

Comment in regards to below proposed SORNA DOJ RULE Changes.

**Document Citation:**

85 FR 49332

**Page:**

49332-49355 (24 pages)

**CFR:**

28 CFR 72

**Agency/Docket Numbers:**

Docket No. OAG 157  
AG Order No. 4759-2020

**RIN:**

1105-AB52

**Document Number:**

2020-1580

This my objection to the SORNA Law and DOJ Proposed Rule changes, it is from a perspective of the laws in “Local-State” where I live and am subject to STATE SOR laws.

For myself it leaves a series of ex post facto punishments, likely unconstitutional, that were not in place when I initially took a plea. As this Rule change may be.

A quick synopsis:

Since my misdemeanor plea conviction I have been on STATE SOR for over 19 years. Accusation rose during property division during a divorce. My ex did try to have the charges dropped. It has dramatically effected, in the past, my ability to provide adequate support for my children, two of my children deny my existence due to their positions as teachers (I have heard their Mother says to tell people their father died in jail), I have lost several lucrative career opportunities (costing me over 2 million dollars in lost income over the last 19 years...which would have greatly contributed to my children’s health, wellbeing and education as well as society’s through tax monies on that income and of course my own wellbeing), any position has become increasingly more difficult to obtain as ex post facto legislative changes have been put into law over the years, it is impossible to work even on a contract basis as each client must have their information entered into STATE SOR ...ever changing...sometimes daily (Employers largely do not want their

information on STATE SOR), I have been harassed out of a few jobs when viscous coworkers used my being on STATE SOR to advance their own position, I have been the victim of vigilantism on several occasion (seeming guns or large firecrackers being discharged in front of where I live...physical threats and so on), I have had to live in some housing conditions that were not conducive to health and wellbeing, Though I am thankful to have any lodging as all the apartment complexes in this city refuse to rent to anyone on the Registry, as do many landlords, I have had landlords tell me to move after they found that I was on the Registry, The Registry greatly effects travel into other states as one has to Identify one's motel or hotel (again those establishments do not want their addresses on STATE SOR, I have been harassed in recreational gatherings by individuals who are just plain vindictive... likely covering for their own shortcomings, outright simple shunning that greatly effects the stability of a Registrant makes it incredibly difficult to reintegrate into the community, housing is increasingly difficult to find as apartment houses deny individuals on The Registry, Banks have denied loans seemingly after running a Background check, The restriction on Living, Working and Loitering within a School zone is prohibitive even if one could determine where the boundaries lay as there are so many as (for example nearly the entire City and the business district and along the Main Highways seem to be zoned out as are in many other cities and towns), where can I go to Church as many have schools nearby, volunteering for Church activities or Political Activities may be impacted (Violates my First Amendment Rights) by The Registry (that greatly opens me for difficulties with the law, My health is impacted as I have had more than a few medical care givers refuse to give me care for my critical condition, I have had other medical care givers run background checks then go about telling their coworkers that I am on The Registry, as I age I note that adult communities as well as assisted living facilities along with nursing homes refuse to allow individuals on The Registry, I have been hospitalized several times with a chronic critically serious health condition where I had to insist to the doctors to release me so I would not run afoul of the 7 day address change laws. Were I to lose my small dingy apartment and become homeless it is unlikely I would last two weeks on the street due to my health.

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I think that, from my reading of the "Local-State" Registry Law, Reflective in the Federal SORNA Law, As well as the DOJ Rule herein under discussion, is a very

poor proposed Rule I that does not address the many onerous problems with The Registry generally. I think that this bill needs to be allowed to die in Committee. The Registry is not supposed to be a Death Sentence though it is seemingly a slow death sentence. Deliberately so?

Discussions between the ACLU --- and State Agencies were fruitful to establishing a more reasonable STATE SOR Law. I believe these discussions need be allowed to continue to a reasoned Law both in "Local-State" and for the Federal SORNA Law DOJ Rule Changes.

As mentioned above, for myself, and others, it leaves a series of 'ex post facto' punishments, likely unconstitutional, that were not in place when I initially took a plea. Among others I would like to point out the following.

I respectfully offer Ladies and Gentlemen for your consideration the following:

➤Yesterday I was looking about my County with an eye to purchase an inexpensive house of my own, rather than depending on whim of a landlord...as many landlords will cut lose a registrant due to 'antipathy of a disfavored class'\*\* brought on by media myth and popular misconception that is not based at all in any scientific basis. I had found a place nearby my apartment which I then checked out online...only to find on this realtor site a listing of STATE SOR Registrants in the neighborhood, myself included. I believe this to be illegal under the STATE SOR LAW. I am not a lawyer, however please read my thinking. From the perspective of both the "Local-State" STATE SOR and Federal SORNA Law:

#### **1994 SORA First Enacted:**

- **Revealing registry information is a crime & a tort (treble damages);**

The Practice of Listing Registrants on third party sites, or linking to the STATE SOR or SORNA, to "out" Registrants ought to be put to a stop by "Local-State" State Police, or Federal Law Enforcement Agencies, notifying those 3<sup>rd</sup> party sites.

➤In these Crisis times of record unemployment there is no good reason to publicly list a registrants place or address of employment or other identifying information of the registrant's employer. Doing so makes it exceedingly difficult to find employment and thus the registrant becomes a financial drain on family and the State for support rather than being able to reintegrate fully into the community as an employed individual able to provide for their own support and that of their families. Many references from STATE DOC, and DOJ (2007), support that employed individuals are less likely to commit any crime. Why else do Probation / Parole Officers insist on employment? To that end the following ought to be removed from STATE SOR and SORNA. I have not had employment since 2011 despite seeking such.

- 1. An end to listing one's place of employment.** Employers shy away from "negative connotation". Not listing an employer's phone number for the same reason. Many Registered Citizens obtaining a job have found that a coworker background checked and Googled them and spread the word to fellow workers and anonymously to Employer (A personal experience more than once). This seemingly is an attempt to starve out Registered Citizens. Registered Citizens have the Right and the need to work to support our families and ourselves. Please reference:

- "Local-State" Constitution Article 1 Section 16; "cruel and unusual punishment"

- The Constitution of the United States "Cruel and Unusual Punishment" 8<sup>th</sup> Amendment.

- 2. Eliminate the Picture from SO Registry, generally.** Enables shunning a form of torture (8<sup>th</sup> Amendment of the US Constitution). The Registry Pictures ought to be eliminated for anyone whose conviction date was prior to that enactment, specifically. And generally as well. Those Pictures became law in 2004. Please reference:

-“Local-State” Constitution Article 1 Section 10 “No...ex post facto law ... shall be enacted”.

-“Local-State” Constitution Article 1 Section 16; “cruel and unusual punishment”

-The Constitution of the United States “Cruel and Unusual Punishment”.  
8<sup>th</sup> Amendment.

**3. The STATE SOR, SORNA, requirement that a 21 day notice be given to Law Enforcement by Registered Citizens if one is leaving the country for more than 7 days needs to be eliminated**, this effectively puts a stop to working offshore outside of US Waters, The US and Territories along with working on contract in other countries. One’s Management expects one to go to work “right now” if the employee or contractor is needed...Management will not give one leeway to wait 21 days to go to work. My medical work was as an essential person to shipboard operation. This Amendment to the STATE SOR Law, SORNA, ended for me a very nice career of working in the medical field shipboard out of the USA on ship crewed by men. (STATE SOR Amendments 2011) This apparently is used to inform Law Enforcement of whatever Country the Registrant wishes to visit or work in, ostentatiously to end “sex tourism”. There are no scientific facts or reasonable data surrounding support for this requirement only some mythical belief by individuals based upon ‘antipathy of a disfavored class’ that this goes on. Perhaps it does but likely not to any extent. And quite likely not by ex-sex offenders. All are being punished for the supposed possible prior actions, or imagined thoughts, of a few.

4 . The defendant is not required to prove that he/she is not guilty. US 397 358 (1970) Taylor v Kentucky and People v Antommarchi 80 NY 2<sup>nd</sup> 247, 252-253.

5 . “The court is to exclude **derogatory opinions...of the investigator.**” People v Allen 49 ---. App 148.

6 . “The constitutional right to a fair trial entitles the accused to have his guilt or innocence determined solely on the basis of evidence introduced at trial, **and not on grounds of official suspicion,**

**indictment, continued custody, or other circumstances not adduced as proof at trial” People V Banks 249 --- App 247 (2002). (Sixth Amendment to US Constitution)**

7 . **“The presumption of innocence is a basic component of a fair trial”... People V Banks 249 --- App 247 (2002). (Sixth Amendment to US Constitution)**

8 . **“A defendant cannot be held criminally liable for conduct to which he never plead guilty or for which he was never tried and convicted”. ...People V Hathcox Opinion of the Court 135 --- App 82**

➤Additionally I bring to your attention the possibility that the STATE SOR annual fee seemingly violates the law for many Registrants prior to 2004 and/or 2013. And perhaps for all in its entirety. Reference Please:

-“Local-State” Constitution Article 1 Section 10 “No...ex post facto law ... shall be enacted” . ,

-“Local-State” Constitution Article 1 Section 21 “No person shall be imprisoned for debt arising out of or founded on contract, express or implied, except in cases of fraud or breach of trust.”

#### **2004 Amendments:**

- **Imposed registry fee, and made it a crime not to pay the fee.**

#### **2013 Amendments:**

- **Impose annual fee.**

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One of my main concerns is the School Safety Zones and the definitions of school property that accompanies the Exclusion Zones.

- It takes in most of the City in which I live or in towns here in the County in which I live.
- I think the 1000 foot rule is arbitrary and without any basis in Scientific data.
- Would I not be able to attend Church for Worship if the church building lies near a school? Or volunteering for a Church Community meal or function?
- Would I not be allowed to attend Political Meetings or events held within an exclusion zone?
- Having to run in to the “Local-State” State Police Post to let them know that I am attending a meeting for an hour or more on an ever-changing basis and often place within an exclusion zone? It would be extremely cumbersome to the registering Agency to have to make the frequent weekly changes and I would not want to run afoul of the law.
- Would I not be able to be a Political Volunteer under the same circumstances?
- Would I not be able to attend City Political Meetings again as they might be in an exclusion zone?
- Would I not be able to go to the Court House as Students do have school functions at the Court House for a variety of reasons?
- Would I not be able to eat at a restaurant in an exclusion zone?
- Or because schools often stop by various restaurants for meals without advance notice to registrants?
- Food banks and “Food for the Disadvantaged” are often held within an exclusion zone. Would a registrant have to run to Registering Entity to tell them they were going to have dinner? Or get food because their larder and pantry is bare...and they are hungry? Due to lack of work resulting from being a Registrant.
- Can a registrant not go to the Senior Center for warmth, food, help or a meeting with friends as Students sometimes use said facility for functions or classes?
- Makes it difficult to find part time ad hoc work to help pay for life sustaining medicine, food and shelter.

- Makes it evermore so difficult to find housing, food, medical care and social activities that greatly helps re-integration into the community and it has been proven that the longer a registrant is in a community and has strong community ties the less likely a registrant is to commit any crime.
- Important to me is being able to use the Community Recreational Center Gym and Pool. I am in Stage 3 Heart Failure and Stage 2 Kidney failure. The Community gym / pool is the only facility I can use as I get my membership paid by my medical insurance company, I could afford no other. I have barely the income to pay for food, medicine, health insurance and dingy small studio apartment (though I am happy to have any place safe (many are not) to live as it is rare that a landlord will rent to a registrant. My remote landlady is a good Christian and extends the Christian helping hand to me. As long as my rent is paid timely...I digress.
- Due to the damage to my heart (over 25 years and several heart attacks) I cannot (and am medically prohibited by my Doctors) exercise outside if the weather is cold under 50F or if hot over 80 degrees Fahrenheit. Difficult in "Local-State". Either of which could cause serious and sudden heart negative heart implications...read that sudden death. Exercising outside puts me away from an AED or Help from Rec Center Staff. My Cardiologists and other Doctors have said I need to exercise about an hour a day to strengthen my heart and control my diabetes. Swimming is a good thing for me as I have joint damage in several joints. I don't want to bore you with my health difficulties, it is only to explain the why and wherefore. The Community Center would lie within an exclusion zone or at times be used for school functions. And "School Functions" is vaguely defined.

I think that the School Safety Zones ought to be stricken from any Registry Law, current or proposed.

All said the STATE SOR was not intended to be a Death Sentence but may in fact actually be. Not just for myself where death is an everyday concern. The Total Effect on other registrants (and their wives and children) where they are denied adequate clean and safe housing, regular healthy food, access to medicine (many charities deny help to registrants due to the STATE SOR, SORNA, implications) and the stigma attached that is based on media myth and not scientific data. Much of the proof of my last statement was presented to the "Local-State" House Judiciary



Committee in the May 6<sup>th</sup>, 2020 hearing by Dr. Jill Levenson and Miriam Aukerman). [Sex offenders] need to have a place to live, they need to be able to get jobs. They need to be able to support themselves and their families. And without those things, they're going to be more likely to resume a life of crime. That's not a debate, that's a fact. —Dr. Jill S. Levenson, Lynn University\*\*

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I pray that you let SORNA die in Committee and not enact the DOJ Rule changes of 10/2020 so that a reasonable and scientific based SOR can be written in conjunction with the ACLU and allies and the State of “Local-State” and US Government.

This is a very difficult entangled law to read and understand. Imbroglio, quagmire and spaghetti like only begins to describe its lack of understandability.

Additionally in the reporting of STATE SOR regarding education there exists the phrase “ but not limited to”, this is very vague and broad including cooking seminars or pretty near anything that one is trying to learn for any reason. Certainly unconstitutional in its vagueness and broad reaching possible interpretation. It ought to be stricken from any STATE SOR Law.

Other points DOJ et al may consider:

That the Smith V Alaska case is way off point as the Recidivism rate as shown even by the FBI, and DOJ (2007) are “NOT frighteningly high”. Rather about 3%. Less with having completed a therapy course. California and Connecticut Studies.

Many studies to show what should be done with Registries, not scare tactics, the fact that studies have shown that the Registry is not cutting down on sexual assaults and in fact may be raising crime rates.

*“The system is broken. It’s overwhelmed and I think the public is starting to realize that. You can’t paint sex offenders with a broad brush.” —John Walsh, father of Adam Walsh\*\**

The harm the Registry does to families is incalculable. Breaking up otherwise good stable families.

Most sex crimes are committed by a person well known to the victim yet the Registry seems to be based upon “stranger danger”.

A person who is on a registry and they are doing good and complete all terms of the Court and no other convictions there is no path off the registry.

People after 5, 10, 15 years post-conviction with no other convictions are simply not the person they were when convicted of a sex crime.

Consideration need also be given to the fact that many individuals were coerced into a plea for any of several reasons with statistics showing coerced pleas upwards to 25% of all convictions. Numerous studies indicate this conclusion.

Additionally there are FBI statistics that indicate that perhaps 4+ % of convictions fall into this category and are in fact innocent individuals.

Even people with no conviction are on Sex Offender Registry with no way off.

A lifetime on a registry is serving no useful purpose after 10 years and several studies back that up.

Placing people on the Registry for any number of years without a Risk Assessment for their chance of recidivism is not a valid way to place people on the Registry.

Keep in mind the proposed DOJ Rule that requires the reporting of any birthdate used... Many people do not use their actual birthdates when entering contests and such for the purpose of personal security. With the hacking of computer systems and cybercrime using birthdates other than one's own actual is a must. It is not used to evade the law but to provide security for one's personal information. I also think that that information need not be public on any Registry. Are Registrants to run into the registering agency each time said registrant enters a contest. That represents the potential for a huge expense to law enforcement.

Consider the money and lost Law Enforcement time spent on this program with little return value, in fact that this money used on the registry could be used for victim treatment and public education.

*“...I’m worried that we’re focusing so much energy in naming and shaming convicted sex offenders that we’re not doing as much as we should to protect our children from other real threats.” —Patty Wetterling, mother of Jacob Wetterling\*\**

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## Newly-published study from the Association for the Treatment of Sexual Abusers\*\*

Partial Summary as follows:

- **Discontinue one-size-fits all approaches** for the registration and notification of individuals convicted of sexual crimes;
- **Individualize registration and notification requirements** based upon empirically validated risk assessment tools and similar methods;
- **Develop avenues and criteria for relief from registration** which incorporates the desistance literature and recognizes the importance of treatment and supervision interventions for reducing recidivism risk, facilitating desistance and strengthening protective factors;
- **Limit public community notification practices** to the highest risk registrants, decrease broad-based dissemination of registrant information and/or re-establish law enforcement only registration practices coupled with allowing public inquiry about specific individuals;
- **Remove adjunct policies, such as residence restrictions**, from SORN laws as they do not work and are one of the primary drivers for legal challenges. Adjunct policies also undermine protective factors and create unnecessary barriers for community reintegration;
- **Recognize that a national one-size-fits all approach to SORN laws does not work** within the U.S. and allow states to make adjustments to their registries based on individual needs without incurring any financial penalty;
- **Utilize registration as part of a larger management scheme** for adults convicted of sexual crimes, with greater collaboration and focus on rehabilitative and reintegration efforts;

- **Strengthen partnerships between law enforcement** and sexual offense specific management professionals, including treatment professionals.

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Consider why is the Department of Justice is promoting a Registry that is only used by those elected to office to use as a way to get reelected by saying they are going to make the sex offender Registry even more strict, giving the elected official a chance for some news coverage at no cost to the elected official at the expense of ‘antipathy of a disfavored class’.\*\*

Please read the below Court Decisions.

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...the behavior to which it applies is already a crime, [6] whether an alternative purpose to which it may rationally be connected is assignable for it, and [7] whether it appears excessive in relation to the alternative purpose assigned.

In *Does v. Snyder*, the court accordingly found that the “Local-State” law was punitive in effect and could not be imposed retroactively. The Snyder court forcefully explained:

*A regulatory regime that severely restricts where people can live, work, and “loiter, ” that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by -at best- scant evidence that such restrictions serve the professed purpose of keeping “Local-State” communities safe, is something altogether different from and more troubling than Alaska’s first-generation registry law. SORA brands registrants as moral lepers solely on the basis of a prior conviction. It consigns them to years, if not a lifetime, of existence on the margins, not only of society, but often, as the record in this case makes painfully evident, from their own families, with whom, due to school zone restrictions, they may not even live. It directly regulates where registrants may go in their daily lives and compels them to interrupt those lives with great frequency in order to appear in person before law enforcement to report even minor changes to their information.*

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## PRESUMPTION OF INNOCENCE

The Fourteenth Amendment of the Constitution of the United States guarantees that "No State shall make or enforce any law which shall abridge the privileges or immunities of any citizen"... 'Nor deny to any person within its jurisdiction the equal protection of the law".

The fundamental principle that applies in all trials is the **presumption of innocence (US Constitution Amendment 14)**. Code of Public Law 300 10(2).

1. The defendant is not required to prove that he/she is not guilty. US 397 358 (1970) Taylor v Kentucky and People v Antommarchi 80 NY 2<sup>nd</sup> 247, 252-253.
2. The people must prove beyond a reasonable doubt every element of the crime. People V Whalen 59 NY 2<sup>nd</sup> 279 and Victor v Nebraska 511 US 1 (1994).
3. "The court is to exclude **derogatory opinions...of the investigator**." People v Allen 49 --- App 148.
4. "The constitutional right to a fair trial entitles the accused to have his guilt or innocence determined solely on the basis of evidence introduced at trial, **and not on grounds of official suspicion, indictment, continued custody, or other circumstances not adduced as proof at trial**" People V Banks 249 --- App 247 (2002). (Sixth Amendment to US Constitution)
5. "The **presumption of innocence is a basic component of a fair trial**"... People V Banks 249 --- App 247 (2002). (Sixth Amendment to US Constitution)
6. "**A defendant cannot be held criminally liable for conduct to which he never plead guilty or for which he was never tried and convicted**". ...People V Hathcox Opinion of the Court 135 --- App 82

Please Consider:

Registered sex offenders have the lowest recidivism rates when compared to assault, DUI, robbery, theft, drug offenses, battery, and domestic violence. The

only crime with a lower recidivism rate is murder.” —Bureau of Justice Statistics, 2006\*\*

95% of new sex offenses are committed by someone NOT on a sex offender registry. —Bureau of Justice Statistics, 2006\*\*

*Research shows the best way to [change antisocial behavior] is to normalize life. Offender websites and community notification, coupled with requirements to report their every move to the police, do the opposite. You ban somebody from the community, he has no friends, he feels bad about himself, and you reinforce the very problems that contribute to the sex abuse behavior in the first place. You make him a better sex offender.” —Eric Lotke, former research and policy director of the Justice Policy Institute\*\**

Do sex offenders really pose the greatest danger to our children? Isn't it time lawmakers consider the statistics and listen to the experts? \*\*

In closing I ask that the DOJ Rule Changes the subject of this missive, STATE SOR, SORNA law be stricken as unconstitutional and thus allow Registrants to fully reintegrate into society without the media Myths and fear mongering based upon 'antipathy of a disfavored class' imposed after an individual has served his or her Court Ordered Sentence.

Sincerely,

T. Mercier

#### References:

\*\*Sex Offender Solutions & Education Network PO Box 235, Dixon, IL 61021 (800) 773-4319  
[www.sosen.org](http://www.sosen.org)

\*\*Levenson, J. (2016) Hidden Challenges: Sex Offenders Legislated into Homelessness. Journal of Social Work (2016)

\*\*Association for the Treatment of Sexual Abusers 4900 SW Griffith Dr. #274 Beaverton, OR 97005

\*\* *Eric Lotke, former research and policy director of the Justice Policy Institute*

\*\**Does v. Snyder from Documents submitted in said 6<sup>th</sup> US Court of Appeals.*