

# CURE-SORT NEWS

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## What will the new federal SORNA regulations mean?

*By Larry and Sandy of National Association for Rational Sexual Offense Laws (NARSOL)*

The only consensus seems to be that whatever happens, it won't be good.

Although the AWA was passed and became law in 2006, only 18 states have thus far been deemed "substantially compliant."

Many of our advocates mistakenly believe that the remaining states have rejected the AWA. Rather than this being the case, the non-compliant states, for the most part, have not rejected the AWA.

As for what these amended guidelines are designed to do, the one-sentence answer is that they are intended to assist those states and jurisdictions that desire to become substantially AWA compliant an easier path to accomplish that goal.

So which states might be less likely to adopt these guidelines? Some states, especially the southern ones, already have a registry that exceeds federal AWA requirements in some areas. They may have felt no need to seek compliance, or they may have been turned down on their original application because of a shortcoming in an area they have no intention of rectifying, such as registration of juveniles, for example.

States with a great many deficiencies and deviations from AWA requirements are probably less likely to seek this avenue. Even though they may wish to be compliant, they may face too many difficulties, for a variety of reasons, in actually implementing their registries so that they are acceptable for compliance to the SMART office.

Some states have provisions in their constitutions that prohibit a federal SORNA requirement. Maryland's constitution, for example, states that no disadvantage can be imposed ex post facto to its citizens, and attempts to impose some of the AWA-required elements have been shot down not once but twice by their highest court, making it less likely that they will try again. The key is their ex post facto provision is broader than that in the U.S. Constitution, so Maryland chooses to provide more protection. So do a number of states. Any state constitution can provide more protection that does the U.S. one; it just can't provide less.

The same is true with these federal SORNA requirements. A state can do more than required and be compliant; they just can't do less. These are recommendations to the states. If a state wishes to be fully funded, without any loss of funding, it will do at least these things. It can do more but not less.

Another question that has arisen regarding the revised AWA guidelines is if they have the potential to affect every

person with a previous sexual crime conviction. The federal definition of a person required to register is anyone who has ever been convicted of a sexual crime, even those pre-registry who never had to register. States are highly unlikely to go looking for these individuals, but if they come to the attention of the criminal justice system with any type of felony conviction and they had an old conviction for a sexual crime, they must, according to the federal SORNA scheme, be added to the registry.

This too is confusing because if the person's offense is a Tier I or Tier II, enough time may have passed that the state would not be required to capture that person.

And then the question becomes if it wouldn't be unconstitutional to redefine who does and doesn't have to register due to an administrative implementation. This is entering even deeper into unknown territory. Everything a branch of the government does is considered to be constitutional. It isn't until litigation takes place and a court declares it unconstitutional that the question is answered.

Therefore, a state's becoming compliant with the Adam Walsh Act through administrative fiat is likely to usher in a fresh new set of lawsuits, something that those of us in this advocacy enthusiastically welcome.

## ACLU Sues State Officials for the Fourth Time over Unconstitutional Michigan Registration Act

Civil rights organization says it's unconstitutional to label people for life without individual review

DETROIT – Today the American Civil Liberties Union of Michigan (ACLU), on behalf of 10 people who all previously won federal court rulings that Michigan's Sex Offenders Registration Act (SORA) is unconstitutional, filed a federal class action lawsuit against state officials over the latest version of the law. The federal courts and the Michigan Supreme Court have repeatedly ruled that the earlier iteration of SORA was unconstitutional.

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Today's lawsuit, *Does v. Whitmer*, or *Does III*, filed in U.S. District Court, argues that the new SORA statute, which went into effect in 2021, is also unconstitutional. Specifically, SORA fails to provide for individual review or an opportunity for removal. The 193-page complaint also argues that SORA imposes unconstitutional retroactive punishment, including by retroactively extending the registration terms of thousands of people to life.

Michigan has one of the largest registries in the country; there are approximately 45,000 Michigan registrants, and almost 10,000 more who live out of state.

"The latest version of SORA is more of the same, and still puts tens of thousands of people on this list automatically without any consideration of their individual circumstances. What we're asking for is very simple: consider the facts in each case before someone is tarred as a sex offender for life. Dying shouldn't be the only way a person can get off the registry." Miriam Aukerman, ACLU of Michigan senior staff attorney

Expert reports filed with the case explain that Michigan's registry is counter-productive: because registration makes it more difficult for people to find housing, employment and family support — the key factors in preventing recidivism — the registry makes the public less safe.

There is no mechanism in SORA to remove these individuals from the registry unless they die.

Experts in the case determined that the plaintiffs are no more likely to commit a sex offense than people who aren't registered, and that there are likely thousands of other registrants whose risk of offending is likewise indistinguishable from non-registrants.

"Michigan's registry is one of the largest in the country, it costs taxpayers millions of dollars annually, and it has no demonstrable public safety benefit for anyone," said Paul Reingold, retired University of Michigan clinical law professor and an ACLU of Michigan cooperating attorney on the case. "Registries don't work because they sabotage people's efforts to successfully reenter society, make it harder for victims to report abuse, impose an impossible burden on law enforcement, and divert resources from prevention programs. The research is clear: registries undermine public safety and needlessly waste taxpayer money."

Comprehensive background, including basic facts, legislative history and legal challenges to SORA, are at: <https://www.aclumich.org/en/sora>.

**Sotomayor sounds constitutional alarm on NY residency law for those with sex offenses**

*By Emily Zantow / Courthouse News Service, Feb. 22, 2022*

WASHINGTON (CN) — The Supreme Court turned down a challenge Feb. 22 from a convicted sex offender whom the state refused to let out of prison when he was

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otherwise eligible because he couldn't find residential accommodations far enough away from a school to meet probationary requirements.

Justice Sonia Sotomayor said the situation raises constitutional concerns "All told, because of New York's residency prohibition, Ortiz was imprisoned for over two years longer than he otherwise would have been," the Obama appointee wrote.

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Calling it "practically impossible" for inmates to find residency within the densely populated city, Sotomayor said New York's law effectively "requires indefinite incarceration for some indigent people judged to be sex offenders."

"Rather than tailor its policy to the geography of New York City or provide shelter options for this group, New York has chosen to imprison people who cannot afford compliant housing past both their conditional release date and the expiration of their maximum sentences," she wrote.

Against this backdrop, Sotomayor notes, multiple scholars, courts and law enforcement agencies have all acknowledged that residency restrictions do not reduce recidivism and could actually increase the likelihood of reoffending.

There is "no empirical support for the effectiveness of residence restrictions" such as New York's, the Department of Justice wrote in its 2017 Sex Offender Management Assessment and Planning Initiative. Sotomayor quoted this finding and a 2014 study from the *Journal of Criminology and Public Policy*, which concluded that residency restrictions have "little or no effect on recidivism."

Illinois, North Carolina and Wisconsin already revised policies similar to that of New York's that they had on the books, and the Empire State should do the same, Sotomayor advised.

"Because of the grave importance of these issues and the frequency with which they arise, it seems only a matter of time until this court will come to address the question presented in this case," she wrote.

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### **Former Staffers Condemn Cruel Treatment of Inmates at a Texan Prison for Sex Offenders**

*Lenore Skenazy | 8.12.2021*

For many men serving time for committing sex offenses in Texas, their prison term never really ends—even if they complete their sentence. That's because they're required to enter a live-in mental health facility before returning to society.

That facility—in Littlefield, Texas—is actually a former maximum-security prison in the middle of a dirt field.

Civil commitment is the practice of keeping people locked up past their release date, on the grounds that they are so dangerous they need therapy—years and years of it—before they can safely return to society.

Of course, Molnar notes, if the state really "wanted them to have treatment and counseling, they had plenty of time to get that done. In some cases, these men served 20 to 25 years" in an ordinary prison before being civilly committed.

This might seem just. But even as we feel great anger and sorrow on behalf of sex crime victims, we can also see that civil commitment is an extra prison sentence by another name.

Originally called clients or residents when the center opened in 2015, the men have been re-labeled "inmates" since Management and Training Corporation, a private prison company, took over in 2019.

"MTC does not run it in a therapeutic manner whatsoever," says Mandi Harner, a former security officer at the facility who was fired for having a relationship with one of the residents. "They run it like a prison. I'm not going to tell you everyone in there is an angel. But there are some men who deserve treatment they're not getting, and also some who did things as teenagers who don't deserve to be there their whole lives."

For their first year or two at the treatment facility, the men are required to wear electronic ankle monitors that they have to pay for, according to Harner. MTC declined a request for comment about this and other claims made by sources in this article, as did the Texas Civil Commitment Office (TCCO), the government agency that oversees the facility.

There is only one way to get out of Littlefield: The men must work their way up through four tiers of treatment before they are allowed to petition for their freedom.

The therapeutic techniques sound hodge-podge. The inmates "have to admit to all of their offenses and share it with the group," said one of the founders of Texans Against Civil Commitment (TACC), a former Littlefield therapist who writes under the name 'Murphy' and who claims to have been fired for not seeing "eye to eye" with management.

The prison also employs polygraphs and penile plethysmography, measuring changes to the circumference or volume of the penis as the men watch and listen to different stimuli.

When an inmate moves up a tier, which can take a year, he can find himself demoted for many reasons, including very small infractions. One man who had been at Littlefield for years and made it through all four tiers was finally about to get his release hearing. But he did something wrong—rumor had it he swore at a guard—and was knocked back down to tier 1, where he would have to start anew, according to Murphy.

He went to his cell and hanged himself.

A former Littlefield guard I'll call Frank—who says he quit but wants to stay in corrections and fears retaliation—estimates about 15 percent of the men are intellectually challenged, so they will never be able to successfully complete the therapy, because they don't understand it.

The average age of inmates is 58, says Murphy. "But there are several 80-year-old men. There are several blind men, several that use walkers and wheelchairs." That's because almost no one ever manages to complete the therapy, according to a 2015 study.

During the height of the COVID-19 pandemic, when the men were locked two to a cell for 23 hours a day for several months, nine men out of about 300 died.

"We were to go with them to the hospital—two officers per resident—and you would just stare at them while on ventilators and get paid for it," says Harner. "And when they knew they were dying, they weren't even allowed to call their mom or dad because TCCO said you can't."

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### From Staffers Condemn Treatment - Cont'd from Pg 3

Civil commitment rests on the mistaken belief that people who committed sex offenses are incorrigible—despite very low recidivism rates. What's more, no one who serves time for a sex crime enters the community unsupervised after their prison term. They remain under strict supervision for years, sometimes for life, on probation, parole, and often the Sex Offense Registry.

Civil commitment is by no means confined to Texas, and Littlefield's status as a privately operated facility is hardly the main issue. The problem is bad laws, as well as court decisions that have upheld them: More than 6,000 people are confined under civil commitment in 21 states. While the Fifth and 14th Amendments to the U.S. Constitution prohibit double jeopardy, the Supreme Court has ruled that it is acceptable to effectively imprison sex offenders a second time—not for the crimes they committed, but for future crimes they might commit.

Meanwhile, back in Texas, Littlefield has become a human "storage facility," says Frank.

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### Karsjens Case is Closed in Frank Court

After winning a decision that the Minnesota civil commitment facility was unconstitutional in District Court by Judge Donovan W. Frank but later overturned by the 8<sup>th</sup> Circuit Court of Appeals, further challenges were made to find specific areas unconstitutional in Judge Frank's Court. In final decision to close the case, the Court concluded in this way on Feb. 17, 2022:

"This Court is bound by and obligated to follow the law as it currently exists. The Eighth Circuit has determined that the MSOP is constitutional both on its face and as applied. The Court now concludes that based on the governing legal standards, Plaintiffs' claims related to the conditions of confinement and inadequate medical care also fail.

"Notwithstanding, the confinement of the elderly, individuals with substantive physical or intellectual disabilities, and juveniles, who might never succeed in the MSOP's treatment program or who are otherwise unlikely to reoffend, remains of serious concern for the Court and should be for the parties as well.<sup>17</sup> The Court continues to believe that politics or political pressures should not compromise Class Members' rights to treatment and eventual reintegration into society. The Court re-emphasizes that the Constitution protects individual rights even when they are unpopular and reiterates Judge Sandra Day O'Connor's judicious observation that "[a] nation's success or failure in achieving democracy is judged in part by how well it responds to those at the bottom and the margins of the social order." (Phase One Order at 69 (quoting *Annual William French Memorial Lecture: A Conversation with Retired Justice Sandra Day O'Connor*, 37 Pepp. L. Rev. 63, 65 (2009))).

"The fact that the MSOP is constitutionally sound should not deter the State of Minnesota from doing better.<sup>18</sup> The leaders in this great State are capable of more; there is no reason that Minnesota cannot, as the Rule 706 Experts advised, "refin[e] its sexual offender civil commitment policies and procedures, with an aim towards providing humane and evidence-based clinical services to civilly committed clients, while maintaining a high degree of public safety." (Rule 706 Expert Report at 2.) The interests of justice for all concerned would then be appropriately and finally served. Justice requires no less.

Case was Dismissed With Prejudice so cannot be refiled.

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### W A R Washington Conference March 5 - 7, 2023

The main event during their time in D.C. is the vigil on March 7 on the steps of the U.S. Supreme Court to call attention to the 20th anniversary of the Smith v. Doe decision, which has significantly harmed and continues to harm registrants and their families, that was signed by one now retired and one current justice.

The event will consist of 3 distinct parts: 1. A conference, with guest speakers, break-out sessions, networking opportunities etc. 2. A visit to Capitol Hill for meetings with legislators or staff (appointments will be made in advance). 3. A vigil on the steps of the Supreme Court of the United States (SCOTUS)

<https://ww1.womenagainstry.org/march2023>

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### Civil Commitment Database

We are collecting donations to develop an online database where lawmakers, attorneys, family members and the general public can learn the truth about "civil commitment". Once developed, detainees can also submit testimonies about their experience as inmates. To support this project, donate online at [thevoicesofocean.net](http://thevoicesofocean.net), or make out a check or money order to address below. Donations are tax-deductible.

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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 2.

**One Breath at A Time** by Ila Davis (\$17.50) Non-prisoner only due to facility restrictions

**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)

**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 on [amazon.com](http://amazon.com)