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TO: Senate Judiciary Committee  
FROM: Christopher M. Joseph  
DATE: March 5, 2012  
RE: Support for an AMENDMENT to HB 2568

Good afternoon Chairman and members of the Committee, my name is Chris Joseph and I am a criminal defense attorney. I am submitting this testimony in support of a proposed amendment to HB 2568.

I have seen a number of young clients who made mistakes when they were between the ages of 18 and 26, serve short sentences of probation or prison, and under current law are required to be on the offender registry for the remainder of their lives. Sex offender evaluations have indicated that these young men pose a low-risk for re-offending. This includes low LSIR scores. Psychological evaluations performed on most of them concluded that their conduct was primarily driven by immaturity and impairment by alcohol.

These young people have little hope for a normal life. They will spend more than 50 years with the stigma of being a registered sex offender. Jobs will be hard to find and healthy relationships will be virtually impossible to find. They will be forever ostracized from society because of a mistake committed while they were still growing up.

Ironically, lifetime registration has virtually no impact on truly dangerous clients. I have represented a handful of clients who are fixated pedophiles and a danger to society. They are generally older men. Sentences handed down to these clients have been "life" sentences. They will likely die in prison and lifetime registration is meaningless to them. That is the true irony of the lifetime registration requirement – it principally impacts those who are of little or no risk to society.

If young people fail to comply with the registration requirements at any point during their entire life, they are subject to prosecution for a strict-liability felony. If the person is also on lifetime postrelease supervision (and he likely is), the felony failure to register mandates that he return to prison for the rest of his natural life (the commission of a felony by someone on lifetime postrelease supervision mandates a return to prison for life).

Young low-risk people who have been convicted for mistakes made in their youth need hope. Without hope, they will live a pitiful life, ostracized by their peers, with few economic opportunity, and may resort to other crimes in order to survive. The proposed

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amendment gives them hope to one day be removed from the registry. Without that hope, the registry is doing enormous harm and very little good.

The proposed safety-valve allows a registrant to seek release from the requirements after 10 years of registration. It puts the burden on the registrant to prove by clear and convincing evidence that registration is no longer necessary to protect the public.

Many states have provisions allowing early termination of the requirement to register. Attached to my testimony is a summary of the safety-valve provisions in other states. Kansas appears to be uniquely harsh by not having a mechanism for early discharge. With respect to "safety valve" statutes allowing removal from the registry, note that SMART has determined all of the states listed have been deemed SORNA compliant. "Substantial compliance" with SORNA should not be put into jeopardy by this amendment.

### Safety-valve for lifetime postrelease supervision

The same young people who get lifetime registration often get lifetime postrelease supervision (parole). That is simply excessive. Under current law, an 18-year old who solicits a make-out session with a 13 year old gets both lifetime registration and lifetime postrelease supervision. Lifetime postrelease is even harsher than lifetime registration.

I was shocked to learn that if one of my 20-something clients commit a new misdemeanor ever in his life, the consequence is return to prison for "up to life." See K.S.A. § 75-5217. If he commits any felony, the consequence is that he must go back to prison for the rest of his natural life. *Id.* ("If the violation results from a conviction for a new felony, upon revocation, the inmate shall serve the entire remaining balance of the period of postrelease supervision even if the new conviction did not result in the imposition of a new term of imprisonment."). I underscore any felony. Felonies that would trigger the client being sent back to prison for life include the following:

gamecock fighting, dog fighting, solicitation of aggravated interference with parental custody, aiding a person charged with a felony, altering a legislative document, soliciting assisted suicide, use of a fictitious name on an ID application, removal of a vehicle VIN, bigamy, attempted vehicle burglary, felony DUI, capturing or killing certain animals with a value of \$1,000 or more, unauthorized attempt to destroy or modify a computer network, contributing to a child's misconduct, counterfeiting, criminal damage to property over \$1,000, criminal threat, knowing use of a revoked or canceled financial card in a transaction valued at over \$1,000, attempted possession of a device to silence a firearm, manufacturing a false identification document, dealing in gambling devices, defacing identification marks on a firearm, possession of user drug paraphernalia within 1,000 feet

of a school, delivering a non-controlled substance to a person under 18 with the expressed representation that the substance is a controlled substance, transportation of less than \$5,000 in drug proceeds, distributing a simulated controlled substance, use of a communication facility in an attempt to purchase drugs, possession of marijuana (a second offense), false impersonation of a voter, attempt to commit any number of election crimes, making a false claim in connection with obtaining unemployment benefits, attempting to cheat in connection with the lottery, exposing another to a communicable disease by sharing a hypodermic needle, leaving the scene of an accident resulting in great bodily harm or death, failure to report an accident resulting in great bodily harm or death, making a false writing, forgery, obtaining a false identification document, incitement to riot, incest with an adult, various violations of the Kansas Air Quality Act, unlawful branding of livestock, misuse of public funds over \$1,000, nonsupport of a child, nonsupport of a spouse, various crimes related to adjusting odometers to reflect lower milage, various crimes related to the disposal of brine water from oil and gas wells, various crimes related to violations of oil and gas well regulations, various crimes related to racing horses, perjury, promotion of obscenity, promotion of prostitution, transportation of hazardous waste in a manner that violates rules and regulations, sports bribery, forgery of lottery tickets, sale of a lottery ticket to a person under 18 (second offense), tampering with a sports contest, tampering with electronic monitoring equipment, failure to verify the date of birth or age of the purchaser of cigarettes and tobacco products, unlicensed sale of cigarette and tobacco products, possessing marijuana without affixing the appropriate tax stamp, removal of a theft detection device, possession of a theft detection device remover, theft in any form of over \$1,000, unlawful use of a traffic control signal preemption device, taking contraband into a correctional facility, knowingly using counterfeit chips at a tribal casino, unauthorized possession of a cheating device at a tribal casino, possession of marked cards or loaded dice at a tribal casino, drawing or delivering a negotiable instrument receipt knowing it to contain a false statement, and attempt to obtain a better premium than entitled for workers compensation insurance.

Even the following misdemeanors would require the client to go back to prison for "up to life":

not having proof of insurance when driving, driving a vehicle that is not properly registered, "standing or parking" in a manner that blocks a handicapped stall or access entrance, boating without required lifesaving devices, boating without a fire extinguisher readily accessible and in good order, operating a boat without adequate lights at night, operating a boat towing a person on skis during prohibited hours, possessing a boat with inadequate toilet facilities, interference with a census worker, commercial

fossil hunting without a landowner's permission, common nuisance, computer password disclosure, purchasing "items of junk" without receiving information of ownership from seller, trespass, owning dangerous animals, permitting your dog to be at large, disorderly conduct, allowing another person to use your drivers license, eavesdropping, failure to comply with a parks and wildlife citation, failure to show a complete chain of title, violations of fire prevention code, gambling, illegal bingo operation, removal of a beer keg ID number, excessive motorboat noise or exhaust, violating posted rules in parks/museums/lakes/recreational grounds, breeding animals without a license, hazing, unlawful junkyard maintenance, failure to place a smoke detector as required by the Smoke Detector Act, smoking in a non-designated area of a public place, failure to post smoking prohibited signs and designated smoking area signs, tampering with a traffic signal, trespassing on railroad property, trespassing on fairgrounds, failure to comply with traffic citation, pedestrian under the influence of alcohol, racing on highways, transporting an open container, refusal to comply with lawful order by officer or fireman with authority to direct traffic, transporting a dead body outside of the state without a permit, unlawful assembly, moving certain machinery from a field infested with a noxious weed without freeing the equipment of all weed seed and liter, fishing without a license, hunting without a license, failure to have license on person while hunting or fishing, violations of various hunting restrictions, and shipping wine without a permit.

Beyond making minor crimes into mandatory life in prison, there are tremendously onerous requirements of lifetime postrelease supervision for sex offenders. There are the standard 12 conditions of postrelease supervision, <http://www.doc.ks.gov/victim-services/information/conditions-of-post-release-supervision>, which include (1) regular reporting to a parole officer and restrictions on travel, (2) not consume alcohol and be subject to random testing for drugs and alcohol, (3) notify employers of the person's convictions and "status as an offender," (4) pay various fees, (5) complete and pay for any required treatment or counseling, (6) have no contact, direct or indirect, with the victim, and (7) be subject to random searches of you, your home, your car, and any "property under your control."

Sex offenders will also be subject to special conditions of supervision including: (1) completing and paying for sex offender treatment and random polygraph examinations, (2) notifying any employer about the offense of conviction and ongoing postrelease supervision ("self-employment is not an acceptable employment arrangement and shall not be approved by your assigned officer"), (3) not having contact with children under 18, including his own children, (4) not being present at schools, parks, playgrounds, fairs, circuses, carnivals, video arcades, toy stores or other areas where children congregate, (5) not traveling to another jurisdiction without the permission of his assigned officer and maintaining a mileage log, (6) not residing with, entering into a romantic relationship

with, or marrying anyone who has minor children, (7) not owning, borrowing, viewing, transporting or manufacturing any sexually explicit or erotic materials, (8) using any computer or electronic device for the purpose of viewing, copying, or transmitting sexually explicit or erotic material and being subject to search and inspection by parole services at any time, (9) not possessing items on his person or property that entice or attract children, (10) not entering any establishments where alcohol is the major source of revenue including bars, clubs, lounges, taverns, liquor stores, and topless or exotic dance clubs, and (11) driving only motor vehicles properly registered and approved by a parole officer. <http://www.doc.ks.gov/publications/Sex%20Offender%20Handbook.pdf>.

Many states have safety-valves have provisions allowing early termination of the requirement for lifetime postrelease supervision. Like with registration, Kansas appears to be uniquely harsh by not having such a provision.

Society has an obligation to give hope and an opportunity for a future to young people who made a mistake before they really grew up, and who can prove that are no longer a threat to society.

**OFFENDER REGISTRATION "SAFETY-VALVE" STATUTES  
IN OTHER STATES**

**Delaware – Deemed compliant by SMART**

*11 Del C. § 4121 (2011)*

(e)(2) Notwithstanding any provision in this section to the contrary:

a. Any sex offender designated to Risk Assessment Tier III may petition to the Superior Court for redesignation to Risk Assessment Tier II if 25 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State, has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred. Notwithstanding any provision of this section or § 4120 of this title to the contrary, any sex offender who is redesignated from Risk Assessment Tier III to Risk Assessment Tier II shall continue to comply with the registration and re-registration requirements imposed by § 4120(g) upon Tier III offenders for life. Any redesignation from Risk Assessment Tier III to Risk Assessment Tier II shall not release the offender from the requirement of lifetime registration or address verification every 90 days pursuant to § 4120(g)(1)(a) of this title and paragraph (e)(1) of this section.

b. Any sex offender designated to Risk Assessment Tier II may petition the Superior Court for redesignation to Risk Assessment Tier I if the victim was not a child under 18 years of age and 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

c. Any sex offender designated to Risk Assessment Tier I may petition the Superior Court for relief from designation as a sex offender, and from all obligations imposed pursuant to this section and § 4120 of this title, if 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and if the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

d. The Superior Court shall not grant a petition for redesignation or relief filed pursuant to this subsection unless:

1. The sex offender establishes, by a preponderance of the evidence, that the public safety no longer

requires preservation of the original designation; and

2. The Court provides the Attorney General with notice of the petition and with a reasonable period of time to be heard upon the matter.

e. When considering a petition for redesignation, the Court shall weigh all the relevant evidence which bears upon the character and propensities of the offender, and the facts and circumstances of that offender's prior offenses. The Court may in its discretion hold a hearing on the petition. If the Court grants the petition, it shall promptly notify the Sex Offender registry.

### **Louisiana - Deemed compliant by SMART**

*La. R.S. 15:544 (2011)*

D. (1) The registration period of fifteen years established in Subsection A of this Section may be reduced to a period of ten years if the offender maintains a clean record for the entire ten-year period of registration upon petition to be relieved of the sex offender registration to the court of conviction for those convicted in Louisiana, or the court of the parish of residence for those convicted under the laws of another state, or military, territorial, foreign, tribal, or federal law which have been determined to be comparable to a Louisiana offense requiring a fifteen-year registration period by the bureau pursuant to the provisions of *R.S. 15:542.1.3*. The petition shall be accompanied by a certification from the office of state police of the offender's history of registration in Louisiana.

(2) The lifetime registration period established in Paragraph (B)(2) of this Section may be reduced to a period of twenty-five years if the offender was adjudicated delinquent for the offense which requires registration and maintains a clean record for twenty-five years upon petition to be relieved of the sex offender registration to the court of adjudication for those adjudicated in Louisiana, or court of the parish of residence for those adjudicated under the laws of another state, or military, territorial, foreign, tribal, or federal law. The petition shall be accompanied by a certification from the office of state police of the offender's history of registration in Louisiana.

(3) For purposes of this Subsection, an offender maintains a "clean record" by:

- (a) Not being convicted of any offense for which imprisonment for more than one year may be imposed
- (b) Not being convicted of any sex offense;
- (c) Successfully completing any periods of supervised release, probation, or parole; and
- (d) Successfully completing an appropriate sex offender treatment program by a registered treatment as provided in *R.S. 24:936* or an appropriate sex offender treatment program certified by the Attorney General of the United States.
- (e) Complying with all sex offender registration and notification requirements in Louisiana for the prescribed period of time pursuant to the provisions of this Chapter.

(4) The following procedures shall apply to the provisions of Paragraphs (1) and (2) of this Subsection:

- (a) The district attorney shall be served with a copy of the petition and the Louisiana Department of Public Safety and Corrections, office of state police and the Department of Justice shall be given notice of the filing with a copy of the pleading.
- (b) The court shall order a contradictory hearing to determine whether the offender is entitled to be relieved of the registration and notification requirements pursuant to the provisions of Paragraphs (1) and (2) of this Subsection. The Louisiana Department of Public Safety and Corrections, office of state police and the Department of Justice shall be given notice of the hearing date.
- (c) The provisions of Paragraphs (1) and (2) of this Subsection shall not apply to any person who was convicted of more than one offense which requires registration pursuant to the provisions of this Chapter.

E. (1) Notwithstanding the provisions of Subsection A or Paragraph (B)(1) of this Section, the court, upon motion of the district attorney, and after a contradictory hearing, shall have the authority to order a person required to register and provide notification pursuant to the provisions of this Chapter to register and notify for the duration of the

lifetime of the offender upon a showing by a preponderance of the evidence that the offender poses a substantial risk of committing another offense requiring registration pursuant to this Chapter. The district attorney and the offender may enter into a plea agreement requiring the offender to register and provide notification for the duration of the lifetime of the offender without a contradictory hearing.

(2) Whenever the registration and notification period of a sex offender has been increased to lifetime pursuant to the provisions of Paragraph (1) of this Subsection, upon maintenance of a clean record for the minimum time period applicable to the offense of conviction as provided by the provisions of Subsection A or Paragraph (B)(1) of this Section, the offender may petition the court in the jurisdiction of conviction, or if convicted under the laws of another state, or military, territorial, foreign, tribal, or federal law, in the jurisdiction of the offender's residence, to be relieved of the registration and notification requirements of this Chapter. The district attorney shall be served with the petition, and the matter shall be set for contradictory hearing. Upon a finding by clear and convincing evidence that the offender has maintained a "clean record" as defined in this Section and that the offender does not pose a substantial risk of committing another offense requiring registration pursuant to this Chapter, the court may order that the offender be relieved of the obligation to register and notify pursuant to this Chapter.

### **Maryland – Deemed compliant by SMART**

*Md. Criminal Procedure Code Ann. § 11-707 (2011)*

(c) Reduction of terms. -- The term of registration for a tier I sex offender shall be reduced to 10 years if, in the 10 years following the date on which the registrant was required to register, the registrant:

- (1) is not convicted of any offense for which a term of imprisonment of more than 1 year may be imposed
- (2) is not convicted of any sex offense;
- (3) successfully completes, without revocation, any period of supervised release, parole, or probation; and (4) successfully completes an appropriate sex offender treatment program.

### **Michigan – Deemed compliant by SMART**

*MCLS § 28.728c*

(1) An individual classified as a tier I offender who meets the requirements of subsection (12) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act .

(2) An individual classified as a tier III offender who meets the requirements of subsection (13) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act .

(3) An individual classified as a tier I, tier II, or tier III offender who meets the requirements of subsection (14) or (15) may petition the court under that subsection for an order allowing him or her to discontinue registration under this act.

(4) This section is the sole means by which an individual may obtain judicial review of his or her registration requirements under this act. This subsection does not prohibit an appeal of the conviction or sentence as otherwise provided by law or court rule. A petition filed under this section shall be filed in the court in which the individual was convicted of committing the listed offense. However, if the conviction occurred in another state or country and the individual is a resident of this state, the individual may file a petition in the circuit court in the county of his or her residence for an order allowing him or her to discontinue registration under this act only. A petition shall not be filed under this section if a previous petition was filed under this section and was denied by the court after a hearing.

(5) A petition filed under this section shall be made under oath and shall contain all of the following:

- (a) The name and address of the petitioner.
- (b) A statement identifying the offense for which discontinuation from registration is being requested.
- (c) A statement of whether the individual was previously convicted of a listed offense for which registration is required under this act.



(6) An individual who knowingly makes a false statement in a petition filed under this section is guilty of perjury as proscribed under section 423 of the Michigan penal code, 1931 PA 328, MCL 750.423.

(7) A copy of the petition shall be filed with the office of the prosecuting attorney that prosecuted the case against the individual or, for a conviction that occurred in another state or country, the prosecuting attorney for the county of his or her residence, at least 30 days before a hearing is held on the petition. The prosecuting attorney may appear and participate in all proceedings regarding the petition and may seek appellate review of any decision on the petition.

(8) If the name of the victim of the offense is known by the prosecuting attorney, the prosecuting attorney shall provide the victim with written notice that a petition has been filed and shall provide the victim with a copy of the petition. The notice shall be sent by first-class mail to the victim's last known address. The petition shall include a statement of the victim's rights under subsection (10).

(9) If an individual properly files a petition with the court under this section, the court shall conduct a hearing on the petition as provided in this section.

(10) The victim has the right to attend all proceedings under this section and to make a written or oral statement to the court before any decision regarding the petition is made. A victim shall not be required to appear at any proceeding under this section against his or her will.

(11) The court shall consider all of the following in determining whether to allow the individual to discontinue registration under subsection (12) or (13) but shall not grant the petition if the court determines that the individual is a continuing threat to the public :

- (a) The individual's age and level of maturity at the time of the offense.
- (b) The victim's age and level of maturity at the time of the offense.
- (c) The nature of the offense.
- (d) The severity of the offense.
- (e) The individual's prior juvenile or criminal history.
- (f) The individual's likelihood to commit further listed offenses.
- (g) Any impact statement submitted by the victim under the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, or under this section.
- (h) Any other information considered relevant by the court.

(12) The court may grant a petition properly filed by an individual under subsection (1) if all of the following apply:

- (a) Ten or more years have elapsed since the date of his or her conviction for the listed offense or from his or her release from any period of confinement for that offense, whichever occurred last.
- (b) The petitioner has not been convicted of any felony since the date described in subdivision (a).
- (c) The petitioner has not been convicted of any listed offense since the date described in subdivision (a).
- (d) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole.
- (e) The petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole.

(13) The court may grant a petition properly filed by an individual under subsection (2) if all of the following apply:

- (a) The petitioner is required to register based on an order of disposition entered under section 18 of chapter XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.18, that is open to the general public under section 28 of chapter XIII A of the probate code of 1939, 1939 PA 288, MCL 712A.28.
- (b) Twenty-five or more years have elapsed since the date of his or her adjudication for the listed offense or from his or her release from any period of confinement for that offense, whichever occurred last.

- (c) The petitioner has not been convicted of any felony since the date described in subdivision (b).
- (d) The petitioner has not been convicted of any listed offense since the date described in subdivision (b).
- (e) The petitioner successfully completed his or her assigned periods of supervised release, probation, or parole without revocation at any time of that supervised release, probation, or parole.
- (f) The court determines that the petitioner successfully completed a sex offender treatment program certified by the United States attorney general under 42 USC 16915(b)(1), or another appropriate sex offender treatment program. The court may waive the requirements of this subdivision if successfully completing a sex offender treatment program was not a condition of the petitioner's confinement, release, probation, or parole.

(14) The court shall grant a petition properly filed by an individual under subsection (3) if the court determines that the conviction for the listed offense was the result of a consensual sexual act between the petitioner and the victim and any of the following apply:

- (a) All of the following:
  - (i) The victim was 13 years of age or older but less than 16 years of age at the time of the offense.
  - (ii) The petitioner is not more than 4 years older than the victim.
- (b) All of the following:
  - (i) The individual was convicted of a violation of section 158, 338, 338a, or 338b of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, and 750.338b.
  - (ii) The victim was 13 years of age or older but less than 16 years of age at the time of the violation.
  - (iii) The individual is not more than 4 years older than the victim.
- (c) All of the following:
  - (i) The individual was convicted of a violation of section 158, 338, 338a, 338b, or 520c(1)(i) of the Michigan penal code, 1931 PA 328, MCL 750.158, 750.338, 750.338a, 750.338b, and 750.520c.
  - (ii) The victim was 16 years of age or older at the time of the violation.
  - (iii) The victim was not under the custodial authority of the individual at the time of the violation.

(15) The court shall grant a petition properly filed by an individual under subsection (3) if either of the following applies:

- (a) Both of the following:
  - (i) The petitioner was adjudicated as a juvenile.
  - (ii) The petitioner was less than 14 years of age at the time of the offense.
- (b) The individual was registered under this act before July 1, 2011 for an offense that required registration but for which registration is not required on or after July 1, 2011.

### **Missouri – Deemed compliant by SMART**

§ 589.400 R.S.Mo. (2011)

3. The registration requirements of sections 589.400 through 589.425 are lifetime registration requirements unless:

- (1) All offenses requiring registration are reversed, vacated or set aside;
- (2) The registrant is pardoned of the offenses requiring registration;
- (3) The registrant is no longer required to register and his or her name shall be removed from the registry under the provisions of subsection 6 of this section; or
- (4) The registrant may petition the court for removal or exemption from the registry under subsection 7 or 8 of this section and the court orders the removal or exemption of such person from the registry.

4. For processing an initial sex offender registration the chief law enforcement officer of the county or city not within a county may charge the offender registering a fee of up to ten dollars.

5. For processing any change in registration required pursuant to section 589.414 the chief law enforcement official of the county or city not within a county may charge the person changing their registration a fee of five dollars for each change made after the initial registration.

6. Any person currently on the sexual offender registry for being convicted of, found guilty of, or pleading guilty or nolo contendere to committing, attempting to commit, or conspiring to commit, felonious restraint when the victim was a child and he or she was the parent or guardian of the child, nonsexual child abuse that was committed under *section 568.060*, or kidnapping when the victim was a child and he or she was the parent or guardian of the child shall be removed from the registry. However, such person shall remain on the sexual offender registry for any other offense for which he or she is required to register under *sections 589.400 to 589.425*.

7. Any person currently on the sexual offender registry for having been convicted of, found guilty of, or having pleaded guilty or nolo contendere to committing, attempting to commit, or conspiring to commit promoting prostitution in the second degree, promoting prostitution in the third degree, public display of explicit sexual material, statutory rape in the second degree, and no physical force or threat of physical force was used in the commission of the crime may file a petition in the civil division of the circuit court in the county in which the offender was convicted or found guilty of or pled guilty or nolo contendere to committing, attempting to commit, or conspiring to commit the offense or offenses for the removal of his or her name from the sexual offender registry after ten years have passed from the date he or she was required to register.

8. Effective August 28, 2009, any person on the sexual offender registry for having been convicted of, found guilty of, or having pled guilty or nolo contendere to an offense included under subsection 1 of this section may file a petition after two years have passed from the date the offender was convicted or found guilty of or pled guilty or nolo contendere to the offense or offenses in the civil division of the circuit court in the county in which the offender was convicted or found guilty of or pled guilty or nolo contendere to the offense or offenses for removal of his or her name from the registry if such person was nineteen years of age or younger and the victim was thirteen years of age or older at the time of the offense and no physical force or threat of physical force was used in the commission of the offense, unless such person meets the qualifications of this subsection, and such person was eighteen years of age or younger at the time of the offense, and is convicted or found guilty of or pleads guilty or nolo contendere to a violation of section\* 566.068, 566.090, 566.093, or 566.095, when such offense is a misdemeanor, in which case, such person may immediately file a petition to remove or exempt his or her name from the registry upon his or her conviction or finding or pleading of guilty or nolo contendere to such offense.

9.

(1) The court may grant such relief under subsection 7 or 8 of this section if such person demonstrates to the court that he or she has complied with the provisions of this section and is not a current or potential threat to public safety. The prosecuting attorney in the circuit court in which the petition is filed must be given notice, by the person seeking removal or exemption from the registry, of the petition to present evidence in opposition to the requested relief or may otherwise demonstrate the reasons why the petition should be denied. Failure of the person seeking removal or exemption from the registry to notify the prosecuting attorney of the petition shall result in an automatic denial of such person's petition. If the prosecuting attorney is notified of the petition he or she shall make reasonable efforts to notify the victim of the crime for which the person was required to register of the petition and the dates and times of any hearings or other proceedings in connection with that petition.

(2) the petition is denied, such person shall wait at least twelve months before petitioning the court again. If the court finds that the petitioner is entitled to relief, which removes or exempts such person's name from the registry, a certified copy of the written findings or order shall be forwarded by the court to the chief law enforcement official having jurisdiction over the offender and to the Missouri state highway patrol in order to have such person's name removed or exempted from the registry.

10. Any nonresident worker or nonresident student shall register for the duration of such person's employment or attendance at any school of higher education and is not entitled to relief under the provisions of subsection 9 of this section. Any registered offender from another state who has a temporary residence in this state and resides more than seven days in a twelve-month period shall register for the duration of such person's temporary residency and is not entitled to the provisions of subsection 9 of this section.

11. Any person whose name is removed or exempted from the sexual offender registry under subsection 7 or 8 of this section shall no longer be required to fulfill the registration requirements of *sections 589.400 to 589.425*, unless such

person is required to register for committing another offense after being removed from the registry.

**Nevada – Deemed compliant by SMART**

*Nev. Rev. Stat. Ann. § 179D.490 (2011)*

3. If an offender or sex offender complies with the provisions for registration:

- (a) For an interval of at least 10 consecutive years, if the offender or sex offender is a Tier I offender; or
- (b) For an interval of at least 25 consecutive years, if the offender or sex offender is a Tier III offender adjudicated delinquent for the offense which required registration as an offender or sex offender, during which the offender or sex offender is not convicted of an offense for which imprisonment for more than 1 year may be imposed, is not convicted of a sexual offense, successfully completes any periods of supervised release, probation or parole, and successfully completes a sex offender treatment program certified by the State or by the Attorney General of the United States, the offender or sex offender may file a petition to reduce the period of time during which the offender or sex offender has a duty to register with the district court in whose jurisdiction the offender or sex offender resides or, if he or she is a nonresident offender or sex offender, in whose jurisdiction the offender or sex offender is a student or worker. For the purposes of this subsection, registration begins on the date that the Central Repository or appropriate agency of another jurisdiction establishes a record of registration for the offender or sex offender or the date that the offender or sex offender is released, whichever occurs later.

4. If the offender or sex offender satisfies the requirements of subsection 3, the court shall hold a hearing on the petition at which the offender or sex offender and any other interested person may present witnesses and other evidence. If the court determines from the evidence presented at the hearing that the offender or sex offender satisfies the requirements of subsection 3, the court shall:

- (a) If the offender or sex offender is a Tier I offender, reduce the period of time during which the offender or sex offender is required to register by 5 years; and
- (b) If the offender or sex offender is a Tier III offender adjudicated delinquent for the offense which required registration as an offender or sex offender, reduce the period of time during which the offender or sex offender is required to register from the life of the offender or sex offender to that period of time for which the offender or sex offender meets the requirements of subsection 3.

**Wyoming – Deemed compliant by SMART**

*Wyo. Stat. § 7-19-304 (2011)*

(a) The duty to register under *W.S. 7-19-302* shall begin on the date of sentencing and continue for the duration of the offender's life, subject to the following:

- (i) An offender specified in *W.S. 7-19-302(g)* or adjudicated as a delinquent for offenses specified in *W.S. 7-19-302(j)*, who has been registered for at least ten (10) years, exclusive of periods of confinement and periods in which the offender was not registered as required by law, may petition the district court for the district in which the offender is registered to be relieved of the duty to continue to register if the offender has maintained a clean record as provided in subsection (d) of this section. Upon a showing that the offender has maintained a clean record as provided in subsection (d) of this section for ten (10) years, the district court may order the offender relieved of the duty to continue registration;
  - (ii) An offender specified in *W.S. 7-19-302(h)* who has been registered for at least twenty-five (25) years, exclusive of periods of confinement and periods in which the offender was not registered as required by law, may petition the district court for the district in which the offender is registered to be relieved of the duty to continue to register if the offender has maintained a clean record as provided in subsection (d) of this section. Upon a showing that the offender has maintained a clean record as provided in subsection (d) of this section for twenty-five (25) years, the district court may order the offender relieved of the duty to continue registration; and
- (A) and (B) Repealed by Laws 1999, ch. 203, § 3.

(iii) A petition filed under this subsection shall be served on the prosecuting attorney for the county in which the petition is filed. The court shall not grant a petition that was not served on the prosecuting attorney. The prosecuting attorney may file a responsive pleading within thirty (30) days after service of the petition.

(b) Repealed by Laws 1999, ch. 203, § 3.

(c) Nothing in *W.S. 7-13-302* shall be construed as operating to relieve the offender of his duty to register pursuant to *W.S. 7-19-302*. *Wyo. Stat. § 7-19-304*

(d) An offender seeking a reduction in his registration period as provided in paragraph (a)(i) or (ii) of this section shall demonstrate to the court that he has maintained a clean record by:

- (i) Having no conviction of any offense for which imprisonment for more than one (1) year may be imposed;
- (ii) Having no conviction of any sex offense;
- (iii) Successfully completing any periods of supervised release, probation and parole; and
- (iv) Successfully completing any sex offender treatment previously ordered by the trial court or by his probation or parole agent.

### **Ohio – Deemed compliant by SMART**

*ORC Ann. 2950.15 (2011)*

(A) As used in this section and *section 2950.16 of the Revised Code*, "eligible offender" means a person who is convicted of, pleads guilty to, was convicted of, or pleaded guilty to a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a tier I sex offender/child-victim offender or a child who is or was adjudicated a delinquent child for committing a sexually oriented offense or child-victim oriented offense, regardless of when the offense was committed, and is a public registry-qualified juvenile offender registrant.

(B) Pursuant to this section, an eligible offender may make a motion to the court of common pleas or, for a delinquent child, the juvenile court of the county in which the eligible offender resides requesting that the court terminate the eligible offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*. If the eligible offender is not a resident of this state, the eligible offender may make a motion to the court of common pleas of the county in which the eligible offender has registered pursuant to *section 2950.04 or 2950.041 [2950.04.1] of the Revised Code*, but if the eligible offender has registered addresses of that nature in more than one county, the eligible offender may make such a motion in the court of only one of those counties. Notwithstanding any state or local rule assigning costs and fees for filing and processing civil and criminal cases, the fee for filing the motion shall be one hundred fifty dollars. This fee shall be applied to any further processing of the motion, including, but not limited to, the costs associated with investigating the motion, notifying relevant parties, scheduling hearings, and recording and reporting the court's determination.

(C)

(1) Except as provided in division (C)(2) of this section, an eligible offender who is classified a tier I sex offender/child-victim offender may make a motion under division (B) of this section upon the expiration of ten years after the eligible offender's duty to comply with division (A)(2) or (4) of *section 2950.04* or division (A)(2) or (4) of *section 2950.041* and *sections 2950.05 and 2950.06 of the Revised Code* begins in relation to the offense for which the eligible offender is subject to those provisions.

(2) An eligible offender who is a delinquent child and is classified a public registry-qualified juvenile offender registrant may make a motion under division (B) of this section upon the expiration of twenty-five years after the eligible offender's duty to comply with division (A)(3) or (4) of *section 2950.04* and *sections 2950.05 and 2950.06 of the Revised Code* begins in relation to the offense for which the eligible offender is subject to those provisions.

(D) An eligible offender who makes a motion under division (B) of this section shall include all of the following with

the motion:

- (1) A certified copy of the judgment entry and any other documentation of the sentence or disposition given for the offense or offenses for which the eligible offender was convicted, pleaded guilty, or was adjudicated a delinquent child;
- (2) Documentation of the date of discharge from supervision or release, whichever is applicable;
- (3) Evidence that the eligible offender has completed a sex offender or child-victim offender treatment program certified by the department of rehabilitation and correction or the department of youth services pursuant to *section 2950.16 of the Revised Code*;
- (4) Evidence that the eligible offender has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for committing any subsequent sexually oriented offense, child-victim oriented offense, or other criminal offense, except for a minor misdemeanor traffic offense;
- (5) Evidence that the eligible offender has paid any financial sanctions imposed upon the offender pursuant to *section 2929.18 or 2929.28 of the Revised Code*.

(E) Upon the filing of a motion pursuant to division (B) of this section, the offender or delinquent child shall serve a copy of the motion on the prosecutor who handled the case in which the eligible offender was convicted of, pleaded guilty to, or was adjudicated a delinquent child for committing the sexually oriented offense or child-victim oriented offense. Upon the filing of the motion, the court shall set a tentative date for a hearing on the motion that is not later than one hundred eighty days from the date the motion is filed unless good cause exists to hold the hearing at a later date and shall notify the eligible offender and the prosecutor of the date, time, and place of the hearing. The court shall then forward a copy of the motion and its supporting documentation to the court's probation department or another appropriate agency to investigate the merits of the motion. The probation department or agency shall submit a written report detailing its investigation to the court within sixty days of receiving the motion and supporting documentation. Upon receipt of the written report from the probation department or other appropriate agency, the court shall forward a copy of the motion, supporting documentation, and the written report to the prosecutor.

(F)

- (1) After the prosecutor is served with a copy of the motion as described in division (E) of this section, the prosecutor shall notify the victim of any offense for which the eligible offender is requesting a termination of duties under *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*. The victim may submit a written statement to the prosecutor regarding any knowledge the victim has of the eligible offender's conduct while subject to the duties imposed by *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*.
- (2) At least seven days before the hearing date, the prosecutor may file an objection to the motion with the court and serve a copy of the objection to the motion to the eligible offender or the eligible offender's attorney.

(G) In addition to the evidence that accompanies the motion described in division (D) of this section and the written report submitted pursuant to division (E) of this section, in determining whether to grant a motion made under division (B) of this section, the court may consider any other evidence the court considers relevant, including, but not limited to, evidence of the following while the eligible offender has been subject to the duties imposed under *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*:

- (1) Whether the eligible offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege has ever been suspended;
- (2) Whether the eligible offender has maintained financial responsibility for a motor vehicle as required by *section 4509.101 [4509.10.1] of the Revised Code*;
- (3) Whether the eligible offender has satisfied any child or spousal support obligations, if applicable;
- (4) Whether the eligible offender has paid all local, state, and federal income taxes, and has timely filed all associated income tax returns, as required by local, state, or federal law;
- (5) Whether there is evidence that the eligible offender has adequately addressed sex offending or child-victim offending behaviors;
- (6) Whether the eligible offender has maintained a residence for a substantial period of time;

- (7) Whether the eligible offender has maintained employment or, if the eligible offender has not been employed while under a duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, whether the eligible offender has satisfied the offender's financial obligations through other manners of support such as disability payments, a pension, spousal or child support, or scholarships or grants;
- (8) Whether the eligible offender has adequately addressed any drug or alcohol abuse or addiction;
- (9) Letters of reference;
- (10) Documentation of the eligible offender's service to the community or to specific individuals in need.

(H)

- (1) The court, without a hearing, may issue an order denying the eligible offender's motion to terminate the eligible offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* if the court, based on the evidence submitted with the motion pursuant to division (D) of this section and the written report submitted pursuant to division (E) of this section and after considering the factors described in division (G) of this section, finds that those duties should not be terminated.
- (2) If the prosecutor does not file an objection to the eligible offender's application as provided in division (F)(2) of this section, the court, without a hearing, may issue an order that terminates the eligible offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code* if the court, based on the evidence submitted with the motion pursuant to division (D) of this section and the written report submitted pursuant to division (E) of this section and after considering the factors described in division (G) of this section, finds that those duties should be terminated.
- (3) If the court does not issue an order under division (H)(1) or (2) of this section, the court shall hold a hearing to determine whether to grant or deny the motion. At the hearing, the Rules of Civil Procedure or, if the hearing is in a juvenile court, the Rules of Juvenile Procedure apply, except to the extent that those Rules would by their nature be clearly inapplicable. At the hearing, the eligible offender has the burden of going forward with the evidence and the burden of proof by a preponderance of the evidence. If, after considering the evidence submitted with the motion pursuant to division (D) of this section, the written report submitted pursuant to division (E) of this section, and the factors described in division (G) of this section, the court finds that the eligible offender has satisfied the burden of proof, the court shall issue an order that terminates the eligible offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*. If the court finds that the eligible offender has not satisfied the burden of proof, the court shall issue an order denying the motion.
- (4)
  - (a) The court shall provide prompt notice of its order issued pursuant to division (H)(1), (2), or (3) of this section to the eligible offender or the eligible offender's attorney.
  - (b) If the court issues an order terminating the eligible offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, the court shall promptly forward a copy of the order to the bureau of criminal identification and investigation. Upon receipt of the order, the bureau shall update all records pertaining to the eligible offender to reflect the termination order. The bureau also shall notify every sheriff with whom the eligible offender has most recently registered under *section 2950.04, 2950.041 [2950.04.1], or 2950.05 of the Revised Code* of the termination order.
  - (c) If the court issues an order terminating the eligible offender's duty to comply with *sections 2950.04, 2950.041 [2950.04.1], 2950.05, and 2950.06 of the Revised Code*, the court shall promptly forward a copy of the order to any court that sentenced the offender or adjudicated the child a delinquent child for a sexually oriented offense or child-victim oriented offense that is the basis of the termination order. The court that receives this notice shall retain a copy of the order in the eligible offender's original case file.

**LIFETIME POSTRELEASE SUPERVISION  
"SAFETY-VALVE" PROVISIONS IN OTHER STATES**

**NEVADA**

*Nev. Rev. Stat. Ann. § 176.0931*

3. A person sentenced to lifetime supervision may petition the sentencing court or the State Board of Parole Commissioners for release from lifetime supervision. The sentencing court or the Board shall grant a petition for release from a special sentence of lifetime supervision if:

- (a) The person has complied with the requirements of the provisions of NRS 179D.010 to 179D.550, inclusive;
- (b) The person has not been convicted of an offense that poses a threat to the safety or well-being of others for an interval of at least 10 consecutive years after the person's last conviction or release from incarceration, whichever occurs later; and
- (c) The person is not likely to pose a threat to the safety of others, as determined by a person professionally qualified to conduct psychosexual evaluations, if released from lifetime supervision.

**IOWA**

*Iowa Code § 903B.1*

903B.1 Special sentence -- class "B" or class "C" felonies.

A person convicted of a class "C" felony or greater offense under chapter 709, or a class "C" felony under section 728.12, shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906.

906.15 Discharge from parole.

If a person has been sentenced to a special sentence under section 903B.1 or 903B.2, the person may be discharged early from the sentence in the same manner as any other person on parole. However, a person convicted of a violation of section 709.3, 709.4, or 709.8 committed on or with a child, or a person serving a sentence under section 902.12, shall not be discharged from parole until the person's term of parole equals the period of imprisonment specified in the person's sentence, less all time served in confinement.

**MASSACHUSETTS**

*ALM GL ch. 127, § 133D*

**§ 133D. Community Parole Supervision for Life; Regulations.**



(a) A person upon whom a sentence of community parole supervision for life has been imposed under section 45 of chapter 265 shall be subject to the jurisdiction of the parole board for the term of such sentence.

Except as otherwise provided in this section, a person serving such sentence of community parole supervision for life shall be subject to the provisions of law governing parole as if such person were a parolee. The parole board shall impose terms and conditions for such sentence within 30 days prior to the commencement of community parole supervision. Such terms and conditions may be revised, altered and amended by the parole board at any time.

A person under community parole supervision for life shall be under the jurisdiction, supervision and control of the parole board in the same manner as a person under parole supervision. The board is authorized to establish such conditions of community parole supervision for life, on an individual basis, as may be necessary to ensure public safety. Such conditions may include protecting the public from such person committing a sex offense or kidnapping as well as promoting the rehabilitation of such person. Such conditions shall include sex offender treatment with a recognized treatment provider in the field for as long as the board deems necessary, and compliance with the requirements of sections 178C to 178P, inclusive, of chapter 6.

A person under community parole supervision for life shall be under the jurisdiction, supervision and control of the parole board in the same manner as a person under parole supervision. The board is authorized to establish such conditions of community parole supervision for life, on an individual basis, as may be necessary to ensure public safety. Such conditions may include protecting the public from such person committing a sex offense or kidnapping as well as promoting the rehabilitation of such person. Such conditions shall include sex offender treatment with a recognized treatment provider in the field for as long as the board deems necessary, and compliance with the requirements of sections 178C to 178P, inclusive, of chapter 6.

(b) (1) Notwithstanding the board's authority to issue a certificate of termination of sentence under section 130A, after a person sentenced to community parole supervision has been on such supervision for a period of 15 years, such person may petition the board for termination of community parole supervision. Such termination may only occur by a majority vote of all the members. Upon receiving such a petition, the board shall, within 60 days, conduct a hearing before the full membership. At least 30 days prior to a hearing on the petition, the board shall cause a criminal history check to be conducted and notify in writing the victims of the crime for which the sentence was imposed, the attorney general, the district attorney in whose district the sentence was imposed, the chief of police or head of the organized police department of the municipality in which the crime was committed and the chief of police or head of the organized police department of the municipality in which the parolee resides, of the person's petition for release from supervision. Such officials and victims shall be provided the opportunity to respond to such petition. Such officials and victims may appear in person or be represented or make written recommendations to the board, but failure of any or all of such officials to appear or make recommendations shall not delay the termination procedure.

(2) Prior to the hearing, the petitioner shall be examined, personally interviewed and evaluated by a psychiatrist or licensed psychologist who is an expert in the field of sex offender treatment and who is approved by the board. The psychiatrist or psychologist shall file with the board

written reports of his examinations and diagnosis and his recommendation for the disposition of such petitioner. The petitioner's treatment while on community parole supervision shall be examined and considered by such psychiatrist or psychologist in such recommendation. Such reports shall be admissible in a hearing conducted pursuant to this section. If such petitioner refuses to be personally interviewed by such psychiatrist or psychologist, without good cause, such petitioner shall be deemed to have waived his right to a hearing on the petition and the petition shall be dismissed by the board. The cost of such examination and evaluation shall be the responsibility of the petitioner; provided, however, that the board shall establish procedures for cases of hardship or indigency.

(3) At the hearing, the board shall call such witnesses as it deems necessary, including the examining psychiatrist or psychologist, the appropriate district attorney, the attorney general, the police chief or the victims of the crime or such crime victims' family members, as the board deems necessary. The petitioner may offer such witnesses and other proof at the hearing as is relevant to the petition.

(4) The board shall terminate community parole supervision for life if the petitioner demonstrates, by clear and convincing evidence, that he has not committed a sex offense or a kidnapping since his conviction, that he is not likely to pose a threat to the safety of others and that the public interest is not served by further community parole supervision over the petitioner.

(5) If a petition for release from supervision is denied by the board, such petitioner may not file another such petition for a period of three years.

## **COLORADO**

### ***C.R.S. 18-1.3-1006. Release from incarceration - parole - conditions***

(b) If a sex offender is released on parole pursuant to this section, the sex offender's sentence to incarceration shall continue and shall not be deemed discharged until such time as the parole board may discharge the sex offender from parole pursuant to subsection (3) of this section. The period of parole for any sex offender convicted of a class 4 felony shall be an indeterminate term of at least ten years and a maximum of the remainder of the sex offender's natural life. The period of parole for any sex offender convicted of a class 2 or 3 felony shall be an indeterminate term of at least twenty years and a maximum of the remainder of the sex offender's natural life.

(3) (a) On completion of twenty years on parole for any sex offender convicted of a class 2 or 3 felony or on completion of ten years of parole for any sex offender convicted of a class 4 felony, the parole board shall schedule a hearing to determine whether the sex offender may be discharged from parole. In determining whether to discharge the sex offender from parole, the parole board shall determine whether the sex offender has successfully progressed in treatment and would not pose an undue threat to the community if allowed to live in the community without treatment or supervision. The sex offender's community parole officer and treatment provider shall make recommendations to the parole board concerning whether the sex offender has met the requirements specified in this subsection (3) such that the sex offender should be discharged from parole. The recommendations shall be based on the criteria established by the management board pursuant to section 18-1.3-1009.

(b) If the parole board does not discharge the sex offender from parole pursuant to paragraph (a) of this subsection (3), the parole board shall review such denial at least once every three years until it determines that the sex offender meets the criteria for discharge specified in paragraph (a) of this subsection (3). At each review, the sex offender's community parole officer and treatment provider shall make recommendations, based on the criteria established by the management board pursuant to section 18-1.3-1009, concerning whether the sex offender should be discharged.

(4) In determining whether to release a sex offender on parole, reduce the level of supervision, or discharge a sex offender from parole pursuant to this section, the parole board shall consider the recommendations of the department and the sex offender's community parole officer and treatment provider. If the parole board chooses not to follow the recommendations made, it shall make findings on the record in support of its decision.

## **TENNESSEE**

### ***Tenn. Code Ann. § 39-13-525***

#### **Release from community supervision.**

(a) After a person sentenced to community supervision pursuant to § 39-13-524 has been on supervision for a period of fifteen (15) years, the person may petition the sentencing court for release from community supervision.

(b) Upon receiving a petition, the court shall, at least thirty (30) days prior to a hearing on the petition, cause the office of the district attorney general responsible for prosecuting the person to be notified of the person's petition for release from supervision. Upon being notified, the district attorney general shall conduct a criminal history check on the person to determine if the person has been convicted of a criminal offense during the period of community supervision. The district attorney general shall report the results of the criminal history check to the court, together with any other comments the district attorney general may have concerning the person's petition for release. The district attorney general may also appear and testify at the hearing, in lieu of, or in addition to, submitting written comments.

(c) Between the date the petition is filed with the court and the date established by the court for a hearing on the petition, if the person is entitled to a hearing, the person shall be examined and evaluated by a psychiatrist or licensed psychologist with health service designation approved by the board. The cost of the examination and evaluation shall be the sole responsibility of the person petitioning for release from supervision. No hearing on the petition may be conducted until the person has been examined and evaluated in accordance with this subsection (c).

(d) (1) If the report of the district attorney general indicates that the petitioner has been convicted of a criminal offense while under community supervision, the court shall deny the petition without conducting a hearing.

(2) If the report of the district attorney general indicates that the petitioner has not been convicted of a criminal offense while under community supervision, the court shall conduct a hearing on

the petition. At the hearing, the court shall call such witnesses, including the examining psychiatrist or licensed psychologist with health service designation or the prosecuting district attorney general, as the court deems necessary to reach an informed and just decision on whether the petitioner should be released from community supervision. The petitioner may offer such witnesses and other proof at the hearing as is relevant to the petition.

(3) If a petition for release from supervision is denied by the court, the person may not file another such petition for a period of three (3) years.

#### **NEW HAMPSHIRE**

##### ***RSA 632-A:10-a***

V. (a) When a defendant pleads or is found guilty of aggravated felonious sexual assault under RSA 632-A:2, I(1), the judge may include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision by the department of corrections. The defendant shall comply with the conditions of lifetime supervision which are imposed by the court or the department of corrections. Violation of any terms of lifetime supervision shall be deemed contempt of court. The special sentence of lifetime supervision shall begin upon the release of the offender from incarceration, parole or probation.

(b) A person sentenced to lifetime supervision under subparagraph (a) may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(1) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(2) The person is not likely to pose a threat to the safety of others if released from supervision.

(c) Prior to granting any petition pursuant to subparagraph V(b), the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family and permit those parties to be heard on the petition. If the court denies the offender's petition, the offender may not file another application pursuant to this paragraph for 5 years from the date of the denial and shall include a risk assessment prepared at the offender's expense.

#### **NEW JERSEY**

##### ***N.J. Stat. § 2C:43-6.4***

c. A person sentenced to a term of parole supervision for life may petition the Superior Court for release from that parole supervision. The judge may grant a petition for release from a special sentence of parole supervision for life only upon proof by clear and convincing evidence that the person has not committed a crime for 15 years since the last conviction or release from incarceration, whichever is later, and that the person is not likely to pose a threat to the safety of others if released from parole supervision. Notwithstanding the provisions of section 22 of P.L.1979, c.441 (C.30:4-123.66), a person sentenced to a term of parole supervision for life may be released from that parole supervision term only by court order as provided in this subsection.

**WISCONSIN**

**Wis. Stat. § 939.615**

(2) (a) Except as provided in par. (b), if a person is convicted of a serious sex offense or found not guilty of a serious sex offense by reason of mental disease or defect, the court may, in addition to sentencing the person, placing the person on probation or, if applicable, committing the person under s. 971.17, place the person on lifetime supervision by the department if notice concerning lifetime supervision was given to the person under s. 973.125 and if the court determines that lifetime supervision of the person is necessary to protect the public.

**(6) PETITION FOR TERMINATION OF LIFETIME SUPERVISION.**

(a) Subject to par. (b), a person placed on lifetime supervision under this section may file a petition requesting that lifetime supervision be terminated. A person shall file a petition requesting termination of lifetime supervision with the court that ordered the lifetime supervision.

(b)1. A person may not file a petition requesting termination of lifetime supervision if he or she has been convicted of a crime that was committed during the period of lifetime supervision.

2. A person may not file a petition requesting termination of lifetime supervision earlier than 15 years after the date on which the period of lifetime supervision began. If a person files a petition requesting termination of lifetime supervision at any time earlier than 15 years after the date on which the period of lifetime supervision began, the court shall deny the petition without a hearing.

(c) Upon receiving a petition requesting termination of lifetime supervision, the court shall send a copy of the petition to the district attorney responsible for prosecuting the serious sex offense that was the basis for the order of lifetime supervision. Upon receiving a copy of a petition sent to him or her under this paragraph, a district attorney shall conduct a criminal history record search to determine whether the person has been convicted of a criminal offense that was committed during the period of lifetime supervision. No later than 30 days after the date on which he or she receives the copy of the petition, the district attorney shall report the results of the criminal history record search to the court and may provide a written response to the petition.

(d) After reviewing the report of the district attorney submitted under par. (c) concerning the results of a criminal history record search, the court shall do whichever of the following is applicable:

1. If the report of the district attorney indicates that the person filing the petition has been convicted of a criminal offense that was committed during the period of lifetime supervision, the court shall deny the persons petition without a hearing.

2. If the report of the district attorney indicates that the person filing the petition has not been convicted of a criminal offense that was committed during the period of lifetime supervision, the court shall order the person to be examined under par. (e), shall notify the department that it may submit a report under par. (em) and shall schedule a hearing on the petition to be conducted as provided under par. (f) (e) A person filing a petition requesting termination of lifetime supervision who is entitled to a hearing under par. (d) 2. shall be examined by a person who is

either a physician or a psychologist licensed under ch. 455 and who is approved by the court. The

physician or psychologist who conducts an examination under this paragraph shall prepare a report of his or her examination that includes his or her opinion of whether the person petitioning for termination of lifetime supervision is a danger to public. The physician or psychologist shall file the report of his or her examination with the court within 60 days after completing the examination, and the court shall provide copies of the report to the person filing the petition and the district attorney who received a copy of the persons petition under par. (c) The contents of the report shall be confidential until the physician or psychologist testifies at a hearing under par. (f) The person petitioning for termination of lifetime supervision shall pay the cost of an examination required under this paragraph.

(e) After it receives notification from the court under par. (d) 2., the department may prepare and submit to the court a report concerning a person who has filed a petition requesting termination of lifetime supervision. If the department prepares and submits a report under this paragraph, the report shall include information concerning the persons conduct while on lifetime supervision and an opinion as to whether lifetime supervision of the person is still necessary to protect the public. When a report prepared under this paragraph has been received by the court, the court shall, before the hearing under par. (f), disclose the contents of the report to the attorney for the person who filed the petition and to the district attorney. When the person who filed the petition is not represented by an attorney, the contents shall be disclosed to the person.

(f) A hearing on a petition requesting termination of lifetime supervision may not be conducted until the person filing the petition has been examined and a report of the examination has been filed as provided under par. (e) At the hearing, the court shall take evidence it considers relevant to determining whether lifetime supervision should be continued because the person who filed the petition is a danger to the public. The person who filed the petition and the district attorney who received the petition under par. (c) may offer evidence relevant to the issue of the persons dangerousness and the continued need for lifetime supervision.

(g) The court may grant a petition requesting termination of lifetime supervision if it determines after a hearing under par. (f) that lifetime supervision is no longer necessary to protect the public.

(h) If a petition requesting termination of lifetime supervision is denied after a hearing under par. (f), the person may not file a subsequent petition requesting termination of lifetime supervision until at least 3 years have elapsed since the most recent petition was denied.

(i) If the court grants a petition requesting termination of lifetime supervision and the person is registered with the department under s. 301.45, the court may also order that the person is no longer required to comply with the reporting requirements under s. 301.45 This paragraph does not apply to a person who must continue to comply with the reporting requirements for life under s. 301.45 (5) (b) or for as long as he or she is in this state under s. 301.45 (5m) (b)

## LOUISIANA

### **§ 15:561.2. Supervised release upon expiration of sentence**

A. A person convicted on or after August 15, 2006, of a sex offense as defined in *R.S. 15:541* when the victim is under the age of thirteen years shall be placed upon supervised release as

provided for by this Chapter whenever he is released from the custody of the Department of Public Safety and Corrections upon expiration of his sentence.

B. Any person placed on supervised release pursuant to the provisions of this Section shall be on supervised release for life from the date of release from incarceration. Notwithstanding any other provision of law to the contrary, any person who was placed upon supervised release pursuant to the provisions of this Section, may petition the sentencing court for a termination of the supervision.

## **RHODE ISLAND**

### **R.I. Gen. Laws § 13-8-32. Community supervision**

(e) After a person sentenced to community supervision has been under supervision for a period of fifteen (15) years or any time after the person ceases to be a resident of the state, the person may petition the board for termination of community supervision. A petition for termination which is based upon the person no longer being a resident of Rhode Island shall be accompanied by an affidavit of the person attesting to his or her non-residency and providing his or her new out of state address. A petition for termination which is based upon the completion of fifteen (15) years of community supervision may only occur by a majority vote of all the members of the community supervision board. Termination may only occur by a majority vote of all the members. Upon receiving a petition for termination, the board shall, within sixty (60) days, conduct a hearing before the full membership. At least thirty (30) days prior to a hearing on the petition, the board shall cause a criminal history check to be conducted, and notify in writing the victims of the crime for which the sentence was imposed, the attorney general, and the chief of police or head of the organized police department of the municipality in which the crime was committed, and the chief of police or head of the organized police department of the municipality in which the person resides, of the person's petition for release from community supervision. Those officials and victims shall be provided the opportunity to respond to the petition. The officials and victims may appear in person or be represented or make written recommendations to the board, but failure of any or all of the officials to appear or make recommendations shall not delay the termination procedure.

(f) If a victim is deceased at the time the termination hearing is scheduled the deceased victim may be represented by his relatives in the following order: mother, father, spouse, child, grandchild, brother or sister, niece or nephew.

(g) Prior to the hearing, the petitioner shall be examined, personally interviewed and evaluated by a psychiatrist or licensed psychologist, who is an expert in the field of sex offender treatment and approved by the board. The psychiatrist or psychologist shall file written reports with the board of his or her examinations and diagnoses, and his or her recommendation for the disposition of the person. The petitioner's treatment while on community supervision shall be examined and considered by the psychiatrist or psychologist in the recommendation. The reports shall be admissible in a hearing pursuant to this section. If the person refuses, without good cause, to be personally interviewed by the psychiatrist or psychologist, the person shall be deemed to have waived his or her right to a hearing on the petition, and the petition shall be dismissed by the board. The cost of the examination and evaluation shall be the responsibility of

the person petitioning for release from supervision; provided, that procedures shall be established for cases of hardship or indigency.

(h) At the hearing, the board shall call any witnesses that it deems necessary, including the examining psychiatrist or psychologist, the attorney general, the police chief or the victims of the crime or his or her family member, as the board deems necessary. The petitioner may offer any witnesses and other proof at the hearing that is relevant to the petition.

(i) The board shall terminate community supervision if the petitioner demonstrates, by clear and convincing evidence, that he or she has not committed a sex offense of child kidnapping since his or her conviction, that he or she is not likely to pose a threat to the safety of others, and that the public interest is not served by further community supervision.

(j) If a petition for release from supervision is denied by the board, the person may not file another petition for a period of three (3) years.

## MAINE

### **§ 1231. Inclusion of period of supervised release after imprisonment**

3. During the period of supervised release specified in the sentence made pursuant to subsections 1 and 2, and upon application of a person on supervised release or the person's probation officer, or upon its own motion, the court may, after a hearing upon notice to the probation officer and the person on supervised release, modify the requirements imposed by the court, add further requirements authorized by section 1232, or relieve the person on supervised release of any requirement imposed by the court that, in its opinion, imposes on the person an unreasonable burden.

Notwithstanding this subsection, the court may grant, ex parte, a motion brought by the probation officer to add further requirements if the requirements are immediately necessary to protect the safety of an individual or the public and if all reasonable efforts have been made to give written or oral notice to the person on supervised release. Any requirements added pursuant to an ex parte motion do not take effect until written notice of the requirements, along with written notice of the scheduled date, time and place when the court will hold a hearing on the added requirements, is given to the person on supervised release.

4. On application of the probation officer, or of the person on supervised release, or on its own motion, and if warranted by the conduct of the person, the court may terminate a period of supervised release and discharge the convicted person at any time earlier than that provided in the sentence made pursuant to subsections 1 and 2. A termination and discharge may not be ordered unless notice of the motion is given to the probation officer and the attorney for the State. A termination and discharge relieves the person on supervised release of any obligations imposed by the sentence of supervised release.



The Sex Offender Registration and Notification Act (SORNA)<sup>1</sup>, which mandates a national registry of people convicted of sex offenses and expands the type of offenses for which a person must register, applies to both adults and children. By July 2009, all states must comply with SORNA or risk losing 10 percent of the state's allocated Byrne Grant money, which states generally use to enforce drug laws and support law enforcement.

In the last two years, some states have extensively analyzed the financial costs of complying with SORNA. These states have found that implementing SORNA in their state is far more costly than the penalties for not being in compliance. JPI's analysis finds that in all 50 states, the first-year costs of implementing SORNA outweigh the cost of losing 10 percent of the state's Byrne Grant. Most of the resources available to states would be devoted to the administrative maintenance of the registry and notification, rather than targeting known serious offenders. Registries and notification have not been proven to protect communities from sexual offenses, and may even distract from more effective approaches.

Given the enormous fiscal costs of implementing SORNA, coupled with the lack of evidence that registries and notification make communities safer, states should think carefully before committing to comply with SORNA.

**Ohio determined that the cost of implementing new software to create a registry would approach a half million dollars in the first year.<sup>2</sup> The total estimated cost for complying with SORNA exceeds the Byrne funds Ohio would lose if it did not comply.**

- Installing and implementing software alone would cost \$475,000 in the first year. The software would then cost \$85,000 annually thereafter for maintenance.
- Certification of treatment programs based on new standards and providing a description of a person on the registry to the state's Bureau of Criminal Identification and Investigation would cost another \$100,000 annually.
- Ohio also lists other factors that would increase the cost of implementing SORNA, including salaries and benefits for new personnel, new court and administration costs, and costs to counties and municipalities. These costs are in addition to the \$475,000 needed for software, but have not yet been quantified by the state.
- If Ohio chose not to implement SORNA, the state would lose approximately \$622,000 annually from its Byrne funds. However, the total estimated cost of software, certification of treatment programs, salaries, and benefits for new personnel would exceed the lost Byrne funds.

**Virginia determined that the first year of compliance with the registry aspect of SORNA would cost more than \$12 million.<sup>3</sup>**

- The first year of implementing SORNA would cost the Commonwealth of Virginia \$12,497,000.
- The yearly annual cost of SORNA would be \$8,887,000. Adjusted with a 3.5 percent yearly inflation rate,<sup>4</sup> Virginia would be paying more than \$10 million by 2014.
- If Virginia chose to comply with SORNA, the state would spend \$12,097,000 more than it would if it chose not to implement SORNA and forfeit 10 percent of its yearly Byrne grant, a loss totaling approximately \$400,000.<sup>5</sup>

**As evidenced by these summaries, states can expect to incur significant costs as they attempt to comply with SORNA. States should consider all possible areas in which increased expenditures will occur.**

- New personnel
- Software, including installation and maintenance
- Additional jail and prison space
- Court and administrative costs
- Law enforcement costs
- Legislative costs related to adopting, and crafting state law

<sup>1</sup> SORNA is Title 1 of the Adam Walsh Act.

<sup>2</sup> Ohio Legislative Service Commission Fiscal Note & Local Impact Statement (Columbus, OH: Ohio Legislative Service Commission, 2007) <http://www.lsc.state.oh.us>

<sup>3</sup> Virginia Department of Planning and Budget 2008 Fiscal Impact Statement (Richmond, VA: Department of Planning and Budget, 2008).

<sup>4</sup> Oregon State University, "Yearly Inflation or Deflation Rate (CPI-U) 1915 -2005, in Percent." April 24, 2008.

<http://oregonstate.edu/cla/polisci/faculty-research/sahr/pc1915ff.htm>

<sup>5</sup> Office of Justice Programs, "JAG State Allocations," April 23, 2008. <http://www.ojp.usdoj.gov/BJA/grant/07JAGstateallocations.pdf>

Chris Joseph

**22-3717 Parole or postrelease supervision; eligibility; interviews, notices and hearings; rules and regulations; conditions of parole or postrelease supervision.**

(f) (G) Except as provided in subsection (u), persons convicted of a sexually violent crime committed on or after July 1, 2006, and who are released from prison, shall be released to a mandatory period of postrelease supervision for the duration of the person's natural life, *unless the judge finds substantial and compelling reasons to depart and impose a definite term of postrelease supervision.*

*(x) Motion for termination of lifetime postrelease supervision.*

*(1) A person sentenced to lifetime postrelease supervision may file a motion requesting that lifetime postrelease supervision be terminated. A person may file such a motion only after at least five years have passed since the person's lifetime postrelease supervision began. A motion filed by a person who is not eligible to file such a motion shall be denied without a hearing.*

*(2) The court may grant a motion requesting termination of lifetime postrelease supervision if it determines, after a hearing, that lifetime postrelease supervision is no longer necessary to protect the public. At such a hearing, the court may consider any evidence relevant to whether the person who filed the motion is a danger to the public. Except as provided in (3), the person who filed the motion has the burden to prove by clear and convincing evidence that lifetime postrelease supervision is no longer necessary to protect the public.*

*(3) If a motion requesting termination of lifetime postrelease supervision is denied after a hearing, the person may not file a subsequent motion requesting termination of lifetime postrelease supervision until at least five years have elapsed since the motion was denied.*

*(4) Persons sentenced to lifetime postrelease supervision on or before July 1, 2012, may file a motion seeking release from lifetime postrelease supervision on the grounds that substantial and compelling reasons to depart exist and that the court should impose a definite term of postrelease supervision.*

**22-4906 Time period in which required to register; termination of registration requirement.**

(a) (1) Except as provided in subsections (c) or (m), if convicted of any of the following offenses, an offender's duration of registration shall be, if confined, 15 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 15 years from the date of conviction: . . .

(b) (1) Except as provided in subsections (c) or (m), if convicted of any of the following offenses, an offender's duration of registration shall be, if confined, 25 years after the date of parole, discharge or release, whichever date is most recent, or, if not confined, 25 years from the date of conviction: . . .

(d) *Except as provided in subsection (m), the duration of registration for any offender who has been convicted of any of the following offenses shall be for such offender's lifetime: . . .*

(m) *Motion for termination of registration requirement.*

(1) *After 10 years of registration, an offender may file a motion requesting that the registration requirement be terminated. A motion filed by a person who is not eligible to file such a motion shall be denied without a hearing.*

(2) *The court may grant a motion requesting termination of registration if it determines, after a hearing, that registration is no longer necessary to protect the public. At such a hearing, the court may consider any evidence relevant to whether the person who filed the motion is a danger to the public. Except as provided in (3), the person who filed the motion has the burden to prove by clear and convincing evidence that registration is not longer necessary to protect the public.*

(3) *If a motion requesting termination of registration is denied after a hearing, the person may not file a subsequent motion requesting termination of registration until at least five years have elapsed since the motion was denied.*