

## Michigan Supreme Court states that the registry punishes, can't be applied retroactively to one sentenced before Act

By John Agar | [Jagar@mlive.com](mailto:Jagar@mlive.com)

The Michigan Supreme Court said requirements of the state's Sex Offender Registration Act are an unconstitutional punishment for a man convicted years before the registry took effect.

The man's attorney said the ruling in the Muskegon County case would impact others who were convicted before registry rules were amended in 2011. The provisions restricted where sex offenders could live or work and forced them to follow other rules or face prosecution.

"It's a really big deal for the tens of thousands of people subject to the burdensome requirements" of the Sex Offender Registration Act, or SORA, Jessica Zimelman, an attorney for the State Appellate Defender Office, told MLive on Tuesday, July 27.

She expected others, including several represented by attorneys in her office, to seek to have convictions for violating SORA vacated. Attorney General Dana Nessel's Office declined to comment. A message seeking comment was left with Muskegon County Prosecutor D.J. Hilson.

Zimelman represented Paul Betts Jr., who pleaded guilty to second-degree criminal-sexual conduct in 1993. Betts was sentenced to five to 15 years in prison. SORA began a couple of years later. Betts served his sentence and successfully completed parole.

In 2012, he was charged with violating SORA requirements: he allegedly failed to report within three days changes in his residence, his email and the purchase of a vehicle.

He entered a conditional no-contest plea while he challenged the constitutionality of the state retroactively applying the 2011 amended law. The sentence – one year in jail, three years on probation – was suspended pending his appeal.

The state Court of Appeals denied his application but the Supreme Court heard oral argument. The Supreme Court found that the 2011 statute was an unconstitutional "ex post facto" law that retroactively punished conduct, rather than an effort to promote public safety.

"We are asked to decide whether the retroactive application of Michigan's Sex Offenders Act (as amended in 2011) ... violates state and federal constitutional prohibitions on ex post facto laws," the Supreme Court wrote. "We hold that it does."

The 2011 law required offenders to provide additional personal information, with changes in address or email, purchase of vehicles or travel, reported within three days, in-person. Legislators had already increased "exclusion zones" that kept offenders from living within 1,000 feet of a school and added an annual \$50 registration fee.

Meanwhile, five plaintiffs filed a federal lawsuit in the Eastern District of Michigan, with a judge finding that some provisions of the law – student-safety zones, in-person reporting – were unconstitutionally vague under federal law. The federal court rejected claims that retroactive application of the 2011 law violated ex post facto protections, court records said.

The U.S. Sixth Circuit Court of Appeals in Cincinnati, however, said that [registry rules added in 2006 and 2011 could not be applied retroactively](#). The U.S. Supreme Court declined to hear a challenge. The federal appeals court did not consider a challenge under the state's Constitution.

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## Michigan Supreme Court, Cont.

The state Supreme Court said legislators likely intended 2011 SORA rules “as a civil regulation rather than a criminal punishment” but said they impose “onerous burdens” and resemble “the punishment of shaming. The breadth of information available to the public – far beyond a registrant’s criminal history – as well as the option for subscription-based notification of the movement of registrants into a particular zip code, increased the likelihood of social ostracism based on registration.”

The Supreme Court said that over 40,000 registrants were subject to the 2011 SORA.

“In conclusion, the 2011 SORA bears significant resemblance to the traditional punishments of banishment, shaming, and parole because of its limitations on residency and employment, publication of information and encouragement of social ostracism, and imposition of significant state supervision,” the court said.

The court ordered Betts’ conviction for failure to register as a sex offender be vacated. Zimelman, the appellate defender, said that none of the judges “disagreed that it’s punishment. That’s really important.”

## #EndMSOP rally in Minnesota Tells Personal Stories

Anti-registry activists and anti-civil commitment activists representing five Midwestern states in rallied on July 18 at the Minnesota State Capitol Building in St. Paul. The event was coordinated by the Voices of OCEAN, a coalition of family members and loved ones of those indefinitely detained at the Minnesota PreCrime Preventative Detention Facility (Also known as MSOP). About 75 persons were in attendance, including a brief visit from a Minnesota legislator and a speech from Minnesota Supreme Court candidate Michelle McDonald.

The #EndMSOP campaign has increased in intensity and visibility in recent months, including two hunger strikes (the latter ending just before the rally) and a “honk-in” event outside the Moose Lake program as a show of solidarity.

This outdoor conference was an invitation to start a dialogue with the media and legislators with the ultimate goal of closing down the controversial MSOP.

The morning before the event, three members of the OCEAN group attended the Pride March, a weeklong event for the LGBTQ+ community, in hopes of drawing attendees to support the #EndMSOP rally. It has been determined that many MSOP residents are LGBTQ!+. According to one of the OCEAN members, they had signed up about 200 people to their email list for future events.

Rita Wahl of Illinois reminded all that we are still dealing with human beings. “Human beings need to treat other human beings in a more humane way... You don’t have to be guilty of a sex offense; you just have to be accused of a sex offense and then you are treated as a monster for the rest of your life.”

As the event was taking place, a few passersby stopped to listen to the message. A couple of them had expressed genuine interest in the message. One woman told those manning the brochures table she was “unaware this is happening” and “how sad” and took multiple copies of every brochure to share.

Three of the local media stations conducted interviews of the event and even followed the OCEAN group to the Governor’s Residence, which followed the rally, but none of the news stories had been posted online as of this writing. It is a disappointing footnote on an otherwise positive day.

**Thank you to Vicki Henry and Women Against Registry (WAR) for some of her information for this report.**

# Update on Pell Application and SORT programs

By Wayne Bowers, Director

In the first issue of 2021 we reported on the passage of Pell grants again for incarcerated persons. However, there has been a delay in the application and some restrictions cause a block out at the present time for those with a sex offense and housed in civil commitment.

We checked with National CURE director Charlie Sullivan for an update and he directed us to Dr. Stephen J. Steurer, reentry/education advocate, who has told us, "I have contacted my sources to get the latest on progress toward writing new regulations for Pell grants. A number of us have already submitted recommendations which included eliminating a lot of the restrictions."

"To date, we have gotten very little back from USDOE about future changes. We have also recommended not to wait another year before implementing changes. When my sources get back to me, I will write to both of you with an update."

**SORT programs are different** than our organization – At times we receive correspondence that asks about our treatment program, thinking that our name (SORT) is the therapy they have heard about and do need in their journey toward parole. And we have heard of some programs in prisons in the country that is called SORT or SORTS.

The same name of therapy and our name is just an oddity that has evolved through the years. Our name, which of course is an acronym of Sex Offenders Restored Through Treatment, began in 1990. That may have been quite a while before therapy programs developed. However, there were many more treatment programs in prisons 30 years ago.

But there are some around the country and not all use that name, but some do. So, if you hear about those programs, know they have no connection to us. The only connection would be that we do promote valid therapy, and if it can be Seurer in a safe environment and not putting participants at risk.

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## Connecticut Committee Considers Sex Offender Registry Changes

By Lisa Backus

A subcommittee of the state Sentencing Commission is working to create a process to allow certain individuals to be removed from the public sex offender registry.

After at least two attempts to reshape the law regarding people who have committed sex offenses, the General Assembly's Incarceration and Collateral Consequences of Criminal Conviction Subcommittee will hear a presentation Thursday on two narrow proposals to create a path for people to get off the registry.

The proposals are in their infancy and likely will be altered several times before they go before the entire commission, said Alex Tsarkov, executive director of the Sentencing Commission. "We've been trying to do this for a very long time. It's a tough topic to work with."

It's a safety issue that is playing out as a political issue, said Amber Vlangas, executive director of the Restorative Action Alliance, which advocates for victims of sexual violence and those who have been subject to "state violence" through probation and parole policies after conviction.

"We believe this perpetuates the cycle of violence," Vlangas said of sex offender registries. The registries create shame, isolation, and an inability for people to meet their economic needs which in turn creates instability and a greater possibility of reoffending."

"What is going to make people safe? Stability," said Vlangas, who is a victim of military sexual assault and married to someone who is on Connecticut's registry. "We are in full support of providing a path off of the registries."

But she also said she would like to see the final product before supporting the latest proposals.

Under the draft proposals that will be presented to the subcommittee Thursday, registrants would be allowed to petition the Superior Court to be removed from the public registry after 10 years. The court would hold a hearing for victims and prosecutors to provide input and the registrant would have to prove that they met all the requirements of their probation or parole and treatment during their time on the registry.

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## Available Resources from CURE-SORT

We are pleased to offer the following resources. Donations accepted to cover cost of postage and printing. Mail donations to the CURE-SORT, address on Page 3.

**One Breath at A Time** by Ila Davis (\$17.50)

**Understanding Offending Behavior** by Stephen Price. (A collection of 9 of Stephens articles from previous newsletters) (\$4.00 for the set of 9 articles)

**When Someone on the Registry Moves into My Neighborhood** (Member Price \$5; Non-Member \$10)

**SUPPORT GROUP:** Families & friends for those in civil confinement, contact Eldon Dillingham. Interested persons contact at 404 Walnut St., Wamego, KS 66547, [eldoncdillingham@gmail.com](mailto:eldoncdillingham@gmail.com)

**No More Victims – One Man's Journey into Sexual Offending and Recovery**, By S. Sands (Ed G), \$13.95. (Includes postage). Send requests to CURE-SORT or email to [gunder788@verizon.net](mailto:gunder788@verizon.net) or [amazon.com](http://amazon.com)

The court would hold a hearing for victims and prosecutors to provide input and the registrant would have to prove that they met all the requirements of their probation or parole and treatment during their time on the registry. This option would allow people to seek to be moved from the public registry to the law enforcement registry, which can only be accessed by police and other criminal justice officials. The registrant and the state's attorney would have the right to appeal the court's decision.

The proposal also would expand the court's authority to exempt registration requirements for people convicted of misdemeanors, the draft document said. A second proposal would allow people who were "grandfathered" onto the registry when it was created in 1998 to seek a hearing to be removed. This group of people was automatically placed on the registry even though when they were convicted or pleaded guilty, it didn't exist.