

1 **SECTION 213.12A. REGISTRATION FOR LAW ENFORCEMENT PURPOSES**

2 **(1) *Offenses Committed in this Jurisdiction***

3 (a) Except as provided in subsection 213.12A(3), every person convicted of an  
4 offense that is designated a registrable offense in this Article shall, in addition to any  
5 sanction imposed upon conviction, be obligated to appear personally and register as  
6 a sex offender with the law-enforcement authority designated by law in each [county]  
7 where the offender resides, is employed, or is a student.

8 (b) Notwithstanding any other provision of law, no conviction for an offense  
9 under this Article, or for any other criminal offense in this jurisdiction, shall make  
10 the offender eligible for or subject to an obligation to register as a sex offender with  
11 law enforcement or other governmental authority, nor shall any conviction for an  
12 offense under this Article, or for any other criminal offense in this jurisdiction, make  
13 the offender eligible for or subject to any other obligation or restriction applicable to  
14 sex offenders specifically, other than obligations and restrictions incident to a  
15 suspended sentence, probation, or parole, unless that offense is designated a  
16 registrable offense under this Article.

17 **(2) *Offenses Committed in Other Jurisdictions***

18 (a) Every person obligated to register as a sex offender in another jurisdiction,  
19 because of an offense committed in that jurisdiction, who subsequently resides, works,  
20 or studies in this jurisdiction, shall register as a sex offender in this jurisdiction and  
21 comply with the requirements of this Section, provided that the offense committed in  
22 the other jurisdiction would be a registrable offense under this Article if committed  
23 in this jurisdiction.

24 (b) Notwithstanding any other provision of law, no conviction for an offense in  
25 another jurisdiction shall make the offender eligible for or subject to an obligation to  
26 register as a sex offender with law enforcement or other governmental authority in  
27 this jurisdiction, nor shall any conviction for an offense in another jurisdiction make  
28 the offender eligible for or subject to any other obligation or restriction in this  
29 jurisdiction applicable specifically to sex offenders, other than obligations and  
30 restrictions incident to a suspended sentence, probation, or parole, unless the  
31 commission of that offense obligates the offender to register as a sex offender in that

1 jurisdiction and that offense would be a registrable offense under this Article if  
2 committed in this jurisdiction.

3 (3) *Juvenile Offenders.* No person shall be subject to the obligation to register under  
4 subsection (1) of this Section, to other obligations or restrictions under this Section, or to  
5 additional collateral consequences under Section 213.12I, on the basis of an offense  
6 committed when the offender was under the age of 18, or on the basis of an adjudication of  
7 delinquency based on conduct when the delinquent was under the age of 18; provided,  
8 however, that this subsection (3) shall not apply to an offender convicted of Sexual Assault  
9 by Aggravated Physical Force or Restraint if the offender was at least 16 years old at the  
10 time of that offense.

11 (4) *Scope and Implementation of the Obligation to Register, Associated Duties, and*  
12 *Other Collateral Consequences Applicable Specifically to Sex Offenders*

13 (a) Notification of the offender's duty to register and associated duties is  
14 governed by Section 213.12B.

15 (b) The time of initial registration is governed by Section 213.12C.

16 (c) The information required upon registration is specified in Section  
17 213.12D.

18 (d) The duty to keep registration current is specified in Section 213.12E.

19 (e) The duration of the registration requirement is specified in Section  
20 213.12F.

21 (f) Penalties for failure to register are governed by Section 213.12G.

22 (g) Access to registry information is governed by Section 213.12H.

23 (h) Additional collateral consequences of conviction are governed by Section  
24 213.12I.

25 (i) Standards and procedures for relief from the duty to register, associated  
26 duties, and additional collateral consequences applicable specifically to sex offenders  
27 are governed by Section 213.12J.

28 **Comment:**

29 1. *Offenses committed in this jurisdiction.* Section 213.12A(1) applies to collateral  
30 consequences potentially applicable on the basis of an offense committed in this jurisdiction.

Section 213.12A. Registration for Law Enforcement Purposes

1           *a. Subsection (1)(a).* In order to serve law-enforcement purposes, subsection (1)(a) obliges  
2 an offender to register as a sex offender and fulfill related duties when offense committed is  
3 designated under this Article designates it as a registrable offense.

4           The following offenses are the only offenses designated as registrable offenses under this  
5 Article:

6                   (i) Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint.

7                   (ii) Section 213.2. Sexual Assault by Physical Force, but only when committed after  
8 the offender had previously been convicted of a felony sex offense.

9                   (iii) Section 213.3(1). Sexual Assault of an Incapacitated Person, but only when  
10 committed after the offender had previously been convicted of a felony sex offense.

11                   (iv) Section 213.8(1). Sexual Assault of a Minor Younger than 12, but only when  
12 the offender is a [reserved] degree older.

13                   (v) Section 213.8(2). Sexual Assault of a Minor 12 to 16 Years of Age, but only  
14 when the offender who is a [reserved] degree older.

15                   (vi) Section 213.8(3). Incestuous Sexual Assault of a Minor.

16           Subsection (1)(a) requires offenders convicted of one of these designated offenses to  
17 register with law-enforcement authorities in each locality where the offender resides, works, or  
18 studies. Municipal organization and local logistical capabilities will determine for each state the  
19 official agency and jurisdictional level where the registration obligation is centered. For example,  
20 in California, offenders required to register must do so “with the chief of police of the city in which  
21 he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area  
22 or city that has no police department, and, additionally, with the chief of police of a campus of the  
23 University of California, the California State University, or community college if he or she is  
24 residing upon the campus or in any of its facilities.”<sup>1</sup> In Pennsylvania, offenders required to  
25 register must do so with an appropriate official of the correctional facility where incarcerated prior  
26 to release, with the Pennsylvania Board of Probation and Parole, or with the Pennsylvania state  
27 police, depending on the circumstances.<sup>2</sup>

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<sup>1</sup> Cal. Penal Code §290(b) (2019).

<sup>2</sup> 42 Pa. Cons. Stat. Ann. § 9799.19 (2019)

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1           **b. Subsection (1)(b).** Existing sex-offender registration requirements and related provisions  
2 are codified in diverse places within the corpus of state law. In addition, many jurisdictions impose  
3 sex-offender registration and related obligations on the basis of sexual offenses other than rape  
4 and sexual assault—sex-related offenses that fall outside the scope of Article 213 such as  
5 exhibitionism, stalking, and possession of child pornography. Section 213.12A(1)(b) provides that  
6 an obligation to register as a sex offender, related duties, and other collateral consequences  
7 applicable to sex offender specifically may not be imposed on an offender on the basis of any  
8 offense committed in this jurisdiction that is not defined by Article 213 and designated a registrable  
9 offense under this Article.

10           Subsection (1)(b) therefore makes clear that the registration provisions of Article 213.12A  
11 supersede prior law governing sex-offender registration and other sex-offender collateral  
12 consequences in the jurisdiction. Once enacted, the Article 213 designation of offenses that are  
13 registrable, and the provisions of Sections 213.12A-J specifying the scope and limits of collateral  
14 consequences applicable to sex offenders specifically constitute the exclusive source of law  
15 applicable to these collateral consequences in the jurisdiction. Obligations and restrictions incident  
16 to a suspended sentence, probation, or parole, and collateral consequences not applicable to sex  
17 offenders specifically—that is, obligations or restrictions applicable both to persons convicted of  
18 sex-offenses and to persons convicted of other offenses, such as disqualifications from voting, jury  
19 service or eligibility for public benefits—are governed by *Model Penal Code: Sentencing*, and are  
20 not affected by the provisions of Sections 213.12A-J.

21           **2. Offenses committed in other jurisdictions.** Section 213.12A(2) applies to sex-offender  
22 collateral consequences potentially applicable when an offender enters the jurisdiction after having  
23 been convicted of a sex offense in another jurisdiction. Under subsection (2)(a), this out-of-state  
24 offender is subject to the registration obligations of Section 213.12A if and only if two  
25 requirements are met: the offender must be obliged to register as a sex offender in the jurisdiction  
26 where the offense was committed *and* the offense must be one that would be a registrable offense  
27 if committed in this jurisdiction.

28           Under subsection (2)(b), the out-of-state offender is subject to those registration obligations  
29 *only* if these two requirements are met. Many jurisdictions require registration for a much broader  
30 array of offenses than those that trigger registration obligations under Article 213; the policy  
31 judgment underlying Section 213.12A, that sex-offender registration should be carefully targeted,

1 makes registration unnecessary in such cases. Conversely, an offender may have committed an  
2 offense that would be registrable if committed in this jurisdiction but is not registrable in the  
3 jurisdiction where it was committed. That situation will seldom arise in practice, because few states  
4 if any restrict the registration obligation more narrowly than does Article 213. In such an event,  
5 however, the policy underlying Section 213.12A *would* call for the public-safety measures that  
6 Section 213.12A contemplates, and some jurisdictions accordingly require sex-offender  
7 registration on the basis of offenses not registrable where committed, if the offense is registrable  
8 when committed in that jurisdiction.<sup>3</sup> Nonetheless, since the offense was not registrable where  
9 committed, the offender would not receive registration-related notice at the time of conviction. It  
10 is therefore neither practical nor fair for that offender to face Section 213.12A requirements when  
11 subsequently entering this state.

12       3. *Juvenile offenders.* Subsection (3) protects juveniles from the obligation to register and  
13 from other collateral consequences specific to sex offenders, regardless of the offenses they  
14 committed, and regardless of whether the potential trigger for those consequences is an  
15 adjudication of delinquency or a criminal conviction under this Article, except that juveniles  
16 convicted of Sexual Assault by Aggravated Physical Force or Restraint remain subject to the  
17 requirements of Section 213.12A if they were at least 16 years old at the time of that offense.

## REPORTERS' NOTES

### 18       1. *Introduction: sex-offender collateral consequences generally.*

19       Every state currently has legislation requiring sex offenders, on release from custody, to  
20 register with local authorities in their place of residence, to keep authorities informed of changes  
21 in their address, and to observe a variety of other restrictions, including (in many states) limits on  
22 places where they can live or work. This legislation makes their personal information available to  
23 law enforcement and typically permits the general public to access these registries under various  
24 circumstances. Many of the new laws also establish a regime of community notification—a  
25 requirement that local authorities take affirmative steps to inform the public about the names and  
26 addresses of convicted sex offenders living, working, or studying in the area. Federal law not only  
27 establishes a nationwide, internet-accessible registry of this information but also requires every  
28 state, as a condition of receiving certain federal funds, to maintain a sex-offender registry with  
29 specific minimum features. Although originally inspired by concern over violent recidivists, these  
30 laws now apply even to first offenders convicted of a broad range of sexual offenses, including

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<sup>3</sup> TBS.

1 possession of child pornography and statutory rape (sometimes including statutory rape in which  
2 victim and perpetrator are close in age).

3 Collateral consequences of conviction are not confined to the sex offenses, and in recent  
4 years they have proliferated across broad swaths of the criminal law, prompting several prominent  
5 law-reform bodies to address collateral sanctions applicable to offenders in general.<sup>4</sup> These  
6 initiatives have considered under one umbrella virtually the entire gamut of collateral sanctions  
7 triggered by conviction not only of sexual offenses but also offenses ranging from homicide to  
8 drug crimes, securities fraud, and drunk driving; likewise they seek to cover not only registration  
9 and community notification, but also such sanctions as disenfranchisement, ineligibility for public  
10 housing, loss of other public benefits, barriers to occupational licensing and the like.

11 These efforts mainly aim to identify general principles and corresponding statutory  
12 language suitable for application to any collateral consequence associated with conviction for any  
13 offense. Because they cover so much terrain, they cannot delve into the substantive question of  
14 when a given sanction should be available for a given offense. Rather, of necessity they focus on  
15 general principles of coherence, notice, and procedural fairness that can be cast in broadly  
16 applicable terms—for example, requiring that the sentencing judge explain applicable collateral  
17 consequences to defendants prior to entry of a guilty plea and at sentencing; that appropriate  
18 authorities compile in one place a list of the jurisdiction’s collateral sanctions; that jurisdictions  
19 allow offenders to seek relief from inappropriate collateral sanctions; and that sentencing  
20 commissions develop guidelines for courts to use in making substantive decisions about whether  
21 to impose a given collateral sanction or grant relief from it.<sup>5</sup> These treatments inevitably stop short  
22 of the sustained attention to the range of issues that arise in the context of collateral sanctions  
23 applicable specifically to the sexual offenses.

24 These issues are not only important in their own right, but they also have important  
25 implications for the substantive definition of the sexual offenses. In deciding the proper scope of  
26 penal prohibitions, legislative bodies must consider the severe collateral consequences typically  
27 triggered by state offenses denominated as “rape” or “sexual assault.” Concerns of this nature  
28 presumably shaped the Institute’s original decision, in 1962 MPC § 213.5, to address matters of  
29 procedure and evidence distinctive to rape that go beyond mere substantive crime definition.  
30 Sections 213.12A-J likewise reflect the judgment that sound treatment of the sexual offenses in  
31 Article 213 cannot confine itself to offense definitions alone but must also address collateral  
32 sanctions authorized or required upon conviction.

33 Note 2 examines the historical development of sex-offender collateral consequences. Note  
34 3 provides a brief overview of the policy concerns surrounding these laws and the Institute’s

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<sup>4</sup> See American Bar Association, *Standards for Collateral Sanctions and Discretionary Disqualification of Convicted Persons* (2004); National Conference of Commissioners on Uniform State Laws, *Uniform Collateral Consequences of Conviction Act* (2009); *Model Penal Code: Sentencing*, Article 7, at. 238-261.

<sup>5</sup> See, e.g., *Model Penal Code: Sentencing*, supra note 4.

1 perspective on the underlying issues. Note 4 describes the restrictions and disabilities in question  
2 and variation in the relevant state and federal legislation, with respect to both registration regimes  
3 and other sex-offender collateral consequences. Note 5 examines in detail the policy goals of this  
4 kind of legislation and assesses the evidence bearing on its effects, both intended and unintended.  
5 Note 6 explains the approach of Article 213 with regard to sex-offender collateral consequences  
6 generally. Note 7 addresses the issues specific to registration that are resolved in Sections  
7 213.12A-J.

## 8 **2. Historical Background.**

9 Since the 1930s and before, convicted sex offenders have faced a variety of special  
10 sanctions, including mandatory sterilization and indefinite commitment for psychiatric treatment.<sup>6</sup>  
11 But these measures had relatively little visibility or importance when the Model Penal Code was  
12 originally drafted. That picture changed dramatically in the early 1990s, when public interest in  
13 identifying previously convicted sex offenders emerged with new intensity following several  
14 highly publicized murders of young children in the early 1990s.<sup>7</sup> In 1993, 12-year-old Polly Klaas  
15 was kidnapped, raped, and murdered by a man with a prior record for the commission of serious  
16 violent crimes. The next year, seven-year-old Megan Kanka was sexually assaulted and killed by  
17 a career sex offender who lived across the street. Several similar incidents were widely publicized  
18 during the 1990s and shortly thereafter.<sup>8</sup> The legislative reaction to the Klaas killing focused on  
19 the “three-strikes-and-you’re-out” solution, which mandates extended terms of imprisonment for  
20 offenders previously convicted of two serious or violent felonies.<sup>9</sup> In New Jersey, Megan Kanka’s  
21 murder prompted a different response, imposing registration requirements applicable only to sex  
22 offenders. Within weeks of the killing, the state Assembly declared a legislative emergency, and a  
23 sex-offender registration law passed, without committee hearings, about two months later.<sup>10</sup>

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<sup>6</sup> See WAYNE A. LOGAN, KNOWLEDGE AS POWER: CRIMINAL REGISTRATION AND COMMUNITY NOTIFICATION LAWS IN AMERICA 1-48 (2009); PHILIP JENKINS, MORAL PANIC: CHANGING CONCEPTS OF THE CHILD MOLESTER IN MODERN AMERICA (1998); Karen J. Terry & Alissa R. Ackerman, A Brief History of Major Sex Offender Laws, in Richard G. Wright, ed., *Sex Offender Laws: Failed Policies, New Directions* 65, 66-74 (2009).

<sup>7</sup> See generally Logan, *supra* note 6, at 49-108; Terry & Ackerman, *supra* note 6, at 74-94.

<sup>8</sup> In the Sex Offender Registration and Notification Act of 2006 (“SORNA”), Congress’s “declaration of purpose,” 34 U.S.C. § 20901 (2019), lists more than a dozen specific victims.

<sup>9</sup> See Michael Vitello, *Three Strikes: Can We Return to Rationality?*, 87 J. CRIM. L. & CRIMINOLOGY 395 (1997).

<sup>10</sup> See Michelle Ruess, Second Thoughts About Megan’s Law: Concern Growing over Ripple Effects, RECORD (Hackensack, N.J.), Feb. 19, 1996, at A1 (describing rapid passage of Megan’s Law); Robert E. Freeman-Longo, *Reducing Sexual Abuse in America: Legislating Tougher Laws or Public Education and Prevention*, 23 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 303, 316 (1997) (same). The statute is now codified at N.J. STAT. ANN. § 2C:7-6 (West 1995 & Supp. 2011).

## Section 213.12A. Registration for Law Enforcement Purposes

1           In 1990, Patricia Wetterling responded to the murder of her 11-year old son Jacob by  
2 establishing a foundation to press for the enactment of sex-offender registration laws.<sup>11</sup> A year  
3 after New Jersey’s enactment of Megan’s Law, her efforts bore fruit when Congress, as part of the  
4 Violent Crime Control and Law Enforcement act of 1994, enacted the Jacob Wetterling Crimes  
5 Against Children and Sexually Violent Offender Registration Act, which required all states, on  
6 pain of loss of federal funding, to establish a system of registration for all offenders convicted of  
7 a sexually violent offense or any criminal offense against a minor.<sup>12</sup>

8           Congress subsequently repealed that statute and replaced it with a broader law—the Sex  
9 Offender Registration and Notification Act of 2006 (“SORNA”).<sup>13</sup> SORNA establishes a national  
10 registry for sex offenders, publicly available on the Internet, directs each state to maintain its own  
11 registry, and requires states to create a criminal offense, punishable under state law by more than  
12 a year’s imprisonment, for a sex offender who fails to register or meet a deadline for updating  
13 required registry information.<sup>14</sup> After the passage of SORNA, many states expanded their own  
14 registration requirements and enacted other special restrictions. In addition, it is a federal crime,  
15 punishable by up to 10 years in prison, for a person convicted of a state-law sex offense to travel  
16 interstate without maintaining an up-to-date registration with state authorities.<sup>15</sup>

17           Britain and other European nations have faced similar public pressure to make sex-offender  
18 information more readily available, but unlike the United States, they have generally declined to  
19 respond to that pressure.<sup>16</sup> One fundamental reason is that the continental European nations, and  
20 to a lesser extent the United Kingdom (UK), generally treat criminal-history information as  
21 confidential, in order to protect the privacy of offenders and to aid their rehabilitation.<sup>17</sup>  
22 Regulations in the European Union (EU), applicable (for the moment) in the UK as well, require  
23 specific safeguards to protect the confidentiality of criminal history information, and stipulate that  
24 registries of criminal convictions “may be kept only under the control of official authority.”<sup>18</sup> The

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<sup>11</sup> Jacob’s body was missing for almost 30 years, having been found only in 2016, and his murderer was unknown until he confessed at that time. But the crime was assumed to be the work of a sexual predator.

<sup>12</sup> See 42 U.S.C. § 14071(f)(1) (Supp. III 1997).

<sup>13</sup> PUB. L. NO. 109-248, tit. I, 120 Stat. 590 (2006) (codified as amended at 34 U.S.C. §§ 20901-20929 (2019)).

<sup>14</sup> 34 U.S.C. § 20913(e).

<sup>15</sup> 18 U.S.C. § 2250.

<sup>16</sup> For detailed discussion, see James B. Jacobs & Dimitra Blitsa, US, EU & UK Employment Vetting as Strategy for Preventing Convicted Sex Offenders from Gaining Access to Children, New York University School of Law, Public Law & Legal Theory Research Paper Series, Working Paper No. 12-64 (Nov. 2012), available at <http://ssrn.com/abstract=2176897>.

<sup>17</sup> See James B. Jacobs & Elena Larruri, *Are Criminal Convictions a Public Matter?: The USA and Spain*, 14 PUNISHMENT & SOC’Y 3, 12-14 (2012).

<sup>18</sup> European Union Directive 95/46/EC, European Parliament & Council, 24 Oct. 1995, art. 8(5).

1 EU has modified that background presumption only to the extent of seeking to bar convicted sex  
2 offenders from working with children and seeking to make convictions for sexual offenses against  
3 children accessible to employers whose staff serve that clientele. Although such objectives seem  
4 modest relative to those pursued in American jurisdictions, “[p]rogress towards [imposing these  
5 restrictions] has been slow,”<sup>19</sup> in part because of the commitment to the confidentiality of criminal  
6 records that is embedded in the law of the continental EU nations. In the UK, a public agency is  
7 responsible for determining which forms of private employment should be closed to sex offenders.  
8 UK employers and volunteer organizations have a duty to check the criminal background of those  
9 applying for positions that afford close contact with children and other especially vulnerable  
10 groups, such as the elderly and the handicapped. But the disabilities imposed on sex offenders are  
11 far more limited than in the United States, and registry information is not available to the general  
12 public, largely because of concern that widespread dissemination of criminal history and  
13 burdensome disabilities can undermine offender rehabilitation.<sup>20</sup> Similarly, in Canada, registry  
14 information is available solely to law enforcement, for the purpose of investigating and preventing  
15 sex offenses, and is not available to the public.<sup>21</sup> Almost no foreign countries have adopted the  
16 prevalent U.S. practice of proactive notification of sex offender registry information to community  
17 organizations and the general public.<sup>22</sup>

18 Laws of this kind pose several distinct policy issues: What, precisely, is their underlying  
19 justification? Does their adverse impact on the offender’s prospects for gainful employment and  
20 reintegration into the community outweigh their potential contribution to social protection and  
21 public peace of mind? Do registries in fact provide such peace of mind, and how might they be  
22 structured for optimal effect?

23 **3. Overview of policy concerns and the judgments underlying Sections 213.12A-J.**

24 Despite their prevalence, registration and other collateral-consequence laws targeting sex  
25 offenders rest on highly contested premises. The best available studies discredit many of their  
26 central justifications. At the same time, the research provides strong evidence of unintended  
27 negative impacts, including tendencies (especially for the broadest of these laws) to *aggravate*  
28 recidivism and *jeopardize* public safety, the very opposite of the results that lawmakers and the  
29 general public expect registration and community notification to accomplish.

30 This realization is now widespread among criminal justice professionals, even those who  
31 otherwise disagree about almost all other policies relating to sexual offenses. Critics of registration,

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<sup>19</sup> Jacobs & Blitsa, *supra* note 16, at 34.

<sup>20</sup> TBS.

<sup>21</sup> See Janine Benedet, *A Victim-Centered Evaluation of the Federal Sex Offender Registry*, 37  
QUEEN’S L.J. 437, 464 (describing effect of 2011 amendment to Canada’s Sex Offender Information  
Registration Act).

<sup>22</sup> See Nora V. Demleitner, *Structuring Relief for Sex Offenders from Registration and  
Notification Requirements: Learning from Foreign Jurisdictions and from the Model Penal Code:  
Sentencing*, 30 FED. SENT. RPTR. 317, 317 & n.11 (2018).

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1 community notification, residency and employment restrictions, and the like include substantial  
2 numbers of victim advocates, who see harsh collateral consequences as major contributors to the  
3 frequent reluctance of police and prosecutors to properly charge serious sex offenders, and to the  
4 frequent reluctance of judges and juries to properly convict them.<sup>23</sup> The U.S. Department of Justice  
5 now grants states considerable leeway to sidestep some of the ostensibly mandatory federal  
6 requirements and in acknowledging their unintended consequences, the Department cautions  
7 against any expansion of these regimes.<sup>24</sup> In candid moments, many state lawmakers, even while  
8 supporting this legislation themselves, describe it as overbroad and largely counterproductive, but  
9 politically impossible to oppose.<sup>25</sup>

10 Mindful of these assessments, Sections 213.12A-J provide for sex-offender disabilities on  
11 a substantially more restricted basis than that found in currently prevalent state and federal  
12 legislation. Positions supported by strong currents of public opinion and widely endorsed in the  
13 political process cannot be ignored, and Article 213 does not lightly depart from them. At the end  
14 of the day, however, the Model Code must be guided by the best available evidence and judgments  
15 not deformed by known imperfections in the relevant political deliberations.

16 Sections 213.12A-J therefore limit sex-offender collateral consequences to the domains  
17 most likely to offer public-safety benefits, without strong counterproductive side-effects. It does  
18 so through four distinct mechanisms.

19 First, the relevant provisions sharply distinguish registration *for law-enforcement purposes*  
20 from other restrictions and disabilities, including community notification, residency and  
21 employment restrictions, and other sex-offender disabilities. Up-to-date registration with local  
22 law-enforcement authorities can serve legitimate law-enforcement purposes and is far more cost-  
23 effective than other sex-offender disabilities. Moreover, so long as the confidentiality of these  
24 records is preserved, registration exclusively for law-enforcement purposes poses relatively few  
25 dangers to public safety and to the welfare of offenders themselves. Other sex-offender disabilities,  
26 in contrast, are costly to implement and entail significant, well-documented difficulties<sup>26</sup>;  
27 accordingly they must be targeted and managed with particular care. Sections 213.12A, D & E  
28 therefore require all adults convicted of a registrable offense to provide up-to-date registry  
29 information to local law-enforcement authorities, but Section 213.12H imposes on those  
30 authorities a strong obligation to preserve the confidentiality of that information, and Section  
31 213.12I strictly limits community notification and other sex-offender disabilities,

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<sup>23</sup> See note xx, *infra*.

<sup>24</sup> See note xx, *infra*.

<sup>25</sup> See note xx, *infra*.

<sup>26</sup> See note xx, *infra*.

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1           Second, Section 213.12A sharply restricts the class of offenders to whom the threshold  
2 duty to register applies. It precludes registration of nearly all juvenile offenders, and for adults, it  
3 imposes the threshold duty to register only upon conviction of offenses that most strongly arouse  
4 public concern.

5           Third, the registration framework shortens in two ways the duration of required  
6 registration. Under federal law and that of most states, the serious offenses that require registration  
7 under Section 213.12A typically would trigger an obligation to register for life.<sup>27</sup> In contrast,  
8 Section 213.12F limits to 15 years the registrant's duty to keep registry information current and  
9 provides for automatic termination of that duty at an earlier date if the offender meets specified  
10 rehabilitative goals during the initial registration period; in either case the offender is removed  
11 from the registry at the end of the applicable period. In addition, Section 213.12J permits the  
12 offender to apply for early removal from the registry or relief from some or all of the duties  
13 associated with registration upon an appropriate showing of rehabilitation,

14           Fourth, Section 213.12I tightly constrains, and in most cases eliminates, other sex-offender  
15 disabilities, such as community notification and restrictions on residency, employment, internet  
16 access, and the like. In current law, community notification is widely required for a long list of  
17 sex-related offenses, and other sex-offender disabilities, though not mandated by federal law, are  
18 also commonly imposed. In contrast, Section 213.12I permits community notification and other  
19 sex-offender disabilities only when an individual, case-by-case risk assessment case strongly  
20 supports the need for such measures, to an extent that outweighs their well-established potential  
21 for costly, counterproductive and criminogenic effects.

### 22           **4. Current Law: What Burdens Are Imposed and on Whom?**

23           As discussed above, federal SORNA requires each state, on pain of losing federal funds,  
24 to maintain a registry of convicted sex offenders and specifies many parameters that state  
25 registration regimes must satisfy to comply with the federal mandate, including the offenses that  
26 must trigger the obligation to register, the information states must include in their registries, the  
27 duration of a registrant's duties and the frequency with which registrants must provide updates.  
28 Separately, SORNA requires states to make it a criminal offense, punishable by at least a year in  
29 prison, for a designated offender to fail to register or miss a deadline for updating registry  
30 information.<sup>28</sup> Beyond federal mandates pertaining to the registry system itself, Federal SORNA  
31 directs states to afford public access to their registry and establish a program for promptly notifying  
32 concerned entities and individuals in the community about any change in information pertaining  
33 to registrants in the area. Federal SORNA does not seek to dictate state approaches to other sex-  
34 offender disabilities, such as restrictions on residency, employment, GPS monitoring, and internet  
35 usage.

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<sup>27</sup> TBS.

<sup>28</sup> Federal SORNA § 20913(e).

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1 All states have a registration regime applicable to persons convicted of a broad list of sexual  
2 offenses.<sup>29</sup> But states vary considerably in the extent to which they conform to federal SORNA  
3 expectations with respect to many of the ostensibly mandated details, particularly with regard to  
4 triggering offenses, public access, and community notification. States also vary in the extent to  
5 which they impose other sex-offender disabilities.

6 *a. Which Offenders?* Federal SORNA requires states to impose the obligation to register  
7 as a sex offender and meet other requirements on anyone convicted of a broad list of sexual  
8 offenses, both felonies and misdemeanors. Juvenile delinquency adjudications based on  
9 comparable sexual misconduct are included if the minor was at least 14 years old at the time of the  
10 offense.<sup>30</sup> The designated offenses range from the most violent sex crimes to any offense of  
11 coerced sexual contact, solicitation of a minor to engage in any sexual conduct, possession of child  
12 pornography, “video voyeurism” (defined as photographing or filming the private area of an  
13 individual without the individual’s consent<sup>31</sup>), and any other “sexual act” not involving consenting  
14 adults, even low-level misdemeanors such as public indecency. For example, for an offense  
15 comparable to MPC § 251.1, the petty misdemeanor of committing “any lewd act which [the  
16 offender] knows is likely to be observed by others who would be affronted,” SORNA requires  
17 mandatory registration, public access, and community notification under the “sex offender” label.

18 Federal SORNA establishes a three-tier offender-classification system based solely on the  
19 seriousness of the sex offense and whether it was the defendant’s first. All offenders convicted of  
20 a qualifying sex offense, regardless of classification, must (to comply with SORNA) face at  
21 minimum all of the restrictions and disabilities detailed in Note 4(d) below with respect to  
22 registration, public access to registry information, and community notification—that is, proactive  
23 law enforcement measures to alert schools, other local agencies, and the general public to the  
24 identify of registered sex offenders present in the area. The three tiers differ only in the length of  
25 time the offender is subject to the restriction and the accompanying duty to keep registration  
26 information current (15 years for the least serious offenders, life for the most), and the frequency  
27 with which the offender must appear personally to confirm the required information (once a year  
28 for the least serious offenders, quarterly for the most).

29 Many states similarly impose the burdens of a sex-offender conviction automatically on  
30 offenders convicted of any of a broad array of sex-related crimes. The triggering offenses typically  
31 include all felonies and misdemeanors, however classified, that fall within the purview of Article  
32 213, as well as many offenses that do not—for example, possession of child pornography,  
33 solicitation to practice prostitution, sexual performance involving a minor, and exhibitionism. In

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<sup>29</sup> See Catherine Carpenter & Amy E. Beverlin, *The Evolution of Unconstitutionality in Sex Offender Registration Law*, 63 HASTINGS L.J. 1071, 1078 (2012) (describing sex-offender registry laws enacted in the wake of federal SORNA).

<sup>30</sup> SORNA § 20911.

<sup>31</sup> See 18 U.S.C. § 1801 (2019).

1 some states, the list of covered misconduct includes as many as 40 distinct offenses.<sup>32</sup> In some of  
2 these jurisdictions, the burdens of sex-offender conviction automatically extend not only to  
3 registration, often for life, but also to stringent residency restrictions.<sup>33</sup> Some states grade  
4 offenders according to tiers of seriousness, but as under federal SORNA, their tiers are determined  
5 solely by prior record and the nature of the offense of conviction.

6 Other state regimes are more nuanced. Many exclude young offenders from registration  
7 and other obligations.<sup>34</sup> Many states further narrow the universe of affected offenders by using a  
8 ranking system to vary the scope of the collateral burdens as a function of the intensity of perceived  
9 need. One common approach eschews categorization based solely on the conviction offense and  
10 prior record. Instead, many states classify sex offenders on the basis of an individualized risk  
11 assessment that considers a variety of factors pertinent to the nature and seriousness of the risk  
12 posed, such as whether the victim of the offense was a minor, and the age difference and  
13 relationship between victim and offender.<sup>35</sup> In New York, the level of assessed risk affects the  
14 duration of the obligation to remain registered and the type of information that can be publicly  
15 released.<sup>36</sup> Minnesota, New Jersey, Oregon, Washington, and Vermont, among other states, rely  
16 on actuarial assessment to distinguish sex offenders and the basis of risk and assign more serious  
17 collateral consequences to offenders who pose the greatest danger to the public.<sup>37</sup> In Georgia, a  
18 “Sex Offender Registration Review Board”<sup>38</sup> uses research-based assessments to assign “points”

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<sup>32</sup> See, e.g., UTAH CODE ANN. § 77-27-21.5(g), (n) (2011) (listing 29 registerable offenses); LA. REV. STAT. ANN. § 15:541(24)(a) (2011) (listing 26 registerable offenses); N.Y. CORRECT. LAW § 168-a (2011) (listing over 40 registerable offenses).

<sup>33</sup> See Chiraag Bains, *Next-Generation Sex Offender Residency Statutes: Constitutional Challenges to Residency, Work, and Loitering Restrictions*, 42 HARV. C.R.-C.L.L. REV. 483 (2007); Brian J. Love, *Regulating for Safety or Punishing Depravity? A Pathfinder for Sex Offender Residency Restriction Statutes*, 43 CRIM. L. BULL. 834 (2007). For discussion of states where residency restrictions are automatic or discretionary, see Mary A. Lentz, § 13:3. Missing children—Megan’s Law: Missing, Abused, and Neglected Children: Residency Laws for Sex Offenders in Various States, in LENTZ SCHOOL SECURITY (2011-2012 ed.); D. Scott Bennett, Sex Offender Registry Laws and School Boards, INQUIRY AND ANALYSIS, NAT’L SCHOOL BOARDS ASS’N (February 2008).

<sup>34</sup> See, e.g., Lisa Ann Minutola & Riya Saha Shah, *A Lifetime Label: Juvenile Sex Offender Registration*, 33 DEL. LAW. 8, 12 (2015).

<sup>35</sup> E.g., N.Y. CORRECT. LAW, §§ 168-169-W (2019). See generally Hinton, *supra* note xx (noting that many law-enforcement officials follow classification systems that are more nuanced, and therefore more restrictive than the ostensibly mandatory federal regime).

<sup>36</sup> See [N.Y.] Div. of Crim. Just. Services, “Risk Level & Designation Determination,” [https://www.criminaljustice.ny.gov/nsor/risk\\_levels.htm](https://www.criminaljustice.ny.gov/nsor/risk_levels.htm) (last visited Jul. 29, 2019) (stating that “risk level governs the amount and type of information which can be released as community notification and also impacts duration of registration”).

<sup>37</sup> Citations TBS. See also Colorado.

1 that are used to compute a score indicating a high, moderate, or low risk of re-offending; sexual  
2 attacks against strangers and a history of multiple offenses are among the factors considered  
3 indicative of high risk.<sup>39</sup>

4 *b. Which Burdens?*

5 All states require registrants to update their registry information periodically and authorize  
6 criminal punishment for failing to register or keep registry information up to date.<sup>40</sup> And the great  
7 majority permit public access to registry information on an essentially unlimited basis.<sup>41</sup> Similarly,  
8 most states, at their own initiative, regularly distribute registry information to the entire community  
9 or to pertinent government agencies and to private organizations where contact with children or  
10 other vulnerable individuals might occur.

11 Nearly all states bar sex offenders from working as teachers, security guards, and in other  
12 sensitive occupations, but many exclude sex offenders from much more extensive forms of  
13 employment.<sup>42</sup> Sex offenders are commonly prohibited from living near schools, parks, and other  
14 places where children congregate.<sup>43</sup> And even when not formally excluded from living or working  
15 at a certain place, community notification can create almost insuperable barriers to finding a  
16 landlord or employer willing to deal with them. At least 17 states require sex offenders to wear a  
17 GPS monitoring device that enables law enforcement to determine their location at all times. Other

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<sup>38</sup> See GA. CODE ANN. § 42-1-12 et seq. (2019). For discussion of Georgia protocols for actuarial risk assessment, see Sexual Offender Registration Rev. Board [Ga.], *Sexual Offender Registration Review Board Standing Procedure* (last visited Jul. 29, 2019) <https://www.sorrb.org/board-information/standing-procedures>.

<sup>39</sup> For example, sexual attacks against strangers and a history of multiple offenses are high-risk indicators of recidivism. See Hinton, *supra* note xx.

<sup>40</sup> See Carpenter & Beverlin, *supra* note 29, at 1078 (2012) (describing sex-offender registry laws enacted in the wake of federal SORNA).

<sup>41</sup> For details, see Reporters' Note to Section 213.12H, *infra*. See also "Collateral Consequences," ABA CRIMINAL JUSTICE SECTION, <http://www.abacollateralconsequences.org/search/?jurisdiction=37>.

<sup>42</sup> See "Collateral Consequences," *supra* note 41; Sara Geraghty, *Challenging the Banishment of Registered Sex Offenders from the State of Georgia: A Practitioner's Perspective*, 42 HARV. C.R.-C.L. L. REV. 513, 515 (2007).

<sup>43</sup> Geraghty, *supra* note 42, at 514-515 (summarizing states' residency-restriction laws). For further detail, see notes 151-152, *infra*.

1 restrictions, less common for the time being, range from GPS monitoring<sup>44</sup> and limits on using the  
2 Internet<sup>45</sup> to chemical castration.<sup>46</sup>

3 **5. Results.**

4 Because most states have implemented simultaneously a package of diverse sex-offender  
5 duties and restrictions, much of the data-driven research cannot tease out the separate effects of  
6 registration alone or of other common elements of sex-offender policy. Other research  
7 methodologies do shed some light on that question, but the overall picture is best understood by  
8 beginning with what is known about the impact of sex-offender collateral consequences generally.  
9 This Note then focuses on the likely benefits and costs of their individual components, and the  
10 Notes to Sections 213.12H & I return to that question, with more sustained attention to the impact  
11 of collateral consequences other than law-enforcement registration alone.

12 *a. Intended Effects and Inherent Limitations.* The various collateral-consequence measures  
13 (registration, public access, notification, residential restrictions, employment restrictions, and the  
14 like) differ substantially in the burdens they represent for offenders, but broadly speaking they  
15 share the same two goals—to reduce recidivism and to facilitate self-protective measures on the  
16 part of the public. A collateral aim, no doubt, is to alleviate public fear, even if the measures have  
17 no concrete effect on the behavior of offenders or law-abiding citizens. Some state legislators have  
18 occasionally articulated a third objective that is specific to residency restrictions—the goal of  
19 making life so difficult for convicted sex offenders that they will simply choose to leave the state.<sup>47</sup>

20 The success of sex-offender collateral-consequence laws in reducing recidivism has been  
21 extensively studied, and there is also significant research examining how members of the public

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<sup>44</sup> See Kamika Dunlap, *Sex Offenders After Prison: Lifetime GPS Monitoring?*, FINDLAW BLOTTER, February 1, 2011; Michelle L. Meloy & Sharenda Coleman, GPS Monitoring of Sex Offenders, in *Wright*, supra note 16, at 243 (reporting that as many as 46 states use GPS monitoring to track sex offenders under some circumstances). The Supreme Court has held that GPS monitoring of a sex offender parolee constitutes a search that must meet Fourth Amendment requirements of reasonableness, but the Court did not reach the question whether such monitoring passes muster under that standard. *Grady v. North Carolina*, March 30, 2015.

<sup>45</sup> See Charles Wilson, *Court Upholds Ind. Facebook Ban for Sex Offenders*, ASSOCIATED PRESS, June 25, 2012, available at [http://abcnews.go.com/Technology/wireStory/judge-upholds-ind-facebook-ban-sex-offenders-16642465#.T-ikN\\_LNnio](http://abcnews.go.com/Technology/wireStory/judge-upholds-ind-facebook-ban-sex-offenders-16642465#.T-ikN_LNnio) (discussing cases in which courts have held bans on internet use compatible with the first amendment).

<sup>46</sup> See Alan Blinder, “What to Know about the Alabama Chemical Castration Law,” *N.Y. Times*, June 11, 2019. Other states imposing chemical castration on some paroled sex offenders include California, Florida, Louisiana, and Wisconsin. *Id.*

<sup>47</sup> See Nancy Badertscher, *Law to Track Sex Offenders Studied*, *Atlanta J.-Const.*, Aug. 16, 2005, at B1 (quoting Representative Keen, the sponsor of proposed residency restrictions, as saying: “If it becomes too onerous and too inconvenient, [sex offenders] just may want to live somewhere else... And I don’t care where, as long as it’s not Georgia”); Editorial, *Sex Offenders Won’t Vanish for Good*, *Atlanta J.-Const.*, Mar. 23, 2006, at 14A (quoting Jerry Keen, House Majority Leader, as stating: “Candidly ... they will in many cases have to move to another state”).

1 alter their behavior in response to these laws. The research consistently establishes four points.  
2 First, in terms of the primary objective—reducing recidivism—the studies conducted to date are  
3 either inconclusive or establish that pertinent gains were not achieved. Similarly, with respect to  
4 the aim of enhancing citizen self-protection, research has detected no significant measurable  
5 benefits and powerfully counterproductive side effects: community notification, unrestricted  
6 citizen access to registry information, and restrictions on residency and employment are associated  
7 with strongly negative impacts on offenders, including great difficulty reintegrating into society  
8 and significantly enhanced rates of recidivism.<sup>48</sup> Third, there is an inherent mismatch between the  
9 risks that different sorts of sex offenders pose and the restrictions to which they are subject. Finally,  
10 the laws are expensive to implement.

11 (i) *Reducing Recidivism*. The Supreme Court, echoing a commonly held view, has stated  
12 that “[t]he risk of recidivism posed by sex offenders is ‘frightening and high.’”<sup>49</sup> There is little to  
13 no evidence to support this assumption, which has been thoroughly debunked.<sup>50</sup> Recidivism in this  
14 group of offenders is not unusually elevated; the available research strongly suggests the  
15 opposite—that “[s]ex offenders have some of the lowest recidivism rates of any class of  
16 criminal.”<sup>51</sup> In a 2002 Department of Justice study, sex crimes were one of the offense categories  
17 for which convicted offenders had the lowest rates of re-arrest for any new offense, and only 2.5  
18 percent of released rapists were rearrested for a new rape, while 13.4 percent of released robbers  
19 were rearrested for a new robbery and 22 percent of offenders convicted of a non-sexual assault  
20 were rearrested for a new assault.<sup>52</sup>

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<sup>48</sup> See Reporters’ Notes, *infra*.

<sup>49</sup> *Smith v. Doe*, 538 U.S. 84, 103 (2003) (quoting *McKune v. Lile*, 536 U.S. 24, 34 (2002)).

<sup>50</sup> See, e.g., Ira Mark Ellman & Tara Ellman, “Frightening and High”: The Supreme Court’s Crucial Mistake about Crime Statistics, 30 *Constit. Comm.* 495 (2015). One writer notes that there is “vanishingly little evidence for the Supreme Court’s assertion,” and that the origin of its mistake was simply “a throwaway line in a glossy magazine.” Adam Liptak, *Did the Supreme Court Base a Ruling on a Myth?*, *N.Y. Times*, March 6, 2017.

<sup>51</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.” See also Katherine K. Baker, *Once a Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 *HARV. L. REV.* 563, 578 (1997) (noting evidence that convicted rapists are less likely to re-offend than convicted burglars and thieves); Wesley G. Jennings, Richard Tewksbury & Kristen Zgoba, *Sex Offenders: Recidivism and Collateral Consequences*, available at NCJRS <https://www.ncjrs.gov/pdffiles1/nij/grants/238060.pdf> (2011).

<sup>52</sup> U.S. Dept. of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994*, at 1, 9 (2002). See also U.S. Dept. of Justice, Bureau of Justice Statistics, *Sex Offenses and Offenders*, 25-26 (1997) (among felony offenders placed on probation, “rapists had a lower rate of re-arrest for [any] new felony and a lower rate of re-arrest for a violent felony than most categories of probationers with convictions

1           Importantly, recorded recidivism rates for sex offenses are deflated by exceptionally low  
2 rates of reporting, arrest, and conviction for these crimes. A number of methodologies have been  
3 used to control for this difficulty. But recidivism is surely a greater concern than the data imply,  
4 and awareness of this distortion arguably bolsters the case for registration policies to strengthen  
5 prevention of crimes that are more frequent than might appear. But low rates of reporting, arrest,  
6 and conviction also mean that the great majority of those who commit sex offenses are not  
7 convicted in the first place, so they are not on a registry when they commit their subsequent  
8 offenses. Registry regimes cannot help prevent this large chunk of recidivist sex offenses. Indeed,  
9 many professionals believe they actually *impede* effective enforcement by focusing attention on a  
10 relatively small population of unlikely recidivists, at the expense of attention to the much larger  
11 population of potential offenders not yet caught and therefore not yet on any registry.

12           Misunderstandings about the data on these points are sufficiently widespread to warrant  
13 further discussion. On several occasions, the Supreme Court has stated that “convicted sex  
14 offenders are much more likely than any other type of offender to be rearrested for a new rape or  
15 sexual assault.”<sup>53</sup> The claim is literally true but misleading. It relies on a Bureau of Justice  
16 Statistics finding that a convicted rapist is more likely than someone convicted of some other crime  
17 (e.g., bank robbery) to be arrested subsequently for rape;<sup>54</sup> it does not find that rapists, as compared  
18 to other offenders, have a higher rate of recidivism for their offense of conviction or for subsequent  
19 crime generally. Indeed, a Justice Department analysis of prisoners released in 1994 found that  
20 among 1717 ex-prisoners subsequently arrested for rape, *less than five percent* had previously been  
21 convicted of that offense.<sup>55</sup> Properly understood, in other words, the data invoked to support sex-  
22 offender registration paradoxically show how *misdirected* these laws are: By focusing attention on  
23 offenders previously convicted of rape, such legislation risks diverting attention from the vastly  
24 larger pool of individuals who will eventually commit that crime—individuals who were  
25 previously convicted of other offenses or not previously convicted of any crime at all.

26           Although sex offenders, therefore, are *not* more likely than other offenders to re-offend,  
27 collateral-consequence legislation arguably could be defended on the basis that sex crimes, being  
28 distinctively harmful and unsettling, warrant special effort to prevent them. The crucial question,  
29 then, is whether registration and other collateral-consequence measures have succeeded in doing  
30 so. Most studies suggest that they have not.

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for violence”). All such studies are of course sensitive to the definition of re-offending (which offenses and whether established by arrest or conviction), and the time period over which recidivism is measured.

<sup>53</sup> Smith, *supra*, 538 U.S. at 103 (quoting *McKune*, 536 U.S. at 33).

<sup>54</sup> U.S. Dept. of Justice, *Sex Offenses and Offenders*, *supra* note xx, at 27.

<sup>55</sup> U.S. Dept. of Justice, *Recidivism of Prisoners Released in 1994*, *supra* note xx, at 9-10.

## Section 213.12A. Registration for Law Enforcement Purposes

1 Before-after studies have found no significant correlation between recidivism rates and the  
2 passage of registration laws, public registries, and community notification.<sup>56</sup> A regression analysis  
3 found that *registration alone*, by keeping police informed about sex offenders in the area, tended  
4 to deter the frequency of reported sex offenses against neighbors of the offender (but not against  
5 family members or more distant strangers).<sup>57</sup> *Notification laws* had some apparent crime-reduction  
6 effect by deterring *non-registered* offenders from committing offenses that would render them  
7 eligible for this sanction,<sup>58</sup> but community notification also tended to increase recidivism among

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<sup>56</sup> For New Jersey, a statewide study found a long-term downward trend in sex-offense rates, with an acceleration of the trend when Megan’s Law passed in 1994. But when disaggregated to the county-level, that effect became negligible; in six counties (of 21 studied) there was no statistically significant change in the long-term downtrend, and in six others, the acceleration of that trend preceded passage of Megan’s Law. Kristen Zgoba & Philip Witt, *Megan’s Law: Assessing the Practical and Monetary Efficacy*, N.J. Dep’t of Corrs. (Dec., 2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/225370.pdf>. The New Jersey study based sex-offending rates on arrest data, a potential source of bias, either because registered offenders were more easily targeted and arrested (an effect that would generate arrest statistics higher than the actual rate of re-offending post-1994), or because law-enforcement arrest efforts slackened in a false-sense-of-security effect (which would generate arrest statistics lower than the actual rate of re-offending post-1994). Whatever the bias, it would seem that any positive effect on recidivism was too slight to be detected in any but very subtle analysis. In a different research sample, the New Jersey researchers tracked sex offenders released from prison between 1990 and 2000; they found a significant drop in re-offending post-1994 (from 50 percent to 41 percent), but the drop cut across all offenses, with no statistically significant drop for *sexual* offenses, with respect either to likelihood of re-arrest or time from prison release to re-arrest. *Id.* at 21-32.

A before-after study of community notification in the state of Washington produced similar findings: no significant drop in the rate of re-arrest for sex crimes, and a slightly larger but still statistically insignificant drop in the rate of re-arrest for crimes generally. Donna D. Schram & Cheryl Darling Milloy, *Community Notification: A Study of Offender Characteristics and Recidivism* 17, 19, Washington State Institute for Public Policy (Oct., 1995), available at <http://www.wsipp.wa.gov/rptfiles/chrrec.pdf>. In the case of crimes generally, there was a substantial difference in the time to the first re-arrest (a median of only 25 months for the notification group but much better— 62 months—for the control group); nonetheless, this difference could have been due to the use of arrest statistics as a proxy for re-offending rates, and in any case the difference was observed only in re-arrests for crimes generally, not in re-arrests for sex crimes.

A study relying on three distinct data sets and three outcome measures (crime rates for sex offenses, recidivism rates for sex offenders, and location-specific incidence of offenses) found “[no] support [for] the hypothesis that sex offender registries are effective tools for increasing public safety.” Amanda Y. Agan, *Sex Offender Registries: Fear without Function?*, 54 *J. L. & ECON.* 207, 207 (2011).

<sup>57</sup> J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 *J. L. & ECON.* 161 (2011). On the complexity of disentangling the effects of registration as such from accompanying measures involving community notification, see James Vess et al., *International Sex Offender Registration Laws: Research and Evaluation Issues Based on a Review of Current Scientific Literature*, 14 *POLICE PRACTICE AND RESEARCH: AN INTERNATIONAL JOURNAL* 322 (2014).

<sup>58</sup> Deterrence has not been officially advanced as a policy rationale for registration laws, and to do so would undermine the classification of these collateral consequences as non-punitive; that classification

1 offenders who *were* registered. As a result, “any beneficial effect of registration on recidivism is  
2 dampened by the use of notification, and [thus] . . . the punitive aspects of notification laws may  
3 have perverse consequences.”<sup>59</sup>

4 Overall, the available research does not conclusively exclude the possibility that  
5 registration, notification, restricted residency, and similar collateral consequences could  
6 potentially contribute to public safety. But after two decades of experience with such laws, and  
7 with the considerable body of evidence that experience has generated, their beneficial effects (if  
8 any) have yet to be discerned.

9 One reason for this inability to detect public-safety benefits may be that some benefits were  
10 realized but were offset by the negative consequences for public safety that these laws also entail.  
11 That possibility is examined in Note 5(b) below.

12 (ii) *Transparency and Self-protection*. Public access and community notification give the  
13 public and organizations responsible for the welfare of vulnerable populations an ability to take  
14 precautions. Indeed, the perception of transparency and empowerment seems to follow almost  
15 automatically from public access and community notification. But their effects have been  
16 decidedly mixed. The evidence is discussed in the Reporters’ Note to Section 213.12H, which  
17 addresses the specifics of public access to registry information. Overall, the research suggests that  
18 public awareness typically prompts few self-protective measures, and that the very existence of  
19 these regimes tends to divert attention away from much more significant sexual dangers.<sup>60</sup>

20 (iii) *Mismatch*. The collateral-consequence laws under consideration here were initially  
21 prompted by cases like Megan Kanka’s: a young child sexually assaulted by a stranger with a prior  
22 history of sexual offenses who was, unbeknownst to her parents, living nearby. Nonetheless, from  
23 the start these laws extended their reach to offenses against adults and to offenders who were well  
24 known to their victims. Such expansive conceptions of the offenders to be targeted are  
25 understandable and potentially justified, but they sweep within the single rubric of the “sex  
26 offender” individuals who may present different risks that, if so, call for different measures of  
27 social protection. Offenders can be distinguished on three especially important dimensions. But  
28 those differences are not necessarily stable. A fourth problem is that not all offenders “specialize”  
29 in a particular type of victim or a sexual offense. Instead, research finds significant rates of “cross-  
30 over” sexual offending (“polymorphism” in the language of behavioral science). These four  
31 “mismatch” concerns are crucial for sound registration policy.

32 First is the “stranger danger” myth. Though contemporary sex offender registration  
33 regimes grew out of highly publicized stranger crimes, most sexual assaults—by a wide margin—  
34 involve family members or acquaintances. In a Wisconsin sample of 200 recidivist sex offenders,

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is the foundation for an extensive Supreme Court jurisprudence holding that these “regulatory” measures  
are not subject to the ex post facto prohibition. **CITES.**

<sup>59</sup> Prescott & Rockoff, *supra* n.55, at 181.

<sup>60</sup> See Reporters’ Note to Section 213.12H, *infra*.

1 *none* had perpetrated crimes against strangers; a more comprehensive Justice Department study  
2 found that among child victims of sexual abuse, 34 percent had been molested by family members  
3 and an additional 25 percent by close acquaintances.<sup>61</sup> Moreover, despite important qualifications  
4 in the “cross-over” literature discussed below, perpetrators who molest a family member seldom  
5 go on to target strangers. It should be superfluous to point out that the needs for notification and  
6 residency restrictions are quite different (if they apply at all) when a parent is convicted of  
7 molesting the parent’s own child; yet stranger assaults and acquaintance assaults are legally  
8 identical offenses. That means that in the prevalent state and federal approach, classifying  
9 offenders automatically based on the legal offense of conviction, stranger and acquaintance  
10 offenses entail precisely the same collateral consequences.

11 Second, the “child victim” concern is not a myth, but it involves a distinctive set of  
12 behavioral and rehabilitative issues. Offenders who target young, pre-adolescent children  
13 (pedophiles) usually present different risks from those of the offender who has assaulted an adult.  
14 Many classification regimes automatically place offenses against minors in a more serious  
15 category, but some do not. And even where that distinction is drawn, it is often insufficiently  
16 discriminating. Classifications often fail to take into account the age of the minor victim or to  
17 differentiate between pedophiles and offenders who are themselves teenagers who had consensual  
18 sex with other teens who were close or identical in age.

19 Third, is the problem of risk vs. remedy. Offenses involving adults, even those in the least  
20 serious category, nonetheless remain subject to the full panoply of collateral consequences; their  
21 treatment may differ from offenses against children, as in the federal regime, only in the length of  
22 the registration period (merely 15 years rather than 25 years or life). Yet many of the required  
23 collateral consequences—such as the federal mandate to notify day-care centers and common state  
24 mandates barring residence close to school zones (not to mention prohibitions on living near a  
25 school-bus stop)—apply even though the necessity for these measures is different or nonexistent  
26 when the offender is an employer who groped an adult employee in the store room or a person  
27 who raped an adult stranger but shows no indication of being attracted to pre-adolescent children.<sup>62</sup>

28 Fourth, “cross-over” offending complicates this picture. Although in conventional wisdom,  
29 the pedophile and the person who forcibly rapes an adult are often assumed to harbor different  
30 sexual proclivities, this is not uniformly true. One recent study of the issue found that among  
31 recidivist offenders, 37 percent of those who initially raped or sexually assaulted an adult

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<sup>61</sup> See Jill Levenson, Sex Offender Residence Restrictions, in *SEX OFFENDER LAWS: FAILED POLICIES, NEW DIRECTIONS* 267, 275 (Richard G. Wright Ed., 2009); PATRICIA TJADEN & NANCY THOENNES, DEP’T OF JUSTICE, Findings From the National Violence Against Women Survey, available at <https://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (2006).

<sup>62</sup> In many states, residency restrictions apply to all offenders regardless of their classification. Catherine Elton, Behind the Picket Fence, *THE BOSTON GLOBE*, May 6, 2007, at 36; Geraghty, *supra* note xx, at 516.

1 subsequently committed a sexual offense against a pre-pubescent child.<sup>63</sup> Research finds similar,  
2 though less pronounced, polymorphism across the stranger-acquaintance divide. In one study of  
3 sexual recidivists, over 25 percent had sexually assaulted both strangers and non-strangers,<sup>64</sup> but  
4 other studies find recidivist targeting patterns to be “highly stable” in terms of victim-offender  
5 relationship (i.e., stranger vs. acquaintance vs. intra-familial) as well as the victim’s gender.<sup>65</sup>  
6 Cross-over offending cautions against narrowly matching collateral sanctions to the character of  
7 the triggering offense. But because baseline rates of recidivism for sexual offenses are quite low  
8 (only 2.5 percent in one Department of Justice study),<sup>66</sup> cross-over offenses by previously  
9 convicted recidivists represent a small sliver of the total problem, arguably not enough to justify  
10 the law-enforcement effort and expense devoted to the issue. And some aspects of cross-over  
11 offending actually reinforce these reasons to restrict rather than extend the scope of registration  
12 and notification. One study of recidivist sex offenders released on parole found that only 4.5  
13 percent had been arrested only for sex offenses. The others had heterogeneous prior records—they  
14 had either committed a nonsexual offense first (and hence would not have been on a registry prior  
15 to committing their sexual offense) or they committed a sex offense first (and hence would have

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<sup>63</sup> Jenna Rice & Raymond A. Knight, *Differentiating Adults with Mixed Age Victims from Those Who Exclusively Sexually Assault Children or Adults*, 31(4) SEXUAL ABUSE: A J. OF RES. AND TREATMENT 410, 411 (2019). Accord, Skye Stephens, et al., *Examining the Role of Opportunity in the Offense Behavior of Victim Age Polymorphic Sex Offenders*, 52 J. OF CRIM. JUST. 41, 41 (2017) (reporting “high levels of polymorphism” in regard to the targeting of adult vs. child victims); Skye Stephens, et al., *The Relationships Between Victim Age, Gender, and Relationship Polymorphism and Sexual Recidivism*, 30(2) SEXUAL ABUSE: A J. OF RES. AND TREATMENT 132, 141 (2018) (finding age-based polymorphism to be most common type). An earlier study found a much higher rate of adult-victim/child-victim cross-over offending (70%) among prison inmates, but a much lower rate (18% among parolees; researchers speculated that parolees may have been less truthful for fear of triggering greater parole restrictions. See Peggy Heil, et al., *Crossover Sexual Offenses*, 15 SEXUAL ABUSE: A J. OF RES. AND TREATMENT 221, 229 (2003). See also Mariana A. Saramago, Jorge Cardoso & Isabel Leal, *Victim Crossover Index Offending Patterns and Predictors in a Portuguese Sample*, 24 SEXUAL ABUSE: A J. OF RES. AND TREATMENT 1, 1 (2018) (finding that among sexual recidivists in a Portuguese prison, 48% had victims in different age categories).

Related, but indicative of the widely divergent estimates of age-based polymorphism, see Jessica N. Owens, et al., *Investigative Aspects of Crossover Offending from a Sample of FBI Online Child Sexual Exploitation Cases*, 30 AGGRESSION AND VIOLENT BEHAVIOR 3, 3 (2016) (reporting that “[r]eliable estimates vary about the percentage of child pornography offenders who also engage in other sexual crimes against children, ranging from 3 to 5% to 85%.”).

<sup>64</sup> Rachel Lovella, et al., *Offending Patterns for Serial Sex Offenders Identified via the DNA Testing of Previously Unsubmitted Sexual Assault Kits*, 52 J. OF CRIM. JUST. 68, 72 (2017). The authors also find that among recidivists who targeted strangers, there was significant cross-over offending by age. *Id.*

<sup>65</sup> Skye Stephens, et al., *supra* n.xx, 52 J. OF CRIM. JUST. at 41 (2017) (finding rates of polymorphism below 10% for victim gender and below 20% in terms of victim-offender relationship).

<sup>66</sup> See text at note xx, *infra*. On the inferences to be drawn from the fact that exceptionally low conviction rates for sex offenses artificially deflate these recidivism figures, see text following note xx, *infra*.

1 been on a registry subject to law-enforcement attention in that regard, but then went on to commit  
2 a nonsexual offense).<sup>67</sup>

3 (iv) *Cost*. Legislators sometimes assume that registration, residency restrictions, and other  
4 collateral burdens on sex offenders are virtually cost-free so far as the state itself is concerned. But  
5 these measures are expensive to implement, especially when (as is typical) the requirements target  
6 a large, heterogeneous group of offenders. Recording and updating the required information and  
7 installing the requisite website technology can cost each jurisdiction millions of dollars per year,<sup>68</sup>  
8 without even counting the resulting need for law-enforcement personnel to reduce the time they  
9 can devote to responding to emergencies and other duties.<sup>69</sup>

10 This experience raises great doubt about whether these measures are fiscally viable and  
11 worth their direct costs to state and local government. Many state criminal-justice agencies, after  
12 careful assessment, have concluded that they are not, especially when more selective approaches  
13 can achieve most or all of the benefits at considerably lower cost.<sup>70</sup>

14 *b. Unintended Effects*. In contrast to the intended benefits of collateral sanctions, for which  
15 empirical measures of success are disappointing or nonexistent, unintended negative side-effects  
16 are well-documented. This is particularly true with respect to burdens that extend beyond the  
17 disclosure of registry information to law-enforcement agencies themselves—burdens such as public  
18 access, community notification, and restrictions on residency and employment. The issue is  
19 discussed in more detail in the Reporters’ Note to Section 213.12I, which addresses the specifics  
20 of collateral consequences additional to the duty to register with law enforcement.<sup>71</sup>

21 The negative impacts *on offenders* include difficulty in obtaining housing and employment,  
22 psychological stigma, and physical abuse by misguided members of the public.<sup>72</sup> These  
23 consequences in turn mean negative impacts *for public safety* because the adverse personal impacts  
24 for offenders impede their reintegration into society and aggravate their risks of re-offending.<sup>73</sup>

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<sup>67</sup> See Jeffrey Lin & Walter Simon, *Examining Specialization Among Sex Offenders Released From Prison*, 28(3) SEXUAL ABUSE: A J. OF RES. AND TREATMENT 253, 263 (2016).

<sup>68</sup> See text accompanying notes xx-xx, *supra*. See also Hinton, *supra* note xx, at 2.

<sup>69</sup> See Geraghty, *supra*, note 40, at 518.

<sup>70</sup> See text accompanying note xx, *supra*.

<sup>71</sup> See Reporters’ Note to Section 213.12G, *infra*.

<sup>72</sup> See, e.g., *E.B. v. Verniero*, 119 F.3d 1077, 1102 (3d Cir. 1997) (“The record documents that registrants and their families have experienced profound humiliation and isolation as a result of the reaction of those notified. Employment and employment opportunities have been jeopardized or lost. Housing and housing opportunities have suffered a similar fate. Family and other personal relationships have been destroyed or severely strained. Retribution has been visited by private, unlawful violence and threats . . .”).

<sup>73</sup> Prescott & Rockoff, *supra* note 55, at 181.

## Section 213.12A. Registration for Law Enforcement Purposes

1           It could be that the intuitively plausible law-enforcement benefits of these laws partially or  
2 fully offset these negative consequences for public safety, a result that would explain the inability  
3 of researchers to detect any *net* gain in re-offending rates. If so, the resulting symmetry is a poor  
4 one, taking no account of the human consequences for registered offenders and their families, and  
5 achieving a public-safety equilibrium only by driving up law-enforcement effort and expense to a  
6 sufficient extent to counterbalance the *increased* dangerousness of potential offenders.

7           Perhaps unexpectedly, victim advocates and organizations actively engaged in providing  
8 support services for rape survivors share these concerns and have been forceful critics of  
9 registration and other collateral consequences. A recurring grievance is the way that registration  
10 and notification have “done a disservice by . . . the construction of sexual assault risk—who poses  
11 it, who faces it, and how to mitigate it—and [by] the reinforcement of a victim hierarchy that  
12 demeans most victims.”<sup>74</sup> Victim services organizations like state-based Coalition[s] Against  
13 Sexual Assault (CASA’s) repeatedly elaborate on this theme. A victim advocate affiliated with a  
14 CASA in the Northeast explained that these laws “have confused the public by emphasizing the  
15 least common offender.”<sup>75</sup> At another CASA, an advocate noted that “Vulnerability [for sexual  
16 abuse] is actually reinforced by these laws because it turns the attention [of the public and the  
17 criminal justice system towards] one-percent of the crime.”<sup>76</sup>

18           Advocates similarly object that sex offender laws “reinforce a narrow [view] that only  
19 forced sexual contact with a stranger that results in grave bodily harm is a ‘real’ assault, and that  
20 only child victims are ‘real victims’<sup>77</sup>; that view in turn ‘makes it harder [for victims] to come  
21 forward [because the laws] reinforce the notion that [the justice system, the public, and service  
22 providers] are only interested in a specific offender type.’<sup>78</sup>

23           Another prominent concern for victim advocates has been that expensive initiatives to  
24 impose collateral-consequence restrictions on offenders have been coupled with “absolutely no  
25 corresponding increase in material support for victim services.”<sup>79</sup> Further, “[a]ccording to several  
26 CASAs, these expensive laws have demonstrated little to no discernable impact on reducing  
27 recidivism. Instead, they eat up scarce resources, scare victims into not reporting [an abusive]

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<sup>74</sup> Rachel Kate Bandy, “The Impact of Sex Offender Policies on Victims,” in *Wright*, supra n.xx, at 491.

<sup>75</sup> *Id.* (quoting CASA interviewee).

<sup>76</sup> *Id.* (quoting CASA interviewee located on West coast).

<sup>77</sup> *Id.*, at 493.

<sup>78</sup> *Id.*, (quoting CASA interviewee based in Southeast).

<sup>79</sup> *Id.*, at 502 (reporting views of a West Coast CASA).

1 loved one, and reinforce to the public stereotypes about what violence is and who perpetrates it.<sup>80</sup>  
2 One advocate summarizes that “[t]hese policies are about a *sense* of safety, not *real* safety.”<sup>81</sup>

3 Patricia Wetterling, the mother of a murder victim, is widely credited with playing a pivotal  
4 role in enactment of SORNA’s predecessor, the first federal legislation mandating the creation of  
5 state regimes for sex-offender registration.<sup>82</sup> Wetterling continues to support registration as a  
6 useful law enforcement tool, along with notification when it is carefully done (“the way we do it  
7 in Minnesota”), but she has come to regret much of the overextended legislation that her initiative  
8 spawned. She describes residency restrictions as “ludicrous,” noting that “most sex offenses are  
9 committed by somebody that gains your trust, or is a friend or relative.... [N]one of these laws  
10 address the real [problem] that nobody wants to talk about.”<sup>83</sup>

11 Registration of juvenile offenders has had distinctively harsh consequences, and  
12 assessments of its value have been especially negative. The relevant research is discussed in the  
13 Reporters’ Note to Section 213.12A(3), which imposes special limits on juvenile registration.

14 **6. The Model Code: Sections 213.12A-J.** A regime to govern sex-offender collateral  
15 consequences must address dense thicket of substantive and procedural issues. Distinctive features  
16 of local law necessarily affect the appropriate statutory structure and language dealing with  
17 operational detail. Thus, many facets of scope and implementation do not lend themselves to  
18 treatment in Model Code intended for a multi-jurisdictional audience. Crucial issues of drafting  
19 and policy, however, are common to all jurisdictions and can be addressed in universal terms:  
20 Which offenses and which offenders should ever be subject to restrictions specific to sex  
21 offenders? How much information should be publicly accessible? Should particular collateral  
22 sanctions (for example, limits on where an offender can live) ever be imposed upon conviction of  
23 a sexual offense? If so, which sex offenses should trigger exposure to that sanction, and should it  
24 be imposed automatically or only after an individualized assessment of benefits and costs? What  
25 should be the duration of the disabilities in question? What procedural safeguards should attend  
26 the determination of whether a particular offender should be subject to a particular disability or  
27 whether a previously imposed disability should be lifted? Sections 213.12A-J address broadly  
28 relevant issues of this kind.

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<sup>80</sup> *Id.*, at 505.

<sup>81</sup> 505 (quoting a West Coast CASA advocate and noting that as a result, the unintended byproduct of these laws “may well be the creation of more victims.”).

<sup>82</sup> See text at n.xx, *supra*.

<sup>83</sup> Patricia Wetterling & Richard G. Wright, *The Politics of Sex Offender Policies: An Interview with Patricia Wetterling*, in Wright, *supra* note xx, at 101-103. For further discussion of Wetterling’s further criticism of residency restrictions see Reporters’ Note to Section 213.12H, *infra*.

## Section 213.12A. Registration for Law Enforcement Purposes

1 Sections 213.12A-J do not accept the federal framework as a given and instead reconsider  
2 the federal baseline on its merits, for two reasons. First, the federal “mandate” is quite weak,  
3 because noncompliance causes states to lose only 10 percent of their federal law-enforcement  
4 grants.<sup>84</sup> By comparison, the costs of compliance typically are many times greater. For example,  
5 in California, the state’s Sex Offender Management Board estimated that complying with federal  
6 SORNA would cost the state at least \$38 million, as against a loss of only \$2.1 million in federal  
7 funds.<sup>85</sup> For Texas, comparable figures were assessed at a cost of \$39 million for SORNA  
8 compliance, as against a loss of only \$1.4 million in federal funding.<sup>86</sup> In Colorado, the state  
9 estimated that the federal funds lost (\$240,000) would suffice to implement SORNA only in a  
10 single mid-size law-enforcement agency.<sup>87</sup> As a result, in most states, SORNA is seen as an  
11 unfunded mandate of considerable proportions.<sup>88</sup>

12 Second, and partly as a consequence of the first point, as of August 2019, only 22 states  
13 had complied with the federal mandate.<sup>89</sup> All states have some system for registering sex  
14 offenders, but the majority have chosen to go their own way, adopting more flexible approaches,  
15 even at the cost of losing some federal funds. The collateral burdens imposed on sex offenders  
16 vary widely, exceeding the federal minimum in some jurisdictions but falling below it in others.

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<sup>84</sup> 34 U.S.C. § 20925(a) (2019).

<sup>85</sup> California Sex Offender Management Board, Adam Walsh Act Statement of Position 3-4 (n.d.), available at [http://www.opd.ohio.gov/AWA\\_Information/AWA\\_CA\\_SOMB\\_SORNA\\_Position\\_Paper.pdf](http://www.opd.ohio.gov/AWA_Information/AWA_CA_SOMB_SORNA_Position_Paper.pdf). The implementation costs continue to dwarf even the more substantial loss of federal funds (\$3.2 million) that California faced for fiscal 2011. See National Conference of State Legislatures, SORNA Noncompliance Penalties, available at <http://www.ncsl.org/Portals/1/documents/cj/jagstatedollars.pdf>.

<sup>86</sup> Senate Criminal Justice Committee [Texas], Interim Report 14 (Dec. 15, 2010), available at <http://www.senate.state.tx.us/75r/Senate/commit/c590/c590.InterimReport81.pdf>.

<sup>87</sup> Colorado Sex Offender Management Board, White Paper on the Adam Walsh Child Protection & Safety Act of 2006, at 17 (Sept. 2008), available at [http://dcj.state.co.us/odvsom/Sex\\_Offender/SO\\_Pdfs/SOMB%20AWA%20White%20Paper%20Final%20-%2009-19-08.pdf](http://dcj.state.co.us/odvsom/Sex_Offender/SO_Pdfs/SOMB%20AWA%20White%20Paper%20Final%20-%2009-19-08.pdf). In addition to the California, Colorado, and Texas assessments just cited, see also Russell Hinton, “Georgia’s Sexual Offender Registry” GEORGIA DEPARTMENT OF AUDITS AND ACCOUNTS PERFORMANCE AUDIT OPERATIONS 09-18 (2010), available at <http://www.atlantaunfiltered.com/wp-content/uploads/2010/08/sex-offender-registry-audit.pdf>.

<sup>88</sup> See Dylan Scott, States Find SORNA Non-Compliance Cheaper, Nov. 7, 2011, available at <http://www.governing.com/blogs/fedwatch/States-Find-SORNA-Non-Compliance-Cheaper.html#>.

<sup>89</sup> See “SORNA” OFFICE OF JUSTICE PROGRAMS, DEPARTMENT OF JUSTICE, <http://ojp.gov/smart/sorna.htm> (last accessed August 10, 2019) (listing 22 states that “[h]ave substantially implemented SORNA”). Prior to 2016, the Department of Justice considered only 17 of the 50 states to be SORNA-compliant. DoJ guidance finalized in August 2016 provided states “greater flexibility” in implementing SORNA’s requirements with respect to juvenile registration. See Office of the Attorney General, Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 50,522, 50,552 (Aug. 1, 2016). The relaxation of these rules permitted a modest increase in the count of SORNA-compliant states.

## Section 213.12A. Registration for Law Enforcement Purposes

1 This pattern suggests widespread dissatisfaction with the federal regime, whether because of fiscal  
2 or policy concerns.

3 For these reasons, Sections 213.12A-J, while targeting issues that the federal mandate  
4 currently leaves to the discretion of the states, also evaluate, and in part reject, approaches that  
5 current federal law seeks to mandate nationwide. The potential benefits of sex-offender collateral  
6 consequences become attenuated and costs together with negative side-effects dominate decisively  
7 when—as under currently prevalent law—the obligation to register applies indiscriminately to  
8 offenders of widely divergent culpability and future risk; when public access to registry  
9 information is essentially unlimited; and when special measures go beyond registration to include  
10 affirmative community notification, occupational and residency restrictions, and the like. The  
11 broad, inflexible sweep of collateral-consequence sanctions under federal SORNA and under the  
12 legislation of most states is unjust and counterproductive. On this point, well-considered  
13 arguments for a more limited approach have won a positive reception in the legislatures and law  
14 enforcement agencies of a significant minority of the states, even in the face of considerable  
15 political risk. By delineating a balanced, discriminating approach, Sections 213.12A-J offer a  
16 template for legislatures willing to consider much-needed reform in this area.

17 The Article 213 offense definitions limit eligibility for collateral sanctions of any sort, and  
18 for eligible offenses, Sections 213.12A-J provide a structure for selectively assessing the need to  
19 burden the offender with particular sorts of collateral consequences beyond the threshold  
20 requirement of registration itself. These provisions require restraint in imposing registration,  
21 community notification, residency restrictions and related collateral consequences, in light of the  
22 public-policy costs of such sanctions that, although not readily apparent to the general public, are  
23 nonetheless substantial and well-documented in all the relevant research.

24 Section 213.12A establishes the scope of the threshold duty to register. Issues relevant to  
25 implementing that duty are discussed in the Reporters' Notes to Section 213.12B (for the notice  
26 offenders must receive), Section 213.12C (for the time when the obligation to register ripens),  
27 Section 213.12D (for the information registrants and states themselves must provide), Sections  
28 213.12E & F (for the registrant's duty to periodically update registry information and the duration  
29 of that duty), and Section 213.12G (for penalties applicable to failure to register or update registry  
30 information as required). Consequences other than registration are discussed in more detail in the  
31 Reporters' Notes to subsequent Sections, which restrict, substantively and procedurally, the  
32 offender's exposure to other collateral consequences. Section 213.12H strictly limits public access  
33 to registry information. Section 213.12I establishes a formal procedure for deciding on the need  
34 for additional offender obligations or disabilities; identifies factors the authorized official must  
35 weigh in determining whether a particular offender should incur such consequences<sup>90</sup>; and requires

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<sup>90</sup> Statutory language is not the place to mandate specific risk assessment parameters. The sentencing judge or other authorized official will draw on detailed protocols that are evolving and continually refined for this purpose. See, e.g., Grant Duwe, *Better Practices in the Development and Validation of Recidivism Risk Assessments: The Minnesota Sex Offender Screening Tool-4*, 30 CRIM. JUSTICE POLICY REV. 538 (2019); R. Karl Hanson, et al. *The Field Validity of Static-99/R Sex Offender*

1 a written explanation of the reasons why any additional collateral consequence is justified in the  
2 interest of public safety, after due consideration of its impact on the offenders prospects for  
3 successful reintegration into law-abiding society. Finally, Section 213.12J addresses procedures  
4 by which offenders can obtain early relief from sex-offender duties and disabilities, including the  
5 duty to keep registry information current.

6 **7. Section 213.12A. Registration for Law-Enforcement Purposes**

7 The findings canvassed above cast considerable doubt on the efficacy and wisdom of nearly  
8 all the common collateral-consequence requirements enacted for sex offenders since the early  
9 1990s. One response to that assessment would be to discard registration-related practices entirely  
10 and treat sex offenders living in the community no differently from anyone else who has a criminal  
11 record. That approach, however, gives insufficient weight to legitimate social interests, especially  
12 the law enforcement interests that a local registry can serve.

13 To be sure, law-enforcement officials can readily retrieve criminal-history information,  
14 regardless of the jurisdiction where the conviction occurred, when they need background on a  
15 person of interest in a particular criminal investigation. But that option is more cumbersome than  
16 the ability to quickly determine through the local registry whether that individual has a serious  
17 sex-offense record. And a criminal-history search of the national data base is beside the point when  
18 there is an effort to identify the unknown perpetrator of an unsettling sexual crime. At least to the  
19 extent that the information does not leave law-enforcement hands, its public-safety value easily  
20 outweighs the potential costs. An obligation to register with local law-enforcement authority  
21 therefore seems readily defensible for the most serious offenders. Section 213.12A delineates the  
22 appropriate reach of that obligation.

23 A significant difficulty is that once information exists anywhere in cyberspace, its  
24 confidentiality is fragile, no matter what the law may say.<sup>91</sup> Whether the combined risks of data  
25 breach and data misuse outweigh the law-enforcement value of location-specific sex-offender  
26 information is not easy to determine; the answer inevitably depends in large part on the danger  
27 posed by particular types of offenders. The difficulty of appraising that trade-off counsels in favor  
28 of limiting the registration obligation, with its attendant costs, to offenders most likely to pose a  
29 significant public-safety threat, and then relying on offender-specific assessments of risk, as many  
30 states already do, to determine the frequency and duration of information-update obligations and  
31 eligibility for early termination of registration and other collateral consequences.

32 A separate but especially salient interest is the value of heightened possibilities for citizen  
33 self-protection in settings such as schools, day-care centers, and nursing homes, where staff have  
34 frequent, unsupervised access to young children and other particularly vulnerable individuals. That

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*Risk Assessment Tool in California*, 1 J. THREAT ASSESSMENT & MGMT. 102 (2014); R. Karl Hanson & Kelly E. Morton-Bourgon, *The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies*, 21 PSYCHOL. ASSESSMENT 1(2009).

<sup>91</sup> Leakage of ostensibly confidential information has been a problem for registry information even before the internet. See Logan, *supra* n.xx, at 229 n.218

1 interest is discussed in connection with the provisions of Section 213.12H, which govern public  
2 access to registry information.

3 **a. Section 213.12A(1): Adults convicted of sex offenses in this jurisdiction.** The Article  
4 213 offense definitions classify as “registrable,” and therefore capable of triggering sex-offender  
5 collateral consequences, only those sexual offenses most likely to signal a propensity for  
6 dangerous predatory sexual behavior. The following Article 213 offenses are classified as  
7 registrable:

8 (i) *Section 213.1. Sexual Assault by Aggravated Physical Force or Restraint.* This, the most  
9 serious sexual offense, involves exceptionally aggressive sexual abuse that clearly justifies special  
10 concern about the danger of violent recidivism.

11 (ii) *Section 213.2. Sexual Assault by Physical Force.* This offense covers a wide range of  
12 sexual misconduct, from that involving force just short of “aggravated physical force” to many  
13 lesser degrees of force and threat, including any amount physical force that is more than negligible,  
14 provided of course that the offender has the necessary culpable awareness of causing sexual  
15 submission to or performance of penetration or oral sex without consent by those forcible means.  
16 So defined, the offense includes within its reach misconduct that, while very serious, does not  
17 necessarily mark the offender as a threat to children or a potentially violent predator. To require  
18 registration for all such offenders would therefore be overbroad. Section 213.2 therefore classifies  
19 the offense as registrable only when the offense conduct occurs after the offender had previously  
20 been convicted of a felony sex offense.

21 (iii) *Section 213.3(1). Sexual Assault of an Incapacitated Person.* This offense similarly  
22 covers a wide range of sexual misconduct, and the conduct within its reach, while very serious,  
23 does not necessarily mark the offender as a threat to children or a potentially violent predator. To  
24 require registration for all such offenders would therefore be overbroad. Section 213.3(1) therefore  
25 classifies the offense as registrable only when the offense conduct occurs after the offender had  
26 previously been convicted of a felony sex offense.

27 (iv) *Section 213.8(1) & (2).* These offenses involve sexual penetration or oral sex with a  
28 victim under the age of 16 by an offender who is a [reserved] degree older. This is predatory sexual  
29 abuse of exceptionally serious nature, justifying the special precautions that the sex-offender  
30 registry permits.

31 (v) *Section 213.8(3).* This offense involves sexual penetration or oral sex with a victim  
32 under the age of 21 by an offender who is a parent, guardian, or other adult in a similarly direct  
33 position of trust and responsibility for the victim’s welfare. This is exceptionally serious sexual  
34 misconduct, involving exploitation and abuse of trust that calls for the special precautions that the  
35 sex-offender registry permits.

36 The one comparably dangerous Article 213 offense not classified as registrable is the  
37 offense of Sex Trafficking under Section 213.9. Like the registrable offenses, it is an especially  
38 serious felony involving predatory behavior and exploitation of vulnerable victims. But as its  
39 motivation is primarily economic, it calls for a different kind of law-enforcement attention. Unless

1 its perpetrators are themselves guilty of other Article 213 offenses, they do not warrant inclusion  
2 in a sex-offender registry that aims to identify a different sort of offender.

3 The other Article 213 offenses all involve serious crimes, and their perpetrators  
4 undoubtedly may include a certain number of potential recidivists. But the empirical research and  
5 experience detailed above makes clear that the currently prevalent approach, which seeks to cast  
6 widest conceivably defensible net is unjust, costly, and counterproductive. With respect to the  
7 other Article 213 offenses, the social harms of registration demonstrably outweigh its potential  
8 benefits. Making this judgment explicit, Section 213.12A(1)(b) stipulates that no conviction for  
9 any other criminal offense under Article 213 or any other criminal law of this jurisdiction can be  
10 the basis for requiring sex-offender registration or any other obligation applicable to sex offenders  
11 specifically, other than obligations incident to a suspended sentence, probation, or parole.

12 ***b. Section 213.12A(2): Adults convicted of sex offenses in other jurisdictions.*** Section  
13 213.12A(2)(a) requires certain adults convicted sex offenses in other jurisdictions to register with  
14 the appropriate local authority if they subsequently live, work, or study in this jurisdiction. This  
15 out-of-state sex offender is subject to the registration obligations of Section 213.12 if and only if  
16 two requirements are met: the offender must be obliged to register as a sex offender in the  
17 jurisdiction where the offense was committed *and* the offense must be one that would be a  
18 registrable offense if committed in this jurisdiction.

19 Many jurisdictions require sex-offender registration for a much broader array of offenses  
20 than those that trigger registration obligations under Article 213. The policy judgment underlying  
21 Section 213.12A, that sex-offender registration should be carefully targeted, makes registration  
22 unnecessary and inappropriate in such cases. Accordingly, Section 213.12A(2)(b), like Section  
23 213.12A(1)(b), stipulates that no conviction for any offense not registrable under Article 213 can  
24 be the basis for requiring sex-offender registration or any other obligation in this jurisdiction  
25 applicable to sex offenders specifically.

26 Conversely, an offender may have committed an offense that would be registrable if  
27 committed in this jurisdiction but is not registrable in the jurisdiction where it was committed. That  
28 situation will seldom arise in practice, because few states if any restrict the registration obligation  
29 more narrowly than does Article 213. In such an event, however, the policy underlying Section  
30 213.12A *would* call for the public-safety measures that Sections 213.12A-J contemplate, and some  
31 jurisdictions accordingly require sex-offender registration on the basis of offenses not registrable  
32 where committed, if the offense is registrable when committed in that jurisdiction.<sup>92</sup> Nonetheless,  
33 since the offense was not registrable where committed, the offender would not receive registration-  
34 related notice at the time of conviction. It is therefore neither practical nor fair for that offender to  
35 face Section 213.12A requirements when subsequently entering this state.

36 With respect to other offenses committed outside this jurisdiction, the social harms of sex-  
37 offender registration demonstrably outweigh its potential benefits. Accordingly, Section  
38 213.12A(2)(b), like Section 213.12A(1)(b), stipulates that no conviction for any other criminal

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<sup>92</sup> TBS.

1 offense can be the basis for imposing an obligation to register or any other obligation applicable  
2 to sex offenders specifically.

3 ***c. Section 213.12A(3): Juvenile offenders.***

4 Under current law, many states impose duties to register and other sex-offender collateral  
5 consequences for a long list of sex offenses even when the perpetrator was a minor at the time of  
6 the misconduct. Registration is widely required, often for life, not only when the youthful offender  
7 is convicted of a criminal offense as an adult but also in many circumstances where the offense  
8 was the basis for an adjudication of delinquency. Federal SORNA seeks to require states to extend  
9 registration to juveniles adjudicated delinquent if they were at least 14 years of age at the time of  
10 the offense and the offense was comparable to or more severe than the federal crime of aggravated  
11 sexual abuse or an attempt or conspiracy to commit that offense.<sup>93</sup>

12 The research is replete with heartbreaking stories of the unnecessarily cruel, life-destroying  
13 impact of placing children on a sex-offender registry for offenses committed as minors.<sup>94</sup> The  
14 impact has been not only harsh but particularly counterproductive. Victim advocates note that  
15 “juvenile offender registration [has] inadvertently created a disincentive for victims to disclose  
16 [their victimization]”<sup>95</sup>; that their clients “fear that there are no intermediate interventions  
17 available”; and that when abused at the hands of a juvenile, “they fear that the youth will be  
18 required to register as a sex offender and will, therefore, be ‘branded’ for life despite being  
19 potentially amenable to treatment.”<sup>96</sup>

20 Patricia Wetterling is especially outspoken in condemning juvenile registration. “I don’t  
21 see any, not one redeeming quality in doing that. . . . Registering juveniles is ludicrous and wrong  
22 always.” Noting that she objected to the language covering juveniles when the Jacob Wetterling  
23 bill was being drafted, she recalls that she “kept raising questions about treating juveniles the same  
24 way we treat adults. It makes no sense at all . . . . I was told not to worry about the juvenile  
25 provisions because that would get thrown out. I was told there was no way that it would pass . . .  
26 and yet [it did].”<sup>97</sup>

27 Victim advocates report that “juvenile offender registration [has] inadvertently created a  
28 disincentive for victims to disclose [their victimization].”<sup>98</sup> They say their clients “fear that there  
29 are no intermediate interventions available,” and that when abused at the hands of a juvenile, “they

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<sup>93</sup> SORNA § 20911(8) (2019). Under the federal criminal code, aggravated sexual abuse is defined as ...18 USCS § 2241.

<sup>94</sup> *Human Rights Watch, Raised on the Registry* (2013).

<sup>95</sup> Bandy, *supra* note 72, at 471, 488.

<sup>96</sup> *Id.*

<sup>97</sup> Wetterling & Wright, *supra* note 81, at 99, 101.

<sup>98</sup> Bandy, *supra* note 72x, at 471, 488.

1 fear that the youth will be required to register as a sex offender and will, therefore, be ‘branded’  
2 for life despite being potentially amenable to treatment.”<sup>99</sup>

3 Apart from the vivid anecdotal evidence, systematic research tells a consistently negative  
4 story. Findings suggest that registration of juveniles has no preventive effect<sup>100</sup> and substantial  
5 criminogenic consequences,<sup>101</sup> with overall effects that are unambiguously negative. One  
6 quantitative study estimates that juvenile registration alone saddles the public with social costs,  
7 net of benefits, amounting to at least \$40 million per year, and that community notification  
8 pertaining to offenders placed on a registry as minors generates net social costs of at least \$10  
9 billion per year.<sup>102</sup>

10 Studies from other methodological perspectives consistently reach qualitatively similar  
11 results.<sup>103</sup> In 2016, the Federal Advisory Committee on Juvenile Justice, in recommendations to  
12 the Justice Department’s Office of Juvenile Justice and Delinquency Prevention, reported that  
13 juvenile sex offender registration laws “are inconsistent with research and evidence-based practice  
14 and undermine positive outcomes.” The Committee urged rejection of the registration approach  
15 for juveniles in preference to using “evidence-based, community based and family-focused  
16 responses.”<sup>104</sup> Largely concurring in this recommendation, the Justice Department’s official  
17 guidance on the subject noted that “[j]uvenile cases have been pled to non-registration offenses at

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<sup>99</sup> Id.

<sup>100</sup> Elizabeth J. Letourneau et al., Juvenile Registration and Notification Policy Effects: A Multistate Evaluation Project, National Criminal Justice Reference Service, <http://www.ncjrs.gov/App/publications/abstract.aspx?ID=273674> (January 2018); Cynthia J. Najdowski et. al., *Adolescent Sex Offender Registration Policy: Perspectives on General Deterrence Potential from Criminology and Developmental Psychology*, 22 PSYCHOL., PUB. POL’Y, & L. 114 (2016).

<sup>101</sup> Catherine L. Carpenter, *Throwaway Children: The Tragic Consequences of a False Narrative*, 45 SW. L. REV. 461 (2016).

<sup>102</sup> See Richard B. Belzer, The Costs and Benefits of Subjecting Juveniles to Sex-Offender Registration and Notification, 41 R STREET POL’Y STUDY (2015), <https://www.rstreet.org/wp-content/uploads/2015/09/RSTREET41.pdf>.

<sup>103</sup> See, e.g., J.C. Sandler, et al., Juvenile Sexual Crime Reporting Rapes Are Not Influenced by Juvenile Sex Offender Registration Policies, *Psych., Pub. Pol’y & L.* (forthcoming 2020); E.J. Letourneau, et al., Juvenile Registration and Notification Policies Fail to Prevent First-Time Sexual Offenses: A Replication Study (manuscript under review, 2019); A.J. Harris, et al., *Collateral Consequences of Juvenile Sex Offender Registration and Notification: Results from a Survey of Treatment Providers*, 28 SEXUAL ABUSE: A J. OF RES. AND TREATMENT 770 ((2016); Najdowski et. al., supra n.xx.

<sup>104</sup> GEORGE W. TIMBERLAKE & AMY M. DAVENPORT, FED. ADVISORY COMM. ON JUVENILE JUSTICE, RECOMMENDATIONS OF THE FEDERAL ADVISORY COMMITTEE ON JUVENILE JUSTICE 4 (2016), [https://facj.ojp.gov/ojpasset/Documents/FACJJ\\_Recommendation\\_OJJDP\\_November\\_2016.pdf](https://facj.ojp.gov/ojpasset/Documents/FACJJ_Recommendation_OJJDP_November_2016.pdf).

1 the expense of the juvenile not being eligible for treatment,” even though “[c]ost-benefit analysis  
2 demonstrates that sex-offender treatment programs for youth can provide a positive return on  
3 taxpayer investment.” The Department concluded that “[f]urther expansion of SORN [Sex  
4 Offender Registration and Notification] with juveniles is not recommended.”<sup>105</sup>

5 Responding in part to these assessments, several state courts have held that mandatory  
6 registration of juvenile sex offenders is unconstitutional because it lacks an individualized  
7 assessment of risk.<sup>106</sup> At a minimum, the research suggests, juvenile registration must be reserved  
8 for “situations where either unique risk or needs are clearly associated with the commission of a  
9 crime”<sup>107</sup> and offenders convicted (or adjudicated delinquent) for conduct as minors must have  
10 viable opportunities to terminate their registration duties at an early date. But even a limited period  
11 on a sex-offender registry leaves a youthful offender’s sex-offense status widely available through  
12 public and private databases, in effect creating long-term punishment and leading many to argue  
13 that minors should be exempt from registration and notification requirements entirely.<sup>108</sup> Eleven  
14 states specifically exclude minors from their state sex-offender registries, despite the federal  
15 mandate to the contrary.<sup>109</sup>

16 Reflecting these persuasive assessments, Section 213.12A(3) rejects registration and all  
17 associated disabilities for juveniles—that is, offenders under the age of 18 at the time of their  
18 offense—regardless of the underlying offense, except in the case of offenders over 16 who are  
19 criminally convicted of a sexual assault involving aggravated physical force or restraint, in  
20 violation of Section 213.1.

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<sup>105</sup> U.S. Dep’t of Justice, *Office of Justice Programs, Sex Offender Management Assessment and Planning Initiative* (2016).

<sup>106</sup> *In re C.P.*, 967 N.E.2d 729 (Ohio 2012) (finding automatic, lifelong registration of juvenile to violate constitutional prohibition against cruel and unusual punishment); *In re J.B.*, 107 A.3d 1 (Pa. 2014) (finding automatic, lifelong registration of juvenile to violate procedural due process).

<sup>107</sup> Amanda M. Fanniff et al., *Juveniles Adjudicated for Sexual Offenses: Fallacies, Facts, and Faulty Policy*, 88 TEMP. L. REV. 789, 799 (2016). The authors argue that a “reasonable strategy would be to target the highest risk [juvenile sex offenders] for the ... most invasive social control policies,” but note the difficulty of developing the accurate risk assessment tools on which such a strategy depends. As a result other prevention strategies “may prove more fruitful than registration and notification policies, ... without [their] potential harmful effects.” *Id.*, at 800-801.

See also Lydia D. Johnson, *Juvenile Sex Offenders: Should They Go to a School With Your Children or Should We Create a Pedophile Academy*, 50 U. TOL. L. REV. 39, 54-56 (2018) (arguing that registry obligations for juveniles should be limited to those who commit crimes such as forcible rape or sexual assault of minor children under the age of 14, and those juvenile offenders who fail to complete an assigned rehabilitation treatment program).

<sup>108</sup> Ashley R. Brost & Annick-Marie S. Jordan, *Punishment That Does Not Fit the Crime: The Unconstitutional Practice of Placing Youth on Sex Offender Registries*, 62 S.D. L. REV. 806, 817, 829 (2017).

<sup>109</sup> Minutola & Shah, *supra* n.xx, at 8.

**SECTION 213.12B. NOTIFICATION OF THE OBLIGATION TO REGISTER AND ASSOCIATED DUTIES**

**(1) Prior to accepting a guilty plea, and at the time of sentencing after conviction on a guilty plea or at trial, the sentencing judge shall:**

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

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

**(i) the identity and location, or procedure for determining the identity and location, of the government office or agency where the offender must appear to register as required by Section 213.12A;**

**(ii) the duty to report to that office or agency periodically in person, as required by Section 213.12E(1); and**

**(iii) the duty to promptly notify at least one of the local jurisdictions where the offender is registered of any change in the registry information pertaining to the offender, as required by Section 213.12E(2);**

**(c) notify the offender of the right to petition for relief from those duties as provided in Section 213.12J;**

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

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

**(f) require the offender 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 offender understands those duties and that right;**

**(g) ensure that if the offender cannot read or understand the language in which the form is written, the offender will be apprised 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 Section 7.04.<sup>110</sup>**

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

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<sup>110</sup> See *Model Penal Code: Sentencing*, § 7.04(1) (Proposed Final Draft (2017)).

1           **(3) If the offender is sentenced to a custodial sanction, an appropriate official shall,**  
2 **shortly before release of the offender from custody, again inform the offender of the**  
3 **registration requirement, explain the rights and duties associated therewith, including and**  
4 **the right to petition for relief from those duties, and require the offender to read and sign a**  
5 **form stating that those rights and duties have been explained and that the offender**  
6 **understands those rights and duties. At the time of release from custody, the offender shall**  
7 **receive a copy of that form.**

8 **Comment:**

9           *Subsection (1)* specifies the procedures for notifying the offender of applicable registration  
10 rights and duties and also details the information that must be included in that notification.  
11 *Subsection (2)* requires the sentencing judge to provide the offender a copy of the form signed  
12 pursuant to subsection (1). For an offender who is incarcerated after conviction, *subsection (3)*  
13 specifies the procedures for again notifying an incarcerated offender of applicable registration  
14 rights and duties prior to that offender’s release from custody.

**REPORTERS’ NOTES**

15           The notification provisions of Federal SORNA are stated in the briefest terms, requiring  
16 only that an appropriate official “inform the sex offender of the duties of a sex offender ...[,]  
17 explain those duties; [and] require the sex offender to read and sign a form stating that the duty to  
18 register has been explained and that the sex offender understands the registration requirement.”<sup>111</sup>  
19 Subsection (1) adds specificity by building on the notification protocols applicable to collateral  
20 consequences generally under the sentencing provisions of the Model Penal Code.<sup>112</sup>

21           Going beyond those protocols:

22           (a) subsection (1)(b), consistent with federal SORNA, requires the sentencing judge to  
23 explain the required information to the offender;<sup>113</sup>

24           (b) subsection (1)(d) requires the judge to insure that defense counsel has also explained  
25 that information,

26           (c) subsection (1)(e) requires the judge to ensure that the offender understands that  
27 information;

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<sup>111</sup> SORNA § 20919(a).

<sup>112</sup> See *Model Penal Code: Sentencing*, supra note 108, § 7.04(1).

<sup>113</sup> MPCs requires the sentencing judge to provide that information to the offender in writing but does not explicitly require the judge to explain it or assure that the offender understands.

Section 213.12B. Notification of the Obligation to Register and Associated Duties

1 (d) under subsection (1)(f), the judge must, consistent with federal SORNA, require the  
2 offender to read and sign a form stating that defense counsel and the judge have explained the  
3 relevant information and that the offender understands it; and

4 (e) subsection (1)(g) calls attention to the need to communicate effectively with offenders  
5 who cannot read or understand the language in which notification is given.

6 **SECTION 213.12C. TIME OF INITIAL REGISTRATION**

7 **A sex offender subject to registration shall initially register:**

8 **(a) if incarcerated after sentence is imposed, then within 48 hours of release;**

9 **or**

10 **(b) if not incarcerated after sentence is imposed, then not later than five**  
11 **business days after being sentenced for the offense giving rise to the duty of**  
12 **registration.**

13 **Comment:**

14 Section 213.12C specifies the time when the obligation to register ripens.

**REPORTERS' NOTES**

15 Federal SORNA requires that a sex offender who is required to register must do so within  
16 a strict time frame. Offenders who have been incarcerated must register “*before* completing a  
17 sentence of imprisonment with respect to the offense giving rise to the registration requirement.”<sup>114</sup>  
18 A sex offender not sentenced to a term of imprisonment must register “not later than 3 business  
19 days after being sentenced for that offense.”<sup>115</sup> These deadlines are unnecessarily tight and a  
20 considerable challenge to meet. Not all incarcerated offenders will know prior to release exactly  
21 where they will be living, and even when their new address is known in advance, incarcerated  
22 offenders can hardly be expected to travel to their new residence *before release* and then appear  
23 *in person* at the designated local agency, as federal SORNA and most state registry regimes  
24 require.<sup>116</sup> Taken literally, these provisions guarantee that incarcerated sex offenders subject to  
25 registration will commit a crime the moment they step outside the prison gate. To avoid this absurd  
26 result, the statute authorizes the Attorney General to prescribe rules for registering sex offenders

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<sup>114</sup> SORNA § 20913(b)(1) (emphasis added).

<sup>115</sup> SORNA § 20913(b)(2).

<sup>116</sup> SORNA § 20918 requires those subject to registration to appear periodically in person at the site designated for registration in order to allow the jurisdiction to take a current photograph.

1 who are unable to comply with these deadlines,<sup>117</sup> hardly the most straightforward way to address  
2 a simple problem. And the three-day time limit for sex offenders not sentenced to incarceration,  
3 though not inherently ridiculous, is also unnecessarily tough to meet.

4 Section 213.12C sets more realistic deadlines that adequately meet any realistic public  
5 safety concern.

6 **SECTION 213.12D. INFORMATION REQUIRED IN REGISTRATION**

7 **(1) An offender subject to registration pursuant to Section 213.12A shall provide the**  
8 **following information to the appropriate official for inclusion in the sex-offender registry:**

9 **(a) the name of the offender (including any alias used by the offender);**

10 **(b) the Social Security number, if any, of the offender;**

11 **(c) the address of each residence at which the offender resides or expects to**  
12 **reside;**

13 **(d) the name and address of any place where the offender is an employee or**  
14 **expects to be an employee;**

15 **(e) the name and address of any place where the offender is a student or**  
16 **expects to be a student;**

17 **(f) the license-plate number and a description of any vehicle owned or**  
18 **regularly operated by the offender.**

19 **(2) *Supplementary Information.* The local jurisdiction in which an offender registers**  
20 **shall ensure that the following information is included in the registry for that offender and**  
21 **kept up to date:**

22 **(a) the text of the provision of law defining the criminal offense for which the**  
23 **offender is registered;**

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

27 **(c) any other information required by law.**

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<sup>117</sup> SORNA § 20913(d) authorizes the Attorney General to prescribe rules for the registration of sex offenders who are unable to comply with the deadlines prescribed in § 20913(b).

1           **(3) Homeless offenders**

2           **If an offender subject to registration lacks a residential address, the offender shall, at**  
3 **the time of registration, report with as much specificity as possible the principal places where**  
4 **the offender sleeps and eats, in lieu of the information required under subsection (1)(c).**  
5 **Thereafter, the registrant shall confirm or update those locations once every thirty days.**

6           **(4) Correction of Errors**

7           **Each locality where an offender registers shall provide efficacious, reasonably**  
8 **accessible procedures for correcting erroneous registry information and shall, at the time of**  
9 **registration, provide the registrant instructions on how to use those procedures to seek**  
10 **correction of registry information that the registrant believes to be erroneous.**

11 **Comment:**

12           Subsections (1) and (2) specify the information that the registrant and the registering  
13 authority itself must provide. They require the disclosure of considerable detail, as do all existing  
14 sex-offender registration regimes, consistent with their perceived public-safety objectives.

15           Subsection (3) explains the information to be provided, in lieu of the offender's  
16 residential address, when the registrant is or becomes homeless. It allows the homeless registrant  
17 to update the relevant information once every 30 days, even if the registrant has relocated one or  
18 more times in the interim.

19           Subsection (4) obliges each locality where an offender registers to inform the registrant, at  
20 the time of registration, how to seek correction of registry information that the registrant considers  
21 erroneous. It does not specify any particular correction procedures but leaves those details to each  
22 local jurisdiction, subject to the requirement that the procedures afforded be reasonably user-  
23 friendly, offer expeditious means to determine the validity of a registrant's complaint and correct  
24 information found to be erroneous.

**REPORTERS' NOTES**

25           **1. Subsections (1) and (2): The required information.** Federal SORNA directs states to  
26 obtain from each sex offender a long list of detailed personal information, including the registrant's  
27 name, address, and social-security number; the location of the registrant's current employment or  
28 school; and the license-plate number and description of any vehicle owned or operated by the  
29 registrant. In addition, states must themselves provide to the directory the offender's criminal  
30 history, physical description and a current photo, fingerprints, palm prints, a DNA sample, and a

1 photocopy of the offender’s driver’s license or identification card.<sup>118</sup> States vary considerably in  
2 the information that offenders must provide.<sup>119</sup>

3 Subsections (1) & (2) follow federal SORNA requirements with respect to the information  
4 required to be reported.

5 **2. Subsection (3): Homeless registrants.** Nineteen states and the District of Columbia  
6 provide no statutory guidance on how homeless registrants can satisfy their obligation to report  
7 and continuously update their residency. Federal SORNA is silent on this issue as well. Among  
8 states that do address the problem, periodic update requirements range from 90 days to a month  
9 (Florida, Texas), a week, or even every three days (Arizona, Georgia, North Dakota).<sup>120</sup>

10 Registry requirements, along with unrestricted public access, community notification, and  
11 restrictions on housing and employment, are themselves a major cause of homelessness among sex  
12 offenders.<sup>121</sup> Adding insult to injury, the extra burdens of more frequent updating and shortened  
13 periods for doing so can make compliance virtually impossible; in Arizona, the state supreme court  
14 struck down that states’s requirement that homeless registrants report every 72 hours.<sup>122</sup> In Florida,  
15 a registrant who becomes homeless must notify the relevant authority within 48 hours; in  
16 Minnesota, notification is required within 24 hours.<sup>123</sup>

17 Subsection (3), following California’s relatively simple approach,<sup>124</sup> allows the homeless  
18 registrant to update the relevant information once every 30 days, even if the registrant has moved  
19 one or more times in the interim.

20 **3. Subsection (4): Correction of errors.** Federal SORNA contains no mandate that states  
21 put in place any process to correct erroneous registry information, and many states likewise fail to  
22 do so. Subsection (4) makes clear that states must provide this essential safeguard and ensures that  
23 the offender will be made aware of the available procedures. It requires each locality where an  
24 offender registers to inform the registrant, at the time of registration, how to seek correction of

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<sup>118</sup> SORNA § 20914.

<sup>119</sup> See Carpenter & Beverlin, *supra* note 27, at 1078 (2012) (describing sex-offender registry laws enacted in the wake of SORNA).

<sup>120</sup> See FL. STAT. ANN. 943.0435(4) (b), (c); TEX. CODE CRIM. PROC. ANN. art. 62.051(j)(1)--(2) (West 2017); E. Esser-Stuart, Note, “*The Irons Are Always in the Background*”: *The Unconstitutionality of Sex Offender Post-Release Laws as Applied to the Homeless*, 96 TEX. L. REV. 811 (2018).

<sup>121</sup> See generally Jill Levenson, *Where for Art Thou: Transient Sex Offenders and Residence Restrictions*, <https://journals.sagepub.com/doi/pdf/10.1177/0887403413512326>.

<sup>122</sup> *State v. Burbey*, 403 P.3d 145 (Ariz. 2017).

<sup>123</sup> MINN. STAT. 243.166 (subdiv. 3a (a)) (2019). See also *Boyd v. State*, 408 P.3d 362 (Wash. Ct. App. 2017), upholding a similar Washington provision.

<sup>124</sup> CAL. PENAL CODE § 290.011(d) (West 2017). Texas similarly allows homeless registrants to update their residency information once every 30 days. TEX. CODE CRIM. PROC. ANN. art. 62.051(j)(1)--(2) (West 2017).

1 erroneous registry information. It does not lay down the details that an appropriate system must  
2 include, since those matters depend in large measure on local logistics, customs, and agency  
3 procedures. But the correction processes afforded must be reasonably user-friendly and must be  
4 designed to ensure that complaints will be resolved promptly and that information found to be  
5 erroneous will be corrected without unnecessary delay.

6 **SECTION 213.12E. DUTY TO KEEP REGISTRATION CURRENT**

7 **(1) *Periodic Updates.* A sex offender who is required to register under Section 213.12A**  
8 **shall, not less frequently than once every year, appear in person in at least one jurisdiction**  
9 **where the offender is required to register, verify the current accuracy of the information**  
10 **provided in compliance with Section 213.12D, allow the jurisdiction to take a current**  
11 **photograph, and report any change in the identity of other jurisdictions in which the offender**  
12 **is required to register.**

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

14 **(a) Each jurisdiction that maintains a sex-offender registry shall permit**  
15 **registrants to notify the jurisdiction, by means of U.S. mail, internet notification, or**  
16 **other readily accessible means of communication of the jurisdiction's choosing, of any**  
17 **change of name, residence, employment, or student status, and any change in the**  
18 **identity of all other jurisdictions in which the offender is required to register.**

19 **(b) Each jurisdiction that maintains a sex-offender registry shall advise each**  
20 **registrant, at the time of registration, of the registrant's option to utilize the means of**  
21 **communication established under subsection (2)(a), rather than appearing personally**  
22 **for that purpose, if the registrant so chooses.**

23 **(c) A sex offender subject to registration under Section 213.12A shall, not later**  
24 **than five business days after each change of name, residence, employment, or student**  
25 **status, notify at least one local jurisdiction specified in Section 213.12A of:**

26 **(i) all changes in the information that the offender is required to**  
27 **provide under Section 213.12D, and**

28 **(ii) the identity of all other jurisdictions in which the offender is**  
29 **required to register.**

30 **(3) The local jurisdiction notified of any changes pursuant to subsections (1) and (2)**  
31 **shall promptly provide the offender a written receipt confirming that the updated**

1 **information has been provided, and shall provide that information to all other jurisdictions**  
2 **in which the offender is required to register.**

3 **Comment:**

4 Subsection (1) requires periodic re-registration in person once a year.

5 Changes to a registrant's name, residence, employment, or student status must be reported  
6 more promptly. Subsection (2)(a) requires jurisdictions to permit registrants to do so by one or  
7 more readily utilized means of communication of the jurisdiction's choosing, and subsection (2)(b)  
8 requires jurisdictions to advise registrants of their ability to use that option, if they prefer, rather  
9 than reporting the change of information in person,.

10 Subsection (2)(c) requires registrants to provide the necessary notification within five  
11 business days and to inform the jurisdiction notified about all other jurisdictions in which the  
12 offender is required to register.

13 Subsection (3) requires the jurisdiction initially notified of any changes pursuant to  
14 subsections (1) and (2) to promptly provide the updated information to all other jurisdictions in  
15 which the offender is required to register.

**REPORTERS' NOTES**

16 **1. Periodic Updates.** Federal SORNA requires registrants to appear periodically in person  
17 in at least one jurisdiction where they are required to register, allow that jurisdiction to take a  
18 current photograph, and verify the current accuracy of the registry information pertaining to them.  
19 The required frequency of these periodic updates under federal SORNA varies from quarterly to  
20 yearly as a function of the seriousness of the offense that triggers the registration duty. But updates  
21 only on an annual or semi-annual basis are permitted only for lower-level offenses that Section  
22 213.12A does not treat as registrable at all.<sup>125</sup> Federal SORNA requires updates at least every three  
23 months for all of the offenses that are registrable under Article 213.

24 Such frequent re-registration in person is unnecessarily burdensome and in effect punitive,  
25 because registrants are in any event required to notify the pertinent local agency within a matter of  
26 days whenever there is a change of the registrant's name, residence, employment, or student status.  
27 Absent such a change of circumstances, reporting in person serves only to assure the current  
28 accuracy of the offender's personal appearance as recorded in the photograph on file, and that need

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<sup>125</sup> Federal SORNA permits annual updates for Tier I offenses, which include such crimes as ..... The statute permits semi-annual updates for Tier II offenses, which include such crimes as ..... [TBS].

## Section 213.12E. Duty to Keep Registration Current

1 is readily met on an annual basis.<sup>126</sup> Therefore, absent a change in circumstances, Section 213.12E  
2 requires periodic re-registration in person only once a year.

3 **2. Change of Circumstances.** Under Federal SORNA, state registration regimes must  
4 require offenders to appear in person before appropriate state authorities, not later than three  
5 business days after any change of name, residence, employment, or student status, in order to  
6 update the pertinent information. Requiring the registrant to provide these updates *in person* and  
7 to do so within *three days* is unnecessarily burdensome and in effect punitive because, with respect  
8 to information of this nature, in person appearance provides no assurance of accuracy that cannot  
9 be attained by requiring submission of appropriate documentation in writing, whether by U.S. mail,  
10 internet messaging, or other means of efficient communication.

11 Accordingly, subsection (2)(a) requires each jurisdiction to permit registrants to report  
12 changes in this information by any readily accessible means of communication of the jurisdiction's  
13 choosing, and subsection (2)(b) requires jurisdictions to advise registrants of the availability of  
14 that option. Finally, subsection (2)(c) requires registrants to provide the necessary notice within  
15 five business days rather than just three.

## 16 SECTION 213.12F. DURATION OF REGISTRATION REQUIREMENT

17 **(1) Subject to the provisions of subsection (3), an offender subject to registration shall**  
18 **keep the registration current for a period of 15 years, beginning on the date when the**  
19 **offender is released from custody after conviction for the offense giving rise to the**  
20 **registration requirement; or if the offender is not sentenced to a term of incarceration,**  
21 **beginning on the date when the offender is sentenced for that offense.**

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

26 **(3) If, during the first 10 years of the period during which the offender is required to**  
27 **keep the registration current, the offender:**

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<sup>126</sup> Federal SORNA does not treat an offender's deliberate alteration of personal appearance (for example, by changing hair style or hair color) as a change of circumstance requiring immediate notification, so even the most frequent periodic update required by federal SORNA (once every three months) does not effectively guard against a predator who uses that stratagem to evade SORNA surveillance.

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

4           **(b) successfully completes any required sex-offender treatment program; and**

5           **(c) is not convicted of any additional offense under this Article, or any offense**  
6           **in another jurisdiction that would be an offense under this Article if committed in this**  
7           **jurisdiction; then:**

8           **the duty to keep that registration current will terminate; the offender will not be**  
9           **subject to any further duties associated with that registration requirement; and no public or**  
10           **private agency other than a law-enforcement agency shall thereafter be permitted access to**  
11           **the offender’s registry information.**

12           **(4) When the offender’s duty to register terminates under subsections (1) or (3), the**  
13           **law-enforcement agency in the local jurisdiction where the offender resides will, upon the**  
14           **offender’s request, notify all other jurisdictions in which the offender has registered that the**  
15           **offender’s duties associated with that registration requirement have terminated and that no**  
16           **public or private agency other than a law-enforcement agency shall thereafter be permitted**  
17           **to have access to that registry information.**

18           **Comment:**

19           Section 213.12F(1) specifies the duration of the registration requirement, including the  
20           duration of the offender’s continuing obligation to keep registry information current.

21           Subsection (3) provides for automatic early termination of the registration obligation if the  
22           offender successfully satisfies specified rehabilitative goals during the initial registration period.

23           Subsection (4) provides that when the offender’s registration duties terminate under  
24           subsection (1) or (3), the agency in the local jurisdiction where the offender resides must, upon the  
25           offender’s request, report that termination to all other jurisdictions where the offender is registered  
26           and caution those jurisdictions that no public or private agency other than a law-enforcement  
27           agency may have access to that registry information.

**REPORTERS’ NOTES**

28           Federal SORNA specifies the duration of registration and the accompanying duty to keep  
29           information current—15 years for Tier I offenses (the least serious), 25 years for Tier II offenses,  
30           and life for Tier III offenses, which include offenses comparable to the offenses registrable under

## Section 213.12F. Duration of Registration Requirement

1 Article 213. The statute affords only limited opportunity for early relief from these obligations.  
2 For Tier I offenders who maintain a clean record for 10 years, registry obligations terminate at the  
3 end of that period, and for offenders adjudicated delinquent on the basis of a Tier III offense,  
4 registry obligations terminate after 25 years if they maintain a clean record for that period. Under  
5 federal SORNA, no other offenders are eligible for early relief from registry obligations. Thus,  
6 even a juvenile offender must remain on the registry for at least 25 years, and Tier III adult  
7 offenders must be retained for life on the registry, with all its attendant obligations, even if they  
8 remain entirely crime-free for decades.<sup>127</sup>

9 States vary considerably in the duration of their obligation to keep registration information  
10 current, but lifetime registration is commonly required for the most serious offenses, such as those  
11 that are registrable under Article 213. Early relief also varies considerably but many, including the  
12 22 states that are SORNA compliant, impose inescapable lifetime registration on the most serious  
13 sex offenders.<sup>128</sup>

14 There is no plausible justification for maintaining the registry obligation for such an  
15 extended period, without regard to the offender's subsequent behavior. Among the minority of  
16 sex-offenders who recidivate at all, nearly all do so within five or at most 10 years of release from  
17 custody.<sup>129</sup> Together with the natural decay of offending rates by age, a crime-free period of 10  
18 years provides strong assurance that the likelihood of the offender's committing a new sexual  
19 offense is remote, certainly no higher than the risk that a person of the same age with no previous  
20 sex-offense record will commit a new sexual offense. Although the possibility of a false negative  
21 cannot be excluded, that vanishingly small risk must be weighed against the cost, in terms of  
22 required law-enforcement attention and resources, of maintaining and constantly updating registry  
23 information on thousands of ex-offenders who will never pose any threat to public safety.

24 Accordingly, Section 213.12F sets the duration of the obligation to register and its  
25 associated duties at 15 years, with early termination of those obligations after 10 years for  
26 offenders who maintain a clean record throughout that period. In the event that the offender does  
27 commit a new sexual offense during that period, of course, the offender will face a new criminal  
28 sentence, along with whatever additional registry obligations are triggered by the new offense.

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<sup>127</sup> SORNA § 20915. A “clean record” is defined as “(a) not being convicted of any offense for which imprisonment for more than 1 year may be imposed; (B) not being convicted of any sex offense; (C) successfully completing any periods of supervised release, probation, and parole; and (D) successfully completing an appropriate sex offender treatment program ....”.

<sup>128</sup> See Carpenter & Beverlin, *supra* note 29, at 1078 (2012).

<sup>129</sup> TBS.

1 **SECTION 213.12G. FAILURE TO REGISTER**

2 **(1) *Failure to Register.* A person required to register under Section 213.12A is guilty**  
3 **of Failure to Register, a misdemeanor, if that person knowingly fails to register or knowingly**  
4 **fails to update a registration as required.**

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

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

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

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

13 **Comment:**

14 Section 213.12G defines the misdemeanor offense of Failure to Register, applicable to the  
15 offender who knowingly fails to register or knowingly fails to update required registry information.  
16 It provides an affirmative defense for a person who cannot comply with required registration  
17 obligations because of circumstances beyond that person’s control, provided that the person did  
18 not voluntarily contribute to creating those circumstances in reckless disregard of the requirement  
19 to comply and subsequently complied as soon as reasonably feasible. A person convicted of a  
20 misdemeanor “may be sentenced ... to a term of incarceration ... [that] shall not exceed [one  
21 year].”<sup>130</sup>

**REPORTERS’ NOTES**

22 Federal SORNA requires states to make it a criminal offense, punishable by “a maximum  
23 term of imprisonment that is greater than 1 year,” for an offender who is required to register to fail to  
24 do so or to miss a deadline for updating any change of the required information.<sup>131</sup> In addition,

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<sup>130</sup> Id., § 6.06(7)(a). The maximum term is “stated in brackets [because] recommendations concerning the severity of sanctions that ought to attend particular crimes ... are fundamental policy questions that must be confronted by responsible officials within each state. . . .” Id., § 6.06, Comment *k*, p. 157.

<sup>131</sup> Id., § 20913(e).

1 federal law makes it a crime, punishable by up to 10 years in prison, to travel interstate after  
2 knowingly failing to register or update a required registration.<sup>132</sup>

3 State statutory offenses for failure to register and for failure to fulfill related duties vary  
4 widely but generally cluster in the low end of the range the federal SORNA seeks to impose on  
5 the states. Consistent with that pattern, the Article 213.12G offense requires a mens rea of  
6 knowledge and is punishable as a misdemeanor.

7 **SECTION 213.12H. ACCESS TO REGISTRY INFORMATION**

8 **(1) Confidentiality**

9 **(a) Each local jurisdiction in which the offender is registered shall exercise due**  
10 **diligence to ensure that all information in the registry remains confidential, except**  
11 **that such information shall be made available upon request to any law-enforcement**  
12 **agency in connection with the investigation of any offense.**

13 **(b) Any disclosure pursuant to subsection (1)(a) shall include a warning that**  
14 **the law-enforcement agency receiving the information must exercise due diligence to**  
15 **ensure that the information remains confidential; that such information may not be**  
16 **disclosed to any person or public or private agency other than a law-enforcement**  
17 **agency, including any person or agency seeking to conduct a background check in**  
18 **connection with employment or service; and that the information thus disclosed may**  
19 **not be used to injure, harass, or commit a crime against the offender or anyone else;**  
20 **and that any such actions against the offender or anyone else could result in civil or**  
21 **criminal penalties.**

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

24 **(a) the actor, having received registry information in an official capacity or**  
25 **otherwise subject to an obligation to ensure that the information remains confidential,**  
26 **knowingly or recklessly discloses that information, or permits that information to be**  
27 **disclosed, to any person not authorized to receive it; or**

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<sup>132</sup> 18 U.S.C. §2250(a) (2019).

1           **(b) the actor obtains access to registry information by computer trespassing or**  
2           **otherwise in violation of law and subsequently for commercial gain knowingly or**  
3           **recklessly discloses that information, or permits that information to be disclosed, to**  
4           **any person.**

5           **Unauthorized Disclosure of Registry Information under subsection (2)(a) of this**  
6           **Section is a misdemeanor. Unauthorized Disclosure of Registry Information under**  
7           **subsection (2)(b) of this Section is a felony of the fourth degree.**

8           **Comment:**

9           Section 213.12H seeks to insure that registry information be reserved for law-enforcement  
10          use and not made available for other purposes. Subsection (1) requires that registry information be  
11          disseminated no more widely than necessary to serve the direct law-enforcement objectives of the  
12          registration regime. Under subsection (2), Unauthorized Disclosure of Registry Information is a  
13          misdemeanor, and the offense becomes a felony of the fourth degree when an actor obtains the  
14          information illegally and subsequently disseminates it for commercial gain. The sentencing  
15          provisions of the Model Penal Code provide that a misdemeanor is punishable by imprisonment  
16          for a term that “shall not exceed [one year],” and a felony of the fourth degree is punishable by  
17          imprisonment for a term that “shall not exceed [five] years.”<sup>133</sup> These maximum terms are in  
18          brackets because the Code “does not offer exact guidance on the maximum prison terms that  
19          should be attached to different grades of ... offenses.”<sup>134</sup>

**REPORTERS’ NOTES**

20          Federal SORNA and most state registration regimes contemplate largely unrestricted  
21          public access to registry information. The federal statute requires states to post on the Internet and  
22          make available to the general public, in conveniently searchable form, all information included in  
23          the registry, subject to specified exceptions. States are required to withhold from the public the  
24          offender’s social-security number, the names of victims, and all information about arrests that did  
25          not result in conviction. In addition, states are permitted to withhold information concerning  
26          certain low-level offenders, when the victim of the offense was an adult. For the more serious  
27          offenses, and for all covered offenses involving a minor, states are permitted to withhold (in

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<sup>133</sup> Id., §§ 6.06(6)(d), 7(a). These maximum terms are “stated in brackets [in part because] recommendations concerning the severity of sanctions that ought to attend particular crimes ... are fundamental policy questions that must be confronted by responsible officials within each state. . . .” Id., § 6.06, Comment *k*, p. 157.

<sup>134</sup> Id., § 6.06, Comment *k*, p. 157.

1 addition to social-security number and records of arrests not resulting in conviction) only the name  
2 of an offender's employer or (for a student) place of study. In other words, for more serious  
3 offenders, and for *any* offender convicted of a covered offense involving a minor, states *must* make  
4 available to any member of the public the offender's current address, physical description, current  
5 photo, a photocopy of the offender's driver's license, and identifying information for any vehicle  
6 the offender uses. In addition, the state information must be submitted to the Attorney General,  
7 who maintains a national registry of the same information, also accessible in searchable form on  
8 the Internet, subject to the same restrictions.<sup>135</sup>

9 Across the states, public access to registry information takes different forms in different  
10 jurisdictions. The great majority comply with federal SORNA by maintaining registries readily  
11 accessible to any member of the general public. But some restrict access to entities with a  
12 demonstrated need, such as schools and youth camps, and limit at least some of the registry  
13 information available to qualifying entities. A few states restrict access even more tightly, but that  
14 approach is currently the exception.<sup>136</sup>

15 Public access, however, is only the beginning of a pervasive system for raising community  
16 awareness and sensitivity with regard to the sex offenders in the area. Federal SORNA requires  
17 each local jurisdiction to employ active measures to alert interested individuals and public and  
18 private agencies when a sex offender registers in the area. Most states take similar steps with regard  
19 to public access and community notification. And in any event, all state registry information, once  
20 transmitted to the Attorney General, becomes readily accessible nationwide through a national  
21 registry available on the internet.

22 Section 213.12H deals only with access to registry information by interested parties who  
23 seek it, while Section 213.12I (Additional Collateral Consequences of Conviction) addresses a  
24 variety of other collateral consequences, including proactive measures to alert individuals and  
25 organizations in the community. Accordingly, details particular to community notification are  
26 discussed in the Reporters' Note to Section 213.12I. Many issues, however, are common to public  
27 access and community notification; these are discussed here.

28 Open records and government transparency are bedrock, if oversimplified, values in  
29 American political culture. In addition, both public access and community notification can enable  
30 citizens to feel a sense of empowerment with regard to crimes that many consider especially  
31 sinister, unpredictable, and frightening. Payoffs of this kind are arguably important even if such  
32 laws have no effect on actual recidivism rates.

33 But the empirical research shows that actual effects are complicated, even with respect to  
34 these seemingly inherent benefits. Public access to registry information and indiscriminate  
35 community notification designed to alert the population to the presence of a sex offender in its

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<sup>135</sup> SORNA § 20918.

<sup>136</sup> See "Collateral Consequences," ABA CRIMINAL JUSTICE SECTION, <http://www.abacollateralconsequences.org/search/?jurisdiction=37>.

1 midst have been responsible for unwarranted public alarm at the same time that they generate  
2 acutely counterproductive side effects.

3 Studies in Ohio and Minnesota found no statistically significant relationship between being  
4 notified about a high-risk sex offender in the neighborhood and taking steps to protect *oneself*  
5 (such as installing better locks or lighting).<sup>137</sup> But among residents who were parents, those  
6 receiving notification in both states were more likely to take steps to protect *their children*, such  
7 as warning them not to talk to strangers and not to let unknown persons into the home.<sup>138</sup>

8 Of course, such warnings should be routine for all children; it would be worrisome if some  
9 parents not receiving notification and finding nothing of note at their own initiative neglected to  
10 warn their children out of a false sense of security (false because children are equally if not more  
11 vulnerable to attack by individuals with no prior sex-offense record and recidivist sex offenders  
12 *not* living in their own neighborhoods).<sup>139</sup> It would be similarly worrisome if parents who receive  
13 notification tend to emphasize the dangers of stranger abuse at the expense of warnings and  
14 protective measures appropriate with respect to the even-higher risk of abuse at the hands of  
15 relatives, teachers, and other acquaintances. In any case, without minimizing the importance of  
16 such warnings, it is safe to say that state and local law enforcement could easily use other public-  
17 education measures, where necessary, to encourage wise child-protection behavior on the part of  
18 parents and teachers, without incurring the direct costs (and indirect consequences for offenders)  
19 entailed in public registries and community-notification laws.

20 Negative impacts on offenders are convincingly documented in an extensive literature.  
21 They include a high incidence of joblessness, social isolation, homelessness, suicide, and on  
22 occasion even physically violent victimization at the hands of self-appointed vigilantes or  
23 psychologically unstable citizens who object to having a sex offender nearby.<sup>140</sup> Because these  
24 powerfully criminogenic effects hinder the offender's rehabilitation and make recidivism more  
25 likely, they offset to some extent and probably outweigh the potential public-safety benefits of  
26 self-protection and the enhanced possibilities for surveillance and deterrence of registrants.<sup>141</sup>

27 The strongest case for public access is presented when a school, day-care center or other  
28 organization or person has a justified need to perform a background check on an individual being

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<sup>137</sup> Rachel Bandy, *Measuring the Impact of Sex Offender Notification on Community Adoption of Protective Behaviors*, 10 CRIMINOLOGY & PUBLIC POLICY 237 (2011) (Minneapolis); Victoria S. Beck, James Clingermayer, Robert J. Ramsey & Lawrence F. Travis, *Community Response to Sex Offenders*, 32 J. PSYCHIATRY & L. 141 (2004) (Hamilton County, Ohio).

<sup>138</sup> Bandy, *supra* note 137, at 249, 255; Beck, et al., *supra* note 137, at 163.

<sup>139</sup> See text accompanying note xx, *supra*.

<sup>140</sup> See, e.g., *E.B. v. Verniero*, 119 F.3d 1077, 1102 (3d Cir. 1997) (noting that “[r]etribution has been visited by private, unlawful violence and threats . . .”).

<sup>141</sup> Prescott & Rockoff, *supra* note 57, at 181.

1 considered for a position involving contact with anyone a vulnerable population. But the national  
2 data base affords a readily available and more efficient means to perform background checks on  
3 known individuals, without need to access a local registry that can too easily be misused.

4 In light of these considerations, Section 213.12H marks a major departure from the  
5 prevalent American approach of investing considerable resources in the effort to maximize the  
6 public availability of sex-offender information. Both to promote just treatment of persons  
7 convicted of sexual offenses and, very importantly, to further public safety goals rather than  
8 impeding them, Section 213.12H seeks to ensure maximum feasible confidentiality for registry  
9 information.<sup>142</sup>

10 **SECTION 213.12I. ADDITIONAL COLLATERAL CONSEQUENCES OF CONVICTION**

11 **(1) *Definition.* For purposes of this Section, the term “additional collateral**  
12 **consequence” means any government action or government-imposed restriction or disability**  
13 **applicable specifically to persons convicted as sex offenders, other than (a) the fine,**  
14 **probation, supervised release, or term of incarceration authorized upon conviction of the**  
15 **offense, and (b) the obligation to register and the associated duties specified under Section**  
16 **213.12A. Those additional collateral consequences include any government-imposed**  
17 **restriction upon an offender’s occupation, employment, education, internet access, or place**  
18 **of residence; any government action notifying a community organization or entity or a**  
19 **private party that the offender resides, works, or studies in the locality; and any other**  
20 **government action providing registry information to a public or private organization, entity,**  
21 **or person except as authorized by subsection (3) of this Section.**

22 **(2) *Additional Collateral Consequences Applicable to Persons Not Required to Register.***  
23 **Notwithstanding any other provision of law, no person shall be subject to an additional**  
24 **collateral consequence unless that person has been convicted of a registrable offense and is**  
25 **required to register as a sex offender under Section 213.12A.**

26 **(3) *Additional Collateral Consequences Applicable to Persons Required to Register.***  
27 **Notwithstanding any other provision of law, a person required to register as a sex offender**

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<sup>142</sup> *Sorrell v. IMS Health Inc.*, 564 U.S. 552 (2011), appears to grant First Amendment protection for the disclosure and sale of ostensibly confidential records (in that case the prescribing practices of doctors), but only in a situation where the person concerned acquires the information in a lawful manner; *Sorrell* grants no right of access to the information itself. Because the offense of Unauthorized Disclosure defined by subsection (2) applies only to individuals who obtain or disclose registry information unlawfully, the offense presumably does not raise First Amendment problems.

1 under Section 213.12A may not be subject to any additional collateral consequence unless  
2 the sentencing judge or other designated official, after affording the offender notice and an  
3 opportunity to respond concerning the proposed additional collateral consequence,  
4 determines that the additional collateral consequence is manifestly required in the interest  
5 of public safety, after due consideration of:

6 (a) the nature of the offense;

7 (b) all other circumstances of the case;

8 (c) the offender's prior record; and

9 (d) the potential negative impacts of the restriction, disability, or government  
10 action on the offender, on the offender's family, and on the offender's prospects for  
11 rehabilitation and reintegration into society.

12 (4) *Limitations.* The sentencing judge or other designated official who approves any  
13 additional collateral consequence pursuant to subsection (3) of this Section must determine  
14 that the additional collateral consequence:

15 (a) satisfies all applicable notification requirements set forth in Section  
16 213.12B;

17 (b) is authorized by law;

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

19 (d) is accompanied by a written statement of the official approving the  
20 additional collateral consequence, explaining the need for the specific restriction or  
21 disability imposed or government action to be taken, the evidentiary basis for that  
22 finding of need, and the reasons why a more narrowly drawn restriction, disability,  
23 or government action would not adequately meet that need; and

24 (e) is imposed only for a period not to exceed that permitted by Section  
25 213.12F.

26 **Comment:**

27 Section 213.12I determines when conviction for a sex offense can trigger obligations in  
28 addition to the basic duties to register with law enforcement and to keep the registry information  
29 up to date.

30 Subsection (1) defines the operative term "additional collateral consequence," in order to  
31 make clear that it includes any government action or government-imposed restriction or disability

## Section 213.12I. Additional Collateral Consequences of Conviction

1 applicable specifically to persons convicted as sex offenders, other than the sentence of fine,  
2 probation, supervised release, or incarceration imposed upon conviction, and the basic duties  
3 associated with registration itself. The additional collateral consequences referenced include such  
4 common sex-offender disabilities as restriction upon an offender's employment, education,  
5 internet access, and residency. Also included is the widespread practice of notifying community  
6 organizations and private citizens that a sex-offender is present in the area; notification and  
7 disclosure are permitted only when authorized under the conditions specified in subsections (3)  
8 and (4).

9 Because the "additional collateral consequences" governed by Section 213.12I include  
10 only restrictions and disabilities applicable specifically to sex offenders as such, Section 213.12I  
11 does not affect collateral consequences imposed on wider categories of offenders, such as the  
12 restrictions that many jurisdictions impose on ex-offenders' rights to vote, serve on juries, or  
13 receive public benefits.

14 Subsection (2) stipulates that "additional collateral consequences," as defined, are  
15 categorically precluded in the case of offenders who are not subject to registration under Section  
16 213.12A. Additional collateral consequences may be imposed on offenders who are subject to  
17 registration, but only in compliance with the standards and procedures specified in subsections (3)  
18 and (4). The offender must have notice of the additional collateral consequences contemplated and  
19 an opportunity to respond. Thereafter, the sentencing judge or other official designated to make  
20 the determination may authorize one or more additional collateral consequences, but only upon  
21 finding that each additional consequence is manifestly required in the interest of public safety,  
22 after considering all relevant circumstances, including the nature of the offense, the offender's  
23 prior record, the potential negative impacts of the additional restriction, disability, or government  
24 action on the offender, on the offender's family, and on the offender's prospects for rehabilitation  
25 and reintegration into society.

26 Subsection (4) further limits the imposition of additional collateral consequences by  
27 requiring that they be authorized by law, drawn as narrowly as possible, and accompanied by a  
28 written statement explaining the need for the additional restriction, disability, or government  
29 action; its evidentiary basis; and the reasons why a more narrowly drawn additional consequence  
30 would be inadequate. In addition, no additional collateral consequence may be imposed for a  
31 period that exceeds the duration of the offender's registry obligations under Section 213.12F.

**REPORTERS' NOTES**

1 Section 213.12I establishes standards and procedures for imposing additional collateral  
2 consequences, beyond those delineated in Sections 213.12A-H. These consequences can include  
3 community notification, restrictions on employment, residency, and internet access, GPS  
4 monitoring, and a number of other restrictions and disabilities.

5 Regarding *community notification*, federal SORNA requires states, at their own initiative,  
6 to regularly provide their registry information (other than information exempted from public  
7 access, such as registrants' social security numbers) to law-enforcement and other appropriate  
8 government agencies (such as schools and public-housing agencies) in the locality where the  
9 registered offender resides, works, or studies. Direct notification also must be given to:<sup>143</sup>

10 "Any agency responsible for conducting employment-related  
11 background checks ...[;]

12 "Social service entities responsible for protecting minors in the child  
13 welfare system[;]

14 "Volunteer organizations in which contact with minors or other  
15 vulnerable individuals might occur[; and]

16 "Any organization, company, or individual who requests such  
17 notification ...."

18 Moreover, federal SORNA allows any concerned organization or individual to opt to receive the  
19 notification as frequently as once every five business days or even sooner.<sup>144</sup>

20 Some states, resisting the broad mandate of federal SORNA, provide affirmative  
21 notification only on a restricted basis and do not automatically notify any organization or  
22 individual who requests it, independent of a demonstrated need.<sup>145</sup> Nearly all provide notification  
23 to community entities and individuals with a need to know (such as schools and youth camps).<sup>146</sup>

24 The majority, however, afford affirmative notification much more widely, along the lines  
25 that federal SORNA requires, often essentially notifying the entire community at large. For  
26 example, in Pennsylvania, the state maintains a website listing all registered sex offenders, with  
27 their home and work addresses, the license-plate number of their car, and their sex-offender  
28 classification. The website advises those who visit it that the information it provides "could be a  
29 significant factor in protecting yourself, your family members, or persons in your care" from the

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<sup>143</sup> SORNA § 20923(b).

<sup>144</sup> SORNA § 20923(c).

<sup>145</sup> Washington State, *infra*....

<sup>146</sup> See "Collateral Consequences," *supra* note 136.

## Section 213.12I. Additional Collateral Consequences of Conviction

1 “recidivist acts” of those listed.<sup>147</sup> In a recent year, three million people accessed the site.<sup>148</sup> To  
2 further enhance public awareness, the Pennsylvania State Police send out “red alerts” by email to  
3 anyone who asks to be informed whenever a registrant in their area adds or deletes their home,  
4 work or school address; in a recent year the State Police sent out almost four million of these red  
5 alerts.<sup>149</sup>

6 *Limits on employment and residency* are not addressed in federal SORNA, and state  
7 approaches vary widely. Nearly all states bar sex offenders from working in particularly sensitive  
8 areas of employment (such as teachers, security guards), but the list of excluded occupations is far  
9 from uniform.<sup>150</sup> At least 27 states and many municipalities prohibit some (or all) sex offenders  
10 from living within 500, 1000, or 2000 feet of schools, parks, playgrounds and day-care centers.<sup>151</sup>  
11 In densely populated counties, such residency restrictions can make it virtually impossible for  
12 convicted sex offenders to live anywhere in the jurisdiction.<sup>152</sup> Some states bar sex offenders from  
13 living close to school-bus stops, a requirement that can preclude offenders, even in rural areas,  
14 from residing almost anywhere in the county.<sup>153</sup> Compounding the burden of such restrictions,  
15 parolees are often required as a condition of their parole (and on pain of parole revocation), to  
16 obtain employment within 45 days of release (even though community notification puts employers

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<sup>147</sup> See <https://www.pameganslaw.state.pa.us/>.

<sup>148</sup> Pennsylvania State Police, Megan’s Law Section, 2017 Annual Report, at 5-6, available at [https://www.pameganslaw.state.pa.us/Documents/ MeganLaw Annual Report.pdf](https://www.pameganslaw.state.pa.us/Documents/MegansLaw%20Annual%20Report.pdf).

<sup>149</sup> *Id.*

<sup>150</sup> See “Collateral Consequences,” *supra* note 136; Geraghty, *supra* note 42, at 515 (2007).

<sup>151</sup> Geraghty, *supra* note 42, at 514-515 (summarizing states’ residency-restriction laws); accord, Jill Levenson, Sex Offender Residency Restrictions, in *Wright*, *supra* note xx, at 267, 268 (stating that 30 states impose residency restrictions); “Collateral Consequences,” *supra* note 136 (indicating 22 states that impose residency restrictions). In some states, residency restrictions imposed by municipalities have been held invalid on the ground that they are preempted by state legislation. See, e.g., *People v. Diack*, N.Y. Ct. App., Feb. 17, 2015.

<sup>152</sup> See, e.g., *Williams v. Dept. of Corrections & Community Supervision*, N.Y. Sup. Ct., N.Y. L.J., Jan. 23, 2014 (upholding constitutionality of condition that paroled sex offender not live within 1000 feet of a school or other places where children congregate; the restriction ruled out virtually all of Manhattan and the Bronx, but court noted that large areas of Brooklyn and Queens remained available). Compare *In re Taylor*, Cal. S. Ct., March 2, 2015 (holding that California voter initiative barring all convicted sex offenders from living within 2000 feet of schools and playgrounds was unconstitutional as applied to parolees living in San Diego County, because the restriction placed more than 97% of the county’s affordable housing off limits).

<sup>153</sup> Richard Tewksbury, *Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions*, 42 HARV. C.R.-C.L. L. REV. 531, 533 (2007).

1 on alert not to hire them)<sup>154</sup> or to reside in a particular county (even though virtually no housing  
2 may be available to them there).<sup>155</sup>

3 At least 17 states require sex offenders to wear a GPS monitoring device that enables law  
4 enforcement to determine their location at all times.<sup>156</sup> Less common for the time being, but worthy  
5 of note, are statutes in at least three states (Indiana, Louisiana, and Nebraska) that prohibit sex  
6 offenders from using the Internet to engage in social networking.<sup>157</sup> Instead of imposing a  
7 categorical ban on internet use, a California voter initiative required registered sex offenders to  
8 provide to law enforcement all their email addresses and user names, and to notify authorities  
9 within 24 hours of any changes to that information.<sup>158</sup> Alabama recently joined a small group of  
10 states taking the lead in another area, imposing chemical castration as a condition of parole after  
11 conviction for certain sex offenses.<sup>159</sup>

12 These restrictions and disabilities have prompted a host of constitutional challenges, with  
13 frequently conflicting holdings and little prospect that litigation will abate any time soon.<sup>160</sup> Even  
14 where courts have found such restrictions constitutionally permissible, however, the cases have  
15 underscored the overbreadth and unfairness that the restrictions can present both generally and as  
16 applied to particular offenders, juveniles and elderly parolees in particular.<sup>161</sup> Overall, the evidence

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<sup>154</sup> See, e.g., *State v. Dull*, Kan. S. Ct., June 5, 2015 (considering burden of requirement to secure employment within 45 days as a factor rendering mandatory lifetime supervision unconstitutional as applied to juvenile sex offender).

<sup>155</sup> See cases cited in note xx, *supra*.

<sup>156</sup> See Kamika Dunlap, *Sex Offenders After Prison: Lifetime GPS Monitoring?* FINDLAW BLOTTER, February 1, 2011; Michelle L. Meloy & Shareda Coleman, *GPS Monitoring of Sex Offenders*, in *Wright*, *supra* note 16, at 243 (reporting that as many as 46 states use GPS monitoring to track sex offenders under some circumstances). The Supreme Court has held that GPS monitoring of a sex offender parolee constitutes a search that must meet Fourth Amendment requirements of reasonableness, but the Court did not reach the question whether such monitoring passes muster under that standard. *Grady v. North Carolina*, March 30, 2015.

<sup>157</sup> See Charles Wilson, *Court Upholds Ind. Facebook Ban for Sex Offenders*, ASSOCIATED PRESS, June 25, 2012, available at [http://abcnews.go.com/Technology/wireStory/judge-upholds-ind-facebook-ban-sex-offenders-16642465#.T-ikN\\_LNnio](http://abcnews.go.com/Technology/wireStory/judge-upholds-ind-facebook-ban-sex-offenders-16642465#.T-ikN_LNnio) (discussing cases in which courts have held bans on internet use compatible with the first amendment).

<sup>158</sup> *Doe v. Harris*, 9th Cir., Nov. 18, 2014 (upholding preliminary injunction against enforcement of this restriction on ground of its likely unconstitutionality under the First Amendment).

<sup>159</sup> See Alan Blinder, “What to Know about the Alabama Chemical Castration Law,” *N.Y. Times*, June 11, 2019. Other states imposing chemical castration on some paroled sex offenders include California, Florida, Louisiana, and Wisconsin. *Id.*

<sup>160</sup> With respect to the constitutionality of mandatory lifetime GPS monitoring of sex offenders, compare *Belleau v. Wall*, Cir. Jan. 29, 2016) (upholding Wisconsin provision to that effect), with *State v. Dykes*, (S.C. May 9, 2012) (holding South Carolina provision to that effect unconstitutional as a violation of due process).

1 establishes with little doubt that indiscriminate community notification and restrictions on  
2 residency and employment are responsible for wasted law enforcement effort and misdirected  
3 civilian efforts at self-protection, with little to no public-safety payoff, and harsh, criminogenic  
4 impact on the offenders themselves.<sup>162</sup>

5 In California, *GPS monitoring* of sex offenders has cost the state \$60 million annually.<sup>163</sup>  
6 The costs for states and localities involve more than simply the additional dollar outlays. In some  
7 jurisdictions, sheriff's deputies and other government employees have had to reduce the time they  
8 can devote to other duties, including 9-1-1 dispatch, in order to monitor sex-offender residences  
9 and post eviction notices for those living in impermissible zones.<sup>164</sup> GPS locational monitoring  
10 requires law-enforcement agents to spend more time at their computers and less time directly  
11 supervising parolees or carrying out other duties in the field.<sup>165</sup> To make matters worse, 99 percent  
12 of the GPS alerts received in some jurisdictions have come from low-battery signals or other false  
13 alarms; only one percent indicated that an offender had entered a restricted area.<sup>166</sup> Of course, the  
14 low incidence of true alarms would be consistent with the hypothesis that GPS monitoring deters  
15 offenders from violating their restrictions, but even if this is the case, the frequency of false alarms  
16 means that any such gains come at a high price in terms of required law-enforcement attention.

17 With respect to *residency restrictions*, the evidence of possible benefit is similarly  
18 disappointing. The Minnesota Department of Corrections found that among sex offenders re-  
19 arrested after release from prison (seven percent of all sex offenders released, a figure far lower  
20 than the recidivism rate for other serious crimes), “[n]ot one . . . would likely have been deterred  
21 by a residency restriction law,” largely because “[offenders who] established direct contact with  
22 victims . . . were unlikely to do so close to where they lived.”<sup>167</sup> The Colorado Department of  
23 Corrections found that child molesters who re-offended did not live closer to child-care facilities  
24 and schools than first offenders arrested for similar crimes; the Department therefore concluded  
25 that “[p]lacing restrictions on the location of . . . supervised sex offender residences may not deter  
26 the sex offender from re-offending and should not be considered as a method to control sexual

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<sup>161</sup> See cases cited in notes xx-xx, *supra*.

<sup>162</sup> See also Reporters' Notes to Sections 213.12A & H, *supra*.

<sup>163</sup> See Don Thompson, California to Change Sex-Offender Tracking, Associated Press, May 26, 2011, available at [http://www.msnbc.msn.com/id/43186851/ns/us\\_news-](http://www.msnbc.msn.com/id/43186851/ns/us_news-)

<sup>164</sup> See Geraghty, *supra*, note 42, at 518.

<sup>165</sup> See Thompson, *supra* note 163.

<sup>166</sup> *Id.*

<sup>167</sup> Minn. Dept. of Corr., Residential Proximity & Sex Offense Recidivism in Minnesota 1, 2 (2007), available at <http://www.corr.state.mn.us/publications/documents/04-07SexOffenderReport-Proximity.pdf>.

1 offending recidivism.”<sup>168</sup> Other available evidence on the efficacy of residency restrictions is  
2 uniformly to the same effect.<sup>169</sup>

3 These consequences in turn mean negative impacts for public safety because the adverse  
4 personal impacts for offenders impede their reintegration into society and aggravate their risks of  
5 re-offending. Successful reintegration and law-abiding behavior typically depend on stable living  
6 arrangements, supportive family relationships, and steady employment,<sup>170</sup> while poor social  
7 support and psychological distress are important risk factors for sexual recidivism.<sup>171</sup> Thus, any  
8 direct gains from greater law-enforcement efficacy or from improved public awareness and self-  
9 protection may be outweighed by an *increased* likelihood of recidivism.<sup>172</sup>

10 In several widely reported incidents, sex offenders have been brutally attacked and even  
11 murdered by neighbors who learned of their presence through registration and notification  
12 programs.<sup>173</sup> More systematic research has largely depended on offender self-reports, arguably a  
13 reason to discount some of the unfavorable consequences described. Subject to that caveat,  
14 however, the studies find extensive evidence of worrisome impacts.

15 Among offenders subject to community notification in Connecticut and Indiana (an  
16 undifferentiated group of defendants convicted of any sex offense), 21 percent lost a job because

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<sup>168</sup> Sex Offender Mgmt. Bd., Colo. Dep’t of Pub. Safety, Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community 4 (2004), available at <http://dcj.state.co.us/ors/pdf/docs/FullSLAFinal.pdf>.

<sup>169</sup> See text at notes xx-xx *infra* (Tewskbury and ACA).

<sup>170</sup> CUMMING & BUELL, SUPERVISION OF THE SEX OFFENDER (1997); Levenson, *supra* note xx, at 282-283; Elton, *supra* note xx, at 38 (“community reintegration, therapy, and stability help reduce recidivism among the majority of [sex] offenders”).

<sup>171</sup> R.K. Hanson & A. J. R. Harris, Dep’t of Solicitor Gen. of Can., Dynamic Predictors of Sexual Recidivism (1998), available at <http://www.static99.org/pdfdocs/hansonandharris1998.pdf>; Levenson, *supra* note xx, at 267, 281.

<sup>172</sup> Prescott & Rockoff, *supra* note 57, at 181.

<sup>173</sup> See *Doe v. Pataki*, 120 F.3d 1263, 1279 (2d Cir. 1997) (noting “numerous instances in which sex offenders have suffered harm in the aftermath of notification—ranging from public shunning [to] physical attacks, and arson”); *E.B. v. Verniero*, 119 F.3d at 1102 (“[While] incidents of ‘vigilante justice’ are not common, they happen with sufficient frequency and publicity that registrants justifiably live in fear of them”). See also “Washington State Man Accused of Slaying Two Sex Offenders,” Reuters, June 5, 2012, available at <http://www.nytimes.com/reuters/2012/06/05/us/05reuters-usa-sexoffenders>. One of the *amicus* briefs filed in a companion case to *Smith v. Doe*, 538 U.S. 84, 103 (2003), describes numerous specific instances in which registration laws resulted in sex offenders being subjected to grave physical assault, harassment, threats, loss of employment or loss of housing, including being driven into homelessness or moving out of state; the brief also describes many specific instances in which such laws drove a sex offender to suicide. *Godfrey v. Doe*, No. 01-729, October Term 2001, Brief Amicus Curiae of the Public Defender For The State of New Jersey, et al., at 7-21, 2002 WL 1798881 (July 31, 2002).

1 a boss or co-worker learned of their status,<sup>174</sup> 21 percent were forced to move out of their residence  
2 because a landlord or neighbor found out, 10 percent had been physically assaulted after  
3 community notification had been given, and 16 percent of offenders reported that a member of  
4 their household had been threatened, harassed, or assaulted.<sup>175</sup> Roughly half reported fearing for  
5 their safety, and a similar proportion said they felt alone and isolated because of community  
6 notification.<sup>176</sup> On a more positive note, 22 percent of the offenders said registration and  
7 notification had helped them avoid re-offending, but a larger proportion expressed feelings of  
8 hopelessness, with 44 percent of the offenders agreeing with the statement that “no one believes I  
9 can change, so why even try.”<sup>177</sup>

10 Adverse impacts may be even more widespread among offenders in the highest risk  
11 categories.<sup>178</sup> In a sample of high-risk sex offenders in Wisconsin, all but one said that notification  
12 made it harder for them to reintegrate into the community.<sup>179</sup> The study found that 83 percent had  
13 been excluded from a residence, and 57 percent had lost a job because of community  
14 notification.<sup>180</sup> More than three-quarters reported being ostracized by neighbors and  
15 acquaintances, or either humiliated, harassed, or threatened by community residents or others.<sup>181</sup>  
16 In two-thirds of the cases, adverse effects extended to the parents or children of offenders; relatives  
17 commonly experienced emotional distress and sometimes had been humiliated or ostracized by  
18 acquaintances.<sup>182</sup> Similar findings recur throughout the literature. In a Florida study, 35 percent of  
19 the registered offenders were forced to move, 27 percent had lost their jobs, and 19 percent had  
20 been harassed.<sup>183</sup> In light of this research and their own on-the-ground experience, a number of

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<sup>174</sup> Jill S. Levenson, David A. D’Amora, & Andrea Hern, *Megan’s Law and its Impact on Community Re-Entry for Sex Offenders*, 25 BEHAV. SCI. & L. 587, 594 (2007).

<sup>175</sup> Id.

<sup>176</sup> Id.

<sup>177</sup> Id.

<sup>178</sup> Richard G. Zevitz & Mary Ann Farkas, National Institute of Justice, *Sex Offender Community Notification: Assessing the Impact in Wisconsin* (Dec. 2000), available at <https://www.ncjrs.gov/pdffiles1/nij/179992.pdf>.

<sup>179</sup> Id. at 9.

<sup>180</sup> Id. at 10.

<sup>181</sup> Id. at 9.

<sup>182</sup> Id.

<sup>183</sup> Richard Tewksbury, *Collateral Consequences of Sex Offender Registration*, 21 J. CONTEMP. CRIM. JUST. 67, 67-79 (2005). To similar effect, see also Anne-Marie McAlinden, *THE SHAMING OF SEXUAL OFFENDERS: RISK, RETRIBUTION AND REINTEGRATION* 116 (2007) (“[t]he community’s abhorrence and rejection of sex offenders” prevents re-integration); Richard Tewksbury, *Experiences and*

## Section 213.12I. Additional Collateral Consequences of Conviction

1 states resist public demand for indiscriminate community notification and restrict that measure to  
2 a narrow category of the highest-risk offenders.<sup>184</sup> In Washington, the state’s Sex Offender Policy  
3 Board unanimously recommended that “sex offender registration information should be exempt  
4 from public disclosure.” The Board noted that “this information has been held from public  
5 disclosure for decades, and has proven to be in the best interests of the public, of victims of sexual  
6 assault, of community safety, and of registered sex offenders – both in terms of facilitating their  
7 successful reintegration into the community and in terms of their physical safety.”<sup>185</sup>

8 The negative consequences of restricted living arrangements (whether as a direct  
9 consequence of residency prohibitions or an indirect effect of community notification) can be  
10 dramatic, because these limitations tend to push registered sex offenders into socially disorganized,  
11 economically disadvantaged communities.<sup>186</sup> In Iowa, residency restrictions barred sex offenders  
12 from 98 percent of one county’s housing units,<sup>187</sup> and throughout the state many offenders became  
13 homeless.<sup>188</sup> In one Florida county, restrictions on living near a school-bus stop left only one  
14 percent of the county open to residency by sex offenders.<sup>189</sup> At the same time, “research provides  
15 little if any support for the effectiveness of residential restriction laws in deterring or preventing  
16 sexual offenses.”<sup>190</sup>

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*Attitudes of Registered Female Sex Offenders*, 68 FED. PROBATION 30, 31 (2004) (female registered sex offenders experienced harassment, as well as loss of jobs, friendships, and residences); Richard Tewksbury & Matthew Lees, *Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences*, 26 SOC. SPECTRUM 309, 330-333 (2006) (78 percent of registered sex offenders in Illinois said that restrictions had “impeded their ability to reintegrate into community life”).

<sup>184</sup> NJ, VT.

<sup>185</sup> WASHINGTON ST. SEX OFFENDER POL’Y BOARD, General Recommendations for Sex Offender Management, 6-7 (2016) [https://sgc.wa.gov/sites/default/files/public/sopb/documents/general\\_recommendations.pdf](https://sgc.wa.gov/sites/default/files/public/sopb/documents/general_recommendations.pdf)

<sup>186</sup> Richard Tewksbury, *supra* n.xx, at 533.

<sup>187</sup> See Brian J. Love, *Regulating for Safety or Punishing Depravity? A Pathfinder for Sex Offender Residency Restriction Statutes*, 43 CRIM. L. BULL. 834, 835 (2007).

<sup>188</sup> See Elton, *supra* note xx, at 38.

<sup>189</sup> See Tewksbury, *Experiences and Attitudes*, *supra* note 183, at 533.

<sup>190</sup> Tewksbury, *Residency Restrictions*, *supra* note xxx, at 539. See also Am. Cor. Ass’n, Resolution on Neighborhood Exclusion of Predatory Sex Offenders (Jan. 24, 2007) (stating that “there is no evidence to support the efficacy of broadly-applied residential restrictions on sex offenders”); Jill S. Levenson et al., *Grand Challenges: Social Justice and the Need for Evidence-Based Sex Offender Registry Reform*, 43 J. SOC. & SOC. WELFARE 3, 22 (2016) (arguing that restrictions on sex offender residency should be abolished).

## Section 213.12I. Additional Collateral Consequences of Conviction

1 In sum, registration, community notification, and residency restrictions have frequent,  
2 well-documented adverse impacts on sex offenders. And (other things being equal) these impacts  
3 tend to make recidivism *more likely*.

4 Victim advocates add to these reservations. They list a wide range of harmful impacts for  
5 victims, for example, that “residency restrictions . . . have inadvertently created a disincentive for  
6 victims to disclose [their victimization].”<sup>191</sup> Victims informed about residency restrictions “rolled  
7 their eyes, seemingly in exasperation” at the irrelevancy of these laws to their situation.<sup>192</sup>

8 A state Coalition Against Sexual Assault reported that notification, GPS tracking, and  
9 residency restrictions “have actually impeded public safety because they have reinforced to the  
10 public grossly inaccurate depictions of the type of sexual assault risk one is most likely to face. . .  
11 . [b]y focusing on the ‘stranger danger’ myth, people are less aware of a more likely assailant: a  
12 person they know. These myths, in turn, have created a public demand for sexual assault risk  
13 mitigation (e.g. residency restrictions, offender registries and notification) aimed at particularly  
14 scary, but unlikely, threats.”<sup>193</sup> Many of these Coalitions have “publicly denounced residency  
15 restriction laws, describing them as ‘irresponsible’ and ‘counterproductive.’”<sup>194</sup>

16 Patricia Wetterling, one of the original leaders of the movement for registration and  
17 community notification, is equally emphatic. Residency restrictions, she says, are “wrong and  
18 ludicrous and make no sense at all. We’re putting all our energy on the stranger, the bad guy, and  
19 the reality is it’s most sex offenses are committed by somebody that gains your trust, or is a friend  
20 or relative, and so none of these laws address the real, sacred thing that nobody wants to talk  
21 about.”<sup>195</sup> Wetterling adds, “When these guys are released from prison, we want them to succeed.  
22 . . . All of these laws they’ve been passing make sure that they’re not going to succeed. They don’t  
23 have a place to live; they can’t get work. Everybody knows of their horrible crime and they’ve  
24 been vilified. There is too much of a knee jerk reaction to these horrible crimes. . . . [T]here is no  
25 safe place for these guys. We have not built into the system any means for success . . . .”<sup>196</sup>

26 Unless carefully targeted, therefore, most of these measures almost inevitably aggravate  
27 the very dangers that they are intended to allay.

28 In light of these findings, Section 213.12I creates a strong presumption against limits on  
29 sex-offender residency and employment, GPS monitoring, and other restrictive measures that can

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<sup>191</sup> Bandy, *supra* note 74, at 471, 488.

<sup>192</sup> *Id.*, at 490.

<sup>193</sup> *Id.*, at 491-492 (paraphrasing CASA interviewee based in Southwest).

<sup>194</sup> *Id.*, at 492 (explaining that these provisions “provide the public with a false sense of security and serve to reinforce stereotypes about the typical offender and the typical victim”).

<sup>195</sup> *Id.*, at 101-103,

<sup>196</sup> *Id.*, at 107-108, 112.

1 only impede the offender’s prospects for re-integration into society. The same presumption applies,  
2 for the same reason, against community notification as well, despite its firm pedigree in federal  
3 law and widespread acceptance in the states.

4 Different issues are presented when community notification or a particular sex-offender  
5 restriction is deployed on a carefully targeted basis. An obvious example might be a nursery  
6 school’s request for affirmative notification in the event that a registered sex offender moves into  
7 the area. To accommodate potentially legitimate needs of this sort, subsections (3) and (4) establish  
8 a framework for approving on a case-by-case basis specific collateral consequences, additional to  
9 those authorized by Sections 213.12A-H. The official making that individual determination is  
10 required to give careful consideration to the public-safety need for the particular measure; to weigh  
11 that need against its impact on the offender, the offender’s family, and the offender’s prospects for  
12 rehabilitation and reintegration into society; and to ensure that any measure approved is drawn as  
13 narrowly as possible to achieve the goal of public safety.

14 This standard will not open the door to routine imposition of community notification or  
15 other additional collateral consequences just because a community organization asserts a particular  
16 need to know, or because a particular registrant has been found guilty of a very serious offense.  
17 For example, a nursery school seeking to avoid hiring employees who have sex-offense records  
18 does not require affirmative notification every time a new registrant moves into the area; ordinary  
19 background check procedures suffice for that purpose.<sup>197</sup> In contrast, a commitment to notify the  
20 nursery school about any registrant in the area who has a particularly serious record of prior  
21 convictions for molesting young children might be warranted, provided that such a decision is  
22 reached after carefully considering all the circumstances. And similarly, a registrant with a prior  
23 record of that nature might reasonably face a narrowly targeted restriction on living or seeking  
24 employment near schools and play areas where young children congregate, provided again that the  
25 restriction is imposed only after carefully considering all the circumstances.

26 The important point is that the interests in public safety and successful offender  
27 rehabilitation both require that the unintended harms of additional collateral consequences be fully  
28 appreciated and that their use accordingly be limited to a narrow range of specially compelling  
29 circumstances.<sup>198</sup> Subsections (3) & (4) identify the factors that the sentencing judge or other authorized  
30 official must weigh in determining whether a particular offender should incur such consequences.<sup>199</sup>

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<sup>197</sup> See Reporters’ Note to Section 213.12H, addressing the related issue of whether organizations of this sort need access to registry information.

<sup>198</sup> Cf. *Doe v. Attorney General*, 686 N.E.2d 1007 (Mass. 1997) (holding Massachusetts provision subjecting sex offender to mandatory registration accompanied by public access and community notification to violate procedural due process in the absence of an individualized risk assessment); *State v. Bani*, 36 P.3d 1255, 1268 (Haw. 2001) (same). But see *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1 (2003) (Connecticut’s mandatory registration with public access and community notification did not violate procedural due process).

<sup>199</sup> Statutory language is not the place to mandate specific risk assessment parameters. The sentencing judge or other authorized official will draw on detailed protocols that are evolving and

Section 213.12J. Relief from Obligation to Register, Associated Duties,  
and Additional Collateral Consequences

1 SECTION 213.12J. RELIEF FROM OBLIGATION TO REGISTER, ASSOCIATED DUTIES, AND  
2 ADDITIONAL COLLATERAL CONSEQUENCES

3 (1) *Petition for relief.* At any time prior to the expiration of the obligation to register,  
4 the associated duties, or any additional collateral consequences, the offender may petition  
5 the sentencing court, or other authority authorized by law, to issue an order of relief from  
6 all or part of that obligation or those duties or consequences.

7 (2) *Proceedings on petition for relief.* The authority to which the petition is addressed  
8 may either dismiss the petition summarily, in whole or in part, or institute proceedings as  
9 needed to rule on the merits of the petition. If that authority chooses to entertain submissions,  
10 hear argument, or take evidence prior to ruling on the merits of the petition, it shall give the  
11 prosecuting attorney notice and an opportunity to participate in those proceedings.  
12 Following those proceedings, the authority to which the petition is addressed may grant or  
13 deny relief, in whole or in part, from the obligation to register, any associated duties, and  
14 any additional collateral consequences. An order granting or denying relief following those  
15 proceedings shall explain in writing the reasons for granting or denying relief.

16 (3) *Standard for relief.* The authority to which the petition is addressed may grant  
17 relief under subsection (2) of this Section if it finds that the obligation, duty, or consequence  
18 in question is likely to impose a substantial burden on the offender's ability to reintegrate  
19 into law-abiding society, and that public-safety considerations do not require continued  
20 imposition of the obligation, duty, or consequence after due consideration of:

- 21 (a) the nature of the offense;  
22 (b) all other circumstances of the case;  
23 (c) the offender's prior record; and

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continually refined for this purpose. See, e.g., Grant Duwe, *Better Practices in the Development and Validation of Recidivism Risk Assessments: The Minnesota Sex Offender Screening Tool-4*, 30 CRIM. JUSTICE POLICY REV. 538 (2019); R. Karl Hanson, et al., *The Field Validity of Static-99/R Sex Offender Risk Assessment Tool in California*, 1 J. THREAT ASSESSMENT & MGMT. 102 (2014); R. Karl Hanson & Kelly E. Morton-Bourgon, *The Accuracy of Recidivism Risk Assessments for Sexual Offenders: A Meta-Analysis of 118 Prediction Studies*, 21 PSYCHOL. ASSESSMENT 1 (2009).

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and Additional Collateral Consequences

1           **(d) the potential negative impacts of the restriction, disability, or government**  
2           **action on the offender, on the offender’s family, and on the offender’s prospects for**  
3           **rehabilitation and reintegration into society.**

4           **Relief should not be denied arbitrarily or for any punitive purpose.**

5           **(4) *Subsequent proceedings.* An order of relief granted under this Section does not**  
6           **preclude the sentencing court or other authorized authority from later revoking that order**  
7           **if, on the basis of the offender’s subsequent conduct and any other substantial change in**  
8           **circumstances, the authority finds by a preponderance of the evidence that public-safety**  
9           **considerations, weighed against the burden on the offender’s ability to reintegrate into law-**  
10           **abiding society, no longer justify the order of relief.**

11           **Comment:**

12           Section 213.12J identifies the standards and procedures for relieving an offender from the  
13           obligation to register, from the associated duties, or from any additional collateral consequences.  
14           It largely follows the framework applicable generally to petitions for relief from collateral  
15           consequences, as specified in the sentencing provisions of the Model Penal Code,<sup>200</sup> with  
16           additional detail pertinent to sex-offender collateral consequences.

17           In deciding whether to grant relief, the sentencing judge or other official authorized to  
18           make the determination is instructed to consider all the circumstances of the case, with particular  
19           attention to the nature of the offense; the offender’s prior record; and the potential negative impacts  
20           of the collateral consequence in question on the offender, on the offender’s family, and on the  
21           offender’s prospects for rehabilitation and reintegration into society. Some states endorse  
22           essentially similar criteria, but offer greater detail. Washington, for example, breaks down these  
23           general categories into twelve factors and adds that the court may also take into account “[a]ny  
24           other factors the court may consider relevant.”<sup>201</sup>

**REPORTERS’ NOTES**

25           Federal SORNA makes no provision for early relief from registration and its associated  
26           duties and restrictions. More than half the states provide some opportunity for early termination of  
27           registration requirements, though in almost all cases the opportunity is limited to persons convicted

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<sup>200</sup> See *Model Penal Code: Sentencing*, supra note 110, § 7.04(2) & (3).

<sup>201</sup> WASH. REV. CODE ANN. § 9A.44.142 (2019).

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1 of the least serious sexual offenses.<sup>202</sup> Section 213.12J draws on the early relief provisions of  
2 *Model Penal Code: Sentencing*, Article 7, with additional provisions relevant to sex-offender  
3 collateral consequences, and with several adjustments to align sex-offender relief with  
4 implementation details and policy considerations specific to this context.<sup>203</sup>

5 (a) MPCS directs that petitions for relief be addressed to the sentencing court, and this is a  
6 common approach among jurisdictions that authorize early relief from sex-offender registry  
7 obligations.<sup>204</sup> However, many jurisdictions take a different approach. In some, petitions for relief  
8 must be addressed to a court in the jurisdiction where the registrant resides.<sup>205</sup> In some states, the  
9 sentencing court acts on the advice on a board of experts;<sup>206</sup> elsewhere the final decision is  
10 entrusted to an independent risk assessment board.<sup>207</sup> It seems appropriate to allow for local  
11 flexibility in this regard. Section 213.12J endorses that approach.

12 (b) MPCS imposes a daunting burden of proof: the offender must demonstrate by clear and  
13 convincing evidence that the criteria for relief are satisfied. The effect is to create a strong  
14 presumption in favor of sustaining a mandatory collateral consequence that by definition was not  
15 initially attuned to the situation of the individual offender. This high hurdle has drawn criticism as  
16 unduly difficult to meet with respect to collateral consequences generally.<sup>208</sup> It is especially  
17 inappropriate in the context of sex-offender collateral consequences, because these duties and  
18 restrictions carry no strong presumption that they are likely to be sufficiently justified in the  
19 individual instance. To the contrary, the case for most collateral consequences is mixed at best,  
20 particularly with the passage of time since the offender's initial registration. Accordingly, for sex-  
21 offender collateral consequences, the appropriate burden of proof is not a matter that can be  
22 suitably constrained in advance. Section 213.12J(3) does not specify a particular burden of proof  
23 and instead leaves this decision to the sound discretion of the decision-making authority.

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<sup>202</sup> See “Relief from Sex Offender Registration Obligations,” <http://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-relief-from-sex-offender-registration-obligations/>.

<sup>203</sup> The collateral-consequence provisions of MPCS were not intended to apply without exception to the unique circumstances of sex-offender collateral consequences. See *CITE*.

<sup>204</sup> E.g., See, e.g., FLA. STAT. ANN. § 943.0435(11)(a)(2); GA. CODE ANN. § 42-1-19; MICH. COMP. LAWS ANN. § 28.728c(4); N.Y. CORRECT. LAW § 168-o.

<sup>205</sup> E.g., CAL. PENAL CODE § 290.5 (*effective July 1, 2021*) (petition to court in county in which offender resides); OHIO REV. CODE ANN. § 2950.15 (same).

<sup>206</sup> E.g., 42 PA. STAT. AND CONS. STAT. ANN. § 9799.15(a.2) (sentencing court acts on report of State Sexual Offenders Assessment Board); TEX. CODE CRIM. PROC. ANN. art. 62.404 (sentencing court acts on basis of individual risk assessment conducted by the state's Council on Sex Offender Treatment).

<sup>207</sup> E.g., MD. CODE REGS. 12.06.01.14 (decision by Sex Offender Registry Unit); 803 MASS. CODE REGS. 1.30 (petition to Sex Offender Registry Board).

<sup>208</sup> See Demleitner, *supra* note 22, at 321-323.

Section 213.12J. Relief from Obligation to Register, Associated Duties,  
and Additional Collateral Consequences

1           (c) MPCCS sets stiff criteria for granting relief. The offender must show that the collateral  
2 consequence in question is (i) not substantially related to the elements and facts of the conviction  
3 offense; (ii) likely to impose a substantial burden on the offender’s ability to re-integrate into  
4 society; *and* (iii) not required by public safety considerations. In the context of sex-offender  
5 collateral consequences, it will too often be impossible to demonstrate that all three of these criteria  
6 are met. Except in rare instances, sex-offender collateral consequences will be intrinsically related  
7 to the elements and facts of the underlying sexual offense, making the first essential criterion  
8 beyond reach in most cases, even when the balance of public-safety considerations and adverse  
9 impacts on the offender clearly warrant relief. Accordingly, Section 213.12J(3) allows the  
10 decision-making authority to grant relief simply on the basis of a finding that the collateral  
11 consequence in question is likely to impose a substantial burden on the offender’s ability to  
12 reintegrate into law-abiding society, and that public-safety considerations do not require its  
13 continued imposition.

14           (d) MPCCS permits the decision-making authority to deny relief without making any  
15 specific finding that the evidence and the relevant criteria warrant that result. And when the  
16 decision-making authority does grant relief, MPCCS does not expressly require that the necessary  
17 findings be explained in writing. Section 213.12J(2) specifies that when the decision-making  
18 authority institutes proceedings to rule on the merits of a petition for relief, an order granting *or*  
19 *denying* relief following those proceedings must explain in writing the reasons for granting or  
20 denying relief.