

Submitted by the Council to the membership of  
The American Law Institute  
for consideration at the 2021 Annual Meeting on May 17-18 and June 7-8, 2021.



THE AMERICAN LAW INSTITUTE

## MODEL PENAL CODE: SEXUAL ASSAULT AND RELATED OFFENSES

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*Tentative Draft No. 5*

(May 4, 2021)

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### SUBJECTS COVERED

<b>ARTICLE 213</b>	Part I – Grading Part II – Sections 213.0 to 213.11J
<b>APPENDIX A</b>	Pertinent 1962 Code Provisions
<b>APPENDIX B</b>	Black Letter of Tentative Draft No. 5

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**Model Penal Code:  
Sexual Assault and Related Offenses**

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## SECTION 213.11. SENTENCING AND COLLATERAL CONSEQUENCES OF CONVICTION

### Comment:

#### Executive Summary\*

1           Sentencing and the collateral consequences of conviction raise unusually complex issues;  
2 extensive black letter is required to treat them with precision. But black letter is not the ideal way  
3 to convey the provisions’ overall aims and effects. This Executive Summary serves that purpose.  
4 It first explains why there is a need for Sections 213.11 to 213.11J in the scheme of Article 213. It  
5 then summarizes the most prominent features of current law on this subject and explains why it is  
6 important for Sections 213.11 to 213.11J to establish a different framework.

7           1. *Why is this subject addressed in Article 213?* Underlying this common question are  
8 concerns about preemption and the appropriate scope of the project. Sentencing is treated  
9 comprehensively in the Institute’s recent revision of the sentencing provisions of the MPC. To  
10 reconsider that subject in Article 213 might seem unnecessary or inconsistent with prior judgments  
11 of the Institute. Moreover, *collateral* consequences are not intrinsically matters of criminal law  
12 and therefore might seem beyond the proper scope of a *penal* code.

13           These concerns are understandable but misplaced. With respect to “preemption,”  
14 *MPC:Sentencing* treats sentencing issues only in general terms applicable to any offense. The  
15 Comments to *MPC:Sentencing* state that it is not intended to preclude special rules tailored to the  
16 specifics of particular offenses.<sup>1</sup> In any event, Sections 213.11-213.11J are not inconsistent with  
17 *MPC:Sentencing*; they supplement its provisions without contradicting them.

18           The concern about relevance to criminal law is especially important. In determining  
19 whether to criminalize various forms of sexual misconduct, the Article 213 revision must consider  
20 all important consequences of doing so, regardless of whether they be labeled “penal” or

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\* Footnote cross-references in this Executive Summary indicate footnotes in Sections 213.11-213.11J of this Draft.

<sup>1</sup> See MODEL PENAL CODE: SENTENCING, Section 7.06(4) (Official Statutory Text, AM. L. INST., May 24, 2017) (stating that “[a] certificate of restoration of rights removes all mandatory collateral consequences ..., except as provided by Article 213.) See also MODEL PENAL CODE: SENTENCING Section 7.06 Comment *d* (Proposed Final Draft, AM. L. INST., April 10, 2017) (stating that the Section 7.06 provisions concerning relief from collateral consequences are subject to an exception: “for individuals convicted of sexual offenses, the restrictions on relief set forth in Article 213 apply.”)

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1 “regulatory.” When revising the sentencing provisions of the MPC, the Institute approved a  
2 lengthy Article on collateral consequences, defined as “disadvantages, however denominated, that  
3 are authorized or required by federal or state law as a direct result of an individual’s conviction  
4 [that] are *not part of the sentence* ordered by the court ....”<sup>2</sup> In that Article, moreover,  
5 *MPC:Sentencing* addresses—and forbids—certain demonstrably noncriminal consequences of  
6 conviction—disenfranchisement and disqualification from jury service.<sup>3</sup> In short, the Institute has  
7 rejected the position that collateral consequences lie outside the domain of the MPC.

8 Collateral consequences are *especially* important for Article 213. Over the past half-  
9 century, the principle that frames the sexual offenses has shifted from force and coercion to the  
10 absence of consent. Updating the MPC to reflect this shift was a primary motivation for the  
11 Institute’s decision to revise Article 213. And because absence of consent, rather than only force,  
12 coercion, or incapacity, can now support conviction, the reach of sexual-offense law has justifiably  
13 expanded in most American jurisdictions<sup>4</sup> and around the world.<sup>5</sup>

14 The crucial question is to determine *how far* this expansion should go. That judgment must  
15 be shaped by balancing the need for penal safeguards against the potentially disproportionate  
16 consequences of a criminal conviction. A decision to consider the first half of this equation in  
17 isolation, without attention to the second half, would be difficult to defend.<sup>6</sup>

18 This is not an abstract question. In prevalent state law, the consequences of a sexual-offense  
19 conviction often include highly restrictive “collateral” measures, such as onerous registration

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<sup>2</sup> MODEL PENAL CODE: SENTENCING, Section 7.01 (Official Statutory Text, AM. L. INST., May 24, 2017) (emphasis added).

<sup>3</sup> *Id.*, Section 7.03.

<sup>4</sup> See “Current State of the Law -- Consent-Only Offenses” (Oct. 20, 2016).

<sup>5</sup> For example, the Istanbul Convention, adopted by the Council of Europe in 2011, requires member states to criminalize all “non-consensual acts of sexual nature.” See Council of Europe Treaty Series - No. 210, *Convention on Preventing and Combating Violence Against Women and Domestic Violence*, May 11, 2011. The Convention was signed by 45 of the Council’s 47 member nations; only Russia and Azerbaijan failed to sign.

<sup>6</sup> Referring to current Minnesota efforts to revise that state’s definitions of sexual assault, the mother of Jacob Wetterling (the victim of a nationally notorious sexual crime) recently wrote that “[a]ny statutory analysis of the criminal statutes is woefully incomplete without considering the effectiveness, cost, and collateral and material consequences the [sex-offense] Registry poses.” Patty Wetterling, Letter to Minnesota Senators and Representatives, Feb. 8, 2021.

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1 duties, limits on employment and residency, and expanded public awareness of a local resident’s  
2 record of convictions. Courts have held that sex-offense collateral-consequence regimes in Alaska,  
3 Kentucky, Michigan, Pennsylvania, and many other states constitute *criminal punishment* and  
4 therefore are subject to all the strictures of the criminal law.<sup>7</sup> Statutory provisions like those are  
5 obviously appropriate for a penal code to address. But whether these consequences are penal or  
6 regulatory, they have powerful impacts on a convicted individual and therefore must be considered  
7 in any judgment about whether to criminalize an area of behavior.

8 An example makes this principle concrete. A decision to punish sexual penetration without  
9 force but without consent could be readily supported if the potential prison sentence is low and if  
10 the Code stipulates that conviction cannot lead to any “collateral” burdens. But that decision would  
11 be difficult to sustain if conviction could lead to life imprisonment even in the absence of  
12 aggravating circumstances. That decision likewise would be difficult to sustain if conviction could  
13 require lifetime registration with law enforcement and lifetime limits on employment and  
14 residency. Yet in many states, current law does exactly that; a penal code that did not address the  
15 issue would leave these burdens of conviction in effect. A sound approach to the criminalization  
16 decision cannot avoid attention to these consequences.

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<sup>7</sup> In *Smith v. Doe*, 538 U.S. 84, 92 (2003), the Supreme Court held that sex-offense registration regimes are not necessarily punitive and that Alaska SORA was not punitive as a matter of federal constitutional law. Compare *Doe v. State*, 189 P.3d 999 (Alaska 2008) (holding Alaska SORA to be punitive under state constitution); *Doe v. Snyder*, 834 F.3d 696, 705-706 (6th Cir. 2016) (holding that “*Smith* [should not] be understood as writing a blank check to states to do whatever they please in this arena.... Michigan’s SORA imposes punishment”). Accord, *State v. Myers*, 923 P.2d 1024 (Kan. 1996) (holding Kansas SORA to be punitive as applied); *Commonwealth v. Baker*, 295 S.W.3d 437 (Ky. 2009) (holding residency restrictions of Kentucky SORNA to be punitive); *State v. Letalien*, 985 A.2d 4 (Me. 2009) (holding Maine SORNA to be punitive on its face); *Doe v. State*, 111 A.3d 1077, 1100 (N.H. 2015) (holding that “[a]s applied to petitioner, ... the punitive effect of [New Hampshire registry law] was enough to overcome any nonpunitive legislative intent”); *Riley v. N.J. State Parole Bd.*, 98 A.3d 544 (N.J. 2014) (holding New Jersey Sex Offender Monitoring Act to be punitive); *Starkey v. Oklahoma Dep’t of Corr.*, 305 P.3d 1004 (Okla. 2013) (holding Oklahoma SORA to be punitive as applied); *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2018) (holding Pennsylvania SORNA to be punitive); *In re C.P.*, 967 N.E.2d 729, 738 (Ohio 2012) (holding that Ohio SORNA imposes cruel and unusual punishment as applied to juveniles).

Cf. *State v. Bani*, 36 P.3d 1255, 1268 (Haw. 2001) (holding Hawaii SORNA to violate procedural due process in the absence of individualized risk assessment); *Doe v. Attorney General*, 686 N.E.2d 1007 (Mass. 1997) (Massachusetts, same); *in re J.B.*, 107 A.3d 1 (Pa. 2014) (holding that Pennsylvania SORNA violates procedural due process as applied to juveniles); *Doe v. Wasden*, 9th Cir. Dec. 9, 2020 (holding that *Smith* does not foreclose plaintiffs’ claim that Idaho SORNA regime is punitive).

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1           2. *Current law.* All American jurisdictions currently require persons convicted of certain  
2 sexual offenses to register with local law-enforcement where they reside, work, or study, and to  
3 continually update the personal information provided. In most states the list of sexual offenses that  
4 trigger these obligations is extensive, the obligations are long-lasting, and the steps required to  
5 keep the information updated are onerous. Many states or their municipalities also prohibit  
6 registrants from residing in certain areas; most prohibit registrants from working in certain  
7 occupations.<sup>8</sup> And in nearly all states, the registry information is widely available. Although a few  
8 states keep that information confidential except with respect to registrants at high risk of  
9 reoffending,<sup>9</sup> most permit public access to information pertaining to every registered ex-  
10 offender.<sup>10</sup> Moreover, most states require law enforcement to proactively notify the community as  
11 soon as a new registrant comes to the area. Although a few states notify only groups or individuals  
12 with a particular need to know, the great majority distribute notification widely, including to  
13 anyone who asks to be notified, regardless of need to know.<sup>11</sup>

14           Federal law complicates this picture. The Sex Offender Registration and Notification Act  
15 of 2006 (federal SORNA)<sup>12</sup> requires every state, as a condition of receiving certain federal funds,  
16 to maintain a registry of persons convicted of almost any offense that has a sexual element.  
17 Although federal SORNA does not require states to limit registrants' employment or residency, its  
18 other requirements are more restrictive than much preexisting state law. The offenses that must  
19 trigger a state duty to register include adjudications of delinquency involving use of force by  
20 juveniles aged 14 or older and adult convictions even for misdemeanor contact offenses<sup>13</sup>;  
21 registrants must appear in person, within three business days, to report any change in required

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<sup>8</sup> See generally, text at notes 149, 296-301, 319-322.

<sup>9</sup> See text at notes 94-99, 276-278.

<sup>10</sup> See text at note 243.

<sup>11</sup> See text at notes 243, 274-278.

<sup>12</sup> 34 U.S.C. §§ 20901-20929 (2020).

<sup>13</sup> *Id.*, § 20911(5) & (8).

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1 registry information<sup>14</sup>; the duties to register and to update personal information normally continue  
2 for at least 15 years even for the lowest-level offenses; and those duties normally continue for life  
3 in the case of any penetration offense committed by force or threat.<sup>15</sup> Federal SORNA also requires  
4 each state to make available on the Internet most information about every registrant and to  
5 immediately notify the entire local community whenever an ex-offender updates registry  
6 information or newly registers in the area.<sup>16</sup>

7         Given the onerous requirements federal SORNA imposes on registrants and on state  
8 officials themselves, a large majority of the states have chosen not to comply with its entire  
9 mandate. As of November 2020, only 18 states were fully SORNA-compliant; the rest have opted  
10 to disregard one or more of its major provisions, even at the cost of losing millions of dollars in  
11 federal funding.<sup>17</sup> Even so, registration requirements, public access to registry information, and  
12 proactive community notification about registrants in the area are the norm throughout the United  
13 States. And in many jurisdictions the burdens imposed on persons convicted of a sexual offense  
14 are even more restrictive than federal SORNA requires. Most states require registrants to submit  
15 to GPS monitoring in various circumstances; many restrict Internet usage; and at least 27 states  
16 and many municipalities prohibit registrants from living near schools, parks, playgrounds, and  
17 day-care centers.<sup>18</sup>

18         3. *Assessment.* The aim of these laws is to ease public fear, reduce recidivism, and enable  
19 concerned citizens to take steps for self-protection. Yet extensive research demonstrates that these  
20 gains have not materialized. To the contrary, there is clear evidence, widely acknowledged by  
21 professionals in the field, that these laws are seriously counterproductive.<sup>19</sup> They are expensive

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<sup>14</sup> Id., § 20913(c).

<sup>15</sup> Id., § 20915(a).

<sup>16</sup> Id., §§ 20920(a); 20923(b).

<sup>17</sup> See text at note 167. The most frequent reasons for substantial noncompliance were narrower lists of triggering offenses and less frequent obligations to verify and update registry information. See Andrew J. Harris & Christopher Lobanov-Rostovsky, National Sex Offender Registration and Notification Act (SORNA) Implementation Inventory Preliminary Results (July 2016), pp. 4, 13-30 (detailing reasons for noncompliance as of March 2016.)

<sup>18</sup> See text at note 297.

<sup>19</sup> See text at notes 150, 255-256, 316-327.

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1 for local police to administer, unduly hinder the rehabilitation of ex-offenders, and ultimately  
2 defeat their own central purposes by *impeding* law enforcement and *increasing* the incidence of  
3 sexual offenses.<sup>20</sup>

4 a. *Recidivism*. Although a common view holds that that “[t]he risk of recidivism posed by  
5 sex offenders is ‘frightening and high,’”<sup>21</sup> the available empirical evidence lends little or no  
6 support to this claim.<sup>22</sup> Even taking into account that reporting rates for sexual offenses are  
7 exceptionally low, “[s]ex offenders have some of the lowest recidivism rates of any class of  
8 criminal.”<sup>23</sup> This is also true of sexual offenses against children. Again, low reporting rates for  
9 offenses against minors make research about recidivism in these cases only suggestive rather than  
10 definitive, but to the extent that reliable data are available, they indicate that recidivism rates for  
11 these offenses are as low as or lower than for other sexual crimes.<sup>24</sup>

12 Comparative recidivism rates, however, are largely beside the point. Sexual offenses are  
13 distinctively unsettling and injurious, even more so in the case of sexual offenses against children.  
14 Exceptional prevention efforts are unquestionably justified. The crucial point is simply that  
15 registration, public access, community notification, residency restrictions, and other special  
16 burdens do not have the anticipated preventive effect. Research on this point has been extensive,  
17 and its conclusions are unequivocal: all the available evidence indicates that these special burdens  
18 *do not* reduce the incidence of these offenses.<sup>25</sup>

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<sup>20</sup> See generally *id.*

<sup>21</sup> *Smith v. Doe*, 538 U.S. 84, 103 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)).

<sup>22</sup> See text at notes 111-128.

<sup>23</sup> Stuart A. Scheingold et al., *Sexual Violence, Victim Advocacy, and Republican Criminology: Washington State’s Community Protection Act*, 28 LAW & SOC’Y REV. 729, 743 (1994) (noting that “as few as 5.3% [of sex offenders] re-offend within three years, according to the Bureau of Justice Statistics, as opposed to rates in the 65 to 80% range for drug offenders and thieves.”)

<sup>24</sup> See text at notes 111-128.

<sup>25</sup> See text at notes 131-135. With respect to the recidivism impact of particular measures, “research provides little if any support for the effectiveness of residential restriction laws in deterring or preventing sexual offenses.” Tewksbury, *Residency Restrictions*, note 299, at 539. See also text at notes 319-323.

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1           b. *Self-protection.* Citizen self-protection is a separate goal. Yet public access and  
2 community notification seldom prompt individuals to take effective precautions to safeguard  
3 themselves or their loved ones. And the very existence of these regimes diverts attention from  
4 much more significant sexual dangers, thus in effect fostering a false sense of security and  
5 increasing the dangers to children and others.<sup>26</sup>

6           Schools, day-care centers, and other organizations that serve vulnerable populations  
7 present a different issue. They must not employ staff or volunteers who put their clientele at risk  
8 of sexual abuse, and their due-diligence obligations in that regard are strong. But background-  
9 check mechanisms are available nationally and in all states to meet this need within well-regulated  
10 privacy-protective frameworks. Where incomplete or too narrow in their coverage, these  
11 background-check mechanisms can be strengthened without resort to county- and municipal-level  
12 sex-offense registries, which in any event cannot meet the need—they are overbroad, poorly  
13 insulated from *unnecessary* public access, and dangerously *underinclusive* because they omit  
14 criminal history pertaining to relevant nonsexual offenses.<sup>27</sup>

15           c. *Costs.* Substantial costs must be weighed against these scant public-safety benefits.  
16 Registration laws are expensive to implement, especially when (as is typical) they target a large,  
17 heterogeneous group of ex-offenders. For local police departments, registry management, GPS  
18 monitoring, and related duties take personnel away from responding to emergencies, investigating  
19 crime, and providing other public services. Out-of-pocket expenses for website technology and for  
20 recording and updating registry information can run to several millions of dollars per year.<sup>28</sup> Many  
21 states find that more selective approaches can achieve nearly all the benefits at much lower cost.<sup>29</sup>

22           d. *Unintended Effects.* Even more concerning are the counterproductive side effects.  
23 Restricted residency pushes registrants into socially disorganized, economically stressed  
24 neighborhoods or into homelessness. Public access to registry information, community  
25 notification, overbroad limits on employment and residency, and indirect impacts on registrants'

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<sup>26</sup> See text at note 136 and Reporters' Note to Section 213.11H.

<sup>27</sup> See text at notes 258-271.

<sup>28</sup> See text at notes 145-146, 309-312.

<sup>29</sup> See note 167.



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1 ability to find jobs and housing lead to a high incidence of registrant joblessness, social isolation,  
2 homelessness, suicide, and even physical violence at the hands of misguided members of the  
3 public.<sup>30</sup> These effects in turn mean negative impacts *for public safety* because successful  
4 reintegration into society requires stable living arrangements, supportive family, and steady  
5 employment, while poor social support and psychological stress are important risk factors for  
6 sexual recidivism. So the burdens typically imposed on registrants almost inevitably aggravate the  
7 very dangers they seek to allay; the adverse impacts on registrants impede their rehabilitation and  
8 aggravate their risks of reoffending.<sup>31</sup> Registration of juveniles has had distinctively harsh  
9 consequences, and assessments of its value have been especially negative.<sup>32</sup> Because these  
10 criminogenic effects can *increase* registrant recidivism, they tend to outweigh any public-safety  
11 benefits of self-protection and the enhanced possibilities for surveillance and deterrence of  
12 registrants. The result, convincingly documented, is that these laws actually undermine public  
13 safety, the exact opposite of what lawmakers and the public so confidently assume they  
14 accomplish.

#### 15 4. *Recommendations.*

16 a. *Overall approach.* The strong case against these schemes prompts many experts to  
17 unconditionally oppose *any* regime for sex-offense registration or other collateral consequences.  
18 The Draft does not endorse that view. First, simply as a pragmatic matter, it is clear that an Institute  
19 recommendation to eliminate registries entirely will have no constructive law-reform impact,  
20 either now or in any foreseeable political future. Registries and their associated features currently  
21 command overwhelming public support, based on emotions and intuitions not easily dislodged.  
22 Those actively engaged in the reform effort on the ground are emphatic that there is no legislative  
23 audience for an approach that categorically opposes registries altogether.<sup>33</sup>

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<sup>30</sup> See text at notes 149, 253-256, 319-322.

<sup>31</sup> See text at notes 150, 255-256, 316-327.

<sup>32</sup> See note 81 and text at notes 190-204.

<sup>33</sup> See, e.g., William Buhl, J.J. Prescott & Miriam Aukerman, *Michigan Poised to Double Down on Failed Sex Offender Registry*, DETROIT FREE PRESS, Dec. 10, 2020 (statement of “a judge whose hands were tied by SORA’s one-size-fits-all approach, a researcher who has documented the counterproductive impact of registries, and an attorney who has represented [registrants]” arguing that in Michigan “[l]egislators should bring together stakeholders and experts to draft an evidence-based statute, looking to examples like the draft model law written by the American Law Institute.”); Patty Wetterling, Letter to

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1           On the merits, moreover, unqualified opposition to registries in any form reaches farther  
2 than a discriminating analysis can justify. Sex-offense collateral consequences in the United States  
3 are certainly too harsh, a fact that no doubt contributes to the strongly negative reaction that the  
4 registry concept so often prompts. But the overly severe, counterproductive effects are not inherent  
5 in registries as such. Instead, they result from features common in the United States but readily  
6 severable and virtually unheard of elsewhere in the world.

7           Nearly every Western nation maintains registries of persons who have been convicted of a  
8 sexual offense. But unlike American registries, those of other countries are almost exclusively for  
9 law-enforcement use, with either very limited need-to-know access for others or (in the great  
10 majority of countries) no public access at all. Registry regimes outside the United States typically  
11 include none of the elements that make American sex-offense regimes so destructive—most  
12 obviously, the sweeping and illogical restrictions on residency, but also, for registries themselves,  
13 the overbroad list of offenses that require registration, burdensome and overly long-lasting update  
14 duties, unrestricted public access, and sweeping community notification disconnected from any  
15 plausible need to know.<sup>34</sup>

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Minnesota Senators and Representatives, Feb. 8, 2021 (urging appointment of a Working Group to consider “many needed reforms” because Minnesota SORNA is “overbroad” and “must be scaled back.”); Eric Janus, Letter to Minnesota Senators and Representatives, Feb. 8, 2021 (same); Ira Ellman, email to Stephen Schulhofer, Nov. 10, 2020 (describing difficult, nearly unsuccessful California effort to enact modest SORNA amendments, merely to differentiate triggering offenses by tiers, and concluding “The idea of proposing [California] simply abolish its registry never occurred to anyone. [Even in] this heavily blue state in which Democrats enjoy legislative super majorities, that would have been a complete non-starter.”); Eric S. Janus, email to Stephen Schulhofer, Jan. 21, 2021 (“Although I doubt that there are good grounds for uniquely targeting sex crimes for even highly confined registration laws, I believe that the current ALI draft moves substantially in the right direction. I am aware of efforts in some states ... [to] rein in registration laws. A model law that focuses on the one arguably valid foundation for such laws—assisting law enforcement—would be of enormous benefit as a guide to state legislative efforts.”); Eric Tennen (Boston attorney who has represented several hundred registrants), Letter to Stephen Schulhofer, Feb. 16, 2021:

“I [do not] support registration. ... But as a practical matter, I recognize there is no real legal or political route to abolition.... I believe [the ALI’s] efforts can more realistically achieve reform than simply taking the position registration should not exist.... I do not believe that even our progressive [Massachusetts] Legislature would entertain calls to abolish our registry. However, I do believe our Legislature might be responsive to evidence-based arguments to scale back registration... Therefore, [I support] ALI’s efforts on this front. I believe Council Draft 11 is an extremely well argued, well researched proposal. It is both modest and groundbreaking. Modest because it recognizes the reality of registration; groundbreaking because it insists registration be objective and scientific.”

<sup>34</sup> See text at notes 30-80.

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1 In light of these concerns, the Draft does not condemn sex-offense collateral consequences  
2 wholesale. Instead, it recommends a selective approach. Because a sex-offense registry provides  
3 locally relevant information that police cannot obtain from ordinary criminal-history databases  
4 when they have not identified a particular suspect,<sup>35</sup> registries facilitate high-priority investigations  
5 of serious sexual offenses. That gives them the important practical advantages that prompt virtually  
6 all Western nations to maintain sex-offense registries for law-enforcement use.<sup>36</sup> As long as the  
7 confidentiality of these records is preserved, registration for law-enforcement purposes poses  
8 relatively few dangers to public safety and to the welfare of registrants themselves.

9 The Draft therefore accepts the value of registries available exclusively to law enforcement,  
10 but requires that they be structured to avoid undue burdens on registrants. At the same time, the  
11 Draft limits and carefully targets other special burdens, permitting them only on a substantially  
12 more restricted basis than that found in much of current American law, in order to make their  
13 imposition more coherent and less prone to abusive application.

14 b. *Principal details.* The Draft's core recommendation is to permit sex-offense registries  
15 for the exclusive use of law enforcement, while deploying a range of devices, some conspicuous  
16 and others more granular, to minimize or eliminate unnecessarily harsh and counterproductive  
17 features of currently prevalent law. Seven of these limiting devices are especially important:

18 1) *Triggering offenses.* Section 213.11A sharply restricts the class of individuals to whom  
19 the duty to register and other sex-offense collateral consequences apply. It precludes registration  
20 of nearly all juveniles, and for adults, it imposes the threshold duty to register only upon conviction  
21 of offenses that most strongly arouse public concern, specifically:

22 (i) Sexual Assault by Aggravated Physical Force or Restraint.

23 (ii) Sexual Assault by Physical Force, but only when committed after the offender  
24 had previously been convicted of a felony sex offense.

25 (iii) Sexual Assault of an Incapacitated Person, but only when committed after the  
26 offender had previously been convicted of a felony sex offense.

27 (iv) Sexual Assault of a Minor, but only when the minor is younger than 12 and the  
28 actor is 21 years old or older.

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<sup>35</sup> See text at notes 85.

<sup>36</sup> See text at notes 30-80.

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1 (v) Incestuous Sexual Assault of a Minor, but only when the minor is younger than

2 16.

3 2) *Updating information.* Section 213.11E permits registrants to update required  
4 information by email or other readily accessible means of communication, without needing to  
5 make overly frequent personal appearances or navigate other burdensome bureaucratic obstacles.

6 3) *Duration of duties.* The registration framework shortens in three ways the duration of  
7 required registration. Section 213.11F(2) limits to 15 years the registrant's duty to keep registry  
8 information current. Section 213.11F(3) provides for automatic termination of that duty at an  
9 earlier date if the registrant meets specified rehabilitative goals during the initial registration  
10 period. Finally, Section 213.11J permits the registrant to apply for early removal from the registry  
11 upon an appropriate showing of rehabilitation.

12 4) *Public access to registry information.* Section 213.11H marks a major departure from  
13 the American practice of investing considerable resources in an effort to maximize public  
14 awareness of registry information. It permits only government law-enforcement agencies and  
15 personnel to access registry information. Non-law-enforcement access is precluded, and Section  
16 213.11H imposes on authorities who have access to registry information a strong obligation to  
17 preserve its confidentiality.

18 A legitimate need for non-law-enforcement access arises when an individual is being  
19 considered for a position of trust involving contact with a vulnerable population. But the FBI has  
20 authority to share criminal-history information with state agencies responsible for licensing and  
21 employment background checks in regulated areas, including for individuals who work with  
22 vulnerable populations.<sup>37</sup> Although some state regimes do not apply to all arguably relevant  
23 occupations and may have other gaps, the solution to that problem is simply to fill those gaps  
24 directly, after expressly confronting the conflicting public-safety benefits and privacy costs.  
25 Whether that step is taken or not, local sex-offense registries cannot fill such gaps because they  
26 omit criminal history information pertaining to large numbers of crucially relevant nonsexual  
27 offenses and therefore are vastly underinclusive.<sup>38</sup> To open local registries for these purposes  
28 would create unnecessary risks, given the availability of pertinent records (including for relevant

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<sup>37</sup> See text at note 262.

<sup>38</sup> See text at notes 262-271.

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1 *nonsexual* offenses) from national and state databases subject to stronger oversight and controls.  
2 Since the legitimate need can be met adequately, and indeed more adequately, in other ways,  
3 Section 213.11H does not permit non-law-enforcement access to registry information.

4 5) *Community notification*. Because persons and organizations with a justifiable need to  
5 know have access to criminal-record information on a well-regulated basis through the criminal-  
6 history background-check systems just mentioned, Section 213.11I(3) bars proactive government  
7 measures broadly notifying community organizations and individuals that a registrant resides,  
8 works, or studies in the area.

9 6) *Other burdens*. Section 213.11I tightly constrains, and in most cases eliminates, other  
10 burdens and restrictions applicable specifically to persons convicted of a sexual offense. It creates  
11 a strong presumption against GPS monitoring, residency restrictions, limits on Internet access, and  
12 the like, permitting them only when an individual, case-by-case risk assessment strongly supports  
13 the need for such a measure, to an extent that outweighs its potential for costly, counterproductive,  
14 and criminogenic effects. The official making the determination must carefully consider the  
15 public-safety need for the particular measure; weigh that need against its impact on the registrant,  
16 the registrant's family, and the registrant's prospects for rehabilitation; and ensure that any  
17 measure approved is drawn as narrowly as possible to achieve its public-safety objectives.

18 7) *Relief from registration and other burdens*. Section 213.11J establishes standards and  
19 procedures by which registrants can petition for early relief from registration and other special  
20 burdens of a sex-offense conviction.

## SECTION 213.11. SENTENCING AND COLLATERAL CONSEQUENCES OF CONVICTION

**(1) Definitions.** For purposes of this Article:

(a) “sentencing consequences” are penalties, disabilities, or disadvantages that are part of the sentence imposed by the court or by an agency authorized to set the terms of parole or post-release supervision in connection with conviction of an Article 213 offense; and

(b) “collateral consequences” are penalties, disabilities, or disadvantages, however denominated, that are authorized or required by federal, state, or local law as a direct result of an individual’s conviction of an Article 213 offense but are not part of the sentence imposed by the court or by an agency authorized to set the terms of parole or post-release supervision in connection with that conviction.

**(2) General Rule.** Sentencing procedure, the authorized disposition of a person convicted of an Article 213 offense, sentencing consequences, and collateral consequences are specified in Articles 6 and 7 of this Code,\* and are subject to the additional requirements of this Section.

**(3) Additional Requirements for Sentencing Consequences.** Notwithstanding any contrary provisions of law, the conditions of any suspended sentence under Section 6.02(2), any sentence to probation under Section 6.05, and any terms of parole or post-release supervision under Section 6.13 must be eligible for early relief under Section 213.11J and must not include:

(a) a condition that:

(i) imposes an obligation to register with law enforcement that carries requirements other than those authorized under Sections 213.11A-213.11G and Section 213.11J;

(ii) permits access to the person’s registry information, except as authorized under Section 213.11H; or

(iii) authorizes or permits any government official to notify a public or private entity or individual, other than a government law-enforcement agency or individual, that the person is registered with law enforcement or resides, works, or studies in the locality;

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\* MODEL PENAL CODE: SENTENCING, *Official Statutory Text* (May 24, 2017).

**(b) a condition that restricts the person’s occupation or employment, except as required by state law or authorized under paragraph (d) of this subsection; or**

**(c) except as authorized under paragraph (d) of this subsection, a condition that:**

**(i) requires the person to submit to GPS monitoring; or**

**(ii) restricts the person’s education, Internet access, or place of residence.**

**(d) The court, and any agency authorized to set the terms of parole or post-release supervision, may impose a condition, not required by state law, that restricts the person’s occupation or employment, or a condition specified in paragraph (c) of this subsection, only if the court or agency determines that the condition is manifestly required in the interest of public safety. That determination must be:**

**(i) made after due consideration of the nature of the offense; all other circumstances of the case; the person’s prior record; and the potential negative impacts of the burden, restriction, requirement, or government action on the person, on the person’s family, and on the person’s prospects for rehabilitation and reintegration into society; and**

**(ii) accompanied by a written statement of the official setting the condition, explaining the need for it, the evidentiary basis for the finding of need, and the reasons why a more narrowly drawn condition would not adequately meet that need.**

**(e) Any condition imposed under paragraph (d) must be:**

**(i) drawn as narrowly as possible to achieve the goal of public safety; and**

**(ii) imposed only for a period not to exceed that permitted under Section 213.11F for the duties to register and keep the registration current.**

***(4) Additional Requirements for Collateral Consequences that are Applicable Primarily to Persons Convicted of a Sexual Offense.* Notwithstanding any contrary provisions of law, collateral consequences applicable primarily to persons convicted of a sexual offense, including the obligation to register with law enforcement; associated duties; restrictions on occupation and employment, education, and place of residence applicable primarily to**

persons convicted of a sexual offense; and other collateral consequences applicable primarily to persons convicted of a sexual offense, are authorized and their scope and implementation are delineated as follows:

(a) The person's obligation to register for law-enforcement purposes is governed by Section 213.11A.

(b) Notification of the person's obligation to register and associated duties is governed by Section 213.11B.

(c) The time of initial registration is governed by Section 213.11C.

(d) The information required upon registration is specified in Section 213.11D.

(e) The duty to keep registration current is specified in Section 213.11E.

(f) The duration of the registration requirements is specified in Section 213.11F.

(g) Penalties for failure to register are governed by Section 213.11G.

(h) Access to registry information is governed by Section 213.11H.

(i) Collateral consequences applicable primarily to persons convicted of a sexual offense, other than the obligation to register for law-enforcement purposes and restrictions on occupation and employment required by state law, are governed by Section 213.11I.

(j) Standards and procedures for relief from the obligation to register, associated duties, and other collateral consequences applicable specifically to persons convicted of a sexual offense are governed by Section 213.11J.

## **SECTION 213.11A. REGISTRATION FOR LAW-ENFORCEMENT PURPOSES**

### ***(1) Offenses Committed in This Jurisdiction***

(a) Except as provided in subsection (3), every person convicted of an offense that is designated a registrable offense in this Article must, in addition to any other sanction imposed upon conviction, appear personally and register, at the time specified in Section 213.11C, with the law-enforcement authority designated by law in the [county] where the person resides. If the person who is required to register



under this subsection does not reside in this jurisdiction, but works in this jurisdiction, registration must be accomplished in the [county] where the person works; if the person does not reside or work in this jurisdiction but is enrolled in a program of study in this jurisdiction, registration must be accomplished in the [county] where the person studies.

(b) Notwithstanding any other provision of law, no conviction for an offense under this Article, or for any other criminal offense in this jurisdiction, will require the person convicted to register with law enforcement or other governmental authority in a registry regime applicable primarily to persons convicted of a sexual offense, unless this Article designates that offense as a registrable offense.

*(2) Offenses Committed in Other Jurisdictions*

(a) *Duty to register and related duties.* Every person currently obliged to register with law enforcement or other public authority in another jurisdiction, because of a sexual offense committed in that jurisdiction, who subsequently resides, works, or enrolls in a program of study in this jurisdiction, must register with the law-enforcement authority designated by law and comply with the requirements of Sections 213.11A-213.11G, provided that the offense committed in the other jurisdiction is comparable to an offense that would be registrable under this Article if committed in this jurisdiction.

(b) *Place of registration.* If the person who is obliged to register under paragraph (a) resides in this jurisdiction, registration must be accomplished in the [county] where the person resides. If the person who is obliged to register under paragraph (a) does not reside in this jurisdiction, but works in this jurisdiction, registration must be accomplished in the [county] where the person works; if the person does not reside or work in this jurisdiction but is enrolled in a program of study in this jurisdiction, registration must be accomplished in the [county] where the person studies.

*(c) Determining the comparability of in-state and out-of-state offenses*

(i) *Standard.* An offense committed in another jurisdiction is comparable to a registrable offense under this Article if and only if the elements of the out-of-state offense are no broader than the elements of that

registrable offense. When, regardless of the conduct underlying the out-of-state conviction, the out-of-state offense can be committed by conduct that is not sufficient to establish a registrable offense under this Article, the two offenses are not comparable.

(ii) *Procedure.* Before determining that an offense committed in another jurisdiction is comparable to a registrable offense under this Article, the authority designated to make that determination must give the person concerned notice and an opportunity to be heard on that question, either orally or in writing.

(d) Notwithstanding any other provision of law, no conviction for a sexual offense in another jurisdiction will require the offender to register with law enforcement or other governmental authority in this jurisdiction, unless that conviction currently requires the offender to register with law enforcement or other governmental authority in the jurisdiction where the offense was committed and the conviction is for an offense comparable to an offense that would be registrable under this Article if committed in this jurisdiction.

(3) *Persons under the age of 18.* No person may be subject to the obligation to register under subsection (1) of this Section, to other obligations or restrictions under this Section, or to additional collateral consequences under Section 213.11I, on the basis of a criminal conviction for an offense committed when the person was under the age of 18, or on the basis of an adjudication of delinquency based on conduct when the person was under the age of 18; provided, however, that this subsection (3) does not apply to a person convicted of a criminal offense of Sexual Assault by Aggravated Physical Force or Restraint if the person was at least 16 years old at the time of that offense.

#### **SECTION 213.11B. NOTIFICATION OF THE OBLIGATION TO REGISTER AND ASSOCIATED DUTIES**

(1) Before accepting a guilty plea, and at the time of sentencing after conviction on a guilty plea or at trial, the sentencing judge must:

(a) inform the person who is subject to registration of the registration requirement;

**(b) explain the associated duties, including:**

**(i) the identity and location, or procedure for determining the identity and location, of the law-enforcement agency where the person must appear to register as required by Section 213.11A;**

**(ii) the duty to register with a law-enforcement agency in any locality where the person subsequently resides, including the possible duty to register with a law-enforcement agency or other government authority in another jurisdiction to which the person subsequently moves;**

**(iii) the duty to report to that office or agency periodically in person, as required by Section 213.11E(1); and**

**(iv) the duty to promptly notify at least one of the local jurisdictions where the person is registered of any change in the registry information pertaining to that person, as required by Section 213.11E(2);**

**(c) notify the person of the right to petition for relief from those duties as provided in Section 213.11J;**

**(d) confirm that defense counsel has explained to that person those duties and the right to petition for relief from those duties;**

**(e) confirm that the person understands those duties and that right;**

**(f) require the person to read and sign a form stating that defense counsel and the sentencing judge have explained the applicable duties and the right to petition for relief from those duties, and that the person understands those duties and that right;**

**(g) ensure that if the person convicted of a sexual offense cannot read or understand the language in which the form is written, the person will be informed of the pertinent information by other suitable means that the jurisdiction uses to communicate with such individuals; and**

**(h) satisfy all other notification requirements applicable under Model Penal Code: Sentencing, Section 7.04(1).**

**(2) At the time of sentencing, the convicted person shall receive a copy of the form signed pursuant to subsection (1)(f) of this Section.**

**(3) If the convicted person is sentenced to a custodial sanction, an appropriate**

official must, shortly before the person's release from custody, again inform the person of the registration requirement, explain the associated rights and duties, including the right to petition for relief from those duties, and require the person to read and sign a form stating that those rights and duties have been explained and that the person understands those rights and duties. At the time of release from custody, the person concerned shall receive a copy of that form.

#### **SECTION 213.11C. TIME OF INITIAL REGISTRATION**

**A person subject to registration must initially register:**

- (a) if incarcerated after sentence is imposed, then within three business days after release; or**
- (b) if not incarcerated after sentence is imposed, then not later than five business days after being sentenced for the offense giving rise to the duty of registration.**

#### **SECTION 213.11D. INFORMATION REQUIRED IN REGISTRATION**

**(1) A person subject to registration under Section 213.11A must provide the following information to the appropriate official for inclusion in the law-enforcement registry:**

- (a) the name of the person (including any alias used by the person);**
- (b) the Social Security number, if any, of the person;**
- (c) the address of each place where the person resides or expects to reside;**
- (d) the name and address of any place where the person works or expects to work;**
- (e) the name and address of any place where the person is a student or expects to be a student;**
- (f) the license-plate number and a description of any vehicle owned or regularly operated by the person.**

**(2) *Supplementary Information.* The local jurisdiction in which a person registers must ensure that the following information is included in the registry for that person and**

kept up to date:

(a) the text of the provision of law defining the sexual offense for which the person is registered;

(b) the person's criminal history, including the date and offense designation of all convictions; and the person's parole, probation, or supervised-release status;

(c) any other information required by law.

(3) *Registrants Who Lack a Stable Residential Address.* If a person required to register lacks a stable residential address, the person must, at the time of registration, report with as much specificity as possible the principal place where the person sleeps, instead of the information required under subsection (1)(c).

(4) The local jurisdiction in which a person registers must promptly provide the information specified in subsections (1), (2), and (3) of this Section to an appropriate law-enforcement authority in every other jurisdiction in which the registrant works or expects to work and is enrolled or expects to enroll in a program of study.

(5) *Correction of Errors.* Each locality where a person registers and each locality that receives information about a registrant pursuant to subsection (4) of this Section must provide efficacious, reasonably accessible procedures for correcting erroneous registry information. Each locality where a person registers must, at the time of registration, provide the registrant instructions on how to use those procedures to seek correction of registry information that the registrant believes to be erroneous.

#### SECTION 213.11E. DUTY TO KEEP REGISTRATION CURRENT

(1) *Periodic Updates.* A person who is required to register under Section 213.11A must, not less frequently than once every year, appear in person in at least one jurisdiction where the person is required to register, verify the current accuracy of the information provided in compliance with Section 213.11D(1), allow the jurisdiction to take a current photograph, and report any change in the identity of other jurisdictions in which the person is required to register or in which the person works or is enrolled in a program of study.

***(2) Change of Circumstances***

**(a) Except as provided in paragraph (b) of this subsection, a person subject to registration under Section 213.11A must, not later than five business days after each change of name and each change in the location where the person resides, works, or is enrolled in a program of study, notify at least one local jurisdiction specified in Section 213.11A of:**

**(i) all changes in the information that the person is required to provide under Section 213.11D, and**

**(ii) the identity of all other jurisdictions in which the person resides, works, or is enrolled in a program of study.**

**(b) Registrants who lack a stable residential address, and therefore report instead the principal place or places where they sleep, as provided in Section 213.11D(3), must confirm or update those locations once every 90 days but need not do so more often.**

**(c) Each jurisdiction that maintains a registry of persons who have been convicted of a sexual offense must permit registrants to notify the jurisdiction, by one or more reliable, readily accessible methods of communication of the jurisdiction's choosing, such as U.S. mail, submission of an appropriate form online, or otherwise, of any change of name, residence, employment, student status, or vehicle regularly used, and any change in the identity of all other jurisdictions in which the person resides, works, or is enrolled in a program of study.**

**(d) Each jurisdiction where a person registers pursuant to Section 213.11A must advise the registrant, at the time of registration, of the registrant's option to use the means of communication established under subsection (2)(c), rather than appearing personally for that purpose, if the registrant so chooses.**

**(3) The local jurisdiction notified of any changes pursuant to subsections (1) and (2) must promptly provide the registrant a written receipt confirming that the updated information has been provided, and must provide that information to all other jurisdictions in which the person resides, works, or is enrolled in a program of study.**

## SECTION 213.11F. DURATION OF REGISTRATION REQUIREMENT

(1) Subject to the provisions of subsection (3) of this Section and Section 213.11J, a person required to register must keep the registration current for a period of 15 years, beginning on the date when the registrant is released from custody after conviction for the offense giving rise to the registration requirement; or if the registrant is not sentenced to a term of incarceration, beginning on the date when the registrant was sentenced for that offense.

(2) At the expiration of that 15-year period, the duty to keep that registration current will terminate; the person who had been registered will not be subject to any further duties associated with that registration requirement; and no public or private agency other than a government law-enforcement agency shall thereafter be permitted access to the person's registry information.

(3) *Early termination.* If, during the first 10 years of the period during which a person is required to keep registration information current, the person:

(a) successfully completes any period of supervised release, probation, or parole, and satisfies any financial obligation such as a fine or restitution, other than a financial obligation that the person, despite good-faith effort, has been unable to pay; and

(b) successfully completes any required sex-offense treatment program; and

(c) is not convicted of, or facing pending charges for, any subsequent offense under this Article, or any subsequent sexual offense in another jurisdiction that would be an offense under this Article if committed in this jurisdiction; then:

the duty to keep that registry information current will terminate; the person who had been registered will not be subject to any further duties associated with that registration requirement; and subsequent access to registry information will be governed by subsection (4).

(4) *Access to Registry Information after Termination.* When the person's obligation to register and to keep registry information current terminates under subsection (2) or (3), subsequent access to registry information is limited as follows:

(a) Registry information recorded as of the date when termination takes effect may remain available to any government law-enforcement agency seeking

disclosure of that information in compliance with Section 213.11H(1)(a).

(b) Except as provided in paragraph (a), no public or private agency may thereafter be permitted access to registry information concerning the person whose obligation to register and keep registry information public has terminated.

(5) *Notice of Termination.* When a person's duty to register terminates under subsection (2) or (3), the law-enforcement agency in the local jurisdiction where the person resides must:

(a) include in its registry a notice that the person's duty to register and all duties associated with that registration requirement have terminated; and

(b) upon the person's request, notify all other jurisdictions where the person is registered and where information about the registrant has been provided pursuant to Section 213.11D(4) that the person's duty to register and all duties associated with that registration requirement have terminated and that no public or private agency other than a government law-enforcement agency shall thereafter be permitted to have access to that registry information.

(6) *Certification.* When a person's duty to register terminates under subsection (2) or (3), the law-enforcement agency in the local jurisdiction where the person resides must, upon request, provide that person a certificate attesting that person's duty to register and all duties associated with that registration requirement have terminated.

#### SECTION 213.11G. FAILURE TO REGISTER

(1) *Offense of Failure to Register.* A person required to register under Section 213.11A is guilty of Failure to Register, a misdemeanor, if that person knowingly fails to register as required by Sections 213.11A, 213.11C, 213.11D, and 213.11E(1), or knowingly fails to update a registration as required by Section 213.11E(2).

(2) *Affirmative Defense.* In a prosecution for Failure to Register under subsection (1) of this Section, it is an affirmative defense that:

(a) circumstances beyond the control of the accused prevented the accused from complying;



(b) the accused did not voluntarily contribute to the creation of those circumstances in reckless disregard of the requirement to comply; and

(c) after those circumstances ceased to exist, the accused complied as soon as reasonably feasible.

#### **SECTION 213.11H. ACCESS TO REGISTRY INFORMATION**

##### **(1) Confidentiality**

(a) Each law-enforcement agency with which a person is registered and each law-enforcement agency that receives information about a registrant pursuant to Section 213.11D(4) must exercise due diligence to ensure that all information about the registrant remains confidential, except that relevant information about a specific registrant must be made available to any government law-enforcement agency that requests information to aid in the investigation of a specific criminal offense.

(b) Any disclosure pursuant to paragraph (a) must include a warning that:

(i) the law-enforcement agency receiving the information must exercise due diligence to ensure that the information remains confidential;

(ii) such information may be disclosed and used as provided in paragraph (a), but otherwise must not be disclosed to any person or public or private agency;

(iii) such information may be used only for the purpose requested;

(iv) such information may not be used to injure, harass, or commit a crime against the registrant or anyone else; and

(v) any failure to comply with the confidentiality and use-limitation requirements of paragraph (b) could result in civil or criminal penalties.

(2) *Unauthorized Disclosure of Registry Information.* An actor is guilty of Unauthorized Disclosure of Registry Information if:

(a) the actor, having received registry information as provided in subsection (1), knowingly or recklessly discloses that information, or permits that information to be disclosed, to any person not authorized to receive it; or

(b) the actor obtains access to registry information by computer trespassing or otherwise in violation of law and subsequently knowingly or recklessly discloses

that information, or permits that information to be disclosed, to any other person.

Unauthorized Disclosure of Registry Information is a felony of the fourth degree [five-year maximum].

#### SECTION 213.11I. ADDITIONAL COLLATERAL CONSEQUENCES OF CONVICTION

(1) *Definition.* For purposes of this Section, the term “additional collateral consequence” means any collateral consequence, as defined in Section 213.11(1)(b), that is applicable primarily to persons convicted of a sexual offense, other than the obligation to register with law enforcement specified in Section 213.11A, the associated duties and restrictions specified in Sections 213.11C-213.11G, and any restriction on occupation or employment required by state law. These additional collateral consequences include any government-imposed program or restriction applicable primarily to persons convicted of a sexual offense that restricts the convicted person’s occupation or employment except as required by state law; limits the convicted person’s education, Internet access, or place of residence; uses methods such as GPS monitoring to track the person’s movements; notifies a community organization or entity or a private party that the person resides, works, or studies in the locality; or permits a public or private agency, organization, or person to access registry information, except as authorized by Section 213.11H. An “additional collateral consequence” under this Section does not include a collateral consequence that applies to persons convicted of many different offenses, such as government-imposed limits on voting, jury service, access to public benefits, and other government-imposed penalties, disabilities, and disadvantages that result from conviction of a wide variety of offenses, including but not limited to sexual offenses.

(2) *Additional Collateral Consequences Precluded for Persons Not Required to Register.* Notwithstanding any other provision of law, no person shall be subject to an additional collateral consequence, as defined in subsection (1), unless that person has been convicted of a registrable offense and is required to register with law enforcement under Section 213.11A.

(3) *Additional Collateral Consequences Precluded for Persons Required to Register.* Notwithstanding any other provision of law, a person required to register with law enforcement under Section 213.11A must not be subject to any government action notifying

a community organization or entity or a private party that the person resides, works, or studies in the locality; and must not be subject to any government action permitting a public or private agency, organization, or person to access registry information, except as authorized by Section 213.11H.

**(4) *Additional Collateral Consequences Available for Persons Required to Register.***

Notwithstanding any other provision of law, a person required to register with law enforcement under Section 213.11A may be subject to an additional collateral consequence not specified in subsection (3), but only if an official designated by law, after affording the person notice and an opportunity to respond concerning the proposed additional collateral consequence, determines that the additional collateral consequence is manifestly required in the interest of public safety, after due consideration of:

(a) the nature of the offense;

(b) all other circumstances of the case;

(c) the person's prior record; and

(d) the potential negative impacts of the burden, restriction, requirement, or government action on the person, on the person's family, and on the person's prospects for rehabilitation and reintegration into society.

**(5) *Limitations.*** The designated official who approves any additional collateral consequence pursuant to subsection (4) of this Section must determine that the additional collateral consequence:

(a) satisfies all applicable notification requirements set forth in Section 213.11B;

(b) is authorized by law;

(c) is drawn as narrowly as possible to achieve the goal of public safety;

(d) is accompanied by a written statement of the official approving the additional collateral consequence, explaining the need for it, the evidentiary basis for the finding of need, and the reasons why a more narrowly drawn restriction, disability, or government action would not adequately meet that need; and

(e) is imposed only for a period not to exceed that permitted under Section 213.11F for the duties to register and keep the registration current.

**(6) *Confidentiality.*** In any proceeding under subsection (4) to consider whether to

impose an additional collateral consequence, the official responsible for making the determination must insure that the identity of the registrant concerned remains confidential.

**SECTION 213.11J. DISCRETIONARY RELIEF FROM REGISTRATION AND OTHER SENTENCING CONSEQUENCES AND COLLATERAL CONSEQUENCES**

**(1) *Petition for Discretionary Relief.*** At any time prior to the expiration of any sentencing consequences imposed under Section 213.11(3) or any collateral consequences applicable primarily to persons convicted of a sexual offense, including the obligation to register, the obligation to comply with associated duties, restrictions on occupation or employment required by state law, collateral consequences imposed under Section 213.11(4), and additional collateral consequences imposed under Section 213.11I(4), the registrant may petition the sentencing court, or other authority authorized by law, to order relief from all or part of those consequences. If the obligation to register or other consequences arose from an out-of-state conviction, the petition may be addressed to a court of general jurisdiction or other authority of this state in the place where the person concerned is registered.

**(2) *Proceedings on Petition for Discretionary Relief.*** The authority to which the petition is addressed may either dismiss the petition summarily, in whole or in part, or institute proceedings to rule on the merits of the petition. If that authority chooses to entertain submissions, hear argument, or take evidence prior to ruling on the merits of the petition, it must give notice of the proceeding and an opportunity to participate in it to the prosecuting attorney for the offense out of which the obligation to register or other consequence arose. If the obligation to register or other consequence arose from an out-of-state conviction, notice of the proceeding and an opportunity to participate in it must be addressed to the principal prosecuting attorney in the jurisdiction of this state where the authority to which the petition is addressed is located.

**(3) *Judgment on Proceedings for Discretionary Relief.*** Following proceedings for discretionary relief under subsection (2), the authority to which the petition is addressed may grant or deny relief, in whole or in part, from the obligation to register, any associated

duties, and any of the sentencing consequences or collateral consequences in question. When that order terminates the registrant's obligation to register and to keep registry information current, subsequent disclosure of registry information is governed by subsection (5) of this Section. An order granting or denying relief following those proceedings must explain in writing the reasons for granting or denying relief.

(4) *Standard for Discretionary Relief.* The authority to which the petition is addressed must grant relief if it finds, after proceedings to rule on the merits pursuant to subsection (2), that the sentencing consequence or collateral consequence in question is likely to impose a substantial burden on the registrant's ability to reintegrate into law-abiding society, and that public-safety considerations do not require continued imposition of the obligation, duty, or consequence after due consideration of:

- (a) the nature of the offense;
- (b) all other circumstances of the case;
- (c) the registrant's prior and subsequent record of criminal convictions, if any; and
- (d) the potential negative impacts of the burden, restriction, or government action on the registrant, on the registrant's family, and on the registrant's prospects for rehabilitation and reintegration into society.

Relief must not be denied arbitrarily or for any punitive purpose.

(5) *Access to Registry Information after Discretionary Relief.* When an order of discretionary relief terminates the person's obligation to register and to keep registry information current, all limits on access to registry information under Section 213.11H shall remain in effect. Registry information recorded as of the date when discretionary relief takes effect must remain available to any government law-enforcement agency seeking disclosure of that information in compliance with Section 213.11H(1)(a) but must not otherwise be disclosed.

(6) *Notice to Other Jurisdictions Concerning Discretionary Relief.*

(a) When discretionary relief is granted to a person under this Section, the authority granting the order of relief must, upon the person's request, give notice of that order to any other jurisdiction where the person concerned is registered or where information about the person has been provided pursuant to Section

**213.11D(4).**

**(b) When the other jurisdiction notified is a jurisdiction of this state, the notice must specify that the other jurisdiction must extend the same relief from registration-related duties and any other sentencing consequences or collateral consequences. When that order terminates the registrant's obligation to register and to keep registry information current, that notice must also specify the limits on subsequent disclosure of registry information applicable under subsection (5).**

**(7) *Proceedings Subsequent to Discretionary Relief.* An order of discretionary relief granted under this Section does not preclude the authority to which the petition was addressed from later revoking that order if, on the basis of the registrant's subsequent conduct or any other substantial change in circumstances, the authority finds by a preponderance of the evidence that public-safety considerations, weighed against the burden on the registrant's ability to reintegrate into law-abiding society, no longer justify the order of relief.**

**(8) *Confidentiality.* In any proceedings under this Section to consider whether to grant or deny discretionary relief, the official responsible for making the determination must insure that the identity of the registrant concerned remains confidential.**

**SECTION 213.12. PROCEDURAL AND EVIDENTIARY PRINCIPLES APPLICABLE TO ARTICLE 213**

*[reserved]*