.15(b)(1) (2014).			There is a counseling fee for SVP. 42 PA. CONS. STAT. § 9799.36(a) (2014).

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Rhode Island</b>	Annual and quarterly mail-in verification. 11 R.I. GEN. LAWS §§ 11-37.1-4, 11-37.1-8.	Yes	None			Rhode Island passed a law in 2017 that limited the number of sex offenders in homeless shelters to 10% of the shelter's residents. The ACLU of Rhode Island is currently challenging this law. <i>See RIHAP v. Raimondo</i> , ACLU (2017), <a href="http://riaclu.org/court-cases/case-details/rihap-v.-raimondo/">http://riaclu.org/court-cases/case-details/rihap-v.-raimondo/</a> [https://perma.cc/MG9E-R7FK].
<b>South Carolina</b>	Semi-annually or quarterly. S.C. CODE ANN. § 23-3-460(A).	Yes	Yes. S.C. CODE ANN. § 23-3-460(D).		Yes. S.C. CODE ANN. § 23-3-540.	
<b>South Dakota</b>	Bi-annually. S.D. CODIFIED LAWS § 22-24B-7.	Yes	None			

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Tennessee</b>	Annual or quarterly. TENN. CODE ANN. § 40-39-204 (b)-(c) (Supp. 2015).	Yes	Monthly. TENN. CODE ANN. § 40-39-203(f) (Supp. 2015).	\$150. TENN. CODE ANN. § 40-39-204(c) (Supp. 2015).		Counties may impose additional fees. TENN. CODE ANN. § 40-39-217 (a)(2) (Supp. 2015).
<b>Texas</b>	Annual or quarterly. TEX. CODE CRIM PROC. ANN. art. 62.058(a).	Yes	Weekly or monthly. TEX. CODE CRIM PROC. ANN. art. 62.051(b)(1)-(2) (weekly); art. 62.055(i) (monthly).	The registrant is required to pay for notification. TEX. CODE CRIM PROC. ANN. art. 62.056.		
<b>Utah</b>	Annual. UTAH CODE ANN. § 77-41-104.	Yes	None	\$100-\$125 annually. UTAH CODE ANN. § 77-41-111(1)		
<b>Vermont</b>	Annual or quarterly. V.T. STAT. ANN. tit. 13 § 5407(a)(2).	Yes	Yes <sup>5</sup>			

5. VT. STAT. ANN. tit. 13 § 5407(b) ("A registrant who has no permanent address shall report to the Department to notify it as to his or her temporary residence. Temporary residence, for purposes of this section, need not include an actual dwelling or numbered street address, but shall identify a specific location. A registrant shall not be required to check in daily if he or she makes acceptable other arrangements with the Department to keep his or her information current. The Department may enter into an agreement with a local law enforcement agency to perform this function, but shall maintain responsibility for compliance with this subsection.").

State	Reporting Requirement	In Person	Homeless	Fee	GPS	Author's Notes
<b>Virginia</b>	Annual or quarterly. VA. CODE ANN. § 9.1-904.	No	None	Potentially. See VA. CODE ANN. § 9.1-914. <sup>6</sup>		
<b>Washington</b>	Annual or quarterly verification. WASH. REV. CODE § 9A.44.145 (Supp. 2016).	No	Weekly in person. WASH. REV. CODE § 9A.44.130(6)(b) (Supp. 2016).			
<b>West Virginia</b>	Annual or quarterly. W. VA. CODE § 15-12-10 (2014).	Yes	None			
<b>Wisconsin</b>	Annual. WIS. STAT. § 301.45.	Yes	None	\$100. WIS. STAT. § 301.45(10).	Yes	
<b>Wyoming</b>	Annual. WYO. STAT. ANN. § 7-19- 302 (2015).	Yes	Weekly. WYO. STAT. ANN. § 7-19-302(e) (2015).			

6. "The State Police shall establish reasonable guidelines governing the automatic dissemination of Registry information, which may include the payment of a fee, whether a one-time fee or a regular assessment, to maintain the electronic access. The fee, if any, shall defray the costs of establishing and maintaining the electronic notification system and notice by mail." VA. CODE ANN. § 9.1-914.