

Members

Rep. Greg Steuerwald, Chairperson
Rep. Ralph Foley
Rep. Ed DeLaney
Rep. Vernon Smith
Sen. Brent Steele
Sen. R. Michael Young
Sen. James Arnold
Sen. Lindel Hume
Larry Landis
David Powell
Commissioner Bruce Lemmon
Greg Server
Don Travis
Hon. Stephen R. Heimann



CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

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Committee
Andrew Hedges, Attorney for the Committee
K.C. Norwalk, Attorney for the Committee
Timothy Tyler, Attorney for the Committee

Authority: IC 2-5-32.5

MEETING MINUTES¹

Meeting Date: October 17, 2012
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Rep. Greg Steuerwald, Chairperson; Rep. Ralph Foley; Rep. Ed DeLaney; Sen. Brent Steele; Sen. R. Michael Young; Sen. James Arnold; Sen. Lindel Hume; Larry Landis; David Powell; Commissioner Bruce Lemmon; Don Travis; Hon. Stephen R. Heimann.

Members Absent: Rep. Vernon Smith; Greg Server.

Chairman Steuerwald called the meeting to order at 10:10 a.m.

Regulation of Criminal History Providers

Andrew Hedges, Staff Attorney for the Committee, described the features of LSA's prepared draft concerning criminal history providers. (See Document 20131232[chproviders].wpd in Exhibit A.)

Luke Rollins, Senior Manager, State Government Affairs-Midwest, Reed Elsevier Inc., answered questions about the proposed language.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Danielle Coulter, Deputy Director of Governmental Affairs of the Association of Indiana Counties (AIC), addressed the committee on behalf of the AIC and the Clerks Association on a list of concerns regarding HEA 1033. (Exhibit B)

Sex Offender Registry

Andrew Hedges presented language (Document # 20130106[ver2].wpd) concerning the management and monitoring of sex offenders. (Exhibit C)

Matt Light, Chief Counsel and David Miller, Legislative Director, Attorney General's Office, described recent court opinions (Exhibits D and E) and discussed issues concerning the sex offender registry.

Steve Luce, Executive Director, Indiana Sheriff's Association, and Detective Jeff Shimkus, Detective, Allen County Sheriff's Department, spoke about the proposed changes shown in Document # 20130106[ver2].wpd in Exhibit C. Director Luce stated the cost of the sex registry software is \$300,000 per year.

Larry Landis proposed adding language (See Exhibit F.) to Document # 20130106[ver2].wpd. Mr. Landis recommended petitioning the court to have all information removed from the sex offender registry once the person completes the court-ordered term on the registry. Detective Shimkus expressed his concern that law enforcement needed to be able to keep the information if the offender was to be removed from the registry or website.

The committee agreed to include the language that Mr. Landis proposed and to vote on final language at the next meeting on October 25th.

The meeting adjourned at 12:30 p.m.

Exhibit A: Bill draft concerning criminal history providers

Specifies that the clerk of a court is not a "criminal history provider". Permits a criminal history provider to provide information relating to an infraction, an arrest, or a charge that did not result in a conviction. (Under current law, only information that relates to a conviction may be provided.) Provides that a criminal history provider may provide certain information concerning expunged, restricted, or reduced convictions to a person required by law to obtain this information. Specifies that a criminal history provider does not violate the requirement to provide current information if the public records used to obtain the information are not current. Provides that a violation of these requirements is a deceptive act that is actionable by the attorney general, and provides a defense for an action that is permissible under the fair credit reporting act. Specifies that the five year period for infractions begins on the later of: (1) July 1, 2012; or (2) the date the judgment was satisfied.

1
2 SECTION 1. IC 24-4-18-1, AS ADDED BY P.L.69-2012, SECTION 1, IS AMENDED
3 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) As used in this chapter,
4 "criminal history information" means information:

- 5 (1) concerning a criminal conviction in Indiana; and
6 (2) available in records kept by a clerk of a **circuit, superior, city, or town court**
7 with jurisdiction in Indiana.

8 (b) The term consists of the following:

- 9 (1) Identifiable descriptions and notations of arrests, indictments, informations,
10 or other formal criminal charges.
11 (2) Information, including a photograph, regarding a sex or violent offender (as
12 defined in IC 11-8-8-5) obtained through sex or violent offender registration
13 under IC 11-8-8.
14 (3) Any disposition, including sentencing, and correctional system intake,
15 transfer, and release.
16 (4) A photograph of the person who is the subject of the information described in
17 subdivisions (1) through (3).

18 (c) The term includes fingerprint information described in IC 10-13-3-24(f).

19 SECTION 2. IC 24-4-18-2, AS ADDED BY P.L.69-2012, SECTION 1, IS AMENDED
20 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) As used in this section,
21 "criminal history provider" means a person or an organization that **assembles compiles a**
22 **criminal history reports report** and either uses the report or provides the report to a person or an
23 organization other than a criminal justice agency, **or a law enforcement agency, or another**
24 **criminal history provider. The term does not include the clerk of a circuit, superior, city, or**
25 **town court.**

26 (b) The term does not include the following:

- 27 (1) A criminal justice agency.
28 (2) A law enforcement agency.

1 (3) Any:

2 (A) person connected with or employed by:

3 (i) a newspaper or other periodical issued at regular intervals and
4 having a general circulation; or

5 (ii) a recognized press association or wire service;

6 as a bona fide owner, editorial or reportorial employee, who receives
7 income from legitimate gathering, writing, editing, and interpretation of
8 news;

9 (B) person connected with a licensed radio or television station as an
10 owner or official, or as an editorial or reportorial employee who receives
11 income from legitimate gathering, writing, editing, interpreting,
12 announcing, or broadcasting of news; or

13 (C) other person who gathers, records, compiles, or disseminates:

14 (i) criminal history information; or

15 (ii) criminal history reports;

16 solely for journalistic, **academic, governmental, or legal research**
17 purposes.

18 SECTION 3. IC 24-4-18-3, AS ADDED BY P.L.69-2012, SECTION 1, IS AMENDED
19 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 3. (a) As used in this section,
20 "criminal history report" means criminal history information that has been compiled **primarily**
21 for the purposes of evaluating a particular person's **eligibility for:**

22 (1) character; or

23 (2) eligibility for:

24 (A) (1) employment **in Indiana;**

25 (B) (2) housing **in Indiana; or**

26 (C) (3) participation in any activity or transaction: a license, permit, or
27 **occupational certification issued under state law; or**

28 (4) **insurance, credit, or another financial service, where the insurance,**
29 **credit, or financial service is to be provided to a person residing in Indiana.**

30 (b) **The term does not include information compiled primarily for the purpose of**
31 **journalistic, academic, governmental, or legal research.**

32 (c) **The term includes information described in subsection (a) and not excluded**
33 **under subsection (b), regardless of the geographical location of the person who compiled**
34 **the information.**

35 SECTION 4. IC 24-4-18-6, AS ADDED BY P.L.69-2012, SECTION 1, IS AMENDED
36 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 6. (a) ~~A criminal history provider~~
37 ~~may provide only criminal history information that relates to a conviction:~~

38 (b) (a) **Except as provided in subsection (b), a criminal history provider may not**
39 **provide information relating to the following:**

40 (1) **An infraction, an arrest, or a charge that did not result in a conviction:**

1 (2) (1) A record that has been expunged by:

2 (A) marking the record as expunged; or

3 (B) removing the record from public access.

4 (3) (2) A record that is restricted by a court or the rules of a court **and is marked**
5 **as restricted from public disclosure or removed from public access.**

6 (4) (3) A record indicating a conviction of a Class D felony if the Class D felony
7 conviction:

8 (A) has been entered as a Class A misdemeanor conviction; or

9 (B) has been converted to a Class A misdemeanor conviction.

10 (5) (4) A record that the criminal history provider knows is inaccurate.

11 (b) A criminal history provider may provide information described in subsection
12 (a)(1) through (a)(3) if the person requesting the criminal history report is:

13 (1) required by state or federal law to obtain the information; or

14 (2) the state or a political subdivision and the information will be used solely
15 in connection with the issuance of a public bond.

16 SECTION 5. IC 24-4-18-7, AS ADDED BY P.L.69-2012, SECTION 1, IS AMENDED
17 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) A criminal history provider
18 may not **knowingly** include criminal history data **information** in a criminal history report if the
19 criminal history data **information** has not been updated to **fails to reflect material** changes to
20 the official record occurring sixty (60) days or more before the date the criminal history report is
21 delivered.

22 (b) A criminal history provider that provides a criminal history report and fails to
23 reflect material criminal history information does not violate this section if the material
24 criminal history information was not contained in the official record at least sixty (60) days
25 before the date the criminal history report is delivered.

26 SECTION 6. IC 24-4-18-8 [EFFECTIVE JULY 1, 2013]. Sec. 8. (a) The attorney general
27 may bring an action to enforce a violation of section 6 or 7 of this chapter. In addition to any
28 injunctive or other relief, the attorney general may recover a civil penalty of:

29 (1) not more than one thousand dollars (\$1,000) for a first violation; and

30 (2) not more than five thousand dollars (\$5,000) for a second or subsequent
31 violation.

32 (b) Any person injured by a violation of section 6 or 7 of this chapter may bring an
33 action to recover:

34 (1) the greater of:

35 (A) actual damages, including consequential damages; or

36 (B) liquidated damages of five hundred dollars (\$500); and

37 (2) court costs and reasonable attorney's fees.

38 (a) A violation of section 6 or 7 of this chapter is a deceptive act that is actionable
39 ~~by the attorney general under IC 24-5-0.5-4(e) and is subject to the penalties enumerated in~~
40 ~~IC 24-5-0.5.~~ However, it is a defense to an action under this section that the action is

1 permissible under the fair credit reporting act (15 USC Sec. 1681 *et seq.*).

2 (b) This section does not prohibit an individual from bringing an action on the
3 individual's own behalf under the fair credit reporting act (15 USC Sec. 1681 *et seq.*).

4 SECTION 7. IC 34-28-5-16, AS ADDED BY P.L.69-2012, SECTION 3, IS AMENDED
5 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 16. (a) This chapter applies only
6 to a person found to have committed an infraction.

7 (b) Five (5) years after **the later of:**

8 (1) July 1, 2012; or

9 (2) the date a person satisfies a judgment imposed on a person for the violation
10 of an infraction;

11 the clerk of the court shall prohibit the disclosure of information related to the infraction to a
12 noncriminal justice organization or an individual.

13 (c) If a person whose records are restricted under this section brings a civil action that
14 might be defended with the contents of the records, the defendant is presumed to have a complete
15 defense to the action.

16 (d) For the plaintiff to recover in an action described in subsection (c), the plaintiff must
17 show that the contents of the restricted records would not exonerate the defendant.

18 (e) In an action described in subsection (c), the plaintiff may be required to state under
19 oath whether the disclosure of records relating to an infraction has been restricted.

20 (f) In an action described in subsection (c), if the plaintiff denies the existence of the
21 records, the defendant may prove the existence of the records in any manner compatible with the
22 law of evidence.

23 (g) A person whose records have been restricted under this section may legally state on
24 an application for employment or any other document that the person has not been adjudicated to
25 have committed the infraction recorded in the restricted records.
26

~~34-28-5-16~~ add.
34-28-5-15?

Exhibit B:
HEA 1033 – 2012

Second Regular Session 117th General Assembly (2012)

PRINTING CODE. Amendments. Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions. Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation. Text in a statute in ~~this style type~~ or ~~this style type~~ reconciles conflicts between statutes enacted by the 2011 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1033

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 24-4-18 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]:

Chapter 18. Criminal History Providers

Sec. 1. (a) As used in this chapter, "criminal history information" means information:

- (1) concerning a criminal conviction in Indiana; and
- (2) available in records kept by a clerk of a court with jurisdiction in Indiana.

(b) The term consists of the following:

- (1) Identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges.
- (2) Information, including a photograph, regarding a sex or violent offender (as defined in IC 11-8-8-5) obtained through sex or violent offender registration under IC 11-8-8.
- (3) Any disposition, including sentencing, and correctional system intake, transfer, and release.
- (4) A photograph of the person who is the subject of the information described in subdivisions (1) through (3).

(c) The term includes fingerprint information described in IC 10-13-3- 24(f).

Sec. 2. (a) As used in this section, "criminal history provider"

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means a person or an organization that assembles criminal history reports and either uses the report or provides the report to a person or an organization other than a criminal justice agency or law enforcement agency.

(b) The term does not include the following:

- (1) A criminal justice agency.
- (2) A law enforcement agency.
- (3) Any:

(A) person connected with or employed by:

- (i) a newspaper or other periodical issued at regular intervals and having a general circulation; or
- (ii) a recognized press association or wire service: as a bona fide owner, editorial or reportorial employee, who receives income from legitimate gathering, writing, editing, and interpretation of news;

(B) person connected with a licensed radio or television station as an owner or official, or as an editorial or reportorial employee who receives income from legitimate gathering, writing, editing, interpreting, announcing, or broadcasting of news; or

(C) other person who gathers, records, compiles, or disseminates:

- (i) criminal history information; or
- (ii) criminal history reports; solely for journalistic purposes.

Sec. 3. As used in this section, "criminal history report" means criminal history information that has been compiled for the purposes of evaluating a particular person's:

- (1) character; or
- (2) eligibility for:
 - (A) employment;
 - (B) housing; or
 - (C) participation in any activity or transaction.

Sec. 4. As used in this section, "criminal justice agency" has the meaning set forth in IC 10-13-3-6.

Sec. 5. As used in this section, "law enforcement agency" has the meaning set forth in IC 10-13-3-10.

Sec. 6. (a) A criminal history provider may provide only criminal history information that relates to a conviction.

(b) A criminal history provider may not provide information relating to the following:

- (1) An infraction, an arrest, or a charge that did not result in



a conviction.

(2) A record that has been expunged.

(3) A record that is restricted by a court or the rules of a court.

(4) A record indicating a conviction of a Class D felony if the Class D felony conviction:

(A) has been entered as a Class A misdemeanor conviction;

or

(B) has been converted to a Class A misdemeanor conviction.

(5) A record that the criminal history provider knows is inaccurate.

Sec. 7. A criminal history provider may not include criminal history data in a criminal history report if the criminal history data has not been updated to reflect changes to the official record occurring sixty (60) days or more before the date the criminal history report is delivered.

Sec. 8. (a) The attorney general may bring an action to enforce a violation of section 6 or 7 of this chapter. In addition to any injunctive or other relief, the attorney general may recover a civil penalty of:

(1) not more than one thousand dollars (\$1,000) for a first violation; and

(2) not more than five thousand dollars (\$5,000) for a second or subsequent violation.

(b) Any person injured by a violation of section 6 or 7 of this chapter may bring an action to recover:

(1) the greater of:

(A) actual damages, including consequential damages; or

(B) liquidated damages of five hundred dollars (\$500); and

(2) court costs and reasonable attorney's fees.

SECTION 2. IC 34-28-5-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 15. (a) If a person alleged to have violated a statute defining an infraction:

(1) is not prosecuted or if the action against the person is dismissed;

(2) is adjudged not to have committed the infraction; or

(3) is adjudged to have committed the infraction and the adjudication is subsequently vacated;

the court in which the action was filed shall order the clerk not to disclose or permit disclosure of information related to the



infraction to a noncriminal justice organization or an individual.

(b) If a court fails to order the court to restrict information related to the infraction under subsection (a), the person may petition the court to restrict disclosure of the records related to the infraction to a noncriminal justice organization or an individual.

(c) A petition under subsection (b) must be verified and filed in:

- (1) the court in which the action was filed, for a person described in subsection (a)(1); or
- (2) the court in which the trial was held, for a person described in subsection (a)(2) or (a)(3).

(d) A petition under subsection (b) must be filed not earlier than:

- (1) if the person is adjudged to have not committed the infraction, thirty (30) days after the date of judgment;
- (2) if the person's adjudication is vacated, three hundred sixty-five (365) days after:
 - (A) the order vacating the adjudication is final, if there is no appeal or the appeal is terminated before entry of an opinion or memorandum decision; or
 - (B) the opinion or memorandum decision vacating the adjudication is certified; or
- (3) if the person is not prosecuted or the action is dismissed, thirty (30) days after the action is dismissed, if a new action is not filed.

(e) A petition under subsection (b) must set forth:

- (1) the date of the alleged violation;
- (2) the violation;
- (3) the date the action was dismissed, if applicable;
- (4) the date of judgment, if applicable;
- (5) the date the adjudication was vacated, if applicable;
- (6) the basis on which the adjudication was vacated, if applicable;
- (7) the law enforcement agency employing the officer who issued the complaint, if applicable;
- (8) any other known identifying information, such as the name of the officer, case number, or court cause number;
- (9) the date of the petitioner's birth; and
- (10) the petitioner's Social Security number.

(f) A copy of a petition under subsection (b) shall be served on the prosecuting attorney.

(g) If the prosecuting attorney wishes to oppose a petition under subsection (b), the prosecuting attorney shall, not later than thirty



(30) days after the petition is filed, file a notice of opposition with the court setting forth reasons for opposing the petition. The prosecuting attorney shall attach to the notice of opposition a certified copy of any documentary evidence showing that the petitioner is not entitled to relief. A copy of the notice of opposition and copies of any documentary evidence shall be served on the petitioner in accordance with the Indiana Rules of Trial Procedure. The court may:

- (1) summarily grant the petition;
- (2) set the matter for hearing; or
- (3) summarily deny the petition, if the court determines that:
 - (A) the petition is insufficient; or
 - (B) based on documentary evidence submitted by the prosecuting attorney, the petitioner is not entitled to have access to the petitioner's records restricted.

(h) If a notice of opposition is filed under subsection (g) and the court does not summarily grant or summarily deny the petition, the court shall set the matter for a hearing.

(i) After a hearing is held under subsection (h), the court shall grant the petition filed under subsection (b) if the person is entitled to relief under subsection (a).

(j) If the court grants a petition filed under subsection (b), the court shall order the clerk not to disclose or permit disclosure of information related to the infraction to a noncriminal justice organization or an individual.

SECTION 3. IC 34-28-5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 16. (a) This chapter applies only to a person found to have committed an infraction.

(b) Five (5) years after the date a person satisfies a judgment imposed on a person for the violation of an infraction, the clerk of the court shall prohibit the disclosure of information related to the infraction to a noncriminal justice organization or an individual.

(c) If a person whose records are restricted under this section brings a civil action that might be defended with the contents of the records, the defendant is presumed to have a complete defense to the action.

(d) For the plaintiff to recover in an action described in subsection (c), the plaintiff must show that the contents of the restricted records would not exonerate the defendant.

(e) In an action described in subsection (c), the plaintiff may be required to state under oath whether the disclosure of records



relating to an infraction has been restricted.

(f) In an action described in subsection (c), if the plaintiff denies the existence of the records, the defendant may prove the existence of the records in any manner compatible with the law of evidence.

(g) A person whose records have been restricted under this section may legally state on an application for employment or any other document that the person has not been adjudicated to have committed the infraction recorded in the restricted records.

SECTION 4 IC 35-38-8-7. AS ADDED BY P.L.194-2011. SECTION 2. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 7. **(a)** If a court orders a person's records to be restricted under this chapter, the person may legally state on an application for employment or any other document that the person has not been arrested for or convicted of the felony or misdemeanor recorded in the restricted records.

(b) An employer may not ask an employee, contract employee, or applicant whether the person's criminal records have been sealed or restricted. An employer who violates this subsection commits a Class B infraction.

SECTION 5. IC 35-50-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 1. **(a)** As used in this chapter, "Class D felony conviction" means a conviction of a Class D felony in Indiana and a conviction, in any other jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor **entered under IC 35-38-1-1.5 or section 7(b) or 7(c)** of this chapter.

(b) As used in this chapter, "felony conviction" means a conviction, in any jurisdiction at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year. However, it does not include a conviction with respect to which the person has been pardoned, or a conviction of a Class A misdemeanor under section 7(b) of this chapter.

(c) As used in this chapter, "minimum sentence" means:

- (1) for murder, forty-five (45) years;
- (2) for a Class A felony, twenty (20) years;
- (3) for a Class B felony, six (6) years;
- (4) for a Class C felony, two (2) years; and
- (5) for a Class D felony, one-half (1/2) year.

SECTION 6. IC 35-50-2-7. AS AMENDED BY P.L.71-2005. SECTION 10. IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2012]; Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).

(b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:

- (1) the court finds that:
 - (A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and
 - (B) the prior felony was committed less than three (3) years before the second felony was committed;
- (2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or
- (3) the offense is possession of child pornography (IC 35-42-4-4(c)).

The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

(c) Notwithstanding subsection (a), the sentencing court may convert a Class D felony conviction to a Class A misdemeanor conviction if, after receiving a verified petition as described in subsection (d) and after conducting a hearing of which the prosecuting attorney has been notified, the court makes the following findings:

- (1) The person is not a sex or violent offender (as defined in IC 11-8-8-5).
- (2) The person was not convicted of a Class D felony that resulted in bodily injury to another person.
- (3) The person has not been convicted of perjury under IC 35-44-2-1 or official misconduct under IC 35-44-1-2.
- (4) At least three (3) years have passed since the person:
 - (A) completed the person's sentence; and
 - (B) satisfied any other obligation imposed on the person as part of the sentence;
 for the Class D felony.
- (5) The person has not been convicted of a felony since the person:
 - (A) completed the person's sentence; and



(B) satisfied any other obligation imposed on the person as part of the sentence;

for the Class D felony.

(6) No criminal charges are pending against the person.

(d) A petition filed under subsection (c) must be verified and set forth:

(1) the crime the person has been convicted of;

(2) the date of the conviction;

(3) the date the person completed the person's sentence;

(4) any obligations imposed on the person as part of the sentence;

(5) the date the obligations were satisfied; and

(6) a verified statement that there are no criminal charges pending against the person.

(e) If a person whose Class D felony conviction has been converted to a Class A misdemeanor conviction under subsection (c) is convicted of a felony within five (5) years after the conversion under subsection (c), a prosecuting attorney may petition a court to convert the person's Class A misdemeanor conviction back to a Class D felony conviction.

SECTION 7. [EFFECTIVE JULY 1, 2012] (a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.

(b) As used in this SECTION, "study committee" means either of the following:

(1) A statutory committee established under IC 2-5.

(2) An interim study committee.

(c) The legislative council is urged to assign the following topics to a study committee during the 2012 legislative interim:

(1) The provisions of IC 24-4-18, as added by this act, concerning criminal history providers.

(2) The need for any legislation to amend IC 24-4-18, as added by this act, concerning criminal history providers before IC 24-4-18 takes effect on July 1, 2013.

(d) If the topics described in subsection (c) are assigned to a study committee, the study committee shall issue a final report to the legislative council containing the study committee's findings and recommendations, including any recommended legislation concerning the topics, in an electronic format under IC 5-14-6 not later than November 1, 2012.

(e) This SECTION expires December 31, 2012.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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Exhibit C:
Bill Draft Concerning Sex
Offender Registry

Makes certain changes to the sex or violent offender registration system. Prepared for the Criminal Law and Sentencing Policy Committee. For discussion purposes only. **Version 2.**

1 SECTION 1. IC 11-8-8-4.5, AS AMENDED BY P.L.72-2012, SECTION 1, IS
2 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4.5. (a) Except as
3 provided in section 22 of this chapter, as used in this chapter, "sex offender" means a person
4 convicted of any of the following offenses:

- 5 (1) Rape (IC 35-42-4-1).
- 6 (2) Criminal deviate conduct (IC 35-42-4-2).
- 7 (3) Child molesting (IC 35-42-4-3).
- 8 (4) Child exploitation (IC 35-42-4-4(b)).
- 9 (5) Vicarious sexual gratification (including performing sexual conduct in the
10 presence of a minor) (IC 35-42-4-5).
- 11 (6) Child solicitation (IC 35-42-4-6).
- 12 (7) Child seduction (IC 35-42-4-7).
- 13 (8) Sexual misconduct with a minor as a Class A, Class B, or Class C felony (IC
14 35-42-4-9), unless:

15 (A) the person is convicted of sexual misconduct with a minor as a Class
16 C felony;

17 (B) the person is not more than:

18 (i) four (4) years older than the victim if the offense was
19 committed after June 30, 2007; or

20 (ii) five (5) years older than the victim if the offense was
21 committed before July 1, 2007; and

22 (C) the sentencing court finds that the person should not be required to
23 register as a sex offender.

- 24 (9) Incest (IC 35-46-1-3).
- 25 (10) Sexual battery (IC 35-42-4-8).
- 26 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of
27 age, and the person who kidnapped the victim is not the victim's parent or
28 guardian: **unless the court finds by clear and convincing evidence that the
29 offense was not committed for a sexual purpose.**
- 30 (12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18)
31 years of age, and the person who confined or removed the victim is not the
32 victim's parent or guardian: **unless the court finds by clear and convincing
33 evidence that the offense was not committed for a sexual purpose.**
- 34 (13) Possession of child pornography (IC 35-42-4-4(c)).
- 35 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.
- 36 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less

- 1 than eighteen (18) years of age.
2 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).
3 (17) Human trafficking (~~IC 35-42-3.5-1(d)(3)~~) (IC 35-44.1-5-1) if the victim is
4 less than eighteen (18) years of age.
5 (18) Sexual misconduct by a service provider with a detained child (~~IC~~
6 ~~35-44-1-5(c)~~) (IC 35-44.1-3-10(c)).
7 (19) An attempt or conspiracy to commit a crime listed in subdivisions (1)
8 through (18).
9 (20) A crime under the laws of another jurisdiction, including a military court,
10 that is substantially equivalent to any of the offenses listed in subdivisions (1)
11 through (19).

12 (b) The term includes:

- 13 (1) a person who is required to register as a sex offender in any jurisdiction; and
14 (2) a child who has committed a delinquent act and who:
15 (A) is at least fourteen (14) years of age;
16 (B) is on probation, is on parole, is discharged from a facility by the
17 department of correction, is discharged from a secure private facility (as
18 defined in IC 31-9-2-115), or is discharged from a juvenile detention
19 facility as a result of an adjudication as a delinquent child for an act that
20 would be an offense described in subsection (a) if committed by an
21 adult; and
22 (C) is found by a court by clear and convincing evidence to be likely to
23 repeat an act that would be an offense described in subsection (a) if
24 committed by an adult.

25 (c) In making a determination under subsection (b)(2)(C), the court shall consider expert
26 testimony concerning whether a child is likely to repeat an act that would be an offense described
27 in subsection (a) if committed by an adult.

28 SECTION 2. IC 11-8-8-5, AS AMENDED BY P.L.1-2012, SECTION 3, IS AMENDED
29 TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 5. (a) Except as provided in
30 section 22 of this chapter, as used in this chapter, "sex or violent offender" means a person
31 convicted of any of the following offenses:

- 32 (1) Rape (IC 35-42-4-1).
33 (2) Criminal deviate conduct (IC 35-42-4-2).
34 (3) Child molesting (IC 35-42-4-3).
35 (4) Child exploitation (IC 35-42-4-4(b)).
36 (5) Vicarious sexual gratification (including performing sexual conduct in the
37 presence of a minor) (IC 35-42-4-5).
38 (6) Child solicitation (IC 35-42-4-6).
39 (7) Child seduction (IC 35-42-4-7).
40 (8) Sexual misconduct with a minor as a Class A, Class B, or Class C felony (IC

1 35-42-4-9), unless:

2 (A) the person is convicted of sexual misconduct with a minor as a Class
3 C felony;

4 (B) the person is not more than:

5 (i) four (4) years older than the victim if the offense was
6 committed after June 30, 2007; or

7 (ii) five (5) years older than the victim if the offense was
8 committed before July 1, 2007; and

9 (C) the sentencing court finds that the person should not be required to
10 register as a sex offender.

11 (9) Incest (IC 35-46-1-3).

12 (10) Sexual battery (IC 35-42-4-8).

13 (11) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18) years of
14 age, and the person who kidnapped the victim is not the victim's parent or
15 guardian: **unless the court finds by clear and convincing evidence that the
16 offense was not committed for a sexual purpose.**

17 (12) Criminal confinement (IC 35-42-3-3), if the victim is less than eighteen (18)
18 years of age, and the person who confined or removed the victim is not the
19 victim's parent or guardian: **unless the court finds by clear and convincing
20 evidence that the offense was not committed for a sexual purpose.**

21 (13) Possession of child pornography (IC 35-42-4-4(c)).

22 (14) Promoting prostitution (IC 35-45-4-4) as a Class B felony.

23 (15) Promotion of human trafficking (IC 35-42-3.5-1(a)(2)) if the victim is less
24 than eighteen (18) years of age.

25 (16) Sexual trafficking of a minor (IC 35-42-3.5-1(c)).

26 (17) Human trafficking (IC 35-42-3.5-1(d)(3)) if the victim is less than eighteen
27 (18) years of age.

28 (18) Murder (IC 35-42-1-1).

29 (19) Voluntary manslaughter (IC 35-42-1-3).

30 (20) An attempt or conspiracy to commit a crime listed in subdivisions (1)
31 through (19).

32 (21) A crime under the laws of another jurisdiction, including a military court,
33 that is substantially equivalent to any of the offenses listed in subdivisions (1)
34 through (20).

35 (b) The term includes:

36 (1) a person who is required to register as a sex or violent offender in any
37 jurisdiction; and

38 (2) a child who has committed a delinquent act and who:

39 (A) is at least fourteen (14) years of age;

40 (B) is on probation, is on parole, is discharged from a facility by the

1 department of correction, is discharged from a secure private facility (as
2 defined in IC 31-9-2-115), or is discharged from a juvenile detention
3 facility as a result of an adjudication as a delinquent child for an act that
4 would be an offense described in subsection (a) if committed by an
5 adult; and
6 (C) is found by a court by clear and convincing evidence to be likely to
7 repeat an act that would be an offense described in subsection (a) if
8 committed by an adult.

9 (c) In making a determination under subsection (b)(2)(C), the court shall consider expert
10 testimony concerning whether a child is likely to repeat an act that would be an offense described
11 in subsection (a) if committed by an adult.

12 SECTION 3. IC 11-8-8-8, AS AMENDED BY P.L.119-2008, SECTION 6, IS
13 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) The
14 registration required under this chapter must include the following information:

- 15 (1) The sex or violent offender's full name, alias, any name by which the sex or
16 violent offender was previously known, date of birth, sex, race, height, weight,
17 hair color, eye color, any scars, marks, or tattoos, Social Security number,
18 driver's license number or state identification card number, vehicle description,
19 **and** vehicle plate number, **and vehicle identification number** for any vehicle
20 the sex or violent offender owns or operates on a regular basis, principal
21 residence address, other address where the sex or violent offender spends more
22 than seven (7) nights in a fourteen (14) day period, and mailing address, if
23 different from the sex or violent offender's principal residence address.
24 (2) A description of the offense for which the sex or violent offender was
25 convicted, the date of conviction, the county of the conviction, the cause number
26 of the conviction, and the sentence imposed, if applicable.
27 (3) If the person is required to register under section 7(a)(2) or 7(a)(3) of this
28 chapter, the name and address of each of the sex or violent offender's employers
29 in Indiana, the name and address of each campus or location where the sex or
30 violent offender is enrolled in school in Indiana, and the address where the sex or
31 violent offender stays or intends to stay while in Indiana.
32 (4) A recent photograph of the sex or violent offender.
33 (5) If the sex or violent offender is a sexually violent predator, that the sex or
34 violent offender is a sexually violent predator.
35 (6) If the sex or violent offender is required to register for life, that the sex or
36 violent offender is required to register for life.
37 (7) Any electronic mail address, instant messaging username, electronic chat
38 room username, or social networking web site username that the sex or violent
39 offender uses or intends to use.
40 (8) Any other information required by the department.

1 (b) If the sex or violent offender registers any information under subsection (a)(7), the an
2 offender **on probation or parole** shall sign a consent form authorizing the:

3 (1) search of the sex or violent offender's personal computer or device with
4 Internet capability, at any time; and

5 (2) installation on the sex or violent offender's personal computer or device with
6 Internet capability, at the sex or violent offender's expense, of hardware or
7 software to monitor the sex or violent offender's Internet usage.

8 (c) If:

9 (1) **the appearance of the sex or violent offender changes from the**
10 **photograph described in subsection (a)(4); or**

11 (2) **any other information described in subsection (a) changes;**

12 **the sex or violent offender shall report in person to the local law enforcement authority**
13 **having jurisdiction over the sex or violent offender's principal address not more than**
14 **seventy-two (72) hours after the change and permit a new photograph to be made (for a**
15 **change in appearance) or submit the new information to the local law enforcement**
16 **authority.**

17 SECTION 4. IC 11-8-8-11, AS AMENDED BY P.L.119-2008, SECTION 7, IS
18 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. (a) If a sex or
19 violent offender who is required to register under this chapter changes:

20 (1) principal residence address; or

21 (2) if section 7(a)(2) or 7(a)(3) of this chapter applies, the place where the sex or
22 violent offender stays in Indiana;

23 the sex or violent offender shall report in person to the local law enforcement authority having
24 jurisdiction over the sex or violent offender's current principal address or location and, if the
25 offender moves to a new county in Indiana, to the local law enforcement authority having
26 jurisdiction over the sex or violent offender's new principal address or location not more than
27 seventy-two (72) hours after the address change.

28 (b) If a sex or violent offender moves to a new county in Indiana, the local law
29 enforcement authority where the sex or violent offender's current principal residence address is
30 located shall inform the local law enforcement authority in the new county in Indiana of the sex
31 or violent offender's residence and forward all relevant registration information concerning the
32 sex or violent offender to the local law enforcement authority in the new county. The local law
33 enforcement authority receiving notice under this subsection shall verify the address of the sex or
34 violent offender under section 13 of this chapter not more than seven (7) days after receiving the
35 notice.

36 (c) If a sex or violent offender who is required to register under section 7(a)(2) or 7(a)(3)
37 of this chapter changes the sex or violent offender's principal place of employment, principal
38 place of vocation, or campus or location where the sex or violent offender is enrolled in school,
39 the sex or violent offender shall report in person:

40 (1) to the local law enforcement authority having jurisdiction over the sex or

1 violent offender's current principal place of employment, principal place of
2 vocation, or campus or location where the sex or violent offender is enrolled in
3 school; and
4 (2) if the sex or violent offender changes the sex or violent offender's place of
5 employment, vocation, or enrollment to a new county in Indiana, to the local law
6 enforcement authority having jurisdiction over the sex or violent offender's new
7 principal place of employment, principal place of vocation, or campus or
8 location where the sex or violent offender is enrolled in school;

9 not more than seventy-two (72) hours after the change.

10 (d) If a sex or violent offender moves the sex or violent offender's place of employment,
11 vocation, or enrollment to a new county in Indiana, the local law enforcement authority having
12 jurisdiction over the sex or violent offender's current principal place of employment, principal
13 place of vocation, or campus or location where the sex or violent offender is enrolled in school
14 shall inform the local law enforcement authority in the new county of the sex or violent
15 offender's new principal place of employment, vocation, or enrollment by forwarding relevant
16 registration information to the local law enforcement authority in the new county.

17 (e) If a sex or violent offender moves the sex or violent offender's residence, place of
18 employment, vocation, or enrollment to a new state, the local law enforcement authority shall
19 inform the state police in the new state of the sex or violent offender's new place of residence,
20 employment, vocation, or enrollment.

21 (f) If a sex or violent offender who is required to register under this chapter changes or
22 obtains a new:

- 23 (1) electronic mail address;
- 24 (2) instant messaging username;
- 25 (3) electronic chat room username; or
- 26 (4) social networking web site username;

27 the sex or violent offender shall report in person to the local law enforcement authority having
28 jurisdiction over the sex or violent offender's current principal address or location and shall
29 provide the local law enforcement authority with the new address or username not more than
30 seventy-two (72) hours after the change or creation of the address or username.

31 (g) A local law enforcement authority shall make registration information, including
32 information concerning the duty to register and the penalty for failing to register, available to a
33 sex or violent offender.

34 (h) A local law enforcement authority who is notified of a change under subsection (a),
35 (c), or (f) shall:

- 36 (1) immediately update the Indiana sex and violent offender registry web site
37 established under IC 36-2-13-5.5;
- 38 (2) update the National Crime Information Center National Sex Offender
39 Registry data base via the Indiana data and communications system (IDACS);
- 40 and

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(3) notify the department.

(i) If a sex or violent offender who is registered with a local law enforcement authority becomes incarcerated, the local law enforcement authority shall transmit a copy of the information provided by the sex or violent offender during registration to the department.

(j) If a sex or violent offender is no longer required to register due to the expiration of the registration period, the local law enforcement authority shall transmit a copy of the information provided by the sex or violent offender during registration to the department.

(k) This subsection only applies to a sex or violent offender who has:

- (1) informed the local law enforcement authority of the offender's intention to move the offender's residence to a new location; and**
- (2) not moved the offender's residence to the new location.**

Not later than seventy-two hours after the date on which a sex or violent offender to whom this subsection applies was scheduled to move (according to information the offender provided to the local law enforcement authority before the move), the sex or violent offender shall report in person to the local law enforcement authority having jurisdiction over the offenders's new current address or location, even if the offender's address has not changed.

SECTION 5. IC 11-8-8-13, AS AMENDED BY P.L.114-2012, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 13. (a) To verify a sex or violent offender's current residence, the local law enforcement authority having jurisdiction over the area of the sex or violent offender's current principal address or location shall do the following:

- (1) ~~Mail~~ **Contact each offender in a manner** approved or prescribed by the department to each sex or violent offender in the county at the sex or violent offender's listed address at least one (1) time per year, beginning seven (7) days after the local law enforcement authority receives a notice under section 11 or 20 of this chapter or the date the sex or violent offender is:
 - (A) released from a penal facility (as defined in IC 35-31.5-2-232); a secure private facility (as defined in IC 31-9-2-115); or a juvenile detention facility;
 - (B) placed in a community transition program;
 - (C) placed in a community corrections program;
 - (D) placed on parole; or
 - (E) placed on probation;

whichever occurs first:

- (2) ~~Mail~~ **Contact each offender who is designated a sex or violent offender in a manner** approved or prescribed by the department to each sex or violent offender who is designated a sexually violent predator under IC 35-38-1-7.5 at least once every ninety (90) days, beginning seven (7) days after the local law enforcement authority receives a notice under section 11 or 20

1 of this chapter or the date the sex or violent offender is:

- 2 (A) released from a penal facility (as defined in IC 35-31.5-2-232), a
- 3 secure private facility (as defined in IC 31-9-2-115), or a juvenile
- 4 detention facility;
- 5 (B) placed in a community transition program;
- 6 (C) placed in a community corrections program;
- 7 (D) placed on parole; or
- 8 (E) placed on probation;

9 whichever occurs first:

10 (3) Personally visit each sex or violent offender in the county at the sex or
11 violent offender's listed address at least one (1) time per year, beginning seven
12 (7) days after the local law enforcement authority receives a notice under section
13 7 of this chapter or the date the sex or violent offender is:

- 14 (A) released from a penal facility (as defined in IC 35-31.5-2-232), a
- 15 secure private facility (as defined in IC 31-9-2-115), or a juvenile
- 16 detention facility;
- 17 (B) placed in a community transition program;
- 18 (C) placed in a community corrections program;
- 19 (D) placed on parole; or
- 20 (E) placed on probation;

21 whichever occurs first.

22 (4) Personally visit each sex or violent offender who is designated a sexually
23 violent predator under IC 35-38-1-7.5 at least once every ninety (90) days,
24 beginning seven (7) days after the local law enforcement authority receives a
25 notice under section 7 of this chapter or the date the sex or violent offender is:

- 26 (A) released from a penal facility (as defined in IC 35-31.5-2-232), a
- 27 secure private facility (as defined in IC 31-9-2-115), or a juvenile
- 28 detention facility;
- 29 (B) placed in a community transition program;
- 30 (C) placed in a community corrections program;
- 31 (D) placed on parole; or
- 32 (E) placed on probation;

33 whichever occurs first.

34 (b) If a sex or violent offender fails to return a signed form either by mail or in person,
35 not later than fourteen (14) days after mailing, or appears not to reside at the listed address, the
36 local law enforcement authority shall immediately notify the department and the prosecuting
37 attorney.

38 SECTION 6. IC 11-8-8-14, AS AMENDED BY P.L.216-2007, SECTION 22, IS
39 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 14. (a) This
40 subsection does not apply to a sex or violent offender who is a sexually violent predator. In

1 addition to the other requirements of this chapter, a sex or violent offender who is required to
2 register under this chapter shall, at least one (1) time **every three hundred sixty-five (365) days**
3 **per calendar year:**

- 4 (1) report in person to the local law enforcement authority;
- 5 (2) register; and
- 6 (3) be photographed by the local law enforcement authority;

7 in each location where the offender is required to register.

8 (b) This subsection applies to a sex or violent offender who is a sexually violent
9 predator. In addition to the other requirements of this chapter, a sex or violent offender who is a
10 sexually violent predator under IC 35-38-1-7.5 shall:

- 11 (1) report in person to the local law enforcement authority;
- 12 (2) register; and
- 13 (3) be photographed by the local law enforcement authority in each location
14 where the sex or violent offender is required to register;

15 every ninety (90) days.

16 (c) Each time a sex or violent offender who claims to be working or attending school
17 registers in person, the sex or violent offender shall provide documentation to the local law
18 enforcement authority providing evidence that the sex or violent offender is still working or
19 attending school at the registered location.

20 SECTION 7. IC 11-8-8-15, AS AMENDED BY P.L.216-2007, SECTION 23, IS
21 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 15. (a) A sex or
22 violent offender who is a resident of Indiana shall obtain and keep in the sex or violent offender's
23 possession:

- 24 (1) a valid Indiana driver's license; or
- 25 (2) a valid Indiana identification card (as described in IC 9-24-16);

26 **which contains the offender's current address and current physical description.**

27 (b) A sex or violent offender required to register in Indiana who is not a resident of
28 Indiana shall obtain and keep in the sex or violent offender's possession:

- 29 (1) a valid driver's license issued by the state in which the sex or violent offender
30 resides; or
- 31 (2) a valid state issued identification card issued by the state in which the sex or
32 violent offender resides;

33 **which contains the offender's current address and current physical description.**

34 (c) A person who knowingly or intentionally violates this section commits failure of a
35 sex or violent offender to possess identification, a Class A misdemeanor. However, the offense is
36 a Class D felony if the person:

- 37 (1) is a sexually violent predator; or
- 38 (2) has a prior unrelated conviction:
 - 39 (A) under this section; or
 - 40 (B) based on the person's failure to comply with any requirement

1 imposed on an offender under this chapter.

2 (d) It is a defense to a prosecution under this section that:

3 (1) the person has been unable to obtain a valid driver's license or state issued
4 identification card because less than thirty (30) days have passed since the
5 person's release from incarceration; or

6 (2) the person possesses a driver's license or state issued identification card that
7 expired not more than thirty (30) days before the date the person violated
8 subsection (a) or (b); or

9 **(3) the person possesses a valid driver's license or state issued identification**
10 **card, but the card does not reflect the person's current address or current**
11 **physical description because less than thirty (30) days have passed since the**
12 **person changed the person's current address or physical characteristics.**

13 SECTION 8. IC 35-38-1-7.5, AS AMENDED BY P.L.216-2007, SECTION 37, IS
14 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7.5. (a) As used in
15 this section, "sexually violent predator" means a person who suffers from a mental abnormality
16 or personality disorder that makes the individual likely to repeatedly commit a sex offense (as
17 defined in IC 11-8-8-5.2). The term includes a person convicted in another jurisdiction who is
18 identified as a sexually violent predator under IC 11-8-8-20. The term does not include a person
19 no longer considered a sexually violent predator under subsection (g).

20 (b) A person who:

21 (1) being at least eighteen (18) years of age, commits an offense described in:

22 (A) IC 35-42-4-1;

23 (B) IC 35-42-4-2;

24 (C) IC 35-42-4-3 as a Class A or Class B felony;

25 (D) IC 35-42-4-5(a)(1);

26 (E) IC 35-42-4-5(a)(2);

27 (F) IC 35-42-4-5(a)(3);

28 (G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;

29 (H) IC 35-42-4-5(b)(2);

30 (I) IC 35-42-4-5(b)(3) as a Class A or Class B felony;

31 (J) an attempt or conspiracy to commit a crime listed in clauses (A)
32 through (I); or

33 (K) a crime under the laws of another jurisdiction, including a military
34 court, that is substantially equivalent to any of the offenses listed in
35 clauses (A) through (J);

36 (2) commits a sex offense (as defined in IC 11-8-8-5.2) while having a previous
37 unrelated conviction for a sex offense for which the person is required to register
38 as a sex or violent offender under IC 11-8-8;

39 (3) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a
40 previous unrelated adjudication as a delinquent child for an act that would be a

1 sex offense if committed by an adult, if, after considering expert testimony, a
2 court finds by clear and convincing evidence that the person is likely to commit
3 an additional sex offense; or

4 (4) commits a sex offense (as defined in IC 11-8-8-5.2) while having had a
5 previous unrelated adjudication as a delinquent child for an act that would be a
6 sex offense if committed by an adult, if the person was required to register as a
7 sex or violent offender under IC 11-8-8-5(b)(2);

8 is a sexually violent predator. Except as provided in subsection (g) or (h), a person is a sexually
9 violent predator by operation of law if an offense committed by the person satisfies the
10 conditions set forth in subdivision (1) or (2) and the person was released from incarceration,
11 secure detention, or probation, or **parole** for the offense after June 30, 1994.

12 (c) This section applies whenever a court sentences a person or a juvenile court issues a
13 dispositional decree for a sex offense (as defined in IC 11-8-8-5.2) for which the person is
14 required to register with the local law enforcement authority under IC 11-8-8.

15 (d) At the sentencing hearing, the court shall indicate on the record whether the person
16 has been convicted of an offense that makes the person a sexually violent predator under
17 subsection (b).

18 (e) If a person is not a sexually violent predator under subsection (b), the prosecuting
19 attorney may request the court to conduct a hearing to determine whether the person (including a
20 child adjudicated to be a delinquent child) is a sexually violent predator under subsection (a). If
21 the court grants the motion, the court shall appoint two (2) psychologists or psychiatrists who
22 have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing.
23 After conducting the hearing and considering the testimony of the two (2) psychologists or
24 psychiatrists, the court shall determine whether the person is a sexually violent predator under
25 subsection (a). A hearing conducted under this subsection may be combined with the person's
26 sentencing hearing.

27 (f) If a person is a sexually violent predator:

28 (1) the person is required to register with the local law enforcement authority as
29 provided in IC 11-8-8; and

30 (2) the court shall send notice to the department of correction.

31 (g) This subsection does not apply to a person who has two (2) or more unrelated
32 convictions for an offense described in IC 11-8-8-4.5 for which the person is required to register
33 under IC 11-8-8. A person who is a sexually violent predator may petition the court to consider
34 whether the person should no longer be considered a sexually violent predator. The person may
35 file a petition under this subsection not earlier than ten (10) years after:

36 (1) the sentencing court or juvenile court makes its determination under
37 subsection (e); or

38 (2) the person is released from incarceration or secure detention.

39 A person may file a petition under this subsection not more than one (1) time per year. A court
40 may dismiss a petition filed under this subsection or conduct a hearing to determine if the person

1 should no longer be considered a sexually violent predator. If the court conducts a hearing, the
2 court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal
3 behavioral disorders to evaluate the person and testify at the hearing. After conducting the
4 hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court
5 shall determine whether the person should no longer be considered a sexually violent predator
6 under subsection (a). If a court finds that the person should no longer be considered a sexually
7 violent predator, the court shall send notice to the department of correction that the person is no
8 longer considered a sexually violent predator. Notwithstanding any other law, a condition
9 imposed on a person due to the person's status as a sexually violent predator, including lifetime
10 parole or GPS monitoring, does not apply to a person no longer considered a sexually violent
11 predator **or offender against children.**

12 (h) A person is not a sexually violent predator by operation of law under subsection
13 (b)(1) if all of the following conditions are met:

- 14 (1) The victim was not less than twelve (12) years of age at the time the offense
15 was committed.
- 16 (2) The person is not more than four (4) years older than the victim.
- 17 (3) The relationship between the person and the victim was a dating relationship
18 or an ongoing personal relationship. The term "ongoing personal relationship"
19 does not include a family relationship.
- 20 (4) The offense committed by the person was not any of the following:
 - 21 (A) Rape (IC 35-42-4-1).
 - 22 (B) Criminal deviate conduct (IC 35-42-4-2).
 - 23 (C) An offense committed by using or threatening the use of deadly
24 force or while armed with a deadly weapon.
 - 25 (D) An offense that results in serious bodily injury.
 - 26 (E) An offense that is facilitated by furnishing the victim, without the
27 victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a
28 controlled substance (as defined in IC 35-48-1-9) or knowing that the
29 victim was furnished with the drug or controlled substance without the
30 victim's knowledge.
- 31 (5) The person has not committed another sex offense (as defined in
32 IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if
33 committed by an adult) against any other person.
- 34 (6) The person did not have a position of authority or substantial influence over
35 the victim.
- 36 (7) The court finds that the person should not be considered a sexually violent
37 predator.

38 SECTION 9. IC 35-42-4-11, AS AMENDED BY P.L.216-2007, SECTION 47, IS
39 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 11. (a) As used in
40 this section, and except as provided in subsection (d), "offender against children" means a person

1 required to register as a sex or violent offender under IC 11-8-8 who has been:

2 (1) found to be a sexually violent predator under IC 35-38-1-7.5; or

3 (2) convicted of one (1) or more of the following offenses:

4 (A) Child molesting (IC 35-42-4-3).

5 (B) Child exploitation (IC 35-42-4-4(b)).

6 (C) Child solicitation (IC 35-42-4-6).

7 (D) Child seduction (IC 35-42-4-7).

8 (E) Kidnapping (IC 35-42-3-2), if the victim is less than eighteen (18)
9 years of age and the person is not the child's parent or guardian.

10 (F) Attempt to commit or conspiracy to commit an offense listed in
11 clauses (A) through (E).

12 (G) An offense in another jurisdiction that is substantially similar to an
13 offense described in clauses (A) through (F).

14 A person is an offender against children by operation of law if the person meets the conditions
15 described in subdivision (1) or (2) at any time.

16 (b) As used in this section, "reside" means to spend more than three (3) nights in:

17 (1) a residence; or

18 (2) if the person does not reside in a residence, a particular location;

19 in any thirty (30) day period.

20 (c) An offender against children who knowingly or intentionally:

21 (1) resides within one thousand (1,000) feet of:

22 (A) school property, not including property of an institution providing
23 post-secondary education;

24 (B) a youth program center; or

25 (C) a public park; or

26 (2) establishes a residence within one (1) mile of the residence of the victim of
27 the offender's sex offense;

28 commits a sex offender residency offense, a Class D felony.

29 (d) This subsection does not apply to an offender against children who has two (2) or
30 more unrelated convictions for an offense described in subsection (a). A person who is an
31 offender against children may petition the court to consider whether the person should no longer
32 be considered an offender against children. The person may file a petition under this subsection
33 not earlier than ten (10) years after the person is released from incarceration (**or, if the person is**
34 **not incarcerated, not earlier than ten (10) years after the person is released from probation.)**
35 **or parole, whichever occurs last.** A person may file a petition under this subsection not more than
36 one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a
37 hearing to determine if the person should no longer be considered an offender against children. If
38 the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who
39 have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing.
40 After conducting the hearing and considering the testimony of the two (2) psychologists or

1 psychiatrists, the court shall determine whether the person should no longer be considered an
2 offender against children. If a court finds that the person should no longer be considered an
3 offender against children, the court shall send notice to the department of correction that the
4 person is no longer considered an offender against children.
5
6

Exhibit D: Schepers v. DOC

In the
United States Court of Appeals
For the Seventh Circuit

No. 11-3834

DAVID SCHEPERS, *et al.*,

Plaintiffs-Appellants,

v.

COMMISSIONER, INDIANA DEPARTMENT OF CORRECTION,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division.
No. 1:09-cv-1324 TWP-TAB—Tanya Walton Pratt, Judge.

ARGUED MAY 25, 2012—DECIDED AUGUST 28, 2012

Before POSNER, FLAUM, and WOOD, *Circuit Judges.*

WOOD, *Circuit Judge.* Indiana, like many states, maintains a public database of persons convicted of sex offenses. Its database is called the "Sex and Violent Offender Registry" and is accessible via the Internet. See Indiana Sex and Violent Offender Registry, <http://www.icrimewatch.net/indiana.php> (last visited August 23, 2012). People visiting the registry's website find, on each registrant's page, a recent photograph, home address, informa-

tion about the registrant's height, weight, age, race, and sex, and information about the particular offenses that required placement on the registry. Some registrants' pages may additionally carry the label of "sexually violent predator," if they have committed certain serious offenses or have had multiple previous convictions for specified sex and violent offenses. See IND. CODE § 35-38-1-7.5 (defining "sexually violent predator"). The public can search the database by a variety of fields (such as offender name or county of residence), and can generate a map showing the location of all registered offenders living near any address (such as one's home or school).

A class of persons required to register brought this suit against the Indiana Department of Correction (DOC), alleging that the DOC's failure to provide any procedure to correct errors in the registry violates due process. In response, the DOC created a new policy to give notice to current prisoners about their pending registry listings and an opportunity to challenge the information. The district court granted summary judgment on the ground that the new policy was sufficient to comply with due process. But the DOC's new procedures still fail to provide *any* process at all for an entire class of registrants—those who are not incarcerated. We thus reverse the district court's grant of summary judgment and remand for further proceedings.

I

Indiana's registry was enacted in 1994; it was modeled on New Jersey's "Megan's Law," the country's first sex

offender registration statute. Many states have created similar registries since then, spurred no doubt by Congress's threat of withholding grant money from states that did not. See generally *Wallace v. State*, 905 N.E.2d 371, 374 (Ind. 2009) (discussing the history of Indiana's registry and the impact of the 1994 Jacob Wetterling Crimes Against Children and Sexually Violent Offenders Registration Act). Over time, Indiana's registry has greatly expanded in scope, in terms of both who is required to register and what registration entails.

Today, a conviction for any of 21 different offenses, including some non-sex offenses such as murder, voluntary manslaughter, and kidnapping, requires an offender to be listed on the registry. See IND. CODE § 11-8-8-5. Placement on the registry comes with a variety of obligations and restrictions; failure to comply can have criminal consequences. Among other obligations, a registrant must periodically report in person to the local law enforcement authority—for most, annually, and for sexually violent predators, every 90 days—to update contact information and take a new photograph. *Id.* § 11-8-8-14. Failure to do so is a felony. *Id.* § 11-8-8-17. Registrants must also allow law enforcement to visit and verify their addresses (again annually for most and every 90 days for sexually violent predators). *Id.* § 11-8-8-13. Registrants must carry a valid driver's license or state identification card at all times, or risk prosecution, *id.* § 11-8-8-15; they are forbidden from changing their names, *id.* § 11-8-8-16.

The status of being a "sexually violent predator" carries with it extra burdens. In addition to their obligation to

register more frequently, sexually violent predators are regulated in other ways: they cannot live, work, or volunteer within 1,000 feet of a school, public park, or youth program center. To do so is a felony. *Id.* § 35-42-4-10; 35-42-4-11(c); see also Alex Campbell, *Motel Home to City's Largest Sex Offender Cluster*, INDIANAPOLIS STAR, Feb. 18, 2012, available at <http://blogs.indystar.com/starwatch/2012/02/18/motel-home-to-citys-largest-sex-offender-cluster/>; Jeff Wiehe, *Sex-felon Residency Law Vexes Everyone*, FORT WAYNE J. GAZETTE, Jan. 8, 2012, available at <http://www.journalgazette.net/article/20120108/LOCAL/301089926/-1/LOCAL11>. In addition, if a sexually violent predator plans to be absent from her home for more than 72 hours, she must inform local law enforcement in both the county where she lives and the county she plans to visit of her travel plans. IND. CODE § 11-8-8-18.

II

David Schepers is one of an estimated 24,000 registrants on Indiana's Sex and Violent Offender Registry. (This number comes from data collected in February 2010, at which time the registry contained 24,000 registrants, some of whose obligations to keep their data current had expired, and 11,000 of whom were under a current obligation to comply with these rules.) Schepers must register because he was convicted of two counts of child exploitation in 2006. If one were to visit Schepers's registry profile today, she would see those two counts along with the designation "Offender

Against Children.” But for some time in the past, Schepers was erroneously designated as a “Sexually Violent Predator” and thus was subject to the more burdensome requirements and restrictions that apply to that group. (There is no dispute that Schepers is not a Sexually Violent Predator under Indiana law.) He tried to correct this error, but he found that the DOC provided no official channel or administrative mechanism allowing him to do so. He turned to informal channels, telephoning officials in the DOC in an attempt to get the label removed. When that proved unsuccessful, he brought suit against the DOC under 42 U.S.C. § 1983 on behalf of a class of registrants, arguing that the DOC’s failure to provide any mechanism to correct registry errors violated due process and seeking injunctive relief to establish such a procedure.

In response to the suit, the DOC instituted a new policy designed to provide some process to correct registry errors. It calls that policy the “Sex and Violent Offender Registry Appeal Process.” Under the new Appeal Process, the DOC must send prisoners notice (consisting of two forms—a “notice” and a “specimen”) before they are released from their institution that explains what information will be published on the registry. The notice informs the prisoner that if there are any errors with his information, he has 20 days to seek review by submitting an appeal to the director of the Division of Registration and Victim Services. The person deciding the appeal (the “Appeal Authority”) can then request additional information or consult with the prisoner. The policy does *not* require the Appeal Authority

to hold a hearing, formal or otherwise. After 30 days have passed, all appeals are "deemed denied." If an appeal is not deemed denied, the prisoner will be notified of a decision to grant an appeal in full or in part. The prisoner has no right to further review after an appeals decision. As we indicated earlier, this Appeal Process applies only to those who are incarcerated in DOC facilities; it does not apply to persons listed on the registry who already have been released or were never incarcerated in a DOC facility (perhaps because they received a probationary sentence or they were convicted in another state).

After enacting this new policy, the DOC moved for summary judgment on the basis that the policy was sufficient to meet the requirements of due process. In addition, it argued that the Due Process Clause did not apply at all because mistakes in the registry do not infringe any constitutionally protected liberty interest. The district court rejected the DOC's argument that the Due Process Clause did not apply, holding that misclassification of registrants does implicate an offender's liberty interest and is thus protected by the Due Process Clause. But the court agreed with the DOC that its new appeals policy was sufficient to meet the Clause's requirements, and granted summary judgment. Plaintiffs now appeal.

III

We review the grant of a motion for summary judgment *de novo*, construing all facts and drawing all infer-

ences in the light most favorable to the non-moving party (here, Schepers and the plaintiff class). *Lagestee-Mulder, Inc. v. Consolidated Ins. Co.*, 682 F.3d 1054, 1056 (7th Cir. 2012). Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Id.*

We begin by addressing a preliminary argument raised by the DOC unrelated to the merits of the due process question. The DOC contends that it cannot be the entity required to provide process, even if process is due, because (it says) it is not the entity responsible for mistakes in the sex offender registry. Put briefly, the DOC argues that Schepers has sued the wrong defendant. The DOC stresses that it “does not publish any information on the Internet” and “does not control the sex offender registry web site.” Instead, those tasks are currently performed by the Indiana Sheriff’s Association. But the DOC does not and cannot contest that, under state law, it is the entity ultimately responsible for the creation, publication, and maintenance of the registry. See IND. CODE § 11-8-2-12.4 (“The department shall . . . Maintain the Indiana sex and violent offender registry.”); *id.* § 11-8-2-13(b) (listing the DOC’s registry responsibilities, including requirements that it “[e]nsure that the Indiana sex and violent offender registry is updated at least once per day with information provided by a local law enforcement authority” and “[p]ublish the Indiana sex and violent offender registry on the Internet”). DOC’s argument begins to unravel when one discovers that the reason why the Indiana Sheriff’s Association is the entity that publishes information on the Internet is because the DOC has

contracted with it to do so. We will accept for present purposes that state law also gives the sheriffs some shared responsibility over the registry, see *id.* § 36-2-13-5.5, but this does not diminish the DOC's own state-law obligations. (Perhaps the DOC could have argued that the sheriffs were necessary parties to this suit. We doubt that this defense would have been successful, but no matter: The DOC never raised it and it has thus been waived. See FED. R. CIV. P. 12(h)(2); *Mucha v. King*, 792 F.2d 602, 613 (7th Cir. 1986).)

Moreover, the facts in the record do not support the DOC's attempt to put so much distance between itself and the day-to-day operation of the registry. It appears that the DOC does have a direct role to play in some of the errors that creep into registry listings. The DOC is the entity that first decides how offenders should be classified and what information will appear in the registry. It then passes that information on to the Sheriff's Association for publication. Clearly, errors can crop up at any of these stages, but surely one of the most important points is the stage at which the DOC makes an initial registry determination. Thus, under state law and in practice, the DOC has sufficient responsibility over the registry to be compelled to provide any additional process that may be required.

IV

A

That brings us to the heart of the due process claim in this case. Plaintiffs allege that errors in the regis-

try—such as being mislabeled a sexually violent predator—infringe on a liberty interest protected by the Due Process Clause, and thus that the DOC is required to provide some process to correct those errors. In order for state action that injures one's reputation to implicate the Due Process Clause, the action must also alter one's legal status or rights. The Supreme Court applied this principle to allegations of defamation by government agents in *Paul v. Davis*, 424 U.S. 693 (1976), where it rejected the argument that the injury to reputation from being included on a list of "active shoplifters" implicated a liberty interest for due process purposes. Rather, the Court held, it is the alteration of legal status, in the sense of a deprivation of a right previously held under state law, that when "combined with the injury resulting from the defamation, justif[ies] the invocation of procedural safeguards." *Id.* at 708-09; see also *Kahn v. Bland*, 630 F.3d 519, 534 (7th Cir. 2010) (applying this test). The need to show alteration of legal status along with some stigmatic or reputation injury is commonly referred to as the "'stigma plus' test." *Kahn*, 630 F.3d at 534.

The district court held that the class members meet both parts of the "stigma plus" test. The DOC does not challenge that holding on appeal, and so any argument on this issue is therefore forfeited. It did argue before the district court, however, that the plaintiffs had failed to assert a liberty interest; since this case is being remanded, we think it prudent to discuss the matter briefly. The plaintiff class here is complaining about much more than the kind of simple reputational

interest asserted by respondent Davis in the Supreme Court's case. The Indiana statute deprives members of the class of a variety of rights and privileges held by ordinary Indiana citizens, in a manner closely analogous to the deprivations imposed on parolees or persons on supervisory release. Citizens do not need to report to the police periodically, nor is their right to travel conditioned on notifications to the police in both the home and the destination jurisdiction. Unlike Schepers, who was forbidden from living within 1,000 feet of a school or park while he was categorized as a sexually violent predator, members of the public are free to decide where they wish to live. These restrictions, in our view, fit the requirement in *Paul v. Davis* of an alteration in legal status that takes the form of a deprivation of rights under state law.

Although any kind of placement on the sex offender registry is stigmatizing, we agree with the district court that erroneous labeling as a sexually violent predator is "further stigmatizing to [one's] reputation." Society's abhorrence of sexually violent predators goes above and beyond that reserved for other sex offenders. Indiana has taken that position formally through the additional restrictions in the law on the sexually violent predator's actions. Other courts have reached similar conclusions when considering sex offender registration systems with "tiered" registration levels. See, e.g., *Pasqua v. Council*, 892 A.2d 663, 675 (N.J. 2006), abrogated on other grounds by *Turner v. Rogers*, 131 S. Ct. 2507 (2011); *New York v. David W.*, 733 N.E.2d 206, 210-11 (N.Y. 2000). We are satisfied that plaintiffs have shown that

the kind of registry mistakes they have alleged here implicate a liberty interest protected by the Due Process Clause.

B

This leaves the question whether Indiana is providing whatever process is "due." To answer that question, we must balance three factors: "[f]irst, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

The DOC argues that the process it currently provides adequately balances these three factors and thus passes muster under the Due Process Clause. But there is a glaring problem with this position: it ignores the fact that the policy provides *no process* whatsoever to an entire class of registrants—those who are not incarcerated. If it were impossible to land on the registry without a prior term of incarceration, then this might be a different case, at least moving forward; those persons who had been released before this system was enacted would still be out of luck. But that is not the way it works. The record leaves no doubt that not all registrants are first incarcerated, even though many of

the crimes triggering registration are quite serious. Moreover, even for people who move from an Indiana prison onto the registry and thus obtain whatever benefits DOC's procedures offer, there is no guarantee that later mistakes will not be made (perhaps, for instance, when someone moves from one town to another, or a sheriff's department changes computer systems). A cursory review of some of the pages on the registry itself reveals that registrants are sometimes given sentences that are suspended, sentences of probation, or sentences with terms so low (several months) that they receive credit for time served and never move to a DOC facility.

The DOC complains again that it makes no sense for it to be the entity responsible for furnishing notice and review to people who are not located in its institutions. That, however, is what the Indiana legislature decided to do, when it gave DOC control over the entire registry, including both those who entered it from prison and those who did not. See IND. CODE § 11-8-2-12.4(5) (requiring the DOC to maintain records for sex and violent offenders who are not necessarily incarcerated). It is not our role to question the wisdom of the state's choice in this respect. Taking the system as it is, we conclude that the DOC's current procedures are inadequate because they fail to provide any way for persons not currently incarcerated, including the lead plaintiff in this case, to correct errors in the registry.

This deficiency alone requires us to reverse the district court's grant of summary judgment. We are

also concerned, however, with the fact that the DOC's appeals process never actually requires the DOC to review a registrant's complaint. Under the 30-day "deemed denied" policy, an appeal never has to be considered before it is rejected. An offender could mail his appeal to the DOC appeal authority, only to have it sit on a desk unread. Such an appeal would be deemed denied after 30 days of inaction. This is not sufficient to meet the "fundamental requirement of due process"—"the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *Mathews*, 424 U.S. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). An appeal process must at the very least provide for a real opportunity for registrants to bring errors to the DOC's attention and, if the arguments have merit, to have the errors fixed.

The DOC finally argues that it is not under any legal compulsion to provide process to registrants (even though it is currently doing so voluntarily for some) because adequate state judicial remedies exist to correct any errors. It is true that in some circumstances, a deprivation of liberty or property might be the result of a "random and unauthorized" act by a state official, and the aggrieved person is thus relegated to post-deprivation remedies such as state tort actions. See, e.g., *Parratt v. Taylor*, 451 U.S. 527, 543 (1981). But as we have explained, the *Parratt* doctrine "rest[s] on the principle that when a state officer acts in a 'random and unauthorized' way—by unpredictably departing from state law, for example—the state has *no opportunity* to provide a pre-deprivation hearing and may instead satisfy due

process by providing an adequate post-deprivation remedy." *Pro's Sports Bar & Grill, Inc. v. City of Country Club Hills*, 589 F.3d 865, 872 (7th Cir. 2009) (emphasis added). Where, however, the state has an opportunity to provide pre-deprivation process because the deprivation is the "result of some established state procedure," the *Parratt* doctrine does not apply. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 436 (1982). Like the Indiana Court of Appeals, we see the determination of registry status as "analogous to an established state procedure, rather than a random and unauthorized act of a state official." *Myers v. Coats*, 966 N.E.2d 652, 659 (Ind. App. Ct. 2012). The DOC uses established procedures to determine a person's registry status, in light of his criminal history and the registry definitions under state law, and then it publishes that information on the registry website. Before publication, an additional procedural step that provides an opportunity to check the accuracy of that information can easily be incorporated into the established processes, in order to reduce the frequency of any mistakes that happen to arise.

We agree with the plaintiffs that the state judicial post-deprivation remedies cited by the DOC are insufficient to meet the requirements of due process. First, many of the remedies to which the DOC points are not available to registrants challenging errors like those at issue here. See IND. CODE § 11-8-8-22 (available only to persons seeking a change in registration status based on changes in registration laws after June 30, 2007); IND. CODE § 35-38-1-7.5(g) (giving state courts discretionary power to change sexually violent predator status after 10 years).

And although a writ of mandate under IND. CODE § 34-27-3-1 appears to be theoretically available, its usage is disfavored in Indiana law. See *Zimmerman v. Indiana*, 750 N.E.2d 337, 340 (Ind. 2001) (Rucker, J., concurring) (“Mandate is an extraordinary remedy viewed with extreme disfavor.”). The DOC gives no example of a registrant using a writ of mandate to challenge a registry listing in Indiana. Finally, although registrants can, and have, challenged registry errors in the course of criminal prosecutions for failure to comply with registration requirements, due process does not require a person to risk additional criminal conviction as the price of correcting an erroneous listing, especially where a simple procedural fix is available much earlier.

At this stage, we decline to outline in any more detail what sort of process the DOC must enact. Instead we leave it open for the parties to determine in further proceedings (or, of course, the court, should the parties fail to agree on a constitutionally adequate result). We note in this connection that due process is “flexible and calls for such procedural protections as the particular situation demands.” *Dupuy v. Samuels*, 397 F.3d 493, 504 (7th Cir. 2005) (quoting *Mathews*, 424 U.S. at 334). It is possible that a paper review system would suffice, given the fact that registration requirements are not discretionary. We also do not prejudge whether or to what extent additional process would be required at each re-registration event, assuming that the person’s registration status has not changed. If there are reasons to provide additional process at re-registration stages, or there is no available judicial review of the DOC’s denial of an appeal, the parties or the court will need

to consider whether DOC must provide somewhat more extensive process. See *Dupuy*, 397 F.3d at 504 (“As long as substantial post-deprivation process is available, the pre-deprivation process . . . need not be elaborate or extensive. Rather, in many situations, it should be an initial check against mistaken decisions.”).

We conclude with the observation that providing additional procedures to correct registry errors may wind up benefitting the state as well as registrants. Erroneously labeling an offender a sexually violent predator imposes unnecessary monitoring costs on state law enforcement and reduces the efficacy of the registry in providing accurate information to the public. See *Indiana Sex Offender Registry Full of Inaccuracies*, EVANSVILLE COURIER & PRESS, Apr. 21, 2012, available at <http://www.courierpress.com/news/2012/apr/21/indiana-sex-offender-registry-full-inaccuracies/> (quoting the “director of legislative affairs at the National Center for Missing & Exploited Children” calling the errors “troubling” because “[t]he value of the public registry as a child protection tool is that the information is accurate”). Reducing these errors is in the interest of the state as well as the plaintiffs.

* * *

On remand, we encourage the parties to work together to come to an agreement that fits within the boundaries outlined above. As it stands, the DOC’s process is constitutionally insufficient. We thus REVERSE the district court’s grant of summary judgment and REMAND for further proceedings consistent with this opinion.

Exhibit E: Cline v. State

FOR PUBLICATION

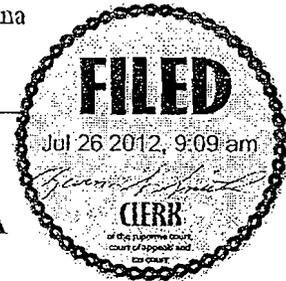
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IN THE
COURT OF APPEALS OF INDIANA

JEREMIAH CLINE,)
)
Appellant-Petitioner,)
)
vs.) No. 06A05-1111-MI-611
)
STATE OF INDIANA,)
)
Appellee-Respondent.)

APPEAL FROM THE BOONE CIRCUIT COURT
The Honorable J. Jeffrey Edens, Judge
Cause No. 06C01-1103-MI-256

July 26, 2012

OPINION - FOR PUBLICATION

BAILEY, Judge

Case Summary

The Boone Circuit Court determined that Jeremiah Cline (“Cline”) is not required to register as a sex offender, but also determined that it lacked authority to order the removal of Cline’s name and information from the Indiana Sex Offender Registry (“the Registry”). Cline appeals and presents the sole issue of whether the trial court has authority to expunge Cline’s information from the Registry. We affirm.

Facts and Procedural History

Then twenty-year-old Cline engaged in sexual intercourse with a fifteen-year-old in February of 2001 and with a fourteen-year-old on June 4, 2001. On May 31, 2002, Cline pled guilty to two counts of Sexual Misconduct with a Minor, as Class C felonies.¹ He was sentenced to six years imprisonment, with two years suspended.

The Indiana Sex Offender Act (originally enacted in 1994) (“the Act”), was amended, effective July 1, 2001 such that one convicted of the crime of Sexual Misconduct with a Minor, as a Class C felony, was required to register as a sex offender. Although Cline’s crimes predated the statutory change, he was required upon release from incarceration to register accordingly.

On July 26, 2011, Cline filed his “Amended Petition to Remove Petitioner From Sex Offender Registration Requirement.” (App. 20.) A hearing was conducted on July 27, 2011. On October 24, 2011, the trial court issued an order with specific findings. The trial court found that Cline had no obligation to continue to register as a sex offender, because

¹ Ind. Code § 35-42-4-9(a).

application of the statutory change would constitute ex post facto punishment as to him. However, the trial court also found that it lacked authority to expunge Cline's existing information from the Registry. This appeal ensued.

Discussion and Decision

I. Standard of Review

Cline petitioned for relief pursuant to the provision of the Act allowing a sex offender to petition to remove the designation or register under less restrictive conditions. Ind. Code § 11-8-8-22. Generally, a trial court's ruling on a petition for relief filed under subsection 22 is reviewed for an abuse of discretion. Lucas v. McDonald, 954 N.E.2d 996, 998 (Ind. Ct. App. 2011). Here, however, the issue presented is one of law.

The interpretation of a statute is a legal question that is reviewable de novo. Avemco Ins. Co. v. State ex rel. McCarty, 812 N.E.2d 108, 115 (Ind. Ct. App. 2004). We owe no deference to a trial court's determination. Bowling v. State, 960 N.E.2d 837, 841 (Ind. Ct. App. 2012). The goal of statutory construction is to determine and implement legislative intent. Fort Wayne Patrolmen's Benev. Ass'n v. Fort Wayne, 903 N.E.2d 493, 497 (Ind. Ct. App. 2009), trans. denied. We read all sections of an act and strive to give effect to all provisions. Id. "We will not read into a statute that which is not the manifest intent of the legislature. For this reason, it is as important to recognize not only what a statute says, but also what a statute does not say." Cox v. Cantrell, 866 N.E.2d 798, 809 (Ind. Ct. App. 2007) (citation and quotation marks omitted), trans. denied.

II. Analysis

Indiana law requires persons convicted of sex or violent crimes to report to and register with local law enforcement. Ind. Code § 11-8-8-14. Sex offenders must fulfill obligations including providing personal information, registering annually,² being photographed, and keeping law enforcement authority apprised of any changes in work or residence. See id. Sex offender registry information appears on an Internet website jointly established and maintained by Indiana sheriffs. Ind. Code § 36-2-13-5.5.

However, effects of the Act have been declared in violation of the ex post facto clause contained in the Indiana Constitution,³ as applied to persons who had committed their crimes prior to the imposition of any registration requirement. See Wallace v. State, 905 N.E.2d 371, 384 (Ind. 2009) (defendant's conviction for failing to register as a sex offender was reversed because the registration statute, as applied to him, added punishment beyond that which could have been imposed when he committed his crime), reh'g denied; see also State v. Pollard, 908 N.E.2d 1145, 1154 (Ind. 2009) (trial court properly dismissed charge that Pollard violated the residency restriction provision of the Sex Offender Registration Act when he had served his sentence before the Act was enacted and application to him would add punishment beyond that possible when his crime was committed).⁴

² Sexually violent predators must register every 90 days. Ind. Code § 11-8-8-14(b).

³ Article I, section 24 of the Indiana Constitution provides that "[n]o ex post facto law ... shall ever be passed."

⁴ However, on the same day that it handed down Wallace, our supreme court handed down Jensen v. State, 905 N.E.2d 384, 394 (Ind. 2009), a plurality decision supporting the proposition that portions of the Act requiring lifetime registration may be applied retroactively if the offender was already required to register at the time of his offense. Jensen, who had pled guilty to child molesting while the registration statute included a ten-year reporting requirement, and was subsequently adjudicated a sexually violent predator and ordered to register for life, did not demonstrate a violation of the ex post facto clause. Id. See also Lemmon v. Harris, 949 N.E.2d 803 (Ind. 2011) (applying Jensen and concluding that a sexual violent predator designation with lifetime

Subsequent to the Wallace decision, our Legislature amended the Act such that it includes a provision allowing a sex offender to petition for removal of the designation, providing in relevant part:

- (c) A person to whom this section applies may petition a court to:
 - (1) remove the person's designation as an offender; or
 - (2) require the person to register under less restrictive conditions.
- (d) A petition under this section shall be filed in the circuit or superior court of the county in which the offender resides

.....

- (g) A court may grant a petition under this section if, following a hearing, the court makes the following findings:
 - (1) The law requiring the petitioner to register as an offender has changed since the date on which the petitioner was initially required to register.
 - (2) If the petitioner who was required to register as an offender before the change in law engaged in the same conduct after the change in law occurred, the petitioner would:
 - (A) not be required to register as an offender; or
 - (B) be required to register as an offender, but under less restrictive conditions.
 - (3) If the petitioner seeks relief under this section because a change in law makes a previously unavailable defense available to the petitioner, that the petitioner has proved the defense.

Ind. Code § 11-8-8-22(c)-(d),(g). Cline contends that the foregoing is a statutory codification of Wallace, and must be interpreted so as to not only relieve him of future obligations but also to provide for removal of his name and existing information from the Registry. According to Cline, complete expungement is required to avoid ex post facto punishment because retention of identifying information (even without a duty to provide updates) has a punitive effect upon him akin to the ex post facto punishment discussed in Wallace. He thus argues that, not only should he not have to register in the future, he should be placed in a

registration requirements did not violate the ex post facto clause).

position as if he had never reported his personal information.

In Wallace, our supreme court recognized that the Act imposes “significant affirmative obligations and a severe stigma on every person to whom it applies” and “exposes registrants to profound humiliation and community-wide ostracism.” 905 N.E.2d at 379-80. Mindful of such onerous effects, the Court highlighted a deficiency of the Act as it then existed, observing:

In this jurisdiction the Act makes information on all sex offenders available to the general public without restriction and without regard to whether the individual poses any particular future risk. Indeed we think it significant for this excessiveness inquiry that the Act provides no mechanism by which a registered sex offender can petition the court for relief from the obligation of continued registration and disclosure. Offenders cannot shorten their registration or notification period, even on the clearest proof of rehabilitation.

Wallace, 905 N.E.2d at 384. Effectively, our supreme court invited the Legislature to provide a “mechanism by which a registered sex offender can petition the court for relief from the obligation of continued registration and disclosure” or for shortening the time of obligation. Id. (emphasis added.) The Legislature responded by enacting a mechanism for relief from registration obligations and for shortening of the period of obligation. Notably, the Wallace Court did not address expungement; nor did the legislative response specifically do so.

Although Cline claims he will have to endure the stigma associated with registration even if he does not register in the future, the fact that Cline committed sex crimes is a matter of public record. We do not read the Wallace decision as broadly as does Cline; it does not insulate an offender from all punitive consequences associated with having committed his

crimes.⁵ Furthermore, the statutory provision under which Cline sought relief does not include an expungement provision.⁶ We will not add such a provision. See Cox, 866 N.E.2d at 809 (observing that we will not read into a statute that which is not the manifest intent of the legislature).

Nonetheless, a panel of this Court has very recently observed: “The undisputed facts here establish that the DOC [the Indiana Department of Correction] determines whether an incarcerated individual belongs on the Registry and also handles complaints about mistaken sex offender registrations.” Myers v. Coats, 966 N.E.2d 652, 658 (Ind. Ct. App. 2012) (emphasis added). We further observed that the DOC had added an administrative appeal to allow for challenges to errors on the Registry. Id. at 4, n.4. Cline is not precluded from this avenue, although we express no opinion on the breadth of relief to be afforded, if any.

Cline has not demonstrated his entitlement to expungement as a judicial remedy; the trial court did not misapply the law. Accordingly, we affirm the trial court.

Affirmed.

⁵ We acknowledge that, in Brogan v. State, 925 N.E.2d 1285, 1289 (Ind. Ct. App. 2010), a panel of this Court stated that Indiana Code Section 11-8-8-22, as revised in 2010, “provides for a petition by a sex offender to have his name removed from the designation as a sex offender so as to relieve him from the duty to register as a sex offender.” In determining whether Brogan’s motion for removal from the Registry was a cognizable vehicle for his ex post facto argument, the Court appeared to equate “removal of the person’s name from any sexual offender registry” with “relie[f] from the obligation to register.” Id. at 1289-90. In holding that Noble County was not the appropriate forum in which to obtain judicial relief directing removal of Brogan’s name, the Court observed: “One thing is patently clear from the Wallace decision. Brogan is entitled to have his name removed from any sex offender registry which has resulted from his 1994 convictions in Noble County.” Id. at 1291. See also Clampitt v. State, 932 N.E.2d 1256, 1258 (Ind. Ct. App. 2010) (directing the trial court to consider an amended petition “to remove [Clampitt]’s name from Indiana’s sex offender registry”).

⁶ The general expungement statute, Indiana Code § 35-38-5-1, affords relief only when there has been no charge following an arrest or where a charge is dismissed because of mistaken identity, no offense was in fact committed, or there is an absence of probable cause.

MATHIAS, J., concurs.

ROBB, C.J., dissents with opinion.

IN THE
COURT OF APPEALS OF INDIANA

JEREMIAH CLINE,)	
)	
Appellant-Petitioner,)	
)	
vs.)	No. 06A05-1111-MI-611
)	
STATE OF INDIANA,)	
)	
Appellee-Respondent.)	

ROBB, Chief Judge, dissenting

I respectfully dissent. I begin to explain why by briefly describing the factual and legal context. Upon Cline's release from incarceration, a state office required Cline to add his name and information to the sex offender registry. He later took the initiative to request the court remove⁷ his name and information, alleging it was unlawful to require him to have registered at all. Following a hearing, the trial court agreed with Cline that authorities

⁷ The majority and the trial court refer to Cline's request as one of expungement. While his request for removal of his name and information from the registry does constitute "expungement" in some form, expungement is a term of art which refers to complete removal of an arrest from one's criminal history retained by a local, regional, or state entity, see Ind. Code § 35-38-5-3, and limited access to one's criminal history upon the passage of fifteen years since the date of discharge from probation, imprisonment, or parole, see Ind. Code 35-38-5-5. Expungement is similar to what Cline requests regarding the sex offender registry, but the distinction is significant enough and the similarity is potentially confusing enough that I believe it important to use different nomenclature in discussing Cline's case. I refer to Cline's request as one to remove his name and information from the sex offender registry, and conclude his petition does not seek expungement of his arrest or conviction from his criminal record.

violated the Indiana Constitution by requiring he add his name and information to the registry in the first place. I agree, and the majority appears to as well.

The majority further concludes, though, that trial courts have no authority to correct this admitted constitutional violation by ordering the removal of an erroneous-registrant's name and information from the registry. It is this latter conclusion from which I respectfully dissent.

Before going further, it is important to note what this case is not about. It is not about determining whether the registry requirement is an ex post facto law as applied to Cline. It is not about removing one's name and information from the registry due to a change in the law that eliminates an offense for which one must register. For instance, it is not about one who initially registered pursuant to a statute requiring registry for a conviction of sexual misconduct with a minor and later seeks removal upon a statutory change so that one later convicted of that offense is not required to register. This case is also not about removal of one's name and information from the registry or termination of the duty to register upon the passage of a period of time since he or she began registering. See Ind. Code § 11-8-8-19(a). Finally, this case is not about expungement of a conviction from one's criminal history or record.

This is a case about whether a person who should not have had to but was erroneously required to add his name and information to the registry in the first place is entitled to relief in the form of having his name and information removed. The backdrop is Wallace, in which our supreme court held that the sex offender registration act was unconstitutional as applied

to one who committed his offense before the act was enacted. See 905 N.E.2d at 384. Specifically, the court held that it “violates the prohibition on ex post facto laws contained in the Indiana Constitution because it imposes burdens that have the effect of adding punishment beyond that which could have been imposed when his crime was committed.” Id. The General Assembly responded by amending Indiana Code section 11-8-8-22 to address the supreme court’s ex post facto concern.

Thus, this case is also about interpreting and applying section 11-8-8-22. This section is poorly written and confusing. Nevertheless, a logical reading of the following subsections of section 11-8-8-22 determines the fate of Cline’s petition.⁸

(b) Subsection (g) applies to an offender required to register under this chapter if, due to a change in federal or state law after June 30, 2007, an individual who engaged in the same conduct as the offender:

- (1) would not be required to register under this chapter; or
- (2) would be required to register under this chapter but under less restrictive conditions than the offender is required to meet.

(c) A person to whom this section applies may petition a court to:

- (1) remove the person’s designation as an offender; . . .

(g) A court may grant a petition under this section if, following a hearing, the court makes the following findings:

- (1) The law requiring the petitioner to register as an offender has changed since the date on which the petitioner was initially required to register.
- (2) If the petitioner who was required to register as an offender before the change in law engaged in the same conduct after the change in law occurred, the petitioner would:
 - (A) not be required to register as an offender; or
 - (B) be required to register as an offender, but under less restrictive conditions.

⁸ As to the principles governing our court’s interpretation of a statute, I agree with the majority’s references to and reading of Avemco, Bowling, Fort Wayne Patrolmen’s Benev. Ass’n, and Cox. See Slip Op. at 3.

(3) If the petitioner seeks relief under this section because a change in law makes a previously unavailable defense available to the petitioner, that the petitioner has proved the defense.

The court has the discretion to deny a petition under this section, even if the court makes the findings under this subsection.

Ind. Code § 11-8-8-22.

Subsection (c) states that the relief Cline seeks is available so long as the section applies to Cline. Subsection (b) states that a court may grant a petition to remove one's designation as an offender, referring to subsection (g), if "a change in federal or state law" after a certain date resulted in particular consequences for others. Subsection (g) also describes a court's authority regarding the registry when particular changes in the law occur.

The only way the repeated references to a "change in law" in section 11-8-8-22 make sense is if the section addresses the supreme court's concern that some applications of the registry laws lead to violations of the Indiana Constitution's ex post facto clause. If the statute – particularly subsection (c) – does not mean that a court may remove an offender's name and information from the registry, then it has no meaning at all. "The goal of statutory construction is to determine, give effect to, and implement the intent of the General Assembly." Sanders v. Bd. of Comm'rs of Brown Cnty., 892 N.E.2d 1249, 1252 (Ind. Ct. App. 2008), trans. denied. "[I]n seeking to give effect to the legislature's intent, we . . . strive to give effect to all of the provisions so that no part is held meaningless if it can be reconciled with the rest of the statute. We presume that our legislature intended for its language to be applied in a logical manner consistent with the statute's underlying policy and goals." Fort Wayne Patrolmen's Benev. Ass'n, 903 N.E.2d at 497-98 (citations omitted).

Further, to the extent it is clear that section 11-8-8-22 is intended to address the Indiana Constitution's prohibition of ex post facto laws, the authority to remove an offender's name and information from the registry must rest with someone. Subsection (c) states that the authority rests with the trial court. The majority suggests Cline take up his cause with the Department of Correction. I believe the trial court is the appropriate authority, first because it is explicitly designated as such in subsection (c), and second because Cline's allegation that his listing violates the Indiana Constitution is one which trial courts have the authority and legal training to address.

The majority also supports its decision, in part, by contending that removal of Cline's name and information from the registry would be pointless because Cline's convictions would remain part of the public record even if he receives the relief he seeks. This implies that the registry is not harmful or punitive, and perhaps is merely a replica of the already-public criminal history of offenders. Our supreme court concluded that the registry is punitive for its relative excessiveness, especially, as the majority points out, because as formulated at the time of Wallace, there was "no mechanism by which a registered sex offender can petition the court for relief from the obligation of continued registration and disclosure." Slip Op. at 6 (quoting Wallace, 905 N.E.2d at 384). As the majority notes, section 11-8-8-22 might have partially or fully addressed this concern.

Regardless, the supreme court concluded the registry is punitive for other reasons too: because it "impose[s] substantial disabilities on registrants," Wallace, 905 N.E.2d at 380, "resembles the punishment of shaming," is "comparable to conditions of supervised

probation or parole,” id. at 381, and it “promote[s] community condemnation of the offender,” id. at 382 (quotation omitted). Therefore, it is incorrect to suggest that removal of Cline’s name from the registry would be pointless. To the extent the majority construes Cline’s request as one to eliminate all punitive consequences associated with having committed his offenses, I believe that to be a different issue.

For these reasons, I respectfully dissent.

Exhibit F: Potential amendment to
sex and violent system draft offered
by Larry Landis

POTENTIAL AMENDMENT TO SEX AND VIOLENT OFFENDER REGISTRATION SYSTEM DRAFT
10/17/12 Criminal Law & Sentencing Policy Study Committee

1. Removes the requirement that the department maintain the names of persons no longer required to register on the Sex and Violent Offender Registry
2. Allows a person who is no longer required to register due to a change in state or federal law to petition the court to remove the person from the registry.

IC 11-8-2-13

Operation of the Indiana sex and violent offender registry

Sec. 13. (a) The Indiana sex and violent offender registry established under IC 36-2-13-5.5 and maintained by the department under section 12.4 of this chapter must include the names of each offender who is ~~or has been~~ required to register under IC 11-8-8.

(b) The department shall do the following:

(1) Ensure that the Indiana sex and violent offender registry is updated at least once per day with information provided by a local law enforcement authority (as defined in IC 11-8-8-2).

(2) Publish the Indiana sex and violent offender registry on the Internet through the computer gateway administered by the office of technology established by IC 4-13.1-2-1, and ensure that the Indiana sex and violent offender registry displays the following or similar words:

"Based on information submitted to law enforcement, a person whose name appears in this registry has been convicted of a sex or violent offense or has been adjudicated a delinquent child for an act that would be a sex or violent offense if committed by an adult."

As added by P.L.140-2006, SEC.11 and P.L.173-2006, SEC.11. Amended by P.L.216-2007, SEC.9.

IC 11-8-8-22

Procedure for retroactive application of ameliorative statutes

Sec. 22. (a) As used in this section, "offender" means a sex offender (as defined in section 4.5 of this chapter) and a sex or violent offender (as defined in section 5 of this chapter).

(b) Subsection (g) applies to an offender required to register under this chapter if, due to a change in federal or state law after June 30, 2007, an individual who engaged in the same conduct as the offender:

(1) would not be required to register under this chapter; or

(2) would be required to register under this chapter but under less restrictive conditions than the offender is required to meet.

(c) A person to whom this section applies may petition a court to:

(1) remove the person's designation as an offender **and remove all information regarding the person from the registry**; or

(2) require the person to register under less restrictive conditions; or.

(d) A petition under this section shall be filed in the circuit or superior court of the county in which the offender resides. If the offender resides in more than one (1) county, the petition shall be filed in the circuit or superior court of the county in which the offender resides the greatest time. If the offender does not reside in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is employed the greatest time. If the offender does not reside or work in Indiana, but is a student in Indiana, the petition shall be filed in the circuit or superior court of the county where the offender is a student. If the offender is not a student in Indiana and does not reside or work in Indiana, the petition shall be filed in the county where the offender was most recently convicted of a crime listed

in section 5 of this chapter.

(e) After receiving a petition under this section, the court may:

- (1) summarily dismiss the petition; or
- (2) give notice to:
 - (A) the department;
 - (B) the attorney general;
 - (C) the prosecuting attorney of:
 - (i) the county where the petition was filed;
 - (ii) the county where offender was most recently convicted of an offense listed in section 5 of this chapter; and
 - (iii) the county where the offender resides; and
 - (D) the sheriff of the county where the offender resides;

and set the matter for hearing. The date set for a hearing must not be less than sixty (60) days after the court gives notice under this subsection.

(f) If a court sets a matter for a hearing under this section, the prosecuting attorney of the county in which the action is pending shall appear and respond, unless the prosecuting attorney requests the attorney general to appear and respond and the attorney general agrees to represent the interests of the state in the matter. If the attorney general agrees to appear, the attorney general shall give notice to:

- (A) the prosecuting attorney; and
- (B) the court.

(g) A court may grant a petition under this section if, following a hearing, the court makes the following findings:

(1) The law requiring the petitioner to register as an offender has changed since the date on which the petitioner was initially required to register.

(2) If the petitioner who was required to register as an offender before the change in law engaged in the same conduct after the change in law occurred, the petitioner would:

- (A) not be required to register as an offender; or
- (B) be required to register as an offender, but under less restrictive conditions.

(3) If the petitioner seeks relief under this section because a change in law makes a previously unavailable defense available to the petitioner, that the petitioner has proved the defense.

The court has the discretion to deny a petition under this section, even if the court makes the findings under this subsection.

(h) The petitioner has the burden of proof in a hearing under this section.

(i) If the court grants a petition under this section, the court shall notify:

- (1) the victim of the offense, if applicable;
- (2) the department of correction; and
- (3) the local law enforcement authority of every county in which the petitioner is currently required to register.

(j) An offender may base a petition filed under this section on a claim that the application or registration requirements constitute ex post facto punishment.

(k) A petition filed under this section must:

- (1) be submitted under the penalties of perjury;
- (2) list each of the offender's criminal convictions and state for each conviction:
 - (A) the date of the judgment of conviction;
 - (B) the court that entered the judgment of conviction;
 - (C) the crime that the offender pled guilty to or was convicted of; and
 - (D) whether the offender was convicted of the crime in a trial or pled guilty to the criminal

charges; and

(3) list each jurisdiction in which the offender is required to register as a sex offender or a violent offender.

(l) The attorney general may initiate an appeal from any order granting an offender relief under this section.

As added by P.L. 216-2007, SEC. 30. Amended by P.L. 103-2010, SEC. 2.